

TEMPORARY PARKING EASEMENT AGREEMENT (NORTH PARCEL)

THIS TEMPORARY PARKING EASEMENT AGREEMENT (this "**Easement**") is made and executed as of _____, 2023, by and between **Boynton Beach Town Center Apartments, LLC**, a Florida limited liability company, C/O Time Equities, Inc. 55 Fifth Avenue, 15th Floor New York, NY 10003 ("**Grantor**") and **The City of Boynton Beach, Florida**, a political subdivision of the State of Florida, 100 East Ocean Avenue, Boynton Beach, FL 33435 ("**City**").

WITNESSETH:

WHEREAS, Grantor and the City are entering into a Development Agreement ("Development Agreement") on a date even with the Effective Date (defined below), and Grantor is, or shall be on the Effective Date, the owner of certain property located in Boynton Beach, Palm Beach County, Florida described on Exhibit "A" attached hereto and made a part hereof (the "Grantor Property"); and

WHEREAS, as of the date first mentioned above, the City is the beneficiary of certain recorded Temporary Parking Easement Agreements with JKM BTS Central, LLC, JKM BTS Capital, LLC, and JKM BTS North, LLC, (collectively, "JKM") recorded in Palm Beach County Official Record Book 31962, Page 1449 and Book 31962, Page 1434 (together, the "Existing Temporary Parking Easements"); and

WHEREAS, Grantor intends to purchase the Grantor Property from JKM; and

WHEREAS, it is the desire of Grantor and the City to terminate the Existing Temporary Parking Easements and simultaneously enter into this Easement, and enter into a like easement on certain other property known as the "Central Parcel"; and

WHEREAS, the Grantor Property is the subject of a Development Agreement which contemplates development of a mixed-use project, together with a parking structure (the "Project"), and which, once constructed, is intended to be occupied by tenants to reside or conduct business therein and shall provide permanent parking to the City therein pursuant to a separate continuing parking lease agreement;

WHEREAS, the temporary parking spaces provided by this Easement, along with a like easement with Grantor over the Central Parcel, are intended to satisfy the temporary parking which Grantor may hereafter be required to provide to the City with respect to the parking structure (the "North Garage") contemplated for construction upon certain property located in Boynton Beach, Palm Beach County, Florida described on Exhibit "B" attached hereto and made a part hereof (the "North Parcel") pursuant to the Development Agreement,

without releasing or modifying any of Grantor's other contingent obligations to provide temporary parking as referenced therein; and

WHEREAS, Grantor desires to establish, create and grant for the benefit of, and as a burden upon, the Grantor Property, a temporary exclusive easement for use by City over and across the portion of the Grantor Property as described in Exhibit "C" attached hereto and made a part hereof (the "Easement Property") for the purposes and upon the terms and conditions as set forth herein, for the benefit of City; the Easement Property, together, if separately agreed in writing by City and Grantor, with an easement across adjacent property owned by another affiliate of Grantor (the "Adjacent Property") or any alternative parking arranged at another location (any such location or locations, collectively, "Alternative Property") by Grantor with the consent of City (which consent shall not be unreasonably withheld), is intended to provide at least 198 parking spaces for use by the City as set forth in this Easement; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements heretofore made, and in satisfaction of the requirement to provide temporary parking under the Development Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, Grantor and City hereby agree as follows:

- 1. Recitals.** The foregoing recitals are true and correct and are hereby incorporated into this Easement by reference in their entirety.

- 2. Parking Easement.**
 - a. Parking Easement.** Grantor hereby establishes, creates and grants to the City a temporary, exclusive easement for parking on the parking areas constructed and existing from time to time within the Easement Property and for the existing road and driveway used to access the parking areas (the "Parking Easement"). Grantor establishes, creates and grants the Parking Easement for City to use, without payment of any fee or charge, the Easement Property for the intended purposes as set forth in this Easement. For the avoidance of doubt, the Parking Easement only includes the Easement Property and does not include any right to use or enter upon any portion of the Grantor Property outside of the Easement Property. This Easement shall become effective upon the execution of this Easement by both parties and Grantor's closing on the Grantor Property ("Effective Date"). This Easement shall be recorded in the Public Records of Palm Beach County, Florida.

