

OFF-STREET PARKING AGREEMENT AND LEASE OF PARKING PERMITS

THIS IS AN OFF-STREET PARKING AGREEMENT AND LEASE OF PARKING PERMITS (“Agreement”), by and between:

CITY OF FORT LAUDERDALE, a municipal corporation of the State of Florida, hereinafter “City,”

and

IVY TOWER 101 PROPERTY, LLC, a Delaware limited liability company, authorized to conduct business in the State of Florida, hereinafter “IVY TOWER”

WHEREAS, the City and IVY TOWER desire to enter into an Off-Street Parking Agreement and Lease of Parking Permits; and

WHEREAS, as the owner of certain property located at 101 NE 3rd Avenue, Fort Lauderdale, Florida 33301 (“IVY TOWER Property”), IVY TOWER intends to provide parking permits to its tenants and occupants at the IVY TOWER Property to facilitate parking needs for IVY TOWER’S tenants and occupants; and

WHEREAS, the parties desire to enter into this Agreement which is intended to terminate, replace and supersede the existing original Off-Street Parking Agreement and Lease of Parking Permits dated August 2, 1991, as modified and amended by that certain Assignment of Lease, dated June 10, 1998, that certain Assignment of Lease, dated June 7, 2012, that certain First Amendment to Off Street Parking Agreement and Lease of Parking Permits, dated November 20, 2012, that certain Second Amendment to Off Street Parking Agreement and Lease of Parking Permits, dated May 6, 2014, that certain Third Amendment to Off Street Parking Agreement and Lease of Parking Permits, dated July 7, 2015, and that certain Assignment of Lease, dated January 8, 2016 (collectively, the “Prior Agreement”); and

WHEREAS, the Prior Agreement shall be terminated, replaced and superseded with this Agreement when the last party to this Agreement has executed this Agreement; and

WHEREAS, the City owns certain municipal parking facilities located at 200 NE 2nd Street, known as the “City Hall Garage”; and

WHEREAS, pursuant to Section 8.09 of the Charter of the City, City is authorized to lease off-street parking to IVY TOWER; and

WHEREAS, the number of parking spaces leased to IVY TOWER will consist of one hundred fifty (150) parking spaces within the City Hall Garage from the date when the last party to this Agreement has executed this Agreement through December 14, 2050;

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth below, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. The foregoing recitals are true and correct and are hereby incorporated into this Agreement.

2. IVY TOWER agrees to lease one hundred and fifty (150) monthly parking permits for parking spaces, hereinafter "Parking Spaces," at the City Hall Garage, located at 200 NE 2nd Street, Fort Lauderdale, Florida, hereinafter the "City Hall Garage", effective as of the date when the last party to this Agreement has executed this Agreement, and which shall be in full force and effect until December 14, 2050 (the "Term");

3. The Parking Spaces shall mean one hundred fifty (150), where (120) unnumbered and undesignated spaces are located on the third (3rd) "level" (Roof) of the City Hall Garage and (30) unnumbered and undesignated spaces are located on the second (2nd) "level" of the City Hall Garage. Beginning the effective date of this Agreement, the 3rd level Parking Spaces shall be leased at fifty dollars (\$50.00) per space, where the 2nd level Parking Spaces shall be leased at sixty-five dollars (\$65.00) per space and shall be made payable monthly to the City. Such rates are subject to be increased at anytime by City at the Municipal Market Rate (as hereinafter defined). For purposes of this Agreement, the term "Municipal Market Rate" shall mean and refer to a market rate which is consistent with the rates derived from market rate studies and approved by the City Commission, generally charged for the use of parking spaces in parking garage facilities in the Fort Lauderdale area, plus any applicable sales tax (but in no event shall the Municipal Market Rate exceed the rate generally charged by the City at such time for parking permits in the City Hall Garage).

a. IVY TOWER may request additional spaces over the 150 authorized Parking Spaces on a monthly basis, provided that such request is first approved by the Director of Transportation and Mobility. On each month such a request for extra spaces is made, and said request will be promptly considered by the Director of Transportation and Mobility pursuant to City Parking Permit Policy.

b. Upon the approval of the City's Director of Transportation and Mobility and in accordance with the City Parking Permit Policy, IVY TOWER may purchase additional parking spaces on a monthly basis. These additional permits shall be paid for by IVY TOWER in advance on a monthly, not quarterly, basis. The City reserves the right to reject or otherwise limit the purchase of these additional permits for Parking Spaces or a portion thereof, for any reasonable reason, and at the discretion of

the City's Director of Transportation and Mobility. Upon payment by IVY TOWER in accordance with this subsection, City shall make available for pick-up by IVY TOWER prior to the beginning of said month the number of pre-numbered vehicle decals & access cards purchased by IVY TOWER. IVY TOWER is fully responsible for distribution of these permits to the proper permittees. IVY TOWER acknowledges and understands that it is fully responsible for lost, stolen or misplaced vehicle decals and access cards.

