

PARKING GARAGE USE AGREEMENT

This Parking Use Agreement (this "Agreement") is made and entered into as of this ___ day of _____, 202___ (the "Effective Date"), by DOWNTOWN EAST REALTY PARTNERS LLC ("RETAILER") and CITY OF PFLUGERVILLE ("CITY").

Recitals:

WHEREAS, CITY is the owner of certain real property, more specifically described on Exhibit A attached hereto, where CITY plans to construct a parking garage to be comprised of approximately 466 parking spaces (the "Garage") located in the City of Pflugerville, Texas. For purposes of this Agreement, the owner of the Garage from time to time may hereinafter be referred to as the "Garage Owner."

WHEREAS, RETAILER is the owner of certain real property nearby the Garage, more specifically described as that certain Retail Unit created pursuant to that certain Development Tract Declaration of Condominium Regime for Parcel 4 Master Condominium, recorded or to be recorded in the Official Public Records of Travis County, Texas (collectively, the "Retail Property"). In the event that there is a new owner of the Retail Property, such new owner shall notify the Garage Owner in writing of the new owner's name and address within ten (10) business days of acquiring ownership. The owner of the Retail Property from time to time may hereinafter be referred to as the "Retail Owner".

WHEREAS, RETAILER and CITY have agreed to enter into this Agreement to (i) provide certain Retail Permitted Users (defined below) with the use of certain Garage Spaces (defined below) in the Garage, (ii) provide for the collection and remittance of Garage Facility Expenses (defined below) payable by the Retail Owner, and (iii) set forth various rights and obligations regarding the Garage.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises hereinafter contained, the parties, intending to be legally bound, agree as follows:

1. Incorporation of Recitals; Defined Terms.

(a) The foregoing recitals are hereby incorporated in this Agreement by this reference.

(b) For the purposes of this Agreement, the following terms shall have the respective meanings indicated below:

"Applicable Law." All applicable laws, rules, regulations and ordinances (federal, state, county, city or otherwise) of any Governmental Authority including, without limitation, all

districts, departments, commissions, boards and officers thereof, and any other body exercising similar functions, including, but not limited to any environmental laws, the Americans with Disabilities Act, and any similar laws, statutes or ordinances relating to handicapped accessibility.

"Garage Facility Expenses." All operating costs and routine capital expenditures incurred or anticipated to be incurred by Garage Owner or the Operator (defined below) in connection with the ownership, use, or operation of the Garage. "Garage Facility Expenses" shall include, without limitation: (a) the cost of all premiums for insurance maintained on the Garage and amounts paid as deductibles under any insurance; (b) all Governmental Impositions; (c) routine capital expenditures such as re-striping of parking stalls and directional markings, repainting curbs, bollards, walls, ceilings and columns, replacing signage, replacing or upgrading lighting fixtures and lamps, minor non-structural concrete patching or crack sealing, replacing joint sealant and caulking in limited areas, refreshing landscaping or planters associated with the deck, replacing small items or site furniture, such as benches and trash receptacles, and minor replacements in access control systems or parking equipment; (d) a management fee payable to any management company hired to handle the day-to-day operations of the Garage; and (e) the cost of any Services (defined herein). "Garage Facility Expenses" shall not include non-routine capital expenditures, such as structural concrete restoration or post-tension tendon repair, full waterproofing membrane or deck coating replacement, major joint system replacement, expansion joint reconstruction, structural or foundation rehabilitation, major repair or replacement of systems (for example, MEP), or installation of new systems (such as EV charging, solar canopy or ventilation overhaul).¹

"Governmental Authority." Any and all applicable courts, boards, agencies, commissions, offices or authorities of any nature whatsoever for any governmental entity (federal, State, County, district, municipal, city or otherwise) whether now or hereafter in existence.

"Governmental Impositions." All real property and personal property taxes, assessments, standby fees, excises and levies, and any interest, costs or penalties with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, which at any time prior to or after the execution of this Agreement, may be assessed, levied or imposed upon the Garage.

"Owner" means Retail Owner or Garage Owner.

2. Parking Spaces in the Garage.

(a) Subject to the terms and conditions of this Agreement, and in consideration of the payment of the Garage Facility Expenses, Garage Owner hereby agrees to make available to the Retail Owner, and its guests, employees, visitors, invitees and customers

¹ NTD: This change reflects the concept from the MOU that capital expenditures are to be allocated proportionately only for *routine* capital expenditures.

