

## **PARKING FACILITY MANAGEMENT AGREEMENT**

THIS PARKING FACILITY MANAGEMENT AGREEMENT ("Agreement") entered into as of the day of \_\_\_\_\_ 2018, between One Broward Blvd Holdings LLC, a Delaware limited liability company, herein called "Owner" and City of Fort Lauderdale, Parking Services division, a Florida municipal corporation herein called "City":

### **BACKGROUND FACTS**

- A. On November 15, 2000, the Owner's predecessor and the City of Fort Lauderdale entered into that certain Amended and Restated Lease Agreement (the "Air Rights Lease") as recorded in Official Records Book 31745, page 1502 and as amended by that First Amendment dated \_\_\_\_\_, 2018, in which Owner constructed and was granted long-term lease rights to a portion of the parking facility located at 200 N.E. 2nd Street, Fort Lauderdale, Florida (the "Parking Facility") as more particular set forth in the Air Rights Lease.
- B. Owner is responsible for maintenance of the Parking Facility, excluding the ground floor of the Parking Facility which shall be maintained by the City, all as more particularly set forth in the Air Rights Lease.
- C. Owner and City desire to enter into this Agreement to retain the City to exclusively manage and maintain the Parking Facility for the fees more particularly set forth herein
- D. Owner represents and warrants that it will terminate its current Parking Facility Management Agreement effective thirty days after this agreement is executed by both parties.

Now, therefore, in consideration of the foregoing and the mutual covenants and agreements contained herein, the parties hereto agree as follows:

- 1. The Background Facts set forth above are true and correct and are incorporated herein by reference.
- 2. Owner hereby contracts with City under the terms, conditions and provisions hereinafter set out for City to exclusively operate and maintain that portion of the Parking Facility leased by Owner pursuant to the Air Rights Lease and required to be maintained by Owner pursuant to the Air Rights Lease.
- 3. The term of this Agreement shall commence on May 1, 2018, and shall continue in effect through the expiration date of the Air Right Lease, unless terminated earlier pursuant to the terms of this Agreement. Termination of this Agreement whether with or without cause, shall be deemed a termination of the Air Rights Lease.

4. The Parking Facility is to be operated by City as a commercial parking garage and shall be used for no other purpose without prior written approval of Owner. City agrees to set aside the necessary space to protect any commitments made to the tenants of Owner and City agrees to honor any allocations of space that Owner deems necessary. City agrees to operate the Parking Facility in a manner consistent with satisfying as efficiently as possible the parking demands generated by Owner and its tenants.
5. This Agreement shall not be assigned, subcontracted or pledged by City in whole or in part without written consent of Owner.
6. Within 30 days from the effective date of this Agreement, the City shall prepare and submit to the Owner and Owner's lender the initial proposed operating budget for the promotion, operation, repair, and maintenance of the Premises for the forthcoming calendar year. After submission of initial budget, preliminary and final budgets will be due ninety (90) and forty-five (45) days respectively prior to the end of each calendar year. Such budgets shall be prepared on a cash basis, showing a month-by-month projection of income and expense and capital expenditures.

After approval of each such operating budget by Owner, the City agrees to exercise diligence and to employ all reasonable efforts to ensure that the actual costs of operating the Premises shall not exceed said budget.

7. Gross Revenues, Operating Expenses, and Operating Surplus are defined as follows:
  - (a) "Gross Revenues" shall include all revenues received by City relating to the operation of the Parking Facility or Owner (excluding all sales taxes or other charges required to be remitted to any governmental agency), as well as income from vending machines, pay telephone commission, and other income approved by Owner. Any revenues collected directly by Owner shall be accurately reported to City. The Owner shall establish and maintain, in accordance with generally accepted accounting principles consistently applied, accurate and complete books of accounts with proper entries of all receipts, income and disbursements pertaining to the Parking Facility. The City shall have the right to audit the books and records of Owner relating to the operation, management and maintenance of the Parking Facility.
  - (b) "Operating Expenses" shall include all ordinary direct expenses of operating that portion of the Parking Facility leased to Owner or required to be maintained by Owner under the Air Rights Lease, other than those of a capital cost nature and those defined in paragraph (s) herein, including, but not limited to:

- 1) Actual wages of supervisory personnel directly assigned to the Parking Facility, attendants, cashiers, clerical and audit staff, including monetary fringe benefits such as workers' compensation insurance in amounts required by Florida law for parking attendants, unemployment insurance, social security and health insurance. The personnel positions and salary amounts to be provided by the City at the Parking Facility are set forth in Schedule C;
- 2) Telephone expenses;
- 3) Business taxes, other than franchise taxes on income or profits;
- 4) Licenses and permits;
- 5) Advertising and promotion costs as approved by Owner per the annual budget;
- 6) Insurance in the amount required of City and Owner in this Agreement;
- 7) Sundry items such as uniforms, tickets and janitorial supplies;
- 8) Payroll processing and accounts receivable processing expense;
- 9) Voluntary settlement of patrons' claims for vehicle damage or loss of contents provided that the same has been authorized by Owner and approved City;
- 10) Normal maintenance and repairs of the Parking Facility including repainting of stall markings, replacement or repair of signs and ticket dispensing equipment;
- 11) Legal or audit charges directly attributable to the operation of the Parking Facility, other than those performed by the staff of the Owner or City, if approved in advance by the Owner;
- 12) The costs of special audits to be performed from time to time by City's, staff auditor for the mutual benefit of Owner and City, provided, however, that the time and manner of the taking of the audit is approved by Owner in advance. Costs qualifying as Operations Expense shall be limited to a mutually agreed upon per diem rate and actual out-of-pocket expenses of the auditor during the period of an approved special audit;
- 13) Payment of the "deductible" amount of insurance claims settlement

and payment of claims in excess of policy limits;

14) Security expenses approved by Owner in accordance with an approved budget; and

15) Elevator maintenance expenses.

(c) Certain costs are specifically excluded from the definition of Operating Expenses for the purpose of this Agreement and shall be borne by the respective parties. The expenses of the City are those set forth in Schedule A. The expenses of the Owner are those set forth in Schedule B.

(d) "Operating Surplus" shall be defined as "Gross Revenues" less "Operating Expenses".

(e) City shall provide consulting and advisory services to Owner concerning the Parking Facility without additional charge except for reimbursement of out-of-pocket expenses such as postage, printing and supply charges, phone charges, drafting expenses in connection with the performance of services requested or required by Owner, and any other similar out-of-pocket expenses. Such expenses shall be supported by cash receipts or other documentary proof of payment.

8. City covenants that it will collect or cause to be collected all of the gross receipts from the operation and use of the Parking Facility. The Gross Revenue for each month's operation shall thereafter, on or before end of the succeeding month, be disbursed by City as follows:

(a) City shall pay all Operating Expenses,

(b) City shall then pay to itself out of the Gross Revenues the following amount: For each month commencing with the date of this Agreement, a base management fee of \$900 plus an amount equal to six and seventy-five hundredths percent (6.75%) of annual Operating Surplus over \$280,000, if any. The annual Operating Surplus shall be calculated for each full year of this Agreement starting on the date of this Agreement, as opposed to a rolling twelve (12) month period.

(c) After payment of the amounts as directed in (a) and (b) above, the balance of the Operating Surplus shall be paid to Owner monthly in conjunction with the delivery of City's monthly report to Owner listing Gross Revenues and Operations Expenses generated by the Parking Facility in preceding calendar month (the "Monthly Report"). The Monthly Report shall be submitted by City for each month of the term hereof by the end of the next succeeding calendar month in a format agreed upon by both parties.

(d) If the Gross Revenues for any month are insufficient to make the payments

required under subparagraphs (a) and (b) above, Owner agrees to remit to City the amount of such deficit within ten (10) days after receipt of the Monthly Report. In the event Owner fails to reimburse City within said ten (10) day period, the City will retain funds from next succeeding months of the Operating Surplus until insufficient funds are paid.

9. City agrees to operate the Parking Facility in an efficient manner and to operate same on Monday through Friday from 7:00 a.m. until 8:00 p.m., for the tenants and guest of adjacent office buildings. The City will also be able to operate the garage after regular hours in the twenty-four (24) period for a seven (7) day week. City farther agrees that charges for parking in the Parking Facility will be commensurate with the demand for parking space and in accord with existing parking rates in the area and such rates shall not be varied without written approval of both parties. Notwithstanding the foregoing, unless approved by Owner in writing, all parking agreements and/or other contracts related to the operation of the garage will have thirty (30) day cancellation provisions and no contract shall exceed a term established by the City. City agrees to furnish and promote safe, efficient and courteous service adequate to meet all commercially reasonable demands for its service at the Parking Facility; and to maintain a close watch over its parking attendants to ensure that they shall discharge their duties in a safe, courteous and efficient manner to maintain a commercially reasonable standard of safety and service to the public.
10. The City shall establish and maintain, in accordance with generally accepted accounting principles consistently applied, accurate and complete books of accounts with proper entries of all receipts, income and disbursements pertaining to the Parking Facility. Such books of accounts shall be the property of both parties and shall be available to Owner and their representatives in their entirety for inspection at any time during regular business hours. If this Agreement is terminated for any reason, all such records shall be promptly delivered to Owner. City agrees that it will keep records pursuant to State Statute of record retention pertaining to the operation of the Parking Facility.
11. It is understood and agreed that Owner in no event shall be construed to be a partner or associate of City in the operation of the Parking Facility or the conduct of City's business thereon, nor shall Owner be liable for any debits incurred by City except related to the garage operation.
12. Owner shall be responsible for all Parking Facility repairs of a structural nature, including, but no limited to: electrical systems, plumbing, pavement repair, painting of the structure, replacement of all mercury or sodium lighting tubes and ballasts, repairs to the walls and floors of the Parking Facility, and maintenance of elevators. City agrees to use reasonable diligence in the care and protection of the Parking Facility during the term of this Agreement

and to surrender the Parking Facility at the termination of this Agreement in as good condition as received, ordinary wear and tear and other casualty excepted.

