PARKING LICENSE AGREEMENT

THIS PARKING LICENSE AGREEMENT ("The Agreement") is effective this 1st day of October, 2014 by and between the **CITY OF DELRAY BEACH**, a Florida municipal corporation (the "**CITY**"), and **The Avenue Bar & Grill, d/b/a 32 East,** a Florida corporation ("**LICENSEE**").

WITNESSETH:

WHEREAS, it has been determined that valet parking in commercial areas can reduce issues caused by vehicular traffic; and

WHEREAS, valet parking also increases the number of available parking spaces in the City; and

WHEREAS, providing a process for obtaining a valet parking license enables the City to allow commercial businesses to have valet parking, while being able to monitor its usage; and

WHEREAS, **LICENSEE** has requested permission to use a certain number of public parking spaces along Atlantic Avenue and certain side streets for valet parking queues; and

WHEREAS, in order to use the parking spaces, the **CITY** requires that **LICENSEE** enter into this non-exclusive License Agreement.

NOW THEREFORE, in consideration of the sum of Ten Dollars ($10.00), the mutual covenants and conditions contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Incorporation of Recitals**. The parties hereby represent and warrant that the above recitals are accurate and correct and hereby incorporate them into this Agreement.

2. **Valet Parking Queues**. The **CITY** agrees to allow **LICENSEE** the non-exclusive use eight (8) parking spaces located on the south side of East Atlantic Avenue between Swinton and SE 1st Avenues to create a valet parking queue in order to provide valet parking services to the public. The valet parking queue must be open every day between the hours of 5:00 PM and 2:00 AM, twelve months a year. **LICENSEE** acknowledges that the valet parking queues may be relocated or unavailable for use during certain special events from time to time

(as determined in the **CITY's** sole discretion), and during these special events, the license may not be valid. The valet queue locations may from time to time be relocated by the **CITY** in its sole discretion after providing thirty (30) days written notice to **LICENSEE**. The **LICENSEE** shall not restrict the use of the valet parking queue to only persons who are using the **LICENSEE's** business. The valet parking queue must be open to anyone wanting to use the valet parking service offered by **LICENSEE**.

3. **Parking Locations**. **LICENSEE** will ensure that, its employees and/or any valet operator hired by the **LICENSEE** will park cars in private parking lot(s) leased to the **LICENSEE** for that purpose. **LICENSEE** will ensure that its employees, and/or any valet operator hired by **LICENSEE** will not park any cars in on-street or off-street parking spaces owned and/or maintained by the **CITY**. Upon execution of this license agreement and at the CITY's request **LICENSEE** must provide the **CITY** with a lease agreement(s) naming the **LICENSEE** as the lessor for use of a private parking lot(s) containing sufficient capacity as determined by staff and that complies with the City requirements for parking lots as described in the City's Land Development Regulations. If the lease changes the **LICENSEE** must provide the **CITY** with a copy of the new lease agreement within thirty (30 days). Failure to comply with the requirement of this section will be a basis for termination of this License Agreement.

4. **Staffing.** **LICENSEE** agrees that the valet parking queues will be staffed by a minimum of two (2) people, with one (1) person dedicated to oversee the queue to ensure that the valet service is operated in a manner that will not result in illegal parking in the queue or stacking and/or blocking of the travel ways of any alleyway, public street, or parking lot. Upon execution of this license agreement, **LICENSEE** must provide the **CITY** with a copy of its agreement with the valet operator (if any), and a copy of the valet operator's current insurance certificate as set forth in Exhibit "A".

5. **Payment**. **LICENSEE** agrees to pay the **CITY** One Hundred Thirteen Dollars and 56/100 per space by the tenth (10^{th}) day of each month. This fee shall be increased by three percent (3%) annually. A late fee of five percent (5%) will be charged after this date. If more than one License Agreement is issued for this valet parking queue, the fee will be shared proportionately. Only one (1) valet operator will be permitted to operate the queue. **LICENSEE**

shall pay one (1) month's fee in advance of beginning operation of the valet parking queue as a security deposit. This deposit is due when the signed agreement is submitted to the CITY and shall be held by the **CITY** in a non-interest bearing account and returned upon written request subsequent to termination of this License Agreement, provided that **LICENSEE** is not in arrears at time of termination. Only one, (1), security deposit per **LICENSEE** shall be required.

