

consummation of the Transaction. Each Party shall promptly cooperate with and promptly furnish information to the other Parties in connection with any such efforts by, or requirement imposed upon, any of them in connection with the foregoing.

(c) *Injunctions.* If any Governmental Authority of competent jurisdiction issues a preliminary or permanent injunction or temporary restraining order or other order before the Time of Closing which would prohibit or materially restrict or hinder the Closing, each Party shall use all reasonable efforts to have such injunction, decree or order dissolved or otherwise eliminated or to eliminate the condition that formed the basis for such injunction or order, in each case as promptly as possible and, in any event, prior to the Time of Closing.

(d) *Operation of the Parking Facilities System.* From the Bid Date up to the Time of Closing, the Government Parties shall have caused the Authority Parking Facilities to be operated by the Authority, and the City Parking Facilities to be operated by the City, as applicable, in the ordinary course in a manner consistent with past practice, which shall include using all reasonable efforts to preserve the goodwill of the Parking Facilities System and to maintain good business relationships with customers, suppliers and others having business dealings with the Parking Facilities System, to maintain the Parking Facilities System Assets in normal operating condition and repair in accordance with past practice (ordinary wear and tear excepted), to perform (or cause to be performed) in all material respects all of the City's and the Authority's obligations under the Parking Facilities System Contracts and to cause the Parking Facilities System to be operated in all material respects in accordance with all applicable Laws (except to the extent any non-compliance is being contested in good faith by appropriate proceedings), all to the end that the Parking Facilities System as a going concern shall be unimpaired and transferred to the Concessionaire at the Closing in a condition not materially worse than the condition as of the Bid Date. It is understood and agreed that the Authority or the City, as applicable, shall, up to and including the Time of Closing, be entitled to all of the cash or cash equivalents in or generated by the Parking Facilities System (subject to the terms of Section 2.2(b) in the case of any cash or cash equivalents that are paid prior to the Time of Closing but are allocable to periods after the Time of Closing). Without limiting the foregoing, the Government Parties shall not terminate, amend, modify or agree to a waiver of the terms of any Authorization related to the Parking Facilities System after the Bid Date and before the Time of Closing without the Concessionaire's consent, which shall not be unreasonably withheld, conditioned or delayed.

(e) *Policies of Insurance.* From the date hereof up to the Time of Closing, the Government Parties shall continue in force all applicable policies of insurance maintained in respect of the Parking Facilities System. At the Time of Closing, the Concessionaire shall be responsible for obtaining insurance for the Parking Facilities System in accordance with the terms hereof.

(f) *Disclosure of Changes.*

(i) From the date hereof up to the Time of Closing, each Party shall immediately disclose in writing to the other Parties any matter which becomes known to

it which is inconsistent in any material respect with any of the representations or warranties contained in Article 9. No such disclosure, however, shall cure any misrepresentation or breach of warranty for the purposes of Section 2.4 or Article 12; and

(ii) From the date hereof up to the Time of Closing, the Authority may supplement or amend the Schedules hereto, including one or more supplements or amendments to correct any matter which would constitute a breach of any representation, warranty, covenant or obligation contained herein, including any amendment or supplement to Schedule 2 to make any necessary changes in relation to, pursuant to or in accordance with the delivery of the Title Commitment pursuant to Section 2.4(a)(v)). No such supplement or amendment shall be deemed to cure any breach for purposes of Section 2.4(a) or, subject to the following sentence, for any other purpose. Notwithstanding the previous sentence, if the Closing occurs, then, subsequent to the Closing, any such supplement or amendment with respect to any representation or warranty contained in Sections 9.1(d), 9.1(g)(ii), 9.1(i), 9.1(j) or 9.1(k) or Sections 9.2(d), (e), (f), (g), (h) or (i) relating to a matter arising after the date hereof will be effective to cure and correct for all purposes any inaccuracy in, or breach of, any such representation or warranty which would exist if the Authority had not made such supplement or amendment, and all references to any Schedule hereto which is supplemented or amended as provided in this Section 2.5(f)(ii) shall (subject to the foregoing limitation) for all purposes after the Closing be deemed to be a reference to such Schedule as so supplemented or amended.

(g) *Access to Information.* From the date hereof up to the Time of Closing, but subject to confidentiality obligations binding on any Government Party with respect to any Person (*provided* that the Government Party has disclosed to the Concessionaire the existence of the applicable agreement or other document that is subject to such confidentiality limitation in order to enable the Concessionaire to evaluate the materiality and significance of the lack of disclosure based on such limitations) the Government Parties shall (i) give the Concessionaire and its Representatives reasonable access during normal business hours and on reasonable notice to the Parking Facilities System, subject to the Government Parties' policies and regulations regarding safety and security and any other reasonable conditions imposed by the Government Parties, (ii) permit the Concessionaire and its Representatives to make such inspections as they may reasonably request (including any environmental assessments of the Parking Facilities System and any plats of survey thereof) (*provided* that Concessionaire shall not conduct any boring, drilling or other invasive testing of the Parking Facilities System without the express Approval of the Authority, and such invasive testing may only be conducted after entering into a separate testing agreement with the Authority), and (iii) to furnish the Concessionaire and its Representatives with such financial and operating data and other information that is available with respect to the Parking Facilities System as they may from time to time reasonably request. The Concessionaire shall hold and will cause its Representatives to hold in strict confidence all documents and information concerning the Parking Facilities System to the extent and in accordance with the terms and conditions of the confidentiality agreement between the Authority and _____, dated as of _____. After the Closing Date, the Concessionaire shall at the request of the Authority, in connection with claims

or actions brought by or against third parties based upon events or circumstances concerning the Parking Facilities System, (A) provide reasonable assistance in the collection of information or documents and (B) make the Concessionaire's employees available when reasonably requested by the Authority; *provided, however*, that the Authority shall reimburse the Concessionaire for all reasonable out-of-pocket and documented costs and expenses incurred by the Concessionaire in providing said assistance and will not unduly interfere with Concessionaire's operations.

(h) *Transition.* From the date hereof up to the Time of Closing, the Parties shall cooperate with each other to ensure the orderly transition of control, custody, operation, management, maintenance and rehabilitation of, and the right to charge and collect Parking Fee Revenues and Other Concessionaire Revenues in connection with, the Parking Facilities System at the Time of Closing. In order to assure such orderly transition and to provide Information and Documents related to the operations of the Parking System to the Concessionaire, the Government Parties shall use commercially reasonable efforts to exercise their rights under existing service agreements with service providers. Upon the request of the Concessionaire, the Authority will use reasonable efforts to provide to the Concessionaire, for up to six months following the Closing, the services of any employee whose primary responsibilities relate to the Parking Facilities System (or the services of other Authority employees who are assigned for such purpose). All such services shall be provided for an amount equal to the actual cost to the Authority (including employment costs and related overhead expenses allocable to such employees, as reasonably determined by the Authority), which amount shall be billed to the Concessionaire as soon as reasonably practicable following the end of each month and shall be payable by the Concessionaire within 30 days of receipt of any such statement, and upon such other reasonable terms and conditions as the Authority and the Concessionaire may agree.

(i) *Casualty Loss Prior to Closing.* If prior to the Time of Closing, a material casualty loss, destruction or damage to any part of the Parking Facilities System has occurred and this Agreement has not been terminated under Section 2.4(d), then the Government Parties at their option shall (i) promptly and diligently repair and rebuild the affected parts of the Parking Facilities System to restore them to at least the same condition in which they were before the occurrence of such casualty loss, destruction or damage, *provided* that if the affected parts of the Parking Facilities System cannot prior to the Closing Date be repaired or rebuilt to restore them to at least the same condition in which they were before the occurrence of such casualty loss, destruction or damage, the Government Parties shall make such repairs or restoration as can reasonably be completed prior to the Closing Date and prior to the Closing Date shall provide to the Concessionaire a plan for the completion of such repairs or restoration following the Time of Closing at the Authority's expense subject to the Concessionaire's reasonable approval and shall then complete such repairs or restoration in accordance with such plan, or (ii) authorize the Concessionaire to repair and rebuild the affected parts of the Parking Facilities System, in which event the Government Parties shall assign to the Concessionaire all insurance and other proceeds payable by third-party insurers or other third parties to the Government Parties in respect of such casualty loss, destruction or damage and enforce (with the cooperation of the Concessionaire) all of its rights,

remedies and privileges under any applicable insurance policies with third-party insurers, *provided* that to the extent that such proceeds are not sufficient to repair and rebuild the affected parts of the Parking Facilities System and restore such affected parts to at least the same condition in which they were before the occurrence of the casualty loss, destruction or damage then (A) any Party may terminate this Agreement prior to the Closing Date or (B) in the event neither Party terminates this Agreement pursuant to clause (A), the Authority shall reimburse the Concessionaire for the difference upon such terms as are agreed to by the Authority and the Concessionaire. The Authority shall pay the Concessionaire all Concession Compensation with respect to any repair or restoration required by this Section 2.5(i).

(j) *Parking Facilities System Contracts.* The Parking Facilities System Contracts are listed on Schedule 6. At least 45 days prior to the Closing Date, the Concessionaire shall designate any such Parking Facilities System Contracts as Parking Facilities System Contracts to be assigned to the Concessionaire by the appropriate Government Party on the Closing Date; *provided* that with respect to that certain Parking Management Agreement, dated as of December 31, 2008, by and between the Authority and Network Parking, the Concessionaire shall provide such designation at least 65 days prior to the Closing Date. Following the Concessionaire's designation, each Government Party shall designate any remaining Parking Facilities System Contracts that are not to be assigned to the Concessionaire as Parking Facilities System Contracts to be retained by such Government Party following the Closing Date (so long as such retained Parking Facilities System Contracts do not interfere with the operation of the Parking Facilities System). All other Parking Facilities System Contracts of a Government Party shall be terminated by the Government Party, effective at the Time of Closing. Any liability under or related to any Parking Facilities System Contracts retained by a Government Party following the Closing Date or terminated by a Government Party on the Closing Date (including any liability resulting from the termination thereof), and any liability under or related to any Parking Facilities System Contracts that is assigned to the Concessionaire on the Closing Date attributable to periods prior to the effectiveness of the assignment thereof to the Concessionaire, shall be solely for the account of the Government Party.

(k) *Employees.* Prior to the Time of Closing, the Concessionaire shall offer (or shall cause the Operator to offer on behalf of the Concessionaire) employment to all Authority employees engaged in the provision of Parking Facilities Services who are in the bargaining unit recognized in a collective bargaining agreement with the Authority. The Concessionaire accepts all of the provisions of each such collective bargaining agreement and agrees to be bound by such provisions for the remaining term of each such collective bargaining agreement.

(l) *Damage or Destruction.* Neither Government Party shall perform or fail to perform any act which as a result would cause material damage to or the destruction of the Parking Facilities System and such damage or destruction would have a Material Adverse Effect. For the avoidance of doubt whether or not sufficient insurance is in place shall be disregarded for the purposes of this Section 2.5(l).

(m) *Operational Matters.* The Government Parties shall consult with the Concessionaire with respect to any Parking Facilities System operation matters of a material nature prior to the Time of Closing.

Section 2.6. Memorandum of Lease. At the Time of Closing, the Parties shall execute and deliver a memorandum of lease (the “Memorandum of Lease”) in the form attached hereto as Schedule 10, which shall be recorded in the Allegheny County Department of Real Estate. At the time of such recording, the Concessionaire shall pay any realty transfer tax due with respect to the lease granted under this Agreement. To the extent that changes are made to this Agreement with respect to the Term, leased property or other material matters set forth in the recorded Memorandum of Lease, the Parties shall execute, deliver and record an amendment to the recorded Memorandum of Lease reflecting such changes. The Parties agree not to record this Agreement itself.

Section 2.7. City Reversionary Interest. The City hereby irrevocably and unconditionally agrees that the grant contemplated in Section 2.1 shall, as of the Closing Date, be effective to grant to the Concessionaire all of the rights and privileges contemplated in Section 2.1 and elsewhere in this Agreement which shall apply and remain effective, without any further action by any Person, to any reversionary interest of the City in the Parking Facilities System upon the termination of the Authority pursuant to Section 5514 of the Parking Authority Law. In connection therewith, the City shall do or cause to be done all such further acts and things as may be reasonably requested by the Concessionaire. Without limiting the foregoing, the City will promptly and duly execute and deliver or cause to be executed and delivered such instruments (including, without limitation, any agreements, leases, deeds of title and other documents) and take such actions as may be reasonably requested by the Concessionaire in order to carry out more effectively the intent and purpose of Section 2.1.

Section 2.8. Closing Deliveries. At the Time of Closing, each Party shall execute and deliver all assets, agreements of sale, assignments, endorsements, instruments and documents as are reasonably necessary in the opinion of the other Parties to effect the Transaction (and in form and substance that are reasonably satisfactory to such other Parties).

Section 2.9. Intended Treatment for Federal and State Income Tax Purposes. This Agreement is intended for United States federal and state income Tax purposes to be a sale of the Parking Facilities System and the Parking Facilities System Assets to the Concessionaire, a lease of the real property on which the Parking Facilities System is located and the grant to the Concessionaire of a right and franchise within the meaning of sections 197(d)(1)(D) and (F) of the Internal Revenue Code of 1986, and sections 1.197-2(b)(8) and (10) of the Income Tax Regulations thereunder, for and during the Term to provide Parking Facilities Services. The Government Parties and the Concessionaire agree that the Consideration will be allocated among the assets that the Concessionaire is obtaining the use of pursuant to this agreement using the residual allocation provisions of Section 1060 of the Internal Revenue Code of 1986 as provided therein.

ARTICLE 3
TERMS OF THE LEASE AND CONCESSION

Section 3.1. Quiet Enjoyment; Present Condition.

(a) *Quiet Enjoyment.* The Government Parties agree that the Concessionaire shall, at all times during the Term, be entitled to and shall have the quiet possession and enjoyment of the Parking Facilities System and the rights and privileges granted to the Concessionaire hereunder, subject to (i) the Authority's right to terminate the Concessionaire Interest with respect to any of the Parking Lots pursuant to Section 3.19, (ii) the City's and Authority's remedies upon a Concessionaire Default, (iii) the Reserved Powers and (iv) the provisions contained in this Agreement. The Parties acknowledge that the Concessionaire's rights to use the Parking Facilities System as public parking garages and public parking lots and charge parking fees are subject to the right of the Government Parties, in accordance with the terms of this Agreement, to monitor compliance with this Agreement to ensure that the Parking Facilities System is used and operated as required by this Agreement. Any entry by the Government Parties or any of their Representatives onto the Parking Facilities System required or permitted under this Agreement shall not constitute a reentry, trespass or a breach of the covenant for quiet enjoyment contained in this Agreement. The Authority shall, at all times during the Term, defend its fee or leasehold interest title, as the case may be, to the Parking Facilities System, the Concessionaire's leasehold interest in and to the Parking Facilities System and the rights granted to the Concessionaire hereunder, or any portion thereof, against any Person claiming any interest adverse to the Authority or the Concessionaire in the Parking Facilities System, or any portion thereof, except where such adverse interest arises as a result of the act, omission, negligence, misconduct or violation of Law of the Concessionaire, its Affiliates or their respective Representatives.

(b) *Present Condition.* Subject to Section 2.5(i) and except as specifically set forth herein, the Concessionaire understands, agrees and acknowledges that the Concessionaire (i) by the execution of this Agreement, agrees to accept the Parking Facilities System "AS IS" at the Time of Closing and (ii) has inspected the Parking Facilities System and is aware of its condition and acknowledges that the Government Parties have not made and are not making any representation or warranty, express or implied, regarding the condition of the Parking Facilities System (or any part thereof) or its suitability for the Concessionaire's proposed use.

Section 3.2. Parking Facilities System Operations.

(a) *Use.* Except as otherwise specifically provided herein, including without limitation the public purpose requirements set forth in Section 3.18 the Concessionaire shall, at all times during the Term, (i) be responsible for all aspects of the Parking Facilities System Operations, and (ii) maintain and operate the Parking Facilities System and cause the Parking Facilities System Operations to be performed in accordance with the provisions of this Agreement and applicable Law (*provided, however*, that the Concessionaire or the Operator may contest the application of any Law by appropriate proceedings). The Concessionaire shall, at all times during the Term, cause the Parking Facilities System to be continuously open and operational for use by all members of the

public for Parking Facilities Purposes (and subject to the terms of the definition thereof and Section 3.18) as controlled access parking garages, controlled access parking lots or metered parking lots, as applicable, 24 hours a day, every day, except that the Concessionaire (A) may provide limited hours of operation for Allowable Service Concessions; (B) shall not be required to operate the Second Avenue Plaza Parking Lot during the hours of 3:30 p.m. to 5:00 a.m. and (C) may close the Parking Facilities System or a portion or portions thereof (1) with respect to underutilized portions of the Parking Facilities System during periods of such underutilization, as reasonably determined by the Concessionaire, and subject to the Concessionaire complying with the terms of the definition of “Parking Facilities Purposes” and the requirements of Section 3.18; *provided* that no such closure shall prevent users of the Parking Facilities System from retrieving their vehicles from any such closed portion, (2) as specifically permitted under this Agreement, (3) as required by applicable Law, (4) as necessary to comply with any other requirement of this Agreement (including closures related to the performance of the Required Capital Improvements or to the performance of capital improvements or maintenance or repair activities as required by the Operating Standards) or (5) as necessary for temporary closures required to address emergencies, public safety or temporary events.

