



# AGENDA ITEM REQUEST FORM

**Development Services**

Department Submitting Request

**Jeff Bowman**

Zoning/Code Supervisor

**REGULAR  
COMMISSION MTG**  
Meeting Dates - 7:00 PM

**DEADLINE TO  
Town Clerk**

**ROUNDTABLE/  
SPECIAL MEETING**  
Meeting Dates / TIME

**DEADLINE TO  
Town Clerk**  
7 Days Prior (noon)

Aug 23, 2011

Aug 12 (5:00 pm)

Insert Date/Time

\*Subject to Change

Presentation

Reports

Consent

Ordinance

Resolution

Quasi Judicial

Old Business

New Business

**SUBJECT TITLE: Third Amended Revocable License Agreement (Exhibit 1) for Valet Parking (Between the Town and Beach Restaurant, Inc.)**

**EXPLANATION:** At its meeting of October 12, 2010, the Commission approved extending the trial period for the operation of a valet service from the public right-of-way (ROW) on El Mar Drive adjacent to 101 Ocean Restaurant until February 27, 2011. A copy of the license agreement is attached (**Exhibit 2**) for your reference. Listed below are the dates of events pertaining to the valet service:

- July 13, 2010, the Commission approved the proposed use for 90 days.
- August 3, 2010, the Town and Beach Restaurants entered into a Revocable License Agreement.
- October 12, 2010, the Commission approved the First Amendment to the Revocable License Agreement extending the use period until February 27, 2011.
- January 25, 2011, the Town Commission approved the Second Amendment to the Revocable License Agreement extending use period until August 27, 2011.

The valet company provides weekly reports about their operation, which includes start and ending times and the number of cars parked. They are parking as many as 20 cars on Saturday night. The activities of the operation are monitored by the police, code, parking, and administration. There were only two complaints received by the Town since the approval of the second amended agreement. The first for using the loading/unloading spaces for VIP parking while using the El Mar Drive traffic lane for the transfer of vehicles and blocking traffic. The other for stacking cars on El Mar drive and blocking traffic. Beach Restaurant, Inc. and Demko Parking (valet contractor for Beach Restaurant, Inc.) was notified of these complaints and were very receptive to correcting the issues.

To-date staff believes that the valet operations have been operating with little or no incident.

**RECOMMENDATION:** We recommend: Authorizing the Town Manager to execute a new license agreement with the terms and conditions modified for a one (1) year period. The Town still retains the right to revoke the license at will.

- EXHIBITS:**
1. Third Amended License Agreement
  2. Revocable License Agreement
  3. Renewal Request from Licensee

Reviewed by Town Attorney

Yes  No

Town Manager Initials

*CB*

**THIRD AMENDMENT TO  
REVOCABLE LICENSE AGREEMENT FOR VALET PARKING BETWEEN  
THE TOWN OF LAUDERDALE BY-THE-SEA AND BEACH RESTAURANT, INC.**

This Third Amendment to the Revocable License Agreement for Valet Parking between The Town of Lauderdale By-The-Sea and Beach Restaurant, Inc. (this “Third Amendment”) is made and entered into as of \_\_\_\_\_, 2011, by and between the Town of Lauderdale-By-The-Sea, Florida, a municipal corporation of the State of Florida (the “Town”) and Beach Restaurant, Inc., a Florida corporation (the “Licensee”).

**WITNESSETH**

**WHEREAS**, as of August 3, 2010, the Town entered into a Revocable License Agreement for Valet Parking (“the Agreement”) with Licensee for use of certain Town property for a valet transfer location; and

**WHEREAS**, as of October 31, 2010, the Town entered into a First Amended Revocable License Agreement (“First Amendment”) with Licensee for use of certain Town property for a valet transfer location; and

**WHEREAS**, as of February 22, 2011, the Town entered into a Second Amended Revocable License Agreement (“Second Amendment”) with Licensee for use of certain property for valet transfer location: and

**WHEREAS**, the parties agree to extend the term of the Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants set forth in this Third Amendment, the receipt and sufficiency of which is hereby acknowledged, the parties hereby amend the Agreement to read as follows:

# Exhibit 1

**Section 1. Amendment to Agreement.** The parties hereby agree to amend the Agreement as follows<sup>1</sup>:

\* \* \* \* \*

**Section 3. Term.** The term ("the Term") of this Agreement shall commence upon execution hereof and shall remain in effect ~~for a period of ninety (90) days until August 27, 2012,~~ unless terminated as described herein or extended by additional written agreement between the Town and the Licensee.

\* \* \* \* \*

**Section 2. No Further Modifications.** All other provisions of the Agreement, other than as specifically addressed herein, shall remain in full force and effect.

