

PARK, BARK, & FLY ANNEXATION AND DEVELOPER'S AGREEMENT

THIS ANNEXATION AND DEVELOPER'S AGREEMENT (hereinafter the "**Agreement**"), made and entered into this _____ day of _____, 2020, by and between Airport Parking Rental 1, LLC, a Florida limited liability company, hereinafter referred to as the "**Owner**" and the CITY OF ORLANDO, a municipal corporation organized and existing under the laws of the State of Florida, hereinafter referred to as the "**City**".

PREAMBLE

Whereas, it is the policy of the City to encourage the annexation of property into the City to insure sound urban development, accommodate growth, and assure the efficient provision of urban services; and

Whereas, the Owner is the owner of land adjacent to State Road 436 (Semoran Blvd) more particularly described on **Exhibit A** attached hereto and incorporated herein by this reference, hereinafter referred to as the "Property"; and

Whereas, the Property is also identified by the following Orange County Parcel ID number 21-23-30-0000-00-007; and

Whereas, the Property is currently located in unincorporated Orange County; and

Whereas, the Property is contiguous to the City and is reasonably compact; and

Whereas, the Owner filed a Petition for Annexation (hereinafter the "**Petition**") on September 23, 2019, and the Petition was accepted by the City Council of the City of Orlando, Florida (hereinafter the "**Orlando City Council**") at its regularly scheduled meeting of January 13, 2020; and

Whereas, the Petition was considered by the City's Municipal Planning Board (hereinafter the "**MPB**") at its regularly scheduled meeting of January 21, 2020, and was recommended for approval with certain conditions, including certain conditions that must be addressed in an annexation agreement; and

Whereas, at its meeting of January 21, 2020, the MPB also considered and recommended approval of the application for a Growth Management Plan (hereinafter the "**GMP**") Future Land Use Map (hereinafter "**FLUM**") designation and initial zoning designation; and

Whereas, the MPB recommended approval of the request for a GMP FLUM designation of Industrial, Community Activity Center and Conservation and an initial zoning designation of Planned Development with the Aircraft Noise Overlay District and Planned Development with the Aircraft Noise and Semoran Gateway Special Plan Overlay Districts, and Conservation with the Aircraft Noise Overlay District with the underlying development standards for the AC-1/AN/SP, and the I-G/AN zoning districts; and

Whereas, the Orlando City Council accepted and approved the recommendations of the MPB at the regularly scheduled Orlando City Council meeting on February 24, 2020; and

Whereas, the Owner, in the alternative, herein consents to involuntary annexation of the Property into the City pursuant to Section 171.0413, Florida Statutes; and

Whereas, the Property is presently partially developed under Orange County regulations with the following uses: automobile parking; recreational vehicle and boat parking; along with an automobile parking and sales facility presently under construction and an existing on premises digital non-static sign, also known as an electronic message center; and

Whereas, the Owner has indicated that it desires a PD zoning designation with the underlying development standards for the AC-1 and IG zoning districts as depicted on the development plan attached as **Exhibit B** and incorporated herein by this reference (hereinafter the “**Development Plan**”); and

Whereas, the Owner is making a significant financial contribution through tax revenue to the City by agreeing to annex; and

NOW, THEREFORE, in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Owner agree as follows:

AGREEMENT

1. **Incorporation of Preamble.** The preamble of this Agreement is incorporated herein as if fully set out below.
2. **Ownership of the Property.** Owner hereby covenants and warrants to the City that it is the owner of the Property free and clear from all encumbrances. Owner further covenants and warrants that its officer executing this Agreement below has the right, authority, and capacity to enter into this Agreement and as evidence thereof has executed the affidavit attached hereto and incorporated herein by this reference as **Exhibit C** (hereinafter the “**Affidavit**”).

Owner acknowledges that the City has relied on the Affidavit in connection with its decision to enter into this Agreement.

3. **Petition for Voluntary Annexation; Consent to City-initiated Annexation.** The Owner hereby irrevocably petitions the City for voluntary annexation of the Property in accordance with Section 171.044, Florida Statutes. The City hereby accepts such petition. The City promises set forth below are contingent upon the Property being annexed into the City.
4. **Growth Management Plan Amendment.** The City will process a Growth Management Plan amendment to assign the Industrial (INDUST), Community Activity Center (C-AC), and

Conservation (CONSERV) official future land use designations to the Property, subject to City Council and applicable State of Florida regulatory approvals.

