

**USE AND OCCUPANCY AGREEMENT**

This Use and Occupancy Agreement ("Agreement") is made as of the 30 day of October, 2017 by and between the **CITY OF ATLANTIC CITY**, whose address is 1301 Bacharach Boulevard, Atlantic City, New Jersey 08401 (hereinafter referred to as "City") and **ATLANTIC PIER AMUSEMENTS** whose address is 1000 Boardwalk, Atlantic City, NJ 08401. **ATLANTIC PIER AMUSEMENTS** and the City may be referred to hereinafter singly as "**ATLANTIC PIER AMUSEMENTS**" and "the City" and collectively as the "Parties".

**Recitals**

A. **ATLANTIC PIER AMUSEMENTS** has a short term need, about four months, to use and occupy unused space for storage; and

C. The City of Atlantic City (the "City") is the owner of property known as Bader Field and Sandcastle Stadium as shown on the Tax Map of the City as Block 794, Lot 1, (the "Property") and recognizes that **ATLANTIC PIER AMUSEMENTS** needs a place for storage; and

D. **ATLANTIC PIER AMUSEMENTS** is desirous of using and occupying approximately 1920 square feet of unused space located on Bader Field for the purpose of parking approximately 10 semi-truck utility trailers; and

E. The Parties intend by this Agreement to set forth the terms and conditions under which **ATLANTIC PIER AMUSEMENTS** may use and occupy unused space on the Property for storage and staging in exchange for a fee of \$.18 per square foot of used space, paid monthly; and

**NOW, THEREFORE**, in consideration of the foregoing, the mutual covenants and promises, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **ATLANTIC PIER AMUSEMENTS** will be permitted to use and occupy approximately 1920 square feet of unused spaces located at Bader Field subject to the terms and conditions of this Agreement. No other person or entity shall be permitted to use or occupy the spaces provided to **ATLANTIC PIER AMUSEMENTS**.
2. No legal title or leasehold interest in the Property shall be deemed or construed, created or vested in **ATLANTIC PIER AMUSEMENTS** by an Agreement. It is expressly understood and agreed that **ATLANTIC PIER AMUSEMENTS** is not a tenant, the City is not a landlord, and that **ATLANTIC PIER AMUSEMENTS** does not have any rights, whatsoever, as may exist under applicable Landlord – Tenant law or any other similar State or local laws or regulations.
3. **ATLANTIC PIER AMUSEMENTS** shall pay to the City, a monthly use and occupancy fee equivalent to \$.18 per square foot of used space paid monthly and due on earlier date of the date of occupancy on within 15 days of execution of an Agreement.
4. Ernest Coursey to be responsible for fencing.

