

Meeting Date: 02/10/15

Agenda Item 13

REQUESTED COMMISSION ACTION:

Consent  Ordinance  Resolution  Consideration/Discussion  Presentation

SHORT TITLE A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE AN AGREEMENT REGARDING ESTABLISHMENT OF AN ARTIFICIAL REEF BETWEEN THE CITY OF POMPANO BEACH AND PPI, INC.; PROVIDING AN EFFECTIVE DATE.

Summary of Purpose and Why:

PPI, Inc. is the parent company of the Pompano Beach Isle Casino. The requested agreement solidify's PPI's donation of \$312,500 for an artificial reef project in what is recommended to be called "Pompano Beach Shipwreck Park".

- (1) Origin of request for this action: Pompano Beach Tourism Committee and Economic Development Council
- (2) Primary staff contact: Greg Harrison, Assistant City Manager *Greg Harrison* 954 786-4601
- (3) Expiration of contract, if applicable: \_\_\_\_\_
- (4) Fiscal impact and source of funding: Total: \$312,500 (Revenue to the City from PPI, Inc.)

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
City Attorney	<u>2/4/15</u>	_____	<i>[Signature]</i>
Finance	<u>2/5/15</u>	_____	<i>[Signature]</i>
Budget	<u>2-4-15</u>	<u>Approval</u>	<i>[Signature]</i>

*[Signature]*  
X City Manager

*[Signature]*  
Pompano Beach

ACTION TAKEN BY COMMISSION:

Ordinance	Resolution	Consideration	Workshop
1 <sup>st</sup> Reading _____	1 <sup>st</sup> Reading _____	Results: _____	Results: _____
2 <sup>nd</sup> Reading _____	_____	_____	_____
_____	_____	_____	_____



**City Attorney's Communication #2015-439**  
January 20, 2015

**TO:** Greg Harrison, Assistant City Manager  
**FROM:** Fawn Powers, Assistant City Attorney  
**RE:** Resolution – Agreement To Establish An Artificial Reef

As requested, I have prepared and attached the following captioned resolution:

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE AN AGREEMENT REGARDING ESTABLISHMENT OF AN ARTIFICIAL REEF BETWEEN THE CITY OF POMPANO BEACH AND PPI, INC.; PROVIDING AN EFFECTIVE DATE.**

Please feel free to contact me if I may be of further assistance.

  
\_\_\_\_\_  
FAWN POWERS

l:cor/mgr/acm/2015-439f  
Attachment

RESOLUTION NO. 2015-\_\_\_\_\_

**CITY OF POMPANO BEACH**  
**Broward County, Florida**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE AN AGREEMENT REGARDING THE ESTABLISHMENT OF AN ARTIFICIAL REEF BETWEEN THE CITY OF POMPANO BEACH AND PPI, INC.; PROVIDING AN EFFECTIVE DATE.**

**BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:**

**SECTION 1.** That an Agreement between the City of Pompano Beach and PPI, Inc. to establish an artificial reef, a copy of which Agreement is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

**SECTION 2.** That the proper City officials are hereby authorized to execute said Agreement between the City of Pompano Beach and PPI, Inc.

**SECTION 3.** This Resolution shall become effective upon passage.

**PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
**LAMAR FISHER, MAYOR**

**ATTEST:**

\_\_\_\_\_  
**MARY L. CHAMBERS, CITY CLERK**

FP/ds

1/20/15

l:reso/2015-181f

**Agreement**

**Between**

**THE CITY OF POMPANO BEACH**

**and**

**PPI, INC.**

**Relating to**

**Providing Funds to Establish an Artificial Reef**

**By Means of Sinking at Sea**

**The Vessel known as the M/V Santé Manna**

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## **EXHIBITS**

- 1 Description of the M/V Santé Manna
- 2 Agreement between the City of Pompano Beach and Kearns Construction Company

**THIS AGREEMENT** made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between

**THE CITY OF POMPANO BEACH**, a Florida municipal corporation whose address is 100 West Atlantic Boulevard, Pompano Beach, Florida 33060 (the “CITY”),

and

**PPI, INC.**, a Florida for profit corporation whose principal address is 1800 SW 3 Street, Pompano Beach, Florida 33069 (the “ISLE”)

