

Meeting Date: March 22, 2016

Agenda Item 17

REQUESTED COMMISSION ACTION:

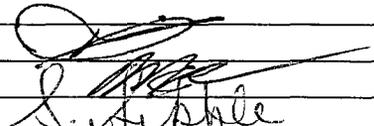
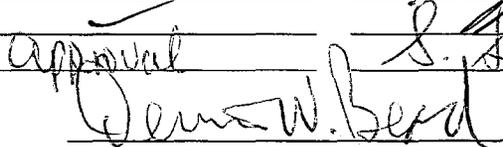
 Consent X Ordinance Resolution Consideration/Discussion Presentation

SHORT TITLE AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF
POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE
PROPER CITY OFFICIALS TO EXECUTE: (i) A SECOND 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; (ii) A
FIRST AMENDMENT TO PARCEL E GROUND LEASE 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 PPA-E, LLC; (iii) A FIRST AMENDMENT TO
PARCEL R2 GROUND LEASE 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 PPA-R2, LLC; (iv) A FIRST AMENDMENT TO PARCEL R3
GROUND LEASE 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 PPA-R3, LLC; PROVIDING FOR SEVERABILITY; PROVIDING AN
EFFECTIVE DATE.

Summary of Purpose and Why:

Soon after the First Amendment to the Amended and Restated Development Agreement was approved, CRA staff and Pompano Pier Associates, LLC (PPA) began discussions about the lease for the commercial space inside the Pier Parking Garage. The developer is eager to enter into a lease agreement at this time because they want to ensure coordination with the Pier Parking Garage construction efforts. In order to be able to enter into a lease for Parcel R4 (Pier Parking Garage), a Second Amendment to the Amended and Restated Development Agreement is needed. Also since the approval of the First Amendment, PPA has gone through the development review process for a few parcels. Going through this process has better informed their construction schedule and necessitated revisions to the Development Timeline. The Second Amendment will address the R4 Lease, Development Timeline revisions and also clean up some additional items.

- (1) Origin of request for this action: Staff
- (2) Primary staff contact: Dennis Beach, City Manager/ Adriane Esteban, CRA Project Manager Ext. 7841
- (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		Approval	
City Attorney	<u>3-11-16</u>		
Finance			

X City Manager 

ACTION TAKEN BY COMMISSION:

Ordinance

Resolution

Consideration

Results:

Results:

Results:



P. O. Drawer 1300
Pompano Beach, FL 33061

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

MEMORANDUM

Date: March 22, 2016

To: Pompano Beach City Commission

From: Adriane Esteban, Project Manager

Thru: Dennis Beach, City Manager

Re: Second Amendment to the Amended and Restated Development Agreement and First Amendments to Parcel Ground Leases E, R2 and R3

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). Then in 2015, the design contracts for the Pier Parking Garage and New Pier Structure were approved and the new Beach Library was completed. When these affiliated projects became more defined, it became necessary to revise the Development Timeline so that the development of the parcels and the Arch could logistically and synergistically foster a successful Pier development project. In March 2015, a First Amendment to the Amended and Restated Development Agreement was approved that addressed revisions to the Development Timeline, construction of the Arch, payment terms for the utilities in the Existing Concession Building restrooms, demolition of existing buildings and coordination with the Pier Parking Garage construction. Soon after that amendment was approved, CRA staff and PPA began discussions about the lease for the commercial space inside the Pier Parking Garage. The developer is eager to enter into a lease agreement at this time because they want to ensure coordination with the Pier Parking Garage construction efforts. In order to be able to enter into a lease for Parcel R4 (Pier Parking Garage), a Second Amendment to the Amended and Restated Development Agreement is needed. Also since the approval of the First Amendment, PPA has gone through the development review process for a few parcels. Going through this process has better informed their construction schedule and necessitated revisions to the Development Timeline. The Second Amendment will address the R4 Lease, Development Timeline revisions and also clean up some additional items.

Agenda Item

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

- Parcel R4 Space Lease added as an exhibit. This is the lease for the 6,306.78 SF commercial space in the Pier Parking Garage as well as use of the Patio Area in front.

CRA

POMPANO BEACH

P. O. Drawer 1300
Pompano Beach, FL 33061

Phone: (954) 786-5535
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The terms are similar to those of the Parcel Ground Lease, but better reflect conditions for a Space Lease.

- The revised Development Timeline extends the dates for the parcels to better reflect the actual amount of time necessary to get through the development review and permitting process. The developer found that it took up to five months just get through the development review process, which impacts the overall schedule. PPA thinks this revised Development Timeline will give them the appropriate amount of time to complete construction.
- Clarification that Mayor or Vice Mayor can execute the Parcel Ground Lease or Parcel R4 Space Lease.
- Instead of including a date certain for Library Demolition, the demolition is dependent on construction of Parcels R2 and R3. The Library has recently been demolished however, and the developer will have 60 days to reimburse the City.
- The City will wait to adopt Beachfront Area Guidelines for the mobile kiosks until the brick and mortar restaurants and retail are up and running.
- The developer will pay for a new set of restrooms for Parcel E patrons, which will be constructed by either the City or the developer at a location to be determined. The developer will then take over maintenance and utilities of whichever restrooms are deemed for Parcel E patrons, while the City will then take over maintenance and utilities for the public restrooms.
- A reimbursement process is identified for the drainage system, grease traps, other utilities and infrastructure improvements needed for the PPA's development and constructed by the City's Pier Parking Garage contractor. The City's contractor is installing improvements because they have site control and it would be best to have them install these improvement while the site is under construction.
- Option to lease Tourism Space in Pier Parking Garage if the opportunity becomes available.
- The other items in the Second Amendment are for clarification purposes regarding Recognition Agreement, Assignments, and Development Deadline sections.

The First Amendments to the Parcel Ground Leases for Parcels E, R2 and R3 are related to the revised Development Timeline. The amendment to the Parcel E Ground Lease also identifies the Rent Commencement Date as June 1, 2015, which is when the developer took over operations of the concessions. The Second Amendment and Parcel Ground Leases First Amendment update terms and schedules of the Pier development for the clarification and benefit of both parties. Approval of these amendment shows the City and developer's commitment to create a desirable destination and successful new development in the City of Pompano Beach.



City Attorney's Communication #2016-584

March 9, 2016

TO: Adriane Esteban, Project Manager
FROM: Mark E. Berman, City Attorney
RE: Ordinance – Pompano Pier

As requested, I have reviewed and revised the attached form of Resolution 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: (i) A SECOND 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; (ii) A FIRST AMENDMENT TO PARCEL E GROUND LEASE 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 PPA-E, LLC; (iii) A FIRST AMENDMENT TO PARCEL R2 GROUND LEASE 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 PPA-R2, LLC; (iv) A FIRST AMENDMENT TO PARCEL R3 GROUND LEASE 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 PPA-R3, LLC; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.


MARK E. BERMAN

MEB/jrm
l:cor/cra/2016-584

Attachment

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: (i) A SECOND 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; (ii) A FIRST AMENDMENT TO PARCEL E GROUND LEASE 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 PPA-E, LLC; (iii) A FIRST AMENDMENT TO PARCEL R2 GROUND LEASE 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 PPA-R2, LLC; (iv) A FIRST AMENDMENT TO PARCEL R3 GROUND LEASE 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 PPA-R3, LLC; 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 ("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 PPA-E, LLC, an affiliate of the Developer, have entered into a Parcel Ground Lease for Parcel E of the Property ("Parcel E Lease"); and

WHEREAS, the City and PPA-R2, LLC, an affiliate of the Developer, have entered into a Parcel Ground Lease for Parcel R2 of the Property ("Parcel R2 Lease"); and

WHEREAS, the City and PPA-R3, LLC, an affiliate of the Developer, have entered into a Parcel Ground Lease for Parcel R3 of the Property ("Parcel R3 Lease"); and

WHEREAS, the City and the Developer now wish to amend the Development Agreement to include:

- (1) approval of the Phase R4 lease of space to Developer in the City's parking garage ("R4 Lease");
- (2) a change in the timing for the demolition of the Library by the City;

(3) a provision requiring either the City or the Developer to construct a second set of restrooms on Parcel E at Developer's expense, with one set of the restrooms to be designated for use by the public and with the City to be responsible for the maintenance and utilities serving the public restroom;

(4) an allocation of costs and responsibilities for the installation of a drainage system, grease traps, and other utilities in connection with the construction of Pier Street;

(5) an option for the Developer to lease the City's proposed tourism space in the parking garage if the space becomes available at any time during the term of the R4 Lease;

(6) an obligation by the City to execute a recognition agreement acceptable to the City in order to provide certain assurances to a Parcel Subtenant, subject to limitations;

(7) a change in the Development Timeline attached as Exhibit C to the Development Agreement;

(8) clarification that either the Mayor or Vice Mayor (but not both) are required to sign the Parcel Ground Leases and the R4 Lease pursuant to the Development Agreement; and

(9) deletion of minor provisions in the form of Parcel Ground Lease attached as Exhibit D to the Development Agreement; and

WHEREAS, the City and PPA-E, LLC now wish to amend the Parcel E Lease to include:

(1) clarification that the Developer has assigned its rights to lease Parcel E to PPA-E, LLC, which entity has the identical ownership of the Developer;

(2) confirmation of the Lease Commencement Date and the Minimum Rent Commencement Date;

(3) incorporation into the Parcel E Lease of the terms and conditions of the Development Agreement which pertain to the use, operation, and maintenance of the Property;

(4) substitution of the updated Development Timeline for Exhibit D to the Parcel E Lease; and

(5) deletion of conflicting dates in the Parcel E Lease; and

WHEREAS, the City and PPA-R2, LLC now wish to amend the Parcel Ground Lease for Parcel R2 of the Property (“Parcel R2 Lease”) to include:

(1) clarification that the Developer has assigned its rights to lease Parcel R2 to PPA-R2, LLC, which entity has the identical ownership of the Developer;

(2) incorporation into the Parcel R2 Lease of the terms and conditions of the Development Agreement which pertain to the use, operation, and maintenance of the Property;

(3) substitution of the updated Development Timeline for Exhibit D to the Parcel R2 Lease; and

(4) deletion of conflicting dates in the Parcel R2 Lease; and

WHEREAS, the City and PPA-R3, LLC now wish to amend the Parcel Ground Lease for Parcel R3 of the Property (“Parcel R3 Lease”) to include:

(1) clarification that the Developer has assigned its rights to lease Parcel R3 to PPA-R3, LLC, which entity has the identical ownership of the Developer; and

(2) incorporation into the Parcel R3 Lease of the terms and conditions of the Development Agreement which pertain to the use, operation, and maintenance of the Property;

(3) substitution of the updated Development Timeline for Exhibit D the Parcel R3 Lease; and

(4) deletion of conflicting dates in the Parcel R3 Lease; 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 Second 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 a First Amendment to Parcel Ground Lease for Parcel E of the Property, a copy of which amendment is attached hereto and incorporated herein by reference as if set forth in full, is hereby approved.

SECTION 4. That a First Amendment to Parcel Ground Lease for Parcel R3 of the Property, a copy of which amendment is attached hereto and incorporated herein by reference as if set forth in full, is hereby approved.

SECTION 5. That the proper City officials are hereby authorized to execute said amendments.

SECTION 7. 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 8. This Ordinance shall become effective upon passage.

PASSED FIRST READING this _____ day of _____, 2016.

PASSED SECOND READING this _____ day of _____, 2016.

LAMAR FISHER, MAYOR

ATTEST:

ASCELETA HAMMOND, CITY CLERK

:jrm
3/9/16
L:ord/2016-147

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

THIS SECOND AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AGREEMENT (“Second 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, and a First Amendment to Amended and Restated Development Agreement dated March 27, 2015 (collectively, “**Agreement**”) , for the development, leasing and operation of approximately 6.125 acres of oceanfront property located on Pompano Beach Boulevard (“**Property**”).

All terms used in this Second Amendment which are defined in the Agreement will have the meanings set forth in the Agreement.

Section 7.5 of the Agreement currently provides as follows:

City agrees that Developer has the right to develop 5,000 to 7,000 square feet of space for retail or restaurant use in Phase R4 of the Project. The square footage allocated to Phase R4 may be developed within a parking garage (“**Parking Garage**”) which City intends to construct in the future on the property shown as Parcel R4 on the Master Plan, or the City may elect to allocate the Phase R4 square footage to one or more other Parcels of the Project. If the Phase R4 square footage will be developed within the Parking Garage, a separate space lease (“**R4 Lease**”) will be negotiated by the parties upon completion of the design of the Parking Garage. Nothing in this Agreement obligates the City to construct the Parking Garage at any time.

City has completed the design of the Parking Garage on Parcel R4.

City and Developer have negotiated the terms of the R4 Lease and desire to enter into the R4 Lease.

City and Developer have agreed to amend Section 7.5 of the Agreement to reflect the construction of the Parking Garage and the location of Phase R4 of the Project in the Parking Garage.

City and Developer have agreed to amend Section 6.3 of the Agreement regarding parties required to execute Parcel Ground Leases and the R4 Lease on behalf of the City.

City and Developer have agreed to amend the Agreement to provide for reimbursement to the City for certain infrastructure improvements to be installed by City on the Property.

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. **Phase R4.** Section 7.5 of the Agreement is deleted in its entirety and replaced with the following:

Phase R4. City grants to Developer the right to develop 5,000 to 7,000 square feet of space (currently estimated to be 6,300 square feet) for retail or restaurant use in Phase R4 of the Project (“**R4 Space**”). The R4 Space will be located on the ground floor of the parking garage (“**Parking Garage**”) to be constructed by the City. City and Developer agree to enter into a lease for the R4 Space (“**R4 Lease**”) in substantially the form attached as **Exhibit J** to this Agreement. As long as the form and terms of the R4 Lease are substantially as set forth in **Exhibit J** to this Agreement, the R4 Lease will be executed by the Mayor or Vice Mayor, the City Manager, and City Clerk without any further approval by the City Commission.

2. **R4 Space Lease.** The form of R4 Lease attached as **Exhibit A** to this Second Amendment is hereby incorporated as **Exhibit J** to the Agreement.
3. **Exhibits.** The list of Exhibits in Section 2 of the Agreement is amended to add the following:

Exhibit J – Form of Parcel R4 Space Lease

4. **Development Timeline.** The Development Timeline attached as **Exhibit C** to the Agreement is replaced with the revised Development Timeline attached as **Exhibit B** to this Second Amendment.
5. **Execution of Parcel Ground Leases.** Section 6.3 of the Agreement is amended in its entirety to read as follows:

- 6.3 **Lease Execution Dates.** The respective Parcel Ground Leases and the R4 Lease will be executed according to the schedule set forth in the Development Timeline. As long as the form and terms of the respective Parcel Ground Leases and R4 Lease are substantially as set forth in this Development Agreement, and are in the form of Parcel Ground Lease attached as Exhibit D or the form of the R4 Lease attached to the Second Amendment to Development Agreement, the Parcel Ground Leases and R4 Lease will be executed by (i) the Mayor ~~or the~~ Vice Mayor, (ii) the City Manager, and (iii) the City Clerk without any further approval by the City Commission.

6. **Obligations of City Prior to Development.** Section 15 of the Agreement is amended in its entirety 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**”) located on the Property prior to the commencement of construction on either Parcel R2 or Parcel R3. Developer will reimburse the City the sum of \$25,116.70 for the cost of demolition of the Library within 60 days after receipt of written notice or request for reimbursement 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 has previously demolished the fire station located on the Property.

7. **City to Provide Beachfront Area Guidelines.** Section 8.2 of the Agreement is amended in its entirety to read as follows:

8.2 **City to Provide Beachfront Area Guidelines.** City will adopt a set of design guidelines for the Beachfront Area within 90 days after completion of construction of the first Parcel to be developed (other than Parcel E). The Beachfront Area design guidelines will include a description of the types of structures to be permitted, procedure for obtaining design approval of structures and permits, hours of operation, etc. Neither City nor Developer will enter into any Beachfront Concession Agreements until the Beachfront Area guidelines have been adopted.

8. **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.
- (d) **Prior to the completion of the Parcel E Improvements, either City or Developer will construct a second set of restrooms on or adjacent to Parcel E at Developer's expense in a location to be agreed upon by the parties. When the second set of restrooms is constructed, one set of restrooms will be designated for use by the public, and the other set will be designated for use by the patrons of Parcel E. Upon completion of the restrooms, the City will be responsible for the maintenance and utilities for the restrooms designated as public, and the Developer will be responsible for the maintenance and utilities for the restrooms serving the Parcel E patrons**

9. **Parking Garage Trash Collection Room.** Section 22.5 of the Agreement is amended in its entirety to read as follows:

22.5 **Trash Collection Room.** The Tenant of Parcel R4 ("R4 Tenant") will be responsible for maintaining and operating the trash collection room located in the northeast corner of the Parking Garage. The R4 Tenant will pay all costs of maintaining and operating the trash collection room, and must maintain this area in operating and sanitary condition at all times.

10. **Traffic, Road and Infrastructure Improvements.** The heading and first sentence of Section 24 of the Agreement are changed to read as follows:

24. **Traffic, Road and Infrastructure Improvements.** City and Developer recognize that because Pier Street, the Parking Garage, and the surface parking on the Property will be developed by City, and the Parcels and the R4 Space will be developed by Developer, there will be overlaps in the development work to be performed by the respective parties in connection with the Project. In order to avoid duplication of efforts, and to make the development process more efficient and cost-effective for each of the parties, the parties agree to the following provisions:

11. **Drainage System, Grease Traps, and other Utilities.** The following provisions are added after Section 24.5 of the Agreement:

- 24.5 **Drainage System.** In connection with the construction of Pier Street and related site improvements by City, City intends to install a new drainage system (“**Drainage System**”) on the Property at a cost of \$234,440.00 (“**Drainage Cost**”). The Drainage System will serve Parcels R1, R2, R3, R5, and the R4 Space. Developer will have right to review the plans and specifications for the Drainage System prior to installation by the City. City will invoice Developer for each payment made by the City to the contractor installing the Drainage System, and Developer shall reimburse City for each payment within 60 days after receipt of the City’s invoice. City will maintain the Drainage System at its expense throughout the term of this Agreement.
- 24.6 **Grease Traps.** Developer shall pay for the installation of all grease traps required to serve the Project. City will install grease traps in Seabreeze Way to serve Parcels R1, R2, R3, R5, and the R4 Space. City will invoice Developer for each payment made by the City to the contractor installing the grease traps, and Developer shall reimburse City for each payment within 60 days after receipt of the City’s invoice. City and Developer will coordinate the size and locations of all grease traps serving the Project prior to installation. Developer will maintain all grease traps on the Property at its expense throughout the term of this Agreement.
- 24.7 **Other Utilities and Infrastructure Improvements.** If Developer asks City to either (i) install additional infrastructure improvements (such as electrical lines, fiber optic cable, communication lines, or other infrastructure which may be needed to serve the Project now or in the future) for the benefit of the Parcels or the R4 Space, or (ii) relocate a planned infrastructure improvement for the benefit of Developer, Developer agrees to pay its proportionate share of the cost of the installation or relocation. For any such work to be performed by City, City will provide Developer with an estimate of the cost of the work to be paid for by Developer. If Developer is willing to pay for the requested installation or relocation, Developer will notify City in writing. City will invoice Developer for each payment made by the City to the contractor performing the work, and Developer shall reimburse City for each payment within 60 days after receipt of the City’s invoice.
12. **Tourism Space in Parking Garage.** The following provision is added as Section 22.7 of the Agreement:
- 22.7 **Option to Lease Tourism Space.** In the event the proposed tourism space located at the southeast corner of the Parking Garage (“**Tourism Space**”) becomes available for lease at any time during the term of the R4 Lease, City will offer the Tourism Space to Developer on the same terms then in effect under the R4 Lease. Developer will have a period of 10 days after the Tourism Space is offered to Developer to send a written notice to City accepting the offer to lease the Tourism Space. If the

Developer elects to lease the Tourism Space, the R4 Lease will be amended by the parties to add the Tourism Space to the premises described in the R4 Lease.

13. **Recognition Agreement.** The following provision is added as Section 6.7 of the Agreement:

6.7 **Recognition, Non-Disturbance and Attornment Agreement.** City agrees, upon written request of a Parcel Tenant or its Subtenant, to execute and deliver a Sublease Recognition, Non-Disturbance and Attornment Agreement (“**Recognition Agreement**”) in favor of the Subtenant as long as (i) the operation of the Recognition Agreement does not cause a reduction in any of the Rents or other benefits due City under the applicable Parcel Ground Lease or R4 Lease; (ii) the operation of the Recognition Agreement does not impose any monetary or performance obligations on City in excess of those in the applicable Parcel Ground Lease or R4 Lease; (iii) the Recognition Agreement is acceptable to City in form and content; and (iv) the Recognition Agreement is approved by the City Commission. Developer agrees to reimburse the City for its costs and expenses (including Attorneys’ Fees) incurred in the negotiation and approval of any Recognition Agreement.

14. **Assignments to Affiliates.** The following provision is added as Section 38.6.7 of the Agreement:

38.6.7 **Assignment of Rights to Lease Parcels.** Assignment to an entity with ownership identical to that of the Developer of Developer’s right to lease one or more Parcels or the R4 Space, as long as the assignee expressly acknowledges, accepts and agrees to be bound by all of the terms, conditions, and obligations of Developer under the Development Agreement which are applicable to the Parcel or the premises being leased.

15. **Form of Parcel Ground Lease.** Section 15 of the Form of Parcel Ground Lease attached as Exhibit D to the Development Agreement is changed to read as follows (added language is underlined and in bold, deleted language has a line through it):

15. **Parcel Development Deadlines.** Tenant expressly agrees that the Parcel will be developed in accordance with the Development Timeline attached as **Exhibit D**, and that time is of the essence in the development of the Parcel. ~~The specific deadlines for the development of the Parcel are as follows:~~

~~15.1. **Plans and Permit Application.** The deadline for completion of the Plans and submission of a Building Permit application is on or before _____.~~

~~15.2. **Building Permit.** The deadline for obtaining the Building Permit is on or before _____.~~

~~15.3. **Commencement of Construction.** The deadline for commencement of construction is on or before _____.~~

~~15.4. **Certificate of Occupancy.** The deadline for obtaining a Certificate of Occupancy is on or before _____.~~

16. **Ratification of Agreement.** The Agreement, as amended by this Second Amendment, remains in full force and effect on the date hereof.

[SIGNATURES ON FOLLOWING PAGES]

Witnesses:

[Signature]
Tim Hernandez
Christi French
Christi French

“DEVELOPER”

POMPANO PIER ASSOCIATES, LLC, a Florida limited liability company

By: [Signature]
RICHARD CASTER, President

Date: 3/4/16

STATE OF FLORIDA
COUNTY OF BROWARD

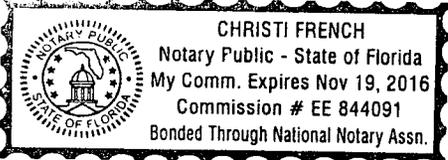
The foregoing instrument was acknowledged before me this 4th day of March, 2016, by RICHARD CASTER, as President of Pompano Pier Associates, LLC, a Florida limited liability company, on behalf of the company. He is personally known to me or has produced _____ as identification.