 - b. Right to Modify, Remove or Relocate Parking Easements.** Grantor shall have the right, at any time and from time to time, upon 90 days prior written notice to City, to modify, remove and relocate all or any portion of the Parking Easement described herein to another location, with the consent of the City (which consent shall not be unreasonably withheld, conditioned, or delayed), within the Grantor Property (or to an Alternative Property owned by Grantor or

to an Alternative Property procured via acquisition, lease, or other possessory interest by Grantor), provided in all events that the City is provided the use of at least 300 spaces when taking into account spaces provided by or procured by Grantor or its affiliates at the Grantor Property, the Adjacent Property, and any Alternative Property. For purposes of this Easement, it is anticipated that in the event a modification, removal, or relocation of the Parking Easement results in the parking area being located more than .25 miles from the entrance to City Hall (measured from the point in the parking area closest to City Hall to the entrance doorway to City Hall), the City may condition its consent for such modification, removal, or relocation on Grantor's provision of shuttle service from the parking area to City Hall.

c. Termination. The Parking Easement shall be terminated, upon at least ten (10) business days prior written notice, at such time construction of the North Garage is complete and a certificate of occupancy (or equivalent certification) has been issued for the same, or at such time as Grantor shall have provided (either itself, through one of its affiliates, or through a third party) alternative parking arrangements consented to by the City (which consent shall not be unreasonably withheld) until such time as the North Garage can be completed. Following termination of the Parking Easement and provided alternative parking has been provided subject to terms and conditions reasonably comparable to those set forth in this Easement, City shall cease using the Easement Property for parking, and the City will enter into an agreement terminating this Easement and all rights hereunder.

d. No Assignment or Transfer. The Parking Easement may not be assigned or transferred by City. Any attempted assignment or transfer of the Parking Easement or any rights granted herein shall be null and void and shall be deemed a violation of the Parking Easement. Grantor may assign this Easement to its affiliate without City's consent, provided that Grantor shall provide City not less than 30 days' advance written notice of such assignment, provided such assignment is for the whole of this Easement.

3. Prohibited Use. The intended use of the Easement Property is for parking of typical passenger vehicles by City employees, their invitees, and the general public in connection with business with the City or attending civic events; for the avoidance of doubt, the City shall not use or park any heavy equipment, buses, recreational vehicles, or other oversized vehicles within the Easement Property. The City will use its best efforts to prohibit or limit any use not consistent with the intended use. The City will not use the Easement Property to stage any civic or social events, City shall be prohibited from using the Easement Property in violation of any law or for any purpose other than use of the Parking Easement. The City will establish and enforce reasonable restrictions assure that minors less than 12 years of age are permitted on the easement property only when accompanied by an adult and that animals are prohibited on the easement property except when on leash or other physical halter. The City will mark or sign the walkways from the parking lots to City facilities to enhance safety and minimize foot-traffic movement onto adjacent Grantor properties. Subject to applicable governmental requirements and approvals, and with the consent of City (which consent shall

not be unreasonably withheld), Grantor may post signs on the Grantor Property and/or the Easement Property setting forth the rules and restrictions for the use of the Easement Property consistent with the terms of this Easement, and the prohibition of use of portions of the Grantor Property other than the Easement Property.

4. Use by Grantor. Grantor may continue to use the Easement Property and all other portions of the Grantor Property for any lawful purposes that do not unreasonably interfere with the easement rights granted herein, including the right to improve the easement areas, which improvements may include parking, paving, sidewalks, lighting, landscaping, green spaces, recreational areas, drive aisles for motor-vehicles, and construction of the Project (including, without limitation, installation of staging areas). City shall not interfere in any manner with Grantor's operations and activities upon the Easement Property.

5. Maintenance.

- a. Definition of Maintenance Obligations. The term "Maintenance Obligations" means any and all obligations to maintain, safeguard, upkeep, operate, repair, replace and remove the parking areas so that the Easement Property and the Grantor Property remain reasonably safe for the parking of vehicles and the access to such vehicles by their operators.
- b. City Duties. The City will keep the parking area free of debris. The City is responsible for the repair of any damage caused by the storage or operation of City heavy equipment, buses, recreational vehicles, or other oversized vehicles on the Easement Property.
- c. No City Duty. The City has no duty to remove or pay for removal of the temporary parking improvements when the temporary use ends.
- d. Performance. Subject to Sections 5(a) and (b), Grantor shall be responsible to perform all Maintenance Obligations as reasonably necessary and reasonably required hereby on or at the Easement Property.
- e. Standard of Care. To the extent required to be performed by each of the parties hereto as set forth in this Easement, all Maintenance Obligations shall be performed in a good and workmanlike manner, and in compliance in all respects with all applicable laws, rules, regulations and ordinances of all governmental authorities having jurisdiction over the Grantor Property or the Easement Property.

