

Prepared by and return to:  
Donald J. Doody, Esq.  
Goren, Cherof, Doody & Ezrol, PA  
3099 E. Commercial Blvd.  
Suite 200  
Fort Lauderdale, FL 33308

### **IN-LIEU OF PARKING FEE PAYMENT AGREEMENT**

**THIS AGREEMENT** (“Agreement”) is made as of the 17<sup>th</sup> day of May, 2017 by and between **THE CITY OF OAKLAND PARK**, a Florida municipal corporation of the State of Florida (“**City**”), and **GREENWHEEL, LLC**, a limited liability company of the State of Florida (“**Greenwheel**”).

**WHEREAS, Greenwheel** is the owner of certain real property located at 3400 NE 11<sup>th</sup> Avenue and 3401 N. Dixie Highway, Oakland Park, Florida, which is collectively referred to as the “Property”; and

**WHEREAS, Greenwheel** has applied to the City for approval of a site plan modification for the development of a fitness center and restaurant on the Property; and

**WHEREAS**, as a condition of approval for the development of a fitness center and restaurant on the Property, **Greenwheel** is to provide on site parking as required under the Land Development Regulations of the **City**.

**WHEREAS**, the intended use of the real property located at 3400 N.E. 11<sup>th</sup> Avenue requires that the **Greenwheel** provide twenty-three (23) on site parking spaces and the intended use of the real property located at 3401 North Dixie Highway requires that **Greenwheel** provide twelve (12) on site parking spaces for a total of thirty-five (35) on site parking spaces for the development of a fitness center and restaurant on the Property; and

**WHEREAS**, Section 24-276(D) of the Land Development Regulations provides for a fifteen thousand (\$15,000.00) dollar fee for each parking space not provided for on site; and

**WHEREAS**, Section 24-276 of the Land Development Regulations provides that the City Manager may waive the payment of a fee to the **City** in-lieu of providing required parking; and

**WHEREAS, Greenwheel** is only able to provide five (5) on site parking spaces for Property resulting in a deficiency of thirty (30) on site parking spaces; and

**WHEREAS**, the City in consideration of **Greenwheel** paying a fee of Two Hundred Thousand (\$200,000.00) Dollars in accordance with the payment schedule set forth herein agrees to waive the on site parking requirements; and

**WHEREAS**, the parties desire to enter into this Agreement in order to confirm the terms of the in-lieu fee and the basis of the waiver and the obligation of the parties going forward.

**NOW, THEREFORE**, in consideration of the foregoing, the mutual covenants and conditions contained in this Agreement, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. The parties hereby represent and warrant that the foregoing recitals are accurate and correct and hereby incorporate them in this Agreement.
2. Property. The Property to which this Agreement applies is legally described as follows:

See Attached Exhibit "A"

3. Payment Schedule. **Greenwheel** agrees and acknowledges that it shall pay to the **City** a total in-lieu of parking fee of Two Hundred Thousand Dollars (\$200,000.00) ("Parking Fee") as consideration of the City's waiving the requirement that **Greenwheel** provide thirty (30) on site parking spaces in addition to the existing five (5) on site parking spaces located on the Property. The total fee shall be paid as follows:
  - (a) The initial payment ("Initial Payment") in the amount of Twenty-Eight Thousand Five Hundred Seventy One and 48/100 Dollars (\$28,571.48) by check delivered to the **City of Oakland Park Finance Department** shall be due and payable three hundred sixty five (365) calendar days subsequent from the date of the issuance of the Temporary Certificate of Occupancy or Certificate of Occupancy for any Phase of the project which requires parking, whichever is sooner..
  - (b) A second payment in the amount of Twenty-Eight Thousand Five Hundred Seventy One and 42/100 Dollars (\$28,571.42), shall become due on the first anniversary of the date of the Initial Payment.

- (c) A third payment in the amount of Twenty-Eight Thousand Five Hundred Seventy One and 42/100 Dollars (\$28,571.42), shall become due on the second anniversary of the date of the Initial Payment.
- (d) A fourth payment in the amount of Twenty-Eight Thousand Five Hundred Seventy One and 42/100 Dollars (\$28,571.42), shall become due on the third anniversary of the date of the Initial Payment.
- (e) A fifth payment in the amount of Twenty-Eight Thousand Five Hundred Seventy One and 42/100 Dollars (\$28,571.42), shall become due on the fourth anniversary of the date of the Initial Payment.
- (f) A sixth payment in the amount of Twenty-Eight Thousand Five Hundred Seventy One and 42/100 Dollars (\$28,571.42), shall become due on the fifth anniversary of the date of the Initial Payment.
- (g) A seventh payment in the amount of Twenty-Eight Thousand Five Hundred Seventy One and 42/100 Dollars (\$28,571.42), shall become due on the sixth anniversary of the date of the Initial Payment.
- (h) Any payment referenced above shall be paid no later than ten (10) calendar days from the due date and any payment not made within ten (10) days calendar days from the due date shall constitute an event of default and began to accrue interest at the highest rate allowed under Florida law as may be amended from time to time.
- (i) Each payment shall be made to:  
Finance Department  
City of Oakland Park  
3650 NE 12<sup>th</sup> Avenue  
Oakland Park, FL 33334
- (j) Upon completion of payments required hereunder, the waiver shall remain in place unless terminated by the City for a default under Section 8 herein

