

This Instrument prepared  
by and return to:  
James Brako, Assistant City Attorney  
City of Ft. Lauderdale  
100 N. Andrews Avenue  
Ft. Lauderdale, FL 33301

**AGREEMENT ANCILLARY  
TO  
REVOCABLE LICENSE AGREEMENT  
("Agreement")**

THIS IS AN AGREEMENT ANCILLARY TO A REVOCABLE LICENSE AGREEMENT (hereinafter "Agreement") made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2020 by and between:

LO3 Investors, LLC, a Delaware limited liability company, whose principal address is 850 Third Avenue, New York, NY 10022, FEI/EIN # 82-3074939, its successors and assigns (hereinafter "LICENSEE")

and

The District Board of Trustees of Broward College, Florida, a state college under the Florida College System having a principal address of 111 East Las Olas Boulevard, Fort Lauderdale, FL 33301 (hereinafter, "Broward College")

and

**CITY OF FORT LAUDERDALE**, a municipal corporation of the State of Florida having a principal address of 100 North Andrews Avenue, Fort Lauderdale, FL 33301, FEI/EIN 59-6000319 (hereinafter, "CITY")

**R E C I T A L S**

WHEREAS, the CITY, LICENSEE and Broward College are about to enter into a Revocable License Agreement with Broward County, a political subdivision of the State of Florida (hereinafter, "COUNTY") relative to LICENSEE'S installation and maintenance of certain landscaping, public sidewalk and irrigation and related improvements in the SE 3<sup>rd</sup> Avenue right-of-way, the installation and maintenance of such improvements being subject to certain terms and conditions; and

WHEREAS, the Revocable License Agreement with LICENSEE, COUNTY, Broward College and CITY is attached hereto as **Exhibit “A”** and incorporated herein by reference (hereinafter, “RLA”); and

WHEREAS, pursuant to the Florida Transportation Code, SE 3<sup>rd</sup> Avenue is within the County Road System; and

WHEREAS, Broward College and Licensee entered into a ninety-nine (99) year lease (the “Lease”) under which Licensee became the entity responsible for the ongoing management of the Property (as defined below) which is adjacent to SE 3<sup>rd</sup> Avenue; and

WHEREAS, Licensee is in the process of developing the Property and, in connection therewith desires to construct certain improvements in the SE 3<sup>rd</sup> Avenue right of way, as more particularly described in the RLA; and

WHEREAS, there are a number of provisions in the RLA whereby CITY accepts responsibility for the ongoing maintenance and repair of the Revocable License Area set forth in **Exhibit “B”** of the RLA, identified as “Location Map,” should the Licensee fail to comply with the maintenance and repair provisions of the RLA.

WHEREAS, Paragraph 2.6 of the RLA provides:

If Licensee fails to perform or comply with any terms or conditions of this Agreement, and upon Licensee’s, Broward College’s and Municipality’s receipt of written notice from the Director of the same, Municipality will immediately be responsible for, and assume Licensee’s responsibilities and obligations for the ongoing maintenance repair and replacement of the Improvements. Municipality, at its sole cost, will then have thirty (30) days to return the Revocable License Area to a condition acceptable to the County as determined in the sole discretion of the Director. County shall not be obligated to proceed against Licensee or exhaust and other remedies it may have against Licensee or Municipality prior to enforcing Municipality’s obligations under Paragraph 2.6.

WHEREAS, in order to induce the CITY into entering the RLA with the COUNTY and LICENSEE, as a condition precedent to executing the RLA, CITY is requiring LICENSEE to enter into this Agreement with CITY;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and other good and valuable considerations, the sufficiency and adequacy of which is hereby acknowledged, LICENSEE, Broward College and CITY agree as follows:

**1. Recitals.** The foregoing recitals are 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 CITY's Chief Executive Officer, its CITY Manager, or his or her designee.

*Agreement* means this Agreement Ancillary to Revocable License Agreement.

*Contract Administrator* means the City Engineer of the CITY, or his designee. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Contract Administrator.

*Day(s)*. In computing any period of time expressed in day(s) in this Agreement, 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* means the effective date of this Agreement, which shall be the date upon which both (i) this Agreement is executed by the proper corporate officials for LICENSEE and (ii) CITY and (iii) the RLA is executed by all parties thereto, and (a) the RLA and (b) this Agreement are recorded in the Public Records of Broward County, Florida and copies of the recorded instruments are delivered to the City's Clerk and the City's Contract Administrator.

