

PARKING AGREEMENT

THIS PARKING AGREEMENT (this “**Parking Agreement**” or “**Agreement**”), is made this _____ day of _____, 2018 by and between **EOM REALTY, LLC** (referred to herein as “**Redeveloper**”), a limited liability company of the State of New Jersey (the “**State**”) and the **CITY OF BAYONNE** (the “**City**” and, together with Redeveloper, the “**Parties**”), a New Jersey municipal corporation.

WITNESSETH:

WHEREAS, pursuant to the Redevelopment Law, the Municipal Council of the City of Bayonne (the “**Municipal Council**”) adopted Resolution No. 98-02-04-040, designating the entire City as an area in need of rehabilitation in accordance with *N.J.S.A.* 40A:12A-14; and

WHEREAS, by Ordinance O-_____, the City Council adopted a Redevelopment Plan [as defined in the New Jersey Local Redevelopment and Housing Law, *N.J.S.A.* 40A:12A-1, et seq.] (the “**Redevelopment Plan**”) titled “Redevelopment Plan Block 184, Lot 5 (554-556 Broadway), Block 184, Lot 10 (11 East 25th Street)” for property designated as Block 184, Lot 5 and Block 184, Lot 10 (the “**Property**”), which Property is identified on **Exhibit A** to this Agreement; and

WHEREAS, the Mayor and City Council serve as an instrumentality and agency of the City pursuant to the LRHL for the purpose of implementing the Redevelopment Plan and carrying out redevelopment projects within the City; and

WHEREAS, *N.J.S.A.* 40A:12A-8 authorizes the City to enter into contracts or agreements for the planning, construction or undertaking of any development project or redevelopment work in an area in need of redevelopment; and

WHEREAS, the Redeveloper has undertaken a project on the Property for a mixed-used building containing sixty five (65) residential units and ground floor retail space (the “**Project**”); and

WHEREAS, the Redevelopment Plan allows the Project to satisfy its parking requirement by leasing parking spaces within a certain distance of the Property; and

WHEREAS, the City is authorized under the Redevelopment Law to lease or convey property or improvements to Redeveloper to serve the Project upon such terms as it deems appropriate; and

WHEREAS, Redeveloper and the City authorized a Redevelopment Agreement dated _____ 2018 (the “**Redevelopment Agreement**”), whereby the City agreed to lease up to seventy (70) but not less than sixty (60), in the Redeveloper’s discretion, parking spaces to the Redeveloper within a to-be-constructed parking structure to be located on Block 179, Lots 4, 5, and 6 (the “**Municipal Lot**”) to serve the Project and requiring the execution of a separate parking agreement regarding same; and

WHEREAS, the Parties have determined to enter this Parking Agreement to set forth, among other things, the terms and conditions under which Redeveloper shall be entitled to use the parking spaces in the Municipal Lot to satisfy a portion of the Project Parking Requirement.

NOW, THEREFORE in consideration of the respective covenants, conditions and agreements herein contained, it is agreed by and among the Parties as follows:

ARTICLE I
GENERAL PROVISIONS

SECTION 1.01. Exhibits Incorporated. All exhibits referred to in this Parking Agreement and attached hereto are incorporated herein and made a part hereof.

SECTION 1.02. Recitals Incorporated. All recitals set forth above this Parking Agreement and are incorporated herein and made a part hereof as though fully set forth herein.

SECTION 1.03. Interpretation and Construction. In this Parking Agreement, unless the context otherwise requires:

(a) The terms “hereby”, “hereof”, “hereto”, “herein”, “hereunder” and any similar terms, as used in this Parking Agreement, refer to this Parking Agreement, and the term “hereafter” means after, and the term “heretofore” means before the date of delivery of this Parking Agreement.

(b) All references to Articles, Sections or Exhibits shall, unless otherwise indicated, refer to the Articles, Sections or Exhibits in this Parking Agreement.

(c) Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.

(d) Words importing persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations, limited liability companies and other legal entities, including public or governmental bodies, as well as natural persons.

(e) All notices to be given hereunder and responses thereto shall be given, unless a certain number of days is specified, within a reasonable time.

(f) Unless otherwise indicated, any “fees and expenses” shall be required to be customary and reasonable.

