

COMPREHENSIVE AGREEMENT

This Comprehensive Agreement (this “**Agreement**”) is entered into as of the ____ day of _____, 2023, by and between the City of Fort Lauderdale, a municipal corporation of the State of Florida, 100 North Andrews Avenue, Fort Lauderdale, Florida 33301 (“**City**”), Las Olas Parking Solutions, LLC, a Florida limited liability company, its successors and assigns, whose principal address is 517 Northeast 6th Street, Fort Lauderdale, Florida 33304 (“**Private Party**”).

STATEMENT OF BACKGROUND AND PURPOSE

WHEREAS, the City is the owner in fee simple of certain real property located at 216 SE 8th Avenue in the City of Fort Lauderdale, Broward County, Florida referred to herein as the “**Property**” as further described by **Exhibit A** attached hereto.

WHEREAS, the Private Party is a Limited Liability Company organized under the laws of the State of Florida for the purpose of developing and operating the Qualified Project on the Property; and

WHEREAS, on June 24, 2021, the City received an unsolicited proposal pursuant to Section 255.065, Florida Statutes, from the Private Party, to develop, construct, operate and maintain the Qualified Project on the Property (“**Unsolicited Proposal**”); and

WHEREAS, pursuant to Resolution No. 21-261, the City Commission, at its meeting of November 16, 2021, determined that the unsolicited proposal submitted by the Private Party serves a public purpose as a public facility or infrastructure that is used or will be used by the public at large or in support of an accepted public purpose or activity, and as proposed, constitutes a qualifying project pursuant to Section 255.065, Florida Statutes; and

WHEREAS, pursuant to Resolution No. 22-94, the City Commission, at its meeting of May 3, 2022, declared its intent to enter into this Comprehensive Agreement with the Private Party encompassing therein the development, construction, operation, and maintenance of the Qualified Project on the Property as particularly described in the unsolicited proposal and related documents, and as provided in this Agreement; and

WHEREAS, pursuant to Motion, the City Commission further declared its intent to accept other proposals for the same project in accordance with Section 255.065, Florida Statutes; and

WHEREAS, the City published once a week for two weeks, in the Florida Administrative Register and a newspaper of general circulation, a Notice of its intent to accept other proposals for the same project on or before the thirtieth day from November 22, 2021; and

WHEREAS, no other proposals were received for the same project during the thirty (30) days beginning November 22, 2021; and

WHEREAS, on May 3, 2022, the City Commission passed Resolution No. 22-94 providing notice of its decision to proceed with the unsolicited proposal submitted by the Private Party to develop, construct, operate, and maintain the Qualified Project on city-owned Property located at 216 SE 8th Avenue, Fort Lauderdale, Florida; and

WHEREAS, the City and the Private Party agree that all prerequisites to the execution of this Agreement required pursuant to Section 255.065 have been met and this Agreement complies with the requisites of Statute 255.065 Florida Statutes; and

WHEREAS, the Private Party has complied with the project approval requirements set forth in F.S. Section 255.065(4) or such requirements have been waived by the City and the financing plan for the development and operation of the Qualified Project by the Private Party including equity to be provided by the Private Party and leasehold financing which has to be obtained by the Private Party is hereby approved by the City as the financing plan for the Qualified Project; and

WHEREAS, the City and the Private Party desire to enter into this Agreement to supersede and replace all agreements now existing between them, both oral and written, effective as of the Effective Date; and

NOW THEREFORE, in consideration of the mutual covenants exchanged herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Private Party agree as follows:

ARTICLE 1

FUNDAMENTAL PROVISIONS & DEFINITIONS

1.1 **Recitations**. The recitations heretofore set forth are true and correct and are incorporated herein by this reference.

1.2 **Design Professionals**. Architectural and engineering services shall be procured from licensed, independent design professionals retained by the Private Party or furnished by licensed employees of the Private Party, as permitted by law. If the design professional is an independent design professional, the architectural and engineering services shall be procured pursuant to a separate agreement between the Private Party and the design professional.

In accordance with Section 255.065(3)(a)(5), Florida Statutes, the City reserves the right if the City chooses to retain architectural, engineering, and landscape architectural licensed professionals to evaluate the Qualified Project and advise the City through the completion of the design and construction of the Qualified Project. The Private Party, and its agents, contractors and employees, shall cooperate with professionals hired by the City and shall provide access to the Property and the Qualified Project and documents, instruments, plans, specifications, drawings, data and such other information as reasonably requested by the City's professionals.

1.3 **Exhibits.** True and correct copies of all exhibits referenced in this Agreement will be initialed by the Parties and attached to this Agreement, and such exhibits will thereafter be incorporated into this Agreement by this reference.

1.4 **Definitions.** For the purposes of this Agreement and the various covenants, conditions, terms and provisions which follow, the DEFINITIONS AND IDENTIFICATIONS are as set forth below.

Additional Rent shall mean all payments that the Private Party is obligated to pay to the City under this Agreement, other than Base Rent.

Agreement shall mean this Comprehensive Agreement and any modifications to the Agreement.

Annual Increased Rate shall have the meaning set forth in Section 7.11.

Applicable Authority shall mean all applicable governmental authorities having jurisdiction over such issue.

Application shall mean the application for Site Plan approval submitted to the City for the Qualified Project.

Approved Capital Expenditures shall have the meaning set forth in Section 11.1.

Approved Plans shall have the meaning set forth in Section 7.1.

Arbitration shall mean the disputed matters shall be submitted to binding arbitration in accordance with the rules of the American Arbitration Association in which one arbitrator shall hear the cause on an expedited basis, which arbitration shall be conducted in Broward County, Florida. The Parties shall share the costs in filing such Arbitration and each Party shall pay its own costs and expenses in connection with such Arbitration.

Authorized Representative shall mean (i) as to the City, the City Manager or such other person(s) as may be designated by the City Manager from time to time in writing to the Private Party; and (ii) as to the Private Party, Steven W. Hudson, Charles G. Ladd, Eric Metz, or such other person(s) as the Private Party may designate to the City in writing from time to time. A directive, approval or consent related to this Agreement, as the case may be, issued by one of the 3 individuals may be relied upon by the City and the City may assume the matter is binding on the Private Party.

Base Rate shall mean eight percent (8%).

Base Rent shall mean (i) the Initial Base Rent payable during the Initial Period, and (ii) the Subsequent Base Rent payable during the Subsequent Period, subject to deductions and adjustments as provided in this Agreement.

Beginning Date shall mean the date of the beginning of the payment of Subsequent Base Rent as provide in the definition of Subsequent Base Rent.

Building shall mean the multiuse building containing the Qualified Project.

Business Day shall mean any day from Monday through Friday, exclusive of any legal holidays of the State of Florida or United States of America.

Capital Expenditures shall mean all hard and soft costs incurred by or through the Private Party for capital repairs and/or improvements.

Capital Improvement Budget shall mean a budget for construction of the Qualified Project which shall not be less than \$20,000,000 (and includes the improvements for the Fire/EMS Station) or other budget for ongoing capital repairs and/or improvements prepared by the Private Party as reasonably approved by the City Manager as may be modified by the Private Party from time to time as reasonably approved by the Parties plus the Parking Equipment Contribution to and through the Ramp Up Period.

Capital Payments shall mean the aggregate of (i) carry costs with respect to the Qualified Project, the hard and soft costs to design, permit and construct the Qualified Project (which includes, but is not limited to, vertical design and **construction costs**, professional fees, rent fees, impact fees, public improvements and utility costs, all Initial Base Rent, improvements and allowances to the FIRE/EMS Station, funded by the Private Party included within the Capital Improvements Budget from and after the date any such costs are incurred, to and through the Ramp Up Period times the Specified Rate per annum on all such sums, which Capital Payments shall be payable to the Private Party monthly out of the Excess Revenue Account over the Term of the Agreement from the date included, plus (ii) all costs incurred in leasing portions of the Commercial Space including but not limited to hard and soft costs to design, permit, and construct tenant improvements, tenant inducements, lease commissions and similar costs committed to prior to the end of the Ramp Up Period times the Specified Rate per annum on all such sums from the date incurred.

Capital Reserve Account shall mean a monthly reserve in the amount of Five Thousand and No/100 Dollars (\$5,000.00) or such other amounts as the City and the Private Party shall mutually agree upon from time to time (“**Monthly Reserve Capital Payment**”) shall be paid into an account with a Qualified Institution (controlled by the Private Party), which Capital Reserve Account the Private Party may use (subject to the reasonable approval of the City Manager) for capital repairs, replacements and other capital expenditures needed for capital repairs and replacements, provided after the Capital Reserve Account has been funded with at least Fifty Thousand Dollars (\$50,000), there shall be maintained \$50,000 in the Capital Reserve Account at all times thereafter. The Private Party shall create a multi-year capital improvement transition plan in the forty-seventh (47th) Lease Year (“**Funding Plan**”) and the then existing Capital Reserve Account would be used to fund such Funding Plan and any remaining monies in the Capital Reserve Account shall be paid to the City after payment of all sums owed to the Private Party.

Catch Up Distribution(s) shall have the meaning set forth in the definition of Excess Revenues.

Certificate of Occupancy shall mean such certification as would normally be issued for a Qualified Project including permits to permit use of the Parking Spaces in the Garage by the public, the FIRE/EMS Station has passed all applicable governmental inspections needed and shall have received permits to permit such space to be utilized for the purpose intended and the Commercial Space has received a shell certificate of occupancy (or equivalent).

Change in Financial Return shall have the meaning set forth in Section 7.10.

City shall mean the City of Fort Lauderdale, a Florida municipal corporation and sometimes referred to herein as “**the City**”, its successors and assigns.

City Commission shall mean the City Commission of the City of Fort Lauderdale.

City Improvements shall mean the Parking Streetscape Improvements. The Private Party shall improve and maintain the Streetscape Improvements as provided in this Agreement and the City shall maintain and repair the On-Street Parking and shall be entitled to all revenues derived from the On-Street Parking.

City Manager shall mean the Chief Executive Officer of the City or his/her designee. The term shall at all times include, without limitation, Deputy the City Manager(s) and Assistant the City Manager(s). All decisions as set forth in Section 16.6 attributed to the City in this Agreement may be made by the City Manager, or his authorized designee, unless otherwise specified in this Agreement.

City Operating Expenses or **City Operating Expense** shall mean a staffing fee of __TBD__% of Parking Revenues collected from the Garage each month and utilized for city and third-party expenses incurred by the City in connection with the collection and recording of Parking Revenue(s) in the Garage, such as meter fees, credit card fees, bank fees, audit fees, software service fees and other third-party operational costs associated with the collection of Parking Revenues (to the extent set forth in the Operating Budget). The City Operating Expenses has been computed to compensate the City for its services in connection with collection of such Parking Revenues as contemplated by Section 255.065 F.S.

Commencement Date shall mean the date which is the earlier to occur of (i) 18 months after the Effective Date (ii) one (1) year after obtaining DRC Approval of the Qualified Project, or (iii) the Private Party obtains a building permit for the Qualified Project. The Private Party shall be entitled to exclusive use of the Property from and after the Rent Commencement Date, subject to the terms of this Agreement and the FIRE/EMS Sub-Lease. The Private Party acknowledges the City retains control over the operation and management of the Property until the Rent Commencement Date and retains the right to receive any and all revenue, income and proceeds generated by the Property until the Rent Commencement Date.

Commencement of Construction shall mean the issuance of a building permit and delivery of the Performance Bond with respect to the Initial Improvements as contemplated by this Agreement.

Commercial Space shall have the meaning set forth in the definition of Qualified Project.

Commercial Subleases shall mean any subleases of Commercial Space.

Construction Period shall mean the period commencing with the Commencement Date and ending on the date which is the earlier to occur of (i) the date the Garage has obtained all governmental approvals from applicable governmental authority to permit the opening of the Garage to permit the general public to park in the Parking Spaces in the Garage, or (ii) thirty seven months (37) after the Commencement Date, subject extension due to Uncontrollable Delays.

Construction Security shall have the meaning set forth in Section 7.7.

Daily SOFR means a rate equal to the Secured Overnight Financing Rate as administrated by the Federal Reserve Bank of New York (or a successor administrator).

DRC Approval shall mean final Development Review Committee Certificate of Approval based on the Site Plan of the Qualified Project with all appeal periods having expired with respect thereto.

Effective Date shall mean the date this Agreement is fully executed by the Private Party and the City.

Enforcement Revenue shall have the meaning set forth in the definition of Parking Enforcement.

Excess Cost shall have the meaning set forth in Section 7.2.

Excess Cost Reimbursement shall have the meaning in Section 7.2 to be paid to the Private Party from the Excess Revenue Distribution.

Excess Revenue Account shall mean the account established and controlled at the Qualified Institution by the Private Party (as reasonably approved by the City Manager) into which (i) the Parking Revenues (other than Enforcement Revenue), after deduction of the City Operating Expenses and Subsequent Base Rent, shall be paid by the City into such account, and (ii) the portion of Gross Revenues received by the Private Party shall be paid by the Private Party to such account.

Excess Revenue Distribution shall mean the monies in the Excess Revenue Account shall be disbursed as provided below:

first to be disbursed to the Private Party to pay the City the balance of Base Rent and City Operating Expenses (not previously paid by the City out of Parking Revenues) (and to

the extent there is not sufficient funds in the Excess Revenue Account, then the Private Party shall pay the City the shortfall in Base Rent and City Operating Expenses);

second, the Private Party shall be paid the Private Party Operating Expenses (to the extent set forth in the Operating Budget);

third, payment of Additional Rent, if any, to the City;

fourth, to pay the Monthly Reserve Capital Payment to be paid into the Capital Reserve Account,

fifth, to pay the Private Party any unpaid Capital Payments not previously paid to the Private Party,

sixth, to pay the Private Party any Repair Replacement Payment not previously paid to the Private Party,

seventh, to pay the Private Party and City, pro rata, any Catch Up Distribution, and

eight, the balance (“**Profit Distribution**”) shall be paid fifty percent (50%) to the City less an amount equal to the Excess Cost Reimbursement until the Excess Cost Reimbursement has been fully repaid to the Private Party and fifty percent (50%) to the Private Party, plus an amount equal to the Excess Cost Reimbursement until the Excess Cost Reimbursement has fully repaid to the Private Party.

The debt service payment made by any Party to its lender shall not be included in monies paid out of the Excess Revenue Account.

Excess Revenues shall mean the Gross Revenues which are paid into the Excess Revenue Account by the City and the Private Party as provided in Section 5.2 and the Private Party shall disburse the monies from the Excess Revenue Account as provided in Section 5.2.

The distribution of Excess Revenues by the Private Party out of the Excess Revenue Account set forth above shall be “trued up” at the end of each Lease Year with any overpayment or underpayment to be paid to the appropriate Party out of the next available Excess Revenue and to the extent Excess Revenues in any Lease Year were not sufficient to pay any of the distributions in the first to sixth level of distributions set forth above during such Lease Year, or the Private Party paid Base Rent from sources other than from the Excess Revenue Account (such shortfall “**Catch Up Distribution**”), then the Private Party shall have the right to make up such Catch Up Distribution out of the seventh distribution of Excess Revenues in the following Lease Year. The City shall be entitled to a Catch Up Distribution at level seventh, out of the next available Excess Revenue to the extent budgeted City Operating Expenses were paid by the City from sources other than revenue generated by the Qualified Project.

Existing License shall have the meaning set forth in the definition of Qualified Project.

Expiration Date shall be the date which is 50 years from the Commencement Date plus the Construction Period of the Initial Improvements for the Property.

Fair Market Value Rent shall be the amount of rent in effect on the commencement date of such lease representing at least ninety percent (90%) of the amount of rent that a bona fide unrelated, unaffiliated third party tenant would pay a bona fide, unrelated, unaffiliated third party landlord for the lease of comparable space then being determined, taking into consideration, the amount of tenant improvement allowance being provided, brokerage commission being paid, age of the premises, location of the premises, term of such lease, and other applicable considerations in determining fair market value. The Parties hereby agree that in connection with each Sublease in which the Fair Market Value Rent needs to be determined, the City Manager and the Private Party will attempt to agree between themselves as to the Fair Market Value Rent and, to the extent the City Manager and the Private Party agree to same, such rent agreed to by the City Manager and the Private Party shall be deemed to be the Fair Market Value Rent for such Sublease. In the event the City Manager and the Private Party are unable to reach agreement as to the Fair Market Value Rent for such lease within thirty (30) days after written request by either party to the other, then the determination of the Fair Market Value Rent for such Sublease shall be determined by Arbitration.

FIRE/EMS Cam means the City paying the pro rate share of Operating Expenses, as shall be set forth in the FIRE/EMS Sub-Lease.

FIRE/EMS Spaces shall mean the 14 parking spaces in the Garage that are designated for the exclusive use of the FIRE/EMS Station, which FIRE/EMS Spaces shall have the security measures to provide for the security of vehicles using such FIRE/EMS Spaces as provided in the work letter attached to the FIRE/EMS Sub-Lease.

FIRE/EMS Station shall have the meaning set forth in the definition of Qualified Project.

FIRE/EMS Sub-Lease shall mean the Sub-Lease to be agreed to by the City and the Private Party (each acting reasonably) during the Inspection Period.

FIRE/EMS Sub-Tenant shall mean the sub-tenant under the FIRE/EMS Sub-Lease.

Garage shall have the meaning set forth in the definition of Qualified Project.

Governmental Regulations shall mean all laws, resolutions, ordinances, rules, regulations, statutes, building codes and other matters of all governmental authorities having jurisdiction over the Property (the “**Applicable Authorities**”), including all health, zoning, construction, environmental and regulatory requirements.

Gross Revenues shall mean all sums paid for use of the Commercial Space and Parking Spaces including, without limitation, rent and common area maintenance fees (“CAM Revenue”) received from the tenants under the Commercial Space. Gross Revenue shall mean such gross amounts whether paid by cash, credit card, check, debit card, electronic transfer of funds or otherwise less any refunds of sums previously included in Gross Revenues. Gross

Revenues shall not include sales, excise or use tax or similar taxes, insurance proceeds, deposits until same are forfeited by the party who made the deposit, advance payments of rent or parking revenue until such time as they are due, taxes or payments to repair damage caused by a sub-tenant or customer using the Qualified Project. Enforcement Revenue shall not be included in Gross Revenue .

Hazardous Substances shall mean any hazardous or toxic substances, materials or wastes, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) as now in effect or as same may be amended from time to time, or such substances, materials and wastes which are now or hereafter become regulated by any Environmental Agency, including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) radon, (v) designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Section 1251, et. seq. (33 U.S.C. Section 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Section 1317), (vi) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et. seq. (42 U.S.C. Section 6903), (vii) defined as “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601, et. seq. (42 U.S.C. Section 9601), or (viii) designated as a “hazardous substance” as defined in Chapter 403 (Part IV) of the Florida Statutes.

Hazardous Substances Laws shall mean all applicable municipal, county, district, state and federal laws, codes, ordinances, rules, regulations and orders, as same may now exist or may from time to time be amended, relating to industrial hygiene, environmental protection or regulation, protection of air, water or other natural resources, or the use, analysis, generation, manufacture, storage, disposal or transportation of any Hazardous Substances.

Improvements shall mean all buildings, structures and other improvements constructed on the Property.

Increased Rate shall have the meaning set forth in Section 7.10.

Initial Base Rent shall mean Thirty Thousand Dollars (\$30,000) per month during the Initial Period.

Initial Improvements shall mean the initial improvements constructed upon the Property as set forth in the Site Plan and Approved Plans.

Initial Period shall mean the period commencing on the Rent Commencement Date and ending at the last day of the Construction Period prorated for any partial month during the Initial Period.

Inspection Period shall mean from the Effective Date until a date one hundred twenty (120) days after the Effective Date or such later date as the Private Party and City Manager may mutually agree.

Lease Year shall mean the one (1) year period starting on the Commencement Date, if such date is the first day of the month, and each one (1) year period thereafter. If the Commencement Date is not the first day of the month, the period from the Commencement Date to the end of such month is the “**Partial Lease Year**” and Rent payable to the City shall be prorated based on a thirty (30)-day month and the first Lease Year shall be the first day of the month following the Commencement Date.

Leasehold Mortgage shall mean any mortgage, deed of trust or similar lien on the leasehold estate of the Private Party hereunder and shall not encumber the City’s fee interest in the Qualified Project, or, the City’s distributions from Excess Revenue Distributions.

Mortgagee means the holder of any Leasehold Mortgage or other purchaser at a foreclosure or other sale pursuant to the terms of a Leasehold Mortgage that has acquired the leasehold estate under this Agreement by foreclosure or a Leasehold Mortgagee that has obtained a new Agreement under the provision of Section 13.7 hereof, and their successors and assigns.

Leasehold Mortgagee means a Federal or State bank, savings bank, association, savings and loan association, trust company, family estate or foundation, insurance company, (provided they are domestic), pension fund, an institutional investor such as a publicly held real estate investment trust, an entity that qualifies as a “REMIC” under the Internal Revenue Code of 1986, as amended, or other US public or private investment entity; a brokerage or investment banking organization; an employees’ welfare, benefit, pension or retirement fund; an institutional leasing company; any governmental agency or entity insured by a US governmental agency or similar Person authorized to take mortgage loans in the State of Florida, in all events whether acting individually or in a fiduciary or representative capacity (such as an agency capacity), or any combination of the foregoing, which holds a Leasehold Mortgage. The term Leasehold Mortgagee also includes (x) a Person that is controlled by, controls or is under common control with a Leasehold Mortgagee as described in this paragraph, and (y) any Person which is a party to a bond financing, as the initial purchaser or indenture trustee of a bond, certificate, warrant or other evidence of indebtedness, or any fiduciary of such issuer, owner or holder, or any provider of credit enhancement and/or liquidity support for such indebtedness.

Memorandum of Agreement shall mean the Memorandum of Agreement in the form of **Exhibit B** attached hereto and made a part hereof.

Monthly Parking Permits shall mean the permits issued by the City (as authorized by the Private Party) for the monthly license of using a Parking Space within the Garage recognizing the City shall have the right to purchase up to ten (10) Monthly Parking Permits and the Parking Charges for such Monthly Parking Permits issued to the City for each month shall be deducted from the Subsequent Base Rent due to the City in the following month.

New License shall have the meaning set forth in Section 4.2(c).

Offset Rights shall have the meaning set forth in Section 7.2 of this Agreement.

Operating Budget shall mean a budget as to the Private Party Operating Expenses prepared by the Private Party as reasonably approved by the City Manager and budget of the City Operating Expenses prepared by the City as reasonably approved by the Private

Party, as such Operating Budget may be modified from time to time as reasonably approved by the Parties.

Operating Expenses shall mean the costs and expenses incurred in connection with the maintenance, operation and repair and leasing of the Qualified Project as more particularly described in this Agreement and the Parking Equipment Contribution, which is comprised of the City Operating Expenses and the Private Party Operating Expenses.

Parking Charges in the rates (i.e., rates for Reserved Parking, Special Event Parking, Monthly Parking Permits, Short Term Parking and other charges for parking in the Garage) which shall be consistent with the City's parking rates established in Section 26.161 as amended from time to time (or comparable reference to parking charges charged by the City from time to time) or such higher rates as the Private Party (as reasonably approved by the City) agree to. The Private Party shall determine the allocation of the Parking Spaces, including but not limited to, Reserved Parking, Short Term Parking, Special Event Parking, Monthly Permit Parking, etc., all as determined by the Private Party in its discretion, provided (i) the City shall (on behalf of the Private Party) issue the Monthly Parking Permits in accordance with their systems for issuance of Monthly Parking Permits as directed by the Private Party from time to time, and (ii) the City shall have the right to purchase up to ten (10) Monthly Parking Permits each month upon at least 10 days' prior written notice from the City to the Private Party. The City shall collect and remit all Parking Charges collected by the City each month to the Private Party (after deduction of an amount equal to the Subsequent Base Rent for such month and the City Operating Expenses incurred for such month), which revenues shall, upon receipt, be deposited by the Private Party in the Excess Revenue Reserve and the Enforcement Revenue shall be retained by the City and not included in such Parking Charges.