*Florida Building Code* means The Florida Building Code adopted pursuant to Chapter 553, Florida Statutes and includes the Broward County Amendments thereto.

*License Area* means that area identified as "Legal Description of Licensed Area" as set forth in **Exhibit "A"** to the RLA and as further identified pictorially as "Revocable License Area" on Sheet 1 of **Exhibit "B"** to the RLA and legally described on Sheets 1, 2 and 3 of 3 of **Exhibit "B"** to the RLA .

*LICENSEE* means LO3 Investors, LLC, a Delaware limited liability Company whose principal address is c/o Shorenstein Properties, LLC, 850 Third Avenue, New York, NY 10022, FEI/EIN # 82-3074939.

*Permit* means either a Building Permit issued by the Building Official pursuant to The Florida Building Code and Broward County Administrative Amendments thereto or an Engineering Permit issued by the Broward County, or both, whichever the case may be.

*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.

*Plans and Specifications* means the signed and sealed engineering drawings, plans, specifications, schematics, drawings, details, and topographic survey for the Project Improvements to be installed, constructed, operated, maintained, repaired within and removed from the License Area(s), which such plans, specifications, drawings, details, etc. are on file in the Building Department under **Master Permit No. PM-18021610**.

*Project* means the implementation, construction, installation, operation, maintenance, repair and replacement from time to time of the Project Improvements within the designated License Area for the purpose of establishing, operating, maintaining and repairing, from time to time the Project Improvements as more particularly identified in **Exhibit “C”** to the RLA. The term *Project* also includes the ongoing obligation of maintenance and repair of the Project Improvements within the designated License Area, including reconstruction, repair or reinstallation of Project Improvements from time to time as more particularly set forth in the RLA. The term *Project* shall not include the possession, use or occupancy of the designated License Areas for any other purpose, except as expressly authorized in this Revocable License. The term *Project* includes any portion thereof.

*Project Improvements* means the placement, installation, construction, fabrication of certain improvements within the License Area as more particularly identified in Exhibit “C” to the RLA. The term *Project Improvements* includes any portion thereof. The Project Improvements are demonstrated on **Exhibit “C”** to the RLA.

*Property* means the real property identified as the “Legal Description of Burdened Parcel” as set forth in **Exhibit “A”** to the RLA.

*RLA* means that Revocable License Agreement by and between COUNTY, CITY Broward College and LICENSEE relative to LICENSEE’s installation and maintenance of certain landscaping, public sidewalk and irrigation and related improvements in the South Andrews Avenue right-of-way, the installation and maintenance of such improvements being subject to certain terms and conditions. The RLA is attached to this Agreement as **Exhibit “A”**.

*Staging of Materials or Equipment* means the placement of materials or equipment or parking of vehicles within the License Area or vehicular travel lanes adjacent thereto during the assembling or construction of the Project Improvements 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. Staging of Materials or Equipment shall include equipment or materials off-loaded from a vehicle and placed within the License Area when not being installed within or removed from the License Area to Licensee’s Property as soon as practicable.

*Storage* is synonymous with *Staging of Materials or Equipment* during the assembling or construction of the Project Improvements and shall mean the placement of materials or equipment within the License Area or any public right of way within two blocks of the Property in such a manner as would constitute *Staging of Materials or Equipment* if the materials or equipment were within the License Area.

**3. Compliance and Default.** LICENSEE shall comply with each and every term and condition set forth in the RLA and failure to so comply and following the expiration of any applicable notice and cure period, shall constitute a default under this Agreement. Any acts or omissions by LICENSEE or LICENSEE'S contractors which are not in compliance with the terms and conditions of the RLA shall constitute a default under this Agreement. Furthermore, LICENSEE shall comply with each and every term and conditions set forth in this Agreement.

**4. Conditions.** This Agreement is subject to the following conditions:

**4.1** No construction of the Project Improvements shall be commenced prior to issuance of the required Permits.

**4.2** For the License Area where the Project Improvements are to be placed, installed or constructed, prior to construction and installation of Project Improvements within the License Area, CITY, at the discretion of the City Engineer shall perform, at its sole cost and expense, a sub-surface utility investigation.

**4.2.1** In the event defects to any of the subterranean utilities are detected as a result of the sub-surface utility investigation, CITY shall cause to be repaired such defects prior to construction and installation of the Project Improvements.