(b) *Costs and Expenses.* Except as otherwise specifically provided herein, the Concessionaire shall, at all times during the Term, pay or cause to be paid all costs and expenses relating to the Parking Facilities System Operations as and when the same are due and payable.

(c) *Assumed Liabilities and Excluded Liabilities.*

(i) The Concessionaire agrees to assume and discharge or perform when due, all debts, liabilities and obligations whatsoever relating to the Parking Facilities System or the Parking Facilities System Operations that occur, arise out of or relate to, or are based on facts or actions occurring, during the Term, but only to the extent such debts, liabilities or obligations do not arise from or relate to any breach by any Government Party of any covenant, representation or warranty set forth in this Agreement (collectively, the “Assumed Liabilities”); *provided that* the Assumed Liabilities shall not include the Excluded Liabilities as defined in paragraph (ii).

(ii) The Excluded Liabilities shall consist of any debts, liabilities and obligations: (1) with respect to the such Government Party’s obligations under this Agreement, which each respective Government Party shall perform and discharge when due; (2) arising out of Parking Facilities System Operations (including with respect to any Parking Facilities System Contracts) prior to the Time of Closing, which the Authority shall perform and discharge when due; (3) relating to any Parking Facilities System Bonds or any other debt or obligations related to the Parking Facilities System and incurred by any Government Party or the defeasance thereof, which the Government Party who incurred such debt or obligation shall perform and discharge; or (4) arising under any Environmental Law related to the ownership, operation or condition of the Parking Facilities System at any time prior to the Time of Closing or any Hazardous Substance or other contaminant that was present or released on or migrated or escaped or was released from the Parking Facilities System or its subsurface or otherwise existed at

any time prior to the Time of Closing and including (A) the abatement or removal of any asbestos present at the Time of Closing from the Parking Facilities System as required by any Environmental Law in connection with the repair, maintenance or construction activities permitted or required to be performed under this Agreement and (B) any known or unknown environmental conditions relating to the Parking Facilities System or its subsurface that existed prior to the Time of Closing the manifestation of which occurs following the Time of Closing, which environmental obligations the Authority shall perform and discharge when due.

Section 3.3. **Operator.**

(a) *Engagement.* The Parking Facilities System Operations shall, at all times during the Term, be under the direction and supervision of an active operator with the expertise, qualifications, experience, competence, skills and know-how to perform the Parking Facilities System Operations in accordance with this Agreement (an “Operator”) who may be the Concessionaire itself or its Affiliate. Except as provided in Section 2.5(h), the Operator on the first day of the Term shall be the Concessionaire unless the Concessionaire has designated another Person to be the Operator in the response to the request for Parking Facilities System concessionaire qualifications delivered by or on behalf of the Concessionaire to the Authority in connection with the execution of this Agreement. The Concessionaire shall not engage or appoint a replacement Operator unless the Authority has Approved such Operator (based upon a determination in accordance with Section 3.3(b)) or such Operator and replacement Operator are Affiliates of the Concessionaire in which case no such Approval shall be required; *provided, however*, that a Change in Control of an Operator shall be deemed to be the appointment of a replacement Operator subject to the Authority’s Approval. The Operator shall at all times be subject to the direction, supervision and control (by ownership, contract or otherwise) of the Concessionaire, and any delegation to an Operator shall not relieve the Concessionaire of any obligations, duties or liability hereunder. The Concessionaire shall immediately notify the Authority upon the termination or resignation of an Operator. Any agreement between the Concessionaire and any Operator shall by its terms terminate without penalty at the election of the Authority or the Operator upon three Business Days’ notice to such Operator or the Authority, as applicable, upon the termination of this Agreement. The Operator shall have no interest in or rights under this Agreement or the Parking Facilities System unless the Operator is the Concessionaire itself.

(b) *Approval.* The Approval of a proposed replacement Operator may be withheld if the Authority reasonably determines that the engagement of such proposed Operator is prohibited by applicable Law or such proposed Operator is not capable of performing the Parking Facilities System Operations in accordance with this Agreement, which determination shall be based upon and take into account the following factors: (i) the ability of the Operator to operate the Parking Facilities System in a manner that complies with the Operating Standards and will result in the operation of the Parking Facilities System in accordance with the public purposes of the Authority as set forth in the Parking Authority Law and in Section 3.18; (ii) the financial strength and integrity of the proposed Operator, its direct or indirect beneficial owners and each of their respective Affiliates; (iii) the capitalization of the proposed Operator; (iv) the experience of the

(vii) to (A) install, design, manage, maintain, repair and rehabilitate any existing or future utilities or similar services (whether provided by the Government Party or third parties at the Government Party's instruction) in, on, under, across, over or through the Parking Facilities System (including water and sewer lines, power transmission lines, fiber optic cable, other communications and other equipment), (B) grant easements and rights on, over, under or within the Parking Facilities System for the benefit of suppliers or owners of any such utilities or services and (C) use the Parking Facilities System in connection with any such installation, design, management, maintenance, repair or rehabilitation (*provided* that notwithstanding the foregoing clauses (A), (B) and (C), the Concessionaire shall have the right, at all times during the Term, to install, design, manage, maintain, repair and rehabilitate utilities or other services for its own account (and not for lease, resale or service to third parties) to the extent that the said utilities or services are necessary for the Parking Facilities System Operations); and

(viii) to, solely in accordance with the terms hereof, do any other act or thing that the City or the Authority may be obligated to do or have a right to do under this Agreement;

provided, however, that the Government Parties shall not (A) be obligated to make any payments to the Concessionaire for such access (other than Concession Compensation to the extent required hereunder) and the Government Parties shall use reasonable efforts to minimize interference with the Parking Facilities System Operations in connection with any entry on the Parking Facilities System pursuant to this Section 3.7(a) and (B) have access to the cash collections or any software or other intangibles of the Concessionaire. The Authority shall pay to the Concessionaire the Concession Compensation, after demand by the Concessionaire, resulting from any entry to or action on the Parking Facilities System pursuant to clauses (iv), (v), (vi), (vii) and (viii).

(b) *Access Rights.* The Government Parties and any of their Representatives, grantees, tenants, mortgagees, licensees and others claiming by, through or under the Government Parties, during the progress of any work referred to in this Section 3.7 shall, subject to the Concessionaire's right to demand payment of the Concession Compensation referred to in Section 3.7(a), have all necessary easement and access rights and may keep and store at the Parking Facilities System all necessary materials, tools, supplies, equipment and vehicles, in a reasonably neat and orderly fashion in compliance with all Laws and so as to not unreasonably interfere with the Concessionaire's conduct of business at the Parking Facilities System. To the extent that a Government Party undertakes work or repairs in the Parking Facilities System under this Section 3.7 or any other provision of this Agreement, such work or repairs shall be commenced and diligently completed in a good and workmanlike manner, in accordance with any applicable Operating Standards and in such a manner as not to unreasonably interfere with the conduct of business in or use of such space.

(c) *Effect of Reservation.* Any reservation of a right by the City or the Authority and any of their Representatives, grantees, tenants, mortgagees, licensees and others claiming by, through or under the City or the Authority to enter the Parking Facilities System and to make or perform any repairs, alterations, Restoration or other work in, to, above, or about the Parking Facilities System which is the Concessionaire's

obligation pursuant to this Agreement, shall not be deemed to (i) impose any obligation on any Government Party to do so, (ii) render the Government Party liable to the Concessionaire or any other Person for the failure to do so or (iii) relieve the Concessionaire from any obligation to indemnify the Government Party as otherwise provided in this Agreement. Nothing in this Agreement shall impose any duty upon the part of the City or the Authority to do any work required to be performed by the Concessionaire hereunder and performance of any such work by the City or the Authority and any of their Representatives, grantees, tenants, mortgagees, licensees and others claiming by, through or under the City or the Authority shall not constitute a waiver of the Concessionaire's default in failing to perform the same.

Section 3.8. **Coordination.**

(a) *Utility Coordination.* The Concessionaire shall be responsible for coordinating or ensuring the coordination of all Parking Facilities System Operations with utilities and Persons having service lines, pipelines, transmission lines and other equipment, cables, systems and other apparatus in, on, under, over or adjacent to the Parking Facilities System. The Concessionaire shall cause provision to be made for the removal or temporary or permanent relocation and restoration of utilities and other services and any lines, equipment, cables, systems and other apparatus that intersect, interfere with, interface with or otherwise affect the Parking Facilities System Operations and shall arrange for temporary rights of entry and access to utilities and other services to be made available that are necessary in connection with the Parking Facilities System Operations or as may exist under this Agreement or applicable Law; *provided* that the Government Parties shall cooperate with the Concessionaire with respect to the Concessionaire's obligations under this Section 3.8(a).

(b) *Affected Property Coordination.* The Concessionaire shall be responsible for coordinating or ensuring the coordination of all Parking Facilities System Operations with Affected Property. The Concessionaire shall arrange for temporary right-of-entry and access to the property of all relevant Governmental Authorities or other Persons as may be necessary in connection with the Parking Facilities System Operations or as may exist under this Agreement or applicable Law. The Government Parties shall cooperate with the Concessionaire with respect to the Concessionaire's obligations under this Section 3.8(b).

(c) *No Interference.* The Parties understand and agree that nothing in the foregoing clauses (a) and (b) is in any way intended to interfere with the normal operations of the Parking Facilities System by the Concessionaire, and the Government Parties shall cooperate with the Concessionaire in minimizing any effect that the obligations of the Concessionaire under such clauses (a) and (b) may have on the Parking Facilities System Operations and the Other Concessionaire Revenues and Parking Fee Revenues.

Section 3.9. Withholding Payments. The Concessionaire acknowledges and agrees that if a Government Party is required under an applicable Law of general application to withhold a portion of any payment that the Government Party is obligated to make to the Concessionaire under this Agreement, the Government Party will be

deemed to have satisfied such payment obligation to the Concessionaire to the extent of such withholding by the Government Party. If any such withheld amounts are permitted to be paid to the Concessionaire, the Government Party shall pay such amounts to the Concessionaire whenever permitted by Law. The Government Party shall notify the Concessionaire in writing at least five Business Days prior to the withholding of any amount pursuant to this Section 3.9.

Section 3.10. Payment of Taxes.

(a) *Payment.* Except as otherwise provided in this Section 3.10(a), the Concessionaire shall pay when due all Taxes payable during the Term in respect of the use, operations at, occupancy of, or conduct of business in or from the Parking Facilities System, including any parking Taxes that the Concessionaire is obligated to collect from customers of the Parking Facilities System and remit to the taxing authorities, as required by the applicable Law. The Authority reserves the right, without being obligated to do so, to pay the amount of any such Taxes not timely paid or contested by the Concessionaire, and the amount so paid by the Authority shall be deemed additional consideration hereunder, due and payable by the Concessionaire within 10 Business Days after written demand by the Authority. The Concessionaire shall have the right to contest in good faith the validity or amount of any Taxes which it is responsible to pay under this Section 3.10, *provided* that (i) the Concessionaire has given prior notice to the Authority of each such contest, (ii) no contest by the Concessionaire may involve a reasonable possibility of forfeiture or sale of the Parking Facilities System, and (iii) upon the final determination of any contest by the Concessionaire, if the Concessionaire has not already done so, the Concessionaire shall pay any amount found to be due, together with any costs, penalties and interest. It is the understanding and intention of the Parties that, except with respect to certain space used for Allowable Service Concessions, the real property comprising the Parking Facilities System is and shall remain public property used for public purposes, and that such real property utilized to provide the Parking Facilities Purposes is and should remain exempt from the imposition of real property Taxes imposed by the Commonwealth of Pennsylvania or any subdivision of the Commonwealth of Pennsylvania (including any school district). The Concessionaire shall not be liable for, and the Authority shall pay any real property Tax imposed by the Commonwealth of Pennsylvania or any subdivision of the Commonwealth of Pennsylvania on the Parking Facilities System, other than real property Taxes imposed upon that portion of the real property comprising the Allowable Service Concessions or used by the Concessionaire for purposes other than the Parking Facilities Purposes. The imposition of real property Taxes upon real property utilized to provide Parking Facilities Purposes shall not be an Adverse Action if the full amount of such Tax is paid when due by the Authority or the City.

(b) *Compensation Event.* Any increase in the City of Pittsburgh parking tax to a rate in excess of forty percent (40%) shall constitute a Compensation Event for which the Concessionaire may be entitled to Concession Compensation.

Section 3.11. Utilities. During the Term, the Concessionaire shall pay when due all charges (including all applicable Taxes and fees) for gas, electricity, light, heat, power, telephone, water and other utilities and services used in the Parking Facilities

System Operations or supplied to the Parking Facilities System during the Term. Upon request of the Authority, the Concessionaire shall forward to the Authority, within 15 days following the respective due dates, official receipts, photocopies thereof, or other evidence satisfactory to the Authority, acting reasonably, of the payment required to be made by the Concessionaire in accordance with this Section 3.11. The City shall offer to furnish to the Concessionaire for purposes of the Parking Facilities System Operations any utilities that the City is voluntarily and directly furnishing to other commercial users in the immediate vicinity of the Parking Facilities System at such time, on rates and other terms as are applicable to other similarly situated commercial users of such utilities, as may be amended from time to time; *provided, however*, that the City shall have no obligation or responsibility to furnish the Concessionaire with any other utilities and makes no representations or warranties as to the availability of any utilities. The City does not warrant that any utility services will be free from interruptions caused by war, insurrection, civil commotion, riots, acts of God, government action, terrorism, repairs, renewals, improvements, alterations, strikes, lockouts, picketing, whether legal or illegal, accidents, inability to obtain fuel or supplies or any other causes, and any such interruption of utility services in and of itself shall never be deemed an Adverse Action or an eviction or disturbance of the Concessionaire's use and possession of the Parking Facilities System or any part thereof, or render the City liable to the Concessionaire for damages or, unless the same constitutes a Delay Event, relieve the Concessionaire from performance of the Concessionaire's obligations under this Agreement.

Section 3.12. Negotiations with Governmental Authorities. Prior to entering into any agreement with any Governmental Authority in connection with the Parking Facilities System Operations (a "Government Agreement") that extends or could extend beyond the Term (unless such extension is subject to a right by the Authority to terminate such agreement within three Business Days' notice or less) or pursuant to which the Government Parties may incur any liability whatsoever thereunder, the Concessionaire shall submit such Government Agreement for Approval by the Authority (which Approval may be withheld, delayed or otherwise conditioned in the discretion of the Authority) prior to the execution and delivery thereof (except with respect to Government Agreements the absence of which may cause the Concessionaire or Parking Facilities System Operations to fail to be in compliance with applicable Law or this Agreement, in which case the Concessionaire may enter into such Government Agreement upon notice to the Authority *provided* that the Concessionaire indemnifies the City and the Authority, as the case may be, for any Losses relating thereto).

Section 3.13. Notices of Defaults and Claims.

(a) *Notice by the Concessionaire.* The Concessionaire shall promptly give notice to the Government Parties (i) if the Concessionaire becomes aware that a Concessionaire Default has occurred under this Agreement (*provided, however*, that the failure to give such notice shall not constitute an independent Concessionaire Default) and (ii) of all material claims, proceedings, disputes (including labor disputes) or litigation in respect of the Concessionaire pertaining to the Parking Facilities System or the Government Parties or the Parking Facilities System Operations (whether or not such claim, proceeding or litigation is covered by insurance) of which the Concessionaire is aware (other than as a result of a notice to the Concessionaire from a Government Party).

The Concessionaire shall provide the Government Parties with all reasonable information requested by it from time to time concerning the status of such claims, proceedings or litigation.

(b) *Notice by the Authority.* The Authority shall promptly give notice to the Concessionaire (i) if the Authority becomes aware that an Authority Default has occurred under this Agreement (*provided, however*, that the failure to give such notice shall not constitute an independent Authority Default) and (ii) of all material claims, proceedings, disputes (including labor disputes) or litigation in respect of the Authority pertaining to the Parking Facilities System or the Concessionaire or the Parking Facilities System Operations (whether or not such claim, proceeding or litigation is covered by insurance) of which the Authority is aware (other than as a result of a notice to the Authority from the Concessionaire). The Authority shall provide the Concessionaire with all reasonable information requested by it from time to time concerning the status of such claims, proceedings or litigation.

(c) *Notice by the City.* The City shall promptly give notice to the Concessionaire (i) if the City becomes aware that a City Default has occurred under this Agreement (*provided, however*, that the failure to give such notice shall not constitute an independent City Default) and (ii) of all material claims, proceedings, disputes (including labor disputes) or litigation in respect of the City pertaining to the Parking Facilities System, the Parking Facilities System Operations or the Concessionaire (whether or not such claim, proceeding or litigation is covered by insurance) of which the City is aware (other than as a result of a notice to the City from the Concessionaire). The City shall provide the Concessionaire with all reasonable information requested by it from time to time concerning the status of such claims, proceedings or litigation.