6. No Duties of Grantor. Grantor and its members, managers, lenders (including any lender with a mortgage upon the Grantor Property), attorneys, employees, and agents (together, the "Grantor Parties") shall not have any duty to City whatsoever with respect to the Parking Easement or the Easement Property, including no duty to provide to City any services whatsoever, except infrastructure maintenance as required by, and subject to those limitations set forth in, Section 5 and any conditions imposed by the City in exchange for the City's consent to modify, remove, or relocate the Parking Easement. Furthermore, Grantor Parties shall not have any duty to City or any of City's employees, agents,

contractors, guests, or invitees to provide security or to monitor the Grantor Property or the Easement Property in order to protect against injury to any person or to safeguard or protect any vehicles or personal property of any such parties. Grantor shall not have any liability whatsoever for any injury to any person or for any lost, stolen, or damaged property to City or any of City's employees, agents, contractors, guests, or invitees. City and City's employees, agents, contractors, guests, and invitees assume all risk of injury to any person and loss (including, but not limited to theft) and damage to any of their respective vehicles or other personal property, and City, on its own behalf and on behalf of City's employees, agents, contractors, guests, or invitees, agrees to hold Grantor harmless from and against any and all damages in connection with the Parking Easement including, but not limited to, consequential damages, arising with respect to the matters set forth in this Easement. Grantor Parties shall not have any obligation to assist (or to cause their employees or agents to assist) City in collecting and/or removing any vehicles or personal property of City or other Party from the Easement Property after the Parking Easement has been terminated. Any vehicles or personal property left on the Easement Property after termination of the Parking Easement shall be deemed to have been abandoned, and Grantor may remove any such vehicles or personal property from the Easement Property without any obligation to account to City or any other party with respect thereto.

7. **Indemnification.** City agrees to indemnify and hold harmless Grantor Parties from and against any damage, cost, or liability to the Grantor Parties or the Grantor Parties' property (including the Grantor Property) caused by the use of the Parking Easement granted herein or the exercise of any rights granted in connection with the Parking Easement, unless such damage, cost or expense was caused by a failure of Grantor to maintain the infrastructure as required by Section 5 or the negligence or willful misconduct of the Grantor Party. Nothing in this paragraph shall be interpreted as a waiver of City's sovereign immunity or the limitations of liability set forth in Sec. 768.28, Florida Statutes.

8. **Default.**

- a. **Default.** If City shall be in default under any of the obligations applicable to it as set forth in this Easement for 72 hours after receipt of written notice of default (or such lesser time in the event of an emergency) given by Grantor, or if such default shall be of such a nature that the same cannot practicably be cured within such 72 hour period and City shall not within such period commence the curing of such default and thereafter with due diligence complete the curing of such default, then Grantor may take appropriate steps to cure such default. City shall, following the demand (which shall be accompanied by appropriate supporting documentation), reimburse the Grantor for the City's share of the costs and expenses reasonably paid or incurred by Grantor in the exercise of such rights necessary to cure City's default. Amounts unpaid by City more than 45 days after such demand shall accrue interest at a rate of 10% per annum.
- b. **Standard of Care for Self-Help.** Any acts which the Grantor shall perform or cause to be performed in exercise of its self-help and cure rights under this Section 8 shall be performed with the same standards of care, diligence and workmanship as if such

acts were being performed or caused to be performed by City pursuant to its obligations or duties hereunder.

- c. In the event of a default by City that continues beyond the notice and cure periods herein, Owner shall have the right to bring an action against City for damages or specific performance, as appropriate.

9. **Estoppel Certificate.** City shall, without charge, at any time, and from time to time, within ten (10) days after request therefor, certify by written instrument duly executed, acknowledged and delivered to or for the benefit of any existing or prospective tenant, buyer, or mortgagee of the Grantor Property (or any portion thereof), specify:

- a. That this Easement is unmodified and in full force and effect (or if there has been a modification, that the Easement is in full force and effect as modified and stating the modification);
- b. Whether or not there are any existing defaults under this Easement and if so, specifying such defaults; and
- c. Such other pertinent information as the requesting party may reasonably request.

