

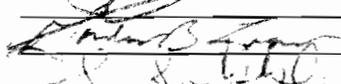
REQUESTED COMMISSION ACTION:

Consent	<input checked="" type="checkbox"/> Ordinance	Resolution	Consideration/ Discussion	Presentation
<p>SHORT TITLE <u>AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A FIRST AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AGREEMENT RELATING TO CITY PROPERTY LYING BETWEEN NORTH OCEAN BOULEVARD (A1A) AND THE ATLANTIC OCEAN AND BETWEEN ATLANTIC BOULEVARD (S.R. 814) AND NE 5TH STREET BETWEEN THE CITY OF POMPANO BEACH AND POMPANO PIER ASSOCIATES, LLC; AUTHORIZING THE MAYOR OR VICE MAYOR, CITY CLERK AND CITY MANAGER TO EXECUTE ON BEHALF OF THE CITY FUTURE NON-MATERIAL AMENDMENTS TO THE AMENDED AND RESTATED DEVELOPMENT AGREEMENT AND TO THE PARCEL GROUND LEASES TO BE ENTERED INTO BY THE CITY PURSUANT TO THE TERMS OF THE AMENDED AND RESTATED DEVELOPMENT AGREEMENT; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.</u></p>				

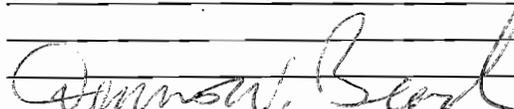
Summary of Purpose and Why:

On July 22, 2014, the Pompano Beach City Commission approved the Amended and Restated Development Agreement between the City of Pompano Beach (City) and Pompano Pier Associates, LLC (PPA). Since that time, the City has approved the design contracts for the Pier Parking Garage and New Pier Structure as well as substantially completed the new Beach Library. Now that the dates for these affiliated projects are more defined, it has become necessary to revise the Development Timeline so that the development of the parcels and the Arch can logistically and synergistically foster a successful Pier development project. Additionally, it has also become apparent that more equitable payment terms for the utilities in the Existing Concession Building Restrooms were needed since the restrooms are used by both patrons of the Concessions, which PPA will operate, as well as the public beachgoers.

- (1) Origin of request for this action: Staff
- (2) Primary staff contact: Dennis Beach, City Manager/ Adriane Esteban, CRA Ext. 7841
Project Manager
- (3) Expiration of contract, if applicable: N/A
- (4) Fiscal impact and source of funding: N/A

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
CRA	<u>3/2/15</u>	Approval	
City Attorney	<u>2/27/15</u>		
Finance	<u>2/12/15</u>	<u>approval</u>	


 City Manager



ACTION TAKEN BY COMMISSION:



P. O. Drawer 1300
Pompano Beach, FL 33061

Phone: (954) 786-5535
Fax: (954) 786-7836

MEMORANDUM

Date: March 10, 2015

To: Pompano Beach City Commission

From: Adriane Esteban, Project Manager

Re: First Amendment to the Amended and Restated Development Agreement

Background

On July 22, 2014, the Pompano Beach City Commission approved the Amended and Restated Development Agreement between the City of Pompano Beach (City) and Pompano Pier Associates, LLC (PPA). Since that time, the City has approved the design contracts for the Pier Parking Garage and New Pier Structure as well as substantially completed the new Beach Library. Now that the dates for these affiliated projects are more defined, it has become necessary to revise the Development Timeline so that the development of the parcels and the Arch can logistically and synergistically foster a successful Pier development project. Additionally, it has also become apparent that more equitable payment terms for the utilities in the Existing Concession Building restrooms were needed since the restrooms are used by both patrons of the Concessions, which PPA will operate, as well as the public beachgoers.