Section 3.14. Assignment of Operating Agreements and Plans. At the request of the Authority, the Concessionaire shall collaterally assign, to the extent reasonably practicable, to the Authority, in form and substance satisfactory to the Authority, acting reasonably, all of the right, title and interest of the Concessionaire in, to and under all or any of the Operating Agreements and all present and future specifications, plans, drawings, information and documentation in relation to the Parking Facilities System Operations except to the extent any of the foregoing involve proprietary information (collectively, the “Operating Agreements and Plans”) as collateral security to the Authority for the observance and performance by the Concessionaire of its covenants and obligations under this Agreement. The Concessionaire covenants that it shall use all reasonable efforts to cause all of the right, title and interest of the Concessionaire in, to and under all Operating Agreements and Plans entered into or created after the Time of Closing to be collaterally assignable to the Authority for the purposes of this Section 3.14. The Authority acknowledges that the Operating Agreements and Plans may also be assigned as security to a Leasehold Mortgagee and that each of the Authority and such Leasehold Mortgagee shall be entitled to use the Operating Agreements and Plans in enforcing their respective security as hereinafter provided. Without limiting the generality of the foregoing, but subject to the Authority’s assumption of liabilities under the Operating Agreements and Plans and to Article 18, the Authority shall be entitled to use the Operating Agreements and Plans in each of the following events: (i) if the Authority terminates this Agreement without a concession agreement being granted to a

Leasehold Mortgagee or nominee thereof pursuant to the provisions of Article 18; and (ii) if the Authority elects to use the Operating Agreements and Plans to remedy a Concessionaire Default under this Agreement. Notwithstanding the foregoing, in the event that any such Leasehold Mortgagee has entered into possession or is diligently enforcing and continues to diligently enforce its security, whether by way of appointment of a receiver or receiver and manager, foreclosure or power of sale in accordance with Article 18, or otherwise, and is using the Operating Agreements and Plans in respect of the Parking Facilities System Operations, the Authority shall not be entitled to use the Operating Agreements and Plans in enforcing its security, it being acknowledged that any assignment of the Operating Agreements and Plans to a Leasehold Mortgagee shall have priority at all times over any assignment of the Operating Agreements and Plans to the Authority. The Concessionaire shall promptly deliver to the Authority, at the sole cost and expense of the Concessionaire, forthwith after completion or execution and delivery, a copy of each item of the Operating Agreements and Plans.

Section 3.15. Naming Rights and Advertisements.

(a) The name designated for the Parking Facilities System is the “Pittsburgh Parking System” composed of each of the named Parking Garages listed in Schedule 1, the Second Avenue Parking Plaza and other Parking Lots. Such names may be changed by the Concessionaire with the prior Approval of the Government Parties.

(b) The Authority retains the exclusive naming rights with respect to the Parking Facilities System and the exclusive right to register and own the naming rights as the “Pittsburgh Parking System,” including the right to sell or lease any naming rights for the Parking Facilities System, or any portion of the Parking Facilities System, to any third party; *provided* that, during the Term, without the prior consent of the Concessionaire (which shall not be unreasonably withheld), the Authority shall not (i) change the names of any Parking Garage and the Parking Facilities System or (ii) grant any third party to right to change the names of any Parking Garage and the Parking Facilities System. Any action taken by the Authority pursuant to this Section 3.15(b) is not a Compensation Event or an Adverse Action. The Government Parties shall not use or permit to be used any name or mark in connection with the Parking Facilities System that may reasonably be odious or offensive to the Concessionaire or otherwise be reasonably likely to result in negative association by the general public.

(c) The Government Parties grant to the Concessionaire a non-exclusive, non-transferable, royalty-free license during the Term to use the names “Second Avenue Parking Plaza” and the names of each of the named Parking Garages listed in Schedule 2, together with all existing and future developed logos and marks (not including the City seal or the Authority seal) used in connection with the Parking Facilities System Operations, solely in connection with the performance of the Concessionaire’s rights and obligations under this Agreement. The Concessionaire may sub-grant the same right to the Operator and vendors with operations within the boundaries of the Parking Facilities System.

(d) The Concessionaire may provide for advertisements at the Parking Facilities System. All such advertisements must conform to the requirements of the Advertising Policy set forth in Schedule 11 attached hereto.

Section 3.16. **Police, Fire, Emergency and Public Safety Access Rights.** At all times during the Term and without notice or compensation to the Concessionaire (i) any police, fire and emergency services and any other security or emergency personnel retained by or on behalf of the City or the Authority shall have access, as required by such services or personnel, to the Parking Facilities System; (ii) the Government Parties shall have access to the Parking Facilities System as necessary for the protection of public safety; *provided, however*, that inspections by the Government Parties for purposes of determining whether or not the Concessionaire is in compliance with its obligations under this Agreement or applicable Law shall be undertaken pursuant to Section 3.7(a)(i); and (iii) any Governmental Authority with jurisdiction over the Parking Facilities System shall have access to the Parking Facilities System as necessary for emergency management and homeland security purposes, including the prevention of or response to a public safety emergency.

Section 3.17. Administration of the Public Way. The Concessionaire acknowledges and accepts that the City holds and administers the public way for the non-discriminatory benefit of all Persons and interests, including the Concessionaire and the Concessionaire Interest. The rights granted to the Concessionaire under this Agreement do not create a priority in favor of the Concessionaire over any other user of the public way and are subject to the Operating Standards and all provisions of Law, including, but not limited to, applicable City permit requirements.

Section 3.18. Public Purpose Requirements.

(a) The Parties agree that during the Term the Authority retains the Reserved Power to enforce this Agreement and the Operating Standards such that the Parking Facilities System will be dedicated and used at all times for purposes intended to promote the public safety, convenience and welfare, to enhance the free circulation of traffic through the streets of the City of Pittsburgh, to alleviate traffic congestion that interferes with the primary use of such streets for the movement of vehicles, including the rapid and effective disposition of firefighters, police forces and public safety responders, and to otherwise foster and promote the public purposes of the Parking Authority Law.

(b) The Concessionaire, and any Operator, at all times during the Term, shall maintain and operate the Parking Facilities System and shall provide Parking Facilities Services pursuant to this Agreement for Parking Facilities Purposes in accordance with the Operating Standards and the public purposes of the Authority as enumerated in the Parking Authority Law.

(c) In order to assure that the Parking Facilities System continues to fulfill the public purposes of the Authority, the Parking Facilities System shall be operated consistent with the following requirements:

(i) Except as provided in Section 3.18(c)(ii),

(A) The number of spaces available in each Core Area Parking Facility that is available for use by members of the general public for transient parking and not allocated to specific Persons (such as through arrangements for monthly or annual parking) shall be no less than 45% of the spaces in such Core Area Parking Facility and the aggregate number of such spaces in the combined Core Area Parking Facilities (taken as a whole) that is available for use by members of the public for transient parking shall be not less than 50% of the spaces in the Core Area Parking Facilities (the "Minimum Transient Spaces"). For purposes of calculating compliance with this requirement, the number of spaces available shall be calculated separately for weekday daytime (6 a.m. to 6 p.m.), weekday nighttime (6 p.m. to 6 a.m.) and weekend (Friday 6 p.m. to Monday 6 a.m.).

(B) No more than 30 percent of the number of spaces in any Parking Garage or Parking Lot within the Parking Facilities System may be reserved or dedicated under any agreement with any Person for lease to any such Person or to a group of Persons who either are residents of the same residential building or are employees or customers of a single business or commercial enterprise (the "Lease Commitment Limit").

(ii) The Concessionaire may request the Authority to approve an adjustment of the Minimum Transient Spaces or Lease Commitment Limit for a particular Parking Garage or Parking Lot, which approval shall be subject to the Authority's discretion. In considering any such request, the Authority shall consider (A) the pattern of historical use of the affected Parking Garage or Parking Lot, and whether historical use indicates underutilization of the Parking Garage or Parking Lot; (B) the impact of any change in the Minimum Transient Spaces or Lease Commitment Limit upon traffic control and availability of adequate off-street parking in the area served by the Parking Garage or Parking Lot; and (C) the impact of any change in the Minimum Transient Spaces or Lease Commitment Limit upon the ability of the Parking Facilities System as a whole to continue to serve its essential public purposes.

(iii) No parking space area existing as of the Closing Date in a particular Parking Garage or Parking Lot may be converted to use as an Allowable Service Concession without the approval of the Authority, which approval shall be at the Authority's discretion.

(iv) In implementing the improvement or replacement of a particular Parking Garage or Parking Lot, (A) the percentage of parking spaces available for transient parking after the improvement or replacement project shall not be less than the percentage of parking spaces available for transient parking prior to such project, and (B) no greater than 20% of the total area of the Parking Garage or Parking Lot shall be utilized for Allowable Service Concessions. The Authority may, at the Authority's discretion, approve exceptions to the requirements in this Section 3.18(c)(iv), *provided* that the Authority determines that the Parking Garage or Parking Lot, and the Parking Facilities System as a whole, will continue to serve the essential public purposes of the Parking Facilities System.

(d) If either Government Party at any time determines that the Concessionaire or the Operator are not maintaining or operating the Parking Facilities System or providing Parking Facilities Services pursuant to this Agreement for Parking Facilities Purposes in accordance with the Operating Standards or the public purpose requirements set forth in this Section 3.18, such Government Party shall promptly provide the Concessionaire and the Operator with written notice thereof. Such notice to the Concessionaire and the Operator shall described in reasonable detail the basis for such Government Party's determination and set forth the steps or measures necessary to satisfy the objections of such Government Party.

(i) The Concessionaire shall have the right to dispute the validity of such Government Party's determination. If the Concessionaire shall give notice of dispute (the "Concessionaire-Dispute Notice") to such Government Party within 10 days following the date of receipt of such Government Party's notice stating in reasonable detail the grounds for such dispute. If neither the Government Party's notice nor the Concessionaire-Dispute Notice has been withdrawn within 30 days following the date of receipt of the Concessionaire-Dispute Notice by the Government Party, the matter shall be submitted to the dispute resolution procedure in Article 19.

(ii) If the Concessionaire does not exercise its right to dispute the validity of such Government Party's determination within 60 days of the receipt by the Concessionaire of such Government Party's notice thereof, the Concessionaire shall implement the steps or measures indicated in such Government Party's notice or take such other actions necessary to satisfy the objections of such Government Party.

Section 3.19. Early Reversion of Parking Lots. Except for the Second Avenue Parking Plaza, the Authority reserves the continuing right from time to time during the Term and with respect to any one or more of the other Parking Lots to terminate the Concessionaire Interest with respect to any such Parking Lot and to cause the reversion to the Authority of such Parking Lot upon not less than 120 days notice to the Concessionaire establishing the Early Reversion Date for such Parking Lot. The Concessionaire Interest with respect to such Parking Lot shall terminate and the Concessionaire shall well and truly surrender and deliver to the Authority such Parking Lot and all Parking Facilities System Assets related to or used in connection with the Parking Facilities System Operations for such Parking Lot, if and only if, on or prior to the Early Reversion Date, the Concessionaire shall have been paid, as full compensation for the early termination of such Concessionaire Interest, the following sums (i) the Remaining Amortized Value and (ii) as reimbursement for all capital improvements undertaken by the Concessionaire with respect to such Parking Lot, an amount equal to the initial cost of such capital improvements less the accumulated depreciation thereof determined as of the Early Reversion Date and in accordance with generally accepted accounting principles (including any elections taken with respect thereto under the United States Internal Revenue Code of 1986).

Section 3.20. Allowable Service Concessions.

(a) *Allowable Service Concessions.* Subject to the terms and conditions of this Section 3.20, the Concessionaire may use or sublease portions of the Parking

Facilities System for (i) convenience food vendors, (ii) small convenience kiosks or newsstands, (iii) hand car wash facilities for customers of the Parking Facilities System, (iv) dry-cleaning facilities, *provided* that such facilities are pick-up and drop-off facilities that deliver items to a location outside of the Parking Facilities System for cleaning and that no dry-cleaning solvents (including perchloroethylene) may be used in the Parking Facilities System, (v) car rental facilities, (vi) walk-up automatic teller machines, (vii) vending machines, (viii) long-term automobile storage and (ix) self-storage facilities located within the Parking Facilities System, *provided* that the locations of such self-storage facilities within the Parking Facilities System are Approved by the Authority; (x) any other use in operation as of the Bid Date, or (xi) the sale of goods or services that are otherwise Approved by the Authority (collectively, the “Allowable Service Concessions”). No space within the Parking Facilities System may be subleased or utilized for the sale of gasoline or automobile accessories, or for any other use not authorized by the Parking Authority Law.

(b) *Limitation on Subleasing for Service Concessions.* The total amount of space used for the Allowable Service Concessions shall not exceed 20% of the gross square footage of the Parking Facilities System, it being understood that the Concessionaire may not eliminate any parking spaces existing as of the Closing Date for conversion to an Allowable Service Concession without the approval of the Authority pursuant to Section 3.18(c)(iii).

(c) *Applicable Requirements.* All activities undertaken in connection with any Allowable Service Concessions shall be conducted in compliance with all applicable Laws and shall be subject to all Authorizations, fees (including license fees) and Taxes generally imposed by the City and other Governmental Authorities with respect to such activities and the revenues generated by such activities.

(d) *Public Facilities Concession Regulation Act.* The Concessionaire shall develop and submit to the Authority, for Approval by the Authority, a plan (the “Concession Regulation Plan”) that includes standards and requirements (including contract conditions) to assure that the goods and services offered to the public by any Person operating an Allowable Service Concession are of high quality and provided at reasonable prices, in compliance with the requirements of the Public Facilities Concession Regulation Act, 62 Pa.C.S. §§4301-4303. The Concessionaire shall (i) implement the Concession Regulation Plan through appropriate contract provisions with the operators of Allowable Service Concessions that regulate the kind, quality and prices of goods and services upon terms and conditions consistent with the approved Concession Regulation Plan; (ii) monitor the kind, quality and price of goods and services offered by the operators of Allowable Service Concessions; and (iii) provide an annual report to the Authority regarding compliance of the Allowable Service Concessions with the standards and requirements of the Concession Regulation Plan.

Section 3.21. Commercial Parking Place Requirements. The Concessionaire shall comply with all applicable requirements of City of Pittsburgh Code of Ordinances, Title 7, Art. VII, §763, relating to the operation of commercial parking places, including the safety, security, disabled parking, and other requirements contained therein.

Section 3.22. **Authority Use of Wood-Allies Garage.** During the Term the Authority shall have the exclusive right to use (i) the 13,720 square feet of space in the Wood-Allies Garage used by the Authority on the date of this Agreement for office, administrative and storage purposes; (ii) the Wood-Allies Garage for the parking and servicing of vehicles used for parking and traffic enforcement purposes. The Concessionaire agrees to provide such exclusive rights to the Authority without any cost or expense to the Authority or the City.

Section 3.23. **Signage.** The City and the Authority acknowledge and agree that upgrades to the signage with respect to the Parking Facilities System will be required in connection with this Agreement. The Concessionaire (i) shall have the right, but not the obligation, at its own cost and expense, to redesign, install, manage, maintain, repair and rehabilitate existing or future signage relating to the Parking Facilities System, and (ii) in addition to the Concessionaire's rights under clause (i), the City and the Authority agree to install, manage, maintain repair and rehabilitate on the public way, in each case at the Concessionaire's cost and expense, up to two directional signs for each Parking Garage in the Parking Facilities System and the Second Avenue Parking Plaza visually consistent with current signage on the public way relating to the Parking Facilities System or such type and at such locations as are reasonably agreed to by the City, the Authority and the Concessionaire. The installation of all such signage shall be in compliance with applicable Law and subject to all generally applicable Authorizations with respect each particular type of signage installed. The City and the Authority shall reasonably cooperate with the Concessionaire, including with respect to the issuance of such authorization reasonably requested by the Concessionaire, in order to give effect to this Section 3.23.

Section 3.24. **Issuance of Parking Tickets.** The Government Parties retain the exclusive right to establish and to revise from time to time all parking rules and regulations. The Concessionaire, as the agent of the Government Parties and subject to the supervision of the Authority (and subject to plans and procedures approved by the Authority), and in compliance with the policies and procedures established by, the Authority, shall have the right, at its sole cost and expense, to issue parking tickets for violations of the parking rules and regulations with respect to the Metered Parking Spaces in Parking Lots, *provided* that such tickets must be in the form prescribed by the City (or the Authority on behalf of the City), that the issuance of such tickets shall otherwise be subject to applicable City and Authority rules and regulations and the performance of such services by the Concessionaire must conform to the Operating Standards and applicable Laws and the supervisory policies of the Authority. The City (or the Authority on behalf of the City) shall provide to the Concessionaire, at the Concessionaire's sole cost and expense, parking ticket materials and equipment and other items reasonably necessary to enable the Concessionaire to issue parking tickets as contemplated by this Section 3.24. The Government Parties retain the right and responsibility to provide all other enforcement of parking rules and violations. Parking tickets issued by the Concessionaire pursuant to this Section 3.24 shall have the same legal efficacy as parking tickets issued by the City or the Authority.