ARTICLE II

PARKING

SECTION 2.01. Project Parking. The Redeveloper shall lease parking spaces in the Municipal Lot, from the City under the following terms.

(a) The Redeveloper shall, in its discretion, lease up to seventy (70) and no less than sixty (60) parking spaces from the City in a parking facility to be constructed on the Municipal Lot, such parking spaces to be reserved for the tenants and residents of the Project in locations that are mutually-agreeable to the Redeveloper and the City. The City shall construct a parking facility to accommodate up to seventy (70) parking spaces for the Project. The City shall complete construction of that parking facility in advance of the Redeveloper seeking a Certificate of Occupancy for the Project. The City shall proceed with due diligence to construct the parking facility once the Redeveloper receives Planning Board approval of its site plan. The Redeveloper, at the end of the first year after the commencement date set forth in Section 2.01(d) herein, may revise the number of parking spaces it actually needs for the Project and the Redeveloper's payments will be revised accordingly, such number may be less than the sixty space minimum set forth above upon written notice to City.

(b) The Redeveloper represents that there is sufficient parking provided for the residents and tenants of the Project. A resident who is issued a parking permit for a parking space in the City parking facility will only receive one (1) parking permit for that parking space. No resident of the Project is eligible for nor will the resident receive any other parking permit for an on-street parking space.

(c) The Redeveloper shall pay to the City of Bayonne a one-time payment of \$3,000.00 for each off-site parking space. The Redeveloper will, therefore, pay to the City of Bayonne the sum of at least \$180,000 but not more than \$240,000 for up to seventy (70) and no less than sixty (60) parking spaces within the parking facility to be constructed on the Municipal Lot, such payment to be made within sixty (60) days after the Planning Board's adoption of a resolution memorializing a site plan approval for the Project and provided that the time for appeal of the Planning Board's approval has expired. Redeveloper shall notify City the number of spaces it will lease at the same time it makes this payment.

(d) Subject to this Section 2.01(d) of this Parking Agreement and unless otherwise adjust pursuant to Section 2.01(a) above, , the Redeveloper shall also be required to pay to the City of Bayonne an annual fee under this Agreement (the "Annual Fee"). Commencing on the first day of the first month following sixty (60) days after issuance of the Certificate of Occupancy or Temporary Certificate of Occupancy for the Project (the "Annual Fee Commencement Date"). The Annual Fee for the initial five (5) year period under this Agreement shall be calculated at the rate of \$1,200.00 per off-site parking space per year.

Beginning on the sixth anniversary of the Annual Fee Commencement Date, the Annual Fee shall increase annually in accordance with either the Consumer Price Index (CPI) or two percent (2%), whichever shall be greater.

(e) The City represents that it will provide to the Redeveloper up to seventy (70) and no less than sixty (60) parking spaces within the to-be-constructed parking facility on the Municipal Lot for as long as the Project is in existence. The City shall, at the City's sole cost and expense, construct, operate and maintain a parking facility on the Municipal Lot to accommodate the up to seventy (70) and no less than sixty (60) parking spaces to be provided to the Redeveloper, if necessary, to satisfy the Project parking requirement. The Annual Fee may be adjusted after the first year in accordance with the terms and provisions of Section 2.01(a) above.

(f) Notwithstanding the terms of the Redevelopment Agreement and this Parking Agreement between the City and the Redeveloper, the Redeveloper shall have the right to assess parking fees, in such amounts as it deems necessary in its sole discretion, to end users for use of the leased parking spaces in the municipal parking lot or parking structure on the Municipal Lot.

