

RECIPROCAL ENTRY & INSPECTION AGREEMENT

This Agreement is entered into this ___ day of October, 2012 by and between:

P.D.K.N. P-4, LLC, a Florida limited liability company, whose address is 1280 S. Pine Island Road, Plantation, FL 33324 (hereinafter, "DEVELOPER")

and

CITY OF FORT LAUDERDALE, a Florida municipal corporation, whose address is 100 North Andrews Avenue, Fort Lauderdale, FL 33301 (hereinafter, "CITY")

RECITALS

A. DEVELOPER owns the following described real property within the City of Fort Lauderdale:

Lots 2, 3, 4, 5 & 6, Block 5, GALT OCEAN MILE, according to the Plat thereof, as recorded in Plat Book 34, Page 16 of the Public Records of Broward County, Florida; said lands lying, situate and being in Broward County, Florida.

(Hereinafter, "Parcel One").

B. CITY owns the following described real property having a street address of 3200 N.E. 32nd Street, Fort Lauderdale, FL:

Lots 1, 2, 3, 4, 12, 13 and 14, Block 2, GALT OCEAN MILE, according to the Plat thereof, as recorded in Plat Book 34, Page 16 of the Public Records of Broward County, Florida; said lands lying, situate and being in Broward County, Florida.

(Hereinafter, "Parcel Two").

C. CITY operates a Fire Station on Parcel Two.

D. DEVELOPER is involved in the development of a restaurant lounge, principally located on Lots 1 through 8, Block 1, GALT OCEAN MILE, according to the Plat thereof, as recorded in Plat Book 34, Page 16 of the Public Records of Broward County, Florida; said lands lying, situate and being in Broward County, Florida.

E. The parties are desirous of conducting certain preliminary investigations of the respective Parcels and securing permission to enter upon the Parcels for the purpose of conducting such preliminary investigations under certain terms and conditions.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and other good and valuable considerations, the adequacy and receipt of which are hereby acknowledged, the parties agree as follows:

1. **Recitals.** The foregoing recitals are true and correct.

2. **Investigation and study by Developer.**

2.1 DEVELOPER shall have the right, through its agents, servants, employees and contractors to enter upon Parcel Two for the purpose of conducting investigation, discovery, inspection and testing of Parcel Two, including soil testing and boring, environmental studies, surveying, provided, however, since Parcel Two is used by CITY as an operational Fire Station, any entry upon Parcel Two must be coordinated in advance and consented to by the CITY's Public Works Director.

2.2 In connection with such inspection, there shall be no soil tests or other invasive tests that can or may cause damage to the Parcel Two unless DEVELOPER has received prior written approval of such tests by the CITY's Public Works Director. All such entries shall be at the risk of DEVELOPER; CITY shall have no liability for any injuries sustained by DEVELOPER or any of DEVELOPER'S agents, servants, employees or contractors. DEVELOPER agrees to repair or restore promptly any damage to the Parcel Two caused by DEVELOPER, its agents, servants, employees or contractors under this Paragraph. Unless otherwise agreed between the parties, upon completion of DEVELOPER'S investigations and tests, the DEVELOPER shall restore Parcel Two to the same condition as it existed before DEVELOPER'S entry upon Parcel Two.

3. **Investigation and study by CITY.**

3.1 CITY shall have the right, through its agents, servants, employees and contractors to enter upon Parcel One for the purpose of conducting investigation, discovery, inspection and testing of Parcel One, including soil testing and boring, environmental studies, surveying.

3.2 In connection with such inspection, there shall be no soil tests or other invasive tests that can or may cause damage to the Parcel One unless CITY has received prior written approval of such tests by DEVELOPER. All such entries shall be at the risk of CITY. DEVELOPER shall have no liability for any injuries sustained by CITY or any of CITY'S agents, servants, employees or contractors as a result of negligent acts or omissions of CITY or its agents, servants, employees or contractors. CITY agrees to repair or restore promptly any damage to the Parcel One caused by CITY, its agents, servants, employees or contractors under this Paragraph. Unless otherwise agreed between the parties, upon completion of CITY's investigations and tests, the CITY shall restore Parcel One to the same condition as it existed before CITY's entry upon Parcel Two.

4. **Investigation Period.** The Investigation Period under Paragraphs 2 and 3 above shall be for a period of 45 days, commencing with the Effective Date of this Agreement. The Investigation Period may be extended for an additional thirty (30) days upon execution of an amendment by both parties. The CITY's City Manager shall have the authority to extend the Investigation Period under this Paragraph.

5. **Effective Date.** This Agreement shall be effective on the date the City Commission grants authorization for the proper CITY officials to execute this Agreement and the Agreement has been executed by DEVELOPER .

6. **License, not Lease.** It is acknowledged and stipulated by and between the parties hereto that the contractual rights of license exchanged under this Agreement shall not be deemed lease of either Parcel One or Parcel Two by either of the parties but rather a license granted for the purpose of entry onto Parcel One or Parcel Two for the purchases set forth in Paragraphs 2 and 3 hereof.

