

PARKING DECK OPERATING AGREEMENT

by and between

The City of Ann Arbor

and

Lower Town Development Group, L.L.C.

Dated _____, 2007

FILE NO. _____

PARKING DECK OPERATING AGREEMENT

THIS PARKING DECK OPERATING AGREEMENT ("Agreement") dated _____, 2007 is made and entered into by and between the **City of Ann Arbor**, a Michigan municipal corporation (the "City") , 100 North Fifth Ave., Ann Arbor, Michigan 48107 and **Lower Town Development Group, L.L.C.**, a Michigan limited liability company (the "Operator") 1427 W. Saginaw Highway, Suite 200, East Lansing, Michigan 48823. The City and the Operator from time to time are referred to herein individually as a "Party", or collectively as "Parties".

RECITALS:

A. Operator and the City are parties to a certain Turnkey Parking Deck Construction and Donation Agreement dated as of _____, 2007 (the "Construction Agreement"), pursuant to which Operator committed to construct, on a turnkey basis, an approximately 700 space multi-level parking deck and certain other improvements (the "Parking Deck") on that certain parcel of real property consisting of approximately ___ acres of land, more or less, located in the City of Ann Arbor, Washtenaw County, Michigan, and more particularly described on Exhibit A, attached hereto and incorporated herein by reference (the "Deck Parcel"), and upon the completion thereof to convey the Deck Parcel, the Parking Deck and the other relevant appurtenances thereto to the City; and

B. Operator has achieved Completion of construction of the Parking Deck in accordance with the terms of, and as defined in, the Construction Agreement, as the same may have been amended from time to time, and simultaneously with the execution of this Agreement, has conveyed the Deck Parcel, Parking Deck and appurtenances to City; and

C. The Parking Deck is a part of the Broadway Village PUD Zoning District Supplemental Regulations approved by the City on October 7, 2003 (the "Supplemental Regulations"), which in turn are governed by the terms and conditions of that certain Broadway Village at Lowertown Development Agreement dated September 3, 2004, as amended by First Amendment to Development Agreement dated as of July 16, 2007, and as the same may have been and subsequently may be duly amended from time to time thereafter (the "Development Agreement"), which Development Agreement sets forth certain duties and responsibilities of both the City and the Operator and/or its affiliates; and

D. In accordance with the terms and conditions of the Construction Agreement and the Development Agreement, the City desires to engage the Operator to manage same for and on behalf of the City for a period of thirty (30) years commencing as of the date of this Agreement; and

E. Pursuant to the Development Agreement and the Supplemental Regulations, the Deck is to be operated for the benefit of the public and the tenants and

occupants of the Broadway Village PUD Zoning District, its employees, agents, and invitees; and

F. The City and Operator wish to set forth on a more particularized basis the agreement of the Parties with respect to the management of the Deck in accordance with the Development Agreement and related documentation.

NOW, THEREFORE, in consideration of the sum of \$10.00 paid by the Operator to the City, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt, adequacy and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

ARTICLE 1

DEFINITIONS

1.1 Definitions. The following capitalized terms shall have the definitions given herein.

1.1.1 “Administering Department” means the City of Ann Arbor or its designee.

1.1.2 “Affiliate” shall mean a person or entity that directly or indirectly controls or is controlled by, or is under the common control of the Operator (as hereinafter defined). For purposes of this definition, common control means not less than 50% of the equitable ownership of the Affiliate.

1.1.3 “Agreement”, or “Operating Agreement”, shall mean this Operating Agreement.

1.1.4 “Building Equipment” shall mean all equipment, apparatus, machinery, devices, fixtures, appliances which are permanently affixed now, or hereafter affixed, upon, and used or useful in connection with the operation of the Parking Deck, including without limitation elevators and parking access and revenue control equipment, but excluding leased equipment which shall be controlled by the terms and conditions of the lease creating Operator’s interest therein.

1.1.5 “City” shall mean the City of Ann Arbor, its successors and assigns.

1.1.6 “Construction Agreement” has the meaning set forth in Recital B.

1.1.7 “Deck Parcel” shall have the meaning set forth in Recital A.

1.1.8 “Development Agreement” shall have the meaning set forth in Recital C.

1.1.9 “Effective Date” means the date of execution of this Agreement.

1.1.10 “Governmental Authorities” shall mean all federal, state, county, municipal and local governments, and all departments, commissions, boards, bureaus, agencies and offices thereof, having or claiming jurisdiction over all or any part of the Deck Parcel, the Parking Deck and/or the use thereof.

1.1.11 “Hazardous Materials” means any substance, including without limitation perchloroethylene (PCE) or any substance containing PCE, deemed hazardous under any Hazardous Materials Law, the group of organic compounds known as polychlorinated biphenyls, flammable explosives, radioactive materials, medical waste, chemicals, pollutants, effluents, contaminants, emissions or related materials and items included in the definition of hazardous or toxic wastes, materials or substances under any Hazardous Materials Law.

1.1.12 “Hazardous Materials Law” means any law, regulation or ordinance relating to environmental conditions, including without limitation the Resource Conservation and Recovery Act of 1976 (“RCRA”), the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”), as amended by the Superfund Amendments and Reauthorization Act of 1986 (“SARA”), the Hazardous Materials Transportation Act, the Federal Water Pollution Control Act, the Clean Air Act, the Clean Water Act, the Toxic Substances Control Act, the Safe Drinking Water Act, the Atomic Energy Act, the Michigan Natural Resources and Environmental Protection Act and all similar federal, state and local environmental statutes, ordinances and the regulations, orders, or decrees now or hereafter promulgated thereunder.

1.1.13 “Lender” shall mean that entity identified in a written notice to the City, which notice shall include the name, address, phone number and fax number for same, to whom the Operator may have assigned for security its rights and obligations under this Operating Agreement. The Lender may act as a lead agent for any series of syndicate banks which may take a participation in any such financing.

1.1.14 “Operator” shall mean LowerTown Development Group, LLC, a Michigan limited liability company, its permitted successors and assigns (which includes an Affiliate).

1.1.15 “Parking Deck” means the multi-level motor vehicle parking structure required to be constructed pursuant to the Construction Agreement as defined therein.

1.1.16 “Project” means the Broadway Village at Lower Town multi-use development project being undertaken by Operator, as reflected in the Development Agreement and the Supplemental Regulations, lying immediately adjacent to and contemplating the use of the Parking Deck.

1.1.16 “Supervising Professional” means the Director of the Administrating Department or other persons acting under the authorization of the Director of the Administering Department or a third party appointed by City to act as Supervising Professional.

1.1.17 “Supplemental Regulations” has the meaning set forth in Recital C.

1.1.18 “Term” shall have the meaning set forth in Paragraph 2.2.

1.1.19 “TIF Reimbursement” means the tax increment financing district reimbursement for certain eligible costs relating to the construction of the Parking Deck and the Project, under the Michigan Brownfield Redevelopment Authority Act and as implemented by the Reimbursement Agreement dated _____, 2007, by and between Operator and the Washtenaw County Brownfield Redevelopment Authority.

ARTICLE 2

AGREEMENT TO OPERATE

2.1 Engagement to Operate. Operator hereby agrees to possess and operate, and City hereby retains Operator exclusively to possess and operate, pursuant to the provisions hereof, the Parking Deck for the Term (as defined in Paragraph 2.2 below).

