

MEMORANDUM

TO: MAYOR AND CITY COMMISSION

FROM: CITY ATTORNEY'S OFFICE

DATE: April 20, 2020

RE: **Parking License Agreement with VS Lakeland, LLC
for 15 Parking Spaces in Tigertown Parking Lot**

Attached for your consideration is a Parking License Agreement with VS Lakeland, LLC for fifteen (15) parking spaces in the Tigertown parking lot. VS Lakeland owns property located at 2111 Lakeland Hills Boulevard, which it leases to GV Lakeland, LLC, the operator of an assisted living and memory care facility commonly known as Grand Villa of Lakeland. Also on this agenda, VS Lakeland is seeking a zoning change on its property from O-1 (Low Impact Office) to C-1 (Pedestrian Commercial) in order to facilitate the addition of 10 beds to Grand Villa's facility. One condition of the zoning change is that Grand Villa secure the rights to 15 additional parking spaces in order to meet City parking requirements.

Under the attached Parking License Agreement, VS Lakeland is granted the right to use 15 parking spaces in the Tigertown parking lot to the east of Grand Villa's facility. They will have the exclusive right to use the parking spaces except during Detroit Tiger spring training games and for a period three (3) hours before and after each spring training game. They will also be granted an access easement between the subject parking spaces and their facility and will be responsible for constructing and maintaining a sidewalk within the access easement. Under the Agreement, the sidewalk must be at least four feet (4') wide and six inches (6") thick, substantially flush with the grass surrounding it and must be lit at night with in-ground lighting fixtures that can be driven over by vehicles.

The initial term of the Agreement is for five (5) years and the Agreement will be renewed for successive 5-year terms thereafter unless terminated by the parties. VS Lakeland will pay \$10.00 per space per month for the right to use the parking spaces, which rate will be subject to a CPI adjustment every five years. The City may terminate the Agreement upon default by VS Lakeland or in the event the parking spaces are no longer necessary to serve VS Lakeland's property. VS Lakeland will indemnify the City and provide commercial general liability insurance in the amount of \$1,000,000.00 and excess liability coverage in the amount of \$1,000,000.00.

It is recommended that the City Commission approve the attached Parking License Agreement with VS Lakeland, LLC and authorize the appropriate City officials to execute the Agreement.

Attachment

PARKING LICENSE AGREEMENT

THIS PARKING LICENSE AGREEMENT (the "**Agreement**") is made effective as of the ____ day of _____, 2020 (the "**Effective Date**"), by and between VS Lakeland, LLC, a Delaware limited liability company ("**VS**"), with a mailing address of _____, and The City of Lakeland, a Florida municipal corporation (the "**City**"), with a mailing address of _____.

RECITALS:

- A. The City is the owner of the "Tigertown Complex," a sports complex used in connection with the Detroit Tigers (the "**Tigers**") spring training and other activities ("**Tigertown**").
- B. VS owns the land described on Exhibit "A" attached hereto (the "**VS Land**").
- C. VS leases the VS Land to an affiliate, and the affiliate leases the VS Land to GV Lakeland, LLC, a Florida limited liability company ("**Operator**"), and Operator operates thereon an assisted living and memory care facility commonly known as Grand Villa of Lakeland (the "**Project**").
- D. The VS Land is located west of and adjacent to certain land owned by the City and described on Exhibit "B" attached hereto (the "**City Land**") on which Tigertown is located.
- E. Tigertown includes a paved parking lot (the "**Parking Lot**") and undeveloped land lying between the Parking Lot and the Project (the "**Vacant Land**"), as depicted on Exhibit "C" attached hereto (the "**Plan**").
- F. VS desires to obtain a license from the City to enable tenants of VS Land to use certain spaces within the Parking Lot as well as a pedestrian access easement as described below, and the City is willing to grant to VS such a license and access easement, on and subject to the terms and conditions as hereinafter set forth.

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

1. Grant of Parking License. The City hereby grants to VS, and any person or entity claiming an interest in the VS Land by or through VS, and each of their employees, residents, agents, and invitees (collectively, the "**VS Parties**"), the exclusive right and license (the "**License**") to use the fifteen (15) parking spaces depicted on the Plan (the "**Parking Spaces**") 24 hours a day during each day of the Term except during the times that the Tigers conduct spring training baseball games at Tigertown and for a period of three (3) hours before and after such spring training games.

