

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease Agreement") is made and entered into on this _____ day of _____, 2018, by and between CITY OF DELRAY BEACH, a political subdivision of the State of Florida ("CITY"), and TKG DELRAY BEACH LLC, a Florida limited liability corporation, located at 105 NE 1st Ave., Delray Beach, FL 33411 ("LESSEE") (CITY and LESSEE each a "Party" and collectively the "Parties").

WHEREAS, CITY is the owner of a parking garage known as the Old School Square Parking Garage ("Garage") located at 180 NE 1st Street.

WHEREAS, LESSEE is the owner of the Hyatt Place hotel adjacent to the Garage. LESSEE desires temporary and exclusive use of forty-five spaces in the Garage in order to provide parking for its hotel guests during the construction of a two-story office building, known as Phase II of Hyatt Place, that was approved by the City in April 2011; and

WHEREAS, CITY finds it to be in the public interest to enter in a lease for the use stated herein under the terms and conditions set forth below.

W I T N E S S E T H:

IN CONSIDERATION of the mutual terms, conditions, promises, and covenants hereinafter contained, it is hereby agreed by and between the parties hereto as follows:

1. DESCRIPTION OF PREMISES:

CITY hereby leases to Lessee and Lessee hereby leases from CITY forty-five parking spaces on the top floor of the Old School Square Parking Garage, located at 180 NE Street, Delray Beach, Florida, as shown on Exhibit "A", which is attached hereto, and made a part of this Lease Agreement (the "Premises").

2. TERM AND RENEWALS:

LESSEE shall have and hold the Premises for a term of one (1) year (hereinafter referred to as the "Term") commencing on the date this agreement is fully executed by the party ("Commencement Date"). For the purposes of this Lease Agreement, a "Lease Year" shall be defined as that twelve (12) month period during the Term commencing on the Commencement Date. For the purposes of this Lease Agreement, a "Lease Month" shall be defined as those successive calendar month periods beginning with the Commencement Date and continuing through the Term of the Lease Agreement.

CITY, acting through its City Manager, may renew this Lease Agreement for a term not to exceed six (6) months upon sixty (60) days' written notice from LESSEE, before the end of the then current term. Either CITY, acting through its City Manager, or LESSEE may terminate this Lease Agreement as indicated under Section 11, TERMINATION.

3. COMPENSATION:

LESSEE agrees to pay to CITY, as compensation for the privileges granted herein, the total sum of FIVE THOUSAND DOLLARS (\$5000) per month due on the first day of the month, in advance, so long as this Lease Agreement is in full force and effect. LESSEE agrees to pay all expenses creating and using a reserved parking spaces including signage and other enforcement mechanisms (which may include barriers, bollards or a gate), and the cost to return the Premises to its original condition. LESSEE shall also pay all sales and use taxes levied or assessed under this Lease Agreement incurred as a result of LESSEE's use of the Premises. Additionally, LESSEE agrees to make a one time payment of \$2,500.00 to CITY, as compensation for LESSEE's use of the PREMISES for approximately two weeks prior to the execution of this Lease Agreement.

4. USE OF THE PREMISES:

LESSEE shall use the Premises only for the purposes of parking and storing vehicles owned or operated by LESSEE's hotel guests and hotel patrons. LESSEE's use of the Premises shall be in a commercially reasonable manner. The CITY shall not be responsible for enforcing LESSEE's parking rights against any third parties. However, LESSEE is specifically authorized to enforce its right to use the Premises, exercising reasonable discretion, against unauthorized third parties who have no right to use the spaces depicted in Exhibit "A". LESSEE may employ its own reasonable enforcement methods, may contract with the CITY's parking enforcement vendor, or any other parking enforcement vendor of LESSEE's choosing.

