

FIRST CLASS PARKING, LLC
Concession Agreement

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**CONCESSION AGREEMENT
BETWEEN THE CITY OF MIAMI BEACH
AND
FIRST CLASS PARKING, LLC.
TO PROVIDE VALET PARKING SERVICES
AT THE FILLMORE MIAMI BEACH AT JACKIE GLEASON THEATER, AT THE MIAMI BEACH
CONVENTION CENTER, AND OTHER CITY PROPERTIES, AS MAY BE REQUIRED,
PURSUANT TO REQUEST FOR PROPOSALS NO. 40-07/08**

THIS CONCESSION AGREEMENT (“Agreement”) made this 22 day of September, 2016, between the **CITY OF MIAMI BEACH**, a municipal corporation of the State of Florida (“**City**”), and **FIRST CLASS PARKING, LLC**, a Florida limited liability company, with offices at 12550 Biscayne Boulevard, Suite 207, Miami, Florida, 33181 (“**Concessionaire**”).

WITNESSETH

WHEREAS, on July 16, 2008, the Mayor and City Commission authorized the issuance of Request for Proposals (RFP) No. 40-07/08 for Valet Parking Services on City-owned Property (the RFP); and

WHEREAS, pursuant to Resolution No. 2009-27017, on February 25, 2009, the Mayor and City Commission authorized the Administration to enter into negotiations with Concessionaire, as the successful proposer pursuant to the RFP; accordingly, City and Concessionaire executed an agreement with the Concessionaire with an initial term of three (3) years and two (2) one (1) year renewal options, which term ended on September 30, 2015; and

WHEREAS, pursuant to Resolution No. 2015-28943, adopted on March 11, 2015, the Mayor and City Commission authorized the Administration to waive competitive bidding requirements and enter into negotiations with the Concessionaire for an extension of the Agreement for a period of three (3) years or until substantial completion of the Miami Beach Convention Center (“MBCC”) expansion and renovation project (the “Project”), whichever occurs first.

NOW THEREFORE, in consideration of the premises and the mutual covenants and conditions herein contained, it is agreed by the parties hereto as follows:

The City hereby grants to the Concessionaire, and the Concessionaire hereby accepts from the City, the right to maintain, manage and operate a valet parking concession for the City properties set forth in Section 2 hereof, for the term stated herein and subject to all terms and conditions herein contained:

SECTION 1. TERM.

- 1.1 The term of this Agreement shall commence retroactively on the 1st day of October, 2015 (Commencement Date), and terminate on September 30, 2018 or upon substantial completion of the renovation of the Miami Beach Convention Center (“MBCC”) Project (the “Project”), whichever date occurs first (the “Term”). Substantial completion of the MBCC Project shall be defined as of the date when the City, in its proprietary capacity, has secured the requisite governmental approvals to operate the MBCC, which may include any of the following benchmarks: issuance of a temporary certificate of occupancy; issuance of a certificate of occupancy; or issuance of a certificate of completion with respect to the entire Project.

A Contract Year, as referred to herein shall start on October 1st and end on September 30th of the following year.

SECTION 2. USES.

- 2.1 The City hereby grants to Concessionaire the right, during the Term herein, to maintain, manage and operate, at its sole cost and responsibility, a valet parking concession(s) for the following City properties (hereinafter, the properties in this Section 2.1 (a) – (c) may also be referred to as the “Venues”):
- (a) The Fillmore Miami Beach at Jackie Gleason Theater (the Fillmore), located at 1700 Washington Avenue, Miami Beach, Florida, 33139;
 - (b) Miami Beach Convention Center (MBCC), located at 1901 Convention Center Drive, Miami Beach, Florida, 33139; and
 - (c) Such other City properties, as may be authorized, in writing, by the City Manager, in his sole discretion.
- 2.2 As referred to in this Agreement, the City Manager’s designee shall be the City’s Parking Department Director.
- 2.3 In operating the valet parking concession for the Venues, the Concessionaire shall be entitled to use up to one hundred (100) parking spaces in a designated area of Municipal Parking Garage No. 9 (“Penn Ave Garage”), located at Pennsylvania Avenue and 17th Street (the “Valet Storage Area”).

Concessionaire shall park vehicles only within the Valet Storage Area. The Concessionaire shall park vehicles consistent with the designated traffic circulation pattern within the Penn Ave Garage. Notwithstanding the preceding, Concessionaire shall have the option of parking vehicles in a backed-in position. If unauthorized vehicles are parked in the Valet Storage Area, the Concessionaire shall immediately contact the City for resolution. **Under no circumstances shall the Concessionaire use parking spaces outside of the Valet Storage Area.**

Concessionaire and City acknowledge that the MBCC Project will require the relocation of the Valet Storage Area to a different municipal parking garage or parking lot commencing as of the second Contract Year. The Concessionaire and City Manager’s designee shall cooperate to find a mutually agreeable new location for the Valet Storage Area; however, if the parties cannot reach an agreement, the City Manager’s written confirmation of a new Valet Storage Area shall be final and binding upon the parties.

- 2.4 The City Manager or his designee may approve additional spaces for use by Concessionaire at Municipal Parking Lot No. 29, located on the northeast corner of Convention Center Drive and 17th Street or any other municipal garage or parking lot (“Additional Valet Storage Area”), when, in the City Manager’s or his designee’s sole discretion (i) a high-volume event is expected to exceed the assigned capacity available in the Penn Ave Garage; or (ii) the anticipated high volume will create an unacceptable diminution of valet service levels for such event.
- 2.5 With regard to the provision of valet parking services at MBCC, Concessionaire shall set-up, operate, and provide passenger loading and unloading at one (1) of two (2) mutually agreed upon areas (the “Passenger Ramp Locations”); however, if Concessionaire and the City Manager’s designee cannot reach an agreement with respect to the location of the

Passenger Ramp Locations, the City Manager's written confirmation of the location of the Passenger Ramp Locations shall be final and binding upon the parties. Individuals and/or firms who contract to use all or a portion of MBCC (an MBCC User) for a convention, trade show, or other event (an MBCC Event) shall have the option of selecting either of the two (2) aforesaid Passenger Ramp Locations.

When providing valet parking for an MBCC Event, no valet stand shall be set up in a location, which, in the sole discretion of the City Manager's designee, will interfere with bus service provided for the Event.

- 2.6 Upon request by an MBCC User, and subject to the prior written approval of the City Manager, Concessionaire may provide pre-paid group valet parking. The Concessionaire, the City Manager, and the MBCC User shall mutually agree upon a predetermined number of valet parking coupons. The MBCC User shall pre-pay all coupons seven (7) days in advance of the first "show" day of the MBCC Event. The MBCC User shall forfeit the value of any non-redeemed coupons and shall not be entitled to a refund. The MBCC User may purchase additional coupons (referred to hereinafter as a subsequent purchase) if needed. The MBCC User shall be entitled to refunds of unused coupons of subsequent purchases. Concessionaire shall refund the amount for unused coupons derived from subsequent purchases within seven (7) days of the last "show" day of the MBCC Event.

Notwithstanding anything in this subsection 2.6 or the Agreement, valet parking coupon payment, creation, control, accountability, and verification shall be the sole responsibility of the Concessionaire.

- 2.7 The Concessionaire shall attend any and all planning meetings for any event at the Venues where valet parking services are to be provided. Concessionaire acknowledges that such meetings may be scheduled by the City Manager or his designee; or, for MBCC Events, by Global Spectrum LLP (Global), the City's manager for MBCC or, for events at The Fillmore, by Live Nation Worldwide, Inc. (Live Nation), the City's manager for The Fillmore.

Said meetings shall be held in order for Concessionaire to become aware of the user's needs, requests, and requirements for the event, and for Concessionaire's input and recommendations. While the City (or Global or Live Nation, as the case may be) may solicit input and recommendations from Concessionaire, all final operational decisions shall ultimately rest with, and be within the exclusive purview of the City. Concessionaire's failure to have representation and/or participate at any pre-event planning meetings shall be deemed a waiver by Concessionaire to challenge any and all operational decisions made with regard to the event.

