

**PARKING MANAGEMENT AGREEMENT**

THIS PARKING MANAGEMENT AGREEMENT (the "**Agreement**") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2017 (the "**Effective Date**"), by and between the City of Coral Gables, a municipal corporation of the State of Florida, (the "**City**"), whose address for purposes hereof is 405 Biltmore Way, Coral Gables, Florida 33134, and DMD of Coral Gables, LLC ("**Owner**"), whose address is identified as 100 SE 2<sup>nd</sup> St, #3400, Miami, FL 33131.

**WITNESSETH:**

In consideration of the mutual promises hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Owner hereby covenant and agree as follows:

**I. APPOINTMENT AND AUTHORITY OF CITY AS MANAGER:** Owner hereby appoints City as the exclusive manager of the parking lot located at 900 Ponce de Leon Blvd, Coral Gables, Florida 33134 under Folio Nos. 03-4108-009-0860, 03-4108-009-0850, and 03-4108-009-0840 (subject to the terms in Section V) as described and depicted in **Exhibit A**, (hereinafter called "**the Lot**") and the City accepts the appointment. Owner acknowledges that City shall be the exclusive manager of the Lot for all of the purposes set forth herein, and the Owner agrees that during the Term, as hereafter defined, Owner and its principals shall not enter into any other agreements relating to the management of the Lot or any part thereof, except as specifically permitted.

In performing its obligations hereunder, City shall be acting as an independent contractor. Any personnel employed by the City in rendering services hereunder shall be employees or contractors of the City and shall not be deemed employees of the Owner.

Owner covenants that it owns the Lot and has the authority to enter into this Agreement.

**II. TERM, TERMINATION AND RENEWAL:** The term of this Agreement (the "**Term**") shall commence on the \_\_\_ day of \_\_\_\_\_, 2017 ("**Commencement Date**"), and shall continue for a period of three (3) years; provided, however, that either party shall have the right to terminate this Agreement at any time upon at least ninety (90) days' prior written notice starting on 1<sup>st</sup> day after the 1<sup>st</sup> year anniversary of the Commencement Date, ("**Right to Terminate Date**"). In the event that Owner elects to terminate this Agreement before the Right to Terminate Date, City shall be entitled to recovery of the unamortized portion of all capital improvements to the Lot made by the City, including, but not limited to, lighting, landscaping, signage, and paving subject to the terms of Section V. At Owner's request, the City shall provide to Owner proof of all capital improvement expenses. The unamortized portion shall be determined on a straight line basis over the first year of the Term.

In the event the City shall continue managing the Lot after the expiration of the Term of this Agreement or any renewal or extension thereof without any agreement in writing between City and Owner with respect thereto, such management shall not be deemed to extend or renew the term of the Agreement, but shall continue as a tenancy at will, from month to month, upon the covenants, provisions and conditions herein contained. Notwithstanding the foregoing, either party shall have the right to terminate this Agreement at any time upon at least forty-five (45) days' prior written notice to the other party.

Upon expiration of the Term or termination of this Agreement, City shall relinquish control and possession of the Lot to Owner, but shall leave all improvements, except pay stations and signage, to the

Lot, which shall become the property of Owner. City shall leave the Lot in good condition and repair, ordinary wear and tear and casualty damage excepted.

**III. USE AND OPERATION:** Throughout the Term, City agrees to use the Lot for the conduct of the business of operating a parking lot for the parking of motor vehicles and for no other purposes. Nothing set forth herein shall be construed to prohibit special patron parking services such as valet parking or ancillary services, so long as such services are not anticipated to decrease the gross income from the Lot as a result.

City shall operate the Lot in compliance with all applicable Federal, State and municipal laws, rules or regulations. Further, the City covenants not to permit or cause any lien or encumbrance to be placed against the Lot as a result of the actions of City or its contractors.

City shall provide, subject to the terms and conditions hereof, sufficient operating personnel to collect parking charges and operate the Lot's mechanical equipment. City shall cause the Lot to be operated every day of the year.

