Meeting Date: March 24, 2015 Agenda Item 41

REQUESTED COMMISSION ACTION:

Consent	X Ordinance	Resolution	Consideration/ Discussion	Presentation

SHORT TITLE 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 THE GROUND LEASE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND DIVITO ENTERPRISES LIMITED PARTNERSHIP; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

(Fiscal impact: $3600.00 per year)

Summary of Purpose and Why:

Staff is seeking City Commission approval of an Ordinance to execute a First Amendment to a lease agreement with DiVito Enterprises LP. ("DiVito"). Back in February 2014 (Ordinance 2014-14), the City entered into an agreement with DiVito to lease a vacant parcel behind Harbor Village (see Location Map). The City wishes to convert this parcel into a parking facility (project is under final design and permitting). The initial agreement stipulated monthly lease payments beginning on the lease's first anniversary. Staff believes it would be practical to make one annual payment rather than monthly payments (monthly payment is only $300.00). Staff recommends approval of this request. No other changes are being sought through this amendment.

(1) Origin of request for this action: City Commission
(2) Primary staff contact: Dennis W. Beach/Horacio Danovich Ext. 786-4601
(3) Expiration of contract, if applicable:
(4) Fiscal impact and source of funding: $3,600.00 per year (account 472-4710-545-4410 – rentals and leases).

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
City Attorney	03/04/2015	2015-659	
Budget	3/17/15	Approval	
X Finance Director			
X City Manager			

ACTION TAKEN BY COMMISSION:

Ordinance	Resolution	Consideration	
Workshop			
1st Reading	1st Reading	Results:	Results:
2nd Reading			

CRA
POMPANO BEACH

MEMORANDUM

March 9, 2015

TO: City Commission

THRU: Kim Briesemeister, CRA Executive Director
Chris Brown, CRA Executive Director
Dennis Beach, City Manager

FROM: Horacio Danovich, CIP Engineer

Issue

Staff is seeking City Commission approval of an Ordinance to execute an amendment to a lease agreement with DiVito Enterprises Limited Partnership (please see Location Map and Ordinance 2014-14).

Recommendation

Staff recommends Approval of the Ordinance.

Background

Staff is seeking City Commission approval of an Ordinance to execute a First Amendment to a lease agreement with DiVito Enterprises Limited Partnership. This agreement was previously approved by City Commission via Ordinance 2014-14. Approval of this First Amendment is necessary to allow lease payments to occur once per calendar year as opposed to making monthly payments. Staff believes this change is justified and practical as it eliminates nominal monthly installments. No other changes are being sought through this amendment.

Staff recommends Approval of the Ordinance.

City Attorney's Communication #2015-659
March 4, 2015

TO: Horacio Danovich, Pompano Beach CRA Engineer

FROM: Jill R. Mesojedec, FRP, Paralegal

VIA: Gordon B. Linn, City Attorney

RE: Resolution and First Amendment – Divito Enterprises Limited Partnership

As requested, the above-referenced Agreement has been prepared and is attached at this time along with the appropriate Ordinance captioned as follows:

> **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 THE GROUND LEASE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND DIVITO ENTERPRISES LIMITED PARTNERSHIP; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.**

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

JILL R. MESOJEDEC

/jrm
l:cor/cra/2010-961

Attachment

ORDINANCE NO. 2015-_____

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 THE GROUND LEASE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND DIVITO ENTERPRISES LIMITED PARTNERSHIP; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

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 a First Amendment between the City of Pompano Beach and DiVito Enterprises Limited Partnership, a copy of which Amendment is attached hereto and incorporated herein by reference as if set forth in full, is hereby approved.

SECTION 2. That the proper City officials are hereby authorized to execute said Amendment.

SECTION 3. 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 4. 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

/jrm
3/4/15
L:ord/2015-238

FIRST AMENDMENT

THIS IS A FIRST AMENDMENT TO THE AGREEMENT dated the _____ day of _____, 2015, between:

> **DIVITO ENTERPRISES LIMITED PARTNERSHIP**, a limited partnership company organized and existing under the laws of the State of Illinois, with a mailing address of 360 South Green Bay Road, Lake Forest, IL 60045, referred to herein as "Lessor,"
>
> **and**
>
> **CITY OF POMPANO BEACH,** a municipal corporation of the State of Florida, whose address is 100 West Atlantic Boulevard, Pompano Beach, Florida 33060, hereinafter referred to as "Lessee."