Christi French
NOTARY PUBLIC, STATE OF FLORIDA

Christi French
(Name of Notary Typed, Printed or Stamped)

EE 844091
Commission Number

NOTARY’S SEAL



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

Witnesses:

“CITY”

CITY OF POMPANO BEACH, FLORIDA

Print name: _____

By: _____
LAMAR FISHER, MAYOR

Print name: _____

Dated: _____

By: _____
DENNIS W. BEACH, CITY MANAGER

Attest:

Dated: _____

ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved by:

MARK BERMAN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, 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 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 Second Amendment

**Exhibit A to Second Amendment to Development Agreement
Form of Phase R4 Lease**

(see following pages)

PHASE R4 SPACE LEASE

THIS R4 SPACE LEASE (“Lease”) is dated as of the Effective Date, and is between the **CITY OF POMPANO BEACH, FLORIDA**, a Florida municipal corporation (“**City**”) and **PPA-R4, LLC**, a Florida limited liability company (“**Tenant**”).

RECITALS

The City is the owner of approximately 6.125 acres of oceanfront property located on Pompano Beach Boulevard (the “**Property**”). The Property is more particularly described in **Exhibit A** to this Agreement.

On September 30, 2011, the City issued Request for Qualifications No. H-46-11 (“**RFQ**”) seeking a Developer for the redevelopment of the Property.

On October 19, 2011, after reviewing all proposals submitted in response to the RFQ, the Pompano Beach Community Redevelopment Agency (“**CRA**”) ranked Pompano Pier Associates, LLC, a Florida limited liability company (“**Developer**”) as the first-place respondent to the RFQ.

On October 25, 2011, the City Commission accepted the recommended ranking of submitted proposals and authorized staff to negotiate an agreement with the Developer to redevelop the Property in accordance with the terms and conditions of the RFQ.

On January 28, 2013, the City and Developer entered into a Development Agreement (“**Original Agreement**”) for the development of the Property with food and beverage concessions, restaurants and eateries, beach and pier related retail, and active and passive open space, all in keeping with a maritime or “fishing village” theme.

On July 28, 2014, City and Developer entered into an Amended and Restated Development Agreement (“**Amended and Restated Agreement**”) in order to address changes which occurred after the date of the Original Agreement.

On March 27, 2015, City and Developer entered into a First Amendment to Amended and Restated Development Agreement (“**First Amendment**”) in order to address additional changes which occurred after the date of the Amended and Restated Agreement.

On _____, 2016, City and Developer entered into a Second Amendment to Amended and Restated Development Agreement (“**Second Amendment**”) in order to address the terms of a lease of Parcel R4 and to make other minor changes to the Amended and Restated Agreement.

The Amended and Restated Agreement, First Amendment, and Second Amendment are collectively the “**Development Agreement**.”

The Original Agreement contemplated that the Property would be divided up into a maximum of eight separate development parcels -- Parcels R1, R2, R3, R4, R5, C1, C2 and E (each one a “**Parcel**”), with each Parcel to be leased by Developer or by an “Acceptable Transferee” of Developer (as defined in the Development Agreement) pursuant to a separate ground lease prior to the commencement of development on the Parcel.

Subsequent to the Original Agreement, the City elected to construct a parking garage (“**Parking Garage**”) on the land to be developed as Parcel R4.

The Development Agreement now gives the City the right to build the Parking Garage on Parcel R4 and grants to Developer the right to lease 5,000 to 7,000 square feet of space in the Parking Garage (“**R4 Space**”) from the City and to develop the R4 Space for retail or restaurant use.

Developer has assigned to Tenant its rights to lease the R4 Space from the City and to develop, use, and sublease the R4 space as contemplated by the Development Agreement.

The ownership of Tenant is identical to the ownership of Developer, and as a result, City’s consent to the assignment from Developer to Tenant is not required.

City and Tenant are entering into this Lease in accordance with the Development Agreement.

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

AGREEMENT

1. **Exhibits.** Attached to this Lease and incorporated into this Lease by reference are the following Exhibits:

Exhibit A – Legal Description of the Property

Exhibit B – Graphic Illustration of the Premises

Exhibit C - Legal Description of the Parking Garage Property

Exhibit D – Site Plan Showing Location of Premises

Exhibit E – Graphic Illustration of Patio Area

Exhibit F - Development Timeline revised February 3, 2016 (“Development Timeline”)

Exhibit G – Description of Improvements to Leased Premises

Exhibit H – Ownership of Tenant

Exhibit I – Memorandum of Lease

2. **Defined Terms.** Terms used in this Lease are defined in the paragraphs where they are first used. The following terms appear throughout this Lease and have the meanings set forth below.

2.1. **Attorneys’ Fees.** All reasonable attorneys’ fees, expenses, and costs incurred by a party in connection with any matter arising under this Lease, including, without limitation, paralegal fees, in-house attorneys’ fees, and all fees, taxes, costs and expenses incident to trial, appellate, bankruptcy and post-judgment proceedings.

2.2. **Business Day.** Any day that the Pompano Beach City Hall is open for business.

- 2.3. **City Parties.** The City of Pompano Beach and any elected officials, employees, agents, advisors, representatives, attorneys, or other persons or entities acting on City's behalf or otherwise related to or affiliated with the City
 - 2.4. **Effective Date.** The date this Lease is fully executed by City and Tenant.
 - 2.5. **Governmental Approval.** Any license, permit, certificate, consent, authorization, or other document issued by a Governmental Authority.
 - 2.6. **Governmental Authority.** Any federal, state, county, municipal or other governmental department, entity, authority, commission board, bureau, court, agency, or any instrumentality of any of them.
 - 2.7. **Governmental Requirement.** Any law, enactment, statute, code, ordinance, rule, regulation, judgment, decree, writ, injunction, order, permit, certificate, license, authorization, agreement, or other direction or requirement of any Governmental Authority now existing or hereafter enacted, adopted, promulgated, entered, or issued.
 - 2.8. **Unavoidable Delays.** Any delays due to strikes, riots, acts of God, hurricanes, floods, shortages of labor or materials, war, Governmental Requirement, or any other cause beyond the reasonable control of such party (other than delays caused by the actions or omissions of the party claiming or asserting the delay or such party's financial inability to pay).
3. **Lease of Premises.** The City hereby demises and leases to Tenant, and the Tenant accepts from City, possession of the R4 Space graphically depicted in **Exhibit B** attached to this Lease ("**Premises**"), subject to the terms and conditions of this Lease and the Development Agreement (including any subsequent amendments to the Development Agreement). The Premises will be located within the Parking Garage to be constructed on the land described in **Exhibit C**.
- 3.1. **Premises Are Part of Project.** City and Tenant acknowledge that the Premises are a part of a project being developed by Developer on the Property, intended to consist of food and beverage concessions, restaurants and eateries, beach and pier related retail, and active and passive open space, all in keeping with a maritime or "fishing village" theme. ("**Project**"). The Site Plan for the Project attached as **Exhibit D** shows the location of the Premises within the Project.
 - 3.2. **Incorporation of Terms of Development Agreement.** Tenant, as the assignee of Developer's rights to lease, develop and sublease the Premises, acknowledges that all of the terms and conditions of the Development Agreement which pertain to the use, operation, and maintenance of the Property described in the Development Agreement will also apply to Tenant's use, operation and maintenance of the Premises.
4. **Lease Term.** The term of this Lease ("**Lease Term**") will begin on _____ ("**Lease Commencement Date**") and will be for a period of 50 years. Tenant is not permitted to use or occupy the Premises, or carry on any activities on the Premises until the Lease Commencement Date.

- 4.1. **Lease Year.** Each consecutive 12-month period during the Lease Term will be a “**Lease Year**,” with the first Lease Year to begin on the Lease Commencement Date. If City wishes for a Lease Year to begin on January 1 of each calendar year during the Lease term, the parties agree that Rent (defined below) will be prorated for the first and last years of the Lease Term.
5. **Rent.** Tenant will pay to the City the Base Rent, Minimum Rent, Percentage Rent, and Additional Rent (all as defined below) for each Lease Year. Base Rent, Minimum Rent, Percentage Rent, and Additional Rent are collectively referred to as “**Rent**.”
 - 5.1. **Base Rent.** Tenant agrees to pay “**Base Rent**” of \$10.00 per square foot of space in the Premises.
 - 5.1.1. **Amount.** The Base Rent for the Premises will be \$63,067.80 per Lease Year, based on the square footage of 6,306.78 shown for the Premises on the plans for the Parking Garage on the Effective Date of this Lease.
 - 5.1.2. **Adjustment of Base Rent.** If after the completion of construction of the Parking Garage the square footage of the Premises is determined to be higher or lower than the amount set forth in this Lease, the Base Rent will be adjusted accordingly and the parties will execute an amendment to the Lease confirming the actual Base Rent.
 - 5.1.3. **Base Rent Payment Due Dates.** All payments of Base Rent are due and payable in advance on the first day of each calendar quarter (January 1, April 1, July 1 and October 1) throughout the Lease Term.
 - 5.1.4. **Base Rent Commencement Date.** Base Rent will commence on the earlier of (i) the 90th day after issuance by the City of Pompano Beach of the first final certificate of occupancy (“**CO**”) for the Premises, or (ii) the 90th day after Tenant or a Subtenant opens for business in the Premises (“**Base Rent Commencement Date**”). If the Base Rent Commencement Date occurs on a date other than the first day of a calendar quarter, the Base Rent due for the initial and final partial quarters will be prorated based on the number of days in the partial quarter.
 - 5.2. **Minimum Rent.** Tenant agrees to pay the following “**Minimum Rent**” in accordance with this Lease.
 - 5.2.1. **Amount.** The Minimum Rent for the Premises will be \$60,000.00 per Lease Year, payable in four equal quarterly payments of \$15,000.00 each.
 - 5.2.2. **Minimum Rent Payment Due Dates.** A quarterly installment of Minimum Rent will be due and payable in advance on the first day of each calendar quarter (January 1, April 1, July 1 and October 1) during the Lease Term.
 - 5.2.3. **Minimum Rent Commencement Date.** Minimum Rent will commence on earlier of (i) the 90th day after issuance by the City of Pompano Beach of the first CO for the Premises, or (ii) the 90th day after Tenant or a Subtenant opens for business in the Premises (“**Minimum Rent Commencement Date**”). If the Minimum Rent Commencement Date

occurs on a date other than the first day of a calendar quarter, the Minimum Rent due for the initial and final partial quarters will be prorated.

- 5.3. **Percentage Rent.** Tenant agrees to pay the following “**Percentage Rent**” in accordance with this Lease.
 - 5.3.1. **Amount.** The Percentage Rent for the Premises will be 1.25% of the Gross Revenue generated by the Premises in excess of \$9,760,000.00.
 - 5.3.2. **Percentage Rent Due Date.** Percentage Rent will be due and payable annually within 45 days after the end of the Lease Year.
 - 5.3.3. **Percentage Rent Commencement Date.** Percentage Rent will commence on the Lease Commencement Date.
- 5.4. **Annual Increase to Base Rent, Minimum Rent, and Percentage Rent Threshold.** The Base Rent, Minimum Rent, and Percentage Rent Threshold for the R4 Space will each increase by 3% on each anniversary of the Lease Commencement Date.
- 5.5. **Additional Rent.** Any sums to be paid by Tenant to City under the terms of this Lease – other than Base Rent, Minimum Rent or Percentage Rent – will be “**Additional Rent**,” and will be subject to all of the requirements applicable to the payment of Rent. Tenant will pay any Additional Rent when due under this Lease.
- 5.6. **Payment of Rent Generally.** Tenant agrees to pay the Base Rent, Minimum Rent, Percentage Rent, and Additional Rent, if any, when due and payable. All Rent and other payments required to be made to the City under the Lease must be paid to the City at the following address:

City of Pompano Beach Treasury Division
100 West Atlantic Boulevard
Room 135
Pompano Beach, Florida 33060
Attention: Revenue Collections Manager

or at such other place as the City designates from time to time by written notice given pursuant to the notice provisions of this Lease. Payments must be made by check mailed or delivered to City or by wire transfer to a City account designated by the City Director of Finance.
- 5.7. **Late Payments.** Any late payment of Rent or any late payment of any other sums due under the Lease will automatically accrue interest at the highest interest rate permitted by law (“**Default Rate**”) from the date the payment was due until paid.
6. **Premises Within Parking Garage.** The Premises will be located on the ground floor of the Parking Garage to be constructed by City. The Parking Garage will be a public parking facility operated by the City. Tenant’s parking rights in the Parking Garage are set forth in the Development Agreement.

- 6.1. **Maintenance of Trash Collection Areas.** Tenant will be responsible for maintaining and operating the trash collection room located in the northeast corner of the Parking Garage. Tenant will pay all costs of maintaining and operating the trash collection area, and must maintain this area in operating and sanitary condition at all times.
- 6.2. **Common Area Maintenance Charges.** Tenant will be responsible for the payment of a prorated portion of the maintenance charges for the exterior of the Parking Garage, including charges for landscaping, pressure cleaning, window cleaning, and other services provided by the City which maintain, improve, enhance, or otherwise benefit the exterior of the Premises or the Parking Garage. Tenant's prorated share of the common area maintenance charges will be a calculated based on the square footage of the Premises to the square footage of the entire Parking Garage.
7. **License to Use Patio Area Adjacent to Premises.** City grants to Tenant an exclusive license ("**Patio License**") to use the patio area adjacent to the Premises and shown on **Exhibit E** ("**Patio Area**") during the Lease Term for outdoor dining and for the sale of merchandise by occupants of the Premises. Tenant acknowledges that it must obtain a permit from the City of Pompano Beach prior to any use of the Patio Area for outdoor dining or outdoor sales of merchandise.
 - 7.1. **Maintenance of Patio Area.** Tenant will keep the Patio Area in a clean and neat appearance at all times. Tenant will be responsible for maintenance of the Patio Area throughout the Lease Term, regardless of whether or not the Tenant is actually using the Patio Area.
 - 7.2. **No Obstructions in Patio Area.** Tenant acknowledges that although it has an exclusive license to use the Patio Area, the Patio License is subject to the rights of the general public to use the Patio Area for ingress and egress to and from the Parking Garage. At no time shall Tenant block access to and from the Patio Area to the Parking Garage.
8. **Gross Revenue.**
 - 8.1. **Definition of Gross Revenue.** For purposes of this Lease, "**Gross Revenue**" mean any and all revenue (whether cash, credit or barter) paid to or collected by any individual or entity that uses or occupies any portion of the Premises pursuant to a written or oral agreement with Tenant, including, but not limited to, a sublease, license or concession agreement.
 - 8.2. **Exclusions from Gross Revenue:** The following items will not be considered as Gross Revenue:
 - 8.2.1. Parking revenues generated by the Premises;
 - 8.2.2. Insurance loss proceeds which are applied toward restoration of the Premises;
 - 8.2.3. Any award or payment made by a Governmental Authority in connection with the exercise of any right of eminent domain, condemnation, or similar right or power;

- 8.2.4. Sales taxes;
 - 8.2.5. Employee meals, if free or discounted for such employees and their immediate family members;
 - 8.2.6. The proceeds of any sale by a Subtenant (defined below) of the Subtenant's business to a third party;
 - 8.2.7. Merchandise exchanges between Tenant's (or Subtenant's) business locations, where such exchanges are made solely for the convenient operation of Tenant's or Subtenant's business and not for the purpose of consummating a sale made at the Premises or for the purpose of depriving City of the benefit of a sale which otherwise would have been made at the Premises; and
 - 8.2.8. The amount of returns to shippers or manufacturers, or the amount of any cash or credit refund made upon any sale when the merchandise sold (or some portion thereof) is thereafter returned by a purchaser and accepted by Tenant (or Subtenant, as applicable).
- 8.3. **Definition of Subtenant.** For purposes of this Lease, a “**Subtenant**” is any individual or entity that uses or occupies any portion of the Premises pursuant to a written or oral agreement, including, but not limited to, a sublease, sub-sublease, license or concession agreement (each, a “**Sublease**”).
- 8.4. **Reporting of Gross Revenue.** Tenant and all Subtenants must report Gross Revenue in a format which identifies and shows the dollar amount of any item which is excluded from Gross Revenue. All reports of Gross Revenue used to calculate any payments due City under this Lease must reconcile with the Gross Revenue shown on the monthly State sales tax returns filed by Tenant or by any applicable Subtenants in connection with the Premises.
- 8.5. **Documentation.** All revenue data reported or used to arrive at the amounts of any payments to City under this Lease must be verifiable and supported by acceptable source documents (“**Source Documents**”). Source Documents include but are not limited to Florida Department of Revenue sales and use tax returns, Federal tax returns, 1099 forms from credit card companies, credit card reports, bank deposit slips, bank statement, wire fund transfer documents, sales invoices, point of sale receipts, cash register reports, sales terminal reports, and financial statements. If Subtenants are not able to utilize a computerized terminal or cash register, the use of pre-numbered sales receipts will be required in order to provide an adequate record.
- 8.6. **Subtenant Bank Accounts.** All Subleases of the Premises must require each Subtenant to maintain a separate bank account for the respective Subtenant's daily operations on the Property.
- 8.7. **Statement of Gross Revenue.** Within 45 days after the close of each Lease Year, Tenant will furnish to City one or more certified gross sales reports detailing all of the Gross Revenue generated by the Premises during the Lease Year (the “**Gross Revenue Statement**”), together with a calculation of the Percentage Rent for the

Lease Year. The Gross Revenue Statement must be prepared both in accordance with generally accepted accounting principles and consistent with the form required by the State for the reporting of sales tax. The Gross Revenue Statement must be accompanied by copies of the Source Documents supporting the information in the Gross Revenue Statement. The Gross Revenue Statement must be certified by Tenant as a true and correct determination of the Percentage Rent based on the Gross Revenue for the applicable Lease Year, and must be accompanied by Tenant's payment of the Percentage Rent for the Lease Year.

- 8.8. **Revenue Included.** Without limiting the definition of Gross Revenue, the following revenue generated by the Premises will be included in Gross Revenue: revenue from food, beverage, and retail sales, concessions, rental fees, subleases, third party contracts, use agreements, recreational programs and services, events, admissions, ticket sales, and commissions.
9. **Records Retention and City's Right to Audit.** All records of Tenant must be made available locally, at the expense of the Tenant, for inspection and audit by (i) a certified public accountant licensed to do business in the State of Florida ("CPA") retained by the City, (ii) the City's Internal Auditor, or (iii) any other designee of the City.
 - 9.1. **Availability of Records.** Records must be made available for inspection at all reasonable times, after reasonable notice from City, throughout the term of this Lease, and for a period of three years after the date of the final payment due under this Lease.
 - 9.2. **Record Retention.** All records of Tenant must be retained until the later of (a) three years after the date of the final payment due under this Lease; or (b) as required by applicable law, including the required retention period of the Florida Public Records Act set forth in Chapter 119 of the Florida Statutes.
 - 9.3. **Records to be Retained.** The records required to be retained under this Lease include, but are not limited to, all business records, bookkeeping and accounting records, sales and income tax records and returns, bank statements, tax deposits, supporting documents, statistical records, sales reports, and any other records which may be pertinent to this Lease or to the calculation of Gross Revenue, including Subtenants' sales receipts.
 - 9.4. **Audit Results.** If any inspection or audit performed by the City discloses an underpayment by Tenant to City, then Tenant must pay to City, within 15 days after receipt of the City's inspection or report, the amount due with respect to the understatement, plus interest at the rate of 18% from the date the payment was originally due until the date of payment. If the audit reveals a discrepancy of more than 5% in the amount of Gross Revenue reported by Tenant, Tenant must also reimburse City for its reasonable costs incurred in conducting the audit.
10. **Sales Tax.** Tenant will be responsible for insuring the collection and remission to the State of Florida of all sales tax required to be paid in connection with the use and operation of the Premises.
11. **Tenant's Obligation to Pay Public Charges.** Tenant covenants and agrees to timely pay and discharge, before any fine, penalty, interest or cost may be added, all levies,

assessments, fees, charges and taxes (collectively, “**Public Charges**”) imposed or assessed against the Premises, the Rents, or the Subleases, including, without limitation, ad valorem real property taxes; personal property taxes; taxes on Rent payable under this Lease; taxes on rent paid under Subleases; tourist, room and restaurant taxes; public assessments; special assessments; and taxes on utilities.

11.1. **Payment of Public Charges.** Tenant’s obligation to pay and discharge Public Charges levied, assessed or imposed against or with respect to Premises will commence on the Lease Commencement Date. If the Lease Commencement Date is not at the beginning of a calendar year, the Public Charges for the first Lease Year will be prorated between Tenant and City. Upon written request by City, Tenant will provide to City the official receipts of the appropriate taxing authority, or other proof satisfactory to the City evidencing the payment of any Public Charges for which Tenant is responsible under this Lease.

11.2. **Payment in Lieu of Ad Valorem Taxes.** If during the Term all or a portion of the Premises is no longer subject to ad valorem taxes (or to a tax imposed on the Premises in lieu of or replacing an ad valorem tax) due to legal or judicial action or otherwise, then Tenant shall, each year during the Term, make payments to the City in lieu of such ad valorem taxes in an amount equal to that which would have accrued to the City if the Premises was subject to ad valorem taxes in the applicable Lease Year (pro-rated for any partial calendar year). Such payment shall be made on the first day of April of each succeeding year. The amount to be paid under this paragraph will be calculated by multiplying the assessed value of the Premises as determined by the Broward County Property Appraiser by the millage rate established by the City.

12. **Contesting Public Charges.** Tenant may contest the amount or validity, in whole or in part, of any Public Charges for which Tenant is (or is claimed to be) liable, by appropriate proceedings diligently conducted. Upon the termination of the proceedings, Tenant must pay the amount of the Public Charges determined to be due, together with any costs, fees, including Attorneys’ Fees, interest, penalties and any other liabilities arising out of the proceedings.

12.1. **Joinder by City.** City will not be required to join in any proceedings to contest any Public Charges unless Governmental Requirements require that the proceedings be brought by or in the name of City, in which event the City will join in the proceedings or permit them to be brought in the City’s name.

12.2. **City Not Liable For Cost to Contest.** Tenant agrees to reimburse City for any fees, costs and expenses incurred by the City in connection with Tenant’s contest of any Public Charges, including City’s Attorneys’ Fees. Any fees, costs and expenses incurred by the City in connection with Tenant’s contest of any Public Charges will be considered Additional Rent under this Lease, and will be due and payable by Tenant upon receipt of notice from City.

13. **Utilities.** Tenant will be responsible for paying or causing its Subtenants to pay all charges and fees for all utilities provided to any portion of the Premises during the Term (collectively, “**Utility Charges**”).

