

City of Biddeford
City Council - Workshop
November 12, 2019 5:30 PM Council Chambers

1. Workshop Discussion Items

- 1.1. Overview of Joint Development Agreement with Treadwell Franklin Infrastructure Capital Partners/James W. Sewall Co.
[11-12-2019 Parking Garage Joint Development Agreement - MEMO.pdf](#)
[11-12-2019 Parking Garage Joint Development Agreement - City Council Workshop.pdf](#)

City of Biddeford, Maine



The Office of
City Manager

James A. Bennett

Email: jbennett@biddefordmaine.org

MEMORANDUM

TO:	Honorable Mayor and City Council
CC:	City Council-Elect
FROM:	James A. Bennett, City Manager
DATE:	November 8, 2019
RE:	November 12, 2019 Workshop (5:30 Start Time)

On Tuesday evening, the Council will hold a workshop for the purpose of reviewing the draft of the Joint Development Agreement (JDA) for the financing of the riverwalk/pedestrian connections as well as the financing/construction/operation of the parking garage. As you may recall, order # 2019.105 authorized this office to sign the JDA, given that it complies with the details of the order. Those details (as well as the order itself) are at the end of this memo. It further directed that the JDA must be presented to the City Council for their review prior to execution as an additional and final review for compliance.

The singular purpose of the workshop is to determine if the JDA as presented complies with the conditions set forth by the Council for execution. It is not to revisit the policy decision of the garage or to further negotiate the agreed to terms.

Keith will lead the presentation through the document. He will demonstrate why he believes that the JDA as presented complies with the Council order. He will also point out any other items of significance.

If the majority of the Council agrees that the JDA complies with the order, no action is necessary. However, if there are any concerns about the compliance issue, Tuesday night would be the time to express that concern. Should a majority of the Council agree that the JDA has missed the target, Keith will work to address the concerns.

Finally, it should be noted that Norm had volunteered to participate in the process of document review. Given his expertise and the importance of the issue, your leadership, Keith, Brian and I were most welcoming to his involvement. If you have any questions about the document prior to the meeting on Tuesday evening, please feel free to seek answers directly from Keith, Brian or myself. I anticipate that Norm would welcome your inquiries as well.

September 17, 2019 Council Order

2019.105

IN BOARD OF CITY COUNCIL... SEPTEMBER 17, 2019

BE IT ORDERED, that the City Manager and City Solicitor be and hereby are authorized to negotiate a Joint Development Agreement ("JDA") with Treadwell Franklin Infrastructure Capital LLC ("TFIC") and James W. Sewall Company ("Sewall") (and/or its appropriate

205 Main Street

Biddeford, ME 04005

Phone: 207.284.9313

Fax 207.571.0678

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Marcy Faucher, Human Resource Director, 205 Main Street Biddeford, ME 04005, or call (207) 286-0593.

designee) for the construction and subsequent operation and maintenance of a privately financed municipal parking garage and existing pay-per-use surface lots. The City Council specifically directs that the JDA must include the following critical terms and conditions:

Garage

- The garage shall be located on a designated lot at the 3 Lincoln Street site as specified by the City
- Garage shall be 640± spaces in accordance with Desman Design Management plans

Costs:

- Project construction cost shall be confirmed by a formal bid process through TFIC with such costs identified in the JDA.
- Selection of operator determined through an agreed selection process with such costs identified in the JDA.
- Expected construction cost to be \$22,297,158 to include up to \$3,000,000 for the construction of the RiverWalk and pedestrian connections
- Construction cost capped at \$24,631,350, based on formal bid process.
- Initial construction costs above \$22,297,158, based on bid results, limited to an additional City obligation of no greater than \$16,500/\$250,000 increment.
- Financing for no greater than a 25-year term.
- Construction costs shall be subject to open-book accounting review by the City.
- No taxpayer support required.

Project Options

- After year 10, the City shall have the option to buy the garage at fair market value ("FMV"), sell the garage to TFIC at FMV, refinance the garage, or continue with established terms.
- After year 25, the ownership of the garage shall revert to the City for \$1.

Cost Sharing:

- Any project cost savings resulting from a lower than expected construction bid shall go to the direct benefit of the City to reduce Support Payments; such reduction shall be reflected in the JDA.
- If NOI is greater than 110% of projections, on a six-month basis, income above 100% of projections shall go to the City until the City's sunk costs are recouped in full. Thereafter, the City shall share future revenue with TFIC - \$0.90 of every dollar to the City, \$0.10 of every dollar to TFIC.

Revenue and NOI Projections

- Prepare and include as part of the JDA, net operating income (NOI), revenue, operation and maintenance, and other projections to serve as the basis for revenue sharing, Opex Reimbursement, Support Payments, Stabilization Payments, and garage/lot pricing calculations utilizing the most advantageous construction and operator bids.

Support Payments from TIF:

The JDA shall limit the City's financial obligations to Support Payments, operating expense reimbursements (Opex Reimbursement), and Stabilization Payments from TIF resources. No property tax dollar commitment shall be included.

- *Support Payments*

- *Support Payments shall begin no earlier than six months after the date of garage opening.*
- *Support Payments shall be capped at \$650,000, \$700,000, \$750,000, \$800,000, \$850,000, \$900,000, for years 1-6 respectively.*
- *Support Payments shall increase annually thereafter subject to the lesser of a negotiated escalator or the local CPI.*
- *Support payments may be increased incrementally by no more than \$16,500 for every \$250,000 increment over \$22,297,158 based on received construction bids up to a construction cap of \$24,631,350. Such calculations, if required, shall be established and finalized in the JDA.*

- *Opex Reimbursement*

- *Opex Reimbursement shall include operating and maintenance expenses, beginning no sooner than one month after the date of garage opening.*
- *Opex expense payments shall be established in the JDA.*

- *Stabilization Payment*

- *The need for Stabilization Payments shall be assessed on a semi-annual basis.*
- *Stabilization Payments shall only be required in the event net operating income (NOI) falls below 90% of projections, and only to the extent that the NOI shortfall is a result of deviations in operation and maintenance expenses or garage/lot revenues relative to projections established in the JDA.*
- *Stabilization Payment calculations shall be subject to review by the City through an open-book accounting system. Such payments are intended to maintain a targeted 10% IRR.*
- *A Stabilization Payment shall be no greater than the amount of the NOI shortfall.*
- *The JDA shall include a provision for review of rate increases in an effort to limit the need for municipal Stabilization Payments.*
- *The City shall make such Stabilization Payments, as needed, and at its sole discretion, establish a mechanism for reimbursement of such payments, for example, through a Special Assessment District or any other mechanism authorized by the City Council.*

Specific Protections:

- *The JDA shall include construction dates and penalties for delivery of a parking structure.*
- *The City shall have the right to review and if desired, buy down any rate increases.*
- *No rate increases in existing lots through the date of garage opening.*
- *TFIC shall bear risk for all-in costs of financing and project execution including project-overrun costs and delays.*
- *All other customary administrative terms and conditions.*

BE IT FURTHER ORDERED, that the City Manager shall execute a JDA which includes the above terms and conditions provided, however, that the City Manager shall not be authorized to

execute the JDA unless the City Council has reviewed the JDA to confirm that the JDA includes the City Council's directives regarding the above critical terms and conditions.

**BIDDEFORD URBAN CORE TRANSPORTATION
JOINT DEVELOPMENT AGREEMENT**

BY AND BETWEEN

THE CITY OF BIDDEFORD

AND

BIDDEFORD RIVERWALK COMMUNITY 1 LLC

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**BIDDEFORD URBAN CORE TRANSPORTATION
JOINT DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF BIDDEFORD
AND
BIDDEFORD RIVERWALK COMMUNITY 1 LLC**

THIS BIDDEFORD URBAN CORE TRANSPORTATION JOINT DEVELOPMENT AGREEMENT (the “**Agreement**”) is made effective as of the _____ day of _____, 2019 (the “**Execution Date**”) between the City of Biddeford, Maine, a Maine municipal corporation and body politic (the “**City**”), and Biddeford Riverwalk Community 1 LLC a Maine limited liability company, together with any assignees or successors in interest (the “**Developer**”).

WHEREAS, the City has selected the Developer to deliver the Project (as defined below) in accordance with the City Council’s Order 2019.105, dated September 17, 2019; and

WHEREAS, the City desires that the Developer construct, finance, and operate a new multi-level parking garage containing 640+/- parking spaces (the “**Parking Facility**”) located on the City owned land as identified in Exhibit A (the “**Site**”); and

WHEREAS, the City and its contractors have developed and created a 100 % Design of the Parking Facility; and

WHEREAS, as set forth in this Agreement, Developer agrees to (i) construct the Parking Facility consistent with the Design provided by the City; (ii) construct the RiverWalk and Pedestrian Connections, in consultation with the City, and (iii) manage and operate the Parking Facility and the Additional Parking Areas, all as further defined herein, which are collectively referred to herein as the “**Project**”; and

WHEREAS, the Developer desires to lease the Site from the City, and obtain a grant from the City to operate, maintain and improve the Parking System for the Term (as defined herein) of this Agreement in connection therewith, all as hereinafter provided; and

WHEREAS, the City desires to lease the Site to the Developer and grant the Developer the right to operate, maintain and improve the Parking System for the Term of this Agreement in connection therewith, all as hereinafter provided; and

WHEREAS, as set forth in the Agreement, the Additional Parking Areas will be managed by the Operational Subcontractor; and

WHEREAS, the Project is intended to be a key part of the transformation of the City’s historic Mill District and downtown; and

WHEREAS, the Project offers significant benefits to the community and City; and

WHEREAS, both the City and the Developer have the right to terminate this Agreement if the Developer is unable to secure financing of the Parking Facility as set forth herein,

203 **WHEREAS**, the Parties desire to enter into this Agreement to identify the roles and
204 responsibilities of the Parties with respect to the Project.

205 **NOW, THEREFORE**, for and in consideration of the mutual covenants, representations,
206 warranties, and agreements contained herein, and other valuable consideration, the receipt and
207 sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

208 **ARTICLE 1**
209 **DEFINITIONS**

210 Unless otherwise specified or the context otherwise requires, for the purposes of this
211 Agreement, the following terms have the following meanings:

212 **“Additional Parking Areas”** means the surface parking lots identified on Exhibits K and
213 L.

214 **“Agreement”** means this Joint Development Agreement entered into by and between the
215 City and the Developer for the design, construction, financing, operation, and maintenance of the
216 Project.

217 **“Annual Report”** has the meaning set forth in Article 10.

218 **“Applicable Law”** means all State of Maine and Federal laws, rules, regulations, orders,
219 ordinances, and other governmental standards and requirements which may be applicable from
220 time to time, as the context may require.

221 **“Business Days”** means Monday through Friday, inclusive, other than holidays or other
222 days on which banks are not open for domestic business in the City of Biddeford.
223

224 **“Casualty Property”** has the meaning set forth in Section 12.11.1.

225 **“Change of Law”** means the passage, adoption, repeal, amendment or other modification
226 of Applicable Law coming into effect after the Execution Date.

227 **“Changed Conditions”** means (a) the discovery of any hazardous waste, substance or
228 material not specifically stated in the Declaration of Environmental Covenant identified in
229 Section 4.5.5, underground obstruction, underground utilities, or other latent obstruction to the
230 performance of the Construction Work; (b) any breach or failure of the City to comply with
231 terms of this Agreement; or (c) any Change of Law.

232 **“Changed Condition Costs”** has the meaning set forth in Section 7.3.3.

233 **“Changed Condition Loans”** has the meaning set forth in Section 7.3.3.

234 **“City”** has the meaning set forth in the Preamble.

235 **“City Default”** has the meaning set forth in Section 11.3.

236 **“City Indemnified Party(ies)”** means the City, and the agents, employees and
237 authorized representatives of the City.

238 **“Construction Agreement”** means the contract between the Developer and its selected
239 Construction Contractor.

240 **“Construction Completion Date”** shall mean each of the completion dates for the
241 Project set out in Exhibit D.

242 **“Construction Contractor”** means the contractor selected by the Developer to construct
243 the Parking Facility and, as applicable, the RiverWalk and Pedestrian Connections.

244 **“Construction Schedule”** means the schedule, including milestones for Substantial
245 Completion, of the Construction Work as set forth in Exhibit D.

246 **“Construction Work”** means the construction of the Parking Facility.

247 **“Construction Work Plan”** means the choice of technology, the definition
248 of work tasks, the estimation of the required resources and durations for individual tasks, and the
249 identification of any interactions among the different work tasks to use as the basis for
250 developing the budget and the Construction Schedule for the Parking Facility.

251 **“Consumer Price Index”** or **“CPI”** means the Consumer Price Index – U.S. City
252 Averages for all Urban Consumers, All items in Portland-South Portland-Biddeford, ME, all
253 urban consumers (not seasonally adjusted) [BLS Series ID: CUURA311SA0] or its successor, as
254 published by the U.S. Department of Labor, Bureau of Labor Statistics, or its successor. If the
255 CPI is changed so that the base year of the CPI changes, the CPI will be converted in accordance
256 with the conversion factor published by the U.S. Department of Labor, Bureau of Labor
257 Statistics, or its successor. If the CPI is discontinued or substantially altered, the applicable
258 substitute index will be that chosen by the Secretary of the Treasury for the Department of
259 Treasury’s Inflation-Linked Treasuries as described at 62 Fed. Reg. 846-847 (Jan. 6, 1997), or if
260 no such securities are outstanding, will be determined by the Parties in accordance with general
261 market practice at that time.

262 **“Design”** means the substantially complete design documents created by the City and
263 licensed to Developer attached as Exhibit B, which will be amended and updated by the
264 Developer as the basis for the Construction Work. As the Design is updated by the Developer or
265 its Construction Contractor, the then current version of the design document shall be designated
266 as the “Design”, contingent upon the updated Design being provided to the City.

267 **“Developer”** has the meaning set forth in the Preamble and shall include any assignee of
268 any obligations under this agreement.

269 **“Developer Affiliate”** means any other Person who, directly or indirectly through one or
270 more intermediaries, Controls, or is Controlled by, or is under common Control with, the
271 Developer, including, without limitation, any fund, partnership, company, syndicate, separate
272 account or other collective investment scheme now or hereafter existing that is managed, advised
273 or controlled by any Developer Affiliate. For the purposes of this definition, **“Control”** of any

274 Person (including the terms “Controlled by” and “under common Control with”) means the
275 possession, directly or indirectly, of the power to direct or cause the direction of the management
276 and policies of such Person, whether through ownership of voting securities, by contract, or
277 otherwise.

278 “**Developer Default**” has the meaning set forth in Section 11.1.

279 “**Developer Indemnified Party(ies)**” means the Developer, the Equity Members of the
280 Developer and each officer, director, manager and member, general partner, agent, employee and
281 authorized representative of the Developer.

282 “**Developer Interest**” means the interest of the Developer in the Parking System created
283 by this Agreement and the rights and obligations of the Developer under this Agreement.

284 “**Developer’s Representatives**” has the meaning set forth in Section 3.6.

285 “**Development Contingencies**” means any amount remaining unspent from the Project
286 Budget at the [final completion date of the Construction Work], after accounting for amounts
287 owed under the Construction Agreement and any taxes due or forecast to be due as a result of the
288 construction and financing.

289 “**Document**” means any document, proposal, certificate, plan, drawing, specification,
290 contract, agreement, budget, schedule, report or other written instrument whatsoever.

291 “**Early Termination Date**” means the tenth (10th) anniversary of the Effective
292 Operational Date.

