

Recording Requested by and When
Recorded Mail to:

City of Arcadia
240 W. Huntington Dr.
Arcadia, California 91006
Attn: City Clerk

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

ACCESS AND PARKING EASEMENT AGREEMENT

This Access and Parking Easement Agreement (“Agreement”) is entered into as of this _____ day of _____, 2020 (“Effective Date”), by and between the City of Arcadia, a California municipal corporation and charter law city (“City”) and New World International, LLC (“Owner”) (each, individually, a “Party” and collectively the “Parties”).

RECITALS

A. City was the owner of certain real property located on the south side of Wheeler Avenue, east of First Avenue in the City of Arcadia, County of Los Angeles, State of California, that City used as surface parking lot consisting of fifty-five (55) parking spaces (the “City Parcel”). Owner desired to purchase the City Parcel from City to be used as part of a mixed use development consisting of 10,200 square feet of ground floor commercial uses, 139 residential units, and subterranean and surface parking consisting of 350 spaces, the development of which was approved by the City Council pursuant to [**list entitlement approvals**]. (the “Project”).

B. City was willing to sell the City Property to Owner, provided that the Owner would ensure as part of the Project that 55 parking spaces would be available for public use in perpetuity.

C. Owner is the owner of certain real property in the City of Arcadia, Los Angeles County, California, as legally described in Exhibit A, attached hereto and incorporated herein by reference (the “Property”). The Property, which includes the City Parcel, is located generally in between Wheeler Avenue and Huntington Drive in the City of Arcadia, as shown on the Map of the Site, Exhibit B.

D. As part of the Project, Owner desires, on behalf of itself and all successors and assigns to all or part of the Property, to set aside 55 parking spaces on the Property for public use, and provide the public access to said parking spaces.

E. The Owner desires to provide public access and parking rights on the Parcel to the City as set forth in this Agreement.

NOW THEREFORE, the Parties agree as follows:

AGREEMENT

1. Parking Easement. Owner, as grantor, hereby grants to the City for the benefit of the public, a nonexclusive easement for the passage and parking of passenger vehicles in the Parking Easement Area (as defined below), which shall be improved with 55 surface parking spaces for public parking, three of which shall be handicapped parking spaces (“Parking Easement”). “Parking Easement Area” initially means and refers to the area so designated as shown on the Initial Map of the Site, Exhibit B. Unless and until the issuance of the first building permit for the Project, the City shall have access to the Parking Easement Area as shown on the Initial Map of the Site in accordance with the terms of this Agreement. The Parties agree that following the issuance of the first building permit for the construction of the Project, the Parking Easement Area shall be reconfigured and shall thereafter refer to the area so designated as shown on the Final Map of the Site, Exhibit C. The new 55 surface parking spaces for public parking which shall be constructed in the Parking Easement Area as shown on Exhibit C shall be constructed in the manner as set forth in the plans and specifications attached hereto and incorporated herein by reference as Exhibit D (the “Parking Specifications”). The Parking Easement Area may be further relocated within the Property by the mutual written agreement of the Owner and the City.

2. Access Easement. Owner, as grantor, hereby grants to the City for the benefit of the public a nonexclusive easement for vehicular and pedestrian ingress, egress and access in, over and across the Access Easement Area (“Access Easement”). “Access Easement Area” means and refers to the area so designated as shown on the Final Map of the Site, Exhibit C. The Access Easement Area may be relocated within the Property by the mutual written agreement of the Owner and the City.

3. Access Easement Area and Parking Easement Area Maintenance and Repair. Owner shall maintain and repair the Access Easement Area and the Parking Easement Area as listed in Section 3.1 through 3.4 below. These obligations shall be the joint and several obligations of all subsequent owners of the Property or any portion thereof.

3.1 Paved Areas. Maintain all paved surfaces and curbs in the Access Easement Area and Parking Easement Area, which shall only include cleaning, sweeping, re-striping, repainting, and resurfacing, using surfacing material of a quality equal to or superior to the original surfacing material.

3.2 Traffic Signs and Markers. Placing, keeping in good repair, replacing, and repainting any appropriate directional signs, markers and lines in the Access Easement Area and Parking Easement Area.

3.3 Storm Drains. Maintaining, cleaning, repairing and replacing the storm drains located in the Access Easement Area and the Parking Easement Areas.