(collectively, the "Retail Permitted Users"), a certain number of parking spaces in the Garage (for the parking of motor vehicles only) for the Retail Property, as more particularly described on Exhibit B, each of which is singly referred to herein as a "Garage Space" and collectively referred to herein as the "Garage Spaces." Subject to reasonable limitations on access, as may be imposed from time to time by Garage Owner and/or the Operator for security purposes, the Garage Spaces will be available for the use of the Retail Permitted Users.

(b) Retail Owner shall have the right to use the Garage Spaces allocated to the Retail Property to park in the Garage for and in consideration of the payment of the Garage Facility Expenses. The Garage Owner and/or Operator may cause to be implemented an identification system which may consist of parking stickers, parking cards, or other reasonable methods to identify Retail Permitted Users using the Garage. The Garage Owner and/or Operator may further require that Retail Permitted Users take time cards upon entering the Garage and to surrender such cards upon leaving the Garage.

(c) In addition, Retail Owner shall have the right to use additional parking spaces in the Garage, on the same general terms and for the fees charged to members of the public, as established from time to time by the Garage Owner and/or Operator.

(d) Provided that the Garage Spaces are made available to the Retail Permitted Users as set forth herein, the Garage Owner and/or Operator may make any other Garage Spaces available to members of the public, or other parties, on such terms, conditions and requirements determined from time to time by the Garage Owner.

(e) As a condition precedent to each applicable Retail Permitted Users use of the Garage Spaces, there shall be no material default by Retail Owner (after expiration of any applicable notice or cure period) under this Agreement; and the Retail Permitted Users shall adhere to all reasonable rules and regulations imposed for use of the Garage.

3. Garage Facility Expenses.

(a) Prior to the commencement of each fiscal year, the Garage Owner shall prepare and deliver to Retail Owner a budget setting forth the anticipated Garage Facility Expenses for the ensuing year. The anticipated Garage Facility Expenses will be allocated to Retail Owner based on the total Garage Spaces allocated to the Retail Owner divided by the total number of Garage Spaces (the "Garage Facility Expenses Allocation"). Retail Owner shall be obligated to pay the anticipated Garage Facility Expenses allocated to Retail Owner in bi-annual installments on March 1 and July 1 of each year following the Effective Date.

(b) On or before sixty (60) days after the end of each fiscal year, the Garage Owner will deliver to Retail Owner a comparison of the actual costs incurred during the prior twelve (12) month period to the anticipated Garage Facility Expenses for the same twelve month period (the "**Annual Reconciliation**"). In the event the estimated costs exceed the actual costs, Garage Owner will either (i) pay to Retail Owner an amount equal to the difference

between the estimated costs and the actual costs on or before sixty (60) days after the Annual Reconciliation is delivered to Retail Owner or (ii) credit to Retail Owner an amount equal to the difference between the estimated costs and the actual costs towards Retail Owner's next bi-annual installment of the anticipated Garage Facility Expenses. In the event the actual costs exceed the estimated costs, Retail Owner will pay to the Garage Owner an amount equal to the difference between the actual costs and the estimated costs on or before sixty (60) days after the Annual Reconciliation is delivered to Retail Owner. Retail Owner will be entitled to inspect and audit the books and records of the Garage Owner as such books and records pertain to the Garage upon thirty (30) days advance written notice. An inspection and audit shall occur no more than one (1) time per calendar year. Any inspection and audit shall be done at the sole cost of Retail Owner.

4. Garage Operation.

(a) Garage Owner/Operator shall cause the Garage to be operated as a commercial parking garage in accordance with a standard consistent with the operation of the similar parking facilities in Travis County, Texas.

(b) Garage Owner may, from time to time, enter into an agreement with a third-party for operation and administration of the Garage, and to otherwise discharge and/or perform Garage Owner's responsibilities pursuant to the terms and provisions of this Agreement (the "Operator").

(c) Garage Owner may, from time to time, operate or enter into an agreement with a third-party for operation of a valet parking program ("Valet Parking"). The costs of the Valet Parking program shall be allocated between Garage owner and Retail Owner either (i) in proportion to the amount of time each Owner uses the Valet Parking and the number of allocated Garage Spaces for each Owner, or (ii) another reasonable usage formula determined by Garage Owner. Garage Owner and Retail Owner shall agree upon a reasonable method of allocating revenue from Valet Parking based on the expense allocation described in the preceding sentence.