2.2 Term. The Term hereof shall commence on the Effective Date and end on the 30th anniversary of the Effective Date unless otherwise terminated in accordance with the terms and conditions hereof. The Term of this Agreement may be extended upon the mutual written agreement of the Parties.

2.3 Surrender Upon Expiration of Term.

2.3.1 Upon expiration or earlier termination of the Term, Operator shall deliver possession of the Parking Deck to City broom-clean, in good and fully functional and operational order and condition, maintained fully in accordance with the requirements of this Agreement. Operator shall deliver to City all then-existing reserves established pursuant hereto. Subject to Section 2.4, Operator shall have no right to continued possession or operation of the Parking Deck or the revenues therefrom after the expiration of the Term.

2.3.3 If (a) Operator is receiving TIF Reimbursement as of the expiration of the Term, and continued operation of the Parking Deck as a municipal garage as required by this Agreement is necessary to the continued eligibility for such TIF Reimbursement, and/or (b) continued operation of the Parking Deck as a municipal garage as required by this Agreement is necessary to compliance of the Project with the Supplemental Regulations, as the same may have been amended from time to time, and (c) Operator has materially complied and, as of the expiration of the Term, is in substantial compliance with the terms and conditions of this Agreement (such that the Parking Deck is a fully functioning parking garage) after notice and the expiration of any applicable cure period, then and in such event City shall continue to operate the Parking Deck as a municipal garage in accordance with the standards set forth in this Agreement, or with standards then generally and uniformly applied by City or its Downtown Development Authority for its other municipal parking garages of similar

vintage, for a period terminating on the earlier to occur of: (x) the expiration of twenty (20) years from the expiration of the Term, or (y) such time as such requirements for TIF Reimbursement and/or the Supplemental Regulations cease to apply.

2.4 City's Put Option. Provided same does not adversely affect Developer's TIF reimbursement, City shall have the option (but shall not be required), to convey the Parking Deck Parcel and the Parking Deck to Operator or Operator's designee upon expiration of the Term, provided the state and quality of title to the Deck Parcel has not been materially changed from that which existed at the time of Closing nor have the environmental conditions of the Parking Deck been adversely and materially affected since the Effective Date through the acts or omissions of City. This option shall be exercised irrevocably by the City providing written notice to Operator and Lender (if any) in accordance with this Agreement no later than the twenty-ninth (29th) anniversary of the Effective Date. If City elects to exercise this option, the closing on the conveyance of the Parking Deck shall take place within thirty (30) days following the expiration of the Term. City shall convey the Parking Deck Parcel and Parking Deck by covenant deed and covenant bill of sale, on an otherwise AS-IS, WHERE-IS, and WITH ALL FAULTS basis except to the extent the Parking Deck has been materially damaged due to the acts and/or omissions of City, its employees, agents and/or contractors (excluding Operator), with no warranties or representations whatsoever, for the consideration of One Dollar (\$1.00) in hand paid by Operator. If City shall have encumbered the Parking Deck Parcel or the Parking Deck by a mortgage or mortgages as permitted herein, any such mortgage shall be discharged at or before closing on such conveyance. If and in the event the TIF reimbursement shall for any reason not have been completed (or shall not be projected as of the date by which the foregoing election would otherwise have to be made by City to be completed) by the expiration of the term of this Agreement, then and in such event the Put Option granted to City hereunder shall be deemed extended until such time as the TIF reimbursement shall be complete.

2.5 Recordation of Agreement. Upon request of either Party, this Agreement shall be recorded in the records of the Washtenaw County Register of Deeds. The cost of recording shall be born by Operator. In the event Operator assigns and/or grants a security interest in Operator's rights hereunder to Operator Lender (as defined below) as collateral, the Lender shall be permitted to file evidence of such assignment and/or pledge for collateral both in the real estate records for Washtenaw County and such other filings, including UCC filings, as said Lender may require. The City agrees to reasonably cooperate at no cost to itself in the prompt execution of such acknowledgements.

2.6 Fees Payable to the City. The Operator shall pay to City a fee for the exclusive right and privilege of operating the Deck pursuant to the terms hereof in the amount of Ten (\$10.00) Dollars, the receipt of which City acknowledges by its execution hereof. There shall be no other fees payable to City by Operator as a condition of the continuation of this Agreement.

ARTICLE 3

PARKING DECK OPERATIONS

The following terms and conditions shall apply to the operation of the Parking Deck during the term hereof:

3.1 Operation.

3.1.1 Operator agrees to operate the Parking Deck for the benefit of the public and the tenants and occupants of the Broadway Village PUD Zoning District, its employees, agents, invitees and otherwise as a public parking facility which shall be open to the users thereof seven (7) days a week, twenty four (24) hours a day in accordance with the Supplemental Regulations.

3.1.2 It is contemplated by the Parties that Operator shall at all times operate the Parking Deck through, and engage the services of, a reasonably established parking garage management company selected by Operator but satisfactory to City and to Operator's Lender, with demonstrable experience in operating and maintaining parking garages similar to the Parking Deck.

3.1.3 Operator (or its management company) shall employ honest, competent and courteous personnel who are adequately trained and capable of performing the job duties assigned to them in accordance with this Agreement. Operator (or its management company) shall perform a criminal history background check on every employee hired to work in the Parking Deck. A minimum of one cashier shall be on-site and on duty at all times during attended hours of operation. Operator is responsible for providing adequate cashier staffing levels to provide acceptable levels of customer service. All staff shall wear neat and clean uniforms and shall wear badges which have a photo of the employee, identify the staff member's name, and display the Operator's (or management company's) name and logo. Operator shall utilize nameplates on the exterior of the parking booths to clearly identify the cashier on duty.

3.2 Rates. Operator shall have the right in its reasonable discretion to set parking rates for usage, and generally-applicable rules of operation consistent with sound management practices and this Agreement without the prior written consent of City. Parking rates for general public usage shall take into account any and all operating, maintenance and repair expenses and reserves, including real estate taxes, and the need to maintain a balance to provide adequate parking for tenants and visitors of the Project and the remainder of the general public, but in all events in accordance with the Supplemental Regulations. Operator's authority shall extend to entering into agreements with the tenants, occupants and invitees of the project for such duration and at such rates as Operator may agree, provided however, City shall not be obligated to assume such obligations following the expiration of the Term if they are for a term of more than one (1) year. Said parking arrangements may exceed thirty (30) days and shall be otherwise on such terms and conditions as Operator shall determine appropriate.

3.3 Retention of Revenue. Any and all revenue, profits and/or income of any kind collected by or payable to Operator from the operation of the Parking Deck shall be retained by Operator and first used to pay operating expenses, repairs and maintenance of the Parking Deck and to establish reserves in accordance with the provisions hereof. Any operating revenue collected in excess of the cost to operate and maintain the Parking Deck and to fund reserves as hereinafter required, if any, may be utilized by Operator for operations, to reimburse the Operator for the costs of the initial construction of the Parking Deck, and/or to cover any finance expenses incurred in connection with same.