**WHEREAS**, the parties to this Agreement have identified the container ship known as the M/V Santé Manna more particularly described in Exhibit 1 as being available for purchase and sinking as an artificial reef in a location known as the Permitted Site (the “Project”); and

**WHEREAS**, the CITY intends to enter into an agreement with Kearns Construction Company (“KEARNS”), a copy of which is attached as Exhibit 2, whereby KEARNS will acquire and scuttle the M/V Santé Manna in accordance with all applicable laws and regulations for a total contract price of \$515,000.00; and

**WHEREAS**, the CITY and ISLE agree to provide \$312,500.00 each for a total of \$625,000.00 to be utilized exclusively towards funding the Project pursuant to this Agreement and the CITY’s agreement with KEARNS (Exhibit 2); and

**WHEREAS**, the CITY and ISLE intend to design and construct an interactive casino space on the M/V Santé Manna prior to it being scuttled at the Permitted Site and to work together in good faith regarding the marketing and merchandising of the artificial reef on the Permitted Site; and

**WHEREAS**, the CITY has decided that participating in the Project is in the public’s best interest; and

**WHEREAS**, the CITY and ISLE desire to enter into this Agreement setting forth their mutual understandings and obligations regarding the Project.

**NOW, THEREFORE**, in consideration of the conditions, covenants and mutual promises set forth herein, the parties agree as follows.

**ARTICLE 1**  
**DEFINITIONS**

As used in this Agreement the following terms shall have the following meanings. Other terms not defined in this Article shall have the meanings assigned to them elsewhere in this

Agreement. Words used herein in the singular shall include the plural and words in the masculine/feminine/neuter gender shall include words in the masculine/feminine/neuter where the text of this Agreement requires.

1. **Agreement**: means this document.
2. **Authorized Representative**: The person(s) designated and appointed from time to time by any of the parties to represent that entity in administrative matters as opposed to policy matters.
3. **CITY**: The City of Pompano Beach, a municipal corporation of the State of Florida.
4. **City Commission**: The elected governing body of the City.
5. **Completion Date**: The date when the CITY issues a Notice of Completion for Phase I of the Project.
6. **Contractor**: Kearns Construction Company, a Florida for-profit corporation responsible to perform the Phase I Work for the Project.
7. **Contract Administrator**: For the CITY, its City Manager or his/her designee as provided for in writing by the City Manager. For ISLE, Robert Wyre or his designee as provided for in writing by Robert Wyre.
8. **Default**: An event under which any party to this Agreement has failed to materially perform under the obligations of this Agreement, after having been given notice of such event and an opportunity to cure. The opportunity to cure any event of default, unless otherwise prescribed in this Agreement, shall be 30 days after delivery of notice to the party (ies) alleged to be in default.
9. **Effective Date**: The date on which this Agreement is executed by both parties.
10. **Governmental Authorities**: The CITY and any other federal, state, county, municipal or other government department, entity, authority, commission, board, bureau, court, agency or any instrumentality of any of them.
11. **Notice of Completion**: The Notice of Completion shall be the CITY's written notice to CONTRACTOR memorializing the CITY's satisfaction with CONTRACTOR's satisfactory completion of the Work for Phase I.
12. **Permitted Site**: The Atlantic Ocean sand bottom with approximate coordinates of 26° 13.775' N, Longitude 80° 03.861' S, where the M/V Santé Manna is to be scuttled in an upright position at an approximate depth of 150 feet for establishment of an artificial reef in accordance with the provisions of this Agreement.

13. **Project**: The acquisition, decommissioning and scuttling of the M/V Santé Manna at the Permitted Site for the purpose of establishing an artificial reef off the coast of Pompano Beach, Florida.

14. **Project Financing**: Any financing provided for all or any portion of the Project.

15. **Salvaged Items**: Those items listed in Exhibit 6 to the CITY's Agreement with KEARNS (Exhibit 2) which shall be removed from the M/V Santé Manna and delivered to the CITY for safekeeping until such time as the CITY and ISLE jointly decide how the Salvaged Items shall be utilized.

