

**FIRST AMENDMENT TO PARKING SPACE
USE AGREEMENT**

THIS First Amendment to the Parking Space Use Agreement ("Agreement") is hereby entered into this _____ day of July, 2021 by and between:

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

and

THE SHIPYARD, L.L.C., a Florida Limited Liability Company, with its principal address located at 1900 SE 15th Street, Fort Lauderdale, FL 33316, hereinafter referred to as ("USER").

R E C I T A L S

WHEREAS, on May 18, 2021, the City Commission of the City of Fort Lauderdale approved a Parking Space Use Agreement between the CITY and USER ("parties") for the purpose of permitting the use of twelve (12) parking spaces in the City parking lot, known as the "Cox's Landing 15th Street Boat Launch," located at 1784 SE 15th Street, Fort Lauderdale, Florida 33316; and

WHEREAS, a portion of Section 9. "Insurance Requirements," was inadvertently omitted; and

WHEREAS, the parties wish to amend the Agreement to correct the error;

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants, agreements, terms, and conditions contained herein, do agree as to the following:

1. The above recitals and representations are true and correct and are incorporated herein.
2. Section 9. of the Agreement is hereby amended to provide as follows:

9. Insurance Requirements. 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 USER, 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 USER. The USER shall provide the City a certificate of insurance evidencing such coverage. The USER'S insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by the USER shall not be interpreted as limiting the

USER'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 USER for assessing the extent or determining appropriate types and limits of coverage to protect the USER 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 USER 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 USER. 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 USER 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 USER 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

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

The USER'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 USER 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 USER 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 USER's insurance policies.

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

4. This First Amendment shall be effective upon full execution by the parties.

5. This First Amendment may be fully executed in multiple copies by the parties each of which, bearing original signatures, shall have the force and effect of an original document.

6. In the event of any conflict or ambiguity by and between the terms and provisions of the Parking Space Use Agreement and this First Amendment to said Agreement, the terms and provisions of this First Amendment shall control to the extent of any such conflict or ambiguity.

7. The terms and conditions of the Parking Space Use Agreement, shall remain in full force and effect, except as specifically amended by this First Amendment.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
[SIGNATURES TO FOLLOW]

IN WITNESS OF THE FOREGOING, the parties executed this First Amendment to the Parking Space Use Agreement as follows:

ATTEST:

CITY OF FORT LAUDERDALE

Jeffrey A. Modarelli, City Clerk

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

_____ day of _____, 2021

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

By: _____
Kimberly Cunningham Mosley
Assistant City Attorney

USER

WITNESSES:

THE SHIPYARD, L.L.C.

Signature

Ted Drum, Managing Member

Print Name

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 Ted Drum, as Managing Member, for The Shipyard, L.L.C., 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 _____