

## OPTION AND PURCHASE AND SALE AGREEMENT

THIS OPTION AND PURCHASE AND SALE AGREEMENT (“Agreement”), dated as of \_\_\_\_\_, 2024, is made by and between CHARLOTTESVILLE PARKING CENTER, INC. (“CPC”), WATER STREET LEASING, LLC (“WSL”), and THE CITY OF CHARLOTTESVILLE, VIRGINIA (“City”).

### *Recitals:*

A. WHEREAS, WSL is the owner of a tract of land located in the City of Charlottesville, known as TMP 280061000 (the “*Land*”), acquired by Deed of Gift from CPC dated January 12, 2017, and recorded in the Clerk’s Office for the City of Charlottesville as instrument number 201700000338; and,

B. WHEREAS, WSL leases the land to the Water Street Parking Garage Condominium Association pursuant to Deed of Lease dated May 1, 1991, as amended by First Amendment to Deed of Lease dated on or about the date of this Agreement (as amended, the “*Ground Lease*”); and,

C. WHEREAS, pursuant to the Ground Lease a building commonly known as the Water Street Parking Garage (the “*Garage*”) has been constructed on the Land; and,

D. WHEREAS, the Garage is subject to the Declaration of Condominium of Water Street Parking Garage Condominium, dated February 16, 1994, and recorded in the Clerk’s Office for the City of Charlottesville in Deed Book 623, page 641, as amended (the “*Declaration*”); and,

E. WHEREAS, pursuant to the Declaration, the Garage contains Commercial Units (as defined in the Declaration) as well as One Thousand Nineteen (1019) Parking Units (as defined in the Declaration), as more particularly described in the Declaration; and,

F. WHEREAS, the City is the owner of Seven Hundred and Two (702) Parking Units (the “*City Parking Spaces*”); and,

G. WHEREAS, CPC is the owner of Three Hundred Seventeen (317) Parking Units (the “*CPC Parking Spaces*”); and,

H. WHEREAS, the City leases the CPC Parking Spaces from CPC, pursuant to a Deed of Lease entered into between CPC and the City, dated June 30, 2018, as amended by First Amendment to Deed of Lease dated on or about the date of this Agreement (as amended, the “*Parking Space Lease*”); and,

I. WHEREAS, WSL and CPC have agreed to grant the City an option to purchase the Land and the CPC Parking Spaces, and City has agreed to grant CPC a contingent

purchase right for the City Parking Spaces in the event that the City does not exercise its' option, all upon the terms and conditions contained in this Agreement.

*Agreement:*

NOW, THEREFORE, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Grant of Option to City.** WSL and CPC jointly grant to the City the sole and exclusive option to purchase the Land together with the CPC Parking Spaces upon the following terms and conditions (the "*City Option*"):

(a) If the City desires to exercise the City Option, it must do so on or before July 1, 2043, by providing written notice of such election to both CPC and WSL.

(b) The purchase price of the Land to be paid to WSL by the City will be calculated by taking the annual rental amount pursuant to the Ground Lease from July 1, 2043, to June 30, 2044, and applying a capitalization rate on such annual rental amount equal to the interest rate paid on the ten year United States treasury bill as of June 1, 2044, with a maximum allowable capitalization rate of 4.0% and a minimum allowable capitalization rate of 5.0%. For illustration purposes only, if the above referenced treasury bill is accruing interest at a rate of 2.5%, the capitalization rate that is applied will be 4.0%, if the interest rate is 4.3% then capitalization rate that is applied will be 4.3%, and if the interest rate is 10% then the capitalization rate that is applied to the annual rental amount will be 5.0%. As used herein, "applying a capitalization rate" means the purchase price will be determined pursuant to the following formula: (annual rental amount from July 1, 2043 to June 30, 2044) \* (1/(capitalization rate)) = purchase price. For illustration purposes only, if the applicable annual rental amount is \$1, and the interest on the applicable treasury bill is 5%, then the purchase price would be calculated as follows: (\$1\*(1/.05)) = \$20.

(c) The purchase price to be paid to CPC by the City for the CPC Parking Spaces will be \$14,500 per parking space adjusted for changes in CPI-U from July 1, 2024, to March 1, 2044. "CPI-U" as used in this Agreement is agreed to refer to "Consumer Price Index for All Urban Consumers (CPI-U), US City Average, All Items, 1982-84=100, not seasonally adjusted" published by the Bureau of Labor Statistics. Department of Labor.

(d) In the event the City properly exercises the City Option, the closing date for the acquisition of the Land and the CPC Parking Spaces will be July 1, 2044, or the first business day thereafter.