Agenda Item

The revised terms specified in the First Amendment include the following:

- The Development Timeline extends the dates for Parcels E and the 1st of Parcels R1, R2, R3, C1 or C2 by 3 months and for Parcel R4 an extension of 4 months. The main driver for this change is the completion of the Pier Parking Garage (Garage). In order for the restaurants and retail businesses to be successful, adequate parking will be needed. It is important that the Garage be completed or near completion when construction for the parcels starts. The Developer will also be in a better negotiating position with tenants if the timeline is revised to coincide with the Garage completion.
- The City and Developer will equitably split the cost of the utilities for the Existing Concession Building Restrooms. If the meter for the restrooms and rest of the building is shared, as is the present condition, the developer will pay 80% of the utilities up to a maximum annual amount equal to 50% of the minimum rent for the current lease year, and the City will pay 20% plus any charges in excess of 50% of the minimum rent for the current lease year. If the meters are ever separated between the restrooms and rest of the building, then the developer will pay 70% of the utilities costs for the restrooms up to a

CRA

POMPANO BEACH

P. O. Drawer 1300
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maximum annual amount equal to 50% of the minimum rent for the current lease year, and the City will be responsible for the remaining 30% plus any charges in excess of 50% of the minimum rent for the current lease year; while the developer will pay 100% for the rest of the building.

- The Arch construction schedule will be tied to the New Pier Structure, with the Arch construction occurring within 12 months of the New Pier Structure completion rather than within two years of the Lease Term. The New Pier Structure construction will need to utilize the area where the Arch is to be located for loading and staging, so it is in the best interest of all parties to wait until the New Pier Structure is completed before the Arch is constructed.
- The City will have the Garage's design-build team demolish the Fire Station and Library by July 31, 2015, and the developer will reimburse the City for the cost of the Library demolition. This will enable the design-build team to optimize site control and gives additional time for the Fire Station and Beach Library to relocate to their new facilities.
- The Garage construction will have use of Parcel R5 as a staging area
- The Ordinance will authorize the Mayor or Vice Mayor, in the absence of the Mayor, City Clerk and City Manager, to execute further non-material changes to the Development Agreement or Parcel Ground Lease provided that such changes do not delay either party's performance by more than 180 days from the date stated in the approved agreement and lease, or increase or decrease by more than ten percent (10%) any dollar amounts or square footages stated in the agreement or lease. This will allow minor deviations to be approved in a timely manner so that the progress of the Pier Development is not stalled.

This First Amendment updates terms and schedules of the Pier development for the clarification and benefit of both parties. Approval of this amendment shows the City and Developer's commitment to create a desirable destination and successful new development in the City of Pompano Beach.

CITY OF POMPANO BEACH
Broward County, Florida

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A FIRST AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AGREEMENT RELATING TO CITY PROPERTY LYING BETWEEN NORTH OCEAN BOULEVARD (A1A) AND THE ATLANTIC OCEAN AND BETWEEN ATLANTIC BOULEVARD (S.R. 814) AND NE 5TH STREET BETWEEN THE CITY OF POMPANO BEACH AND POMPANO PIER ASSOCIATES, LLC; AUTHORIZING THE MAYOR OR VICE MAYOR, CITY CLERK AND CITY MANAGER TO EXECUTE ON BEHALF OF THE CITY FUTURE NON-MATERIAL AMENDMENTS TO THE AMENDED AND RESTATED DEVELOPMENT AGREEMENT AND TO THE PARCEL GROUND LEASES TO BE ENTERED INTO BY THE CITY PURSUANT TO THE TERMS OF THE AMENDED AND RESTATED DEVELOPMENT AGREEMENT; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City owns property which is a prime redevelopment parcel located as a landmark site between A1A and the ocean, and between Atlantic Boulevard and NE 5th Street, hereinafter the "Property"; and

WHEREAS, the City and Pompano Pier Associates, LLC, ("Developer") entered into a Development Agreement for the development of the Property, approved by City Ordinance No. 2013-39; and

WHEREAS, the City and the Developer subsequently entered into an Amended and Restated Development Agreement for the development of the Property, approved by City Ordinance No. 2014-49; and

WHEREAS, the Amended and Restated Development Agreement provides that the City and Developer or its permitted assigns will execute a series of Parcel Ground Leases in substantially the form attached as Exhibit D to the Amended and Restated Development Agreement for various phases of the development according to a timeline; and

