

## FIRST AMENDMENT TO PARKING GARAGE LEASE

### SP2 301 E VIRGINIA, LLC and the CITY OF MCKINNEY, TEXAS

**THIS FIRST AMENDMENT TO PARKING GARAGE LEASE** (the “Lease”) is entered into this 6th day of November 2018 (the “Effective Date”) by and between SP2 301 E VIRGINIA, LLC, a Texas limited liability company (“Landlord”) and the CITY OF MCKINNEY, TEXAS, a Texas home rule city (“Tenant”).

#### RECITALS:

WHEREAS, pursuant to that certain Parking Garage Lease dated January 17, 2018 (the “Parking Garage Lease”) City of McKinney (the “City”) leased from SP2 301 E Virginia, LLC a structured parking garage, subject to the terms of a Parking Garage Development Agreement; and

WHEREAS, the parties desire to modify and amend certain provisions of the Parking Garage Lease to address completion and possession of the structured parking garage.

#### AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. The sections and subsection identified below shall be amended and shall henceforth read as follows:

“1.01 (b) Term: Sixty (60) months commencing upon the Commencement Date, which date shall be the earlier of (i) the date Landlord receives a permanent Certificate of Occupancy, or (ii) February 1, 2019.”

“2.04 Tender of Possession. Upon Landlord’s performance of its obligations under the Development Agreement and receipt of a Temporary Certificate of Occupancy for the Parking Garage pursuant thereto, and specifically in accordance with the bidding/procurement requirements of Paragraph 1(b) and (c) thereof, Landlord shall deliver possession of the Property to Tenant. Within ten days after Landlord’s receipt of a permanent Certificate of Occupancy, Tenant shall execute and deliver to Landlord a letter substantially in the form of **Exhibit “D”** hereto confirming (i) the Commencement Date and the expiration date of the Term, (ii) that Tenant has accepted the Property, and (iii) the monthly amount of Base Rent, however, the failure of the Parties to execute such letter shall not defer the Commencement Date or otherwise invalidate this Lease. Time is of the essence in Landlord’s required delivery of possession to Tenant by the Commencement Date, and weather delays shall not constitute force majeure under this Section 2.04.”

“4.01 Base Rent. Commencing on the later of the first day of the next month after i) the Landlord’s receipt of a final Certificate of Occupancy, or ii) the Commencement Date, Tenant shall pay to Landlord the Base Rent in monthly installments, in advance, on the first day of each and every month. Simultaneously with Landlord’s receipt of the first development permit allowing ground disturbance for the Property, the Tenant shall escrow the sum of Three Million and No/100 Dollars (\$3,000,000.00) (the “Rent Prepayment Escrow”) with the title company

named is Section 8.04(b) under the terms of an Escrow Agreement acceptable to Tenant whereby the funds are (i) interest-bearing, (ii) not subject to any Lender, and (iii) released to Landlord according to this Section 4.01, including any interest earned on said Rent Prepayment Escrow, subject to Landlord's satisfaction of the following condition:

**Landlord obtains a Temporary Certificate of Occupancy on or before December 31, 2018.**

If the foregoing condition is satisfied, Tenant shall pay to Landlord the sum of Two Million and No/100 Dollars (\$2,000,000.00) and upon Landlord's subsequent receipt of a permanent Certificate of Occupancy, Tenant shall pay to Landlord the sum of One Million and No/100 Dollars (\$1,000,000.00), which amounts, in the aggregate, shall constitute an initial prepayment of rent and shall be in addition to the monthly Base Rent obligation described above. Upon receipt of the entirety of the Rent Prepayment Escrow of rent in the aggregate amount of \$3,000,000.00, the prepaid rent shall be deemed fully earned and not refundable to Tenant under any circumstances, subject to Tenant's rights and remedies under Section 9.05 below. If a Temporary Certificate of Occupancy is not received by Landlord by December 31, 2018, no portion of the Rent Prepayment Escrow shall be payable until a permanent Certificate of Occupancy is received by Landlord, and further, Tenant shall receive a reduction of Base Rent in the amount of \$2,000/day beginning January 1, 2019 until a Temporary Certificate of Occupancy is received by Landlord, however, such reduction of Base Rent shall not overlap with any period where Base Rent is reduced under Section 9.05 below. Weather delays shall not constitute force majeure under this Section 4.01."

"4.06 Tenant Improvements, Fee Waivers, and Construction Assistance during Construction. Tenant agrees, at its cost and on or before May 1, 2018, to: (i) remove and relocate Onco power pole, including wires, transformers, conduits, and boxes from the property; and (ii) relocate the two primary service lines running to 301 and 305 E. Virginia St. according to the Chestnut Commons Parking Garage Exhibit Coserv Conduit plan attached hereto as **Exhibit "G"**. Tenant agrees to provide waivers for any and all City of McKinney fees associated with the parking garage project up to \$40,000.00. Within three (3) business days of receipt of Landlord's written request, Tenant further agrees to provide \$35,000.00, payable jointly to Landlord and its general contractor, for the following components of the construction:

a. utility work described in the Chestnut Commons Parking Garage Utility and Drainage Plan, Sheet C-11 of Sheet C-13, attached hereto as **Exhibit "H"**, including pavement repair associated with the work described in this paragraph (a); and

b. landscaping described in the Chestnut Commons Parking Garage Landscape Plan approved by the City of McKinney, attached hereto as **Exhibit "I "**."

"9.05 Landlord's Default. Landlord shall not be in default hereunder unless Landlord fails to perform the obligations required of Landlord within a reasonable time, but in no event later than thirty (30) days after written notice by Tenant to Landlord specifying wherein Landlord has failed to perform such obligation; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are reasonably required for performance, then Landlord shall not be in default if Landlord commences the cure within such thirty (30) day period and thereafter diligently pursues the cure to completion. In the case of a default by Landlord, Tenant's sole remedy shall be to cure the same and seek reimbursement from Landlord (and should Landlord fail to promptly reimburse Tenant, Tenant shall have the right to pursue an action at law against Landlord for monetary damages). Nothing herein contained shall be interpreted to mean that

Tenant is excused from paying Base Rent, Additional Rent and all other monetary obligations due hereunder as a result of any default by Landlord. Notwithstanding the foregoing, Landlord's failure to receive a permanent Certificate of Occupancy by February 1, 2019 shall automatically reduce the Base Rent payable to Landlord by \$2,000.00/day for every day of delay in delivery of the Property to Tenant, except for delays caused by Force Majeure events. However, weather delays shall not constitute force majeure under the previous sentence of this Section 9.05."

2. All sections and subsections not amended hereby shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties have executed this First Amendment to the Parking Garage Lease as of the Effective Date.

**LANDLORD:**

SP2 301 E VIRGINIA, LLC,  
a Texas limited liability company

By: \_\_\_\_\_  
J. Martin Sanchez, Manager

**TENANT:**

CITY OF MCKINNEY, TEXAS  
a Texas municipal corporation

By: \_\_\_\_\_  
Paul G. Grimes, City Manager

ATTEST:

\_\_\_\_\_  
EMPRESS DRANE  
City Secretary  
MELISSA LEE  
Deputy City Secretary

APPROVED AS TO FORM:

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MARK S. HOUSER  
City Attorney