293 “**Effective Date**” has the meaning set forth in Section 2.3.

294 “**Effective Date Certificate**” means the certificate in the form of Exhibit G-1 that will be
295 executed by the Developer to confirm the Effective Date.

296 “**Effective Operational Date**” means the date on which the Developer confirms to the
297 City that Substantial Completion has been achieved and the Parking Facility can be put into
298 service as evidenced by the execution by the Developer of an Effective Operational Date
299 Certificate.

300 “**Effective Operational Date Certificate**” means the certificate in the form of Exhibit G-
301 2 that will be executed by the Developer confirming Substantial Completion of the Parking
302 Facility.

303 “**Emergency**” means a situation that is urgent and calls for immediate action, which, if
304 such action is not taken, is reasonably likely to result in imminent harm or physical damage to
305 any or all of the Parking System or any Person, including the City.

306 “**Encumbrance**” means any mortgage, lien, judgment, execution, pledge, charge,
307 security interest, restriction, easement, servitude, option, reservation, lease, claim, trust, deemed

trust or encumbrance of any nature whatsoever, whether arising by operation of Law, judicial process, contract, agreement or otherwise created.

“Enforcement Policies and Procedures” means the policies and procedures set forth in O&M Management Plan that are designed to deter parking violations within the Parking System.

“Environment” means any air (including air within natural or man-made structures above or below ground), water (including territorial, coastal, and inland waters and ground water in drains and sewers), land (including the sea or river bed under any water), surface land, and sub-surface land.

“Environmental Law” means any federal or State law, act, statute, ordinance, rule, regulation, order, decree, permit, or ruling of any federal, State, or administrative regulatory body, agency, board, or commission or a judicial body, relating to the protection of human health or the environment or otherwise regulating or restricting the management, use, storage, disposal, treatment, handling, release, and/or transportation of a Hazardous Material, which are applicable to the Project, including but not limited to 42 U.S.C. § 9601, et seq. (CERCLA), 42 U.S.C. § 6901 et seq. (RCRA), the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., the Safe Drinking Water Act, 42 U.S.C. § 300f et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., the Emergency Planning and Community Right To Know Act, 42 U.S.C. § 11001 et seq., and any State equivalent laws as each of the same is amended or supplemented from time to time.

“Equity Fair Market Value” or **“Equity FMV”** shall have the meaning set forth in Section 11.5.

“Equity Member” means the members of the Developer that contribute shareholders’ equity to the Developer as part of the Developer’s financing of the Project.

“Execution Date” has the meaning set forth in the Preamble.

“Extended Force Majeure” has the meaning set forth in Section 11.6.

“Fair Market Value” means the value of Developer’s interest in the Project (not the Parking Facility in and of itself) assuming the Project is operated for the remaining years of the full Term, determined in accordance with the process as set out in Exhibit I, and subject to the procedures of Section 11.5 herein.

“Fees” means, collectively, the Parking Fees and any other revenues received by the Developer or its contractors in the operation of the Parking Facility.

“Financial Close Long Stop Date” has the meaning set forth in Section 2.1.

“Financing” means the funding provided by a Financing Party to the Developer pursuant to the Financing Documents.

346 “**Financing Documents**” means any agreements between the Developer and a Financing
347 Party with respect to the financing of the Project.

348 “**Financing Party**” has the meaning set forth in Section 16.3.

349 “**Force Majeure**” means any labor dispute, fire, unusual delay in transportation or
350 delivery, unavoidable casualty, flood, earthquake, epidemic, civil disturbance, war, terrorism or
351 threats thereof, freight embargo, riot, sabotage, unusually severe weather conditions in the State
352 as determined by the National Weather Service, labor or material shortage or any other similar
353 act or condition, in each case only to the extent the event in question is not reasonably
354 foreseeable by and is beyond the control of and not caused by the fault or negligence of the
355 Developer or the City, as applicable, and that results in a delay in the commencement,
356 prosecution, or completion of requirements under this Agreement. For the avoidance of doubt, a
357 Force Majeure caused by the fault or negligence of the City will not restrict the Developer’s
358 ability to claim a Force Majeure has occurred (and vice versa).
359

360 “**Governmental Authority**” means any and all federal or State governmental or quasi-
361 governmental municipal corporation, board, agency, authority, department, or body having
362 jurisdiction over all or any portion of the Project.
363

364 “**Governmental Delay**” means a delay in performance by the Developer directly caused
365 by either: (i) with respect to any matter that requires the approval of the City specifically under
366 this Agreement, where the Developer has provided the City sufficient information to respond to
367 such request for approval, the City fails to specify in reasonable detail the reason for the City’s
368 disapproval or rejection of such matter and the changes that would be required for approval, (ii)
369 with respect to any matter that requires the review or consent of any Governmental Authority,
370 where the Developer has provided such Governmental Authority sufficient information to
371 respond to such request for approval, delays caused by such Governmental Authority not
372 completing its review within the customary response period for the matter in question, imposing
373 conditions that are not customary for the matter in question or that would constitute a change to
374 the Construction Work Plans or the Construction Schedule, or acting outside of such
375 Government Authority’s powers contained in Applicable Law; provided that the Developer must
376 provide notice to the City of such Governmental Delay event within seven (7) days of discovery
377 of such Governmental Delay event, which notice shall include the Developer’s estimate of the
378 length of the delay that will be caused by such event and the actions the Developer is taking to
379 minimize such delay.
380

381 “**Gross Revenues**” means, for any calendar year or part thereof, the sum of: (a) the
382 aggregate gross revenues in respect of such calendar year or part thereof deriving from Parking
383 Fees and any other revenues related to the Project, (b) any insurance proceeds received by the
384 Developer to the extent that such proceeds are in respect of lost gross revenues, and (c) any all
385 other amounts deposited during such calendar year or part thereof in the Gross Revenues
386 Account, which amounts are not otherwise included in the calculation of aggregate gross
387 revenues under clause (a) above, such as interest earnings, income, and Fees in respect of the
388 Project; provided, however, that Gross Revenues specifically excludes any taxes collected by the
389 Developer from Persons parking within the Parking System that are required to be remitted to a
390 Governmental Authority under Applicable Law.

391 **“Gross Revenues Account”** means the dollar denominated account established by the
392 Developer or Developer’s lenders at a bank or other financial institution into which all Gross
393 Revenues shall be deposited and withdrawn in accordance with the Gross Revenues Agreement.

394 **“Gross Revenues Agreement”** means the agreement executed among the Developer and
395 the Trustee in advance of the Effective Date with respect to the collection and disbursement of
396 the Gross Revenues.

397 **“Hazardous Materials”** means a substance that falls within one or more of the following
398 categories, other than in quantities or concentrations that constitute Permitted Materials: (1) Any
399 “hazardous substance” under 42 U.S.C. § 9601, et seq. or “hazardous waste” under 42 U.S.C.
400 § 6901, et seq.; (2) Any substance or chemical defined and regulated under requirements
401 promulgated, respectively, by the U.S. Environmental Protection Agency at 40 C.F.R. part 355,
402 by the U.S. Department of Transportation at 49 C.F.R. parts 100-180, by the U.S. Occupational
403 Safety and Health Administration at 29 C.F.R. § 1910.1200, and ionizing materials otherwise
404 regulated by the U.S. Nuclear Regulatory Commission at 10 C.F.R. part 20; (3) Any substance or
405 chemical that is defined as a pollutant, contaminant, dangerous substance, toxic substance,
406 hazardous or toxic chemical, hazardous waste, or hazardous substance under any other
407 Environmental Law, or the presence of which requires reporting, investigation, removal and
408 remediation or forms the basis of liability under any Environmental Law; (4) Any substance or
409 material that the Secretary of Defense designates as a “toxic or hazardous material” under 10
410 U.S.C. § 2692(a)(2); (5) Any substance the presence of which on the Site or adjacent property
411 causes or threatens to cause a nuisance or poses or threatens to pose a hazard to health or safety
412 of persons on or about the Site or adjacent property; (6) Gasoline, diesel fuel, or other petroleum
413 hydrocarbons, including refined oil, crude oil and fractions thereof, natural gas, synthetic gas,
414 and any mixtures thereof; (7) Asbestos or asbestos containing material; and (8) Polychlorinated
415 bi-phenyls, or materials or fluids containing the same.

416
417 **“Improvements”** has the meaning set forth in Section 3.3.

418 **“Indemnified Party”** and **“Indemnified Parties”** has the meaning set forth in Section
419 4.5.1.

420 **“Inflation Adjustment”** has the meaning set forth in Section 7.1.1.

421 **“Law”** or **“Laws”** or **“Applicable Laws”** means any order, writ, injunction, decree,
422 judgment, law, ordinance, decision, opinion, ruling, policy, statute, code, rule, or regulation of
423 any Governmental Authority applicable to the Project.

424 **“Leased Premises”** means the Site.

425 **“Leasehold Mortgage”** means any lease, indenture, mortgage, deed of trust, pledge or
426 other security agreement or arrangement, including a securitization transaction with respect to
427 parking revenue, encumbering any or all of the Developer Interest or the shares or equity
428 interests in the capital of the Developer and any of its subsidiaries and any cash reserves or
429 deposits held in the name of the Developer.

430 **“Lenders Liabilities”** means any outstanding debt (principal and interest) and other costs
431 and expenses on the Project issued by a Financing Party to Developer.

432 **“Long Stop Date”** shall have the meaning provided in Section 5.6.1.

433 **“Loss”** or **“Losses”** means, with respect to any Person, any loss, claim, liability, damage,
434 penalty, charge or out-of-pocket and documented cost or expense (including fees and expenses of
435 counsel and any tax losses) actually suffered or incurred by such Person, but excluding any
436 punitive, special, indirect, and consequential damages and any contingent liability until such
437 liability becomes actual.

438 **“Net Operating Income”** or **“NOI”** shall mean the Gross Revenues adjusted for any or
439 taxes incurred directly on the receipt of Parking Fees, less the Operational Costs.

440 **“O&M Management Plan”** has the meaning set forth in Section 6.2 and is set forth in
441 Exhibit C.

442 **“Operational Costs”** means, for any applicable period, the cumulative costs of operating
443 the Parking System and the Additional Parking Areas, including the costs under any Operations
444 and Maintenance Agreement regarding operations of the Parking System and the Additional
445 Parking Areas including, without limitation, any taxes, fees or costs incurred by such Operational
446 Subcontractor(s) provided they did not result from a default by such Operational Subcontractor,
447 as set forth in the Operations and Maintenance Agreement, and also including any costs of
448 Developer to administer any such Operations and Maintenance Agreement.

449 **“Operational Subcontractor”** means the contractor, selected and contracted by the
450 Developer, who will have responsibility for the Parking Facilities, including operations and
451 maintenance, collection of Parking Fees and other management responsibilities as set out in the
452 contract with the Developer.

453 **“Operations and Maintenance Agreement”** means one or more agreements to be
454 entered into between the Developer and one or more Operational Subcontractors in advance of
455 the Effective Date with the approval of the City (in accordance with the terms of this
456 Agreement), as such agreement may be further amended with the approval of the City (in
457 accordance with the terms of this Agreement) and containing a schedule of Operational Costs
458 applicable to each such Operational Subcontractor’s scope.

459 **“Parking Enforcement”** means the issuance of parking tickets or citations and all other
460 enforcement actions for violations of the Enforcement Policies and Procedures with respect to
461 the Parking System, including any public ways and fire lanes.

462 **“Parking Facility”** means a multi-level parking structure containing 640 parking spaces
463 that will be designed, constructed, and maintained by the Developer in accordance with this
464 Agreement on the Site.

465 **“Parking Fee”** means any fee paid by a Person for the privilege of parking within the
466 Parking System. The Parking Fee explicitly excludes any taxes paid by a Person for the
467 privilege of parking within the Parking System.

468 **“Parking Spaces”** means each of the parking spaces to be provided by the Developer
469 within the Parking System under the terms of this Agreement.

470 **“Parking System”** means the system consisting of (a) Parking Facility and (b) parking
471 system assets (such as computer systems and software, payment and access control equipment,
472 operating and maintenance equipment, etc.), (c) landscaping, improvements, equipment, or
473 systems (such as electrical, plumbing, HVAC, mechanical concerns all of which are located on
474 the Leased Premises and (d) the Additional Parking Areas.

475 **“Parking System Management”** has the meaning set forth in Section 6.2.

476 **“Parking System Operations”** means (i) the operation, management and maintenance of
477 the Parking System, (ii) the issuance, processing and collection of parking tickets or citations for
478 violations of parking rules and regulations with respect to the Parking Spaces pursuant to this
479 Agreement, and (iii) all other actions relating to the Parking System that are performed by or on
480 behalf of the Developer pursuant to this Agreement.

481 **“Parking System Personnel”** has the meaning set forth in Section 6.9.

482 **“Party”** means individually the City or the Developer.

483 **“Parties”** means, collectively, the City and the Developer.

484 **“Permits”** mean all permits required for compliance with applicable local and federal law
485 for the Developer’s activities with respect to the Project.

486 **“Permitted Developer Encumbrance”** means, with respect to the Developer’s Interest:
487 (i) any Encumbrance contemplated by the project financing that Developer reasonably
488 implements in connection with delivering the Project contemplated in this Agreement; (ii) any
489 Encumbrance that is being contested by Developer (but only for so long as such contest
490 effectively postpones enforcement of any such Encumbrance); (iii) any (A) lien or security
491 interest for obligations not yet due and payable to a Contractor or other Person, (B) statutory lien,
492 deposit or other non-service lien or (C) lien, deposit or pledge to secure mandatory statutory
493 obligations or performance of bids, tenders, contracts (other than for the repayment of borrowed
494 money) or leases, or for purposes of like general nature, any of which are incurred in the
495 ordinary course of business of the Parking System Operations and are either (A) not delinquent
496 or (B) which are being contested by the Developer (but only for so long as such contest
497 effectively postpones enforcement of any such Encumbrance); (iv) inchoate materialmen’s,
498 mechanics’, workmen’s, repairmen’s, employees’, carriers’, warehousemen’s or other like
499 Encumbrances arising in the ordinary course of business of the Parking System or the
500 Developer’s performance of any of its rights or obligations hereunder, and either (A) not
501 delinquent or (B) which are being contested by the Developer (but only for so long as such
502 contest effectively postpones enforcement of any such Encumbrance); (v) any right reserved to
503 or vested in any Governmental Authority by any statutory provision or under common law (it
504 being understood and agreed that nothing in this clause (vi) shall limit or otherwise affect the
505 City’s obligations or the Developer’s rights hereunder); (vii) any other Encumbrance permitted
506 hereunder (including any Leasehold Mortgage (and financing statements or other means of
507 perfection relating thereto)); (viii) liens incurred in the ordinary course of business in connection

with workers' compensation, unemployment insurance, social security and other governmental rules and that do not in the aggregate materially impair the use, value or operation of the Parking System; (ix) any Encumbrances created, incurred, assumed or suffered to exist by the City or any Person claiming through the City; (x) any Encumbrance, security interest or pledge imposed upon the Developer and any Affiliate as to Developer's and any Affiliate's assets arising from borrowings, financings, leases or similar transactions in the ordinary course of business; (xi) any Encumbrance securing reimbursement obligations under any letter of credit; and (xii) any amendment, extension, renewal or replacement of any of the foregoing.

"Permitted Materials" means any materials or substances regulated by Environmental Law that are reasonably and customarily used during construction, provided that the same are used, handled, and stored in compliance with all applicable Environmental Law.

