PARKING PERMIT AND ENFORCEMENT AGREEMENT

THIS IS AN AGREEMENT, entered into on the _____day of _____2018, between, the

CITY OF FORT LAUDERDALE, a municipal corporation of the state of Florida, hereinafter referred to as "City",

and

FIRST PRESBYTERIAN CHURCH OF FORT LAUDERDALE, INC, a Florida not-for profit corporation, hereinafter referred to as "Church",

WHEREAS, the City Commission of the City of Fort Lauderdale, Florida, at its meeting of _____, 2018 authorized the City Manager to enter into this Agreement; and

WHEREAS, the Fort Lauderdale First Presbyterian Church is the owner of those certain parking lots located at SE 15th Avenue, Folio numbers 504211012230 and 504211012140 and at Tarpon Drive, Folio 504211011930, Fort Lauderdale, Florida, 33301, hereinafter referred to as "Properties" and more particularly described in the attached Exhibit "A"; and

WHEREAS, the Church represents to the City that the Church intends to manage the Properties for church parking and use as needed for church services and use, and to make the designated parking spaces at the Properties available for public parking when not needed for church use;

WHEREAS, the Church is requesting to allow the City to manage a public parking permit program on the Properties in exchange for the City agreeing that the Church shall retain the monthly permit revenue derived by the City from said Properties; and

WHEREAS, the City agrees to monitor a total number of 78 parking spaces, as designated by the Church, on the Properties being permitted seven (7) days a week excluding Sunday mornings until 1 p.m., or as may be amended by this Agreement, to ensure that patrons display proper permits and, as necessary, enforce by issuing citations to violators. At the minimum, such monitoring shall include the physical patrol of the Properties by the City's parking enforcement officer.

WHEREAS, the City shall provide monthly documentation, in the form of a monthly permit report, which reflects revenues collected for the Church by the City.

WHEREAS, the location of the designated parking spaces eligible for permit parking and enforcement is particularly described in Exhibit “A” attached hereto; and

WHEREAS, Church shall be provided with the monthly revenues by the City for the permits sold and the City agrees to provide a monthly itemized statement to Church

outlining all such revenues; and

WHEREAS, when not used for Church purposes or otherwise reserved, during the term of this Agreement the designated parking spaces at the Properties are made available as permitted parking for the general public and open to permitted parking public access; and

WHEREAS, the City finds that managing a public parking and permit program and providing enforcement services for the Church serves a legitimate municipal purpose; and

WHEREAS, the Church agrees to allow City to retain citation revenue derived by City from said permit violations; and

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

1. Recitations. The recitals set forth above are true and correct and are incorporated into this Agreement by this reference as if fully set forth herein.

2. The Church and City agree that at the identified times, and subject to reasonable rules and regulations as may be established by the Parties the designated parking spaces at the Properties are made available for parking by the general public through a parking permit system, and the City shall provide parking management and enforcement as set forth herein. The hours of public permit parking at parcels 504211012230 and 504211011930 shall be limited to 7 am to 2 am each day. The hours of public permit parking at parcel 504211012140 shall be limited to 8 am to 8 pm each day. The City shall enforce the hours of operation.

3. City agrees to monitor the designated parking spaces eligible for public permit parking and enforcement, as identified and designated by the Church. The Church shall provide 30 days' notice prior to reducing or increasing the number of parking spaces available for the public permit parking program. The Church shall provide 30 days written notice to the residential property owners on SE 16th Avenue prior to any change to the location of the designated public parking spaces or the hours for public parking at parcel 504211012140.

4. Subject to the terms and conditions set forth below, the Church hereby authorizes the City to manage and maintain the parking signs at the Properties more particularly described in the attached Exhibit "A". The Church shall also have the right to install and maintain Church identification signs at the Properties.

5. The term of this Agreement shall be for a period of one (1) year, effective December 31, 2018, unless otherwise terminated as provided herein, with an option for three (3) one-year renewals, which such renewals shall be subject to City Commission approval.