WHEREAS, the parties entered into an Ground Lease Agreement for the purpose of providing public parking on the Leased Premises, ("Original Agreement"), a copy of which is attached hereto and made a part hereof, and approved by City Ordinance No. 2014-14; and

WHEREAS, the parties now desire to amend the monthly rental payment to a yearly payment; and

NOW, THEREFORE, in consideration of the mutual terms and conditions, promises, covenants, and payments hereinafter set forth, the parties agree as follows:

1. Each "WHEREAS" clause set forth above is true and correct and herein incorporated by this reference.

2. The Original Agreement shall remain in full force and effect except as specifically amended hereinbelow.

3. Paragraph 3 to the Original Agreement is hereby amended as follows:

3. RENT.

The base rent for the initial term shall be at the rate of Three Thousand Six Hundred ($3,600.00) Dollars per year, payable in monthly installments of Three Hundred ($300.00) dollars each, plus applicable Florida sales taxes, which Lessee shall pay to Lessor at the address listed on page 1 above, or at such other place as may be designated from time to time by Lessor. Commencing on the second year of the five (5) year term, the rent payment shall be paid in one single annual payment.

4. All other terms and conditions of the said agreement shall remain in full force and effect as provided by the original agreement and any previous amendments and renewals thereto, unless earlier terminated pursuant to the provisions of the agreement.

5. That no other amendment to the terms of the said agreement shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

IN WITNESS WHEREOF, the parties have caused this Amendment to Agreement to be duly executed on the day and year first above written.

"LESSOR":

Witnesses:

Michelle Wagner Bray

Michelle WAGNER BRAY

Print Name

Rosie Robertson

Rosie Robertson

Print Name

DiVito Enterprises Limited Partnership
an Illinois limited partnership

By: Reliance Enterprises of South Florida, Inc.,
a Florida corporation, its General Partner

By: _____, atty-in-fact
Blake M. Harmon, as Attorney-in-Fact

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 9 day of March, 2015, by Blake M. Harmon with proper authority as Attorney-in-Fact, for Reliance Enterprises of South Florida, Inc., a Florida corporation, the General Partner of DiVito Enterprises Limited Partnership, an Illinois limited partnership. He X is personally known to me or ___ has produced _____ (type of identification) as identification.

NOTARY'S SEAL:

Michelle Wagner Bray
NOTARY PUBLIC, STATE OF FLORIDA

MICHELLE WAGNER BRAY
Commission # FF 126071
Expires September 23, 2018
Bonded Thru Troy Fain Insurance 800-385-7019

_____
(Name of Acknowledger Typed, Printed or Stamped)

_____
Commission Number

"LESSEE":

Witnesses:

CITY OF POMPANO BEACH

_____

By:_____
Lamar Fisher, Mayor

_____

By:_____
Dennis W. Beach, City Manager

Attest:

_____
ASCELETA HAMMOND, 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 **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who is personally known to me.

NOTARY'S SEAL:

_____
NOTARY PUBLIC, STATE OF FLORIDA

_____
(Name of Acknowledger Typed, Printed or Stamped)

_____
Commission Number

GBL/jrm
3/4/15
2/10/15
l:agr/2015-558

This document prepared by:
BLAKE M. HARMON, ESQUIRE
Patterson & Harmon, P.A.
4701 North Federal Highway
Suite 480, Box A-6
Pompano Beach, Florida 33064

CORRECTIVE POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That I, **EUGENE C. DiVITO**, individually and as President of **RELIANCE ENTERPRISES OF SOUTH FLORIDA, INC., a Florida corporation**, the General Partner of **DIVITO ENTERPRISES LIMITED PARTNERSHIP, an Illinois limited partnership** (the "Partnership"), of 360 South Green Bay Road, Lake Forest, IL 60045, have made, constituted and appointed, and by these presents do make, constitute and appoint my attorney, **BLAKE M. HARMON**, of Patterson & Harmon, P.A., 4701 N. Federal Highway, Suite 480, Pompano Beach, FL 33064, my true and lawful attorney for me and in my name, place and stead and as my lawful representative to do all things as necessary and to take all necessary actions acting on my behalf in order to apply for any building, sign, land use or any other governmental permits or approvals with respect to the any real property owned by the Partnership including, without limitation, those certain properties listed on Exhibit "A" attached hereto (collectively, the "Property"), or any portion of any such Property. The aforesaid authority shall include, without limitation, the authority to sign on my behalf and deliver any application for permit to be submitted to any municipal, county or state governmental entity, or any quasi-governmental entity, in connection with any permit, license or other governmental approval relating to any such Property.

This Corrective Power of Attorney is corrective of that certain Power of Attorney previously dated August 29, 2014 (the "Original POA") by correctly identifying the aforesaid Partnership as an Illinois limited partnership rather than a Florida limited partnership as it was inadvertently and erroneously referred to in the Original POA. This Corrective Power of Attorney shall further serve to ratify and approve any action previously taken by the aforesaid agent by virtue of said Original POA.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this ___ day of February, 2015.

Signed, sealed and delivered
in the presence of:

Signature of 1st Witness
FRANK J. PETTEGRINO JR
Printed Name of 1st Witness

EUGENE C. DiVITO
360 South Green Bay Road
Lake Forest, IL 60045

Signature of 2nd Witness
Printed Name of 2nd Witness

STATE OF ILLINOIS
COUNTY OF Cook

The foregoing instrument was acknowledged before me this 23RD day of February, 2015, by EUGENE C. DiVITO.