"Person" means an individual, a general or limited partnership, a joint venture, a corporation, a limited liability company, a trust, an unincorporated organization, or a Governmental Authority.

"Project" has the meaning set forth in the Recitals.

"Project Budget" is set forth in Exhibit J.

"Projected NOI" shall mean Developer's anticipated annual Net Operating Income, as set forth in Exhibit E.

"Public Way" means the streets, alleys, driveways and sidewalks owned by (or for the benefit of) the City that provide and allow access to the Parking System.

"Relevant Date" is the date used for the calculation of the City's right to purchase the Developer's equity in the Project as set forth in Section 11.5 and Exhibit I.

"Retained Information" has the meaning set forth in Section 14.1.

"RiverWalk and Pedestrian Connections" means those certain physical connections between the Parking Facility and the City's existing and to be built RiverWalk project,

"Scheduled Date of Substantial Completion" is the date of Substantial Completion set forth in Exhibit D.

"Site" has the meaning set forth in the Recitals.

"Stabilization Payment" has the meaning set forth in Section 7.2.

"Substantial Completion" shall mean that (i) construction is sufficiently complete such that the applicable facility can be used as a parking facility (including all necessary operating services, safety, and utilities), (ii) that such construction has been completed in accordance with the requirements of this Agreement and (iii) all permits that the Developer is required to obtain related to the applicable facility have been obtained.

543 “**Successor Developer**” has the meaning set forth in Section 16.7.1.

544 “**Successor Development Agreement**” has the meaning set forth in Section 16.7.1.

545 “**Support Payment**” has the meaning set forth in Section 7.1.

546 “**Support Payment Date**” has the meaning set forth in Section 7.1.

547 “**Target Financial Close Date**” has the meaning set forth in Section 2.1.

548 “**Term**” means the period commencing on the Execution Date and terminating twenty-
549 five years (25) years after the Effective Operational Date unless terminated earlier or extended
550 longer in accordance with the terms of this Agreement.

551 “**Termination by Court Ruling**” shall have the meaning set for in Section 11.9.

552 “**Termination Compensation**” has the meaning set forth in Section 11.8.1.

553 “**Termination Compensation for Court Ruling**” has the meaning set forth in Section
554 11.7.3.

555 “**Termination Notice**” has the meaning set forth in Section 12.11.3.

556 “**Transfer**” means to sell, convey, assign, encumber, transfer, or otherwise dispose of.

557 “**Trustee**” shall mean the trustee selected by the Developer or Financing Party to manage
558 the Gross Revenues Account in accordance with the Gross Revenues Agreement.

559 “**Variations**” has the meaning set forth in Section 5.7.2.

560 **ARTICLE 2** 561 **FINANCING**

562 **Section 2.1. Target Financial Close Date.** The Developer is responsible for arranging
563 for the financing of the Parking Facility, and the RiverWalk and Pedestrian Connections. The
564 Developer shall use commercial best efforts to achieve financial close of such Financing within
565 one hundred and twenty (120) days of the Execution Date (“**Target Financial Close Date**”).
566 The financial close of such Financing shall occur within one hundred and eighty (180) days from
567 the Execution Date (“**Financial Close Long Stop Date**”) provided, however, that if both Parties,
568 in each Party’s sole discretion, agree to an extension, the Financial Close Long Stop Date can be
569 extended in writing by the Parties.

570 **Section 2.2. Assistance to Financing Party.** If and to the extent reasonably requested
571 by the Developer, the City agrees and undertakes to provide reasonable assistance, including as
572 set forth in Article 16, to the Financing Party, or any representatives or advisors thereof, in
573 connection with any due diligence relating to the Financing Documents performed by, or on
574 behalf of, the Financing Party.

Section 2.3. Effective Date. The “**Effective Date**” shall be upon financial close of the Financing and the Developer delivering the Effective Date Certificate to the City.

Section 2.4. Termination Prior to Effective Date. This Agreement may be terminated at any time prior to the Effective Date:

Section 2.4.1. By the mutual consent of the City and the Developer in a written instrument;

Section 2.4.2. By the Developer, upon notice to the City, if any Governmental Authority of competent jurisdiction shall have issued an order, decree or ruling or taken any action permanently restraining, enjoining, or otherwise prohibiting the transaction, and such order, decree, ruling, or other action has become final and nonappealable;

Section 2.4.3. By the Developer, upon notice to the City, if (a) Developer is unable to secure Financing for 100% of the Project Budget as determined in Developer’s sole discretion, or (b) the City does not acquire the Permits set forth in Exhibit H by the Financial Close Long Stop Date;

Section 2.4.4. By the City, upon notice to the Developer, if the Developer does not secure Financing for 100% of the Project Budget by the Financial Close Long Stop Date.

Section 2.5. Effect of Termination Prior to Financial Close of the Financing. In the event of termination of this Agreement by either the City or the Developer as provided in Section 2.4, this Agreement shall forthwith become void, and there shall be no liability or obligation on the part of the City or the Developer or their respective Representatives for any Losses in any respect whatsoever.

ARTICLE 3 GRANT AND ACCEPTANCE OF RIGHTS; TERM

Section 3.1. Grant of Concession.

Section 3.1.1. Subject to the terms and conditions of this Agreement, as of the Execution Date, the City grants to the Developer the exclusive right, license and concession, and (subject to securing Financing in accordance with Article 2 above) imposes on the Developer the obligations to: (i) operate, administer, construct, develop, manage, improve, and maintain the Parking System; (ii) engineer, procure, finance, construct, equip, test, and complete the Parking Facility on the Site as well as the RiverWalk and Pedestrian Connections; and (iii) charge, collect and retain all revenue and income generated by the Project including the Fees from the Parking System and, as applicable, the Additional Parking Areas, during the Term of this Agreement, subject to the requirements of Article 8.

Section 3.1.2. Subject to the terms and conditions of this Agreement, the City hereby grants to the Developer (and its designees) the exclusive right for the Term of this Agreement to enter into agreements with third parties for the development, administration, management, operation, and maintenance of the Parking System and, as applicable, the Additional Parking Areas, provided, however, that Developer shall not enter into agreement with

an Operational Subcontractor without the written consent of the City, which consent shall not be unreasonably withheld or delayed. If the City reasonably objects to hiring of any Operational Subcontractor, the City shall notify the Developer within seven (7) days of receipt of the Developer's request for consent and identify any objections. If the City consents or the City does not respond, the Developer will proceed with the hiring of the Operational Subcontractor. If the City does not consent in a timely manner and the Developer agrees with the reasons for the objection by the City, the Developer will hire a different Operational Subcontractor pursuant to the consent process set forth herein. If the Developer does not agree with the City's objection to hiring the Operational Subcontractor, the Parties will meet within two (2) days to discuss the City's objections and the Developer shall be granted a Government Delay until such time as a new Operational Subcontractor is hired by the Developer and, for the avoidance of doubt, the City will continue to be responsible for and pay the Stabilization Payments. Further, the Developer shall have the right at its sole option to either contract with the existing Operational Subcontractor to continue the operations or to hire temporary Operational Subcontractors while seeking to obtain the consent of the City for a long-term Operational Subcontractor. The City hereby approves [_____] as the Operational Subcontractor.

Section 3.2. Grant of Leasehold Interest. As of the Effective Date, the City demises, grants and leases to the Developer and the Developer accepts a leasehold interest in the Site free and clear of all Encumbrances sufficient for the Developer to carry out its responsibilities in accordance with this Agreement.

Section 3.3. Improvements. All improvements located in, on and under the Site and that are hereafter constructed on the Site by or at the request of the Developer shall vest in and belong to the Developer subject to the terms of this Agreement ("**Improvements**").

Section 3.4. Exclusivity. The Developer shall, during the Term of this Agreement, have the exclusive right to exercise the rights set forth in Section 3.1.

Section 3.5. Quiet Enjoyment. The Developer shall, at all times during the Term, be entitled to and shall have quiet enjoyment of the Site and Parking System and the rights and privileges granted to the Developer hereunder, subject to the provisions contained in this Agreement. The City and the Developer acknowledge the Developer's rights to operate the Project in accordance with the terms of this Agreement. The City shall, at all times during the Term, defend its fee interest title to the Site, the Developer's leasehold interest in and to the Site and title to the Parking Facility and the rights granted to the Developer hereunder, or any portion thereof, against any Person claiming any interest adverse to the Developer or to the Developer's interest in the Project, or any portion thereof.

Section 3.6. Right of Entry and Access to the Public Way. The City hereby grants to the Developer and its contractors, subcontractors, authorized representatives, employees, customers, patrons, invitees, designees and suppliers (collectively, the "**Developer's Representatives**") a non-exclusive right to enter upon, in, under, over and across the Public Way to such extent and at such times as shall be necessary or desirable for the Developer and Developer's Representatives to access the Site and the Parking System in order to conduct Parking System Operations, including construction, operating, maintaining, inspecting, repairing and managing the Parking Facility, operating and managing the Additional Parking, as

applicable, collecting Parking Revenue and installing monitoring or observation technology or equipment reasonably necessary for Parking System Operations. The rights granted to the Developer under this Section 3.6 neither create an interest in real property nor do they create a priority in favor of the Developer over any other user of such areas and are subject to all provisions of Law relating to the conduct of a private business or franchise in the Public Way. The City retains the right to access the Site and the Parking Facility at reasonable times and with reasonable advance notice to Developer for any purpose permitted or required by this Agreement or required by Applicable Law. No advance notice is necessary for the City to access the Site or the Parking Facility in the case of an emergency or for public safety purposes.

Section 3.7. Encumbrances.

Section 3.7.1. By the Developer. The Developer shall not do any act or thing that will create any Encumbrance except for any Permitted Developer Encumbrances against the Parking System and shall promptly remove any Encumbrance against the Parking System, except for any Permitted Developer Encumbrances unless the Encumbrance came into existence as a result of an act of or omission by the City or a Person claiming through it which in turn was not caused by an act or omission of the Developer. The Developer shall not be deemed to be in default hereunder if the Developer continuously, diligently and in good faith contests any such Encumbrance, or the validity thereof (or causes such contest), by appropriate legal proceedings that shall operate to prevent the foreclosure of any such Encumbrance.

Section 3.7.2. By the City. The City shall not do any act or thing that will create any Encumbrance against the Parking System and shall promptly remove any Encumbrance against the Parking System that came into existence as a result of an act of or omission by the City or a Person claiming through the City. The City shall not be deemed to be in default hereunder if the City continuously, diligently and in good faith contests any such Encumbrance, or the validity thereof (or causes such contest), by appropriate legal proceedings that shall operate to prevent the foreclosure of any such Encumbrance; provided that the City has given advance notification to the Developer that it is the intent of the City to contest the validity or collection thereof or cause such contest.

Section 3.7.3. Removal. Each Party, if requested by the other Party and at such other Party's costs and expense, shall use its reasonable efforts to assist such other Party in attempting to remove any Encumbrance that has come into existence as a result of an act of or omission by such other Party; provided that nothing herein shall obligate the City to waive, modify or otherwise limit or affect the enforcement by the City of any applicable rule, procedure or policy of the City whether or not with respect to the Parking System or any activities generating Parking Revenue or anything unrelated thereto.

Section 3.8. Cooperation.

Section 3.8.1. The City agrees, to the extent consistent with Applicable Law, and at the Developer's request, to:

(i) Provide reasonable assistance to the Developer to carry out the Project and to make available to it the benefits of the Developer rights provided hereunder;

(ii) Provide reasonable cooperation in seeking the assistance of the appropriate Governmental Authorities in carrying out the operation and maintenance of the Parking System, the Construction Work, and the transition of parking operations to the Developer and to the Parking Facility, when completed;

(iii) Provide reasonable assistance to the Developer in obtaining any relevant consents or Permits required to be obtained by the Developer; and

(iv) If any claim is asserted against the Developer, or the Developer is made a party in any action or proceeding, in connection with the Project, provide reasonable assistance, as requested by the Developer, provided that the Developer shall provide the City with (a) written notice of the assistance requested promptly upon receipt of any applicable compliant, summons, or court order, and (b) all relevant facts and information.

Section 3.9. Filing Memorandum of Lease. The Developer shall have the right to file a Memorandum of Lease, as necessary, consistent with this Agreement and the City shall cooperate within the Developer to file such document in the records of the York County Registry of Deeds.

ARTICLE 4 PARTIES' RESPONSIBILITIES

Section 4.1. Technical Requirements. The Developer shall hire and manage a Construction Contractor to perform the Construction Work, at its sole cost and expense, in compliance with the Design. In carrying out its duties and exercising its powers pursuant to this Agreement, the Developer shall exercise reasonable skill, care, and business judgment.

Section 4.2. Utilities. The City shall be responsible for procuring and arranging for utilities for the Parking System and to the Site during the construction phase, including any required utility interfaces, connections and relocations. Developer shall assume responsibility for the payment of such utilities upon Substantial Completion.

Section 4.3. Developer Subcontracting. The Developer has the right to subcontract the Developer's obligations identified in this Agreement in accordance with the terms of this Agreement.

Section 4.4. Licensing and Certification. The Developer, its sublessees, if any, and its contractors and subcontractors are required to obtain and maintain all licenses and/or certifications required by Applicable Law to perform their respective responsibilities or designated work under this Agreement. Developer, its sublessees, if any, and its contractors and subcontractors shall be qualified to do business in the State as required by Applicable Law.

Section 4.5. Environmental Requirements.

Section 4.5.1. The City and the Developer hereby warrant and covenant that each of them has and shall comply with all provisions of Environmental Law applicable to the Project including but not limited to the Declaration of Environmental Covenant identified in Section 4.5.5. Each Party shall indemnify, defend, and hold the other Party and its officers, directors,

agents, and employees (individually, an “**Indemnified Party**” and collectively, the “**Indemnified Parties**”) harmless from and against any and all third party claims and causes of action to the extent caused by such Party’s failure to comply with Environmental Law, except if such violation is caused by the Indemnified Party . For the avoidance of doubt the City shall be responsible for any Hazardous Material (whether known or unknown) on the Site prior to the Effective Date, as set forth in Section 4.5.4, and any resulting costs, damage, and liabilities arising out of a claim by an Indemnified Party (including, without limitation, the reasonable fees and disbursements of counsel and engineering consultants) incurred by or asserted against such Indemnified Party in connection with, arising out of, in response to, or in any manner relating to the violation of any Environmental Law.

Section 4.5.2. The Developer is not permitted to store, dispose of, release, or discharge any Hazardous Materials on, in, under or from the Project Site, except in compliance with applicable Environmental Law.

Section 4.5.3. The Developer shall or shall cause its subcontractors to obtain and maintain any Permits or other approvals required under applicable Environmental Law for the Project, excluding Permits that are the responsibility of the City as set forth in Exhibit I.

Section 4.5.4. The City is responsible for the condition of the Site, and Additional Parking Areas, including any existing environmental conditions, the presence of Hazardous Materials, subsurface and surface utilities and related equipment, archaeological conditions, the presence of endangered species and their habitat, and any historic property or condition. The City agrees to assume any and all risks, costs and expenses caused by, arising out of or in connection with, any such condition regardless of when such condition was discovered by either Party and the Parties shall treat any such condition as a Changed Condition.