3.4 Costs. Operator shall pay any and all costs to operate, maintain, repair and/or replace the Parking Deck or any part thereof including, but not limited to, fees for water service, sewer service, solid waste disposal, gas, electric, staffing, real estate taxes (including leasehold or similar taxes levied in addition to, or in lieu of, real estate taxes), special assessments, personal property taxes, administration, maintenance, management, light, heat, steam power, elevator maintenance and repair, telephone and other utility services supplied to the Parking Deck, all of which Operator agrees to pay prior to accrual of late fees and/or penalties due to non-payment. Nothing contained herein shall negate Operator's right to challenge any such tax. Any rebate of taxes and/or assessments shall be retained by Operator. It is the intent of this Agreement that any and all costs and expenses of any nature whatsoever pertaining to the Parking Deck during the Term shall be the sole obligation and liability of Operator, and Operator shall defend, indemnify and hold harmless City therefrom.

3.5 Compliance with Encumbrances. Operator acknowledges the existence of and agrees to comply with during the Term hereof, the terms and conditions of the encumbrances affecting the operation, use and maintenance of the Parking Deck as of the Effective Date including, but not limited to, the reciprocal easement agreement for ingress and egress between the City, as the owner of the Parking Deck, and the Operator's affiliates and the easement agreement for elevator and pedestrian access. City also agrees to comply with the terms of any permitted encumbrances to the extent not a part of Operator's obligations hereunder. Operator shall not be responsible for the compliance of any other encumbrances placed upon the Deck Parcel following the Effective Date which would limit Operator's rights to operate and manage the Parking Deck in accordance with the terms hereof or increase the cost of the operation and management of same unless first approved by the Operator or unless such encumbrances are due or attributable to the act or neglect of Operator.

3.6 Repair and Maintenance; Reserves.

3.6.1 Operator shall at all times maintain (including all necessary and appropriate repairs and replacements) the Parking Deck in accordance with established "best practices" for parking garages of the design and construction of the Parking Deck, based on the following published industry standards (as the same may be updated from or superseded from time to time): (a) National Parking Association, Parking Consultants Council, Parking Garage Maintenance Manual, 4th Edition, 2004; (b) Precast/Prestressed Concrete Institute, Maintenance Manual for Precast Parking

Structures, 2004; (c) American Concrete Institute, Document ACI 362.2R-OO, Guide for Structural Maintenance of Parking Structures, 2000; and (d) operations and maintenance manuals for the Building Equipment published by the manufacturers thereof. In the event Carl Walker, Inc., and Smith Group, the design architects and engineers for the Parking Deck, shall have prepared a project-specific operations and maintenance manual for the Parking Deck based on the foregoing standards and best practices, and otherwise reasonably satisfactory to City, the provisions of such manual shall be deemed to establish the standards for maintenance, repair and replacement purposes of this Agreement.

3.6.2 Operator shall maintain the Deck in accordance with the requirements of Section 3.6.1, above, as implemented in the annual maintenance plan developed pursuant to Section 3.7 below, and pay for all expenses related thereto. Operator shall cause the Parking Deck to comply with all lawful requirements of Governmental Authorities, except to the extent caused by the wrongful acts or omissions of the City and/or its employees, agents, and/or contractors.

3.6.3 Beginning as of the Effective Date, Operator shall establish and at all times fund and maintain such reserves as are required or appropriate in accordance with industry standards (which may include reserves for regularly reoccurring or extraordinary maintenance, repairs and capital expenditures/replacements), reasonably calculated to provide adequate funding for the costs and expenses which are Operator's obligation under this Agreement throughout the life of this Agreement, and satisfactory to City and Lender. Failure to fund any required reserves as required by this Section 3.6.3 shall constitute a material default under this Agreement, and is not subject to dispute resolution pursuant to Section 3.12, below. Any reserves required to be established pursuant to the provisions of this Section 3.6.3 shall be funded based upon a funding plan to be agreed to by the Parties such that, over a reasonable period of time, such reserves shall be accrued to a maximum amount by the Industry standards. Any reserves, once established, shall be used by Operator for their intended purpose and, once drawn upon, shall be refunded in accordance with the installment contribution method to an amount not to exceed the maximum of such reserves.

3.7 Annual Maintenance Schedules. Beginning as of the Effective Date and annually thereafter, the Operator shall submit to City a proposed maintenance and repair plan for the Parking Deck components which shall be prepared initially by Operator and shall otherwise be consistent with the requirements of Section 3.6. The management plan shall provide estimated costs associated with said plan and shall establish such reserves as the Parties may reasonably determine appropriate given the useful life of the components of the Parking Deck and industry standards. In the event the City fails to object by written notice to Operator within sixty (60) days of receipt of the annual maintenance, repair and reserve plan and budget, same shall be deemed accepted by the City and Operator shall implement same in accordance with said budget. If City timely objects to said maintenance, repair and reserve plan (the "MRR Plan") then the provisions of Section 3.12 shall govern the resolution of said dispute. Not more frequently than annually (or at such other intervals as established under Section 3.6), the City may request that Operator have the Parking Deck

improvements inspected by a third party inspector to confirm the condition of the Parking Deck. Said inspection shall be performed at the sole cost and expense of the City; provided, however, that if such inspection discloses that Operator has failed to maintain the Parking Deck in accordance with Section 3.6, Operator shall promptly and at its sole expense remedy the deficiencies identified in such inspection and pay the cost of the inspection. Notwithstanding the foregoing, Operator shall engage a third party inspector at its sole cost and expense to inspect and conduct an engineering assessment of the Parking Deck at least once every two (2) years and provide a copy of said report to the City. Similarly, if such inspection discloses that Operator has failed to maintain the Parking Deck in accordance with Section 3.6, Operator shall promptly and at its sole expense remedy the deficiencies identified in such inspection. The inspector engaged by the Operator for such purposes shall be subject to the reasonable approval of City, such approval shall not be unreasonably withheld, conditioned or delayed.

3.8 Annual Reports. Within sixty (60) days following the end of any calendar year or any partial calendar year, Operator shall provide a report to the City summarizing all maintenance, repair and replacement activities which it has undertaken over the course of the immediately preceding calendar year. Operator shall also report and show evidence of funding of the reserves required pursuant to Section 3.6. Operator shall not be obligated to provide to the City reports summarizing the operational revenue of the Deck except in the limited circumstance where reserves have not been funded in accordance with Section 3.6 or the operating revenue is insufficient to cover the expenses of the Parking Deck and Operator has defaulted in its obligations hereunder, which default remains uncured (by Operator or any Operator Lender) following notice and the expiration of any cure period. In the event of any shortfall, Operator shall be responsible for funding same.

3.9 Disclosure; Signage. Operator shall post such signs within the Parking Deck as are necessary to make clear to the users of the Deck that all comments and/or questions relating thereto should be directed to the Operator and not to the City. Notwithstanding the foregoing, in the event the City becomes aware through any source or otherwise resulting from its investigations of the need for any repairs or replacements to the Parking Deck, it shall provide written notice thereof to Operator. City may, at its option, require appropriate signage on and/or in the Parking Deck identifying it as a City/municipal parking structure.

3.10 Temporary Closing. In the event Operator determines that repairs and/or maintenance need to be effected which shall require that more than fifty (50) spaces within the Parking Deck, or the Parking Deck needs to be closed to the public for more than twenty four (24) continuous hours at any time, Operator shall provide prior written notice of such fact to the City.