ARTICLE 4
CAPITAL IMPROVEMENTS

Section 4.1. **Concessionaire Responsibility for Capital Improvements.** The Concessionaire shall be responsible for all capital improvements with respect to the Parking Facilities System required to be completed during the Term in accordance with the terms of this Agreement, including as required by the Operating Standards, which capital improvements include the Required Capital Improvements. The Concessionaire may undertake at its sole cost and expense and subject to the Approval of the Authority, the expansion of any Parking Garage for Parking Facilities Purposes permitted by and undertaken in compliance with the Agreement. In connection with any such expansion of a Parking Garage, the Government Parties shall grant to the Concessionaire such Parking Garage Expansion Rights as necessary in connection with the capital improvements to the extent consistent with the plans Approved by the Authority for such capital improvement and to the extent such air space is used exclusively for Parking Facilities Purposes. Upon the granting of Parking Garage Expansion Rights, the Parties shall execute any amendment of Schedule 1 necessary to reflect such grant.

Section 4.2. **Authorizations Related to Capital Improvements.** The Concessionaire's obligation to perform capital improvements shall be subject to the issuance by the Government Parties of any and all Authorizations to be issued by the Government Parties and as required by the Government Parties with respect thereto and the Government Parties agree not to unreasonably withhold, condition or delay the issuance of any such Authorizations, and to use their respective reasonable efforts to assist the Concessionaire in obtaining such Authorizations. Without limiting the generality of the foregoing, the Government Parties agree that they will reasonably assist and cooperate with the Concessionaire in obtaining any and all Authorizations (including any required rights of access over real property that is owned or controlled by a Government Party but that does not comprise part of the Parking Facilities System) in order for the Concessionaire to perform capital improvements.

Section 4.3. **City and Authority Responsibility for Capital Improvements.**

(a) Subject to Section 3.17, the City, at its own cost and expense, shall maintain, repair and rehabilitate any existing or future roads or streets constituting Affected Property under the jurisdiction of the City that provide direct access to or from the Parking Facilities System in such a manner as to maintain access to and from the Parking Facilities System reasonably comparable to that in existence as of the date of this Agreement and in any event to a standard not less than that observed by the City with respect to other public roads. Without limiting the City's obligation under the preceding sentence, prior to undertaking any construction or other activities (other than in the event of an emergency) that would materially reduce or impede access to any Parking Garage or the Second Avenue Parking Plaza or could otherwise reasonably be expected to have a material adverse effect on the Concessionaire Interest, the City (i) shall provide the Concessionaire with not less than 90 days prior notice of such activities and (ii) jointly with the Concessionaire shall develop a plan to mitigate the effects of such construction activities on the Parking Facilities System.

(b) Each Government Party shall, at its own cost and expense, maintain, repair and rehabilitate, as appropriate, all Affected Property owned by such Government Party, as applicable, in accordance with the terms set forth in the Operating Standards and otherwise in a manner sufficient to enable the Concessionaire to operate the Parking Facilities System in compliance with the terms hereof and in a manner consistent with the Operating Standards, and each Government Party shall reasonably cooperate in taking such actions (which may include the granting of access rights in favor of the Concessionaire) with respect to such property as are necessary to enable the Concessionaire to comply with its obligations under this Agreement. The Parties shall reasonably cooperate with each other, in connection with any needed maintenance, management, repair or rehabilitation of Affected Property owned by the City or the Authority.

Section 4.4. Older Garages Improvement Plan. The Parties acknowledge and agree that the Fort Duquesne and Sixth Garage, the Smithfield Liberty Garage and the Ninth and Penn Garage (collectively, the “Older Garages”) are in need of replacement or substantial rehabilitation. The replacement or substantial rehabilitation of the Older Garages are Required Capital Improvements to be undertaken by the Concessionaire at the expense of the Concessionaire and in accordance with the provisions of this Section 4.4. The Ninth and Penn Garage shall be replaced or substantially rehabilitated no later than December 31, 2017. The Fort Duquesne and Sixth Garage and the Smithfield Liberty Garage shall be replaced or substantially rehabilitated no later than December 31, 2025. Each Required Capital Improvement of the Older Garages shall be undertaken pursuant to plans and specifications prepared by or on behalf of the Concessionaire and Approved by the Authority in accordance with the general plan for the improvement of the Older Garages attached hereto as Schedule 7. The Required Capital Improvements to the Older Garages shall be scheduled and undertaken in such manner that, at all times, at least two of the Older Garages shall be opened and fully operational. The capital improvement plan for each Older Garage shall provide, and the completed capital improvement work shall result in, the improved Older Garage or replacement for the Older Garage, as the case may be, having a useful life extending beyond the year 2061 and (i) in the case of the Ninth and Penn Garage having not less than 95% of the parking spaces that the Ninth and Penn Garage had prior to its replacement or substantial rehabilitation as required by this Section 4.4 and (ii) in the case of the Fort Duquesne and Sixth Garage and the Smithfield Liberty Garage having more parking spaces than the Older Garage had prior to its replacement or substantial rehabilitation as required by this Section 4.4.

ARTICLE 5 MODIFICATIONS

Section 5.1. **Authority Directives.** Subject to the Authority’s compliance with any applicable Laws (including, to the extent applicable, Pa.C.S. Title 62, the Parking Authority Law, or other Laws governing procurement), the Authority may, at any time during the Term, issue a Directive to the Concessionaire. Subject to the Authority making available to the Concessionaire sufficient funds to perform the work required to

implement such Directive at or before the time payment for such work is required to be made, and the Concessionaire having obtained (with the cooperation of the Authority) all relevant Authorizations from all relevant Governmental Entities required for the relevant work, the Concessionaire shall perform the work required to implement such Directive, and the Authority shall pay to the Concessionaire the Concession Compensation with respect thereto.

Section 5.2. **Concessionaire Requests.** If the Concessionaire wishes at any time during the Term to make a fundamental change in the dimensions, character, quality or location of any part of the Parking Facilities System, then the Concessionaire may submit to the Authority, for Approval, a Concessionaire Request with respect to such change and shall submit to the Authority for its Approval specific plans with respect to any such work. Changes that are non-structural in nature shall not be considered “fundamental changes.” The Concessionaire shall be responsible for all amounts required to implement an Approved Concessionaire Request (and any Losses incurred in connection therewith). No Concessionaire Request shall be implemented unless and until such Concessionaire Request has been Approved by the Authority.

Section 5.3. **Performance of Modifications.** Subject to the other provisions of this Article 5, the Concessionaire shall ensure that Directives and Approved Concessionaire Requests are performed in a good and workmanlike manner and diligently complied with and implemented in such manner that the costs (in the case of Directives only) and delays relating thereto are minimized.

ARTICLE 6 OPERATING STANDARDS

Section 6.1. **Compliance with Operating Standards.** The Concessionaire shall, at all times during the Term, cause the Parking Facilities System Operations to, comply with and implement the Operating Standards in all material respects (including any changes or modifications to the Operating Standards pursuant to the terms of this Agreement). The Parties acknowledge and agree that the Operating Standards shall be construed flexibly in light of their objectives. The Concessionaire shall have in place procedures that are reasonably designed to achieve compliance with the Operating Standards. The Operating Standards shall not be deemed to be violated by immaterial acts or omissions, including an immaterial failure to comply with specific requirements set forth in the Operating Standards other than actions or omissions that endanger the public health or safety. Except as specifically set forth herein, the Concessionaire shall perform all work required to comply with and implement the Operating Standards (including the capital improvements described therein) as part of the Parking Facilities System Operations and at its sole cost and expense.

Section 6.2. **Proposed Operating Standards.** If the Concessionaire, at its cost and expense, wishes to implement and use operating standards other than the Operating Standards, the Concessionaire must provide such proposed operating standards to the Authority for Approval. The Concessionaire’s proposed operating standards must be

accompanied by an explanation of the Concessionaire's rationale for making its proposal and all relevant supporting information, certificates, reports, studies, investigations and other materials as are necessary to demonstrate that the Concessionaire's proposed operating standards are reasonably designed to achieve the objectives of the applicable Operating Standards that the proposed operating standards would modify and will assure that all affected portions of the Parking Facilities System are operated in a manner consistent with public purpose requirements of the Parking Authority Law and Section 3.18 (the "Approval Criteria"). The Authority may request any additional supporting information, certificates, reports, studies, investigations and other materials as are reasonably required by the Authority to determine if the Concessionaire's proposed operating standards are reasonably designed to satisfy the Approval Criteria. Approval of the Concessionaire's proposed operating standards may be withheld, delayed or conditioned only if the Authority reasonably determines that the Concessionaire's proposed operating standards are not reasonably designed to satisfy the Approval Criteria. Until the Authority provides its Approval for the implementation of the Concessionaire's proposed operating standards, the Concessionaire shall not implement the proposed operating standards and shall implement and comply with the Operating Standards. The Concessionaire's proposed operating standards shall be deemed incorporated into the Operating Standards upon Approval by the Authority in accordance with the terms hereof. If the Authority refuses to Approve any proposed operating standards and the Concessionaire disagrees with such refusal, the Concessionaire may submit the matter to dispute resolution under the provisions of Article 19.

Section 6.3. **Modified Operating Standards.**

(a) The Authority shall have the right, at any time during the Term, to modify or change the Operating Standards upon notice to the Concessionaire to (i) comply with any new Law or change in Law (other than a new Law or change of Law enacted by a Government Party) applicable to the Parking Facilities System Operations or (ii) conform the Operating Standards to standards or practices generally adopted with respect to Comparable Public Parking Garages. In the event the Authority modifies the Operating Standards in accordance with the immediately preceding sentence, the Concessionaire, at its cost and expense, shall perform all work required to implement and shall comply with all such modifications and changes and in no event shall the Concessionaire be excused from compliance with any such modification or change. For the avoidance of doubt, the Concessionaire will have the right to challenge any modified Operating Standard pursuant to Article 19 on the basis that it does not meet either of the requirements of this Section 6.3(a).

(b) If during the Term the Authority is of the opinion that a modification or change to the Operating Standards is necessary or desirable but such modification or change is not subject to Section 6.3(a), the Authority may upon reasonable written notice to the Concessionaire modify or change the Operating Standards; *provided, however*, that the Authority shall pay to the Concessionaire the Concession Compensation with respect thereto at the time such modification or change is implemented. At the Authority's request, the Concessionaire shall perform all work required to implement and shall comply with all such modifications and changes, and in no event shall the Concessionaire be excused from compliance with any such modification or change. The Authority shall

have the right to undertake the work necessary to ensure implementation of and compliance with any such modification or change to the Operating Standards if the Concessionaire fails to do so within a reasonable period of time; *provided, however*, that to the extent that such work is undertaken by the Authority, the Concessionaire shall pay to the Authority within 10 Business Days following demand therefor, or the Authority may offset from amounts owing to the Concessionaire in connection with such modification or change, the costs of the portion of the work performed in order to comply with the Operating Standards existing immediately prior to such modification or change, and the Authority shall be responsible only for the incremental costs of the additional work required in order to implement such proposed modification or change to the Operating Standards and, without duplication with the foregoing, the Concession Compensation with respect to such modification or change.

ARTICLE 7 PARKING FEES; REVENUES

Section 7.1. **Parking Fee Revenues.**

(a) *Authority Reserved Power.* The rates and other charges for the Parking Facilities System shall be determined by the Authority in accordance with the requirements of Section 5505(d)(9) of the Parking Authority Law, and this Article 7.

(b) *Authority Establishment of Schedule of Parking Rates.* The Authority has considered and evaluated the costs of construction, improvement, maintenance and operation of the Parking Facilities System and performance of the Parking Facilities Services to be undertaken by the Concessionaire, including the investment made by the Concessionaire and the payment of principal and interest of obligations assumed by the Concessionaire pursuant to this Agreement. In consideration thereof, the Authority, pursuant to the power vested in it under Section 5505(d)(9) of the Parking Authority Law, and subject to the right of appeal as provided therein accorded to any person questioning the reasonableness of rates fixed by the Authority, has adopted and approved, and hereby fixes and agrees that:

(i) the Initial Schedule of Parking Rates set forth in Schedule 3 is established in each of the calendar years 2011 to 2015, both inclusive as listed in Schedule 3;

(ii) the Schedule of Parking Rates for each calendar year starting January 1, 2016, shall be the rate set forth in Schedule 3 for calendar year 2015 Adjusted for Inflation by the percentage change in the Index from the Index for the month of June 2014 to the Index for the month of June of the calendar year immediately prior to the calendar year for which the Schedule of Parking Rates is to be established (rounded to next higher \$0.10);

(iii) commencing with the first day of the second month following the month that the initial Older Garage to be replaced or substantially rehabilitated pursuant

to Section 4.4 is replaced or substantially rehabilitated in accordance with Section 4.4 and placed in service for Parking Facilities Purposes and continuing for the next following 239 months (unless suspended as herein provided), the Schedule of Parking Rates established in Section 7.1(b)(i) and (ii) shall be increased by the Older Garage Surcharge. As used in this Section 7.1(b)(iii) the term “Older Garage Surcharge” means the additional parking charge imposed on each vehicle using the Parking Facilities System of \$0.12 per hour, or \$26.05 per month, Adjusted for Inflation by the percentage change in the Index from the Index for the month of June 2010 to the Index for the month of June of the calendar year immediately prior to the particular calendar year for which the Older Garage Surcharge is to be imposed. In addition, the Schedule of Parking Rates shall be increased by the amount of the then applicable City of Pittsburgh parking tax as applied to the Older Garage Surcharge. The Older Garage Surcharge shall be suspended if the Authority determines that the Concessionaire has failed to satisfy its obligations under Section 4.4 and shall be resumed as of the month following the month that the Authority determines that the Concessionaire is again in compliance with the requirements of Section 4.4.

(iv) the Schedule of Parking Rates established in Sections 7.1(b)(i) and (ii) include the City of Pittsburgh parking tax at the current rate of 37.5 percent of the consideration paid for each parking transaction; and in the event that such parking tax rate is changed, the Schedule of Parking Rates shall be as established pursuant to Sections 7.1(b)(i) and (ii) adjusted proportionately to account for the change in the parking tax rate (rounded to the next higher \$0.10);

(v) the Authority shall not reduce the Schedule of Parking Rates established under Sections 7.1(b)(i), (ii), (iii) and (iv), except as provided in Section 7.1(c); and

(vi) the rates established under the Schedule of Parking Rates set forth in Sections 7.1(b)(i), (ii), (iii) and (iv) are reasonable and necessary.

(c) *Lesser Rate Schedules.* Rate schedules at less than the Schedule of Parking Rates established under Section 7.1(b), or containing various charges for various time periods (such as variable rates, time-of-day rates, monthly rates, weekday, weekend and special event rates and discounts) not in excess of the Schedule of Parking Rates established under Section 7.1(b), will be put into effect by the Authority at the written request of the Concessionaire and within 40 days after such written request is filed with the Authority.

(d) *Rate Adjustments.* The Concessionaire may, as circumstances warrant, request the Authority to consider adjustment of the Schedule of Parking Rates established under Section 7.1(b), including any adjustments required to account for changes in the costs of providing the Parking System Services or for payment of the capital costs (including principal, interest, and return on equity investment) associated with any Parking Facilities System improvements undertaken or financed by either the Authority or the Concessionaire. The Authority shall give good faith consideration to any such request by the Concessionaire, and consistent with the requirements of Section 5505(d)(9) of the Parking Authority Law, the Authority will set, establish and maintain a

Schedule of Parking Rates that provides reasonable rates for purposes of providing for payment of all reasonable and appropriately documented costs of providing the Parking System Services, including the payment of any capital costs (including principal, interest, and return on equity investment) associated with any Parking Facilities System improvements undertaken or financed by either the Authority or the Concessionaire.

(e) *Rights of Concessionaire.* The Concessionaire shall, at all times during the Term, subject to the provisions of Sections 7.1(a)-(d), (i) have the right to collect and enforce payment of fees and charges, at rates not exceeding those permitted by the Schedule of Parking Rates then in effect, with respect to the parking of any vehicle in the Parking Facilities System in accordance with the provisions of this Agreement and (ii) have the right, title, entitlement and interest in all revenues (but not fines imposed with respect to Metered Parking Spaces) derived from fees and charges imposed by or on behalf of the Concessionaire in respect of vehicles using the Parking Facilities System during the Term (“Parking Fee Revenues”).

(f) *Appeal Rights.* The Parties acknowledge that the Schedule of Parking Rates may be subject to review by a court, and that as a result of such review, such parking rates may be subject to adjustment by a court order issued pursuant to Section 5505(d) of the Parking Authority Law. Any such court order shall not constitute an Adverse Action if the Authority has defended diligently the reasonableness of the contested Schedule of Parking Rates in any such court proceeding. The Authority shall give notice to the Concessionaire of the commencement of any suit or proceeding seeking a reduction in the Schedule of Parking Rates and shall cooperate with the Concessionaire in connection with the defense of such suit or proceeding. The Authority shall not be obligated to appeal any such final court order unless the Concessionaire shall have agreed to assume all costs and expenses related to such appeal.

(g) *Compensation Events.* In the case of any Schedule of Parking Rates established pursuant to Section 7.1(b), with no adjustment pursuant to Section 7.1(d), that is thereafter reduced as a result of a final court order issued pursuant to Section 5505(d) of the Parking Authority Law, such reduction shall constitute a Compensation Event. It shall not be a Compensation Event if any Schedule of Parking Rates adjusted pursuant to Section 7.1(d) is reduced by such a court order.