Parking Enforcement shall mean the City will perform parking enforcement with regard to violations of the City ordinances with regard to parking and/or the failure to pay Parking Charges. The City shall have the right to retain all of the revenues derived by the City for Parking Enforcement which are collected as part of such parking enforcement ("**Enforcement Revenue**").

Parking Equipment means systems of physical, mechanical or electronic mechanisms, installed at the beginning of the Term, by which the public pays for the Short-Term Parking when the Garage is open to the public. An amount of up to the Parking Equipment Contribution is to be paid by the Private Party to the City to reimburse or pay to the City for Parking Equipment purchased by the City in connection with the construction of the Garage by the Private Party (which amount shall be repaid as provided in the definition of Private Party Operating Expenses. The Parking Equipment may include parking meters, pay stations, signage, license plate reader and other technology in connection with parking operation to be conducted in the Garage which shall be purchased by the City and installed by the City in the Garage as part of the initial construction of the Garage, which installation by the City shall be coordinated by the City with the Private Party in connection with the Private Party's construction of the Garage. The Parking Equipment shall be selected by the City subject to the reasonable approval of the Private Party and to the extent the City does not utilize the entire Parking Equipment Contribution allocation for the purchase and installation of Parking Equipment, then any unused portion of such Parking Equipment Contribution shall, upon opening of the Garage, be paid by

the Private Party to the City (and included in Private Party Operating Expenses). Notwithstanding anything contained in this Agreement to the contrary, the costs to maintain, repair and replace the Parking Equipment shall be performed by the City so that such Parking Equipment is maintained in good condition and repair, which expenses shall be included in the City Operating Expenses. To the extent the City fails to maintain such Parking Equipment, which breach is not cured within one hundred twenty (120) days after written notice of such breach, the Private Party shall have the right but not the obligation to do so and the expense incurred by the Private Party shall be included in its Private Party Operating Expenses (even though not included in the Operating Budget).

Parking Equipment Contribution shall mean the \$100,000 to be paid by the Private Party to the City as provided in the definition of Parking Equipment.

Parking Regulations shall mean all applicable parking laws, regulations and requirements adopted by and applicable within the City.

Parking Revenue(s) shall mean all parking revenues derived in connection with Parking Charges within the Garage, including, but not limited to, Monthly Parking Permits, Special Events Parking, Short Term Parking, Reserved Parking (recognizing there is no parking charge for the FIRE/EMS Spaces), whereby the City shall use good faith and diligent efforts to collect such Parking Revenues at the Parking Charges in accordance with applicable City Ordinances, and each month the City shall provide an itemization of all such Parking Revenues collected by the City, may deduct the Subsequent Base Rent due for such month and then the City Operating Expenses incurred by the City for such month from such Parking Revenues to be remitted to the Private Party to deposit in the Excess Revenue Account and the balance shall be paid to the Private Party and included in gross revenues recognizing that in computing the distribution of the Excess Revenues the amount of the payment of the Rent shall be reduced by any portion of Subsequent Base Rent paid by the City out of Parking Revenues prior to paying such Parking Revenues to the Private Party. Neither this Agreement nor the obligations imposed upon the City hereunder shall be or constitute an indebtedness or general obligation of the City within the meaning of any constitutional, statutory or charter provisions requiring the City to levy ad valorem taxes or a place lien upon any properties or funds of the City. The parties agree this Agreement is not intended to create debt of the City, but the Private Party may incur debt secured by its interest in this Agreement. Nothing herein shall be deemed a pledge of the full, faith and credit of the City.

The City shall be entitled to collect, enforce and receive any On-Street Parking Revenues and other revenues derived from such On-Street Parking pursuant to the City Code, and such revenues shall not be part of the Gross Revenues in connection with the Qualified Project, nor shall the City be obligated to remit any portion of such On-Street Parking Revenues to the Private Party.

Parking Spaces shall have the meaning set forth in the definition of Qualified Project.

Parties shall mean the City and the Private Party and **Party** shall mean the City or the Private Party.

Pay Stations shall mean the mechanical/electronic device as part of the Parking Equipment into which payments is made for use of the parking spaces.

Permitted Corporate Transfer shall have the meaning set forth in Section 13.1.

Permitted Exceptions shall mean the matters affecting title to the Property which have been approved by the Private Party prior to the end of the Pre-Development Period.

Permitted Transfer shall have the meaning set forth in Section 13.1.

Permitted Use: The Private Party may design, permit and construct the Qualified Project on the Property. The City shall collect the Parking Revenues and Enforcement Revenues. At its expense, the Private Party shall construct the Initial Improvements on the Property by the Private Party based upon the permits issued by the City pursuant to the Approved Plan. Additionally, the Private Party may sublease the FIRE/EMS Station pursuant to the FIRE/EMS Sub-Lease, may sublease the Commercial Space for all lawful purposes except for those prohibited uses set forth in Section 6.2(g) and (h)

Pre-Development Approvals shall have the meaning set forth in Section 4.1.

Pre-Development Period shall mean the period from the Effective Date until eighteen (18) months after the Effective Date.

Private Party shall mean Las Olas Parking Solutions, LLC, a Florida limited liability company, its successors and assigns.

Private Party Improvements shall mean collectively the real and personal property improvements constructed by the Private Party at the Private Party's expense during the Term on the Property which are structural in nature, have a cost of \$250,000 or more, alterations to the exterior of the Initial Improvements (other than minor cosmetic alterations), which improvements shall require approval of the City Manager (which approval shall not be unreasonably withheld or delayed) which shall initially include, the Qualified Project as permitted and approved by the Applicable Authorities (the "**Initial Improvements**" or "**Improvements**"). The Private Party will coordinate commencement and completion of the Private Party Improvements with the City, and its agents, employees and contractors, to minimize disruption to traffic flow, pedestrian travel, noise pollution and other nuisances to the surrounding neighborhood and community. Both Parties acknowledge that health and safety are primary concerns in planning and constructing the Private Party Improvements. The Private Party's minimum contribution, whether debt, equity or grants, to construct the Qualified Project shall not be less than Twenty Million Dollars (\$20,000,000).

Private Party Operating Expenses shall mean all Operating Expenses as provided in the Operating Budget (including but not limited to the Parking Equipment Contribution) other than the City Operating Expenses.

Private Party's GC shall have the meaning set forth in Section 7.8.

Property shall mean the property described on **Exhibit A**, and all rights, privileges, easements, and appurtenances belonging to or in any way appertaining to the Property and the proposed Improvements all as more particularly depicted in the rendering attached hereto as **Exhibit B** which shall be developed by the Private Party on the Property as provided in this Agreement. The Improvements which are constructed by or at the expense of the Private Party during the Term on the Property shall remain the property of the Private Party during the Term but shall become the property of the City upon any termination of this Agreement.

Profit Distribution shall have the meaning set forth in the definition of Excess Revenue Distribution.

Qualified Institution shall have the meaning set forth in Section 12.1(b).

Qualified Project or Base Project shall mean the Improvements contemplated by the Unsolicited Proposal including, but not limited to, (i) a multi-level parking garage (“**Garage**”) containing approximately 300 parking spaces (“**Parking Spaces**”), (ii) approximately ±19,000 square feet of Commercial spaces (“**Commercial Space**”), (iii) and approximately ± 6,700 square feet fire/rescue/EMS Station as set forth in the FIRE/EMS Sub-Lease (“**FIRE/EMS Station**”), (iv) installation of the Streetscape Improvements, (v) installation of a trash container area to accommodate a trash container as contemplated in the plans for the Initial Improvements recognizing that the existing Revocable Licenses between the City and the Las Olas Holding Company Inc. (“**LOC**”) recorded in Instrument Number 116301277 of the Public Records of Broward County, Florida (“**Existing License**”) shall be terminated by the City and the Private Party shall attempt to agree to a new license with LOC on terms reasonably acceptable to the Private Party to permit retail facilities on Las Olas Blvd (“**Las Olas Designees**”) to use [TBD] ___% of the capacity of a new trash container to be installed in the Qualified Project based on a new license agreement to be entered into between the Private Party and the Las Olas Company whereby the Las Olas Company shall pay for [TBD] ___% the reasonable costs related to the removal of trash from the container and the maintenance and repair of such trash container area (“**New License**”), and (vi) other appurtenant Improvements developed on the Property from time to time.

Ramp Up Period shall mean a date ending twelve (12) months after the end of the Construction Period.

Rent or Rental shall mean any Base Rent, Subsequent Base Rent and/or Additional Rent owed by the Private Party to the City subject to adjustment for any offset or credits provided in this Agreement.

Rent Commencement Date shall mean from the date the Private Party obtains a building permit and Commencement of Construction of the Qualified Project.

Repair Replacement Payment shall mean upon any casualty, condemnation or if there is any capital repairs or replacements needed, then to the extent the Private Party shall make such repairs and/or replacement (and to the extent there is insufficient funds available from insurance proceeds or otherwise available from the Repair Replacement Reserve), the Private

Party shall pay for such shortfall and the Repair Replacement Payment shall be the aggregate unpaid amount of such shortfall times the Specified Rate per annum.

Reserved Parking shall mean reserved parking made available by the Private Party to third parties.

Response Notice shall have the meaning in Section 7.10.

Short Term Parking shall mean parking available on a first come, first served basis in the Garage.

Site Plan shall mean the Site Plan to be reviewed and approved by the City in accordance with the City's Unified Land Development Regulations.

SOFR Rate shall mean a rate per annum of a one month forward looking term rate based on the Daily SOFR that is published by the CME Group Benchmark Administration Limited (or a successor administrator) or a substantially equivalent rate as mutually agreed to by the Parties to the extent that such rate is no longer published).

Special Event Parking shall mean charges established by the City (consistent with such Special Event rates generally charged by the City or such other rates as mutually agreed upon by the City and the Private Party) for the use of Parking Spaces for special events (e.g., the boat parade or the air/sea show).

Specified Control shall have the meaning set forth in Section 13.1.

Specified Fixed Rate Increase Notice shall have the meaning set forth in Section 7.10.

Specified Rate shall mean the interest rate equal to (i) the Base Rate plus (ii) any Increased Rate plus (iii) any Annual Increased Rate.

Streetscape Improvements shall mean the streetscape and landscape along Southeast 8th Avenue, Southeast 9th Avenue and Southeast 2nd Court as shall be set forth in the DRC Approval.

Subsequent Base Rent shall mean \$60,000 per month from the beginning of the Subsequent Period (“**Beginning Date**”) until the tenth anniversary of the Beginning Date, and on the 10th anniversary of the Beginning Date, and each and every tenth anniversary thereafter, the Subsequent Base Rent then in effect shall be increased by 5%, subject to the express provisions of this Agreement, with respect to abatement of Rent (in connection with any casualty and/or condemnation) and/or offset of Rent (for any monies owed by the City to Private Party as set forth in this Agreement), Subsequent Base Rent shall never be less than \$60,000 per month.

Subsequent Major Improvements shall have the meaning set forth in Section 11.13.

Subsequent Period shall mean the period commencing on the business day following the end of the Construction Period and continuing during the balance of the Term.

Survey shall have the meaning set forth in Section 4.2.

Term shall mean the period commencing on the Commencement Date and continuing until the Expiration Date unless terminated earlier as expressly provided in this Agreement. The City Manager and the Private Party shall execute and record in the Public Records of Broward County, Florida a certificate evidencing the Commencement Date, Term, Rent Commencement Date and Construction Period, which such certificates shall make reference to this Agreement.

Termination Notice shall have the meaning set forth in Section 7.10.

Title Commitment shall have the meaning set forth in Section 4.2.

Title Company shall have the meaning set forth in Section 4.2.

Title Documents shall have the meaning set forth in Section 4.2.

Title Policy shall have the meaning set forth in Section 4.2.

Uncontrollable Delay shall have the meaning set forth in Section 7.4.

ARTICLE 2 **LEASE GRANT**

2.1 **Property**. In consideration of the obligation of the Private Party to pay rent as herein provided and in consideration of the other terms, covenants and conditions hereof, the City hereby demises and leases to the Private Party, and the Private Party hereby takes from the City, the Property TO HAVE AND TO HOLD said Property for the Term all upon the terms and conditions set forth in this Agreement. The City further agrees that if the Private Party shall perform all of the covenants and agreements herein required to be performed by the Private Party, the Private Party shall, subject to the terms of this Agreement, at all times during the continuance of this Agreement have peaceful and quiet possession of the Property, subject to the Permitted Exceptions as described in **Exhibit C** which the City has no obligation to cure or remove.

ARTICLE 3 **TERM**

3.1 **Term**. The “**Term**” hereof shall commence on the Commencement Date and continue in full force and effect until the Expiration Date, subject to earlier termination as provided herein.

3.2 **Termination of Use.** In the event that any governmental authority having jurisdiction and legal authority imposes a restriction that materially limits or terminates a Permitted Use hereunder (a “**Termination of Use**”), then the Private Party shall have, in addition to its other remedies, the right to terminate this Agreement upon thirty (30) days advance written notice to the City. In the event of the occurrence of a Termination of Use, the City may, at its election, reasonably consider and may consent to a substitute Permitted Use that is consistent with applicable zoning. Any substitute Permitted Use must meet the definition of Qualified Project under F.S. 255.065.

3.3 **Possession.** On or before the Commencement Date, the City agrees to remove (at its expense) its parking meters (and any other parking equipment) located on the Property and deliver exclusive possession of the Property to the Private Party.

3.4 **Authorized Representative.** In the administration of this Agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the respective Authorized Representative.

ARTICLE 4

INSPECTION & TITLE/SURVEY REVIEW

4.1 **Inspection.** Commencing on the Effective Date of this Agreement, the Private Party shall have the right to inspect the Property prior to taking Possession of the Property, to conduct feasibility studies regarding the Private Party’s intended use and redevelopment of the Property; provided, however, that any invasive testing shall require the prior written consent of the City, which shall not be unreasonably withheld, conditioned or delayed and shall not interfere with the ongoing operations of the existing parking. The Private Party shall be permitted access to the Property at all times (including prior to the Commencement Date) to perform the Private Party’s permitted studies, which may include without limitation: (i) core soil borings if called for by a Phase I Environmental Site Assessment (“**Phase I**”) and do not unreasonably interfere with the City’s Improvements or use of the Property; (ii) environmental and architectural tests and investigations, including a Phase I; (iii) physical inspections of all improvements, including, equipment, subsurface soils, structural members, and personal property; and (iv) examination of plans specifications, manuals, and other documents relating to the construction and condition of the Property. The Private Party and the Private Party’s agents, employees, consultants and contractors shall have the right of reasonable entry onto the Property during normal business hours as deemed reasonably necessary by the Private Party, solely for purposes adequately completing inspections, studies, tests and examinations of the Property. All inspections, studies, tests and examinations performed hereunder by the Private Party shall be at the Private Party’s expense. If for any reason during the Inspection Period, the Private Party does not desire to proceed with this Agreement, then the Private Party may terminate this Agreement by delivering a written notice to the City on or before the last day of the Inspection Period. In the event that the Private Party terminates this Agreement pursuant to this Section 4.1 during the Inspection Period, neither Party shall have any further rights or obligations under this Agreement (except for those that accrue on or before the date the Private Party terminates the Agreement in writing or which may expressly survive the termination of this Agreement). If the Private Party elects to terminate this Agreement, and the condition of the Property was materially altered due to tests,

inspections or pre-development work performed by the Private Party or on the Private Party's behalf, the Private Party must restore the Property to its original condition in all material respects. The Private Party must provide proof of insurance before undertaking any activities and such indemnities as required by the City Manager in his sole discretion. If the City Manager in his sole discretion determines that certain protective bonds (i.e. payment, performance, demolition, etc.) from approved and properly licensed surety or bonding companies are required before conducting any testing on the Property, then the Private Party shall provide same in amounts and from such companies and in such format as reasonably determined by the City Manager before being allowed access to the Property. The Private Party must reasonably coordinate its activities with the City by providing no less than forty-eight (48) hours prior written notice to the City before undertaking any onsite inspections, investigations, tests or assessments of the Property. Until the Commencement Date, the activities authorized in this section shall not unreasonably interfere with the ongoing operations of the Property for the public access and use of the parking lot presently located on the Property. Notwithstanding anything to the contrary contained in this Section 4.1, the Private Party shall provide at least five (5) days advance notice of its intent to the City Manager, or his designee, prior to conducting any invasive procedures within the Property.

4.2 **Title & Survey Review.** The City and the Private Party shall have until the end of the Inspection Period to review the Survey, Title Commitment and Title Documents as set forth in this Section 4.2 below:

(a) **Survey.** As soon as reasonably possible, and in any event within twenty (20) business days following the Effective Date (to the extent not previously delivered to the Private Party), the City shall deliver to the Private Party a copy of the most current survey of the Property the City has in its possession, custody or control. If the City has no current ALTA/ASCM survey of the Property which is satisfactory to the Private Party and its lender, the Private Party shall obtain (i) a new survey, or (ii) at the Private Party's option, an update of the City's existing survey which satisfies the Private Party's internal survey requirements (such new or updated survey being called the "**Survey**"). The Private Party shall pay for the initial cost of any new or updated Survey of the Property. The legal description set forth in the Survey obtained by the Private Party shall be submitted to the City Manager for approval in accordance with this Agreement which approval shall not be unreasonably withheld, delayed or conditioned and upon approval shall be deemed the Legal Description of the Property and added to this Agreement as **Exhibit A**.

(b) **Title Commitment.** As soon as reasonably possible, and in any event within twenty (20) business days after the Effective Date, the Private Party shall, at the Private Party's expense, deliver or cause to be delivered to the City: (1) a title commitment (the "**Title Commitment**") covering the Property binding any title company chosen by the Private Party (the "**Title Company**") to issue a ALTA Leasehold Policy of Title Insurance (the "**Title Policy**") on or before the expiration of the Pre-Development Period, in the full amount of the value associated with the Property after the construction of the Improvements, insuring the Private Party's leasehold title to the Property to be good and indefeasible, subject only to the Permitted Exceptions; and (2) true and legible copies of all recorded instruments affecting the Property and recited as exceptions in the Title Commitment (collectively, the "**Title Documents**"). The City shall have no obligation to cure any title defects other than the following "Agreed Cure Items" (i)

satisfy any lien on the Property created by or through the City or to cause such lien to be subordinate to the rights of the Private Party under this Agreement (ii) provide evidence to the Title Company of the City's authority to enter into this Agreement, (iii) terminate the Existing License and (iv) satisfy any adverse title matter created by the City after the Effective Date which has not been approved in writing by the Private Party. In the event of adverse title matters (other than those to be cured by the Agreed Cure Items which shall be provided by the City), the Private Party's option is to accept title "As-Is" or to terminate this Agreement.

(c) **Action During Inspection Period.** On or before the expiration of the Inspection Period the City and the Private Party, as applicable shall attempt to satisfy the following conditions:

(1) The City and the Private Party shall agree as to the form of the Fire EMS Sublease.

(2) The Private Party shall approve the status of the title and survey of the Property.

(3) The Private Party shall prepare a survey, (at the Private Party's expense) of the Property, (less a carveout for the existing pump station) of the Property and shall show the legal description of the Property which shall be reasonably acceptable to both Parties and upon approval shall replace the legal description and upon approval shall replace the legal description set forth on Exhibit A.

(4) The City and Private Party shall agree on the percentage of City's staffing costs under the definition of City Operating Expenses and the minimum threshold for capital repairs and/or improvements set forth in Section 11.1.

(5) The written agreement of the Private Party and the City of the scope of the Initial Improvements and work letter for the construction by the City of the landlord work as contemplated by the FIRE/EMS Sub-Lease.

(6) The termination of the Existing License and negotiation of the written agreement between Private Party and Las Olas Holding Company of the New License.

In the event any of the conditions in this Section 4.2(c) are not satisfied or waived in writing by the Private Party (as to 4.2(c)(1), (2), (3), (4), (5) and/or (6)) or the City (as to 4.2(c)(1), (3), (4), (5) and/or (6)), the Private Party or the City may terminate this Agreement by delivering written notice to the other on or before the last day of the Inspection Period. In the event that the Private Party or the City terminates this Agreement pursuant to this Section 4.2(c) then neither Party shall have any further rights or obligations under this Agreement (except those that accrue on or before the date of this Agreement is terminated in writing or which may expressly survive termination of this Agreement). If this Agreement is terminated prior to the end of the Inspection Period and if the Private Party has possession of the Property, then, upon demand, the Private Party shall vacate the Property.

4.3 **Pre-Development Period Approvals.** On or before the expiration of the Pre-Development Period, the City and/or the Private Party, as applicable, shall attempt to satisfy the following conditions complete the following (collectively the “**Pre-Development Approvals**”):

- (a) The approval of the Approved Plans for the Initial Improvements;
- (b) The agreed upon Capital Improvement Budget;
- (c) Execute a mutually acceptable Subordination, Non-disturbance and Attornment Agreements in favor of a Leasehold Mortgagee;
- (d) Commission and delivery of the ESA (defined below) to the City;
- (e) The Private Party may have obtained the DRC Approval;
- (f) The written agreement as to the scope of the Parking Equipment; and
- (g) The Private Party shall obtain all governmental approvals with all appeal periods having expired (including but not limited to a building permit) for the Private Party to construct the Initial Improvements with requirements acceptable to the Private Party.

If any of the conditions in this Sections 4.3 are not satisfied or waived in writing by the Private Party or the City, the Private Party or the City may terminate this Agreement by delivering a written notice to the other on or before the last day of the Pre-Development Period. In the event that the Private Party or City terminates this Agreement, then neither Party shall have any further rights or obligations under this Agreement (except for those that accrue on or before the date this Agreement is terminated in writing or which may expressly survive the termination of this Agreement). If this Agreement is terminated during the Pre-Development Period and if the Private Party has possession of the Property, then upon demand of the City, the Private Party shall vacate the Property and restore the Property to the condition existing prior to its possession caused by the Private Party.

4.4 **Construction Approvals Period.** The Private Party shall have a period commencing on the Effective Date of this Agreement and expiring on the end of the Pre-Development Period to pursue all necessary consents, approvals, permits or licenses (including but not limited to the DRC Approval) required by any Applicable Authority prior to the commencement of construction of the Initial Improvements. If the Private Party is unable to secure development approvals from the Applicable Authorities to construct the Initial Improvements, then the Private Party or the City may terminate this Agreement by delivering a written notice to the other on or before the last day of the Pre-Development Period. In the event that the Private Party or the City terminates this Agreement pursuant to this Section 4.4 during the Pre-Development Period, neither Party shall have any further rights or obligations under this Agreement (except for those that accrue on or before the date of termination of the Agreement prior to the end of the Pre-Development Period in writing or which may expressly survive the termination of this Agreement). If this Agreement is terminated, and the condition of the Property was materially altered due to tests, inspections or pre-development work performed by

the Private Party or on the Private Party's behalf, the Private Party must restore the Property to its original condition in all material respects.

ARTICLE 5
RENTAL

5.1 **Base Rent.** The Private Party shall to pay to the City (to the extent not paid by the City, as provided in the definition of Parking Charges and/or from the Excess Revenues as provided in Section 5.2) in lawful money of the United States of America (i) on the Rent Commencement Date and on the 25th day of each calendar month after the Rent Commencement Date during the Initial Period for which this Agreement is in effect, the Initial Base Rent (prorated based on a 30 day month for any partial month of the month of the Rent Commencement Date if the Rent Commencement Date is not the 25th day of the month of the Initial Period) and (ii) Subsequent Base Rent on the first day of the Subsequent Period (prorated based on a 30-day month, if the first day of the Subsequent Period is not the 25th day of the month), and the 25th day of each calendar month thereafter during the Term in which this Agreement is in effect.

5.2 **Excess Revenue.** On or before the 25th day of each month (i) the Private Party shall pay all Gross Revenues it receives in such each month into the Excess Revenue Account and (ii) the City shall pay all Parking Revenues (net of any Base Rent and City Operating Expenses paid by the City to itself out of Parking Revenue as provided in the definition of Parking Charges) it received in the prior month to the Private Party to deposit into the Excess Revenue Account from and after the Rent Commencement Date. On or before the 25th day of each month the Private Party shall distribute the Excess Revenue Distributions out of the Excess Revenue Account. Excess Revenue shall be deposited into an account with the Qualified Institution (as defined in 12.1 (b)).