6. **Maximum Parking Fee Permitted.** At no time shall valet parking fees for the first four (4) hours exceed Ten Dollars ($10.00). An extended stay fee in the amount of five dollars ($5) may be assessed to all vehicles parked in excess of four (4) hours west of the Intracoastal Waterway. Valet prices must be prominently displayed on the valet stand and the associated signage as described in Section 7. Extended stay fees are excluded from validation discounts. Customer tickets must be time stamped upon arrival to qualify.

7. **Signage**. The **CITY** agrees to place signs at the valet parking queue that display the valet parking times and days of service. **LICENSEE** may use additional signs to advertise the valet service. All valet stands and signage must display the words "OPEN TO THE PUBLIC" in lettering no less than three inches (3") in height on valet stands and two inches (2") in height on all other signage. All lettering must be of similar color and font as the lettering on associated signs. All signage must comply with the City's Sign Code as described in the Land Development Regulations and are subject to the approval of the City Manager or his/her designee. Sandwich board signs may not be used to advertise the valet service.

8. **Valet Equipment**. The **LICENSEE** may install a moveable, temporary, valet desk for the storage of keys on the sidewalk during the hours of valet service so long as the desk does not impede the pedestrian flow. All uniforms of the personnel operating the valet service must display "VALET" across the back, in no less than two inch (2") block lettering, and the name of the LICENSEE on the front, left, upper torso. Corporate logos are permitted. Shirts should have collars and be light in color for optimal visibility after dark.

9. **Validation Programs**. **LICENSEE** shall provide a validation program with neighboring businesses interested in validating parking for customers in any of the following ways:

a) **Donation of Spaces:** A neighboring business may provide, by lease or

otherwise, the private parking spaces as required in Section 3. The costs to insure the private spaces provided shall be the responsibility of business that is providing the private parking spaces.

b) **Financial Donation**: Neighboring businesses may contribute towards the total costs associated with this License Agreement, including the requirement of the private parking lot(s), in exchange for validation of their customer's vehicles by the **LICENSEE**. In no case shall their contribution exceed the total cost of the valet parking queue and the private parking lot. For example, if a neighboring business contributes to the costs associated with this License Agreement, the neighboring business will contribute no greater than fifty percent (50%) of the total. If two neighboring businesses contribute to the costs associated with this License Agreement, the neighboring business will each contribute no greater than thirty-three percent (33%) of the total.

c) **Coupon Program**: **LICENSEE** may offer the sale of coupons to neighboring businesses who want to provide validated parking to customers.

10. **Term and Renewal.** The term of this Agreement shall be for three (3) years. If the **LICENSEE** has an account in arrears and/or is unable to provide proof of valid lease(s) and insurance annually by October 1st each year, the license may be suspended –until required payment and/or documentation is received.

11. **Revocable License**. This Agreement is only a nonexclusive License Agreement and may be revoked by the **CITY** at any time with or without cause during the initial term or any renewals thereof upon by providing written notice via U.S. Mail, certified, return receipt requested, to **LICENSEE.** The revocation shall be effective when mailed. **LICENSEE** may cancel the agreement by providing written notice of cancellation no less than thirty (30) days prior to cancellation.

12. **Compliance with Laws**. **LICENSEE** agrees to comply and adhere to all state laws and local ordinances regarding parking either now existing or as amended from time to time.

13. **ADA Compliant Parking. LICENSEE** acknowledges that handicapped parking spaces in leased private parking lots are subject to statutory regulation and may only be used for

parking vehicles that have a valid ADA-compliant license plate or hanging placard issued by any state. Direct access to the valet parking space must be provided for vehicles unable to be operated by valet attendants or for customers who need a safe area to unload passengers with disabilities. Regular valet parking fees apply.

14. **Notice**. Notices required to be provided pursuant to this Agreement shall be sent to the following addresses:

To CITY: City Manager
100 N.W. 1st Avenue
Delray Beach, Florida 33444

To LICENSEE: 32 EAST
32 E. Atlantic Ave
Delray Bch, FL 33444

15. **Insurance**. **LICENSEE** agrees to provide the **CITY** with insurance for the valet service in the amounts and under the conditions prescribed in Exhibit "A" which shall at all times remain current. The City of Delray Beach shall be named an additional insured and certificate holder.