Selena Fiore (SEAL)
Notary Public
My Commission Expires: May 16, 2018

Personally known ✓ OR
Produced Identification ____
Type of Identification Produced:
_____

_____

SELENA FIORE
OFFICIAL SEAL
Notary Public - State of Illinois
My Commission Expires
May 16, 2018

DIVITO ENTERPRISES LIMITED PARTNERSHIP
LIST OF PROPERTIES

Property Address	Folio No.
784-800 South Federal Highway Deerfield Beach, Florida	4843 06 17 0190
718-778 South Federal Highway Deerfield Beach, Florida	4843 06 17 0170
2752 N.E. 1st Street Pompano Beach, Florida	4843 31 15 0140
2741-2749 East Atlantic Boulevard Pompano Beach, Florida	4843 31 15 0050
814 South Federal Highway Deerfield Beach, Florida	4843 06 00 1080

Location Map

Google earth

feet 500

meters 100

ORDINANCE NO. 2014-14

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 GROUND LEASE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND DIVITO ENTERPRISES LIMITED PARTNERSHIP; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

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 a Ground Lease Agreement between the City of Pompano Beach and DiVito Enterprises Limited Partnership, a copy of which Agreement is attached hereto and incorporated herein 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.

SECTION 3. 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 4. This Ordinance shall become effective upon passage.

PASSED FIRST READING this 11th day of February, 2014.

PASSED SECOND READING this 28th day of January, 2014.

LAMAR FISHER, MAYOR

ATTEST:

MARY L. CHAMBERS, CITY CLERK

/jrm
1/6/14
L:ord/2014-111

GROUND LEASE AGREEMENT
between
DIVITO ENTERPRISES LIMITED PARTNERSHIP
and
CITY OF POMPANO BEACH

THIS AGREEMENT made and entered into this 14th day of February, 2014 by and between:

> **DIVITO ENTERPRISES LIMITED PARTNERSHIP**, a limited partnership company organized and existing under the laws of the State of Illinois, having its principal office at 360 South Green Bay Road, Lake Forest, IL 60045, referred to herein as "Lessor"
>
> and
>
> **CITY OF POMPANO BEACH**, a municipal corporation organized and existing under the laws of the State of Florida, having its principal office at 100 W. Atlantic Blvd., Pompano Beach, Florida, 33060, referred to here as "Lessee,"

Whereas Lessor and Lessee desire to enter into a lease agreement pursuant to which Lessee shall lease from Lessor the Premises (as identified hereinbelow) for the purpose improving said Premises as a parking lot containing approximately 17 parking spaces and utilizing such parking lot to provide public parking; now therefore,

W I T N E S S E T H:

1. <u>DEMISE; DESCRIPTION OF PREMISES</u>.

Lessor leases to Lessee and Lessee hires from Lessor, for the purpose of providing public parking and for no other purpose, the following described Premises situated in the City of Pompano Beach, County of Broward, State of Florida, and more particularly described in Exhibit "A" attached hereto and made a part hereof. As used in this Lease, the term "Premises" or "Leased Premises" refers to the real property described above and to any improvements located on the property from time to time during the term of this Lease.

2. <u>TERM</u>.

a. The initial term of this Lease shall be for five (5) years, commencing on the date of execution of this Lease. As used in this Lease, the expression "term of this Lease" refers to such initial term and to any extension of the initial term as provided in Paragraph 2.b below.

b. Lessee, provided it is not in default of any terms or conditions of this Lease, shall have the right and option (if consented to by Lessor as provided herein), but shall in no way be obligated, to seek extensions of the term of this Lease for an additional five (5) years for each extension (each an "Extension Period"), on the terms and conditions as set forth in this Lease. Should Lessee wish to extend this Lease for an Extension Period as referenced herein, Lessee shall provide written notice to that effect to the Lessor, which notice shall be given at least one hundred twenty (120) days prior to the last day of the term of the Lease. The terms of the Lease for each of the extension terms shall be the same as for the initial term of this Lease, except for the rental amount which shall be established by Lessor and Lessee based upon the then market rental value of the Leased Premises.

c. Lessor shall have the right to terminate this Lease at any time and for any reason with ninety (90) days advance written notice provided to Lessee, subject to the terms set forth below in Paragraph 5.

3. RENT.

The base rent for the initial term shall be at the rate of Three Thousand Six Hundred ($3,600.00) Dollars per year, payable in monthly installments of Three Hundred ($300.00) dollars each, plus applicable Florida sales taxes, which Lessee shall pay to Lessor at the address listed on page 1 above, or at such other place as may be designated from time to time by Lessor.

