

REVOCABLE LICENSE AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 2020, by and between:

CITY OF POMPANO BEACH, a municipal corporation of the State of Florida, whose address is 100 W. Atlantic Blvd., Pompano Beach, Florida 33060, (“CITY”),

and

FAIRFIELD POMPANO LP, a Delaware limited partnership with offices located at 5510 Morehouse Drive, Suite 200, San Diego, CA 92121, (“LICENSEE”),

collectively referred to as “the Parties.”

WITNESSETH:

WHEREAS, LICENSEE is the owner of fee simple title to certain real property located on the northwest corner of N.E. 6th Street and State Road 5/Federal Highway in the City of Pompano Beach, Broward County, Florida, and more particularly described in Exhibit “A” attached and incorporated in this Agreement (the “Property”); and

WHEREAS, LICENSEE is developing a Fairfield Residential project on the Property (the “Project”); and

WHEREAS, as part of the Project, LICENSEE intends to or has constructed or placed, and agrees to maintain, certain improvements including, but not limited to, pavers, landscaping and irrigation (“Improvements”), within the rights-of-way of N.E. 6th Street and Federal Highway, and as further described and depicted in Exhibit “B;” and

WHEREAS, it is the intent of the Parties that LICENSEE any successor property owner, association or other designated legal entity shall be required to maintain the Improvements; and

WHEREAS, Federal Highway Right-of-way adjacent to the Property is under the jurisdiction of the Florida Department of Transportation (“FDOT”); and

WHEREAS, pursuant to City Resolution No. 2008-49, a Landscape Inclusive Maintenance Memorandum of Agreement (“MMOA”) between City and FDOT, outlining the parties’ responsibilities regarding improvements to be constructed and installed, and the maintenance of such Improvements, within the Right-of-Way of State Road 5/Federal Highway; and

WHEREAS, pursuant to the City Resolution No. 2019-149, the CITY and FDOT recently executed Amendment No. 17 of the MMOA agreeing to allow adjacent property owners to State Road 5/Federal Highway to install or construct additional landscape improvements or to modify improvements within the Right-of-Way of State Road 5/Federal Highway, and to maintain such improvements; and

WHEREAS, LICENSEE has agreed to maintain the Improvements proposed for installation or construction within the Rights-of-Way of N.E. 6th Street and State Road 5/Federal Highway, pursuant to the standards and requirements outlined in the MMOA and any amendments and in the Maintenance Plan for Landscape Improvements, attached and incorporated in this Agreement as Exhibit “C”; and

WHEREAS, LICENSEE has agreed to maintain Improvements as consideration for CITY’s authorization to place all of the Improvements, as indicated above, in the Rights-of-Way of N.E. 6th Street and State Road 5/Federal Highway; and

WHEREAS, claims for damages or injuries may be made, or have been made against CITY solely due to the installation, placement or existence of the aforementioned Improvements within

the aforementioned Rights-of-Way prior to the effective date of this Agreement, and LICENSEE intends to indemnify CITY for any and all such claims; and

WHEREAS, pursuant to the terms set forth in this Agreement, LICENSEE agrees to indemnify and hold CITY harmless for the installation, construction and maintenance of the Improvements within the Rights-of-Way; and

WHEREAS, inasmuch as the use of the property owned by CITY and FDOT by LICENSEE for this restricted purpose will not interfere with the rights enjoyed by the public and will be without cost to the public.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and such other valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

1. Recitals.

The parties acknowledge and agree that the Recitals above are true and correct and incorporated herein by this reference.