10. **Insurance.** City, at its sole expense, shall maintain a reasonable program of self-insurance or shall otherwise obtain insurance coverages, as described in Exhibit "D", with admitted insurers authorized to do business in the State of Florida and which are rated "A-/VIII" or equivalent in Best's Key Rating Guide, or any successor thereto (or if there is none, a rating organization having a national reputation); upon Grantor's request, City shall provide to Grantor a copy of each such policy or a certificate of insurance. Furthermore, any policy of insurance maintained by City in connection with the Easement Property shall provide that written notice shall be given to all insured parties, additional insured parties, and holders of certificates of insurance at least thirty (30) days prior to suspension, cancellation, termination, modification, non-renewal or lapse or material change of coverage. Subject to applicable law, in no event shall the limits of any insurance policies (or the City's election to self-insure as to any risks in connection with the Easement Property) limit the liability of City under this Easement.

11. **Miscellaneous.**

- a. The intended and primary use of the Easement Property is to provide parking for City employees, City invitees, and the general public, and such use will have priority over other uses unless a like number and quality of alternative parking is provided at a location reasonably agreed to by the City in accordance with the terms of this Easement. The exercise of the rights and privileges granted hereby shall be exercised in a manner which does not unreasonably interfere with or disrupt the normal use, business or occupation of the Project or any improvements located or to be located on the Grantor Property or the Easement Property.

- b. All provisions of this Easement and the easement rights hereunder shall run with the land and shall be binding upon Grantor and its successors and assigns. The Grantor Property shall hereafter be held, sold, conveyed, operated and leased subject to the easements, restrictions, covenants and conditions contained in this Easement.
- c. All notices, demands, requests or other communications required hereunder shall be in writing and sent by recognized express courier (such as FedEx or United Parcel Service) or via United States registered, certified mail, postage prepaid, return receipt requested, addressed to each party hereto, as the case may be, at the address first hereinabove provided or such other address as any party may from time to time designate in writing to the other.
- d. This Easement shall be governed by and construed in accordance with the laws of the State of Florida. Venue of any litigation or administrative proceeding shall be exclusively in Palm Beach County, Florida. The prevailing party in any litigation arising from the terms of this Easement shall be entitled to recover its reasonable attorneys' fees, both at trial and on appeal, as well as court costs, from the non-prevailing party.
- e. The captions used in this Easement are solely for the convenience of reference and shall not in any way limit or amplify the terms and provisions hereof.
- f. This Easement may be executed in counterparts, each of which will be deemed an original as against any party whose signature appears hereon, and all of which shall constitute one and the same agreement.
- g. This Easement may not be terminated, modified or amended except as provided herein or as otherwise agreed to in a written document executed by the parties hereto or their respective successors in interest.
- h. Any invalidity of any of the terms and conditions or provision of this Easement by judgment, court order or otherwise shall not affect any of the other terms, conditions or provisions of this Easement.
- i. A like Easement Agreement will be executed contemporaneously with this Agreement by the parties to address additional temporary parking on the Central Parcel.
- j. City shall not be liable or responsible to Grantor beyond the monetary limits specified in Ch. 768.28, Fla. Stat., regardless of whether said liability be based in tort, contract, indemnity or otherwise; and in no event shall City be liable to Grantor for punitive or exemplary damages or for lost profits or consequential damages.
- k. City and Grantor hereby acknowledge and confirm that the Existing Temporary Parking Easements shall be terminated and become null and void and of no further force or effect simultaneous with the Effective Date.

[SIGNATURES AND ACKNOWLEDGEMENTS APPEAR ON THE FOLLOWING
PAGES]

IN WITNESS WHEREOF the parties hereto have caused these presents to be executed.

CITY OF BOYNTON BEACH

ATTEST:

City Clerk

By: _____
Mayor, Ty Penserga

Address:

Witness: _____
Printed Name: _____

APPROVED AS TO FORM:

City Attorney

STATE OF FLORIDA }
COUNTY OF PALM BEACH }

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by _____, as Mayor of the **CITY OF BOYNTON BEACH**, a municipal corporation of the State of Florida. He/she appeared before me in person or electronically and is personally known to me or has produced _____ as identification.

Commission Expires: _____

Signed, sealed and delivered: **DEVELOPER:**

BOYNTON BEACH TOWN CENTER APARTMENTS, LLC, a Florida limited liability company

Witness: _____

By: _____

Printed Name: _____

Witness _____

Dated: _____

Printed Name: _____

STATE OF _____)
) SS
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by _____ of **BOYNTON BEACH TOWN CENTER APARTMENTS, LLC**, a Florida limited liability company.

He or she is appeared before me in person or

electronically and is:

[] personally known to me, or
[] produced identification. Type of identification produced _____.