- 2.8 Concessionaire shall provide valet parking services at a Venue whenever there is an event where people including, without limitation, members of the public, are expected to be in attendance. The Concessionaire shall **not** be required to provide valet parking services at a Venue where: (i) prior to commencement of the event, the Concessionaire is expressly directed, in writing, by either the City Manager or his designee (for any Venue); or by Global (for MBCC); or by Live Nation (for the Fillmore), that its services will not be required; or (ii) following commencement of an event, where the Concessionaire parks no more than ten (10) cars in any day for such event, in which case Concessionaire shall not be required to provide valet parking services for the remainder of that event.

- 2.9 Lincoln Road Ramps- Should the City elect, at any time during the Term, to have Concessionaire provide valet parking services for all or any portion of Lincoln Road Mall, the City Manager or his designee will provide the Concessionaire with not less than two (2) Passenger Ramp Locations on Lincoln Road (from where such services can be provided),

as well as reasonable trailblazing signage in areas approaching Lincoln Road notifying the public of valet parking (with the manner and locations of all signage to be determined solely by the City Manager, at his/her sole discretion).

- 2.10 Special Events – During the Term herein, the Concessionaire shall provide free valet parking services for at least four (4) events per Contract Year, at such Venues as shall be determined by the City Manager, at his/her sole judgment and discretion. City acknowledges that the Concessionaire currently provides free valet parking services for the Cleveland Clinic’s Annual Charitable Event at MBCC; accordingly this event shall count as one of the four (4) required events per year, so long as the event continues to be held annually at MBCC.

SECTION 3. CONCESSION FEE.

3.1 Commencing retroactively on October 1st, 2015, and thereafter at the beginning of each month during the Term, Concessionaire shall pay the City a fixed monthly minimum payment (the “Concession Fee”), which Concession Fee is based upon valet parking services at three Venues; to wit: the Fillmore, the MBCC and the Lincoln Road Ramps. The Concession Fee has been calculated based upon an assumption that the Concessionaire will sustain a loss (of 50% during the initial and second Contract Years and 42% during the third Contract Year) in the total number of vehicles serviced at the MBCC Venue (“MBCC Venue Assumption”) during the construction phases of the Project, as compared to the total number of vehicles which Concessionaire serviced at the MBCC Venue during Fiscal Year 2014-2015 (the “Contract Base Year”). As such, the total amount of Concession Fees paid during each of the Contract Years shall be subject to a true up at the end of each Contract Year, as described in subsection 3.1.4, based upon any change in the MBCC Venue Assumption. In calculating the Concession Fee, the portion of the Concession Fee which relates to the other Venues (the Fillmore and the Lincoln Road Ramps) was not modified and shall remain constant during the Term of the Agreement. For purposes of this Agreement, the term “Closed” shall refer to any month during the second or third Contract Year where the MBCC Venue shall be unavailable to host any activities or events for a period of fifteen (15) or more days in any single month.

3.1.1 Initial Contract Year (Fiscal Year 2015-2016).

During the initial Contract Year, the Concession Fee shall be \$11,221.88 plus sales tax (with the MBCC Venue portion of the Concession Fee being \$6,733.13).

3.1.2 Second Contract Year (Fiscal Year 2016-2017).

For all months where the MBCC Venue is not Closed during the second Contract Year, the Concession Fee shall be \$11,221.88 plus sales tax. For any month during the second Contract Year in which the MBCC Venue is Closed, the Concessionaire shall receive a full abatement of the MBCC Venue portion of the Concession Fee (which MBCC Venue portion of the Concession Fee has been estimated at \$6,733.13).

3.1.3 Third Contract Year (Fiscal Year 2017-2018).

For all months where the MBCC Venue is not Closed in the third Contract Year, the Concession Fee shall be \$12,299.18 plus sales tax. For any month during the third Contract Year in which the MBCC Venue is Closed, the Concessionaire shall receive a full abatement of the MBCC Venue portion of the Concession Fee (which MBCC Venue portion of the Concession Fee has

been calculated at \$7,810.43).

3.1.4 True-up in event of a Change.

At the end of each Contract Year, Concessionaire and the City Manager shall determine the Vehicle Volume Change (as defined below) at the MBCC Venue for the previous Contract Year; determine the actual amount of Concession Fees due for the previous Contract Year; and true up the total amount of Concession Fees received for the previous Contract Year with the actual amount of Concession Fees due for the previous Contract Year (the "True-Up Calculation"). Any True-Up Credit or True-Up Payment (each as defined below) shall be paid to the City or Concessionaire, as applicable, within thirty (30) days of the City's transmittal of written notice regarding the True-Up Calculation to the Concessionaire.

As referred to herein, Vehicle Volume Change shall mean the change between the actual number of vehicles serviced at the MBCC Venue during the previous Contract Year as compared to the total number of vehicles serviced during the Contract Base Year, based upon the percentage of change which Concessionaire experienced during the previous Contract Year, as compared to the Base Contract Year ("Vehicle Volume Change"). For illustration purposes, Exhibit "A" provides an example of Vehicle Volume Change for the MBCC Venue, assuming there was a reduction in the total number of vehicles serviced by Concessionaire during the previous Contract Year, as compared to the Base Contract Year ("Negative Vehicle Volume Change"), as well as an example assuming that there was an increase in the total number of vehicles serviced by Concessionaire during the previous Contract Year, as compared to the Base Contract Year ("Positive Vehicle Volume Change"). If there is a Negative Vehicle Volume Change, Concessionaire shall be entitled to a true-up credit for the total amount of the overpayment in Concession Fees paid during the previous Contract Year (the "True-up Credit"). Similarly, if there is a Positive Vehicle Volume Change, Concessionaire shall owe the City a true-up payment for the total amount of the underpayment in Concession Fees paid during the previous Contract Year (the "True-up Payment").

The Concession Fee shall be submitted to the attention of the City Manager's designee, and must be received no later than the fifteen (15th) day of each month.

3.2 Interest for Late Payment.

Any payment which Concessionaire is required to make to the City which is not paid on or before the due date provided for in this Agreement shall be subject to interest at the rate of eighteen (18%) percent per annum, or the maximum amount allowable under Florida law, whichever is less, from the due date of payment until such time as payment is actually received by the City.

3.3 Sales and Use Tax.

It is also understood that the required Florida State Sales and Use Tax shall be added to Concessionaire's payments and forwarded to the City as part of said payments. It is the City's intent that it is to receive the monthly minimum payment due from Concessionaire as net of such Florida State Sales and Use Tax.

3.4 City Business Tax Receipts.

Concessionaire shall obtain, at its sole expense and responsibility, any business tax receipts required by the City for the proposed use(s) contemplated herein. To the extent required by the applicable sections of the City Code (as same may be amended from time to time), business tax receipts shall be obtained for each Venue serviced by Concessionaire pursuant to this Agreement.

SECTION 4. MAINTENANCE AND EXAMINATION OF RECORDS.

Concessionaire shall maintain current, accurate, and complete financial records, on an accrual basis, related to its operations pursuant to this Agreement. Systems and procedures used to maintain these records shall include a system of internal controls. All accounting records shall be maintained in accordance with generally accepted accounting principles, during customary business hours, and shall be open to inspection, copying, and audit by the City Manager or his/her designee, upon reasonable verbal or written notice. Concessionaire shall maintain all such records at its principal office, currently located at 12550 Biscayne Boulevard, Suite 207, Miami, Florida, 33181; or, if moved to another location, all such records shall be relocated, at Concessionaire's sole expense, to a location in Miami Beach, within five (5) days from notice of request for inspection by the City. Financial records and accounts shall include, at a minimum, a breakdown of gross receipts, expenses, and profit and loss statements. Concessionaire shall maintain accurate receipt-printing cash registers (or a like alternative) for each Venue, which will record and show the payment for every sale made or service provided at said Venue. Other financial records shall be maintained, as would be required by an independent CPA in order to audit a statement of annual gross receipts and profit and loss statement pursuant to generally accepted accounting principles. Concessionaire's records shall be maintained for a period of three (3) years following expiration (or other termination) of this Agreement (regardless of whether such termination results from the expiration of the Term or for any other reason).

A monthly report of activities shall be submitted to the City Manager's designee by the 15th of each month, for the activities of the preceding month. At a minimum, this report shall contain a chronological listing of events serviced, including the event name, date, time, exact location(s), number of transactions (vehicles), gross receipts per location, and gross receipts totals.