16. **Indemnification**. In consideration of the payment of Ten Dollars ($10.00), receipt of which is hereby acknowledged, **LICENSEE** shall protect, defend, indemnify and hold harmless the CITY from and against any and all claims, suits, actions, damages and/or causes of action arising during the Term of this Lease for any personal injury, loss of life and/or damage to property sustained in or about the parking spaces/queues by reason or as a result of the use and occupancy of the parking spaces/queues by **LICENSEE**, its agents, employees, licensees, invitees, and members of the public generally, and from and against any orders, judgments, and/or decrees which may be entered thereon, and from and against all costs, attorney fees, expenses and liabilities incurred in and about the defense of any such claim. In the event the **CITY** shall be made a party to any litigation commenced against **LICENSEE** or by **LICENSEE** against any third party, then the **LICENSEE** shall protect, defend, indemnify and hold the CITY harmless and pay all costs and attorney's fees incurred by the **CITY** in connection with such

litigation, and any appeals thereof.

17. **Third Parties.** Nothing in this license agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this license agreement upon any person other than the parties hereto and their respective heirs, successors, legal representatives, and permitted assigns, nor is anything in this license agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this license agreement, nor shall any provision thereof give any third person any right of subrogation or action over or against any party to this Agreement.

18. **Violations**. **LICENSEE** will at all times comply with the terms and provisions of the License Agreement. The following conduct is a violation of this License Agreement and will subject the **LICENSEE** to the penalties described in Section 19.

a) Parking cars in either on-street or off-street public parking spaces;

b) Parking cars in the designated parking queues;

c) Double-parking unattended vehicles in the valet parking queue area;

d) Expanding the designated parking queue;

e) Inappropriate behavior of the valet operators which shall include, but not be limited to:

i. Any instance of the use of language that is obscene, risqué or religiously, ethnically or sexually demeaning, or making light of physical or mental disability, regardless of whether it is directed at a customer, passerby or another employee.

ii. Any instance of belligerent or malicious behavior toward a customer, passerby or another employee.

iii. Striking, hitting, kicking, spitting at or on customers or other employees, visitors, guests or passersby.

iv. Littering in landscape nodes adjacent to queuing areas, associated parking lots, or any **CITY** property.

v. Eating in the presence of customers, or in customer vehicles, whether on or off duty.

vi. Smoking in the presence of customers, in customer vehicles or within twenty-five (25) feet of customer waiting areas.

vii. Willful failure to assist customers.

viii. Willful destruction or damage to any **CITY** property.

ix. Violation of uniform dress standards and/or wearing inappropriate attire (for example, provocative clothing, beach apparel, or visible undergarments).

x. Reckless or unsafe driving including failure to stop at train crossings, rolling through stop signs, speeding or other violation of Florida State Traffic laws.

f) Any conduct that the City believes, in its sole discretion, would jeopardize the health, welfare, and safety of City residents and visitors.

19. **Penalties and Enforcement**. The City Manager or his/her designee(s) shall enforce the provisions of this License Agreement, including the location, time, days of the valet service, parking limitations and requirements, conduct of operators, and compliance with all applicable laws and ordinances.

a) A LICENSEE who violates or allows a violation of any provision of this License Agreement shall be subject to the following penalties:

First violation of each offense:	Warning
Second violation of each offense:	$200
Third violation of each offense:	$500
Fourth violation of each offense:	Termination of License

b) A code or law enforcement officer who finds a violation of this License Agreement may issue a notice of violation that states the nature of the violation, the date and the time of the violation, and the procedure to follow in order to pay the penalty or contest the notice. A copy of the notice will be sent to the City Manager. Failure to make payment or contest the notice within thirty (30) days of receipt of the notice will result in termination of the Agreement.

c) The **LICENSEE** may appeal the violation to the City Manager or his or her designee.

d) The accumulation of violations shall be limited to each contract year and will start anew on October 1st each year.

e) **LICENSEE** acknowledges that, notwithstanding the foregoing, the **CITY,** in its sole discretion, may remove or prevent a valet attendant from providing service at any and all City Of Delray Beach valet parking queues at any time as determined by the City Manager or his/her designee. The use of an off-duty police officer at the valet parking queue may be required as determined by the City Manager.