## **ARTICLE 2** **REPRESENTATIONS AND COVENANTS**

1. **Representations of the CITY**. The CITY makes the following representations to CONTRACTOR and the CITY acknowledges that CONTRACTOR has relied upon in entering into this Agreement.

a. This Agreement is a valid, binding and permissible activity within the power and authority of the CITY and does not violate any CITY Code, Charter provision, rule, resolution, ordinance, policy, or agreement of the CITY or constitute a default of any agreement or contract to which the CITY is a party.

b. The individuals executing the Agreement on behalf of the CITY are duly authorized to take such action, which action shall be, and is, binding upon the CITY.

c. Until such time as the parties enter into a subsequent agreement or a non-profit foundation is created for the Project, the CITY agrees to share with the ISLE, equal decision-making authority and rights regarding the design and construction of an interactive casino space on the M/V Santé Manna prior to, and after, said vessel is scuttled at the Permitted Site; the marketing and merchandising of the artificial reef on the Permitted Site; and how to best utilize the Salvaged Items.

d. The CITY agrees to support the creation of a foundation or other corporate entity to further develop, manage and market the Project, including, but not limited to, to raise and receive additional funding for the Project and to seek additional community, educational and/or other governmental partners to participate in, and benefit, the Project. The CITY agrees that the ISLE, at ISLE's sole discretion, shall have the right to appoint fifty percent (50%) of the directors or board members of any such foundation or corporate entity.

e. The CITY agrees to actively seek out other stakeholders for the Project, including the Greater Ft. Lauderdale Convention and Visitors Bureau, the CITY's Tourism Marketing Committee, and the Pompano Beach Chamber of Commerce, in order to ensure the Project receives the best national and international exposure possible.

f. The CITY agrees that the ISLE has no maintenance or additional obligations to the Project except as expressly set forth herein.

g. Unless and until any proposed non-profit foundation is established for the Project, the CITY agrees the ISLE shall have the exclusive right to re-name the M/V Santé Manna.

h. CITY acknowledges that its failure to faithfully perform any of the provisions of this Agreement constitutes default on its part, and CITY fully agrees to the remedies for default as set forth in Article 6 herein.

2. Representations of ISLE. ISLE makes the following representations to the CITY which the CITY relies upon in entering into this Agreement.

a. ISLE is a Florida for-profit corporation, duly organized, existing and in good standing under the laws of the State of Florida with the power and authority to enter into this Agreement.

b. The execution, delivery, consummation and performance under this Agreement will not violate or cause ISLE to be in default of any provisions of its governing documents or rules and regulations or any other agreement to which ISLE is a party or constitute a default thereunder or cause acceleration of any obligation of ISLE thereunder.

c. By execution of this Agreement, ISLE certifies to the CITY that the officer executing this Agreement has been duly authorized by proper resolution(s) of ISLE's respective Board of Directors to enter into, execute and deliver this Agreement and all other documents, certificates, agreements, consents and receipts, and to take any and all other actions of any kind whatsoever in order to accomplish the purposes and undertakings hereunder and such action shall be, and is, binding on ISLE.

d. There are no actions, suits or proceedings pending or threatened against or affecting ISLE or its principals, which ISLE is aware of in any court or before or by any federal, state, county or municipal department, commission, board, bureau, agency or other governmental body which would have any material effect on ISLE's ability to perform its obligations under this Agreement.

e. ISLE acknowledges this Agreement has been entered into to provide for establishment of an artificial reef at the location known as the Permitted Site.

f. ISLE also recognizes that the CITY, in entering into this Agreement, is accepting and relying on the ISLE for the faithful performance of all undertakings and covenants contained in this Agreement in view of the substantial financing and other resources committed by the CITY for the Project.

g. ISLE further acknowledges that its failure to faithfully perform any of the provisions of this Agreement constitutes default on its part, and ISLE fully agrees to the remedies for default as set forth in Article 6 herein.

h. The ISLE agrees to actively seek out other stakeholders for the Project, including the Greater Ft. Lauderdale Convention and Visitors Bureau, the CITY's Tourism Marketing Committee, and the Pompano Beach Chamber of Commerce, in order to ensure the Project receives the best national and international exposure possible.

i. Until such time as the parties enter into a subsequent Agreement or a non-profit foundation is created for the Project, the ISLE agrees to share with the CITY, equal decision-making authority and rights regarding the design and construction of an interactive casino space on the M/V Santé Manna prior to, and after, said vessel is scuttled at the Permitted Site; the marketing and merchandising of the artificial reef on the Permitted Site; and how to best utilize the Salvaged Items.

j. The ISLE agrees to support the creation of a foundation or other corporate entity to further develop, manage and market the Project, including, but not limited to, to raise and receive additional funding for the Project and to seek additional community, educational and/or other governmental partners to participate in, and benefit, the Project. The ISLE, at ISLE's sole discretion, reserves the right to appoint fifty percent (50%) of the directors or board members of any such foundation or corporate entity.

k. The ISLE agrees that the CITY has no maintenance or additional obligations to the Project except as expressly set forth herein.