(g) Should the City, at any time, sell or dispose of the Municipal Lot, the Redeveloper shall have the right of first refusal to purchase the Municipal Lot. In such event, the City shall provide written notice to Redeveloper of the City's intention to sell or otherwise convey title to the Municipal Lot. Redeveloper shall have a 60-day exclusive period to negotiate the terms of a Purchase Agreement with the City for the purchase of the Municipal Lot. If Redeveloper and the City are unable to agree on the terms for the purchase of the Municipal Lot within the 60-day period, the City may offer same to any other party in accordance with applicable law. If the City enters an agreement with another party for the sale and purchase and conveyance of title to the Municipal Lot (an "Agreement"), the City shall give written notice of the Agreement and shall provide to Redeveloper a copy of the Agreement in accordance with the notice provisions of this Redevelopment Agreement. Redeveloper shall have 30 days to give written notice to the City that it will acquire the Municipal Lot pursuant to the same terms and conditions contained in the proposed offer. If Redeveloper does not give written notice within the 30-day period, the City may convey the Municipal Lot pursuant to the terms contained in the Agreement, subject to applicable law. If the terms of the Agreement are modified, the City shall give written notice to Redeveloper, who shall have 30 days to agree to acquire the Municipal Lot on the modified terms. If the City does not convey the Municipal Lot pursuant to the Agreement, and the City enters an Agreement to sell or otherwise convey title to the Municipal Lot thereafter, Redeveloper shall continue to have the rights of first refusal as contained in this paragraph.

(h) This Parking Agreement shall remain in effect for as long as the Project remains in existence and subject to the Project parking requirements, except that after the twenty-fifth anniversary of the Annual Fee Commencement Date, Redeveloper may terminate this agreement upon acquiring the right to use an equivalent number of alternative parking spaces located no further than 1,000 feet from any portion of the Property.

(i) The City has the option to locate and construct the parking structure on Lot 11 in Block 184. In the event the City exercises this option, it will amend the Redevelopment Plan to reflect the relocation of the parking structure.

SECTION 2.02. Damage, Destruction or Failure to Construct Parking Spaces; Relocation of Parking Spaces. If the parking facility in which a maximum of seventy (70) but no less than sixty (60) spaces (unless otherwise adjusted pursuant to Section 2.01(g) above) (“**Required Spaces**”) (a) are not completed by the time Redeveloper seeks a Certificate of Occupancy for the Project, or (b) are otherwise rendered unavailable to the Redeveloper, and are damaged, or destroyed as a result of circumstances beyond the City’s reasonable control such that the Required Spaces cannot be provided in such location, then the City shall provide the Required Spaces in one or more of the other lots owned by the City in the vicinity of the Property and mutually agreeable to Redeveloper and the City until the damage is repaired to the Redeveloper’s reasonable satisfaction. The parking radius restriction set forth in the Redevelopment Plan shall not apply during the period in which the City is repairing its damaged parking facility on the Municipal Lot and/or has failed to complete construction of the parking facility.

If the parking facility on the Municipal Lot on which the Required Spaces are located shall be lawfully condemned or taken in any manner for any public or quasi-public use such that the Required Spaces shall no longer be available or useful for its intended purposes, then the City shall provide the Required Spaces in one or more of the other lots owned by the City in the vicinity of the Property and said spaces and their location are reasonably satisfactory to Redeveloper. The parking radius restriction set forth in the Redevelopment Plan shall not apply during the period when the City has not constructed the parking facility and the City shall take all necessary steps to ensure same.

SECTION 2.03. Rules and Regulations. The Required Spaces shall be made available by the City subject to the rules and regulations generally in force with respect to the use of the other City owned and operated Parking Lots, provided that such rules and regulations do not unreasonably interfere with the use and enjoyment of the Required Spaces as contemplated by this Agreement.

ARTICLE III **DEFAULT**

SECTION 3.01. Default by Redeveloper.

(a) The following actions shall constitute events of default by the Redeveloper under the terms of this Parking Agreement:

- (i) if Redeveloper shall fail to make any payment of Parking Fees or any other charges or amounts due under this Parking Agreement, on the day

when such payments are due and such default continues for fifteen (15) days after Redeveloper's receipt of written notice that payment was not made when due; or

- (ii) if Redeveloper shall fail to perform any other provision, covenant or condition of this Parking Agreement other than the payment of Parking Fees or any other charges or amounts due, and such failure continues for sixty (60) days after Redeveloper is notified in writing by the City to cure such default; provided that if such failure cannot reasonably be cured within sixty (60) days, then, provided that Redeveloper commences to cure the default within such period and thereafter diligently continues to complete such cure, Redeveloper shall have a reasonable time to cure such default; or
- (iii) if Redeveloper makes an assignment for the benefit of creditors or enters into an agreement with its creditors, or if the interest of Redeveloper in the parking or any personal property used in connection therewith is attached, levied upon or seized by legal process, or if Redeveloper is found to be bankrupt or insolvent by any court of competent jurisdiction, or if a receiver is appointed for Redeveloper.

