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DOCUMENT ROUTING FORM

NAME OF DOCUMENT: REVOCABLE LICENSE FOR ACCESS TO PREMISES WITH P.D.K.N. HOLDINGS, LLC.

Routing Origin: CAO Also attached: copy of CAM Original Documents

City Attorney's Office: Approved as to Form 2 Originals and Delivered to City Manager

Assistant City Attorney: RBD

Sr. Assistant City Attorney: _____

CIP FUNDED YES NO
Capital Investment / Community Improvement Projects

Capital Investment / Community Improvement Projects defined as having a life of at least 10 years and a cost of at least \$50,000 and shall mean improvements to real property (land, buildings, fixtures) that add value and/or extend useful life, including major repairs such as roof replacement, etc. Term "Real Property" include: land, real estate, realty, real.

2) **City Manager:** Please sign as indicated and forward 2 originals ASST. CITY ATTY, BOB DUNCKEL/MEREDITH SHUSTER (DOES NOT NEED CLERK)

Original Route form to Meredith, CAO

**REVOCABLE LICENSE
FOR
ACCESS TO PREMISES**

THIS REVOCABLE LICENSE FOR ACCESS TO PREMISES is executed this 18th day of September, 2015 by and between:

CITY OF FORT LAUDERDALE, a Florida municipal corporation, whose principal address is 100 North Andrews Avenue, Fort Lauderdale, FL 33301, by and through its City Manager (hereinafter, "CITY")

and

P.D.K.N. HOLDINGS, LLC, a Florida limited liability company FEI/EIN Number 27-4601144, whose principal address is 1280 South Pine Island Road, Plantation, FL 33324 (hereinafter, "LICENSEE")

CITY owns real property located generally at 600 Seabreeze Boulevard, Fort Lauderdale, FL 33316; and

On August 18, 2015, the City Commission adopted Resolution No. 15-159 selecting LICENSEE as the successful bidder in the offering for Lease of the Premises commonly known as "Oasis Café" located at 600 Seabreeze Boulevard, Fort Lauderdale, FL 33316, the Leased Premises being more particularly described in Exhibit "A" attached hereto.

SEE SKETCH & DESCRIPTION
ATTACHED HERETO AS
EXHIBIT "A"

(Hereinafter, "Premises")

Pursuant to the processes set forth in City of Fort Lauderdale Charter Section 8.09, with the adoption of Resolution No. 15-141, a Lease Agreement will be prepared with a term of twenty (20) years with two (2) five (5) year options to renew with use of the Premises as a restaurant for casual, tropical dining with the Lease Agreement scheduled to be approved by the City Commission at their October 20, 2015 meeting; and

LICENSEE has requested permission to have access to the Premises prior to the execution of the Lease; and

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Revocable License Access to Premises, and other good and valuable considerations, the adequacy and receipt of which are hereby acknowledged, the parties are agree as follows:

1. **Recitals.** The foregoing recitals and true and correct and are hereby ratified and confirmed and incorporated herein.

2. **Defined Terms.** The following terms, as used and referred to herein, shall have the meanings set forth below, unless the context indicates otherwise:

City Manager means the CITY's Chief Executive Officer, its City Manager, or his or her designee.

Day(s) means in computing any period of time expressed in day(s) in this Revocable License, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

Effective Date shall mean the date this Revocable License becomes effective, which shall be date the Revocable License is executed by the City Manager on behalf of the CITY.

Person means any individual, firm, partnership (general or limited), corporation, company, association, joint venture, joint stock association, estate, trust, business trust, cooperative, limited liability corporation, limited liability partnership, limited liability company or association, or body politic, including any heir, executor, administrator, trustee, receiver, successor or assignee or other person acting in a similar representative capacity for or on behalf of such Person.

Staging of Materials or Equipment means the placement of materials or equipment or parking of vehicles within or about the Premises in any manner other than (a) temporarily and (b) for the purpose of and while actually engaged in the act of loading or off-loading materials or equipment from a vehicle.

