

Record and return to:

Day Pitney LLP  
242 Trumbull St  
Hartford, CT 06103  
Attn: Rosemary G. Ayers, Esq.

**FIRST AMENDMENT TO  
PARKING MANAGEMENT AGREEMENT**

This **FIRST AMENDMENT TO PARKING MANAGEMENT AGREEMENT** (this "**Amendment**") is dated as of December 2, 2013, by and between the **TOWN OF MANSFIELD** (the "**Town**"), a municipal corporation organized under the laws of the State of Connecticut, having an address at 4 South Eagleville Road, Mansfield, Connecticut 06268, and **LEYLAND STORRS, LLC**, a limited liability company formed under the laws of the State of Connecticut (the "**Operator**"), having an address at P.O. Box 878 – 233 Route 17, Tuxedo, New York 10987 (each a "**Party**," and collectively, the "**Parties**").

**RECITALS**

- A. Storrs Center Alliance, LLC ("**SCA**"), the Town and Education Realty Trust, Inc. ("**EDR**") entered into that certain Development Agreement Phases 1A and 1B dated as of February 15, 2011 and recorded in Volume 707, Page 198 of the Mansfield Land Records, as supplemented by Supplement to Development Agreement dated as of May 26, 2011 and recorded in Volume 707, Page 311 of the Mansfield Land Record (as so supplemented, the "**Original Development Agreement**"), for the purpose of developing Storrs Center, expected to eventually comprise up to 800 units of housing, 150,000 to 200,000 square feet of retail, office, and other commercial space, as well as other public and private improvements in downtown Storrs, located in the Town of Mansfield, CT nearby the University of Connecticut campus.
- B. SCA's right, title and interest in the Original Development Agreement was assigned to, and SCA's obligations thereunder assumed by, Operator by that certain Assignment and Assumption of Development Agreement dated as of August 30, 2011 and recorded in Volume 715, Page 343 of the Mansfield Land Records, and EDR's right, title and interest in the Original Development Agreement was assigned to, and EDR's obligations thereunder assumed by, EDR Storrs LLC ("**EDR Storrs**") by that certain Assignment and Assumption of Development Agreement dated as of August 30, 2011 and recorded in Volume 715, Page 326 of the Mansfield Land Records. The Original Development Agreement was amended by that certain Amendment to Development Agreement dated as of October 1, 2011, and recorded in Volume 715, Page 397 of the Mansfield Land Records (the "**First**

**Amendment**", and the Original Development Agreement, as amended by the First Amendment, the "**Development Agreement**"). References hereinbelow to EDR and SCA shall be EDR Storrs and Leyland Storrs, LLC, respectively.

- C. As noted in subsection E of the "Recitals" of the Development Agreement, the **Town** has sought and been awarded grants from the State of Connecticut to make and to own and control certain public improvements that will benefit Storrs Center including, but not limited to \$10,000,000 in grant funds from the State of Connecticut Department of Economic and Community Development (the "**DECD Grant Funds**") to be utilized for the design and construction of a parking structure. Per the Development Agreement, the Intermodal/Parking Facility, which the Town is responsible to design and construct pursuant to Development Agreement Section 3.01(a), is "integral to the success of the [Storrs Center] Project." See, Development Agreement, Section 3.01(b).
- D. Per subsection 9.05(a) of the Development Agreement, Operator has assumed management responsibility for the Intermodal/Parking Facility, Internal On-Street Parking and the Storrs Road Parking under that certain Parking Management Agreement between Operator and the Town dated as of June 14, 2012 (the "**Parking Management Agreement**"), which superseded the provisions of Section 9.05 of the Development Agreement relating to such management. The Parking Management Agreement was recorded in Volume 729, Page 264 of the Mansfield Land Record. Initial capitalized terms not defined herein shall have the meanings ascribed thereto in the Parking Management Agreement.
- E. As required by Section 9.05 of the Development Agreement, paragraph 6(B) of the Parking Management Agreement provides, in pertinent part, that after certain operating expenses are paid or reimbursed: (1) 50 per cent of annual net parking revenues received from the Public Garage, the Shared Facilities and the On-Street Parking are paid to Operator and (2) 50 percent of such net parking revenues are paid to the Town until the aggregate amount distributed to the Town under paragraph 6(B)(2) of the Parking Management Agreement equals the aggregate amount of Annual Reserve Amounts to be deposited in the Repair and Replacement Reserve through the date of such distribution, and (C) the balance, if any, of such net parking revenues is paid to the Operator.
- F. Paragraph 3 of the Parking Management Agreement provides that the term of the Agreement and therefore Operator's capacity to continue to receive income per paragraph 6 of the Parking Management Agreement shall terminate on "June 30th of the 7<sup>th</sup> fiscal year of the Town following the October 1 immediately succeeding the issuance of the certificate of occupancy for the Residential Component of Phase 1A," of the Storrs Center Project.
- G. The certificate of occupancy for Phase 1A of the Storrs Center Project was issued on August 1, 2012. Therefore the Operator's capacity to continue to