5.3 **Statement of Gross Revenue and Operating Expenses.** On or before the 25th day of each month during the Subsequent Period of this Agreement, the Private Party shall prepare and deliver to the City and the City shall prepare and deliver to the Private Party, a statement certified as correct by such Party showing the amount of Gross Revenue received by such Party during the preceding month. In addition, on or before a date 120 days after the end of each Lease Year, each Party shall prepare and deliver to the other Party, a written statement of Gross Revenues received by such Party during the preceding Lease Year (or partial Lease Year), certified to be correct by an independent Certified Public Accountant; provided, however (i) the City shall be entitled to collect, enforce and receive any Enforcement Revenue. The Enforcement Revenue is not part of Gross Revenue and the City shall not be obligated to remit any portion of Enforcement Revenues to the Private Party. All such statements shall be in such form as the Party's may reasonably require. If any such certified statement discloses an error in the calculation of the amount of the Gross Revenues received by the Private Party to deposit into the Excess Revenue Account for any period, or the appropriate adjustment of the Excess Revenues to be distributed, the Parties shall true-up such deficiency so that the appropriate Gross Revenues are paid into the Excess Revenue Account and appropriate Excess Revenues paid.

5.4 Operating Expenses.

(a) **Operating Budget.** On or before March 31 of each year the City and the Private Party shall agree on the Operating Budget for the following fiscal year, subject to finalizing such Operating Budget based on the timing of the City's budgeting process. The Operating Budget shall be subject to being revised upon mutual agreement of the City and the Private Party acting reasonably. The determination of Operating Expenses shall be based on a fiscal year of October through the following September 30.

(b) **Operating Expenses.** During the Term (i) the City shall pay the City Operating Expenses as permitted in the Operating Budget to compensate the City for the services it provides pursuant to this Agreement and may deduct the City Operating Expenses from the Parking Charges which the City is required to remit to the Private Party each month, provided the City shall, as a City Operating Expense, be required to maintain, repair and replace the Parking Equipment in good condition as set forth in the definition of Parking Equipment, and (ii) the Private Party shall be required to maintain and operate the Qualified Project (subject to the City's obligations set forth in (i) and the obligations of the FIRE/EMS Sub-Tenant under the FIRE/EMS Sub-Lease and shall be reimbursed out of the Excess Revenue Account for the Base Rent, the Private Party Operating Expenses, Capital Payments, Repair Replacement Payment, Catch-Up Distributions and the Private Party's 50% share of the Profit Distribution.

(c) **Omitted Intentionally.**

(d) **Gross Revenue and Operating Expenses Records.** The Parties shall keep in Broward County, Florida an accurate set of books and records (as required by applicable law) of all Gross Revenue received by such Party and Operating Expenses paid by such Party in or about the Property, and all reasonably supporting records, including, but not limited to, sales, income and other tax reports, banking records, cash register tapes, sales slips and other sales records.

(e) **Audit.** Each Party, in its sole discretion, shall have the right to have its auditors make a special audit of all books and records, wherever located, pertaining to Gross Revenue and Operating Expenses of the other Party and the payment into and out of the Excess Revenue Account and Capital Reserve Account. Additionally, the City shall be entitled to request Private Party provide the City with copies of bank statements with respect to the Excess Reserve Account and Capital Reserve Accounts. If such statements are found to be incorrect to an extent of more than five percent (5%) over the figures submitted by such Party, the other Party shall pay for such audit. The violating Party shall promptly pay into the Excess Revenue Account any deficiency or be entitled from the Excess Revenue Account a Catch-Up Distribution, as the case may be, which is established by such audit.

(f) The Parties herein shall furnish to the other Party within one hundred twenty (120) days of the end of the Lease Year an audited **financial report** performed by a certified public accountant licensed to practice in the State of Florida and using generally accepted governmental accounting standards, said financial report reflecting the Gross Revenue received by such Party and the Operating Expenses for the prior fiscal year incurred by such Party and the Private Party shall also provide fund balance of the Excess Revenue Account.

5.5 **Parking Revenue from Property.** The City and the Private Party acknowledge and agree the Private Party shall retain control, possession and all rights to the Property from and after the Commencement Date and the City shall be entitled to collect Enforcement Revenue and On-Street Parking Revenue. The City shall collect all Parking Revenues and remit such Parking Revenues each month to the Private Party as provided in the definition of Parking Revenue. The City shall have reasonable and necessary access to the Garage in order to collect the Parking Revenue and perform its parking enforcement obligations.

5.6 **Capital Reserve Account.** During the Subsequent Period, the Monthly Reserve Capital Payment shall be paid in the Capital Reserve Account (controlled by Private Party) and the Private Party shall be entitled to distributions from the Capital Reserve Account and Excess Revenue Account as provided in Sections 11 and 12 of this Agreement.

5.7 **Offset.** To the extent the City (its successors and assigns) owes Private Party any monies under the FIRE/EMS Sub-Lease then, in addition to Private Party's (its successors and assigns) rights under the FIRE/EMS Sub-Lease, the Private Party (its successors and assigns) shall have the Offset Rights under this Agreement.

ARTICLE 6 **USE OF DEMISED PREMISES**

6.1 **Use.** The Property shall be used by the Private Party only for the purpose or purposes specified under the Permitted Use definition in Article I and for no other purpose without the prior written consent of the City. The Property may only be used by the Private Party as permitted by, and in full and strict compliance with, all Governmental Regulations and any restrictive covenants applicable to the Property.

6.2 **Limitations on Use.**

(a) The Private Party shall not, without the City's prior written consent, keep anything within the Property or use the Property for any purpose which invalidates any insurance policy carried on the Property. All property kept, stored or maintained within the Property by the Private Party shall be at the Private Party's sole risk, subject to the terms of the FIRE/EMS Sub-Lease.

(b) Without the consent of the City Manager, which consent shall not be unreasonably withheld or delayed or as provided in the FIRE/EMS Sub-Lease, the Private Party shall not permit any objectionable or unpleasant odors to emanate from the Property; nor place any awning or other projection on the exterior of the Property (other than those indicated on Approved Plans approved in advance by the City in writing in its proprietary capacity under this Agreement and not in its regulatory capacity or in the exercise of its police power); nor take any other action which would constitute a nuisance. The Private Party shall comply with local noise ordinances in the operation of radios, televisions, loudspeakers or amplifiers on the Property.

(c) The Private Party shall take good care of the Property and keep the same free from waste at all times. The Private Party shall keep the Property clean and free from dirt or rubbish at all times and shall store all trash and garbage within the Property or in such area

outside and premises as may be designated for such purpose by the City and the Private Party shall arrange, for the regular pickup of such trash and garbage at the Private Party's expense. The Private Party shall not operate an incinerator or burn trash or garbage.

(d) The Private Party covenants and agrees that during the Term of the Agreement it will (a) maintain appropriate certifications and licenses for such use, subject to an Uncontrollable Delay, and (b) seek to maximize the Gross Revenue generated from Commercial Spaces consistent with sound business practices and market conditions. Such covenant of Private Party shall not apply to parking rates established by the City for Parking Spaces within the Garage which shall be consistent with City's parking charges for similar parking.

(e) The Private Party agrees that at no time will it directly or indirectly knowingly permit the Property or any portion thereof to be used for any illegal purpose.

(f) Without the consent of the City which may be granted or withheld in the City's absolute discretion, this Agreement is issued to the Private Party with the explicit condition that any type of gambling at the Property is prohibited.

(g) Without the consent of the City, which may be granted or withheld in the City's absolute discretion no live adult entertainment establishments (as defined in Section 15-156(a) of the City of Fort Lauderdale Code of Ordinances in effect as of the Commencement Date) shall be allowed on the Property, nor shall adult streaming video be allowed.

(h) Without the written consent of the City Commission of the City, which may be granted or withheld in the City's absolute discretion, the Private Party shall not create a condominium form of ownership on or within the Property.

(i) Without the written consent of the City, the logo of the City shall not be used by the Private Party in connection with its marketing of the Qualified Project.

6.3 **Subordination.** This Agreement is subordinate to any emergency use invoked pursuant to Section 252.42, Florida Statutes, as amended or revised, or invoked pursuant to any applicable emergency management program or plan. Upon the termination of such emergency status, the City shall use its best efforts to cease and/or restore the Property to its condition prior to the declaration of the emergency.

ARTICLE 7

DESIGN, CONSTRUCTION, INSTALLATION AND LIEN CLAIMS

7.1 **Construction of Improvements.** The City authorizes the Private Party to design, develop and construct the Qualified Project on a "turn-key" basis based on the Approved Plans. The Private Party shall not be responsible for any "off-site" improvements necessary to serve the Qualified Project, except such "off-site" improvements as are required by the development process pursuant to all applicable laws, codes, and ordinances, including but not limited to, the City's Unified Land Development Regulations ("ULDR"), as may be amended from time to time. The Private Party shall, in consultation with the City and in accordance with all applicable laws, codes, and ordinances, select the services of the Qualified Project design and

construction team, including but not limited to the consultants, professionals, architects, engineering services, surveyors and landscape architects necessary to design and construct the Qualified Project and define its elements in detail sufficient for the Qualified Project's purposes and to fulfill the Qualified Project's construction requirements. The Private Party may engage outside consultants on the City's approved list of outside consultants to expedite the review process or as otherwise reasonably approved by the City Manager.

The Private Party agrees to cause the Initial Improvements to be constructed on the Property all in accordance with the Approved Plans. Prior to commencement of construction of the Private Party Improvements, the plans for such the Private Party Improvements shall be submitted to the City Manager for review and approval on behalf of the City in the City's proprietary capacity under this Agreement which approval shall not be unreasonably withheld, conditioned or delayed. Within thirty (30) days of receipt of the plans, the City Manager shall give the Private Party written notice of either the City's proprietary approval or disapproval setting forth the reasons therefore and failure to respond in any manner by the City Manager shall be deemed the City's approval of the Plans which approval shall remain subject to the City's approval in its regulatory capacity or in the exercise of its police power under Governmental Regulations (such plans as so approved are the "**Approved Plans**"). In the event that the City Manager disapproves the plans, the Private Party shall within ten (10) business days of receipt of the City Manager's notice modify the plans in accordance with the reasons set forth in the City Manager's disapproval notice or meet with the City Manager to discuss a resolution to any disagreement over changes in the plans, if applicable. The modified plans shall be resubmitted to the City Manager for the City Manager's further review and approval (not to be unreasonably withheld, delayed, or conditioned). Notwithstanding anything to the contrary contained herein, any approval (or deemed approval) by the City Manager on behalf of the City in its proprietary capacity under this Agreement shall remain subject to the Private Party's compliance with Governmental Regulations, including, without limitation, the City of Fort Lauderdale Unified Land Development Regulations (ULDRs) which approvals under the ULDRs may be simultaneously pursued while the City Manager reviews the plans under this Agreement.

All construction of the Private Party Improvements shall be done in a good and workmanlike manner and with the use of quality materials. Construction of the Private Party Improvements shall be at the Private Party's cost and risk and the Private Party shall pay promptly all costs of construction associated with the Private Party Improvements for which it is responsible, which shall include, but not by way of limitation, (a) all contract charges (labor, material and services furnished by contractors and subcontractors) (b) all costs of labor and material, (c) engineering, architectural, surveying and other professional fees and costs, and (d) all other costs and expenses (insurance, administrative, zoning, etc., but not debt service payments made by the Private Party), including, but not limited to, the cost of site clearing, excavating, site preparation, fill, compaction and grading with soil acceptable to build the proposed the Private Party Improvements. As between the City and the Private Party, construction of the Initial Improvements shall conclusively be deemed to be substantially completed upon delivery to the Private Party of a certificate of use permitting use of the Garage, a shell certificate of occupancy for the Commercial Space and a certificate of occupancy for the FIRE/EMS Station issued by a the City of Fort Lauderdale building inspector and any other certificate required by an Applicable Authority with respect to the Initial Improvements.

The City shall (in addition to its inspection rights in its governmental capacity), as the owner of the Property, have the right at its option to inspect the Qualified Project with such persons as it reasonably determines in compliance with FS 287.55 to ensure that the Private Party's activities comply with the provisions of this Agreement.

Subject to compliance with F.S. 255.065, as amended, the Private Party shall be permitted to renovate, develop and construction Improvements on the Property during the Term of this Agreement in conformance with this Agreement, applicable zoning requirements and other governmental requirements. The Private Party agrees to make no the Private Party Improvements to the Property, without first obtaining the written consent of the City Manager. The City agrees that the City Manager will reasonably approve or deny such the Private Party Improvements.

The Private Party shall use commercially reasonable efforts to complete the Initial Improvements as defined herein, prior to the end of the Construction Period, however the Private Party may ask for and the City may grant reasonable extensions for good cause shown. Failure of the Private Party to complete the Initial Improvements prior to the end of the Construction Period (as same may be extended as provided above) shall constitute a material default pursuant to Article XV of this Agreement.

Subject to the provisions of Section 7.2 of this Agreement, the financing plan, pursuant to F.S. 255.065, approved by the City contemplate the cost of the Qualified Project shall be fully financed by leasehold financing with Leasehold Mortgage(s) and/or by the Private Party through private funds. The Private Party has provided the City with evidence of the Private Party's ability to fully pay for the Qualified Project (to the extent it does not obtain financing from Leasehold Mortgage(s)). The Private Party shall provide the City evidence of financing it obtains in connection with the Qualified Project prior to commencement of construction of the Initial Improvements.

Subject to Section 7.2 of this Agreement, to the extent that there are cost overruns associated with the construction of the Qualified Project, any such cost overruns shall be paid by the Private Party.

The Private Party shall manage and oversee the construction of the Qualified Project in accordance with the design documents and construction documents reasonably approved by the City or any further development of the aforesaid documents that have been reasonably approved in writing by the City Manager.

After the initial construction/permanent financing, the proceeds of which were used to construct the Qualified Project, if the Private party seeks to engage in a "cash out" refinance transaction, then such a transaction shall be subject to the reasonable approval of the City Manager only to the extent that such financing affects in any material way the rights or obligations of the City as set forth in this Agreement recognizing that the Private Party may pledge it's interest in this Agreement as long as such transferee takes subject to the provisions of this Agreement in connection with the rights and obligations of the Private Party under this Agreement.

The Private Party shall provide a proforma statement addressing these impacts and an Operating Budget for the Private Party reflecting the new debt service payments before the City Manager will make a decision. The Private Party shall provide such information and give notice of intent to refinance at least 45 days before the scheduled closing date.

7.2 **FIRE/EMS Station.** The City and the Private Party agree that prior to the end of the Pre-Development Period, the Private Party and the FIRE/EMS Sub-Tenant shall execute the FIRE/EMS Sub-Lease, whereby (i) the Private Party shall construct the FIRE/EMS Station which includes, without limitation, the shell, plumbing, electricity, air conditioning, architectural and engineering fees, as provided in the work letter of the FIRE/EMS Sub-Lease, recognizing to the extent the City desires that the City shall receive a tenant improvement or other allowance in excess of the amounts in **Schedule 7.2** attached hereto (“**Excess Costs**”), then the City shall pay such Excess Costs or if the City elects to have the Private Party pay such Excess Costs, then to the extent Private Party pays for or provides a tenant improvement or other allowance for such Excess Costs, the Private Party shall be repaid for such Excess Cost (“**Excess Cost Reimbursement**”) as provided in the definition of Excess Revenue Distribution, (ii) the FIRE/EMS Sub-Tenant shall be entitled to utilize the FIRE/EMS Spaces when constructed, (iii) the FIRE/EMS Sub-Tenant shall pay the Private Party the FIRE/EMS Cam which shall be based on the City’s pro rata share of Operating Expenses as shall be set forth in the FIRE/EMS Sub-Lease, (iv) the FIRE/EMS Sub-Tenant shall, at its expense, operate the FIRE/EMS Station as provided in the FIRE/EMS Sub-Lease, and (v) if the City (its successors or assigns) is in default under the FIRE/EMS Sub-Lease, the Private Party (its successors and assigns) shall have, in addition to its other rights and remedies under the FIRE/EMS Sub-Lease, the right to offset against any Rent payable under this Agreement and to offset and collect from any Excess Revenues payable to the City any monies owed by the City (its successors or assigns) to the Private Party (its successors and assigns) (collectively the “**Offset Rights**”). Notwithstanding anything contained in this Agreement to the contrary, the Private Party is not required to comply with any obligations under this Agreement which are to be performed by the FIRE/EMS Sub-Tenant under the FIRE/EMS Sub-Lease, nor shall the Private Party provide indemnification with respect to any matters where the Private Party is to indemnify the City if such damage to the City is caused by the FIRE/EMS Sub-Tenant or those claiming by or through the FIRE/EMS Sub-Tenant under the FIRE/EMS Sub-Lease.

The Private Party agrees that (except as otherwise agreed to in writing between the City and the Private Party), it shall deliver the FIRE/EMS Station when all improvements for the FIRE/EMS Station to be constructed by the Private Party are completed, including, without limitation, the tenant improvement work required to be performed by Private Party pursuant to the FIRE/EMS Sub-Lease on or prior to a date 90 days after the date the first certificate of occupancy for the first Commercial Space, with all tenant improvements constructed thereon, so such tenant can commence to conduct business in such Commercial Space as completed.

Both Parties acknowledge that construction of the FIRE/Station is a material inducement for the City to enter into this Agreement and continued occupancy by fire personnel or other authorized employees is a material condition of this Agreement. Further, any leasehold mortgagee must recognize the Fire/EMS Sublease if it acquires possession or control of the Qualified Project and agrees never to terminate the Sublease for a City default, provided such party shall be entitled, in addition to the other rights and remedies under the FIRE/EMS Sub-

Lease, for a default by the City (its successors and assigns), it shall also have the Offset Rights provided in this Agreement, and the City will attorn to the leasehold mortgagee.

7.3 **Ownership of the Private Party Improvements.** All of the Private Party Improvements of any nature constructed by the Private Party on the Property including the Initial Improvements and alterations of the Initial Improvements and other alterations made pursuant to the provisions of this Agreement shall be owned by and shall be the property of the Private Party during the Term of this Agreement, provided upon the termination of this Agreement such improvements shall revert to the City and any existing leasehold debt must be satisfied or by its terms no longer encumber the Qualified Project at the time of termination.. The Private Party Improvements shall be owned by the Private Party until the Expiration Date. Upon the termination of this Agreement, whether by expiration of the Term hereof or by reason of default on the part of the Private Party, or for any other reason whatsoever, the Private Party Improvements (including the Initial Improvements), and all parts thereof shall merge with the title of the land, free of any claim of the Private Party and all persons and corporations (subject to the provisions of Article XIII hereof with respect to the rights of Leasehold Mortgagees holding Leasehold Mortgages, as both such terms are hereinafter defined it being understood that the Leasehold Mortgage should in no event have a maturity date which extends beyond the Expiration Date) claiming under or through the Private Party (except for trade fixtures and personal property of the Private Party that can be removed without damage to the Private Party Improvements). The Private Party shall deliver the Property to the City in reasonably good condition, actual wear, tear, casualty and condemnation excepted, upon the termination or expiration of the term of this Agreement. Upon the termination of this Agreement, the Private Party, at the City's request, will execute a recordable instrument evidencing the termination of this Agreement and stating the termination date.

7.4 **Uncontrollable Delay.** The time for the performance of the Private Party's obligations relative to the construction, restoration, repair, operation and maintenance of the Improvements as provided for in this Agreement shall be extended for the period that such performance is due to Uncontrollable Delays. "**Uncontrollable Delay**" shall mean all failures or delays in a Party's performance of its obligations hereunder not within such Party's reasonable control, including without limitation, the impossibility of such performance which shall result from or be caused by any arbitration, legal proceedings or other litigation threatened, instituted against or defended by such Party, in good faith, and not merely for purposes of delay, act of God, acts of the public enemy, wars, blockades, epidemics, pandemics, earthquakes, storms, floods, explosions, strikes, labor disputes, work stoppages, riots, insurrections, breakage or accident to machines or lines or pipe or mains, lawful acts of any governmental agency or authority restricting or curtailing the construction of the Improvements or withholding or revoking necessary consents, approvals, permits or licenses, equipment failures, inability to procure and obtain needed building materials (provided such Party who is unable to do so makes reasonable efforts to procure satisfactory substitute materials if practical) whether as a result (directly or indirectly) of any lawful order, law or decree of any governmental authority or agency or otherwise, and any other cause whether of the kind herein referred to or otherwise; provided, that such Party shall pursue with reasonable diligence the avoidance or removal of such delay. The inability or refusal of a Party to settle any labor dispute shall not qualify or limit the effect of Uncontrollable Delay. The inability of a Party to secure funds required to perform its agreements hereunder shall not constitute Uncontrollable Delay.

7.5 **Private Party's Work.** The Private Party shall have no right, authority or power to bind the City, or any interest of the City in the Property, for any claim for labor or material or for any other charge or expense incurred in connection with any construction work done by the Private Party within the Property, or any change, alteration or addition thereto, or replacement or substitution therefor, nor to render the City's interest in the Property liable to any lien or right of lien for any labor or material or any other charge or expense incurred in connection therewith, and the Private Party shall in no way be considered as the agent of the City in the construction or operation of the Private Party Improvements or any replacement or substitution therefor. Nothing herein shall be deemed a pledge of the full faith and credit of the City. Any lien on the fee simple interest of the City is void ab initio.

7.6 **Zoning, Permits & Approval by the City.** Irrespective of any other provisions of this Agreement or additions thereto, the obligations of the Private Party under this Agreement are conditioned upon (a) approval of the plans and specifications for the Initial Improvements by the City and any Applicable Authorities, (b) replatting of the Property, if necessary, in accordance with Governmental Regulations or restrictive covenants, and (c) the issuance of appropriate development orders and building permits for the construction of the Initial Improvements upon the Property. All such approvals or replatting shall be secured prior to the end of the Pre-Development Period. The City, in its capacity as the City under this Agreement (without waiver of the City's regulatory rights or duties provided by Governmental Regulations), hereby agrees to cooperate fully with the Private Party in securing the aforesaid permits and approvals and hereby grants the Private Party the right to make application for them in the name of the City, if required by the governing authority. The City will sign applications as the Owner of the Qualified Project and not as the applicant but shall authorize the Applicant to process such applications. Private Party shall provide such further indemnification as reasonably requested by the City in connection with requirements of other governmental authorities. All expenses incurred by the Private Party in obtaining the permits and authorizations referred to in this paragraph shall be the responsibility of the Private Party (with such hard and soft costs shall be included in Capital Payments) and the City shall have no liability for the permitting costs associated with Initial Improvements, other than to install the Parking Equipment and as provided with respect to Excess Revenue Distribution. Notwithstanding the forgoing, each Party hereto will, at the request of the other Party hereto, take such further actions as are requested and execute any additional documents, instruments or conveyances of any kind which may be reasonably necessary to further effect the transactions contemplated by this Agreement, including, without limitation, applications necessary to apply for grants available for construction or maintenance of the Qualified Project. As a condition for the City's assistance in applying for grants for construction or maintenance of the Private Party Improvements, the Private Party shall assume any and all liability and obligations under any grants received by the Private Party for the Qualified Project. Nothing in this Agreement is intended to limit or restrict the regulatory or police powers and responsibilities of the City in acting on such applications by virtue of the fact that the City may have been required to consent to such applications as a property owner under this Agreement.