Section 4.5.5. Developer acknowledges that the City has provided Developer with the Declaration of Environmental Covenant, dated September 3, 2015, recorded in the York County Registry of Deeds in Book 17098, Pages 898-921, which includes a Soil and Groundwater Management Plan. Developer further acknowledges that it shall provide copies of the Declaration of Environmental Covenant to all contractors performing work on the Site. As of or prior to the Execution Date, the City does not have any knowledge of any Hazardous Materials on the Site and Additional Parking Areas or with the passage of time that may impact the Site and Additional Parking Areas other than those identified in the Declaration of Environmental Covenant. The City shall notify the Developer if any Hazardous Materials are discovered on the Site and Additional Parking Areas.

ARTICLE 5

DESIGN AND CONSTRUCTION

Section 5.1. Basis of Design. The Developer shall use the Design developed by the City as the basis for the construction of the Project.

Section 5.2. Construction Criteria and Requirements. The Developer shall contract with a Construction Contractor to procure, construct, design, equip, commission and complete

the Construction Work consistent with the Design. All Construction Work shall be delivered on a turn-key basis, in good working order and immediately usable as a parking facility.

Section 5.3. Specifications and Drawings for Construction of the Project. The Developer shall require the Construction Contractor to keep on the Site a copy of the drawings and specifications and shall give the City reasonable access thereto.

Section 5.3.1. The Construction Agreement shall require the Construction Contractor to perform all Construction Work in a skillful and workmanlike manner.

Section 5.4. Permits. The City is responsible for obtaining the Permits as set forth in Exhibit I to this Agreement. Developer shall have the responsibility for obtaining all approvals, inspections, and Permits required for its performance of the Construction Work, other than the Permits required to be acquired and maintained by the City and shall make application therefor directly to the applicable Governmental Authority. The City shall, upon request by the Developer, execute applications for Permits, as fee owner of the applicable portion of the Site, to the extent required by the applicable Governmental Authority, at no cost, expense, obligation, or liability to the City. In no event shall the Developer permit the Construction Contractor to commence construction of all or any portion of the Site until the Developer shall have obtained all Permits required for such Construction Work.¹

Section 5.4.1. The City has the right, but not the duty, to (i) inspect the construction of the Project and the plans and specifications with respect thereto at reasonable times (and upon reasonable notice) during the design and construction of the Project and (ii) at reasonable times (and upon reasonable notice) perform testing (and take samples) on any part of the construction site or Work. In taking any such actions, the City agrees it will not interfere with the construction or operation of the Project Site and (a) any damage caused by the City while performing such testing shall be paid for by the City to the Developer within thirty (30) days of demand and (b) any delay to the Project shall be dealt with in the same manner as Governmental Delay under Section 5.6.2.

Section 5.5. Warranties. The Developer will obtain a warranty, to the extent commercially available, from the Construction Contractor. The Developer shall, to the extent permissible, add the City as a beneficiary to such warranties from the Construction Contractor.

Section 5.6. Delivery Schedule.

Section 5.6.1. The Developer shall require the Construction Contractor to commence construction of the Project and shall thereafter diligently prosecute the same to Substantial Completion in accordance with the [milestones and deadlines identified within the Construction Schedule]/[Construction Completion Dates]. Developer shall require the Construction Contractor to achieve Substantial Completion on or before the Scheduled Date of Substantial Completion identified in Exhibit D. The Scheduled Date of Substantial Completion shall in no event be later than December 31, 2021 unless extended in accordance with the terms of this Agreement or as otherwise agreed by the Parties (the “**Long Stop Date**”).

¹ Parties to discuss permitting requirements.

Section 5.6.2. Delays due to Force Majeure, Changed Conditions and Governmental Delay. The Financial Close Long Stop Date, Scheduled Date of Substantial Completion, Long Stop Date and other [outside dates for milestones in the Construction Schedule]/[Construction Completion Dates] shall be subject to an extension for delays caused by Force Majeure, Changed Condition(s) and Governmental Delay in accordance with the terms of this Section 5.6.2 (and the Developer shall not be in breach of its obligations to the extent it is prevented from carrying out such obligations due to Force Majeure, Changed Condition or Governmental Delay). Any such extension shall be day-for-day for the period of Force Majeure, Changed Conditions or Governmental Delay, as applicable. In all instances, the Developer shall use commercially reasonable efforts to mitigate the length of a delay due to a Force Majeure, Changed Condition or Governmental Delay, as applicable. In claiming any such extension due to Force Majeure, Changed Condition or Governmental Delay, as applicable, the Developer shall reasonably demonstrate that such Force Majeure, Changed Condition or Governmental Delay, as applicable, is likely to cause, or has caused, a delay of a milestone/date (as referred to above) to which the Developer is requesting an extension.

Section 5.7. Variations.

Section 5.7.1. It is expressly understood that all risks and costs relating to design, construction, financing, operation, and maintenance of the Project, as applicable, and performance of all its obligations deriving from this Agreement shall be borne solely by the Developer, unless otherwise expressly stipulated in the Agreement.

Section 5.7.2. Variations shall mean a variation in the schedule, scope, design, quality, form, character, kind, position, dimension, level or line of the Construction Work as a result of any omissions, modifications, additions, substitutions, or alterations to the Construction Work Plan as requested by the Developer or the City pursuant to this Section 5.7.2 (“**Variations**”). For the avoidance of doubt, a change in schedule, scope, quality, form, character, kind, position, dimension, level or line of the Construction Work deriving from a defect, omission, flaw or error attributable to the Developer or any of its contractors or suppliers thereof shall NOT constitute a Variation and shall be corrected at the sole cost and responsibility of the Developer; provided that a change in schedule, scope, quality, form, character, kind, position, dimension, level or line of the Construction Work deriving from a Design defect, omission, flaw or error shall be the responsibility of the City and the Developer shall receive (i) payment to correct the design, and (ii) an extension of time for the delay caused by the design issue. Any such extension shall be day-for-day for the period of delay. In all instances, the Developer shall use commercially reasonable efforts to mitigate the length of a delay.

Section 5.7.3. The City shall have the right to request the Developer in writing to implement a Variation. The Developer, subject to the Developer’s confirmation that any such Variation does not impede the Developer’s ability to otherwise perform the services at prescribed service levels set forth in this Agreement, shall implement or have implemented any such requested Variation. The City shall bear the additional cost, including, without limitation, any financing cost, of any Variation so requested by the City and implemented by the Developer. The City shall agree to the estimated cost of the Variation, and any extension to the milestones or dates referenced in Section 5.6.2, prior to any of the Variation work commencing and shall compensate the Developer for such additional cost on such basis as the City and the Developer

shall mutually agree in writing, including, without limitation, by direct payment to the Developer. If the City and Developer cannot agree on the estimated cost of the Variation, the Developer shall not be obligated to undertake such Variation work.

Section 5.7.4. The Developer shall have the right to implement Variations, provided, however, that Developer shall not implement material Variations without the written consent of the City which consent shall not be unreasonably withheld. The Developer shall bear the additional cost of any Variation so implemented by the Developer.

Section 5.8. Bond Security. The Developer shall cause the Construction Contractor to purchase both payment and performance bonds, in the name of both the Developer and the City, each of which bonds shall be in an amount not less than the contract sum of the Developer's Project costs and shall protect the City and the Site from any and all mechanics' and materialmen's liens which may be levied for labor or materials furnished in connection with the Project and to insure proper completion of the Project. Prior to commencing construction, the Developer shall furnish all executed bonds, including any necessary reinsurance agreements, to the City.

Section 5.9. RiverWalk and Pedestrian Connections. The Developer and City agree that they will use commercially reasonable efforts to agree to the terms and conditions permitting the RiverWalk and Pedestrian Connections to be designed, constructed and financed for an amount not to exceed three million dollars (\$3M), which amount shall be part of the Financing to be arranged by Developer. The construction schedule, contractor, permitting and construction terms and conditions related to the RiverWalk and Pedestrian Connections will also be agreed, and the Parties will leverage, to the greatest practical extent, the work performed on the Parking Facility.

ARTICLE 6 OPERATIONS AND MAINTENANCE

Section 6.1. Parking System Management Subcontracting.

Section 6.1.1. Developer is authorized to enter into Operations and Maintenance Agreements with Operational Subcontractors in connection with the Developer's performance of the Parking System Management. subject to the process set forth in Section 3.1.2.

Section 6.1.2. Developer shall enter into an initial term of no shorter than three (3) years with the Operational Subcontractor for operation of the Parking System. Prior to renewal of the Operations and Maintenance Agreement or execution of a new Operations and Maintenance Agreement, Developer will conduct a benchmarking exercise to confirm the best value of such Operations and Maintenance Agreement, subject to the Developer's reasonable discretion.

Section 6.1.3. To the extent the Operational Subcontractor is removed or terminated by the Developer, Developer agrees to promptly conduct a transparent, arms-length process to replace the Operational Subcontractor.

Section 6.2. General Operational Duties. Beginning on the Effective Operational Date of this Agreement, the Developer shall require the Operational Subcontractor to operate, manage, administer, equip, improve, maintain, and keep the Parking System in good repair, order, and condition in accordance with the plan attached as Exhibit C (“**O&M Management Plan**”). Developer shall require the Operating Subcontractor to create and otherwise have responsibility for delivering the O&M Management Plan (“**Parking System Management**”). The Developer shall require the Operational Subcontractor to use its good faith and commercially reasonable efforts to manage, maintain, and operate the Parking System in a manner reasonably calculated to optimize the availability and efficiency of the Parking System, including, without limitation, as regards the flow of vehicles and pedestrians and the allocation of space at and within the Parking System. Without limiting the generality of the foregoing, the Developer, either itself or through consultants, contractors, and/or subcontractors retained and/or supervised by the Developer (“**Operational Subcontractors**”), shall perform or cause to be performed the Parking System Management.

Section 6.3. Specific Operational Duties. Developer will require the Operational Subcontractor to perform all services as required by the O&M Management Plan, including, without limitation, the following:

Section 6.3.1. Diligently preserving and protecting the Parking System, and keeping the same in a useable, safe, and sanitary condition.

Section 6.3.2. Performing the Parking System Management and maintaining the Parking Facility.

Section 6.3.3. Collecting, for deposit in the Gross Revenues Account, revenue and income generated by the Project during the Term of this Agreement, including Parking Fees.

Section 6.4. Hours of Operation. The Developer shall require the Operational Subcontractor to ensure that the Parking System remains operational 24 hours a day, 7 days a week.

Section 6.5. Parking Enforcement. The City shall not be responsible for Parking Enforcement within the Parking System other than emergency police and fire response.

Section 6.6. Protection Services and Emergencies. The Developer shall require the Operational Subcontractor to procure adequate security protection, fire protection and inspection, and emergency services (which may be provided by a governmental body) at the Parking Facility, to the extent not provided by the City.

Section 6.7. Books and Records. The Developer agrees to require the Operational Subcontractor to maintain complete and accurate books and records in connection with the management and operation of the Project in accordance this Agreement and Applicable Law or regulation.

Section 6.8. Tax and Reporting Matters. The Developer shall require the Operational Subcontractor to be responsible for preparing and filing all necessary returns, reports and forms required by Law in connection with the operation and management of the Parking System,

including, without limitation, those with respect to unemployment insurance, social security taxes, workers' compensation, disability, federal and state income tax withholding, and other similar taxes and all other returns and reports required by any federal or State authority, and pay or make all deposits required for such taxes.

Section 6.9. Personnel and Training. The Developer shall require the Operational Subcontractor to employ a number of trained, experienced persons sufficient to operate the Parking System and perform the Parking System Management responsibilities ("**Parking System Personnel**") in accordance with this Agreement.

Section 6.10. Improvements Required by Law. During the Term of this Agreement, and subject to Section 7.3.3, the Developer will be required to build, maintain, and repair all fences, sewers, drains, roads, curbs, sidewalks, and parking areas which may be required by Applicable Law to be made, built, maintained, and repaired upon the Site or used in connection with or for the use of the Site or any part thereof, provided that such items are required by Applicable Law for the Developer's use of the Site. To the extent a portion of the Site is not in compliance with Applicable Law on the Effective Date, any work required to bring the Site into compliance with Applicable Law shall be treated as a City requested Variation and Section 5.7 shall apply.

Section 6.11. Appointment of Auditors. The Developer shall (a) put in place an accounting and cost control system in respect of the Parking System which shall, among other things, record all financial and commercial transactions and other activities in respect of the Parking System whether or not recorded on the books and records of the Developer; and (b) retain a firm of registered independent accountants, acceptable to the City as auditors of the Developer. The Developer shall prepare and maintain its accounts in dollars in accordance with City contracting standards. The Developer's financial year shall be consistent with that of the City, unless otherwise agreed by the Parties in writing.

Section 6.12. Taxes. Any taxes imposed by the City or a City related taxing authority on the Parking Facility or Project shall be paid by the City to the Developer thirty (30) days prior to such taxes being owed by the Developer for payment to the applicable taxing authority.

Section 6.13. Additional Parking Areas. Developer agrees to hire an Operational Subcontractor to manage the areas identified as the Additional Parking Area and to collect the Fees related thereto.

ARTICLE 7 PAYMENTS

Section 7.1. Support Payments. The City shall make semi-annual payments to the Developer, in the aggregate annual amounts and according to the schedule below in order to compensate Developer for the Financing and development of the Parking System ("**Support Payments**"). Such Support Payments are in addition to, and are not a substitute for, the Fees collected and retained by the Developer from the operation of the Parking System and the Stabilization Payments. The Parties have agreed that the City will make Support Payments for years one through six after the Effective Operational Date in the amounts set forth in the table

below. Thereafter, starting annually in year seven (7) after the Effective Operational Date, the Support Payments will increase on an annual basis, as set forth in Section 7.1.1. The Support Payments will commence no earlier than six months after the Effective Operational Date and Support Payments will occur semi-annually thereafter (“**Support Payment Date**”). For each Support Payment, Developer will submit a written payment request to the City sixty (60) days prior to the Support Payment Date. The City agrees to pay Developer the aggregate annual amount specified in the chart below, with each semi-annual payment being made on or prior to the Support Payment Date.

Effective Operational Date Anniversary	Amount
Year 1	\$650,000
2nd	\$700,000
3rd	\$750,000
4th	\$800,000
5th	\$850,000
6th	\$900,000

Section 7.1.1. After payment of the final Support Payment relating to year six (6) specified in Section 7.1, the Support Payment shall be adjusted annually (the “**Inflation Adjustment**”) based upon the lesser of: (i) 3.5% per year and (ii) the escalation factor provided from the following formula:

$$RFC_j = RFC_0 \times \left[\frac{CPI_{j-1}}{CPI_0} \right]$$

Whereby,

j = the calendar year of the Term in which the Inflation Adjustment is under consideration (year seven (7) after the Effective Operational Date and each subsequent year thereafter);

RFC_j = the amount of the Support Payment to be paid in year j;

RFC₀ = the amount of the Support Payment paid in the previous year to the Developer;

CPI_{j-1} = the Consumer Price Index averaged for the 12 months of the calendar year immediately preceding year j of the Term; and

CPI₀ = the Consumer Price Index averaged for the 12 months of the calendar year two years prior to year j.