- 13.1. **Timely Payment of Utility Charges.** Tenant agrees to pay or cause its Subtenants to pay all Utility Charges on a timely basis. If Tenant or its Subtenants fail to pay any Utility Charges on a timely basis, and the City receives notice that Utility Charges are past due, City will have the right (but not the obligation) to pay the past due Utility Charges. Any funds advanced by City for Utility Charges will be considered Additional Rent under this Lease, and will be due and payable by Tenant upon receipt of notice from City, together with interest at the Default Rate from the date the funds are advanced by the City until the date of payment by Tenant.
14. **Permitted Uses of the Premises.** During the Lease Term, Tenant and any Subtenants may use the Premises for any use permitted by the applicable Governmental Requirements (“**Permitted Use**”) at the time of such use. Any use of the Premises other than a Permitted Use is prohibited.
- 14.1. **Restrictions on Use.** Tenant shall not use the Premises or any portion of it, or permit the use of all or any portion of the Premises for any of the following: any unlawful or illegal business, use or purpose; any business, use or purpose which is immoral or disreputable; any hazardous use; any use which could constitute a public or private nuisance; any use which violates in any way the CO or other Governmental Approvals; or any use which violates a Governmental Requirement. Tenant will not commit or permit any waste, odor, noise, nuisance, or any activity on the Premises which violates any Governmental Requirement. Tenant shall not convert the use of the Premises or any portion thereof to any time-sharing, time interval or cooperative form of ownership, or subject the same to any condominium regime.
- 14.2. **Compliance with Governmental Requirements.** Tenant shall comply with all Governmental Requirements applicable to the Premises, including, without limitation, those prohibiting discrimination by reason of race, color, religion, sex, national origin, or handicap in the development, construction, management, lease, use or occupancy of the Premises or any portion thereof.
- 14.3. **Request for Additional Use.** If Tenant desires to use any portion of the Premises for a use that is not a Permitted Use under this Lease, Tenant must seek written consent from the City, which consent may be withheld or denied in City’s sole discretion.
15. **Title and Survey Issues.** Tenant acknowledges that it has received the title and survey information required under the Development Agreement, and that City has no further obligations with regard to matters of title and survey under this Lease.
16. **“As Is” Condition of the Premises.** Tenant acknowledges and agrees that prior to the execution of this Lease it has been given the opportunity to perform all inspections and investigations concerning the Premises to its satisfaction and that, except as expressly provided in the Development Agreement and this Lease, the City is not making and has not made any representations or warranties, express or implied, as to the Premises, including but not limited to, title, survey, physical condition, suitability or fitness for any particular purpose, value, financial prospects or condition, or the presence or absence of hazardous substances. Tenant acknowledges that it has relied solely on Tenant’s own

inspections and investigations of the Premises in its determination of whether to proceed with its lease of the Premises. As a material part of the consideration of this Lease, Tenant agrees to accept the Premises in “as is” and “where is” condition, subject only to the City Obligations described in the Development Agreement, without any representations or warranties other than those expressly stated in this Lease.

17. **Premises Development Deadlines.**

17.1. **Development to Comply With Development Timeline.** Tenant expressly agrees that the Premises will be developed in accordance with the Development Timeline for Parcel R4 attached as **Exhibit F**, and that time is of the essence in the development of the Premises.

17.2. **Extension of Deadlines. Extension of Deadlines.** If a CO has not been issued for the Parking Garage by October 31, 2016 (the deadline for obtaining a building permit for construction of the Premises), and the absence of a CO for the Parking Garage prevents Tenant from either obtaining a building permit or commencing construction of the Premises, then the applicable deadlines for Parcel R4 in the Development Timeline will be extended by the number of days of delay resulting from the absence of a CO for the Parking Garage.

18. **Improvement Cost.** Tenant agrees that the improvements to be located in the Premises (“**Improvements**”) will be at least \$470,000.00 (“**Improvement Cost**”). Tenant agrees to expend at least 50% of the Improvement Cost during the first two years of the Lease Term, and the balance of the Improvement Cost during the third and fourth years of the Lease Term.

19. **Evidence of Funding Sources.** Prior to submitting an application for a building permit, Tenant must provide to City evidence satisfactory to City, in City’s sole discretion, of the source of funds for the Improvement Cost. The source of funds may be loan funds, equity investment, or a combination of both, as long as the sources of funds total 100% of the Improvement Cost. Examples of satisfactory evidence of funding include one or more of the following:

19.1. **Loan Commitment.** A fully executed loan commitment from any federal or state chartered commercial bank, national bank, savings and loan association, savings bank, trust company, or an unrelated third-party private investor reasonably acceptable to City (any one of them, a “**Lender**”) committing to loan to Tenant an amount equal to the Improvement Cost; or

19.2. **Equity Investment.** Evidence of a bank or investment account in Tenant’s name containing funds equal to the Improvement Cost (or the portion of the Improvement Cost not covered by another source of funding), along with a written covenant by Tenant that the funds will not be used for anything other than the construction of the Improvements.

20. **Guaranty of Completion.** Prior to City’s issuance of a building permit for the Improvements, Tenant must provide to City a form of security for Tenant’s obligation to complete construction of the Improvement. Acceptable forms of security include a performance bond, personal guarantees by the principals of the Tenant, or a letter of credit in the amount of the Improvement Cost. The form of security must include a

guaranteed source of funds to be available to the City to complete construction of any unfinished Improvements. The security must be satisfactory to the City in its sole discretion.

21. **Premises Improvement Cost.** Tenant agrees to expend a minimum of 50% of the Improvement Cost during the first two years of the Lease Term, and the balance of the Improvement Cost during the second two years of the Lease Term.

22. **Reporting of Improvement Costs.**

22.1. **Semi-annual Improvement Cost Reports.** Beginning after the Lease Commencement Date, and until completion of the Improvements, Tenant will be required to submit to the City an “**Improvement Cost Report**” for the Premises on or before January 30 and July 30 of each calendar year. Each Improvement Cost Report must include the following information and documentation:

22.1.1. Cost of Improvements (or portions of Improvements) completed to date;

22.1.2. Description of Improvements completed to date;

22.1.3. Estimated or actual completion date for each Improvement; and

22.1.4. Copies of cancelled checks, bank statements, wire transfers or other documentation evidencing payment of the Improvement Costs shown in the Improvement Cost Report.

22.2. **Improvement Cost Record Retention.** All records pertaining to the construction of any Improvements must be made available for inspection at all reasonable times, after reasonable notice from City, throughout the term of this Agreement, and for a period of three years after the date of the final payment due under this Lease.

22.3. **Record Retention.** All records pertaining to the Improvement Costs must be retained until the later of (a) three years after the date of the final payment due under this Lease; or (b) as required by applicable law, including the required retention period of the Florida Public Records Act set forth in Chapter 119 of the Florida Statutes.

22.4. **Format of Report.** The Improvement Cost Reports may be provided in spreadsheet format, as long as each report is accompanied by the appropriate documentation evidencing payment of the Improvement Costs shown in the report. The Improvement Cost Reports must be submitted to:

City of Pompano Beach Finance Department
100 West Atlantic Boulevard
Pompano Beach, Florida 33060
Attention: Controller, Room 480

23. **City’s Obligations with Regard to Premises.** The Premises will be located on the first floor of the Parking Garage which City is constructing on the real property described in **Exhibit C**. City is leasing the Premises to Tenant as a cold, dark shell.

23.1. **Subdivision of Premises into Units.** City acknowledges that Tenant intends to subdivide the Premises into five separate units (each, a **Unit**”). City will not be

responsible for installing any walls or dividers within the Premises to create the separate Units. City will, however, provide each of the five proposed Units with the following items at City's expense:

- 23.1.1. A storefront glass door;
 - 23.1.2. A storefront glass façade with windows of not less than 10' in height;
 - 23.1.3. Minimum 13' height from finished floor elevation to unfinished ceiling;
 - 23.1.4. One air conditioning chase for the Premises;
 - 23.1.5. One ventilation chase for the Premises; and
 - 23.1.6. Rough plumbing to one or more grease traps for the Premises, with City and Tenant to coordinate size, location and quantity of grease traps.
- 23.2. **Utilities.** No utilities, plumbing, heating, ventilation, or air conditioning will be installed by City within the Premises. Tenant will be responsible for the installation and connection of all utilities, plumbing, heating, ventilation, and air conditioning in the Premises.
- 23.3. **Location of Utility Connections.** City agrees to make accommodations in the design of the Premises to enable Tenant to install utility lines at the time of Tenant's construction of the Improvements in the Premises without the need to further penetrate, cut, or excavate the shell of the Premises or any improvements such as streets or sidewalks installed by the City in or adjacent to the Parking Garage, as long as Tenant advises City in writing prior to commencement of construction of the Parking Garage as to the specific locations in the Premises where Tenant will be installing utilities. City acknowledges receipt of Tenant's preliminary engineering plans for the Premises. Tenant must provide City with written instructions as to the specific desired locations for Tenant's utility connections prior to the commencement of construction of the Parking Garage. In the absence of such written instructions, City will locate utility connections in accordance with Tenant's preliminary engineering plans.
- 23.4. **Underground Utilities.** City will stub underground utilities (water, sewer and storm drainage) to a location within two feet of the Parking Garage.
- 23.5. **Communication Utilities.** Tenant acknowledges that the City does not install telephone, cable, Internet, or other communication utilities and has no control over the location of these utilities.
24. **Construction of Improvements.**
- 24.1. **Deadlines.** Tenant must strictly adhere to all design, permitting, and construction deadlines for the Premises set forth in the Development Timeline attached as **Exhibit F**.
 - 24.2. **Plans.** Tenant will be responsible for preparing the construction plans and specifications for the Improvements to be constructed on the Premises ("**Plans**"). The Plans must conform in all material respects to all applicable Governmental Requirements and the Description of the Improvements attached as **Exhibit G** to this Lease. The Plans must include, without limitation, the following:

- 24.2.1. Schematic designs and architectural drawings;
 - 24.2.2. Electrical and mechanical drawings; and
 - 24.2.3. Final specifications.
- 24.3. **Signage.** Any signage to be installed on the exterior of the Premises or inside the Premises and visible from the exterior of the Premises must comply with all Governmental Requirements.
- 24.4. **Governmental Approvals.** Tenant shall secure and pay for any Governmental Approvals required for the construction of the Improvements on the Premises, as well as any Governmental Approvals that may be required for any alterations and renovations permitted by this Lease. Tenant shall pay all fees and charges due any Governmental Authority in connection with the issuance of any required Governmental Approvals.
- 24.5. **Construction Quality.** Tenant agrees to perform all work required to complete the construction of the Improvements on the Premises (“**Work**”) in a good and workmanlike manner in accordance with the Plans and all applicable Governmental Requirements.
- 24.6. **Tenant’s Obligations During Construction.** Prior to the issuance of a final CO for Premises, Tenant shall:
- 24.6.1. Perform and complete the Work;
 - 24.6.2. Select the means and methods of construction, using only adequate and safe procedures, methods, structures and equipment;
 - 24.6.3. Furnish, erect, maintain and remove any construction equipment and temporary structures that may be required to perform the Work; be responsible for the safety, efficiency and adequacy of the construction equipment and construction methods used, and be responsible for any damage which may result from any failure of the construction equipment or any failure in the method of construction;
 - 24.6.4. Provide all architectural and engineering services, scaffolding, hoists, temporary structures, light, heat, power, toilets, temporary utility connections, equipment, tools and materials and whatever else may be required for the proper performance of the Work;
 - 24.6.5. Order and have delivered all materials required for the Work and be responsible for properly securing, protecting and insuring the materials and making certain they remain in good condition;
 - 24.6.6. Maintain the Premises in a clean and orderly condition at all times commensurate with the public beachfront nature of the Project, and remove all paper, cartons and other debris from the Premises;
 - 24.6.7. Protect all Work prior to its completion and acceptance;
 - 24.6.8. Preserve all properties adjacent to or leading to the Premises, and restore and repair any such properties damaged as a result of construction of the Improvements, whether such properties are publicly or privately owned;

- 24.6.9. Implement and maintain in place at all times a comprehensive hurricane and flood plan for the Premises and the Work, and provide a copy of same to the City;
- 24.6.10. Upon completion, deliver to the City as-built plans and specifications for the Improvements;
- 24.6.11. Upon completion of the Improvements, deliver to the City a copy of the final CO for the completed Improvements;
- 24.6.12. Carry on any construction, maintenance or repair activity with diligence and dispatch and use diligent effort to complete the Work in the shortest commercially reasonable time under the circumstances.
- 24.6.13. Take commercially reasonable precautions to protect property adjacent to the Premises, or property which is in the vicinity of or is in anyway affected by the Work, and be entirely responsible and liable for all damage or injury to all adjacent public and private property as a result of Tenant's operations.
- 24.6.14. At all times enforce discipline and good order among its employees and the general contractor working in or around the Premises.
- 24.7. **Tenant to Provide Quarterly Progress Reports.** Tenant must keep the City apprised of Tenant's progress regarding the Work. Tenant will deliver written reports of the progress of construction not less than quarterly. The quarterly progress reports are to be delivered to the City Manager or his or her designee.
- 24.8. **City's Representative.** The City may designate one or more employees or agents to be the City's Representative for the Project. The City's Representative may, during normal business hours, visit, inspect or appraise the Premises, and any materials, contracts, records, plans, specifications and shop drawings relating to the Premises, whether kept at Tenant's offices or at the Project construction site or elsewhere. Tenant agrees to advise City's Representative of meetings among Tenant, Tenant's representative and the contractor or subcontractor or any subset of this group, and City's Representative will be entitled to attend such meetings. Tenant agrees to cooperate with the City to enable City's Representative to conduct site visits, inspections and appraisals.
- 24.9. **Certificates of Final Completion.** After Tenant completes the Work and obtains a final CO for the Improvements, the City will deliver to Tenant, upon request by Tenant, a recordable Certificate of Final Completion certifying that, to the best of the City's knowledge, Tenant has satisfied all of its obligations to the City, in its capacity as landlord under this Lease, for the construction of the specified Improvements. If the City fails or refuses to provide the Certificate of Final Completion, the City must, within 30 days after receipt of a written request from Tenant, provide Tenant with a written statement indicating in what respects Tenant has failed to complete the Work, or is otherwise in default, and what measures and acts, in the opinion of the City, are necessary for Tenant to obtain a Certificate of Final Completion.

- 24.10. **Utilities.** Tenant shall install or cause to be installed all necessary connections between the Improvements and any utilities, whether owned publicly or privately. Tenant will be responsible for payment of all utility connection fees. City will allow Tenant credit for any existing connections on the Premises, and any other credits available.
25. **Changes to the Improvements.** After the Improvements have been completed, Tenant will not make any alterations or additions (“**Changes**”) to the Improvements without the City’s prior written consent. Any permitted Changes will be made in a good and workmanlike manner, in accordance with approved plans, if required, and in accordance with all Governmental Requirements. The Tenant’s obligations during construction of the Improvements set forth in Section 22.6 of this Lease will also apply to the construction or implementation of any Changes to the Improvements.
26. **Parking.** This Lease is subject to all of the terms and conditions pertaining to parking set forth in the Development Agreement.
27. **Transfers and Assignments.** Tenant may not transfer or assign its rights under this Lease except as set forth in the Development Agreement.
28. **Subleases.**
- 28.1. **Subleases Permitted.** Subject to the other terms and conditions of this Lease, Tenant has the right to enter into Subleases with Subtenants at any time during the Lease Term upon commercially reasonable terms and conditions.
- 28.2. **Structuring of Subleases.** No Sublease may be structured in a manner to reduce the Percentage Rent payable to the City.
- 28.3. **Tenant to Comply with Subleases.** Tenant covenants that it will perform and observe all the terms, covenants, conditions and agreements that Tenant is required to perform and observe under each Sublease. In addition, Tenant agrees to use reasonable efforts to require each Subtenant to perform all of the obligations imposed by the applicable Sublease.
- 28.4. **Sublease Requirements.** Tenant agrees that each Sublease must:
- 28.4.1. Require the Subtenant to maintain all records and Source Documents pertaining to Gross Revenue as required by this Lease;
- 28.4.2. Require Subtenant to remit to the State of Florida all sales tax due and payable by Subtenant under its Sublease;
- 28.4.3. Require the Subtenant to remain in continuous operation throughout the term of its Sublease, and to provide written notice to Tenant and City if Subtenant intends to cease operations for a period not to exceed 10 days in order to make renovations or repairs to the subleased portion of the Premises;
- 28.4.4. Require the Subtenant to comply with Governmental Requirements;

- 28.4.5. Provide that if this Lease terminates, the Subtenant shall attorn to City and pay the previously agreed upon rents and all other charges due under the Sublease directly to the City, and enter into a direct lease with City on the same terms and conditions as in the Sublease unless otherwise mutually agreed by City and Subtenant; and
- 28.4.6. Obligate the Subtenant to comply with all terms, covenants, conditions and restrictions of this Lease applicable to Tenant.
- 28.4.7. Include a statement that the sublease of the Premises to Subtenant will provide a benefit to the public at large as required by Section 253 of the City Charter.

29. **Leasehold Mortgages.**

- 29.1. **Tenant's Right to Encumber Leasehold.** Tenant has the right, without the consent or approval of City, to encumber all -- but not less than all -- of the Tenant's leasehold interest in the Premises ("**Leasehold Interest**") to secure repayment of a loan or loans made to Tenant by a Lender, subject to the conditions set forth in this Lease. The encumbrance by Tenant of its Leasehold Interest to secure repayment of a loan will be referred to as a "**Leasehold Mortgage.**"
- 29.2. **Mortgage Limitation.** Tenant agrees that at no time will the outstanding principal balance of all Leasehold Mortgages encumbering the Tenant's Leasehold Interest in the Premises exceed 75% of the value of the Leasehold Interest, as determined by a third party appraisal.
- 29.3. **Debt Secured.** Any Leasehold Mortgage must be solely for the purpose of securing debt directly related to the Premises. Tenant may not encumber or attempt to encumber the Leasehold Interest as security for any indebtedness of Tenant arising out of any other property owned by Tenant. Any such attempt will be null and void and will also constitute a Tenant Event of Default.
- 29.4. **Delivery of Leasehold Mortgage Documents.** Tenant must deliver to the City, within five days after execution by Tenant, a true and correct copy of any Leasehold Mortgage and any amendment, modification or extension of a Leasehold Mortgage. In addition, Tenant must provide to City the contact information for the holder of the Leasehold Mortgage.
- 29.5. **City's Obligations.** After a true and correct copy of a Leasehold Mortgage and the contact information for the holder of the Leasehold Mortgage are delivered to the City, then until the lien of the Leasehold Mortgage has been extinguished, the City will not:
 - 29.5.1. Terminate, agree to any termination, or accept any surrender or cancellation of this Lease (except upon the expiration of the Term), except as permitted by Section 28.7; or
 - 29.5.2. Consent to any amendment, modification, mortgaging or other hypothecation of this Lease, without the prior written consent of Lender, if the Leasehold Mortgage documents require Lender's prior written

consent to such amendment, modification, mortgage or other hypothecation.

- 29.6. **No Limitations on City's Rights Under Lease.** No provision of any Leasehold Mortgage will prevent or restrict the City from making the decisions it is entitled or required to make pursuant to this Lease.
- 29.7. **City's Rights Upon Tenant Event of Default.** If a Tenant Event of Default under the Lease has occurred and is continuing, the City may not terminate the Lease or exercise its other remedies under with the Lease, unless:
 - 29.7.1. The City has given the Lender written notice of the Tenant Event of Default as required by this Lease;
 - 29.7.2. The City has given Lender a second written notice, sent by certified mail, return receipt requested, to Lender at the address set forth for notice in the Leasehold Mortgage, advising that Tenant has failed to cure the Tenant Event of Default within the time proscribed in the Lease; and
 - 29.7.3. The Lender fails to do one of the following within 30 days after receipt of the second notice from City: remedy the Tenant Event of Default; acquire Tenant's leasehold estate in the Premises; or commence foreclosure or other appropriate proceedings as set forth in the Lease and within the time specified in the Lease. As long as the Lender is actively engaged in curing the Tenant Event of Default or is proceeding to foreclose the Leasehold Mortgage, City will not terminate this Lease.
- 29.8. **Lender's Rights Upon Tenant Event of Default.** If Tenant defaults under the Lease, Lender -- to prevent a termination of the Lease or the exercise by the City of its other remedies -- has the right, but not the obligation:
 - 29.8.1. To pay all of the Rent and other payments due under the Lease, including any accrued interest;
 - 29.8.2. To provide any insurance, to pay any Public Charges (including any penalties), and to make any other payments due under the Lease;
 - 29.8.3. To enter upon the Premises or any part thereof, and do all things necessary to cure the Tenant Event of Default and protect Lender's security;
 - 29.8.4. To continue to construct and complete the Improvements, to make any repairs to the Improvements, and to do any other act or thing required of Tenant under the Lease, in order to prevent the termination of the Lease or the exercise by the City of its other remedies under the Lease.
- 29.9. **Lender's Cure Periods.** If a Tenant Event of Default occurs, Lender will have 60 days after receiving written notice from the City setting forth the nature of the Event of Default to cure it. If the Tenant Event of Default cannot be cured within 60 days, Lender will have an additional 60 days to cure the Event of Default, as long as Lender has commenced curing within 60 days and continues to diligently pursue the cure. Lender will have the right (but without any obligation to do so), without notice to or demand on Tenant, to enter upon the Premises or any part

thereof, and do all things necessary to cure the Tenant Event of Default and protect its security.

- 29.10. **Limitation of Lender Liability.** Lender shall not become liable for the obligations of this Lease unless and until it becomes the owner of the leasehold estate created by this Lease by foreclosure, assignment in lieu of foreclosure or otherwise, and thereafter Lender shall remain liable for such obligations only as long as Lender remains the owner of the leasehold estate.
- 29.11. **City's Forbearance Upon Default.** The City will refrain from taking action under the Lease based upon Tenant's Event of Default, including bankruptcy and other insolvency defaults, as long as all Rent and other payments required to be paid by Tenant continue to be paid in accordance with the Lease.
- 29.12. **Extension of Time for Lender to Acquire Property.** If the Lender is prohibited from commencing or prosecuting a foreclosure or other appropriate proceedings because of any process, injunction, or action by any court having jurisdiction of any bankruptcy, debtor rehabilitation or insolvency proceedings involving Tenant, then the times specified for Lender to cure or commence to cure the default will be extended for the period of such prohibition.
- 29.13. **Notices of Tenant Non-compliance.** The City shall simultaneously send, by certified mail, to any Lender whose contact information has been provided to City a copy of any notice that City sends to Tenant relating to non-compliance with the terms of this Lease.
- 29.14. **Mortgage Foreclosure.** City's consent will not be required for any foreclosure of a Leasehold Mortgage or any sale under a Leasehold Mortgage (whether by judicial proceedings or by any power of sale contained in the Leasehold Mortgage or applicable law), or for any conveyance of Tenant's Leasehold Interest to Lender by deed in lieu of foreclosure. If the Lender complies with the provisions of this Lease pertaining to Leasehold Mortgages, the foreclosure of a Leasehold Mortgage will not constitute a default under this Lease.
- 29.15. **Lender as Successor Tenant.** After the completion of any foreclosure of a Leasehold Mortgage, or any sale or conveyance to Lender or a foreclosure sale purchaser following the foreclosure of a Leasehold Mortgage, the City shall recognize the Lender, or any other foreclosure sale purchaser, as the successor Tenant under the Lease.
- 29.16. **Multiple Leasehold Mortgages.** If there are two or more Leasehold Mortgages or foreclosure sale purchasers (whether under the same or different Leasehold Mortgages), the City has no duty or obligation whatsoever to determine the relative priorities or rights of the holders of such Leasehold Mortgages or foreclosure sale purchasers.
- 29.17. **Subsequent Leasehold Mortgages.** If a Lender or foreclosure sale purchaser either (a) assigns or transfers its interest under this Lease after acquiring the same by foreclosure or by acceptance of a deed in lieu of foreclosure; or (b) subsequently assigns or transfers its interest under a new lease entered into pursuant to the Leasehold Mortgage provisions of this Lease; and in connection

with any such assignment or transfer, Lender or a foreclosure sale purchaser takes back a mortgage encumbering the Leasehold Interest to secure a portion of the purchase price, Lender or the foreclosure sale purchaser will be entitled to receive the benefit of the provisions of this Lease intended for the benefit of a Lender or the holder of a Leasehold Mortgage.