- 4. In addition to the fee schedule referenced above, the City agrees and allows **Greenwheel** to avail itself of fifteen (15) parking spaces available on an existing surface parking lot located within close proximity (approximately 700 feet) of the Property.
- 5. The City acknowledges **Greenwheel** has entered into an agreement with a third party acceptable to the City providing for temporary off-site parking consisting of a

minimum of 14 parking spaces. **Greenwheel** has provided written evidence to the City that it shall have use of and access of off-site parking for 14 parking spaces for at least one (1) year.

6. The City intends, but shall have no obligation to **Greenwheel**, to design and construct a surface parking lot on City owned land which once constructed shall be available to **Greenwheel** for parking purposes.
7. In the event **Greenwheel** conveys, sells, transfers, or assigns any interest in the Property, or a portion of the Property, then in that event the remaining balance of all sums due the City shall become immediately due and payable and the failure to remit full and complete payment of all monies due the City in accordance with this Agreement within thirty (30) calendar days shall constitute a default.

The parking waiver shall remain in full force and effect in the event **Greenwheel**, its successor and/or assigns, convey, sell, transfer, or assign any interest or a portion of the Property if the following have been satisfied.

- (a) the parking fee payment has been made in full; and
- (b) provided the City confirms the use does not change.

8. Default. The failure of **Greenwheel** to comply with the terms of this Agreement until such time as the Parking Fee the **City** are paid in full shall constitute an event of default.

- (a) In the event Greenwheel does not comply with Sections 3 and 7, the **City** shall thereby be entitled to accelerate all remaining payments, demand payment, and file suit in a court of law seeking all payments due, interest, costs, and attorneys' fees and all other available remedies including a revocation of the business tax license resulting in an immediate cessation of business operations on the Property; and
- (b) In the event of a non-monetary default by, **Greenwheel** relative to any terms in this Agreement via written notification documenting reason for default, the **City** shall at its option have the right to terminate this Agreement rendering the allocation of public parking spaces to **Greenwheel** to offset its parking space requirement null and void after allowing Greenwheel sixty (60) days to cure

said written non-monetary default. **Greenwheel's** deficient parking requirements will be reinstated and all required parking spaces will be a requirement of **Greenwheel** or its successors and assigns.

9. In the event of any litigation arising from this Agreement, the prevailing party shall be entitled to reimbursement of reasonable attorneys' fees, incurred at all proceedings, including, without limitation, at trial and all appellate levels, from the non-prevailing party and venue shall be in Broward County, Florida.
10. All of the terms and provisions of this Agreement shall be binding upon, inure to the benefits of and be enforceable by, the parties to this Agreement and their respective successors, legal representatives, and assigns.
11. This Agreement shall constitute the entire agreement of the parties with respect to the subject matter of this Agreement. All prior understandings and agreements between the parties with respect to such matters are merged into this Agreement, which alone fully and completely expresses their understanding.
12. This Agreement may not be amended, assigned, modified, altered, or changed in any respect, except by a further agreement in writing duly executed by each of the parties to this Agreement.
13. **Greenwheel** and the **City** have been represented by counsel of its own choice.
14. This Agreement shall be governed by the laws of the State of Florida and venue shall be in Broward County.
15. This Agreement shall be recorded in the Public Records of Broward County, Florida.

IN WITNESS WHEREOF, the parties to the Agreement have caused this Agreement to be duly executed on their behalf as of the dates set forth below.

ATTEST:

CITY OF OAKLAND PARK, FLORIDA

Renee M. Shroust  
Renee M. Shroust, City Clerk  
R.2017-056

John Adornato, III  
John Adornato, III, Mayor

WITNESSES:

GREENWHEEL, LLC, a limited liability company

PAIGENAST  
Print Name: PAIGENAST  
Sarahmae  
Print Name: Sarahmae

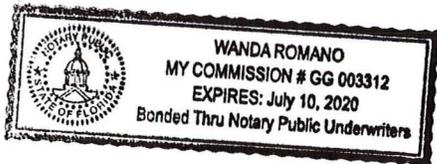
Blaise McMackin  
By: Blaise McMackin  
Title: Member

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 22 day of May, 2017 by \_\_\_\_\_ of Greenwheel, LLC, a Florida limited liability company, on behalf of the company. He/She is personally known to me or has produced \_\_\_\_\_ as identification.