3.11 Alterations/Additions Costing More Than \$25,000.00. Operator shall not make any alterations, replacements or additions to the Parking Deck costing more than \$25,000.00, or which could impact the structural integrity of the Parking Deck regardless of cost, without first providing written notice thereof to the City, which

written notice shall contain a description of the structural alterations to be made, the justification for same, and the cost estimate therefor, together with plans and specifications for same. Except in the event of an emergency involving potential injury or loss of life (and in which event Operator shall immediately provide all available information to City), the City shall have a period of sixty (60) days following its receipt of such information to object thereto. If an emergency described in the foregoing sentence exists, Operator shall immediately (but after prompt notice to City thereof) take all steps as are necessary to alleviate the emergency, subject only to regular City permitting and inspection requirements (independent of this Agreement), and shall thereafter proceed with the review and approval process set forth herein. In the event the City fails to object or provide comments within such sixty (60) day period, then Operator shall be permitted to proceed with the alterations proposed, at Operator's sole cost and expense.

3.12 Maintenance Disputes. In the event City alleges that Operator has defaulted in its maintenance and repair obligations under Sections 3.6.1 and 3.6.2, the Parties cannot agree on the MRR Plan under Section 3.7, and/or City otherwise determines that additional maintenance, repairs or alterations are required to the Parking Deck, City shall provide written notice thereof to Operator (and Operator's Lender, if any), which notice shall detail with specificity the scope and extent of such default, objection, modifications and/or alterations. Operator shall have a period of fifteen (15) days following its receipt of such notice to object and/or provide comments to same. In the event Operator and City disagree with respect to the existence of a default, the need for or the design of any such modifications proposed by the City, or are unable to agree on the MRR Plan, they shall first endeavor to resolve same through the exercise of good faith negotiations. In the event the Parties are unable, within thirty (30) days after Operator's timely objection to City's claim, to resolve said dispute, then at any time thereafter upon the election of either party a mutually acceptable engineer with demonstrated expertise in the maintenance, repair and design of parking decks shall be engaged by the Parties to provide an opinion with respect to such alleged default and/or needed repairs and/or replacements, the design thereof, the MRR Plan or any required reserves under Section 3.6.3 (but the procedure in this Section 3.12 shall not apply to any failure by Operator to fund established reserves). The decision of said third party engineer shall be binding upon both the City and Operator. Operator shall not be in default of its obligation hereunder in such circumstance unless and until the engineer has issued its report indicating that such repair and/or alterations are necessary and Operator has failed to implement same within sixty (60) days of such determination.

ARTICLE 4

INDEMNIFICATION AND INSURANCE

4.1 Indemnification.

4.1.1 Except as to damage caused by the willful misconduct, fraud, breach or the intentional or negligent act or omission of City, its agents or employees,

Operator shall defend and hold City harmless from and against any and all claims and damages, including reasonable attorneys' fees, and any orders, decrees or judgments which may be entered therein, brought for damages or alleged damages resulting from any injury to person or property or from loss of life sustained on the Parking Deck arising during the Term and/or renewed Term. Nothing in this Agreement shall be construed to waive or impair any rights or defenses related to governmental immunity.

4.1.2 Upon payment to City of Operator's full liability to City hereunder with respect to any such occurrence; Operator shall be subrogated to any rights of City against other Parties to the extent of the payments so made. City shall promptly notify Operator of any claims asserted against City on account of any occurrence to which the foregoing indemnity relates. Operator shall defend any action or proceeding based on any such claim in its own name or the name of City, at Operator's cost, with attorneys of Operator's selection (but satisfactory to City) and City shall cooperate in such defense if requested by Operator. City may, if it sees fit, participate in any such defense, but Operator shall not be required to reimburse City for any costs or expenses unless such costs or expenses were incurred at Operator's request.

4.1.3 City shall defend and hold Operator and its officers, directors, employees, agents and contractors harmless from and against any and all claims and damages, including reasonable attorneys fees, and any orders, decrees or judgments which may be entered therein, brought for damages or alleged damages resulting from any injury to person (*i.e.*, bodily injury) or property or for loss of life sustained on the Parking Deck resulting from the willful misconduct, fraud or the intentional or negligent acts or omissions of the City, its agents and/or employees or otherwise resulting from a default by City hereunder. City shall defend any action or proceeding based upon any such claim in its own name or in the name of the Operator, at the City's cost, with attorneys of City's selection and Operator shall cooperate in such defense, if requested by City. Operator may, if it sees fit, participate in any such defense, but City shall not be required to reimburse Operator for any costs or expenses (including fees of Operator's counsel) unless such costs or expenses were incurred at City's request.

4.2 Insurance. Operator shall maintain and pay for with insurance carriers authorized to do business in Michigan, the following insurance with respect to the Parking Deck and its operation:

4.2.1 Garage Keeper's legal insurance, in the amount of not less than \$1,000,000.00.

4.2.2 Commercial general liability insurance, naming City as an additional insured, against claims for bodily injury, death and property damage occurring upon, in or about the Parking Deck, and which shall include coverage for dishonest acts of Operator's or its management company's employees and agents. Such insurance shall provide for a limit of not less than \$1,000,000.00 single-limit coverage per occurrence;

4.2.3 Automobile liability in the amount of \$1,000,000.00, single limit, covering any automobile, hired automobile, and non-owned automobiles;

4.2.4 Umbrella excess coverage in the amount of \$10,000,000.00.

4.2.5 Workers' compensation in policy limits of: Coverage A—statutory, and Coverage B--\$100,000.00;

4.2.6 Commercial property insurance (formerly known as "all-risk" insurance) in the amount of the full replacement cost of the Parking Deck, with a special broad form causes-of-loss form, on the Parking Deck insuring City and Operator, as their respective interests may appear, and against loss or damage by such other, further and additional risks as Operator may elect.

4.2.7 The insurance coverage required to be carried by Operator, as set forth in this Section, may be carried in whole or in part (i) under any plan of self-insurance which Operator may from time to time have in force and effect so long as the amount self-insured does not exceed \$100,000, or (ii) under a "blanket" policy or policies of Operator or affiliates of Operator.

4.2.8 At the request of Operator's Lender, all insurance required to be obtained and maintained by Operator hereunder shall name said Operator Lender as an additional insured and/or as loss payee as it relates to the rights of the Operator in and to such policies and/or proceeds.

4.2.9 Insurance required under this Section 4.2 shall be considered primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance. Further, the Operator agrees to waive any right of recovery by its insurer against the City.

4.2.10 Operator shall provide to the City before the commencement of this Agreement Contract documentation demonstrating it has obtained the above mentioned policies. Documentation must provide and demonstrate an unconditional 30 day written notice of cancellation in favor of the City. Further, the documentation must explicitly state the following: (a) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts; (b) any deductibles or self-insured retentions which shall be approved by City, in its sole discretion; (c) that the policy conforms to the requirements specified. An original certificate of insurance may be provided as an initial indication of the required insurance, provided that no later than 21 calendar days commencement of the Term Operator supplies a copy of the endorsements required on the policies. Upon request, Operator shall provide within thirty (30) days a copy of the policy(ies) to City. If any of the above coverages expire by their terms during the Term, Operator shall deliver proof of renewal and/or new policies to the Administering Service Area/Unit at least ten days prior to the expiration date.

4.2.11 Any insurance provider of Operator shall be admitted and authorized to do business in the State of Michigan and shall carry and maintain a

minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A-" overall and a minimum Financial Size Category of "V." Insurance policies and certificates issued by non-admitted insurance companies are not acceptable unless approved in writing by the City.