5. Initial Zoning. The Owner has requested that the Property be zoned PD/AN, PD/AN/SP, and C/AN with underlying development standards set forth in the AC-1/AN/SP, IG/AN, and C zoning classifications. The City will process an application to establish such zoning districts for the Property in accordance with the Development Plan. The Owner acknowledges that the initial zoning is subject to the approval of the City Council at the time such application is made.
6. Master Plan Approval. The Owner has filed for a master plan (Case #MPL2019-10066) and must secure approval of that master plan prior to development. The City shall issue no building permit prior to the final approval of the master plan pursuant to the Orlando City Code.
7. Permitted Use Approvals and Restrictions: Notwithstanding the zoning classifications granted to the Property, the Owner agrees to the following limitations, restrictions, allowances and Permitted Uses:
 - A) Parking as a Principal Use is a permitted use on the Property and the provisions of Footnote 37 of Section 58.110 1B Zoning Tables FG-2B LDC shall not apply to the Property.
 - B) Recreational Vehicle and Boat Storage is a permitted use in the IG portion of the Property.
 - C) Automobile Sales and Rentals is a permitted use in the AC-1 portion of the Property and shall not be subject to the acreage requirements in the Semoran Gateway Special Plan (City Code Sec. 62.409(d)).
8. Existing Signage / Electronic Message Center. The City and Owner acknowledge that there is an existing on site digital non static sign, also referred to as an electronic message center, located on the Property which has been approved in accordance with Orange County regulations and which has existed for many years. The parties further acknowledge that such signage is not in conformity with City codes and regulations and, but for the annexation, would not be permitted under present Code. It is a material part of this Agreement that such signage be permitted to continue to be used by Owner for the existing Park Bark and Fly and Hertz businesses.
 - A) The City has agreed to allow such sign to be continued to be used by these two existing businesses. If one business closes, the sign may remain in use for the other business but must be removed once both businesses close. No new business may be granted access to use the sign.
 - B) The sign shall be considered a non-conforming sign and shall remain substantially as it exists on the date of annexation. It shall not be rebuilt if it is destroyed or

damaged, but may be maintained through routine maintenance, as described in City Code Sec. 64.271.

- C) The sign shall be removed from the property if residential is built on any portion of the site.
 - D) No message or image may be displayed for less than eight (8) seconds. This message time is referred to as dwell time.
 - E) The City acknowledges that the Applicant will need to update the sign to meet the conditions of approval and will apply for a permit in the City of Orlando upon annexation.
9. Conformity of Existing Improvements and Refurbishment of Existing Improvements. The City acknowledges that all the structures and site improvements presently located on the Property, and shown in the attached **Exhibit D**, were constructed or are in the course of being constructed in conformance with all applicable provisions of the then current Orange County land development code and Orange County building code. The City hereby agrees that all lot sizes and open space areas, as well as all structures and improvements which are built, constructed or installed or in the process of being constructed and installed and are located on the Property, as of the date of this Agreement, and shown in **Exhibit D**, to the extent not in compliance with the City land development code and building code are legally existing non-conformities. They are subject to the City's regulations for legal non-conformities, as shown in City Code Chapter 58, Part 7. Within six months of the effective date of the annexation ordinance, the property owner must apply for and obtain permits from the City for site work that was started while the property was in the County.
10. Community Rating System. To ensure that this annexation does not adversely affect the City's Community Rating System, the Applicant must meet the following conditions.
- A. Submit a Letter of Map Revision ("LOMR") that meets local, state, and federal requirements. The LOMR must be approved by the Federal Emergency Management Agency ("FEMA") prior to final inspection if no structures are proposed at this time. If a structure is proposed within the Special Flood Hazard Area ("SFHA"), the approval of the LOMR by FEMA is required prior to the issuance of certification of occupancy.
 - B. All design calculations, civil plans, and topographic survey must be prepared in NAVD 88 datum, and the minimum engineering design must meet the requirements of the City's Engineering Standards Manual.
 - C. The stormwater and floodplain design shall be modeled using Interconnected Channel and Pond Routing software for submittal because the software is the accepted hydraulic numerical model that meets the National Flood Insurance Program requirements for flood hazard mapping activities.