Concessionaire shall submit to the City Manager's designee, within sixty (60) days of the end of each Contract Year, an annual statement of gross receipts, in a form consistent with generally accepted accounting principles. Such statement shall be accompanied by a report from an independent CPA firm certifying the report.

For purposes of this Agreement, the term "gross receipts" is understood to mean all income collected or accrued, derived by the Concessionaire under the privileges granted by this Agreement, excluding amounts of any Federal, State, or City sales tax (or other tax) collected by the Concessionaire and required by law to be remitted to the taxing authority.

SECTION 5. INSPECTION AND AUDIT.

During the Term, the City Manager or his designee shall be entitled to audit any and all of Concessionaire's records (financial or otherwise) pertaining to its operations pursuant to this Agreement, as often as he/she deems necessary ;and three (3) times within the three (3) year period following expiration (or other termination) of this Agreement. The City shall be responsible for paying all costs associated with such audit(s), unless the audit(s) reveals a deficiency of five (5%) percent or more in Concessionaire's statement of gross receipts for any year or years audited, in which case Concessionaire shall pay to the City, within thirty (30) days of demand from the City deeming, the cost of the audit and a sum equal to the amount of the deficiency revealed by the

audit, plus interest. The aforesaid audits are in addition to periodic City audits of Resort Tax collections and payments (which are performed separately). Nothing contained within this Section shall preclude the City's audit rights for Resort Tax collection purposes.

It is Concessionaire's intent to stay informed of comments and suggestions by the City regarding Concessionaire's performance under the Agreement. Within thirty (30) days after the end of each Contract Year, Concessionaire and the City Manager's designee may meet to review Concessionaire's performance under the Agreement for the previous Contract Year. At the meeting, Concessionaire and the City may discuss quality, operational, maintenance and any other issues regarding Concessionaire's performance under the Agreement.

SECTION 6. TAXES, ASSESSMENTS, AND UTILITIES.

Concessionaire agrees and shall pay, before delinquency, all taxes and assessments of any kind (including, without limitation, ad valorem taxes [if assessed] and/or Resort Taxes) levied or assessed upon Concessionaire, and/or upon any City property, or portion thereof, used by Concessionaire for the purpose of providing the valet parking services required under this Agreement, or by reason of any other business, operations, and/or activities of Concessionaire upon or in connection with the servicing of the Venues.

Concessionaire shall have the right, at its own expense, to contest the amount or validity, in whole or in part, of any tax and/or assessment by appropriate proceedings, which Concessionaire shall conduct diligently and continuously, in good faith. Concessionaire may refrain from paying a tax to the extent it is contesting the imposition of same in a manner that is in accordance with law; provided, however, if, as a result of such contest, additional delinquency charges become due, Concessionaire shall be responsible for such delinquency charges, in addition to payment of the contested tax (if so ordered).

Concessionaire shall be solely responsible for, and shall promptly pay when due, all charges for any utilities (including, without limitation, (and as applicable), charges for gas, electricity, water, sewer, cable, telephone, trash collection, and any other utility service, as well as any hook-up fees and impact fees related thereto) used by Concessionaire in connection with the provision valet parking services and operations at the Venues. In addition to other rights and remedies hereinafter reserved to the City, upon the failure of Concessionaire to pay for any utility services when due, the City may elect to pay same, in which case Concessionaire shall promptly reimburse the City upon demand.

In no event shall the City be liable, whether to Concessionaire or to third parties, for an interruption or failure in the supply of any utilities services to any City property (including, without limitation, any City property located at, on, or within a Venue, and/or any City garages and/or lots to which Concessionaire is granted the use of in order to conduct its operations pursuant to this Agreement).

SECTION 7. EMPLOYEES AND INDEPENDENT CONTRACTORS.

7.1 Concessionaire shall select, train, employ (or otherwise hire or retain) such number of employees and/or independent contractors as is necessary and appropriate for Concessionaire to satisfy its responsibilities under this Agreement, and as necessary to maintain the same levels of service as exist in similar first class valet parking concession facilities and operations. Concessionaire's employees and/or independent contractors shall be employees and/or independent contractors of Concessionaire and not of the City, and Concessionaire shall be solely responsible for their supervision, daily direction and control. Concessionaire shall be solely responsible for, and have the sole authority to hire, terminate and discipline any and all employees and/or contractors employed or retained by Concessionaire.

- 7.2 Concessionaire and its employees and/or independent contractors shall wear identification badges and uniforms approved by the City. All employees and/or independent contractors shall observe all the graces of personal grooming. Concessionaire shall hire/retain people to work in its operation who are neat, clean, well groomed, and comport themselves in a professional and courteous manner. Concessionaire and any persons hired and/or retained by Concessionaire shall never have been convicted of a felony.
- 7.3 Concessionaire shall have an experienced manager or managers overseeing the concession operations at all times.
- 7.4 The Concessionaire and its employees and/or contractors are considered "ambassadors" of the City and, shall (at a minimum) comport themselves as follows in the discharge of their duties: greet patrons upon arrival and departure; make every attempt to quickly and courteously expedite the transfer of the patron's vehicle; and attempt to accommodate any reasonable request of patrons in connection with the provision of the valet parking services. Employees shall not smoke, drink and/or eat while actively serving patrons; shall speak English; and shall not solicit tips, or solicit the use of curbside parking for a fee higher than the approved City valet parking rate.
- 7.5 The Concessionaire shall be responsive to all persons (whether patrons or otherwise) who believe that they or their vehicle were injured or damaged (or personal items taken) by the Concessionaire ("Claimant"). In the event a Claimant advises the Concessionaire (or any staff of the Concessionaire) of any such damage, injury or loss (a "Claim"), the Concessionaire shall, within twenty four (24) hours of such notice, fill out a Claim form and submit same to the City Manager's designee. The Concessionaire shall immediately investigate each Claim; shall respond to the Claimant by telephone or in writing within forty eight (48) hours of the Claim; and shall provide the City Manager's Designee with a written summary as to the resolution or other disposition of the Claim. Notwithstanding anything in this subsection 7.5, the Concessionaire shall not be required to pay or satisfy any Claim that Concessionaire, after good faith reasonable investigation, determines not to be its responsibility.

SECTION 8. IMPROVEMENTS, MAINTENANCE, REPAIR and OPERATION.

Concessionaire accepts the use of any and all City property to which it is granted the use of to carry out the stated purpose(s) of this Agreement (including, without limitation, any City property located at, on, or within the Venues and/or any City garages and/or lots used by Concessionaire), in its "**AS IS**" "**WHERE IS**" condition.

Concessionaire assumes sole responsibility and expense for the day to day maintenance of any such City property while being used by Concessionaire (including any furnishings, fixtures, equipment and any other improvements thereon). This shall include, without limitation, removal of litter, garbage and debris. Concessionaire shall also be responsible for all garbage disposal generated by its operations.

8.1 Equipment.

- 8.1.1. The Concessionaire shall provide and maintain, at its sole cost and expense, valet parking stand(s), kiosk(s), booth(s), and any other related furnishings, fixtures and equipment (collectively the Equipment), as necessary, to provide and maintain the valet parking services contemplated herein, consistent with the same levels of service that exist in similar valet parking facilities and operations in first class facilities. All Equipment shall be new and in excellent condition. The height and the color of the Equipment (including stands, kiosks, and booths) shall be the same at

each valet parking location for all Venues. Uniforms and badges shall also be standardized for all Venues. All Equipment must be approved, in writing, by the City Manager's designee prior to being put into use. Storage of all Equipment shall be the sole responsibility of Concessionaire.

8.2 Garbage Receptacles.

With respect to litter, garbage and debris removal, Concessionaire shall provide, at its sole expense, a sufficient number of trash receptacles for its operations and for the use of patrons. Determination of the "number" of receptacles shall at all times be within the sole and reasonable judgment and discretion of the City Manager's designee. Dumping of receptacles, and removal of trash, rubbish and garbage in connection with Concessionaire's operations, shall be the sole responsibility of the Concessionaire, but shall be coordinated with the respective managers at MBCC, the Fillmore, and/or any other Venues. Any costs for removal of the contents of said trash receptacles by the City, because of the Concessionaire's failure to do so, will be charged to Concessionaire, and payment shall immediately be due upon demand by City.

