

**CITY OF FORT LAUDERDALE
TEMPORARY LICENSE AGREEMENT
FOR THE SALE, SERVICE AND DELIVERY
OF FOOD AND ALCOHOLIC BEVERAGES ON CITY BEACHES**

THIS LICENSE AGREEMENT, is entered into on _____, 2023, by and between:

THE CITY OF FORT LAUDERDALE, a Florida municipal corporation, hereinafter referred to as “City”

and

DIAMONDROCK FL TENANT, LLC d/b/a THE WESTIN BEACH RESORT FORT LAUDERDALE, a Delaware Limited Liability Company authorized to transact business in the State of Florida, with its principal address at 2 Bethesda Metro Center, Suite 1400, Bethesda, MD 20814, hereinafter referred to as “Applicant” or “Licensee.”

[collectively referred to as “Parties.”]

WHEREAS, Applicant is the operator of the **THE WESTIN BEACH RESORT FORT LAUDERDALE**, an upland hotel located at **321 North Fort Lauderdale Beach Blvd, Fort Lauderdale, Florida, 33304**, and desires to sell, serve, and deliver food and alcoholic beverages on the City beaches for consumption by its hotel guests or any person occupying a beach chair rented from a City-approved beach concessionaire; and

WHEREAS, on November 1, 2022, the City Commission adopted Section 8-55.4 of the Code of Ordinances of the City of Fort Lauderdale, Florida (“City Code”) authorizing a one-year pilot program to allow the sale, service, and consumption of food and alcoholic beverages on the public beach by upland hotels located along State Road A-1-A, upon the approval of a license application and license agreement by the City Commission and subject to certain terms and conditions outlined therein; and

WHEREAS, Section 8-55.4 of the City Code shall automatically be repealed, null and void and of no further force and effect, unless re-enacted by the city commission on or before three hundred sixty-five (365) days from the date of its passage, and any license or license agreement approved by the city commission will automatically terminate and all rights and privileges granted thereunder shall be null and void and of no further force and effect; and

WHEREAS, the City is in receipt of a completed license application by Applicant with all applicable license fees and supporting documents in compliance with the terms and conditions outlined in Section 8-55.4 of the City Code (“License Application”); and

WHEREAS, Applicant wish to enter into a temporary license agreement with the City to

memorialize the terms and conditions outlined in City Code Section 8-55.4; and

WHEREAS, the City Commission has determined allowing the sale, service and consumption of food and non-alcoholic beverages to tourists and visitors on the sandy area of the beach will improve tourists' and visitors' experience on Fort Lauderdale beach; and

WHEREAS, City Commission wish to approve Applicant's license application and enter into this Temporary License Agreement with Applicant, subject to the terms and conditions outlined herein ("Temporary License Agreement"); and

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

1. **RECITALS AND EXHIBITS INCORPORATED.** The foregoing recitals are true and correct and incorporated herein by this reference. All attached and referenced Exhibits are also incorporated herein.

2. **DEFINITIONS.** For the purposes of this Agreement and the various covenants, conditions, terms and provisions that follow, the Definitions set forth below are assumed to be true and correct and are therefore agreed upon by the parties:

- a. "Temporary License Agreement" means this Agreement between the City and Applicant, including all of the attached and referenced Exhibits, as the same may be amended in writing from time to time, with an original on file with the City Clerk.
- b. "License Application" means a completed license application prepared by Applicant and received by City, with all applicable fees, for the sale, service, and delivery of food and alcoholic beverages on City beaches in compliance with the terms and conditions outlined in Section 8-55.4 of the City Code.
- c. "Applicant" means **DIAMONDROCK FL TENANT, LLC d/b/a THE WESTIN BEACH RESORT FORT LAUDERDALE**, a Delaware Limited Liability Company authorized to transact business in the State of Florida, and the operator of an upland hotel named **THE WESTIN BEACH RESORT FORT LAUDERDALE**, located at **321 N Fort Lauderdale Beach Blvd, Fort Lauderdale, Florida, 33304**.
- d. "City" means the City of Fort Lauderdale, Florida, a municipal corporation of the State of Florida, of which the City Commission is its governing body.
- e. "Contract Administrators" means the City of Fort Lauderdale's City Manager for the City or his/her designee. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Contract Administrators. Except as provided for in this Agreement, the Contract Administrators may not make any change to this Agreement without the approval and formal amendment to this Agreement in writing by City Commission and Applicant.