The Premises shall not be used for any other purpose whatsoever without written consent of CITY. LESSEE covenants that it will not, without written consent of CITY, permit the Premises to be used or occupied by any person, firm, entity, or corporation other than LESSEE, its hotel guests, and hotel patrons. LESSEE further covenants that no nuisance or hazardous trade or occupation shall be permitted or carried on, in, or upon said Premises, that no act shall be permitted and nothing shall be kept in or about said Premises that will increase the risk of any hazard, fire, or catastrophe, and that no waste shall be permitted or committed upon or any damage done to said Premises. LESSEE shall not permit the Premises to be used or occupied in any manner which will violate any laws or regulations of any governmental authority. Notwithstanding the foregoing,

CITY hereby agrees and acknowledges that LESSEE may use the Premises for hotel guest parking for more than fourteen (14) consecutive hours and that LESSEE shall incur no fines or penalties for such use of the PREMISES hereunder.

5. ALTERATIONS AND IMPROVEMENTS TO PREMISES:

LESSEE may not make any alteration, adjustment, partition, addition, or improvement, including the placement of signage, to the Premises, or any part thereof, without obtaining prior written consent of CITY. All requests by LESSEE shall be in writing and shall contain all pertinent plans and specifications. All alterations, adjustments, partitions, additions, or improvements shall, at the CITY's sole discretion, remain the exclusive property of CITY or be removed by LESSEE upon CITY's request. In the event that CITY shall request removal, LESSEE shall perform, at its sole cost, removal in a manner that shall return the Premises to the condition in which it was received. Any costs necessary to restore or prepare the Premises for return shall be the sole responsibility of LESSEE.

6. ASSIGNMENT OR SUBLETTING:

Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other Party.

7. PERSONAL PROPERTY AND DAMAGE:

LESSEE agrees that all personal property placed upon the Premises, inclusive of vehicles, shall remain the property of LESSEE, and shall be placed upon the Premises at the risk of LESSEE. LESSEE shall give to CITY, or its agent, prompt written notice, in compliance with the provisions of Section 16, Notices, below, of any occurrence, incident, or accident occurring on the Premises. In the event that any damage should occur to the Premises, LESSEE shall promptly notify CITY.

8. CITY'S RIGHT TO ENTER:

LESSEE agrees that in the event of any catastrophe, including but not limited to natural disasters such as hurricanes and other weather-related events, the CITY shall have the right to take immediate occupancy of the Premises and to utilize the Premises for its own use during and subsequent to any such emergency. CITY shall occupy the Premises for only such time as is reasonably necessary and shall be responsible for any damage caused to the Premises reasonably resulting from any such emergency.

In the event that CITY occupies the PREMISES under this Section 8, it shall take

reasonable steps to accommodate LESSEE's parking requirements in a different section of the PREMISES or any other parking controlled by CITY in the surrounding vicinity. To the extent that LESSEE is deprived of its use of the PREMISES by CITY, then LESSEE's monthly payment to the CITY for use of the PREMISES shall be pro-rated for the number of days per number of parking spaces LESSEE was unable to use.

CITY or its agents, or any authorized employee of said agent, may enter upon said Premises at all reasonable times and hours to examine same to determine if LESSEE is properly maintaining the Premises according to the terms of this Lease Agreement.

9. INDEMNIFICATION:

LESSEE shall at all times hereafter indemnify, hold harmless and, at the City Attorney's option, defend or pay for an attorney selected by the City Attorney to defend CITY, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by any intentional, negligent, or reckless act of, or omission of, LESSEE, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Lease Agreement, including, without limitation, any and all claims, losses, liabilities, expenditures, demands, or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event any lawsuit or other proceeding is brought against CITY by reason of any such claim, cause of action, or demand, LESSEE shall, upon written notice from CITY, resist and defend such lawsuit or proceeding by counsel satisfactory to CITY or, at CITY's option, pay for an attorney selected by City Attorney to defend CITY. The obligations of this section shall survive the expiration or earlier termination of this Lease Agreement. To the extent considered necessary by CITY, any sums due to LESSEE under this Lease Agreement may be retained by CITY until all of CITY's claims for indemnification pursuant to this Lease Agreement have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by CITY.