8.3 Maintenance/Repair.

Concessionaire shall maintain, at its sole expense and responsibility, all Equipment required to operate the concessions. In the event any Equipment is lost, stolen, or damaged, it shall be replaced or repaired promptly, at Concessionaire's sole expense. If Concessionaire fails to make any repairs, restoration and/or replacement, the City may elect to do so, and all sums spent and expenses incurred by the City shall be paid by Concessionaire within ten (10) days after receipt of a bill or statement thereof. Notwithstanding that the City may elect to make such repairs, restoration, and/or replacement, the City shall have no obligation and/or affirmative duty to do so.

8.4 No Dangerous Materials.

Concessionaire agrees not to use or permit the storage and/or use of gasoline, fuel oils, diesel, illuminating oils, oil lamps, combustible powered electricity producing generators, turpentine, benzene, naphtha, propane, natural gas, or other similar substances, combustible materials, or explosives of any kind, or any substance or thing prohibited in the standard policies of fire insurance companies in the State of Florida. Any such substances or materials found on Concessionaire's operations, whether at a Venue or on any City property being utilized by Concessionaire, shall be immediately removed.

In consideration of a separate and specific consideration of Ten (\$10.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Concessionaire shall indemnify and hold the City harmless from any loss, damage, cost, or expense of the City, including, without limitation, reasonable attorney's fees, incurred as a result of, arising from, or connected with the placement by Concessionaire of any "hazardous substance" or "petroleum products" on, under, in or upon any property (whether City-owned or otherwise being utilized by Concessionaire for its operations hereunder, as those terms are defined by applicable Federal and State statutes, or any environmental rules and environmental regulations promulgated thereunder. The provisions of this subsection 10.4 shall survive the termination or earlier expiration of this Agreement.

8.5 Security.

The Concessionaire shall be solely responsible for providing any security measures, if and as it deems necessary, in its reasonable business judgment, to protect the concession areas

from loss or theft including, without limitation, any of the Equipment thereon.

8.6 Inspection.

Concessionaire agrees that its operations at any or all of the Venues may be inspected at any time by the City Manager or his designee, or by any other municipal, County or State officer, or other agency having responsibility and/or jurisdiction for inspection of such operations. Concessionaire hereby waives all claims against the City for compensation for loss or damage sustained by reason of any interference with the concession operations, whether by the City or by any public agency or official, in enforcing their respective duties, or enforcing compliance with any applicable laws, or ordinances, or regulations.

SECTION 9. INSURANCE.

Concessionaire shall maintain, at all times throughout the Term, at its sole expense and responsibility, the following types of insurance coverage:

- a. Commercial General Liability or Garage Liability insurance in the minimum amount of one million dollars (\$1,000,000) per occurrence and per location covering bodily injury and property damage resulting from valet parking operations (including Concessionaire's activities connected with the handling of vehicles on public property).
- b. Garage Keepers Legal Liability insurance to provide Collision and Comprehensive coverage for vehicles under control of the valet parking operation, with minimum limits of \$300,000 per location, with a maximum Self-Insured Retention (SIR) or deductible of \$1,000.
- c. Worker's Compensation and Employers' Liability as required to meet the statutory requirements of the State of Florida.

The policies of insurance referred to above shall not be subject to cancellation or changing coverage except upon at least thirty (30) days prior written notice to the City, and then only subject to the prior written approval of the City Manager or his designee. Prior to the Commencement Date of this Agreement, Concessionaire shall provide the City with a Certificate of Insurance for each such policy. **ALL LIABILITY POLICIES SHALL NAME THE CITY OF MIAMI BEACH FLORIDA, GLOBAL SPECTRUM LLP, AND LIVE NATION WORLDWIDE, INC. AS AN ADDITIONAL NAMED INSURED.** All such policies shall be obtained from companies authorized to do business in the State of Florida with an A.M. Best's Insurance Guide (latest edition) rating acceptable to the City's Risk Manager, and any replacement or substitute company shall also be subject to the approval of the City's Risk Manager.

Should Concessionaire fail to obtain, maintain or renew the policies of insurance referred to above, in the required amounts, the City may, at its sole discretion, obtain such insurance, and any sums expended by the City in obtaining said insurance, shall be repaid by Concessionaire to the City, plus ten (10%) percent of the amount of premiums paid to compensate the City for its administrative costs. If Concessionaire fails to repay the City's expenditures following written demand from the City (and within the time specified in the City's demand notice), such failure shall be deemed an event of default hereunder and the total sum owed shall accrue interest at the rate of eighteen (18%) percent or the highest rate allowable by law, whichever is less, until paid.

SECTION 10. INDEMNITY.

- 10.1 Indemnification of the City. In consideration of a separate and specific consideration of Ten (\$10.00) Dollars and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Concessionaire shall indemnify, hold harmless and defend the City, its officers, employees, contractors, agents or servants from and against any and all loss, cost, expense, damage, injury, liability, claim, demand, penalty or cause of action of whatsoever kind or nature, arising out of, or in any way related to, or resulting from: (i) Concessionaire's breach of the terms of this Agreement or its representations and warranties herein; (ii) the operations and/or the performance of the services contemplated under this Agreement (including, without limitation, its use of any City property at, on, or within the Venues and/or any City garage and/or parking lot used herein); or (iii) error, omission, or negligent act of Concessionaire, its officers, employees, contractors, agents or servants in connection with the operations and/or performance of the services contemplated under this Agreement (including, without limitation, its use of any City property at, on, or within the Venues and/or any City garage and/or parking lot used herein), and shall pay all claims and losses of any nature whatsoever in connection therewith, and shall defend all suits, in the name of the City of Miami Beach when applicable, and shall pay all cost (including attorney's fees at the trial and appellate levels) and judgments which may issue thereon. This indemnification, however, shall not apply to any such liability that arises as a result of the willful misconduct or gross negligence of the City, its officers, employees, contractors, agents or servants.
- 10.2 Indemnification of Global Spectrum LLP. In consideration of a separate and specific consideration of Ten (\$10.00) Dollars and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Concessionaire shall indemnify, hold harmless and defend Global Spectrum LLP ("Global Spectrum"), its officers, employees, contractors, agents or servants from and against any and all loss, cost, expense, damage, injury, liability, claim, demand, penalty or cause of action of whatsoever kind or nature, arising out of, or in any way related to, or resulting from: (i) the operations and/or the performance of the services contemplated under this Agreement (including, without limitation, its use of any City property at, on, or within the Venues and/or any City garage and/or parking lot used herein); or (ii) error, omission, or negligent act of Concessionaire, its officers, employees, contractors, agents or servants in connection with the operations and/or performance of the services contemplated under this Agreement (including, without limitation, its use of any City property at, on, or within the Venues and/or any City garage and/or parking lot used herein), and shall pay all claims and losses of any nature whatsoever in connection therewith, and shall defend all suits, in the name of Global Spectrum when applicable, and shall pay all cost (including attorney's fees at the trial and appellate levels) and judgments which may issue thereon. This indemnification, however, shall not apply to any such liability that arises as a result of the willful misconduct or gross negligence of Global Spectrum, its officers, employees, contractors, agents or servants.
- 10.3 Indemnification of Live Nation Worldwide, Inc. In consideration of a separate and specific consideration of Ten (\$10.00) Dollars and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Concessionaire shall indemnify, hold harmless and defend Live Nation Worldwide, Inc. ("Live Nation"), its officers, employees, contractors, agents or servants from and against any and all loss, cost, expense, damage, injury, liability, claim, demand, penalty or cause of action of whatsoever kind or nature, arising out of, or in any way related to, or resulting from: (i) the operations and/or the performance of the services contemplated under this Agreement (including, without limitation, its use of any City property at, on, or within the Venues and/or any City garage and/or parking lot used herein); or (ii) error, omission, or negligent act of Concessionaire, its officers, employees, contractors, agents or servants in connection with the operations and/or

performance of the services contemplated under this Agreement (including, without limitation, its use of any City property at, on, or within the Venues and/or any City garage and/or parking lot used herein), and shall pay all claims and losses of any nature whatsoever in connection therewith, and shall defend all suits, in the name of Global Spectrum when applicable, and shall pay all cost (including attorney's fees at the trial and appellate levels) and judgments which may issue thereon. This indemnification, however, shall not apply to any such liability that arises as a result of the willful misconduct or gross negligence of Live Nation, its officers, employees, contractors, agents or servants.