- f. “City Manager” means the City of Fort Lauderdale’s City Manager or his/her designee.
- g. “Hotel” means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than thirty (30) days or one (1) calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests containing sleeping room accommodations for twenty-five (25) or more guests and providing the services generally provided by a hotel and recognized as a hotel in the community in which it is situated or by the hotel industry.
- h. “Upland Hotel” means any hotel located on a parcel of property that shares a property line with the western right-of-way line of a segment of State Road A-1-A, between Holiday Drive to the south and Sunrise Boulevard to the north, excluding that portion of A-1-A designated as Seabreeze Boulevard from Seville Street to the north and SE 5th Street to the south.
- i. “Sale, Service or Delivery” includes the act or action of supplying or offering for sale any food or beverage item to any person.
- j. “Alcoholic Beverages” includes beers, wines, liquors, and any type of beverage with any volume of alcohol content.
- k. “Public Beach” is defined in Sections 8-51 and 8-71 of the City Code.
- l. “Licensed Area” is defined as that portion of the Public Beach that Applicant is permitted to use during the term of this Agreement, as further defined in the License approved by the City.
- m. “Operational Plan” shall have the meaning given to such term in Section 6 of this Agreement.
- n. “Public Safety Plan” shall have the meaning given to such term in Section 7 of this Agreement.
- o. “Repair” shall mean any work (including all third party labor, supplies, materials and equipment) reasonably necessary to repair, restore, or replace any equipment, building, structure or any other component of the Licensed Area, if such work is solely necessitated by any damage or destruction, including any damage or destruction resulting from the acts or omissions of other parties, including guests, licensees or invitees of the Applicant. Repairs shall also include work necessitated by damage or destruction caused by the negligence of the Applicant and/or its guests, agents, employees, contractors or subcontractors.
- p. “Term” shall have the meaning given to such term in Section 4.

3. **TEMPORARY LICENSE: PERMITTED USE.** The Applicant's license application for the sale, service and delivery of food and alcoholic beverages on the City beaches for consumption by its hotel guests or any person occupying a beach chair rented from a City-approved beach concessionaire is hereby approved, subject to such additional terms and conditions outlined in this Agreement. Applicant is hereby authorized and entitled to use the portions of the beach owned by the City during the license period, pursuant to the terms and conditions outlined in this Agreement. The right to use the City beach area does not infer any proprietary rights onto Applicant or imply that the Applicant is automatically allowed to use any portion(s) of the beach that is not owned by the City. City makes no warranties as to any apparent or actual property lines. It is Applicant's sole responsibility to secure any and all necessary property survey. No other City properties may also be used Applicant and/or its guests, agents, employees, contractors or subcontractors, during the term of this Agreement. All food and/or alcohol sales during on the City beaches shall be governed in accordance with all applicable Florida Statutes and sections of the City of Fort Lauderdale Code of Ordinances.

4. **TERM.** The Term of this Agreement **shall commence upon execution of this Agreement and will expire on December 31, 2023**, subject to Applicant's compliance with all terms and obligations described herein. **Except that this term shall automatically terminate on October 31, 2023, without further notice to Applicant, if the pilot program is repealed in accordance with Section 8-55.4 of the City Code.**

5. **TEMPORARY LICENSE GENERAL TERMS.**

- a. The e sale, service, delivery and consumption of all food or alcoholic beverages on the Public Beach pursuant to this section shall be limited to the area within each hotel's upland property boundary lines that extend to the Public Beach, and subject to the terms and conditions outlined in the license agreement approved by the city commission;
- b. No licensee's service operation or temporary beachfront structure as defined in the City Code, if any, shall interfere with or obstruct the view of any lifeguard tower or any lifeguard on duty and, upon request by a lifeguard on duty or city official, the licensee shall immediately remove said obstruction;
- c. Beachfront storage of any equipment is prohibited;
- d. No motorized vehicles shall be used in the service or delivery of food or beverages;
- e. **The Applicant agrees to pay the City a license application fee of Ten Thousand Eight Hundred Twenty Five Dollars and Zero Cents (\$10,825.00)**, which is calculated at an amount equal to Twenty-Five Dollars (\$25) times the total number of guest rooms at the Applicant upland hotel and, thereafter, a license application and applicable fee shall be due annually on January first of each year, and as may be amended from time to time by the City Commission. **The Westin Beach Resort Fort Lauderdale currently has a total of Four Hundred Thirty-Three (433) guest rooms; and**

- f. Any other provision, term, plan or condition deemed necessary by the city, as outlined in this Agreement.
6. **OPERATIONAL PLAN.** Applicant shall provide the City with an Operational Plan which shall include the following:
- a. A site plan, depicting a layout of the upland hotel's property boundary lines and lines representing the extension of side boundary lines east into the Public Beach representing the proposed location for food and any beverage service on the Public Beach, a detailed description and design of a temporary beachfront structure, if any, including the material to be used for the structure. Any temporary beachfront structure plans shall satisfy all applicable permitting requirements of the City Code and shall be reviewed and processed by the city's development services department;
 - b. Types of food and/or beverages to be served, sold or delivered;
 - c. A traffic control plan with safety guidelines for service providers and hotel guests expected to cross State Road A-1-A or any other right-of-way in order to access the Public Beach to ensure no undue interference with the passage of the public on State Road A-1-A. The traffic control plan and personnel necessary to implement said plan shall be furnished at the sole cost and expense of each licensee;
 - d. A policy to ensure hotel guests consuming alcoholic beverages and all employees serving or otherwise handling alcoholic beverages are 21 years of age or older;
 - e. A policy to ensure service providers wear uniforms and name tags that identify the upland hotel as the employer, as more specifically set forth in the license application;
 - f. Use of a mobile point-of-sale (POS) system that is compatible with other credit card processing software and necessary electronic equipment to facilitate and manage the food and beverage sale transactions to hotel guests on the beach and any person who rents a beach chair from a city-approved beach concessionaire;
 - g. Statement of commitment to the exclusive use of recyclable or reusable food and beverage containers, cutlery, and condiment packaging, that all clearly identify the upland hotel as the service provider;
 - h. Statement indicating that the applicant's hours of operation on the Public Beach shall be limited to seven (7) days per week, between the hours of 10:00 a.m. through 6:00 p.m. for the months of October, November, December, January, February, March, April and May, and between the hours of 10:00 a.m. through 7:00 p.m. for the months of June, July, August, and September. Any change or deviation to these operating hours requires prior city commission approval;
 - i. A plan for the continuous cleanup and deposit of all trash and debris in proper receptacles in compliance with sanitary facilities and any safety inspection

requirements, as deemed necessary by the City's Fire Department, Parks and Recreation department, and Development Services Department; and