4. IVY TOWER and/or its proper permittees may utilize the Parking Spaces at any time the City Hall Garage is open, which is presently 24 hours a day, seven days a week. All vehicles present in any of the parking areas included in this Agreement must properly display the current and appropriate City-honored vehicle decal in accordance with City Parking Policies.

5. IVY TOWER acknowledges that City may enter into similar parking lot agreements with other entities for parking permits within the City Hall Garage. City agrees not to oversell parking permits in excess of that which is commercially reasonable for like parking garages.

6. Due to repair and rehabilitation activities to the City Hall Garage, the City reserves the right, at its discretion, to move and/or relocate permit holders within the City Hall Garage during the period of such repair and rehabilitation (which shall not exceed 60 days in the aggregate during the term of this Agreement). City shall provide IVY TOWER with at least sixty (60) days written notice prior to any move or relocation being implemented and prior to any change in operations by City materially affecting operation of this Agreement. The City reserves the right, at its discretion, to move and/or relocate permit holders under this Agreement to alternative locations during any such repair and rehabilitation activities to the City Hall Garage as long as such alternative parking location is in close proximity to the IVY TOWER Property.

7. 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 reasonable 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 on the part of any party be deemed Force Majeure.

8. Each party agrees that it shall be fully responsible for its own negligence, acts and omissions and for the negligence, acts and omissions of its employees, agents and attendants parking or present. Nothing herein shall be construed as a waiver by any party to this Agreement of the protections and immunities afforded under Section 768.28, Florida Statutes.

9. IVY TOWER acknowledges that the City's Parking Policies attached hereto as are incorporated into this Agreement.

10. [INTENTIONALLY OMITTED]

11. IVY TOWER shall pay for at its own expense and maintain during the term of this Agreement, commercial general liability insurance in the minimum amount of One Million (\$1,000,000.00) Dollars covering sums payable as a result of death or bodily injury to any person and loss of or damage to property occurring at the City Hall Garage as a result of the acts, omissions or negligence of IVY TOWER or its permittees. Such policy shall name the City as an additional insured and shall contain a provision requiring that the City receive at least thirty (30) days advance written notice prior to any cancellation, reduction or termination of insurance by the insurer. Certificates of Insurance evidencing IVY TOWER's compliance with this section shall be delivered to City prior to any permits being issued.

12. For the purpose of this Agreement, any notice required hereunder shall be in writing and sent certified U.S. Mail, return receipt requested, and addressed to the following:

IF TO CITY:

City Manager
City of Fort Lauderdale
100 N. Andrews Avenue
Fort Lauderdale, Florida 33301

IF TO IVY TOWER:

102 Chestnut Ridge Rd
Suite 204
Montvale, New Jersey 07645
Attention: Director of Leasing

WITH A COPY TO:

Lazer, Aptheker, Rosella & Yedid, P.C.
225 Old Country Road
Melville, New York 11747
Attention: Matthew C. Lamstein, Esq.

13. This Agreement shall be governed by the laws of the State of Florida, with venue lying in Broward County, Florida. Prior to exercising any remedies, City shall furnish IVY TOWER with written notice of any default hereunder and allow IVY TOWER a period of thirty (30) days to remedy such default.

14. This Agreement may be amended only by written document executed by City and IVY TOWER with the same formality and of equal dignity herewith.

15. This Agreement, or any interest herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by IVY TOWER without the prior written consent of City, which consent shall not be unreasonably withheld, conditioned or delayed.

16. This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to 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, it is agreed that no deviation of the terms hereof shall be predicated upon any prior representations of agreements, whether oral or written.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
[SIGNATURES TO FOLLOW]

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

ATTEST:

CITY OF FORT LAUDERDALE, a
municipal corporation of the State of
Florida.

JEFFREY A. MODARELLI
City Clerk

LEE R. FELDMAN, City Manager

(SEAL)

Approved as to form:
CYNTHIA A. EVERETT, City Attorney

By: _____
KIMBERLY CUNNINGHAM MOSLEY
Assistant City Attorney

LESSEE

WITNESSES:

IVY TOWER 101 PROPERTY, LLC, a Delaware limited liability company authorized to transact business in the State of Florida

By: _____

_____, Manager

Print Name

Print Name

STATE OF _____ :

COUNTY OF _____ :

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____ as Manager for IVY TOWER 101 PROPERTY, LLC, a Delaware limited liability company authorized to transact business in the State of Florida.

(SEAL)

Notary Public, State of _____
(Signature of Notary taking Acknowledgment)

Name of Notary Typed, Printed or Stamped

Personally known or Produced identification

Type of Identification _____