6. Permit rate shall be based upon prevailing market rates for public parking and shall be initially set at $50.00 plus sales tax, per month for either a daytime permit or an evening permit. Daytime is defined as 7 am – 4 pm and evening is defined as 4 pm – 2 am. The rate may be amended from time to time upon the mutual consent of the Parties, which consent shall not be unreasonably denied. City shall pay to the Church the monthly revenue from parking permits minus sales taxes. Payment to

the Church shall be made on a monthly basis and the City shall be provided with thirty (30) calendar days to process monthly payments to the Church. The City agrees to provide a monthly revenue report to the Church identifying the parking permit revenue for the prior month. The Church reserves the right to revise times that the Property is available for public parking, reserve certain spaces for identified groups, and market and sell permits independent of this Agreement.

7. It is hereby agreed by and between the City and the Church that upon the termination of this Agreement, the City shall have the right to remove from the Property all of City's personal property there located upon the Properties, including, but not limited to, signs and any other property owned by City. The City agrees that the cost of removing such items shall be borne by the City.

8. This Agreement may be terminated with or without cause at any time by either party upon sixty (60) days written notice. In the event of termination, the City shall within sixty (60) days of termination pay to the Church its share of the revenue prior to termination and property as provided in Paragraph 6 of this Agreement.

9. The Parties agree that additional parking lots, or parcels, may be added to the Properties subject to amendment of this Parking Enforcement Agreement, in the same formality, upon agreement of the Parties. The Church shall provide 30 days written notice to the residential property owners on SE 16th Avenue prior to any change to the location of the designated public parking spaces or the hours for public parking at parcel 504211012140.

10. The Church hereby grants City the right to install, maintain, and repair parking signs. The City shall at all times maintain the City's parking signs in a condition at all times, ordinary wear and tear excepted. The City is not responsible for maintenance of the Properties.

11. The Church warrants and represents to the City that it is the owner of the Property and further represents and warrants that the Property is presently used as a parking area.

12. The Church agrees that the City shall have the right of ingress and egress to the Properties aforementioned for any and all purposes required by the City pertaining to the use of the Property as a parking lot. The enforcement of ordinances applicable to such permitted parking shall be accomplished by the City as set forth herein.

13. The City will determine the frequency of visits and length of time for enforcement services which shall include the physical patrol of the property as covered under this Agreement. Enforcement for this parking lot will be added to the "Zone Two" enforcement zone coverage and monitored during the hours of enforcement of 7 am – 3:30 am, seven days per week, excluding Thanksgiving and Christmas days. This Agreement shall not create a general right of access nor an access easement to the general public. The rights of access are limited to permit holders and based upon the limited terms of the permit.

14. In exchange for providing parking lot enforcement services, the City shall retain all revenues derived from parking citations issued on said properties noted herein or as may be amended from time to time. The Church may request that the City provide a

one-time courtesy citation dismissal per church patron, which shall waive any parking fines or fees of the associated citation. The Church solely, on behalf of its patron, shall submit a courtesy dismissal form within 30 days of the citation issuance date to the City's Parking Services division. The one-time courtesy dismissal shall serve as a written warning and future citations, if contested, shall be processed through the standard appeal process.

15. Church reserves, without charge, the exclusive use and occupancy of said Properties for Church purposes on each and every Sunday, until 1 p.m., and other designated Church holiday services, and also those spaces not made available subject to this Agreement. The Church retains the authority to determine enforcement times. Notice of any modification of enforcement times shall be provided by the Church, to the City Director of Transportation and Mobility via written advanced notice no less than 72 hours prior to the modification.

16. Each party agrees to be fully responsible for its acts of negligence or its agents' acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence. However, nothing contained herein shall constitute a waiver by the City of its sovereign immunity protection or of its rights and limits to liability existing under Section 768.28, Florida Statutes. This section shall survive the termination of all performance obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

17. At all times during the term of this Agreement, Church, at its expense, shall keep or cause to be kept in effect the following insurance coverage:

    a. General liability insurance policy, in standard form, insuring Church and City as an additional insured, against any and all liability for bodily injury or property damage arising out of or in connection with this Agreement and the license granted herein with a policy limit of not less than One Million Dollars ($1,000,000.00) per occurrence and Two Million Dollars ($2,000,000.00) general aggregate, and shall name the City as an additional insured. All such policies shall cover the activities under the Agreement, including, but not limited to the possession, use, occupancy, maintenance, repair, and construction of additions, modifications, renovations or demolition of the premises or portions thereof. This policy shall not be affected by any other insurance carried by City.

    b. The minimum limits of coverage under subsection (a) may be adjusted by City, in City's sole discretion, on the anniversary date of the Effective Date of this Agreement.

    c. All personal property placed or moved onto the Properties is at the sole risk of the owner of such property. City shall not be liable for any damage to such personal property or for personal injuries to the Church or any of Church's, agents, servants, employees, contractors, guests, or invitees or to trespassers on the Properties.

18. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

a. The Church agrees to be fully responsible for its acts of negligence, or its employees' acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.

b. The CITY agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, for its acts of negligence, or its employees' acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.

19. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. 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.

20. Church shall:

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

(b) Provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2018), as may be amended or revised, or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

(d) Meet all requirements for retaining public records and transfer, at no cost, to the City, all public records in possession of the contractor upon termination of this contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

21. All notices required by law and by this Agreement to be given by one party to the other shall be in writing, and the same shall only be deemed given if as follows:

(a) By certified mail, return receipt requested, or by hand delivery, to the following addresses:

CITY: CITY OF FORT LAUDERDALE
CITY MANAGER
100 NORTH ANDREWS AVENUE
FORT LAUDERDALE, FLORIDA 33301

CHURCH: FIRST PRESBYTERIAN CHURCH
401 SE 15TH AVENUE

(b) Or to such other addresses as the parties may by writing designate to the other party.

22. General Provisions

(a) **No Third Party Beneficiaries**. The parties expressly acknowledge that nothing in this Agreement shall create or confer any rights or obligations in or upon any third person or entity under this Agreement. There shall be no substantial benefit to a third party as a result of this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

(b) **Independent Contractor.** The parties to this agreement shall at all times act in the capacity of independent contractors and not as an officer, employee or agent of one another. Neither party or its respective agents, employees, subcontractors or assignees shall represent to others that it has the authority to bind the other party unless specifically authorized in writing to do so.

(c) **Compliance with Laws.** Each party shall comply with all applicable federal, state and local laws, in performing its duties, responsibilities and obligations pursuant to this Agreement.

(d) **Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

(e) **Entirety of Agreement.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

(f) **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(g) **Assignment.** Neither this Agreement or any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from CITY.

(h) **Severability.** In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in

full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

(i) **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

(j) **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

(k) **Survival.** All representations and warranties made herein, indemnification obligations, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Agreement.

(l) **Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

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CITY

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

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

By:_____
DEAN J. TRANTALIS, Mayor

(CORPORATE SEAL)

By: _____
LEE R. FELDMAN, City Manager

ATTEST:

_____
JEFFREY A. MODARELLI,
City Clerk

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

_____
KIMBERLY CUNNINGHAM MOSLEY,
Assistant City Attorney

CHURCH

WITNESSES:

FIRST PRESBYTERIAN CHURCH OF FORT LAUDERDALE, INC., a Florida not for profit corporation.

_____ _____

_____ _____
[Witness print/type name] [Print Name, check title]

☐ President ☐ Vice President
_____ ☐ Authorized Signatory (Please provide corporate authorization)

_____
[Witness print/type name] ATTEST:

_____
Secretary

_____
[Print Name]

CORPORATE SEAL

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by _____ as _____ of FIRST PRESBYTERIAN CHURCH OF FORT LAUDERDALE, INC., a Florida not for profit corporation, who is ☐ personally known to me or ☐ has produced _____ as identification.

(NOTARY SEAL)

_____
Notary Public, State of Florida
(Signature of Notary Taking Acknowledgment)

_____
Name of Notary Typed, Printed or Stamped

My Commission Expires: _____
Commission Number: _____

Exhibit A

FIRST PRESBYTERIAN CHURCH – PROPOSED PARKING LOTS

28 Spaces



0 Spaces



50 Spaces


North Lot
SE 15TH AVE
Parcel Information
Folio Number: 504211012230
Owner: FIRST PRESBYTERIAN CHURCH OF FORT LAUDERDALE FL INC
Situs Address: SE 15 AVE FORT LAUDERDALE FL 33301
Legal: COLEE HAMMOCK 1-17 B LOT 9,10 BLK 39
Millage Code: 0312
Use Code: 28
Land Value: $ 580,000
Building Value: $ 27,800
Other Value: 0
Total Value: $ 607,800
SOH Capped Value: $ 607,800
Homestead Exempt: $ 0