**IV. PARKING CHARGES/MANAGEMENT FEE/RECORDS:** The rates to be charged by users of the Lot shall be established by City from time to time that may include short-term parking or permit parking. The short-term parking shall generally be on an hourly basis or a flat rate when deemed appropriate by City so long as such flat rate is not anticipated to decrease the gross income from the Lot as a result. The City may adjust rates in its discretion, provided in no event shall the hourly rate be less than **\$1.50**. The monthly permit parking shall generally be on a monthly basis starting at **\$75.00**, or a rate deemed appropriate by City. The City may adjust rates in its discretion. Notwithstanding the foregoing, in the event that in any prior six (6) month period of operation the gross income is showing trends of declining, the City may lower the parking rate(s) in an effort to increase revenue, provided that there is no guaranty of an increase. Notwithstanding anything to the contrary herein, the parties acknowledge that there is no charge for lawful parking in handicapped spaces.

Within fifteen (15) days of the end of each month the City shall remit to Owner fifty percent (50%) of all Parking Revenue generated from the Lot. "**Parking Revenue**" means all collected rates paid, but shall not include sales tax collected by the City, which sales tax shall be remitted by the City to the State. Notwithstanding anything to the contrary herein, the City shall not be obligated to pay any income, inheritance, estate or succession tax, assessment (including the assessment of the Business Improvement District or other special assessments), or real estate tax, or any other tax in the nature of the described taxes, or any other tax that may be levied or assessed against the Owner with respect to the income derived from this Agreement, nor shall City be obligated to pay any corporate, franchise or excise tax, which may be assessed or levied against the Owner, or any corporate successor, transferee or anyone claiming any interest under the Owner. All such taxes and assessments shall be the responsibility of Owner. The City shall retain the remaining fifty percent (50%) of Parking Revenue as a "**Management Fee**."

City shall keep complete records of all receipts and disbursements pertaining to the operation of the Lot, and shall provide a quarterly report showing all Parking Revenue. Within 60 days after the end of each calendar year, the City shall submit to Owner a statement prepared in accordance with generally acceptable accounting principles, which statement shall show all items of Parking Revenue relating to operation of the Lot during that year.

City shall establish and maintain complete and auditable books and records showing details of all Parking Revenue, and City shall retain such books and records for at least three (3) years. Owner shall

have the right, upon reasonable notice and at Owner's cost, to audit City's books and records relating to operation of the Lot.

The parking department of the City shall provide to Owner a weekly report on the revenue generated at the Lot.

**V. IMPROVEMENTS:** The City, at its discretion, and at its expense, may install pay-stations on the Lot, resurface the Lot with appropriate stripping, post appropriate informational signage, and install lighting and landscaping as reasonably desired by the City (the "Lot Improvements"). In the event the City and Owner agree to pave the parcel under the folio ID 03-4108-009-0840 due to increased parking demand, at the City's own expense, the Right to Terminate Date shall be extended to the 1<sup>st</sup> day after the 2nd year anniversary of the Commencement Date, not foregoing the terms in this Agreement. Any Lot Improvements shall be performed in a good and workmanlike manner by contractors who are licensed, insured, and fully bonded, and shall be completed in accordance with all applicable laws, rules, regulations, statutes and codes, including, without limitation, the City of Coral Gables and the Florida Building Code. If the City decides to make such improvements, upon completion of the Lot Improvements, the City shall provide the Owner with a detailed statement showing in reasonable detail the costs and expenses that have been actually incurred and substantiated in connection with the total capital expenditures incurred on the Lot.

**VI. UTILITIES:** The City shall be responsible for the electricity costs for the operation of the Lot during the Term.

**VII. MAINTENANCE:** The City shall maintain the Lot and all equipment thereon during the Term. The City shall provide sweeping, cleaning, washing and all landscaping services to keep the Lot free of dirt and debris, and to properly maintain the landscaping in a conditions set by the City regulatory code first class condition.

