

**FIRST AMENDMENT TO PARKING STRUCTURE LEASE**

34947

THIS FIRST AMENDMENT TO PARKING STRUCTURE LEASE (this "**Amendment**") is made by and between SRE-OW 100 BROADWAY OWNER, LLC, a Delaware limited liability company ("**Landlord**"), and the CITY OF LONG BEACH, a municipal corporation ("**Tenant**") as of the date (the "**Effective Date**") set forth beneath Landlord's signature below.

**RECITALS**

A. Landlord is the owner of the Parking Structure (all terms in initial capitals used herein without definition shall have the meanings given to such terms in the Lease (defined below)).

B. The Lease (defined below) provided Tenant with certain rights to exclusively use and occupy the Parking Structure during Tenant's Hours of Operation (specified in the Lease as 5:30 P.M. through 3:30 A.M. on Business Days and 10:00 A.M. through 3:30 A.M. on Non-Business Days) and provided Landlord with certain rights to exclusively use and occupy the Parking Structure during Landlord's Hours of Operation (specified in the Lease as 7:00 A.M. through 5:30 P.M. on Business Days (as defined in the Lease)). The "**Lease**" means that certain Parking Structure Lease dated December 1, 1992 between Landlord (as successor in interest to IDM Corporation) and Tenant (as successor in interest to The Redevelopment Agency of the City of Long Beach).

C. Tenant is not utilizing the Parking Structure during all of Tenant's Hours of Operation, Tenant is not utilizing the entire Parking Structure during any particular hours, and Tenant's Parking Operator is not controlling access to the Parking Structure during Tenant's Hours of Operation.

D. Access to the Parking Structure is not currently controlled during hours that the Parking Structure is not being utilized by Landlord or Tenant, and as a result, the Parking Structure is being used by unauthorized persons, for unauthorized purposes at times that neither Landlord nor Tenant is utilizing the Parking Structure.

E. Landlord and Tenant desire to control access to the Parking Structure at all times.

F. Landlord and Tenant hereby desire by this Amendment to: (i) provide for the Landlord to operate the Parking Structure at all times; (ii) convert the Lease from a lease of the Parking Structure, generally, to a lease of the 150 Monthly Parking Spaces, (iii) provide for the installation by Landlord of automated gates that will prevent ingress and egress to the Parking Structure at times mutually agreed by Landlord and Tenant, and (iv) further amend the Lease upon and subject to each of the terms, conditions, and provisions set forth herein.

**AGREEMENT**

NOW, THEREFORE, in consideration of the Recitals set forth above, the agreements set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. **Amendment of Lease.**

1.1 Recitals B and C of the Lease are amended and restated to read in their entirety as follows:

"B. Tenant desires to lease 150 Monthly Parking Spaces within the Parking Structure from Landlord pursuant to the Provisions of this Lease.

C. Landlord desires to lease 150 Monthly Parking Spaces to Tenant pursuant to the Provisions of this Lease."

1.2 Section 1.11 of the Lease is amended and restated to read in its entirety as follows:

"1.11 Landlord's Hours of Operation - means 24 hours per day, 7 days per week."

1.3 Section 1.23 of the Lease is deleted and is of no further force or effect.

1.4 The first paragraph of Section 2 of the Lease is amended and restated to read in its entirety as follows:

"Landlord leases to Tenant and Tenant leases from Landlord 150 Monthly Parking Spaces to be used for parking in the Parking Structure on an unreserved basis during Landlord's Operating Hours."

1.5 Section 4.1 of the Lease is amended and restated to read in its entirety as follows:

"4.1 One Hundred and Fifty Monthly Parking Spaces. At all times Tenant, its assigns and designees, shall be entitled to occupy up to one hundred and fifty (150) parking passes for parking on an unreserved basis within the Parking Structure (the "150 Monthly Parking Spaces"). Users of the 150 Monthly Parking Spaces shall be issued parking passes (the "Parking Passes") mutually acceptable to Landlord and Tenant evidencing their non-exclusive right to use a parking space."