4. CONSTRUCTION OF SURFACE PARKING LOT AND USE OF PREMISES.

a. Lessee shall construct, at Lessee's sole cost and expense, a temporary surface parking facility on the Premises in general conformity with the rendering provided in Exhibit B of this Lease. Upon the completion of the improvements, the Premises shall be used as a parking facility for Harbor Village tenants (from 8:00 AM until 5:00 PM) and for valet parking services (from 5:00 PM until midnight). In addition to the construction of the temporary surface parking facility, Lessee shall install required landscaping and provide parking pay-stations on the Premises. All of the above-referenced construction and improvements shall be undertaken at the Lessee's sole cost and shall be constructed in accordance with applicable building codes and otherwise in a good workmanlike manner.

b. Prior to commencing construction of the parking facility, Lessor shall be provided with the plan for the parking facility for review and approval. Said approval shall not be unreasonably withheld. Lessee shall proceed with due diligence and continuity to fund and construct the parking facilities on the Premises and timely notify Lessor of all hearings or meetings concerning the Premises so as to permit a representative of the Lessor to attend said hearings or meetings. Additionally, Lessee shall provide Lessor with copies of all official correspondence, notices and submissions regarding the Premises. Lessor agrees to sign as Owner and sign all governmental applications and documents for permits for the project.

c. Lessee shall have the right to close the parking facility either partially or entirely to public use for no more than four (4) days during each year, commencing upon the completion of the improvements, at Lessee's option. Said closure may be undertaken for any reason, including repairs to the Premises and use of the Premises by Lessee for the installation of ticket sales booths or other booths administered by the Lessee in connection with festivals or other beach related activities. Lessee shall, except in the case of an emergency closure, provide Lessor with not less than five (5) days written notice of its intent to so close the parking facility which said notice shall provide the reason for the closure, the date(s) of the closure, and such other information as is necessary to reasonably inform Lessor as to such intended closure.

d. Lessor shall be entitled to the exclusive use of up to three (3) dedicated parking spaces to be used by his tenants. All of said spaces shall be contiguous, shall be clearly marked for the exclusive use of Lessor's tenants, and shall be made available to Lessor during normal business hours.

5. PENALTY FOR EARLY TERMINATION BY LESSOR.

In the event that Lessor exercises its right to terminate the Lease before the initial five-year term has expired, as provided for in Section 2.c above, Lessor shall be required to compensate Lessee for the cost of the improvements made to the Premises by Lessee at the time of the termination amortized on a monthly basis according to the total cost of the improvements divided by 60 months. [For example: $30,000.00 (total maximum cost of improvements)/60 (number of months in the lease) = $500.00 = the (monthly) amortized penalty rate. Therefore, if Lessor exercised its right to terminate the Lease after the end of the 3rd year, thereby leaving 24 unexpired months in the initial term, Lessor would be required to pay to Lessee an early termination penalty of $12,000.00.] If Lessor exercises said right to terminate the Lease any time after the initial term (assuming Lessee exercises one or more options to extend the lease term), Lessor shall not be required to pay any penalty.

6. WARRANTIES OF TITLE AND QUIET POSSESSION.

Lessor covenants that Lessor is seized of the Leased Premises in fee simple and has full right to make this Lease and that Lessee shall have quiet and peaceable possession of the Leased Premises during the term of this Lease.

7. DELIVERY OF POSSESSION.

If, for any reason whatsoever, Lessor cannot deliver possession of the Leased Premises to Lessee at the commencement of the Lease term, as specified above, this Lease shall not be void or voidable, nor shall Lessor be liable to Lessee for any loss or damage resulting from the inability to deliver possession; in that event, there shall be a proportionate reduction of rent covering the period between the commencement of the Lease term and the time when Lessor can deliver possession. However, in the event that Lessor cannot deliver possession within three (3) months of the execution of this Lease, this Lease shall be voidable by either party.

8. USES PROHIBITED.

Lessee shall not use or permit the Leased Premises, or any part thereof, to be used for any purpose other than the purpose for which the Premises are leased. No use shall be made or permitted to be made of the Premises, or acts done, that will cause a cancellation of any insurance policy covering the Premises; nor shall Lessee sell, or permit to be kept, used, or sold, in or about the Premises, any article prohibited by the standard form of fire insurance policies. Lessee shall, at its sole cost, comply with all requirements, pertaining to the Leased Premises, of any insurance organization or company, necessary for the maintenance of insurance, as provided in this Lease, covering any improvements and appurtenances at any time located on the Leased Premises.

9. WASTE AND NUISANCE PROHIBITED.

During the term of this Lease, Lessee shall comply with all applicable laws affecting the Leased Premises, the breach of which might result in any penalty on Lessor or forfeiture of Lessor's title to the Premises. Lessee shall not commit or suffer to be committed any waste or nuisance on the Leased Premises.

10. ABANDONMENT OF PREMISES.

Lessee shall not vacate or abandon the Premises at any time during the term of this Lease. If Lessee abandons, vacates, or surrenders the Leased Premises, or is dispossessed by process of law or otherwise, any personal property belonging to Lessee and left on the Premises shall be deemed to be abandoned, at the option of Lessor, except any property that may be encumbered to Lessor.