WHEREAS, the City and the Developer now wish to amend the Amended and Restated Development for the development of the Property; and

WHEREAS, pursuant to law, ten (10) days' notice has been given by publication in a paper of general circulation in the City, notifying the public of this proposed ordinance and of a public hearing in the City Commission Chambers of the City of Pompano Beach; and

WHEREAS, a public hearing before the City Commission was held pursuant to the published notice described above, at which hearing the parties in interest and all other citizens so desiring had an opportunity to be and were, in fact, heard; now, therefore,

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That the foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct.

SECTION 2. That a First Amendment to Amended and Restated Development Agreement between the City of Pompano Beach and Pompano Pier Associates, LLC, a copy of which amendment is attached hereto and incorporated herein by reference as if set forth in full, is hereby approved.

SECTION 3. That the proper City officials are hereby authorized to execute said amendment.

SECTION 4. Without further approval of the City Commission, the Mayor or Vice Mayor, in the absence of the Mayor, City Clerk and City Manager, are hereby authorized to

execute on behalf of the City, further non-material changes to the Amended and Restated Development Agreement provided that such changes do not delay either party's performance by more than 180 days from the date stated in the Amended and Restated Development Agreement approved by City Ordinance No. 2014-49, or increase or decrease by more than ten percent (10%) any dollar amounts or square footages stated in the Amended and Restated Development Agreement approved by City Ordinance No. 2014-49.

SECTION 5. Without further approval of the City Commission, the Mayor or Vice Mayor, in the absence of the Mayor, City Clerk and City Manager, are hereby authorized to execute on behalf of the City, non-material changes to an executed Parcel Ground Lease provided that such changes do not delay either party's performance by more than 180 days from the date stated in the executed Parcel Ground Lease, or increase or decrease by more than ten percent (10%) any dollar amounts or square footages stated in the executed Parcel Ground Lease.

SECTION 6. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 7. This Ordinance shall become effective upon passage.

PASSED FIRST READING this _____ day of _____, 2015.

PASSED SECOND READING this _____ day of _____, 2015.

LAMAR FISHER, MAYOR

ATTEST:

ASCELETA HAMMOND, CITY CLERK

**FIRST AMENDMENT TO
AMENDED AND RESTATED DEVELOPMENT AGREEMENT**

THIS FIRST AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AGREEMENT (“First Amendment”) is dated as of _____ and is between the **CITY OF POMPANO BEACH, FLORIDA**, a Florida municipal corporation (“City”) and **POMPANO PIER ASSOCIATES, LLC**, a Florida limited liability company (“Developer”).

RECITALS:

City and Developer have entered into an Amended and Restated Development Agreement dated July 28, 2014 (“Agreement”) for the development, leasing and operation of approximately 6.125 acres of oceanfront property located on Pompano Beach Boulevard (“Property”).

City and Developer now wish to amend the Agreement in order to change certain deadlines and make other changes as set forth in this Amendment.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Amendment, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENT:

1. **Revised Development Timeline.** The Development Timeline attached as **Exhibit C** to the Agreement has been revised and is attached as **Exhibit A** to this First Amendment.
2. **Restrooms in Existing Concession Building.** Section 7.1.4 of the Agreement is amended in its entirety to read as follows (added language is underlined and in bold, deleted language has a line through it):

7.1.4 **Restrooms in Existing Concession Building.** During the Lease Term of the Parcel E Ground Lease, the City will be responsible for paying for and carrying out the maintenance and operation of the restrooms located in the Existing Concession Building. The Developer will pay for the utilities that service the restrooms, **as follows:**

- (a) **If the restrooms in the Existing Concession Building are metered separately from the rest of the building, the Developer will be responsible for paying (i) 70% of the utility charges for the restrooms, up to an annual maximum amount equal to 50% of the Parcel E Minimum Rent due for the current Lease Year, and (ii) 100% of the utility charges for the remainder of the Existing Concession Building. The City will pay 30% of the restroom utility charges plus any portion of Developer’s share of the restroom utility charges in excess of 50% of the Parcel E Minimum Rent due for the current Lease Year.**
- (b) **If the restrooms in the Existing Concession Building are not separately metered, the Developer will pay 80% of the utility**

charges for the Existing Building, up to an annual maximum amount equal to 50% of the Parcel E Minimum Rent due for the current Lease Year. The City will pay 20% of the utility charges plus any portion of Developer's share in excess of 50% of the Parcel E Minimum Rent due for the current Lease Year.