Section 7.2. Parking Fee Rate Notices. The Concessionaire shall provide to the Authority, no later than the end of each calendar quarter, notice of the fees and fee types charged by the Concessionaire for the parking of any vehicle in the Parking Facilities System. Such notice shall include the fees and fee types charged during the prior calendar quarter and expected to be charged during the next calendar quarter and shall confirm to the Authority, that no fee or proposed fee for Parking Facilities Services for the then current or the next quarter will (at any time) exceed the maximum fee for such Parking Facilities Service set forth in the Schedule of Parking Rates.

Section 7.3. Other Concessionaire Revenues. The Concessionaire shall have the right, title, entitlement and interest in all rentals and revenues generated within the Parking Facilities System from (a) the erection of any forms of advertising, *provided* that

such advertising complies with the Advertising Policy attached hereto as Schedule 11; and (b) Allowable Service Concessions (“Other Concession Revenues”).

Section 7.4. Parking Fines and Enforcement.

(a) *General Provisions.* With respect to Metered Parking Spaces, the Parties acknowledge and agree that effective enforcement of parking rules and regulations by the Government Parties and the adjudication and punishment of Persons that violate such rules and regulations are material to the Parties and to the administration of this Agreement. The Concessionaire acknowledges and agrees that the Government Parties’ system for the enforcement of parking rules and regulations as in effect on the date of execution of this Agreement satisfies the requirements of this Section 7.4 and that the Government Parties will incur no liability to the Concessionaire during such period as such system remains unchanged and in effect. The Government Parties covenant that with respect to the Metered Parking Spaces they will enforce parking rules and regulations, as in effect from time to time, in accordance with the provisions of this Section 7.4 and acknowledge that their failure to do so may result in Losses to the Concessionaire and thereby may constitute a Compensation Event. The Concessionaire acknowledges and agrees that with respect to the Metered Parking Spaces the adjudication of parking violations and the punishment of violators is a judicial or quasi-judicial matter and that the outcome of such adjudications (and the methods employed by the City and the Authority with respect thereto) and the punishments, if any, imposed, may not be compensated for under this Agreement and will not give rise to a Compensation Event or result in Concession Compensation in any event. During the Term and pursuant to their Reserved Powers, but subject to applicable provisions of the Law, the City shall adopt and shall enforce or cause the Authority to enforce rules and regulations with respect to the Metered Parking Spaces. Violations of parking rules and regulations shall be enforced by the Government Parties in accordance with Law. With respect to the Metered Parking Spaces, the Government Parties agree to establish, maintain and undertake procedures for the enforcement of parking rules and regulations that are designed to deter parking violations, including procedures for the collection of unpaid parking tickets by such means as then permitted by Law. In addition, the Government Parties shall maintain at all times during the Term a vehicle immobilization program (the form and method of which may be determined from time to time by the City, the Authority or another Governmental Authority). The Government Parties have the right to use other methods of deterrence and immobilization that are not currently being used as of the date of this Agreement. The amount of the fines imposed for violations with respect to Metered Parking Spaces shall be established by the City and revised from time to time as necessary to deter parking violations. In addition, the Government Parties shall at all times during the Term maintain a vehicle immobilization program if then permitted by Law. In no event shall this prevent the Government Parties from using alternative methods of deterrence and immobilization which are not used as of the date of this Agreement. The City shall establish and maintain a system for the adjudication and punishment of those Persons that commit parking violations. With respect to parking by Exempt Persons, the City will penalize abuse of such parking permits through significant fines and other appropriate measures and will take all reasonable measures to ensure that levels of counterfeit parking permits are minimized.

(b) *Specific Undertakings.* In the administration of its vehicle immobilization program, the Government Parties will not discriminate between tickets issued for metered parking violations and tickets issued for other parking violations. Whenever a metered parking violation has neither been contested or paid and the Authority has obtained accurate and complete registration information with respect to the registered owner of the vehicle, the Authority will mail, or cause to be mailed, notices of violation, determination and final determination to the registered owner of the cited vehicle. If the Authority is unable to collect the amount of any unpaid metered parking violation fine or penalty within 180 days following the final adjudication of such fine or penalty, and the aggregate amount due equals or exceeds the amount of the fine for the violation, then the Authority shall refer such collection to a law firm or collection agency.

(c) *Compensation Events.* Each of the following shall constitute a Compensation Event: (i) if the Government Parties requires more than five final determinations of parking violation liability for a passenger vehicle to become eligible for vehicle immobilization, provided, however, that nothing in this clause (i) limits the Government Parties from enacting an outstanding parking penalty, costs and interest balance threshold value for vehicle immobilization eligibility as long as such threshold value is less than or equal to five times the average fine or penalty value of all final determinations of parking violation liability rendered in the prior 12 months, and (ii) if the Government Parties offer Persons with unpaid parking fines or penalties the option of paying an amount as full satisfaction of the fine and penalty if that amount is less than eight times the then weighted average hourly parking fee for Metered Parking Spaces in Parking Lots.

(d) *Limitation on Remedies.* A failure on the part of the City or the Authority to satisfy the provisions of Sections 7.4(a), (b) or (c) shall not constitute a City Default, an Authority Default or an Adverse Action.

ARTICLE 8 REPORTING; AUDITS; INSPECTIONS

Section 8.1. **Reports.**

(a) *Incident Management and Notifications.* The Concessionaire shall provide notice to the Authority within 24 hours of all emergencies, and promptly provide notice to the Authority of all accidents and incidents occurring on or at the Parking Facilities System, and of all claims in excess of \$50,000 made by or against the Concessionaire, or potential claims in excess of \$50,000 that the Concessionaire reasonably expects to make against, or to be made against it by, third parties.

(b) *Environmental Incident Management and Notifications.* The Concessionaire shall provide notice to the Government Parties within 24 hours following the Concessionaire's becoming aware of the discharge, dumping, spilling or other release (accidental or otherwise) of any Reportable Quantity of Hazardous Substances occurring on or at the Parking Facilities System and the location at which the incident has occurred,

the time, the agencies involved, the damage that has occurred and the remedial action taken.

(c) *Financial Reports.* Until the End Date, the Concessionaire shall deliver to the Authority within 120 days after the end of each Reporting Year a copy of the audited balance sheets of the Concessionaire at the end of each such Reporting Year, and the related audited statements of income, changes in equity and cash flows for such Reporting Year, including in each case the notes thereto, together with the report thereon of the independent certified public accountants of the Concessionaire, in each case in a manner and containing information consistent with the Concessionaire's current practices and certified by the Concessionaire's chief financial officer that such financial statements fairly present the financial condition and the results of operations, changes in equity and cash flows of the Concessionaire as at the respective dates of and for the periods referred to in such financial statements, all in accordance with generally accepted accounting principles in the United States consistently applied. Such financial statements shall reflect the consistent application of such accounting principles throughout the periods involved, except as disclosed in the notes to such financial statements.

Section 8.2. **Information.**

(a) *Furnish Information.* At the request of a Government Party, the Concessionaire shall, at the Concessionaire's cost and expense and at any and all reasonable times during the Term: (i) make available or cause to be made available (and, if requested by a Government Party, furnish or cause to be furnished) to the Government Parties all Information relating to the Parking Facilities System Operations, this Agreement or the Parking Facilities System as may be specified in such request and as shall be in the possession or control of the Concessionaire or its Representatives, and (ii) permit the Government Parties, after giving 10 Business Days' prior notice to the Concessionaire (which notice shall identify the persons to be present for an interview and describe with reasonable specificity the subject matter to be raised in the interview), to discuss the obligations of the Concessionaire under this Agreement with any of the directors, officers, employees or managers of the Concessionaire, the Operator or their respective Representatives (it being agreed that the Concessionaire shall have the right to be present during any such discussions with the Operator or Representatives of the Concessionaire or the Operator), for the purpose of enabling the Government Parties to determine whether the Concessionaire is in compliance with this Agreement, *provided* that, in the case of investigations of possible criminal conduct or City ordinance violations, no prior notice shall be required to the Concessionaire and the Concessionaire shall not have the right to be present during any discussions with the Operator or Representatives of the Concessionaire or the Operator. For the avoidance of doubt, this Section 8.2(a) does not impose a requirement to retain Information not otherwise retained in the normal course of business or required to be retained by applicable Law.

(b) *Confidentiality.* Unless disclosure is required by applicable Law, the Government Parties shall keep confidential any Information obtained from the Concessionaire or its Representatives that constitutes "confidential proprietary information" or "trade secrets" (as those terms are defined under the Pennsylvania Right-to-Know Law) that are exempt from required disclosure under the Pennsylvania Right-to-

Know Law, where such Information is designated and clearly marked as such by the Concessionaire in writing at the time when the Information is submitted to the Government Parties; *provided, however*, that the Government Parties shall have the right to determine, in its reasonable discretion, whether any exemption from disclosure under the Pennsylvania Right-to-Know Law applies to any such Information; *provided further* that in the event a Government Party determines that the exemptions from disclosure under the Pennsylvania Right-to-Know Law do not apply to any such Information, the Government Party shall provide reasonable notice to, and shall consult with, the Concessionaire prior to disclosure of such Information. In the event that the Concessionaire requests the Government Party to defend an action seeking the disclosure of Information that the Government Party determines to be exempt from disclosure pursuant to the Pennsylvania Right-to-Know Law and this Section 8.2(b), the Concessionaire shall reimburse the Government Party for the reasonable costs and expenses (including attorneys' fees of the prevailing party) incurred by the Government Party in defending any such action. Notwithstanding anything to the contrary herein, the Government Party and the Concessionaire may disclose the United States federal tax treatment and tax structure of the Transaction.

Section 8.3. **Inspection, Audit and Review Rights of the Government Parties.**

(a) *Audit Right.* In addition to the rights set out in Section 8.2, a Government Party may, at all reasonable times, upon 10 Business Days' prior notice, except in the case of investigations of possible criminal conduct or City ordinance violations, in which case no prior notice shall be required, cause a Representative designated by it to, carry out an Audit of the Information required to be maintained or delivered by the Concessionaire under this Agreement in connection with the performance of the Parking Facilities System Operations for the purpose of verifying the information contained therein and shall be entitled to make copies thereof and to take extracts therefrom, at the Government Party's expense, but, in any event, subject to Section 8.2(b). The Concessionaire, at the cost and expense of the Concessionaire, shall, at reasonable times, make available or cause to be made available to each Government Party or its designated Representative such information and material as may reasonably be required by the Government Party or its designated Representative for its purposes and otherwise provide such cooperation as may be reasonably required by the Government Party in connection with the same.

(b) *Inspection Right.* The Government Parties and their Representatives shall, at all reasonable times and upon reasonable prior notice, have access to the Parking Facilities System and every part thereof (*provided* that no access is permitted to the cash collections or any software or other intangibles) and the Concessionaire, at the reasonable cost and expense of the Concessionaire, shall and shall cause its Representatives to, furnish the Government Parties with every reasonable assistance for inspecting the Parking Facilities System and the Parking Facilities System Operations for the purpose of Auditing the Information or ascertaining compliance with this Agreement and applicable Law.

(c) *Tests.* A Government Party and its Representatives shall, with the prior consent of the Concessionaire (which shall not be unreasonably withheld, conditioned or

delayed), except in the case of investigations of possible criminal conduct or City ordinance violations, in which case no consent shall be required, be entitled, at the sole cost and expense of the Government Party, and at any time and from time to time, to perform or cause to be performed any test, study or investigation in connection with the Parking Facilities System or the Parking Facilities System Operations as the Government Party may reasonably determine to be necessary in the circumstances and the Concessionaire, at the cost and expense of the Concessionaire, shall, and shall cause its Representatives to, furnish the Government Party or its Representatives with reasonable assistance in connection with the carrying out of such tests, procedures, studies and investigations.

(d) *No Waiver.* Failure by the Government Parties or their Representatives to inspect, review, test or Audit the Concessionaire's responsibilities under this Agreement or any part thereof or the Information, shall not constitute a waiver of any of the rights of the Government Parties hereunder or any of the obligations or liabilities of the Concessionaire hereunder. Inspection, review, testing or Audit not followed by a notice of Concessionaire Default shall not constitute a waiver of any Concessionaire Default or constitute an acknowledgement that there has been or will be compliance with this Agreement and applicable Law.

(e) *No Undue Interference.* In the course of performing its inspections, reviews, tests and Audits hereunder, the Government Parties shall minimize the effect and duration of any disruption to or impairment of the Parking Facilities System Operations or the Concessionaire's rights or responsibilities under this Agreement, having regard to the nature of the inspections, reviews, tests and Audits being performed, except as necessary in the case of investigations of possible criminal conduct or City ordinance violations.

Section 8.4. Audits, Assistance, Inspections and Approvals. Wherever in this Agreement reference is made to a Government Party or its Representatives providing assistance, services, Approvals or consents to or on behalf of the Concessionaire or its Representatives or to a Government Party or its Representatives performing an Audit or inspecting, testing, reviewing or examining the Parking Facilities System, the Parking Facilities System Operations or any part thereof or the books, records, documents, budgets, proposals, requests, procedures, certificates, plans, drawings, specifications, contracts, agreements, schedules, reports, lists or other instruments of the Concessionaire or its Representatives, such undertaking by a Government Party or its Representatives shall not relieve or exempt the Concessionaire from, or represent a waiver of, any requirement, liability, Concessionaire Default, covenant, agreement or obligation under this Agreement or at law or in equity and shall not create or impose any requirement, liability, covenant, agreement or obligation (including an obligation to provide other assistance, services or Approvals) on a Government Party or its Representatives not otherwise created or imposed pursuant to the express provisions of this Agreement.

ARTICLE 9
REPRESENTATIONS AND WARRANTIES

Section 9.1. **Representations and Warranties of the Authority.** The Authority makes the following representations and warranties to the Concessionaire and acknowledges that the Concessionaire and its Representatives are relying upon such representations and warranties in entering into this Agreement:

(a) *Organization.* The Authority is a body corporate and politic, duly organized and existing under the Constitution and laws of the Commonwealth of Pennsylvania.

(b) *Power and Authority.* The Board has (i) duly adopted a resolution authorizing the Transaction, which remains in full force and effect, (ii) duly authorized and approved the execution and delivery of this Agreement and (iii) duly authorized and approved the performance by the Authority of its obligations contained in this Agreement. The Authority has the power and authority to enter into this Agreement and to do all acts and things and execute and deliver all other documents as are required hereunder to be done, observed or performed by it in accordance with the terms hereof.

(c) *Enforceability.* This Agreement has been duly authorized, executed and delivered by the Authority and constitutes a valid and legally binding obligation of the Authority, enforceable against the Authority in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

(d) *Title.* At the Time of Closing, the Authority will have good and marketable title to the Parking Facilities System necessary for the Parking Facilities System Operations pursuant to this Agreement, subject only to Permitted Authority Encumbrances and Permitted Concessionaire Encumbrances (other than the Permitted Concessionaire Encumbrances specified in clause (iv), clause (viii) and clause (ix) as it pertains to clauses (iv) and (vii), of the definition of the term “Permitted Concessionaire Encumbrances”). Subject to any and all Permitted Authority Encumbrances and Permitted Concessionaire Encumbrances (other than the Permitted Concessionaire Encumbrances specified in clause (iv), clause (vii) and clause (viii) as it pertains to clauses (iv) and (vii), of the definition of the term “Permitted Concessionaire Encumbrances”) existing at the Time of Closing, there is no recorded or unrecorded agreement, contract, option, commitment, right, privilege or other right of another binding upon, or which at any time in the future may become binding upon, the Authority to sell, transfer, convey, subject to lien, charge, grant a security interest in, or in any other way dispose of or materially encumber any portion of the Parking Facilities System. The recorded or unrecorded restrictions, exceptions, easements, rights of way, reservations, limitations, interests and other matters that affect title to the Parking Facilities System (or any portion thereof) do not and will not materially adversely affect the Concessionaire’s ability to operate the Parking Facilities System in accordance with the terms hereof. Following defeasance of the outstanding Parking Facilities System Bonds pursuant to Section 2.4(a), no indebtedness for borrowed money of the City or the Authority will be secured by any right or interest in the Parking Facilities System or the revenues or

income therefrom and no Person will have any claim or right to, or interest in, any income, profits, rents, or revenue derived from or generated with respect to the Parking Facilities System (other than the Concessionaire under this Agreement and any claims, rights or interests granted by or otherwise relating to the Concessionaire).

(e) *No Conflicts.* The execution and delivery of this Agreement by the Authority, the consummation of the transactions contemplated hereby (including the operation of the Parking Facilities System in accordance with the terms of this Agreement) and the performance by the Authority of the terms, conditions and provisions hereof has 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 Authority under (i) any applicable Law or (ii) any agreement, instrument or document to which the Authority is a party or by which it is bound.

(f) *Consents.* No Consent is required to be obtained by the Authority from, and no notice or filing is required to be given by the Authority to or made by the Authority with, any Person (including any Governmental Authority) in connection with the execution, delivery and performance by the Authority of this Agreement or the consummation of the transactions contemplated hereby as of Closing, except for those Consents which have been obtained or will be obtained on or before Closing or, with respect to the performance of the Authority's obligations after Closing, those Consents which the Authority has obtained or reasonably expects to obtain in the ordinary course prior to the time when such Consent is required.