11. LESSOR'S RIGHT OF ENTRY.

Lessee shall permit Lessor and Lessor's agents and employees to enter the Leased Premises at all reasonable times for the purpose of inspecting the Premises, or for the purpose of posting notices of non-responsibility for alterations, additions, or repairs, without any rebate of rent and without any liability to Lessee for any loss of occupation or quiet enjoyment of the Premises. Lessee shall also permit Lessor and its agents and employees, at any time within the last one hundred twenty (120) days prior to the expiration of this Lease (provided Lessee has not exercised any option provided herein to extend the lease term beyond such expiration date), to place on the Premises any usual or ordinary "To Let" or "To Lease" or "For Rent" signs and exhibit the Premises to prospective Lessees at reasonable hours.

12. SUBLETTING AND ASSIGNMENT.

Lessee may not sublet the Premises in whole or in part at any time without Lessor's written consent, which said consent may be withheld by Lessor in its sole discretion. Lessor's consent to any such sublease shall not release Lessee from, or otherwise affect in any manner, any of Lessee's obligations under this Lease nor shall any such consent to an assignment be deemed to be consent to any subsequent assignment. Any assignment without consent shall be void, and shall, at the option of Lessor, terminate this Lease. Neither this Lease nor the Leasehold estate of Lessee nor any interest of Lessee under this Lease in the Premises or any buildings or improvements on it shall be subject to involuntary assignment, transfer, or sale, or to assignment,

transfer, or sale by operation of law in any manner whatsoever, and any attempted involuntary assignment, transfer, or sale shall be void and of no effect and shall, at the option of Lessor, terminate this Lease in which event the Lessor shall be exempt from any penalty provided for in Section 5 hereinabove.

13. NOTICES.

All notices, demands, or other writings in this Lease provided to be given or made or sent, or which may be given or made or sent, by either party to this Lease to the other, shall be deemed to have been fully given or made or sent when made in writing and deposited in the United States mail, with postage prepaid, and registered and addressed as follows:

TO LESSOR: DiVito Enterprises Limited Partnership
Attn: Eugene C. DiVito
360 South Green Bay Road
Lake Forest, IL 60045

COPY TO: Blake M. Harmon, Esq.
Patterson & Harmon, P.A.
4701 N. Federal Highway, Suite 480
Pompano Beach, FL 33064
and
Christopher Brown, CRA Co-Executive Director
Suzette Sibble, Finance Director
100 W. Atlantic Blvd., 4th Floor
Pompano Beach, FL 33062

TO LESSEE: Dennis Beach, City Manager
Pompano Beach CRA
100 W. Atlantic Blvd., 4th Floor
Pompano Beach, FL 33062

COPY TO: Gordon Linn, City Attorney
Brian Donovan, Budget Director
100 W. Atlantic Blvd., 4th Floor
Pompano Beach, FL 33062

The address to which any notice, demand, or other writing may be given or made or sent to any party mentioned above may be changed by written notice given by the party mentioned above.

14. TAXES AND ASSESSMENTS.

a. Lessor agrees to pay any and all real estate taxes or charges or special assessments by ad valorem which at any time may be levied by any federal, state, county, city or any real estate tax assessment levying body upon the Premises, or any possessory right which Lessor may have in or to the Premises. However, Lessee shall be solely obligated to pay any tangible personal property taxes assessed against any fixtures, equipment, or other personal property installed in or brought onto the Leased Premises by Lessee.

b. Notwithstanding the foregoing provision, Lessor shall, after notifying Lessee of its intention to do so, have the right in its own name or behalf, or in the name and behalf of Lessee hereto, to contest in good faith by all appropriate proceedings the amount, applicability or validity of any such tax or assessment, and in good faith by all appropriate proceedings the amount, applicability or validity of any such tax or assessment.

15. REPAIRS AND DESTRUCTION OF IMPROVEMENTS.

a. Maintenance of improvements; compliance with laws. Throughout the term of this Lease, Lessee shall, at its own cost and without any expense to Lessor, keep and maintain the Premises, including all improvements of every kind that may be a part of the Premises and all appurtenances to the Premises, including sidewalks adjacent to the Premises, in good, sanitary, and neat order, condition and repair. Except as specifically provided in this Lease, during the term of this Lease, Lessee shall restore and rehabilitate any improvements of any kind that may be destroyed or damaged by fire, casualty, or any other cause whatsoever. Lessor shall not be obligated to make any repairs, replacements, or renewals of any kind whatsoever to the Leased Premises or improvements on it. Lessee shall also comply with and abide by all federal, state, county, municipal, and other governmental statutes, ordinances, laws, and regulations affecting the Premises, the improvements on the Premises, or any activity or condition on or in the Premises, including, without limitation, compliance with the Americans with Disabilities Act as to all improvements on or to the Leased Premises.

b. Damage to and destruction of improvements. The damage, destruction, or partial destruction of any improvement that is a part of the Premises shall not release Lessee from any obligation under this Lease, except as expressly provided below. In case of damage to or destruction of any improvement, Lessee shall at its own expense promptly repair and restore the improvement to a condition as good as or better than that which existed prior to the damage or destruction. Without limiting the obligations of Lessee, it is agreed that the proceeds of any insurance covering the damage or destruction shall be made available to Lessee for repair or replacement.