10.4 Subsections 10.1, 10.2, and 10.3 shall survive the termination or expiration of this Agreement. Additionally, the indemnification set forth in subsections 10.1, 10.2, and 10.3, shall not be limited in any way by the type or amount of insurance carried by the Concessionaire.

10.5 Subrogation.

The terms of insurance policies referred to in Section 9 shall preclude subrogation claims against Concessionaire, the City and their respective officers, employees, contractors, agents or servants.

10.6 Force Majeure.

Whenever a period of time is herein prescribed for the taking of any action by the City or Concessionaire (as applicable), the City or Concessionaire (as applicable), shall not be liable or responsible for, and there shall be excluded from the computation of such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, or governmental laws, regulations, or restrictions in the nature of a prohibition or moratorium, or any bona fide delay beyond the reasonable control of City or Concessionaire (as applicable). The foregoing shall not apply to any payments of money due under this Agreement.

Notwithstanding the preceding paragraph, in the event that damage to or destruction of (i) a Venue or Venues; or (ii) to Concessionaire's Equipment; or (iii) to the Penn Ave Garage or Municipal Parking Lot No. 29 (subsection 10.6 (i) and (iii) shall hereinafter collectively be referred to as a "Facility" or the "Facilities"), due to a Force Majeure event (as defined herein) resulting in the closure of said Facility or Facilities, or in material damage to the majority of Concessionaire's Equipment, to the extent that (in the City Manager's sole and reasonable discretion and determination) Concessionaire's provision/performance of the services is either rendered impossible, unnecessary, or economically impracticable, then Concessionaire and the City shall mutually agree upon a proportionate (prorated) adjustment of the monthly minimum payment during the pendency of the event of Force Majeure but, in any event, not to exceed 180 days from the occurrence thereof, whichever is less. If the event of Force Majeure continues for a period in excess of 180 days, then either party may terminate this Agreement upon sixty (60) days written notice to the other. In the event of a termination pursuant to this subsection, the City shall not be liable to Concessionaire; nor have any further obligation (financial or otherwise) to Concessionaire under this Agreement; nor shall the City be liable to concessionaire for any indirect, incidental, or special costs, lost profits, or consequential damages. If an event of Force Majeure causes the City to close or limit the Concessionaire's use of the Penn Ave Garage or Municipal Parking Lot No. 29, the City Manager shall use commercially reasonable efforts to provide the Concessionaire with the use of parking spaces in another municipal parking facility or lot in a location reasonably close to the parking facility affected by the Force Majeure.

10.7 Waiver of Loss from Hazards.

Concessionaire hereby expressly waives all claims against the City for loss or damage sustained by the Concessionaire resulting from an event of Force Majeure (as defined herein), and the Concessionaire hereby expressly waives all rights, claims, and demands against the City and forever releases and discharges the City from all demands, claims, actions and causes of action arising from any of the aforesaid causes.

SECTION 11. DEFAULT AND TERMINATION.

Subsections 11.1 through 11.3 shall constitute events of default under this Agreement. An event of default by Concessionaire shall entitle the City to exercise any and all remedies described as the City's remedies under this Agreement, including but not limited to those set forth in Subsection 11.4 and Section 12 hereof. An event of default by the City shall entitle Concessionaire to exercise any and all remedies described as Concessionaire's remedies under this Agreement, including but not limited to those set forth in Subsection 11.5.

11.1 Bankruptcy.

If either the City or Concessionaire shall be adjudged bankrupt or insolvent, or if any receiver or trustee of all or any part of the business property of either party shall be appointed, or if any receiver of all or any part of the business property shall be appointed and shall not be discharged within sixty (60) days after appointment, or if either party shall make an assignment of its property for the benefit of creditors, or shall file a voluntary petition in bankruptcy, or insolvency, or shall apply for reorganization or arrangement with its creditors under the bankruptcy or insolvency laws now in force or hereinafter enacted, Federal, State, or otherwise, or if such petitions shall be filed against either party and shall not be dismissed within sixty (60) days after such filing, then the other party may immediately, or at any time thereafter, and without further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to it for breach of contract.

11.2 Default in Payment.

In the event Concessionaire fails to submit any payment and accumulated penalties within fifteen (15) days after the payment due date, and such failure continues three (3) days after written notice thereof, then the City may, without further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to it for breach of contract, and may begin procedures to collect the Performance Bond required in Section 12 herein.

11.3 Non-Monetary Default.

In the event that Concessionaire or the City fails to perform or observe any of the covenants, terms or provisions under this Agreement, and such failure continues fifteen (15) days after written notice thereof from the other party hereto, such non-defaulting party may immediately or at any time thereafter, and without further demand or notice, terminate this Agreement. In the event that a default is not reasonably susceptible to being cured within such period, the defaulting party shall not be considered in default if it shall, within such period, commence with due diligence and dispatch to cure such default and thereafter completes with dispatch and due diligence the curing of such default, but in no event shall such extended cure period exceed sixty (60) days from the date of written notice thereof. In the event Concessionaire cures any default pursuant to this subsection, it shall promptly provide the City with written notice of same.

11.4 City's Remedies for Concessionaire's Default.

If any of the events of default, as set forth in this Section, shall occur, the City may, after notice (if required) and the expiration of cure periods, as provided above, at its sole option and discretion, institute such proceedings as in its opinion are necessary to cure such default(s) and to compensate the City for damages resulting from such default(s), including but not limited to the right to give to Concessionaire a notice of termination of this Agreement. If such notice is given, the Term of this Agreement shall terminate upon the date specified in such notice from the City to Concessionaire. On the date so specified, Concessionaire shall then quit and surrender any and all City property pursuant to the provisions of subsection 11.8. Upon the termination of this Agreement by the City, all rights and interest of Concessionaire in and to this Agreement (and including, Concessionaire's right to remain on any City property used by Concessionaire to provide the services under the Agreement) shall cease and terminate and the City may, in addition to any other rights and remedies it may have, retain all sums paid to it by Concessionaire under this Agreement, including but not limited to, beginning procedures to collect the Performance Bond in Section 12 herein.

In addition to the rights set forth above, the City shall have the rights to pursue any and all of the following:

- a. the right to injunction or other similar relief available to it under Florida law against Concessionaire; and/or
- b. the right to maintain any and all actions at law or suits in equity or other proper proceedings to obtain damages resulting from Concessionaire's default.

11.5 Concessionaire's Remedies for City's Default.

If an event of default, as set forth in this Section, by the City shall occur, Concessionaire may, after the expiration of the cure period, terminate this Agreement upon written notice to the City. Said termination shall become effective upon receipt of the written notice of termination by the City. On the date specified in the notice, Concessionaire shall quit and surrender any and all City property pursuant to the provisions of subsection 11.8.

11.6 Termination for Convenience.

11.6.1 NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION 11 OR OF THE AGREEMENT, THIS AGREEMENT MAY BE TERMINATED, IN WHOLE OR IN PART, BY THE CITY, FOR CONVENIENCE AND WITHOUT CAUSE, UPON THE FURNISHING OF THIRTY (30) DAYS PRIOR WRITTEN NOTICE TO CONCESSIONAIRE.

11.6.2 In the event of termination by the City pursuant to this subsection 11.6, Concessionaire herein acknowledges and agrees that it shall not have any claim, demand, or cause of action of whatsoever kind or nature, against the City, its agents, servants and employees (including, but not limited to, claims for any start-up costs, interference in business or damages for interruption of services, or interference in its concession operations). In no event shall the City be liable to Concessionaire for any indirect, incidental, special, lost profits or consequential damages.