(c) The Developer will bill the City for its share of the utilities on a monthly basis, and the City will pay the billed costs within 30 days after receipt from the Developer of the invoice and copies of the actual utility bills.

3. **Arch.** Section 7.1.6 of the Agreement is amended to read as follows:

7.1.6 **Arch.** ~~Developer will construct the Arch on Parcel E during the first two years of the Lease Term.~~ within 12 months after the construction of a New Pier Structure (as described in Section 19.3) is completed. If the City makes a final determination that it will not construct a New Pier Structure in the foreseeable future, the Developer shall commence construction of the Arch within 12 months after the City makes such final determination.

4. **Obligations of City Prior to Development.** Section 15 of the Agreement is amended to read as follows:

15. **Obligations of City Prior to Development.** City acknowledges that the following undertakings ("City Obligations") must be completed in order for the Developer to commence development of the Property.

15.1 **Demolition of Library and Fire Station.** City will demolish the Broward County Public Library ("Library") and the fire station ("Fire Station") located on the Property by July 31, 2015. Developer will reimburse the City the sum of \$25,116.70 for the cost of demolition of the Library within 10 days after receipt of written notice from the City that the Library has been demolished. Developer's failure to reimburse the City for the cost of the demolition will be an event of Default under this Agreement. City

~~agrees to remove from the Property the fire station ("Fire Station") currently located on the Property upon the later of~~

15.1.1. ~~30 days after Developer submits an application for a construction permit as described in the City Code ("Building Permit") for the first to be developed of Parcel R1, R2, R3 or R4; or~~

15.1.2 ~~December 31, 2014.~~

15.2 ~~Library.~~ City is seeking an alternate location for the Broward County Public Library ("Library") currently located on the Property, and may decide to physically move the existing Library structure by truck or other vehicle to a new location. City agrees to relocate the Library on or before December 31, 2014. ~~If City wants developer to demolish the Library, City~~

~~must notify Developer in writing on or before September 30, 2014, and thereafter Developer will demolish the library at Developer's expense. If Developer demolishes the Library building before Developer is ready to start construction in the location of the Library, Developer will be required to resurface the former Library area with either paving or grass at Developer's expense.~~

5. **Parking Garage.** The following subsection is added to Section 22 of the Agreement:
 - 22.6 **Staging of Garage Construction. Developer acknowledges and agrees that the City has the right to use the southwest corner of the Property shown as Parcel R-5 on the Master Plan as a staging area during the period of construction of the Parking Garage, but not later than December 31, 2016.**
7. **Ratification of Agreement.** The Agreement, as amended by this First Amendment, remains in full force and effect on the date hereof.

[SIGNATURES ON FOLLOWING PAGES]

The parties have executed this First Amendment on the dates set forth below their respective signatures.

Witnesses:

“CITY”

CITY OF POMPANO BEACH, FLORIDA

By: _____
LAMAR FISHER, MAYOR

Dated: _____

Attest:

By: _____
DENNIS W. BEACH, CITY MANAGER

MARY L. CHAMBER, CITY CLERK

Dated: _____

Approved by:

(SEAL)

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 are personally known to me.

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Notary Typed, Printed or Stamped)

NOTARY’S SEAL

Commission Number

City Signature Page to First Amendment

Witnesses:
[Signature]
[Signature]

"DEVELOPER"

POMPANO PIER ASSOCIATES, LLC, a Florida limited liability company

By: [Signature]
RICHARD CASTER, President

Date: 2/25/14

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 25 day of February, 2015, by RICHARD CASTER, as President 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 PUBLIC-STATE OF FLORIDA
John A. Jacobs
Commission # EE129338
Expires: SEP. 12, 2015
BONDED THRU ATLANTIC BONDING CO., INC.