Section 7.2. Stabilization Payments. In addition to the Support Payments from the City, the Developer is also eligible to receive, and, subject to Sections 7.2.1 and 7.2.2 below, the City shall pay, a semi-annual subsidy payment from the City for the Project stabilization (“**Stabilization Payment**”). If the Developer’s NOI, in any semi-annual period is below ninety percent (90%) of the Projected NOI for the same period as established in Exhibit E, and only if the shortfall is a result of deviations in operation and maintenance costs and expenses and/or

Parking System revenues, the City agrees, subject to Sections 7.2.1 and 7.2.2 below, to make a Stabilization Payment to Developer in an amount equal to the difference between the applicable Projected NOI and the actual NOI for such period thereby bringing Developer to 100% of the Projected NOI. ²

7.2.1 Notwithstanding the above, the City may present a written request to the Developer to increase the Parking Fees as an alternative to making a Stabilization Payment under Section 7.2 within 10 days of receiving a Stabilization Payment request. The written request for an increase of the Parking Fees shall set forth an explanation of the basis for such request, the amount of such increase including its cost basis and any margin, its anticipated effect on the business and financial condition of the City and the Parking System, its competitive effect with parking in the area, and the details of the implementation of any such increase.

7.2.2 If, after due consideration of the merits of the request, the Developer determines, at its discretion, that there is reasonable cause for an increase in the Parking Fees as an alternative to making the Stabilization Payment (hereinafter “extraordinary increase”), and, if the requested extraordinary increase would otherwise be permitted by Applicable Laws, the Developer may elect to implement the new Parking Fee. However, if, after due consideration of the merits of the request, the Developer determines, at its discretion, that all or a portion of the increase will negatively impact the Project to justify the amount of the requested extraordinary increase in Parking Fees, the Developer shall provide the City with a written response explaining the reasons for its rejection of all or a portion of the request. Should the request be rejected the City shall make the Stabilization Payment less that portion of the increase accepted by Developer in line with Section 7.2 promptly and no later than 7 days after receiving the rejection. For the avoidance of doubt, notwithstanding the provisions of Section 7.2.1 and 7.2.2, the City shall have the right in its discretion to increase the Parking Fees for the Parking System when it determines appropriate.

Section 7.3. Cost Savings and Changed Conditions Costs.

Section 7.3.1. Construction Cost Savings. Following the date of [final completion of the Construction Work] the Developer will promptly pay to the City the Development Contingencies.

Section 7.3.2. Operational Cost Savings.

(i) Following the date of Substantial Completion and subject to Section 7.3.3, to the extent Developer’s NOI exceeds one-hundred and ten percent (110%) of Projected NOI for the same semi-annual period as established in Exhibit E, Developer agrees to make a payment to the City in an amount equal to the amount set forth in Section 7.3.2(ii).

(ii) The distribution to the City will be equal to 100% of the first \$750,000 of any such annual surplus (over 100% of Projected NOI) and 90% of any additional annual surplus (over 100% Projected NOI), with the remaining 10% of such annual surplus retained by Developer.

² The final Agreement will include an exhibit identifying additional details.

Section 7.3.3. Changed Conditions Costs. If as a result of the occurrence of a Changed Condition the Developer (a) incurs, or will incur, additional costs or (b) will be required to make any payments to any Financing Party prior to the achievement by the Developer of Substantial Completion (“**Changed Condition Costs**”), the City may elect in its sole discretion to fund the Changed Condition Costs. If City declines to do so, Developer may elect to advance required amounts to the Construction Contractor or other third parties (including any Financing Party) (“**Changed Condition Loans**”). The Changed Condition Loans shall be repaid pursuant to a schedule agreed to by the Parties. The repayment to the Developer of the Changed Condition Loans shall be made from first, to the extent any exist, any Parking Fees that exceed 110% of Projected NOI (for the avoidance of doubt, before any distribution to the City pursuant to Section 7.2); second from an increase to the Support Payments as agreed to by the Parties; and third from the proceeds of any sale or transfer of the Project as contemplated herein. Where neither Party funds the Changed Condition Costs, Section 11.7 shall apply. Upon termination of the Agreement for any reason, any amount outstanding under any Changed Condition Loan shall be immediately due and payable by the City to Developer. Any extensions to the milestones or dates referenced in Section 5.6.2 arising from a Changed Condition shall be dealt with in accordance with Section 5.6.2.

Section 7.4. Annual Reporting for Calculations. The calculation of Stabilization Payments and Cost Savings reimbursement mechanisms will be referenced against Developer’s Annual Report, in accordance with Article 10 of this Agreement. Developer will submit a written payment request for any Stabilization Payment to the City on a semi-annual basis within thirty (30) days of the end of the applicable semi-annual period (and will be subject to a true-up by reference to the Annual Report). Any payments to be made under Sections 7.2 and 7.3, either from the City to the Developer or from the Developer to the City, shall be made within fifteen (15) days of the notice from the Developer to the City of the calculation of the amount due under this Article 7.

ARTICLE 8 FEES

Section 8.1. Collection of Fees.

Section 8.1.1. The Developer shall be entitled to bill, collect, receive, deposit, and retain all Fees on the Parking System and on the Additional Parking Areas during the Term, subject to the terms and conditions set forth in this Agreement. All Fees shall be charged and collected in dollars and in accordance with the provisions of all Applicable Law and deposited into the Gross Revenues Account

Section 8.1.2. The Developer shall be wholly and exclusively responsible for the billing, collection, receipt, deposit, and retention of all Fees on the Parking System and Additional Parking Areas during the Term and shall assume all risks associated therewith.

1076 **ARTICLE 9**
1077 **ASSIGNMENT AND TRANSFER**

1078 **Section 9.1. Restrictions on Transfers by the Developer.** Developer shall have the
1079 right to assign this Agreement to a Developer Affiliate at any time without the consent of the
1080 City (provided that such assignment does not violate any Applicable Law). The Developer shall
1081 notify the City of such assignment within fifteen (15) Business Days of such assignment
1082 occurring. If the Developer intends to assign this Agreement to a party which is not a Developer
1083 Affiliate, the Developer shall only be permitted to do so with the prior written consent of the City
1084 (such consent not be unreasonably withheld or delayed).

1085 **Section 9.1.1.** Unless and to the extent otherwise expressly agreed to in writing
1086 by the City, any assignee shall be deemed to have assumed all of the obligations of the
1087 Developer under this Agreement, and no assignment shall relieve the Developer of any of its
1088 obligations hereunder.

1089 **Section 9.1.2.** Any attempted Transfer of this Agreement by the Developer,
1090 including its respective permitted successors or assigns, is subject to the City's written consent,
1091 with the exception of the Developer Affiliates, and must include the provisions of this Article 9.

1092 **Section 9.1.3.** Subject to Section 9.1.2, any attempted Transfer in violation of
1093 this Article 9 shall be null and void ab initio and of no force or effect, and the City shall not be
1094 obligated to recognize any right of any Person to an interest in this Agreement or to own or
1095 operate any facilities and/or improvements or conduct any other activity or activities on the Site
1096 otherwise authorized under this Agreement that was acquired in violation of this Article 9.

1097 **Section 9.2. Permitted Succession and Assignments.** The Developer and the City
1098 agree that all of the covenants, conditions, obligations, and liabilities contained in this
1099 Agreement shall be binding upon and inure to the benefit of any and all permitted successors and
1100 assigns of the Developer to the same extent as if the successors and assigns were in each case
1101 named as a party to this Agreement; provided, however, the provisions of this Section shall not
1102 apply to a Financing Party unless and until the Financing Party acquires the Developer's Interest
1103 through foreclosure or otherwise.

1104 **Section 9.3. Restrictions on Transfers by the City.** City shall not have the right to
1105 assign this Agreement.

1106 **ARTICLE 10**
1107 **ANNUAL REPORT**

1108 Following the Effective Operational Date, the Developer shall require the Operational
1109 Subcontractor to submit an annual report (each, an "**Annual Report**") to the City on or before
1110 [March 10] of each year which includes the following information, at a minimum:

1111 (i) Amount of Gross Revenues collected during the prior year;

1112 (ii) Amount of the Financing, including Lender Liabilities;

- 1113 (iii) Operational Costs during the prior year;
- 1114 (iv) Any outstanding Overrun Loan amounts, including any principal and
1115 interest paid thereon in the prior year;
- 1116 (v) Stabilization Payment paid to the Developer;
- 1117 (vi) Amount of the Support Payments;
- 1118 (vii) The calculation of any required distribution to the City based on
1119 excesses above Projected NOI, less any payments under the Overrun Loans; and
- 1120 (viii) Any Variations

1121 ARTICLE 11

1122 EVENTS OF DEFAULT, REMEDIES, TERMINATION, AND TERMINATION 1123 COMPENSATION

1124 **Section 11.1. Default by the Developer.** The occurrence of any one or more of the
1125 following events during the Term shall constitute a “**Developer Default**” under this Agreement:

1126 **Section 11.1.1.** If the Developer fails to comply with, perform, or observe any
1127 material obligation in this Agreement, and such failure continues unremedied for a period of
1128 sixty (60) days following notice thereof (giving particulars of the failure in reasonable detail)
1129 from the City to the Developer or for such longer period as may be reasonably necessary to cure
1130 such failure.

1131 **Section 11.1.2.** If within ninety (90) days after the commencement of any
1132 proceeding against the Developer seeking any reorganization, arrangement, composition,
1133 readjustment, liquidation, dissolution or similar relief under the present or any future United
1134 States Bankruptcy Code, or any other present or future Applicable Law, such proceeding has not
1135 been dismissed, or if, within ninety (90) days after the appointment, without the consent or
1136 acquiescence of the Developer, of any trustee, receiver, custodian, assignee, sequestrator,
1137 liquidator or other similar official of the Developer or of all or any substantial part of its
1138 properties or of the Parking System or any interest therein, such appointment has not been
1139 vacated or stayed on appeal or otherwise, or if, within ninety (90) days after the expiration of any
1140 such stay, such appointment has not been vacated.

1141 **Section 11.2. Remedies by the City Upon Developer Default.** Upon the failure to cure
1142 a Developer Default in accordance with the timeframe set forth in Section 11.1, the City may, by
1143 notice to the Developer, declare the Developer to be in default and subject to any rights of the
1144 Financing Party as set forth in Article 16 (i) pay the Developer one-dollar (\$1.00) and (ii) at the
1145 discretion of the City either (x) pay the full amount of any outstanding Lenders Liabilities or (y)
1146 assume through the execution of an assignment agreement between the Developer, relevant
1147 Financing Parties, and the City, the remainder of the payments owed to the Financing Parties
1148 where Developer has any outstanding Lender Liabilities.

1149 **Section 11.2.1.** If this Agreement is terminated for grounds which are later
1150 determined by a court of competent jurisdiction not to justify a termination by the City, such
1151 termination shall be deemed to constitute a Termination for City Default and Developer's
1152 remedy shall be payment of compensation to Developer by the City in an amount equal to the
1153 Termination Compensation within thirty (30) days of such determination.

1154 **Section 11.3. Default by the City.** If the City fails to comply with or observe any
1155 material obligation, covenant, agreement, term or condition in this Agreement, including
1156 payment in accordance with this Agreement, and such failure continues unremedied for a period
1157 of sixty (60) days following notice thereof (giving particulars of the failure in reasonable detail)
1158 from the Developer to the City or for such longer period as may be reasonably necessary to cure
1159 such failure; (a "**City Default**").

1160 **Section 11.4. Remedies by the Developer Upon City Default.** Upon the City's failure
1161 to cure a City Default in accordance with the timeframe set forth in Section 11.3, the Developer
1162 may, by notice to the City, declare the City to be in default and the Developer may exercise any
1163 rights and remedies provided for at law or equity or by notice to the City declare the City to be in
1164 default and may terminate this Agreement by giving thirty (30) days prior notice to the City.

1165 **Section 11.4.1.** In the event of termination by the Developer as a result of City
1166 Default, the City shall pay compensation to Developer in an amount equal to the Termination
1167 Compensation within thirty (30) days of the termination date.

1168 **Section 11.5. City Buy-out Right.** The City has an exclusive option to purchase the
1169 Developer's equity in the Project on the tenth (10th) anniversary of the Effective Operational
1170 Date. If the City decides to exercise such buy-out right option, the City shall at least one-hundred
1171 and twenty (120) days prior to such ten (10) year anniversary provide notice to the Developer of
1172 the City's intent to purchase the Developer's equity in the Project for fair market value (the
1173 "**Equity FMV**"). The Parties agree to follow the process set forth in Exhibit I to determine the
1174 Equity FMV. Following the conclusion of the process set forth in Exhibit I, the City shall either
1175 pay the Equity FMV to the Developer or provide notice that it will not proceed.

1176 **Section 11.6. Termination for Extended Force Majeure Event, Changed Conditions**
1177 **or Court Ruling.**

1178 **Section 11.6.1. Termination Due to Extended Force Majeure Event.** This
1179 Agreement may be terminated by either Party by the provision of thirty (30) days written notice
1180 to the other Party that an event of Force Majeure has occurred and, after a period of at least one
1181 hundred and eighty (180) consecutive days, the affected party continues to be unable to comply
1182 with its obligations under this Agreement ("**Extended Force Majeure**").

1183 **Section 11.6.2. Termination for Changed Conditions.** This Agreement may be
1184 terminated by Developer by written notice to the City that a Changed Condition (other than a
1185 Change in Law) has rendered performance of the Agreement impracticable or impossible
1186 (including where neither Party elects to fund the Changed Conditions Costs). This notice must
1187 be provided within thirty (30) days of Developer learning (upon due inquiry) of the existence of

the Changed Condition. Termination as a result of Change in Law is set forth in Section 11.7.2 below.

Section 11.6.3. Termination by Court Ruling. Termination by Court Ruling means, and becomes effective upon, (a) issuance of a final order by a court of competent jurisdiction after exhaustion of all appeals to the effect that this Agreement is void, voidable, and/or unenforceable or impossible to perform in its entirety for reasons beyond the reasonable control of Developer, or (b) issuance of a final order by a court of competent jurisdiction after exhaustion of all appeals upholding the binding effect on Developer and/or the City of a Change in Law that causes impossibility of performance of a fundamental obligation by Developer or the City under the Contract Documents or impossibility of exercising a fundamental right of Developer or the City under the Contract Documents. The final court order shall be treated as the notice of termination and Developer shall so notify the City within thirty (30) days of the issuance of such final order. In the event of such termination, Developer will be entitled to compensation in an amount equal the Termination Compensation for Court Ruling.

Section 11.7. Consequences of Termination or Reversion. Upon the termination, because of City Default, Extended Force Majeure or Changed Conditions, or expiration of this Agreement, notwithstanding any claims the Parties may have against each other, the following provisions shall apply:

Section 11.7.1. The City shall pay to the Developer any Termination Compensation due to the Developer within thirty (30) days of the termination date. **“Termination Compensation”** shall include (i) all amounts owed to Developer by way of reimbursement of its equity contribution and expected returns as calculated in accordance with the Equity FMV calculation set forth in Exhibit I; plus (ii) outstanding debt Financing including Financing expenses and costs incurred as a result of the termination; plus (iii) Lenders’ Liabilities; plus (iv) the costs to terminate any Developer subcontract (including all associated losses of the Developer under the such subcontracts); (v) plus the costs reasonably incurred by Developer during the course of such Force Majeure event or effect of such Changed Condition; minus (vi) Insurance Proceeds.

Section 11.7.2. In the event that this Agreement is terminated as a result of an Extended Force Majeure occurrence or Changed Condition, as set forth in this Article 11, the City shall also be obligated to pay or reimburse Developer an amount equal to the actual cost to repair and restore any physical damage or destruction to the Project, including any delay costs directly caused by the Extended Force Majeure event or Changed Condition, provided that notification from the Developer to the City of such event or Changed Condition was timely made.