**IN WITNESS WHEREOF,** the parties hereto have accepted, made and executed this First Amendment upon the terms and conditions above stated on the day and year first above written.

**TOWN:**

By: \_\_\_\_\_  
Constance Hoffmann, Town Manager

Date: \_\_\_\_\_

Approved as to form and legal sufficiency for the use and benefit of Lauderdale By-The-Sea:

By: \_\_\_\_\_  
Susan L. Trevarthen, Town Attorney

Date: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
June White, Town Clerk

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<sup>1</sup> Words in ~~strike through~~ type are deletions from the existing agreement; words in underlined type are additions.

# Exhibit 1

Date: \_\_\_\_\_

**BEACH RESTAURANT, INC.**

By: \_\_\_\_\_

\_\_\_\_\_ (Printed Name)

\_\_\_\_\_ (Title)

Date: \_\_\_\_\_

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**REVOCABLE LICENSE AGREEMENT  
FOR VALET PARKING**

3<sup>rd</sup> THIS LICENSE AGREEMENT (the "Agreement") is made and entered into as of the day of August, 2010 (the "Effective Date"), by and between the TOWN OF LAUDERDALE-BY-THE-SEA, a Florida municipal corporation (the "Licensee") and Beach Restaurant, Inc. a Florida corporation, with offices at 101 E. Commercial Blvd. Lauderdale-by-the-Sea, Florida 33038 (the "Licensee").

**RECITALS**

1. The Town is the owner of certain real property constituting two parking spaces located in the public street in front of 4405 El Mar Drive, Lauderdale-by-the-Sea, Florida in Broward County, Florida (the "Property").

2. Licensee desires to utilize the Property for a transfer location for a valet parking service.

3. The Town and Licensee desire to enter into this Agreement to set forth their respective rights and obligations regarding the use of the Property.

NOW THEREFORE, in consideration of the mutual covenants of the parties set forth in this Agreement, and other valuable consideration, the sufficiency and receipt of which is acknowledged by the parties, it is hereby agreed by and between the parties hereto as follows:

1. **Grant of License and Use.** Town grants to Licensee a temporary revocable license for the use of Property, on the terms set forth herein, for use of the Property (two parking spaces) as a transfer point for valet parking. The Licensee shall be entitled to use of the Property for a valet transfer location and parking service. In furtherance thereof, the parties acknowledge and agree to the following schedule and details:

**Access.** Licensee is granted the revocable use of the Property between the hours of 3:00 p.m. and 2:00 a.m., Sunday through Saturday each week.

**Rules.** Licensee agrees to at all times comply with the Rules and Regulations attached hereto as Exhibit "A". The parties agree that Town Manager has authority to make reasonable modifications to the Rules and Regulations, which Licensee shall conform to upon written notice thereof.

2. **Compliance with Laws and Permits.** Licensee agrees to comply with all applicable Federal, State and local laws and with the conditions hereof when exercising any of the privileges granted herein. Licensee is responsible for obtaining all required permits, licenses and approvals required for the use anticipated hereunder and Licensee specifically agrees to obtain all such required permits, licenses and approvals from any governing body as required and keep same in full force and effect at all times during the Term.

## REVOCAABLE LICENSE AGREEMENT Page 2 of 7

3. **Term.** The term (the "Term") of this Agreement shall commence upon execution hereof and shall remain in effect for a period of ninety (90) days, unless terminated as described herein or extended by additional written agreement between the Town and the Licensee.

4. **Access.** The Licensee, its contractors, its agents, employees, and invitees shall have the right of access to the Property during its use thereof.

5. **Condition of Premises.** Licensee agrees to accept the Property in "as is" condition and return the Property to Town at the end of the Term and after each daily use in the same condition as provided to Licensee. Licensee acknowledges it has inspected the Property and the surrounding area and accepts same in its present condition.

6. **Fee for License.** Licensee agrees to pay Town, as the fee for the license granted hereunder, the amount as determined by the number of hours the Town meters are obstructed by Licensee (rounded to the next full hour for any partial hours) multiplied by the Town's then current parking rates, as set forth in the applicable Town resolution. The compensation shall be paid to Town on or before the fifth day of each month for the Licensee's use during the preceding month.

7. **Revocable at Will.** This license (and this Agreement) is revocable by Town or Licensee at any time at will. The Agreement shall terminate automatically at the expiration of the Term or pursuant to written notice given hereunder by either party, effective upon the earlier of receipt or three days after transmittal by sender. In the event of emergency circumstances or in the event the Town or Town Manager finds a threat to the public health or safety is involved, this Agreement may be cancelled by Town verbally, effective immediately, followed by prompt written confirmation.