- j. Statement of compliance with all applicable federal, state and local laws.

7. **TRAFFIC CONTROL PLAN.** In addition to the Applicant's traffic control plan with safety guidelines for service providers and hotel guests expected to cross State Road A-1-A or any other right-of-way in order to access the Public Beach to ensure no undue interference with the passage of the public on State Road A-1-A, the City's Police and Fire Departments will author separate comprehensive Incident Action/Operational Plans specific to their duties. Such plans will take into consideration several factors including, but not limited to, the planning and management guidelines utilizing the National Incident Management System (NIMS) and the Incident Command System (ICS).

8. **MAINTENANCE OF LICENSED AREA.**

- a. Applicant shall be responsible for and shall provide sufficient temporary public sanitary facilities which shall be of the type and in sufficient number as to meet the requirements established by the Development Services Department. Applicant shall provide daily service of the facilities at all times during the License Period. The cost of such temporary public sanitary facilities shall be an expense to Applicant and all costs and expenses for facilities furnished by the City to Applicant shall be paid to City within the time frame as set forth in Section 23, Reimbursement of Cost and Expenses.
- b. Applicant shall be responsible for all cleanup costs and expenses associated with the removal of trash and debris that accumulates on any portion of Licensed area. All trash shall be collected and removed throughout each day with final cleanup being completed at the end of each day of the License period. The requirement to remove trash and debris includes street sweeping. Applicant will cover and reimburse City for all cleanup costs and expenses associated with the removal of trash and debris that accumulates on any portion of Licensed area.
- c. In the event the Applicant wishes to utilize temporary mobile cellular communication (service boosting) towers, which can also benefit public safety by increasing the E-911 capabilities of the specific service provider, the Applicant must notify the City Police and Fire Departments and agrees that the contracted equipment provider with whom they procure such equipment, services etc. will work closely with the City Radio Engineers to confirm the temporary towers will not interfere with the City or County public safety radio frequencies.

9. **CONSTRUCTION OF FACILITIES, TEMPORARY STRUCTURES, CANOPIES, TENTS AND CONCESSION STANDS.**

- a. Applicant shall not erect any temporary structures, canopies, tents, concession stands, or any other permanent or temporary facilities or structures on the City beaches without first securing written approval from the City's Development Services Department.

b. Applicant shall comply with the following:

1. Applicant shall file with the City's Development Services Department a detailed Concession Plan specifying the locations, hours, dates and types of concessions that will operate at the Licensed area. The Concession Plan shall identify and list the individuals, corporations, partnerships or other entities that are or will be operating such temporary structures, concessions, tents or canopies at the Licensed area. Any and all third party vendors with which Applicant contracts for the sale or distribution of alcohol shall submit a copy of the vendor's liquor liability license at this time. Sponsors of events at which food or beverages will be sold or distributed shall meet all applicable state, county and city health codes. This shall be evidenced by a license and any required permit by the appropriate authorities.
2. Current flameproof certificates must be provided for all canvas tents, awnings or canopies and shall be submitted for approval to the City's Fire Department. Applicant shall obtain approval by the City Fire Department and file with its license application evidence that such temporary structure, canopies, tents, awnings and/or concession stands which are to be used during the period of time encompassed by this Agreement are of fireproof material and will not constitute a fire hazard. City's Development Services Department must review and approve the proposed use of any temporary structure used in association with the Licensed in accordance with the standard criteria as outlined in the City's Code of Ordinances and the Florida Building Code.
3. All construction, installations and services, including electrical hook-ups, shall be made at Applicant's expense and approved in advance by the City's Development Services Department. If electricity is required, Applicant shall negotiate arrangements for such service with the City or a licensed contractor. This cost shall be an expense to Applicant and, if furnished by City, shall be paid to City prior to the start date of Applicant's operation on the City beach. The City's Development Services Department shall conduct electrical inspections of all electrical facilities whether power is supplied by local utilities or is self-provided by generator systems. The Applicant shall permit the City staff to conduct electrical inspections of all electrical facilities.
4. Unless Applicant receives prior specific written permission by the City Manager, no construction or installations shall involve the use of stakes or other material that may break the surface or deface any infrastructure such as asphalt, concrete, brick or any plant material.

10. **INSPECTION OF LICENSED AREA AND PAYMENT FOR DAMAGE TO CITY PROPERTY.**

a. City reserves the rights to conduct random and periodic inspections of the Licensed

Area to assess the condition of the premises and damage to the City property, if any. It shall be the sole responsibility of the Applicant to maintain the Licensed Area during the term of this Agreement in the same or better condition as prior to the permitted use.