4.3 Damage or Destruction and Insurance Proceeds.

4.3.1 If at any time during the Term the Parking Deck or any part thereof shall be damaged or destroyed by any casualty insured under the policy required to be carried hereunder (or which would have been covered by such policy if Operator had maintained the same in full force and effect as required hereby), Operator shall use the insurance proceeds to proceed with reasonable diligence to repair, restore, replace or rebuild the same (in accordance with the original plans and specifications for the Parking Deck, as the same may have been modified during the Term hereof) as nearly as possible to its condition and character immediately prior to such damage or destruction such repair, restoration, replacement or rebuilding, including temporary repair or the protection of other property pending the completion thereof, being sometimes referred to herein as the "Rebuilding Work;" or (b) if the damage or destruction occurs during the last year of the Term and City has elected pursuant to Section 2.4 to convey the Parking Deck Parcel and the Parking Deck to Operator upon expiration of the Term, Operator may at its election either use the insurance proceeds to repair or rebuild the Parking Deck as above, or to restore the Parking Deck Parcel to a graded level and stable condition and retain (or pay over to Operator's Lender, as the case may be) the balance of the insurance proceeds, in which event City shall convey the Parking Deck Parcel to Operator in accordance with Section 2.4.

4.3.2 If Operator shall be required under Section 4.3.1 to proceed with the Rebuilding Work, then all insurance money paid on account of such damage or destruction under the policies of insurance covering such loss, if any, less the cost, if any, incurred in connection with the adjustment of the loss and the collection thereof (the "Net Insurance Proceeds"), shall be deposited into escrow with an insurance trustee (which shall be Operator's Lender, if applicable), and shall be applied toward Operator's obligations of repair, restoration or reconstruction of the Deck damaged or destroyed by casualty giving rise to the insurance claim and shall be paid out by the insurance trustee monthly as the Rebuilding Work shall progress, in amounts designated by certification by independent architects licensed to do business in the State showing the application of the amounts as payments for the Rebuilding Work. If the Net Insurance Proceeds are not adequate for the Rebuilding Work, Operator shall pay, out of funds other than the Net Insurance Proceeds, the amount by which the cost of the Rebuilding Work will exceed the Net Insurance Proceeds. Any Net Insurance Proceeds in excess of the cost of Operator's obligations of repair, restoration or reconstruction, shall, upon the completion of the Rebuilding Work, be paid to Operator (or its Lender, as the case may be).

4.4 Release and Waiver of Subrogation. City and Operator agree that if the Deck and other property, tangible and intangible, on the Deck Parcel, at any time forming a part of or located on the Parking Deck shall be damaged or destroyed by (1) a casualty covered by the insurance required herein or (2) a casualty covered by any other property insurance maintained by Operator or City, and whether or not such damage or destruction or interruption was caused by the negligence of the Operator or City, neither Operator nor City shall have liability to each other on account thereof. All policies of property insurance and business interruption insurance carried by or on behalf of Operator or City upon the Parking Deck shall be endorsed with a provision by which the insurer waives any right of subrogation against the Parties herein.

ARTICLE 5

FINANCING

5.1 City's Ability to Encumber. City shall have the right to freely encumber the Parking Deck Parcel and the Parking Deck subject to the terms of this Agreement ("City Encumbrance") and specifically excluding the income, profits and other revenues generated by the Parking Deck. Subject to Operator's receipt of the Non-Disturbance and Attornment Agreement referenced below, Operator agrees to subordinate its right to operate the Parking Deck pursuant to the terms hereof (but not its specific rights arising hereunder) to any fee mortgage hereinafter placed upon the Parking Deck Parcel by City and to all amendments, extensions and renewals thereof and all advances made or hereinafter to be made upon the security thereto, provided however, that the holder of any such mortgage and/or security interest shall, as a condition of any subordination, execute and deliver a Non-Disturbance and Attornment Agreement to Operator and Operator Lender, if applicable, in such form and content as Operator and Operator Lender may reasonably require confirming the agreement of the holder of the City Encumbrance to honor the terms and conditions of this Agreement or any modification hereto in the event a default occurs by the City under such financing.

5.2 Operator's Finance Pledge. Operator shall at all times have the right to assign its interest in this Agreement, the Parking Deck and/or any revenues generated thereby to any Lender (Operator Lender) for any debt or obligation of Operator and/or Operator's affiliates, provided however, that Operator shall in no event have the right to, in any way, encumber the City's ownership in the Parking Deck and/or the Deck Parcel (collectively "Operator Financing").

5.3 Operator's Right to Encumber. In the event Operator elects (which it may do at any time without the consent of City) to finance, encumber, pledge or assign its interest in this Agreement and/or the revenues resulting from the operation of the Deck, the following additional provisions shall apply with respect thereto:

5.3.1 Promptly after the execution of any such pledge, assignment, security or agreement (the "Lender Assignment") of Operator's interest in this Agreement, the grantee, secured party or Operator shall notify the City in writing of the

holder of such Lender Assignment and shall at the same time furnish the City with the address to which it desires copies of notices to be mailed, the City hereby agrees that it will mail to such person or entity at the address so given, duplicate copies of any and all suits filed by the City against the Operator and duplicate copies of any and all material written notices (including notices of default) which the City may from time to time give or serve upon Operator under the terms of this Agreement or otherwise related hereto; provided, however, that failure to give notice to an Operator Lender shall not abrogate the existence of a default by Operator or the validity of notice to Operator thereof. If required by the Operator Lender, the City will promptly execute and deliver a consent to the Lender Assignment in form and substance reasonably satisfactory to Operator Lender which contains these provisions.

5.3.2 The City agrees that any Lender shall have a period of not less than thirty (30) days following receipt of said notice to cure a default of the Operator and City will accept a cure by such Lender; the Lender shall have an additional thirty (30) days after a notice of termination is issued by the City in order to cure a default, provided that within such 30-days or such longer period following notice of termination is issued by the City, the Lender affirmatively advises the City in writing of its intent to cure and, if such notice is given, the Lender may have a further period of time as is reasonably necessary to cure non-monetary defaults so long as it is proceeding diligently to do so. Operator Lender's right to cure a default by Operator shall be at its sole option and Operator Lender shall not be obligated to cure any Operator default hereunder.

5.3.3 If Operator defaults hereunder or under any other obligation to such Operator Lender and the Operator Lender elects to exercise its remedies under the Lender Assignment and thereafter elects to assume the Operator's interest in this Agreement, so long as the Operator Lender pays to City all monies otherwise due hereunder as set forth in any notice, if any, and otherwise undertakes affirmatively all the obligations of Operator under this Agreement, then Operator Lender shall be entitled to foreclose and/or execute on the Operator's interest in this Agreement pursuant to said Lender Assignment and, if the Operator Lender is diligently pursuing that foreclosure and/or execution in good faith then Operator Lender shall be allotted such period of time (at all times during this period the Lender must make and undertake all performance obligations of the Operator) to cure Operator's default(s). The Operator Lender may, at its option, at any time before this Agreement is terminated, pay any amount or do any act or thing required of Operator by the terms of this Agreement; and all payments made and all acts or things so done or performed by any such Operator Lender shall be as effective to prevent any termination of the rights of Operator hereunder as the same would have been if done and performed by Operator instead of any such Lender. In the event of a termination of this Agreement because of a default of Operator which is of such a nature that it cannot be timely cured by any Operator Lender or because of rejection or other termination under the bankruptcy laws that cannot be reasonably prevented by any such Operator Lender, City grants to such Lender the right and option to enter into a new agreement with the City, the provisions of which shall be identical to this Agreement and with a term equal to the Term hereof had it not been terminated, such right to be communicated by City to said Lender prior

to or within one week after such termination (the "Lender Termination Notice"), with said Lender having ten (10) days after receipt of such notice to give notice to the City that it will exercise its right to enter into such a new Agreement (and if such notice has not been given within that period, it shall be deemed that such Lender has declined to enter into such new Agreement) and provided that said Lender shall contemporaneously pay to the City any and all sums owed by Operator and unpaid to City pursuant to this Agreement through and including the date of commencement of such new Agreement, and thereafter perform all other unperformed obligations of Operator that are capable of being performed, said lender shall prepare, execute and deliver said new Agreement to City within thirty (30) days after it has exercised its right to same by notice to the City.