(g) *Compliance with Law; Litigation; Environmental Matters.*

(i) To the best of the Authority's knowledge, the Authority has operated and is operating the Authority Parking Facilities and the City Parking Facilities in compliance, in all material respects, with all applicable Laws and is not in breach of any applicable Law that would have a material adverse effect on the operations of the Parking Facilities System or on the Concessionaire Interest. There are no Authorizations from any Governmental Authority necessary for the operation of the Parking Facilities System as currently being operated except for those Authorizations listed in Schedule 12.

(ii) There is no action, suit or proceeding, at law or in equity, or before or by any Governmental Authority, pending nor, to the best of the Authority's knowledge, threatened against the Authority prior to or at the Time of Closing, which will have a material adverse effect on the operations of the Parking Facilities System. As of the date of this Agreement, there is no action, suit or proceeding, at Law or in equity, or before or by any Governmental Authority, pending nor, to the best of the Authority's knowledge, threatened against the Authority which could materially affect the validity or enforceability of this Agreement.

(h) *Financial Statements.* The financial statements of the Authority for the fiscal years ending September 30 of each of the years 2005 to 2009, both inclusive, fairly present the financial position and results of operations of the portion or portions of the Parking Facilities System reflected in such financial statements as of the dates and for the

periods stated in such financial statements in accordance with generally accepted accounting principles, as applied to governmental units.

(i) *Parking Facilities System Contracts.* Each Parking Facilities System Contract is in full force and effect, has been made available for review by the Concessionaire and shall be terminated at the Time of Closing in accordance with Section 2.5(j). The Authority is not in material breach of its obligations under any Parking Facilities System Contract, and no act or event has occurred which, with notice or lapse of time, or both, would constitute a material breach thereof, and to the knowledge of the Authority no other party to any Parking Facilities System Contract is in material breach of its obligations under any Parking Facilities System Contract, and no act or event has occurred with respect to any such party, which with notice or lapse of time, or both, would or is reasonably be expected to constitute a material breach thereof. The Parking Facilities System Contracts are all of the material contracts and agreements (i) to which the City or the Authority is a party that relate to the Parking Facilities System Operations or (ii) that bind the Parking Facilities System in any material respect.

(j) *Insurance Policies.* All insurance policies set forth on Schedule 13 are in full force and effect with respect to the period between the date hereof and the Time of Closing or will be replaced with like insurance policies that will be in full force and effect through the Time of Closing.

(k) *Absence of Changes.* Since September 30, 2009, there has not been any transaction or occurrence that has resulted or is reasonably likely to result in a Material Adverse Effect.

(l) *Brokers.* Except for Morgan Stanley & Co. Incorporated and Scott Balice Strategies, LLC, whose fees will be paid by the Authority, there is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of the Authority who might be entitled to any fee or commission from the Authority in connection with the transactions contemplated by this Agreement.

(m) *Accuracy of Information.* To the knowledge of the Authority, all consultant reports and financial information prepared by the Government Parties in connection with the Transaction and all historical financial statements and results of operations regarding the Parking Facilities System that the Government Parties provided to the Concessionaire in the virtual data room was accurate in all material respects at the time such information was prepared.

Section 9.2. Representations and Warranties of the City. The City makes the following representations and warranties to the Concessionaire and acknowledges that the Concessionaire and its Representatives are relying upon such representations and warranties in entering into this Agreement:

(a) *Organization.* The City is a municipal corporation and city of the second class, duly organized and existing under the Constitution and laws of the Commonwealth of Pennsylvania and the City of Pittsburgh Home Rule Charter.

(b) *Power and Authority.* The City Council has (i) duly adopted an ordinance authorizing the Transaction, which remains in full force and effect, (ii) duly authorized and approved the execution and delivery of this Agreement and (iii) duly authorized and approved the performance by the City of its obligations contained in this Agreement. The City has the power and authority to enter into this Agreement and to do all acts and things and execute and deliver all other documents as are required hereunder to be done, observed or performed by it in accordance with the terms hereof.

(c) *Enforceability.* This Agreement has been duly authorized, executed and delivered by the City and constitutes a valid and legally binding obligation of the City, enforceable against the City in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

(d) *Title.* Prior to the Time of Closing, the City will have conveyed to the Authority good and marketable title to the City Parking Facilities as necessary for the Parking Facilities System Operations pursuant to this Agreement, subject only to Permitted Authority Encumbrances and Permitted Concessionaire Encumbrances (other than the Permitted Concessionaire Encumbrances specified in clause (iv), clause (viii) and clause (ix) as it pertains to clauses (iv) and (viii), of the definition of the term “Permitted Concessionaire Encumbrances”). Subject to any and all Permitted Authority Encumbrances and Permitted Concessionaire Encumbrances (other than the Permitted Concessionaire Encumbrances specified in clause (iv), clause (vii) and clause (viii) as it pertains to clauses (iv) and (vii), of the definition of the term “Permitted Concessionaire Encumbrances”) existing at the Time of Closing, there is no recorded or unrecorded agreement, contract, option, commitment, right, privilege or other right of another binding upon, or which at any time in the future may become binding upon, the City to sell, transfer, convey, subject to lien, charge, grant a security interest in, or in any other way dispose of or materially encumber the City Parking Facilities. No indebtedness for borrowed money of the City is or will be secured by any right or interest in the Parking Facilities System or the revenues or income therefrom (other than the revenues and income to be derived after the End Date) and no judgment lien exists or shall exist in any revenue derived from or generated with respect to the City Parking Facilities.

(e) *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 Facilities System in accordance with the terms of this Agreement) and the performance by the City of the terms, conditions and provisions hereof has 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.

(f) *Consents.* No Consent is required to be obtained by the City from, and no notice or filing is required to be given by the City to or made by the City with, any Person (including any Governmental Authority) in connection with the execution, delivery and performance by the City of this Agreement or the consummation of the transactions contemplated hereby as of the Closing, except for those Consents which have been

obtained or will be obtained on or before the Closing or, with respect to the performance of the City's obligations after Closing, those Consents which the City has obtained or reasonably expects to obtain in the ordinary course prior to the time when such Consent is required.

(g) *Compliance with Law; Litigation; Environmental Matters.* There is no action, suit or proceeding, at law or in equity, or before or by any Governmental Authority, pending nor, to the best of the City's knowledge, threatened against the City prior to or at the Time of Closing, which will have a material adverse effect on the operations of the Parking Facilities System. As of the date of this Agreement, there is no action, suit or proceeding, at Law or in equity, or before or by any Governmental Authority, pending nor, to the best of the City's knowledge, threatened against the City which could materially affect the validity or enforceability of this Agreement.

(h) *Parking Facilities System Contracts.* The City is not in material breach of its obligations under any Parking Facilities System Contract, and no act or event has occurred which, with notice or lapse of time, or both, would constitute a material breach thereof.

(i) *Brokers.* Except for Morgan Stanley & Co. Incorporated and Scott Balice Strategies, LLC, whose fees will be paid by the Authority, there is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of the City who might be entitled to any fee or commission from the City in connection with the transactions contemplated by this Agreement.

(j) *Accuracy of Information.* To the knowledge of the City, all consultant reports and financial information prepared by the Government Parties in connection with the Transaction and all historical financial statements and results of operations regarding the Parking Facilities System that the Government Parties provided to the Concessionaire in the virtual data room was accurate in all material respects at the time such information was prepared.

Section 9.3. Representations and Warranties of the Concessionaire. The Concessionaire makes the following representations and warranties to the Government Parties (and acknowledges that the Government Parties are relying upon such representations and warranties in entering into this Agreement):

(a) *Organization.* The Concessionaire is duly organized, validly existing and in good standing under the laws of the state of its organization. The capital stock, units, partnership or membership interests and other equity interests or securities of the Concessionaire (including options, warrants and other rights to acquire any such equity interests) are owned by the Persons set forth in the written certification that the Concessionaire delivered to the Authority prior to the date hereof.

(b) *Power and Authority.* The Concessionaire has the power and authority to enter into this Agreement and to do all acts and things and execute and deliver all other documents as are required hereunder to be done, observed or performed by it in accordance with the terms hereof.

(c) *Enforceability.* This Agreement has been duly authorized, executed and delivered by the Concessionaire and constitutes a valid and legally binding obligation of the Concessionaire, enforceable against it in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

(d) *No Conflicts.* The execution and delivery of this Agreement by the Concessionaire, the consummation of the transactions contemplated hereby and the performance by the Concessionaire of the terms, conditions and provisions hereof has not and will not contravene or violate or result in a material breach of (with or without the giving of notice or lapse of time, or both) or acceleration of any material obligations of the Concessionaire under (i) any applicable Law, (ii) any material agreement, instrument or document to which the Concessionaire is a party or by which it is bound or (iii) the articles, bylaws or governing documents of the Concessionaire.

(e) *Consents.* No Consent is required to be obtained by the Concessionaire from, and no notice or filing is required to be given by the Concessionaire to or made by the Concessionaire with, any Person (including any Governmental Authority) in connection with the execution, delivery and performance by the Concessionaire of this Agreement or the consummation of the transactions contemplated hereby, except for such consents which have been obtained and notices which have been given as of the date hereof.

(f) *Compliance with Law; Litigation.* The Concessionaire is not in breach of any applicable Law that could have a material adverse effect on the operations of the Parking Facilities System. Neither the Concessionaire nor any Affiliate of the Concessionaire is listed on any of the following lists maintained by the Office of Foreign Assets Control of the United States Department of the Treasury, the Bureau of Industry and Security of the United States Department of Commerce or their successors, or on any other list of Persons with which the City or the Authority may not do business under applicable Law: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List. There is no action, suit or proceeding, at law or in equity, or before or by any Governmental Authority, pending nor, to the best of the Concessionaire's knowledge, threatened against the Concessionaire prior to or at the Time of Closing, which will have a material adverse effect on (i) the transactions contemplated by this Agreement or (ii) the validity or enforceability of this Agreement.

(g) *Operator.* To the extent the Operator is not the Concessionaire, the Concessionaire represents and warrants as follows: To the best knowledge of the Concessionaire: (i) the Operator is duly organized, validly existing and in good standing under the laws of the state of its organization; (ii) the capital stock of the Operator (including options, warrants and other rights to acquire capital stock) is owned by the Persons set forth in the written certification that the Concessionaire delivered to the Authority prior to the date of this Agreement; (iii) the Operator has the power and authority to do all acts and things and execute and deliver all other documents as are required hereunder to be done, observed or performed by it in connection with its engagement by the Concessionaire; (iv) the Operator has all necessary expertise,

qualifications, experience, competence, skills and know-how to perform the Parking Facilities System Operations in accordance with this Agreement; and (v) the Operator is not in breach of any applicable Law that would have a material adverse effect on the operations of the Parking Facilities System.

(h) *RFQ and RFP.* All of the information in the Concessionaire's Statement of Affiliations submitted pursuant to City of Pittsburgh Code of Ordinances, Title One, Article XI, § 197.08(c), all information regarding the Concessionaire's qualifications set forth in the response to the request for Parking Facilities System concessionaire qualifications and the response to the request for proposals delivered by or on behalf of the Concessionaire to the Authority in connection with the execution of this Agreement is true, accurate and correct in all material respects.

(i) *Brokers.* Except for any broker or advisor whose fees will be paid by the Concessionaire or its Affiliates, there is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of the Concessionaire or any of its Affiliates who might be entitled to any fee or commission in connection with the transactions contemplated by this Agreement.

Section 9.4. **Non-Waiver.** No investigations made by or on behalf of any Party at any time shall have the effect of waiving, diminishing the scope of or otherwise affecting any representation or warranty made by the other Party in this Agreement or pursuant to this Agreement. No waiver by a Party of any condition, in whole or in part, shall operate as a waiver of any other condition.

Section 9.5. **Survival.**

(a) *Authority's Representations and Warranties.* The representations and warranties of the Authority contained in Section 9.1 shall survive and continue in full force and effect for the benefit of the Concessionaire as follows: (i) as to the representations and warranties contained in Sections 9.1(a) through 9.1(g), inclusive, and Section 9.1(m) without time limit; and (ii) as to all other matters, for a period of 24 months following the Closing Date unless a bona fide notice of a Claim shall have been given, in writing in accordance with Section 20.1, prior to the expiry of that period, in which case the representation and warranty to which such notice applies shall survive in respect of that Claim until the final determination or settlement of that Claim, provided such determination or settlement is being pursued diligently and in good faith by the applicable Party.

(b) *City's Representations and Warranties.* The representations and warranties of the City contained in Section 9.2 shall survive and continue in full force and effect for the benefit of the Concessionaire as follows: (i) as to the representations and warranties contained in Sections 9.2(a) through 9.2(g), inclusive, and Section 9.2(j) without time limit; and (ii) as to all other matters, for a period of 24 months following the Closing Date unless a bona fide notice of a Claim shall have been given, in writing in accordance with Section 20.1, prior to the expiry of that period, in which case the representation and warranty to which such notice applies shall survive in respect of that Claim until the final determination or settlement of that Claim, provided such

determination or settlement is being pursued diligently and in good faith by the applicable Party.

(c) *Concessionaire's Representations and Warranties.* The representations and warranties of the Concessionaire contained in Section 9.3 shall survive and continue in full force and effect for the benefit of the Government Parties as follows: (i) as to the representations and warranties contained in Sections 9.3(a) through 9.3(h), inclusive, without time limit; and (ii) as to all other matters, for a period of 24 months following the Closing Date unless a bona fide notice of a Claim shall have been given, in writing in accordance with Section 20.1, before the expiry of that period, in which case the representation and warranty to which such notice applies shall survive in respect of that Claim until the final determination or settlement of that Claim, provided such determination or settlement is being pursued diligently and in good faith by the applicable Party.

ARTICLE 10 FINANCE OBLIGATIONS

Section 10.1. Concessionaire's Obligations. Except with respect to the Authority's funding of costs and expenses related to Directives as contemplated by Section 5.1, the Concessionaire shall be responsible for obtaining any financing for the performance of its obligations under this Agreement, which financing shall comply with all requirements of this Agreement.

Section 10.2. Government Party Obligations. Each Government Party shall, to the extent consistent with applicable Law and at the sole cost and expense of the Concessionaire, cooperate with the Concessionaire with respect to documentation reasonably necessary to obtain, maintain and replace financing for the performance of the obligations of the Concessionaire hereunder. A Government Party's cooperation may include reviewing, approving and executing documents which substantiate the terms of this Agreement (including any consents and agreements necessary to confirm that the debt evidenced by the relevant financing constitutes Leasehold Mortgage Debt) and making information and material available to the Concessionaire's lenders to facilitate financing to the extent permitted by applicable Law and contractual obligations with third parties and to the extent reasonable in the circumstances. If requested to do so by the Concessionaire, a Government Party shall, at the sole cost and expense of the Concessionaire, use its reasonable efforts to cause the Government Party's independent public accountants to consent to the preparation, use and inclusion of certain financial information regarding the Parking Facilities System in connection with the Concessionaire's public or private offering of securities, as the case may be. In addition, the Government Parties shall, promptly upon the request of the Concessionaire or any Leasehold Mortgagee, execute, acknowledge and deliver to the Concessionaire, or any of the parties specified by the Concessionaire, standard consents and estoppel certificates with respect to this Agreement which may be qualified to the best of the knowledge and belief of a designated Representative of the Government Party. Nothing herein shall require the a Government Party to incur any additional obligations or liabilities (unless

the Government Party shall have received indemnification, as determined in the Government Party's discretion, with respect thereto) or to take any action, give any consent or enter into any document inconsistent with the provisions of this Agreement.

Section 10.3. Concessionaire's Obligation for Estoppel Certificates. The Concessionaire shall, within 10 days of the request of a Government Party, execute and deliver to the Government Party, or any of the parties specified by the Government Party, standard consents and estoppel certificates with respect to this Agreement which may be qualified to the best of the knowledge and belief of a designated Representative of the Concessionaire. Nothing herein shall require the Concessionaire to incur any additional obligations or liabilities or to take any action, give any consent or enter into any document inconsistent with the provisions of this Agreement or applicable Law.

Section 10.4. Prohibited Tax Shelter Transactions. The Concessionaire covenants and agrees that it shall not enter into any lease, sublease, concession, management agreement, operating agreement or other similar arrangement or other transaction that would cause the City or the Authority to become a party to a "prohibited tax shelter transaction" within the meaning of section 4965 of the Internal Revenue Code of 1986 (it being agreed that, for purposes of this Section 10.4, neither the City nor the Authority shall be treated as having become a party to any such transaction solely by virtue of the execution of this Agreement). A violation of this Section 10.4 by the Concessionaire shall entitle a Government Party to (a) recover from the Concessionaire, to the extent permitted by applicable Law, the amount of any Tax liability to which the Government Party, or any Government Party official is subject and (b) require the Concessionaire, at the Concessionaire's expense, to prepare timely all statements and returns, and to maintain all lists and similar information that the City or the Authority becomes obligated to disclose, file or maintain with any taxing authority or participant or otherwise as a result of such transaction.

