

## GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT (this "Lease") entered into this 20<sup>th</sup> day of May, 2013, between **WSR Old Naples, LLC**, a Florida limited liability company ("LESSOR"), whose mailing address is 3185 Horseshoe Drive South, Naples, FL 34104, and the **City of Naples** ("LESSEE"), whose mailing address is 735 8<sup>th</sup> Street South, Naples, FL 34102.

### RECITALS

**WHEREAS**, in an effort to accommodate many of the requests for Special Events in the City and to minimize the impact on City streets and parks; and

**WHEREAS**, during these special events, parking for both participants and attendees is at a high premium; and

**WHEREAS**, the City has not had access to remote vacant lots to accommodate either special events or parking; and

**WHEREAS**, LESSOR is the owner of the property shown on Exhibit "A" attached to this Lease and made a part hereof (the "Premises"); and

**WHEREAS**, the City has asked LESSOR and LESSOR has agreed, upon and subject to the terms and conditions hereinafter set forth, to lease the Premises to the City for special events and parking.

**NOW, THEREFORE**, in consideration of the mutual covenants contained in this Lease and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, LESSOR and LESSEE agree as follows:

#### Article 1. Lease / Demised Premises

LESSOR hereby leases the Premises to LESSEE for parking and special event venues as provided below. During the term of this Lease, LESSEE shall have the exclusive right to use and possess the Premises, subject to the right of LESSOR, and its agents, representatives and permittees, to enter onto the Premises in order to conduct such investigations, tests and inspections as LESSOR may deem necessary or appropriate in connection with its ownership, marketing or disposition of the Premises. Additionally, LESSOR may from time to time upon prior written notice to LESSEE remove portions of the Premises from the effect of this Lease to enable LESSOR to construct improvements to the Premises in connection with its pre-development activities upon the Premises. Further, LESSEE agrees to not make any alterations or improvements to the Premises without LESSOR's prior written consent, to be granted or withheld in LESSOR's sole discretion and LESSEE agrees to repair any damage caused to any portions of the Premises.

Article 2. Term of Lease

This Lease shall be for a term beginning upon execution and delivery hereof and shall continue uninterrupted thereafter, for 2 years, unless the Lease Term shall be sooner terminated as hereinafter provided.

Either party may terminate this Lease upon (i) 90 days prior written notice to the other party, without penalty if notice is delivered during the months of December – April during the Term of this Lease and (ii) 30 days prior written notice to the other party, without penalty if notice is delivered during the months of May – November during the Term of this Lease; provided, however, that upon any sale of the Premises by LESSOR, the purchaser shall have the right to terminate this Lease upon 30 days prior written notice to LESSEE.

Article 3. Rent

LESSEE agrees to pay as rent for the Premises for the term of this Lease the sum of \$100.00 (One Hundred Dollars) per year payable in advance.

Article 4. Default

Failure of LESSEE to comply with any provision of this Lease shall constitute a default. In the event of any such default, LESSOR (i) may, at its option, terminate this Lease after written notice to LESSEE and 30 day opportunity to cure such default, unless the default is cured within the notice period, and (ii) shall have all other rights and remedies available at law or in equity in consequence of such default.

Failure of LESSOR to comply with any provision or covenant of this Lease shall constitute a default, and LESSEE may, at its option, terminate this Lease after written notice to LESSOR and 30 day opportunity to cure such default, unless the default is cured within the notice period. The preceding sentence sets forth LESSEE'S sole and exclusive remedy for any default by LESSOR hereunder.

Article 5. Insurance / Control of Premises

It shall be a condition precedent to the effectiveness of this Lease that:

(a) LESSEE shall have provided LESSOR with evidence, in form and substance satisfactory to LESSOR, that there is in full force and effect insurance in the amounts and on the terms more fully set forth on Exhibit "B" attached hereto and incorporated herein by reference.

(b) LESSEE shall deliver Certificates of Insurance to the LESSOR evidencing the insurance required above and naming the LESSOR as Additional Insured and various other entities and/or lenders as LESSOR may request as additional

insureds. The insurance policies shall be primary and non-contributory to any insurance that LESSOR may carry and may not be canceled or materially reduced without at least thirty (30) days' prior written notice to LESSOR. All such policies required of LESSEE shall include waiver of subrogation endorsements in favor of LESSOR.

Such insurance must be continuously maintained during the term of this Lease. Any insurance limits required of the Lessee, are minimum limits only and not intended to restrict the liability imposed on Lessee in regard to this Agreement.