- b. Applicant agrees to repair all core drilling holes and all other paved and unpaved surfaces, made to facilitate the erection of temporary structures, barriers, stages, fences, tents and other improvements to the Licensed area, according to City standards, as determined by the City Manager in his sole discretion, within seventy-two (72) hours after City issues a notice or request for repair to Applicant.
- c. Applicant shall be responsible for damage to any and all portions of the licensed area including, but not limited to, all plants, shrubs, trees, other landscaped areas, paved surfaces, and to any and all structures located or situated upon any portion of the Licensed area. Applicant shall be responsible for the costs to repair any part of the Licensed area that are damaged during the term of the License period as a result of the negligence and/or wrongful acts of Applicant or Applicant's agents, employees, contractors, subcontractors, guests, invitees, licensees, or attendees. Applicant shall be responsible, at Applicant's sole expense, for the repair or loss of its officers', contractors', subcontractors', guests', and agents' personal property, except for repairs of such property caused by the negligence or willful misconduct of the City or its officers, employees or agents.
- d. It is further agreed that if damage is found to exist, as a result of the Applicant's or its agents, employees, contractors, subcontractors, invitees, licensees, guests, or attendees negligence during the License period, City shall furnish Applicant with a written report of such damage which shall include an estimate of the cost to remedy such damage. If City arranges for such damages to be repaired by a third party, such cost shall be paid by Applicant to City within fourteen (14) days after Applicant receives the City's invoice of the cost of said damage.

11. **SECURITY OF APPLICANT'S PROPERTY.** All construction materials, equipment, goods, signs and any other personal property of Applicant shall be protected solely by Applicant. Applicant acknowledges and agrees that City assumes no responsibility or liability, whatsoever, for any such item and that the security and protection of any such item from theft, vandalism, the elements, acts of God, or any other cause, are strictly the responsibility of Applicant, unless caused by the wrongful or negligent acts of the City or its officers, employees or agents.

12. **APPLICANT'S CONTRACTS.** Applicant agrees to be solely responsible for all contracts or agreements of any nature including, without limitation, those for Applicant's employees and vendors. City shall not be named as a party in any contract for the Licensed area and City shall have no obligation to ensure payment to any individual or entity for goods and/or services provided in conjunction with the Licensed Area. No employment relationship exists between City and Applicant.

13. **SUBLEASES, ASSIGNMENTS, OR TRANSFERS.** Applicant or any of the principals of the corporation shall not assign, sublease or transfer any of its obligations and/or rights under

this Agreement, in whole or in part, to any person, business or entity. Any such action by Applicant will result in immediate termination of this Agreement by City and any permission or rights granted thereunder.

14. LICENSES AND PERMITS; COPYRIGHTS, PATENTS AND TRADEMARKS. Applicant agrees to secure and pay for all licenses and permits required by any governmental agency having jurisdiction over the Licensed area. City acknowledges and agrees that Applicant may contract with third party vendor(s) to obtain any applicable permits and licenses as may be required for the service, sale and/or distribution of food and alcoholic beverages. Additionally, if Applicant intends to use any item which is or may be protected from infringement, such as but without limitation, copyrights, patents and trademarks, if requested by City, Applicant shall provide City ten (10) days in advance of the first date of property use, evidence showing that the applicable licenses, permits and/or permission have been secured and, if applicable, all fees have been paid in full by Applicant. The provisions of this paragraph specifically apply to the American Society of Composers, Authors and Publishers (“ASCAP”), Broadcast Music Incorporated (“BMI”) and any other similar. City shall have no responsibilities to any performing rights licensing organizations for any performance during the term of this Agreement.

15. STANDARDS OF CONDUCT; COMPLIANCE WITH RULES, REGULATIONS, ORDINANCES. Applicant agrees that at all times it will conduct its activities with full regard for public safety and will observe and abide by all federal, state and local laws, the federal and state constitutions, and all rules, regulations and ordinances of City and any other governmental agency having jurisdiction including, without limitation, those relating to noise, building, zoning, gambling, fire protection, liquor regulation, sanitation and food facilities and hours of operation. Applicant shall further take all precautions and use due care to conduct its operations in a safe and prudent manner with respect to its guests, agents, employees and visitors to the Licensed Area.

16. INSURANCE. As a condition precedent to the effectiveness of this Agreement, during the term of this Agreement and during any renewal or extension term of this Agreement, the Applicant, at the Applicant’s sole expense, shall provide insurance of such types and with such terms and limits as noted below. Providing proof of and maintaining adequate insurance coverage are material obligations of the Applicant. The Applicant shall provide the City a certificate of insurance evidencing such coverage. The Applicant’s insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by the Applicant shall not be interpreted as limiting the Applicant’s liability and obligations under this Agreement. All insurance policies shall be from insurers authorized to write insurance policies in the State of Florida and that possess an A.M. Best rating of A-, VII or better. All insurance policies are subject to approval by the City’s Risk Manager.