(Seal)

NOTARY PUBLIC:

Print Name: _____

My commission expires:

EXHIBIT "A"

LEGAL DESCRIPTION OF GRANTOR PROPERTY

Parcel 2, Boynton Beach Town Square, according to the plat thereof as recorded in Plat Book 127, Page 1, Public Records of Palm Beach County, Florida.

EXHIBIT "B"

LEGAL DESCRIPTION OF SOUTH PARCEL

Parcel 7, Boynton Beach Town Square, according to the plat thereof as recorded in Plat Book 127, Page 1, Public Records of Palm Beach County, Florida.

EXHIBIT "C"

LEGAL DESCRIPTION OF EASEMENT PROPERTY

A parcel of landing being a portion of Parcel 2, BOYNTON BEACH TOWN SQUARE, according to the Plat thereof as recorded in Plat Book 127, Page 1 of the Public Records of Palm Beach County, Florida. Being more particularly described as follows:

Commencing at the Southwest corner of said Parcel 2;

Thence North $00^{\circ}20'03''$ West (as a basis of bearings) along the Westernmost West line of said Parcel 2, a distance of 30.30' to the POINT OF BEGINNING;

Thence continue North $00^{\circ} 20' 03''$ West along said Westernmost West line, a distance of 24.00 feet;

Thence North $89^{\circ} 40' 29''$ East, a distance of 29.40 feet to a point lying 5.00 feet East of and parallel with (as measured at right angles) the Easternmost West line of said Parcel 2;

Thence North $00^{\circ} 19' 56''$ West along said parallel line, a distance of 262.00 feet;

Thence North $89^{\circ} 40' 29''$ East, a distance of 247.13 feet;

Thence North $00^{\circ} 19' 31''$ West, a distance of 16.47 feet to a point being on the North line of said Parcel 2;

Thence North $89^{\circ} 16' 40''$ East along said North line, a distance of 33.45 feet;

Thence South $00^{\circ} 19' 31''$ East, a distance of 21.70 feet to the point of curvature of a circular curve to the right;

Thence Southerly and Westerly along the arc of said curve having a radius of 40.00 feet, a central angle of $67^{\circ}19'05''$, for a distance of 47.00 feet;

Thence South $00^{\circ} 19' 56''$ East, a distance of 220.09 feet;

Thence North $89^{\circ} 40' 29''$ East, a distance of 161.08 feet to a point being on the East line of said Parcel 2;

Thence South $01^{\circ} 22' 45''$ East along said East line, a distance of 24.00 feet;

Thence South $89^{\circ} 40' 29''$ West, a distance of 15.11 feet;

Thence South $00^{\circ} 20' 03''$ East, a distance of 20.37 feet;

Thence South $89^{\circ} 39' 57''$ West a distance of 56.71 feet;

Thence South $00^{\circ} 20' 03''$ East, a distance of 9.86 feet;

Thence South $89^{\circ} 39' 57''$ West, a distance of 71.32 feet;

Note: The preceding three courses and distance coinciding with the Southern limits of said Parcel 2;

Thence North $00^{\circ} 20' 03''$ West, a distance of 30.25 feet;

Thence South $89^{\circ} 40' 29''$ West, a distance of 303.76 feet to the POINT OF BEGINNING.

Said lands situate, lying and being Section 28, Township 45 South, Range 43 East, City of Boynton Beach, Palm Beach County, Florida. Containing 1.89 acres more or less.

EXHIBIT "D"

Insurance Coverage

Automobile Liability

Bodily injury and property damage liability covering all owned, non-owned and hired automobiles for limits of not less than \$500,000 bodily injury each person, each accident and \$500,000 property damage, or \$500,000 combined single limit each occurrence/aggregate.

Commercial General Liability

Bodily injury and property damage liability as shall protect the City or Grantor from claims of bodily injury or property damage which arise from the use of the Easement. The amounts of such insurance shall be \$2,000,000 per person, \$2,000,000 per occurrence, and a general aggregate limit of \$5,000,000.00. This insurance shall include coverage for products/completed operation, personal injury liability and contractual liability assumed under the indemnity provision of this Easement.

Workers' Compensation Insurance

Meeting the statutory requirements of Florida and Employer Liability of \$1,000,000 per accident limit, \$1,000,000 disease per policy limit, \$1,000,000 disease each employee limit, providing coverage for employees and owners.

Professional Liability Insurance

In an amount of not less than \$2,000,000 each claim and \$2,000,000 aggregate.