

AGREEMENT
between
BROWARD COUNTY
and
CITY OF FORT LAUDERDALE
for
PARKING ACCESS IN THE COUNTY PARKING GARAGE

This AGREEMENT ("Agreement") between Broward County, a political subdivision of the State of Florida, whose address is 115 South Andrews Avenue, Fort Lauderdale, Florida 33301 ("County"), and City of Fort Lauderdale, a municipal corporation of the State of Florida, whose address is 100 North Andrews Avenue, Fort Lauderdale Florida 33301 ("City"), is entered into and effective as of the date this Agreement is executed by County ("Effective Date"). County and City are hereinafter referred to collectively as the "Parties," and individually referred to as a "Party."

RECITALS

County is the owner of the Garage (as defined below) located at 151 SW 2nd Street, Fort Lauderdale, Florida 33301.

City desires to access two hundred (200) parking spaces in the Garage to provide additional parking for non-residential businesses in the downtown core of Fort Lauderdale, Florida.

County is willing to provide access to two hundred (200) parking spaces in the Garage to City pursuant to this Agreement, and in exchange for City's payment of a Monthly Fee, as specifically defined in Section 4.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual terms, conditions, and promises hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Recitals.** The recitals set forth above are true, accurate, and fully incorporated by reference herein.

2. **Garage.**
 - 2.1 County is the owner of that certain property known as the Broward County Governmental Center Parking Garage ("Garage"), as more particularly described in **Exhibit A**, attached hereto and made a part hereof.

2.2 County hereby grants to City the right, privilege, and permission to access and use two hundred (200) parking spaces in the Garage ("Spaces").

3. **Term.** The term of this Agreement shall be effective for twelve (12) years commencing on the Effective Date ("Initial Term"). The Parties shall have the option to renew the Agreement upon the same terms and conditions, for two (2) additional five (5) year terms ("Renewal Term(s)"). The Renewal Term option shall be exercised by City sending written notice to County, at least sixty (60) calendar days before the expiration of the then-current term, and County, through its County Administrator or his or her designee, designated in writing, acknowledging the Renewal Term. The "County Administrator" is defined as the administrative head of the County pursuant to Sections 3.02 and 3.03 of the Broward County Charter. The Initial Term, and any Renewal Term, are collectively referred to herein as the "Term."

4. **Monthly Fee.**

4.1 During the Term, City shall pay County an amount equal to fifty percent (50%) of the monthly parking pass rate as set forth in Section 38.1(a) of the Broward County Administrative Code ("Code"), as may be amended from time to time, for each Space on a monthly basis ("Monthly Fee"). As of the Effective Date, the Monthly Fee is Fifteen Thousand and 00/100 Dollars (\$15,000.00), which is an amount equal to 50% of the \$150 rate, currently set forth in Section 38.1(a) of the Code, for each of the two hundred (200) Spaces. The Monthly Fee shall be adjusted upon an amendment to the monthly parking pass rate, as specified in Section 38.1(a) of the Code.

4.2 The Monthly Fee shall be due and payable to County on the first day of each month of the Term ("Due Date").

5. **Late Payment.**

5.1 If City fails to pay any Monthly Fee within five (5) calendar days after the Due Date, County shall have the right to charge, and City agrees to pay, a late payment fee equal to two percent (2%) of such unpaid Monthly Fee or \$300.00, whichever is greater ("Late Payment Charge").

5.2 The Late Payment Charge is intended to compensate County for its additional administrative costs resulting from City's failure to make a timely Monthly Fee, and has been agreed upon by County and City, after negotiation, as a reasonable estimate of the additional administrative costs that will be incurred by County as a result of

City's failure. The actual cost in each instance is extremely difficult, if not impossible, to determine. This late payment charge will constitute liquidated damages and will be paid to County together with the unpaid Monthly Fee.

- 5.3 The collection of any Late Payment Charge shall not constitute a waiver or limitation of any other rights that County may be entitled to under this Agreement or applicable law.

6. City's Access and Use of the Garage and the Alternate Parking Lot.

- 6.1 City shall have the non-exclusive right to access and use the Spaces during Business Hours to provide parking for businesses located in the downtown Fort Lauderdale area ("Access"). "Business Hours" is defined as 7 a.m. to 7 p.m. (Eastern Time) during the weekdays.