(e) If the City elects to exercise the City Option, the City must purchase both the Land and the CPC Parking Spaces. The City may not elect to exercise the City Option in the event the City is in default of the Parking Space Lease or their obligations under the Declaration.

2. **CPC Purchase Requirement.** In the event the City does not validly exercise the City Option and thereafter acquire the Land and CPC Parking Spaces on the Closing Date, CPC will purchase the City Parking Spaces upon the following terms and conditions (the “*CPC Option*”):

(a) The purchase price to be paid to City by CPC for the City Parking Spaces will be equal to \$1,500,000.00 adjusted for changes in CPI-U from July 1, 2024, to March 1, 2044.

(b) The closing date of the acquisition of the City Parking Spaces will be July 1, 2044, or the first business day thereafter.

3. **Closing.** Closing (“*Closing*”) of the City Option or CPC Option (as applicable) will be at the offices of the attorney representing the purchaser, on July 1, 2044, or the first business day thereafter (“*Closing Date*”). At *Closing*, the party purchasing property will pay the purchase price required under this Agreement for the property being purchased in immediately available funds. Income and expenses related to the property being purchased will be equitably pro-rated between the parties as of the date of *Closing*. Each party agrees to pay closing costs at *Closing* pursuant to local custom for real estate transactions occurring in the City of Charlottesville, VA. Each party will pay its own legal fees.

4. **Conveyance.** At *Closing*, the owner of the property being conveyed will convey fee simple title to said property by special warranty deed, free and clear of all monetary liens, and any title defects, encumbrances, conditions and restrictions which materially impair the use of the property being conveyed as a parking garage and which arise after the date of this Agreement.

5. **Representations and Warranties.** Each party to this Agreement warrants and represents, as of the date of this Agreement, the following:

(a) Each party has full legal capacity to execute and deliver this Agreement and to perform all of its obligations hereunder.

(b) This Agreement and all other agreements, instruments and documents required to be executed or delivered pursuant to this Agreement have been or (if and when executed) will be duly executed and delivered by the appropriate party, and are, or will be, legal, valid and binding obligations of such party.

(c) The consummation of the transactions contemplated herein and the fulfillment of the terms hereof will not result in a breach of any of the terms or provisions of, or constitute a default under, any agreement or document to which a party to this Agreement is a party to or by which it is bound, or any order, rule or regulation of any court or of any federal or state regulatory body or any administrative agency or any other governmental body having jurisdiction over such party.

The representations and warranties stated in this Section 5 shall be true and correct on the Closing Date with the same effect as if made on and as of such date.

**6. Financing Matters; Property Transfer.** (a) The parties acknowledge and agree that either party will be allowed to obtain financing secured by the property that it owns which is subject to this Agreement and may collaterally assign its rights pursuant to this Agreement as part of such financing without further consent of the other party. All such financing must be discharged at or prior to Closing such that the property subject to Closing is not encumbered by any such monetary liens after the occurrence of Closing. No foreclosure of any financing entered into after the date of this Agreement will be effective to terminate this Agreement.

(b) The parties agree to use commercially reasonable efforts to obtain and deliver to the requesting party, within ten (10) business days after a written request, a fully executed statement of fact, in a form reasonably satisfactory to the requesting party, setting forth that the Agreement is in full force and effect, that the certifying party is not in default of this Agreement and to the certifying party's knowledge the other party is not in default of this Agreement; provided, if any of the foregoing are not true, the certifying party may amend such statements to specify any exceptions.

(c) The parties agree to use commercially reasonable efforts to obtain and deliver to the requesting party, within ten (10) business days after a written request, documents in a commercially reasonable form which are requested as part of any financing or transfer of the property of the requesting party.

**7. Brokers.** The parties represent and warrant to one another that no real estate agents or brokers have been involved in this transaction, and each indemnifies the other from and against any and all claims, liabilities and expenses (including reasonable attorneys' fees) arising from any claims asserted by any other real estate agent or broker for services or advice rendered to the indemnifying party in connection with this transaction

**8. Governmental Action.** The City agrees that if it or any of its subsidiaries or authorities over which it has power should use eminent domain or any other taking power to acquire any portion of the Land, the Garage, or any of the CPC Parking Spaces between July 1, 2044 and June 30, 2049, as part of such action, the City will be required to pay to CPC and WSL (or their successors as owners of the Land, the Garage, and/or Parking Units) the higher of: a) the amount the City would have paid to CPC and WSL pursuant to the City Option adjusted by CPI-U from July 1, 2044 to the date the City exercises its taking rights; or b) the amount the parties would otherwise be entitled to pursuant to the relevant eminent domain statute or regulation. This section will survive the Closing or any termination of this Agreement. This section will be binding upon the City notwithstanding the City's assignment of any of its rights or obligations pursuant to this Agreement.