Wanda Romano  
Notary Public

(SEAL)



**Exhibit A**

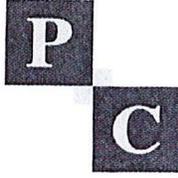
**LEGAL DESCRIPTION**

PARCEL 1:

A portion of the W 1/2 of the NE 1/4 of the SE 1/4 of the SW 1/4 of Section 23, Township 49 South, Range 42 East, Broward County, Florida, being bounded as follows: On the East by the West right of way line of the Old Dixie Highway; on the South by the North right of way line of N.E. 34<sup>th</sup> Street; on the North by a line 50 feet North of and parallel with the said North right of way line of N.E. 34<sup>th</sup> Street; and on the West by a line 105 feet East of and parallel with the East right of way of N.E. 11<sup>th</sup> Avenue; and

PARCEL 2:

That part of the N 1/2 of the W 1/2 of the NE 1/4 of the SE 1/4 of the SW 1/4 of Section 23, Township 49 South, Range 42 East, described as follows: From the Intersection of the center lines of Northeast Eleventh Avenue and Northeast Thirty-fourth Street, run Northerly 20 feet; thence Easterly 20 feet to the Point of Beginning of the Parcel herein described; thence run N 01°26'22" W, along the East line of NE 11<sup>th</sup> Avenue, a distance of 55.00 feet; thence N 88°08'56" E, a distance of 105.00 feet; thence S 01°26'22" E, a distance of 55.00 feet; thence S 88°08'56" W, along the North line of NE 34<sup>th</sup> Street, a distance of 105.00 feet to the Point of Beginning, said lands situate, lying and being in Broward County, Florida.



**Phillips Cantor, P.A.**

ATTORNEYS AT LAW

May 22, 2017

**Via Email**

Jennifer M. Frastai, ICMA-CM  
Director of Engineering & Community Development  
City of Oakland Park  
5399 N. Dixie Highway, Suite 3  
Oakland Park, Florida 33334

Re: Opinion Letter  
Owner: Greenwheel, LLC, a Florida limited liability company  
Property Address: 3401 N. Dixie Highway, Oakland Park, Florida 33334 and  
3400 NE 11<sup>th</sup> Avenue, Oakland Park, Florida 33334 (collectively, the "Property")

Dear Ms. Frastai,

We have acted as closing agent to the Owner in the purchase of the above referenced Property. This opinion letter is delivered to you as required by the City of Oakland Park's attorney.

This opinion letter is rendered solely for the purpose of certifying that Greenwheel, LLC, a Florida limited liability company, is the owner of the Property and has Fee Simple title to the Property as of the date of this letter. The Property is more particularly described on Exhibit A attached hereto and made a part hereof. This may not be relied upon by any other person without our written consent. This opinion letter is not to be quoted or otherwise referred to in any financial statements or any other document, nor filed with or furnished to any governmental agency or other person, without our prior written consent. Notwithstanding the foregoing, portions of this letter may be quoted or furnished to any governmental agency or any rating agency which may issue pass-through certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement relating to the foregoing, to the extent required in connection with such public offering or private placement.

Presidential Circle Suite 500-North, 4000 Hollywood Boulevard, Hollywood, FL 33021

P: 954.966.1820 F: 954.414.9309 W: [www.phillipslawyers.com](http://www.phillipslawyers.com) E: [jcantor@phillipslawyers.com](mailto:jcantor@phillipslawyers.com)

Jennifer M. Frastai, ICMA-CM  
Director of Engineering & Community Development  
City of Oakland Park  
May 22, 2017  
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Very truly yours,



JERALD C. CANTOR  
For the Firm

Jennifer M. Frastai, ICMA-CM  
Director of Engineering & Community Development  
City of Oakland Park  
May 22, 2017  
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**EXHIBIT "A"**  
**Legal Description**

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**Parcel 2:**

That part of the N 1/2 of the W 1/2 of the NE 1/4 of the SE 1/4 of the SW 1/4 of Section 23, Township 49 South, Range 42 East, described as follows: From the intersection of the center lines of Northeast Eleventh Avenue and Northeast Thirty-fourth Street, run Northerly 20 feet; thence Easterly 20 feet to the Point of Beginning of the Parcel herein described; thence run N 01°26'22" W, along the East line of NE 11th Avenue a distance of 55.00 feet; thence N 88°08'56" E, a distance of 105.00 feet; thence S 01°26'22" E, a distance of 55.00 feet; thence S 88°08'56" W along the North line of NE 34th Street, a distance of 105.00 feet to the Point of Beginning, said lands situate, lying and being in Broward County, Florida.