- 1.6 Section 4.2 of the Lease is amended and restated to read in its entirety as follows:
- “4.2 Use of 150 Monthly Parking Spaces. The 150 Monthly Parking Spaces may be used for parking, on a non-exclusive basis, in the Parking Structure 24 hours per day, 7 days per week.”
- 1.7 Section 10.1 of the Lease is amended and restated to read in its entirety as follows:
- “10.1 Operation of the Parking Structure. Landlord shall be responsible for the operation and management of the Parking Structure, in a first class manner, 24 hours per day, 7 days per week. Landlord shall install a pay-on-foot visitor validation and automated tracking system to manage and monitor all visitor and monthly parking, and may additionally install gates and other equipment to control access to the Parking Structure. During Non-Working Hours, at least 25% of the total parking opportunity in the Parking Structure shall be available for Visitor Parking. During Working Hours, in the event the Parking Structure becomes full and any of the Users of the 150 Monthly Parking Spaces are unable to find a parking space within the Parking Structure, to be confirmed via analysis of the automated tracking system, Landlord shall reimburse Tenant the actual, reasonable, parking space expense incurred for parking at another Downtown Long Beach location for each User that is unable to park within the Parking Structure. If any one of Tenant’s Users is unable to find an available parking space within the Parking Structure, as evidenced by the automated monitoring system, more than four times in a single month, the Tenant has the right to have the Landlord implement a valet assist program for Tenant’s Users within the Parking Structure until such time that, as is mutually agreeable between Tenant and Landlord, the parking problem has been remedied.
- 1.8 Sections 10.2 and 10.3 of the Lease are deleted and shall have no further force or effect.
- 1.9 Section 11.1 of the Lease is amended and restated to read in its entirety as follows.
- “11.1 Parking Rates. The Parking Passes shall be provided by Landlord to Tenant without charge. For all but the 150 Monthly Parking Spaces, Landlord shall set all parking rates (i.e. daily, monthly, validated, etc.) for use of the Parking Structure. Tenant shall set all monthly parking rates for the use of the 150 Monthly Parking Spaces.”
- 1.10 Section 11.2 of the Lease is amended and restated to read in its entirety as follows:
- “11.2 Parking Revenues. Tenant shall be entitled to keep, as its sole property, all of the parking revenues attributable to the 150 Monthly Parking Spaces and the Parking Passes. For all but the 150 Monthly Parking Spaces, Landlord shall be entitled to keep as its sole property, all of the parking revenues attributable to additional monthly parking passes for parking in the Parking Structure and all Visitor Parking and Validated Parking revenues attributed to Working Hours (defined below). Revenues attributed to Non-Working Hours (defined below) that are received from Visitor Parking, special event parking, or Monthly Parking, shall be split equally between Landlord and Tenant. “Working Hours” means 5:00 am to 6:00 pm, Monday through Friday, exclusive of “Holidays” on which Long Beach City Hall is closed. “Non-Working Hours” means, during any calendar week, all days and hours that are not Working Hours. Audit Rights. In connection therewith, Landlord shall keep sufficiently detailed records of all revenues relating to the Working Hours and the Non-Working Hours in accordance with generally accepted accounting principles, and shall make such records and other related financial information as may be reasonably requested, available to Tenant for review and audit for a period of at least three (3) years after receipt of such revenue.”
- 1.11 Article 12 of the Lease is amended and restated to read in its entirety as follows:
- “12. ALTERATIONS.
- Tenant shall not make any Alterations to the Parking Structure. Landlord shall not make any Alterations to the Parking Structure that materially interfere with the use and enjoyment of the Parking Structure by Tenant.”
- 1.12 Section 14.1 of the Lease is amended and restated to read in its entirety as follows:
- “14.1 Exculpation of Tenant. Except as provided in this Section 14.1 and subject to Section 14.3 below, Tenant and its Authorized Representatives shall not be liable for any Damage to Landlord or Landlord’s property from any cause. Landlord waives all claims against Tenant and its Authorized Representatives for Damage to Person or property arising for any reason, except that Tenant shall be liable to Landlord for Damage to Landlord or the Landlord’s property resulting from the negligent acts or omissions or willful misconduct of Tenant or its Authorized Representatives.”
- 1.13 Section 14.2 of the Lease is amended and restated to read in its entirety as follows:
- “14.2 Exculpation of Landlord. Except as provided in this Section 14.2 and subject to Section 14.4 below, Landlord and its Authorized Representatives and Landlord’s affiliates, property manager, and lenders (collectively, the “Landlord Parties”) shall not be liable to Tenant for any Damage to Tenant or Tenant’s property from any cause. Tenant waives all claims against Landlord for Damage to Person or property arising for any reason, except that Landlord shall be liable to Tenant for Damage to Tenant or the Tenant’s property resulting from the negligent acts or omissions or willful misconduct of Landlord or its Authorized Representatives. In addition, the rights granted to Tenant hereunder are granted on the condition that Tenant requires