receive income under paragraph 6 of the Parking Management Agreement, and the Operator's maintenance obligations, will end on June 30, 2020, when paragraph 3 of the Parking Management Agreement anticipates that control of the Public Garage, Shared Facilities and On-Street Parking will revert to the owner of the Parking Garage and Shared Facilities, the Town of Mansfield.

- H. In fulfilling its contractual responsibility to construct the Public Garage, the Town was required by Section 3.01(a) of the Development Agreement to design the facility ". . . to accommodate approximately 540 structured parking spaces (the "**Basic Design**")." Said Section 3.01(a) further required, in pertinent part, that "The Town shall also prepare an alternate design for the Intermodal/Parking Facility that includes one additional level of parking in the parking structure, increasing its capacity to no more than 650 parking spaces (the "**Alternate Design**") . . ."
- I. Section 3.01 of the Development Agreement illustrates the parties' intention to take into account the needs of SCA and EDR in constructing the Intermodal/Parking Facility. On the other hand, said Section 3.01 also displays the determination of the parties that SCA or EDR agree to fund any costs incurred by the Town in excess of grant proceeds in constructing the Alternate Facility, instead of shifting such burden to the taxpayers of the Town.
- J. The Developer Parties (as defined in the Development Agreement) informed the Town that they wanted the Town to construct "the Alternate Design" of the Intermodal/Parking Facility, adding an additional (seventh) level of parking to the parking structure. At that time, the Developer Parties and the Town estimated that the costs of constructing the seventh level of the parking structure would exceed the DECD Grant Funds by approximately \$200,000. In a letter dated November 15, 2011, SCA agreed that SCA would pay for the costs of constructing the Alternate Design to the extent such costs were not covered by the DECD Grant Funds.
- K. The Intermodal/Parking Facility has been constructed in accordance with "the Alternate Design," adding a seventh level of parking to the parking structure. For various reasons, the construction of the Intermodal/Parking Facility resulted in a substantial cost overrun. The actual cost overrun exceeds the total amount of DECD Grant Funds and other public grant funds available to pay for the Intermodal/Parking Facility project; it also exceeds the previously estimated, approximately \$200,000 shortfall of implementing "the Alternate Design" by adding a seventh level of parking to the parking structure as requested by the Developer Parties.
- L. The Town and the Operator desire to set forth their agreement herein with respect to reimbursement of the Town by the Operator for the cost to the Town of adding a seventh floor to the parking structure, and to enable the

Operator to potentially recapture these funds by continuing to maintain management responsibility for the Parking Garage, the Shared Facilities and the On-Street Parking beyond the original term of the Parking Management Agreement. The Parties recognize that by virtue of this Agreement, the Operator is agreeing to fund an amount in excess of the originally estimated shortfall in the approximate amount of \$200,000 related to the Alternate Design, and that Operator is agreeing to do so in consideration of the agreements contained in this Amendment as set forth below.

M. This First Amendment to Parking Management Agreement is authorized by subparagraph 13(G) of the Parking Management Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby amend the Parking Management Agreement as follows:

1. The Recitals set forth above are hereby incorporated in and made a part of this Amendment.
2. The Parking Management Agreement is hereby amended to add thereto the following Paragraph 14:

“14. Development Payment. Operator hereby agrees to contribute the sum of \$770,391 (the “**Development Payment**”) to the Town to reimburse the Town for costs incurred by the Town with respect to constructing the Intermodal/Parking Facility in the Alternate Design as requested by the Developer Parties (as defined in the Development Agreement). The Development Payment shall bear interest at the rate of two and one-half percent (2.5%) per annum on the unpaid balance thereof from August 15, 2013 until paid in full. Commencing on August 15, 2014 and continuing on each August 15 thereafter until the Development Payment (together with all accrued unpaid interest thereon) is paid in full, the Development Payment, together with the accrued, unpaid interest, shall be paid by the Operator to the Town in annual installments, each such installment equal to the greater of (i) \$60,000, or (ii) the aggregate amount Operator is entitled to retain with respect to the immediately preceding fiscal year under subparagraphs 6(B)(1) and 6(C) of this Agreement. Each installment shall be applied as follows: (a) first, to accrued unpaid interest on the Development Payment, and (b) the balance against the Development Payment. Nothing herein shall prevent the Operator from prepaying the Development Payment in full, together with all accrued unpaid interest thereon, without premium or penalty. Notwithstanding anything to the contrary contained herein, (x) the unpaid balance of the Development Payment, together with accrued unpaid interest thereon, shall become immediately payable upon the termination

of this Agreement, and (y) the Operator's obligation to pay the Operator's obligations under this Paragraph 14 shall survive the expiration or earlier termination of this Agreement. If Operator fails to pay any amount in full when due, such amount shall bear interest at the Default Rate until paid in full."