The coverages, limits, and endorsements required herein protect the interests of the City, and these coverages, limits, and endorsements may not be relied upon by the Applicant for assessing the extent or determining appropriate types and limits of coverage to protect the Applicant against any loss exposure, whether as a result of this Agreement or otherwise. The requirements contained herein, as well as the City’s review or acknowledgement, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Applicant under this Agreement.

The following insurance policies and coverages are required:

Commercial General Liability

Coverage must be afforded under a Commercial General Liability policy with limits not less than:

- \$2,000,000 each occurrence and \$2,000,000 aggregate for Bodily Injury, Property Damage, and Personal and Advertising Injury
- \$2,000,000 each occurrence and \$2,000,000 aggregate for Products and Completed Operations

Policy must include coverage for Contractual Liability and Independent Contractors which shall include coverage for pyrotechnics.

The City and the City's officers, employees, and volunteers are to be covered as additional insureds with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liability arising out of activities performed by or on behalf of the Applicant. The coverage shall contain no special limitation on the scope of protection afforded to the City or the City's officers, employees, and volunteers.

Liquor Liability

If Applicant engages in the sale and/or distribution of alcohol, Applicant shall provide evidence of coverage for liquor liability in an amount not less than \$1,000,000 per occurrence. If the Commercial General Liability policy covers liquor liability (e.g. host or other coverage), the Applicant shall provide written documentation to confirm that coverage already applies to this Agreement.

If Applicant contracts with a third-party vendor for the sale and/or distribution of alcohol, Applicant agrees to cause any and all third-party vendors to obtain, pay for and keep in force continuously during the term of this Agreement, liquor liability insurance in an amount not less than One Million Dollars (\$1,000,000.00). Applicant is required to confirm, in writing, that each vendor of the Applicant carries insurance coverages and limits that meet or exceed the conditions set forth in this Agreement.

Business Automobile Liability

Coverage must be afforded for all Owned, Hired, Scheduled, and Non-Owned vehicles for Bodily Injury and Property Damage in an amount not less than \$1,000,000 combined single limit each accident.

If the Applicant does not own vehicles, the Applicant shall maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

Watercraft Liability – Not applicable.

Workers' Compensation and Employer's Liability

Coverage must be afforded per Chapter 440, Florida Statutes. Any person or entity performing work for or on behalf of the City must provide Workers' Compensation insurance. Exceptions and exemptions will be allowed by the City's Risk Manager, if they are in accordance with Florida Statute.

The Applicant waives, and the Applicant shall ensure that the Applicant's insurance carrier waives, all subrogation rights against the City and the City's officers, employees, and volunteers for all losses or damages. The City requires the policy to be endorsed with WC 00 03 13 Waiver of our Right to Recover from Others or equivalent.

The Applicant must be in compliance with all applicable State and federal workers' compensation laws, including the U.S. Longshore Harbor Workers' Act and the Jones Act, if applicable.

Insurance Certificate Requirements

- a. The Applicant shall provide the City with valid Certificates of Insurance (binders are unacceptable) no later than thirty (30) days prior to the start of work contemplated in this Agreement.
- b. The Applicant shall provide to the City a Certificate of Insurance having a thirty (30) day notice of cancellation; ten (10) days' notice if cancellation is for nonpayment of premium.
- c. In the event that the insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of the Applicant to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested, and addressed to the certificate holder.
- d. In the event the Agreement term goes beyond the expiration date of the insurance policy, the Applicant shall provide the City with an updated Certificate of Insurance no later than ten (10) days prior to the expiration of the insurance currently in effect. The City reserves the right to suspend the Agreement until this requirement is met.
- e. The Certificate of Insurance shall indicate whether coverage is provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the Certificate of Insurance must show a retroactive date, which shall be the effective date of the initial contract or prior.
- f. The City shall be named as an Additional Insured on all applicable liability policies, with the exception of Workers' Compensation.
- g. The City shall be granted a Waiver of Subrogation on the Applicant's Workers' Compensation insurance policy.
- h. The title of the Agreement, Applicant's name, term of this Agreement, or other identifying reference must be listed on the Certificate of Insurance.

The Certificate Holder should read as follows:

City of Fort Lauderdale
100 N. Andrews Avenue
Fort Lauderdale, FL 33301

The Applicant has the sole responsibility for the payment of all insurance premiums and shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, co-insurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, co-insurance penalty, self-insured retention, or coverage exclusion or limitation. Any costs for adding the City as an Additional Insured shall be at the Applicant's expense.

If the Applicant's primary insurance policy/policies do not meet the minimum requirements, as set forth in this Agreement, the Applicant may provide evidence of an Umbrella/Excess insurance policy to comply with this requirement.

The Applicant's insurance coverage shall be primary insurance as applied to the City and the City's officers, employees, and volunteers. Any insurance or self-insurance maintained by the City covering the City, the City's officers, employees, or volunteers shall be non-contributory.

Any exclusion or provision in the insurance maintained by the Applicant that excludes coverage for work contemplated in this Agreement shall be unacceptable and shall be considered breach of contract.

All required insurance policies must be maintained until the contract work has been accepted by the City, or until this Agreement is terminated, whichever is later. Any lapse in coverage shall be considered breach of contract. In addition, Applicant must provide to the City confirmation of coverage renewal via an updated certificate should any policies expire prior to the expiration of this Agreement. The City reserves the right to review, at any time, coverage forms and limits of Applicant's insurance policies.