**ARTICLE 3**  
**PROJECT DESCRIPTION**

1. The Project. Pursuant to the CITY's Agreement with KEARNS (Exhibit 2), KEARNS will acquire and scuttle the M/V Santé Manna at the Permitted Site in accordance with all applicable laws and regulations. In addition, prior to said vessel being scuttled at the Permitted Site, the CITY and ISLE intend to work together in good faith to design and construct an interactive casino space on it and to otherwise market and merchandise the artificial reef on the Permitted Site. The foregoing activities comprise the scope of work for the Project.

2. Project Funding. The CITY and ISLE agree to provide Three Hundred Twelve Thousand Five Hundred Dollars (\$312,500.00) each for a total of Six Hundred Twenty Five Thousand Dollars (\$625,000.00) for the Project payable as set forth below.

a. CITY agrees to pay KEARNS Two Hundred Fifty Seven Thousand Five Hundred Dollars (\$257,500.00) within five (5) business days of KEARNS obtaining the CITY's written approval that all the requirements set forth in Paragraph 2a-c of Article 3 of the CITY's Agreement with KEARNS (Exhibit 2) have been satisfied;

b. Within five (5) business days of KEARNS obtaining the CITY's written approval that all the requirements set forth in Paragraph 2a-c of Article 3 of the CITY's Agreement with KEARNS have been satisfied, the CITY and ISLE agree to contribute Fifty Five Thousand Dollars (\$55,000.00) each for a total of One Hundred Ten Thousand Dollars (\$110,000.00) which the CITY's Finance Director shall retain in an interest bearing escrow account to be used exclusively for the Project. The CITY's Finance Director agrees to disburse the funds upon receipt of a written request mutually executed by both the CITY and ISLE's Contract Administrators as defined in Article 5 herein.

c. The ISLE shall provide the CITY Two Hundred Fifty Seven Thousand Five Hundred Dollars (\$257,500.00) within three (3) business days after the CITY issues the Notice of Completion memorializing the CITY's satisfaction with KEARNS' completion of the Work under the CITY's Agreement with KEARNS (Exhibit 2).

**ARTICLE 4**  
**TERM**

The term of this Agreement shall commence the date this Agreement is executed by all parties and end when ISLE has tendered payment of \$257,500.00 to the CITY for Phase I of the Project as set forth in the preceding Article. During this period, both CITY and ISLE shall be bound by, and must comply with, the terms and conditions imposed by this Agreement.

**ARTICLE 5**  
**CONTRACT ADMINISTRATOR**

1. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services.

2. For the purposes of the day-to-day conduct during the term of the Project, ISLE's Contract Administrator is Robert Wyre or his written designee as provided for in writing by Robert Wyre.

3. For the purposes of the day-to-day conduct during the term of the Project, the CITY's Contract Administrator is its City Manager or his designee as provided for in writing by the City Manager.

**ARTICLE 6**  
**DEFAULT AND REMEDIES TO CURE DEFAULT**

1. Event of Default. Failure of the CITY or the ISLE to timely comply with the material terms, conditions or covenants of this Agreement that either party is required to observe or perform shall constitute an Event of Default under this Agreement.

2. Remedies in the Event of Default.

a. General. If either party fails to timely cure an Event of Default, then the other party shall have the right to terminate this Agreement and/or may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy said default or breach, including, but not limited to, proceedings to compel specific performance, damages for breach of contract, and any other legal or equitable remedies.

b. Informal Dispute Resolution Process. The parties desire to minimize the adverse effect and cost of disputes in recognition of the complexities involved in implementing this Agreement. As to disputes between the CITY and the ISLE, the parties agree that in the first instance, their respective Contract Administrators shall endeavor to resolve every dispute amicably and to also define the nature and extent of any disagreement to the extent possible. All parties shall be entitled to have representatives present at any such meeting or conference.