LESSEE shall be deemed to be in exclusive care, custody and control of the Premises during the term of this Lease, and shall, as between LESSOR and LESSEE, be solely liable for, and shall indemnify and hold harmless LESSOR from and against, any loss or liability arising out of injury and/or death to any person and/or damage to any property occurring on the Premises (and for any damage to the Premises themselves) during the term of this Lease (except as may be attributable to the gross negligence or wrongdoing of LESSOR), including without limitation any applicable expenses and attorney's fees. Lessee is responsible for their own personal property, equipment, and tools. Lessor shall not be responsible for any loss or damage to Lessee's personal property, equipment or tools.

**Article 6. Subleases and Assignments; Improvements; Employees; No Recording**

(a) This Lease shall not be assigned in whole or in part by LESSEE, nor shall the Premises nor any part thereof be sublet, nor shall any rights or privileges granted to LESSEE hereunder be sold, transferred, or assigned (except as otherwise expressly allowed under this Lease, including without limitation, those specified under Article 7, below), without the prior written consent of LESSOR, and any such sale, transfer, or assignment shall be void and terminate this Lease at the option of LESSOR;

(b) LESSEE shall not construct (or permit to be constructed) any improvements upon the Premises without the prior written consent of LESSOR. LESSEE covenants and agrees not to suffer or permit any lien of mechanics or materialmen to be placed upon or against the Premises or against LESSEE's leasehold interest in the Premises and, in case of any such lien attaching, to immediately remove same by payment, transfer to bond or other means. LESSEE has no authority or power to cause or permit any lien or encumbrance of any kind whatsoever, whether created by act of LESSEE, operation of law or otherwise, to attach to or be placed upon the Premises, and any and all liens and encumbrances created by LESSEE shall attach only to LESSEE's interest in the Premises. If any such liens so attach and LESSEE fails to remove same within thirty (30) days of discovery by LESSEE of the recording of any such lien, such occurrence shall be an event of default and LESSOR shall have the right but not the obligation to pay such lien and in such event LESSEE shall immediately reimburse LESSOR for any costs incurred by LESSOR plus interest at the maximum rate allowed by law.

(c) LESSEE shall have no authority to employ any person, entity, or agent for or on behalf of LESSOR with respect to any activities carried out on the Premises by LESSEE (or with LESSEE'S authorization), and in no event shall any person or entity performing any duties or engaging in any work upon the Premises at the request or direction of LESSEE be deemed to be an employee or agent of LESSOR.

(d) Neither this Lease nor any short form, memorandum or other notice thereof shall be recorded in the Public Records of Collier County.

#### Article 7. Licenses and Use Agreements for Special Events and Parking

LESSEE shall have the right (i) to enter into licenses or use agreements with third parties to conduct special events on the Premises, or to provide parking on the Premises in connection with special events (collectively, "Licenses"), and (ii) to charge for such use of the Premises, upon and subject to the following conditions:

(a) LESSEE agrees to provide LESSOR with not less than 30 days prior written notice of any scheduled event at the Premises and all Licenses shall be in writing, and LESSEE shall not enter into any License without first providing a copy thereof to LESSOR.

(b) Prior to entering into any proposed License, LESSEE shall provide LESSOR with evidence, in form and substance satisfactory to LESSOR, that the proposed licensee or user (the "Licensee") has obtained insurance coverages and limits as required of LESSEE under this Lease during the period in which the Premises are used or occupied by the Licensee. The terms of the Lease shall apply to any Licensee and all insurance and indemnity requirements contained in the Lease shall apply to any Licensee;

(c) Prior to the commencement of any use or occupancy permitted by a Licensee, LESSEE shall cause its agents or employees to physically inspect the Premises in order ensure that any conditions that could result in injury to persons or damage to property are clearly marked and, if feasible, fenced off from the rest of the Premises.

(d) If LESSEE derives any net income (directly or indirectly) from the conduct of any special event(s) or parking on the Premises, it shall promptly remit 50% of such net income to LESSOR. For purposes of this paragraph, "net income" means gross income less management and administrative expenses incurred by LESSEE that are directly related to the maintenance of the Premises.

#### Article 8. Notices

Any notice which LESSOR or LESSEE may be required to give to the other party shall be in writing to the other party at the addresses listed above. The notice to LESSEE shall be to the attention of the City Manager.