7.7 **Discharge of Liens.** If any mechanic's, materialman's or other types of liens or lien claims are filed against the whole or any part of the Property, arising or resulting from actions or omissions by the Private Party or its agents, contractors and/or assigns, then then the Private Party shall promptly secure their release, or if the Private Party wishes to contest any

such lien or claim and has a reasonable basis for a contest, the Private Party may do so, but only if the Private Party furnishes the City with surety bonds or escrow funds (“**Construction Security**”) equal to 125% of the lien amount to protect the City’s interest in the Property and the parties’ interests in this Agreement during the pendency of the contest. If the Private Party does not secure a lien release or furnish Construction Security, such failure shall constitute an event of default by the Private Party hereunder and, in addition to all other rights and remedies available to the City by reason thereof, the City may, after thirty (30) days’ prior written notice pay such lien or claim and secure such release, and the Private Party shall be obligated to reimburse the City for all sums reasonably expended by the City in paying such lien or claim and securing such release, including attorney’s fees, plus interest at the highest lawful rate from the date of the City payment until it is reimbursed. Nothing contained in this Section 7.7 or elsewhere in this Agreement shall be deemed or construed as an authorization by or consent of the City or the Private Party to the filing of any mechanic’s or materialman’s lien against the Property, or against all or any portion of the Property or any interest therein. At the City’s election, the Private Party may be required to file a notice in accordance with Chapter 713, Florida Statutes.

7.8 **Payment and Performance Bond.** Prior to commencement of construction of improvements under a sublease (other than as to work by or through the FIRE/EMS Sub-Tenant) or prior to the commencement of construction of the Initial Improvements, for the Qualified Project, the Private Party, or sublessee, or the Private Party’s, or sublessee’s selected general contractor (collectively the “**Private Party’s GC**”) shall furnish to the City a Payment and Performance Bond, in connection with the construction contract between the Private Party and the general contractor constructing the Initial Improvements for the Specified Party but shall not include any tenant improvements performed in connection with the FIRE/EMS Sublease and/or Commercial Subleases as surety for faithful performance under the terms and conditions of this Agreement, with respect to the completion of the Initial Improvements covered by such Payment and Performance Bond. The corporate surety issuing the Payment and Performance Bond must have a Financial Size Categories (FSC) rating of no less than “A-” by the latest edition of Best’s Key Rating Guide, or acceptance of insurance company that holds a valid Florida Certificate of Authority issued by the State of Florida, Department of Insurance, and are members of the Florida Guarantee Fund. Acknowledgment and agreement is given by both parties that the amount herein set for the Payment and Performance Bond is not intended to be nor shall be deemed to be in the nature of liquidated damages nor is it intended to limit the liability of the Private Party to the City in the event of a material breach of this Agreement. The conditions of the Payment and Performance Bond shall be to insure that the Private Party’s GC will:

(a) Promptly make payment to all claimants, as defined in Section 255.05 Florida Statutes, as amended, supplying the Private Party with labor, materials, or supplies, used directly or indirectly by the Private Party in the prosecution of the work related to the Private Party Improvements under this Agreement;

(b) Pay the City all losses, damages, expenses, costs, and attorney’s fees, including appellate proceedings, that the City sustains because of a default by the Private Party under this Agreement pursuant to claims made under Section 255.05, Florida Statutes; and

(c) Perform the guarantee of all obligations of the Private Party's under this Agreement with respect to the construction, and the acquisition and installation of the Private Party Improvements.

The Payment and Performance Bond must be written by a Corporate Surety company on the U.S. Department of Treasury current approved list of acceptable sureties on Federal Bonds, as found in the U.S. Department of Treasury Circular No. 570, with said bonds being executed and issued by a resident agent licensed by and having offices in the State of Florida representing such Corporate Surety at the time such improvements are constructed, conditioned upon full and faithful performance by the Private Party, sublessee or any contractor, if applicable, of such contract, and full payment to all laborers and materialmen supplying labor or materials for such improvements. Such bonds shall identify the City as an additional obligee. If the bonds are provided by the contractor, then to the extent commercially obtainable, the bond shall provide that a default by the Private Party or sub-tenant as the case may be, in the performance of the contractor's contract, shall not be raised as a defense to the City as one of the obligee's requiring performance of such construction contract by the surety.

7.9 **Contractor's Insurance and Indemnity.** The Private Party shall require every contractor performing any work pertaining to the Private Party Improvements in excess of \$1,000,000 (other than by or through the FIRE/EMS Sub-Tenant) to furnish certificates of insurance to the reasonable satisfaction of the City. Copies of such certificates shall be furnished to the City Manager. The City will be named as an additional insured on such policies as set forth in **Schedule 10.1.1** and **Schedule 10.1.2**. The Private Party shall use commercially reasonable efforts (without being required to incur any increase in cost) to include an indemnification clause on any contract or agreement for any and all labor, services or materials to be provided in connection with the construction of the Private Party Improvements in excess of \$1,000,000 between the Private Party or its affiliate and any Private Party GC, whereby the Private Party GC shall indemnify and hold harmless the Private Party and the City for any and all loss, cost, or expense, including, but not limited to, attorneys' fees and court costs through all trial and appellate levels with respect to personal injury and/or property damage caused by the Private Party GC, its subcontractors, subconsultants, agents and employees in connection with performing or providing such labor, services or materials and/or any other of its obligations under the applicable contract or agreement and arising out of its negligence and/or intentional acts.

7.10 **Change in Financial Return.** To the extent that prior to the Rent Commencement Date, Private Party determines that the economics of the transaction will not provide Private Party an economic return substantially the same as to what it would have received at the time Private Party submitted its Unsolicited Proposal ("**Change in Financial Return**"), the Private Party shall have the right in its sole discretion (i) to notify the City in writing that it believes there was a Change in Financial Return and the Private Party is electing to terminate this Agreement ("**Termination Notice**"), or (ii) the Private Party may requests in writing ("**Specified Rate Increase Notice**") that the Base Rate of 8% be increased by a per annum interest rate equal to Base Rate plus the amount determined by the Private Party as the increase it requests in order to adjust the Base Rate to avoid the adverse impact of such Change in Financial Return ("**Increased Rate**"). In the event that the City notifies the Private Party that

it objects to the Private Party's request to increase the Base Rate by the Increased Rate or does not agree in writing to agree to Private Party's request to the Increased Rate within 20 days of the Specified Rate Increase Notice in either case within 20 days after the Specified Rate Increase Notice to the City that the Private Party requires an adjustment to the Specified Rate to increase same by the Increased Rate (“**Response Period**”) then the Private Party shall have the right upon written notice to the City within 20 days after the end of Response Period to elect to terminate this Agreement. In the event that the Private Party elects in writing to increase the Base Rate as provided in 7.10(ii) above to and the City agrees in writing to the Increased Rate within such 20 days after the Specified Rate Increase Notice, the City shall be deemed to have agreed that the Specified Rate shall be increased to the Base Rate plus the Increased Rate. Upon any termination of this Agreement pursuant to this 7.10 above, this Agreement shall terminate and the Parties shall be released of all further obligations each to the other under this Agreement.

7.11 Additionally, on the first anniversary of the Commencement of Construction and on the first day of each annual anniversary thereafter (each an “**Anniversary Date**”) until such time as Private Party has completed the Qualified Project, as evidenced by certificates of occupancy, and obtained a permanent loan on Private Party's interest in this Agreement, the Parties agree that if as of any Adjustment Date the SOFR Rate exceeds the Specified Rate, then in effect immediately prior to such applicable Anniversary Date (such excess being the “**Additional Increased Rate**”), then the Specified Rate then in effect shall be adjusted upward by the Additional Improvement Rate from and after such Anniversary Date until a determination is made as to whether further Additional Increased Rates should be made to the then Specified Rate on such later Anniversary Date(s). Upon issuance of the Certificate(s) of Occupancy for the Qualified Project, no further Additional Increased Rates shall be added to the Specified Rate and the Specified Rate at the time of such issuance of such Certificate(s) of Occupancy for the Qualified Project shall thereafter remain in effect for the Term of this Agreement.

ARTICLE 8

SECURING GOVERNMENTAL APPROVALS AND COMPLIANCE WITH LAW

8.1 **Compliance with Laws.**

(a) The Private Party, at the Private Party's sole cost and expense, shall obtain any and all governmental licenses, permits, and approvals necessary to construct or install the Improvements. Except as provided in the FIRE/EMS Sub-Lease, the Private Party shall comply and shall require any Sublessees of the Property to comply, at all times with (i) all applicable Governmental Regulations for the use of the Property, and (ii) all governmental orders for the correction, prevention and abatement of nuisances arising from the Private Party's and/or the Sublessees use of the Property, all at the Private Party's and/or Sublessee's sole cost and expense.

(b) The Private Party shall procure at its sole expense any permits and licenses required for the transaction of business in the Property and/or in any way related to the Property and shall comply with all laws, ordinances, regulations and orders now in effect or hereafter enacted or passed during the term of this Agreement insofar as the Property and any signs of the

Private Party are concerned, and shall, except as herein otherwise provided, make at the Private Party's own cost and expense all repairs, additions and alterations to the Property ordered or required by any governmental authorities, whether in order to meet the special needs of the Private Party, or by reason of the occupancy of the Private Party, or otherwise.

(c) The Private Party's compliance with all Governmental Regulations, rules, and other laws shall include, but not be limited to, full compliance with all federal, state, and local laws, rules, and regulations concerning the possession, storage, use, disposal of and clean-up relating to any and all types of Hazardous Substances or hazardous wastes, as the term "**Hazardous Wastes**" is defined by applicable Governmental Regulations or Hazardous Substance Laws.

(d) The Private Party shall obtain any and all needed regulatory approvals, licenses, and/or permits relating to the operation of its business, its occupancy of the Property, and any other such approvals, licenses or permits relating in any way to the Property during the Term, including, but not limited to, any such governmental approvals, permits or licenses relating to Hazardous Substances, chemicals, petroleum products, hazardous materials, as the term "**Hazardous Materials**" is defined by applicable Governmental Regulations or Hazardous Substance Laws, and/or Hazardous Wastes possessed, used, or stored on the Property by the Private Party. The Private Party shall cause or insure that all subtenants or subleases (except for the Fire/EMS substation) obtain any and all needed regulatory approvals, licenses, and/or permits relating to the operation of its business, its occupancy of the Property, and any other such approvals, licenses or permits relating in any way to the Property during the Term, including, but not limited to, any such governmental approvals, permits or licenses relating to Hazardous Substances, chemicals, petroleum products, hazardous materials, as the term "**Hazardous Materials**" is defined by applicable Governmental Regulations or Hazardous Substance Laws, and/or Hazardous Wastes possessed, used, or stored on the Property by the Private Party.

(e) In the event of any accident or spillage of any Hazardous Substances including petroleum product, chemical, toxic compound, Hazardous Materials and/or Hazardous Wastes on or at the Property during the Term, as extended, the Private Party shall comply with all federal, state and local laws, rules, and regulations pertaining thereto, including notification of proper authorities, safety of all persons potentially affected, evacuation of premises if necessary, clean-up and disposal. Additionally, the Private Party shall be solely responsible for all costs associated with any spillage of any such compounds or wastes on or at the Property, and for the clean-up and disposal of any such compounds, including Hazardous Substances or Hazardous Wastes, on the Property, in accordance with Governmental Regulations, Hazardous Substance Laws, rules, and orders unless and to the extent caused by negligent act or omission of the City's employees acting within the course and scope of their employment.

8.2 **Environmental Covenants.**

(a) The Private Party covenants that during the Term, the Private Party shall not permit any toxic or Hazardous Substances, including, without limitation, asbestos and the group of organic compounds known as polychlorinated biphenyls, to be generated, treated, stored or disposed of, or otherwise deposited in or located on, or released on or to the Property, including, without limitation, the surface or the subsurface waters of the Property. The Private

Party will not engage in and will not permit any other Party to engage in any activity on the Property which would cause (i) the Property to become a hazardous waste treatment storage or disposal facility within the meaning of, or otherwise bring the Property within the ambit of, the Resource Conservation and Recovery Act of 1975 (“**RCRA**”), 42 U.S.C. ‘6901, et seq., as amended, or any similar state law or local ordinance or other environmental law, (ii) a release or threatened release of a Hazardous Substance from or to the Property within the meaning of, or otherwise bring the Property within the ambit of, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“**CERCLA**”), 42 U.S.C. ‘9601-9657, as amended, or any similar state law or local ordinance of any other environmental law, or (iii) the discharge of pollutants or effluents into any water source or system, or the discharge into the air of any emissions, which would require a permit under the Federal Water Pollution Control Act, 33 U.S.C. ‘1251, et sea., or the Clean Air Act, 42 U.S.C. ‘7401, et seq., or any similar state law or local ordinance or any other environmental law. the Private Party will not permit any substance or conditions in or on the Property which might support a claim or causes of action under RCRA, CERCLA, or any other federal, state or local environmental statutes, regulations, ordinances or other environmental regulatory requirements, and no ground storage tank will be located on or under the Property, except as presently exists or as approved by the City and the applicable authorities. As used herein, the terms “hazardous substance” and “release” shall have the meanings specified in CERCLA and in this Agreement, and the terms “solid waste” and “disposal” (or “disposed”) shall have the meanings specified in RCRA; provided, in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment, provided further, to the extent that the laws of the State of Florida establish a meaning for such terms which is broader than that specified in either CERCLA or RCRA, such broader meaning shall apply.

(b) In the event the Private Party is obligated by any applicable federal, state or local law, ordinance or regulation or otherwise directed by any governmental agency or authority, to clean up, remove or encapsulate or cause the clean-up, removal, or encapsulation of any Hazardous Substance or Hazardous Wastes and/or Hazardous Materials or asbestos or material containing asbestos (“**Asbestos**”) from the Property, the Private Party hereby guarantees to the City it shall (i) promptly undertake to arrange for such clean up, removal and disposal in accordance with all Governmental Regulations and Hazardous Substance Laws, (ii) exercise its best efforts to insure that such clean up and removal shall be conducted in a timely and diligent manner, and (iii) assume the costs and expense, including any fines, of such clean up and removal. Notwithstanding anything to the contrary contained herein, the end of the Inspection Period, a Phase I Environmental Site Assessment (“**ESA**”) at the Private Party’s expense, shall be performed on the Property. And, if the ESA recommends a Phase II ESA then a Phase II ESA shall also be performed (the Phase I ESA and any applicable Phase II ESA shall form the “**Environmental Baseline**” for this Agreement. Any covenant, obligation or indemnity of the Private Party set forth in this Article VIII shall not extend to any claim, demand, fine, penalty, cause of action, liability, damage, loss, cost or expense related to the presence of Hazardous Substances that are documented in the Environmental Baseline.

(c) In the event that any lien is recorded or filed against the Property pursuant to any Governmental Regulations or Hazardous Substance Laws regarding Hazardous Substances, Hazardous Materials, Hazardous Wastes, or Asbestos, the Private Party hereby

guarantees to the City that the Private Party shall, not later than thirty (30) days following the filing of such lien, satisfy the claim and cause the lien thereunder to be discharged of record (whether by payment, bonding or as otherwise provided by Section 8.2. hereof).

(d) In addition to the foregoing, the Private Party shall protect, defend, indemnify and save harmless the City, and the City's officials, constitutional officers, agents, employees and representatives from and against all loss (including diminution in the value of the Property), cost, damage, liability, obligation, causes of action, fine, penalty or expense (including attorneys' fees and expenses for investigation, inspection, removal, clean up, and remedial costs incurred to permit continued or resume normal operation of the Property), imposed upon or incurred by or asserted against the City by reason of the following occurrences during the Term, as extended (i) the use, generation, storage, presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release, or threatened release of any Hazardous Substance, Hazardous Materials and/or Hazardous Wastes or Hazardous Substances on, from, or affecting the Property or any other property or the presence of Asbestos on the Property; (ii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or -related to such Hazardous Substance, Hazardous Wastes, Hazardous Materials or Asbestos; (iii) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substance, Hazardous Wastes, Hazardous Materials or Asbestos; or (iv) any violation of laws, orders, regulations, requirements, or demands of governmental authorities, which are based upon or in any way related to such Hazardous Substance, Hazardous Wastes, Hazardous Materials or Asbestos including, without limitation, the costs and expenses of any remedial action, attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses.

(e) If at any time the Private Party shall become aware, or have reasonable cause to believe, that any Hazardous Substance in violation of any applicable Governmental Regulations or Hazardous Substance Laws has come to be located on or beneath the Property, the Private Party shall immediately, upon discovering such presence or suspected presence of the Hazardous Substance, give written notice of that condition to the City. In addition, the Private Party shall immediately notify the City in writing of (i) any enforcement, cleanup, removal or other governmental or regulatory action instituted, completed, or threatened pursuant to any Governmental Regulations or Hazardous Substance Laws, (ii) any written claim made or threatened by any person against the Private Party, the Property or improvements located thereon relating to damage, contribution, cost recovery, compensation, loss or injury resulting from or claimed to result from any Hazardous Substances, and (iii) any reports made to any Applicable Authorities arising out of or in connection with any Hazardous Substances in or removed from the Property or any improvements located thereon, including any complaints, notices, warnings or asserted violations in connection therewith. The Private Party shall also supply to the City as promptly as possible, and in any event, within five (5) business days after the Private Party first receives or sends the same, copies of all claims, reports, complaints, notices, warnings or asserted violations of any applicable Governmental Regulations or Hazardous Substance Laws relating in any way to the Property or improvements located thereon or the Private Party's use thereof.

(f) The Private Party agrees to provide to the City a copy of all environmental and Hazardous Substance reports (including test results dealing with the Property) obtained by

the Private Party by the end of the Inspection Period, or which otherwise come into the Private Party's possession, custody, or control (regardless of when conducted), within fifteen (15) days following the Private Party's receipt of same.

(g) The remedial obligation of the Private Party as stated above shall include the reasonable costs of the following when required by Applicable Authorities:

- all required or necessary inspections, investigations, applications, permits, plans, licenses, consent orders, and the like; and,
- all cleaning, detoxification, remediation, cleanup and disposal; and,
- all tests, audit, monitoring, and reporting; and
- payment of all fees, costs, assessments, fines and penalties legally charged by Applicable Authorities in accordance with Governmental Regulations.
- The indemnity in Section 8.2 shall include without limitation the reasonable costs of the following when required by Applicable Authorities that enforce laws related to Governmental Regulations:
 - all fees, costs, assessments, fines and penalties charged by Applicable Authorities.
 - the Private Party agrees to pay for all reasonable attorneys' fees, experts' fees and costs incurred by the City in the City's enforcement against the Private Party of the provision of this Section 8.2;

The indemnification provided in this Section 8.2 shall survive the termination or expiration of this Agreement, but shall end, with respect to any claim or cause of action, with the expiration of any applicable statute of limitations for such claim or cause of action;

In the event the City's insurance coverage requires that the City's carrier defend any claim that falls within the scope of this indemnity, the Private Party shall not be responsible to reimburse the City for its costs of defense; to the extent such defense is provided pursuant to the City's insurance policy.

(h) At any time during the term of the Agreement, the City may, upon reasonable prior written notice to the Private Party (taking reasonable action to minimize potential disruption of the operation of the Permitted Uses) to enter upon the Property for the purpose of conducting environmental tests, pursuant to this Section 8.2 (and thus not as a result of the exercise of its regulatory governmental jurisdiction) ("**City's Tests**"), to determine the presence and extent of contamination by Hazardous Substances on or under the Property, provided that in connection with entering into occupied portions of the Property, the City shall provide reasonable advance notice to the Private Party and coordinate such access with the Private Party, in order to not unreasonably interfere with its operations. The City shall not be

entitled to conduct the City's Tests unless: (1) a governmental entity (other than the City) shall have issued a written notice of violation to the Private Party or the City with respect to Hazardous Substances on, within, or under the Property); or (2) the City has reasonable cause to believe that Hazardous Substances exist on or under the Property in violation of Governmental Regulations.

(i) The City's Tests shall be at the sole cost of the City. The cost and expenses relating to the City's Tests shall not be included in remediation provisions of Section 8.2 or in the scope of any indemnification provided in favor of the City in this Agreement. No the City's Tests shall be conducted until the City has provided to the Private Party the name of the testing contractor (which shall be fully licensed to conduct the City Tests) and a certificate of insurance with limits reasonably acceptable to the Private Party confirming that the Private Party is an additional insured and that coverage exists for property damage, personal injury and business interruption which may result from the City's Tests. Subject to the limitations of F.S. 768.28, the City agrees to indemnify and hold the Private Party harmless (subject to its limitation of sovereign immunity liability) with respect to any loss, claim or damage (including attorney's fees and expenses) which the Private Party shall suffer as the result of the conduct of the City's Tests. No payment shall be made for incidental, special, consequential or punitive damages.

8.3 **Warranties.** Except as expressly stated otherwise in this Agreement, the City makes no representations, express, implied, or otherwise, as to the suitability of the Property for use by the Private Party nor as to the Private Party's intended use of the Property being in compliance with any deed restrictions, laws, regulations, rules, ordinances, building codes, zoning requirements, or other similar restrictions on use. The Private Party acknowledges that it has checked applicable restrictions, laws, building codes, zoning requirements, rules, regulations and ordinances to determine that the Private Party's intended use of the Property is authorized and permitted by law.

ARTICLE 9

TAXES, FEES AND ASSESSMENTS

From and after the Rent Commencement Date, the Private Party shall pay, before they become delinquent, all sales, use or excise taxes, ad valorem and non-ad valorem taxes, assessments (whether general, special, ordinary, extra ordinary, foreseen or unforeseen) and other governmental charges and impositions levied or assessed against the Private Party's fixtures, equipment and personal property on, attached to, or used in connection with the Property or any part thereof or related to or arising from the use, occupancy or rents and income derived from the Property; provided, however, that if any tax is payable in installments, the Private Party may also pay in installments, but all such taxes shall be paid in full prior to the expiration of the Term, as extended if applicable. The City shall promptly present the Private Party with copies of all tax bills received for each lease year for which the Private Party is expressly responsible. Upon the City's written request, the Private Party shall deliver to the City official receipts that show payment of all charges required under this Article and contained in the City's written request. These receipts must be delivered to the place where the Rent payments are to be made. The Private Party shall have the right at the Private Party's election to protest the levy, assessment or collection of any taxes, assessments, charges or impositions by appropriate

legal action, provided that the Private Party shall not thereby permit any lien (other than the lien for current taxes not yet due and payable) or judgment for any taxes, assessments, charges or impositions to be filed or enforced against the Property. On the written request of the Private Party, the City will join with the Private Party in any such protest on the condition that the Private Party pay all of the reasonable costs and expenses (including reasonable attorneys' fees and expenses) incurred by the City in connection with this joinder. The Private Party must give the written notice to the City not later than sixty (60) days before the contested taxes would otherwise become delinquent. The Private Party must also furnish the City with a bond with surety by a surety company qualified to do business in the State of Florida or cash paid into escrow and held by the City. The bond or cash must be in an amount equal to the amount of the taxes, claim, charge or assessment together with estimated penalties and interest being contested and must be conditioned upon payment of the taxes, claim, charge or assessment once the validity has been determined.

The City shall file an application to attempt to obtain tax exempt status of the Garage and Fire/EMS Station and shall co-operate with the Private Party to attempt to avoid the payment of taxes and assessments with respect to the Garage and FIRE/EMS Station due to the public nature of such portions of the Property

ARTICLE 10 INSURANCE

10.1 **Insurance Requirements.** From and after the Commencement Date, the Private Party shall maintain, at the Private Party's sole cost and expense, insurance as provided on **Schedule 10.1.1** and **Schedule 10.1.2** on the Property and/or include the following insurance requirements in any agreement it enters into with any contractor(s) for construction work on the Property or require in its Approved Subleases entered into after the date hereof, and the Private Party further agrees to provide to the City, prior to commencement of the improvements with respect to such contract, certificates of insurance evidencing the contractor's or Sublessee's compliance with the requirements of this Section 10.1:

10.2 **Waiver of Subrogation.** Anything in this Agreement to the contrary notwithstanding, the City and the Private Party each hereby waive any and all rights of recovery, claim, action, or cause of action, against the other, its agents, officers, or employees, for any loss or damage arising from any cause covered by insurance required to be carried by each of them pursuant to this Agreement (or would be covered if the insurance set forth above was obtained by the Parties) or any other insurance actually carried by each of them, regardless of cause or origin, including negligence of the other Party hereto, its agents, officers, or employees, and covenants that no insurer shall hold any right of subrogation against such other Party. All insurance obtained by either the Private Party or the City hereunder, especially including the property damage insurance described herein shall contain appropriate waiver of subrogation rights endorsements whereby the insurer releases all rights of subrogation against both the City and the Private Party. Each Party shall provide the other with copies of such endorsements upon request.