**9. Notice.** All notices to be given hereunder shall be in writing and shall be served either (a) personally; or (b) by depositing the same with the U.S. Postal Service, by

registered or certified mail with return receipt requested, postage prepaid; or (c) by depositing the same with a nationally recognized express or overnight delivery service (“next day delivery”), such as Federal Express or UPS, which provides receipt of service, or (d) by email and by U.S. Postal Service regular mail, postage prepaid, addressed as follows, as such addresses may be updated from time to time by delivering notice of such new address in accordance of with the terms of this Section:

CPC: 210 E. Water St.  
Charlottesville, VA 22902  
Email: \_\_\_\_\_

WSL: 210 E. Water St.  
Charlottesville, VA 22902  
Email: \_\_\_\_\_

CITY: \_\_\_\_\_  
\_\_\_\_\_  
Email: \_\_\_\_\_

**10. Attorneys' Fees.** If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach or default in connection with any of the provisions of the Agreement, the prevailing party or parties shall be entitled to recover reasonable paralegal and attorneys' fees and other costs incurred in that action or proceeding, including those related to appeals, in addition to any other relief to which it or they may be entitled.

**11. Miscellaneous.**

(a) All pronouns used herein shall be construed to be such number and gender as the context may require. This Agreement contains the full and complete understanding of the parties with respect to the option and purchase agreement, and all oral statements and representations are merged herein. This Agreement may not be modified except by written instrument signed by all parties to this Agreement. All headings are for convenience or reference only and in no way limit or determine the interpretation of this Agreement.

(b) This Agreement may be executed in any number of counterparts with the same effect as if all of the parties had signed the same document and all of which counterparts shall be construed together and shall constitute the same agreement.

(c) Upon request of either party, a memorandum of this Agreement in a recordable form will be executed by the parties and may be recorded in the Clerk's Office of the Circuit Court of the City of Charlottesville. The cost of recording (including the payment of any associated transfer taxes) the memorandum will be paid by the party requesting recordation.

(d) This Agreement will be binding upon, inure to the benefit of, and be enforceable by WSL, CPC, and the City, and their respective successors and assigns as owners of the Land, the CPC Parking Spaces, and the City Parking Spaces.

[SIGNATURE PAGES FOLLOW]

WITNESS the following signature and seal:

**CPC:**

CHARLOTTESVILLE PARKING CENTER, INC.

BY: \_\_\_\_\_ (SEAL)  
W. Mark Brown, President

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF \_\_\_\_\_:

I, the undersigned Notary Public, in and for the Commonwealth of Virginia, hereby certify that the foregoing amendment was acknowledged before me this \_\_\_\_ day of July 2024, by W. Mark Brown, president of Charlottesville Parking Center, Inc., a Virginia corporation, on behalf of the corporation.

\_\_\_\_\_ (SEAL)  
Notary Public  
My commission expires: \_\_\_\_\_  
Notary registration number: \_\_\_\_\_

WITNESS the following signature and seal:

**CITY:**

CITY OF CHARLOTTESVILLE, VIRGINIA

By: \_\_\_\_\_ (seal)  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF \_\_\_\_\_:

I, the undersigned Notary Public, in and for the Commonwealth of Virginia, hereby certify that the foregoing amendment was acknowledged before me this \_\_\_\_ day of July 2024, by \_\_\_\_\_, \_\_\_\_\_ of the City of Charlottesville, Virginia, a municipal corporation and political subdivision of the Commonwealth of Virginia, on behalf of the City.

\_\_\_\_\_  
(SEAL)  
Notary Public  
My commission expires: \_\_\_\_\_  
Notary registration number: \_\_\_\_\_

Approved as to form:

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City Attorney

WITNESS the following signature and seal:

**WSL:**

**WATER STREET LEASING, LLC**

BY: \_\_\_\_\_ (SEAL)  
W. Mark Brown, Manager

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF \_\_\_\_\_:

I, the undersigned Notary Public, in and for the Commonwealth of Virginia, hereby certify that the foregoing amendment was acknowledged before me this \_\_\_\_ day of July 2024, by W. Mark Brown, manager of Water Street Leasing, LLC., a Virginia limited liability company, on behalf of the company.

\_\_\_\_\_ (SEAL)  
Notary Public  
My commission expires: \_\_\_\_\_  
Notary registration number: \_\_\_\_\_