c. Damage or destruction occurring toward end of term. Notwithstanding anything to the contrary in the immediately preceding paragraphs of this section, in case of destruction of any improvement on the Premises or damage thereto from any cause other than the negligence of Lessee or its employees or agents, so as to make it untenantable occurring during the last six (6) months of the term of this Lease, Lessee, if not then in default under this Lease, may elect to terminate this Lease by written notice served on Lessor within thirty (30) days after the occurrence of the damage or destruction. In the event of termination, there shall be no obligation on the part of Lessee to repair or restore the improvements, and only Lessor shall have any right to receive proceeds collected under any insurance policies covering the Premises, building or any part of a building located thereon. On termination, Lessee shall return the Premises to Lessor as provided for below in Paragraph 20. On termination, rent and any other sums payable by Lessee to Lessor under this Lease shall be prorated as of the termination date, and in the event any rent shall have been paid in advance, Lessor shall rebate them for the unexpired period for which payment shall have been made.

d. Election not to terminate. If, in the event of destruction or damage during the last six (6) months of the term of this Lease, Lessee does not elect to terminate this Lease, the proceeds of all insurance covering the damage or destruction shall be made available to Lessee for repair or replacement, and Lessee shall be obligated to repair the Premises as provided above.

16. UTILITIES.

Lessee shall fully and promptly pay for all water, gas, heat, light, power, telephone service, and all other public utilities furnished to the Premises throughout the term of this Lease, and all other costs and expenses in connection with the use, operation and maintenance of the Premises and all activities conducted on the Premises. Lessor shall have no responsibility of any kind for any of those costs and expenses.

17. LIENS.

a. Lessee's duty to keep Premises free of liens. Lessee shall keep all of the Premises and every part of the improvements at any time located on the Premises free and clear of any mechanics', materialmen's, construction, and other liens arising out of or in connection with work or labor done, services performed, or materials or appliances used or furnished in connection with any operations of Lessee, any alteration, improvement, or repairs or additions which Lessee may make or permit or cause to be made, or any work or construction, by or permitted by Lessee on or about the Premises, or any obligations of any kind incurred by Lessee. Lessee shall at all times promptly and fully pay and discharge all claims on which any lien may or could be based, and Lessee shall indemnify Lessor and all of the Premises and all improvements on the Premises against all liens and claims of liens and suits or other proceedings pertaining to those liens. Lessee shall give Lessor written notice no less than ten (10) days in advance of the commencement of any construction, alteration, addition, improvement, or repair estimated to cost in excess of $1,000 in order that Lessor may post appropriate notices of Lessor's non-responsibility.

b. Contesting liens. If Lessee desires to contest any lien, Lessee shall notify Lessor of its intention to do so within ten (10) days after the filing of the lien. In such a case, and provided that Lessee shall on demand protect Lessor by a good and sufficient surety bond against any lien and cost, liability, or damage arising out of such contest, Lessee shall not be in default under this Lease until thirty (30) days after the final determination of the validity of the lien, within which time Lessee shall satisfy and discharge the lien to the extent held valid. However, the satisfaction and discharge of any such lien shall not, in any case, be delayed until execution is had on any judgment rendered on it, and any delay shall be a default of Lessee under this Lease. In the event of any such contest, Lessee shall protect and indemnify Lessor against all loss, expense, and damage resulting from the contest.

18. INDEMNIFICATION OF LESSOR.

Lessor shall not be liable for any claim, loss, injury, death, or damage to persons or property which at any time may be suffered or sustained by Lessee or by any person who may at any time be using or occupying or visiting the Leased Premises or be in, on, or about the Premises, whether the claim, loss, injury, death or damage shall be caused by or in

any way result from or arise out of any act, omission, or negligence of Lessee or of any occupant, sublessee, visitor or user of any portion of the Premises, or shall result from or be caused by any other matter or thing. Lessee shall indemnify Lessor against all claims, liability, loss, or damage whatsoever on account of any such claim, loss, injury, death, or damage. Lessee waives all claims against Lessor for damages to the improvements that are now on or will later be placed or built on the Premises and to the property of Lessee in, on or about the Premises, and for injuries to persons or property in or about the Premises, from any cause arising at any time. The three preceding sentences shall not apply to loss, injury, death, or damage arising by reason of the negligence or misconduct of Lessor or its agents or employees. The foregoing release paragraph shall be understood to also release each and every of the Lessor's partners, members and its and their officers, directors, shareholders, attorneys, employees and lenders, and all of their respective agents, predecessors, successors and assigns (the "Released Parties").