ARTICLE 11

MAINTENANCE AND REPAIR; ALTERATIONS; UTILITIES; ACCESS; SECURITY

11.1 **Maintenance and Repair of Property.** The Private Party shall maintain in good repair and condition the entire Property and all of the Private Party Improvements, fixtures, equipment and personal property on the Property (other than those relating to the Fire/EMS Station which shall be maintained by the FIRE/EMS Sub-Tenant pursuant to the FIRE/EMS Sub-Lease and the obligation of the City to maintain the Parking Equipment), and keep them free from waste or nuisance and the Private Party shall be required to replace any the Private Party Improvements or portion or thereof on the Property that have reached the expiration of their useful life during the Term as reasonably determined by the Private Party in accordance with sound accounting principles. The City shall, at its expense, maintain, repair and replace the Parking Equipment in good condition and repair.

The Private Party further covenants and agrees that it will impose and enforce rules and regulations with respect to users of the Property to help with maintaining and operating the Property in a **first-class manner** and their use of the Property.

Additionally (i) the Private Party shall be entitled to be reimbursed from the Excess Revenue Account for all the Private Party Operating Expenses incurred by the Private Party, and (ii) the Monthly Reserve Capital Payment shall be funded into the Capital Reserve Account to the extent of available funds and the Private Party shall be entitled to distributions out of the Capital Reserve Account and Excess Revenue Account as provided in this Agreement. On the Expiration Date, the balance of the Capital Reserve Account (after payment of all sums due to the Private Party) shall be paid to the City.

To the extent the Private Party believes that there are capital repairs and/or improvements in excess of \$TBD, which should be made to the Property which is not otherwise being paid for from insurance proceeds, then the Private Party may request that the City Manager approves such work and a proposed Capital Improvement Budget of hard and soft costs with respect thereto, which approval shall not be unreasonably withheld, delayed or conditioned, and to the extent the City Manager approves such work and budget (such work and budget for such work which has been approved is the “**Approved Capital Expenditures**”), the Private Party shall be entitled to perform the Approved Capital Expenditures, the Private Party shall be entitled to disbursements from the Capital Reserve Account and Excess Revenue Account for such Approved Capital Expenditures which have been made as certified by the Private Party and the contractor performing such work certifying such portion of the Approved Capital Expenditures which have been installed in a good and workmanlike manner substantially in accordance with the Approved Plans and applicable Governmental Regulations and the cost for such Approved Capital Expenditures is consistent with and within the Capital Improvement Budget. To the extent there is not sufficient monies in the Capital Reserve Account to fully pay the Private Party the hard and soft costs for the Approved Capital Expenditures, then the Private Party shall fund the Improvements and be entitled to a Catch Up Distribution to recover such shortfall.

The City shall have the right to reasonably monitor the maintenance practices to be performed by the Private Party to insure that the Qualified Project is maintained as provided

in this Agreement so that proposals submitted by the Qualified Party serves a public purpose as a public facility or infrastructure that will be used or will be used by the public at large or in support of an accepted public purpose or activity and as proposed, constitutes a Qualifying Project pursuant to §255.065 Florida Statutes.

11.2 **Maintenance, Repair and Operation of Parking Equipment.** Notwithstanding anything to the contrary contained herein, the City, at the City's sole cost and expense, and subject to appropriation of funds by the Commissioners of the City, shall maintain in good repair and condition the entirety of the Parking Equipment and keep them free from waste and nuisance in accordance with the City's normal and customary maintenance standards and procedures for similar Parking Equipment.

11.3 **Alterations.** The Private Party shall not make any major alterations, modifications or additions other than to restore a casualty ("**Subsequent Major Improvements**") to the Property without the written consent of the City Manager of the City, which consent shall not be unreasonably, withheld conditioned or delayed. Subsequent Major Improvements means any alteration or addition to the Property (whether done as a single project or as a series of projects within a twelve (12) month period) whose cost exceeds twenty percent (20%) of the Fair Market Value of the Property. Fair Market Value shall be determined by and based on the most current "as-built" appraisal of the Property, prepared by an MAI appraiser licensed to perform appraisal services within the State of Florida, obtained from the Private Party's leasehold mortgagee, if applicable. In the event the most current appraisal is more than two (2) years old, the City or the Private Party may require a new appraisal and such appraisal shall be certified to the City and the Private Party. The cost of such new appraisal shall be borne by the Private Party paid to the Private Party out of Excess Revenues. For purposes of this section, neither routine and normal maintenance nor work required to restore a casualty (as provided in Article XI, Section 11.1) shall be considered Subsequent Major Improvements. Notwithstanding the foregoing, the Private Party shall have the right, from time to time, to make minor additions, alterations and changes to the Private Party Improvements which do not amount to Subsequent Major Improvements and for repair damage caused by a casualty (hereinafter sometimes referred to collectively as "alterations" which term shall, when used in this Section 11.3 include any replacement or substitution therefor), provided that no event of default shall exist by the Private Party in the performance of the Private Party's covenants or agreements in this Agreement, subject, however, to the following:

(a) no structural alterations of the original facade or exterior of the Private Party Improvements shall be commenced except after receipt of the City's written approval of such alterations in its proprietary capacity and not in its regulatory capacity, which approval the City agrees not to unreasonably withhold and which shall not be granted prior to all regulatory approvals;

(b) no alterations shall be made which would impair the structural soundness of the Private Party Improvements;

(c) no alterations shall be undertaken until the Private Party has furnished the City reasonable evidence that all building permits, licenses and authorizations required by Governmental Regulations and all required consents of Leasehold Mortgagees and the City have

been procured. The City shall join, but without expense to the City, in the application for such permits, licenses or authorizations whenever such action is necessary and is requested by the Private Party;

(d) no alterations shall be made which would be in violation of the terms and provisions of the any exceptions not cured or removed as evidenced in the Title Documents [e.g. applicable deed restrictions];

(e) any alterations shall be made within a reasonable time and in a good and workmanlike manner and in substantial compliance with all applicable permits, licenses and authorizations, and building laws and with all other Governmental Regulations.

11.4 **Utilities.** The Private Party is responsible, at its sole cost and expense, for obtaining, connecting, installing, repairing and maintaining all utility lines, connections and facilities at or for the Property, and the Private Party shall pay all charges for cable, heating, air conditioning, water, storm water, sanitation, garbage, electricity, gas, sewer, telephone or any other utility connections, tap-in fees and services furnished to the Property from and after the Effective Date (other than that incurred by the City). The City and the Private Party agree the hard and soft costs of which shall be included in the calculation of Capital Payments and the on-going maintenance, utility charges and other expenses related thereto shall be an Operating Expense repaid out of Excess Revenue. The City shall in no event be liable or responsible for any cessation or interruption in, or damage caused by, any such utility services other than due to its gross neglect or willful misconduct.

ARTICLE 12

CASUALTY DAMAGE, DESTRUCTION AND CONDEMNATION

12.1 Section 13.1. Casualty Damage or Destruction.

(a) **Private Party's Obligation to Restore.** Should the Private Party Improvements currently existing or hereafter situated on the Property during the term of this Agreement be wholly or partially destroyed or damaged by fire, or any other casualty whatsoever, the Private Party shall (subject to the provisions for funding as set forth in Section 11.1) promptly repair, replace, restore or reconstruct the same in substantially the form in which the same existed prior to any such casualty and with at least as good workmanship and quality as the Private Party Improvements being repaired or replaced, all in compliance with the provisions of Article VII hereof but with such alterations or modification as to restored Improvements as may be consistent with the further terms and provisions hereof. Such work shall commence on or before two hundred ten (210) days from the event giving rise to such construction obligation and shall be completed thereafter with reasonable diligence. In the event of any casualty damage to the Private Party Improvements during the last five (5) years of the term of this Agreement which would require more than ninety (90) days to repair and restore after commencement of restoration, the Private Party shall have the option to terminate this Agreement at any time prior to commencement of rebuilding by giving notice of termination to the City. In the event of termination of this Agreement by the Private Party during the last five (5) years of the Term under the circumstances set forth above, this Agreement shall terminate and come to an end upon

the Private Party's termination as aforesaid as though the date of such termination by the Private Party were the date of expiration of the term of this Agreement, and all insurance proceeds shall be payable as follows first to discharge any Leasehold Mortgages, and then the balance to be paid to the City. Notwithstanding the forgoing, upon the Expiration Date, the City shall be entitled receive any remaining funds in any Capital Reserve Account after payment of all sums owed the Private Party.

(b) **Deposit of Funds for Restoration and for Excess Revenue.** So long as there exists a Leasehold Mortgage, all fire and extended coverage insurance proceeds shall be deposited with the holder of such Leasehold Mortgage having the first lien priority, but if no Leasehold Mortgage exists then with a federally insured financial institution with offices located in Fort Lauderdale, Florida selected by the Private Party and reasonably approved by the City Manager ("**Qualified Institution**"). In any event such proceeds shall be received, held and paid out by such Leasehold Mortgage, if any, or by such Qualified Institution, and shall be disbursed for restoration for the casualty damage as follows:

(1) The Private Party must first secure the City's and any Leasehold Mortgagee's reasonable approval of the Plans and Specifications for the proposed restorative work if such Plans and Specifications for restoration deviate materially from the Plans and Specifications for the Private Party Improvements which have been so damaged. The insurance proceeds will be paid to the Private Party by the first lien Leasehold Mortgagee, if any, or disbursed by such Qualified Institution, if any, after delivery of evidence satisfactory to such Leasehold Mortgagee, if any, and to the City that (a) such repair, restoration or rebuilding has been completed and effected in compliance with this Agreement as to quality, and (b) no mechanics' or materialmen's liens have attached to the fee or leasehold estate; or at the option of the Private Party, such proceeds may be advanced by such Leasehold Mortgagee or disbursed by such Qualified Institution in reasonable installments. Each such installment (except the final installment) is to be advanced by such Leasehold Mortgagee, if any, or disbursed by such Qualified Institution, if any, in an amount equal to the cost of construction of the work completed (including the Private Party's overhead directly related or reasonably allocated thereto) since the last prior advance (or since commencement of work, as to the first advance) according to a certificate by the Private Party's architect in charge, less statutorily required retainage in respect of mechanics' and materialman's liens, together with a reasonable showing of bills for labor and material, and evidence satisfactory to any such Leasehold Mortgagee that no lien affidavit has been filed in county for any labor-or material in connection with such work. The final payment or disbursements, which shall be in an amount equal to the balance of such proceeds, shall then be made upon architect's proper certificate of completion and upon receipt of evidenced required by (i) (a) and (i) (b) above, but in no event shall such Leasehold Mortgagee, if any, or such Qualified Institution, if any, be required to advance more than the balance of such insurance proceeds remaining on deposit with such disbursing agent;

(2) Should the cost of said repairs, restoration or rebuilding be estimated by the Private Party's architect in charge to be in excess of said insurance proceeds or should the actual cost determined after the Private Party has commenced restoration be in excess of said proceeds, the Private Party will upon demand by any such Leasehold Mortgagee or the City give satisfactory proof or assurances to such Leasehold Mortgagee that the funds required to

meet such deficiency are or will be available to the Private Party for such purpose or will deposit the necessary funds to cover such deficiency with such Leasehold Mortgagee;

(3) Any and all such insurance proceeds in excess of the cost of such repairs, restoration or rebuilding may, if any Leasehold Mortgage so provides, be applied in reduction of unpaid principal and other indebtedness due under such Leasehold Mortgage in the order of priority of such Leasehold Mortgagees; provided, however, that no insurance proceeds in excess of the cost of such repairs, restoration or rebuilding shall be applied to reduce the amount of any Leasehold Mortgage unless the architect has delivered to the Private Party a certificate to the effect that such repairs, restoration or rebuilding have been completed substantially in accordance with Plans and Specifications therefor. In the event that there is no Leasehold Mortgage on the Private Party's interest, or no Leasehold Mortgagee elects to apply any such excess, the amount of excess shall be paid over to the Private Party only after all maintenance and operations obligations for the current fiscal year have been met.

12.2 Condemnation.

(a) **Total Taking.** The City and the Private Party agree that should the whole of the Property be taken (which term when used in this Section 12.2 shall include any conveyance in avoidance or settlement of condemnation or eminent domain proceedings) by the Government of the United States, State of Florida, the City of Fort Lauderdale, or any other government or power whatsoever, or by any corporation under the right of eminent or should the whole of said Property and improvements be condemned by any court, city, state, county or governmental authority or office, department or bureau of the city, county, state or United States so that the Property can no longer be utilized in an economically sound manner by the Private Party for the uses and purposes contemplated herein, then this Agreement shall terminate as of the date of taking of possession by the condemning authorities (or the later date on which the Private Party receives its portion of the award).

(b) Any condemnation award, whether resulting from a partial or total taking shall be apportioned to the City and the Private Party by a court of competent jurisdiction based on the City's and the Private Party's property rights in the Property.

(c) **Partial Taking.** The City and the Private Party agree that should the fee simple title be taken in part of the Property by the Government of the United States, State of Florida, the City of Fort Lauderdale, or any other government or power whatsoever, or by any corporation under the right of eminent domain, or should a part of said Property be condemned by any court, city, state, county or governmental authority or office, department or bureau of the city, county, state or United States, then in such event this Agreement shall nevertheless continue in effect as to the remainder of the Property unless in the Private Party's reasonable judgment so much of the Property shall be so taken or condemned as to make it economically unsound to attempt to use the remainder for the uses and purposes contemplated herein, in which latter event this Agreement shall terminate upon notice of termination by the Private Party to the City, with such termination to be effective as of the date of taking of possession by the condemning authority (or later date on which the Private Party receives its portion of the award) in the same manner as if the whole of the Property had been thus taken or condemned; provided, however, that if a Leasehold Mortgage then encumbers the leasehold premises this Agreement shall not

terminate without the prior written consent of the Leasehold Mortgagee. In the event of such taking or condemnation of portion of the Property where this Agreement is not terminated thereby under the provisions of the first sentence of this Paragraph, the Rental payable during the remainder of the Term after taking of possession by said condemning authority shall be reduced on a just and proportionate basis having due regard to the square footage of the portion of the Property thus taken or condemned as compared to the remainder thereof and taking into consideration the extent, if any, to which the Private Party's use of the remainder of the Property shall be been impaired or interfered with by reason of such partial taking or condemnation.

(d) **Partial Taking Award.** In the event that a part of the Property and the Private Party Improvements be taken under the power of eminent domain or by condemnation proceedings and this Agreement is terminated by reason of such partial taking, then the award will be distributed to the Private Party and the City in accordance with Section 12.2(b). In the event that a part of the Property and the Private Party Improvements be taken under the power of eminent domain or by condemnation proceedings and this Agreement is not terminated by reason of such partial taking, then the condemnation award shall be paid to the Private Party to the extent the condemnation impairs the Private Party Improvements and to the City to the extent the condemnation impairs the Private Party Improvements.

(e) **Rights of Leasehold Mortgagee.** If any Leasehold Mortgagees encumber the leasehold estate, the Leasehold Mortgagees shall, to the extent permitted by law, be made a Party to any condemnation proceeding, if any so desire. Leasehold Mortgage debt shall be paid from the Private Party award of condemnation proceeds.

(f) **Voluntary Dedication; Easement Grants.** The City covenants and agrees to join the Private Party in any action to dedicate portions of the Property for public streets along the boundaries of the Property if such dedication is required by the Applicable Authorities as a condition to approve construction of the Private Party Improvements. The City further covenants and agrees that it will not undertake or consent to any change in the zoning applicable to the Property without the Private Party's prior written consent. The City at the Private Party's request agrees to join in any easements or other land use documents reasonably required in connection with the Proposed Use provided the terms of such documents are reasonably acceptable to the City Manager. Any dedication of any portion of the Property by plat or easement grant previously approved in connection with the Approved Plans, utilities or other purposes provided above shall not result in any reduction or abatement of Rent under this Agreement.

ARTICLE 13

ASSIGNMENT, SUBLETTING AND MORTGAGE

13.1 **Assignment.** Except as otherwise provided in this Agreement, the Private Party shall not assign, convey or transfer (all of the foregoing, an "**Assignment**") its interest in this Agreement to any Person, without the express written consent of the City or the City Manager. The City or the City Manager shall have thirty (30) days from the date of written request from the Private Party to the City requesting the City or the City Manager to consent to a proposed Assignment. In the event that the City or the City Manager fails to provide such consent or

denial within such 30-day period, the Private Party shall deliver written notice to the City Manager or the City advising the City that the City has not responded to the Private Party within the required 30-day period and the City shall have an additional ten (10) days thereafter to respond to the Private Party with such approval or disapproval. In the event that the City fails to respond after the expiration of the additional 10-day period, the City shall be deemed to have approved the Private Party's request. Any Assignment set forth above shall not be valid until the City has consented or is deemed to have consented to such Assignment and there shall have been delivered to the City Manager or the City a true copy of the instrument effecting such Assignment, and an original counterpart of an agreement in which each such assignee assumes and agrees to perform all the terms, covenants and conditions of this Agreement on the Private Party's part to be performed for matters that arise after the effective date of the Assignment. After the aforesaid instruments have been delivered to the City Manager or the City and the City Manager has consented (or deemed to have consented) to such Assignment, then from and after the effective date of the Assignment, the assigning party shall be released of all obligations under this Agreement for matters arising after the effective date of the Assignment, but shall remain liable to the City for all obligations under this Agreement for matters that arose or became due prior to the effective date of the Assignment. The factors upon which the City shall base its decision on whether to grant consent under this Section 13.1 (to the extent consent is required) will be limited to whether (i) the proposed assignee and/or any of the direct or indirect principals of such proposed assignee (as may be set forth in the certification to the City by a certified public accountant) meets standards of creditworthiness and financial resource of at least an aggregate minimum net worth of \$5,000,000 upon such proposed assignee acquiring the rights to this Agreement which may include the consideration (exclusive of third party financing) being paid by such assignee for such assignment; (ii) the proposed assignee has the reasonable ability to perform the obligations of the Private Party, but as to financial matters, only for reasonably current financial obligations under this Agreement, provided none of the monetary obligations under this Agreement are delinquent; and (iii) the proposed assignee has prior related business experience for operating property with uses similar to those contemplated in this Agreement or as existing at the time of proposed Assignment (or has retained a manager who has such business experience for a length of time of at least five (5) years).

The Parties recognize that as of the Commencement Date the Private Party is a limited liability company and the City agrees that in connection with restructuring or change of the direct or indirect membership interests pursuant to the operating agreement of the Private Party (i) prior to the issuance of a certificate of occupancy (or similar permit) for the Initial Improvements that such transfer shall be subject to the reasonable approval of the City Manager to the extent that Charles Ladd and/or Steven Hudson do not have day-to-day managerial control over the Private Party subject to major decisions of investors in the Private Party ("**Specified Control**"). In connection with a transfer prior to the issuance of the certificate of occupancy (or similar permit) where Charles Ladd and/or Steven Hudson have Specified Control, or in connection with any transfer of membership in the Private Party after the certificate of occupancy (or similar permit) is issued for the Initial Improvements, then same shall not be considered an Assignment and, therefore, shall not be a matter requiring the approval of the City or the City Manager.

The foregoing restrictions on Assignment shall not apply to any assignment as collateral of (i) a leasehold, subleasehold, or sub-subleasehold interest pursuant to the granting of

a mortgage held by a Leasehold Mortgagee, Subleasehold Mortgagee or Sub-Subleasehold Mortgagee as permitted hereunder on any such interest or the foreclosure of a mortgage encumbering said interest or assignment in lieu thereof, which Assignment shall not require the consent of the City; and (ii) the pledge and/or transfer of the interests in the Private Party or its members, shareholders or partners to the lender providing financing with respect to the Improvements.

Additionally, except for Permitted Transfers, the City Manager or the City Commission (if the City Manager determines the City Commission shall approve same) shall have the right to review and approve any assignment of this Agreement to which the City Manager have the right to approve and the City shall be entitled to be reimbursed for the bona fide third party costs of the City in connection with a review of each such applicable request for assignment in an amount which shall be not more than Two Thousand Five Hundred Dollars (\$2,500).

The Private Party acknowledges that its undertakings pursuant to this Agreement are for the purpose of developing the Qualified Project pursuant to this Agreement, and not for speculation or investment purposes. The Private Party further recognizes, in view of the importance of the development of the Qualified Project to the general welfare and in the interest of creating a viable and vibrant downtown for the City, that in connection where the City has a right to approve an Assignment, the qualifications, financial strength and identity of the members of the Private Party are of particular concern to the City to assure the City that the Qualified Project will be constructed and operated as provided in this Agreement.

Except as provided herein, the Private Party agrees that it shall not without the prior written consent of the City, assign, transfer or convey this Agreement to another party, unless such assignment is made to pursuant to one or more of the following "Permitted Transfers" to wit: (a) intentionally omitted; (b) any firm or corporation which the Private Party controls, is controlled by, or is under common control with Steven Hudson and/or Charles Ladd and/or members of their immediate family; (c) Steven Hudson and/or Charles Ladd have day-to-day decision making authority on behalf of the Private Party (subject to major decision by investors of the Private Party); (d) any entity in which the Private Party or its then principal (the mother, father, wife/husband, or children of Charles Ladd and/or Steven Hudson) has a majority ownership interest and/or (e) in connection with any financing of the leasehold interest of the Private Party to a bona fide third party lender.

On the Effective Date of this Agreement, Steven Hudson and Charles Ladd own 100% of the voting of the ownership and management rights in the Specified Party.

Any such transfer in violation of this provision shall be null and void and the City shall have the right deny recognition of the new parties and continue to look to the initial parties for performance. A transfer as a result of a merger where the Private Party or Permitted Transferee controls the merging entity after such merger shall not be prohibited by any provision of this Agreement.

Any Assignment or transfer authorized in this Section 13.1 shall be deemed a **"Permitted Transfer."**

13.2 **Subletting.** The Private Party shall sublet the FIRE/EMS Space to the City and the City shall have the right to sub-sublet the FIRE/EMS Station pursuant to the terms of the FIRE/EMS Sub-Lease. The FIRE/EMS Station shall be governed by the terms and conditions of the FIRE/EMS Sub-Lease. The Private Party may sublet all or portions of the Commercial Space of the Property and/or the Improvements, or grant licenses or concessions thereupon without the written consent of the City; provided, however, that when a Sublessee requests the City to provide a Non-Disturbance Agreement in connection with such Sublease, then the City through the City Manager shall have the right to approve such Sublessee and the Sublease in connection with giving such Non-Disturbance Agreement, which approval shall be given in the City Manager's reasonable discretion or disapproved specifying in reasonable detail the basis for such disapproval within thirty (30) days of request for such approval. In determining whether to approve or not approve such Sublessee and Sublease pursuant to the preceding sentence, the City Manager may consider the specific business experience of the Sublessee (or its managers, if applicable, who, if relying on the business experience of the manager versus the Sublessee, then such management agreement with such manager must have a minimum term of one (1) year), the ability of such Sublessee to carry out the purpose or activity of the Sublease, and as to financial obligations, the ability to perform only the reasonably current financial obligations under the Sublease, the reputation of the Sublessee, the rent payable pursuant to the Sublease being for not less than the Fair Market Value Rent and whether the Sublease complies with the requirements of a Sublease in Section 13.3. Any (i) sublease, sub-license or sub-concession, is throughout this Agreement referred to as a "**Sublease**"; (ii) sub-sublease, sub-sub-license or sub-sub-concession is throughout this Agreement referred to as a "**Sub-Sublease**"; (iii) Sublessee leasing pursuant to a Sublease is referred to as a "**Sublessee**"; and (iv) any Sub-Sublessee leasing pursuant to a Sub-Sublease is referred to as "**Sub-Sublessee**". Each such Sublease or Sub-Sublease entered into after the Commencement Date shall contain a self-operative provision that it is subject and subordinate to this Agreement and any amendments, modifications and extensions thereof, including, but not limited to, all use restrictions and shall be subject to the terms of any nondisturbance agreement between the City and such Sublessee or Sub-Sublessee (as applicable).