- 29.18. **Termination of Lease if Lender Fails to Cure Default.** If a Lender fails to cure a Tenant Event of Default as provided in this Lease, the City has the right to terminate this Lease by reason of the uncured Tenant Event of Default. The City shall give written notification of the termination of the Lease to all Lenders.
- 29.19. **Lender's Right to New Lease.** If due to a Tenant Event of Default or any other reason this Lease is terminated, Lender will be entitled to receive a new lease from the City having the same relative priority as this original Lease, provided Lender agrees to take prompt steps to cure all Events of Default of the original Tenant other than insolvency defaults and such other defaults, if any, as are not susceptible of being cured by the Lender.
- 29.20. **Terms and Conditions of New Lease with Lender.** The new lease from the City to the Lender will contain the same covenants, conditions and agreements contained in this Lease, other than any requirements that have been satisfied by Tenant or City prior to termination of the Lease. The City's delivery of any Improvements to Lender pursuant to a new lease will be made without any representation or warranty of any kind or nature, either express or implied, and the Lender will take any Improvements "as-is" in their then current condition. Upon execution and delivery of a new lease to Lender, Lender will be responsible at its sole cost and expense for taking whatever action may be necessary to cancel and discharge this Lease and to remove Tenant and any other occupant (other than as allowed by Lender or the City) from the Project.
- 29.21. **Lender's Failure to Enter Into New Lease.** If a Lender sends written notice to the City electing to enter into a new lease and then fails to do so within 30 days, the City will send written notice to any other Lenders affording them 30 days from the date of the notice to elect to obtain a new lease. If any Lender elects to obtain a new lease, the City will enter into a new lease of the Property to Lender for the remainder of the Term, provided that at the time the Lender elects to obtain a new lease, the Lender complies with the provisions of this Lease pertaining to new leases.
- 29.22. **Lender's Payment of Percentage Rent.** If a Lender is required to pay Percentage Rent in order to cure a default by Tenant, and the amount of Percentage Rent due cannot be determined by the Lender without possession of the Premises, then the Lender may pay the amount of Percentage Rent which was paid for the immediately previous period. The amount of Percentage Rent due will be adjusted upward or downward within 90 days after Lender obtains possession of the Premises.
- 29.23. **No Waiver of Tenant's Obligations or City's Rights.** No provision of this Lease or of any Leasehold Mortgage shall be deemed or construed to

- 29.23.1. Relieve Tenant from the full and faithful observance and performance of the covenants, conditions and agreements contained in this Lease; or
- 29.23.2. Relieve Tenant from any liability for the non-observance or non-performance of the covenants, conditions and agreements contained in this Lease; or
- 29.23.3. Require, allow or provide for the subordination of the City's rights, title and interest in the Property, the Improvements, or this Lease to the lien of any Leasehold Mortgage or to any Lender; or
- 29.23.4. Require the City to join in or be liable under any Leasehold Mortgage.
- 29.24. **Payment of City's Attorney's Fees.** Any Lender that seeks the benefit of the terms and provisions of this Lease pertaining to Leasehold Mortgages will be required to pay the City's Attorney's Fees associated with the City's duties and responsibilities under this Lease which the City does not otherwise recover from Tenant.
- 30. **Default by Tenant.** Each of the following occurrences is a "**Tenant Event of Default**" by Tenant under the Lease:
 - 30.1. **Failure to Pay Money.** If Tenant fails to pay any Base Rent, Minimum Rent, Percentage Rent, Additional Rent, Public Charges or any other payment of money within five days after the payment is due.
 - 30.1.1. If Tenant fails to pay the amount due to the City within five days after the payment is due, Tenant will be required to pay the delinquent payment plus a late fee equal to 5% of the amount then due and owing no later than the 30th day after the date the payment was originally due;
 - 30.1.2. If Tenant fails to pay the amount due by the 30th day after the original due date, the City is entitled to collect the greater of the late fee or interest at the Default Rate until the amount due under the Lease paid;
 - 30.1.3. After the 30th day, the City is entitled to exercise any and all remedies provided in this Lease for a Tenant Event of Default; and
 - 30.1.4. All interest, late fees, penalties, contributions and all other payments of money required to be paid to the City by Tenant under this Lease (other than Base Rent, Minimum Rent and Percentage Rent), will be treated as Additional Rent.
 - 30.2. **Bankruptcy.**
 - 30.2.1. If any petition is filed by Tenant, as debtor, seeking relief under Chapters 7 or 11 of the United States Bankruptcy Code or any successor code;
 - 30.2.2. If any involuntary petition is filed against Tenant, as debtor, instituting a case under Chapters 7 or 11 of the United States Bankruptcy Code or any successor code and Tenant is unable to dismiss the case within 90 days after filing.

- 30.2.3. If Tenant admits in writing its inability to pay its debts, or if a receiver, trustee or other court appointee is appointed for all or a substantial part of Tenant's property and the receiver, trustee or other appointee is not discharged within 90 days after appointment;
 - 30.2.4. If Tenant's Leasehold Interest in the Premises or the Improvements is levied upon or attached by process of law, and such levy or attachment is not discharged within 90 days after the levy or attachment; or
 - 30.2.5. If a receiver or similar type of appointment or court appointee or nominee of any name or character is made for Tenant or its property, and such receiver, appointee, or nominee is not discharged within 90 days after appointment.
- 30.3. **Failure to Perform Other Covenants, Conditions and Agreements.** If Tenant fails to comply with any of the other covenants, conditions and agreements in the Lease, and the failure continues for a period of 60 days after Tenant receives written notice from the City specifying the Tenant's failure to perform any of the Lease covenants, conditions and agreements.
- 30.3.1. If Tenant's failure to comply with the covenants, conditions and agreements in the Lease is capable of cure, but cannot reasonably be cured within 60 days, then Tenant will have an additional commercially reasonable time within which to cure the Tenant Event of Default, but only if:
 - (a) Tenant commences to cure the default within the 60-day period and thereafter continues to diligently perform all actions necessary to cure the default; and
 - (b) The Project continues to operate in the ordinary course of business, to the extent commercially reasonable taking into account the nature of Tenant's alleged failure to perform according to the covenant, condition or agreement in question.
- 30.4. **Default Under Leasehold Mortgage.** If there is a default by Tenant under any Leasehold Mortgage or any other agreement arising out of the Lease that is not cured within the earlier of either (a) the applicable grace period in the defaulted agreement, or (b) 60 days after Tenant receives written notice from the City specifying the Tenant's default.
- 30.4.1. If Tenant's default under the Leasehold Mortgage or other agreement is capable of cure, but cannot reasonably be cured within 60 days, then Tenant will have an additional commercially reasonable time within which to cure the default but only if:
 - (a) Tenant commences to cure the default within the 60-day period and thereafter continues to diligently perform all actions necessary to cure the default; and
 - (b) The Premises continue to operate in the ordinary course of business, to the extent commercially reasonable taking into

account the nature of Tenant's alleged failure to perform according to the covenant, condition or agreement in question.

- 30.5. **Cessation of the Work.** If Tenant voluntarily ceases construction of the Improvements for a period in excess of 60 consecutive days and fails to resume construction within 30 days after receiving written notice from City.
- 30.6. **Unauthorized Sale, Assignment or Transfer.** If Tenant, in violation of the provisions of this Lease or the Development Agreement:
 - 30.6.1. Sells or assigns its interest in this Lease or the Project;
 - 30.6.2. Attempts to consummate any Transfer by entering into an agreement to sell or assign its interest in the Lease or the Project; or
 - 30.6.3. Otherwise agrees to a Transfer without complying with the provisions of the Development Agreement governing Transfers.

31. **City's Remedies for Tenant's Default.**

- 31.1. **Legal and Equitable Remedies.** If a Tenant Event of Default occurs, the City is entitled to seek all legal and equitable remedies available under Florida law.
- 31.2. **Termination of Lease.** If the City obtains the right to terminate this Lease, Tenant shall quit and peaceably surrender to City the Premises, the Improvements, and all furniture, fixtures and equipment owned by Tenant and used in connection with the Improvements.
 - 31.2.1. **Termination of Tenant's Interest.** Upon a termination of this Lease, all rights and interest of Tenant in and to the Premises and the Improvements will terminate. However, a termination of the Lease will not release Tenant from its obligation to indemnify City for any acts which occurred prior to the termination of the Lease.
 - 31.2.2. **City's Rights to Plans and Specifications.** If this Lease is terminated after the Lease Commencement Date but prior to the date construction of the Premises is completed, Tenant agrees that, to the extent assignable, the City is entitled to use the Plans, specifications, designs, Governmental Approvals, permits and other work product produced by or for Tenant or others for use in the development, construction and operation of the Improvements. City is entitled to use these documents without payment or further permission from either Tenant or the professionals that created or prepared them.
 - 31.2.3. **City's Rights Subject to Lender's Rights.** City's rights and remedies upon a Tenant Event of Default are subject to the rights of Lenders set forth in Section 29 of this Lease.

32. **Default by the City**

- 32.1. **City's Failure to Perform.** City will be in default under the Lease if the City fails to perform any obligation or fulfill any covenant or agreement of the City set forth in the Lease, and the failure continues for 60 days following the City's receipt of written notice of the non-performance.

- 32.2. **Cure of City Default.** The City will not be in default of this Lease if:
- 32.2.1. The City provides Tenant with a written response within the 60-day day period indicating the status of the City's resolution of the breach and providing for a commercially reasonable schedule to correct same; or
 - 32.2.2. With respect to any breach that is capable of being cured but that cannot reasonably be cured within the 60-day period, if the City commences to cure the breach within the 60-day period (or as soon thereafter as is reasonably possible) and diligently continues to cure the breach until completion.
- 32.3. **Tenant's Remedies for City's Default.** If a City Event of Default occurs, the Tenant shall be entitled to seek all legal and equitable remedies available under Florida law.
33. **Force Majeure.** Neither the City nor Tenant, as the case may be, will be considered in breach of or in default of any of their respective non-monetary obligations under the Lease as a result of an unavoidable delay due to strikes, lockouts, acts of God, inability to obtain labor or materials due to governmental restrictions, riot, war, hurricane or other similar causes beyond the commercially reasonable control of a party (in each case, an event of "Force Majeure"). Upon the occurrence of a Force Majeure, the applicable time period will be extended for the period of the Force Majeure event.
- 33.1. **Remedies Cumulative; Waiver.** The rights and remedies of the parties to this Lease, whether provided by law or by this Lease, are intended to be cumulative and concurrent. The exercise by either party of any one or more of its remedies will not preclude the exercise by a party, at the same or different times, of any other remedies for the same default or breach, or of any of its remedies for any other default or breach by the other party. The waiver by a party of any default or Event of Default under this Lease will not extend to or affect any other existing or subsequent Event of Default, or impair any rights, powers or remedies of a party in connection with any other default or Event of Default. A party's delay or omission in exercising any right, power or remedy will not be construed as a waiver of any default or Event of Default or constitute acquiescence to the default.
34. **City's Right to Cure Tenant Default.** If Tenant defaults in the performance of any term, covenant or condition to be performed under the Lease, the City may, in its sole discretion, after notice to the Tenant and after the expiration of the applicable cure periods (or without such notice and cure in the event of an emergency), cure the default on behalf of the Tenant, at the expense of Tenant.
35. **Sums Paid by City to Cure Tenant Default.** If the City is compelled to pay, or elects to pay, any sum of money, or performs any act which requires the payment of any sum of money, or is compelled to incur any expense in the enforcement of its rights under the Lease, such sums will be deemed Additional Rent. Tenant shall repay to City the sums expended by City with interest at the Default Rate, upon demand.
36. **Tenant's Duty to Keep Project Free of Liens.**

- 36.1. **Property Not Subject to Liens.** In accordance with Section 713.10 of the Florida Statutes, any and all liens or lien rights arising out of the construction of the Improvements extend only to Tenant's leasehold interest in the Premises and the Project. The City's right, title and interest in the Premises are not subject to liens or claims of liens for improvements made by Tenant.
- 36.1.1. Nothing contained in the Lease shall be deemed or construed to constitute the consent or request of the City, either express or implied, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement of, alteration to, or repair of any portion of the Premises.
- 36.1.2. Nothing contained in the Lease shall be deemed or construed to give Tenant, any Lender, Subtenant, lessee, or sublessee any right, power or authority to contract for, or permit the rendering of, any services or the furnishing of materials that would give rise to the filing of any lien, mortgage or other encumbrance against City's interest in all or any part of the Premises, or against assets of the City, or City's interest in any Rent and other monetary obligations of Tenant described in this Lease.
- 36.2. **Tenant's Construction Agreements.** Any construction agreements entered into between Tenant and a general contractor or other contractor in privity with the Tenant must provide that City will not be liable for any work performed or to be performed at the Premises for Tenant, any Lender, Subtenant, lessee, or sublessee, or for any materials furnished or to be furnished to the Premises for Tenant, any Lender, Subtenant, lessee, or sublessee.
- 36.3. **No Liens on City's Interest.** No mechanic's, laborer's, vendor's, materialman's or other similar statutory lien for such work or materials will attach to or affect City's interest in all or any part of the Property, or any assets of the City, or the City's interest in any Rent or other monetary obligations of Tenant arising under the Lease.
- 36.4. **Contesting Liens.** If Tenant desires to contest any lien, Tenant must notify the City of its intention to do so within 30 days after the filing of the lien. Tenant, at its sole cost and expense, will protect the City by transferring the lien to bond in accordance with Section 713. 24 of the Florida Statutes within 30 days after the filing of the lien.
- 36.4.1. The lien will not constitute a Tenant Event of Default under the Lease if Tenant timely provides the bond described above. If the lien is determined to be valid, Tenant must satisfy and discharge the lien within 30 days after its validity is determined
- 36.4.2. In the event Tenant contests any lien, Tenant shall protect and indemnify the City against all loss, expense and damage resulting from the lien contest, in accordance with the indemnification provisions of this Lease.
- 36.5. **City Liens.** City will not take any action that could result in a lien against Tenant's Leasehold Interest in the Premises.

37. **Indemnification.**

37.1. **Tenant to Indemnify City.** Tenant, on behalf of itself and on behalf of future subtenants, visitors, trespassers, licensees, invitees, guests or persons performing work or using, visiting or occupying the Premises, hereby agrees and covenants to indemnify, defend (with counsel selected by Tenant, after consulting with the City) and save harmless the City from and against any and all claims, actions, damages, liabilities, losses, costs and expenses, including without limitation, Attorneys' Fees (collectively, "Losses") to the fullest extent permitted by law, arising in connection with the subject matter of this Lease, including, without limitation, indemnification for:

- 37.1.1. Tenant's default, breach, violation or non-performance of any provision of this Lease;
- 37.1.2. Tenant's use and operation of all or any portion of the Premises or the Project during the Lease Term;
- 37.1.3. Tenant's negligent or intentional acts or omissions;
- 37.1.4. Any challenge to the validity of this Lease by a third party through legal proceedings or otherwise, other than a challenge arising by, through or under the City's fee interest in the Property.

37.2. **Indemnification Includes Losses from Construction.** Tenant's indemnity under this Lease includes indemnification of City against any Losses resulting from either the construction of the Improvements or any subsequent renovation or alteration of the Improvements by the Tenant.

37.3. **Indemnification from General Contractor.** Tenant covenants and agrees that any contracts for the Work entered into by Tenant and a general contractor or other contractor in privity with Tenant will include the indemnities required by this Lease from the general contractor or other contractor in privity with Tenant in favor of Tenant and the City.

37.4. **Tenant Liability Not Limited By Insurance.** The liability of Tenant under this Lease will not be limited in any way to the amount of proceeds actually recovered under the policies of insurance required to be maintained pursuant to the terms of this Lease.

37.5. **City's Tort Liability.** Any tort liability to which the City is exposed under this Lease will be limited to the extent permitted by applicable law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, as may be amended, which statutory limitations will be applied as if the parties had not entered into this Lease. The City expressly does not waive any of its rights and immunities under applicable law.

38. **Environmental Matters.**

38.1. **Defined Terms for Purposes of this Section.**

38.1.1. **Environmental Condition** means any set of physical circumstances in, on, under, or affecting the Project that may constitute a threat to or

endangerment of health, safety, property, or the environment, including but not limited to:

- (a) The presence of any hazardous Substance, except in such quantities and concentrations as are routinely found in nature or in products used in ordinary business or commercial activities;
- (b) Any underground storage tanks, as defined in Subtitle I of the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6991 et. seq., or the regulations thereunder, for the storage of hazardous wastes, oil, petroleum products, or their byproducts;
- (c) Any PCB, asbestos or any other substances specifically regulated under the Toxic Substances Control Act, 15 U.S.C. 2601 or regulations issued thereunder; and
- (d) Any open dump or system of refuse disposal for public use without a permit, as prohibited by 42 U.S.C. 6945 and/or Florida law equivalent, or the regulations issued thereunder.

38.1.2. **Environmental Laws** means the Comprehensive Environmental Response, **Compensation** and Liability Act, 42 U.S.C. 9601 et. seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq.; the Toxic Substances Control Act, 15 U.S.C. 2601 et. seq.; the Clean Water Act, 33 U.S.C. 1251 et seq.; the Clean Air Act, 42 U.S.C. 7401 et. seq.; the Oil Pollution Act, 33 U.S.C. 2701 et. seq., the Hazardous Materials Transportation Act, 49 U.S.C. 1801 et. seq.; the Refuse Act of 1989, 33 U.S.C. 407; the Occupational Safety and Health Act, 29 U.S.C. 651 et. seq., as such laws have been amended or supplemented from time to time, the regulations promulgated under these laws; and any analogous Governmental Requirements.

38.1.3. **Environmental Requirements** means all present and future Governmental Requirements, including without limitation, the Environmental Laws, authorizations, judgments, decrees, concessions, grants, orders, agreements or other restrictions or requirements relating to any Environmental Conditions or any Hazardous Substances on the Property.

38.1.4. **Hazardous Substance** means any substances or materials identified to be toxic or hazardous according to any of the Environmental Laws, including without limitation, any asbestos, PCB, radioactive substances, methane, volatile hydrocarbons, acids, pesticides, paints, petroleum based products, lead, cyanide, DDT, printing inks, industrial solvents or any other material or substance that has in the past or could presently or at any time in the future cause or constitute a health, safety or other environmental hazard to any person or property. The term Hazardous Substances includes hazardous wastes, hazardous substances, extremely hazardous substances, hazardous materials, toxic substances, toxic

chemicals, oil, petroleum products and their by-products, and pollutants or contaminants as those terms are defined in the Environmental Laws.

38.1.5. **Environmental Permit** means any Governmental Approval required under any Environmental Law in connection with the ownership, use or operation of the Project for the storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances, or the sale, transfer or conveyance of the Project, and all supporting documentation thereof.

38.1.6. **Environmental Claim** means any accusation, allegation, notice of violation, claim, demand, abatement or other order or direction (conditional or otherwise) by any Governmental Authority or any person for personal injury (including without limitation, sickness, disease, or death), tangible or intangible property damage, damage to the environment, nuisance, pollution, contamination or other adverse effects on the environment, or for fines, penalties, or restrictions, resulting from or based upon:

- (a) The existence or release, or continuation of any existence of a release (including without limitation, sudden or non-sudden, accidental or non-accidental leaks or spills) of, or exposure to, any substance, chemical, material, pollutant, contaminant, or audible noise or other release or emission in, into or onto the environment (including without limitation, the air, ground, water or any surface) at, in, by, from or related to the Property;
- (b) The environmental aspects of the transportation, storage, treatment or disposal of materials in connection with the activities on the Premises; or
- (c) The violation, or alleged violation, of any Governmental Requirements relating to Environmental Requirements on the Premises; but excluding any of violations arising solely from the intentional actions of the City and its agents.

38.1.7. **Corrective Action Work** means any and all activities of removal, response, investigation, testing, analysis, remediation taken to:

- (a) Prevent, abate or correct an existing or threatened Environmental Condition at, about, affecting, or affected by the Property; or
- (b) Comply with all applicable Environmental Requirements.

38.2. **Environmental Indemnification.** Tenant covenants and agrees, at its sole cost and expense, to defend (with counsel selected by Tenant, after consulting with the City), indemnify and hold harmless the City, its successors, and assigns from and against any and all Environmental Claims, whether meritorious or not, brought against the City by any Governmental Authority.

38.2.1. This indemnity includes, without limitation, indemnification against: all costs of removal, response, investigation, or remediation of any kind; all

costs of disposal of such Hazardous Substances as necessary to comply with Environmental Laws; all costs associated with any Corrective Action Work; all costs associated with claims for damages to persons, property, or natural resources; any loss from diminution in the value of the Project; and the City's Attorneys' Fees, consultants' fees, court costs and expenses incurred in connection with any Environmental Claims brought against the City.

- 38.2.2. Tenant's indemnification of City is only for Environmental Claims which arise out of or are caused by actions or events occurring after the Effective Date of the Development Agreement.
 - 38.2.3. This indemnification is to be interpreted as broadly as possible and is in addition to all other rights of the City under this Lease.
 - 38.2.4. Payments by Tenant under the Environmental Indemnification will not reduce Tenant's obligations and liabilities under any other provision of this Lease.
- 38.3. Neither the Tenant nor the general contractor, nor any other contractor in privity with Tenant, has a duty to indemnify the City in connection with any Environmental Claims that are due to the negligent conduct of the City or its agents if the negligent conduct occurs after the date the Tenant completes his environmental testing.
39. **Insurance.** Prior to any activity by Tenant on the Premises, and at all times during the Lease Term, Tenant will be responsible for procuring and maintaining the insurance required by this Lease, at Tenant's sole cost and expense. In addition, Tenant will ensure that its general contractor maintains the applicable insurance coverages set forth in this Lease, unless waived or modified by the City's Risk Management Director.
- 39.1. **General Insurance Provisions.**
- 39.1.1. All policies must be executable in the State.
 - 39.1.2. All insurers must maintain an AM Best rating of A or better.
 - 39.1.3. The terms and conditions of all policies may not be less restrictive than those contained in the most recent edition of the policy forms issued by the Insurance Services Office (ISO) or the National Council on Compensation Insurance (NCCI). If ISO or NCCI issues new policy forms during the policy term of the required insurance, Tenant will not be required to comply with the new policy forms until the expiration date of the insurance policy affected by the change.
 - 39.1.4. Tenant's insurance policies will be primary over any and all insurance available to the City, whether purchased or not, and must be non-contributory.
 - 39.1.5. The Tenant, its general contractor, and its Subtenants will be solely responsible for payment of all deductibles and retentions contained in their respective insurance policies. The City will be included as an "Additional Insured" on the Commercial General Liability policy and

any Liquor Liability and Umbrella Liability policies, if applicable. The City will also be named as “Loss Payee” on all of Tenant’s Property Insurance policies.

