

③ 4/28/14

CITY MANAGER

DOCUMENT ROUTING FORM

2015 APR 15 AM 10:17

6/3/14
CM-6

NAME OF DOCUMENT: Motion to approve Amendment to Easement Agreement and Construction, Use and Operation Agreement with The Bridgeside Square Development Public Parking Facility to Operate and Enforce an Additional 61 Parking Space within the Bridgeside Square Garage

Routing Origin: CAO Also attached: copy of CAM Original Documents

1) **City Attorney's Office:** Approved as to Form 3 Originals and Delivered to City Manager on _____

COLE J. COPERTINO, ASSISTANT CITY ATTORNEY



CIP FUNDED YES NO
Capital Investment / Community Improvement Projects

Capital Investment / Community Improvement Projects defined as having a life of at least 10 years and a cost of at least \$50,000 and shall mean improvements to real property (land, buildings, fixtures) that add value and/or extend useful life, including major repairs such as roof replacement, etc. Term "Real Property" include: land, real estate, realty, real.

2) **City Manager:** Please sign as indicated and forward ___ originals to Mayor.

3) **Mayor:** Please sign as indicated and forward ___ originals to Clerk for attestation and City seal.

INSTRUCTIONS TO CLERK'S OFFICE

4) **City Clerk:** Retains one original and forwards 2 original documents to: Sharon Dreesen x3764

Original Route form to Carla Foster

4/23

**AMENDMENT TO EASEMENT AGREEMENT AND CONSTRUCTION, USE AND
OPERATION AGREEMENT FOR THE BRIDGESIDE SQUARE DEVELOPMENT
PUBLIC PARKING FACILITY**

This Amendment to the Easement Agreement and Construction, Use and Operation Agreement for the Bridgeside Square Development Public Parking Facility (hereinafter "Amendment") between:

The City of Fort Lauderdale, a municipal corporation existing under the laws of the State of Florida (hereinafter "City"), whose principal address is 100 N. Andrews Avenue, Fort Lauderdale, FL 33301

and

The Tides at Bridgeside Square Condominium Association, Inc. (hereinafter "Association"), whose principal address is 3020 N.E. 32ND Avenue Fort Lauderdale, FL 33308

WHEREAS, The City provides parking enforcement at the parking lots located at Bridgeside Square Public Parking Facility; and

WHEREAS, the Property located at 3020 NE 32nd Avenue is deemed a public access lot and permits thoroughfare and parking for the general public, and

WHEREAS, The Association seeks to have the City provide expanded parking enforcement services at the above location; and

WHEREAS, the City finds that providing parking enforcement services for the Association serves a legitimate municipal purpose; and

NOW, THEREFORE, City and Association acknowledge the exchange of valuable consideration, based upon the promises, covenants and terms of this Amendment, the receipt and adequacy of which is acknowledged, and City and Association hereby agree as follows:

This Amendment is entered into on this day April 23, 2014.

The Easement Agreement and Construction, Use and Operation Agreement for the Bridgeside Square Development Public Parking Facility (hereinafter "Agreement") shall be amended to include the following provisions:

1. City shall install and maintain parking meters ("the parking meters") for 62 parking spaces on the north side of the first floor of the Bridgeside Square Parking Facility ("the parking spaces") located at 3020 NE 32nd Avenue ("the Property").

2. City agrees to pay the cost of purchase, installation and maintenance of the parking meters for the term of the Agreement. City further agrees that the rates for the parking meters shall be the same as the rates charged for the municipal parking garage, or such other rates as may be set by the Board of Directors of the Association from time to time.
3. Association shall receive ninety-eight percent (98%) of all monthly revenue from the parking meters and City shall retain two percent (2%) of such revenue for enforcement, maintenance and repair, as required by numbered paragraph 2 above.
4. City shall provide Association with documentation regarding the monthly revenue collected from the parking meters and shall itemize the method of payment/amount paid by patrons. City shall make payment to Association in accordance with numbered paragraph 3 above on a monthly basis within thirty (30) calendar days of the end of each month. Interest on delinquent payments shall accrue at the highest rate permitted by law.
5. City shall provide, on a quarterly basis, an invoice for all costs not recovered from citation collections as a means of cost recovery.
6. City shall enforce and monitor the parking meters at least twenty-two (22) hours a day, seven (7) days a week to ensure that patrons pay the parking fees due and shall enforce payment of the parking fees by issuing citations to violators.
7. The Association reserves the right to determine all parking rates for Association residents. Association shall provide City with seventy-two hours' notice upon any revision to said rates.
8. City agrees that in lieu of City charging any monthly fee to enforce and monitor the parking meters that City shall retain one hundred percent (100%) of citation revenue derived by City from the parking meters.
9. This Agreement may be terminated by either party upon thirty (30) days' written notice at which time the meters will be removed upon vacating facility.
10. All personal property placed or moved onto the Property is at the sole risk of Association or other owner of such personal property. City shall not be liable for any damage to such personal property, or for personal injuries to Association or any of Association's subtenants, agents, servants, employees, contractors, guests or invitees or to trespassers on the Property that arise from any person's tortious acts or omissions, regardless of the status of the person.
11. City shall not be liable for any damage or injury incurred or sustained in, on or about the Property when such damage or injury results from the tortious acts or omissions of any person, including Association's guests, invitees, servants, agents, employees or contractors or trespassers on the Property.