7. Indemnity.

6.1 CITY is a political subdivision as defined in Chapter 768.28, Florida Statutes, and agrees to be fully responsible for acts and omissions of its agents or employees to the extent permitted by law. Nothing herein is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity may be applicable. Nothing herein shall be construed as consent by a political subdivision of the State of Florida to be sued by third parties in any matter arising out of this Agreement or any other contract.

6.2 DEVELOPER shall protect, defend, indemnify and hold harmless the CITY, its officers, employees and agents from and against any and all lawsuits, penalties, damages, settlements, judgments, decrees, costs, charges and other expenses, including reasonable attorney's fees actually incurred, or liabilities of every kind, nature or degree arising out of or in connection with the rights, responsibilities and obligations of DEVELOPER under this Agreement, conditions contained therein, the location, construction, repair, or use by DEVELOPER of the respective License Area or Project, or the breach or default by DEVELOPER of any covenant or provision of this Agreement except for any occurrence arising out of or resulting from the intentional torts or gross negligence of the CITY, its officers, agents and employees. Without limiting the foregoing, any and all such claims, suits, causes of action relating to personal injury, death, damage to property, defects in construction, rehabilitation or restoration of any of Parcel Two by DEVELOPER, alleged infringement of any patents, trademarks, copyrights or of any other tangible or intangible personal or real property right by DEVELOPER, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation or decree of any court by DEVELOPER, is included in the indemnity.

DEVELOPER further agrees that upon proper and timely notice to investigate, handle, respond to, provide defense for, and defend any such claims at its sole expense and agrees to bear all other costs and expenses related thereto even if the claim is groundless, false or fraudulent and if called upon by the CITY, DEVELOPER shall assume and defend not only itself but also the CITY in connection with any claims, suits or causes of action, and any such defense shall be at no cost or expense whatsoever to CITY, provided that the CITY (exercisable by the CITY's Risk Manager) shall retain the right to select counsel of its own choosing. This indemnification shall survive termination, revocation or expiration of this Agreement and shall cover any acts or omissions occurring during the term of the Agreement, including any period after termination, revocation or expiration of the Agreement while any curative acts are undertaken.

8. Insurance.

7.1 The parties hereto acknowledge that CITY is a self-insured governmental entity subject to the limitation of Section 768.28, Florida Statutes. The CITY shall institute and maintain a fiscally sound and prudent risk management program with regard to its obligations under this Agreement in accordance with the provisions of Section 768.28, Florida Statutes.

7.2 At all times during the term of this Agreement, DEVELOPER, at its expense, shall keep or cause to be kept in effect the following insurance coverages:

(a) A **Commercial Liability Insurance Policy**, in standard form, insuring LICENSEE and CITY as an additional insured, against any and all liability for bodily injury or property damage arising out of or in connection with this Agreement and the license granted herein with a policy limit of not less than One Million Dollars (\$1,000,000.00) per occurrence, Two Million Dollars (\$2,000,000.00) general aggregate limit and shall name the CITY as an additional insured. The policy may contain a deductible no greater than \$10,000.00. All such policies shall cover activities under this Agreement and the investigations, use and repair of Parcel Two. This policy shall not be affected by any other insurance carried by CITY. The policy must include:

Premises and operations

Independent contractors

Products and Completed Operations for contracts

Broad Form Contractual Coverage applicable to this specific Agreement, including any hold harmless and indemnification agreements

Personal Injury Coverage with Employee and Contractual Exclusions removed with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability

(b) **Workers' Compensation Insurance** to apply to all DEVELOPER's employees engaged in activities under this Agreement and employees of contractors retained by DEVELOPER for the activities under this Agreement, said coverage to be in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy(ies) must include:

Employers' Liability with a limit of One Hundred Thousand Dollars (\$100,000) each accident.

If any operations are to be undertaken on or about navigable waters, coverage must be included for the U.S. Longshoremen & Harbor Workers Act and Jones Act.

(c) **Business Automobile Liability** for all automobiles owned or leased by DEVELOPER and utilized in conducting the activities under this Agreement and for all automobiles owned or leased by DEVELOPER's contractors that are involved in activities under this Agreement with limits of Three Hundred Thousand Dollars (\$300,000.00) per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

Owned Vehicles, if applicable.

Hired and Non-Owned Automobiles, if applicable.

Employers' Non-Ownership, if applicable.