The Applicant shall provide notice of any and all claims, accidents, and any other occurrences associated with this Agreement to the Applicant's insurance company or companies and the City's Risk Management office, as soon as practical.

It is the Applicant's responsibility to ensure that any and all of the Applicant's independent contractors and subcontractors comply with these insurance requirements. All coverages for independent contractors and subcontractors shall be subject to all of the applicable requirements stated herein. Any and all deficiencies are the responsibility of the Applicant.

17. INDEMNIFICATION AND HOLD HARMLESS. Except in cases of City, its agents, officers, and/or employees negligence or willful misconduct, Applicant agrees to indemnify, defend and hold harmless City, its officers, agents and employees, against any and all damages, claims, losses, liabilities and expenses including claims and losses of bodily injury, property damage, illness and/or sickness (including, without limitation, reasonable legal fees and disbursements) caused by, in connection with, arising out of, or resulting from the use of the Licensed Area or caused by, in connection with, arising out of, or resulting from any act by Applicant, its partners, employees, officers and agents done in the performance of this Agreement. If called upon by City, Applicant shall defend not only itself, but also City in connection with any such Claim at Applicant's expense, and at no expense whatsoever to City. Applicant further agrees

to defend, indemnify, save and hold harmless the City and the City's officers, agents and employees from any Claim, suit, loss, cost or expense or any damages arising out of or relating to Applicant's failure to obtain all necessary performing rights and licenses for the term of this Agreement (BMI, ASCAP, etc.). City shall be liable for damages or injuries caused by the City's negligence as determined by a court of competent jurisdiction in the State of Florida. The foregoing sentence shall not serve as a waiver of the City's sovereign immunity or of any other legal defense available to the City and shall be subject to the limitations contained in Section 768.28, Florida Statutes, as amended or revised. This Section shall survive any cancellation or early termination of this Agreement.

18. LIMITATION OF LIABILITY.

- a. The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds the sum of \$25,000.00. Applicant hereby expresses its willingness to enter into this Agreement with Applicant's recovery from the City for any damage action for breach of contract or for any action or claim arising from this Agreement to be limited to a maximum amount of \$25,000.00. This Section shall survive any cancellation or early termination of this Agreement.
- b. Accordingly, and notwithstanding any other term or condition of this Agreement, Applicant hereby agrees that the City shall not be liable to Applicant for damages in an amount in excess of \$25,000.00, for any action for breach of contract or for any action or claim arising out of this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon City's liability as set forth in Article 768.28, Florida Statutes, as amended. This Section shall survive any cancellation or early termination of this Agreement.

19. COSTS AND EXPENSES FOR CITY SERVICES.

Applicant agrees to cover all out of pocket costs and expenses incurred by the City for services provided at the License Area, without limitation, public safety, maintenance, cleanup, utility connections, breakdown and removal, storage and repair or replacement of property, and staff time. The Police Department may require the Applicant to provide and pay for security personnel for crowd control and traffic direction purposes. The Fire Department may require the Applicant to provide and pay for EMS and fire watch personnel or both. Police, Fire and EMS costs are exempt from prior notice provisions. Applicant further agrees to be responsible for any capital improvements that the City must make to accommodate Applicant's request for any building, electrical, plumbing, fire, municipal, or county code requirements. Applicant shall also be responsible for any replacement and restoration costs as set in this Agreement.

20. REIMBURSEMENT OF COSTS AND EXPENSES.

- a. Subject to the terms hereof, Applicant shall pay City for all costs and expenses incurred

by City for which Applicant is responsible hereunder within fourteen (14) days of receipt of any invoice from City. If total amount is not paid within fourteen (14) days, interest charges of four percent (4%) annual percentage rate shall be applied.

- b. Should Applicant disagree with the invoice provided by the City, Applicant shall state its reason(s) in writing no less than Forty-Eight hours of Applicant's receipt of City's invoice and may request the City Manager to review the charges and render a decision. If Applicant does not agree with the City Manager's decision, Applicant may file a petition to the City Commission to review the City Manager's decision. If Applicant does not agree with the results of such review, upon the filing of a lawsuit the parties shall agree to mandatory mediation.

21. **AUTHORITY OF CITY MANAGER.** Applicant shall coordinate the use of Licensed Area in accordance with the terms hereof and this Agreement. The City Manager shall notify Applicant when, in the City Manager's reasonable opinion, such activities may be or are detrimental to the public or to the City, or if the City has reason to believe that Applicant, its agents, subcontractors, independent contractors and/or employees have violated any law, rule or ordinance. After consultation with Applicant, City reserves the right to eject or cause to be ejected from the Licensed Area any person or persons causing a disturbance and neither the City nor any of its officers, agents or employees shall be liable to Applicant for any damages that may be sustained by Applicant through the exercise by City of such right. The decision of the City Manager in such regard shall be final and binding.

22. **LICENSE SUSPENSION OR REVOCATION.**

- a. Temporary or Emergency suspension.