**4.2.2** In the event no defects to any of the subterranean utilities are detected as a result of the sub-surface utility investigation under 4.2.1., LICENSEE, at the discretion of the City Engineer, shall perform at its sole cost and expense, a second sub-surface utility investigation one (1) year after receiving a Certificate of Completion from the CITY Engineer, and bear the cost of any repairs to the satisfaction of the City Engineer, in the event defects to any of the subterranean utilities are detected as a result of the second sub-surface utility investigation.

**4.3** Any damage to existing pavement or to any publicly owned property or rights-of-way, including public sidewalk areas, caused by the installation, movement or removal of temporary barrier fencing shall be repaired to the satisfaction of the City Engineer and the cost of such repairs shall be borne by LICENSEE.

**4.4** LICENSEE shall provide to the Office of the City Engineer as-built plans, specifications, details and surveys after construction of the Project Improvements.

**4.5** LICENSEE shall be responsible for making all utility notifications and obtaining all locations and clearances prior to performing any excavation work, including for the installation of signs and fence posts.

**4.6** Any damage to existing pavement or to any public sidewalk caused by the installation, movement or removal of Project Improvements shall be repaired to the

satisfaction of the Office of City Engineer and the cost of such repairs shall be borne by LICENSEE.

**4.7** At the conclusion of the construction and installation phase of the Project, all damage caused by Licensee to any elements such as pavement, curbs, sidewalks, signs, markings, landscaping, trees, irrigation, parking meters, light poles, etc. located within the public right of way or License Area shall be repaired or restored to a condition equal to or better than that existing prior to commencement of construction of the Project.

**4.8** Except as expressly set forth herein, storage of construction materials or equipment shall be limited to the Property or other permissible area subject to the limitations referenced herein and shall not be stored within any of the public rights-of-way within a two-block radius of the Property. Except as expressly set forth herein, staging of Materials and Equipment in the public right of ways is strictly prohibited.

**4.9** Storage of dumpsters and debris during the construction and installation phase of the Project shall be limited to the Property and shall not be stored, placed or collected within the any of the public rights-of-way within a two-block radius of the Property.

**4.10** If needed, as determined by the Contract Administrator, during the installation of the Project Improvements, LICENSEE shall provide labor to clean surrounding sidewalks of dirt and debris.

**4.11** All material or equipment deliveries shall be placed within the boundaries of the Property, inside the perimeter fencing for the Property, for off-loading to avoid conflicts with pedestrian traffic.

**4.12** LICENSEE shall be responsible for verifying all underground utilities prior to digging in any area. Licensee shall notify all necessary utility companies 48 hours minimum prior to digging for verification all underground utilities, irrigation and all other obstructions and coordinate prior to initiating operations. No underground portion of the Project Improvements may be located any closer than ten (10) feet to any underground utility.

## **5. Cost Recovery and Fees.**

**5.1 Annual Inspection Fees.** LICENSEE agrees to pay to CITY for each fiscal year that this Agreement is in effect, commencing with the Effective Date hereof and continuing annually on the first day of January of each year thereafter, an annual inspection fee to be determined by the City Manager which such fee shall be based on the CITY'S reasonable projected cost of periodically inspecting the License Area for compliance with the terms and conditions set forth in this Agreement over the then current fiscal year (October 1<sup>st</sup> through September 30<sup>th</sup>), such reasonable projected cost of periodic inspections not to exceed \$ 500.00 per annum.

**5.2 Recovery of Additional Costs of Administration.** In addition to the annual inspection fees set forth above, LICENSEE shall also be obligated to pay additional fees to the CITY amounting to the recovery of reasonable costs incurred by CITY in the creation, administration, monitoring and enforcement of this Agreement and the RLA, including, but not limited to, staff time incurred relative thereto, and reasonable cost of CITY'S attorneys' services associated with the preparation and administration of this Agreement and any amendments thereto and including enforcement of the terms thereof, with such reasonable cost of services not to exceed \$500.00 per annum.