If LESSEE uses a subcontractor, LESSEE shall, by written contract, require its subcontractors to agree to the requirements and obligations of this Section 9.

10. INSURANCE:

10.1 LESSEE shall, at a minimum, provide, pay for, and maintain in force at all times during the term of this Lease Agreement (unless otherwise provided), the insurance coverage set forth in this Article, in accordance with the terms and conditions required by this Article.

10.2 Such policy or policies shall be without any deductible amount unless otherwise noted in this Lease Agreement and shall be issued by approved companies authorized to do business in the State of Florida, with an AM Best financial rating of A- or better. LESSEE shall pay all deductible amounts, if any. LESSEE shall specifically protect the City of Delray Beach by naming the City of Delray Beach as an additional insured under the Commercial Liability Policy as well as on any Excess Liability Policy coverage. The official title of the certificate holder is City of Delray Beach. This official title shall be used in all insurance documentation.

10.3 Commercial Liability Insurance. A Commercial Liability Insurance Policy shall be provided with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence combined single limit for bodily injury liability and property damage liability and shall contain minimum limits of One Million Dollars (\$2,000,000.00) per aggregate. Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial Liability Policy as filed by the Insurance Services Office without restrictive endorsements excluding or limiting coverage for:

Premises and/or operations.

Explosion, Collapse and Underground Hazards

Independent contractors.

Products and/or Completed Operations for contracts.

Broad Form Contractual Coverage applicable to this specific Lease Agreement, including any hold harmless and/or indemnification agreement.

Personal Injury Coverage with Employee and Contractual Exclusions removed, with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.

10.4 Workers' Compensation Insurance. Workers' Compensation insurance to apply for all employees in the minimum amount required by Chapter 440, Florida Statutes, as may be amended from time to time, the "Workers' Compensation Law" of the State of Florida, and all applicable federal laws.

10.5 LESSEE shall furnish to CITY proof of insurance such as Certificate of Insurance and endorsements, Declarations pages or policies evidencing the insurance coverage specified by this Article within fifteen (15) calendar

days of notification of award of the Lease Agreement. LESSEE's failure to provide to CITY the Certificates of Insurance or endorsements evidencing the insurance coverage within fifteen (15) calendar days shall provide the basis for the termination of the Lease Agreement.

10.6 Coverage is not to cease and is to remain in force until all performance required of LESSEE is completed. All policies must be endorsed to provide CITY with notice of expiration, cancellation and/or restriction. If any of the insurance coverage will expire prior to the completion of the work, copies of renewal policies shall be furnished upon expiration.

10.7 CITY reserves the right to review and revise any insurance requirements at the time of renewal or amendment of this Lease Agreement, including, but not limited to, deductibles, limits, coverage, and endorsements. If LESSEE uses a subcontractor, LESSEE shall ensure that subcontractor names CITY as an additional insured.

11. TERMINATION:

This Lease Agreement may be canceled by either CITY, acting through its City Manager, or LESSEE with or without cause, at any time during the term hereof, upon thirty days written notice to the other Party of its desire to terminate this Lease.

12. MAINTENANCE, REPAIR, AND DAMAGE OF PREMISES:

It shall be the responsibility of LESSEE to keep the area of Premises used by LESSEE clean, safe, sanitary, and free from trash and debris. The upkeep and maintenance of all areas herein used by LESSEE shall be borne by LESSEE, and LESSEE agrees to maintain such areas of the Premises in accordance with the terms and conditions of this Lease Agreement and consistent the current industry practice for a Class A parking garage facility. Notwithstanding anything herein to the contrary, LESSEE's obligation to upkeep and maintain the Premises shall be limited to cleaning or janitorial services to keep clean the area of the Premises used by LESSEE. Nothing herein shall obligate LESSEE to maintain the physical structure of the Premises, without limitation to the provision below.