20. **Taxes**. **LICENSEE** shall pay and comply with all laws regarding taxes, levies, assessments, fees and charges, including, but not limited to gross receipts, taxes, use taxes, property taxes, and sales taxes that may be imposed.

21. **Assignment.** This Agreement shall not be transferred or assigned without the express written consent of the **CITY**, no less than 30 days prior to such transfer or assignment which the **CITY** may withhold granting in its sole discretion.

22. **Further Assurances**. The parties shall from time to time execute and deliver such other and further instruments and documents and do all matters and things which may be convenient or necessary to more effectively and completely carry out the intent of this License Agreement.

23. **Binding Effect**. All of the terms and provisions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto and their respective heirs, successors, legal representatives, and permitted assigns.

24. **Public Records**. **LICENSEE** shall comply with all public records laws in accordance with Chapter 119, Fla. Stat. In accordance with state law, **LICENSEE** agrees to:

a) Keep and maintain all records that ordinarily and necessarily would be required by the **CITY**.

b) Provide the public with access to public records on the same terms and conditions that the **CITY** would provide for the records and at a cost that does not exceed the costs provided in Chapter 119, Fla. Stat. or as otherwise provided by law.

c) Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law.

d) Meet all requirements for retaining public records and transfer, at no cost, to the **CITY** all records in possession of the **LICENSEE** at the termination of the contract and destroy any public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the **CITY** in a format that is compatible with the information technology systems of the **CITY**. All records shall be transferred to the **CITY** prior to final payment being made to the **LICENSEE**.

e) If **LICENSEE** does not comply with this section, the **CITY** shall enforce the contract provisions in accordance with the contract and may unilaterally cancel this contract in accordance with state law.

25. **Inspector General. LICENSEE** is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this contract, and may demand and obtain records and testimony from **LICENSEE** and its sub licensees and lower tier sub licensees. **LICENSEE** understands and agrees that in addition to all other remedies and consequences provided by law, the failure of **LICENSEE** or its sub licensee or lower tier sub licensees to fully cooperate with the Inspector General when requested may be deemed by the **CITY** to be a material breach of this Agreement justifying its termination.

27. **Entire Agreement.** This Agreement shall constitute the entire agreement of the parties with respect to the subject matter of it. All prior understandings and agreements between the parties with respect to such matters are merged into this Agreement, which alone fully and completely expresses their understanding.

28. **Amendments**. This Agreement may not be amended, modified, altered, or charged in any respect except by a further agreement in writing duly executed by each of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on their behalf this 31st day of December, 2014.

THE CITY OF DELRAY BEACH,

ATTEST:

City Clerk

By: _____
Cary D. Glickstein, Mayor

Approved as to form:

City Attorney

Jeff Simon
State of Florida
My Commission Expires 03/11/2018
Commission No. FF 100532

LICENSEE:

By: Barbara Straub
Print Name: BARBARA STRAUB
Title: PRES.

(CORPORATE SEAL)

STATE OF Florida

COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me this 18th day of December, 2014, by Barbara Jean Straub, as President (name of officer or agent, title of officer or agent), of 32 East (name of corporation acknowledging), a Delray Beach (state or place of incorporation) corporation, on behalf of the corporation. He/She is personally known to me or has produced Drivers License (type of identification) as identification.

Jeff Simon
Signature of Notary Public – State of Florida

EXHIBIT "A"

INSURANCE REQUIREMENTS

1. Workers' Compensation per the Statutory limits of the State of Florida to include Employer's Liability Insurance with limits of at least $100,000/$500,000/$100,000.

2. Garage Liability Insurance of at least $1,000,000 combined single limits per occurrence to protect the City against all risks of injury to persons (including death) or damage to property wherever located resulting from any action or operation under the contract or in connection with the work. This policy is to provide coverage for premises/operations including auto liability, independent contractors, broad form contractual liability, products/completed operations.

3. Garage Keepers Insurance with limits of no less than $60,000 per auto, with an annual aggregate of $500,000.

4. Automobile Liability of at least $300,000 combined single limits per occurrence for owned/non-owned/hired automobiles connected with the business.

5. The City of Delray Beach and **PRIVATE LOT OWNERS** must be named as additional insureds on the liability policies; and they must be stated on the certificate.

6. Thirty (30) days written cancellation notice required.

7. Best's guide rating B+, VIII or better, latest edition.