In the event of an asserted claim, the Lessee shall provide the Lessor reasonably timely written notice of same, and thereafter the Lessee shall at its own expense defend, protect and save harmless the Lessor and the Released Parties against said claim or any loss or liability thereunder. In the further event the Lessee shall fail to so defend and/or indemnify and save harmless, then in such instance the Released Parties shall have full rights to defend, pay or settle said claim on their behalf and with full rights to recourse against the Lessee for all fees, costs, expenses and payments made or agreed to be paid to discharge said claim so long as Lessor provides written notice to Lessee of same at least seven (7) days prior to assuming the defense, payment or settlement of any such claim.

19. <u>ATTORNEY'S FEES</u>.

If any action at law or in equity shall be brought to recover any rent under this Lease, or for or on account of any breach of this Lease, or to enforce or interpret any of the covenants, terms, or conditions of this Lease, or for the recovery of the possession of the Leased Premises, the prevailing party shall be entitled to recover from the other party as part of the prevailing party's costs reasonable attorney's fees, the amount of which shall be fixed by the court and shall be made a part of any judgment or decree rendered.

20. <u>REDELIVERY OF PREMISES</u>.

a. Upon the expiration or sooner termination of this Lease, Lessee shall surrender the Premises to Lessor in good order and condition subject to the following provisions:

i. Lessee shall be permitted to remove all parking pay stations from the Premises;

ii. All other parking lot improvements on the Premises, including the asphalt or other parking surface, striping, parking spot curbs or stops, and all lighting fixtures shall remain on the Premises as the property of Lessor;

21. <u>REMEDIES CUMULATIVE</u>.

All remedies conferred on Lessor shall be deemed cumulative and no one exclusive of the other, or of any other remedy conferred by law.

22. INSURANCE.

Lessee shall provide insurance for all improvements made to the Premises. Lessee further agrees to maintain a qualified insurance program in the limits specified in Florida Statute 768.28 with Lessor as a named insured. The insurance program shall provide for general and automobile and Workers Compensation and Employers Liability Coverage. Lessee shall provide Lessor with a Certificate of Insurance evidencing Lessee's insurance program. In the event that Lessee's insurance program is modified during the term of this Lease, Lessee shall provide Lessor with at least thirty (30) days prior written notice.

23. PROHIBITION OF INVOLUNTARY ASSIGNMENT.

Neither this Lease nor the Leasehold estate of Lessee nor any interest of Lessee under the Lease in the Premises or in the improvements on the Premises shall be subject to involuntary assignment, transfer, or sale, or to assignment, transfer, or sale by operation of law in any manner whatsoever, except through statutory merger, consolidation, devise, or intestate succession. Any such attempt at involuntary assignment, transfer, or sale shall be void and of no effect.

24. NOTICE OF DEFAULT.

Lessee shall not be deemed to be in default under this Lease unless Lessor shall first give to Lessee fifteen (15) days written notice of the default and Lessee fails to cure the default within fifteen (15) days except where the actions necessary to cure the default take in excess of fifteen (15) days to complete in which case Lessee shall commence curing of default within the initial fifteen (15) day period and shall continue without interruption. In the event Lessee is unable to cure the default within thirty (30) days, Lessee shall be in default of the Lease and the Lessor may terminate the rights of Lessee hereunder.

25. DEFAULT.

a. In the event of any breach of this Lease by Lessee, Lessor, in addition to the other rights or remedies Lessor may have, shall have the immediate right of reentry and may remove all persons and property from the Premises. Any property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of, Lessee. Should Lessor elect to reenter, as provided in this agreement, or should it take possession pursuant to legal proceedings or pursuant to any notice provided for by law, Lessor may terminate this Lease.

b. No reentry or taking possession of the Leased Premises by Lessor shall be construed as an election on the part of Lessor to terminate this Lease unless a written notice of Lessor's intention to terminate this Lease is given to Lessee or unless the termination of the Lease is decreed by a court of competent jurisdiction.

c. Should Lessor at any time terminate this Lease for any breach, in addition to any other remedy it may have, Lessor may recover from Lessee all damages incurred by reason of the breach, including the cost of recovering the Premises, and including the worth

at the time of the termination of the excess, if any, of the amount of rent and charges equivalent to rent reserved in this Lease for the remainder of the stated term over the then reasonable rental value of the Premises for the remainder of the stated term, all of which amounts shall be immediately due and payable from Lessee to Lessor.

26. MARKET FOR SALE

Lessor shall have the absolute right to sell, assign, mortgage, or otherwise encumber or dispose of Lessor's interest in the Premises including, without limitation, erecting any type of for sale or future development sign on or adjacent to the Premises and taking any further action in connection therewith or related thereto. No such action by the Lessor shall be considered to be a disruption of Lessee's quite enjoyment of the Premises.

27. EFFECT OF EMINENT DOMAIN.

a. Effect of total condemnation. In the event the entire Leased Premises shall be appropriated or taken under the power of eminent domain by any public or quasi-public authority, this Lease shall terminate and expire as of the date of the taking, and Lessee shall then be released from any liability accruing under this Lease after that date.

b. Effect of partial condemnation. In the event a portion of the Leased Premises shall be so appropriated or taken and the remainder of the property shall not be suitable for the use then being made of the property by Lessee, or if the remainder of the property is not one undivided parcel of property, Lessee shall have the right to terminate this Lease as of the date of the taking on giving to Lessor written notice of the termination within thirty (30) days after Lessor has notified Lessee in writing that the property has been appropriated or taken.