**5.3 Rendition of Statement.** Upon the CITY providing a statement of fees and/or costs to LICENSEE pursuant to Section 5.1 and 5.2 above, LICENSEE shall pay CITY within thirty (30) days the amounts owed in accordance with the Statement. The Statement shall provide sufficient detail as to the nature of the cost, services rendered, inclusive dates services rendered, time consumed and cost relating thereto. For each month beyond thirty (30) days from rendition of the Statement to LICENSEE for which the fee remains unpaid, simple interest of six percent (6%) per annum shall be due the CITY, but not to exceed the highest lawful amount allowed by law. If a dispute arises as to the fees owed CITY under the Statement, and such dispute is not resolved within ninety (90) days after the date of rendition of the Statement, LICENSEE shall pay the undisputed amount and shall provide CITY with a bond or other security acceptable to the City Manager for the disputed amount pending a resolution of the dispute by negotiation or litigation. In addition to any other remedies available to CITY, CITY shall be entitled to recover from LICENSEE all costs of collection, including reasonable attorneys' fees and court costs incurred at all tribunal and appellate levels, provided CITY ultimately prevails.

**6. ADA.** LICENSEE shall have the continuing obligation of compliance with the Americans with Disabilities Act, as same may be amended from time to time, with respect to the Project as it is applicable.

**7. Condition of License Area.** LICENSEE accepts the License Area in an "As-Is Condition as of the Effective Date of this Agreement. If LICENSEE finds any conditions altered after an initial inspection of the License Area, which has a material adverse effect on the Project, the City shall be notified immediately.

**8. Compliance with Regulations of Public Bodies.** LICENSEE shall, at its sole cost and expense, possess, use, construct, operate, maintain and repair and replace, from time to time, the Project Improvements within the License Area and perform such acts and do such things as shall be lawfully required by all applicable laws, rules and regulations applicable to the Project Improvements.

**9. No Property or Contract Right.** LICENSEE expressly acknowledges that pursuant to the terms hereof, except as expressly set forth herein, it gains no property or contract right through this Agreement to the continued possession, use, operation and maintenance of the Project or Project Improvements within the License Area.

**10. Repairs and Maintenance.** LICENSEE shall not commit waste or injury to the License Area or the use, operation and maintenance of the Project Improvements maintained

therein. LICENSEE shall, at its own cost and expense, at all times cause the Project Improvements within the License Area to be safely and securely maintained, kept in good condition, repair, clean, and materially free of rubbish and other hazards to Persons using the License Area. LICENSEE further covenants and agrees, to make or cause to be made any and all repairs or replacements, ordinary or extraordinary, structural or otherwise, necessary to maintain the Project Improvements in their original condition at the time of the commencement of the term of the RLA, normal wear and tear excepted. The Office of the CITY Engineer shall approve all structural repairs and replacements. When making repairs, replacements and maintenance LICENSEE shall comply with all laws, CITY or applicable County Codes, ordinances, Florida Building Code, regulations promulgated by federal, state, county, City or any other agency with jurisdiction over the Project and Project Improvements and CITY Engineering standards then in effect; provided, however, that LICENSEE shall only be responsible to make such repairs and replacements as required under the RLA. The License Area shall be maintained in a neat and orderly appearance at all times.

**10.1 City Performance of Repairs and Maintenance.** In the event that LICENSEE fails to make maintain the Project Improvements or make repairs to the Project Improvements in accordance with the terms and conditions of the RLA and this Agreement, the CITY, after fifteen (15) days advance written notice to the LICENSEE and BROWARD COLLEGE, may come upon the License Area and perform the necessary maintenance and repairs to the Project Improvements, the cost and expense of which will be the responsibility of LICENSEE. The total cost and expense incurred by the CITY in performing such maintenance and repairs and the administrative costs associated therewith shall be considered a special assessment and lien upon the Property. City shall provide a written statement of such amounts to LICENSEE and BROWARD COLLEGE and LICENSEE shall have thirty (30) days from the date of the statement of the total expenses incurred by the CITY and the administrative costs associated therewith within which to pay to the CITY the full amount due. Failure to timely pay the amount due or serve upon the CITY Manager a written letter contesting the statement of assessed expenses and administrative costs will result in the matter being scheduled before the CITY Commission for consideration of and adoption of a Resolution assessing against the Property the expenses and administrative costs associated with the CITY's removal of the Project Improvements. The Resolution may also impose a Special Assessment Lien against the Property for the CITY Clerk and in the Public Records of Broward County, Florida. The Lien shall continue until payment to CITY of the amounts set forth in the Lien (at which time CITY shall record a Satisfaction of such Lien). In addition to the Lien, CITY shall have all other rights and remedies granted to it at law or in equity for LICENSEE'S failure to pay the necessary costs and expenses together with administrative costs attendant thereto or reimburse CITY for curative actions taken by CITY. The assessed expenses and costs and the lien provided for herein may be foreclosed in the manner provided by law. LICENSEE shall be entitled to pursue all legal and equitable remedies to contest the amount or existence of any such Lien. Broward College reserves the right exercisable in its sole discretion, without assuming or accepting any obligation to perform any obligations or covenants of LICENSEE under this Agreement, and CITY agrees to provide written notice to Broward College of any breach or default by LICENSEE hereunder and to accept any such performance by Broward College, as if such performance had been by LICENSEE.