If the parties' Contract Administrators are unable to reach an agreement within five (5) business days after the dispute arises, they agree to promptly enlist the assistance of the City Manager of the City of Pompano Beach, 100 West Atlantic Boulevard, Pompano Beach, Florida 33060 or his/her respective designee(s). Upon the City Manager's receipt and review of said written appeal or demand, the City Manager may request additional information relating to the dispute from any or all parties which shall be timely provided. The City Manager shall provide his decision regarding resolution of the dispute(s) within five (5) business days of receiving said written appeal or additional requested information.

3. Permitted Delay in Performance for Causes Beyond Control of Party. Neither party shall be considered in breach of its obligations with respect to commencing and completing the Project in the event of Permitted Delays due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to, strikes; walkouts; acts of God; failure or inability to secure materials or labor by reason of priority or similar regulation or enemy action; civil disturbance; fire or other casualty.

In the event of the occurrence of any such Permitted Delay, the intent and purpose of this provision is that the time(s) for performance of either party's obligations hereunder shall be extended for the period of the Permitted Delay provided that the party seeking the benefit of these provisions shall, within five (5) days after the beginning of any such enforced delay, have first notified the other parties in writing of the cause or causes thereof and requested an extension for the period of the enforced delay.

4. Rights and Remedies Cumulative. The rights and remedies of the parties to this Agreement, whether provided by law or by the Agreement, shall be cumulative, and the exercise by any party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by the other party, at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by the other party(ies).

No waiver made by any party with respect to the performance, manner, time, or any obligation of any party or any condition under this Agreement shall be considered a waiver of any rights of the party making the waiver with respect to the particular obligation of the other party or condition beyond those expressly waived in writing or a waiver in any respect in regard to any other rights of the party making the waiver or any other obligations of the other party(ies).

**ARTICLE 7**  
**NOTICES AND DEMANDS**

1. A notice, demand, or other communication under the Agreement by either party to the other shall be given or delivered sufficiently if it is in writing and delivered personally, sent via facsimile, e-mail, or dispatched by registered or certified mail, postage prepaid to the representatives named below or, with respect to either party, is addressed or delivered personally at such other address as that party, from time to time may designate in writing and forward to the other as provided herein.

**ISLE Representative:** Robert Wyre, VP/General Manager  
PPI, Inc.  
1800 SW 3<sup>rd</sup> Street  
Pompano Beach, FL 33069  
(954) 633-6500 Phone  
(954) 972-9970 Fax  
[Rob.Wyre@islecorp.com](mailto:Rob.Wyre@islecorp.com)

**CITY Representative:** Dennis Beach, City Manager  
100 W. Atlantic Boulevard  
Pompano Beach, Florida 33060  
(954) 786-4601 Phone  
(954-786-4504 Fax  
[Dennis.Beach@copbfl.com](mailto:Dennis.Beach@copbfl.com)

2. Any such notice shall be deemed to have been given as of the time of actual delivery or, in the case of mailing, when the same should have been received in due course.

**ARTICLE 8**  
**NON-ASSIGNABILITY AND SUBCONTRACTING**

1. This Agreement is not assignable and both parties agrees not to sell, assign, transfer, merge or otherwise convey any of their interests, rights or obligations under this Agreement, in whole or in part, to any other person, corporation or entity.

2. Any attempt by either party to assign or transfer any of its rights or obligations under this Agreement without first obtaining the written approval of the other shall result in immediate cancellation of this Agreement. Specifically, no assignment of any right or obligation under this Agreement shall be binding on either party without the other party's written consent executed with the same formality as this Agreement.

(iii) Nothing herein shall be construed to create any personal liability on the part of the CITY or its agent(s) nor shall it be construed as granting any rights or benefits hereunder to anyone other than CITY and the ISLE.

**ARTICLE 9**  
**NO CONTINGENT FEE**

Both the CITY and ISLE warrant that they have not employed or retained any company or person to solicit or secure this Agreement and that they have not paid or agreed to pay any person, company, corporation, individual, or firm any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

**ARTICLE 10**  
**WAIVER AND MODIFICATION**

1. 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.