ARTICLE 11 COMPLIANCE WITH LAWS

Section 11.1. Compliance with Laws. The Concessionaire must at all times at its own cost and expense observe and comply, in all material respects, and cause the Parking Facilities System Operations to observe and comply, in all material respects, with all applicable Laws now existing or later in effect that are applicable to it or such Parking Facilities System Operations, including those Laws expressly enumerated in this Article 11, and those that may in any manner apply with respect to the performance of the Concessionaire's obligations under this Agreement. The Concessionaire must notify the Government Parties within seven days after receiving notice from a Governmental Authority that the Concessionaire may have violated any Laws as described above.

Section 11.2. **Non-Discrimination.**

(a) *Non-Discrimination Requirements.* The Concessionaire shall comply with all applicable federal, state and local Laws regarding non-discrimination, including:

(i) the Civil Rights Act of 1964, 42 U.S.C. § 2000 *et seq.* (1981); (ii) the Civil Rights Act of 1991, P.L. 102-166; (iii) Executive Order Number 11246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. § 2000(e) note, as amended by Executive Order Number 11375, 32 Fed. Reg. 14,303 (1967) and by Executive Order Number 12086, 43 Fed. Reg. 46,501 (1978); (iv) the Age Discrimination Act, 42 U.S.C. §§ 6101-6106 (1981); (v) the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-34 (1967); (vi) the Rehabilitation Act of 1973, 29 U.S.C. §§ 793-794 (1981); (vii) the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* (1990); (viii) the Pennsylvania Human Relations Act, Act of October 27, 1955 (P.L. 744, No. 222) as amended, 43 P.S. §§ 951-963; and (ix) City of Pittsburgh Code of Ordinances, Title Six, Article V, Chapters 651 through 659.

(b) *Contract Provisions.* The Concessionaire shall cause all Contractors to comply with each of the federal laws, Pennsylvania Laws and City Laws referenced in this Section 11.2, and shall include a provision to such effect in each contract entered into with any Contractor.

Section 11.3. Non-Discrimination/Sexual Harassment Clause. Pursuant to 62 Pa.C.S. § 3701, the Concessionaire agrees as follows during the Term:

(a) In the hiring of any employees for the manufacture of supplies, performance of work, or any other activity required under this Agreement or any subcontract, the Concessionaire, any Contractor or any Person acting on behalf of the Concessionaire or a Contractor shall not by reason of gender, race, creed, or color discriminate against any citizen of the Commonwealth of Pennsylvania who is qualified and available to perform the work to which the employment relates.

(b) Neither the Concessionaire nor any Contractor nor any Person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work or any other activity required under this Agreement on account of gender, race, creed, or color.

(c) The Concessionaire and all Contractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

(d) The Concessionaire shall not discriminate by reason of gender, race, creed, or color against any Contractor or supplier who is qualified to perform the work to which the contract relates.

(e) The Concessionaire and each Contractor shall furnish all necessary employment documents and records to and permit access to its books, records, and accounts by the Authority for purposes of investigation to ascertain compliance with this Section 11.3. If the Concessionaire or any Contractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the Authority.

(f) The Concessionaire shall include the provisions of this Section 11.3 in every subcontract so that such provisions will be binding upon each Contractor.

Section 11.4. **Non-Collusion.** The Concessionaire attests, after inquiry of its Representatives and subject to the penalties for perjury, that no Representative of the Concessionaire, directly or indirectly, to the best of the Concessionaire's knowledge, entered into or offered to enter into any combination, conspiracy, collusion or agreement to receive or pay any sum of money or other consideration for the execution of this Agreement other than that which is expressly set forth in this Agreement.

Section 11.5. **Ethics and Conflict of Interest Requirements.**

(a) The Concessionaire shall maintain the highest standards of integrity in the performance of this Agreement and shall take no action in violation of state or federal Laws, regulations, or other requirements that govern contracting with the Commonwealth of Pennsylvania, the Authority or the City.

(b) The Concessionaire shall not, in connection with this or any other agreement with the Authority or City, directly, or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Commonwealth of Pennsylvania.

(c) The Concessionaire shall not, in connection with this or any other agreement with the Authority or City, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the Authority or City.

(d) Except with the consent of the Authority and City, neither the Concessionaire nor anyone in privity with the Concessionaire shall accept or agree to accept from, or give or agree to give to, any Representative of the Authority or City, any gratuity from any person in connection with this Agreement that is intended by the provider thereof to be a material inducement to enter into this Agreement or any other contract.

(e) The Concessionaire certifies that except as fully disclosed in the Concessionaire's proposal, Concessionaire has not entered into any arrangement involving a finder's fee, fee splitting, firm affiliation or relationship with any broker-dealer, payment to any consultant, lobbyist, or commissioned representative or any other contractual arrangement that could present a real or perceived conflict of interest.

(f) The Concessionaire, upon being informed that any violation of the provisions of this Section 11.5 has occurred or may occur, shall immediately notify the Authority and City in writing.

(g) The Concessionaire, by execution of this Agreement and any request for compensation pursuant hereto certifies and represents that it has not violated any of the provisions of this Section 11.5.

Section 11.6. Prevailing Wage.

(a) *Compliance with Prevailing Wage Act.* The Concessionaire shall comply with (i) the provisions of the Pennsylvania Prevailing Wage Act, Act of August 15, 1961 (P.L. 987), as amended, 43 P.S. §§165-1 to 165-17, known as the Pennsylvania Prevailing Wage Act and the regulations issued pursuant thereto by the Pennsylvania Department of Labor and Industry; and (ii) the provisions of City of Pittsburgh Code of Ordinances, Title One, Article VII, Chapter 161, Section 161.23. To the extent that the Concessionaire performs any “public work” (as such term is defined in the Pennsylvania Prevailing Wage Act) related to the Parking Facilities System during the Term, or engages any Contractor to perform any such “public work” relating to the Parking Facilities System during the Term, the Concessionaire shall pay and ensure that all of its Contractors pay all employees engaged in such “public work” at least the prevailing wage rates as ascertained from time to time by the Pennsylvania Department of Labor and Industry (or its successors).

(b) *City and Authority Powers.* Further, the Concessionaire acknowledges that the City and Authority may withhold any sums due to the Concessionaire or a Contractor as is necessary to pay to such employees of the Concessionaire or Contractor, as applicable, any deficiency between the wages required to be paid to such employees and the wages actually paid to such employees, and the Authority or City may make such payments directly to the appropriate employees.

(c) *Contract Provisions.* The Concessionaire shall include a provision in each contract or subcontract entered into with a Contractor performing “public work” reflecting the requirements of this Section 11.6.

Section 11.7. Living Wage. The Concessionaire shall comply with, and shall cause all Contractors to comply with, the living wage requirements of the City of Pittsburgh Code of Ordinances Title One, Article VIII, Chapter 161, §161.35, as may be amended from time to time, so long as such requirements are in full force and effect. If an employee of the Concessionaire or a Contractor is required to be paid a living wage pursuant to this Section 11.7 and is also subject to payment of a prevailing wage pursuant to Section 11.6 of this Agreement, then the Concessionaire or Contractor, as appropriate, shall pay the employee the higher of the prevailing wage or the living wage.

Section 11.8. Reciprocal Limitations Act. Subject to federal and state Law, the Concessionaire shall comply with the provisions of the Reciprocal Limitations Act, 62 Pa. C.S.A. § 107, which imposes certain procurement restrictions against those states which have imposed restrictions against purchases from the Commonwealth of Pennsylvania or other states, as such statute relates to the performance by the Concessionaire of any obligation under this Agreement.

Section 11.9. Steel Products Procurement Act. In the performance of any construction, reconstruction, alteration, repair, improvement or maintenance of the Parking Facilities System, the Concessionaire shall comply with the requirements of the Steel Products Procurement Act, Act of March 3, 1978 (P.L. 6, No. 3), as amended, 73 P.S. §§1881-1887.

Section 11.10. **Trade Practices Act.** In accordance with Pennsylvania Trade Practices Act, the Act of July 23, 1968 (P.L. 686, No. 226), 71 P.S. §§ 773.101-773.113, the Concessionaire shall not furnish or use or permit to be furnished or used in any “public works” (as defined in the Pennsylvania Trade Practices Act) any aluminum or steel products made in a foreign country that has been identified by the Commonwealth of Pennsylvania as a foreign country that discriminates against aluminum or steel products manufactured in the Commonwealth of Pennsylvania.

Section 11.11. **Pennsylvania Procurement Code.** In addition to the other obligations set forth in this Agreement, the Concessionaire shall be subject to the following provisions of the Pennsylvania Procurement Code: 62 Pa. C.S. § 531 (relating to debarment and suspension), 62 Pa. C.S. § 541 (relating to accounting standards); 62 Pa. C.S. § 551 (relating to inspections), 62 Pa. C.S.A. § 552 (relating to audits) and 62 Pa. C.S. § 563 (relating to record retention requirements).

Section 11.12. **City Residential Preference Requirements.**

(a) In the event that the Concessionaire or a Contractor enters into a Covered Contract (as defined Section 11.12(b)), the Concessionaire shall comply with, and shall cause all Contractors to comply with, the residential preference requirements of (i) City of Pittsburgh Code of Ordinances, Title One, Article VII, Chapter 161, §161.33, (ii) the City of Pittsburgh Code of Ordinances, Title One, Article IX, Chapter 177A, and (iii) Section 515 of the City of Pittsburgh Home Rule Charter, as each may be amended from time to time, so long as such requirements are in effect.

(b) For purposes of this Section 11.12, the term “Covered Contract” has the meaning set forth in City of Pittsburgh Code of Ordinances, Title One, Article VII, Chapter 161, §161.33. As of the date of the agreement: (1) the term Covered Contract means any Construction Contract (as hereinafter defined) for \$200,000 or more to which the City is a party and which is funded in whole or in part by (i) City funds or value, (ii) funds received from the City directly or indirectly from the state or federal government which the City may expend or administer in connection with a construction project subject to the City of Pittsburgh Code of Ordinances, Title One, Article VII, Chapter 161, or (iii) a combination thereof, and (2) the term “Construction Contract” means any agreement for the erection, repair, alteration or demolition of any building, structure, bridge, roadway or other improvement to real property which is funded, in whole or in part, by City funds or value.

Section 11.13. **Minority-Owned and Women-Owned Business Enterprises.** The Concessionaire shall use good faith efforts during the Term to obtain the participation of M.B.E./W.B.E. in its Parking Facilities System Operations. In order to demonstrate this good faith efforts commitment, the Concessionaire shall, and shall cause all Contractors to, complete and submit to the City (i) a M.B.E./W.B.E. Solicitation and Commitment Statement, which shall detail the efforts of the Concessionaire or the Contractor, as applicable, to obtain such participation or (ii) a M.B.E./W.B.E. Commitment Waiver Request, which shall detail the reasons why no M.B.E./W.B.E. participation could be obtained. Further, within thirty (30) days after the City’s request,

the Concessionaire and the Contractor, as applicable, shall submit a report detailing the actual levels of M.B.E./W.B.E. participation.

ARTICLE 12 INDEMNIFICATION

Section 12.1. Indemnification by the Concessionaire. The Concessionaire shall indemnify and hold harmless the City, the Authority and each of their Representatives from and against any Losses actually suffered or incurred by the City, the Authority or any such Representative, based upon, arising out of, occasioned by or attributable to (i) any failure by the Concessionaire, the Operator or each of their respective Representatives to comply with, observe or perform any of the covenants, obligations, agreements, terms or conditions in this Agreement or, subject to Section 9.5(c), any breach by the Concessionaire of its representations or warranties set forth herein, (ii) any Assumed Liabilities, (iii) any Tax or mortgage recording charge attributable to any Transfer of the Concessionaire Interest or any part thereof by the Concessionaire or (iv) any claim for brokerage commissions, fees or other compensation by any Person who acted on behalf of the Concessionaire or its Representatives in connection with this Agreement, any Transfer of the Concessionaire Interest or any part thereof or any other matter affecting the Parking Facilities System; *provided, however*, that, except with respect to Claims resulting from Third Party Claims, Claims are made in writing within a period of three years following the expiration of the Term or earlier termination of this Agreement or within such shorter period as may be prescribed by the applicable statute of limitations.

Section 12.2. Indemnification by the Government Parties.

(a) *Authority.* The Authority shall indemnify and hold harmless the Concessionaire and each of its Representatives against and from and against any Losses actually suffered or incurred by the Concessionaire or any such Representative, based upon, arising out of, occasioned by or attributable to (i) any failure by the Authority or its Representatives to comply with, observe or perform any of the covenants, obligations, agreements, terms or conditions in this Agreement or, subject to Section 9.5(a), any breach by the Authority of its representations or warranties set forth herein, (ii) any Excluded Liabilities, (iii) any claim for brokerage commissions, fees or other compensation by any Person who acted on behalf of the Authority or any of its Representatives in connection with this Agreement, or any other matter affecting the Parking Facilities System; *provided, however*, that, (A) except with respect to Claims resulting from Third Party Claims, Claims are made in writing within a period of three years of the expiration of the Term or earlier termination of this Agreement or within such shorter period as may be prescribed by the applicable statute of limitations and (B) nothing in this Section 12.2(a) shall be construed as a waiver of the Authority's governmental immunity and related limitations on liability as to damages on account of any injury to a person or property pursuant to the Pennsylvania Political Subdivisions Tort Claims Act, and the Authority shall not be required to indemnify the Concessionaire for any such personal injury or property damages (including Third Party Claims as to

such damages) except to the extent provided under Pennsylvania Political Subdivisions Tort Claims Act.

(b) *City*. The City shall indemnify and hold harmless the Concessionaire and each of its Representatives against and from and against any Losses actually suffered or incurred by the Concessionaire or any such Representative, based upon, arising out of, occasioned by or attributable to (i) any failure by the City or its Representatives to comply with, observe or perform any of the covenants, obligations, agreements, terms or conditions in this Agreement or, subject to Section 9.5(b), any breach by the City of its representations or warranties set forth herein, (ii) any Excluded Liabilities, (iii) any claim for brokerage commissions, fees or other compensation by any Person who acted on behalf of the City or any of its Representatives in connection with this Agreement, or any other matter affecting the Parking Facilities System; *provided, however*, that, (A) except with respect to Claims resulting from Third Party Claims, Claims are made in writing within a period of three years of the expiration of the Term or earlier termination of this Agreement or within such shorter period as may be prescribed by the applicable statute of limitations and (B) nothing in this Section 12.2(b) shall be construed as a waiver of the City's governmental immunity and related limitations on liability as to damages on account of any injury to a person or property pursuant to the Pennsylvania Political Subdivisions Tort Claims Act, and the City shall not be required to indemnify the Concessionaire for any such personal injury or property damages (including Third Party Claims as to such damages) except to the extent provided under Pennsylvania Political Subdivisions Tort Claims Act.

Section 12.3. Agency for Representatives. Each of the Parties agree that it accepts each indemnity in favor of any of its Representatives, as agent and trustee of that Representative and agrees that each of the Parties may enforce an indemnity in favor of its Representatives on behalf of that Representative.

Section 12.4. Third Party Claims.

(a) *Notice of Third Party Claim*. If an Indemnified Party receives notice of the commencement or assertion of any Third Party Claim, the Indemnified Party shall give the Indemnifier reasonably prompt notice thereof, but in any event no later than 30 days after receipt of such notice of such Third Party Claim. Such notice to the Indemnifier shall describe the Third Party Claim in reasonable detail (and include a copy of any complaint or related documents) and shall indicate, if reasonably practicable, the estimated amount of the Loss that has been or may be sustained by the Indemnified Party.

(b) *Defense of Third Party Claim*. The Indemnifier may participate in or assume the defense of any Third Party Claim by giving notice to that effect to the Indemnified Party not later than 30 days after receiving notice of that Third Party Claim (the "Notice Period"). The Indemnifier's right to do so shall be subject to the rights of any insurer or other Party who has potential liability in respect of that Third Party Claim. The Indemnifier agrees to pay all of its own expenses of participating in or assuming each defense. The Indemnified Party shall co-operate in good faith in the defense of each Third Party Claim, even if the defense has been assumed by the Indemnifier and may participate in such defense assisted by counsel of its own choice at its own expense. If

the Indemnified Party has not received notice within the Notice Period that the Indemnifier has elected to assume the defense of such Third Party Claim, the Indemnified Party may assume such defense, assisted by counsel of its own choosing and the Indemnifier shall be liable for all reasonable costs and expenses paid or incurred in connection therewith and any Loss suffered or incurred by the Indemnified Party with respect to such Third Party Claim.

(c) *Assistance for Third Party Claims.* The Indemnifier and the Indemnified Party will use all reasonable efforts to make available to the Party which is undertaking and controlling the defense of any Third Party Claim (the “Defending Party”), (i) those employees whose assistance, testimony and presence is necessary to assist the Defending Party in evaluating and in defending any Third Party Claim, and (ii) all documents, records and other materials in the possession of such party reasonably required by the Defending Party for its use in defending any Third Party Claim, and shall otherwise cooperate with the Defending Party. The Indemnifier shall be responsible for all reasonable expenses associated with making such documents, records and materials available and for all expenses of any employees made available by the Indemnified Party to the Indemnifier hereunder, which expense shall not exceed the actual cost to the Indemnified Party associated with such employees.