**11. Emergencies.** If an emergency situation arises with respect to the Project Improvements 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 and fax or email notice to the LICENSEE's Contact Person. If, following that notice, LICENSEE fails to take timely action to correct the emergency situation, and allowing the emergency situation to continue would pose an imminent threat to health or safety to Persons or property, CITY may undertake such limited actions as are necessary to eliminate the emergency; and CITY shall be entitled to recover its reasonable costs of cure from LICENSEE in accordance with provisions hereof. For the purposes of this Section, LICENSEE's Contact Person shall be Jeffrey Lis ; address – 301 East Las Olas boulevard, Fort Lauderdale, FL 33301; telephone number 954/627-9346; and e-mail address: Jeff.Lis@Stiles.com . In the event the LICENSEE's Contact Persons or any other information pertaining to the LICENSEE's Contact Person shall change, such change shall be provided to the CITY Engineer in writing.

**12. Damage to Public Property.** In the event the use, operation, maintenance, repair, construction, demolition or reconstruction of the Project Improvements by 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, subject to CITY's reasonable satisfaction.

**13. Removal of Project Improvements and Restoration of License Area.**

**13.1** Except as may otherwise be expressly provided herein, it is agreed that upon termination of the RLA, in whole or in part, as to the License Area, upon written request of CITY within thirty (30) days of such termination or such time as required by the COUNTY, whichever is less, LICENSEE shall remove all or any part of the Project Improvements and any components thereof and upon demand of COUNTY for removal of all or any part of the Project Improvements as to the License Area, and upon demand of COUNTY or CITY for removal of all or any part of the Project Improvements as to the License Area, then LICENSEE shall restore the surface of the such License Area to conditions reasonably acceptable to the COUNTY as to the roadway and conditions reasonably acceptable to the CITY as to the sidewalk area and any impacted public utilities. Such removal and restoration shall be at LICENSEE's sole cost and expense. In the event LICENSEE fails to begin to remove all or any part of the Project Improvements contemplated herein with thirty (30) days after written demand by the COUNTY or CITY as permitted hereunder, the CITY is hereby authorized to remove such Project Improvements that interfere with the easement rights or the public's use of dedicated rights-of-way and restore the respective License Area to conditions acceptable to the COUNTY as to the roadway and conditions acceptable to the CITY as to the sidewalk area and any impacted public utilities, and all reasonable costs associated with the removal and restoration thereof shall be fully reimbursed by LICENSEE.

**13.2.** In the event the LICENSEE fails to remove the Project Improvements and CITY finds it necessary to remove the Project Improvements in accordance with the foregoing, then the total expense incurred by the CITY in removing the Project Improvements and the administrative costs associated therewith shall be considered a special assessment and lien upon the Property. LICENSEE shall have thirty (30) days from the date the written statement delivered to LICENSEE AND BROWARD COLLEGE of the total expenses incurred by the CITY and the administrative costs associated therewith within which to pay to the CITY the full amount due. Failure by Licensee to timely pay the amount due or serve upon the CITY Manager a written letter contesting the statement of assessed expenses and administrative costs will result in the matter

being scheduled before the CITY Commission for consideration of and adoption of a Resolution assessing against the Property the expenses and administrative costs associated with the CITY's removal of the Project Improvements. The Resolution may also impose a special assessment lien against the Property for the expenses and costs so assessed. A Notice of the Special Assessment assessed by the CITY Commission for the unpaid expenses and costs as stated above shall be recorded with the CITY Clerk and in the Public Records of Broward County, Florida. The assessed expenses and costs and the lien provided for herein may be foreclosed in the manner provided by law. Upon payment of any such lien, the City shall cause such lien to be removed from the Property.