- 39.1.6. Tenant will ensure that each insurance policy obtained by it or by its Subtenants provides that the insurance company waives all right of recovery by way of subrogation against the City in connection with any damage covered by any policy.
- 39.2. **Evidence of Insurance.** Prior to taking possession of the Property, and throughout the term of the Lease, Tenant must provide satisfactory evidence of the required insurance to the City. Satisfactory evidence of insurance is either (a) a certificate of insurance, or (b) a certified copy of the actual insurance policy. The City, at its sole option, may request a certified copy of any or all insurance policies required by this Lease. Tenant acknowledges that Tenant is the party responsible to the City for providing all insurance required by this Lease. Tenant may pass certain insurance obligations on to its Subtenants, but Tenant will be responsible for making sure that its Subtenants fulfill all insurance requirements of this Lease, and will be liable to City for any failure by Subtenants to provide the required insurance.
- 39.3. **Cancellations and Renewals.** All insurance policies must specify that they are not subject to cancellation or non-renewal without a minimum of 30 days notification to the Tenant or Subtenant, and a minimum of 10 days notification for non-payment of premium. The Tenant will provide the City a minimum of 30 days written notice if any policies are cancelled or non-renewed, and 10 days written notice of cancellation for non-payment of premium.
- 39.4. **Required Coverages.** The following insurance coverage must be maintained throughout the term of the Lease.
 - 39.4.1. **Commercial General Liability Insurance.** Tenant must maintain, or require its Subtenants to maintain, Commercial General Liability Insurance. Coverage must include, as a minimum: (a) Premises Operations, (b) Products and Completed Operations, (c) Incidental Contractual Liability, (d) Personal Injury Liability and (e) Expanded Definition of Property Damage. The minimum limits acceptable are \$1,000,000 per occurrence and \$2,000,000 in the aggregate. The use of an excess/umbrella liability policy to achieve the limits required by this paragraph will be acceptable as long as the terms and conditions of the excess/umbrella policy are no less restrictive than the underlying Commercial General Liability policy.
 - 39.4.2. **All Risk Property Insurance.** Tenant must maintain, or require its Subtenant to maintain, Property Coverage (Special Form), to cover the “All Other Perils” portion of the policy at the Replacement Cost Valuation as determined by a certified property appraiser acceptable to both the Tenant and the City. The perils of Windstorm and Flood shall carry sub limits to be determined annually and acceptable to the City. To the extent available, coverage will extend to furniture, fixtures,

equipment and other personal property associated with the Project. The policy must also provide “Law and Ordinance” coverage, while giving deference to the age of the Improvements, with limits acceptable to both City and Tenant

- 39.4.3. **Business Interruption Insurance.** During the term of this Lease, Tenant must maintain, or must require its Subtenants to maintain, Business Interruption coverage utilizing a Gross Earnings Value form with limits equal to 12 months of Subtenant’s projected profits (including all rental income) associated with the Premises. The City and Tenant will jointly review the Subtenant’s projected profits periodically, and Tenant will be responsible for adjusting the limits of the policy based on this review and City’s request for adjustment.
- 39.4.4. **Workers’ Compensation.** Tenant must maintain, or require its Subtenant to maintain, Workers’ Compensation Insurance with limits sufficient to respond to Florida Statute §440. In addition, the Tenant or its Subtenants must obtain Employers’ Liability Insurance with limits of not less than: (a) \$500,000 Bodily Injury by Accident, (b) \$500,000 Bodily Injury by Disease, and (c) \$500,000 Bodily Injury by Disease, each employee.
- 39.4.5. **Liquor Liability Policy.** If Liquor will be sold on the Premises, Tenant must obtain, or must require its Subtenant to obtain, a Liquor Liability Policy in an amount of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate annually. The Liquor Liability Policy must name the City as an additional insured. Tenant will be responsible for providing evidence of the Liquor Liability Policy to the City.

39.5. **Coverage Required During Construction.**

- 39.5.1. **Builders Risk Insurance.** During all construction activities conducted on the Premises, including modifications to existing buildings or structures on the Premises that impact the structural integrity of the buildings or structures, Tenant or its Subtenants must carry Builders Risk insurance, including the perils of wind and flood, with minimum limits equal to the “Completed Value” of the Improvements being erected or the total value of the modifications being made, to the extent available. If such levels of coverage are not available, Tenant or its Subtenants must carry the full amount of such insurance currently available.
- 39.5.2. **Professional Liability.** Tenant or its Subtenants must ensure that Architects and Engineers Errors and Omissions Liability insurance specific to the construction activities is obtained prior to the commencement of any construction activities on the Premises, including without limitation, the Work. If coverage is provided on a “Claims Made” basis, the policy must provide for the reporting of claims for a period of two years following the completion of all construction activities. The minimum limits acceptable are \$1,000,000 per occurrence and \$2,000,000 in the aggregate annually.

- 39.6. **Premiums and Renewals.** Tenant must insure that all premiums for the insurance required by this Lease are paid they become due. Tenant or its Subtenants must renew or replace each policy prior to the policy expiration date, and promptly deliver to the City all original Certificates of Insurance and copies of all renewal or replacement policies.
- 39.7. **Adequacy of Insurance Coverage.** The City has the unilateral right to periodically review the adequacy of the insurance coverage required by this Lease. The City may request a change in the insurance coverage if the requested change is commercially reasonable, and the coverage requested is customary and commonly available for properties similar in type, size, use and location to the Property and Improvements (including without limitation, environmental liability insurance, fiduciary liability, and directors and officers liability insurance). Tenant has the right to contest the request for a change in insurance, but must be commercially reasonable.
- 39.8. **Appraisal.** The City will require a Replacement Cost Value appraisal from a licensed and certified appraiser at five-year intervals. The selection and expense of the appraiser will be the sole responsibility of the Tenant. Tenant will provide a copy of the full report to City upon completion.
- 39.9. **Inadequacy of Insurance Proceeds.** In the event that insurance proceeds are not adequate to rebuild and restore damaged Improvements to their previous condition before an insurable loss occurred, and the cause of the deficiency in insurance proceeds is the Tenant's failure to adequately insure the Improvements as required by this Lease, Tenant must rebuild and restore the Improvements as required by this Lease and will be responsible for payment of any costs of the rebuilding and restoration not covered by the insurance proceeds.
- 39.10. **City May Procure Insurance if Tenant Fails To Do So.** If Tenant or its Subtenants refuse, neglect or fail to secure and maintain in full force and effect any or all of the insurance required by this Lease, the City, at its option, may procure or renew such insurance. In that event, all sums paid by the City for insurance will be treated as Additional Rent, and will be payable by Tenant to the City together with interest at the Default Rate from the date the sums were paid by the City to the date of reimbursement by Tenant. Tenant must pay to City the amounts paid by the City for insurance, together with accrued interest, within ten days after written demand from City.
40. **Effect of Loss or Damage.** Any loss or damage to the Improvements by fire or other casualty at any time will not operate to terminate this Lease or to relieve or discharge Tenant from the performance and fulfillment of any of Tenant's obligations pursuant to this Lease, including without limitation, the payment of Rent and the payment of any money to be treated as Additional Rent, as the same may become due and payable. The City's acceptance or approval of any insurance agreement will not relieve or release or be construed to relieve or release Tenant from any liability, duty or obligation set forth in this Lease.
- 40.1. **Proof of Loss.** If all or any part of the Improvements (including without limitation, any personal property furnished or installed in the Improvements) is

damaged or destroyed, Tenant must promptly make proof of loss in accordance with the terms of the insurance policies and must proceed promptly to collect all valid claims which may have arisen against insurers or others based upon the damage or destruction. Tenant is required to give City written notice within 48 hours of any material damage or destruction. For purposes of this Section, "material damage or destruction" means either (a) any casualty or other loss with a repair cost in excess of \$50,000 (based on commercially reasonable standards) or, (b) any casualty or other loss which will have a material adverse effect on the day to day operations of the Premises, regardless of the repair cost.

40.2. Payment of Insurance Proceeds. All sums payable for loss and damage arising out of the casualties covered by the property insurance policies shall be payable:

40.2.1. Directly to Tenant, if the total recovery is equal to or less than \$100,000 (as adjusted for inflation over the Term), except that if a Tenant Event of Default has occurred and is continuing under the Lease, the insurance proceeds, subject to the requirements of the Lender, will be paid over to the City, which will apply the proceeds first to curing the Event of Default, and then to the rebuilding, replacing and repairing of the Improvements. Any remaining proceeds shall be paid over to Tenant subject to its obligations to the Lender

40.2.2. To the Insurance Trustee, if the total recovery is in excess of \$100,000 (as adjusted for inflation over the Term), with the proceeds to be held by the Insurance Trustee for disbursement to Tenant pending establishment of reconstruction, repair or replacement costs. If there is a Leasehold Mortgage on the Property at the time insurance proceeds become payable, the Lender having the highest lien priority will serve as the Insurance Trustee. If there is no Leasehold Mortgage at that time, or if the Lender refuses to serve as Insurance Trustee, the Insurance Trustee will be a commercial bank or trust company designated by Tenant and approved by the City, whose approval will not be unreasonably withheld or delayed.

40.3. Disposition of Insurance Proceeds for Reconstruction.

40.3.1. All insurance proceeds must be applied for the reconstruction, repair or replacement of Improvements and the personal property of Tenant contained in the Improvements (the "Reconstruction Work"). The Improvements and any personal property must be restored to a condition comparable to the condition prior to the loss or damage.

40.3.2. The Insurance Trustee will disburse to the Tenant the amount of insurance proceeds that are required for the Reconstruction Work. Tenant will submit invoices or proof of payment to the Insurance Trustee for payment or reimbursement according to an agreed schedule of values approved in advance by the City and Tenant.

- 40.3.3. If the City and Tenant do not agree on the schedule or values, they will arbitrate the matter using the then-existing construction-related rules of the American Arbitration Association in Broward County, Florida.
 - 40.3.4. After the completion of the Reconstruction Work, any remaining insurance proceeds will be paid to Tenant.
 - 40.4. **Covenant for Commencement and Completion of Reconstruction.** Tenant covenants and agrees to commence the Reconstruction Work as soon as practicable, but in any event within three months after the insurance proceeds for the destroyed or damaged Improvements have been received by Tenant or the Insurance Trustee, and to fully complete the Reconstruction Work as expeditiously as possible under the circumstances. With respect to any Reconstruction Work, Tenant must comply with all of the provisions of this Lease regarding renovation or alteration of the Improvements.
 - 40.5. **Inadequacy of Insurance Proceeds.** Tenant's liability under the Lease to timely commence and complete restoration of any damaged or destroyed Improvements is absolute, regardless of whether any insurance proceeds received are adequate to pay for the restoration.
41. **Condemnation.**
- 41.1. **Complete Condemnation.**
 - 41.1.1. If the entire Premises is taken or condemned for any public or quasi-public use or purpose, by right of eminent domain or by purchase in lieu of eminent domain (in each case, a "Taking"), or if the Taking is for a portion of the Premises such that the portion remaining is not sufficient and suitable, on a commercially reasonable basis (subject, however, to the rights of the Lender or Indenture Trustee hereunder), for the operation of the Premises, then this Lease will cease and terminate as of the date on which the condemning authority takes possession.
 - 41.1.2. If this Lease is so terminated, the entire award for the Premises or the portion taken will be apportioned among the City, the CRA, and the Tenant as of the day immediately prior to the vesting of title in the condemnor, as follows:
 - (a) First, but only if the City is not the authority condemning the Premises, the City will receive the then fair market value of the portion of the Premises so taken or condemned considered as vacant, unimproved, and unencumbered, together with the value of the Improvements, discounted from the end of the Term;
 - (b) Second, Tenant will be entitled to the then fair market value of its interest under this Lease and in the Improvements, less the discounted value of the Improvements allocated to the City, together with any and all business damages suffered by Tenant (subject, however, to the rights of any Lender); and

- (c) The City and Tenant shall each receive one-half of any remaining balance of the award, except that the Tenant will receive the entire remaining balance of the award if the City is the authority condemning the Premises.

41.2. Partial Condemnation.

41.2.1. If there is a Taking of a portion of the Premises, and the remaining portion can be adapted and used to operate the Project in the same manner it was previously operated, on a commercially reasonable basis (subject, however, to the rights of the Lender), then this Lease shall continue in full force and effect, and the award shall be apportioned as follows:

- (a) First, to the Tenant to the extent required, pursuant to the terms of this Lease, for the restoration of the Premises;
- (b) Second, but only if the City is not the authority condemning the Premises, to the City the portion of the award allocated to the fair market value of the Property which is taken, considered as vacant and unimproved;
- (c) Third, to the Tenant, the amount by which the value of Tenant's interest in the Improvements and the Property were diminished by the taking or condemnation (subject, however, to the rights of the Lender);
- (d) The City and Tenant will each receive one-half of any remaining balance of the award, except that the Tenant will receive the entire remaining balance of the award if the City is the authority condemning the Premises.

41.3. Restoration After Condemnation. If this Lease does not terminate due to a Taking, then:

- 41.3.1. Tenant will be required to restore the remaining portion of the Project with due diligence in accordance with the provisions pertaining to provisions in this Lease pertaining to alterations and renovations.
- 41.3.2. The entire proceeds of the award will be deposited and treated in the same manner as insurance proceeds are to be treated under this Lease until the restoration has been completed and Tenant and the City have received their respective shares of any remaining balance of the award.
- 41.3.3. If the award is insufficient to pay for the restoration, Tenant will be responsible for the remaining cost and expense; and
- 41.3.4. The Minimum Rent due under the Lease will be adjusted proportionately based upon the proportion that the amount received by the City with respect to the portion of the Property taken bears to the total fair market value of the overall Property at that time.

41.4. Temporary Taking. If there is a Taking of the temporary use (but not title) of all or any part of the Premises, this Lease will remain in full force and effect, but only to the extent it is commercially reasonable. There will be no abatement of

any amount or sum payable by or other obligation of Tenant under the Lease. Subject to the rights of the Lender, Tenant will receive the entire award for any temporary Taking to the extent it applies to the period prior to the end of the Term, and the City will receive the balance of the award.

41.5. **Determinations.** If the City and the Tenant cannot reach agreement regarding any issue arising out of a Taking, the parties will seek a judicial determination by the court with jurisdiction over the Taking. For purposes of the Lease provisions pertaining to a Taking, any personal property taken or condemned will be deemed to be a part of the Improvements, and the provisions of the Lease regarding Takings will be applicable to such property.

41.6. **Payment of Fees and Costs.** All fees and costs incurred in connection with any condemnation proceeding will be paid in accordance with the law governing condemnation proceedings, as determined by the court, if appropriate.

42. **Quiet Enjoyment; No Waste.**

42.1. **City's Covenant of Quite Enjoyment.** City represents and warrants that Tenant, upon paying the Rent, Additional Rent and other monetary obligations of this Lease and observing and keeping the covenants and agreements of this Lease to be kept and performed by Tenant, will lawfully and quietly hold, occupy and enjoy the Premises during the Term without hindrance or molestation by the City or by any person or persons claiming under the City. The City agrees to defend any suits or actions which may be brought by persons claiming by, through or under the City, at City's own cost and expense, through the City Attorney's office or other counsel selected by the City in its sole discretion.

42.1.1. Except for negligent or more culpable acts or omissions by the City, in no event will the City be liable for, and Tenant expressly waives, any claim for damages of any kind whatsoever, including without limitation, damages for loss of income, revenue, profit or value. Tenant has the right to retain its own counsel in connection with such proceedings, at Tenant's sole cost and expense.

42.1.2. If the City is acting in its governmental capacity, any liability under this Section will only be to the extent permitted by applicable law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, as may be amended, which statutory limitations will be applied as if the parties had not entered into this Lease.

42.2. **Waste.** Tenant will not permit, commit or suffer waste or impairment of any portion of the Premises.

43. **Ownership of Improvements During Lease Term.** Prior to the expiration or termination of this Lease, title to the Improvements will remain in Tenant, and will not vest in the City by reason of its ownership of fee simple title to the Premises.

43.1. **Ownership Upon Early Termination.** If this Lease terminates prior to the expiration of the Lease Term, based on a mutual agreement between the parties or a final order from a court with jurisdiction, and if, at that time, any Lender

exercises its option to obtain a new lease for the remainder of the Lease Term in accordance with this Lease, title to the Improvements will automatically pass to, vest in and belong to the Lender or any permitted designee or nominee of the Lender, until the expiration or termination of the term of the new lease.

43.1.1. The City and Tenant covenant that, to confirm the automatic vesting of title as provided in this Section, each will execute and deliver to the other such further assurances and instruments of assignment and conveyance may be reasonably required by the other party for that purpose.

43.2. **Surrender of Leased Property.** Upon the expiration of the Lease Term or the earlier termination of this Lease by mutual agreement of the parties or a final order from a court with jurisdiction, title to the Improvements (including all personal property and equipment furnished or installed on the Premises and owned or leased by Tenant) will automatically pass to, vest in and belong to the City or its successor in ownership, free and clear of all debts, mortgages, encumbrances, and liens. It shall be lawful for the City or its successor in ownership to re-enter and repossess the the Improvements without process of law.

43.2.1. The City and Tenant covenant that, to confirm the automatic vesting of title as provided in this Section, each will execute and deliver such further assurances and instruments of assignment and conveyance as may be reasonably required by the other for that purpose.

44. **Maintenance, Operation and Management.**

44.1. **Maintenance and Operation of Improvements.** Tenant must at all times keep the Premises in good and safe condition and repair, reasonable wear and tear excepted. The Tenant will comply with all Governmental Requirements applicable to the occupancy, maintenance and operation of the Premises.

44.2. **Continuous Operation.** Tenant acknowledges that it is important to City that the Premises remain in full operation at all times. Tenant agrees to use best efforts to keep the Premises in continuous operation throughout the Lease Term. Tenant agrees to include in its Subleases a provision obligating each Subtenant to remain in continuous operation throughout its respective Sublease term. Tenant must provide written notice to City if a Subtenant vacates its premises in violation of its Sublease.

44.3. **Standards Generally.** The City and Tenant agree that the manner in which the Premises are developed, operated and maintained is important to the City by reason of its interest in having a destination dining, shopping, and entertainment facility for use by City residents and visitors to the City. Tenant therefore agrees to develop, operate and maintain the Premises and all other property and equipment located on the Premises consistent with standards to be agreed upon by City and Tenant.

45. **Transfers and Assignments.** Tenant may not transfer or assign its rights under this Lease except as set forth in in this Lease.

- 45.1. **Transfers.** For purposes of this Lease, a “Transfer” is a sale, assignment or conveyance of any of the following:
- 45.1.1. The Leasehold Interest or any part thereof;
 - 45.1.2. Any interest in the Improvements, or any part thereof;
 - 45.1.3. Any interest in the Project, or any part thereof;
 - 45.1.4. Any interest in Tenant;
 - 45.1.5. Any series of such Transfers, or any contract or agreement to do any of the same, that have the cumulative effect of a sale; or
 - 45.1.6. Any other transaction or series of transactions in the nature of a sale.
- 45.2. **Subleases.** A Sublease of any Premises or portion of a Premises that complies with the Sublease requirement of the Premises Ground Lease will not be considered a Transfer under this Lease.
- 45.3. **Purpose of Restrictions on Transfer.** City is entering into this Lease with Tenant solely to develop, operate, and manage the Improvements, and not for speculation in landholding. Tenant recognizes that, because of the importance of the Project to the general welfare of the City and its residents, the Tenant’s qualifications and identity are of particular concern to the community and to the City. Tenant acknowledges that it is because of the qualifications and identity of Tenant that City is entering into this Lease, and that the City is willing to rely on the Tenant’s covenants to fulfill its obligations under this Lease.
- 45.4. **Ownership of Tenant.** Tenant represents and warrants that Tenant has not made, created or suffered any Transfers as of the date of this Lease, and that the entities and individuals with an ownership interest in Tenant on the date of this Lease are listed, together with their percentage and character of ownership, in **Exhibit H**. Upon request by City from time to time throughout the Term of this Lease, Tenant will furnish the City with a complete statement, subscribed and sworn to by the Managing Member of Tenant, setting forth the percentage ownership interest of the Managing Member and the full names and addresses of all members of Tenant who hold at least a ten percent (10%) interest in Tenant. If the Tenant is an entity other than a limited liability company, then the references to membership will be changed to the appropriate ownership interests for the entity in question.
- 45.5. **General Restriction on Transfers.** No Transfer may be made, suffered or created by Tenant, or its permitted successors, assigns or transferees unless it complies with the provisions of this Lease and the Development Agreement. If at the time of a requested Transfer, Tenant is an entity other than a limited liability company, then the references to membership will be changed to the appropriate ownership interests for the entity in question, and the interest being transferred will be changed to the appropriate ownership interest. Any Transfer that violates this Lease or the Development Agreement will be null and void and of no force or effect.

- 45.6. **Transfers Prior to Completion of Certain Premises.** Prior to the completion of development of Parcels R1, R2, E, the Arch, and the Pier Street Extension, as described in the Development Agreement, only the following Transfers (collectively, “Permitted Transfers”) will be permitted without the prior written consent of the City:
- 45.6.1. **Foreclosure.** Any Transfer directly resulting from the foreclosure of a Leasehold Mortgage on the Premises or the granting of a deed in lieu of foreclosure of a Leasehold Mortgage on the Premises, or any Transfer made by the purchaser at foreclosure sale of the Leasehold Mortgage or by the grantee of a deed in lieu of foreclosure of a Leasehold Mortgage, if such purchaser or grantee is the Lender or a nominee of the Lender;
 - 45.6.2. **Conveyance to Lender.** Any Transfer directly resulting from a conveyance to a Lender of Tenant’s Leasehold Interest in the Premises;
 - 45.6.3. **Estate Planning.** Any Transfer of all or any portion of any ownership interest in Tenant for estate planning purposes, including without limitation, any Transfer into a charitable trust or a blind trust, provided the transferor maintains control over the interest in Tenant being transferred;
 - 45.6.4. **Transfers Among Affiliates.** Any Transfer, or series of Transfers, among affiliates of Tenant, provided that at all times after such Transfer, either Timothy Hernandez, Richard Caster, or Kevin Rickard, or a successor individual approved by the City, continues to direct the day-to-day management and policies of Tenant; or
 - 45.6.5. **Transfers of Ownership Interests in Tenant.** Any Transfer, or series of Transfers, totaling not more than ten percent (10%) of the direct or indirect ownership interests in Tenant, provided that at all times after such Transfer, either Timothy Hernandez, Richard Caster, or Kevin Rickard, or a successor individual approved by the City, continues to direct the day-to-day management and policies of Tenant.
 - 45.6.6. **Transfers Resulting from Death or Incapacity.** Any Transfer resulting from the death or incapacity of Timothy Hernandez, Richard Caster, or Kevin Rickard, or from the death or incapacity of a successor individual approved by the City to direct the day-to-day management and policies of Tenant.
- 45.7. **Transfers to an Acceptable Transferee.** After the completion of the Improvements on Parcels R1, R2, E, the Arch, and the Pier Street Extension, the Tenant’s Leasehold Interest may be transferred an “Acceptable Transferee,” as defined below. An “Acceptable Transferee” is an individual or entity meeting the following minimum qualifications:
- 45.7.1. **Development Experience.** The proposed transferee must possess development experience in the State of Florida equal to or better than the experience of the Developer as set forth in the Developer’s response to the RFQ.

