

PARKING ENFORCEMENT AGREEMENT

This Parking Enforcement Agreement ("Agreement") is hereby entered into this ____ day of _____, 2021 ("Effective Date") by and between:

THE CITY OF FORT LAUDERDALE, a Florida municipality, located at 100 North Andrews Avenue, Fort Lauderdale, FL 33301 ("City"),

and

LAS OLAS PLACE II, LLC, a Florida Limited Liability Company located at 1200 East Las Olas Boulevard, Suite 401, Fort Lauderdale, Florida 33301, ("Company").

WHEREAS, at its meeting of May 18, 2021, the City Commission of the City of Fort Lauderdale, Florida authorized the City Manager to enter into this Agreement; and

WHEREAS, Company is the owner of a certain parking garage located at 1200 East Las Olas Boulevard, Fort Lauderdale, FL 33301, hereinafter referred to as "parking garage" or "property"; and

WHEREAS, the parking garage is deemed a public access lot and permits thoroughfare and parking for the general public; and

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

WHEREAS, the City agrees to monitor the above referenced parking lot in accordance with the terms and conditions set forth in this agreement, to ensure that patrons pay the parking fees due and, as necessary, enforce payment of the parking fees at a minimum, by issuing citations to violators. Such monitoring shall include, but may not be limited to, the physical patrol of the parking garage by the Parking Services Division; and

WHEREAS, in lieu of the City charging the Company monthly fees to monitor and enforce parking requirements on the Property, the Company agrees to allow City to retain all citation revenue derived by City from said parking garage;

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. **Recitals.** 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. **Term.** Unless otherwise terminated as provided herein, the term of this Agreement shall be for a period of five (5) years commencing on the Effective Date. The Effective Date is the date when the last party has executed this Agreement.
3. **Termination.** This Agreement may be terminated with or without cause at any time by either party upon thirty (30) days' written notice, in which event, City shall be entitled to all citation revenue up through the date of termination and any collections thereafter, resulting from the City's enforcement services.
4. **General Conditions.**
 - 4.1. The Company warrants and represents to the City that it is the owner of the real property, as depicted in Exhibit "A", attached hereto and incorporated herein and further represents and warrants that the property is presently used as a parking area.
 - 4.2. Prior to the execution of this Agreement, Company, at its sole cost, shall, ensure all pavement markings and signage is clearly visible and meets all state, municipal, and ADA parking requirements. In addition thereto, all signage must comply with the signage requirements as set forth in the City of Fort Lauderdale's Code of Ordinances and Unified Land Development Code, as may be amended.
 - 4.3. The Company agrees that the City shall have the right of ingress and egress to the property for any and all purposes required by the City pertaining to the use of the property as a parking garage. The enforcement of ordinances and regulations applicable to such parking shall be accomplished by the City.
 - 4.4. The Company agrees to notify the Parking Services Manager, of the City of Fort Lauderdale Transportation Department, as to the days and times of enforcement hours. 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, unless instructed by the Company in writing not to enforce during certain days or hours. Enforcement for this parking garage will be added to the City's "Zone Two" enforcement zone coverage and monitored during hours of operation.
5. **Revenue.** In exchange for providing parking enforcement services, the City shall retain all revenues derived from parking citations issued on said property noted herein.

6. Hold Harmless, Release and Indemnity.

6.1. In consideration of having the benefit of enforcement services in the area as designated in the attached "Exhibit A", Company does hereby release, discharge and covenant not to sue City, its officers, elected officials, volunteers, employees, and agents, and does hereby waive and discharge all claims for damages or injuries against City, its officers, elected officials, volunteers, employees, and agents that may be occasioned, directly or indirectly, in connection with enforcement services and vehicle parking, and does agree to protect, defend, indemnify and hold harmless City, its officers, elected officials, volunteers, employees and agents from and against any and all claims, lawsuits, third party lawsuits, fines, penalties, damages, settlements, judgments, decrees, costs, charges and other expenses, including reasonable attorney's fees and costs actually incurred or awarded, and liabilities of every kind, nature or degree, that may arise out of or be asserted in connection with the rights, responsibilities and obligations of Company under this Agreement, the vehicle parking, or the breach or default by Company of any covenant or provision of this Agreement. Without limiting the foregoing, any and all such claims, suits, causes of action relating to personal injury, death, damage to property, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation or decree of any court by Company, is included in the indemnity. This indemnification shall survive termination, revocation or expiration of this Agreement. This indemnity is not limited by insurance coverage.

6.2. All personal property placed or moved onto the property is at the sole risk of the Company or other owner of such property. City shall not be liable for any damage to such personal property or for personal injuries to the Company or any subtenants, agents, servants, employees, contractors, guests, or invitees or to trespassers on the property.