**VIII. INSURANCE:** Under Section §768.28 of the Florida Statutes, the state and its agencies and subdivisions are authorized to be self-insured, enter into risk management programs, or purchase liability insurance for whatever coverage they may choose, or to have any combination thereof, in anticipation of any claim, judgment which they may be liable to pay pursuant to this article. It is understood and agreed that the City is a qualified self-insured governmental entity, and as such shall evidence insurance or self-insurance subject to the limitations of liability as set forth under Section §768.28 of the Florida Statutes.

- A. The City shall evidence the following lines of coverage to the Owner in the form of a standard Certificate of Insurance, naming the Owner as a Certificate Holder:
  - 1. Commercial General Liability insurance including personal and advertising injury for bodily injury and property damage.
  - 2. Worker's Compensation Insurance for all employees of City of Coral Gables including statutory limits for employer's liability insurance contained in Florida Statutes Section 440.
  - 3. Automobile Liability insurance covering all owned non-owned and hired vehicles of City of Coral Gables.
- B. The City shall include or cause to be included in each contract for work to be performed at the Lot on behalf of City the following insurance requirements:

1. Commercial General Liability insurance, including products liability & completed operations coverage, personal and advertising injury, and personal injury and property damage liability with limits no less than \$2,000,000 per occurrence for bodily injury and property damage, and \$5,000,000 in the aggregate. Said policy or policies shall name the City and Owner as an additional insured.
2. Worker's Compensation Insurance for all employees of contractors including statutory limits for employer's liability insurance contained in Florida Statutes Section 440.
3. Automobile Liability insurance covering all owned, non-owned and hired vehicles with a Combined Single Limit of no less than one million per occurrence. If vehicles are not owned or leased (long term) by the contractors, then only hired and non-owned coverage applies.
4. Evidence of insurance of all contractors working for the City under this Agreement shall be maintained and kept for a period of time no less than the applicable statute of limitations for any claim that could be brought against the City of Coral Gables and/or Owner. These records shall be made available to the Owner upon request. Evidence of insurance shall be in the form of a standard Certificate of Insurance naming the City of Coral Gables and Owner as an additional insured.

**IX. INDEMNITY; HOLD HARMLESS:** The City shall defend, indemnify and hold harmless the Owner from and against all suits, actions, claims, costs, demands, causes of action, losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees and court costs at trial and all other levels), including, without limitation, those resulting from death, personal injury and property damage of anyone other than Owner or its employees, to the extent attributable to the negligence or other willful misconduct of the City or its agents or employees. Notwithstanding anything to the contrary herein, regardless of whether any such obligations are based on tort, contract, statute, strict liability, negligence, product liability or otherwise, the obligations of the City under this indemnification provision shall be limited in the same manner that would have applied if such obligations were based on, or arose out of, an action at law to recover damages in tort and were subject to Section §768.28 Florida Statutes, as that section, or its replacement statute, existed at the time of the incident or occurrence that gave rise to such suits, actions, claims, costs or demands.

Owner shall defend, indemnify and hold harmless the City, its elected and appointed officials, attorneys, administrators, consultants, agents, and employees from and against any and all suits, actions, claims, costs, demands, causes of action, losses, damages, liabilities, costs and expenses (including attorneys' fees and court costs at trial and all other levels), including, without limitation, those resulting from death, personal injury and property damage, arising from or related to (1) the existence on the Lot of any defects, except to the extent the same shall result from the willful or negligent acts of City or its agents, contractors and employees, (2) any breach of this Agreement by Owner, or (3) any act or omission of Owner.

All personal property placed or moved into the Lot by City shall be at the risk of City or the owner thereof, and Owner shall not be liable to City for any damage to said personal property.

**X. RELATIONSHIP OF PARTIES:** Nothing herein contained to the contrary shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between Owner and City, it being expressly understood and agreed that neither the computation of Parking Revenue nor any other

provisions contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relations between Owner and City other than the relationship of owner and manager. Notwithstanding the fact that the City of Coral Gables (the "City") is the manager under this Agreement, Owner acknowledges that this Agreement does not grant Owner any rights or create any exceptions to its obligation to comply with and meet the requirements of all the City's ordinances, resolutions and codes, and that the management relationship shall have no effect upon the jurisdiction and governing rights of the City over the Lot and Owner shall be required to fulfill and comply with all applicable laws, rules and regulations, ordinances and resolutions of the City as though no such management relationship existed, including, without limitation, all requirements of the City's Building and Zoning Department or other pertinent City agencies.