Article 9. No Representations, Etc. Regarding Premises

LESSEE ACKNOWLEDGES AND AGREES THAT IT IS LEASING THE PREMISES "AS IS" WITHOUT REPRESENTATION, WARRANTY OR COVENANT (EXPRESS OR IMPLIED) BY THE LESSOR AND SUBJECT TO (A) THE EXISTING STATE OF TITLE, (B) ANY STATE OF FACTS THAT AN ACCURATE SURVEY OR PHYSICAL INSPECTION MIGHT SHOW, AND (C) ANY VIOLATIONS OF APPLICABLE LAW THAT MAY EXIST ON THE DATE HEREOF. WITHOUT LIMITING THE GENERALITY OF THE PRECEDING SENTENCE, LESSOR HAS NOT MADE ANY REPRESENTATION, WARRANTY OR COVENANT (EXPRESS OR IMPLIED) CONCERNING, AND SHALL NOT HAVE ANY LIABILITY WHATSOEVER IN CONNECTION WITH, THE STATE OF TITLE TO THE PREMISES OR ITS VALUE, HABITABILITY, CONDITION, DESIGN, OPERATION OR FITNESS FOR THE USES AND PURPOSES CONTEMPLATED HEREBY, NOR SHALL LESSOR BE LIABLE FOR ANY LATENT, HIDDEN, OR PATENT DEFECT THEREIN OR THE FAILURE OF THE PREMISES, OR ANY PART THEREOF, TO COMPLY WITH ANY APPLICABLE LAW.

Article 10. Governing Law; Attorneys' Fees

(a) This Lease shall be governed by and construed in accordance with the laws of the State of Florida, exclusive of choice of law rules.

(b) If it becomes necessary for either party to employ the services of an attorney to enforce its rights under this Lease, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs.

(c) Severability. If any term, covenant, condition or provision of this Lease or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remaining terms, covenants, conditions and provisions shall not be affected thereby, and each term, covenant, condition and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

(d) Interpretation. Wherever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. The section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof. This Lease may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. The submission of this Lease for examination does not constitute a reservation of or agreement to lease the Premises; and this Lease shall become effective and binding only upon proper execution and unconditional delivery thereof by LESSOR and LESSEE.

(e) Entire Agreement. No oral statement or prior written matter shall have any force or effect. LESSEE agrees that it is not relying on any representations or



agreements other than those contained in this Lease. This Lease shall not be modified or canceled except by writing subscribed by all parties.

**IN WITNESS WHEREOF**, the parties have hereunder set forth their hands and seals as of the date first written above.

WITNESSES:

AS TO LESSOR:

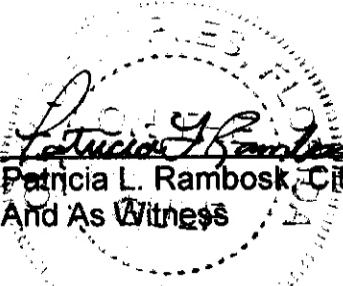
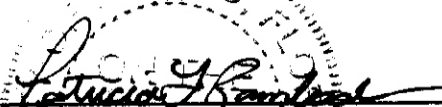
WSR Old Naples, LLC, a Florida limited liability company

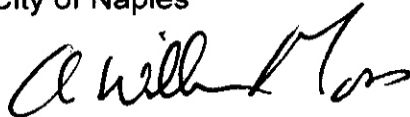
  
\_\_\_\_\_  
Witness  
  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
Print Name: AYESHA MENON  
Title: Authorized Signatory

ATTEST:

AS TO LESSEE:

  
  
\_\_\_\_\_  
Patricia L. Rambosk, City Clerk  
And As Witness

City of Naples  
  
\_\_\_\_\_  
A. William Moss, City Manager

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

  
\_\_\_\_\_  
Robert D. Pritt, City Attorney  
And As Witness

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**EXHIBIT "A"**

**Description of Premises**

## EXHIBIT "A"

### LEGAL DESCRIPTION

Commencing at the intersection of the North right of way line of Fifth Avenue South and the east right of way line of Tenth Street as shown on the amended plat of a portion of the Town of Naples commonly referred to as the Seaboard Replat according to the plat thereof as recorded in Plat Book 1, page 59, of the public records, Collier County, Florida;