Storage is synonymous with *Staging of Materials or Equipment* shall mean the placement of materials or equipment within or about the Premises or any public right of way within two blocks of the Premises in such a manner as would constitute *Staging of Materials or Equipment* if the materials or equipment were within or about the Premises.

3. **Grant of Revocable License.** From the Effective Date hereof, the CITY grants unto LICENSEE a Revocable License for nonexclusive access to the Premises for the purpose of taking measurements, examining construction materials and conducting inspections and tests for the following general areas:

- Electric and plumbing

- HVAC
- Roof & gutters
- Pest inspections
- Insurance survey
- Asbestos
- Lead based paint
- Windows, floors and overall structural integrity
- Soil testing

In anticipation of making renovations to the Premises upon entering a Lease with the CITY, such Revocable License being subject to the following terms and conditions set forth herein.

4. **Term.** The term of this Revocable License shall be for a period of thirty (30) days from the Effective Date hereof.

5. **Revocability.** This Revocable License may be revoked at any time in the discretion of the City Manager.

6. Conditions.

6.1 Access to the Premises is for the exclusive use of LICENSEE, its employees, agents, contractor's, subcontractors or independent contractors or any Person in privity with LICENSEE.

6.2 Access to the Premises must be during normal business hours and access is dependent upon LICENSEE being accompanied by CITY personnel or CBRE personnel.

7. **ADA.** In the performance of conducting activities for which this Revocable License has been granted, LICENSEE shall undertake no activity that would render any portion of the Premises noncompliant with the Americans With Disabilities Act, as same may be amended from time to time, with respect to the Project.

8. **Condition of Premises.** For the purpose of conducting activities for which this Revocable License has been granted, LICENSEE accepts the Premises in an "AS IS" condition as of the Effective Date of this Revocable License.

9. **Compliance with Regulations of Public Bodies.** For the purpose of conducting activities for which this Revocable License has been granted, LICENSEE shall, at its sole cost and expense, conduct such activities on the Premises and perform such acts and do such things as shall be lawfully required by any public body having jurisdiction over the Premises. All testing will be conducted by licensed professionals in accordance with any applicable regulations.

10. **No Property or Contract Right.** LICENSEE expressly acknowledges that pursuant to the terms hereof, it gains no property or contract right through this Revocable License to the continued possession, use, operation and maintenance of the Premises.

11. Repairs and Maintenance. For the purpose of conducting activities for which this Revocable License has been granted, LICENSEE shall not commit or suffer waste or injury to the Premises. For the purpose of conducting activities for which this Revocable License has been granted, LICENSEE shall not cause the Premises to be less and be less securely maintained than is its current state as controlled by CITY, and shall not contribute to the addition of any rubbish and other hazards. In the course of conducting activities granted under this Revocable License, LICENSEE shall conduct no destructive testing of any portion of the Premise without the express written consent of the City Manager. LICENSEE agrees to restore the Premises to the condition that existed prior to any destructive testing in the event CITY and LICENSEE fail to execute a Lease Agreement for the Premises within ninety (90) days of the Effective Date hereof.

12. Emergencies. If an emergency situation arises with respect to the Premises or any condition thereof presents an imminent threat to the health or safety of Persons or property, the CITY shall make reasonable efforts to provide telephone notice to the LICENSEE's Contact Person. For the purposes of this Paragraph, LICENSEE's Contact Person shall be Noel Cullen; office telephone number: 954 533-7152; cell phone number: 702-301-6263; e-mail address: ncullen@bolsamperis.com and address: 11871 NW 27 St. in the event the LICENSEE's Contact Person or any other information pertaining to the LICENSEE's Contact Person shall change, such change shall be provided to the CITY Engineer. (Plantation, FL 33323)

13. Damage to Public Property. In the event performance under this Revocable License by LICENSEE or any of its agents, employees, contractors, subcontractors, independent contractors or other Persons in privity with LICENSEE cause(s) any damage whatsoever to any other public property, then LICENSEE shall be responsible for the cost of repair and shall, at CITY'S option, make said repairs or reimburse CITY for the cost of same.