Section 11.7.3. In the event that this Agreement is terminated in accordance with Section 11.6.3 above, the City shall pay to the Developer within 30 days of the Developer’s notification referred to in Section 11.6.3 above Termination Compensation for Court Ruling. **“Termination Compensation for Court Ruling”** shall include (i) the value of the Equity contributed to the project and the value of any Changed Condition Loans; plus (ii) outstanding debt Financing including Financing expenses and costs incurred as a result of the termination; plus (iii) Lenders’ Liabilities; plus (iv) the costs to terminate any Developer subcontract

(including all associated losses of the Developer under the such subcontracts); (v) plus the costs reasonably incurred by Developer during the course of such Force Majeure event or effect of such Changed Condition; minus (vi) Insurance Proceeds . Notwithstanding this Section 11.7.3, any termination that is a result of Change in Law resulting from an act or failure to act by the City will be compensated in accordance with 11.7.1.

Section 11.7.4. Subject to the payment of Termination Compensation by the City, the Developer shall, without action whatsoever being necessary on the part of the City, surrender, transfer, and deliver to the City the Parking System (including all improvements to the Parking System).

Section 11.7.5. The Developer shall execute and deliver to the City documents and other instruments reasonably required by the City to evidence such termination.

Section 11.7.6. This Section 11.8 is subject to the rights of the Financing Parties set forth herein and shall survive the expiration or any earlier termination of this Agreement.

Section 11.8. No Other Termination Rights. Neither Party has the right to terminate this Agreement for convenience.

ARTICLE 12 INSURANCE

Section 12.1. General Requirements. The amount of all insurance specified herein above shall be equal to the full replacement cost of the improvements on the Site, as the same shall exist from time to time. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage. The Developer shall be liable for any deductible amount in the event of a loss otherwise covered by such insurance. All policies of insurance that this Agreement requires the Developer to carry and maintain or cause to be carried or maintained pursuant hereto shall be issued by an insurer authorized to do business in the State and having an A.M. Best Company rating of A-IX or better (if A.M. Best Company changes its rating system or ceases to provide ratings at some later date, then such insurance company shall have a rating from A.M. Best Company (or some other comparable rating service if A.M. Best Company ceases to provide ratings) comparable to the “A-IX or better” requirement set forth above). All policies shall provide by appropriate language that the City is an additional insured or joint loss payee, as applicable, that the insurance afforded by such policies is primary insurance, and that all rights of the insurer for contribution or otherwise from the City or other insurers of the City are waived. Each such policy shall provide that any losses shall be payable notwithstanding any act or failure to act or negligence of the Developer, the City, any Financing Party or any other person. The property insurance shall not be canceled or lapsed on account of any partial occupancy or use by the City of a portion or portions of the Parking System prior to completion but will remain in full force and effect. The Developer shall provide that all contractors at whatever tier performing work under this Agreement shall comply with the insurance requirements provided herein. Each policy shall contain an endorsement, to the extent reasonably available, that will prohibit its cancellation or material modification prior to the expiration of thirty (30) days after notice of such proposed cancellation or material modification to the City.

Section 12.2. Evidence of Insurance. Certificates of insurance evidencing the effectiveness of the insurance coverage that the Developer is required hereunder to maintain or cause to be maintained shall be delivered to the City Construction prior to any commencing Construction Work on the Parking Facility. Duplicate or certified copies of such policies shall be delivered to the City within fifteen (15) days of demand. In the event copies of any policy or a certificate reasonably satisfactory to the City is not delivered when first required, or any insurance is not in effect or does not comply with the requirements hereof, without affecting the obligations of the Developer or the rights of the City, and, only if the insurance required hereby is not in effect, the City may cause to be purchased insurance complying with the provisions hereof, and the Developer agrees to pay all expenses of the City in connection therewith, from time to time on demand. Notice of insurance policy changes by the Developer shall be furnished to the City.

Section 12.3. Cancellation. The Developer understands and agrees that cancellation of any insurance coverage required to be carried and maintained by the Developer under this Agreement will constitute a failure to comply in a material respect with a material provision of this Agreement.

Section 12.4. Payment of Premiums. The Developer shall pay or cause to be paid all premiums and other charges with respect to all insurance required herein.

Section 12.5. Not a Limit on Liability. The Developer's maintenance of the insurance required in accordance with this Article shall affect no limitation on the Developer's liability with respect to any loss or damage resulting from the willful misconduct, lack of good faith, or negligence of the Developer or any of its officers, agents, servants, employees, or invitees or by any failure on the part of the Developer to fully perform its obligations under this Agreement.

Section 12.6. Notices. The Developer will provide the City with written notice of any and all claims made under any insurance policy applicable to the Project. The Developer will also provide notice to the City of any insurance policy applicable to the Project which will expire within ninety (90) days.

Section 12.7. Compliance with Insurance Policies. Developer agrees it will comply with the terms and conditions of all insurance policies applicable to the Project and required by this Agreement and will not act in any manner which could result in the cancellation of such policy.

Section 12.8. Right to Cure. The City shall have the right, but not the obligation, to obtain, at the Developer's expense, any insurance policy required under this Agreement which the Developer has failed to obtain or has failed to remedy or correct a cancellation thereof.

Section 12.9. Property Insurance

Section 12.9.1. The Developer shall purchase or caused to be purchased and at all times maintain such insurance as will protect the Developer, the City, the Developer's representatives, suppliers and employees, subcontractors and sub-subcontractors from loss or damage to Construction Work or property in the course of construction, including all machinery, materials and supplies on the premises or in transit thereto and intended to become a part of the

finished Construction Work until acceptance by the City. This insurance shall be in the form of “Builders All-Risk.” The Developer shall cause such policy or policies of insurance required under this Article to be endorsed so as to provide that the insurer or insurers waive any right of subrogation against the City. Any deductible provision in such insurance shall not exceed \$10,000.00 without prior written approval of the City. Notwithstanding any such deductible provision, the Developer shall remain solely liable for the full amount of any item covered by such insurance.

Section 12.9.2. The City and the Developer waive all rights against each other for damages caused by fire or other perils to the extent covered by insurance, or any other property insurance applicable to the Construction Work. The Developer shall require, by appropriate agreement, written where legally required for validity, similar waivers in favor of the City and the Developer by subcontractors, sub-subcontractors and suppliers. With respect to the waiver of rights of recovery, the City shall be deemed to be included, to the extent covered by property insurance applicable thereto.

Section 12.10. Insurance.³ From and after the Effective Date, the Developer, at its expense, shall maintain or cause to be maintained the following coverages in the following amounts:

Section 12.10.1. Claims under Worker’s or workmen’s compensation, disability benefit, and other similar employee benefit acts (with Workers Compensation and Employer’s Liability Insurance in amounts not less than those necessary to meet the statutory requirements of the state(s) having jurisdiction over any portion of the Construction Work); the Developer will require its subcontractors to similarly provide Workmen’s Compensation Insurance for all of the latter’s employees; workers’ compensation insurance to the fullest extent required by Applicable Law;

Section 12.10.2. Commercial general liability insurance, including personal injury, bodily injury, and broad form contractual liability coverage, with minimum limits of \$5,000,000 per occurrence, \$10,000,000.00 aggregate, and property damage coverage with minimum limits of \$5,000,000.00 per occurrence;

Section 12.10.3. A policy or policies insuring loss or damage to the Site, including the Parking Facility;

Section 12.10.4. “Builders risk insurance” during such periods when construction activities and improvements are being undertaken on the Site;

Section 12.10.5. Business interruption insurance for the Parking Facility;

Section 12.10.6. Employers’ Liability - At least \$1,000,000.00 for each accident;

Section 12.10.7. Public Liability and Property Insurance - The Developer shall take out and maintain during the life of this Agreement such Public Liability and Property Damage Insurance as shall protect it and any subcontractor performing work under this

³ Parties to discuss what happens if a risk becomes uninsurable or an insurance unavailable.

1349 Agreement from claims for damages for personal injury including accidental death, as well as
1350 from claims for personal property damage which may arise from operations under this
1351 Agreement, whether such operations be by itself or by any subcontractor or by anyone directly or
1352 indirectly employed by either of them. The Developer shall procure insurance coverage for
1353 direct operations, sublet work, elevators, contractual liability and completed operations with
1354 limits not less than those stated below;

1355 **Section 12.10.8.** Property Damages, including Broad Form Property Damage and
1356 Explosion, Collapse, Underground property damage coverage, and blasting, where necessary;
1357 and

1358 **Section 12.10.9.** Completed Operations Liability - Continues coverage in force
1359 for one year after completion of the Construction Work.

1360 **Section 12.10.10.** Crime coverage in the minimum amount of \$2,000,000.00
1361 including coverage for employees, contractor, independent contractors, sub-contractors or similar
1362 representative or and any agent. Employee definition should include any former or retired
1363 natural person employee of the Developer/Organization retained.

1364 **Section 12.10.11.** Commercial Property Liability to cover the Parking System
1365 and its related appurtenances.

1366 **Section 12.10.12.** Without limiting the above during the Term of the Agreement,
1367 the Developer shall purchase and maintain the insurance identified above with companies
1368 licensed to do business in the location where construction is being performed under the
1369 Agreement and satisfactory to the City.

1370 **Section 12.11. Restoration/Termination.**

1371 **Section 12.11.1.** In the event that any item or part of the Site and improvements
1372 shall be damaged (except *de minimis* damage of \$25,000.00 or less (or such greater amount as
1373 the City shall from time-to-time establish)) or destroyed by a fire or other casualty (the
1374 “**Casualty Property**”), the Developer shall promptly give notice or cause notice to be given
1375 thereof to the City.

1376 **Section 12.11.2.** Unless otherwise provided herein, the Developer shall as soon
1377 as practicable after the casualty event, using insurance proceeds, restore or cause to be restored
1378 the affected Casualty Property as nearly as possible to the condition that existed immediately
1379 prior to such loss or damage.

1380 **Section 12.11.3.** In the event that the Developer and the Financing Party agree
1381 that the magnitude of the damage and destruction to the improvements on the Site renders the
1382 portion of the Site or the improvements incapable of use by the Developer for its purposes
1383 identified in this Agreement and the repairs, rebuilding, or replacement of the Casualty Property
1384 cannot reasonably be expected to be substantially completed within two (2) years of the
1385 occurrence of the casualty, the Developer, in consultation with the City, may terminate this
1386 Agreement upon written notice to the other party of the termination (the “**Termination Notice**”)
1387 subject to the payment of the Termination Compensation in accordance with Section 11.8 .

Unless the City and the Developer agree otherwise, the Termination Notice shall be effective thirty (30) days after receipt (or refusal) of the Termination Notice by the other party pursuant to Article 11 of this Agreement. In the event that the Agreement is terminated pursuant to this subsection, the Developer shall be required to remove or cause to be removed debris from and restore the Casualty Property to a reasonably clean and safe condition. To the extent the costs to restore the Casualty Property are not fully covered by insurance, such additional costs shall be paid to the Developer as Termination Compensation.

Section 12.11.4. Absent the agreement by the City and the Developer as provided herein, if the Developer refuses, or fails promptly to repair, restore, or rebuild or cause the repair, restoration, or rebuilding of the Casualty Property, or any part of the Site and improvements damaged or destroyed, to the satisfaction of the City, the City may, by ninety (90) days' written notice to the Developer, terminate this Agreement without compensation to Developer, except as set forth above in Section 11.6 and Section 11.7 and the City may undertake the rebuilding or restoration of the Casualty Property, and any other improvement or the damaged or destroyed portion thereof, and may complete it, by contract or otherwise, and may take possession of and use any materials on the Construction Work site necessary for completing the Construction Work. In the event the City elects to rebuild or restore the Casualty Property, all applicable insurance proceeds relative to the Casualty Property shall be applied first to complete such rebuilding or reconstruction. Subject to the other provisions of this Agreement, the City may retain any remaining balance of the insurance proceeds.

ARTICLE 13

LIABILITY; INDEMNIFICATION

Section 13.1. City Liability and Indemnity. The City shall not be responsible for damages to property or injuries or death to persons which occur or arise during the Term of this Agreement from or attributable or incident to the condition or state or repair of the Site or the use and occupation thereof, or for damages to the property of the Developer, or for damages to the property or injuries or death to the person of the Developer's officers, agents, servants, employees, or tenants, or others who may be on the Site at their invitation or the invitation of any one of them; provided, however, that the City is responsible for any damages to property or injuries or death to persons which occur or arise during the Term of this Agreement from or attributable or incident to any environmental condition in, on or under the Site existing at Execution Date; and provided further, the City is responsible for any loss, damage or destruction to property or injuries or death to persons caused by the acts or omissions of the City or its officers, agents, employees, or contractors to the extent not covered by insurance required to be carried by the Developer under this Agreement and to the extent authorized under Applicable Law. Except as otherwise provided in this Agreement, to the fullest extent permitted by Applicable Law, the City shall indemnify and hold harmless the Developer Indemnified Parties on demand from and against any and all liabilities for losses actually suffered or incurred by such Developer Indemnified Party as a result of any Third-Party Claims arising from (i) any failure by the City to comply with, observe or perform any of the covenants, obligations, agreements, terms or conditions in this Agreement (ii) or any breach by the City of its representations or warranties set forth herein (iii) any breach by the City of its representation and warranty relating to certain disclosed information [add breach by City of material obligations] (iv) any Hazardous Material that exists on the Site as of the Execution Date or migrates to the Site after the Execution Date

from off of the Site; (v) any breach by the City of any Environmental Law that gives rise to any liability of the Developer and (vi) any willful misconduct or negligence of a City Indemnified Party in connection with the performance of the Project; provided, that the indemnity provided in this Section 13.1 shall not extend to losses that are caused by (i) the willful misconduct or negligence of Developer or its subcontractors or (ii) a breach by the Developer of its material obligations under this Agreement.

Section 13.2. Developer Liability and Indemnity. Except as otherwise provided in this Agreement, the Developer agrees to assume all risks of loss or damage to property and injury or death to persons by reason of or incident to the Developer's possession and/or use of the Site during the Term or the activities conducted by the Developer under this Agreement. Except as otherwise provided in this Agreement, to the fullest extent permitted by Applicable Law, the Developer shall indemnify and hold harmless the City Indemnified Parties on demand from and against any and all liabilities for losses actually suffered or incurred by such City Indemnified Party as a result of any Third-Party Claims arising from (i) any failure by the Developer to comply with, observe or perform any of the covenants, obligations, agreements, terms or conditions in this Agreement (ii) or any breach by the Developer of its representations or warranties set forth herein (iii) any breach by the Developer of its representation and warranty relating to certain disclosed information (iv) any breach by the Developer of any Environmental Law that gives rise to any liability of the City except as set forth in Section 4.5 and (vi) any willful misconduct or gross negligence of a Developer Indemnified Party in connection with the performance of the Project; provided, that the indemnity provided in this Section 13.2 shall not extend to losses that are caused by the willful misconduct or negligence of the City or its agents, contractors, employees or subcontractors or a breach by the City of its obligations under this Agreement.

Section 13.3. Waiver of Punitive Damages. Anything therein contained, and anything at law to the contrary notwithstanding, in any action or proceeding between the Parties arising under or with respect to the Agreement or in any manner pertaining to the Project or to the relationship of the Parties thereunder, each Party thereby unconditionally and irrevocably waives and releases any right, power or privilege either may have to claim or receive from the other Party thereto any punitive or exemplary damages, each party acknowledging and agreeing that the remedies herein provided, and other remedies at law and in equity, will in all circumstances be adequate. The foregoing waiver and release shall apply in all actions or proceedings between the Parties and for all causes of action or theories of liability, whether for breach of the Agreement or for violation of any other duty owing by either Party to the other which may in any way relate to Developer's management or operation of the Project. Both Parties will further acknowledge that they are experienced in negotiating agreements of like kind, have had the advice of counsel in connection therewith, and have been advised as to, and fully understand, the nature of the waivers therein contained. Affiliates or agents, or its or their officers or employees, where the damage or destruction is covered by the insurance policies in effect and maintained by the releasing Party.