each person using any of the Parking Passes to release the Landlord Parties from liability, and waive its entire right of recovery against the Landlord Parties, for any direct or consequential loss or damage arising out of or incident to Licensee's and such contractor's or third party's entry upon or use of the Parking Structure, except to the extent of Damage to any such person or to any such person's property resulting from the negligent acts or omissions or willful misconduct of Landlord or its Authorized Representatives."

1.14 Section 14.3 of the Lease is amended and restated so as to read in its entirety as follows:

"14.3 Indemnity for Tenant. Landlord shall defend, indemnify and hold Tenant harmless from and against any and all claims and Damages arising out of any Damage to any Person or property occurring in, on, under or about the Parking Structure and arising out of the negligence acts or omissions or the willful misconduct of Landlord or any of its Authorized Representatives, except to the extent that any such claims and Damages arise out of the negligent acts or omissions or willful misconduct of Tenant or any of its Authorized Representatives (for which Tenant shall be required to indemnify, defend and hold Landlord and the other Landlord Parties harmless in accordance with Section 14.4 below). Landlord's obligations under this Section 14.3 to indemnify, defend and hold Tenant harmless shall be limited to the sum that exceeds the amount of insurance proceeds, if any received by Tenant with respect to the applicable claims and Damages."

1.15 Section 14.4 of the Lease is amended and restated so as to read in its entirety as follows:

"14.4 Indemnity for Landlord. Tenant shall defend, indemnify and hold Landlord and the other Landlord Parties harmless from and against any and all claims and Damages arising out of any Damage to any Person or property occurring in, on, under or about the Parking Structure and arising out of the negligence acts or omissions or the willful misconduct of Tenant or any of its Authorized Representatives, except to the extent that any such claims and Damages arise out of the negligent acts or omissions or willful misconduct of Landlord or any of its Authorized Representatives (for which Landlord shall be required to indemnify, defend and hold Tenant harmless in accordance with Section 14.3 above). Tenant's obligations under this Section 14.4 to indemnify, defend and hold Landlord and the other Landlord Parties harmless shall be limited to the sum that exceeds the amount of insurance proceeds, if any received by Landlord or the applicable Landlord Party(ies) with respect to the applicable claims and Damages."

1.16 Section 14.5.2 of the Lease is deleted and shall have no further force or effect.

1.17 Section 17.1 is amended by deleting the words "interest in the Parking Structure" and replacing them with "interests in the 150 Monthly Parking Spaces".

1.18 Article 19 of the Lease is deleted and shall have no further force or effect.

1.19 Article 20 of the Lease is amended and restated to read in its entirety as follows:

"20. Landlord shall conduct its activities in, on and about the Parking Structure, and shall operate the Parking Structure in a manner that will cause the least possible inconvenience, annoyance or disturbance to Tenant's use of the 150 Monthly Parking Spaces. If any action of Landlord will adversely affect the use of sixty-five (65) or more parking spaces in the Parking Structure on any day, or will cause any material inconvenience, annoyance or disturbance to Tenant, then Landlord shall notify Tenant thereof no less than thirty (30) days in advance of such activities.