14. Liens Against the Premises. LICENSEE shall have no power or authority to incur any indebtedness giving a right to a lien of any kind or character upon the right, title or interest of CITY in and to the Premises, and no Person shall ever be entitled to any lien, directly or indirectly derived through or under the LICENSEE, or its agents, servants, employees, contractors or officers or on account of any act or omission of said LICENSEE as to the Premises. All Persons contracting with the LICENSEE, or furnishing materials, labor or services to said LICENSEE, or to its agents or servants, as well as all Persons shall be bound by this provision of the Revocable License. Should any such lien be filed, LICENSEE shall discharge the same within thirty (30) days thereafter, by paying the same or by filing a bond, or otherwise, as permitted by law. LICENSEE shall not be deemed to be the agent of CITY, so as to confer upon a laborer bestowing labor upon or within the Premises, or upon materialmen who furnish material incorporated in the construction and improvements upon the foregoing, a construction lien pursuant to Chapter 713, Florida Statutes or an equitable lien upon the CITY's right, title or interest in and to the Premises. These provisions shall be deemed a notice under Section 713.10(1), Florida Statutes of the "non-liability" of the CITY.

16. Damage and Destruction. LICENSEE shall not by its possession, use, occupancy, inspection or testing of the Premises, suffer or permit any damage to the Premises or to the adjacent real property or public rights-of-way. If during the term of this Revocable License the structures, improvements, fixtures or personalty within the Premises shall be damaged, destroyed or deteriorated in whole or in part by fire, casualty, obsolescence, failure to maintain or any other cause, and whether or not such destruction or damage is covered by any insurance policy on the Project, LICENSEE shall give to CITY immediate notice thereof, and LICENSEE shall repair any damage, destruction or deterioration shown to be caused by LICENSEE's actions.

17. License, not Lease. It is acknowledged and stipulated by and between the parties hereto that this Revocable License shall not be deemed a lease of the Premises from CITY to LICENSEE, but rather a Revocable License granted to LICENSEE by CITY for the nonexclusive possession, use, occupancy, inspections or testing of the Premises under the terms and conditions stated herein. LICENSEE acknowledges and understands the provisions of § 8.05 and 8.09 of the CITY Charter with respect to Leases.

18. Indemnity.

18.1 LICENSEE 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 attorney's fees or liabilities of every kind, nature or degree arising out of or in connection with the rights, responsibilities and obligations of LICENSEE under this Revocable License (collectively, "Claims"), conditions contained therein, or the breach or default by LICENSEE of any covenant or provision of this Revocable License, 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, operation, maintenance, repair or restoration of the Premises, alleged infringement of any patents, trademarks, copyrights or of any other tangible or intangible personal or real property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation or decree of any court, is included in the indemnity.

18.2 LICENSEE further agrees 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, LICENSEE shall assume and defend not only itself but also the CITY in connection with any Claims and any such defense shall be at no cost or expense whatsoever to CITY, provided that the CITY (exercisable by the CITY's City Attorney) shall retain the right to select counsel of its own choosing. The indemnification obligations set forth herein shall survive termination of this Revocable License for a period coincident with the statute of limitations period applicable to the offending act, omission or default.

19. Insurance. At all times during the term of this Revocable License, LICENSEE, at its expense, shall keep or cause to be kept in effect the following insurance coverages:

- (a) A commercial general liability insurance policy, in standard form, insuring LICENSEE against liability for bodily injury or property damage arising out of or in connection with this Revocable License and the license granted herein with a policy limit of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) general aggregate and shall name the CITY as an additional insured. All such policies shall cover the Project activities and the possession, use, occupancy and maintenance of the Premises. This policy shall not be affected by any other insurance carried by CITY.
- (b) Statutory Workers' Compensation Insurance to apply to all LICENSEE's employees and employees of contractors, subcontractors and agents retained by LICENSEE for work being performed pursuant to this Revocable License, said coverage to be in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws.
- (d) Business Automobile Liability for all vehicles owned by LICENSEE and LICENSEE's employees, agents, contractors and subcontractors and their respective employees and other persons in privity with LICENSEE that are involved in the performance of operations in furtherance of this Revocable License with limits of Three Hundred Thousand Dollars (\$300,000.00) per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.
- (e) All of the policies of insurance provided for in this Revocable License:
 - (i) shall be in the form and substance approved by the Florida Office of Insurance Regulation ("FIOIR"),
 - (ii) shall be issued only by companies licensed by FIOIR,
 - (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 Best's Rating of not less than A, Class VII,
 - (v) shall provide that the policies may not be canceled or modified by the insurer for thirty (30) days after service of notice of the proposed cancellation or modification upon CITY and shall not be invalidated as to the interest of CITY by any act, omission or neglect of LICENSEE.
 - (vii) The insurance coverage under subparagraphs (a) and (c) above shall be for a period coincident with the applicable indemnification obligations set forth above.

- (f) In any case where the original policy of any such insurance shall be delivered to LICENSEE, a duplicated original of such policy shall thereupon be delivered to CITY. All insurance policies shall be renewed by LICENSEE, 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.
- (g) CITY does not in any way represent that the types and amounts of insurance required hereunder are sufficient or adequate to protect LICENSEE's or Contractor's interests or liabilities but are merely minimum requirements established by CITY's Risk Management Division. CITY reserves the right to require any other insurance coverages that CITY deems necessary depending upon the risk of loss and exposure to liability.

20. Notices.

(a) Except as provided in subparagraph (c) below, whenever it is provided herein that notice, demand, request or other communication shall or may be given to, or served upon, either of the parties by the other, or either of the parties shall desire to give or serve upon the other any notice, demand, request or other communication with respect hereto or with respect to any matter set forth in this Revocable License, each such notice, demand, request or other communication shall be in writing and any law or statute to the contrary notwithstanding shall not be effective for any purpose unless the same shall be given by mailing the same by registered or certified mail, postage prepaid, return receipt requested, addressed to the party at the address set forth below, or at such other address or addresses and to such other person or firm as CITY may from time to time designate by notice as herein provided.

(b) All notices, demands, requests or other communications hereunder shall be deemed to have been given or served for all purposes hereunder forty-eight (48) hours after the time that the same shall be deposited in the United States mail, postage prepaid, in the manner aforesaid, provided, however, that for any distance in excess of five hundred (500) miles, air mail service or Federal Express or similar carrier shall be utilized, if available.

AS TO CITY:

City Manager
City of Fort Lauderdale
P.O. Drawer 14250
Fort Lauderdale, FL 33302-4250

With copy to:

City Attorney
City of Fort Lauderdale
P.O. Drawer 14250
Fort Lauderdale, FL 33302-4250

AS TO LICENSEE:

P.D.K.N. Holdings, LLC
1280 South Pine Island Road

Plantation, FL 33324

With Copy to:

Courtney Callahan Crush
333 North New River Drive, East
Suite 2200
Fort Lauderdale, FL 33301

(c) As to activities under Paragraph 12, Emergencies, notice need not be given in accordance with subparagraph (a) above, but notice shall be sufficient if given to the Contact Person pursuant to Paragraph 12, Emergencies.

21. Assignment, Pledge, Security Interest. LICENSEE shall not voluntarily, involuntarily or by operation of law, assign, sell, pledge, grant a security interest, or in any manner transfer the License or any interest therein or grant any right under this Revocable License without the prior written consent of CITY, which such consent may be granted or without in its sole discretion.

22. Compliance with Laws and Regulations. LICENSEE shall comply with all applicable statutes, laws, ordinances, rules, regulations and lawful orders of the United States of America, State of Florida, City of Fort Lauderdale, and of any other public authority that may be applicable to this Revocable License and the possession, use, occupancy and maintenance of the Premises and the conduct of the Project permitted herein.