3.4 Lighting and Landscaping. Maintaining, cleaning, repairing and replacing all lighting and landscaping located in the Access Easement Area and the Parking Easement Area.

4. Parking Meters. In the event that the City decides to install parking meters or other forms of parking management systems within the Parking Easement Area, which may be installed at the sole and absolute discretion of the City, the City shall be responsible for maintaining, cleaning, repairing and replacing all parking meters, and Owner hereby grants the City access to the Access Easement Area and the Parking Easement Area for such purposes.

5. Owner Insurance. Owner shall obtain and keep in force during the term of this Agreement a policy of commercial general liability insurance with broad form general liability endorsement in an amount not less than Five Million and No/100 Dollars (\$5,000,000.00) per occurrence of bodily injury and property damage combined for the Property, including the Access Easement Area and the Parking Easement Area, against the risks of bodily injury, property damage and personal injury liability, and shall name City as an additional insured. In the event that the Property is divided into multiple parcels which are sold as part of the development of the Project, the responsibility to maintain insurance as provided herein shall accrue to the Owner or successor(s) to Owner that owns the underlying fee to the Access Easement Area and the Parking Easement Area.

6. City Insurance. City shall obtain and keep in force during the term of this Agreement a policy of commercial general liability insurance with broad form general liability endorsement in an amount not less than Five Million and No/100 Dollars (\$5,000,000.00) per occurrence of bodily injury and property damage combined or an equivalent amount through self insurance or pooled risk groups that covers the Access Easement Area and Parking Easement Area, against the risks of bodily injury, property damage and personal injury liability.

7. No Obstructions/Interference. Owner shall not unreasonably interfere with the public's use of the Access Easement Area or the Parking Easement Area. Except as otherwise provided for herein, walls, fences, or barriers of any sort or kind shall not be constructed or maintained by Owner within the Access Easement Area or Parking Easement Area; provided, however, that reasonable traffic controls as may be necessary to guide and control the orderly flow of traffic or for security purposes may be installed so long as the access driveways to the Access Easement Area are not closed, blocked, restricted or otherwise adversely altered in a manner that would substantially impair the traffic circulation in the Access Easement Area or the passage and parking in the Parking Easement Area, as set forth in the presently designated configuration as shown in Exhibit B or the configuration that will apply following the issuance of the first building permit for the Project as shown in Exhibit C, or as otherwise mutually agreed to by Owner and the City.

8. Public Use. It is the express intent of the Owner that the Access Easement Area and the Parking Easement Area shall be made available for use by the general public, without limitation or restriction, other than as may be lawfully imposed by the City on public property, through the adoption of an ordinance or resolution, and in accordance with the terms of this Agreement.

9. Covenants To Run With Land. Each of the covenants, conditions or restrictions in this Agreement shall run with the land, and shall bind successive Owners of the Parcel, for the benefit of each Owner of such Parcel.

10. Indemnification. Except for and to the extent of either Party's gross negligence or willful misconduct, each Party covenants and agrees to indemnify, defend and hold the other Party and its officers, officials, agents, employees and independent contractors harmless from and against any and all claims, demands, actions or proceedings, damages, liabilities, costs, expenses (including reasonable attorneys' fees, expert witness fees and other expenses, and costs of suit incurred in connection with such claims) arising from or related to: (1) disputes related to title to, ownership of, use of, and/or the scope of the Access Easement Area and/or Parking Easement Area or the Access Easement or Parking Easement and (2) the injury to or death of any person, or damage to the property of any other person or entity, which occurs on the Parcel arising out of a permissible use of the Access Easement or Parking Easement by the indemnifying Party or as a result of the indemnifying Party's failure to comply with the terms of this Agreement.

11. Amendment and Termination of Agreement. Notwithstanding anything to the contrary herein, a breach of this Agreement shall not entitle either Party to cancel, rescind, or otherwise terminate this Agreement, but such provision shall not affect in any manner any of the other rights or remedies which such Party may have under law or in this Agreement including, but not limited to, those arising by reason of any breach of this Agreement. This Agreement may only be amended or terminated by the mutual written agreement of the Parties or as otherwise provided by law, and the City's non-use of one (1) or more of the Easements granted under this Agreement shall not terminate the Easement on the basis of not being used or be deemed an abandonment of any such Easement.