8. **Insurance.** Licensee shall furnish insurance certificates indicating satisfactory insurance coverage at its sole cost and expense and maintain in full force and effect during the term of this Agreement with Town, policies of insurance of the type and in the minimum amounts stated below. Such policy(s) shall be issued by an insurer of recognized responsibility and rated no less than "A" by the A.M. Best Company or similar insurance rating firm. Such policy(s) shall contain appropriate cross liability clauses, be primary without right of contribution, and will provide that the Town shall be given thirty (30) days advance written notice in the event of cancellation, termination or modification which materially restricts the coverage thereof. Prior to the execution of any Agreement with Town, Licensee shall provide the Town with a certificate of insurance and a copy of the policy endorsement naming the Town of Lauderdale-By-The-Sea its employees, directors, officers, agents, and successors and assigns, and other authorized representatives as additional or named insured.. The certificate shall show a waiver of subrogation and hold harmless agreement in favor of the Town, its employees, directors, officers, agents, and successors and assigns, and other authorized representatives.

## Exhibit 2

### REVOCABLE LICENSE AGREEMENT

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**A. Garage Liability Insurance** - \$1,000,000 combined single limit of insurance per occurrence and \$2,000,000 in the general aggregate

**B. Garage Keepers Legal Liability** - \$100,000.00 comprehensive and collision; \$50,000.00 per vehicle and \$1,000.00 deductible.

9. **Indemnity.** Licensee hereby agrees to indemnify, defend and hold Town and its employees, directors, officers, agents, independent contractors, successors and assigns, and other authorized representatives harmless from and against all liability, debts, claims, actions, losses and damages, including attorney fees and costs, that may be incurred by Town or the other indemnitees resulting from Licensee's performance (or lack thereof) under this Agreement or related in any way to Licensee's use or control or impact on the Property.

10. **Security.** Licensee shall ensure appropriate security and safety measures are provided in the area of the Property to ensure the safety of its employees, agents and that of third parties.

11. **Non-Interference.** During its use hereunder and during the conduct of its business in the area, Licensee agrees to make all reasonable efforts to minimize interference with the business of Town or nearby property owners or third parties in the vicinity of the Property. Licensee shall not block or otherwise obstruct the public vehicular or pedestrian traffic in the area in any way; nor shall Licensee provide or allow any impediment to free passage in the area. Licensee shall take reasonable measures so as to prevent or minimize Licensee's impact on traffic volume and congestion.

12. **Severability.** If any term, covenant, condition or provision of this Agreement (or the application thereof to any circumstance or person) shall be invalid or unenforceable to any extent, the remaining terms, covenants, conditions and provisions of this Agreement shall not be affected thereby; and each remaining term, covenant, condition and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Agreement would prevent the accomplishment of the original intent of the agreement between the parties.

13. **Counterparts.** This Agreement may be signed in two or more counterparts, each of which constitutes the agreement of the parties and each of which will be treated as an original.

14. **Entire Agreement.** This Agreement sets forth the entire agreement between Town and Licensee with respect to the subject matter of this Agreement. This Agreement supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the parties.

REVOCABLE LICENSE AGREEMENT  
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15. **Governing Law.** THIS AGREEMENT SHALL BE INTERPRETED AND CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF FLORIDA APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED ENTIRELY IN THE STATE. THE PARTIES AGREE THAT VENUE FOR ANY LEGAL ACTION INSTITUTED IN CONNECTION WITH THIS AGREEMENT SHALL BE PROPER EXCLUSIVELY IN BROWARD COUNTY, FLORIDA. THE PARTIES HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF THIS AGREEMENT.

16. **No Joint Venture.** Nothing in this Agreement shall be construed to create a joint venture, partnership or any other similar arrangement between Town and Licensee. Nothing in this Agreement will be construed to affect in any way the Town's rights, privileges, and immunities, including the provisions and monetary limitations of Section 768.28 (5), Florida Statutes, which limitations are applicable regardless of whether such provisions would otherwise apply.

17. **No Assignment.** Neither this License nor this Agreement is assignable by Licensee without Town's express written approval, which may be withheld for any reason. Licensee may engage an operator as Licensee's agent to provide the parking services allowed hereunder, provided Licensee remains at all times obligated hereunder and further provided operator is knowledgeable and has a proven track record in the parking services industry and operator assumes the terms hereof in writing by written assumption agreement.

18. **Drafting of Agreement.** Licensee has joined in the drafting of this Agreement and Town shall not be construed as the drafter thereof. Licensee has had an opportunity for review of this Agreement by counsel for Licensee and is in agreement with the foregoing terms and provisions.