5.3.4 This Agreement may be assigned or transferred by Operator to Operator's Lender and/or by Operator's Lender to any party ("Subsequent Transferee") without the City's consent for any reason including, but not limited to, as a result of foreclosure, execution or transfer in lieu of foreclosure and/or execution. Any Subsequent Transferee may, upon such acquisition, without further consent of City, sell, assign, pledge and /or transfer its rights and/or interest in the Agreement or the Lender's Assignment on such terms and to such persons and organizations as are acceptable to such Subsequent Transferee, and upon such assignment and/or transfer Operator Lender or Subsequent Transferee shall thereafter be relieved of all obligations arising hereunder provided that such assignee has delivered to City its written agreement to be bound by all of the provisions of this Agreement. Nothing in this section or in any other provision of this Agreement shall be deemed in any way to impair the right of City to pursue its remedies by reason of a default of Operator or any successor in interest to Operator, notwithstanding that such default may have been committed prior to the then current Operator's acquisition of the interest in this Agreement. Notwithstanding the foregoing, any such assignment shall be subject to the terms of this Agreement.

5.3.5 The provisions of this Article 5 shall survive any termination of this Agreement to the extent of any new operating agreement as set forth hereinabove or with respect to any wrongful termination of this Agreement by the City in violation of City's covenants in this Article 5 or any other provision of this Agreement.

5.3.6 City acknowledges that Operator Lender shall have the right under the Lender Assignment to remove Operator following a default by Operator under any Lender financing and to replace same with another Operator of its choosing, subject to the requirements of this Section 5.3.6; provided, however, Operator Lender shall give City not less than ten (10) day's written notice of such replacement Operator, together with such supporting documentation as is reasonably necessary to evidence such replacement Operator's compliance with the requirements of this Section 5.3.6. Provided such replacement Operator has sufficient experience and creditworthiness to assure future performance of the Operator's obligations under this Agreement and agrees to be bound by the terms hereof, the City's consent shall not be required. In any event, Lender must a condition of such replacement agree that any reserves established by Operator pursuant to this Agreement shall remain in place and shall be available to the replacement Operator in satisfaction of its obligations hereunder. City's

failure to provide written notice to Operator Lender of any objection to said replacement Operator shall constitute City's acknowledgement of its acceptance of same. In the event City does timely object to said Operator, Operator Lender and City agree to negotiate in good faith with respect to any alleged deficiencies of said replacement Operator.

5.4 The provisions of this Article 5 are a material element of the ability of Operator to finance Operator's rights in this Agreement. Accordingly, City agrees that from and after its receipt of written notice confirming the identity of Operator Lender, City and Operator shall not amend or modify this Agreement without the prior written consent of such Operator Lender, it being acknowledged that the provisions of this Agreement shall be binding upon City, the City Lender and its other successors and/or assignments.

ARTICLE 6

ENVIRONMENTAL OBLIGATIONS

6.1 The Parties acknowledge that the Operator's obligations with respect to environmental conditions and Hazardous Materials on or under the Parking Deck Parcel prior to the Effective Date are controlled by the Development Agreement and the Construction Agreement, and with respect to such conditions identified in those documents Operator's responsibility and liability for such preexisting Hazardous Materials and compliance with Hazardous Materials Law shall be limited as set forth therein.

6.2

6.2.1 Subject to the foregoing limitations, Operator shall not conduct or authorize the generation, transportation, storage, use, treatment or disposal on or in the Parking Deck of any Hazardous Material without prior written authorization by City, which authorization may be given or withheld in City's sole and absolute discretion, and Operator's failure to comply with the provisions of this Section 6.2 shall constitute a default under this Agreement. No such purported authorization shall be binding on City unless signed by the Supervising Professional. Notwithstanding the preceding sentence, City hereby authorizes Operator to use and store reasonable quantities of the following in the Parking Deck, in accordance with all applicable laws and regulations: paints; oils; and materials utilized in the normal course of Operator's repair and maintenance of the Parking Deck.

6.2.2 Subject to the foregoing limitations, if the presence, release, threat of release, placement on or in the Parking Deck or any portion thereof, or the generation, transportation, storage, use, treatment, or disposal at the Parking Deck or any portion thereof of any Hazardous Material on or after the Effective Date: (i) gives rise to liability (including, but not limited to, a response action, remedial action, or removal action) under RCRA, CERCLA, applicable state law,

or any common law theory based on nuisance or strict liability, (ii) causes an adverse public health effect, or (iii) pollutes, or threatens to pollute, the environment, Operator, at its sole cost and expense, shall promptly take any and all remedial and removal action necessary to clean up the Parking Deck or any portion thereof, and mitigate exposure to liability arising from the hazardous substance.

6.2.3 Operator shall and does hereby protect, indemnify, defend (at trial and appellate levels and with counsel, experts and consultants acceptable to City and at Operator's sole cost) and hold City free and harmless from and against any loss, cost or expense incurred by City and resulting wholly or in part from Operator's breach of its obligations under this Section 6.2 (collectively, "Operator's Indemnification Obligations"). Operator's Indemnification Obligations shall survive in perpetuity with respect to any liability of City resulting from or attributable to Operator's failure to comply with this Section 6.2. Operator and its successors and assigns hereby waive, release and agree not to make any claim or bring any cost recovery action against City under or with respect to any Hazardous Materials Law. Operator's obligation to City under this indemnity shall likewise be without regard to fault on the part of Operator or City with respect to the violation or condition which results in liability to City. The foregoing indemnity and Operator's other obligations under this Section 6 shall survive the expiration or termination of this Agreement for any reason.

ARTICLE 7

ESTOPPELS

7.1 Within twenty (20) business days after a written request by either Party, the other Party agrees to execute and deliver a statement, certifying to its actual knowledge (a) whether or not this Agreement is in full force and effect, (b) the date of commencement and termination of the Term, (c) whether or not this Agreement has been modified and, if so, identifying the modifications, (d) that there are no uncured defaults by the other party or describing the claimed defaults and (e) such other matters as the requesting Party shall reasonably request. Nothing in any such estoppel statement shall be deemed to modify or amend this Agreement. In addition to the above, City agrees on an annual basis upon the finalization of the MRR Plan to provide the requested estoppel in the form set forth above to Operator and any Operator Lender.