11.7 Habitual Default.

In the event that Concessionaire has defaulted in the performance of, or breached any of the terms, covenants and conditions required herein to be kept and performed by Concessionaire, a total of four (4) times during any Contract Year throughout the Term, at the City's sole option and discretion, and regardless of whether Concessionaire has cured each individual condition of breach or default, the Concessionaire may be determined by the City to be a "habitual violator". At the time such determination is made, the City shall issue to Concessionaire a written notice advising of such determination and citing the circumstances therefore. Such notice shall also advise the Concessionaire that there shall be no further notice or grace periods to correct a fifth (5th) breach or default, and that such breach or default, of whatever nature, taken with the previous four (4) breaches and defaults, shall be considered cumulative and, collectively, shall constitute a condition of non-curable default and grounds for termination of this Agreement. In the event of any such fifth (5th) breach or default within a Contract Year, this Agreement shall terminate, upon written notice of termination to the Concessionaire, such termination to be effective upon the tenth (10th) day following the date of receipt thereof; all payments due hereunder shall be payable to said date; and Concessionaire shall have no further rights hereunder. In such case, the City may also avail itself of the remedies set forth in subsection 11.4 hereof.

11.8 Surrender of City Property/Venues.

Upon (or earlier termination) of this Agreement, Concessionaire shall surrender any and all City property(ies) utilized by Concessionaire in the performance of the valet parking operations hereunder, in the same condition as such property(ies) was/were prior to the Commencement Date, reasonable wear and tear excepted. Concessionaire shall remove all its Equipment, and any other personal property, upon forty-eight (48) hours written notice from the City Manager or his designee unless a longer time period is agreed to by the City. Concessionaire's obligation to observe or perform this covenant shall survive the expiration or other termination of this Agreement. Continued occupancy of any City property after termination of the Agreement shall constitute trespass by the Concessionaire, and may be prosecuted as such. In addition, the Concessionaire shall pay to the City One Thousand (\$1,000.00) Dollars per day as liquidated damages for such trespass and holding over.

SECTION 12. PERFORMANCE STANDARD; PERFORMANCE BOND OR ALTERNATE SECURITY.

12.1 Performance Standard. Concessionaire acknowledges that timely acceptance and return of patron vehicles directly impacts patron's experience of Venue's serviced in this Agreement. As such Concessionaire agrees to ensure that not less than eighty percent (80%) of all vehicles parked for any Venue event shall be returned to patrons within twenty (20) minutes of patron's request for a vehicle (the "Performance Standard"). In the event Concessionaire fails to meet this standard for any Venue event, Concessionaire shall pay to the City a penalty in the amount of Forty and No/100 Dollars (\$40.00) for every vehicle delivered below the Performance Standard (the "Penalty"). The Penalty shall be calculated in accordance with the following standard:

$$\begin{aligned} \text{Penalty} &= [(\text{Total Cars Parked} * 80\%) - \text{Total Cars Returned in 20 Min.}] * \$40 \\ &= [(100 \text{ vehicles} * 80\%) - 75 \text{ vehicles}] * \$40 \\ &= [80 \text{ vehicles} - 75 \text{ vehicles}] * \$40 \\ &= 5 \text{ vehicles} * \$40 \\ &= \mathbf{\$200} \end{aligned}$$

Concessionaire shall be entitled to a credit equal to fifty percent (50%) of any Penalty paid for a Venue event upon presentment of the following documents to the City: (i) an Venue event log listing the name, address, phone number, and vehicle information for each patron to whom a refund of the Concession Fee was provided; and (ii) evidence of voided valet tickets for each refund of the Concession Fee provided to a patron.

12.2 Performance Bond or Alternate Security.

Concessionaire shall, on or before the Commencement Date of this Agreement, furnish to the City Manager a Performance Bond in the penal sum as stated below for the payment of which Concessionaire shall bind itself for the faithful performance of the terms and conditions of this Agreement. A Performance Bond, in the amount of Thirteen Thousand Five Hundred (\$13,500.00) Dollars, shall be required and be in faithful observance of this Agreement. A cash deposit, irrevocable letter of credit, or certificate of deposit may also suffice, as determined by the City Manager, in his sole and reasonable discretion. The form of the Performance Bond or letter of credit shall be as required by the City Manager. In the event that a Certificate of Deposit is approved, it shall be a Thirteen Thousand Five Hundred (\$13,500.00) Dollars one-year Certificate of Deposit in favor of the City, which shall be automatically renewed, the original of which shall be held by the City's Chief Financial Officer. Concessionaire shall be so required to maintain said Performance Bond or alternate security (as accepted by the City Manager), in full force and effect throughout the Term of this Agreement. Concessionaire shall have an affirmative duty to notify the City Manager, in writing, in the event said Performance Bond or alternate security lapses or otherwise expires. All interest that accrues in connection with any financial instrument or sum of money referenced above shall be the property of Concessionaire, except in an event of default, in which case the City shall be entitled to all interest that accrues after the date of default.

SECTION 13. ASSIGNMENT.

The Concessionaire may not sublet or assign this Agreement, or any part thereof, under any circumstances, without the prior written consent of the City which consent, if given at all, shall be in the City's sole judgment and discretion.

SECTION 14. NO IMPROPER USE.

Concessionaire will not use, nor suffer or permit any person to use, in any manner whatsoever, any City property(ies) or portion thereof granted to Concessionaire for the uses set forth in this Agreement, for any improper, immoral or offensive purpose, or for any purpose in violation of any Federal, State, County, or municipal ordinance, rule, order or regulation, or of any governmental rule or regulation now in effect or hereafter enacted or adopted. Concessionaire will protect, indemnify, and forever save and keep harmless the City, its officers, employees, contractors, agents or servants, from and against damage, penalty, fine, judgment, expense or charge suffered, imposed, assessed or incurred for any violation, or breach of any law, ordinance, rule, order or regulation occasioned by any act, neglect or omission of Concessionaire, or any of its officers, employees, contractors, agents or servants. In the event of any violation by Concessionaire, or if the City shall deem any conduct on the part of Concessionaire to be objectionable or improper, the City Manager shall have the right to suspend the concession operations should the Concessionaire fail to correct any such violation, conduct, or practice to the satisfaction of the City Manager, within twenty-four (24) hours after receiving written or verbal notice of the nature and extent of such violation, conduct, or practice; such suspension to continue until the violation is cured. Concessionaire further agrees not to commence operations during the suspension until the violation has been corrected to the satisfaction of the City Manager.

SECTION 15. PRICE SCHEDULES.

Concessionaire agrees that prices and fees charged for valet parking services (the "Valet Fee") shall not exceed those established by the Mayor and City Commission. The parties acknowledge that the Concession Fee, as set forth in Section 3 hereto, is based upon the Valet Fee in effect as of the Commencement Date, which is \$20.00 per vehicle, for all Venues.

Notwithstanding the preceding, the City Commission reserves the right, at its sole discretion and judgment, at any time during the Term hereof, to review the Valet Fee, and to amend said Fee, as (and if) deemed in the best interest of the City.

The Concessionaire may also request that the City increase the Valet Fee (the "Fee Increase") which Fee Increase shall be considered and granted (if at all) by the City Commission, in its sole and absolute discretion. Prior to the Concessionaire's request for a Fee Increase, the Concessionaire and the City Manager, or his/her authorized designee, shall meet and shall use their best efforts to mutually agree on a recommendation (for the Commission) for a Fee Increase and corresponding increase adjustment in the Concession Fee.

SECTION 16. NOTICES.

All notices from the City to Concessionaire shall be deemed duly served upon receipt, if mailed by registered or certified mail with a return receipt to Concessionaire at the following addresses:

First Class Parking, LLC
12550 Biscayne Boulevard, Suite 207
Miami, Florida 33181
Attention: Jorge Zuluaga, Director

All notices from Concessionaire to the City shall be deemed duly served upon receipt, if mailed by registered or certified mail return receipt requested to the City of Miami Beach at the following addresses:

Office of the City Manager
City of Miami Beach
1700 Convention Center Drive
Miami Beach, FL. 33139
Attention: City Manager

and

City of Miami Beach Parking Department
City of Miami Beach
1755 Meridian Ave., Suite 200
Miami Beach, FL. 33139
Attention: Parking Director

Concessionaire and the City may change the above mailing addresses at any time upon giving the other party written notification. All notices under this Agreement must be in writing.

SECTION 17. LAWS.

17.1 Compliance.

Concessionaire shall comply with all applicable City, County, State, and Federal ordinances, statutes, rules and regulations (including but not limited to all applicable environmental City, County, State, and Federal ordinances, statutes, rules and regulations, as same may be amended from time to time.