- 45.7.2. **Financial Resources.** The proposed transferee must possess the financial resources equal to or better than the financial resources of the Developer as set forth in the Developer's response to the RFQ.
- 45.7.3. **Character and Reputation.** The proposed transferee must possess a character, reputation and status in the community equal to or better than the character, reputation and status of the Developer as set forth in the Developer's response to the RFQ.
- 45.7.4. **No Violations.** The proposed transferee must have no outstanding material violation of a Governmental Requirement against the proposed transferee or against any property owned or managed by the proposed transferee in the State.
- 45.7.5. **No Convictions or Indictments.** The proposed transferee must not be owned, controlled or run by entities or individuals who have been convicted, or are presently under indictment, for felonies under the laws of any foreign or United States of America jurisdiction.
- 45.7.6. **No Bankruptcies.** Neither the proposed transferee, nor any of the individuals or entities who own at least a 10% equity interest in the proposed transferee or who are officers, directors, managers or otherwise have the power to direct and control the business and affairs of the proposed transferee, have filed or been discharged from bankruptcy, or have been the subject of an involuntary bankruptcy, reorganization or insolvency proceedings within the past five years. Bankruptcy filings by affiliates will not disqualify a proposed transferee, unless such affiliates who own at least a 10% equity interest in the proposed transferee or who are officers, directors, managers or otherwise have the power to direct and control the business and affairs of the proposed transferee
- 45.8. **Transfers Requiring City's Consent.** For any Transfer of this Lease other than a Permitted Transfer, Tenant shall send City a written Transfer Application requesting approval of the Transfer.
 - 45.8.1. The Transfer Application must include information showing that the proposed transferee is an Acceptable Transferee, including, at a minimum, (a) three years of externally reviewed financial statements; (b) a letter from a Florida bank or other financial institution doing business in Florida indicating the creditworthiness of the assignee; and (c) three letters of reference from unrelated third parties regarding assignee's character and business reputation in the community.
 - 45.8.2. Upon request by City, Tenant will submit any additional information reasonably requested by City to evaluate the proposed transferee.
 - 45.8.3. The City will notify the Tenant in writing within 30 days after its receipt of the Transfer Application if it approves the Transfer. If the City fails to respond to the Transfer Application within 30 days, the City shall be deemed to have withheld its consent to the Transfer in question. The City may reject a Transfer Application as long as City provides

reasonable justification for why the proposed Transferee is not an Acceptable Transferee. Any consent to a Transfer does not waive any of the City's rights to consent to a subsequent Transfer.

45.9. **Transfer Conditions.** In order for a Transfer of this Lease to be effective, the following conditions must be satisfied:

45.9.1. **City Consent.** If the Transfer is not a Permitted Transfer, City's prior written consent to the Transfer must be obtained.

45.9.2. **Entire Lease.** The Transfer must be a Transfer of the entire Lease;

45.9.3. **Written Notice to City.** City must be given written notice of the proposed Transfer together with true and correct copies of the proposed transfer documents and any other relevant agreements between the parties; current certified financial statements of the proposed transferee, if applicable; and any other relevant information about the proposed transferee at least 30 days prior to the intended effective date of the Transfer; and

45.9.4. **Assumption of Obligations by Transferee.** City must be provided with a written instrument in recordable form in which the Transferee, for itself and its successors and assigns, and for the benefit of the City, expressly assumes all of the obligations of Tenant under this Agreement and agrees to be subject to all conditions and restrictions to which Tenant is subject under this Lease.

45.10. **Effectuation of Transfers.** No Transfer will be effective unless executed copies of the transfer documents and any other agreements between the parties to the Transfer are delivered to the City within 30 days after the Transfer.

46. **Notices.** All notices, demands, requests and other communications required under this Lease must be given in writing and may be delivered (a) by hand, or (b) by certified mail, return receipt requested, or (c) by a nationally recognized overnight delivery service such as Federal Express. Notice shall be deemed to have been given upon receipt or refusal of delivery. All notices, demands, requests and other communications required under this Lease may be sent by facsimile or electronic mail provided that the facsimile or electronic communication is followed up by notice given pursuant to one of the three methods in the preceding sentence. Any party may designate a change of address by written notice to the other party, received by such other party at least ten days before the change of address is to become effective.

46.1. **Notice to Tenant.** Notice to the Tenant under this Lease must be sent to:

Pompano Pier Associates, LLC
398 NE 6th Avenue
Delray Beach, Florida 33483
Attention: Timothy Hernandez
Telephone: 561 279 8706
Facsimile: 561 272 3951
Email: thernandez@newurbancommunities.com

With a copy to:

Kevin E. Rickard
398 NE 6th Avenue
Delray Beach, Florida 33483
Telephone: 561 279 8706
Facsimile: 561 272 3951
Email: krickard@newurbancommunities.com

With a copy to:

Richard Caster
290 SE 6th. Avenue
Suite #5, Delray Beach, Florida 33483
Telephone: 561 279 9998
Facsimile: 561 279 7998
Email: rick@casterdevelopers.com

46.2. **Notice to City.** Notice to City under this Lease must be sent to:

City of Pompano Beach
100 West Atlantic Boulevard
Fourth Floor
Pompano Beach, Florida 33060
Attention: City Manager
Telephone: 954.786 4601
Facsimile: 954 786 4504
Email: dennis.beach@copbfl.com

With a copy to:

Redevelopment Management Associates
3109 East Atlantic Boulevard, Suite B
Pompano Beach, Florida 33062
Attention: Kim Briesemeister
Telephone: 954 695 0754
Facsimile: 954 783 4484
Email: kim@rma.us.com

With a copy to:

Pompano Beach City Attorney
100 West Atlantic Boulevard
Pompano Beach, Florida 33060
Attention: Mark Berman, Esq.
Telephone: 954.786.4614
Facsimile: (954) 786-4617
Email: mark.berman@copbfl.com

With a copy to:

Weiss Serota Helfman Cole & Bierman, PL
200 East Broward Boulevard
19th Floor
Fort Lauderdale, Florida 33301
Attention: Jamie Cole, Esq.
Telephone: 954 763 4242
Facsimile: 954 764 7770
Email: jcole@wsh-law.com

47. **Miscellaneous.**

- 47.1. **Time is of the Essence.** Time is of the essence in the performance of all obligations of each party under this Lease, including Tenant's adherence to the Development Timeline.
- 47.2. **No Partnership or Joint Venture.** It is mutually understood and agreed that nothing contained in this Lease is intended or is to be construed in any manner or under any circumstances whatsoever as creating or establishing the relationship of co-partners, or creating or establishing the relationship of a joint venture between the City and Tenant, or as constituting Tenant as the agent or representative of the City for any purpose or in any manner whatsoever.
- 47.3. **Recording; Documentary Stamps.** A memorandum of this Lease, in the form attached as **Exhibit I**, will be recorded by the City in the Public Records of Broward County, Florida. The cost of recording, and the cost of any required documentary stamps, must be paid in full by Tenant. The parties will cooperate in structuring the transactions contemplated by this Lease to reduce such costs, provided the structure does not have any adverse consequence for the City.
- 47.4. **Governing Law.** This Lease will be governed by the laws of the State. This Lease is subject to and must comply with the Charter and City Code of the City of Pompano Beach, as they exist on the date of execution of the Lease. Any conflicts between this Lease and the Charter and City Code will be resolved in favor of the Charter and Code.
- 47.5. **Venue.** Venue for any disputes arising out of this Lease and for any actions involving the enforcement or interpretation of this Lease will be in the State courts of the 17th Judicial Circuit of Broward County, Florida.
- 47.6. **Severability.** If any part of this Lease is for any reason held to be unenforceable, the rest of the Lease remains fully enforceable.
- 47.7. **Conflicts of Interest: City Representatives not Individually Liable.** No elected official, representative, or employee of the City has any personal interest, direct or indirect, in this Lease. No elected official, representative or employee will participate in any decision relating to this Lease which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she has an interest, directly or indirectly. No elected official, representative or employee of the City will be personally liable to Tenant or any

successor in interest for any amount which may become due to Tenant, for any obligations of City under the Lease, or in the event of any default or breach by the City.

47.8. Estoppel Certificates.

47.8.1. Within 30 days after written request by either City or Tenant, the other party will execute, acknowledge and deliver to the requesting party or to any actual or prospective Lender, a certificate stating that:

- (a) This Lease is in full force and effect and has not been modified, supplemented or amended in any way, or, if there have been modifications, the Lease is in full force and effect as modified, identifying the modification agreement. If the Lease is not in force and effect, the certificate will so state;
- (b) This Lease as modified, represents the entire agreement between the parties as to the subject matter, or, if it does not, the certificate will so state;
- (c) The dates on which the Lease Term commenced and will terminate;
- (d) To the knowledge of the certifying party, all conditions under the Lease to be performed up to that date by the City or Tenant, as the case may be, have been performed or satisfied and, as of the date of the certificate, there are no existing defaults, defenses or offsets which the City or Tenant, as the case may be, has against the enforcement of the Lease by the other party. If such conditions have not been satisfied or if there are any defaults, defenses or offsets, the certificate will so state; and
- (e) The Rent due and payable for the year in which the certificate is delivered has been paid in full, or, if it has not been paid, the certificate will so state.

47.8.2. The party to whom the certificate is issued may rely on the matters set forth in the certificate. In delivering the certificate, neither Tenant nor the City, nor any individual signing the certificate on a party's behalf, will be liable for the accuracy of the statements made in the certificate, but rather will be estopped from denying the veracity or accuracy of the statements. Any certificate required to be made by the City or Tenant pursuant to this paragraph will be deemed to be made by the City or Tenant, as the case may be, and not by the person signing the certificate.

47.9. Section Headings. Section headings are for convenience only and do not affect the interpretation of this Lease.

47.10. Counterparts. This Lease may be signed in counterparts, each one of which is considered an original, but all of which constitute one and the same instrument. This Lease is effective only after execution and delivery by the parties.

- 47.11. **Successors and Assigns.** This Lease binds and inures to the benefit of the City and the Tenant, and their respective permitted successors and assigns, except to the extent expressly limited by this Lease.
- 47.12. **Entire Agreement.** This Lease (including the Exhibits) constitutes the sole agreement of the parties with respect to its subject matter. It supersedes any prior written or oral agreements or communications between the parties.
- 47.13. **Amendments.** No amendment to this Lease is binding on either party unless in writing and signed by both parties. The City is not obligated to spend any money or undertake any obligation in connection with an amendment proposed by Tenant. If Tenant requests an amendment to the Lease or any other action by City, Tenant must reimburse City for all third-party costs incurred by City (including but not limited to costs of third-party consultants and attorneys). Before the City takes action regarding any request, Tenant must deposit with the City the estimated amount of third-party costs, as reasonably determined by the City.
- 47.14. **Approvals by the City.** All requests for action or approvals by the City will be sent to the City Attorney for decision as to who within the City, including the City Commission, must act or approve the matter on behalf of the City.
- 47.15. **Prevailing Party's Attorneys' Fees.** In the event either party to the Lease institutes legal proceedings in connection with the Lease, the prevailing party will be entitled to recover its costs of suit, including without limitation, its Attorneys' Fees.
- 47.16. **Holidays.** The parties agree that whenever a notice or performance due under the Lease falls on a Saturday, Sunday or on a legal holiday recognized by the City, the notice or performance will be postponed to the next following business day.
- 47.17. **No Brokers.** City and Tenant warrant and represent to each other that neither party has engaged a real estate broker or other person entitled to payment of a commission in connection with this Lease. Tenant is responsible for, and will hold the City harmless with respect to, the payment of any commission claimed by or owed to any real estate broker or other person retained by Tenant who is entitled to a commission as a result of the execution and delivery of this Lease. The City is responsible for, and will hold Tenant harmless with respect to, the payment of any commission claimed by or owed to any real estate broker or other person retained by the City who is entitled to a commission as a result of the execution and delivery of this Lease.
- 47.18. **No Liability for Approvals and Inspections.** No approval given by the City in its capacity as landlord under this Lease, and no inspection of the Work or the Project by the City under this Lease, will render the City liable for its failure to discover any defects or nonconformance with any Governmental Requirement.
- 47.19. **Radon.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information

regarding radon and radon testing may be obtained from the county public health unit for Broward County.

- 47.20. **Tenant Entity.** On the date of this Lease, Tenant is a Florida limited liability company. If at any time during the Lease Term, Tenant is a corporation or an entity other than a Florida limited liability company, then any references herein to member, membership interest, manager and the like which are applicable to a Florida limited liability company will be changed to the equivalent designation of such term which is appropriate to the nature of the new Tenant entity.
- 47.21. **Standard of Conduct.** The implied covenant of good faith and fair dealing under Florida law is expressly adopted in this Lease.

[SIGNATURE PAGES TO FOLLOW]

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

Witnesses:
As to City:

CITY OF POMPANO BEACH, FLORIDA,
a Florida municipal corporation

Print Name _____

By: _____
Lamar Fisher, Mayor

Date: _____

Print Name _____

By: _____
Dennis Beach, City Manager

Date: _____

Attest: _____
Asceleta Hammond, City Clerk

Date: _____

Approved as to form and correctness by:

Mark Berman, City Attorney

ACKNOWLEDGMENTS ON NEXT PAGE

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this ____ day of _____, 2016 by Lamar Fisher, as Mayor of the City of Pompano Beach, Florida, on behalf of the City. He is personally known to me or produced a Florida driver's license as identification.

NOTARIAL SEAL

Notary: _____

Print Name: _____

Notary Public, State of Florida

My commission expires: _____

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this ____ day of _____, 2016 by Dennis Beach, as City Manager of the City of Pompano Beach, Florida, on behalf of the City. He is personally known to me or produced a Florida driver's license as identification.

NOTARIAL SEAL

Notary: _____

Print Name: _____

Notary Public, State of Florida

My commission expires: _____

Witnesses:

Christi French

Print Name Christi French

Tim Hernandez

Print Name Tim Hernandez

PPA-R4, LLC, a Florida limited liability company

By: Richard Caster
Richard Caster, Manager

Date: 3/4/16

ACKNOWLEDGMENT

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 4th day of MARCH 2016 by Richard Caster, as Manager of PPA-R4, LLC, on behalf of the company. He is personally known to me or produced a Florida driver's license as identification.

NOTARIAL SEAL

Notary: Christi French

Print Name: Christi French

Notary Public, State of Florida

My commission expires: November 19, 2016

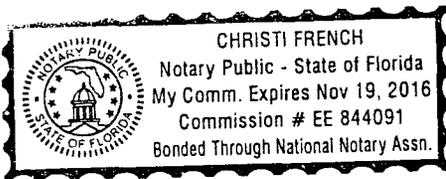
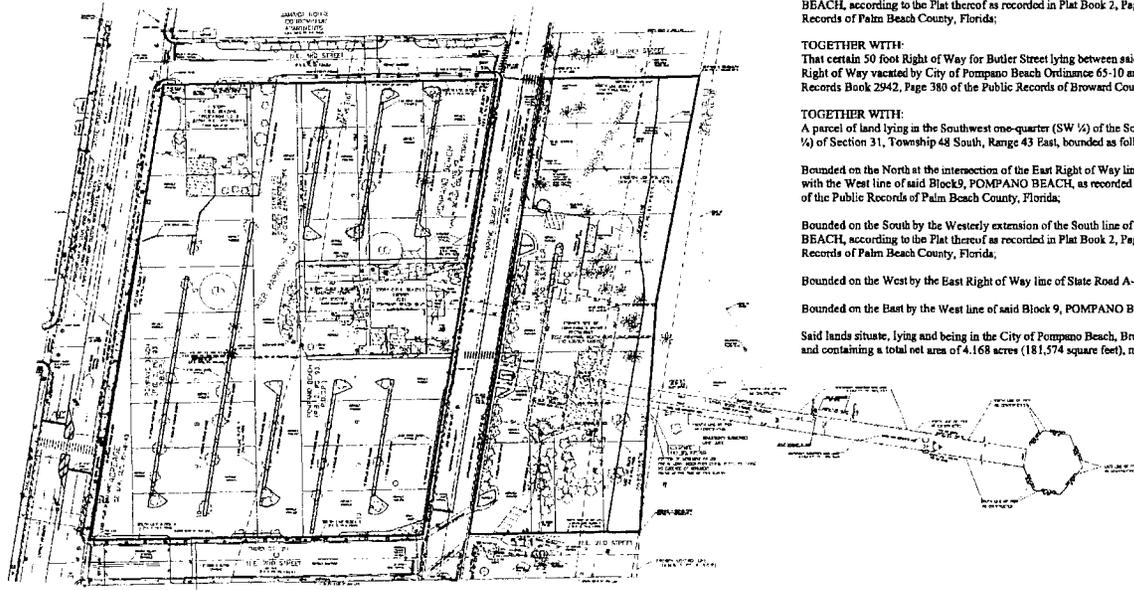


Exhibit A
Legal Description of the Property



LEGAL DESCRIPTION

Fishing Pier Fared
Lots 1 through 7, Block 7, POMPANO BEACH, according to the plat thereof, recorded in Plat Book 2, page 93, of the Public Records of Palm Beach County, Florida, and the easterly extension thereof to the Erosion Control Line, recorded in Miscellaneous Map Book 7, Page 6 of the Public Records of Broward County, Florida.

Said lands situate, lying and being in the City of Pompano Beach, Broward County, Florida and containing a total net area of 1.957 acres (85,257 square feet), more or less.

Pier Parking Lot
Lots 1 through 10, Block 8 and all of Lots 6 through 10 and those portions of Lots 1 through 5 lying East of the East Right of Way line of State Road A-1-A, Block 9, POMPANO BEACH, according to the Plat thereof as recorded in Plat Book 2, Page 93 of the Public Records of Palm Beach County, Florida;

TOGETHER WITH:
That certain 50 foot Right of Way for Butler Street lying between said Blocks 8 and 9. Said Right of Way vacated by City of Pompano Beach Ordinance 65-10 and recorded in Official Records Book 2942, Page 380 of the Public Records of Broward County, Florida.

TOGETHER WITH:
A parcel of land lying in the Southwest one-quarter (SW 1/4) of the Southeast one-quarter (SE 1/4) of Section 31, Township 48 South, Range 43 East, bounded as follows:

Bounded on the North at the intersection of the East Right of Way line of State Road A-1-A with the West line of said Block 9, POMPANO BEACH, as recorded in Plat Book 2, Page 93 of the Public Records of Palm Beach County, Florida;

Bounded on the South by the Westerly extension of the South line of Block 9, POMPANO BEACH, according to the Plat thereof as recorded in Plat Book 2, Page 93 of the Public Records of Palm Beach County, Florida,

Bounded on the West by the East Right of Way line of State Road A-1-A;

Bounded on the East by the West line of said Block 9, POMPANO BEACH.

Said lands situate, lying and being in the City of Pompano Beach, Broward County, Florida and containing a total net area of 4.168 acres (181,574 square feet), more or less.

DATE: 08/24/20
SCALE: 1"=100'
FIELD BOOK:
DRAWN BY: J.P.
CHECKED BY:

KEITH
CITY OF POMPANO BEACH, FLORIDA
PLAT BOOK 2, PAGE 93
MISCELLANEOUS MAP BOOK 7, PAGE 6
OFFICIAL RECORDS BOOK 2942, PAGE 380

BOUNDARY EXHIBIT

A PORTION OF SECTION 31, TOWNSHIP 48 SOUTH, RANGE 43 EAST
CITY OF POMPANO BEACH, BROWARD COUNTY, FLORIDA

SHR 2 01 01
POMPA 201 0000000
97470-05

Exhibit C

Legal Description of the Parking Garage Property (2 pages)

LEGAL DESCRIPTION:

PORTIONS OF LOTS 1 THROUGH 6, INCLUSIVE, BLOCK 8, LOTS 1 THROUGH 6, INCLUSIVE, BLOCK 9 AND THE VACATED 50-FOOT RIGHT-OF-WAY OF N.E. 33rd AVENUE (FORMERLY BUTLER STREET) ALL OF POMPANO BEACH, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 2, PAGE 93 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY FLORIDA, ALSO A PORTION OF THE NORTHWEST ONE-QUARTER (N.W. 1/4) OF THE SOUTHEAST ONE-QUARTER (S.E. 1/4) OF SECTION 31, TOWNSHIP 48 SOUTH, RANGE 43 EAST, SAID PORTIONS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 6, BLOCK 9; THENCE NORTH 00°56'06" WEST, ALONG THE EAST LINE OF SAID LOT 6, BLOCK 9, 33.77 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 88°57'35" WEST, 141.44 FEET TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF STATE ROAD A-1-A; THENCE NORTH 09°08'21" EAST, ALONG SAID EAST RIGHT-OF-WAY LINE, 270.47 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF N.E. 3rd STREET; THENCE NORTH 88°57'35" EAST, ALONG SAID SOUTH RIGHT-OF-WAY LINE, 223.36 FEET; THENCE, DEPARTING SAID SOUTH RIGHT-OF-WAY LINE, SOUTH 09°09'21" WEST, 270.49 FEET; THENCE SOUTH 88°57'35" WEST, 81.85 FEET TO THE POINT OF BEGINNING.

SAID LANDS LYING IN THE CITY OF POMPANO BEACH, BROWARD COUNTY, FLORIDA AND CONTAINING 59,452 SQUARE FEET (1.36 ACRES) MORE OR LESS.

SURVEY NOTES:

1. THE LEGAL DESCRIPTION SHOWN HEREON WAS PREPARED BY THE SURVEYOR.
2. THIS SURVEY NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
3. BEARINGS SHOWN HEREON ARE ASSUMED WITH A REFERENCE BEARING OF NORTH 09°08'21" EAST ALONG THE EAST RIGHT-OF-WAY LINE OF STATE ROAD A-1-A.
4. IT IS A VIOLATION OF STANDARD OF PRACTICE (FORMERLY THE MINIMUM TECHNICAL STANDARDS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE) , PURSUANT TO SECTION 472.027, FLORIDA STATUTES, TO ALTER THIS SURVEY WITHOUT THE EXPRESS PRIOR WRITTEN CONSENT OF THE SURVEYOR. ADDITIONS AND/OR DELETIONS MADE TO THE FACE OF THIS SURVEY WILL MAKE THIS SURVEY INVALID.
5. THE INTENDED DISPLAY SCALE FOR THIS SURVEY IS 1" = 50' OR SMALLER.
6. THIS IS NOT A BOUNDARY SURVEY.

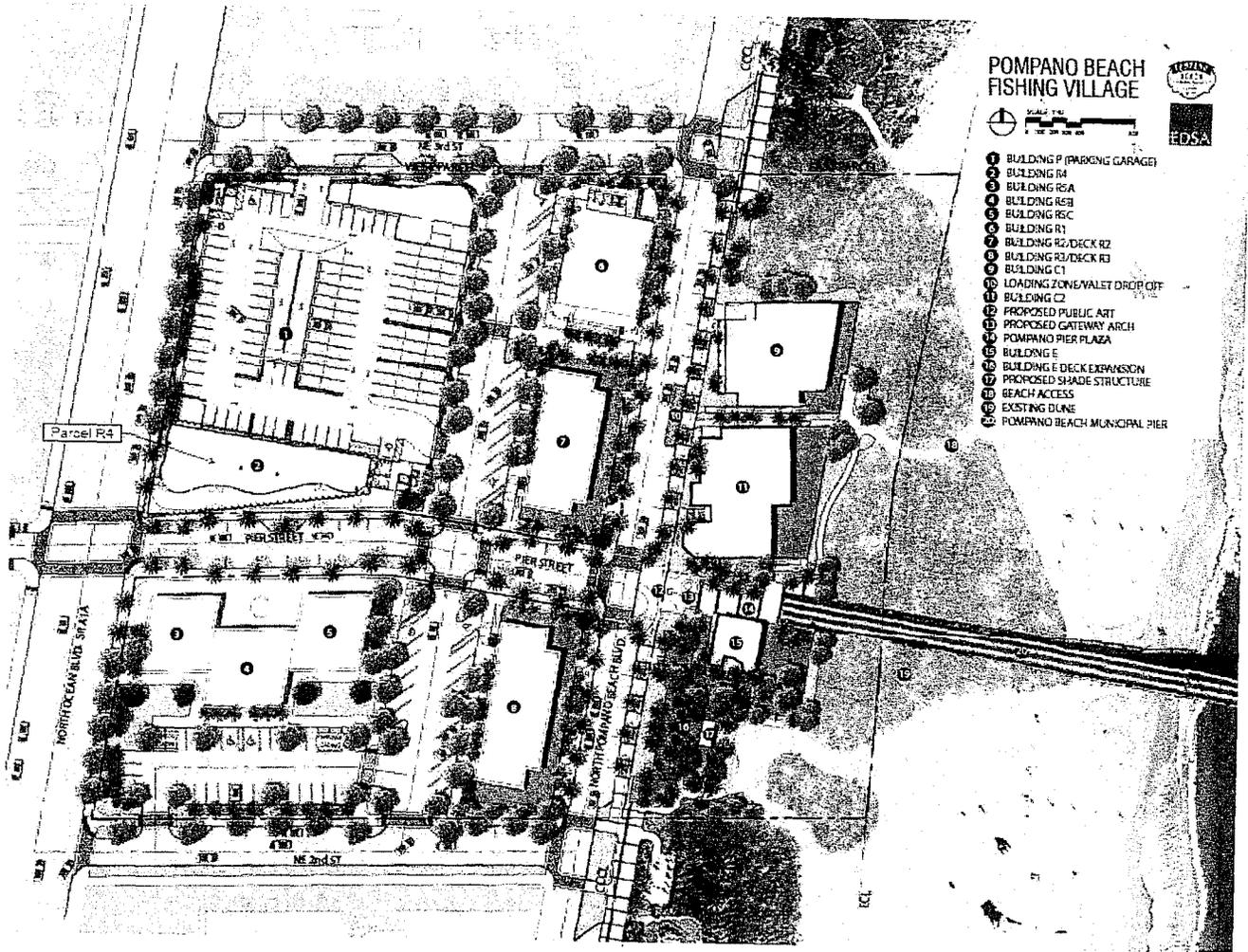
I HEREBY CERTIFY THAT THE ATTACHED SKETCH AND DESCRIPTION OF THE HEREON DESCRIBED PROPERTY IS DEPICTED TO THE BEST OF MY KNOWLEDGE AND BELIEF AS WRITTEN UNDER MY DIRECTION ON FEBRUARY 27, 2015. I FURTHER CERTIFY THAT THIS SKETCH AND DESCRIPTION MEETS THE STANDARD OF PRACTICE (FORMERLY THE MINIMUM TECHNICAL STANDARDS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE) PURSUANT TO SECTION 472.027, FLORIDA STATUTES, SUBJECT TO THE QUALIFICATIONS NOTED HEREON.