2. CITY grants to LICENSEE and LICENSEE accepts from CITY a non-exclusive license to use a portion of right-of-way property ("License Area") in the aforementioned roadways for the purpose of installing, operating and maintaining Improvements in and under the property shown on the site plan and description attached and designated as Exhibit "D," attached and incorporated in this License Agreement. All work of installation, maintenance, land restoration and clean-up shall be done to the satisfaction of the City Engineer. Prior to the start of construction, LICENSEE shall provide documentation (such as pictures, video, topographic surveys) to the City Engineer to establish the conditions that existed within the License Area prior to construction. All damages caused as a result of such installation to any elements, including, but not limited to,

pavement, curbs, sidewalks, landscaping, trees, irrigation, utility poles, located within the public right-of-way shall be restored or repaired to a condition equal to or better than that existing prior to commencement of installation/construction or maintenance of Improvements. This shall include any subsurface features such as water service lines, utility access lines, utility access covers, water meter boxes, water isolation valve stems, or sanitary sewer cleanouts that may deteriorate as a result of removing asphalt, base materials, compaction, paving operations. LICENSEE shall be responsible for verifying all underground utilities prior to digging in any area. LICENSEE shall notify all necessary utility companies, 48 hours minimum prior to digging for verification all underground utilities, irrigation and any other obstructions and coordinate prior to initiating operations.

3. LICENSEE agrees that this License Agreement is contingent upon LICENSEE submitting a site plan or location plan and blueprints or other documentation as is usually required by the Engineering Department of CITY for the issuance of a permit, and the granting of this 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 the right-of-way for construction purposes prior to approval of the permits.

4. This license shall continue from day to day commencing on the date of execution by all parties until terminated in accordance with this Agreement.

5. LICENSEE agrees to pay CITY as compensation for this License the sum of One Dollar (\$1.00) per annum. Receipt of the first payment of One Dollar (\$1.00) is acknowledged.

6. This license may, at the option of LICENSEE, with the consent of CITY, be renewed from year to year after the initial term upon payment by LICENSEE to CITY of the sum of One Dollar (\$1.00) per annum.

7. As further consideration of this License 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.

8. This license may be terminated by CITY at any time, for no express reason, upon giving thirty (30) days' written notice to LICENSEE by certified mail as further provided in paragraph 15. Upon termination, LICENSEE agrees to remove at its sole expense all encroachments lying in, along and under the licensed portion of the right-of-way and to restore the pavement and any modification made by LICENSEE to the licensed premises to its former condition or better as determined in the sole discretion of the Public Works Administrator.

9. LICENSEE specifically agrees that it will use the Rights-of-way pursuant to this license only for the purpose of installing, constructing and maintaining Improvements described in this Agreement. Further, LICENSEE will not suffer or permit the licensed premises or any part 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 in the public right-of-way. Staging of materials in the public right-of-way is strictly prohibited. The City Engineer shall approve all repairs, replacements and maintenance within the License Area.

10. It is further expressly agreed by LICENSEE that it shall not make any alteration other than normal repairs and maintenance to the Improvements by way of substantial alteration without the express written consent of CITY.

11. It is expressly understood and agreed that no real or personal property is leased to LICENSEE; that the LICENSEE's right to occupy the right-of-way is subordinate to CITY's (or any franchisee of CITY) use of the licensed premises, 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 licensed premises at its own expense by restoring the pavement and any modifications made by LICENSEE to the licensed premises to its former condition or better, as determined in the sole discretion of the Public Works Director. In the event that the non-exclusive use, occupation, and possession and maintenance of the Improvements ever (a) conflicts with a superior municipal interest of the CITY or public or FDOT, or (b) at any time the CITY or FDOT requires the use of the License Area for a superior conflicting municipal purpose or (c) the CITY or FDOT determines that continuation of the License Agreement for the License Area is no longer in the best public interest, all as determined by the CITY, and consistent with the MMOMA, then in that event, the license shall be terminable at the will of the CITY upon fifteen (15) days written notice to the LICENSEE.

12. During the term of this License and any subsequent renewal, LICENSEE assumes all risks in the installation, construction and maintenance of the Improvements located along and under the licensed premises and shall be solely responsible and answerable for damages related to all accidents or injuries to person or property arising out of or caused in the performance of any of the work done pursuant to this Agreement, or arising out of the presence, possession or maintenance of such Improvements. LICENSEE further covenants and agrees to indemnify and hold harmless CITY, FDOT and their 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, construction and maintenance of the aforementioned Improvements or the carelessness, negligence or improper conduct of LICENSEE or any servant, agent, subcontractor or employee of LICENSEE.