Thence along the east right of way line of said Tenth Street North 06° 33' 10" West 425.00 feet to the Point of Beginning; Thence continue along the east right of way line of said Tenth Street North 06° 33' 10" West 694.96 feet to the south right of way line of Second Avenue South of said Town of Naples; Thence along the south right of way line of said Second Avenue South, North 83° 27' 30" East 165.00 feet; Thence along the easterly prolongation of the south right of way line of said Second Avenue South, North 83° 27' 30" East 502.09 feet to the west line of those lands as described in Official Record Book 665, page 440 and 441, of the public records of Collier County, Florida; Thence along the west line of said lands North 00° 00' 00" West 80.52 feet to the south line of those lands as described in Official Record Book 2433, page 3057, of the public records of Collier County, Florida; Thence along the boundary of said land in the following four (4) described courses: 1) South 83° 27' 30" West 147.73 feet; 2) North 04° 00' 58" West 320.32 feet to the south line of First Avenue South; 3) along said right-of-way line North 83° 27' 30" East 160.65 feet; 4) South 03° 19' 30" East 160.75 feet to a point on the boundary of those lands as described in Official Record Book 665, page 440 and 441, of the public records of Collier County, Florida; Thence along the boundary of said land in the following three (3) described courses: 1) North 83° 27' 30" East 20.64 feet; 2) North 06° 32' 30" West 160.00 feet to the south line of First Avenue South; 3) along said right of way line North 83° 27' 30" East 249.66 feet to a point on the North and South 1/4 Section line of said Section 3, also being the east line of the Seaboard Coastline Railroad Co. right-of-way and the west right of way line of Goodlette-Frank Road and the east line of the Plan of Naples, according to the plat thereof as recorded in Plat Book 1, page 8, of the public records of Collier County, Florida; Thence along said line South 00° 00' 00" East 1529.78 feet to the north right-of-way line of U.S. 41 (Tamiami Trail); Thence along said north line South 83° 26' 50" West 153.65 feet to the north line of U.S. 41 Area "B" Parcel per order of taking described in Official Records Book 2129, page 280, of the public records of Collier County, Florida; Thence along the boundary of said Area "B", in the following three (3) described courses: 1) 51.79 feet along the arc of a non-tangential circular curve concave south having a radius of 1,279.86 feet through a central angle of 02° 19' 06" and being subtended by a chord which bears South 89° 51' 22" West 51.78 feet; 2) North 06° 46' 30" West 10.00 feet; 3) South 88° 29' 39" West 10.00 feet to the east line of those lands described in Deed Book 15, pages 234 through 237, of the public records of Collier County, Florida; Thence along the east line of said lands North 06° 33' 10" West 133.34 feet; thence along north line of said lands and along the north line of those lands as described in Deed Book 14, pages 572 through 574, of the public records of Collier County, Florida, South 83° 26' 50" West 95.00 feet; Thence along the west line of said lands as described in Deed Book 14, pages 572 through 574, South 06° 33' 10" East 138.87 feet to the north line of U.S. 41 Area "A" Parcel per order of taking described in Official Records Book 2129, page 280, of the public records of Collier County, Florida; Thence along said north line 20.00 feet along the arc of a non-tangential circular curve concave south having a radius of 1,279.86 feet through a central



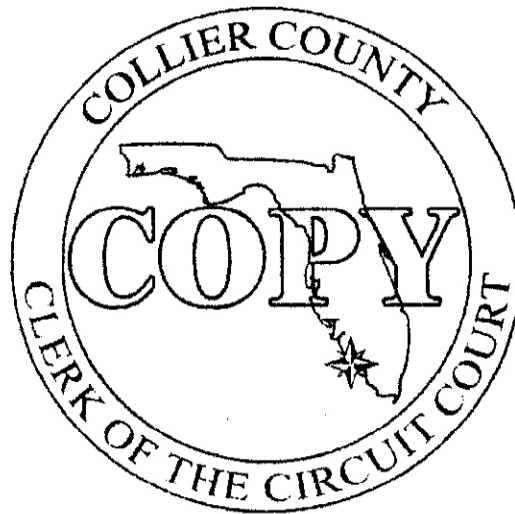
angle of  $00^{\circ} 53' 43''$  and being subtended by a chord which bears South  $83^{\circ} 26' 50''$  West 20.00 feet to a point on the east line of those lands as described in Official Record Book 570, pages 597 through 598, Parcel 2, of the public records, of Collier County, Florida; Thence along the east line of said lands North  $06^{\circ} 33' 10''$  West 138.87 feet; Thence along the north line of said lands South  $83^{\circ} 26' 50''$  West 60.00 feet to the southeast corner of those lands as described in Deed Book 28, pages 24 through 26, of the public records of Collier County, Florida; Thence along the east line of said lands North  $06^{\circ} 33' 10''$  West 250.00 feet; Thence along the north line of said lands South  $83^{\circ} 26' 50''$  West 175.00 feet to the southeast corner of those lands as described in Official Record Book 848, pages 1111 through 1114, of the public records of Collier County, Florida; Thence along the east line of said lands North  $06^{\circ} 33' 10''$  West 25.00 feet; Thence along the north line of said lands South  $83^{\circ} 26' 50''$  West 225.00 feet to the east line of said Tenth Street and the Point of Beginning;