Any structural, mechanical, electrical or other installations or any alterations required by statutes or regulations pertaining to air quality, environmental protection, provisions for persons with disabilities or other similar governmental requirements shall be the sole responsibility of Owner.

13. In the event the Air Rights Lease is extended beyond the term, this Agreement shall be extended coterminous with the extended period of the Air Rights Lease.
14. In the event City shall intentionally fail to fully and faithfully deposit all the receipts from the operation of the Parking Facility or shall intentionally fail to disburse same only in the manner provided for herein, or in the event City shall become bankrupt or insolvent or suffer the appointment of a receiver, or make an assignment for creditors, Owner shall have the right to hold the City liable for any damages, but not including consequential or speculative damages resulting to Owner .Notwithstanding, damages shall not exceed one year of loss net revenue accruing to the Owner.
15. City agrees to keep the Parking Facility, at all times, in a clean, presentable and sanitary condition and not to permit anything thereon which would negate any insurance carried by Owner or City on the Parking Facility. City further agrees to comply with all governmental laws, ordinances and regulations pertaining to the conduct of City's business thereon. City's maintenance of the Parking Facility shall specifically include without limitation the following:
  - (a) maintenance of all bumper guards and wheel blocks excluding those located on the ground level;
  - (b) supply electric light bulbs and replace worn out bulbs and fuses throughout the Parking Facility as needed.
  - (c) maintain and care for all plantings and landscaping, including that which exists on the ground level;
  - (d) maintain and replace all gates and barricades;
  - (e) pay for all utilities, including water, sewer, gas and electric;
  - (f) maintain the premises, excluding the ground level, in a clean and presentable condition, and not allow dirt, paper, trash, or debris of any kind to accumulate upon the City property, and to remove all obstructions from

the Parking Facility and from adjacent driveways and sidewalks. Any dirt, paper, trash or debris shall not be blown or replaced from the Parking Facility and disposed of appropriately;

- (g) make minor repairs necessary to the plumbing and lighting as necessary;
  - (h) maintain and keep in good working order all fluorescent directional, informational, and advertising signage located within or on the exterior of the parking facility, other than ground level.
  - (i) pay the elevator maintenance service agreement.
16. Insurance. The City is self-insured and subject to sovereign immunity pursuant to F.S. 768.28 (2017), as amended and other provisions of the Florida Statute. Nothing herein shall be deemed a waiver of sovereign immunity in favor of the City.
- (a) Workers' Compensation. City shall provide and pay for all necessary workers' Compensation benefits as provided by law for City employees employed at the Garage (self-insured).
17. Taxes and Assessments. To the extent proceeds are available from Gross Revenue, City shall pay all taxes and assessments imposed or, levied against the Garage by any governmental entity having jurisdiction to levy such taxes or assessments, together with any commercial lease tax or sales tax, if applicable. City shall, from time to time, upon reasonable request by the Owner exhibit vouchers and receipts for said payments and, in default of the payment of any such sums by City for ninety (90) days after any of said sums become due and payable, the Owner may, at their option, upon fifteen (15) days written notice to City, pay the same. If the Contributing Parties unanimously agree, City shall in good faith review by appropriate legal or administrative proceedings or in such other manner as City deems suitable contest, at the expense of the Contributing Parties, any and all taxes, assessments, and other charges levied against the Garage which City is required to pay, provided that such protest or contest is conducted in the manner provided by law and provided, further, that the Parking Facility is kept free from default for failure to pay such taxes, assessments or levies.
18. In the event of sale or assignment of Owner's interest in the Air Rights Lease, this Agreement shall be binding on the successors and/or assigns of Owner. . In the event a suit is brought as a result of a default or breach of this Agreement, the prevailing party will be entitled to recover its reasonable attorney's fees and expense from the other party.
19. Upon expiration of the term of the Air Rights Lease, the City shall deliver the following to the Owner's duly appointed Agent on or before ten (10) days following the termination date:

- i. Any balance or moneys due to the Owner or tenant security deposits, or both, held by the City with respect to the Parking Facility; and
  - ii. All records, contracts, drawings, leases, correspondence, receipts for deposits, unpaid bills, summary of all leases in existence at the time of termination, and all other papers or documents which pertain to the Parking Facility. Such data and information and all such documents shall at all times be the property of the Owner, subject to the right of the City to photocopy same.
  - iii. A final accounting, reflecting the balance of income and expenses for the Parking Facility as of the date of termination;
20. Any fees and amounts due the City at termination shall be paid simultaneously with delivery of items set forth in sections (i), (ii) and (iii) above.
21. Owner shall have the right to enter and inspect the Parking Facility at all times.
22. Owner and City agree that, during the term of this Agreement, all personnel employed by City to operate the Parking Facility shall be solely the employees of City and shall have no contractual relationship with Owner.
23. Notwithstanding any provisions of this Agreement to the contrary, the parties mutually agree that this Agreement shall not in any way be construed to be a lease, joint venture, partnership, or associates, but is merely a recitation of contract provisions for management services between Owner and City.
24. Notice to both Owner and City shall be sent by certified mail, return receipt requested, to the following addresses:

Notice to Owner:           One Broward Blvd Holdings, LLC  
                                  102 Chestnut Ridge Road  
                                  Suite 204  
                                  Montvale, NJ 07645  
                                  Attn: Anthony P. DiTommaso, Jr.

Notice to City:            City Manager  
                                  City of Fort Lauderdale  
                                  100 N. Andrews Avenue  
                                  Fort Lauderdale, FL 33301

25. Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by any agency to which sovereign immunity may be



applicable.

26. This Agreement shall be recorded in the public records of Broward County and shall constitute a covenant running with the land and is binding on the successors and assigns of the parties to this Agreement.

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IN WITNESS WHEREOF, Owner and City have caused this instrument to be executed by their duly authorized personnel the day and date first above written.

WITNESSES:

\_\_\_\_\_

\_\_\_\_\_  
Print or type name here

\_\_\_\_\_

\_\_\_\_\_  
Print or type name here

**OWNER**

**ONE BROWARD BOULEVARD  
HOLDINGS, LLC**, a Delaware  
limited liability company

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

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

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018, by \_\_\_\_\_, the \_\_\_\_\_ of One Broward Blvd Holdings, LLC, a Delaware limited liability company, on behalf of the company. He/She is (check one) \_\_\_\_ personally known to me or \_\_\_\_ has produced \_\_\_\_\_ as identification.

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

(SEAL)

\_\_\_\_\_  
Print Name

State of \_\_\_\_\_ at Large

Commission No.: \_\_\_\_\_

My Commission expires: \_\_\_\_\_

**CITY**

WITNESSES:

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

\_\_\_\_\_

By \_\_\_\_\_  
DEAN J. TRANTALIS, Mayor

\_\_\_\_\_  
Print Name

\_\_\_\_\_

By \_\_\_\_\_  
LEE R. FELDMAN, City Manager

\_\_\_\_\_  
Print Name  
(SEAL)

Approved as to form:  
ALAIN E. BOILEAU, Interim City

Attorney

ATTEST:

\_\_\_\_\_  
LYNN SOLOMON, Assistant City Attorney

\_\_\_\_\_  
JEFFREY A. MODARELLI, City Clerk

STATE OF FLORIDA:  
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 2018, by DEAN J. TRANTALIS, 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 \_\_\_\_\_, 2018, by LEE R. FELDMAN, City Manager 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

## **SCHEDULE A**

### **EXPENSES OF CITY**

1. Salaries, travel and accommodation expenses of all executive personnel of City
2. General and administrative expenses of City not directly incurred during and on behalf of the operations at the Parking Facility.
3. Personal property taxes of City's property.

**SCHEDULE B**  
**EXPENSES OF OWNER**

1. Real and personal property taxes of Owner's property.
2. All claims, expenses and/or damages arising from, or caused by structural or design deficiencies or by improper work or supervision during construction including, without limitation, settlement, collapse or inadequacy of structure or equipment, and all repairs related thereto.
3. Debt service or rent payments with respect to land, building and equipment.
4. Costs of legal and auditing fees of Owner.
5. Salaries and wages of all employees of Owner.
6. Costs incurred by Owner in the supervision of obligations of City.
7. Capital expenditures, improvements, alterations, additions and all new equipment, including architectural and engineering fees in connection therewith
8. Cost of premiums for fire and extended coverage insurance.

## SCHEDULE C

### PERSONNEL & SALARY

Parking Manager	_____ full time @	\$_____ per year
Bookkeeper	_____ full time @	\$_____ per year
Auditor/Clerical	_____ full time @	\$_____ per year
Maintenance Personnel	_____ full time @	\$_____ per year
	_____ part time @	\$_____ per year
Cashiers	_____ full time @	\$_____ per year
	_____ part time @	\$_____ per year
Attendants	_____ full time @	\$_____ per year
	_____ part time @	\$_____ per year