No Sublease or Sub-Sublease shall relieve the Private Party from liability for any of its obligations hereunder, and in the event of any Sublease or Sub-Sublease, the Private Party shall continue to remain primarily liable for all financial obligations pursuant to this Agreement and for the performance and observance of all non-financial obligations herein contained.

13.3 **Recognition of Sublease.** Upon the Private Party's written request (or Sublessee's written request if provided with the written consent of the Private Party), the City (if required), within thirty (30) days of the request, will execute and deliver, substantially in the form attached hereto as Schedule 13.3, and suitable for recording, a separate Non-Disturbance Agreement with each Sublessee named in such request, which Sublease (i) provides for an annual rental equal to or in excess of at least one hundred percent (100%) of the Fair Market Value Rent; and (ii) has a term not in excess of the remainder of the Term of this Agreement, which Non-Disturbance Agreement will provide that the City will not terminate such Sublease or the leasehold estate created thereunder nor disturb such Sublessee's possession and rights thereunder upon any termination of this Agreement prior to the expiration of the Term. Upon any termination of this Agreement, then as to each such Sublease, the City shall thereafter recognize the Sublease as a direct lease between the City and Sublessee as to the Sublease unless

such Sublessee shall then be in default under its Sublease and the time to cure such default available to said Sublessee and any Subleasehold Mortgagees of said Sublessee (who has a Non-Disturbance Agreement) shall have expired; provided that in such Non-Disturbance Agreement the Sublessee (and the Sub-Leasehold Mortgagee to the extent it becomes the Sublessee) shall agree to attorn to the City and its successors and assigns, in case of any termination of this Agreement, and, if applicable, the termination of the Sublease. The Sublessee under any Sublease which does not meet the foregoing criteria may also request a Non-Disturbance Agreement, provided that said Sublessee submits the written consent of the Private Party (if required) and receives the written approval of the City Manager. Also upon any termination of this Agreement, the recognition of the Sublessee (and the Sub-Leasehold Mortgagee to the extent it becomes the Sublessee) in its Sublease as a direct lease between the City and such Sublessee (or the Sub-Leasehold Mortgagee, as applicable, to the extent it becomes the Sublessee) shall, at the sole exclusive option of the City, either remain as a direct lease between the City and such Sublessee or, at the option of the City (which may be exercised at any time thereafter), the City may enter into a new lease for the Subleased Property and/or other premises as a primary lease between the City and a third party (“**Third Party Sublessor**”) and the City will assign its interest in the Sublease to the Third Party Sublessor, whereupon the Sublease shall again be deemed to be a Sublease between Sublessee and the Third Party Sublessor of the primary lease between the City and such Third Party Sublessor and a new Non-Disturbance Agreement shall be executed by the City, Third Party Sublessor and Sublessee. In the event that a Sublease is submitted to the City for which the Private Party and/or the Sublessee is requesting a Non-Disturbance Agreement, then prior to the City being required to execute such Non-Disturbance Agreement, the Private Party shall provide a certification to the City certifying that the provisions of Section 13.3 have been satisfied.

13.4 **Provisions Applicable to Non-Disturbance Agreements for Subleases and Sub-Subleases.** Whenever the City Manager’s consent is required, the City Manager shall either consent or specify the basis for the City Manager’s disapproval within thirty (30) days of request for such approval or such consent shall be deemed given. All reasonable costs and expenses incurred by the City to review and approve or decline a request for a Non-Disturbance Agreement in connection with a Sublease and/or Sub-Sublease as requested by the Private Party shall be paid by the requesting Sublessee or Sub-Sublessee to the City prior to delivery of the requested Non-Disturbance Agreement, provided that the costs of such reimbursement shall not exceed \$1,000.

13.5 **Mortgage of Leasehold.**

(a) **Private Party’s Rights.** The Private Party may mortgage its leasehold estate, but not the City’s fee estate, or the City’s rights to Rent or distributions, from the Excess Revenue Distributions, in order to secure a mortgage loan to obtain funds to construct all the Private Party Improvements including the Initial Improvements, for permanent loan funds used to retire interim construction financing, or for other financing or refinancing directly benefiting the Property so long as the conditions precedent set forth in Section 13.5(d) are satisfied.

(b) **Mortgagee’s Obligations.** If the Private Party permissibly mortgages or encumbers its leasehold estate, the Leasehold Mortgagee shall in no event be required to perform the obligations of the Private Party under this Agreement unless and until the Leasehold

Mortgagee becomes the owner of the leasehold estate pursuant to foreclosure, assignment in lieu of foreclosure or otherwise; thereafter, the Leasehold Mortgagee shall remain subject to these obligations only so long as the Leasehold Mortgagee remains the owner of the leasehold estate, and in no event shall the obligations to be performed hereunder be more expansive for the Leasehold Mortgagee than for the Private Party.

(c) **Private Party's Obligations.** Notwithstanding the foregoing, it is specifically understood and agreed that no mortgaging by the Private Party and/or any actions taken pursuant to the terms of the Leasehold Mortgage shall ever eliminate or reduce the Private Party's obligation to pay the rent due hereunder and otherwise fully perform under this Agreement. The Private Party shall give prompt notice to the City of the terms of any Leasehold Mortgage. The Private Party agrees to duly and timely perform all of its obligations under any such Leasehold Mortgage.

(d) **Conditions Precedent.** The Private Party agrees that, as a condition precedent to its right to execute any Leasehold Mortgage, it shall:

(1) furnish to the City its loan documents entered into with the Leasehold Mortgagee and a copy of any notice given by the Leasehold Mortgagee to the Private Party pursuant to the Leasehold Mortgage at the time that it is given to the Private Party;

(2) use commercially reasonable efforts to obtain the Leasehold Mortgagee's agreement to accept the City's cure of any default of the Private Party under the Leasehold Mortgage (the City having no obligation to do so); and

(3) require in the Leasehold Mortgage that there will be an ongoing covenant in the event the Leasehold Mortgagee forecloses on the Leasehold Mortgage that the Property shall continue to be operated in accordance with the requirements of this Agreement and the City Manager shall have the right to reasonably approve the replacement operator of the Property.

(4) require in the Leasehold Mortgage that such lender shall agree to make property damage insurance proceeds payable to such lender available to be used to repair any casualty to the Qualified Project on commercially reasonable terms, that the City shall never be required to subordinate the City's interest in this Agreement in the Property to the mortgage of the proposed Leasehold Mortgagee, encumber its fee interest, waive its right to receive rent (including, base rent, percentage rent or additional rent), waive its right to require payment of taxes, insurance and Additional Rent, waive its sovereign immunity or waive its regulatory or police power and Leasehold Mortgagee cure period does not exceed one year.

13.6 **Mortgagee Right To Cure.** If the Private Party's leasehold estate is encumbered by a Leasehold Mortgage and written notice thereof has been given to the City, the City shall give to the holder of the Leasehold Mortgage (at the address or addresses specified in the written notice to the City for the giving of notices to the Leasehold Mortgagee, or as otherwise specified by the Leasehold Mortgagee to the Private Party in writing) written notice of any default hereunder by the Private Party, contemporaneously with the giving of such notice to the Private Party. The holder of the Leasehold Mortgage has the right to take any action or to

make any payment necessary or appropriate to cure the specified default, it being the intention of the parties hereto that the City shall not exercise the City's right to terminate this Agreement without first giving the Leasehold Mortgagee the notice provided for herein and affording any Leasehold Mortgagee the same right to cure the default as provided to the Private Party in **Article XV**, below. the City agrees not to exercise any right that it may have to terminate this Agreement, so long as the Leasehold Mortgagee, or its successor in interest, is performing all of the Private Party's covenants, duties and obligations under this Agreement.

13.7 **Non-Disturbance.** The City further agrees to execute and deliver to any proposed Leasehold Mortgagee a "**Nondisturbance Agreement**," in form of **Schedule 13.7** or such other form and content reasonably acceptable to the City and such Leasehold Mortgagee wherein the City agrees that the City will recognize the mortgagee and its successors and assigns after foreclosure, or transfer in lieu of foreclosure, as the Private Party hereunder, and continue to perform all of the City's duties and obligations hereunder so long as the mortgagee or its successors and assigns performs all of the duties and obligations of the Private Party hereunder. In addition, at the Private Party's option, the City consents to the following for the benefit of any Leasehold Mortgagee:

(1) an assignment of the Private Party's share of the net proceeds from any award or other compensation resulting from a total or partial taking as set forth in Section 12.2 of this Agreement,

(2) the entry of any Leasehold Mortgagee upon the Property during business hours, without notice to the City or the Private Party, to view the state of the Property,

(3) that a default by the Private Party under this Agreement shall constitute a default under any Leasehold Mortgage, the City shall not assume any liability under the Leasehold Mortgage. The only source of revenue to satisfy the debt is the Excess Revenue Distributions payable to the Private Party.

(4) an assignment of the Private Party's right, if any, to terminate, cancel, modify, change, supplement, alter or amend this Agreement, and

(5) that, effective on a default in any Leasehold Mortgage, the Leasehold Mortgagee may (A) foreclose the Leasehold Mortgage pursuant to Florida law and sell the leasehold estate to the purchaser at the foreclosure sale, (B) appoint a receiver, irrespective of whether any Leasehold Mortgagee accelerates the maturity of all indebtedness secured by the Leasehold Mortgage, (C) enter and take possession of the Property, manage and operate the same, except Leasehold Mortgagee shall not have the right set parking rates, collect parking revenue or engage in parking enforcement activity. Nothing herein shall be deemed a delegation of regulatory authority to the Leasehold Mortgagee or its successors and/or assigns or nominee, collect the subrentals, issues and profits therefrom and cure any default under the Leasehold Mortgage or any default by the Private Party under this Agreement, and (D) assign the Private Party's right, title and interest in and to the premiums for or dividends on any insurance required by the terms of this Agreement, as well as in all refunds or rebates of taxes or assessments on or other charges against the Property, whether paid or to be paid, provided that

none of the foregoing shall be effective with respect to the City until notice of the existence of the Leasehold Mortgage is delivered to the City.

The City also agrees to execute and deliver to the proposed Leasehold Mortgagee any other documents that the proposed Leasehold Mortgagee may reasonably request concerning the mortgaging by the Private Party of the leasehold estate created hereby. A Non-Disturbance Agreement shall include these conditions and such other reasonable terms and conditions required by the City. Any Leasehold Mortgagee must honor the spirit and intent of F.S. 255. 065 and there must be a continuation in service to the public notwithstanding a change in ownership.

13.8 **Rights of Mortgagee on Termination to Require a New Agreement.** If this Agreement terminates before the expiration of the term hereof, and if the City obtains possession of the Property in accordance with all conditions precedent as set forth in Section 13.4 (d), the City agrees that any Leasehold Mortgagee has the right, for a period of 30 days after termination, to require a new lease of the Property, and when the new lease is executed and delivered, possession of the Property.

(a) **New Term.** The new lease's term shall commence at the termination of this Agreement, and shall expire the same date that this Agreement expires, including renewals and extensions, it being understood that the Leasehold Mortgagee shall have the same rights to extend the term of this Agreement as are available to the Private Party hereunder. The new lease is subject to the provision of the city charter.

(b) **Rent and Other Obligations.** The rent for the new lease shall be at the same rate as would have applied had this Agreement not expired or terminated, and all of the rents, covenants, conditions and provisions of the new lease shall be the same as provided for under this Agreement. If a Leasehold Mortgagee requires a new lease within the 30-day period, the Leasehold Mortgagee shall give written notice to the City of the election, and within 30 days, the City and the Leasehold Mortgagee shall execute a new lease on the terms set forth above, and the Leasehold Mortgagee shall pay to the City all accrued rent, additional rent and other sums owed by the Private Party to the City along with unpaid taxes and insurance that remain unpaid at the time of the execution of the new lease, including reasonable attorneys' fees and expenses incurred in connection therewith.

13.9 **No Change in Terms.** So long as there are any unpaid or undischarged Leasehold Mortgages on the Private Party's leasehold estate of which the City has received written notice, the City expressly agrees for the benefit of the Leasehold Mortgagee(s) that it will not accept from the Private Party a material modification of this Agreement, or a voluntary surrender of the Property, without the written consent of the Leasehold Mortgagee(s), which consent shall not be unreasonably withheld. This provision does not limit the City's rights in the event of default by the Private Party.

ARTICLE 14 **INDEMNIFICATION**

14.1 **Private Party Indemnity.** From and after the Effective Date, the Private Party agrees to protect, defend (with counsel reasonably acceptable to the City), indemnify and hold harmless the City and the City's officers, employees, volunteers, and agents from and against any and all claims (including those for bodily injury, disease, sickness, death, property damage) loss, cost, damage, demands, fines, penalties, causes of actions, administrative proceedings, liabilities, and expense (including court costs and reasonable attorneys' fees and expert fees) to the extent not primarily caused by the City's ordinary negligence or willful misconduct of the City's employees acting within the course and scope of their employment and which arises from the following to the extent not cured within the Private Party's cure period (i) the failure by the Private Party or any of its, agents, contractors, employees or Sublessees to perform the Private Party's responsibilities, duties and obligations under this Agreement in accordance with the terms hereof, (ii) the negligence, reckless, misconduct or willful or intentional acts or omission of the Private Party, the Private Party's employees, sublessees, servants, or invitees entering the Property under express or implied invitation of the Private Party, (iii) the Private Party's or sublessee's construction, installation, demolition or depreciation of the Private Party Improvements or sublessee improvements, (iv) the operation of the Private Party's business in the Property, and any other activities on or about the Property, including without limitation, any claims, liabilities or damages relating to products liability, or (v) allegations that this Agreement does not comply with the City's charter or F.S. Chapter 255.065 et al. but such indemnification shall not apply to the City's gross neglect or willful misconduct or due to the acts or wrongful omissions of the FIRE/EMS Sub-Tenant under the FIRE/EMS Sub-Lease.

Except as provided in the FIRE/EMS Sub-Lease, all personal property, placed or moved onto the Property is at the sole risk of the Private Party or other owner of such personal property. The City shall not be liable for any damage to such personal property, or for personal injuries to the Private Party or any of the Private Party'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; provided, however, that if the damage or injury is caused by the negligence the of the City's employees acting within the course and scope of their employment, then, to the extent the damage or injury in question is caused by the City's negligence, then the Private Party's liability to the City hereunder shall be proportionately abated. Nothing herein shall be deemed a waiver of the City's sovereign immunity.

The indemnification provided in this Article XIV shall survive the termination or expiration of this Agreement, but shall end, with respect to any claim or cause of action, with the expiration of any applicable statute of limitations for such claim or cause of action and is not limited by the amount of insurance coverage.

In any matter asserted against the City by third parties which falls within the scope of this indemnity, neither the provisions of this Agreement, nor the Private Party's indemnification of the City are intended to waive or affect, and shall not be construed to waive or affect, the City's sovereign immunity, and at all times the City shall retain its sovereign immunity to the greatest extent as may be provided by law. Furthermore, in defending the City against claims of third parties pursuant to the Indemnity provided in this Article XIV, the Private Party may assert the City's sovereign immunity to the greatest extent as may be provided by law.

14.2 **Third Parties and Sublessees.** In connection with its management, operation, promotion and subleasing of the, Property, including, but not limited to the Private Party's business operations, the Private Party shall insert into each and every contract or Agreement it enters into a clause exculpating the City from personal liability under the contract or lease and a clause pursuant to which the third Party/Sublessee agrees to indemnify and hold harmless the City for the matters set forth in Section 14.1.

ARTICLE 15
DEFAULT AND REMEDIES

15.1 **Default.** Each of the following events is an “**Event of Default**” by the Private Party under this Agreement:

(a) Failure by the Private Party to pay any installment of rental (including, without limitation, Base Rent or Additional Rent) or to deposit Excess Revenue with the Qualified Institution or failure to cause to be made the Excess Revenue Distribution, or to pay or cause to be paid taxes (to the extent the Private Party is obligated to pay same or cause same to be paid), utilities, insurance premiums or other liquidated sums of money herein stipulated in this Agreement to be paid by the Private Party if such failure shall continue for a period of ten (10) days after written notice thereof has been delivered to the Private Party (with a copy of said notice to any Leasehold Mortgagee or trustee as provided by Article XIV hereof).

(b) Failure by the Private Party to perform or observe any of the terms, covenants (including, without limitation, failure to construct and to complete all work required to be performed by the Private Party, including the tenant improvements to be performed by the Private Party with respect to the FIRE/EMS Station as provided in the last paragraph of Section 7.2 of this Agreement), conditions, agreements and provisions of this Agreement (other than the payment of rent, taxes, utilities, insurance premiums or other liquidated sums of money) stipulated in this Agreement to be observed and performed by the Private Party if such failure shall continue for a period of one hundred twenty (120) days after written notice thereof has been delivered to the Private Party (with a copy of said notice to any Leasehold Mortgagee or trustee as provided in Article XIV hereof); provided, however, that if any such failure (other than a failure involving payment, rent, taxes, utilities, insurance premium or other liquidated sums of money) cannot reasonably be cured within such one hundred twenty (120) day period, then the City shall not have the right to exercise the City's remedies pursuant to Subparagraph (1) or (2) of Section 15.2 for so long as the Private Party proceeds in good faith and with due diligence to remedy and correct any such failure, provided that the Private Party has commenced to cure such failure after the effective date of such notice within such one hundred twenty (120) day period. Notwithstanding anything contained in this Agreement to the contrary, a breach of any covenant under this Agreement caused by the FIRE/EMS Sub-Tenant shall not constitute a default by the Private Party under this Agreement.

15.2 **City Remedies for the Private Party Default.**

(a) **Payment of Base Rent and Tax and Insurance.** The City hereby agrees that, notwithstanding any other provision of this Agreement, (a) there will be no cancellation or

termination of this Agreement so long as Base Rent, taxes and insurance are paid when due or cured within the applicable cure period set forth in Section 15.1, Private Party share of Excess Revenue received by the Private Party is deposited into the Excess Revenue Account within any applicable cure period and Private Party does not wrongfully take Excess Revenue Distributions in violation of this Agreement and in each case fails to cure same within the applicable cure period and (b) the City will not, by reason of the nonpayment of Base Rent, taxes or insurance payments, exercise its right to cancel or terminate this Agreement prior to the expiration of the applicable cure period set forth in Section 15.1 for any of such defaults.

(b) **Additional Remedies.** In addition to the remedies set forth above and subject to the terms set forth above, if an Event of Default exists, then the City shall be entitled to all other remedies available at law or at equity which are available to the City in enforcing the terms of this Agreement, as such remedies may exist from time to time, but the City shall not have the right to terminate this Agreement, other than pursuant to Section 15.2(a) and may not accelerate the payment of Rent. Notwithstanding the foregoing, to the extent the City seeks damages, the City shall only be able to seek from the Private Party compensatory damages, and the City shall not be entitled to punitive or consequential damages.

Notwithstanding the existence or adequacy of any remedy provided by law for compensatory damages, the Private Party agrees that the City shall have the right of specific performance to compel the Private Party to cure any non-monetary defaults not cured within the applicable cure period or to file an injunction in a court of competent jurisdiction for failure to comply with any non-monetary covenant, term, condition, agreement or provision of this Agreement, not cured within the applicable cure period.

The City may elect to cure any non-monetary default of the Private Party (which is not cured within the applicable cure period of the Private Party and/or its Leasehold Mortgagee) and, upon such cure taking place, all of the City's reasonably incurred costs in connection with such cure shall become Additional Rent which shall be due and payable within thirty (30) days of written notice from the City to the Private Party of such costs incurred by the City (together with providing reasonable supporting documents of such expenses). If the City elects to cure a non-monetary default of the Private Party, then the Private Party shall be required to reimburse the City for such reasonable costs incurred by the City in connection with such acts to cure within thirty (30) days of written demand, together with reasonable supporting documentation of such expenses.

15.3 **Right to Cure.** In the event the Property and Improvements are not maintained in accordance with the standards set forth in this Agreement, the City shall notify the Private Party and give the Private Party a reasonable opportunity to maintain such elements as are required herein. If the Private Party shall refuse or fail to maintain same after written notice and a reasonable opportunity to cure of at least the applicable cure period set forth in this Article 15, then the City shall have the right, but not the obligation, to repair or maintain same to the standard required by this Agreement and the reasonable costs of such maintenance shall be payable as Additional Rent within thirty (30) days of written notice from the City to the Private Party of the costs incurred by the City (together with reasonable supporting documentation of such expenses). The fact that the City undertakes any repair or maintenance of the Improvements shall impose no continuing duty on the part of the City to continue such repair or

maintenance. This remedy shall be supplemental and cumulative to all other remedies of the City as provided in this Section 15.

ARTICLE 16
MISCELLANEOUS

16.1 **Rent on Net Return Basis.** It is intended that, except as provided in this Agreement, the rent provided for in this Agreement shall be a net return to the City as provided herein, free of any expenses or charges with respect to the Property, including, without limitation, maintenance, repairs, insurance, replacement, taxes and assessments, and this Agreement shall be construed in accordance with and to effectuate this intention.

16.2 **Surrender and Holding Over.** Private Party covenants and agrees to and with City that, upon the Expiration Date or earlier termination of this Agreement, Private Party shall quit and surrender the Property to City in a broom clean condition and in good order, condition and repair except for ordinary wear, tear, casualty and condemnation excepted, and Private Party shall remove Private Party's personal property and Private Party shall surrender all keys for the Property to City at the place then fixed for the payment of Rent and shall inform City of all combinations on its locks and safes, if any, in the Property. Private Party's obligation to observe or perform in this covenant shall survive the expiration or other termination of the Term of this Agreement. If Private Party shall default in so surrendering the Property, Private Party's occupancy subsequent to such expiration, whether or not with consent or acquiescence of City, shall be deemed to be that of a tenancy at sufferance and in no event from month-to-month or from year-to-year, and it shall be subject to all the terms, covenants and conditions of this Agreement applicable thereto, except Private Party shall pay on the first day of each month of the holdover period, as Base Rent, an amount equal to one and one-half (1.5) times one-twelfth (1/12th) of the Base Rent payable by Tenant during the last year of the Lease.

On the Expiration Date or sooner termination of this Agreement, any Leasehold Mortgage encumbering the Qualified Project shall no longer be a lien on the leasehold interest in the Qualified Project subject to the terms of any subordination and non-disturbance or similar agreement between the City and such Leasehold Mortgagee and any sublease shall terminate subject to any subordinate and non-disturbance or similar agreement between the City and such sub-tenants.

Except as is specifically permitted hereunder, Private Party shall not remove any plumbing, air conditioning or electrical fixtures or equipment, cabling floor coverings (including, but not limited to, wall-to-wall carpeting), walls or ceilings and other/improvements to the Property or any other fixtures or equipment (other than trade fixtures or fixtures installed by tenants in the sublet premises) which is permanently affixed to the Property and the removal thereof would damage the Property, all of which shall be deemed to constitute a part of the freehold and/or leasehold interest of City.

16.3 **Waiver of Default.** No waiver by the parties hereto of any default or breach of any term, condition or covenant of this Agreement shall be deemed to be a waiver of any

subsequent default or breach of the same or any other term, condition or covenant contained herein.

16.4 **Attorneys' Fees.** If, on account of any breach or default by the City or the Private Party of their respective obligations under this Agreement, it becomes necessary for the other to employ an attorney to enforce or defend any of its rights or remedies hereunder, if such Party prevails it shall be entitled to collect reasonable attorneys' fees and costs through all appellate proceedings and bankruptcy from the other Party.