LESS AND EXCEPT THE FOLLOWING: (1) Parcel

Commencing at the intersection of the north right-of-way line of Fifth Avenue South and the east right of way line of Tenth Street as shown on the amended plat of a portion of the Town of Naples commonly referred to as the Seaboard Replat according to the plat thereof as recorded in Plat Book 1, page 59, Collier County, Florida; Thence along the east right-of-way line of said Tenth Street North  $06^{\circ} 33' 10''$  West 425.00 feet to the northwest corner of those lands described in Official Record Book 848, pages 1111-1114, of the public records, of Collier County, Florida; Thence leaving said east line and along the north line of said lands North  $83^{\circ} 26' 50''$  East 225.00 feet to the northeast corner of said lands; Thence along the east line of said lands South  $06^{\circ} 33' 10''$  East 25.00 feet to the northwest corner of those lands described in Official Record Book 2244, page 555, of the public records of Collier County, Florida; Thence along the north line of said lands North  $83^{\circ} 26' 50''$  East 175.00 feet to the northeast corner of said lands and the POINT OF BEGINNING; Thence North  $82^{\circ} 36' 44''$  East 144.89 feet; Thence South  $06^{\circ} 51' 57''$  East 189.77 feet; Thence North  $90^{\circ} 00' 00''$  East 266.96 feet to a point on the North and South 1/4 Section line of said Section 3, also being the east line of the Seaboard Coastline Railroad Co. right-of-way and the west right-of-way line of Goodlette-Frank Road and the east line of the Plan of Naples, according to the plat thereof as recorded in Plat Book 1, page 8, Public' Records of Collier County, Florida; Thence along said line South  $00^{\circ} 00' 00''$  East 183.08 feet to the north right-of-way line of U.S. 41 (Tamiami Trail); Thence along said north line South  $83^{\circ} 26' 50''$  West 153.65 feet to the north line of U.S. 41 Area "B" parcel per order of taking described in Official Records Book 2129, page 280, of the public records of Collier County, Florida; Thence along the boundary of said Area "B", in the following three (3) described courses: 1) 51.79 feet along the arc of a non-tangential circular curve concave south having a radius of 1,279.86 feet through a central angle of  $02^{\circ} 19' 06''$  and being subtended by a chord which bears South  $89^{\circ} 51' 22''$  West 51.78 feet; 2) North  $06^{\circ} 46' 30''$  West 10.00 feet; 3) South  $88^{\circ} 29' 39''$  West 10.00 feet to the East line of those lands described in Deed Book 15, pages 234 through 237, of the Public Records of Collier County, Florida; Thence along the east line of said lands North  $06^{\circ} 33' 10''$  West 133.34 feet; Thence along north line of said lands and along the north line of those lands as described in Deed Book 14, pages 572 through 574, of the public records of Collier County, Florida, and the north line of those lands described in Official Record Book 1797, page 1702, of the public records of Collier County, Florida; South  $83^{\circ} 26' 50''$  West 175.00 feet to the southeast corner of those lands as described in Official Record Book 2244, page 555 of the

public records of Collier County, Florida; Thence along the east line of said lands North 06° 33'10" West 250.00 feet to the POINT OF BEGINNING.

Bearings are based on the East Right-of-Way line of Tenth Street, Being North 06° 33'10" West.



**EXHIBIT "A"**



Aerial Photography: January Urban - 2012 - Rural - 2012

## EXHIBIT "B"

### Insurance Requirements

1. Commercial General Liability insurance on an Occurrence Form and on a primary coverage basis covering claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Premises during the term of this Lease, including coverage for premises/operations, products/completed operations, personal injury/advertising liability, contractual liability. The policy must provide at least a limit of \$1,000,000 per occurrence, with a \$2,000,000 general aggregate, and a \$2,000,000 products and completed operations aggregate; and
2. Automobile Liability Insurance covering all vehicles (including owned, non-owned and hired ) used in connection with this event and providing a combined single limit of no less than \$1,000,000; and
3. Worker's Compensation coverage, including employer liability coverage, as required by law.