17.2 Equal Employment Opportunity.

Neither Concessionaire nor any affiliate of Concessionaire performing services hereunder, or pursuant hereto, will discriminate against any employee or applicant for employment because of race, sex, sexual orientation, gender identity, color, creed, national origin, familial status, religion or handicap. Concessionaire will take affirmative steps to utilize minorities and females in the work force and in correlative business enterprises.

17.3 No Discrimination.

Concessionaire agrees that there shall be no discrimination as to race, sex, intersexuality, sexual orientation, gender identity, color, creed, national origin, marital and familial status, religion or disability or age, in its employment practice or in the operations referred to by this Agreement. All facilities and services offered shall be made available to the public.

SECTION 18. MISCELLANEOUS.

18.1 No Partnership.

Nothing contained in this Agreement shall constitute or be construed to be or create a partnership or joint venture between the City and Concessionaire.

18.2 Modifications.

This Agreement cannot be changed or modified except by agreement in writing executed by all parties hereto. Concessionaire acknowledges that no modification to this Agreement may be agreed to by the City unless approved by the Mayor and City Commission except where such authority has been expressly provided herein to the City Manager.

18.3 Complete Agreement.

This Agreement, together with all exhibits incorporated hereto, constitutes all the understandings and agreements of whatsoever nature or kind existing between the parties with respect to Concessionaire's operations, as contemplated herein.

18.4 Headings.

The section, subsection and paragraph headings contained herein are for convenience of reference only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement.

18.5 Binding Effect.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

18.6 Clauses.

The illegality or invalidity of any term or any clause of this Agreement shall not affect the validity of the remainder of the Agreement, and the Agreement shall remain in full force and effect as if such illegal or invalid term or clause were not contained herein unless the elimination of such provision detrimentally reduces the consideration that either party is to receive under this Agreement or materially affects the continuing operation of this Agreement.

18.7 Severability.

If any provision of this Agreement or any portion of such provision or the application thereof to any person or circumstance shall be held to be invalid or unenforceable, or shall become a violation of any local, State, or Federal laws, then the same as so applied shall no longer be a part of this Agreement but the remainder of the Agreement, such provisions and the application thereof to other persons or circumstances, shall not be affected thereby and this Agreement shall be so modified.

18.8 Right of Entry.

The City, at the direction of the City Manager, shall at all times during hours of operation, have the right to enter into and upon any and all parts of the Concession Area for the purpose of examining the same for any reason relating to the obligations of parties to this Agreement.

18.9 Not a Lease.

It is expressly understood and agreed that no part, parcel, building, structure, equipment or space is leased to Concessionaire; that this Agreement is a concession agreement and not a lease, and that Concessionaire's right to operate, manage, and maintain the concession shall continue only so long as Concessionaire complies with the undertakings, provisions, agreements, stipulations and conditions of this Agreement.

Accordingly, Concessionaire hereby agrees and acknowledges that in the event of termination of this Agreement, whether due to a default by Concessionaire or otherwise, Concessionaire shall surrender and yield unto the City any City property then being used by Concessionaire for the provision of services herein, in accordance with subsection 11.8 hereof, and the City shall in no way be required to evict and/or otherwise remove Concessionaire from any such area as if this were a tenancy under Chapter 83, Florida Statutes, nor shall Concessionaire be afforded any other rights afforded to nonresidential tenants pursuant to said Chapter (the parties having herein expressly acknowledged that this Agreement is intended to be a concession agreement and is in no way intended to be a lease).

18.10 Signage.

Concessionaire shall provide, at its sole expense and responsibility, any required signs at its concession locations. All advertising, signage and postings shall be approved by the City, and shall be in accordance with all applicable Municipal, County, State and Federal laws and regulations. Any signage posted by Concessionaire shall be subject to the prior approval of the City Manager or his designee as to size, shape and placement of same.

18.11 Conflict of Interest.

Concessionaire shall perform its services under this Agreement and conduct the concession operation(s) contemplated herein, in a manner so as to show no preference for other concession operations/facilities owned, operated, managed, or otherwise controlled by Concessionaire.

18.12 No Waiver.

18.12.1 It is mutually covenanted and agreed by and between the parties hereto that the failure of the City to insist upon the strict performance of any of the conditions, covenants, terms or provisions of this Agreement, or to exercise any option herein conferred, will not be considered or construed as a waiver or relinquishment for the future of any such conditions, covenants, terms, provisions or options but the same shall continue and remain in full force and effect.

18.12.2 A waiver of any term expressed herein shall not be implied by any neglect of the City to declare a forfeiture on account of the violation of such term if such violation by continued or repeated subsequently and any express waiver shall not affect any term other than the one specified in such waiver and that one only for the time and in the manner specifically stated.

18.12.3 The receipt of any sum paid by Concessionaire to the City after breach of any condition, covenant, term or provision herein contained shall not be deemed a waiver of such breach, but shall be taken, considered and construed as payment for use and occupation (and not as rent), unless such breach be expressly waived in writing by the City.

18.13 No Third Party Beneficiary.

Nothing in this Agreement shall confer upon any person or entity, other than the parties hereto and their respective successors and permitted assigns, any rights or remedies by reason of this Agreement.

SECTION 19. LIMITATION OF LIABILITY.

The City desires to enter into this Agreement only if so doing the City can place a limit on its liability for any cause of action for breach of this Agreement, so that its liability for any such breach never exceeds the sum of Ten Thousand (\$10,000.00) Dollars. Concessionaire hereby expresses its willingness to enter into this Agreement with a Ten Thousand (\$10,000.00) Dollar limitation on recovery for any action for breach of contract. Accordingly, and in consideration of the separate consideration of Ten Thousand (\$10,000.00) Dollars, the receipt of which is hereby acknowledged, the City shall not be liable to Concessionaire for damages to Concessionaire in an amount in excess of Ten Thousand (\$10,000.00) Dollars, for any action for breach of contract arising out of the performance or non-performance of any obligations imposed upon the City by this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of limitation placed upon the City's liability as set forth in Florida Statutes, Section 768.28.

SECTION 20. VENUE.

This Agreement shall be deemed to have been made and shall be construed and interpreted in accordance with the laws of the State of Florida. This Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement

of any and all the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida. **THE CITY AND CONCESSIONAIRE HEREBY KNOWINGLY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING THAT THE CITY AND CONCESSIONAIRE MAY HEREIN AFTER INSTITUTE AGAINST EACH OTHER WITH RESPECT TO ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT.**

SECTION 21. CITY LIEN.

It is expressly agreed that the City shall have a continuing lien on all personal property of the Concessionaire, for all sums which may from time to time become due and unpaid to the City under this Agreement, and upon default of payment by the Concessionaire and failure to cure after the expiration of the applicable grace period, the City shall have the right to take possession of and retain the same until the full amount due shall be paid, or to sell the same at public auction and, after deducting the expense of such sale, apply the balance of the proceeds to such payment and if there should be any deficiency, to resort to any other legal remedy available to it.

SECTION 22. NO LIENS.

Concessionaire agrees that it will not suffer or through its actions or anyone under its control or supervision, cause to be filed upon the property any lien or encumbrance of any kind. In the event any lien is filed, Concessionaire agrees to cause such lien to be discharged within ten (10) days of said filing and in accordance with the applicable law and policy.

SECTION 23. STORAGE.

Concessionaire agrees that there will be no on-site or on-premises storage of any kind, of Concessionaire's Equipment.

SECTION 24. CITY WITHDRAWAL OF CITY PROPERTY.

The City retains the right to withdraw all or any portion of the City property/Venues set forth herein from the terms and conditions of the Agreement. The City shall give the Concessionaire thirty (30) days written notice in the event of such withdrawal. In the event the City withdraws all of the City property and/or Venues, the Agreement shall automatically terminate, without liability to either party herein. In the event the City withdraws less than all of the City property and/Venues, then the remaining property/Venues shall continue within the scope of the Agreement, and the City agrees to make a proportionate adjustment in the Concession Fee amount due.

SECTION 25. PUBLIC BENEFIT.

The Concessionaire agrees to continue its past practice to donate toys, or make a monetary donation, in support of the City Parking Department's annual holiday toy drive benefitting Miami Beach residents.