**XI. MECHANIC'S LIENS:** City shall keep the Lot and all parts thereof at all times free of mechanic's liens and any other lien for labor, services, supplies, equipment or material purchased or procured, directly or indirectly, by or for City. In the event any such lien shall be made or filed, City shall bond against or discharge the same within thirty (30) days after it receives notice of the same.

**XII. ASSIGNMENT:** Without the prior written consent of Owner, City shall not, directly or indirectly, assign, transfer, mortgage, pledge or otherwise encumber or dispose of this Agreement or assign the Lot or any part thereof. Notwithstanding anything to the contrary, City, at City's expense, may contract with a parking management company to administer City's obligations under this Agreement in accordance the City's procurement requirements. Owners may assign this Agreement by providing City with at least thirty (30) days' notice of the assignment.

**XIII. CASUALTY OR CONDEMNATION:** If during the Term, all or any portion of the Lot shall be condemned or taken by eminent domain (a "**Taking**") or damaged by fire or other casualty ("**Casualty**") so that the Lot can no longer be used as a parking Lot, then upon the date such Taking becomes effective or upon the date the Lot ceases to operate as a result of such Casualty, this Agreement shall terminate. If the Lot can continue to be operated, then this Agreement shall remain in full force and effect.

In the event of any Taking or Casualty, Owner shall be entitled to recover and receive all compensation or proceeds recoverable therefore with regard to the Land, and City shall be entitled to recover and receive all compensation or proceeds recoverable therefore with regard to the Lot Improvements.

**XIV. DEFAULT:** Notwithstanding the right to terminate herein, Owner shall, in addition to any other remedy available to Owner have the right to immediately take possession of and operate the Lot and may immediately terminate this Agreement upon the occurrence of any of the following events:

- A. If City shall default in the payment of any sums to be properly paid by City to Owner hereunder, and such default shall not be cured within twenty (20) days after receipt of written notice thereof;
- B. If City, without the prior written consent of Owner, shall fail to operate the Lot as required herein, and such failure shall not be cured within five (5) days of receipt of written notice thereof;
- C. If City shall default in the performance of any other provision of this Agreement and shall fail to cure within thirty (30) days after receipt of written notice from Owner.

Notwithstanding City's right to terminate herein, City shall, in addition to any other remedy available to City, have the right to immediately terminate this Agreement upon Owner's breach of said Agreement. Owner shall be in breach of this Agreement if Owner fails to cure any default within thirty (30) days after written notice from City. Notwithstanding anything contained herein, City shall have the right to immediately terminate this Agreement if Owner shall prevent City from using the Lot for a period of ten (10) or more days.

**XV. NO WAIVER:** Failure of either party to declare any default immediately upon occurrence thereof, or delay in taking any action in connection therewith, shall not waive such default, but said party shall have the right to declare any such default at any time and take such action as might be lawful or authorized hereunder, in law and/or in equity.

No waiver of any term, provision, condition or covenant of this Agreement by either party, or the failure of either party to insist upon strict performance of one or more covenants or conditions of this Agreement shall be deemed to imply or constitute a further waiver by said party of any other term, provision, condition or covenant of this Agreement.

**XVI. NOTICE:** Any notice to be given as provided for in this Agreement shall be in writing and shall be sent by United States certified mail, postage prepaid, return receipt requested, addressed to the respective party at the addresses set forth in the first page of this Agreement, or hand delivered or sent by a nationally recognized overnight courier. Either party, from time to time, by such notice, may specify another address to which subsequent notice shall be sent. Any notice given by mail shall be deemed given on delivery or refusal.

**XVII. SIGNS:** City shall have the right to install signs on the Lot; provided, however, that such signs comply with all requirements of municipal and county governmental requirements.