ARTICLE 8

REIMBURSED PAYMENTS

8.1 Whenever under the terms of this Agreement, City is obligated to reimburse Operator for amounts paid or incurred by Operator in undertaking City's obligations, and City fails to reimburse Operator within thirty (30) days after City

receives written notice by Operator, same shall constitute a default hereunder, in which case City shall reimburse Operator such amounts paid by Operator, together with interest thereon at the rate of ten percent (10%) per annum (the "Reimbursement Rate").

8.2 Whenever under the terms of this Agreement Operator is obligated to pay or reimburse City for amounts paid or incurred by City in undertaking Operator's obligations, Operator agrees to reimburse City such amounts paid by City, together with interest thereon at the Reimbursement Rate. If Operator fails to reimburse City within thirty (30) days after Operator receives written notice by City, then that shall be a material default by Operator under this Agreement, entitling City to all remedies available to City hereunder or otherwise, at law or in equity.

ARTICLE 9

COVENANT AGAINST LIENS

9.1 If, as a result of any act or omission of Operator, any construction lien or other lien, charge or order for the payment of money shall be filed against City or its fee interest in the Deck Parcel, then, unless such lien is otherwise permitted by this Agreement, Operator shall, at its own cost and expense, cause the same to be discharged of record or bonded within sixty (60) days after written notice of same from City to Operator. Operator shall indemnify and save harmless City against and from all costs, liabilities, suits, penalties, claims and demands, including reasonable counsel fees, resulting from any unpermitted liens.

ARTICLE 10

DEFAULT, FORCE MAJEURE; REMEDIES, GENERAL REPRESENTATIONS AND WARRANTIES

10.1 Generally. A breach under this Agreement and the remedies applicable to such breach shall be determined in accordance with this Article, except as expressly provided elsewhere in this Agreement.

10.2 Specific Performance. In addition to any other remedy in law or in equity, specific performance shall be a remedy for any breach of this Agreement.

10.3 Operator Event of Default. Operator shall be in default hereunder:

10.3.1 If Operator fails to make any payment to City when due hereunder.

10.3.2 If Operator fails to fund or maintain any reserve in accordance with Section 3.6.3.

10.3.3 If Operator fails to perform any other obligation under this Agreement (subject to the provisions of Section 3.12, if applicable).

10.3.3 If Operator makes an assignment for the benefit of creditors, or files a voluntary petition under any state or federal bankruptcy or insolvency law, or an involuntary petition alleging an act of bankruptcy or insolvency is filed against Operator under any state or federal bankruptcy or insolvency law, which is not otherwise discharged within sixty (60) days, or whenever a petition is filed by or against Operator under the reorganization provisions of the United States Bankruptcy Code or under the provisions of any law or like import, or whenever a petition shall be filed by Operator under the arrangement provisions of the United States Bankruptcy Code or similar law, or whenever a receiver of Operator, or of, or for, the property of Operator shall be appointed, or Operator admits it is insolvent or is not able to pay its debts as they mature. In any such event, and without limiting whatever other remedies may be available to City at law or in equity, City shall have or be deemed to have all remedies available to a commercial landlord under the applicable provisions of the United States Bankruptcy Code.

10.4 City Default. If City fails to perform any other obligation under this Agreement. The Parties acknowledge that City has no affirmative monetary obligations under this Agreement with respect to the Parking Deck or the Parking Deck Parcel, other than the specific defense and hold harmless provisions of Section 4.1.3.

10.5 Notice and Right to Cure. Subject to the obligations of both Parties to provide notice to their respective Lenders, and the Lenders' rights to cure as set forth in Section 5.3.2, in the event City or Operator determines that a default exists under this Agreement, and except in the event of a default by Operator under Section 10.3.3 (which shall be controlled by the applicable provisions of the United States Bankruptcy Code), the Party alleging that a default exists shall provide the defaulting party written notice, as provided for herein, detailing the nature of the noncompliance and action necessary to cure. Within fifteen (15) business days of receipt of the written notice of default the defaulting party shall provide written assurance to the non-defaulting party that the defaulting party intends to cure the noncompliance. Within thirty (30) business days of receipt of the written notice of default the defaulting party shall cure such noncompliance or provide notice that it disputes same.

10.6 Force Majeure. Neither Party shall be liable for any delays in the performance of its obligations hereunder which are caused by Acts of God; strikes, lockouts, or labor difficulty; explosion, accident, riot, or civil commotion; act of war or terrorist attack; fire or other casualty; failure of state and governmental agencies to respond in a timely fashion; and other causes clearly beyond the reasonable control of such Party. The period of any delay resulting from any of the foregoing causes shall be added to the time period provided for the performance of the obligation so delayed.

10.7 General Representations and Warranties of Operator. The Operator represents and warrants to the City as of the Effective Date the following "Operator's Representations and Warranties":

10.7.1 Authority. Operator has full capacity, right, power and authority to execute, deliver and perform under this Agreement and all documents to be executed

by Operator pursuant to this Agreement, and all required actions and approvals therefore have been duly taken and obtained.

10.7.2 Binding and Enforceable. This Agreement and all documents to be executed by Operator pursuant to this Agreement are and shall be binding upon and enforceable against the Operator in accordance with their respective terms.

10.7.3 No Litigation. There are no existing or pending claims, judgments, causes of action, code or ordinance violations, against Operator that would materially impact Operator's ability to meet its obligations under the Agreement.

10.8 Representations and Warranties of the City. The City represents and warrants to the Operator as of the Effective Date:

10.8.1 Authority. The City has the full capacity, right, power and authority to execute, deliver and perform this Agreement and all documents to be executed by the City pursuant to this Agreement, and all required action and approvals therefore have been duly taken and obtained.

10.8.2 Binding and Enforceable. This Agreement and all documents to be executed by the City pursuant to this Agreement are and shall be binding upon and enforceable against the City in accordance with their respective terms.

ARTICLE 11

MUTUAL COOPERATION

11.1 Each Party shall:

11.1.1 Take all actions required of it by the terms of this Agreement as expeditiously as possible;

11.1.2 Cooperate, to the fullest extent possible, with the other party to this Agreement and with any individual, entity or governmental agency involved in or with jurisdiction over the operation of the Parking Deck, or any other improvements which are undertaken in connection with the foregoing, in the granting and obtaining of all easements, rights of way, permits, licenses, approvals and any other permissions necessary for the operation thereof; and

11.1.3 Execute and deliver all documents necessary to accomplish the purposes and intent of this Agreement, including, but not limited to, such documents or agreements as may be required by the Operator Lenders with respect to assigning Operator's rights under this Agreement to secure the Operator's financing from such lenders.

ARTICLE 12

ASSIGNMENT AND SUBLETTING

12.1 Assignment and Subletting. Except as expressly permitted hereinabove, City shall not assign, pledge, encumber, mortgage, sublet or otherwise convey or transfer any interest in this Agreement or the Parking Deck, if the result of such action would be to either disqualify TIF Reimbursement or disqualify costs as Eligible Expenses as contemplated herein, cause the Project to be in violation of the Supplemental Regulations or violating the terms of the Development Agreement. In any event, the effectiveness of any such transfer shall be contingent upon the transferee of the City's interest executing and delivering to Operator an assumption agreement with respect to this Agreement and any Lender Assignment. Except as otherwise expressly permitted (including Section 5.3.6) herein, Operator shall not assign or transfer the Operator's interest in this Agreement, without the prior written consent of the City, which consent shall not be unreasonably withheld, delayed or conditioned provided Operator has no uncured default under this Agreement and the proposed assignee is determined to be financially qualified and can demonstrate its ability to operate and maintain the Parking Deck in a manner consistent with this Agreement, provided further, Operator shall have the right to assign this Agreement to an Affiliate without City's consent provided the named Operator remains directly liable for all performance obligations of the Operator. At the reasonable discretion of City, City may require, as a condition to its approval of an assignee of Operator, that either (i) the existing reserves be increased to a level at least sufficient to fund all expenditures for which reserves are established, reasonably projected for the following two (2) year period, or (ii) a continuing guaranty by the Assignor.