SECTION 26. AUTOMATED VALET SYSTEM.

The Concessionaire shall at all times employ an automated valet system during the operation of the Concession.

IN WITNESS WHEREOF, the parties hereto have caused their names to be signed and their seals to be affixed, all as of the day and year first above written, indicating their agreement.

Attest:

CITY OF MIAMI BEACH, FLORIDA

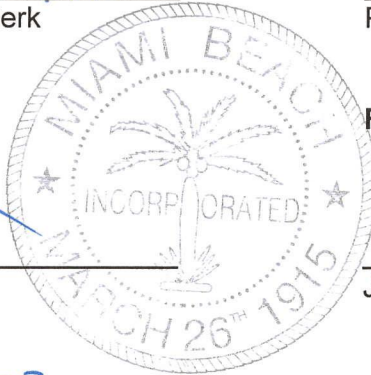
RA 9/22/16
Rafael E. Granado, City Clerk

Philip Levine, Mayor

Attest:

FIRST CLASS PARKING, LLC

[Signature]
Signature/Secretary



Jorge Zuluaga, President

Sebastian Lopez.
(Print Name)

CORPORATE SEAL
(affix seal here)

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

[Signature] 9/16/16
City Attorney Date

EXHIBIT A

FIRST CONTRACT YEAR		2015		2016		2016
Venue	%	Contract Base Year	Ajustment for Increase in Fees per Vehicle	Estimated Impact of MBCC construction	First Contract Year	First Contract Year
			33% increase	-50%		
Miami Beach Convention Center (MBCC)	75.00%	\$ 121,500.00	\$ 161,595.00	\$ (80,797.50)	\$	80,797.50
Lincoln Road ramps	2.50%	\$ 4,050.00	\$ 5,386.50		\$	5,386.50
Fillmore Miami Beach	22.50%	\$ 36,450.00	\$ 48,478.50		\$	48,478.50
Total Payment - Year	100.00%	\$ 162,000.00	\$ 215,460.00		\$	134,662.50
Monthly Payment		\$ 13,500.00			\$	11,221.88

YEARLY TRUE-UP

- (a) Actual number of vehicles serviced
- (b) Actual % of MBCC construction impact
- (c) Recalculated yearly amount based on actual
- (d) Actual amount paid for the year
- (e) Over/Under payment

Example 1 - TRUE-UP - showing a decrease - 10,000 vehicles serviced instead of estimated 12,385

Contract Base Year (Oct 2014 to Sept 2015)	Actual Vehicles	Actual Vehicles	Diff	Actual Impact of MBCC construction
Miami Beach Convention Center	24,769	10,000 (a)	(14,769)	-59.63% (b)

Re-Calculate Year		2015		2016		First Contract Year
Venue	%	Contract Base Year	Ajustment for Increase in Fees per Vehicle	Actual Impact of MBCC construction First Contract Year	First Contract Year	First Contract Year
			33% increase	-59.63% (b)		
Miami Beach Convention Center (MBCC)	75.00%	\$ 121,500.00	\$ 161,595.00	\$ (96,354.17)	\$	65,240.83
Lincoln Road ramps	2.50%	\$ 4,050.00	\$ 5,386.50		\$	5,386.50
Fillmore Miami Beach	22.50%	\$ 36,450.00	\$ 48,478.50		\$	48,478.50
Total Payment - Year	100.00%	\$ 162,000.00	\$ 215,460.00		\$	119,105.83 (c)

Actual Amount Paid **\$ 134,662.50 (d)**

Difference between Amount Paid (d) and Recalculated amount (c) **\$ (15,556.67) (e)**

Example 1 - Concessionaire is due a refund of \$15,556.67

Example 2 - TRUE-UP - showing a increase - 15,000 vehicles serviced instead of estimated 12,385

Contract Base Year (Oct 2014 to Sept 2015)	Actual Vehicles	Actual Vehicles	Diff	Actual Impact of MBCC construction
Miami Beach Convention Center	24,769	15,000 (a)	(9,769)	-39.44% (b)

Re-Calculate Year		2015		2016		First Contract Year
Venue	%	Contract Base Year	Ajustment for Increase in Fees per Vehicle	Actual Impact of MBCC construction First Contract Year	First Contract Year	First Contract Year
			33% increase	-39.44% (b)		
Miami Beach Convention Center (MBCC)	75.00%	\$ 121,500.00	\$ 161,595.00	\$ (63,733.76)	\$	97,861.24
Lincoln Road ramps	2.50%	\$ 4,050.00	\$ 5,386.50		\$	5,386.50
Fillmore Miami Beach	22.50%	\$ 36,450.00	\$ 48,478.50		\$	48,478.50
Total Payment - Year	100.00%	\$ 162,000.00	\$ 215,460.00		\$	151,726.24 (c)

ACTUAL AMOUNT PAID **\$ 134,662.50 (d)**

Difference between Amount Paid (d) and Recalculated amount (c) **\$ 17,063.74 (e)**

Example 2 - City is due a payment of \$17,063.74

RESOLUTION NO. 2015-28943

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE RECOMMENDATION OF THE FINANCE AND CITYWIDE PROJECTS COMMITTEE, AND THE CITY MANAGER, AND APPROVING BY 5/7ths VOTE, A WAIVER OF THE COMPETITIVE BIDDING REQUIREMENT, FINDING SUCH WAIVER TO BE IN THE BEST INTEREST OF THE CITY; AUTHORIZING THE CITY ADMINISTRATION TO NEGOTIATE AN EXTENSION OF THE CONCESSION AGREEMENT WITH FIRST CLASS PARKING FOR VALET PARKING SERVICES, FOR A THREE (3) YEAR PERIOD OR SUBSTANTIAL COMPLETION OF THE MIAMI BEACH CONVENTION CENTER RENOVATION AND EXPANSION PROJECT, WHICHEVER OCCURS FIRST.

WHEREAS, on February 25, 2009, the Mayor and Commission approved Resolution No. 2009-27017, awarding a concession agreement to First Class Parking, Inc., to provide valet parking services to the Miami Beach Convention Center (MBCC); Fillmore at the Jackie Gleason Theater; Lincoln Road; and other City property, as required (the Agreement); and

WHEREAS, the initial term of the Agreement commenced on October 1, 2010 and expired on September 30, 2013; and

WHEREAS, a two-year renewal option was exercised and commenced on October 1, 2013, and expires on September 30, 2015; and

WHEREAS, the MBCC will undergo an unprecedented multiple year renovation and expansion project (the Project) and the MBCC will remain operational through construction; and

WHEREAS, the City Administration has determined that it would be in the best interest of the City to have a valet parking service provider that is familiar with the operations and dynamics of the MBCC through the construction phase of the Project; and

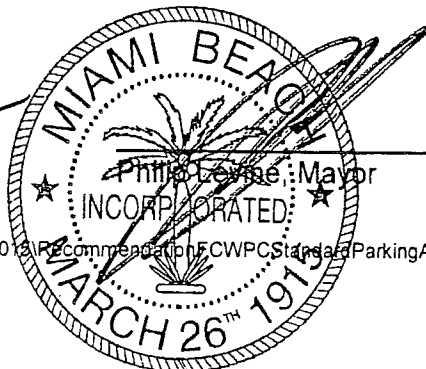
WHEREAS, on February 2, 2015, the Finance and Citywide Projects Committee recommended that the City Commission waive the competitive bidding requirement, and negotiate an extension of the Agreement for a term of three (3) years, or substantial completion of the Project, whichever occurs first.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby accept the recommendation of the Finance and Citywide Projects Committee, and the City Manager, and approve, by 5/7ths vote, a waiver of the competitive bidding requirement, finding such waiver to be in the best interest of the City; authorizing the City Administration to negotiate an extension of the Concession Agreement with First Class Parking for Valet Parking Services, for a three (3) year period or substantial completion of the Miami Beach Convention Center Renovation and Expansion Project, whichever occurs first.

PASSED AND ADOPTED this 11 day of March 2015.

ATTEST:

[Signature] 3/17/15
Rafael E. Granado, City Clerk



APPROVED AS TO FORM & LANGUAGE & FOR EXECUTION
[Signature] 3/11/15
City Attorney Date