



Venice of America

CITY OF
FORT LAUDERDALE

Direct Line: (954) 828-5036

December 26, 2012

Courtney Crush, Esq.
Crush Law, P.A.
333 North New River Drive East
Fort Lauderdale, FL 33301
Fax (954) 522-2030

Re: Reciprocal Entry and Inspection Agreement between P.D.K.N. P-4, LLC
and City of Fort Lauderdale;
Fire Station No. 54 Land Swap

Dear Ms. Crush:

Enclosed please find a fully-executed original Reciprocal Entry and Inspection Agreement as referenced above. The second original is on file with the City Clerk.

Thank you for your kind attention and consideration in this matter.

Very truly yours,

ROBERT B. DUNCKEL
Assistant City Attorney

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Enclosure

cc: Wendy Gonyea, Assistant City Clerk IV
Albert Carbon, Director / Public Works



11-6-12
m-11

RECIPROCAL ENTRY & INSPECTION AGREEMENT

This Agreement is entered into this 21st day of ~~October~~ ^{December}, 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 an 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 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 Parcel Two unless DEVELOPER has received prior written approval of such tests by 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 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, 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 an 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 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 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, CITY shall restore Parcel One to the same condition as it existed before CITY's entry upon Parcel ~~Two~~ One.

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 Parcel Two, 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 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 CITY, DEVELOPER shall assume and defend not only itself but also 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 CITY (exercisable by 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.

(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. DEVELOPER 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 DEVELOPER 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:

Safesa Ali

Safesa Ali

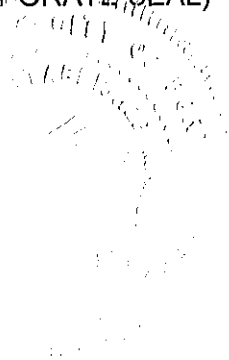
[Witness type or print name]

Alva D. Penedo

Alva D. Penedo

[Witness type or print name]

(CORPORATE SEAL)



CITY OF FORT LAUDERDALE

By [Signature]
John P. "Jack" Seiler, Mayor

By [Signature]
Lee R. Feldman, City Manager

ATTEST:

[Signature]
Jonda Joseph, City Clerk

Approved as to form:

[Signature]
Robert B. Dunckel,
Assistant City Attorney

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this 14th day of December, 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.

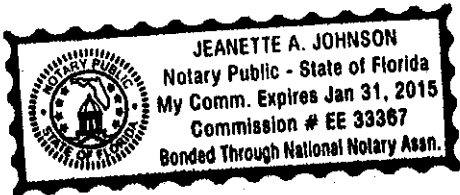
(SEAL)

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

Jeanette A. Johnson
Name of Notary Typed,
Printed or Stamped

My Commission Expires: 1/31/15

Commission Number EE 33367



[Handwritten initials]

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this 13th December, 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)



Donna M. Samuda
Notary Public, State of Florida
(Signature of Notary taking Acknowledgment)

DONNA M. SAMUDA
Name of Notary Typed,
Printed or Stamped

My Commission Expires: 01-30-2013
DD 847364
Commission Number

PSD

AS TO DEVELOPER:

WITNESSES:

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

[Signature]
Tina Linsen
[Witness type or print name]

By: [Signature]
Damon DeSantis
Managing Member

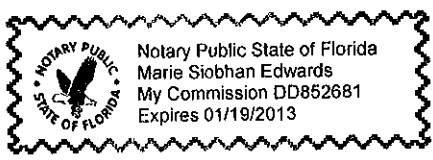
[Signature]
C. Christian South
[Witness type or print name]

STATE OF FLORIDA:
COUNTY OF PALM BEACH:

The foregoing instrument was acknowledged before me this _____, 2012, by, **Damon DeSantis**, Managing Member of **P.D.K.N. P-4, LLC**, a Florida Limited Liability Company, who has the authority to execute this **Reciprocal Entry and Inspection Agreement**. He is (check one) _____ personally known to me or _____ presented _____ as identification.

(SEAL)

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



Marie Siobhan Edwards
Name of Notary Typed,
Printed or Stamped

My Commission Expires:
01/19/2013
Commission Number

DD852681

[Handwritten initials]