KEITH & ASSOCIATES, INC.
CONSULTING ENGINEERS

MICHAEL M. MOSSEY
PROFESSIONAL SURVEYOR AND MAPPER
REGISTRATION No. 5660
STATE OF FLORIDA

SKETCH AND DESCRIPTION PARKING GARAGE A PORTION OF POMPANO BEACH PLAT BOOK 2, PAGE 93, PALM BEACH COUNTY PUBLIC RECORDS CITY OF POMPANO BEACH BROWARD COUNTY, FLORIDA	 consulting engineers 301 EAST ATLANTIC BOULEVARD POMPANO BEACH, FLORIDA 33060-6643 (954) 788-3400 FAX (954) 788-3500 EMAIL: mail@keith-associates.com LB NO. 6860	DATE 2/27/15	DATE	REVISIONS
		SCALE 1"=50'		
		FIELD BK. N/A		
		DWNG. BY MMM		
		CHK. BY MMM		
		SHEET 1 OF 2		
		DRAWING NO. 07470.93		

Exhibit D
Site Plan for the Premises



- POMPAÑO BEACH FISHING VILLAGE**
- SCALE: 1" = 20'
- LEGEND
- 1 BUILDING P (PARKING GARAGE)
 - 2 BUILDING R4
 - 3 BUILDING R5A
 - 4 BUILDING R5B
 - 5 BUILDING R5C
 - 6 BUILDING R1
 - 7 BUILDING R2, DECK R2
 - 8 BUILDING R3, DECK R3
 - 9 BUILDING C1
 - 10 LOADING ZONE/VALET DROP OFF
 - 11 BUILDING C2
 - 12 PROPOSED PUBLIC ART
 - 13 PROPOSED GATEWAY ARCH
 - 14 POMPAÑO PIER PLAZA
 - 15 BUILDING E
 - 16 BUILDING E DECK EXPANSION
 - 17 PROPOSED SHADE STRUCTURE
 - 18 BEACH ACCESS
 - 19 EXISTING DUNE
 - 20 POMPAÑO BEACH MUNICIPAL PIER

Exhibit F
Development Timeline

Development Timeline as of September 21, 2015

Parcel	Lease Execution (LE)	Design Plans	Obtain Permits	Commence Construction	Substantial Completion
1st of Parcels R1, R2, R3, C1 or C2	31-Mar-2015 (LE/1)	31-Mar-2016 (LE/1 + 12 mos)	31-Aug-2016 (LE/1 + 17 mos)	31-Oct-2016 (LE/1 + 19 mos)	30-Sep-2017 (LE/1 + 30 mos)
2nd of Parcels R1, R2, R3, C1 or C2	30-Sep-2015 (LE/2)	31-Mar-2016 (LE/2 + 6 mos)	30-Aug-2017 (LE/2 + 11 mos)	30-Oct-2017 (LE/2 + 13 mos)	30-Sep-2017 (LE/2 + 24 mos)
3rd of Parcels R1, R2, R3, C1 or C2	30-Jun-2016 (LE/3)	31-Dec-2016 (LE/3 + 6 mos)	31-May-2017 (LE/3 + 11 mos)	31-Jul-2017 (LE/3 + 13 mos)	30-Jun-2018 (LE/3 + 24 mos)
4th of Parcels R1, R2, R3, C1 or C2	31-Mar-2017 (LE/4)	31-Sep-2017 (LE/4 + 6 mos)	28-Feb-2018 (LE/3 + 11 mos)	30-Apr-2018 (LE/4 + 13 mos)	31-Mar-2019 (LE/4 + 24 mos)
5th of Parcels R1, R2, R3, C1 or C2	31-Dec-2017 (LE/5)	31-Jun-2018 (LE/5 + 6 mos)	31-Nov-2018 (LE/5 + 11 mos)	31-Jan-2019 (LE/5 + 13 mos)	31-Dec-2019 (LE/5 + 24 mos)
Parcel E	31-Mar-2015 (LE/1)	30-Sept-2015 (LE/1 + 6 mos)	28-Feb-2016 (LE/1 + 11 mos)	30-Apr-2016 (LE/1 + 13 mos)	31-Mar-2017 (LE/1 + 24 mos)
Parcel R4	30-Apr-2016 (LE/R4)	31-Jul-2016 (LE/R4 + 3 mos)	31-Oct-2016 (LE/R4 + 6 mos)	31-Dec-2016 (LE/R4 + 8 mos)	30-Apr-2017 (LE/R4 + 12 mos)
Parcel R5/H	31-Dec-2016 (LE/R5)	31-Jun-2017 (LE/R5 + 6 mos)	31-Dec-2017 (LE/R5 + 12 mos)	31-Mar-2018 (LE/R5 + 15 mos)	30-Sep-2019 (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.

Exhibit G

Description of Improvements to Leased Premises

Vanilla shell interiors (including drop ceiling), lighting, air conditioning, and separate storefront entry for each tenant.

Exhibit H
Ownership of Tenant

PPA-R4, LLC is owned by the following persons or entities:

Richard F. Caster 2010 Irrevocable Trust (100% owned and controlled by Richard F. Caster)	30%
Hard Candy Investments, LLC (100% owned and controlled by Timothy Hernandez)	30%
Kevin E. Rickard	30%
Brian Grossberg	<u>10%</u>
TOTAL	100%

Exhibit I
Memorandum of Lease

This instrument prepared by:

Gail D. Serota, Esq.
Weiss Serota Helfman Cole & Bierman, P.L.
2525 Ponce de Leon Boulevard, Suite 700
Coral Gables, Florida 33134

Record and return to:

Jonathan Marcus
Holland and Knight
515 East Las Olas Boulevard, Suite 1200
Fort Lauderdale, Florida 33301

Folio Number: _____

MEMORANDUM OF PHASE R4 SPACE LEASE

THIS MEMORANDUM OF LEASE (“Lease”) is dated as of _____, 2016, and is between the **CITY OF POMPAÑO BEACH, FLORIDA**, a Florida municipal corporation (“City”), whose address is 100 West Atlantic Boulevard, 4th Floor, Pompano Beach, Florida 33060, Attn: City Manager, and **PPA-R4, LLC**, a Florida limited liability company, (“Tenant”) whose address is 398 NE 6th Avenue, Delray Beach, Florida 33483.

City is the owner of the real property located in the City of Pompano Beach, Broward County, Florida and more particularly described in **Exhibit A** attached to and made a part of this Memorandum (“**Parking Garage Parcel**”).

City has constructed a parking garage (“**Parking Garage**”) on the Parking Garage Parcel, and has leased to Tenant the space in the Parking Garage graphically illustrated in **Exhibit B** attached to and made a part of this Memorandum for a term of 50 years, commencing on _____ and terminating on _____, on the terms and conditions set forth in the Phase R4 Space Lease dated _____.

City and Tenant desire to execute and record this Memorandum of Lease to provide notice to third parties of the Lease and certain provisions contained in the Lease.

Section 35 of the Lease contains the following provisions:

35. Tenant’s Duty to Keep Project Free of Liens.

35.1. **Property Not Subject to Liens.** In accordance with Section 713.10 of the Florida Statutes, any and all liens or lien rights arising out of the construction of the Improvements extend only to Tenant’s leasehold interest in the Premises. The City’s right, title and interest in the Premises are not subject to liens or claims of liens for improvements made by Tenant.

- 35.1.1. Nothing contained in the Lease shall be deemed or construed to constitute the consent or request of the City, either express or implied, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement of, alteration to, or repair of any portion of the Parking Garage or the Project.
- 35.1.2. Nothing contained in the Lease shall be deemed or construed to give Tenant, any Lender, Subtenant, lessee, or sublessee any right, power or authority to contract for, or permit the rendering of, any services or the furnishing of materials that would give rise to the filing of any lien, mortgage or other encumbrance against City's interest in all or any part of the Premises, the Parking Garage Parcel, or against assets of the City, or City's interest in any Rent and other monetary obligations of Tenant described in this Lease.
- 35.2. **Tenant's Construction Agreements.** Any construction agreements entered into between Tenant and a general contractor or other contractor in privity with the Tenant must provide that City will not be liable for any work performed or to be performed at the Premises for Tenant, any Lender, Subtenant, lessee, or sublessee, or for any materials furnished or to be furnished to the Project for Tenant, any Lender, Subtenant, lessee, or sublessee.
- 35.3. **No Liens on City's Interest.** No mechanic's, laborer's, vendor's, materialman's or other similar statutory lien for such work or materials will attach to or affect City's interest in all or any part of the Premises, or any assets of the City, or the City's interest in any Rent or other monetary obligations of Tenant arising under the Lease.

This instrument is being executed and recorded for the purpose of giving notice of the Lease and certain provisions contained in the Lease, but is not intended to change the terms of the Lease which will govern in the case of a conflict.

SIGNATURE BLOCKS ON FOLLOWING PAGES

Witnesses:
As to City:

CITY OF POMPANO BEACH, FLORIDA,
a Florida municipal corporation

Print Name _____

By: _____
Lamar Fisher, Mayor
Date: _____

Print Name _____

By: _____
Dennis Beach, City Manager
Date: _____

Attest: _____
Asceleta Hammond, City Clerk
Date: _____

Approved as to form and correctness by:

Mark Berman, City Attorney

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this ____ day of _____, 2015 by Lamar Fisher, as Mayor of the City of Pompano Beach, Florida, on behalf of the City. He is personally known to me or produced a Florida driver's license as identification.

NOTARIAL SEAL

Notary: _____
Print Name: _____
Notary Public, State of Florida
My commission expires: _____

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by Dennis Beach, as City Manager of the City of Pompano Beach, Florida, on behalf of the City. He is personally known to me or produced a Florida driver's license as identification.

NOTARIAL SEAL

Notary: _____
Print Name: _____
Notary Public, State of Florida
My commission expires: _____

Witnesses:

PPA-R4, LLC, a Florida limited liability company

Print Name _____

By: _____
Richard Caster, President

Print Name _____

Date: _____

ACKNOWLEDGMENT

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this ____ day of _____, 2015 by Richard Caster, as Manager of PPA-R4, LLC, a Florida limited liability company, on behalf of the company. He is personally known to me or has produced a Florida driver's license as identification.

NOTARIAL SEAL

Notary: _____
Print Name: _____
Notary Public, State of Florida
My commission expires: _____

Exhibit A

Legal Description of Parking Garage Parcel

LEGAL DESCRIPTION:

PORTIONS OF LOTS 1 THROUGH 6, INCLUSIVE, BLOCK 8, LOTS 1 THROUGH 6, INCLUSIVE, BLOCK 9 AND THE VACATED 50-FOOT RIGHT-OF-WAY OF N.E. 33rd AVENUE (FORMERLY BUTLER STREET) ALL OF POMPANO BEACH, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 2, PAGE 93 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY FLORIDA, ALSO A PORTION OF THE NORTHWEST ONE-QUARTER (N.W. 1/4) OF THE SOUTHEAST ONE-QUARTER (S.E. 1/4) OF SECTION 31, TOWNSHIP 48 SOUTH, RANGE 43 EAST, SAID PORTIONS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 6, BLOCK 9; THENCE NORTH 00°56'06" WEST, ALONG THE EAST LINE OF SAID LOT 6, BLOCK 9, 33.77 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 88°57'35" WEST, 141.44 FEET TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF STATE ROAD A-1-A; THENCE NORTH 09°08'21" EAST, ALONG SAID EAST RIGHT-OF-WAY LINE, 270.47 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF N.E. 3rd STREET; THENCE NORTH 88°57'35" EAST, ALONG SAID SOUTH RIGHT-OF-WAY LINE, 223.36 FEET; THENCE, DEPARTING SAID SOUTH RIGHT-OF-WAY LINE, SOUTH 09°09'21" WEST, 270.49 FEET; THENCE SOUTH 88°57'35" WEST, 81.85 FEET TO THE POINT OF BEGINNING.

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SURVEY NOTES:

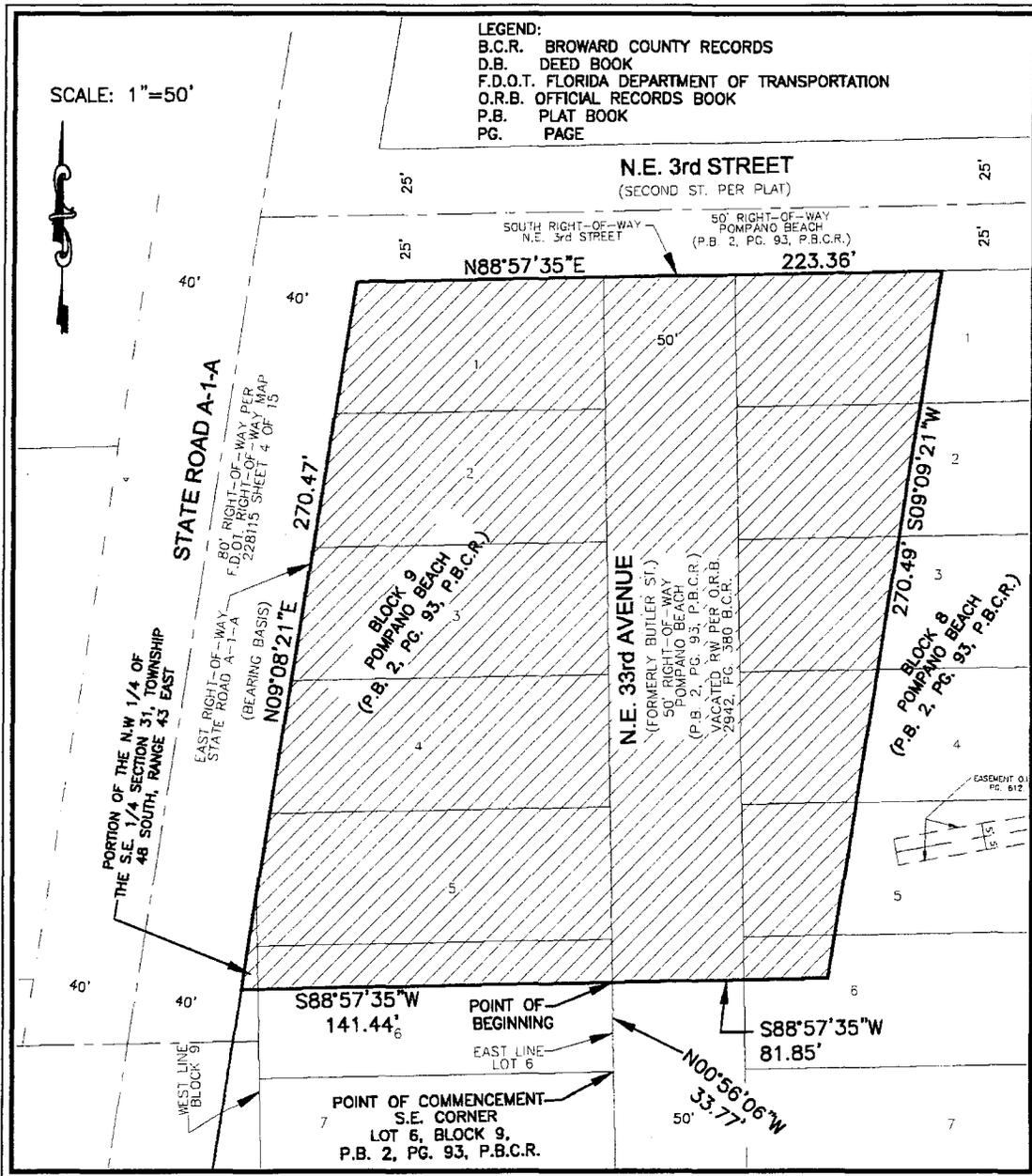
1. THE LEGAL DESCRIPTION SHOWN HEREON WAS PREPARED BY THE SURVEYOR.
2. THIS SURVEY NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
3. BEARINGS SHOWN HEREON ARE ASSUMED WITH A REFERENCE BEARING OF NORTH 09°08'21" EAST ALONG THE EAST RIGHT-OF-WAY LINE OF STATE ROAD A-1-A.
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5. THE INTENDED DISPLAY SCALE FOR THIS SURVEY IS 1" = 50' OR SMALLER.
6. THIS IS NOT A BOUNDARY SURVEY.

I HEREBY CERTIFY THAT THE ATTACHED SKETCH AND DESCRIPTION OF THE HEREON DESCRIBED PROPERTY IS DEPICTED TO THE BEST OF MY KNOWLEDGE AND BELIEF AS WRITTEN UNDER MY DIRECTION ON FEBRUARY 27, 2015. I FURTHER CERTIFY THAT THIS SKETCH AND DESCRIPTION MEETS THE STANDARD OF PRACTICE (FORMERLY THE MINIMUM TECHNICAL STANDARDS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE) PURSUANT TO SECTION 472.027, FLORIDA STATUTES, SUBJECT TO THE QUALIFICATIONS NOTED HEREON.

KEITH & ASSOCIATES, INC.
CONSULTING ENGINEERS

MICHAEL M. MOSSEY
PROFESSIONAL SURVEYOR AND MAPPER
REGISTRATION No. 5660
STATE OF FLORIDA

<p>SKETCH AND DESCRIPTION PARKING GARAGE</p> <p>A PORTION OF POMPANO BEACH PLAT BOOK 2, PAGE 93, PALM BEACH COUNTY PUBLIC RECORDS</p> <p>CITY OF POMPANO BEACH BROWARD COUNTY, FLORIDA</p>	 <p>KEITH ASSOCIATES, INC. consulting engineers</p> <p>301 EAST ATLANTIC BOULEVARD POMPANO BEACH, FLORIDA 33060-6643 (954) 788-3400 FAX (954) 788-3500 EMAIL: mail@keith-associates.com LB NO. 6860</p> <p>SHEET <u>1</u> OF <u>2</u> DRAWING NO. <u>07470.93</u></p>	<p>DATE <u>2/27/15</u></p> <p>SCALE <u>1"=50'</u></p> <p>FIELD BK. <u>N/A</u></p> <p>DWNG. BY <u>MMM</u></p> <p>CHK. BY <u>MMM</u></p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;">DATE</th> <th style="width: 85%;">REVISIONS</th> </tr> </thead> <tbody> <tr><td> </td><td> </td></tr> </tbody> </table>	DATE	REVISIONS										
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SKETCH AND DESCRIPTION PARKING GARAGE A PORTION OF POMPANO BEACH PLAT BOOK 2, PAGE 93, PALM BEACH COUNTY PUBLIC RECORDS CITY OF POMPANO BEACH BROWARD COUNTY, FLORIDA	consulting engineers 301 EAST ATLANTIC BOULEVARD POMPANO BEACH, FLORIDA 33060-6643 (954) 788-3400 FAX (954) 788-3500 EMAIL: mail@keith-associates.com LB NO. 6860	DATE 2/27/15	DATE	REVISIONS
		SCALE 1"=50'		
		FIELD BK. N/A		
		DWG. BY MMM		
		CHK. BY MMM		
SHEET 2 OF 2 DRAWING NO. 07470.93				

Exhibit B
 Graphic Illustration of R4 Premises

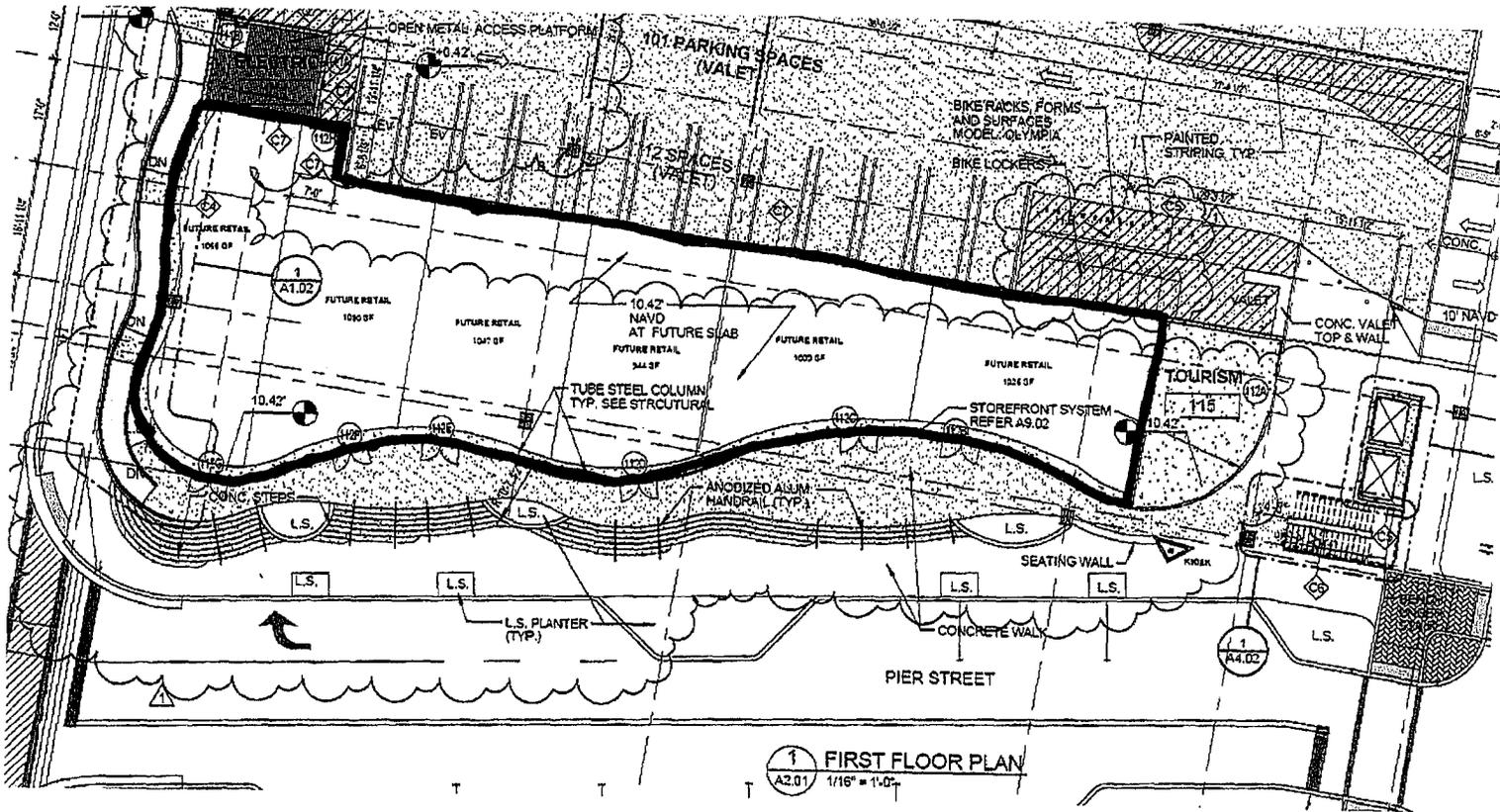


Exhibit B to Second Amendment to Development Agreement

Development Timeline as of February 22, 2016
Exhibit B to Second Amendment to Development Agreement
 (Replaces Exhibit C to Amended and Restated Development Agreement)
Exhibit A to First Amendment to Parcel E Lease
Exhibit A to First Amendment to Parcel R2 Lease
Exhibit A to First Amendment to Parcel R3 Lease

Parcel	Design Plans	Obtain Permits	Commence Construction	Substantial Completion
1st of Parcels R1, R2, R3, C1 or C2	31-Mar-2016	31-Mar-2017	31-May-2017	31-Dec-2017
2nd of Parcels R1, R2, R3, C1 or C2	30-Sep-2016	30-Sep-2017	30-Nov-2017	31-Oct-2018
3rd of Parcels R1, R2, R3, C1 or C2	30-Jun-2017	30-Jun-2018	31-Aug-2018	31-Jul-2019
4th of Parcels R1, R2, R3, C1 or C2	31-Mar-2018	31-Mar-2019	31-May-2019	30-Apr-2020
5th of Parcels R1, R2, R3, C1 or C2	31-Dec-2018	31-Dec-2019	29-Feb-2020	31-Dec-2020
Parcel E	30-Sept-2015	31-Mar-2017	31-May-2017	30-Apr-2018
Parcel R4	31-Jul-2016	31-Oct-2016	31-Dec-2016	30-Jun-2017
Parcel R5/H	31-Aug-2017	31-Aug-2018	30-Nov-2018	31-May-2020

Notes:

1. All dates are outside dates, but may be adjusted in accordance with the provisions of the Development Agreement.
2. R4 and R5 dates assume Parking Garage completion by December 31, 2016.
3. Lease execution must take place before building permit application for a given parcel is submitted.
4. Any deadline for the 1st, 2nd, 3rd, 4th, or 5th of Parcels R1, R2, R3, C1 or C2 may be satisfied by any of Parcels R1, R2, R3, C1 or C2.
5. Substantial Completion shall be the date of issuance of either a Temporary or Final Certificate of Occupancy.