5. ATLANTIC PIER AMUSEMENTS 's right to use and occupy the Property in accordance with an Agreement shall begin at date of execution of this agreement and shall automatically terminate 120 days from the date of execution at midnight, eastern prevailing time, (the "Termination") unless both parties agree to extend the agreement for an additional term.
6. In case of the destruction or damage of any kind whatsoever to the Property or any portion thereof, other than due to the City's sole negligence, which results in ATLANTIC PIER AMUSEMENTS not being able to use its designated portion of the Property, ATLANTIC PIER AMUSEMENTS shall immediately, as practical, vacate the Property, unless consent has been requested and received in writing.
7. The City shall have the right to terminate this Agreement at any time upon thirty (30) days written notice in its sole discretion.
8. ATLANTIC PIER AMUSEMENTS shall hold harmless and indemnify the City for all cost, liabilities and claims arising out of or related to the existence, maintenance, or use of the said use and occupancy of the City's Property, or any use of the City's Property by ATLANTIC PIER AMUSEMENTS. ATLANTIC PIER AMUSEMENTS further agrees to indemnify, defend and hold the City, its members and employees harmless from and against any loss, claims, expense or liability, including attorney's fees, arising out of or related to the loss or damage to ATLANTIC PIER AMUSEMENTS 's personal property or injury or harm to third persons resulting from of or related to ATLANTIC PIER AMUSEMENTS's use and occupancy hereunder. ATLANTIC PIER AMUSEMENTS shall further release the City from any and all responsibility or liability, whatsoever, for any loss or damage to ATLANTIC PIER AMUSEMENTS 's personal property or injury to third parties caused by and during ATLANTIC PIER AMUSEMENTS 's use or occupancy of the Property.
9. All notices shall be sent by certified mail, return receipt requested, to all Parties and are deemed received when sent. Notices shall be sent to the addresses of ATLANTIC PIER AMUSEMENTS and the City as set forth in this Agreement.
10. This Agreement is binding on and shall inure to the benefit of the Parties, their successors, and assigns. Notwithstanding anything to the contrary herein, ATLANTIC PIER AMUSEMENTS acknowledges and agrees that ATLANTIC PIER AMUSEMENTS shall not have the right to assign this Agreement.
11. This Agreement contains the entire agreement of the Parties as it pertains to the use and occupancy of the Property and shall not be modified, altered or changed unless in writing and signed and delivered by all the parties hereto.
12. This Agreement has been entered into solely for the benefit of the Parties. The Parties, by entering into this Agreement, do not intend to benefit any other third party and do not intend to bestow upon any third party any rights or entitlement. The Parties do not intend to create a right in any third party to compel performance of, or to otherwise assert any rights hereunder.
13. This Agreement may be signed in counterparts, all of which when taken together shall constitute a single agreement.

OCT-25-2017 WED 12:07 PM MAYORS OFFICE CITY OF AC FAX NO. 6093475628

P. 04

- 14. This Agreement shall not be recorded by the City. The filing or recordation of this Agreement in violation of this provision shall be deemed a default of this Agreement.
- 15. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date set forth on the first page hereof.

Witness:

By:

ATLANTIC PIER AMUSEMENTS

By: Anthony Catanoso  
Title: President and CEO

Witness:

Paula Geletei  
Paula Geletei,  
City Clerk

THE CITY OF ATLANTIC CITY

  
By: Donald Guardian  
Title: Mayor

Approved as to the form of the Agreement by the city of Atlantic City Solicitor's Office

  
Karl Timbers, Asst. City Solicitor

Date: 10/27/2017

# Resolution of the City of Atlantic City

No. 580

Approved as to Form and Legality on Basis of Facts Set Forth

Factual contents certified to by

Assistant City Solicitor /s/ Karl Timbers, Esq.

Director of Revenue & Finance, Michael Stinson

Prepared by City Solicitor's Office

Council Members RANDOLPH & SHABAZZ present the following Resolution:

## RESOLUTION AUTHORIZING A USE AND OCCUPANCY AGREEMENT WITH STEEL PIER ASSOCIATES, LLC FOR STORAGE OF TRAILERS AND EQUIPMENT

**WHEREAS**, STEEL PIER ASSOCIATES, LLC has a short term need, between two and three months, to use and occupy unused space for storage; and

**WHEREAS**, the City of Atlantic City (the "City") is the owner of property known as Bader Field and Sandcastle Stadium as shown on the Tax Map of the City as Block 794, Lot 1, (the "Property") and recognizes that STEEL PIER ASSOCIATES, LLC needs a place for storage; and

**WHEREAS**, STEEL PIER ASSOCIATES, LLC is desirous of using and occupying a certain square footage of unused space located on Bader Field for the purpose of parking approximately 10 semi-truck utility trailers; and

**WHEREAS**, the parties intend by an Agreement to set forth the terms and conditions under which STEEL PIER ASSOCIATES, LLC may use and occupy unused space on the Property for storage in exchange for a fee of \$.18 per square foot of used space paid monthly; and

**WHEREAS**, City Council finds and declares that the public interest of the City will not be harmed by the granting of a Use and Occupancy agreement; and