6.2 Transponders.

6.2.1 County shall provide City with two hundred (200) transponders to facilitate City's Access. If any of these transponders are lost or damaged during the Term, City may obtain a replacement transponder by paying the fee fixed by County.

6.2.2 City shall return the two hundred (200) transponders to County in good working condition within thirty (30) calendar days after the expiration or earlier termination of this Agreement. If the City fails to return all of the transponders in functioning condition within this 30-day period, City shall pay the replacement costs to County for each missing or damaged transponder.

6.2.3 City may provide the transponders, and the corresponding right to access and use the Garage, to any third party ("Garage User") in accordance with this Agreement. The City may charge a Garage User a fee for the transponder and the related use of the Garage, but such fee shall not exceed an amount equal to fifty percent (50%) of the monthly parking pass rate set forth in Section 38.1(a) of the Code, as may be amended from time to time ("Garage User Fee"). As of the Effective Date, the Garage User Fee is Seventy-Five and 00/100 Dollars (\$75.00) per month, which is an amount equal to 50% of the \$150 rate, currently set forth in Section 38.1(a) of the Code. The Garage User Fee shall be adjusted upon an amendment to the monthly parking pass rate, as specified in Section 38.1(a) of the Code.

6.2.4 Before the City issues a transponder to a Garage User, the City shall submit all of the necessary information about the Garage User and their automobile vehicle, as required by the Facilities Management Director of Broward County (the "Director"). If the City needs to change the Garage User for a transponder, the City shall notify the Director in accordance with Section 10.

6.2.5 City shall annually provide to County a report identifying all of the Garage Users and their corresponding automobile vehicle information, as required by the Director ("Garage User Report"). The Garage User Report shall be provided to County on or before the annual anniversary of the Effective Date.

6.3 In the event that County needs to suspend City's use of the Spaces for a limited time (e.g. garage maintenance, repairs, etc.), City's Access may be temporarily discontinued, in whole or in part, by County providing City with written notice at least ten (10) calendar days before such suspension.

6.4 If City's Access is temporarily discontinued pursuant to Section 6.3, County will, to the extent possible, provide City with access to another parking area for alternative parking ("Alternate Parking Lot").

6.5 City shall not access or use the Garage or the Alternate Parking Lot in a manner that unreasonably interferes with County's use of the Garage or the Alternate Parking Lot.

6.6 City shall not make any alterations, additions or improvements to the Garage or the Alternate Parking Lot.

7. **Default/Termination.**

7.1 If either Party materially breaches its obligations under this Agreement ("Default"), the non-defaulting Party may give written notice of the Default to the defaulting Party ("Default Notice"). The defaulting Party shall have twenty (20) calendar days after receiving the Default Notice to respond by curing the Default, or by delivering to the non-defaulting Party a certificate stating that such Default is not capable of being cured within twenty (20) calendar days and that the defaulting Party is working diligently to cure the Default. If the defaulting Party does not so respond or fails to work diligently, the non-defaulting Party may terminate this Agreement and may pursue all other remedies available to it at law and/or equity.

7.2 This Agreement may also be terminated for convenience by County, through its County Administrator, upon providing written notice to City of the termination date, which shall be not less than thirty (30) calendar days after the date such written notice is provided.

8. **Assumption of Risk.** Except to the extent such matter is caused by the gross negligence or willful misconduct of County or County's employees, agents, or contractors, County shall not be liable to City, City's employees, agents, invitees, or Garage Users for: (i) any damage to property of City, or of others, located in, on or about the Garage or Alternate Parking Lot; (ii) the loss of or damage to any property of City or of others by theft or otherwise; (iii) any injury or damage to persons or property resulting from fire, explosion, steam, gas, electricity, water, or other causes from the Garage, Alternate Parking Lot, the street or subsurface, or any other place; or (iv) any such damage caused by other persons or entities. This Section 8 shall not be construed as a waiver of the sovereign immunity enjoyed by either Party, as provided in Section 768.28, Florida Statutes, as amended from time to time or any other law providing limitations on claims.