LESSEE shall be fully responsible for damage of any kind or nature to the Premises and CITY property located thereon caused by the use of the Premises by LESSEE or invitees of LESSEE. LESSEE shall be fully responsible for any and all repairs or replacement necessitated by LESSEE's use of the Premises deemed necessary by CITY to return the Premises and CITY property to the condition existing at the commencement of this Lease Agreement, normal wear and tear excluded. LESSEE shall give to CITY, or its agent, prompt written

notice, in compliance with the provisions of Section 16 below, NOTICES, of any occurrence, incident, or accident occurring on the Premises in connection with LESSEE's use of the Premises. In the event any damage should occur to the Premises as a result of LESSEE's use of the same, LESSEE shall promptly notify CITY.

CITY has no knowledge of any issue or condition of the Premises that would make such Premises unsafe to LESSEE's personnel, such as environmental hazards, hazardous substances/materials, and structural and mechanical deficiencies.

13. AMENDMENTS:

No modification, amendment or alteration of the terms or conditions contained herein shall be effective unless contained in a written document executed by the Parties hereto, with the same formality and of equal dignity herewith.

14. SURRENDER UPON TERMINATION:

LESSEE shall peaceably surrender and deliver the Premises to CITY, or its agents, immediately upon expiration of the Lease term or upon termination of this Lease Agreement.

LESSEE further agrees that it will leave the Premises in the condition existing at the commencement of this Lease Agreement, all alterations, adjustments, partitions, additions, or improvements excepted, and normal wear and tear excepted, subject to the repair and maintenance obligations provided in this Lease Agreement.

15. MATERIALITY AND WAIVER OF BREACH:

CITY and LESSEE agree that each requirement, duty, and obligation set forth herein was bargained for at arms-length and is agreed to by the Parties in exchange for quid pro quo, that each is substantial and important to the formation of this Lease Agreement, and that each is, therefore, a material term hereof.

CITY's failure to enforce any provision of this Lease Agreement shall not be deemed a waiver of such provision or modification of this Lease Agreement. A waiver of any breach of a provision of this Lease Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Lease Agreement.

16. NOTICES:

Whenever either Party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the Party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the Parties designate the following:

Notice to CITY shall be addressed to:

City of Delray Beach, City Manager
100 NW 1st Avenue
Delray Beach, FL 33444

With a copy to:

City Attorney
200 NW 1st Avenue
Delray Beach, FL 33444

Notice to the LESSEE shall be addressed to:

TKG Delray Beach LLC
Attn: Scott Webb
701 S. Olive Ave.
Ste. 104
West Palm Beach, FL 33401

17. INDEPENDENT CONTRACTOR:

LESSEE is an independent contractor under this Lease Agreement. Services provided by LESSEE pursuant to this Lease Agreement shall be subject to the supervision of LESSEE. In providing such services, neither LESSEE nor its agents shall act as officers, employees, or agents of CITY. The Parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Lease Agreement.

18. CONTINGENCY FEE:

LESSEE warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for LESSEE, to solicit or secure this Lease Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for LESSEE, any fee, commission, percentage, gift, or other

consideration contingent upon or resulting from the award or making of this Lease Agreement. For a breach or violation of this provision, CITY shall have the right to terminate this Lease Agreement without liability at its discretion, or to deduct from the Lease Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

19. THIRD PARTY BENEFICIARIES:

Neither LESSEE nor CITY intends to directly or substantially benefit a third party by this Lease Agreement. Therefore, the Parties agree that there are no third-party beneficiaries to this Lease Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Lease Agreement.

20. COMPLIANCE WITH LAWS:

LESSEE shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations related to this Lease Agreement.

21. SEVERANCE:

In the event this Lease Agreement or a portion of this Lease Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless CITY or LESSEE elects to terminate this Lease Agreement. The election to terminate this Lease Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

22. JOINT PREPARATION:

The Parties hereto acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Lease Agreement has been a joint effort of the Parties, the language has been agreed to by parties to express their mutual intent, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other.

23. PRIORITY OF PROVISIONS:

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Lease Agreement by reference, and a term, statement, requirement, or provision of this Lease Agreement, the

term, statement, requirement, or provision contained in this Lease Agreement shall prevail and be given effect.