16.5 **Estoppel Certificates.** Both parties hereto agree that no more than four (4) times a year, on thirty (30) days prior written request, the non-requesting Party will deliver to the requesting Party a statement in writing certifying:

(a) if the facts permit, that this Agreement is unmodified and in full force and effect (or if there have been modifications, that Agreement as modified is in full force and effect and stating the modifications);

(b) the dates to which rent and other charges have been paid;

(c) that the requesting Party is not in default under any monetary obligation or other material term or provision of this Agreement, and if in default the nature thereof in detail in accordance with an exhibit attached thereto;

(d) if requested by the City, the Private Party will not pay rent for more than one (1) month in advance, and that this Agreement will not be terminated so long as all of the covenants, duties and obligations of the City under this Agreement are being performed; and

(e) any other information reasonably requested by the requesting Party or its mortgagee.

16.6 **Approvals and Consents.** Wherever in this Agreement the approval or consent of any Party (including the City's the City Manager or other Authorized Representative) is required, it is understood and agreed that unless specifically stated to the contrary, such approval or consent maybe granted or withheld in the City's reasonable discretion and within a reasonable time. Except as may be otherwise specifically provided herein, the following actions in this Section 16.6 of this Agreement shall be taken or not taken by the City Manager in the discretion of the City Manager acting reasonably. The City will cooperate in the Private Party's efforts to have the tax assessor agree not to tax the Garage, FIRE/EMS Station and Streetscape Improvements, as such areas are public facilities.

(a) The exercise of the City's approval of the Operating Budget and Capital Improvement Budget and all modifications thereof;

(b) The exercise of the City's right to inspect and approve the Property and the Private Party Improvements thereon;

(c) The exercise of the City's right to approve Subleases and Sub subleases which have been approved as to form by the City Attorney to the extent approval is required by this Agreement;

(d) The exercise of the City's right to execute, amend, and release easements and restrictive covenants; and;

(e) Execute Non-Disturbance Attornment Agreements in the form provided by this Agreement or other from which have been approved as to form by the City Attorney;

(f) The exercise of the City's right to review and approve disbursements out of the Excess Revenue Account and Capital Reserve Account, if needed;

(g) The exercise of the City's right to calculate a payment in lieu of taxes and require the Private Party to pay same;

(h) The exercise of the City's right to execute a joinder in applications for land development approvals which are necessary for the Private Party to obtain from other governmental authorities, and where such applications require evidence of the consent of the property owner;

(i) The exercise of the City's right to receive and approve or not approve and specify the basis for such disapproval the form of Certificates of Insurance, policies, limits, and coverages of insurance, bonds, and environmental assessments;

(j) The exercise on behalf of the City, the City's right, upon consultation with the City Attorney, to declare a default, establish a reasonable time to cure the default, determine whether a proposed cure is reasonable, and the right to seek the approval of the City Commission to enforce any provision of this Agreement;

(k) The exercise of the City's right to approve adjustments to legal descriptions pursuant to this Agreement;

(l) The exercise of the City's rights with respect to approval of plans which require approval as provided in Article 7;

(m) Execution of Amendments which seek to clarify language within this Agreement but does not materially or substantially modify the terms or conditions of the Agreement;

(n) The determination of Fair Market Value Rent; and

(o) Other provisions of this Agreement as to consents or approvals of the City, unless specified as requiring the consent or approval of the City Commission.

All decisions set forth in this Agreement to be made by the City Commission and any other decisions as to which the City advises the Private Party prior to the end of the Inspection Period that such consent or approval shall require the consent or approval of the City

Commission, shall be made by the City Commission. The City Manager shall, where the City Manager's approval or consent is to be given on behalf of the City, approve, approve with stated conditions, or disapprove and specify with specificity the basis for such stated conditions or disapproval within twenty (20) days of the City Manager's receipt of a written request or such approval shall be deemed given.

Notwithstanding anything to the contrary contained herein, the Private Party acknowledges that when the City acts or exercises any rights or obligations under this Agreement, including without limitation the specific approval and consent rights of the City set forth herein, it is doing so in its capacity as the fee owner and the City of the Property and not in the exercise of its municipal regulatory authority, and that the role of the City as a municipality (including its regulatory and sovereign powers) is separate and distinct from the role of the City as the fee owner and the City of the Property under this Agreement.

16.7 **No Partnership.** It is understood and agreed that in leasing and operating the Property, the Private Party is acting independently and is not acting as agent, partner, joint venturer or employee of the City provided, however, the relationship of the City and Private Party is that contemplated by FS 255.065 (as presently written).

16.8 **Survival.** All of the terms, provisions, conditions, agreements and covenants contained in this Agreement shall survive the expiration or termination of this Agreement with respect to all rights and remedies that have accrued prior to or that accrue on the expiration or termination of this Agreement.

16.9 **Exhibits.** All exhibits, attachments, annexed instruments and addenda-referred to herein shall be considered a part hereof for all purposes.

16.10 **Intellectual Property.** The Private Party shall protect and defend at the Private Party's expense, counsel being subject to the City's approval, and indemnify and hold harmless the City from and against any and all losses, penalties, fines, damages, settlements, judgments, claims, costs, charges, royalties, expenses, or liabilities, including any award of attorney fees and any award of costs, in connection with or arising directly or indirectly out of any infringement or allegation of infringement of any patent, copyright, or other intellectual property right in connection with the Private Party's or the City's use of any copyrighted, patented or un-patented invention, process, article, material, or device that is manufactured, provided, or used pursuant to this Agreement. If the Private Party uses any design, device, or materials covered by letters, patent or copyright, it is mutually agreed and understood without exception that the bid prices shall include all royalties or costs arising from the use of such design, device, or materials in any way involved in the work. As between the respective interest of the City and the Private Party in such property, any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the City; and the Private Party disclaims any copyright in such materials. In the event of and upon termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by the Private Party, whether finished or unfinished, shall become the property of the City and shall be delivered by the Private Party to the City's Contract Administrator within seven (7) days of termination of this Agreement by either Party. Any compensation due to the Private Party shall be withheld until the Private Party delivers all documents to the City as provided herein.

16.11 **Public Entity Crime Act.** The Private Party represents that the execution of this Agreement will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes, as may be amended from time to time, which essentially provides that a person or affiliate who is a contractor, consultant, or other provider and who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to the City, may not submit a bid on a contract with the City for the construction or repair of a public building or public work, may not submit bids on leases of real property to the City, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with the City, and may not transact any business with the City in excess of the threshold amount provided in Section 287.017, Florida Statutes, as may be amended from time to time, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid by the City pursuant to this Agreement, and may result in debarment from the City's competitive procurement activities.

16.12 **Conflicts.** Neither the Private Party nor any of the Private Party's employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with the Private Party's loyal and conscientious exercise of judgment and care related to the Private Party's performance under this Agreement. The Private Party further agrees that none of the Private Party's officers or employees shall, during the term of this Agreement, serve as an expert witness against the City in any legal or administrative proceeding in which he, she, or the Private Party is not a Party, unless compelled by court process. Further, the Private Party agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of the City in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude the Private Party or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding. In the event the Private Party is permitted pursuant to this Agreement to utilize subcontractors to perform any services required by this Agreement, the Private Party agrees to require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as the Private Party.

16.13 **Scrutinized Companies.** Subject to *Odebrecht Construction, Inc., v. Prasad*, 876 F.Supp.2d 1305 (S.D. Fla. 2012), affirmed, *Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation*, 715 F.3d 1268 (11th Cir. 2013), this Section applies to any contract for goods or services of \$1 million or more: The Private Party certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List and that it does not have business operations in Cuba or Syria as provided in section 287.135, Florida Statutes (2014), as may be amended or revised. The City may terminate this Agreement at the City's option if the Private Party is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2014), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or has been engaged in business operations in Cuba or Syria, as defined in section 287.135, Florida Statutes (2014), as may be amended or revised.

16.14 **Use of Language.** Words of any gender used herein shall be held and construed to include any other gender, and words in the singular shall be held to include the plural, unless the context otherwise requires.

16.15 **Captions.** The captions or headings of paragraphs in this Agreement are inserted for convenience only, and shall not be considered in construing the provisions hereof if any question of intent should arise.

16.16 **Successors.** The terms, conditions and covenants contained in this Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto and their respective successors in interest, and successor trustees, heirs, executors, administrators and legal representatives. All rights, powers, privileges, immunities and duties of either Party under this Agreement, including, but not limited to, any notices required or permitted to be delivered by either Party hereunder, may, at such Party's option, be exercised or performed by such Party's agent or attorney.

16.17 **Severability.** If any provision herein is held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby.

16.18 **Notices.** All notices which are required or permitted hereunder must be in writing and shall be deemed to have been given, delivered or made, as the case may be, (notwithstanding lack of actual receipt by the addressee): (i) upon actual receipt or refusal by the addressee by hand, telecopier or other electronic transmission; or (ii) three (3) business days after having been deposited in the United States mail, certified or registered, return receipt requested, sufficient postage affixed and prepaid; or (iii) one (1) business day after having been deposited with an expedited, overnight courier service (such as by way of example but not limitation, U.S. Express Mail, Federal Express or Purolator), addressed to the Party to whom notice is intended to be given at the address set forth below:

City: City Manager
City of 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

Private Party: Las Olas Parking Solutions, LLC
699 N. Federal Highway, Suite 250
Fort Lauderdale, FL 33304
Attn: Charles B. Ladd

with copy to: Greenspoon Marder LLP
200 East Broward Boulevard, Suite 1800
Fort Lauderdale, FL 33301
Attn: Barry E. Somerstein, Esq.

16.19 **Fees or Commissions.** Each Party hereby represents and warrants to the other, that it has neither contacted nor entered into an agreement with any real estate broker, agent, finder, or any other Party in connection with this transaction, or taken any action that would result in any real estate broker's, finder's, or other fees or commissions being due or payable to any other Party with respect to the transaction contemplated by this Agreement. Each Party hereby indemnifies and agrees to hold the other Party harmless from any loss, liability, damage, cost, or expense (including reasonable attorney's fees) resulting to the other Party from a breach of the representation made by the indemnifying Party in this Section 16.19.

16.20 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument.

16.21 **Actions for Nonpayment of Rent and Other Charges.** The Private Party shall not for any reason withhold or reduce the Private Party's required payments of rentals and other charges provided in this Agreement, it being agreed that the obligations of the City hereunder are independent of the Private Party's obligations, except as may be otherwise expressly provided.

16.22 **Limitation of Liability.** Nothing herein shall be construed as waiver of sovereignty immunity in favor of the City, but it is acknowledged by the City that it will not have the protections of sovereign immunity in the event that the Private Party brings a breach of contract claim arising out of an expressly stated representation or obligation of the City under this Agreement. the City (and the City's officials, directors, constitutional officers and employees, and all of their officers, directors, and employees) shall not be personally liable for recover of any judgments. The limitation of liability contained in this Section 16.22 shall apply equally and insure to the benefit of the City, its officials, constitutional officers, directors and employees and, successors, and assigns.

16.23 **Force Majeure.** Whenever a period of time is herein prescribed for action to be taken by the City, the City shall not be liable or responsible for, and there shall be excluded from the computation of any such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions or any other Uncontrollable Delays.

16.24 **Recordation Memorandum of Agreement.** The Memorandum of Agreement shall be executed by both Parties contemporaneous with the execution of this Agreement and shall be recorded by the Private Party, at the Private Party's expense, in the Public Records of Broward County, Florida on or about the Effective Date of this Agreement.

16.25 **Governing Law; Provisions Severable.** The laws of the State in which the Property are situated shall govern the interpretation, validity, performance and enforcement of

this Agreement. If any provision of this Agreement should be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby. Venue for any lawsuit by either Party against the other Party or otherwise arising out of this Agreement, and for any other legal proceeding, shall be in the Seventeenth Judicial Circuit in and for Broward County, Florida, or in the event of federal jurisdiction, in the Southern District of Florida, Fort Lauderdale Division.

16.26 **Interest on Late Payments.** In the event any installment of Rent, Profit Distribution (unless a dispute exists as to whether or not such sum is due and payable), percentage rental or any other sum payable by the Private Party to the City under the provisions of this Agreement is not received by the City from the Private Party within five (5) days of the date it is due and payable, the Private Party shall pay to the City an additional sum (Late Charge) equal to five percent (5%) of the amount due. Furthermore, in the event any installment of Base Rental or any other sum payable by a Party to the other Party is not received within ten (10) days after its due date for any reason whatsoever, it is agreed that the amount thus due shall bear interest at a rate of twelve percent (12%) per annum, such interest to accrue continuously on any unpaid balance due by a Party to another Party during the period commencing with the aforesaid due date and terminating with the date on which such Party makes full payment of such amounts to the other Party. Any such interest shall be payable as additional rent hereunder, shall not be considered as a deduction from percentage rental, and shall be payable immediately on demand. In addition to any other charges permitted herein, if the Private Party makes a payment to the City by check and said check is returned to the City by the Private Party's bank marked NSF (Not Sufficient Funds) , "Account Closed" or is dishonored for some similar reason, then an additional charge of \$25.00 per check shall be paid by the Private Party to the City.

16.27 **AS IS/No Warranties/Covenants of Performance.** It is expressly stipulated and agreed that the Property shall be leased "AS IS," in its present condition, and with all faults and defects, whether known or unknown to either the Private Party or the City, or both. The Private Party acknowledges that its decision to lease the Property is based solely upon the Private Party's comprehensive inspection of the Property and not upon any warranty or representation of the City, or of the City's employees, agents, or representatives, with regard thereto. It is expressly stipulated and agreed that none of the obligations to be undertaken hereunder by the City shall constitute any form of a warranty, express or implied, all such obligations being contractual covenants of performance. Without limiting the generality of the foregoing, THERE IS NO WARRANTY, EXPRESS OR IMPLIED, OF SUITABILITY, MERCHANTABILITY, HABITABILITY, and OR FITNESS FOR ANY PARTICULAR PURPOSE GIVEN IN CONNECTION WITH THIS AGREEMENT. The parties agree that the herein provision disclaiming warranties, express and implied, and the provisions hereof under which the Private Party assumes responsibility for repairs under Section 11.1 hereof, are provisions bargained for by the parties in entering into this Agreement. The parties further agree that, except as provided in this Agreement, had warranties been undertaken by the City hereunder or were the City to undertake to perform repairs beyond that contemplated hereunder, the economics of this Agreement would have been affected and would have required an increase in rent from that payable hereunder.

16.28 **Entire Agreement and Amendments.** This Agreement embodies the entire agreement between the City and the Private Party and supersedes all prior agreements and

understandings, whether written or oral, and all contemporaneous oral agreements and understandings relating to the subject matter hereof. Except as otherwise specifically provided herein, no agreement hereafter made shall be effective to change, modify, discharge or effect an abandonment of this Agreement, in whole or in part, unless such agreement is in writing and signed by or on behalf of the Party against whom enforcement of the change, modification, discharge or abandonment is sought.

16.29 **Dispute Resolution.** If a dispute arises with respect to this Agreement, the Parties to the dispute shall first attempt to resolve it through direct discussions in the spirit of mutual cooperation. If the Parties' attempts to resolve their disagreements through negotiation fail, the dispute shall at the request of either Party be submitted to Arbitration in which the determination of such Arbitration shall be binding upon the Parties.

16.30 **Waiver of Jury Trial.** THE CITY AND THE PRIVATE PARTY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THEM AGAINST THE OTHER ON ALL MATTERS ARISING OUT OF THIS AGREEMENT, OR CONSTRUCTION OF THE IMPROVEMENTS OR THE USE AND OCCUPANCY OF THE PROPERTY OR THE MAINTENANCE THEREOF.

16.31 **Bankruptcy or Insolvency.** The City and the Private Party agree that if the Private Party becomes the subject of a bankruptcy proceeding under the Federal Bankruptcy Laws, as now enacted or hereinafter amended, then "adequate protection" of the City's interest in the Property pursuant to the provisions of Sections 361 and 363 (or their successor sections of the Bankruptcy Code, 11 U.S.C. '101, et seq.) prior to the assumption and/or assignment of this Agreement by the Private Party shall include, but not be limited to all (or any part) of the following:

(1) The continued payment by the Private Party of all rent and other sums due and owing under this Agreement; the performance of all other covenants and obligations under this Agreement by the Private Party;

(2) the hiring of security guards to protect the Property if the Private Party abandons and/or ceases operations; such obligation of the Private Party only to be effective so long as the Private Party remains in possession and control of the Property to the exclusion of the City.

(3) The furnishing of a security deposit by the Private Party in the amount of three times then-current monthly Base Rental payable hereunder.

16.32 **No Merger of Title.** Except upon expiration of the term of this Agreement or upon termination of this Agreement pursuant to express right to do so set forth herein, there shall be no merger of this Agreement nor of the leasehold estate created by this Agreement with the fee estate in the Property or any part thereof by reason of the fact that the same person may acquire or own or hold, directly or indirectly, (a) this Agreement or the leasehold estate created by this Agreement or any interest in this Agreement or in any such leasehold estate (including the Building Improvements or any other the Private Party Improvements hereafter situated upon the Property), and (b) the fee estate in the Property or any part thereof or any interest in such fee

estate (including the reversionary interest in the Building Improvements or any other Improvement hereafter situated upon the Property), unless and until all person having any interest in (i) this Agreement or the leasehold estate created by this Agreement, and (ii) the fee estate in the Property or any part thereof, shall join in a written instrument effecting such merger and shall duly record the same.

16.33 **Radon.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of Radon that exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding Radon and Radon testing may be obtained from your county public health unit.

16.34 **Representations.** As a material inducement to the City entering into this Agreement, the Private Party hereby covenants, represents and warrants to the City as follows:

(a) **Power and Authority.** The Private Party has the full power and authority to make, deliver, enter into and perform pursuant to the terms and conditions of this Agreement, and has taken all necessary action or its equivalent, to authorize the execution, delivery and performance of the terms and conditions of this Agreement.

(b) **Good Standing.** The Private Party is duly organized, validly existing and in good standing under the laws of the State of Florida.

(c) **Valid and Binding Obligation.** This Agreement is and shall be valid and binding upon the Private Party in accordance with their respective terms and conditions.

(d) **Financial Capacity.** The Private Party has, or shall have when needed, adequate financial resources (including ability to obtain financing) and capacity to construct and complete the Initial Improvements, and shall provide reasonable written assurance upon request from the City Manager or the City Auditor (as defined in the City Charter) but no sooner than sixty (60) days prior to commencement of construction of the Initial Improvements. The full, faith and credit of the City is not pledged in connection with the City's obligations under this Agreement but the City agrees to budget and appropriate for the payment of its obligations related to the Qualified Project under this Agreement and obligations under the FIRE/EMS Sublease. This covenant to budget and appropriate shall not be deemed an obligation of the City to tax the citizens/residents of the City of Fort Lauderdale. The Private Party shall not have the right to file an action for specific performance to compel the City to tax its citizens. Nothing herein shall be deemed a pledge of or grant of a security interest in the assets or revenues, including without limitation its general funds, of the City to secure its obligations under this Agreement.

16.35 **No Waiver of Sovereign Immunity.** Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity in favor of the City whether at common law or pursuant to F.S. Section 768.28 (2016), but it is acknowledged by the City that it will not have the protections of sovereign immunity in the event that the Private Party brings a breach of contract claim arising out of the terms and conditions of this Agreement.

16.36 **Inspection and Operator.** The City or its Authorized Representative shall have the right to enter the Property and the Buildings constructed thereon, at all reasonable hours and reasonable frequency for the purpose of inspecting the same to ensure that the Private Party is in compliance with its obligations under this Agreement, or for any other purposes not inconsistent with the terms or spirit of this Agreement, provided such inspection shall be performed in a manner to minimize disruption to any business being conducted upon the Property. The City will restore any damage caused to the Property in connection with its inspections and the City shall provide the Private Party reasonable advance notice in order to coordinate such access with operations to be conducted upon the Property. Private Party acknowledges the parties share duties in operating the Project and that the City shall have a right of access and license to the Garage to comply with its duties and obligations under this Agreement. Access to the Commercial Space is subject to the terms of the Sub-Leases.

16.37 **Encumbrance of Fee.** Notwithstanding anything contained herein, the City shall not consent and the Private Party shall not encumber the fee interest of the City in the Property.

16.38 **No Liability for Municipal Actions.** The Private Party acknowledges that the City shall not be liable under this Agreement for any actions taken by the City, acting in its municipal capacity, including, without limitation, any actions which may adversely impact tourism, crime or the local economy and that in no event shall any actions taken by the City in its municipal capacity be the basis for any cause of action or defense of the Private Party's obligations under this Agreement.

16.39 **Third Party Beneficiaries.** Except as otherwise expressly provided in this Agreement, the City and the Private Party do not intend by any provision of this Agreement to confer any right, remedy or benefit upon any third party (express or implied), and no third party shall be entitled to enforce or otherwise shall acquire any right, remedy or benefit by reason of any provision of this Agreement.

16.40 **Tunnel Qualified Project.** To the extent the City elects to construct a tunnel which would have a station at or near the Property, the Private Party agrees to reasonably cooperate with the City to provide for such station, provided (i) the Private Party shall not incur any additional liability or expense in connection with such cooperation, and (ii) the Private Party shall not be required to take any action which would adversely affect in any material respects the Private Party's rights or obligations under this Agreement.

16.41 **Public Disclosure.** The Parties acknowledge that the City and Private Party are bound to comply with FS 119 to the extent applicable. 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, if any, required by applicable law to be maintained by such Party. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Chapter 119, Florida Statutes, as same may be amended from time to time not cured within the applicable cure period and any resultant award of attorney's fees for non-compliance with that law. To the extent applicable, Private Party and all Contractors or subcontractors who are required to comply with Chapter 119, Florida Statutes with respect to the Qualified Project (the "Contractor") engaging in services in connection with

construction and/or maintenance of the Qualified Project shall to the extent required by Chapter 119, Florida Statutes:

(a) Keep and maintain public records that ordinarily and necessarily would be required by City in order to perform the services rendered.

(b) Upon request from City's custodian of public records, provide City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2023), as may be amended or revised, or as otherwise provided by law.

(a) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law and as to Private Party for the duration of the Agreement and as to Contractor for the duration of the contract term and following completion of said contract if Contractor does not transfer the records to City.

16.42 To the extent applicable, upon completion of said construction or maintenance at the Qualified Project, transfer, at no cost, to City all public records in possession of Private Party or Contractor or keep and maintain public records required by City to perform the service. If Contractor transfers all public records to City upon completion of the Qualified Project, Private Party and Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Private Party or Contractor keeps and maintains public records upon completion of the Project, Private Party and Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to City, upon request from City's custodian of public records, in a format that is compatible with the information technology systems of City

If Private Party or Contractor have questions regarding the application of Chapter 119, Florida Statutes, as to Private Party's or Contractor's duty to provide public records relating to its contract, contact the City's custodian of public records by telephone at 954-828-5002 or by e-mail at PRRCONTRACT@FORTLAUDERDALE.GOV or by mail at 100 North Andrews Avenue, Fort Lauderdale, FL 33301 Attention: Custodian of Public Records, and if the Party does not respond in reasonable detail to such request within fifteen (15) days of request, Private Party shall not be in default of this Agreement but such Private Party or Contractor, as applicable, shall be liable for any obligations it has under Chapter 119, Florida Statutes, if any.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

EXECUTED as of the day, month and year first written above.

WITNESSES:

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

By _____
, Mayor

Print Name

By _____
, City Manager

Print Name

(SEAL)

ATTEST:

David R. Soloman, City Clerk

APPROVED AS TO FORM:

D'Wayne M. Spence, Interim City Attorney

By _____
, Assistant City Attorney

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this _____ day of _____, 202__, by _____, Mayor of the CITY OF FORT LAUDERDALE, a municipal corporation of Florida.

(SEAL)

Signature: Notary Public, State of Florida

Name of Notary Typed, Printed or Stamped

Personally Known

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this _____ day of _____, 202__, by _____, City Manager of CITY OF FORT LAUDERDALE, a municipal corporation of Florida.

(SEAL)

Signature: Notary Public, State of Florida

Name of Notary Typed, Printed or Stamped

Personally Known

WITNESSES:

**LAS OLAS PARKING SOLUTIONS,
LLC**, a Florida limited liability company

Print Name

By: _____
Name: _____
Title: _____

Print Name

(SEAL)

STATE OF _____:
COUNTY OF _____:

The foregoing instrument was acknowledged before me this _____ day of _____, 202__, by _____, in his capacity as _____ of Las Olas Parking Solutions, LLC, a Florida limited liability company.