1. The city may temporarily suspend licensee's services on any portion of the Public Beach that is approved for use in conjunction with a city approved special event, or for city to perform maintenance or repairs, or during periods of prohibitive measures imposed for high impact events pursuant to section 8-55.5 of the City Code. The city manager or the city manager's designee shall provide prior written notice to the licensee and licensee shall immediately discontinue all food and beverage services on the Public Beach.
2. The city may suspend licensee's services without any prior written notice upon the issuance of a severe storm, tropical storm or hurricane watch or warning by the National Weather Service or any other local, state or federal authority, including the National Hurricane Center. Licensee shall immediately discontinue all food and beverage services on the Public Beach.

- b. Suspension or revocation for non-compliance.

1. The city manager or his designee shall have the right to suspend any beach service license for non-compliance with any of the requirements of this section and licensee shall immediately discontinue all food and beverage services on

the Public Beach upon receipt of a suspension notice from the city manager. Licensee is required to correct any deficiencies or failure to comply with any provisions of the license within forty-eight (48) hours after a written notice is issued by the city manager or his designee.

2. In the event licensee fails to correct the deficiencies or fails to comply with the terms and conditions of a license issued under this section within the forty-eight (48) hour curing period, and the licensee did not secure a written extension to cure from the city manager or his designee prior to the expiration of the 48-hour curing period, the city manager or his designee shall have the option to immediately revoke the license and licensee shall immediately discontinue all food and beverage services on the Public Beach.
- c. Appeal. Should the city manager or his designee suspend or revoke a license under this Agreement, the Applicant shall have thirty (30) calendar to file an appeal pursuant to Section 8-55.4.

23. **TERMINATION.**

- a. In the event City Manager or City Commission permanently revokes Applicant's License under this Agreement and Applicant fails to timely file an appeal as provided in this Agreement and City Code Section 8-55.4, this Agreement and all rights and permitted use hereunder shall automatically terminate on the same date a the license revocation takes effect, with no further notice to Applicant.
- b. Applicant may elect, during the Term of this Agreement, to terminate this Agreement and no longer operate the Licensed Area and all licenses granted to Applicant and/or use(s) permitted to Applicant this Agreement shall immediately terminate and be of no further force or effect. If Applicant elects to terminate this Agreement, Applicant shall notify the City in writing of such election upon no less than thirty (30) days prior to the effective date of the termination. Applicant shall be obligated to reimburse City for any out of pocket costs and expenses incurred by the City in connection with the fulfillment of the City's obligations under this Agreement.
- c. It is expressly understood that City may seek to terminate this Agreement if the City decides it is necessary to protect the public's health, safety and welfare. City may also seek to terminate this Agreement upon the breach by the Applicant of its obligations under this Agreement. If the City seeks to terminate this Agreement, the City shall provide notice of the reason for termination as set forth in the Notice section of this Agreement, and the Applicant shall have Forty-Eight (48) hours to cure the reason for the termination to the exclusive satisfaction of the City. In the event of a declaration of an emergency or imminent threat to the public's health or safety, the City may terminate this Agreement at any time without prior notice to the Applicant.

24. **BREACH.** A material, monetary, breach of this Agreement by the Applicant shall be grounds for the City to terminate this Agreement and any and all permitted use and licenses approved thereunder, except that before such termination, City shall provide the Applicant with

written notice of the breach and Applicant shall be provided an opportunity to cure the breach within Forty-Eight (48) hours from the receipt of City's notice. Notice of any breach may be sent by facsimile followed by hand delivery of the notice as provided in this Agreement.

25. **FORCE MAJEURE.** In the event the Licensed Area shall, at any time during the term of this Agreement, be destroyed or rendered unusable by fire, storm or threat of a named storm within five hundred (500) miles of the Licensed Area, act of terrorism, war, act of God or other disaster or epidemic, (collectively or separately, "Force Majeure Event"), then either party may terminate this Agreement by providing prior written notice to the other party. In such instance, each party shall be responsible for its own costs and expenses, except that Applicant will reimburse City for all actual costs incurred related to the License and/or its compliance as provided in this Agreement, as otherwise provided for hereunder.

26. **GOVERNING LAW.** This Agreement shall be interpreted and construed in accordance with the laws of the State of Florida and shall inure to and be binding upon the parties, their successors and assigns. Venue for any action brought in state court shall be in Broward County, Florida. Venue for any action brought in Federal Court shall be in the Southern District of Florida, Fort Lauderdale Division. The parties consent to the personal jurisdiction of the aforementioned courts and irrevocably waive any objections to said jurisdiction.

27. **AMENDMENT.** No modification, amendment or alteration of the terms or conditions of this Agreement shall be effective unless contained in a written document duly executed by both parties, with the same formality as this Agreement.

28. **WAIVER OF BREACH.** Failure by City to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement.

29. **EXTENT OF AGREEMENT.** This Agreement represents the entire and integrated Agreement between City and Applicant and supersedes all prior negotiations, representations or agreements either written or oral.