24. JURISDICTION, VENUE, WAIVER OF JURY TRIAL:

This Lease Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. All Parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Lease Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Fifteenth Judicial Circuit in Palm Beach County, Florida, and venue for litigation arising out of this Lease Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either Party may claim by virtue of its residency or other jurisdictional device. **BY ENTERING INTO THIS LEASE AGREEMENT, LESSEE AND CITY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS LEASE AGREEMENT.**

25. PRIOR AGREEMENTS:

This document represents the final and complete understanding of the Parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The Parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Lease Agreement that is not contained in this written document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

26. INCORPORATION BY REFERENCE:

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the Parties. The attached Exhibit "A" is incorporated into and made a part of this Agreement.

27. REPRESENTATION OF AUTHORITY:

Each individual executing this Lease Agreement on behalf of a Party hereto hereby represents and warrants that he or she is, on the date he or she signs this Lease Agreement, duly authorized by all necessary and appropriate action to execute this Lease Agreement on behalf of such Party and does so with full legal authority.

28. MULTIPLE ORIGINALS:

This Lease Agreement may be executed in two (2) copies, each of which shall be deemed to be an original.

29. PUBLIC RECORDS.

IF THE LESSEE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE LESSEE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY OF DELRAY BEACH, CITY CLERK, 100 N.W. 1ST AVE., DELRAY BEACH FLORIDA. THE CITY CLERK'S OFFICE MAY BE CONTACTED BY PHONE AT 561-243-7050 OR VIA EMAIL AT CITYCLERK@MYDELRAYBEACH.COM.

a. LESSEE shall comply with public records laws, specifically to:

- i. Keep and maintain public records required by the City to perform the service.
- ii. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Florida Statute or as otherwise provided by law.
- iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the LESSEE does not transfer the records to the City.
- iv. Upon completion of the Agreement, transfer, at no cost, to the City all public records in possession of the LESSEE or keep and maintain public records required by the City to perform the service. If the LESSEE transfers all public records to the City upon completion of the Agreement, the LESSEE shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the LESSEE keeps and maintains public records upon completion of the Agreement, the LESSEE shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

- v. If the LESSEE does not comply with this section, the City shall enforce the contract provisions in accordance with the contract and may unilaterally cancel this contract in accordance with state law.

30. INSPECTOR GENERAL:

LESSEE is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matter relating to the negotiation and performance of this contract and may demand and obtain records and testimony from LESSEE and its sub LESSEES and lower tier sub LESSEES. LESSEE understands and agrees that in addition to all other remedies and consequences provided by law, the failure of LESSEE or its sub LESSEE or lower tier sub LESSEES to fully cooperate with the Inspector General when requested may be deemed by the CITY to be a material breach of this Agreement justifying its termination.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on the day and year first above written

ATTEST:

CITY OF DELRAY BEACH, FLORIDA

By: _____
City Clerk

By: _____
Shelly Petrolia, Mayor

Approved as to Form:

By: _____
City Attorney

WITNESSES:

(Name printed or typed)

(Name printed or typed)

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by _____ (name and title of officer or agent) of _____ (name of corporation acknowledging), a _____ (state or place of incorporation) corporation, on behalf of the corporation. He/She is personally known to me or has produced _____ (type of identification) as identification and did (did not) take an oath.

Signature of Notary Public - State
of Florida

WITNESSES:

TKG DELRAY BEACH LLC

(Name printed or typed)

By: _____
Print: _____

(Name printed or typed)

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by _____ (name and title of officer or agent) of _____ (name of corporation acknowledging), a _____ (state or place of incorporation) corporation, on behalf of the corporation. He/She is personally known to me or has produced _____ (type of identification) as identification and did (did not) take an oath.

Signature of Notary Public - State
of Florida

Exhibit "A"
Property Description:

Exhibit A Old School Square Parking Garage Parking Space Lease Area



Not To Scale

Document Path: S:\Eng\CADD\GIS\Projects\Faegin\parking\Old School Square Parking Garage\Top Floor.mxd