23. Entire Revocable License. This Revocable License, together with any other agreements entered into contemporaneously herewith, constitutes and represents the entire Revocable License and any other agreements between the parties hereto and supersedes any prior understandings or Revocable Licenses or agreements, written or verbal, between the parties hereto respecting the subject matter herein. This Revocable License may be amended, supplemented, modified or discharged only upon an amendment in writing executed by all of the parties hereto. This Revocable License shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns, subject, however, to the limitations contained herein.

24. Interpretation of Revocable License; Severability. This Revocable License shall be construed in accordance with the laws of the State of Florida. If any provision hereof, or its application to any person or situation, is deemed invalid or unenforceable for any reason and to any extent, the remainder of this Revocable License, or the application of the remainder of the provisions, shall not be affected. Rather, this Revocable License is to be enforced to the extent permitted by law. The captions, headings and title of this Revocable License are solely for convenience of reference and are not to affect its interpretation. Each covenant, term, condition, obligation or other provision of the Revocable License 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 Revocable License, 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.

25. Successors. This Revocable License shall be binding on and inure to the benefit of the parties, their successors and assigns.

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

27. 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 Revocable License. None of the parties intend to directly or substantially benefit a third party by this Revocable License. The parties agree that there are no third party beneficiaries to this Revocable License and that no third party shall be entitled to assert a claim against any of the parties based on this Revocable License. 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.

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

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

30. Records. Each party shall maintain its own respective records and documents associated with this Revocable License in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees of non-compliance with that law.

31. 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 Revocable License 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.

32. Preparation of Agreement. The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this License Agreement has been their joint effort.

33. Waiver. The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this License and, therefore, is a material term hereof. Any party's failure to enforce any provision of this License shall not be deemed a waiver of such provision or modification of this License. A waiver of any breach of a provision

of this License shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this License.

34. Governing Law. This Revocable License 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 Revocable License and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida. To that end, LICENSEE expressly waives whatever other privilege to venue it may otherwise have.

35. Force Majeure. Neither party shall be obligated to perform any duty, requirement or obligation under this Revocable License if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds alone on the part of LICENSEE be deemed Force Majeure.

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

Witnesses

Wendy Simorin
Wendy Simorin
[Type or Print Name]

[Signature]
[Type or Print Name]

Sharon Wilbanks
[Type or Print Name]

P.D.K.N. Holdings, LLC, a Florida limited liability company

By: Noel Cullen
Noel Cullen, manager
[Type or print name and title]

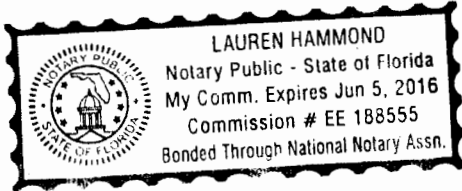
STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this Sept. 18, 2015, by Noel Cullen, as Manager for P.D.K.N.

[Signature]

Holdings, LLC, a Florida limited liability company. He is personally known to me and did not take an oath or produced _____ as identification and took an oath.

(SEAL)



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

Lauren Hammond
Name of Notary Typed, Printed or Stamped

My Commission Expires:

EE188555
Commission Number

QBO

WITNESSES:

CITY OF FORT LAUDERDALE

[Handwritten signature]
[Handwritten signature]

[Handwritten signature]
Lee R. Feldman, City Manager

[Witness print or type name]

[Handwritten signature]
Katerina Skondricka

[Witness print or type name]

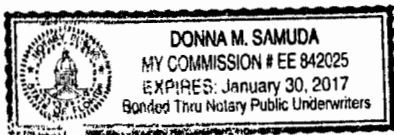
APPROVED AS TO FORM:

[Handwritten signature]
Robert B. Dunckel,
Assistant City Attorney.

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this 18th day of September, 2015, 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. Stanley D. Hawthorne, Acting City Manager for:

(SEAL)



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

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

My Commission Expires: January 30, 2017

EE 842025
Commission Number

[Handwritten initials]