**14. Damage and Destruction.** LICENSEE shall not by its possession, use, occupancy, operation, maintenance or repair of the Project Improvements, cause any damage to the License Area or to the Property or any other adjacent real property. If during the term of the RLA or this Agreement, LICENSEE becomes aware that the Project Improvements within the License Area have been 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 and Broward College prompt notice thereof, and LICENSEE shall:

(a) seek the necessary Permits and approvals from the regulatory agencies with jurisdiction over the License Area, Project Improvements or the Property or other adjacent real property to repair, replace and rebuild the Project Improvements or cause the same to be repaired, replaced or rebuilt as nearly as possible to their original condition, provided, however, that the rights of Broward College hereunder in respect to the Property, shall be in addition to the rights and remedies of Broward College under the Lease; or

(b) to the extent that such destruction or damage affected the Project Improvements within the License Area or real property adjacent thereto, or any part thereof, if LICENSEE elects to remove such Project Improvements consistent with the terms of the RLA, then LICENSEE shall seek the Permits and approvals, if any, required for such removal and cause such Project Improvements to be removed from the License Area and return the License Area to the condition that existed prior to the Effective Date of the RLA.

#### **15. Indemnity.**

(a) LICENSEE, its agents, contractors shall protect, defend, indemnify and hold harmless the CITY, and Broward College, and their respective officers, employees and agents from and against any and all lawsuits, penalties, damages, settlements, judgments, decrees, costs, charges and other expenses charged or incurred, 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 LICENSEE under the RLA and this Agreement, Project, or the breach or default by LICENSEE of any covenant or provision of the RLA or this Agreement, except for any occurrence arising out of or resulting from the intentional torts or gross negligence of the CITY or the COUNTY or their respective officers, agents and employees acting during the course and scope of their employment. To the extent of the forgoing indemnification, such indemnity shall include, any and all such charges, claims, suits, causes of action relating to

personal injury, death, damage to property, defects in construction, rehabilitation or restoration of the Project Improvements by LICENSEE pursuant to the terms of this Agreement, alleged infringement of any patents, trademarks, copyrights or of any other tangible or intangible personal or real property right by LICENSEE, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation or decree of any court by LICENSEE.

(b) LICENSEE further agrees that upon proper and timely notice to investigate, handle, respond to, provide defense for, and defend any claims that are the subject of the indemnification set forth in Section 15(a) above, 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 and Broward College in connection with any claims, suits or causes of action, and any such defense shall be at no cost or expense whatsoever to CITY or Broward College, provided that the CITY (exercisable by the CITY's Risk Manager) shall retain the right to select counsel of its own choosing. This indemnification shall survive termination, revocation or expiration of the RLA and this Agreement with respect to any acts or omissions occurring during the term of the RLA and any curative acts undertaken subsequent to the expiration or termination of this Agreement.

**16. Insurance.** At all times during the term of the RLA and this Agreement, LICENSEE, at its expense, shall keep or cause to be kept in effect the insurance coverages set forth in the RLA, naming each of the City and Broward College as an "additional insured" and LICENSEE shall provide Certificates of Insurance to CITY and Broward College at least fourteen (14) days prior to the commencement of the License Term and annually thereafter on the anniversary date of the policies.

**17. Remedies of CITY.**

**17.1** In the event the LICENSEE fails to perform or violates any of the terms or conditions of the RLA or this Agreement or is in breach or default in any term or condition hereof, COUNTY or CITY shall provide written notice thereof to LICENSEE and BROWARD COLLEGE and LICENSEE shall cure such violation within the time provided in such Notice, which such time for cure shall be reasonable in light of all the circumstances. LICENSEE shall be obligated to serve upon the CITY any notices of breach of default served upon LICENSEE by COUNTY. Notwithstanding anything herein to the contrary, County shall have the right, but not the obligation to cure any defaults which Licensee fails to cure.

**17.1.1** LICENSEE shall provide written Notice to CITY and Broward College when the violation has been cured. In the event the Contract Administrator finds the violation was not cured on the date alleged by LICENSEE, Contract Administrator shall provide LICENSEE with written Notice thereof. Contract Administrator shall provide written Notice to LICENSEE when Contract Administrator finds that the violation has been cured.