Section 13.4. Consequential Damages. The indemnities shall apply to consequential damages only to the extent covered by insurance policies maintained or required to be maintained under the Agreement.

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ARTICLE 14
RETENTION OF INFORMATION

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Section 14.1. Developer Maintain. Developer shall keep and maintain, and cause its contractors to keep and maintain, on a computer system accessible to the City upon request, appropriate books and records in which complete and accurate entries will be made of its transactions relating to the Project or the Agreement, in accordance with GAAP or any other generally accepted accounting standards that are acceptable to the City (in its reasonable discretion) (collectively, the “**Retained Information**”). The Retained Information must include information with respect to and evidence of (i) all matters with respect to the costs of construction, (ii) all matters that the Developer is required to certify to the City pursuant to this Agreement and (iii) any and all other matters relating to the Developer’s operations at the Site or the construction of the Project.

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ARTICLE 15
REPRESENTATIONS AND WARRANTIES

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Section 15.1. Representations and Warranties of the Developer. The Developer hereby represents and warrants to the City as follows:

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Section 15.1.1. Due Formation. The Developer is a [Maine limited liability] company, duly formed and validly existing and in good standing and has full power and authority under the laws of the State of Maine to conduct the business in which it is now engaged [and is registered and in good standing as a foreign limited liability company with the State].

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Section 15.1.2. Execution, Delivery, and Performance. The Developer has the full right, power, and authority to perform the Project as provided in this Agreement and to carry out the Developer’s obligations hereunder, and all requisite action necessary to authorize the Developer to enter into this Agreement and to carry out its obligations hereunder have been taken. This Agreement has been duly executed and delivered by the Developer, and constitutes the legal, valid, and binding obligation of the Developer, enforceable against the Developer in accordance with its terms. The person signing this Agreement on behalf of the Developer is authorized to do so.

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Section 15.1.3. No Consents. No consent or authorization of, or filing with, any Person (including any Governmental Authority), which has not been obtained or will not be obtained, is required in connection with the execution, delivery, and performance of this Agreement by the Developer.

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Section 15.1.4. No Conflicts. The execution and delivery of this Agreement by the Developer, the consummation of the transactions contemplated hereby (including the operation of the Parking System in accordance with the terms of this Agreement) and the performance by the Developer of the terms, conditions and provisions hereof have not and will not contravene or violate or result in a breach of (with or without the giving of notice or lapse of time, or both) or acceleration of any material obligations of the Developer under (i) any Applicable Law or (ii) any agreement, instrument or document to which the Developer is a party or by which it is bound.

Section 15.1.5. No Violation. The execution, delivery, and performance of this Agreement by the Developer and the transactions contemplated hereby and the performance by the Developer of its obligations hereunder do not violate any of the terms, conditions, or provisions of (i) the Developer's organizational documents, (ii) any judgment, order, injunction, decree, regulation, or ruling of any court or other Governmental Authority, or law to which Developer is subject, or (iii) any agreement or contract to which the Developer is a party or to which it is subject.

Section 15.1.6. No Litigation. There is no litigation, arbitration, administrative proceeding, or other similar proceeding pending or threatened in writing against the Developer which, if decided adversely to the Developer, (i) would impair the Developer's ability to enter into and perform its obligations under this Agreement, or (ii) would materially adversely affect the financial condition or operations of the Developer.

Section 15.1.7. No Bankruptcy. Neither the Developer nor any of its members is the subject debtor under any federal, state, or local bankruptcy or insolvency proceeding, or any other proceeding for dissolution, liquidation, or winding up of its assets.

Section 15.2. Representations and Warranties of the City. The City hereby represents and warrants to the Developer as follows:

Section 15.2.1. Execution, Delivery, and Performance. The City (i) has all requisite right, power, and authority to execute and deliver this Agreement and to perform its obligations under this Agreement to be signed by the City, and (ii) has taken all necessary action to authorize the execution, delivery, and performance of this Agreement by the City. This Agreement has been duly executed and delivered by the City, and constitutes the legal, valid, and binding obligation of the City, enforceable against it in accordance with its terms. The Person signing this Agreement on behalf of the City is authorized to do so.

Section 15.2.2. No Violation. The execution, delivery, and performance by the City of this Agreement and the transactions contemplated hereby and the performance by the City of its obligations hereunder will not violate any of the terms, conditions, or provisions of (i) any judgment, order, injunction, decree, regulation, or ruling of any court or other Law to which the City is subject, or (ii) any agreement or contract to which the City is a party or to which it is subject.

Section 15.2.3. No Litigation. There is no litigation, arbitration, administrative proceeding, or other similar proceeding pending or threatened in writing against the City which, if decided adversely to the City, (i) would impair the City's ability to enter into and perform its obligations under this Agreement, or (ii) would materially adversely affect the financial condition or operations of the City, which has not been disclosed in writing to the Developer.

Section 15.2.4. No Consents. No consent or authorization of, or filing with, any Person, which has not been obtained, is required in connection with the execution, delivery, and performance of this Agreement by the City.

Section 15.2.5. No Conflicts. The execution and delivery of this Agreement by the City, the consummation of the transactions contemplated hereby (including the operation of

the Parking System in accordance with the terms of this Agreement) and the performance by the City of the terms, conditions and provisions hereof have not and will not contravene or violate or result in a breach of (with or without the giving of notice or lapse of time, or both) or acceleration of any material obligations of the City under (i) any Applicable Law or (ii) any agreement, instrument or document to which the City is a party or by which it is bound.

Section 15.2.6. Competing Parking Area. The City covenants that it will inform Developer if and when any competitive parking lot is being contemplated by the City within [one (1) mile] of the Site so that Developer may provide feedback and recommendations on any required changes to the operations of the Project.

Section 15.2.7. Environmental Cap and Buffer. The Site does not incorporate or impact the area identified as the Capped Area and its Buffer in the Declaration of Environmental Covenant, dated September 3, 2015, and recorded in the York County Registry of Deeds in Book 17098, Pages 898-921.

ARTICLE 16 PROJECT FINANCING

Section 16.1. Developer Obligations. The Developer shall be solely responsible for obtaining any financing for the construction of the Project and the performance of its obligations under this Agreement, which financing shall comply with all requirements of this Agreement. On or prior to the Effective Date, the Developer shall demonstrate to the reasonable satisfaction of the City that it has secured sufficient financing (in the form of both committed senior debt financing and committed subordinated equity financing) for the Project Budget. The financing on this Project shall not be cross-collateralized with any other project.

Section 16.2. City Obligations. The City agrees, to the extent consistent with Applicable Law, to cooperate in good faith with the Developer with respect to the Developer's documentation reasonably necessary to obtain and maintain financing for the performance of the obligations of the Developer hereunder. Nothing herein shall require the City to provide any funding for the Project or to incur any obligations or liabilities or to take any action, give any consent, or enter into any document inconsistent with the provisions of this Agreement.

Section 16.3. Financing Party. During the Term, the City acknowledges that the Developer will finance its rights to payment pursuant to this Agreement. The holder or holders and each beneficiary of any such payment right including any Equity Members or debt holders shall be referred to herein as the "**Financing Party.**" The City agrees to execute an estoppel certificate and/or a subordination, non-disturbance agreement, and attornment agreement, and an assignment of the Agreement to a special purpose entity for the purposes of financing, as may reasonably be required by a Financing Party so as to facilitate financing, evidence its consent to any such financing and conditional or collateral assignment of this Agreement and to certify as to the status of this Agreement and to the performance of the Developer hereunder as of the date of such certification. Within ten (10) days of assigning or encumbering any portion of its interest in all or any portion of the Project, the Developer shall furnish to the City a written notice thereof setting forth the name and address of any debt holder Financing Party.

Section 16.4. Foreclosure by Financing Party. If the Financing Party or any purchaser acquiring from the Financing Party its interest in the Project after the Financing Party has foreclosed shall acquire the Developer's Interest by virtue of the default by the Developer under this Agreement or otherwise, then this Agreement shall continue in full force and effect (it being understood that this Agreement is not subordinate to any such financing), so long as: (i) the Financing Party or such purchaser is not in default hereunder, notwithstanding any payoff or satisfaction of the obligation underlying the Financing; (ii) the Financing Party or such purchaser is diligently taking such action as is reasonable under the circumstances to cure all continuing Developer Defaults; and (iii) all monetary Developer Defaults are cured. In such event, for the period of time during which the Financing Party or any purchaser at foreclosure continues to hold Developer's Interest, the Financing Party or such purchaser shall become liable and fully bound by the provisions of this Agreement and provided the Financing Party or any purchaser at foreclosure does not disturb the City's rights hereunder, the City will attorn to the Financing Party and/or such purchaser, for the balance of the Term and on all other terms and conditions herein set forth.

Section 16.5. Rights of the Financing Party.

Section 16.5.1. With respect to the Financing Party, the City agrees that the following shall apply and the City and the Developer agree that the Financing Party shall be a third party beneficiary only for the purposes of enforcing the following and to the extent the Financing Party is expressly granted other rights under this Agreement or succeeds to the Developer's Interest for the purpose of enforcing the rights granted to it:

(i) Any notice with respect to a default from the City to the Developer shall be simultaneously delivered to the Financing Party at its registered address, provided that delivery of the notice or failure to deliver notice to the Financing Party shall not extend the time for the Developer to cure any default.

(ii) The City will not accept any cancellation by the Developer or enter into any material modification of this Agreement without the prior written consent thereto of the Financing Party.

Section 16.5.2. The City will accept all performance of this Agreement from the Financing Party as complying with the requirements and obligations of the Developer. In the event the Financing Party elects to cure any such Developer Default, the Financing Party shall diligently begin to cure and, within forty-five (45) days from the date the Developer's fails to cure such Developer Default, replace the Developer with a party consented to by the City, provided that if the City and the Financing Party fail to agree within said forty-five (45) day period on a replacement Developer, then the entity that controls the Financing Party shall form an entity to take ownership of the ownership interests in the Developer, and (a) diligently take such action as is reasonable under the circumstances to cure all continuing Developer Defaults (provided that the Financing Party or such replacement owner shall not be required to cure any non-monetary Developer Defaults not capable of cure by the Financing Party or such replacement owner); and (b) ensure all monetary Developer Defaults are cured within thirty (30) days

1636 **Section 16.5.3.** However, nothing herein shall be construed to require the
1637 Financing Party to perform any obligations of the Developer under this Agreement or otherwise
1638 to cure any default of the Developer, but only grants to the Financing Party the option to do so,
1639 and the exercise by the Financing Party of its rights and remedies under the Financing shall not
1640 constitute an assumption of the Developer's obligations under this Agreement (except to the
1641 extent such obligations are expressly so assumed by an instrument in writing executed by the
1642 Financing Party).

1643 **Section 16.6. New Agreement.** In the event this Agreement shall be terminated by
1644 rejection, or otherwise, during a case in which the Developer is the debtor under Title 11, United
1645 States Code, or other similar federal or state statute, then the City shall, at the option of the
1646 Financing Party, upon notice of the Financing Party to the City given within thirty (30) days
1647 thereafter, enter into a new agreement with the Financing Party having terms substantially
1648 identical to this Agreement, pursuant to which the Financing Party shall have all of the rights and
1649 obligations of the Developer hereunder.

1650 **Section 16.7. Succession.** In the event a Financing Party or its affiliates succeed to
1651 Developer's interest in the Project, the Financing Party and its affiliates shall have the right to
1652 transfer the Project to a third party without the prior written consent of the City. In no event
1653 shall the City's consent be required for any transfer as a result of a foreclosure, trustee's sale or
1654 delivery of a deed in lieu of foreclosure. Any purchaser at a foreclosure sale or transferee from
1655 or through a Leasehold Mortgage, shall assume this Agreement and the Developer's obligations
1656 hereunder and such purchaser shall have no right in respect to the Project unless such purchaser
1657 so assumes and delivers a duplicate original of the assumption agreement (in recordable form)
1658 within thirty (30) days after such purchaser acquires title to the Developer's interest in this
1659 Agreement.

1660 **Section 16.7.1.** Each person (a "**Successor Developer**") who acquires an interest
1661 in the leasehold pursuant to foreclosure, deed in lieu of foreclosure or any similar exercise of
1662 remedies under a Leasehold Mortgage shall, as soon as reasonably practicable in accordance
1663 with and subject to the provisions of this Section 16.7.1, negotiate and enter into a development
1664 agreement with terms substantially similar to those contained in the Development Agreement to
1665 the extent such Development Agreement is still relevant at the time (the "**Successor**
1666 **Development Agreement**"). The Successor Developer shall not be in default of its obligations
1667 under this Agreement (i) so long as it negotiates in good faith to enter into the Successor
1668 Development Agreement described herein, (ii) if the City fails to tender a Successor
1669 Development Agreement meeting the requirements of this Section 16.7 or (iii) if the Successor
1670 Developer is not required to enter into a Successor Development Agreement pursuant to this
1671 Section 16.7.

1672 **Section 16.7.2.** In the event of any casualty or condemnation proceedings, each
1673 Financing Party shall have the right to participate in the adjustment of the insurance proceeds or
1674 condemnation awards, as applicable. In addition, the senior most Financing Party shall have the
1675 right to hold, control and disburse the insurance proceeds and Developer's share in any
1676 condemnation award, so long as such proceeds are used as required by the provisions of this
1677 Agreement.

Section 16.8. Limited Liability of Financing Party. No Financing Party shall be liable to perform, or be liable in damages for failure to perform, any of the obligations of the Developer, unless and until such Financing Party takes possession of or controls or manages any portion of the Leased Premises or is deemed a mortgagee in possession under Applicable Laws and in such event, an Financing Party shall only be liable for damages or failures to perform the obligations while such Financing Party is the “Developer” under this Agreement. Upon the assignment of this Agreement by a Financing Party or its affiliates to a third party, such Financing Party shall have no further obligations under this Agreement arising from and after the date of such transfer.

Section 16.9. Condemnation. Upon the occurrence of a total or substantially total condemnation of the Leased Premises, all condemnation proceeds shall first be applied to the payment of the loans secured by a Financing Party, and the balance shall be divided between the City and the Developer in accordance with the loss suffered by each. In the event of a partial condemnation of the Leased Premises, this Agreement shall not be terminated, provided there shall be a pro rata reduction of the rent. In the event of a temporary taking, this Agreement shall continue, and all proceeds payable as a result of such temporary taking shall belong to the Developer.

ARTICLE 17

RESOLUTION OF DISPUTES

Section 17.1. Scope. Any dispute arising out of, relating to, or in connection with this Agreement shall be resolved as set forth in this Article 17.

Section 17.1.1. If a conflict arises between the City and Developer, the Parties will first attempt to work out the problem internally through representatives designated by the Parties.

Section 17.1.2. If the representatives of the Parties cannot resolve the conflict within two (2) Business Days, the City Manager and designated Developer's program manager will meet to resolve the issue.

Section 17.1.3. If the conflict is not thereafter resolved by the Program Managers within three (3) Business Days, the Parties agree to try in good faith to settle the dispute by mutually agreed mediation or binding arbitration.