**XVIII. QUIET ENJOYMENT:** City, upon paying the agreed Parking Revenue to Owner and performing all of City's covenants and agreements herein contained, shall and may peacefully and quietly have, hold, occupy, and use the Lot subject to the terms, covenants, and provisions set herein.

**XIX. INVALIDITY OF PROVISION; GOVERNING LAW:** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law. This Agreement shall be construed in accordance with the laws of the State of Florida and venue shall be in Miami-Dade County.

**XX. TIME OF ESSENCE:** It is understood and agreed between the parties hereto that time is of the essence of all the terms and provisions of this Agreement.

**XXI. SUCCESSORS AND ASSIGNS:** All terms and provisions of this Agreement to be observed and performed by the parties shall be applicable to and binding upon their respective heirs, personal representatives, successors and assigns, subject, however, to the restrictions as to assignment as provided herein.

**XXII. ATTORNEYS' FEES:** If either party defaults in the performance of any of the terms or provisions of this Agreement and by reason thereof the other party employs the services of an attorney to enforce performance of the covenants, or to perform any service based upon defaults, or in the event a

party successfully defends an action against them for breach under this Agreement, then in any of said events the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and expenses and costs incurred by the prevailing party pertaining thereto (including costs and fees relating to any appeal) and in enforcement of any remedy.

**XXIII. MISCELLANEOUS:** The terms City and Owner as herein contained shall include singular and/or plural, masculine, feminine and/or neuter, heirs, successors, personal representatives and/or assigns wherever the context so requires or admits. The terms and provisions of this Agreement are expressed in the total language of this Agreement and the Article or article headings are solely for the convenience of the reader and are not intended to be all-inclusive and shall not be deemed to limit or expand any of the provisions of this Agreement. All references to days herein shall mean calendar days. Anything herein to the contrary notwithstanding, City shall not be or be deemed to be in default hereunder unless it has failed to cure its default within the time frames set forth in Article XIV. All exhibits attached to this Agreement, if any, are hereby incorporated in and made a part hereof. Neither this Agreement nor any memorandum or short form thereof shall be recorded in the Public Records of Miami-Dade County, Florida. Owner certifies that it is not acting directly or indirectly for or on behalf of any person, group, entity or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and that they are not engaged in this transaction, directly or indirectly on behalf of any such person, group, entity or nation. Owner agrees to defend, indemnify and hold harmless City from and against any and all claims, damages, losses, risks, liabilities, and expenses (including attorney's fees and costs) arising from or related to any breach of the foregoing certification; this indemnity shall survive expiration or earlier termination of this Agreement.

**XXIV. EFFECTIVE DATE:** Submission of this instrument for examination does not constitute an offer, right of first refusal, reservation of or option for the Lot. This instrument becomes effective only upon execution and delivery by both City and Owner.

**XXV. FORCE MAJEURE:** Whenever a period of time is herein provided for performance of any act or thing, neither City nor Owner shall be liable or responsible for any delays due to Force Majeure. The term "**Force Majeure**" shall mean "Acts of God", labor disputes (whether lawful or not), material or labor shortages, restrictions by any governmental or utility authority, civil riots or floods, but shall not mean financial inability.

**XXVI. ENTIRE AGREEMENT:** This Agreement contains the entire agreement between the parties hereto and all previous negotiations leading thereto, and it may be modified only by an agreement in writing signed and sealed by City and Owner. Owner acknowledges and agrees that it has not relied upon any statement, representation, prior written or prior or contemporaneous oral promises, agreements or warranties except such as are expressed herein.

**XXVII. DRAFTING OF AGREEMENT:** The drafting and negotiation of this Agreement have been participated in by each of the parties, and for all purposes, therefore, this Agreement shall be deemed to have been drafted jointly by each of the parties.

**XXVIII. COUNTERPARTS:** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which, together, shall constitute but one and the same instrument.

**XXIX. SURVIVAL:** All provisions of this Agreement intended by their terms to survive expiration or earlier termination shall survive including, but not limited to, all indemnification obligations contained herein.