- D. The previously approved compensating storage, Base Flood Elevation (“BFE”) and Seasonal High Water Table (“SHWT”) may not be accepted by the City. Revision of compensating storage calculation and determination of BFE and SHWT is required using the NAVD 88 datum as the basis for calculation.
 - E. All documents supporting the development within SFHA must be provided.
 - F. Submittal of a complete drainage report and associated supporting documentation including (but not limited to) basin maps, compensating storage calculation, determination of SHWT, and wetland assessment is required once the site is ready to be developed.
- 11. Wetlands Mitigation Permit. The City acknowledges that the Owner has obtained St. John's River Water Management District (“SJRWMD”) Permit No. 20631-5 dated January 23, 2018 allowing the Owner to remove certain wetlands on the Property in accordance with said permit, including Owner's obligation to provide mitigation for wetland removal in the form of Uniform Mitigation Assessment Methodology credits as determined by the SJRWMD. Owner has secured 17.62 UMAM credits as required by SJRWMD to compensate for the wetland impacts associated with the Project. The City acknowledges and will abide by the terms of said permit to allow wetland removal in accordance with said permit.
 - 12. Landscape Criteria. Owner shall provide for a 25-foot landscape buffer along the northern boundary of the conservation area located on the southern portion of the Property. In addition, Owner shall provide a 20-foot buffer along the northern and western portions of the Property that abut existing residential use.
 - 13. Impact Fees. The Owner acknowledges that it will be subject to the requirements of the City as it relates to the obligation to pay impact fees for any future development on the Property. The City acknowledges that the impact fees due with respect to the construction of the auto sales facility on the Property are due to Orange County and no impact fees will be required of the Owner by the City with respect to the construction that is presently permitted.
 - 14. Building Permits. The City agrees to allow the Owner to apply for the building permits to be processed simultaneously with platting of the Property. The City will also allow building permits to be issued while the plat work is being completed, subject to approval of a hold harmless agreement. While architectural and building plans are being finalized, the applicant may request a permit to be issued for foundation and site work, subject to approval by the Building Official.
 - 15. Applicable Codes. Except as set forth herein, the development and use of the Property shall be subject to all ordinances, statues and codes of the City, the State and other applicable regulatory agencies.

16. Force Majeure. The parties shall use reasonable diligence to ultimately fulfill the intent of this Agreement, but shall not be liable to each other, or their successors or assigns, for damages, costs, attorney's fees (including costs or attorney's fees on appeal) for breach of contract, or otherwise for failure, suspension, diminution, or other variations of services occasioned by any cause beyond the control and without the fault of the parties. Such causes may include but shall not be limited to, Acts of God, or of the public enemy, acts of other governments (including regulatory entities or courts) in their sovereign or prior contractual capacity, fires, floods, epidemics, quarantines, restrictions, strikes, or failure of breakdown of transmission or other facilities.
17. Third-Party Beneficiary. This Agreement is solely for the benefit of the parties signing hereto and their successors and assigns, and no right, nor any cause of action, shall accrue to or for the benefit of any third party.
18. Binding Nature of Agreement. This Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the Property and be binding up and inure to the benefit of any person, firm or corporation that may become the successor in interest, directly or indirectly, to the Property, or any portion thereof.
19. Controlling Laws.
 - A. This Agreement and the provision contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida, and all duly adopted ordinances, regulations and policies of the City now in effect and those hereinafter adopted.
 - B. The location for settlement of any and all claims, controversies, or disputes, arising out of or relating to any part of this Agreement, or any breach hereof, shall be Orange County, Florida.
20. Miscellaneous.
 - A. This Agreement constitutes the entire agreement between the parties with respect to the specific matters contained herein and supersedes all previous discussions, understandings, and agreements. Amendment to or waivers of the provisions herein shall be made by the parties in writing.
 - B. If any sentence, phrase, paragraph, provision or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed an independent provision and such holding shall not affect the validity of the remaining portion hereto.
 - C. Upon execution, this Agreement shall be recorded in the Public Records of Orange County, Florida, at the expense of the Owner.

- D. Any notice required or allowed to be delivered hereunder shall be in writing and be deemed to be delivered when (i) hand delivered to the person hereinafter designated, or (ii) receipt of such notice when deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to a party at the address set forth opposite the party's name below, or at such other address as the applicable party shall have specified from time to time, by written notice to the other party delivered in accordance herewith:

CITY: Director, Office of Economic Development City of Orlando
400 S. Orange Avenue
Orlando, Florida 32801

COPY TO: Office of Legal Affairs
City of Orlando
400 S. Orange Avenue
Orlando, Florida 32801

OWNER: Airport Parking Rental 1, LLC
Attn: Rene Hofmann
6050 S. Semoran Blvd.
Orlando, Florida 32822

- E. The effective date of this Agreement shall be the latest date of execution of this Agreement by each party and approval of this Agreement by the City Council.

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

CITY OF ORLANDO

Mayor
Print Name: _____

ATTEST:

City Clerk
Print Name: _____

APPROVED AS TO FORM AND
LEGALITY FOR THE USE AND
RELIANCE OF THE CITY OF ORLANDO
ONLY.

Assistant City Attorney
Print Name: _____

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by means of ____ physical presence or ____ online notarization, this ____ day of _____, 2020, by _____, the _____ of **Airport Parking Rental 1, LLC**, a Florida limited liability company. He is personally known to me or has produced _____ (type of identification) as identification.

Notary Public

Print Name:

Commission Number:

My Commission Expires: _____

(NOTARY SEAL)