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Atlantic City, that for the consideration of \$.18 per square foot of used space, paid monthly by STEEL PIER ASSOCIATES, LLC, the Mayor is hereby authorized to execute and the City Clerk to attest to a short term use and occupancy agreement to authorize STEEL PIER ASSOCIATES, LLC to use and occupy unused space at Bader Field for storage subject to the following terms and conditions:

1. STEEL PIER ASSOCIATES, LLC will be permitted to use and occupy approximately a certain square footage of unused spaces located at Bader Field subject to the terms and conditions of an Agreement. No other person or entity shall be permitted to use or occupy the spaces provided to STEEL PIER ASSOCIATES, LLC.
2. No legal title or leasehold interest in the Property shall be deemed or construed, created or vested in STEEL PIER ASSOCIATES, LLC by an Agreement. It is expressly understood and agreed that STEEL PIER ASSOCIATES, LLC is not a tenant, the City is not a landlord, and that STEEL PIER ASSOCIATES, LLC does not have any rights, whatsoever, as may exist under applicable Landlord – Tenant law or any other similar State or local laws or regulations.

3. STEEL PIER ASSOCIATES, LLC shall pay to the City, a monthly use and occupancy fee equivalent to \$.18 per square foot of used space paid monthly and due on earlier date of the date of occupancy on within 15 days of execution of an Agreement.
4. STEEL PIER ASSOCIATES, LLC 'S right to use and occupy the Property in accordance with an Agreement shall begin at date of execution of this agreement and shall automatically terminate 90 days from the date of execution at midnight, eastern prevailing time, (the "Termination") unless both parties agree to extend the agreement for an additional term.
5. In case of the destruction or damage of any kind whatsoever to the Property or any portion thereof, other than due to the City's sole negligence, which results in STEEL PIER ASSOCIATES, LLC not being able to use its designated portion of the Property, STEEL PIER ASSOCIATES, LLC shall immediately, as practical, vacate the Property, unless consent has been requested and received in writing.
6. The City shall have the right to terminate this Agreement at any time upon fifteen (15) days written notice in its sole discretion.
7. STEEL PIER ASSOCIATES, LLC shall hold harmless and indemnify the City for all cost, liabilities and claims arising out of or related to the existence, maintenance, or use of the said use and occupancy of the City's Property, or any use of the City's Property by STEEL PIER ASSOCIATES, LLC . STEEL PIER ASSOCIATES, LLC further agrees to indemnify, defend and hold the City, its members and employees harmless from and against any loss, claims, expense or liability, including attorney's fees, arising out of or related to the loss or damage to STEEL PIER ASSOCIATES, LLC 's personal property or injury or harm to third persons resulting from of or related to STEEL PIER ASSOCIATES, LLC's use and occupancy hereunder. STEEL PIER ASSOCIATES, LLC shall further release the City from any and all responsibility or liability, whatsoever, for any loss or damage to STEEL PIER ASSOCIATES, LLC 's personal property or injury to third parties caused by and during STEEL PIER ASSOCIATES, LLC 's use or occupancy of the Property.

KT October 27, 2017 12:53 PM

DO NOT USE SPACE BELOW THIS LINE													
RECORD OF COUNCIL VOTE ON FINAL PASSAGE													
COUNCIL MEMBER	AYE	NAY	N.V	A.B.	MOT.	SEC.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	MOT.	SEC.
CHENG	X						MARSH	X					
DELGADO	X						RANDOLPH	X				X	
GILLIAM	X						SHABAZZ	X					X
KURTZ	X						TIBBITT	X					
							SMALL, PRESIDENT	X					
X-Indicates Vote    NV-Not Voting    AB-Absent    MOT-Motion    SEC-Second													

This is a Certified True copy of the Original Resolution on file in the City Clerk's Office.

DATE OF ADOPTION: OCTOBER 18, 2017

/s/ Paula Geletei, City Clerk