9. **Indemnification.** To the extent permitted by law, and without either Party waiving its sovereign immunity or any limits established by Section 768.28, Florida Statutes, City shall indemnify, hold harmless and defend County and County's current and former officers, agents, servants, and employees ("collectively and individually "Indemnified Party") from and against any and all claims, actions, damages, liabilities, and expenditures, including attorneys' fees and court costs, in connection with any property damage or personal injury arising from, relating to, or in connection with this Agreement, and caused, either by commission or omission, by the City, its employees, agents, servants, officers, or invitees (collectively, a "Claim"). In the event any Claim is brought against an Indemnified Party, City shall, upon written notice from County, defend each Indemnified Party against each such Claim by counsel satisfactory to County or, at County's option, pay for an attorney selected by the County Attorney to defend the Indemnified Party.

10. **Notices.** For a notice to a Party to be effective under this Agreement, notice must be sent via U.S. first-class mail with a contemporaneous copy via e-mail to the addresses listed below and shall be effective upon mailing. The addresses for notice shall remain as set forth herein unless and until changed by providing notice of such change in accordance with the provisions of this Section.

NOTICE TO COUNTY:
County Administrator
Broward County Governmental Center, Room 409
115 South Andrews Avenue
Fort Lauderdale, Florida 33301

Email Address: bhenry@broward.org

With a copy to:

Facilities Management Director
115 S. Andrews Avenue, Room 501
Fort Lauderdale, FL 33301

Email Address: scampbell@broward.org

NOTICE TO CITY:

11. **Compliance with Laws.** City shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

12. **Third Party Beneficiaries.** The Parties do not intend to directly or substantially benefit a third party by this Agreement. Therefore, the Parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

13. **Force Majeure.** If a fire, casualty, or other causes beyond the reasonable control of County damages all or part of the Garage or the Alternate Parking Lot ("Force Majeure Event"), then County may elect to either terminate this Agreement or rebuild or repair the damaged property. County shall give City written notice of County's intention to terminate the Agreement or to rebuild or repair the damaged property within one hundred and twenty (120) calendar days after the occurrence of the Force Majeure Event.

14. **Radon Gas.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risk 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 the County Public Health Unit.

15. **Severability.** In the event any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect unless both County and City elect to terminate the Agreement. The election to terminate this Agreement pursuant to this Section shall be made within thirty (30) calendar days after the court's finding becomes final.

16. **Law, Jurisdiction, Venue, Waiver of Jury Trial.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The Parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either Party may claim by virtue of its residency or other jurisdictional device. **BY ENTERING INTO THIS AGREEMENT, THE PARTIES HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

17. **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed by the Parties hereto, with the same formality and of equal dignity herewith.

18. **Prior Agreements.** This Agreement represents the final and complete understanding of the Parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The Parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

19. **Joint Preparation.** This Agreement has been jointly prepared by the Parties hereto, and shall not be construed more strictly against either Party.

20. **Interpretation.** The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a Section of this Agreement, such reference is to the Section as a whole, including all of the subsections of such Section, unless the reference is made to a particular subsection or subparagraph of such Section.

21. **Incorporation by Reference.** Attached **Exhibit A** is incorporated into and made a part of this Agreement.

22. **Priority of Provisions.** If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached hereto or referenced or incorporated herein and any provisions of any Sections of this Agreement, the provisions contained in the Sections shall prevail and be given effect.

23. **Representation of Authority.** Each individual executing this Agreement on behalf of a Party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such Party and does so with full legal authority.

24. **Counterparts and Multiple Originals.** This Agreement may be executed in counterparts. Each executed counterpart will constitute an original document, and all of them, together, will constitute one and the same agreement. It shall not be necessary for every Party to sign each counterpart but only that each Party shall sign at least one such counterpart.

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IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: County, through its Board of County Commissioners, signing by and through its County Administrator, authorized to execute same by Board action on the _____ day of _____, 20____, and City, signing by and through its Mayor, duly authorized to execute same.

COUNTY

BROWARD COUNTY, by and through its County Administrator

By: _____

_____ day of _____, 2016

Approved as to form by
Andrew J. Meyers
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By: _____
Irma Qureshi (Date)
Assistant County Attorney

By: _____
Annika E. Ashton (Date)
Senior Assistant County Attorney

AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF FORT LAUDERDALE
FOR PARKING ACCESS IN THE COUNTY PARKING GARAGE.

CITY

ATTEST:

CITY CLERK

BY: _____
MAYOR

APPROVED AS TO FORM

CITY ATTORNEY