(SEAL)

Signature: Notary Public, State of Florida

Name of Notary Typed, Printed or Stamped

Exhibit A

Legal Description of the Property

The Land referred to herein below is situated in the County of BROWARD, State of Florida, and is described as follows:

Lots 1, 2, 3, 4, 5, 6 7 and 8, Block 9, of COLEE HAMMOCK, according to the Plat thereof as recorded in Plat Book 1, Page(s) 17, of the Public Records of Broward County, Florida.

Exhibit B

Memorandum of Agreement

**THIS INSTRUMENT PREPARED BY
AND RETURN TO:**

Barry E. Somerstein, Esq.
Greenspoon Marder LLP
200 East Broward Boulevard, Suite 1800
Fort Lauderdale, FL 33301

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement is made and entered into as of _____, 2023, by and among **the City of Fort Lauderdale**, a municipal corporation of the State of Florida, having an address at 100 North Andrews Avenue, Fort Lauderdale, Florida 33301 (“**City**”) and **Las Olas Parking Solutions, LLC**, a Florida limited liability company, its successors and assigns, having an address at 517 Northeast 6th Street, Fort Lauderdale, Florida 33304 (“**Private Party**”).

WITNESSETH:

City and Private Party have entered into that certain Comprehensive Agreement dated as of the _____, 2023, as amended (“**Agreement**”) with respect to the property located in the City of Fort Lauderdale more particularly described on **Exhibit A** attached hereto and made a part hereof (“**Property**”).

All capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Agreement. The terms, conditions and covenants of the Agreement are incorporated herein by reference as though fully set forth herein.

The Agreement contains the following provision prohibiting the Private Party from subjecting the Property to any mechanic’s liens:

Private Party shall have no power to do any act or make any contract which may create or be the foundation of any lien, mortgage or other encumbrance upon any interest of City in the Property. NOTICE IS HEREBY GIVEN THAT CITY IS NOT AND SHALL NOT BE LIABLE FOR ANY LABOR, SERVICES OR MATERIALS FURNISHED OR TO BE FURNISHED TO PRIVATE PARTY OR TO ANYONE HOLDING ANY INTEREST IN ANY PART OF THE PROPERTY, AND THAT NO CONSTRUCTION LIENS OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES OR MATERIALS SHALL ATTACH TO OR AFFECT THE INTEREST OF CITY IN AND TO THE PROPERTY OR THE BUILDING. Private Party

shall notify all contractors and material suppliers with whom it contracts of the provision of this Section as required by Florida Statute 713.10.

This Memorandum of Agreement does not supersede, modify, amend or otherwise change the terms of the Agreement. This Memorandum of Agreement shall not be used in interpreting the provisions of the Agreement and is not intended to vary the terms and conditions of the Agreement. In the event of a conflict between the provisions of this Memorandum of Agreement and the provisions of the Agreement, the Agreement shall control.

This Memorandum of Agreement may be executed in counterparts, each of which shall be deemed an original and all of which taken together shall constitute but one and the same instrument.

This Memorandum of Agreement shall be recorded, and shall become effective upon recordation, in the public records of Broward County, Florida, shall be a covenant running with the land and shall be binding on all parties having any right, title or interest in the Property or any portion thereof until the expiration or earlier termination of the Agreement. This Memorandum of Agreement inures to the benefit of and shall be binding upon City and the Private Party and their respective successors and permitted assigns.

[TEXT AND SIGNATURES FOLLOW]

IN WITNESS WHEREOF, the Private Party and City have caused this Memorandum of Agreement to be executed as of the date first written above.

CITY:

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

Print Name: _____ By: _____
Name: _____, Mayor

Print Name:

Print Name: _____ By: _____
Name: _____, City Manager

Print Name:

(SEAL)

ATTEST:

David R. Soloman, City Clerk

APPROVED AS TO FORM:

D'Wayne M. Spence, Interim City Attorney

By: _____
_____, Assistant
City Attorney

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this _____ day of _____, 202__, by _____, Mayor of the CITY OF FORT LAUDERDALE, a municipal corporation of Florida.

(SEAL)

Signature: Notary Public, State of Florida

Name of Notary Typed, Printed or Stamped

Personally Known

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this _____ day of _____, 202__, by _____, City Manager of CITY OF FORT LAUDERDALE, a municipal corporation of Florida.

(SEAL)

Signature: Notary Public, State of Florida

Name of Notary Typed, Printed or Stamped

Personally Known

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

WITNESSES:

**LAS OLAS PARKING SOLUTIONS,
LLC**, a Florida limited liability company

Print Name

By: _____
Name: _____
Title: _____

Print Name
(SEAL)

STATE OF _____:
COUNTY OF _____:

The foregoing instrument was acknowledged before me this _____ day of _____, 202__, by _____, in his capacity as _____ of Las Olas Parking Solutions, LLC, a Florida limited liability company.
(SEAL)

Signature: Notary Public, State of Florida

Name of Notary Typed, Printed or Stamped

Exhibit C

Permitted Exceptions

1. Taxes and assessments for 2023, and subsequent years not due and payable.
2. Restrictions, dedications, conditions, reservations, easements and other matters shown on the plat of COLEE HAMMOCK, as recorded in Plat [Book 1, Page\(s\) 17](#)
3. Ordinance Amending the Broward County Land Use Plan recorded November 21, 2002, in Official Records Book 34145, Page 1891.
4. Educational Mitigation Agreement filed March 16, 2007, and in Official Records Book 43756, Page 1606; as affected by First Amendment filed March 31, 2017, and recorded in Instrument No. 114295268.
5. Resolution No. 12-241 filed January 18, 2013, and recorded in Instrument No. 111266386.
6. Resolution No. 19-126 filed August 5, 2019, and recorded in Instrument No. 115980965.
7. Revocable License between the City of Fort Lauderdale and The Las Olas Holding Company, Inc., filed January 22, 2020, and recorded in Instrument No. 116301277, as shall be modified or terminated as provided in the Agreement.
8. Comprehensive Agreement dated _____, 2023, by and between the City of Fort Lauderdale, a municipal corporation of the State of Florida (“City”) and Las Olas Parking Solutions, LLC , a Florida limited liability company (“Las Olas”).
9. The FIRE/EMS Sub-Lease between Las Olas, as sublessor and the City, as sublessee.
10. To the extent the City needs to grant a commercially reasonable easement to maintain and operate its existing pump station, then such easement shall be a Permitted Exception.

NOTE: All of the recording information contained herein refers to the Public Records of Broward County, Florida, unless otherwise indicated. Any reference herein to a Book and Page or Instrument Number is a reference to the Official Records Books of said county, unless indicated to the contrary.

Schedule 7.2

Landlord's Work
(See attached)

LANDLORD'S WORK

Landlord's Work as described below will be performed by Landlord's contractor at Landlord's sole cost and expense in accordance with applicable building codes prior to Landlord's delivery of possession to Tenant. Landlord will provide to Tenant space as follows:

INTERIOR IMPROVEMENTS		
1.	Demising Walls/Interior partitions:	As set forth on the attached floor plan which includes drywall finishes. Bunk rooms require sound dampening properties.
2.	Exterior Doors:	All entry doors, hardware, and clearances in compliance with ADA and Essential Facilities building code standards (including roll-up door(s) for vehicles)
3.	Floor:	Provide level concrete floor slab and ramp from vehicle storage area to street. Approach and departure angles need to align to fire apparatus requirements including grading and turning movements.
4.	Ceiling:	Building standard 2x2 acoustical in "non-vehicle" area and painted open ceiling in vehicle area at minimum height. "vehicle" area must have ample height clearance for fire apparatus, staff on top of fire apparatus, and large industrial ceiling fans to circulate air. Ceiling Tiles in the bunk rooms must have sound dampening properties.
5.	Interior Doors:	Solidcore wood or metal with hardware per mutually approved floor plan.
6.	Restrooms:	As per floor plan including standard plumbing fixture. Restrooms to include tile all fixtures (cabinets, etc.) and tile flooring, ample counter space for staff hygiene needs, with accessible sink fixtures.
7.	Plumbing and Distribution:	¾" water line and 4" sanitary waste-line with connecting proper pitch stubbed into the premises. Landlord to provide 3" water line with meter, backflow device and shut off valve as per approved plans. Plumbing to be run to and provide 1) kitchen connections 2) appliances connections 3) restrooms fixtures 4) vehicle area hose connections.
8.	HVAC:	Install HVAC (including DOAS system reheat coils) sufficient capacity to maintain normal room temperature (with capabilities to cool and maintain 68 degrees) with distribution per mutually approved interior plans. An isolated HVAC system is required for the bunker gear/storage/contamination areas – to be defined by City.
9.	Electrical Service:	Typical electrical throughout the entire building with standard outlet/lightswitch fixtures with power per plan. Apparatus bay requires upgraded electrical components.
10.	Fire sprinklers:	Provide full system with distribution per approved plan.
11.	Fire alarm System:	Supply and install NFPA, UL and code approved fire protection system.
12.	Telephone:	Provide and install 2" conduit to Tenant's space for Tenant supplied telephone service cables throughout the entire build out with capacity for phone lines and Cat 6 cables
13.	Flooring:	Building standard carpet (color section by Tenant) with 4" carpet base or vinyl flooring with 4" vinyl base. Floor surfaces at sinks, vending area, and kitchen areas shall be 3/16" vinyl floor tile or ceramic surface. Telephone, computer equipment and other appropriate rooms shall have vinyl floors with 4" vinyl base. Exposed concrete areas to be sealed. Need to upgrade finished to 1) Commercial Grade LVT plank flooring and 2) polished concrete. Vehicle area to include trench drains.
14.	Finishes:	Paint to be two coats of latex throughout. Walls to have 4" vinyl base (cove or straight) or higher building standard. 1 – 4'x8' sheet of ¾" fire retardant plywood mounted to the wall of the data closet.

15.	Parking:	Fourteen (14) dedicated (exclusive – no public access) parking spaces reserved for fire rescue personnel with covered parking at no charge.
16.	Generator:	Provision to be made for Developer supplied generator, per City specifications, including gas connections and the associated transfer switches and controls.
17.	Communication Equipment:	Provision to be made for any roof mounted communication equipment.
18.	Shaft:	Any shafts from premises to top of garage or ventilation (including kitchen hood and dryer vents) or connection to communication equipment as set forth on plans.
19.	Cabinetry:	\$30,000 allowance for cabinetry.
20.	Trash Removal:	Interior of demised premises, including all storage areas, shall be free of all personal property and/or debris. Premises to be delivered in a "broom clean" condition after improvements are completed.
21.	Dumpster Area:	Provide area for shared compactor and a dedicated Bio-hazard waste container and access for vendors for pickup
TENANT IMPROVEMENTS (UP TO \$1,005,000)		
A.	Kitchen Appliances	\$73,000.00
B.	Furniture	\$40,000.00
C.	Networking	\$50,000.00
D.	Mobile	\$75,000.00
E.	Voice/AV	\$50,000.00
F.	BDA	\$75,000.00
G.	Fire Alerting	\$260,000.00
H.	Air Vac Exhaust	\$45,000.00
I.	Lockers	\$35,000.00
J.	Signage	\$55,000.00
K.	Air Compressor /Bay Lines	5,000.00
L.	Ice Machine	\$4,000.00
M.	Storage Shelving	\$2,000.00
N.	Gym	\$35,000.00
O.	Secured Parking	\$6,000.00
P.	Undefined / Contingency	\$200,000.00

SCHEDULE 10.1.1

In connection with the operation and maintenance of the Qualified Project, the Private Party shall maintain (or cause to be maintained) the following insurance policies and coverages are required:

(i) Commercial General Liability

Coverage must be afforded under a Commercial General Liability policy with limits not less than:

- \$1,000,000 each occurrence and \$2,000,000 aggregate for Bodily Injury, Property Damage, and Personal and Advertising Injury
- \$1,000,000 each occurrence and \$2,000,000 aggregate for Products and Completed Operations

Policy must include coverage for contractual liability and independent contractors.

The City, a Florida municipal corporation, its officials, employees, and volunteers are to be covered as an additional insured with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liability arising out of activities performed by or on behalf of the Private Party. The coverage shall contain no special limitation on the scope of protection afforded to the City, its officials, employees, and volunteers.

(ii) Business Automobile

Coverage must be afforded for all Owned, Hired, Scheduled, and Non-Owned vehicles for Bodily Injury and Property Damage in an amount not less than \$1,000,000 combined single limit each accident.

If the Private Party does not own vehicles, the Private Party shall maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

(iii) Workers' Compensation and Employer's Liability

Coverage must be afforded per Chapter 440, Florida Statutes. Any person or entity performing work for or on behalf of the City must provide Workers' Compensation insurance. Exceptions and exemptions will be allowed by the City's Risk Manager, if they are in accordance with Florida Statute.

The Private Party waives, and the Private Party shall ensure that the Private Party's insurance carrier waives, all subrogation rights against the City, its officials, employees, and volunteers for all losses or damages. The City requires the policy to be endorsed with WC 00 03 13 Waiver of our Right to Recover from Others or equivalent.

The Private Party must be in compliance with all applicable State and federal workers' compensation laws..

(iv) Property Coverage (on-going basis)

Coverage must be afforded in an amount not less than 100% of the replacement value of the property (excluding foundation) with a deductible of no more than \$250,000 each claim. Coverage form shall include, but not be limited to:

- All Risk Coverage including Flood (to the extent commercially available pursuant to a flood insurance program) (if required) and Windstorm for the full replacement value of the Qualified Project with no coinsurance clause but a reasonable deductible.
- Any separate Flood and/or Windstorm (recognizing windstorm will be at least 5%) deductibles are subject to reasonable approval by the City.

This policy shall insure the interests of the owner and Lessee in the property against all risk of physical loss and damage and name the City as a loss payee.

The Private Party shall, at the Private Party's own expense, take all reasonable precautions to protect the Premises from damage or destruction.

Collection of Insurance

In the event of destruction of or damage to over fifty percent (50%) of any of the Qualified Project or the buildings, other structures and Improvements covered by insurance and Private Party's election to rebuild the Premises or the buildings, other structures and Improvements pursuant to Private Party's option provided in this Agreement, the funds payable pursuant to such insurance policies shall be payable to, and deposited in, a commercial national bank as trustee, located in Fort Lauderdale, Florida, selected by the City, as a trust fund, and the funds shall be used for the purpose of reconstruction or repair, as the case may be, of any of the buildings, other structures or Improvements so damaged or destroyed. Such reconstruction and repair work shall be done in strict conformity with the ordinances and charter of the City. Should the cost of reconstruction or repair exceed the amount of funds available from the proceeds of such insurance policy, then the Private Party is responsible for the difference and such sums shall qualify for Repair Replacement Payments. Any proceeds in excess of the costs for demolition and remediation shall be unencumbered by the City.

Insurance Certificate Requirements

The Private Party shall provide the City with valid Certificates of Insurance (binders are unacceptable) no later than ten (10) days prior to the start of work contemplated in this Agreement.

(a) The Private Party shall provide to the City a Certificate of Insurance having a thirty (30) day notice of cancellation; ten (10) days' notice if cancellation is for nonpayment of premium.

(b) In the event that the insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of the Private Party to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested, and addressed to the certificate holder.

(c) In the event the Agreement term or any surviving obligation of the Private Party following expiration or early termination of the Agreement goes beyond the expiration date of the insurance policy, the Private Party shall provide the City with an updated Certificate of Insurance no later than ten (10) days prior to the expiration of the insurance currently in effect. The City reserves the right to suspend the Agreement until this requirement is met.

(d) The Certificate of Insurance shall indicate whether coverage is provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the Certificate of Insurance must show a retroactive date, which shall be the effective date of the initial contract or prior.

(e) The City shall be named as an Additional Insured on all liability policies, with the exception of Workers' Compensation and as a loss payee on all policies for the Qualified Project.

(f) The City shall be granted a Waiver of Subrogation on the Private Party's Workers' Compensation insurance policy.

(g) The title of the Agreement, Bid/Contract number or other identifying reference must be listed on the Certificate of Insurance.

The Certificate Holder should read as follows:

**City of Fort Lauderdale
100 N. Andrews Avenue
Fort Lauderdale, FL 33301**

The Private Party has the sole responsibility for all insurance premiums and shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, co-insurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, co-insurance penalty, self-insured retention, or coverage exclusion or limitation. Any costs for adding the City as an Additional Insured shall be at the Private Party's expense.

If the Private Party's primary insurance policy/policies do not meet the minimum requirements, as set forth in this Agreement, the Private Party may provide evidence of an Umbrella/Excess insurance policy to comply with this requirement.

The Private Party's insurance coverage shall be primary insurance as respects to the City, a Florida municipal corporation, its officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, a Florida municipal corporation, its officials, employees, or volunteers shall be non-contributory.

Any exclusion or provision in any insurance policy maintained by the Private Party that excludes coverage required in this Agreement shall be deemed unacceptable and shall be considered breach of contract.

All required insurance policies must be maintained or replacement insurance required to be obtained until this Agreement is terminated. Any lapse in coverage shall be considered breach of contract. In addition, Private Party must provide to the City confirmation of coverage renewal via an updated certificate should any policies expire prior to the expiration of this Agreement. The City reserves the right to review, at any time, coverage forms and limits of Private Party's insurance policies.

The Private Party shall provide notice of any and all claims, accidents, and any other occurrences associated with this Agreement to the Private Party's insurance company or companies and the City's Risk Management office, as soon as practical.

It is the Private Party's responsibility to ensure that any and all of the Private Party's independent contractors and subcontractors comply with these insurance requirements. All coverages for independent contractors and subcontractors shall be subject to all of the applicable requirements stated herein. Any and all deficiencies are the responsibility of the Private Party.

SCHEDULE 10.1.2

In connection with construction of improvements having a cost in excess of \$20,000, the Private Party or their the contractor shall maintain the following insurance policies and coverages prior to commencement of construction of such work by the Private Party:

(i) Professional Liability

Coverage must be afforded for Wrongful Acts in an amount not less than \$2,000,000 each claim and \$2,000,000 aggregate.

Contractor must keep the professional liability insurance in force until the third anniversary of expiration or early termination of this Agreement or the third anniversary of acceptance of work by the City, whichever is longer, which obligation shall survive expiration or early termination of this Agreement.

(ii) Commercial General Liability

Coverage must be afforded under a Commercial General Liability policy with limits not less than:

- \$2,000,000 each occurrence and \$2,000,000 project aggregate for Bodily Injury, Property Damage, and Personal and Advertising Injury
- \$2,000,000 each occurrence and \$2,000,000 project aggregate for Products and Completed Operations

Policy must include coverage for contractual liability and independent contractors.

The City, a Florida municipal corporation, its officials, employees, and volunteers are to be covered as an additional insured with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liability arising out of activities performed by or on behalf of the Contractor. The coverage shall contain no special limitation on the scope of protection afforded to the City, its officials, employees, and volunteers.

(iii) Crane and Rigging Liability

Coverage must be afforded for any crane operations under the Commercial General or Business Automobile Liability policy as necessary, in line with the limits of the associated policy.

(iv) Business Automobile Liability

Coverage must be afforded for all Owned, Hired, Scheduled, and Non-Owned vehicles for Bodily Injury and Property Damage in an amount not less than \$2,000,000 combined single limit each accident.

If the Contractor does not own vehicles, the Contractor shall maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

(v) Workers' Compensation and Employer's Liability

Coverage must be afforded per Chapter 440, Florida Statutes. Any person or entity performing work for or on behalf of the City must provide Workers' Compensation insurance. Exceptions and exemptions will be allowed by the City's Risk Manager, if they are in accordance with Florida Statute.

The Contractor waives, and the Contractor shall ensure that the Contractor's insurance carrier waives, all subrogation rights against the City, its officials, employees, and volunteers for all losses or damages. The City requires the policy to be endorsed with WC 00 03 13 Waiver of our Right to Recover from Others or equivalent.

The Contractor must be in compliance with all applicable State and federal workers' compensation laws.

(vi) Property Coverage (Builder's Risk)

Coverage must be afforded in an amount not less than 100% of the total project cost, including soft costs, with a deductible of no more than \$25,000 each claim. Coverage form shall include, but not be limited to:

- All Risk Coverage including Flood (to the extent coverage is commercially available pursuant to a flood insurance program) and Windstorm for the full replacement value of the Qualified Project with no coinsurance clause but with a reasonable deductible,
- Waiver of Occupancy Clause Endorsement,
- Storage and transport of materials, equipment, supplies of any kind whatsoever to be used on or incidental to the project,
- Equipment Breakdown for cold testing of all mechanized, pressurized, or electrical equipment,

This policy shall insure the interests of the owner, contractor, and subcontractors in the property against all risk of physical loss and damage and name the City as a loss payee. This insurance shall remain in effect until the work is completed.

Insurance Certificate Requirements

(a) The Contractor shall provide the City with valid Certificates of Insurance (binders are unacceptable) no later than ten (10) days prior to the start of work contemplated in this Agreement.

(b) The Contractor shall provide to the City a Certificate of Insurance having a thirty (30) day notice of cancellation; ten (10) days' notice if cancellation is for nonpayment of premium.

(c) In the event that the insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of the Contractor to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested, and addressed to the certificate holder.

(d) In the event the Agreement term or any surviving obligation of the Contractor following expiration or early termination of the Agreement goes beyond the expiration date of the insurance policy, the Contractor shall provide the City with an updated Certificate of Insurance no later than ten (10) days prior to the expiration of the insurance currently in effect. The City reserves the right to suspend the Agreement until this requirement is met.

(e) The Certificate of Insurance shall indicate whether coverage is provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the Certificate of Insurance must show a retroactive date, which shall be the effective date of the initial contract or prior.

(f) The City shall be named as an Additional Insured on all liability policies, with the exception of Workers' Compensation and professional liability.

(g) The City shall be granted a Waiver of Subrogation on the Contractor's Workers' Compensation insurance policy.

(h) The title of the Agreement, Bid/Contract number or other identifying reference must be listed on the Certificate of Insurance.

The Certificate Holder should read as follows:

**City of Fort Lauderdale
100 N. Andrews Avenue
Fort Lauderdale, FL 33301**

The Contractor has the sole responsibility for all insurance premiums and shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, co-insurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, co-insurance penalty, self-insured retention, or coverage exclusion or limitation. Any costs for adding the City as an Additional Insured shall be at the Contractor's expense.

If the Contractor's primary insurance policy/policies do not meet the minimum requirements, as set forth in this Agreement, the Contractor may provide evidence of an Umbrella/Excess insurance policy to comply with this requirement.

The Contractor's insurance coverage shall be primary insurance as respects to the City, a Florida municipal corporation, its officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, a Florida municipal corporation, its officials, employees, or volunteers shall be non-contributory.

Any exclusion or provision in any insurance policy maintained by the Contractor that excludes coverage required in this Agreement shall be deemed unacceptable and shall be considered breach of contract.

All required insurance policies must be maintained until the contract work has been completed. . Any lapse in coverage shall be considered breach of contract. In addition, Contractor must provide to the City confirmation of coverage renewal via an updated certificate should any policies expire prior to the expiration of this Agreement. The City reserves the right to review, at any time, coverage forms and limits of Contractor's insurance policies.

The Contractor shall provide notice of any and all claims, accidents, and any other occurrences associated with this Agreement to the Contractor's insurance company or companies and the City's Risk Management office, as soon as practical.

It is the Contractor's responsibility to ensure that any and all of the Contractor's independent contractors and subcontractors comply with these insurance requirements. All coverages for independent contractors and subcontractors shall be subject to all of the applicable requirements stated herein. Any and all deficiencies are the responsibility of the Contractor.

Schedule 13.3

Sublease NDA

(See attached)

Schedule 13.7

Leasehold Mortgagee NDA

(To be prepared by Private Party and submitted to the City for the City approval which approval shall not be unreasonably withheld, delayed or conditioned)