2. Either party may request changes to modify certain provisions of this Agreement; however, unless otherwise provided for herein, any such changes must be contained in a written amendment executed by both parties with the same formality of this Agreement. 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 herein 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.

**ARTICLE 11**  
**NO WAIVER OF SOVEREIGN IMMUNITY**

Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by CITY.

**ARTICLE 12**  
**SEVERABILITY**

The invalidity of any provision hereof shall in no way affect or invalidate the remainder of this Agreement.

**ARTICLE 13**  
**JURISDICTION, VENUE AND WAIVER OF TRIAL**

1. This Agreement shall be governed by the laws of the State of Florida, both as to interpretation and performance. Both parties submit to the jurisdiction of Florida courts and federal courts located in Florida. In the event of a dispute as to the interpretation or application

of or an alleged breach of this Agreement, 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 in Broward County, Florida, and that such dispute shall be heard by a judge, not a jury.

2. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and in addition to every other remedy given herein, now or hereafter existing at law or in equity or by statute or otherwise.

**ARTICLE 14**  
**BINDING EFFECT**

Upon execution of this Agreement, a copy of this Agreement shall be recorded among the Public Records of Broward County, Florida. This Agreement shall be binding upon and enforceable by and against the parties hereto, their personal representatives, heirs, successors, grantees and assigns.

**ARTICLE 15**  
**ATTORNEY'S FEES**

In the event of any litigation involving the terms and conditions of this Agreement or otherwise relating to the transaction encompassed herein, it is understood and agreed that the prevailing party in such litigation shall be entitled to recover from the non-prevailing party reasonable attorney and paraprofessional fees as well as all out-of-pocket costs and expenses incurred thereby by the prevailing party in such litigation through all appellate levels.

**ARTICLE 16**  
**NO THIRD PARTY BENEFICIARIES**

Both parties acknowledge and agree that this Agreement and other contracts and agreements pertaining to the Project will not create any obligation on the part of either the ISLE or the CITY to third parties. No person not a party to this Agreement shall be a third-party beneficiary or acquire any rights hereunder.

**ARTICLE 17**  
**FORCE MAJEURE**

1. No 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.

2. If any party is unable to perform or delayed in their performance of any obligations under this Agreement by reason of any event of force majeure, such inability or delay shall be excused at any time during which compliance therewith is prevented by such event and

during such period thereafter as may be reasonably necessary for either party to correct the adverse effect of such event of force majeure.

3. In order to be entitled to the benefit of this provision, within five (5) days after the beginning of any such delay, a party claiming an event of force majeure shall have given the other party(ies) written notice of the cause(s) thereof, requested an extension for the period and also diligently proceeded to correct the adverse effect of any force majeure. The parties agree that, as to this Article, time is of the essence.

**ARTICLE 18**  
**SURVIVAL OF OBLIGATIONS**

All covenants, agreements, representation and warranties made herein, or otherwise made in writing by any party hereto, including, but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated herein.

**ARTICLE 19**  
**ENTIRE AGREEMENT AND INTERPRETATION**

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

2. This Agreement shall be interpreted as drafted by all parties hereto equally and each party has had the opportunity to be represented by counsel of their choice.

Regardless of which party or party's counsel prepared the original draft and subsequent revisions of this Agreement, all parties 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.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first above written.

**"PPI, Inc.":**

Witnesses:

**PPI, INC.**, a Florida corporation

[Signature]

By: \_\_\_\_\_

[Signature]

Title: \_\_\_\_\_

Print Name

[Signature]

(SEAL)

[Signature]

Print Name

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by \_\_\_\_\_, CEO of PPI, INC., a Florida corporation on behalf of the corporation. He is personally known to me or who has produced \_\_\_\_\_ (Type of identification or identification).

NOTARY'S SEAL:

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



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

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

**“CITY”:**

Witnesses:

**CITY OF POMPANO BEACH**

\_\_\_\_\_

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

\_\_\_\_\_

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

Attest:

\_\_\_\_\_  
MARY L. CHAMBERS, CITY CLERK

(SEAL)

Approved by:

\_\_\_\_\_  
GORDON B. LINN, CITY ATTORNEY

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by **LAMAR FISHER** as Mayor, **DENNIS W. BEACH** as City Manager, and **MARY L. CHAMBERS** 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

2/4/15  
L:agr/manager/2015-438f