FIRST AMENDMENT TO PARCEL E GROUND LEASE

THIS FIRST AMENDMENT TO PARCEL E GROUND LEASE (“**First Amendment**”) is dated as of _____ 2016, and is between the **CITY OF POMPAÑO BEACH, FLORIDA**, a Florida municipal corporation (“**City**”), whose address is 100 West Atlantic Boulevard, 4th Floor, Pompano Beach, Florida 33060, Attn: City Manager, and **PPA-E, LLC**, a Florida limited liability company, (“**Tenant**”) whose address is 398 NE 6th Avenue, Delray Beach, Florida 33483.

RECITALS

City and Tenant have entered into a Parcel Ground Lease (“**Parcel E Lease**”) dated March 31, 2015 for the lease to Tenant of Parcel E described in the Lease.

City and Tenant have agreed to make certain changes to the Lease as set forth in this First Amendment.

AGREEMENT

For Ten Dollars and other good and valuable consideration, the receipt of which is hereby acknowledged by the parties, City and Tenant agree as follows:

1. **Recitals.** The following paragraph is removed from the Recitals to the Parcel E Lease:
City has approved Tenant as an Acceptable Transferee of Developer
and the following paragraphs are inserted in its place:
Developer has assigned to Tenant its rights to lease Parcel E from the City and to develop, use, and sublease Parcel E as contemplated by the Development Agreement.
The ownership of Tenant is identical to the ownership of Developer, and as a result, City’s consent to the assignment from Developer to Tenant is not required.
2. **Revised Development Timeline.** The Development Timeline (as of February 18, 2015) attached as Exhibit D to the Parcel E Lease is replaced with the Development Timeline (as of February 22, 2016) attached as **Exhibit A** to this First Amendment.
3. **Definitions.** Section 2.23 of the Parcel E Lease is amended to read as follows:
2.23 Lease Commencement Date. March 31, 2015.
4. **Incorporation of Terms of Development Agreement.** The following provisions are added to Section 3 of the Parcel E Lease:
 - 3.1. **Premises Are Part of Project.** City and Tenant acknowledge that the Parcel is a part of the Project being developed by Developer on the Property, intended to consist of food and beverage concessions, restaurants and eateries, beach and pier related retail, and active and passive open space, all in keeping with a maritime or “fishing village” theme.
 - 3.2. **Incorporation of Terms of Development Agreement.** Tenant, as the assignee of Developer’s rights to lease, develop and sublease the Parcel, acknowledges that all of the terms and conditions of the Development Agreement which pertain to the use, operation, and maintenance of the Property described in the

Development Agreement will also apply to Tenant's use, operation and maintenance of the Parcel.

5. **Minimum Rent Payments.** Section 5.1.3 of the Parcel E Lease is amended to read as follows:
 - 5.1.2. **Minimum Rent Commencement Date.** Minimum Rent will commence on June 1, 2015. On June 1, 2015, Tenant will pay City Minimum Rent of \$1,500.00 for the month of June, 2015. Thereafter, beginning on July 1, 2015, Tenant shall pay Minimum Rent in quarterly installments on the first day of each calendar quarter.
6. **Parcel Development Timelines.** Section 15 of the Parcel E Lease is amended in its entirety to read as follows, and Subsections 15.1-15.4 are deleted:
 15. **Parcel Development Deadlines.** Tenant expressly agrees that the Parcel will be developed in accordance with the Development Timeline attached as Exhibit D, and that time is of the essence in the development of the Parcel.
7. **Ratification of Parcel E Lease.** The Parcel E Lease, as amended by this First Amendment, remains in full force and effect on the date hereof.

SIGNATURE BLOCKS ON FOLLOWING PAGES

City and Tenant have signed this First Amendment to Parcel E Ground Lease on the dates set forth below their respective signatures

Witnesses:	CITY: CITY OF POMPANO BEACH, FLORIDA
_____	By: _____ LAMAR FISHER, MAYOR
Print Name _____	Dated: _____
_____	By: _____ DENNIS W. BEACH, CITY MANAGER
Print Name _____	Dated: _____
Attest:	
_____	(SEAL)
ASCELETA HAMMOND, CITY CLERK	
Approved by:	

MARK BERMAN, CITY ATTORNEY	

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this ___ day of _____, 2016, 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 are personally known to me.

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Notary Typed, Printed or Stamped)

NOTARY'S SEAL

Commission Number

Witnesses:
[Signature]
Print Name Tim Hernandez
Christi French
Print Name Christi French

TENANT:
PPA- E, LLC, a Florida limited liability company
By: [Signature]
Richard Caster, President
Date: 3/4/14

ACKNOWLEDGMENT

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 4th day of March 2016 by Richard Caster, as Manager of PPA-E, LLC, on behalf of the company. He is personally known to me or produced a Florida driver's license as identification.

NOTARIAL SEAL

Notary: Christi French
Print Name: Christi French
Notary Public, State of Florida
My commission expires: November 19, 2016



Exhibit A to First Amendment to Parcel E Ground Lease

Development Timeline as of February 22, 2016

Exhibit B to Second Amendment to Development Agreement
(Replaces Exhibit C to Amended and Restated Development Agreement)

Exhibit A to First Amendment to Parcel E Lease
Exhibit A to First Amendment to Parcel R2 Lease
Exhibit A to First Amendment to Parcel R3 Lease

Parcel	Design Plans	Obtain Permits	Commence Construction	Substantial Completion
1 st of Parcels R1, R2, R3, C1 or C2	31-Mar-2016	31-Mar-2017	31-May-2017	31-Dec-2017
2 nd of Parcels R1, R2, R3, C1 or C2	30-Sep-2016	30-Sep-2017	30-Nov-2017	31-Oct-2018
3 rd of Parcels R1, R2, R3, C1 or C2	30-Jun-2017	30-Jun-2018	31-Aug-2018	31-Jul-2019
4 th of Parcels R1, R2, R3, C1 or C2	31-Mar-2018	31-Mar-2019	31-May-2019	30-Apr-2020
5 th of Parcels R1, R2, R3, C1 or C2	31-Dec-2018	31-Dec-2019	29-Feb-2020	31-Dec-2020
Parcel E	30-Sept-2015	31-Mar-2017	31-May-2017	30-Apr-2018
Parcel R4	31-Jul-2016	31-Oct-2016	31-Dec-2016	30-Jun-2017
Parcel R5/H	31-Aug-2017	31-Aug-2018	30-Nov-2018	31-May-2020

Notes:

1. All dates are outside dates, but may be adjusted in accordance with the provisions of the Development Agreement.
2. R4 and R5 dates assume Parking Garage completion by December 31, 2016.
3. Lease execution must take place before building permit application for a given parcel is submitted.
4. Any deadline for the 1st, 2nd, 3rd, 4th, or 5th of Parcels R1, R2, R3, C1 or C2 may be satisfied by any of Parcels R1, R2, R3, C1 or C2.
5. Substantial Completion shall be the date of issuance of either a Temporary or Final Certificate of Occupancy.

FIRST AMENDMENT TO PARCEL R2 GROUND LEASE

THIS FIRST AMENDMENT TO PARCEL R2 GROUND LEASE (“**First Amendment**”) is dated as of _____ 2016, and is between the **CITY OF POMPANO BEACH, FLORIDA**, a Florida municipal corporation (“**City**”), whose address is 100 West Atlantic Boulevard, 4th Floor, Pompano Beach, Florida 33060, Attn: City Manager, and **PPA-R2, LLC**, a Florida limited liability company, (“**Tenant**”) whose address is 398 NE 6th Avenue, Delray Beach, Florida 33483.

RECITALS

City and Tenant have entered into a Parcel Ground Lease (“**R2 Lease**”) dated March 31, 2015 for the lease to Tenant of Parcel R2 described in the Lease.

Tenant has asked City to extend certain deadlines for the development of Parcel R2 set forth in the Development Timeline attached as Exhibit D to the Lease.

City has agreed to extend the deadlines as set forth in this First Amendment.

City and Tenant have agreed to make certain additional changes to the R2 Lease as set forth in this First Amendment.

AGREEMENT

For Ten Dollars and other good and valuable consideration, the receipt of which is hereby acknowledged by the parties, City and Tenant agree as follows:

1. **Recitals.** The following paragraph is removed from the Recitals to the Parcel R2 Lease:

City has approved Tenant as an Acceptable Transferee of Developer

and the following paragraphs are inserted in its place:

Developer has assigned to Tenant its rights to lease Parcel R2 from the City and to develop, use, and sublease Parcel R2 as contemplated by the Development Agreement.

The ownership of Tenant is identical to the ownership of Developer, and as a result, City’s consent to the assignment from Developer to Tenant is not required.

2. **Revised Development Timeline.** The Development Timeline (as of February 18, 2015) attached as Exhibit D to the R2 Lease is replaced with the Development Timeline (as of February 22, 2016) attached as **Exhibit A** to this First Amendment.
3. **Incorporation of Terms of Development Agreement.** The following provisions are added to Section 3 of the R2 Lease:
 - 3.1. **Premises Are Part of Project.** City and Tenant acknowledge that the Parcel is a part of the Project being developed by Developer on the Property, intended to consist of food and beverage concessions, restaurants and eateries, beach and pier related retail, and active and passive open space, all in keeping with a maritime or “fishing village” theme.
 - 3.2. **Incorporation of Terms of Development Agreement.** Tenant, as the assignee of Developer’s rights to lease, develop and sublease the Parcel, acknowledges that all of the terms and conditions of the Development Agreement which pertain

to the use, operation, and maintenance of the Property described in the Development Agreement will also apply to Tenant's use, operation and maintenance of the Parcel.

4. **Parcel Development Deadlines.** Section 15 of the R2 Lease is amended in its entirety to read as follows, and Subsections 15.1-15.4 are deleted:
 15. **Parcel Development Deadlines.** Tenant expressly agrees that the Parcel will be developed in accordance with the Development Timeline attached as **Exhibit D**, and that time is of the essence in the development of the Parcel.
5. **Ratification of R2 Lease.** The R2 Lease, as amended by this First Amendment, remains in full force and effect on the date hereof.

SIGNATURE BLOCKS ON FOLLOWING PAGES

City and Tenant have signed this First Amendment to Parcel R2 Ground Lease on the dates set forth below their respective signatures

Witnesses:

CITY:

CITY OF POMPANO BEACH, FLORIDA

Print Name _____

By: _____
LAMAR FISHER, MAYOR

Print Name _____

Dated: _____

By: _____
DENNIS W. BEACH, CITY MANAGER

Attest:

Dated: _____

ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved by:

MARK BERMAN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this ___ day of _____, 2016, 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 are personally known to me.

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Notary Typed, Printed or Stamped

NOTARY'S SEAL

Commission Number

Witnesses:

[Signature]

Print Name Tom Monardiz

[Signature]

Print Name Nissa Espinosa

TENANT:

PPA- R2, LLC, a Florida limited liability company

By: [Signature]
Richard Caster, President

Date: 3/4/16

ACKNOWLEDGMENT

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 4th day of March, 2016 by Richard Caster, as Manager of PPA-R2, LLC, on behalf of the company. He is personally known to me or produced a Florida driver's license as identification.

NOTARIAL SEAL

Notary: Catherine H. Strader
Print Name: _____
Notary Public, State of Florida
My commission expires: _____

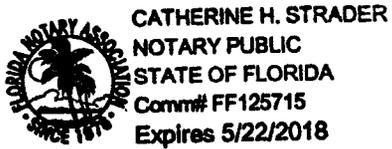


Exhibit A to First Amendment to Parcel R2 Ground Lease

Development Timeline as of February 22, 2016

Exhibit B to Second Amendment to Development Agreement
(Replaces Exhibit C to Amended and Restated Development Agreement)

Exhibit A to First Amendment to Parcel E Lease
Exhibit A to First Amendment to Parcel R2 Lease
Exhibit A to First Amendment to Parcel R3 Lease

Parcel	Design Plans	Obtain Permits	Commence Construction	Substantial Completion
1st of Parcels R1, R2, R3, C1 or C2	31-Mar-2016	31-Mar-2017	31-May-2017	31-Dec-2017
2nd of Parcels R1, R2, R3, C1 or C2	30-Sep-2016	30-Sep-2017	30-Nov-2017	31-Oct-2018
3rd of Parcels R1, R2, R3, C1 or C2	30-Jun-2017	30-Jun-2018	31-Aug-2018	31-Jul-2019
4th of Parcels R1, R2, R3, C1 or C2	31-Mar-2018	31-Mar-2019	31-May-2019	30-Apr-2020
5th of Parcels R1, R2, R3, C1 or C2	31-Dec-2018	31-Dec-2019	29-Feb-2020	31-Dec-2020
Parcel E	30-Sept-2015	31-Mar-2017	31-May-2017	30-Apr-2018
Parcel R4	31-Jul-2016	31-Oct-2016	31-Dec-2016	30-Jun-2017
Parcel R5/H	31-Aug-2017	31-Aug-2018	30-Nov-2018	31-May-2020

Notes:

1. All dates are outside dates, but may be adjusted in accordance with the provisions of the Development Agreement.
2. R4 and R5 dates assume Parking Garage completion by December 31, 2016.
3. Lease execution must take place before building permit application for a given parcel is submitted.
4. Any deadline for the 1st, 2nd, 3rd, 4th, or 5th of Parcels R1, R2, R3, C1 or C2 may be satisfied by any of Parcels R1, R2, R3, C1 or C2.
5. Substantial Completion shall be the date of issuance of either a Temporary or Final Certificate of Occupancy.

FIRST AMENDMENT TO PARCEL R3 GROUND LEASE

THIS FIRST AMENDMENT TO PARCEL R3 GROUND LEASE (“**First Amendment**”) is dated as of _____ 2016, and is between the **CITY OF POMPANO BEACH, FLORIDA**, a Florida municipal corporation (“**City**”), whose address is 100 West Atlantic Boulevard, 4th Floor, Pompano Beach, Florida 33060, Attn: City Manager, and **PPA-R3, LLC**, a Florida limited liability company, (“**Tenant**”) whose address is 398 NE 6th Avenue, Delray Beach, Florida 33483.

RECITALS

City and Tenant have entered into a Parcel Ground Lease (“**R3 Lease**”) dated March 31, 2015 for the lease to Tenant of Parcel R3 described in the Lease.

Tenant has asked City to extend certain deadlines for the development of Parcel R3 set forth in the Development Timeline attached as Exhibit D to the Lease.

City has agreed to extend the deadlines as set forth in this First Amendment.

City and Tenant have agreed to make certain additional changes to the R3 Lease as set forth in this First Amendment.

AGREEMENT

For Ten Dollars and other good and valuable consideration, the receipt of which is hereby acknowledged by the parties, City and Tenant agree as follows:

1. **Recitals.** The following paragraph is removed from the Recitals to the Parcel R3 Lease:

City has approved Tenant as an Acceptable Transferee of Developer

and the following paragraphs are inserted in its place:

Developer has assigned to Tenant its rights to lease Parcel R3 from the City and to develop, use, and sublease Parcel R3 as contemplated by the Development Agreement.

The ownership of Tenant is identical to the ownership of Developer, and as a result, City’s consent to the assignment from Developer to Tenant is not required.

2. **Revised Development Timeline.** The Development Timeline (as of February 18, 2015) attached as Exhibit D to the R3 Lease is replaced with the Development Timeline (as of February 22, 2016) attached as **Exhibit A** to this First Amendment.
3. **Incorporation of Terms of Development Agreement.** The following provisions are added to Section 3 of the R3 Lease:
 - 3.1. **Premises Are Part of Project.** City and Tenant acknowledge that the Parcel is a part of the Project being developed by Developer on the Property, intended to consist of food and beverage concessions, restaurants and eateries, beach and pier related retail, and active and passive open space, all in keeping with a maritime or “fishing village” theme.
 - 3.2. **Incorporation of Terms of Development Agreement.** Tenant, as the assignee of Developer’s rights to lease, develop and sublease the Parcel, acknowledges that all of the terms and conditions of the Development Agreement which pertain

to the use, operation, and maintenance of the Property described in the Development Agreement will also apply to Tenant's use, operation and maintenance of the Parcel.

4. **Parcel Development Deadlines.** Section 15 of the R3 Lease is amended in its entirety to read as follows, and Subsections 15.1-15.4 are deleted:
 15. **Parcel Development Deadlines.** Tenant expressly agrees that the Parcel will be developed in accordance with the Development Timeline attached as **Exhibit D**, and that time is of the essence in the development of the Parcel.
5. **Ratification of R3 Lease.** The R3 Lease, as amended by this First Amendment, remains in full force and effect on the date hereof.

SIGNATURE BLOCKS ON FOLLOWING PAGES

City and Tenant have signed this First Amendment to Parcel R3 Ground Lease on the dates set forth below their respective signatures

Witnesses:

CITY:

CITY OF POMPANO BEACH, FLORIDA

Print name: _____

By: _____
LAMAR FISHER, MAYOR

Dated: _____

Print name: _____

By: _____
DENNIS W. BEACH, CITY MANAGER

Attest:

Dated: _____

ASCELETA HAMMOND, CITY CLERK

Approved by:

(SEAL)

MARK BERMAN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this ___ day of _____, 2016, 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 are personally known to me.

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Notary Typed, Printed or Stamped

NOTARY'S SEAL

Commission Number

Witnesses:
[Signature]
Print Name Tim Hernandez
Christi French
Print Name Christi French

TENANT:
PPA- R3, LLC, a Florida limited liability company
By: [Signature]
Richard Caster, President
Date: 3/4/16

ACKNOWLEDGMENT

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 4th day of March 2016 by Richard Caster, as Manager of PPA-R3, LLC, on behalf of the company. He is personally known to me or produced a Florida driver's license as identification.

NOTARIAL SEAL

Notary: Christi French
Print Name: Christi French
Notary Public, State of Florida
My commission expires: November 19, 2016

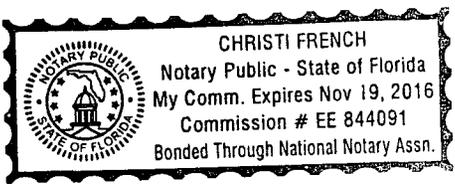


Exhibit A to First Amendment to Parcel R3 Ground Lease

Development Timeline as of February 22, 2016

Exhibit B to Second Amendment to Development Agreement
(Replaces Exhibit C to Amended and Restated Development Agreement)

Exhibit A to First Amendment to Parcel E Lease
Exhibit A to First Amendment to Parcel R2 Lease
Exhibit A to First Amendment to Parcel R3 Lease

Parcel	Design Plans	Obtain Permits	Commence Construction	Substantial Completion
1st of Parcels R1, R2, R3, C1 or C2	31-Mar-2016	31-Mar-2017	31-May-2017	31-Dec-2017
2nd of Parcels R1, R2, R3, C1 or C2	30-Sep-2016	30-Sep-2017	30-Nov-2017	31-Oct-2018
3rd of Parcels R1, R2, R3, C1 or C2	30-Jun-2017	30-Jun-2018	31-Aug-2018	31-Jul-2019
4th of Parcels R1, R2, R3, C1 or C2	31-Mar-2018	31-Mar-2019	31-May-2019	30-Apr-2020
5th of Parcels R1, R2, R3, C1 or C2	31-Dec-2018	31-Dec-2019	29-Feb-2020	31-Dec-2020
Parcel E	30-Sept-2015	31-Mar-2017	31-May-2017	30-Apr-2018
Parcel R4	31-Jul-2016	31-Oct-2016	31-Dec-2016	30-Jun-2017
Parcel R5/H	31-Aug-2017	31-Aug-2018	30-Nov-2018	31-May-2020

Notes:

1. All dates are outside dates, but may be adjusted in accordance with the provisions of the Development Agreement.
2. R4 and R5 dates assume Parking Garage completion by December 31, 2016.
3. Lease execution must take place before building permit application for a given parcel is submitted.
4. Any deadline for the 1st, 2nd, 3rd, 4th, or 5th of Parcels R1, R2, R3, C1 or C2 may be satisfied by any of Parcels R1, R2, R3, C1 or C2.
5. Substantial Completion shall be the date of issuance of either a Temporary or Final Certificate of Occupancy.