ARTICLE 13

MISCELLANEOUS

13.1 Agency. Nothing in this Agreement shall be deemed to create an agency, partnership, joint venture or employment relationship between the City and Operator.

13.2 Third Party Beneficiary. Except as provided elsewhere in this Agreement, the Parties acknowledge and agree that this Agreement is made and entered into for the sole benefit of the Operator, Operator Lender, Subsequent Transferee, and the City, and in no event shall any other person, entity or agency be considered a party to this Agreement or a beneficiary under this Agreement. Accordingly, there shall be no third party beneficiaries under this Agreement, and in no event shall any other person, entity or agency be entitled to enforce or claim any right or benefit under this Agreement.

13.3 Modification. This Agreement and any of its terms, conditions or provisions cannot be modified, amended or waived unless in writing and unless executed by both Parties to this Agreement (and approved by Operator Lender but

only to the extent same has been identified pursuant to the terms hereof). Any representations or statements, whether oral or in writing, not contained in this Agreement shall not be binding on either party. The City Administrator is empowered on behalf of the City to agree to non-material and non-monetary amendments to this Agreement that do not change the overall intent of the Agreement.

13.4 Controlling Law. This agreement shall be interpreted, enforced and governed under the laws of the State of Michigan and Ann Arbor Code of Ordinances. Where a conflict exists between laws of the State of Michigan and Ann Arbor Code of Ordinances, the laws of the State of Michigan shall prevail.

13.5 Cost of Recording. Operator shall pay for the cost of recording the documents arising under this Agreement with the Washtenaw County Register of Deeds.

13.6 Further Actions Required. The Parties shall take such further actions and deliver and execute such additional documents as are reasonably necessary to effectuate the terms and intent of this Agreement.

13.7 Entire Agreement. The Agreement contains all agreements between the Parties. There are no other representations, warranties, promises, agreements or understandings, oral, written or implied, among the Parties, except to the extent reference is made thereto in this Agreement.

13.8 Binding Effect. This Agreement shall be binding upon the Parties hereto and upon their respective successors and assigns.

13.9 Severability. If any clause, provision or section of this Agreement shall be ruled invalid or unenforceable by any court of competent jurisdiction, the invalidity or unenforceability of such clause, provision or section shall not affect the validity of any of the remaining clauses, provisions or sections of this Agreement.

13.10 Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.

13.11 Captions. The captions and headings in this Agreement are for convenience only and in no way limit, define or describe the scope or intent of any provision of this Agreement.

13.12 Permits and Approvals. The Developer shall be responsible for obtaining all easements, licenses, Permits, approvals and any other permissions necessary for the operation of the Parking Deck.

13.13 Notices; Form of Notice. All notices permitted or required under this Agreement shall be in writing and addressed to the Parties at their addresses set forth below. Any such notice shall be sent by certified mail, return receipt requested, express overnight delivery requiring a signed delivery receipt, delivered personally or

sent by facsimile. Any notice sent by certified mail, return receipt requested, will be deemed delivered upon receipt. Any notice sent by express overnight delivery will be deemed delivered on the following business day after delivering such notice to the carrier. Any notice given by personal delivery or by facsimile prior to 5:00 p.m. will be deemed delivered on the date of such delivery or, if 5:00 p.m. or later, on the next business day. Any notice that a party fails or refuses to accept will be deemed delivered on the date of such failure or refusal. The Parties hereto may change their addresses for notice purposes by a notice sent in accordance with the provisions of this Agreement, but no such address shall be a post office box.

13.14 Consents. Whenever the consent, approval or authorization of either Party is required under any provision of this Agreement, such Party may not arbitrarily withhold such consent, approval or authorization except to the extent otherwise herein specifically provided to the contrary. Whenever the consent of the City is required under the terms of this Agreement, the City Council, City Manager or his designee, acting on behalf of the City is authorized to give such consent, which ever is appropriate under the circumstances.

Notice to City:

City Clerk
 City of Ann Arbor
 100 North Fifth Ave.
 Ann Arbor, MI 48107

With a copy to:

Stephen K. Postema
 City Attorney
 City Attorney's Office
 100 North Fifth Ave.
 Ann Arbor, MI 48107

And a copy to:

James C. Adams, Esq.
 Butzel Long
 41000 Woodward Ave.
 Bloomfield Hills, MI 48304

Notice to Operator:

Scott A. Chappelle
 Lower Town Parking
 Services, L.L.C.
 1427 W. Saginaw
 Suite 200
 East Lansing, MI 48823

With a copy to:

Joseph M. Fazio, Esq.
 Miller, Canfield,
 Paddock & Stone, PLC
 7th Floor
 Ann Arbor, MI 48104

Operator's Lender(s):

David Baker
 Senior Vice President
 Key Bank Real Estate
 100 South Main
 Ann Arbor, MI 48107

13.15 Mutual Drafting. The Parties acknowledge that this Agreement together with exhibits and related agreements contemplated herein are the mutual work product of both City and Operator and will not be construed against one party or the other as drafter.

(signatures on following page)

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals the day first above written.

CITY OF ANN ARBOR
100 North Fifth Avenue
Ann Arbor, Michigan 48107

Witnesses:

By: _____
John Hieftje, Mayor

Witnesses:

By: _____
City Clerk

STATE OF MICHIGAN

)

COUNTY OF WASHTENAW

) ss

)

On this _____ day of _____, 200____, before me personally appeared John Hieftje, Mayor, and _____, Clerk of the City of Ann Arbor, a Michigan Municipal Corporation, to me known to be the persons who executed this foregoing instrument, and to me known to be such Mayor and Clerk of said Corporation, and acknowledged that they executed the foregoing instrument as such officers as the free act and deed of said Corporation by its authority.

NOTARY PUBLIC
Washtenaw County, Michigan
My Commission Expires: _____

Approved as to Substance:

Approved as to Form:

Roger W. Fraser, City Administrator

Stephen K. Postema, City Attorney

**LOWER TOWN DEVELOPMENT GROUP,
LLC,**

a Michigan limited liability company
1427 West Saginaw, Suite 200
East Lansing MI 48823

Witnesses:

By: _____

Terra Management Company, Manager
Scott A. Chappelle, President

Witnesses:

STATE OF MICHIGAN)
) ss
COUNTY OF WASHTENAW)

On this _____ day of _____, 200____, before me personally appeared Scott A. Chappelle, to me known to be the person who executed the foregoing instrument, and acknowledged that he executed the foregoing instrument as his free act and deed.

NOTARY PUBLIC
Washtenaw County, Michigan
My Commission Expires: _____

EXHIBIT A Deck Parcel

EXHIBIT A

DECK PARCEL

[to be attached upon execution]