NOTARY'S SEAL

[Signature]
NOTARY PUBLIC, STATE OF FLORIDA
John A. Jacobs
(Name of Notary Typed, Printed or Stamped)
EE129338
Commission Number

Exhibit A to First Amendment

**Exhibit C to Amended and Restated Development Agreement
Development Timeline as of February 18, 2015**

Parcel	Lease Execution (LE)	Design Plans	Obtain Permits	Commence Construction	Substantial Completion
1st of Parcels R1, R2, R3, C1 or C2	<u>31-Mar-2015</u> (LE/1)	<u>30-Sept-2015</u> (LE/1+ 6 mos)	<u>28-Feb-2016</u> (LE/1 + 11 mos)	<u>30-Apr-2016</u> (LE/1 + 13 mos)	<u>31-Mar-2017</u> (LE/1 + 24 mos)
2nd of Parcels R1, R2, R3, C1 or C2	<u>30-Sep-2015</u> (LE/2)	<u>31-Mar-2016</u> (LE/2 + 6 mos)	<u>30-Aug-2017</u> (LE/2 + 11 mos)	<u>30-Oct-2017</u> (LE/2 + 13 mos)	<u>30-Sep-2017</u> (LE/2 + 24 mos)
3rd of Parcels R1, R2, R3, C1 or C2	<u>30-Jun-2016</u> (LE/3)	<u>31-Dec-2016</u> (LE/3 + 6 mos)	<u>31-May-2017</u> (LE/3 + 11 mos)	<u>31-Jul-2017</u> (LE/3 + 13 mos)	<u>30-Jun-2018</u> (LE/3 + 24 mos)
4th of Parcels R1, R2, R3, C1 or C2	<u>31-Mar-2017</u> (LE/4)	<u>31-Sep-2017</u> (LE/4 + 6 mos)	<u>28-Feb-2018</u> (LE/3 + 11 mos)	<u>30-Apr-2018</u> (LE/4 + 13 mos)	<u>31-Mar-2019</u> (LE/4 + 24 mos)
5th of Parcels R1, R2, R3, C1 or C2	<u>31-Dec-2017</u> (LE/5)	<u>31-Jun-2018</u> (LE/5 + 6 mos)	<u>31-Nov-2018</u> (LE/5 + 11 mos)	<u>31-Jan-2019</u> (LE/5 + 13 mos)	<u>31-Dec-2019</u> (LE/5 + 24 mos)
Parcel E	<u>31-Mar-2015</u> (LE/1)	<u>30-Sept-2015</u> (LE/1+ 6 mos)	<u>28-Feb-2016</u> (LE/1 + 11 mos)	<u>30-Apr-2016</u> (LE/1 + 13 mos)	<u>31-Mar-2017</u> (LE/1 + 24 mos)
Parcel R4	<u>30-Apr-2016</u> (LE/R4)	<u>31-Jul-2016</u> (LE/R4 + 3 mos)	<u>31-Oct-2016</u> (LE/R4 + 6 mos)	<u>31-Dec-2016</u> (LE/R4 + 8 mos)	<u>30-Apr-2017</u> (LE/R4 + 12 mos)
Parcel R5/H	<u>31-Dec-2016</u> (LE/R5)	<u>31-Jun-2017</u> (LE/R5 + 6 mos)	<u>31-Dec-2017</u> (LE/R5 + 12 mos)	<u>31-Mar-2018</u> (LE/R5 + 15 mos)	<u>30-Sep-2019</u> (LE/R5 + 33 mos)

Notes:

1. All dates shall be the later of the tentative dates shown in the table or the time period shown in the table.
2. All dates are outside dates, but may be adjusted in accordance with the provisions of the Development Agreement.
3. R4 and R5 dates assume Parking Garage completion by December 31, 2016.