5. Operational Covenants.

(a) Garage Owner shall, or shall cause Operator to, perform the following services (the "Services"):

(i) Perform and supervise routine clean-up of the Garage and maintain or cause to be maintained the Garage and the parking access and parking-related equipment therein in a neat and clean condition and in good operating order. Garage Owner/Operator shall make all needed repairs or resurfacing of any paving or concrete in the Garage and any repairs to the structural portions or mechanical systems in the Garage;

(ii) Provide for utilities to the Garage and provide for trash removal. Garage Owner/Operator shall sweep and keep clear of trash, debris, snow and ice all areas in the Garage accessible by guests, patrons, and visitors;

(iii) Employ, supervise, and discharge employees or contractors necessary or desirable to be employed in the efficient operation, maintenance and care of the Garage and the performance of the Services.

(iv) Purchase and maintain all supplies, equipment, signage and materials necessary for the performance of the Services and the care, maintenance and efficient operation on an on-going basis of the Garage, all of which shall remain the property of Garage Owner/Operator.

(b) Retail Owner shall not use, nor permit any of the Retail Permitted Users to use the Garage in a manner which (i) damages (or could damage) the Garage, (ii) causes (or could cause) harm or injury to any persons or property, (iii) violates (or could violate) any applicable governmental law or restriction, (iv) violates any rule or regulation adopted by the Garage Owner/Operator related to use of the Garage or (v) invalidates (or could invalidate) any insurance on the Garage carried by Garage Owner/Operator. Retail Owner agrees to hold the Garage Owner/Operator, their respective officers, directors, agents, employees, successors and assigns, harmless from and against and indemnify and defend them against any and all injury, loss, damage, liability (or any claims in respect of the foregoing), costs or expenses (including, without limitation, attorney's fees), of whatever nature, to any person or property caused or claimed to be caused or resulting from the negligence or willful acts of the Retail Owner or a Retail Permitted User, as applicable, their officers, directors, agents, employees, successors and assigns.

6. Temporary Closure/Excuses for Non-Performance.

(a) The parties hereby agree that the Garage may be partially or entirely closed by Garage Owner and/or the Operator from time to time for maintenance, repair or other operational reasons. Garage Owner and/or the Operator shall give reasonable prior notice to Retail Owner of any anticipated closure, the reason therefor and the anticipated time period of such closure. To the extent such closure makes it temporarily commercially unreasonable to provide parking in the Garage, Garage Owner/Operator shall use commercially reasonable efforts to provide substitute parking for Retail Permitted Users.

(b) Notwithstanding anything contained in this Agreement, the Garage Owner or Operator, as applicable, shall be temporarily excused from the performance of any obligation under this Agreement, if and so long as the performance of the obligation is prevented, substantially delayed or otherwise substantially hindered by acts of God, fire, earthquake, floods, explosion, extreme or unusual weather conditions, actions of the elements, war, riots, mob violence, acts of terrorism, power outages, inability to procure or a general

shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, actions of labor unions, condemnation, court orders, laws or orders of governmental or military authorities or any other cause, whether similar or dissimilar to the foregoing, not within the reasonable control of the Garage Owner and/or the Operator.

7. Emergency Repairs. Garage Owner shall give prompt notice to Retail Owner of any emergency situation necessitating an immediate repair or alteration (i.e., a repair or alteration necessary to prevent damage to any person, structure or system). Garage Owner/Operator shall be authorized to use its reasonable judgment regarding the need to perform such alteration or repair; provided, however, in such event, Garage Owner shall notify Retail Owner of any such emergency repairs or alterations made as soon as reasonably practicable after such emergency situation occurred. Garage Owner shall provide to Retail Owner invoices reflecting the expenses of such emergency repairs or alterations as directed by Retail Owner, and such expenses shall be allocated to the Retail Owner based on the Garage Facility Expenses Allocation, which Retail Owner shall be obligated to pay within thirty (30) days after receiving such invoices.

8. Remedies. If at any time an Owner (or Operator, as the case may be) shall fail to perform any covenant or agreement required to be performed by it pursuant to this Agreement or if an Owner/Operator shall do or threaten to do anything in violation of this Agreement, then the other Owner, after expiration of any applicable grace periods provided for in this Agreement, shall have, in addition to those remedies expressly set forth herein, all rights and remedies at law or in equity, including but not limited to the right to specifically enforce such covenant or agreement or the right to enjoin such violation or threatened violation.