3. To help enable the Operator herein to recover some or all of said funds paid to the Town pursuant to the above paragraph 2 of this Amendment, paragraph 3 of the Parking Management Agreement is hereby deleted in its entirety and the following is substituted therefor:

"3. Term. The term of this Agreement (the "**Term**") shall commence on August 20, 2012 (the "Commencement Date") and shall continue until June 30, 2030."

4. Paragraph 13(C) of the Parking Management Agreement is hereby amended to delete the first clause of the second sentence thereof in its entirety and to substitute therefor the following:

"The Operator shall not assign its rights and obligations under this Agreement without the prior written approval of the Town, which approval shall not be unreasonably withheld, after taking into account all obligations that remain to be performed by the Operator under this Agreement, and the reputation, experience, financial capability and ability to perform of the assignee assuming such obligations and provided the Operator is not in default under this Agreement and the assignee assumes all of the obligations of the Operator under this Agreement in a written agreement reasonably acceptable to the Town;"

5. Paragraph 13(C) of the Parking Management Agreement is hereby further amended to add the following at the end of said Paragraph 13(C):

" Any assignment without the requisite approval required hereunder shall be null and void and without any force or effect."

6. The Parking Management Agreement is hereby amended to insert the word "Town" in front of the references to "Development Agreement" in the last Whereas of the Recitals thereof and in Paragraph 4(L) thereof.
7. This Amendment may be executed in one or more counterparts, each of which shall be an original, but all of which shall constitute but one instrument.
8. Except as otherwise set forth in this Amendment, the Parking Management Agreement is unchanged and is hereby ratified, confirmed and approved in all respects.

**IN WITNESS WHEREOF**, the Parties have executed and delivered this Amendment as of the date first above written.

**TOWN:**

Cynthia A. van Zelm  
Cynthia A. van Zelm

**Town of Mansfield**

Sara Ann Bourque  
Sara Ann Bourque

By Matthew W. Hart  
**Matthew W. Hart**  
Its Town Manager

**OPERATOR:**

Cynthia A. van Zelm  
Cynthia A. van Zelm

**Leyland Storrs, LLC**

Sara Ann Bourque  
Sara Ann Bourque

By Howard Kaufman  
**Howard Kaufman**  
Its Manager

STATE OF Connecticut )  
COUNTY OF Tolland ) ss: Mansfield

On this the 2<sup>nd</sup> day of December, 2013, before me the undersigned officer, personally appeared Howard Kaufman, who acknowledged himself to be a manager of Leyland Storrs, LLC, a Connecticut limited liability company, signer of the foregoing instrument, and that he as such manager, being authorized so to do, acknowledged the execution of the same for the purposes therein contained and as his free act and deed as such manager and the free act and deed of said limited liability company.

IN WITNESS WHEREOF, I hereunto set my hand.

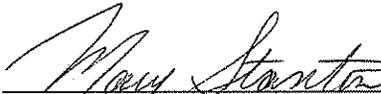
  
\_\_\_\_\_  
Commissioner of the Superior Court  
Notary Public  
My Commission Expires:

**MARY STANTON**  
**NOTARY PUBLIC**  
MY COMMISSION EXPIRES OCT. 31, 2015

STATE OF CONNECTICUT )  
COUNTY OF TOLLAND ) ss: Mansfield

On this the 2<sup>nd</sup> day of December, 2013, before me the undersigned officer, personally appeared Matthew W. Hart, who acknowledged himself to be the Town Manager of the Town of Mansfield, a Connecticut municipal corporation, signer of the foregoing instrument, and that he as such officer, being authorized so to do, acknowledged the execution of the same for the purposes therein contained and as his free act and deed as such officer and the free act and deed of said corporation.

IN WITNESS WHEREOF, I hereunto set my hand.

  
\_\_\_\_\_  
Commissioner of the Superior Court  
Notary Public  
My Commission Expires:

**MARY STANTON**  
**NOTARY PUBLIC**  
MY COMMISSION EXPIRES OCT. 31, 2015