Other than for routine and necessary Maintenance for the Parking Structure (e.g., periodic restriping and cleaning), Tenant shall be entitled to a refund of Rent (as the Rent is adjusted pursuant to Section 18.2.3, to the extent that Landlord's activities in the Parking Structure (other than in response to an emergency or a default by Tenant hereunder) materially and adversely interfere with Tenant's use of the 150 Monthly Parking Spaces."

1.20 Article 22 of the Lease is updated by specifying the following, current notice addresses of Landlord and Tenant:

Landlord's Notice Address:

SRE-OW 100 Broadway Owner, LLC  
c/o Ocean West Management Services  
Attn.: Property Manager  
100 W. Broadway, Suite 230,  
Long Beach, CA 90802

Tenant's Notice Address:

City of Long Beach  
Public Works Department  
Attn: Director  
333 W. Ocean Blvd., 3<sup>rd</sup> floor,  
Long Beach, CA 90802

1.21 Article 25 of the Lease is amended by deleting the words "enjoy the Parking Structure" and replacing them with "enjoy the rights granted to Tenant hereunder with respect to the use of Parking Structure".

2. **Miscellaneous.**

2.1 **Entire Agreement; Remainder of Lease to Continue in Effect; Binding Effect; Modification.** This Amendment constitutes the entire understanding and agreement of Landlord and Tenant with respect to the specific subject matter hereof, and shall supersede and replace all prior understandings and agreements, whether verbal or in writing. Except as amended hereby, the Lease shall in all other respects remain in full force and effect and is hereby ratified and confirmed in all aspects by the parties hereto. In the event of any inconsistency between the Lease and this Amendment, the provisions of this Amendment shall prevail. The parties confirm and acknowledge that there are no other promises, covenants, understandings, agreements, representations or warranties with respect to the subject matter of this Amendment except as expressly set forth herein. Notwithstanding the later date on which any of the terms and provisions of this Amendment shall become effective, subject the terms hereof, this Amendment shall constitute binding contractual obligations upon each of Landlord and Tenant effective upon the execution of this Amendment by each of Landlord and Tenant. This Amendment shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, estates, personal representatives, successors and assigns. This Amendment may not be modified or amended except pursuant to a written instrument duly executed by the parties hereto (or by their successors in interest)

2.2 **Governing Law.** The parties hereby agree that the terms and conditions of Section 29.2.1 of the Lease shall apply to this Amendment (as if set forth herein); provided, however, that for purposes hereof, all references in such Section 29.2.1 to the "Lease" shall be deemed to refer to this Amendment.

2.3 **Authority; Counterparts; Execution.** Each of Tenant and Landlord hereby covenants and warrants that it has full right and authority to enter into this Amendment and that the person signing on its behalf is authorized to do so. This Amendment may be executed in one or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. Each of the parties hereto agree that the delivery of an executed copy of this Amendment by facsimile or email shall be legal and binding and shall have the same full force and effect as if an original executed copy of this Amendment had been delivered.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Amendment as of the Effective Date set forth beneath Landlord's signature below.

**LANDLORD:**

SRE-OW 100 BROADWAY OWNER, LLC,  
a Delaware limited liability company

By: [Signature]  
Name: TER DISCHAK  
Its: MANAGING MEMBER

**TENANT:**

CITY OF LONG BEACH,  
a municipal corporation

By: [Signature]  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Effective Date: June 1, 2018

Tom Modica  
Assistant City Manager  
EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER

APPROVED AS TO FORM  
5-30-2018  
CHARLES PARKIN, City Attorney  
By [Signature]  
RICHARD ANTHONY  
DEPUTY CITY ATTORNEY