12. Default and Remedies.

12.1 Default. Upon any material breach of any provision of this Agreement by either Party, the non-breaching Party may serve written notice describing such breach to the breaching Party. If such breach is not cured within ten (10) days after such written notice, such breaching Party shall be in default of this Agreement; provided, however, that if the nature of the breach is such that it cannot be reasonably cured within this 10-day period, then the breaching Party's commencement of a cure during this 10-day period, and its diligent prosecution of a cure thereafter, shall not be considered a default. An act of condemnation by any public entity shall not be considered a default under this Agreement.

12.2 Remedies. A default under this Agreement may be enforced by either Party. The non-defaulting Party shall have all remedies at law or in equity, including, without limitation, the right to perform such obligation on behalf of such defaulting Party and the right to be reimbursed by such defaulting Party for the cost of performance thereof, together with interest at the maximum rate allowed by law.

12.3 Failure to Enforce is Not a Waiver. The failure of either Party to insist upon the strict performance of any covenant, condition, or restriction in this Agreement shall not be construed as a waiver of any future breach of such provisions.

13. General Provisions.

13.1 Attorneys' Fees. In the event that any legal action or proceeding is instituted to interpret or enforce this Agreement, the prevailing Party shall be entitled to its costs, including reasonable attorneys' fees and all other expenses incurred.

13.2 Relief from Obligations. In the event Owner sells, transfers or otherwise conveys its fee interest in all or a portion of the Property (collectively, "conveyance"), upon such conveyance the Owner shall be automatically freed from and relieved of any and all liability under this Agreement with respect to any obligation thereafter to be performed with respect to the Property or portion thereof so conveyed and such obligations shall be assumed by the Party to whom all or a portion of the Property is conveyed. It is intended that the agreement and obligations contained in this Agreement on the part of each Party shall be binding on such Party only with respect to the obligations that are to be performed during its ownership of the Property (or portion thereof or interest therein); therefore, the conveying Party shall remain liable for any obligations incurred under this Agreement prior to the date on which its ownership of the Property (or portion thereof or interest therein) is conveyed.

13.3 Successors. This Agreement is and shall be binding upon and shall inure to the benefit of each of the Parties hereto and their respective successors, assigns, heirs, administrators, executors and legal representatives.

13.4 Governing Law. This Agreement is governed by the laws of the State of California.

13.5 Duration. Unless otherwise cancelled or terminated, all the Easements granted in this Agreement shall continue in perpetuity.

13.6 Entire Agreement. This Agreement contains the entire agreement of the Parties relative to the matters provided for herein.

13.7 Notices. All notices under this Agreement shall be in writing and sent by (a) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the United States Mail, (b) by a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with that courier, or (c) telecopy or similar means, if a copy of the notice is also sent by United States Mail, as follows:

City	City of Arcadia, 240 West Huntington Dr. Arcadia, CA 91066 Attn: City Manager
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Owner	New World International, LLC Attn: Andy Yong Zhang 2334 Golden Springs Drive, Suite 200 Diamond Bar, CA 91765
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13.8 Counterparts. This instrument may be executed in counterpart originals, all of which together when executed, shall be deemed to be one (1) instrument.

IN WITNESS WHEREOF, the Parties hereto executed this Agreement on the date first above written.

CITY:

CITY OF ARCADIA, a California
municipal corporation and charter law city

By: _____
April Verlato
Mayor

ATTEST:

Linda Rodriguez
Assistant City Clerk

Date: _____

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP

By: _____
City Attorney

OWNER:

NEW WORLD INTERNATIONAL, LLC
a California limited liability company

By: _____

Its: _____

By:

Its: _____

Date: _____

Exhibit A

Legal Description of the Property

[Attached behind this page]

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Exhibit B

Initial Map of the Site

[Showing locations of the Public Parking at the time of recordation of this Agreement]

[Attached behind this page]

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Exhibit C

Final Map of the Site

[Showing locations of the Property, Assessment Easement Area, and Parking Easement Area that apply following commencement of the Project]

[Attached behind this page]

Exhibit D

Parking Specifications

[Plans and Specifications for the Public Parking]

[Attached behind this page]

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