In the event of partial taking and Lessee does not terminate this Lease, this Lease shall continue in full force and effect as to the part not taken, and the rent to be paid by Lessee during the remainder of the term shall continue in the manner provided for above in Paragraph 3.

c. Condemnation award. In the event of the termination of this Lease by reason of the total or partial taking of the Premises by eminent domain, then in any condemnation proceedings Lessor and Lessee shall be free to make claim against the condemning or taking authority for the amount of any damage done to them, respectively, as a result of the taking.

In the event of a partial taking of the Premises and this Lease is not terminated, then Lessee shall have the right to make claim against the condemning or taking authority for only the unamortized cost of the improvements placed on the Leased Premises by Lessee and located on the Premises at the time of the taking or appropriation, which improvements shall be deemed to amortize in equal annual amounts over the period commencing with the date of completion of the improvements and ending upon the termination of the Lease.

28. SURRENDER OF LEASE.

The voluntary or other surrender of this Lease by Lessee, or a mutual cancellation of this Lease, shall not work a merger, and shall, at the option of Lessor, terminate all or any existing

subleases or subtenancies, or may, at the option of Lessor, operate as an assignment to it of any or all such subleases or subtenancies.

29. WAIVER.

The waiver by Lessor of, or the failure of Lessor to take action with respect to any breach of, any term, covenant, or condition contained in this Lease shall not be deemed to be a waiver of that term, covenant, condition, or subsequent breach, or of any other term, covenant, or condition contained in the Lease. The subsequent acceptance of rent under this Lease by Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant, or condition of this Lease, other than the failure of Lessee to pay the particular rental so accepted, regardless of Lessor's knowledge of the preceding breach at the time of acceptance of rent.

30. EFFECT OF LESSEE'S HOLDING OVER.

Any holding over after the expiration of the term of this Lease, without the express written consent of Lessor, shall be deemed to be a tenant from month-to-month only, at fifty (50%) percent increase of the monthly installment in effect during the last month of the expired Term. Except as aforesaid, such tenancy shall be upon and subject to the terms of this Lease. Either party may terminate such tenancy by giving to the other at least fifteen (15) days prior written notice of its intent to terminate.

31. PARTIES BOUND.

The covenants and conditions contained in this Lease shall, subject to the provisions as to assignment, transfer, and subletting, apply to and bind the heirs, successors, executors, administrators, and assigns of all of the parties to this Lease. All of the parties to this Lease shall be jointly and severally liable under the Lease.

32. TIME OF THE ESSENCE.

Time is of the essence of this Lease and of every covenant, term, condition, and provision of this Lease.

33. SECTION CAPTIONS.

The captions appearing under the section number designations of this Lease are for convenience only and are not a part of this Lease and do not in any way limit or amplify the terms and provisions of this Lease.

LESSOR SIGNATURE PAGE

Executed on December 23, 2013.

"LESSOR":

Witnesses:

DiVito Enterprises Limited Partnership
an Illinois limited partnership

By: Reliance Enterprises of South Florida, Inc.,
a Florida corporation, its General Partner

By: _____
Eugene C. DiVito, President

_____
Signature Debra Pellegrini

_____
Signature Sally E. Petterson

STATE OF ILLINOIS
COUNTY OF LAKE

The foregoing instrument was acknowledged before me this 23 day of December, 2013, by Eugene C. DiVito, as President of Reliance Enterprises of South Florida, Inc., a Florida corporation, the General Partner of DiVito Enterprises Limited Partnership, an Illinois limited partnership. He ✓ is personally known to me or ___ has produced _____ (type of identification) as identification.

NOTARY'S SEAL:

OFFICIAL SEAL
SALLY E PETTERSON
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES.06/11/14

_____
NOTARY PUBLIC, STATE OF ILLINOIS

SALLY E Petterson
(Name of Acknowledger Typed, Printed or Stamped)

N/A
Commission Number

LESSEE SIGNATURE PAGE

Executed on _____.

"LESSEE":

Witnesses:

CITY OF POMPANO BEACH

By: _____
LAMAR FISHER, MAYOR

By: _____
DENNIS W. BEACH, CITY MANAGER

Attest:

_____ (SEAL)
MARY L. CHAMBERS
CITY CLERK

Approved As To Form:

_____
GORDON B. LINN
CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instruments were acknowledged before me this 14th day of February, 2014 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'S SEAL:

KRYSTAL AARON
NOTARY PUBLIC
STATE OF FLORIDA
Comm# EE874865
Expires 2/14/2017

_____
NOTARY PUBLIC, STATE OF FLORIDA

Krystal Aaron
(Name of Acknowledger Typed, Printed or Stamped)

_____
Commission Number

GBL/egr
L:realest/Ground Lease 2 – 2-10-12