**XXX. SUBORDINATION:** City's rights under this Agreement shall always be subordinate to the operation and effect of any applicable lender's mortgage, deed of trust, ground lease, or other security instrument now or hereafter placed upon or governing the Lot by Owner. This clause shall be self-operative and no further instrument of subordination shall be required.

**XXXI. OWNER'S AUTHORITY TO EXECUTE:** Owner hereby represents and warrants to City that this Agreement has been duly authorized by all of its managers or managing members, and further represents and warrants to City that this Agreement has been duly executed and delivered and constitutes a legal, valid and binding agreement of Owner enforceable in accordance with its terms.

**XXXII. SOVEREIGN IMMUNITY:** Owner acknowledges that the Florida Doctrine of Sovereign Immunity bars all claims by Owner against the City other than claims arising out of this Agreement. Specifically, the Owner acknowledges that it cannot and will not assert any claims against the City, unless the claim is based upon a breach by the City of this Agreement. Owner acknowledges that this Agreement in no way estops or affects the City's exercise of its regulatory authority. In addition, the City retains the full extent of its sovereign immunity in relation to the exercise of its regulatory authority. Owner acknowledges that it has no right and will not make claim based upon any of the following:

- a. Claims based upon any alleged breach by the City of implied warranties or representations not specifically set forth in this Agreement, as the parties stipulate that there are no such implied warranties or representations of the City. All obligations of the City are only as set forth in this Agreement;
- b. Claims based upon negligence or any tort arising out of this Agreement not otherwise inconsistent with this Agreement;
- c. Claims upon alleged acts or inaction by the City, its commissioners, attorneys, administrators, consultants, agents, or any CITY employee not otherwise inconsistent with this Agreement;
- d. Claims based upon an alleged waiver of any of the terms of this Agreement unless such waiver is in writing and signed by an authorized representative for the City and Owner not otherwise inconsistent with this Agreement.

Nothing in this Agreement is intended to operate as a waiver of City's sovereign immunity.

**XXXIII. FLORIDA PUBLIC RECORDS LAW, FLORIDA STATUTES CHAPTER 119, *et seq.*** Records subject to the provisions of Public Records Law, Florida Statutes Chapter 119, shall be kept and maintained in accordance with such Statute. Owner acknowledges that records and books, not subject to exemption under Chapter 119, may be disclosed and/or produced to third parties by the City in accordance with requests submitted under Chapter 119 or court orders without penalty or reprisal to the City for such disclosure and/or production. Owner also agrees to assert, in good faith, any relevant exemptions provided for under Chapter 119 for records in its possession on behalf of the City. Furthermore, Owner agrees to comply with the provisions outlined in Section 119.0701 of the Florida Statutes, the requirements of which are incorporated by reference herein.

**IF THE OWNER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE OWNER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT,**



**CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 305-460-5210, cityclerk@coralgables.com, 405 Biltmore Way, First Floor, Coral Gables, FL 33134.**

**XXXII. WAIVER OF TRIAL BY JURY.** THE PARTIES TO THIS AGREEMENT HEREBY AGREE TO EXHAUST ALL ADMINISTRATIVE REMEDIES BEFORE FILING A LAWSUIT IN CIVIL COURT TO RESOLVE THE DISPUTE.

[SIGNATURES FOLLOW]

**IN WITNESS WHEREOF**, the parties hereto have signed, sealed and delivered this Agreement at Miami-Dade County, Florida, as of the day and year first above written.

**CITY OF CORAL GABLES, a  
municipal corporation of the State of  
Florida**

By: \_\_\_\_\_

Catherine B. Swanson  
City Manager

ATTEST:

By: \_\_\_\_\_

Walter Foeman

City Clerk

Approved as to form and legal  
sufficiency:

By: \_\_\_\_\_

Miriam S. Ramos  
City Attorney

OWNER:  
D M D OF CORAL GABLES LLC

\_\_\_\_\_

BY: \_\_\_\_\_,

Owner:

WITNESS:

By: \_\_\_\_\_

Name: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

**EXHIBIT A**