13. LICENSEE shall procure at its own cost and expense Comprehensive General Liability Insurance coverage in an amount not less than One Million (\$1,000,000.00) Dollars combined single limit in addition to any other insurance or bond CITY may require, which insurance will protect LICENSEE, CITY, FDOT and their officers and employees from any claims for damages to property and for personal injuries, including death, which may arise on the Property/Licensed premises 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 to the CITY, naming the City of Pompano Beach and FDOT 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. A copy of the approved Certificate is attached and incorporated in this Agreement as Exhibit "E."

14. 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. 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, then this license shall be null and void and terminated without notice to LICENSEE.

15. 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:

Gregory Harrison, City Manager
City of Pompano Beach
Post Office Box 1300
Pompano Beach, Florida 33061-1300

FOR LICENSEE:

Fairfield Pompano LP
3330 Cumberland Blvd. SE, Suite 375
Atlanta, GA 30339
Attn: C. Thomas Brunson and Richard Munger
Email: tbrunson@ffres.com and
rmunger@ffres.com
404-442-3856 office
214-574-1376 fax

16. Installation and construction activities shall not commence until the LICENSEE submits to the Engineering Department maintenance of traffic plan ("plan") for approval, if such is needed, as determined by the City Engineer. The plan shall be signed and dated by a person who has been certified by the American Traffic Safety Services Association or signed and sealed by a professional engineer. The plan shall conform to FDOT's latest manual on Uniform Traffic Control Devices, as amended for streets and highways, the requirements of the Standard Application Package for railways, including flagging services and Railroad Protective Insurance or acceptable alternative, when applicable, and the FDOT's latest Roadway and Traffic Design Standards and Standard Specifications for Road and Bridge Construction, as amended.

17. This License Agreement shall be construed in accordance with the laws of the State of Florida. If any provision or its application to any person or situation, is deemed invalid or unenforceable for any reason and to any extent, the remainder of this License Agreement, or the application of the remainder of the provisions, shall not be affected. Rather, this License Agreement is to be enforced to the extent permitted by law. The captions, headings and title of this License Agreement are solely for convenience of reference and are not to affect its interpretation. Each covenant, term, condition, obligation or other provision of the Revocable License 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 License, unless otherwise expressly provided. All terms and words used in this License 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.

18. This License Agreement shall be binding on and inure to the benefit of the parties, their successors and assigns.

19. Nothing contained in this License Agreement is intended to serve as a waiver of sovereign immunity by the CITY as provided for in Fla. Stat. 768.28.

20. 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 License Agreement. None of the parties intend to directly or substantially benefit a third party by this License Agreement. The parties agree that there are no third party beneficiaries to this License Agreement and that no third party shall be entitled to assert a claim against any of the parties based on this License 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.

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

22. Each party shall maintain its own respective records and documents associated with this License 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 Section 119.07, Florida Statutes, and any resultant award of attorney's fees of non-compliance with that law.

23. 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 License Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms of this Agreement shall be predicated upon any prior representations or agreements, whether oral or written.

24. 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 and that the preparation of this License has been their joint effort.

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

26. This License 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 License Agreement and any action involving the enforcement or interpretation of any rights 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.

27. 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.

Licensee must follow all Federal, State, County, and City safety guidelines, including all CDC safety guidelines in effect during the term of the program, including but not limited to social

distancing, and personal protection equipment. Inability to conduct the program and follow any and all required safety guidelines from the COVID-19 crisis or other similar emergency, or failure to follow such requirements, including but not limited to, social distancing, shall constitute grounds for immediate cancellation of this Agreement unilaterally by the City upon written notice, which may be provided via electronic mail.

The parties, by mutual agreement, may reschedule the performance of the services to a later date pursuant to the terms 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.

"CITY":

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