**17.2** In the event the LICENSEE fails to timely cure the violation within the time specified in Section 17.1, the CITY, as an alternative to the procedures set forth above, may:

**17.2.1** take any equitable action to enforce the terms and conditions of the RLA or this Agreement, it being stipulated by the parties that since the RLA and this Agreement deals with the right to use public easements and rights-of-way on or within COUNTY or CITY owned or dedicated lands used for a governmental purpose, a violation or breach of any term or condition of the RLA constitutes an irreparable injury to the public and CITY for which there is no adequate remedy at law; or

**17.2.3** take such curative action that was required to be taken by the LICENSEE under the RLA and the cost and expense incurred in CITY's curative actions shall be passed on to and owed by LICENSEE, in which case LICENSEE shall be liable for payment to CITY for all reasonable and necessary costs and expenses incurred by CITY in connection with the performance of the action or actions. LICENSEE shall reimburse CITY within sixty (60) days following written demand for payment thereof. Interest shall accrue on the unpaid amount at the rate of twelve percent (12%) per annum simple interest but in no event shall interest exceed the highest amount allowed by Florida law. The demand shall include reasonable documentation supporting the expenses incurred by CITY, and a copy of the demand shall be sent at the same time to Broward College. If a dispute arises as to the need for, or amount due to the CITY for repairs or maintenance undertaken by CITY in accordance with this License, and such dispute is not resolved within forty-five (45) days after the date that CITY makes the original written demand for payment, the LICENSEE shall pay to CITY the undisputed amount and shall provide CITY with a bond or other security acceptable to CITY for the disputed amount pending a resolution of the dispute by negotiation or litigation.

**17.3** If LICENSEE does not make the payments required under this Section within the sixty (60) day period set forth herein, then CITY shall have a right to record a Claim of Lien against the Property, which Lien may be either (a) for the total amount of the fines resulting from the procedures set forth in Sections 17.1 and 17.2, including all subsections thereunder, or (b) for all reasonable and necessary costs and expenses of any cure undertaken by CITY in accordance with this Section, the cost of any interim insurance policy as provided herein, and reasonable attorneys' fees and costs associated therewith. The Lien shall be effective upon the recording of the Claim of Lien in the Public Records of Broward County, Florida, which Claim of Lien shall state all amounts due and owing to CITY. A copy of the recorded Claim of Lien shall be provided by CITY to Broward College promptly after recording thereof. The Lien may be foreclosed by CITY in the same manner as provided by law for foreclosure of mortgage liens. The Lien shall continue until payment to CITY of the amounts set forth in the Lien (at which time CITY shall record a satisfaction of such lien). In addition to the Lien, CITY shall have all other rights and remedies granted to it at law or in equity for LICENSEE'S failure to pay the fines owed or reimburse CITY for curative actions taken by CITY. LICENSEE (and Broward College if LICENSEE fails to contest the Lien) shall be entitled to pursue all legal and equitable remedies to contest the amount or existence of any such lien.

**17.4** CITY shall have all other rights and remedies granted to it at law or in equity for LICENSEE's failure to pay the fines owed or reimburse CITY for curative actions taken by CITY. LICENSEE shall be entitled to pursue all legal and equitable remedies to contest the amount or existence of any such lien. The remedies found within this Section 17, including all subsections thereof, are cumulative. The exercise of one does not preclude the exercise of any other remedy.

**18. Requirement for Notice.** LICENSEE shall give CITY and Broward College prompt written notice of any accidents on, in, over, within, under and above the License Area. LICENSEE shall also give CITY and Broward College prompt written notice of any notices of violation received from the COUNTY.

**19. Notices.**

(a) Except as provided in subsection (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 hand delivery, or by a nationally recognized overnight courier, or 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 LICENSEE 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 upon receipt if by hand delivery, or upon one (1) business day after deposit with such overnight courier as required above, or upon two (2) business days after deposit with 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 Fort Lauderdale  
100 North Andrews Avenue  
Fort Lauderdale, FL 33301

With copy to: CITY Attorney  
City of Fort Lauderdale  
100 North Andrews Avenue  
Fort Lauderdale, FL 33301

AS TO LICENSEE: LO3 Investors, LLC

c/o Shorenstein Co  
235 Montgomery Street  
San Francisco, CA 94104  
Attn: Corporate Secretary  
415-772-7000

With a copy to: c/o Ronnie Ragoff  
Shorenstein Properties, LLC  
850 Third Avenue  
New York, NY 10022

AS TO BROWARD COLLEGE:

111 E Las Olas Blvd.  
Fort Lauderdale, FL 33301  
Broward College  
Lacey Hofmeyer  
General Counsel & VP, Public Policy & Government Affairs  
(954) 201-7410  
Email: lhofmeyer@broward.edu

(c) As to activities under Section 11, Emergencies, notice need not be given in accordance with subsection (a) above, but notice shall be sufficient if given to the Contact Person pursuant to Section 11, Emergencies.