(b) Remedies of the City. If an event of default has occurred, then immediately, or at any time thereafter, in the sole and absolute discretion of the City, without prior notice to or demand upon Redeveloper except as specifically otherwise provided in this Parking Agreement, the City may cease to make the Required Parking Spaces available pursuant to this Agreement, in the City's sole discretion and, as the City elects, either (a) declare this Parking Agreement terminated; in which event the City may thereafter possess and enjoy the Parking Spaces as though this Parking Agreement had never been made, without prejudice, however, to any and all rights of action which the City may have against Redeveloper at the time of such termination for failure to pay Parking Fees, damages or breach of covenant previously accruing or occurring or (b) pursue any other remedy now or hereafter available to the City under the laws of or judicial decisions of the State.

SECTION 3.02. Default by City.

(a) The following actions shall constitute events of default by the City under the terms of this Parking Agreement:

- (i) if the City shall fail to perform any provision, covenant or condition of this Parking Agreement and such failure continues for thirty (30) days after the City is notified in writing by the Redeveloper to cure such default; provided that if such failure cannot reasonably be cured within thirty (30) days, then, provided that the City commences to cure the default within

such period and thereafter diligently continues to complete such cure, the City shall have a reasonable time to cure such default.

(b) **Remedies of Redeveloper.** If an event of default has occurred, then immediately, or at any time thereafter, in the sole and absolute discretion of Redeveloper, without prior notice to or demand upon the City except as specifically otherwise provided in this Parking Agreement, the Redeveloper may in Redeveloper's sole discretion and, as Redeveloper elects, either (i) declare this Parking Agreement terminated with respect to the Required Spaces; in which event City may thereafter possess and enjoy the Required Spaces as though this Parking Agreement had never been made, without prejudice, however, to any and all rights of action which Redeveloper may have against the City at the time of such termination for damages or breach of covenant previously accruing or occurring or (ii) pursue any other remedy now or hereafter available to the Redeveloper under the laws of or judicial decisions of the State.

ARTICLE IV MISCELLANEOUS

SECTION 4.01. Assignment. This Parking Agreement may not be assigned, transferred or conveyed, in whole or in part, by the City without the prior written consent of the Redeveloper, which consent shall not be unreasonably withheld. Redeveloper may assign this Parking Agreement to any successors in interest acquiring title or control of the Project and/or the Property. Such transfer shall become effective immediately upon the Redeveloper's written notice of the assignment to the City.

SECTION 4.02. Waiver. The failure of any party to insist upon strict performance of any of the obligations and covenants of this Parking Agreement or the exercise of any option herein contained shall not be construed as a waiver or relinquishment of the right to enforce said obligation(s) of covenant(s) or any other covenant or option. The receipt by the City of Parking Fees with knowledge of any default by Redeveloper or any other action of the City shall not be deemed a waiver of such default. The acceptance by the City of any sum of parking fees less than the sum provided for in this Parking Agreement shall not alter the terms hereof or absolve Redeveloper from its obligation to pay the Parking Fees, but the acceptance of any lesser sum than the Parking Fees herein stipulated shall be an acceptance of the amount paid and shall be applied on account of the Parking Fees due by the Redeveloper.

SECTION 4.03. Entire Agreement. This Parking Agreement embodies the entire agreement between the parties hereto relative to the Required Parking Spaces. This Parking Agreement shall not be modified, changed or altered in any respect, except in writing executed in the same manner as this Parking Agreement has been executed by the parties hereto.