9. Successors and Assigns. The agreements, covenants, conditions and restrictions set forth herein shall run with the Garage and Retail Property. Whether or not specific reference is made to successors and assigns in each term or provision of this Agreement, all of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties hereto. Retail Owner shall have no right to assign or otherwise transfer this Agreement, or any rights arising hereunder, to any person or entity other than to a party to whom it transfers fee simple title to the Retail Property (including a transfer through foreclosure or a deed in lieu thereof). Garage Owner shall have no right to assign or otherwise transfer this Agreement, or any rights arising hereunder, to any person or entity other than to a party to whom it transfers fee simple title to the Garage (including a transfer through foreclosure or a deed in lieu thereof). The retention of an Operator of the Garage, or the execution of a lease concerning the Garage, shall not be considered an assignment or transfer of this Agreement; provided, however, any such retention or leasing shall be subject to all terms and conditions of this Agreement.

10. Notices. All notices and other communications required or permitted hereunder shall be in writing and deemed received upon personal delivery, one (1) business days after deposit with a nationally recognized overnight delivery service or three (3) business days after deposit in the U.S. mails, sent certified or registered mail, and addressed as follows:

If to Garage Owner:

with a copy to:

If to Retail Owner:

Griffin/Swinerton, LLC
Attention: Korin Crawford and Roger Torriero
5707 Southwest Pkwy #200
Austin, Texas 78735
Email: kcrawford@griffinswinerton.com; rtorriero@griffinholdings.net

with a copy to:

Orrick
Attention: Mason Harry
609 Main Street, 40th Floor
Houston, Texas 77002
Email: mason.harry@orrick.com

with a copy to:

The Rodarti Group
Attn: Keith Davis
7700 Irvine Center Drive, Ste. 180
Irvine, CA 92618
Email: kdavis@constructionriskmanagers.com

Any party may change its address for purposes of notice hereunder by delivering written notice thereof to the other parties in the manner set forth above.

11. Miscellaneous.

(a) Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Texas.

(b) Counterparts. This Agreement may be executed in duplicate and in multiple counterparts, each of which counterparts when taken together shall constitute one and the same original instrument.

(c) Amendments. This Agreement may only be amended by written instrument signed by all parties hereto.

(d) Further Assurances. Notwithstanding anything contained in this Agreement to the contrary, if either Owner reasonably requests additional documentation to evidence any termination expressly provided for in this Agreement, then the other Owner agrees that it shall execute and deliver such documentation promptly following the requesting Owner's written request therefor.

(e) Attorneys' Fees. If any action is brought by an Owner to interpret or enforce this Agreement or otherwise concerning the subject matter of this Agreement, the prevailing Owner in such action shall be entitled to recover its reasonable attorneys' and experts' fees and costs of suit incurred in such action, including all costs incurred upon any appeal or ancillary proceeding.

(f) Non-Merger. This Agreement shall not be subject to the doctrine of merger, even though the underlying fee ownership to the Garage and the Retail Property, or any parts thereof, is vested in one party or entity.

(g) Modification, Amendment or Termination. This Agreement may only be modified, amended or terminated upon the filing of such modification, amendment or termination in the Official Public Records of Travis County, Texas, executed, acknowledged, and approved by: (a) the Garage Owner; and (b) the Retail Owner, at the time of such modification, amendment or termination. Unless terminated in accordance with the previous sentence, this Agreement shall remain in full force and effect in perpetuity.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date set forth above.

RETAILER:

DOWNTOWN EAST REALTY PARTNERS LLC, a
Delaware limited liability company

By:_____

Printed Name:_____

Title:_____

THE STATE OF TEXAS §

COUNTY OF _____ §

This instrument was acknowledged before me this ____ day of _____, 20____
by _____ of DOWNTOWN
EAST REALTY PARTNERS LLC, a Delaware limited liability company, on behalf of said
limited liability company.

(SEAL)

Notary Public Signature

CITY:

CITY OF PFLUGERVILLE

By: _____

Printed Name: _____

Title: _____

THE STATE OF TEXAS §

COUNTY OF _____ §

 This instrument was acknowledged before me this ____ day of _____, 20____
by _____, _____ of
_____, on behalf of the CITY OF PFLUGERVILLE.

(SEAL)

Notary Public Signature

EXHIBIT A

Legal Description of Garage

[TO BE ATTACHED]

EXHIBIT B

Garage Spaces

[TO BE CONFIRMED]

120 parking spaces located in the lowest levels of the Garage.