**20. Assignment, Pledge, Security Interest.** [This Section is intentionally deleted.]

**21. 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, Broward County, City of Fort Lauderdale, and of any other public authority that may be applicable to RLA or this Agreement and the possession, use, occupancy and maintenance of the License Area and the conduct of the Project permitted herein.

**22 Public Entity Crime Act.** [This Section is intentionally deleted.]

**23. Independent Contractor.** As between CITY and LICENSEE, LICENSEE is an independent contractor under this Agreement. In providing such services, neither LICENSEE nor its agents shall act as officers, employees, or agents of CITY. No partnership, joint venture, or other joint relationship is created hereby between any of the Parties to this Agreement. CITY does not extend to LICENSEE or LICENSEE's agents any authority of any kind to bind CITY in any respect whatsoever.

**24. 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.

**25. Interpretation of Agreement; Severability.** This Agreement 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 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 Agreement, 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.

**26. Successors.** This Agreement shall be binding on and inure to the benefit of the parties, their successors and assigns.

**27. No Waiver of Sovereign Immunity.** Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by any party to this Agreement or agency to which sovereign immunity may be applicable.

**28. 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.

**29. Non-Discrimination.** LICENSEE 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.

**30. Records.** Each party shall maintain its own respective records and documents associated with this Agreement 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 Chapter 119, 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 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.

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

**33. 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 Revocable License 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 LICENSEE 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.**

**34. Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement 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.

**35. Recording.** This Agreement shall be recorded in the Public Records of Broward County, Florida. LICENSEE shall record the Agreement. A copy of the recorded Agreement shall be provided to CITY AND Broward College and filed with the CITY Clerk's Office of the CITY of Fort Lauderdale and the City's Contract Administrator.

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

**[SIGNATURE PAGES TO FOLLOW]**

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

**AS TO CITY:**

WITNESSES:

**CITY OF FORT LAUDERDALE, A  
MUNICIPAL CORPORATION OF THE  
STATE OF FLORIDA**



\_\_\_\_\_  
\_\_\_\_\_  
[Witness type or print name]

By \_\_\_\_\_  
Dean J. Trantalis, Mayor

\_\_\_\_\_  
\_\_\_\_\_  
[Witness type or print name]

By \_\_\_\_\_  
Christopher J. Lagerbloom, ICMA-CM  
City Manager

ATTEST:

(CORPORATE SEAL)

\_\_\_\_\_  
Jeffrey A. Modarelli, City Clerk

APPROVED AS TO FORM:  
Alain E. Boileau, City Attorney

By: \_\_\_\_\_  
James Brako, Esq.  
Assistant City Attorney

STATE OF FLORIDA:  
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me, by means of ☐ physical presence or ☐ online, this \_\_\_\_\_, 20\_\_\_\_, by **Dean J. Trantalis**, Mayor of the CITY of Fort Lauderdale, a municipal corporation of Florida. He is personally known to me and did not take an oath.

\_\_\_\_\_  
Notary Public, State of Florida

\_\_\_\_\_  
Name of Notary Typed, Printed or Stamped

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

Type of Identification Produced \_\_\_\_\_

STATE OF FLORIDA:  
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me, by means of ☐ physical presence or ☐ online, this \_\_\_\_\_, 20\_\_\_\_, by **Christopher J. Lagerbloom, ICMA-CM**, 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.

\_\_\_\_\_  
Notary Public, State of Florida

\_\_\_\_\_  
Name of Notary Typed, Printed or Stamped

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

Type of Identification Produced \_\_\_\_\_

**AS TO BROWARD COLLEGE:**

WITNESSES:

**CITY OF FORT LAUDERDALE**

\_\_\_\_\_

\_\_\_\_\_  
[Witness type or print name]

By \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_

By \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_  
[Witness type or print name]

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online, this \_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_ as \_\_\_\_\_ of the District Board of Trustees of Broward College, Florida.

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Name of Notary Typed, Printed or Stamped

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

Type of Identification Produced \_\_\_\_\_

**LICENSEE**

WITNESSES:

LO3 Investors, LLC, a Delaware limited liability company

\_\_\_\_\_  
(Signature)

Printed Name: \_\_\_\_\_

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

Printed Name: \_\_\_\_\_

STATE OF NEW YORK:

COUNTY OF \_\_\_\_\_:

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ company; on behalf of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public signature

\_\_\_\_\_  
Name Typed, Printed or Stamped

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

Type of Identification Produced \_\_\_\_\_