Section 17.1.4. The Parties agree to make good faith efforts to resolve all disputes before the filing of any legal claim or taking any other legal action.

ARTICLE 18

NOTICES

Any and all notices, demands, consents, requests, and responses thereto permitted or required to be given under this Agreement shall be in writing, signed by or on behalf of the Party giving the same, and shall be deemed to have been properly given or served and shall be effective upon being personally delivered or within three (3) Business Days upon being deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, or

email, to the other Party at the address of such other Party set forth below or at such other address as such other Party may designate by notice specifically designated as a notice of a change of address and given in accordance herewith; provided, however, that notice of change of address shall not be effective until the date of receipt hereof. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been received shall also constitute receipt. Any such notice, demand, or request shall be addressed as follows:

City: James A. Bennett, City Manager
City of Biddeford
205 Main Street
Biddeford, Maine 04005

With a copy to: Keith R. Jacques, Esq.
Woodman Edmands, et al
234 Main Street
P.O. Box 468
Biddeford, Maine 04005

Developer: [insert]

With a copy to: [insert]

ARTICLE 19 CITY ACKNOWLEDGEMENT

The City acknowledges that it has entered into this Agreement after sufficient review and consultation, upon the advice of counsel, and is an educated and informed Party to this Agreement.

ARTICLE 20 MISCELLANEOUS PROVISIONS

Section 20.1. Number and Gender. In this Agreement, words in the singular include the plural and vice versa and words in one gender include all genders.

Section 20.2. Headings. The division of this Agreement into Articles, Sections, and other subdivisions is for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The headings in this Agreement are not intended to be full or precise descriptions of the text to which they refer and shall not be considered part of this Agreement.

Section 20.3. References to this Agreement. The words “herein,” “hereby,” “hereof,” “hereto,” and “hereunder” and words of similar import refer to this Agreement as a whole and not to any particular portion of it. The words “Article,” “Section,” “paragraph,” “sentence,” “clause,” and “Schedule” mean and refer to the specified article, section, paragraph, sentence, clause, or schedule of or to this Agreement.

1757 **Section 20.4. References to any Person.** A reference in this Agreement to any Person
1758 at any time refers to such Person's permitted successors and assigns.

1759 **Section 20.5. Meaning of Including.** In this Agreement, the words "include,"
1760 "includes," or "including" mean "include without limitation," "includes without limitation," and
1761 "including without limitation," respectively, and the words following "include," "includes," or
1762 "including" shall not be considered to set forth an exhaustive list.

1763 **Section 20.6. Meaning of Discretion.** In this Agreement, the word "discretion" with
1764 respect to any Person means the sole and absolute discretion of such Person.

1765 **Section 20.7. Meaning of Notice.** In this Agreement, the word "notice" means "written
1766 notice," unless specified otherwise.

1767 **Section 20.8. Consents and Approvals.** Unless specified otherwise, wherever the
1768 provisions of this Agreement require or provide for or permit an approval or consent by either
1769 Party, such approval or consent, and any request therefor, must be in writing (unless waived in
1770 writing by the other Party). This Agreement may not be changed or terminated orally. This
1771 Agreement and all the covenants, terms and provisions contained herein shall be binding upon
1772 and inure to the benefit of the Parties hereto and their respective successors and assigns.

1773 **Section 20.9. Trade Meanings.** Unless otherwise defined herein, words or
1774 abbreviations that have well-known trade meanings are used herein in accordance with these
1775 meanings.

1776 **Section 20.10. Laws.** Unless specified otherwise, references to a Law are considered to
1777 be a reference to (i) such Law as it may be amended from time to time, (ii) all regulations and
1778 rules pertaining to or promulgated pursuant to such Law, (iii) the successor to the Law resulting
1779 from recodification or similar reorganizing of Laws, and (iv) all future Laws pertaining to the
1780 same or similar subject matter. Any interpretation of such laws will be in accordance with the
1781 laws of the State of Maine.

1782 **Section 20.11. Currency.** Unless specified otherwise, all statements of or references to
1783 dollar amounts or money in this Agreement are to the lawful currency of the United States of
1784 America.

1785 **Section 20.12. Generally Accepted Accounting Principles.** All accounting and
1786 financial terms used herein, unless specifically provided to the contrary, shall be interpreted and
1787 applied in accordance with generally accepted accounting principles in the United States of
1788 America, consistently applied.

1789 **Section 20.13. Calculation of Time.** For purposes of this Agreement, a period of days
1790 shall be deemed to begin on the first day after the event that began the period and to end at 5:00
1791 p.m., which time shall be determined by the time in the City, on the last day of the period. If,
1792 however, the last day of the period does not fall on a Business Day, the period shall be deemed to
1793 end at 5:00 p.m., which time shall be determined by the time in the City, on the next Business
1794 Day. For purposes of calculation of days, calendar days shall apply except to the extent Business
1795 Days are specifically identified.

Section 20.14. Incorporation of Exhibits. The Exhibits are integral to, and are made a part of, this Agreement. In the event of any conflict between the terms of this Agreement and the terms of any Exhibit, the terms of this Agreement shall control.

Section 20.15. Order of Precedence. In the event of a conflict between the terms and conditions of this Agreement and any exhibit or attachment, the order of precedence shall be as follows: (a) Agreement terms and conditions; (b) all other exhibits attached to this Agreement.

Section 20.16. Governmental Authority. This Agreement is not intended to supersede the authority granted by law to any regulatory board or agency of the City. Therefore, nothing in this Agreement shall be construed or implied to require the City's Planning, Zoning or other regulatory boards or agencies (however designated) to approve the plans for any aspect of the Project or other action required under this Agreement.

Section 20.17. Nondiscrimination. The Developer agrees that it will not discriminate against any person because of race, color, religion, sex, gender, age, military status, sexual orientation, marital status, national origin or physical or mental disability in the hiring, discharge, promotion or demotion, or to discriminate in matters of compensation, terms, conditions, or privileges of employment or in the furnishing, or by refusing to furnish, to such person or persons the use of any Site, including any and all services, privileges, accommodations, and activities identified in this Agreement. The Developer agrees to inset this provision in all subcontracts related to work to be performed with regard to the Project.

Section 20.18. No Employment of Illegal Aliens. By executing this Agreement, Developer certifies that, at the time of execution of this Agreement, Developer does not knowingly employ or contract with an illegal alien who will perform work under the Joint Development Agreement. Developer agrees to participate in the E-Verify Program, to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement. Developer will not knowingly employ or contract with an illegal alien to perform work under this Agreement. Developer will not enter into a contract with a sub consultant or subcontractor that fails to certify to the Developer that such sub consultant or subcontractor will not knowingly employ or contract with an illegal alien to perform work under the Joint Development Agreement. Developer certifies that it has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the Joint Development Agreement, through participation in the E-Verify Program. Developer is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under this Agreement, and it is otherwise required to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights. If Developer obtains actual knowledge that a sub consultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, the Developer will notify such sub consultant or subcontractor and the City within three (3) days. The Developer will also then terminate such sub consultant or subcontractor if within three (3) days after such notice the sub consultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the sub consultant or subcontractor provides information to establish that the sub consultant or subcontractor has not knowingly employed or contracted with an illegal alien.

Section 20.19. No Joint Venture. Nothing contained in this Agreement creates a partnership or joint venture between the Parties. Nothing in this Agreement shall render either Party liable to any third party for the debts or obligations of the other Party.

Section 20.20. Entire Agreement. The Contract Documents form the entire agreement between the Parties and by incorporation herein are as fully binding on the Parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents. The Agreement has been drafted by the Parties and no provision shall be construed as being drafted by one Party or the other Party separately.

[Signatures on the Following Page]

1849 **IN WITNESS WHEREOF**, the City and the Developer have executed this Agreement
1850 as of the Execution Date.

1851

1852 **CITY OF BIDDEFORD**

1853

1854 By: _____

1855 Name: James A. Bennett,

1856

1857 Title: City Manager, City of Biddeford

1858

1859

1860

1861 **BIDDEFORD RIVERWALK COMMUNITY 1 LLC**

1862 By: _____

1863 Name: _____

1864 Title: _____

1865

1866

EXHIBIT A

MAP OF PARKING SYSTEM SITE

[A map of the parking system site will be included]

DRAFT

EXHIBIT A1

MAP OF SITE

[A map of the parking facility site will be included]

EXHIBIT B

DESIGN

[The City's design for the Parking Facility]

EXHIBIT C

O&M MANAGEMENT PLAN

[The operations and management plan for the Project
below is a draft]

Routine Maintenance. The Operational Subcontractor shall undertake the following scope of work and services:

1. Processing of all payments and parking revenues;
2. Monthly parking account management and maintenance;
3. Light janitorial, sweeping, pressure washing and “spot” maintenance [scope to be further defined] of parking garage and existing parking lots including striping;
4. Snow removal, sanding and salting consistent with standard City practices, from parking garage upper deck and existing surface parking lots;
5. Management of all garage vendors and service providers;
6. Detailed reporting and communication consistent with all requirements of the Joint Development Agreement;
7. Maintain ‘Garage Keepers’ and General Liability Insurance, in satisfaction of any requirements of the Joint Development Agreement;
8. Provide for staffing of the parking garage and its maintenance, as required by the selected [proprietary] parking technology, including:
 - a. Executive and departmental oversight;
 - b. Account manager(s), up to 30 hours on site per week;
 - c. Facility supervisor(s), up to 45 hours on site per week;
 - d. Additional staffing as required for special events parking;
 - e. Call center support personnel provided 24 hours per day, 7 days per week.

Provision of staffing, hiring and training for all related personnel;

9. Provide materials, signage, uniforms, tickets, receipts, and other consumables necessary for the operation of the garage and surface lots, consistent with the selected [proprietary] parking technology.
10. Procurement and provision of required electric, water and sewer utilities;
11. Support and enablement of routine maintenance of passenger elevators under design warranties.

EXHIBIT D

CONSTRUCTION SCHEDULE

[Insert a draft construction schedule which will be updated on confirmation of the final construction schedule]

EXHIBIT E

FORECAST NET OPERATING INCOME

Year	Net Operating Income
1	442,290
2	630,694
3	659,546
4	722,880
5	751,547
6	780,120
7	794,739
8	809,532
9	860,071
10	877,677
11	895,469
12	913,451
13	931,630
14	985,578
15	1,004,162
16	1,022,956
17	1,041,967
18	1,062,563
19	1,136,741
20	1,157,797
21	1,181,544
22	1,205,536
23	1,229,777
24	1,307,629
25	1,332,388

EXHIBIT F
[RESERVED]

EXHIBIT G-1

EFFECTIVE DATE CERTIFICATE

Reference is made to that certain Biddeford Urban Core Transportation Joint Development Agreement By and Between the City of Biddeford and Biddeford Riverwalk Community 1 LLC, dated _____. As provided in Section 2.3 of that Agreement, the Developer, Biddeford Riverwalk Community 1 LLC, hereby certifies that it has secured and achieved Financing for 100% of the Project Budget and financial close of the Financing occurred on _____, 20__.

Therefore, in accordance with that Agreement the Effective Date is _____, 20__.

Dated: _____

BIDDEFORD RIVERWALK COMMUNITY 1 LLC

By: _____

Name: _____

Title: _____

EXHIBIT G-2

EFFECTIVE OPERATIONAL DATE CERTIFICATE

Reference is made to that certain Biddeford Urban Core Transportation Joint Development Agreement By and Between the City of Biddeford and Biddeford Riverwalk Community 1 LLC, dated _____ (as amended as of the date hereof the “Agreement”). As provided by the Agreement, the Developer, Biddeford Riverwalk Community 1 LLC, hereby certifies that, in accordance with the Agreement, Substantial Completion has been achieved and the Parking Facility can be put into service as of the date of this certificate. Therefore, in accordance with that Agreement the Effective Operational Date is _____, 20__.

Dated: _____

BIDDEFORD RIVERWALK COMMUNITY 1 LLC

By: _____

Name: _____

Title: _____

EXHIBIT H

CITY PERMIT LIST

[List of City permits to be agreed and included prior to execution of the Agreement]

EXHIBIT I

FAIR MARKET VALUE PROCESS

In agreeing on the Equity FMV (which involves projecting the future estimated investment returns that would have been received by the Equity Members had the Agreement run to the end of the Agreement term and discounting each amount that would have been received back to the present date to account for the early receipt of those amounts) the Parties shall be obliged to follow the principles set out below:

- (i) all forecast amounts until the expiry of the full Term should be calculated in nominal terms, recognising the adjustment for indexation in respect of forecast inflation between the date of calculation and the forecast payment date(s) as set out in the Agreement;
- (ii) the calculation shall be undertaken on the basis that there is no default existing;
- (iii) the future Support Payments and Gross Revenues (or Stabilization Payments as appropriate) forecast in each semi-annual period shall be calculated and discounted to the Relevant Date at the Relevant Discount Rate;
- (iv) the total of all costs forecast to be incurred by Project shall be calculated and discounted at the Relevant Discount Rate and deducted from the payment calculated pursuant to subparagraph (iii) above, such costs to include (without double counting):
 - (A) the Operational Costs; and
 - (B) the cost of debt service including interest and principal repayments.

The resulting from (iv) deducted from (iii) shall be the Equity FMV on the Relevant Date and will be subject to acceptance by each Party.

The “Relevant Discount Rate” will be determined in reference to market comparable transactions that are not subject to any termination event and will in no circumstances exceed 10%.

EXHIBIT J
PROJECT BUDGET

[Will be updated with final D&C costs prior to signing]

Development Costs	
Parking Garage	\$ 13,951,383
D-B Fees	\$ 428,378
Contingency	\$ 352,865
River Walk	\$ 3,000,000
Development Soft Costs	\$ 3,458,000
Capitalized Interest Reserve	\$ 1,383,421
Underwriting Fees	\$ 267,906
Construction Costs Total	\$ 22,841,953

EXHIBIT K

[RESERVED]

EXHIBIT L

ADDITIONAL PARKING AREAS

SURFACE LOTS

Operational Subcontractor will manage the following City owned parking lots:

Lot Name	Location	Public Spaces
Downtown (Yellow) Lot	Washington St. at Alfred St	25
Federal & Franklin Street Lots (Green)	Federal St., Franklin St., coursing along Washington St.	108 <i>(118 less 13 courthouse reserved spaces)</i>
Washington St. (Red) Lot	Washington St. at Jefferson St.	33
Alfred St (Blue) Lot	Between Alfred and Foss Streets	66 <i>(84 less 18 police sta. reserved spaces)</i>
Foss St. (Purple) Lot	Foss St. at Main St.	46
Gas House (Maroon) Lot	Water St.	24
Water Treatment Plant (Brown) Lot	Water St. and Pike St.	22

[Of the total Public Spaces, the City will allocate certain free, unmetered and/or reserved (unpaid) spaces for public and commercial use subject to prior agreements and undertakings made by the City. The City will define all such spaces prior to the Execution Date and insert the information in this Exhibit.]

EXHIBIT M
RIVERWALK CONNECTIONS

The RiverWalk Connections, as currently contemplated, consist of the following:

- Segment A – Laconia Plaza ADA Accessibility
- Segment B – Saco Falls Boardwalk
- Segment B.1 – Saco Falls Connector
- Segment C – Saco Fall Plaza
- Segment D – RiverDam Boardwalk
- Segment D.1 – RiverDam Connector
- Segment D.2 – Pearl Street Sidewalk
- Segment E – Pearl Plaza
- Segment F.1 – Lincoln Mill Sidewalk
- Segment F.2 – Access Sidewalk