30. **NOTICE.** Whenever any party desires to give notice to any other party, it must be given by written notice sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended at the place designated below and the place so designated shall remain such until they have been changed by written notice in compliance with the provisions of this section. For the present, the parties designate the following as the respective places for giving notice:

CITY:

City Manager
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, FL 33301

With a copy to:

City Attorney
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, Florida 33301

APPLICANT:

DIAMONDROCK FL TENANT, LLC
d/b/a THE WESTIN BEACH RESORT FORT LAUDERDALE
2 Bethesda Metro Center, Suite 1400
Bethesda, MD 20814

31. **SEVERANCE.** In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless City or Applicant elects to terminate this Agreement. The election to terminate this Agreement based upon this provision shall be made within seven (7) days after the court's becomes final.

32. **NON-DISCRIMINATION.** In the performance of this Agreement, Applicant shall not discriminate against any vendor, hotel guest, concessionaire, employee, patron, visitor, attendee or customer because of sex, age, race, color, religion, ancestry, national origin or sexual orientation. Applicant agrees to comply with the terms and provisions of the Americans with Disabilities Act and shall make the Licensed Area accessible for persons with disabilities.

33. **EMERGENCY ACCESS:** Applicant agrees to provide any and all emergency access to the Licensed Area as required by the City and its employees for the safety and general welfare of the community and all Fort Lauderdale residents, and proper entrances into any gates which are locked. If, in the course of Applicant's operations, Applicant or City, or their officers, agents and/or employees, become aware of any condition in or about the Licensed Area which may be dangerous or compromised by unruly individuals, Applicant shall immediately correct such condition or cease operations upon becoming aware or being notified of such condition so as not to endanger persons or property, and immediately notify the Fort Lauderdale Police Department.

34. **PUBLIC RECORDS:**

Applicant shall keep true, complete and correct books and records of all transactions and activities pursuant to this Agreement. Applicant recognizes and acknowledges that all such records shall be subject to Florida Public Records Law, Section 119.0701, Florida Statutes, as amended. **IF THE APPLICANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE APPLICANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY CLERK'S OFFICE, 100 N. ANDREWS AVENUE, FORT LAUDERDALE, FLORIDA, 33301, PHONE: 954-828-5002, EMAIL: PRRCONTRACT@FORTLAUDERDALE.GOV.**

35. **MISCELLANEOUS PROVISIONS:**

- a. Applicant agrees to exercise a good faith and reasonable effort to work with the City Police Department and representatives of the adjacent Homeowners Associations to implement a plan permitting homeowner's ingress and egress to their residences during the term of the Agreement.
- b. Applicant acknowledges that it is solely responsible for all utilities for the Licensed Area including, without limitation, electrical, water, and sewer and storm sewer hookup requirements.
- c. Applicant shall be responsible for and agrees to pay City any additional fee structures approved by the City Commission.
- d. In the event that the City is required to file any legal action against Applicant to collect any fees due under this Agreement, City shall be entitled to its costs of collection, repairs, attorney's fees and costs and interest at the maximum rate allowable by law.
- e. The Applicant, after receiving permission by the City's Contract Administrator, reserves the right to add decor, including, but not limited to signage to the location or cover any existing signage, as authorized by the City of Fort Lauderdale Code of Ordinances.
- g. The Applicant, after receiving permission by the City's Contract Administrator, may conduct its operations on any portion of the Licensed Area and shall retain all rights to such, unless such license is suspended or revoked, or this Agreement is otherwise terminated.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first above written.

CITY

ATTEST:

CITY OF FORT LAUDERDALE, a
Florida municipal corporation:

David R. Soloman, City Clerk

Dean J. Trantalis, Mayor

Greg Chavarria
City Manager

APPROVED AS TO FORM &
CORRECTNESS:
D'Wayne M. Spence, Interim City Attorney:

Patricia SaintVil-Joseph
Assistant City Attorney

APPLICANT

WITNESSES:

**DIAMONDROCK FL TENANT, LLC
d/b/a THE WESTIN BEACH RESORT
FORT LAUDERDALE, a Delaware
Limited Liability Company**

[Witness Signature]

By: _____
WILLIAM J. TENNIS, Manager

[Print Name]

[Witness Signature]

[Print Name]

ATTEST:

(CORPORATE SEAL)

By: _____
Print Name: _____
Title: _____

STATE OF _____:

COUNTY OF _____:

The foregoing instrument was acknowledged before me this _____ day of _____, **2023**, by **WILLIAM J. TENNIS** freely and voluntarily under the authority vested in him/her as Manager of **DIAMONDROCK FL TENANT, LLC d/b/a THE WESTIN BEACH RESORT FORT LAUDERDALE**, a Delaware Limited Liability Company.

(NOTARY SEAL)

Notary Public, State of _____
(Signature of Notary taking Acknowledgment)

Name of Notary Typed, Printed or Stamped

My Commission Expires: _____

Commission Number: _____

EXHIBIT “A”
SERVICE OPERATING HOURS
[Applicable seven (7) days per week]

General Hours:

10:00 a.m – 6:00 p.m. - October, November, December, January, February, March, April and May

10:00 a.m – 7:00 p.m. - June, July, August, and September

**EXHIBIT “B”
DESCRIPTION OF LICENSED AREA**

[Upland Hotel’s area description]

**EXHIBIT “C”
PUBLIC SAFETY PLAN**

**EXHIBIT “D”
MAINTENANCE OF TRAFFIC PLAN**

EXHIBIT "E"
SITE PLAN MAP