(d) All of the policies of insurance provided for in this Agreement:

- (i) shall be in the form and substance approved by the Department of Insurance of the State of Florida ("DOI"),
- (ii) shall be issued only by companies licensed by DOI, having agents upon whom service of process may be made in Broward County, Florida,
- (iii) Certificates of Insurance pertaining to same shall be delivered to CITY, at least fourteen (14) days prior to the commencement of the License Term,
- (iv) shall be with a carrier having an A.M. Best's Rating of not less than A, Class VII,
- (v) shall bear endorsements showing the receipt by the respective companies of the premiums thereon or shall be accompanied by other evidence of payment of such premiums to the insurance companies, including evidence of current annual payment, if on any installment payment basis,
- (vi) shall provide that they may not be canceled by the insurer for thirty (30) days after service of notice of the proposed cancellation upon CITY and shall not be invalidated as to the interest of CITY by any act, omission or neglect of DEVELOPER, and
- (vii) shall name CITY, its officers, agents, employees, volunteers and elected officials as additional insured under the Commercial Liability Policy.

(e) In any case where the original policy of any such insurance shall be delivered to DEVELOPER, a duplicated original of such policy shall thereupon be delivered to CITY. All insurance policies shall be renewed by DEVELOPER, and

certificates evidencing such renewals, bearing endorsements or accompanied by other evidence of the receipt by the respective insurance companies of the premiums thereon, shall be delivered to CITY, at least twenty (20) days prior to their respective expiration dates.

(f) CITY does not in any way represent that the types and amounts of insurance required hereunder are sufficient or adequate to protect DEVELOPER's or its contractor's interests or liabilities but are merely minimum requirements established by CITY's Risk Management Division. CITY reserves the right to reasonably require any other insurance coverages that CITY deems necessary depending upon the risk of loss and exposure to liability.

(g) DEVELOPER shall require any subcontractors doing work pursuant to this Agreement to provide and maintain the same insurance coverages as specified above, which such insurance shall also name CITY and its officers, agents, employees, volunteers and elected officials.

(i) All such policies shall be without any deductible amount, unless otherwise any.

8. Joint Preparation. Each party and its counsel have participated fully in the review and revision of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

9. Severability. If any provision of this Agreement, or its application to any person or situation, is deemed invalid or unenforceable for any reason and to any extent, the remainder of this Agreement, or the application of the remainder of the provisions, shall not be affected. Rather, this Agreement is to be enforced to the extent permitted by law. The captions, headings and title of this Agreement are solely for convenience of reference and are not to affect its interpretation. Each covenant, term, condition, obligation or other provision of the Agreement is to be construed as a separate and independent covenant of the party who is bound by or who undertakes it, and each is independent of any other provision of this License, unless otherwise expressly provided. All terms and words used in this Agreement, regardless of the number or gender in which they are used, are deemed to include any other number and other gender, as the context requires.

10. No Waiver of Sovereign Immunity. Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by any agency to which sovereign immunity may be applicable.

11. No Third Party Beneficiaries. The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties

based on this Agreement. Nothing herein shall be construed as consent by any agency or political subdivision of the State of Florida to be sued by third parties in any manner arising out of any contract.

12. Non-Discrimination. LICENSEE shall not discriminate against any Person in the performance of duties, responsibilities and obligations under this Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

13. Termination. In the event of emergency, either party may cancel this Agreement during the term hereof upon twenty-four (24) hours written notice to the other party of its desire to terminate this Agreement.

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

15. Governing Law. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be brought exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. **By entering into this Agreement, CITY and LICENSEE hereby expressly waive any rights either party may have to a trial by jury of any civil litigation related to this Agreement or any acts or omissions in relation thereto.**

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

[THE BALANCE OF THIS PAGE REMAINS INTENTIONALLY BLANK.]

AS TO CITY:

WITNESSES:

CITY OF FORT LAUDERDALE

By _____
John P. "Jack" Seiler, Mayor

[Witness type or print name]

By _____
Lee R. Feldman, City Manager

ATTEST:

[Witness type or print name]

Jonda Joseph, City Clerk

(CORPORATE SEAL)

Approved as to form:

Robert B. Dunckel,
Assistant City Attorney

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this _____, 2012, by **John P. "Jack" Seiler**, Mayor of the City of Fort Lauderdale, a municipal corporation of Florida. He is personally known to me and did not take an oath.

(SEAL)

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

Name of Notary Typed,
Printed or Stamped

My Commission Expires:

Commission Number

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this _____, 2012, by **Lee R. Feldman**, City Manager of the City of Fort Lauderdale, a municipal corporation of Florida. He is personally known to me and did not take an oath.

(SEAL)

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

Name of Notary Typed,
Printed or Stamped

My Commission Expires:

Commission Number

AS TO DEVELOPER:

P.D.K.N. P-4, A Florida Limited Liability Company

By: _____
Charles E. Muller, III, Managing Member

[Witness type or print name]

[Witness type or print name]

STATE OF FLORIDA:
COUNTY OF PALM BEACH:

The foregoing instrument was acknowledged before me this _____, 2012, by, **Charles E. Muller, II**, Managing Member of **P.D.K.N. P-4, LLC**, a Florida Limited Liability Company, who has the authority to execute this Revocable License on behalf of Kalik, LLC. He is personally known to me or did take an oath.

(SEAL)

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

Name of Notary Typed,
Printed or Stamped

My Commission Expires:

Commission Number