7. Insurance. As a condition precedent to the effectiveness of this Agreement, during the term of this Agreement and during any renewal or extension term of this Agreement, the Company, at its sole expense, shall provide insurance of such types and with such terms and limits as noted below. Providing proof of and maintaining adequate insurance coverage are material obligations of the Company. The Company shall provide the City a certificate of insurance evidencing such coverage. The Company's insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by the Company shall not be interpreted as limiting the Company's liability and obligations under this Agreement. All insurance policies shall be through insurers authorized or eligible to write policies in the State of Florida and possess an A.M. Best rating of A-, VII or better, subject to approval by the City's Risk Manager.

The coverages, limits, and/or endorsements required herein protect the interests of the City, and these coverages, limits, and/or endorsements shall in no way be relied upon by the Company for assessing the extent or determining appropriate types and limits of coverage to protect the Company against any loss exposures, whether as a result of this Agreement or otherwise. The requirements contained herein, as well as the City's review or acknowledgement, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Company under this Agreement.

The following insurance policies and coverages are required:

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 Company. The coverage shall contain no special limitation on the scope of protection afforded to the City, its officials, employees, and volunteers.

Insurance Certificate Requirements

- a. The Company shall provide the City with a valid Certificate of Insurance (binders are unacceptable) no later than ten (10) days prior to the start of work contemplated in this Agreement.
- b. The Company 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 Company 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 goes beyond the expiration date of the insurance policy, the Company 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 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 Company 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.

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

The Company'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 Company that excludes coverage required in this Agreement shall be deemed unacceptable and shall be considered breach of contract.

The required insurance policy must be maintained until this Agreement is terminated. Any lapse in coverage shall be considered breach of contract. In addition, the Company 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 Company's insurance policies.

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

8. **Governing Law.** 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.

9. **No Waiver of Sovereign Immunity.** Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by City.
10. **Notice.** All notices, demands, requests or communication hereunder required by law and by this Agreement shall be sent in writing to the other party and delivered via mail (postage prepaid), commercial courier, personal delivery, or electronic means, and shall be effective upon receipt. The following persons are designated to receive notice, demands, and any other communications pertaining to this Agreement:

AS TO CITY
Christopher J. Lagerbloom, IMCA-CM
City Manager
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, Florida 33301

WITH COPY TO:
Benjamin Rogers, Director
City of Fort Lauderdale
Department of Transportation and Mobility
290 NE 3rd Avenue
Fort Lauderdale, FL 33301

IF TO COMPANY:
Las Olas Place II, LLC
Edward Smoker
1200 E Las Olas Blvd., Suite 401
Fort Lauderdale, FL 33301

or to such other addresses as the parties may by writing designate to the other party.

11. **Amendments.** All modifications or amendments to this agreement shall only be effective upon a written document executed by both parties with the same formality and of equal dignity herewith.
12. **Entire Agreement.** This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation of the terms hereof shall be predicated upon any prior representations of agreements, whether oral or written.
13. **Emergency Termination.** In the event of emergency, the City may cancel this Agreement during the term hereof upon twenty-four (24) hours written notice to

the other party of its desire to terminate this Agreement.

14. **Joint Preparation.** Each party and its counsel have participated fully in the review and revision of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.
15. **Severability.** If any provision of this Agreement, or its application to any person or situation, is deemed invalid or unenforceable for any reason and to any extent, the remainder of this Agreement, or the application of the remainder of the provisions, shall not be affected. Rather, this Agreement is to be enforced to the extent permitted by law. The captions, headings and title of this Agreement are solely for convenience of reference and are not to affect its interpretation. Each covenant, term, condition, obligation or other provision of the Agreement is to be construed as a separate and independent covenant of the party who is bound by or who undertakes it, and each is independent of any other provision of this Agreement, unless otherwise expressly provided. All terms and words used in this Agreement, regardless of the number or gender in which they are used, are deemed to include any other number and other gender, as the context requires.
16. **No Third-Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third-party by 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 on this Agreement.
17. **Records.** Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to the Florida Public Records Laws. Each party shall be responsible for compliance with any public records request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS OF THE FOREGOING, the parties execute this Agreement as follows:

ATTEST:

CITY OF FORT LAUDERDALE

Jeffrey A. Modarelli, City Clerk

By: _____
Christopher Lagerbloom, ICMA-CM,
City Manager

_____ day of _____, 2021

Approved as to form:
Alain E. Boileau, City Attorney

By: _____
Kimberly Cunningham Mosley
Assistant City Attorney

WITNESS

COMPANY

Signature

LAS OLAS PLACE II, LLC, a Florida Limited Liability Company.

Print Name

By: LAS OLAS PLACE II, INC. a Florida Corporation, as managing member.

WITNESS

By: _____
Edward J. Smoker, President

Signature

Print Name

(CORPORATE SEAL)

STATE OF FLORIDA:
COUNTY OF _____:

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 20__, by Edward Smoker, as President, for Las Olas Place II, INC. as managing member for Las Olas Place II, LLC, a Florida Limited Liability Company.

(SEAL)

Signature of Notary Public – State of Florida

Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known ____ OR Produced Identification ____
Type of Identification Produced _____

EXHIBIT "A"

Location Map