12. Association 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 Property.
13. Association shall protect, defend, indemnify and hold harmless the City, its officers, employees and agents from and against any and all lawsuits, penalties, damages, settlements, judgments, decrees, costs, charges and other expenses including attorney's fees or liabilities of every kind, nature or degree arising out of or in connection with the rights, responsibilities and obligations of Association under this Agreement, conditions contained therein, the location, construction, repair, maintenance use or occupancy of the Property or improvements located thereon, or the breach or default by Association of any covenant or provision of this Agreement except for any occurrence arising out of or resulting from the intentional torts or gross negligence of the City, its officers, agents and employees acting within the scope and course of their duties.
 - (a) Without limiting the foregoing, any and all such claims, suits, causes of action relating to personal injury, death, damage to property, defects in construction, rehabilitation or restoration of the Property, alleged infringement of any patents, trademarks, copyrights or of any other tangible or intangible personal or real property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation or decree of any court, is included in the indemnity.
 - (b) Association further agrees to investigate, handle, respond to, provide defense for, and defend any such claims 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, Association shall assume and defend not only itself but also the City in connection with any claims, suits or causes of action, and any such defense shall be at no cost or expense whatsoever to City, provided that the City (exercisable by the City's Risk Manager) shall retain the right to select counsel of its own choosing.
14. At all times during the term of this Agreement, Association, at its expense, shall keep or cause to be kept in effect the following insurance coverage:
 - (a) A general liability insurance policy, in standard form, insuring Association and City as an additional insured, against any and all liability for bodily injury or property damage arising out of or in connection with this Agreement and the license granted herein with a policy limit of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) general aggregate and shall name the City as an additional insured. All such policies shall cover the activities under the Agreement, including, but not limited to the possession, use, occupancy, maintenance, repair, and construction of additions, modifications,

renovations or demolition of the Leased premises or portions thereof. This policy shall not be affected by any other insurance carried by City.

- (b) The minimum limits of coverage under subsections (a), (d) and (e) may be adjusted by City, in City's sole discretion, every five (5) years, on the anniversary date of the Effective Date of this Lease, in accordance with the increase or decrease in the Consumer Price Index for "All Urban Consumers, U.S. All Items (1982 – 1984 = 100)" (hereinafter, CPI) published by the Bureau of Labor Statistics of the United States Department of Labor, or any comparable successor or substitute index designated by City. For the purposes of this subparagraph, the beginning CPI figures shall be the most recently published index figures in effect as of the Effective Date hereof. On the date(s) of adjustment, the adjusting figures shall be the most recently published figures in effect on the subject adjustment date(s).
15. Association 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.
16. In the event of litigation over an alleged default under this Agreement by either party, the prevailing party in such litigation shall be entitled to recover all costs and attorney's fees from the non-prevailing party.
17. Nothing contained herein is intended to serve as a waiver of sovereign immunity by the City pursuant to 768.28, Florida Statutes or other applicable law. Further, nothing contained herein shall be construed as consent by the City to be sued by a third party in any matter arising out of this Agreement or any other contract.
18. This Amendment and the Exhibits attached hereto and forming a part hereof, set forth all covenants, promises, agreements, conditions and understanding between City and Association regarding the parking spaces and the operation of the parking meters and there are no covenants, promises, conditions or understandings either oral or written, between them other than as are herein set forth. No provision of this Agreement may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest.
19. The parties do not in any way or for any purpose become a partner each of the other in the conduct of the ownership or operation of the Property, the parking spaces or the parking meters nor does either party otherwise become a joint venturer or a member of a joint venture enterprise or partner of, or with, the other.

20. Each party represents to the other that it is duly authorized to enter into this Agreement and to do all things and perform all functions contemplated hereby and that same is in compliance with all laws and regulations applicable to it, the doing of such things and the performance of such functions and that this Agreement is the legal, valid and binding obligation of each of them and is enforceable upon them in accordance with its terms.
21. Time is of the essence of this Agreement and each and all of its provisions in which performance is a factor.
22. This Agreement shall be governed by the laws of the State of Florida, with venue being in Broward County.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

WITNESSES:

Jemelle A. Johnson
Jeanette A. Johnson
Print Name

Miranda Slott
MIRANDA SLOTT
Print Name

CITY OF FORT LAUDERDALE
By: [Signature]
John P. "Jack" Seiler, Mayor

By: [Signature]
Lee R. Feldman, City Manager

ATTEST:
[Signature]
Jonda K. Joseph, City Clerk

Approved as to form:
[Signature]
Core J. Copertino
Assistant City Attorney

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

WITNESSES:

THE TIDES AT BRIDGESIDE SQUARE
CONDOMINIUM ASSOCIATION, INC.

Diana Marcon

Print Name Diana Marcon

Carmela Paladino

Carmela Paladino

Print Name

By: Gerard Belisle
Gerard Belisle, President

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 31 day of MARCH, 2014, by GERARD BELISLE as PRESIDENT of The Tides at Bridgeside Square Condominium Association, Inc. He/She is personally known to me or _____ has produced _____ as identification and _____ did not take an oath.

(SEAL)



Sharon A Dreesen
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF021699
Expires 7/15/2017

Sharon A Dreesen
Notary Public, State of Florida
(Signature of Notary taking Acknowledgement)

Name of Notary Typed, Printed or Stamped

My Commission Expires: _____

Commission Number _____