2. License Fee. VS shall pay the City the sum of Ten Dollars (\$10.00) per Parking Space per month for the use of the Parking Spaces (the "**License Fee**"). The License Fee shall be adjusted at the commencement of each successive five-year renewal of this Agreement by the percentage change during the preceding five years in the Consumer Price Index, All Urban Consumers, U.S. City Average, All Items, as published by the Bureau of Labor Statistics, United States Department of Labor (the "CPI-U"). The License Fee shall be due monthly, in advance, on or before the first (1st) day of each month during the Term [prorated for the first month of the Term (as defined below), if such first day is not also the first day of a calendar month]; provided, however, VS has the option of paying the License Fee annually in advance. The License Fee shall be paid to the City at the following address: _____, Lakeland, Florida _____, Attn: _____.

3. Access Easement. The City also grants to the VS Parties a non-exclusive pedestrian access easement (the "**Access Easement**") over the portion of the Vacant Land shown on the Plan as "**Sidewalk**." The Access Easement shall be in effect during the Term of this Agreement. VS shall have the sole responsibility for installing and maintaining any sidewalk or other walkway within the Access Easement necessary or desirable to accommodate such pedestrian access (the "**Sidewalk**"); however, any Sidewalk so constructed shall satisfy the following standards, all of which shall be constructed and maintained at the sole expense of VS: (i) the Sidewalk shall be four feet (4') wide and six inches (6'')

thick; (ii) the Sidewalk shall be constructed so that it is substantially flush with the grass surrounding it; and (iii) the Sidewalk shall be lit at night by in-ground lighting fixtures that can be driven over by vehicles and which can be attached to motion sensors provided by VS if requested by the City. VS and the City shall enter into a recordable Access Easement reflecting the foregoing which VS may record in the public records at its sole cost and expense.

4. Term.

(a) The initial term of this Agreement (the “**Initial Term**”) shall commence on the Effective Date and shall extend for a period of five (5) years thereafter unless sooner terminated as herein provided. After the Initial Term, this Agreement shall be renewed for successive five (5)-year terms unless VS provides written notice of termination to the City prior to the expiration of the then-existing Term. The Initial Term and any period this Agreement continues after the Initial Term is referred to as the “**Term.**”

(b) During the Term, (i) the City may terminate this Agreement by sixty (60) days' written notice to VS only if an Event of Default (as defined below) then exists or if the Parking Spaces are no longer legally required for a use existing on the VS Land; and (ii) VS may terminate this Agreement at any time upon written notice to the City.

5. Legal Description and Sketches. If required for the implementation of any provision of this Agreement, VS shall pay the cost of any survey or title search necessary to create a legal description for the Parking Spaces or the Access Easement.

6. Compliance with Rules and Regulations. The use of the Parking Spaces is subject to all rules and regulations that the City applies to other users of the Parking Lot.

7. Indemnification; Insurance; Limitation of Liability.

(a) VS shall indemnify, pay the defense costs of, and hold harmless the City, from and against any and all losses, damage, claims, demands, actions or causes of action, suits at law or in equity, judgments, liabilities or expenses, including without limitation attorney’s fees and costs, on account of the injury or death to any person whatsoever, or for damage or destruction to property of any person or entity whatsoever, including loss or destruction or loss of use thereof, arising out of, directly or indirectly, any accident, occurrence or action related to: (i) the exercise of the rights granted herein, (ii) the failure to comply with any one or more of the obligations under this Agreement, or (iii) any combination of the foregoing, by VS, its officers, employees, contractors, agents, servants or invitees. VS’s obligation to indemnify the City shall survive the expiration or termination of this Agreement.

(b) VS shall at all times during the Term of this Agreement maintain insurance coverage in accordance with the requirements set forth on Exhibit “D” attached hereto.

(c) The City shall not be liable to VS, any other VS Party, or any third party for any damages, losses or injuries to persons or property which may occur as a result of the use of the License, the Access Easement, or the Sidewalk, except when such injury, loss or damage results from the gross negligence or willful malfeasance of the City. Nothing herein shall be construed or operate as a waiver of any limitation of liability set forth in Section 768.28, Florida Statutes.

8. Assignment. VS shall have the right to transfer or assign all or any part of its interest in this Agreement to any purchaser of the VS Land and/or any person or entity claiming any interest in the VS Land by or through VS. In the case of any transfer or assignment to any purchaser of the VS Land, VS shall be released from this Agreement provided that the purchaser expressly assumes in writing all of VS' obligations under this Agreement.

9. Successors and Assigns. This Agreement and the License and Access Easement created hereby shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto.