SECTION 4.04. Notices and Payment of Parking Fees. Any notice required to be given by one party hereto to another shall be in writing and shall be provided by personal delivery, or United States registered or certified mail, postage prepaid, return receipt requested, or by

nationally recognized overnight courier service for next day delivery, with charges prepaid. Notices shall be addressed to the respective parties at the following addresses:

CITY:

City of Bayonne
Attn: Mayor and City Clerk
City Hall
630 Avenue C
Bayonne, New Jersey 07002

WITH A COPY TO:

John Wyciskala, Esquire
Inglesino, Webster, Wyciskala & Taylor, LLC
600 Parsippany Road, Suite 204
Parsippany, NJ 07054

and

REDEVELOPER:

EOM Realty, LLC Urban Renewal, LLC
c/o Noah Friedman
693 Northumberland Road
Teaneck, New Jersey 07666

WITH A COPY TO:

Michael Miceli, Esq.
Weiner Law Group LLP
629 Parsippany Road
P.O. BOX 438
Parsippany, NJ 07054
Email: mmiceli@weiner.law

or such other addresses as any party hereafter designates to the other in writing as aforesaid. All payments of Parking Fees hereunder shall be made by Redeveloper to the City at the above set forth address of the City to the attention of the accounting department. Notices shall be effective upon delivery or refusal to accept delivery.

SECTION 4.05. Binding Effect. This Parking Agreement shall be binding upon and inure to the benefit of the successors and assigns of the City and the successors and permitted assigns of Redeveloper.

SECTION 4.06. Counterparts. This Parking Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute but one and the same instrument.

SECTION 4.07. Captions. The captions herein used at the beginning of paragraphs or subparagraphs are solely for the purpose of assisting the reader and do not form a part of this Parking Agreement.

SECTION 4.08. Joint and Several Obligation. To the extent that Redeveloper under this Parking Agreement consists of multiple entities, their liability under this Parking Agreement is agreed to be joint and several.

SECTION 4.09. Construction. This Parking Agreement shall be construed and enforced in accordance with the laws of the State of New Jersey, and without regard to or any aid or any presumption or other rule requiring construction against the party drawing or causing this Parking Agreement to be drawn since counsel for the City and Redeveloper have combined in their review and approval of same. In the event of a conflict between the provisions of this Parking Agreement and any prior or preceding agreement between the parties, the terms of this Parking Agreement shall control to the extent permitted by law.

SECTION 4.10. Estoppel Certificates. Each party hereto agrees at any time and from time to time, upon not less than ten (10) business days' prior written request by the other party, to execute, acknowledge and deliver to the other party or to any other person designated by the other party (such as any purchaser or mortgagee, or prospective purchaser or mortgagee, of the Project) a statement in writing certifying to (1) the current status of the Parking Agreement, (2) specifying that the other party is not in default under this Parking Agreement or if said party is in default, the nature of the default, if there be any, (3) stating the modifications thereto, if any, and the dates to which the Parking Fees and other charges have been paid in advance, if any, (4) setting forth the current Parking Fees, and (5) such other matters as may be reasonably requested; it being intended that any such statement delivered pursuant hereto may be relied upon by the party to whom it is addressed including, but not limited to, any purchaser or mortgagee, or prospective purchaser or mortgagee, of the Project.

[REMAINDER OF PAGE LEFT BLANK – SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused these presents to be executed as of the day and year first above written.

ATTEST:

CITY OF BAYONNE

By:

Name: James M. Davis

Title: Mayor, City of Bayonne

ATTEST:

EOM REALTY, LLC

By:

Name: Noah Friedman

Title: Managing Member

ACKNOWLEDGEMENT

STATE OF NEW JERSEY)

) SS:

COUNTY OF HUDSON)

BE IT REMEMBERED, that on this _____ day of _____, 2018 before me, the subscriber, personally appeared **James Davis**, who, being by me duly sworn on his oath, deposes and makes proof to my satisfaction that he is the Mayor of the **City of Bayonne**, the City named in the within Instrument; that the execution, as well as the making of this Instrument, have been duly authorized by the City, that deponent well knows the seal of said City; and that the seal affixed to said Instrument is the proper seal and was hereto affixed by **Robert Sloan**, City Clerk, and said Instrument was signed and delivered by said Mayor as and for the voluntary act and deed of said City.

STATE OF _____)
) SS:
COUNTY OF _____)

I CERTIFY that on _____ day of _____, 2018, NOAH FRIEDMAN personally came before me and stated to my satisfaction that this person:

- (a) was the maker of the attached instrument;
- (b) was authorized to and did execute this instrument as Managing Member of EOM Realty, LLC the entity named in this instrument; and
- (c) executed this instrument as the act of the entity named in this instrument.

Exhibit A
Project Site