19. **Notices.** Notices hereunder shall be provided as follows:

For Town:                   Town Manager  
Town of Lauderdale-By-The-Sea  
4501 N. Ocean Drive  
Lauderdale-By-The-Sea, Florida 33308  
Telephone: 954-776-0576  
Facsimile: 954-776-1857

Copy to:                   Susan L. Trevarthen, Town Attorney  
200 East Broward Blvd. Suite 1900  
Fort Lauderdale, Florida 33301  
Telephone: 954-763-4242  
Facsimile: 954-764-7700

REVOCABLE LICENSE AGREEMENT

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For Licensee: Beach Restaurant, Inc  
101 E. Commercial Blvd.  
Lauderdale-by-the-Sea, Florida 33038

31 IN WITNESS WHEREOF the parties hereto have executed this Agreement on this  
day of August, 2010.

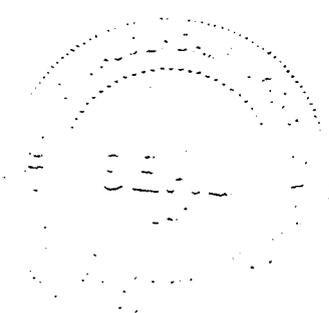
TOWN OF LAUDEDALE-BY-THE-SEA

By: [Signature]  
Name: Connie Hoffman  
Title: Interim Town Manager

ATTEST:  
[Signature]  
Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:  
[Signature]  
Town Attorney

LICENSEE:  
Beach Restaurant, Inc.  
By: [Signature]  
Name: Joseph Breanna  
Title: CFO



## Exhibit "A"

### Revocable License Agreement for Valet Parking Regulations for the Valet Service

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The purpose of the following regulations is to create a safe and workable location for the operation of a valet transfer point in the public right-of-way that does not unduly interfere with the public's use of the sidewalk or of El Mar Drive. The valet service, referred to herein as "Valet Service", has the responsibility and obligation to transport vehicles in a safe and conscientious manner that protects the public welfare at all times.

1. Sidewalk: The Valet Service shall ensure that the sidewalk will not be blocked at any time due to Valet Service's operations, including without limitation, by the key booth, valet employees, or signage.
  2. The Valet key booth shall be located in street near bike rack, but never to interfere with parking of bicycles.
  3. Valet may have two signs at the transfer point announcing its service. One sign may be on the key booth and one sandwich sign (no larger than approximately 2ft by 3ft 10 in.) shall be placed near the end of the stacking lane. The price of Valet services shall be listed on the sandwich sign and may be listed on the key booth sign. The text of both signs shall include "Public Valet" or similar text and shall be approved by the Town Manager prior to use.
  4. All Valet staff shall wear a standardized shirt, which shall be different in color from existing valet services in the downtown area so the public can differentiate Valet staff at a distance.
  5. Contact information for the Valet Service company and contracting entity shall be immediately available to the public upon request.
  6. The Valet's permissible use of the transfer location begins at 3:00 PM and concludes at approximately 2 AM.
  7. Valetted vehicles shall not be parked at any Town parking meter.
  8. The Town may direct adjustments in the routes used by the Valet for traffic control purposes.
  9. Valet shall not use west bound Commercial Blvd from El Mar Drive if, at any time, all of the vehicles on this section of Commercial Blvd cannot proceed westbound in a single cycle of the traffic light.
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## REVOCABLE LICENSE AGREEMENT

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10. Valet shall remove all litter within the area of the transfer point and stacking lane during hours of operations and keep the area free from debris at all times. Valet shall provide a garbage container near the key stand.
11. Stacking area
  - a. Valet shall ensure vehicles in the stacking lane do not hinder the public from entering or leaving the Town's El Mar parking lot or any other area of public traffic.
  - b. Valet shall provide sufficient staff to keep the stacking area from exceeding eight vehicles.
  - c. Valet may use traffic cones to mark the stacking lane if necessary for traffic control.
12. By 4:30 pm each Wednesday, Valet Service shall provide a report of the preceding Sunday thru Saturdays' activities that documents the number of vehicles parked per hour and the total for each day during the reporting week.

# 101 Ocean

August 2, 2011

To whom it may concern,  
Town of Lauderdale-by-the-Sea

We understand that our valet parking license is up for renewal towards the end of this month.

We would respectfully ask that our license be renewed for a further term as we think that it is beneficial to the town as a whole and we have had very few complaints or problems.

Can I please request that this item is put on the agenda for the next commission meeting which I believe is on August 23<sup>rd</sup> 2011.

Thanking you in anticipation,



Joseph Brennan  
Beach Restaurants Inc.