10. Events of Default. The following shall be considered an event of default ("**Event of Default**") by VS hereunder:

(a) Failure to pay the License Fee to the City within ten (10) days after notice of the same from the City;

(b) Failure by VS to perform any other obligation set forth in this Agreement within thirty (30) days after receipt of written notice of default from the City; provided, however if the nature of the default is such that it cannot reasonably be cured within thirty (30) days, then such cure period shall be extended by such additional time as is necessary to reasonably complete the cure, provided that VS commences such cure within the initial thirty (30)-day period and thereafter diligently pursues such cure to completion.

11. Notices. Any notice which may be given under this Agreement shall be given in writing and sent by hand delivery, or by overnight courier service, or by mailing the same by certified United States Mail, return receipt requested, first class mail, postage prepaid, to the individuals and at the addresses for VS and the City set forth below or such other place as either party hereto shall from time to time designate in writing. Notice shall be deemed given upon receipt in the case of hand delivery or overnight courier service, and upon the earlier of receipt or five (5) business days following deposit into the U.S. Mail in the case of mailing.

To City: CITY OF LAKELAND
228 South Massachusetts Avenue
Lakeland, Florida 33801
Attention: Parks & Recreation Director

With a copy to: CITY OF LAKELAND
228 South Massachusetts Avenue
Lakeland, Florida 33801
Attention: City Attorney

To VS: VS LAKELAND, LLC

With a copy to: _____

12. Attorneys' Fees; Governing Law; Jurisdiction; Waiver of Jury Trial. In the event of any legal action between the parties regarding this Agreement, the prevailing party shall be entitled to reimbursement of its reasonable attorneys' fees and costs, whether at trial, on appeal, in bankruptcy or in post-judgment collection proceedings. This provision shall survive termination of this Agreement for any reason. This Agreement shall be construed in accordance with the laws of the State of Florida. Venue and jurisdiction for any action arising out of this Agreement shall be in the courts in and for Polk County, Florida. THE PARTIES TO THIS AGREEMENT HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES AGAINST THE OTHER ON ANY MATTERS ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT.

13. Amendment; Waiver; Approval; Consent. This Agreement constitutes the entire agreement between the parties. This Agreement shall not be amended, modified or waived except in writing signed by all parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

VS LAKELAND, LLC, a Delaware limited liability company

Signature: _____

Print Name: _____

Signature: _____

Print Name: _____

By: _____

Name:

Title:

THE CITY OF LAKELAND, a Florida municipal corporation

By: _____

H. William Mutz, Mayor

ATTEST:

Kelly S. Koos, City Clerk

Approved as to Form and Correctness:

Palmer C. Davis, City Attorney

EXHIBIT A

LEGAL DESCRIPTION OF VS LAND

EXHIBIT "A"

Legal Description:

Begin at a point 40.0 feet east and 57.63 feet north of the northwest corner of the southeast 1/4 of the southwest 1/4 of Section 6, Township 28 South, Range 24 East, run thence South along the East right-of-way line of Lakeland Hills Boulevard, 280.14 feet for the point of beginning of this description;

Continue thence south along said east right-of-way line, 194.34 feet; run thence south $89^{\circ} 56'$ East, 400.0 feet; run thence North and parallel to said East right-of-way line, 196.40 feet; run thence South $89^{\circ} 46' 20''$ West, 400.0 feet to the point of beginning, Polk County, Florida.

EXHIBIT B

LEGAL DESCRIPTION OF CITY LAND

EXHIBIT C

THE PLAN

[attached]



NEW 4'-0" WIDE X 6" THICK CONCRETE SIDEWALK ILLUMINATE WITH IN GROUND PATHWAY LIGHTS. SIDEWALK AND LIGHTS TO BE RATED FOR VEHICULAR TRAFFIC

NEW SIDEWALK SHALL BE JUST NORTH OF EXISTING ELEC. BOX

15 DEDICATED PARKING SPACES LOCATED HERE

EXHIBIT D
INSURANCE REQUIREMENTS

STATEMENT OF PURPOSE

The City of Lakeland (the "City") from time to time enters into agreements, leases and other contracts with Other Parties (as hereinafter defined).

Such Agreements shall contain at a minimum risk management/insurance terms to protect the City's interests and to minimize its potential liabilities. Accordingly, the following minimum requirements shall apply:

CITY DEFINED

The term City (wherever it may appear) is defined to mean the City of Lakeland itself, its Commission, employees, volunteers, representatives and agents.

OTHER PARTY DEFINED

The term Other Party (wherever it may appear) is defined to mean the other person or entity which is the counter-party to the Agreement with the City and any of such Other Party's subsidiaries, affiliates, officers, employees, volunteers, representatives, agents, contractors and subcontractors.

LOSS CONTROL/SAFETY

Precaution shall be exercised at all times by the Other Party for the protection of all persons, including employees, and property. The Other Party shall comply with all laws, rules, regulations or ordinances related to safety and health, and shall make special effort to anticipate and detect hazardous conditions and shall take such precautionary and prompt action where loss control/safety measures should reasonably be expected.

The City may order work to be stopped at any time, without liability, if conditions exist that present immediate danger to persons or property. The Other Party acknowledges that such stoppage, or failure to stop, will not shift responsibility for any damages from the Other Party to the City.

INSURANCE - BASIC COVERAGES REQUIRED

The Other Party shall procure and maintain the following described insurance, except for coverage specifically waived by the City of Lakeland, on policies and with insurers acceptable to the City, and insurers with AM Best ratings of no less than A.

These insurance requirements shall in no way limit the liability of the Other Party. The City does not represent these minimum insurance requirements to be sufficient or adequate to protect the Other Party's interests or liabilities, but are merely minimums.

"Except for workers' compensation and professional liability, the Other Party's insurance policies shall be endorsed to name the City of Lakeland as additional insured. It is agreed that the Other Party's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by The City of Lakeland for liability arising out of the operations of this agreement."

INSURANCE – BASIC COVERAGES REQUIRED (cont’d)

Except for worker’s compensation, the Other Party waives its right of recovery against the City, to the extent permitted by its insurance policies.

The Other Party’s deductibles/self-insured retentions shall be disclosed to the City and may be disapproved by the City. They shall be reduced or eliminated at the option of the City. The Other Party is responsible for the amount of any deductible or self-insured retention.

Insurance required of the Other Party or any other insurance of the Other Party shall be considered primary, and insurance of the City shall be considered excess, as may be applicable to claims which arise out of the Hold Harmless, Payment on Behalf of the City of Lakeland, Insurance, Certificates of Insurance and any Additional Insurance provisions of this agreement, contract, or lease.

Commercial General Liability: This insurance shall be an “occurrence” type policy written in comprehensive form and shall protect the Other Party and the additional insured against all claims arising from bodily injury, sickness, disease, or death of any person other than the Other Party’s employees or damage to property of the City or others arising out of any act or omission of the Other Party or its agents, employees, or Subcontractors and to be inclusive of property damage resulting from explosion, collapse or underground (xcu) exposures. This policy shall also include protection against claims insured by usual personal injury liability coverage, and to insure the contractual liability assumed by the Other Party under the article entitled INDEMNIFICATION, and “**Products and Completed Operations**” coverage.

The Other Party is required to continue to purchase products and completed operations coverage for a minimum of three years beyond the City’s acceptance of renovation or construction properties.

The liability limits shall not be less than:

Bodily Injury and Property Damage	\$1,000,000	Single limit each occurrence
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Business Automobile Liability: Business Auto Liability coverage is to include bodily injury and property damage arising out of ownership, maintenance or use of any auto, including owned, non-owned and hired automobiles and employee non-ownership use.

The liability limits shall not be less than:

Bodily Injury and Property Damage	\$300,000	Single limit each occurrence
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Workers’ Compensation: Workers’ Compensation coverage to apply for all employees for statutory limits and shall include employer’s liability with a limit of \$100,000 each accident, \$500,000 disease policy limits, \$100,000 disease limit each employee. (“All States” endorsement is required where applicable). If exempt from Worker’s Compensation coverage, as defined in Florida Statue 440, the Other Party will provide a copy of State Workers’ Compensation exemption.

All subcontractors shall be required to maintain Worker’s Compensation.

The Other Party shall also purchase any other coverage required by law for the benefit of employees.

Excess Liability: This insurance shall protect the Other Party and the additional insured against all claims in excess of the limits provided under the employer's liability, commercial automobile liability, and commercial general liability policies. The policy shall be an "occurrence" type policy, and shall follow the form of the General and Automobile Liability.

The liability limits shall not be less than: \$1,000,000

EVIDENCE/CERTIFICATES OF INSURANCE

Required insurance shall be documented in Certificates of Insurance which provide that the City shall be notified at least 30 days in advance of cancellation, nonrenewable, or adverse change.

New Certificates of Insurance are to be provided to the City at least 15 days prior to coverage renewals.

If requested by the City, the Other Party shall furnish complete copies of the Other Party's insurance policies, forms and endorsements.

For Commercial General Liability coverage, the Other Party shall, at the option of the City, provide an indication of the amounts of claims payments or reserves chargeable to the aggregate amount of liability coverage.

Receipt of certificates or other documentation of insurance or policies or copies of policies by the City, or by any of its representatives, which indicate less coverage than required does not constitute a waiver of the Other Party's obligation to fulfill the insurance requirements herein.