(d) *Settlement of Third Party Claims.* If an Indemnifier elects to assume the defense of any Third Party Claim in accordance with Section 12.4(b), the Indemnifier shall not be liable for any legal expenses subsequently incurred by the Indemnified Party in connection with the defense of such Third Party Claim. However, if the Indemnifier fails to take reasonable steps necessary to defend diligently such Third Party Claim within 30 days after receiving notice from the Indemnified Party that the Indemnified Party bona fide believes on reasonable grounds that the Indemnifier has failed to take such steps, the Indemnified Party may, at its option, elect to assume the defense of and to compromise or settle the Third Party Claim assisted by counsel of its own choosing and the Indemnifier shall be liable for all reasonable costs and expenses paid or incurred in connection therewith. The Indemnified Party shall not settle or compromise any Third Party Claim without obtaining the prior written consent of the Indemnifier unless such settlement or compromise is made without any liability to, and does not require any action on the part of, the Indemnifier.

Section 12.5. Direct Claims. Any Direct Claim shall be asserted by giving the Indemnifier reasonably prompt notice thereof, but in any event not later than 60 days after the Indemnified Party becomes aware of such Direct Claim. The Indemnifier shall then have a period of 30 days within which to respond in writing to such Direct Claim. If the Indemnifier does not so respond within such 30-day period, the Indemnifier shall be deemed to have rejected such Claim, and in such event the Indemnified Party may submit such Direct Claim to the dispute resolution process set forth in Article 19.

Section 12.6. Failure to Give Timely Notice. A failure to give timely notice in accordance with this Article 12 shall not affect the rights or obligations of any Party except and only to the extent that, as a result of such failure, a Party which was entitled to receive such notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise directly and materially damaged as a result of such

failure. However, this Section 12.6 shall have no effect whatever on the survival provisions set out in Section 9.5 and the rights of the Parties with respect thereto.

Section 12.7. Reductions and Subrogation. If the amount of any Loss incurred by an Indemnified Party at any time subsequent to the making of an indemnity payment hereunder (an “Indemnity Payment”) is reduced by any recovery, settlement or otherwise under or pursuant to any insurance coverage, or pursuant to any claim, recovery, settlement or payment by or against any other Person, the amount of such reduction (less any costs, expenses (including Taxes) or premiums incurred in connection therewith), together with interest thereon from the date of payment thereof at the Bank Rate, shall promptly be repaid by the Indemnified Party to the Indemnifier. Upon making a full Indemnity Payment, the Indemnifier shall, to the extent of such Indemnity Payment, be subrogated to all rights of the Indemnified Party against any third party in respect of the Loss to which the Indemnity Payment relates. Until the Indemnified Party recovers full payment of its Loss, any and all claims of the Indemnifier against any such third party on account of such Indemnity Payment shall be postponed and subordinated in right of payment to the Indemnified Party’s rights against such third party.

Section 12.8. Payment and Interest. All amounts to be paid by an Indemnifier hereunder shall bear interest at a rate per annum equal to the Bank Rate, calculated annually and payable monthly, both before and after judgment, from the date that the Indemnified Party disbursed funds, suffered damages or losses or incurred a loss, liability or expense in respect of a Loss for which the Indemnifier is liable to make payment pursuant to this Article 12, to the date of payment by the Indemnifier to the Indemnified Party.

Section 12.9. Limitation on Certain Claims. No Claim may be made by the Concessionaire or its Representatives against (i) the Authority under Section 12.2(a) for the breach of any representation or warranty made or given by the Authority in Section 9.1 or (ii) the City under Section 12.2(b) for the breach of any representation or warranty made or given by the City under Section 9.2 unless (A) the Loss suffered or incurred by the Concessionaire or its Representatives in connection with such breach is in excess of \$10,000 and (ii) the aggregate of all Losses suffered or incurred by the Concessionaire or its Representatives in connection with breaches of representations and warranties in Section 9.1 and Section 9.2 exceeds \$2,000,000 in the aggregate, in which event the amount of all such Losses in excess of such amount may be recovered by the Concessionaire or its Representatives; *provided, however*, that the maximum aggregate liability of the Government Parties to the Concessionaire or its Representatives in respect of such Losses shall not exceed 50% of the Consideration; *provided further* that this Section 12.9 shall not apply to Claims for the breach of the representations or warranties in Section 9.1(a), (b), (c), (d), (e), (f) or (g); or in Section 9.2(a), (b), (c), (d), (e), (f) and (g); or to Claims for fraud, intentional misrepresentation or intentional breach of the representations or warranties in Section 9.1 or Section 9.2.

Section 12.10. Workers Compensation. To the extent permissible by applicable Law, the Concessionaire waives any limits to the amount of its obligations to defend, indemnify, hold harmless or contribute to any sums due to the City, the Authority or their respective Representatives for any Losses, including any such Losses related to

any claim by any employee of the Concessionaire that may be subject to the Pennsylvania Workers Compensation Act, Act of June 2, 1915, P.L. 736, as amended, 77 P.S. §§1-1001.

Section 12.11. Offset Rights; Limitations on Certain Damages.

(a) Each Party's obligations under this Agreement are subject to, and each Party shall have the benefit of, all defenses, counterclaims, rights of offset or recoupment or other claims and rights, including the right to deduct payments due to the other Parties hereunder (collectively, "Offsets") which such Party may have at any time against such other Party (or any of their respective successors and assigns) or any transferee or assignee of any such other Party's rights as against such Party or any part thereof or interest therein, whether the claim or right of such Party relied upon for such purpose is matured or unmatured, contingent or otherwise, and no transfer or assignment of this Agreement or any other obligation of such other Party, or of any rights in respect thereof, pursuant to any plan of reorganization or liquidation or otherwise shall affect or impair the availability to each Party of the Offsets.

(b) In no event shall any Party be liable to any other Party under this Agreement for consequential, indirect, exemplary or punitive damages (except for claims for fraud or for intentional misrepresentation or intentional breach).

Section 12.12. Survival. This Article 12 shall remain in full force and effect in all circumstances and shall not be terminated by any breach (fundamental, negligent or otherwise) by any Party of its representations, warranties or covenants hereunder or by any termination or rescission of this Agreement by any Party.

ARTICLE 13
INSURANCE

Section 13.1. Insurance Coverage Required. The Concessionaire shall provide and maintain at the Concessionaire's own expense, or cause to be maintained, during the Term and during any time period following expiration if the Concessionaire is required to return and perform any additional work, the insurance coverages and requirements specified below, insuring the Parking Facilities System and all Parking Facilities System Operations (the "Required Coverages").

(a) *Workers' Compensation and Employer's Liability.* The Concessionaire shall provide or cause to be provided Workers' Compensation Insurance, as prescribed by applicable Law, covering all employees who agree to provide a service under this Agreement and Employer's Liability Insurance coverage with limits of not less than \$500,000 each accident or illness or disease.

(b) *Commercial General Liability (Primary and Umbrella).* The Concessionaire shall provide or cause to be provided Commercial General Liability Insurance or equivalent with limits of not less than \$25,000,000 per occurrence and in the annual aggregate, which limits may be met through a combination of primary and excess

or umbrella policies, for bodily injury, personal injury and property damage liability. Coverage shall include the following: all premises and operations, products/completed operations, explosion, collapse, underground, separation of insureds, defense, terrorism (to the extent commercially available) and contractual liability (with no limitation endorsement). The City and the Authority are to be named as additional insureds on a primary, non-contributory basis for any liability arising under or in connection with this Agreement.

(c) *Automobile Liability (Primary and Umbrella)*. When any motor vehicles (owned, non-owned or hired) are used in connection with work to be performed, the Concessionaire shall provide or cause to be provided Automobile Liability Insurance with limits of not less than \$10,000,000 per occurrence and in the annual aggregate, which limits may be met through a combination of primary and excess or umbrella policies, for bodily injury and property damage. The City and the Authority are to be named as additional insureds on a primary, non-contributory basis.

(d) *Garage Liability*. The Concessionaire shall provide, or cause to be provided, Garage Liability Insurance with limits of not less than \$25,000,000 per occurrence and in the aggregate, which limits may be met through a combination of primary and excess or umbrella policies, combined single limit, for bodily injury and property damage. Coverage extensions shall include Garage Keepers Legal Liability and pollution. The City and the Authority shall be named as additional insureds on a primary, non-contributory basis for any liability arising under or in connection with this Agreement.

(e) *Builder's Risk*. When the Concessionaire undertakes any construction, maintenance or repairs to the Parking Facilities System, including improvements and betterments pursuant to this Agreement, the Concessionaire shall provide or cause to be provided, All Risk Builder's Risk Insurance at replacement cost for materials, supplies, equipment, machinery and fixtures that are or will be part of the Parking Facilities System. Coverage shall include, but not be limited to, the following: right to partial occupancy, boiler and machinery, business income, valuable papers and other consequential loss, when applicable with aggregate sublimits for catastrophic perils of earthquake, flood and named wind which are the best available on commercially reasonable terms. The City and the Authority shall be named as additional insureds and, subject to the claims of any Leasehold Mortgagee, as loss payees.

(f) *Professional Liability*. When any architects, engineers, construction managers or other professional consultants perform work of a material nature in connection with this Agreement, the Concessionaire shall cause such professional consultants to provide Professional Liability Insurance covering acts, errors or omissions shall be maintained with limits of not less than \$2,000,000; *provided, however*, that design and construction architects and engineers performing work of a material nature with respect to any such construction project undertaken by the Concessionaire pursuant to this Agreement must maintain limits of not less than \$5,000,000 (to the extent commercially available). Any contractual liability exclusion applying to the policy shall not apply to the extent the professional would otherwise be liable for loss under the policy in the absence of a contract. When policies are renewed or replaced, the policy

retroactive date shall coincide with, or precede, start of work in connection with this Agreement. A claims-made policy which is not renewed or replaced shall have an extended reporting period of two years.

(g) *Property.* The Concessionaire shall obtain All Risk Property Insurance at full replacement cost, covering all loss, damage or destruction to the Parking Facilities System, including improvements and betterments, which insurance may be provided on a blanket basis with reported building values, which shall include the value of the coverage for the Parking Facilities System required hereunder; *provided, however*, that the limits of such coverage may be based on a probable maximum loss analysis, subject to the Authority's approval of such probable maximum loss analysis by an independent third party that is reasonably acceptable to the Authority. Coverage shall include the following: equipment breakdown, collapse, water including overflow, leakage, sewer backup or seepage, utility interruption, debris removal, business ordinance or law for increased cost of construction, extra expense, boiler and machinery, valuable papers and, to the extent commercially available, terrorism and aggregated sublimits for flood, earthquake and named wind. Coverage shall also include business income, which shall be subject to a limit that is separate from and in addition to the limit of full replacement cost for property unless part of a blanket loss limit based on a probable maximum loss analysis approved by the Authority. The City and the Authority are to be named as additional insureds. Subject to the claims of any Leasehold Mortgagee, the City, the Authority and the Depositary are to be named as loss payees. The Concessionaire shall be responsible for any loss or damage to City property or Authority property at full replacement cost. The Concessionaire shall be responsible for all loss or damage to personal property (including materials, fixtures/contents, equipment, tools and supplies) of the Concessionaire unless caused by the Authority or its Representatives.

(h) *Railroad Protective Liability.* When any work is to be done adjacent to or on railroad or transit property, the Concessionaire shall provide or shall cause to be provided, with respect to the operations that the Concessionaire or Contractors perform, Railroad Protective Liability Insurance in the name of the applicable railroad or transit entity. The policy shall have limits of not less than \$2,000,000 per occurrence and \$6,000,000 in the aggregate for losses arising out of injuries to or death of all persons, and for damage to or destruction of property, including the loss of use thereof.

Section 13.2. **Additional Requirements.**

(a) *Evidence of Insurance.* The Concessionaire shall deliver or cause to be delivered to the Authority and to the City, original Certificates of Insurance evidencing the Required Coverages on or before the Closing Date, and shall provide or cause to be provided, not less than 60 days prior to expiration of the then current coverages (or such other period as is agreed to by the Authority), Renewal Certificates of Insurance, or such similar evidence, if such coverages have an expiration or renewal date occurring during the Term. The receipt of any certificate does not constitute agreement by the Government Parties that the insurance requirements in this Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of this Agreement. The failure of a Government Party to obtain certificates or other insurance evidence from the Concessionaire shall not be deemed to be a waiver

by the Government Party. The Concessionaire shall advise all insurers of provisions of this Agreement regarding insurance. Non-conforming insurance shall not relieve the Concessionaire of the obligation to provide insurance as specified herein. Except as otherwise expressly set forth herein, each Required Coverage may be reviewed by the Government Parties for compliance with the terms of this Agreement. Each Required Coverage shall be signed by the insurer responsible for the risks insured against or by the insurer's authorized representative. All Required Coverages shall be placed with insurers reasonably acceptable to the Authority; *provided* that all such insurers, at a minimum, shall have a rating of A(VII) or better by A.M. Best Company (unless the Authority and the City consent to waive this requirement). At the request of the Authority or City, the Concessionaire shall provide the Authority and City with certified copies of policies and all policy endorsements.

(b) *Notice of Cancellation, Material Change or Violation.* All Required Coverages shall provide for 60 days (or in the case of cancellation for non-payment of premiums, 10 days) prior notice to be given to the Government Parties by the insurer in the event coverage is substantially changed, canceled or non-renewed. The Authority shall be permitted (but not obligated) to pay any delinquent premiums before the cancellation date specified by the insurer in any notice of cancellation for non-payment of premium in order to maintain such coverage in full force and effect and the Concessionaire shall reimburse the Authority for any delinquent premiums paid by the Authority on demand without any days of grace and without prejudice to any other rights and remedies of the Authority hereunder. The Concessionaire shall not cancel, terminate, materially change to the detriment of either Government Party any Required Coverage.

(c) *Deductibles.* All Required Coverages may contain deductibles or self-insured retentions not to exceed amounts reasonably acceptable to the Authority taking into account the deductibles or self-insured retentions for the required insurance coverages for comparable parking facilities. Any and all deductibles or self-insured retentions on Required Coverages shall be borne by the Concessionaire or its Contractors.

(d) *Inflation Adjustment.* The amounts of coverage required by Section 13.1 shall be Adjusted for Inflation each succeeding fifth anniversary of the Closing Date except for the policies required by Section 13.1(e) and 13.1(g) where the increase, if any, will be limited to the extent that replacement cost has increased.

(e) *Waiver of Subrogation by Insurers.* Each of the Required Coverages provided by the Concessionaire shall where legally or customarily permitted include a waiver by the insurer of its rights of subrogation against the Government Parties, their employees, elected officials, agents or representatives.

(f) *Government Party's Right to Insure.* If the Concessionaire fails to obtain and maintain or cause to be obtained and maintained the insurance required by this Article 13, each Government Party shall have the right (without any obligation to do so), upon two Business Days' notice to the Concessionaire in a non-emergency situation or forthwith in an emergency situation and without assuming any obligation in connection therewith, to effect such insurance and all costs and expenses of the Government Party in connection therewith shall be payable by the Concessionaire to the Government Party on

demand without any days of grace and without prejudice to any other rights and remedies of the Government Party hereunder. Such insurance taken out by the Government Party shall not relieve the Concessionaire of its obligations to insure hereunder and the Government Party shall not be liable for any loss or damage suffered by the Concessionaire in connection therewith.

(g) *No Limitation as to Concessionaire Liabilities.* The Concessionaire expressly understands and agrees that any coverages and limits furnished by the Concessionaire shall in no way limit the Concessionaire's liabilities and responsibilities specified within this Agreement or by Law.

(h) *No Contribution by Government Parties.* The Concessionaire expressly understands and agrees that any insurance or self-insurance programs maintained by the Government Parties shall not contribute with insurance provided by the Concessionaire under this Agreement.

(i) *Insurance Requirements of Contractors.* The Concessionaire shall require in each contract with any Contractor or subtenant (where such Contractor or subtenant is not covered by the Required Coverages) that such Contractor or subtenant obtain coverages reasonably comparable to the Required Coverages that are reasonably appropriate in their limits and other terms and conditions to the nature of the contract with the Contractor or subtenant. Such coverages shall insure the interests of the Authority, the City, their employees, elected officials, agents and representatives, the Concessionaire and any other Contractors or subtenants in respect of the applicable work being performed and shall be subject to the same (or comparable) coverage and administrative requirements as are imposed on the Concessionaire pursuant to this Agreement. When requested to do so by a Government Party, the Concessionaire shall provide or cause to be provided to the Government Party Certificates of Insurance with respect to such insurance coverages or such other evidence of insurance, acceptable in form and content to the Government Party.

(j) *Joint Venture and Limited Liability Company Policies.* If the Concessionaire or any Contractor required to obtain an insurance policy hereunder is a joint venture or limited liability company, all insurance policies required to be obtained by the Concessionaire or such Contractor shall specifically name the joint venture or limited liability company as a named insured. If the Concessionaire contracts operations to a third party, the Concessionaire will be an additional named insured on any liability policy.

(k) *Other Insurance Obtained by Concessionaire.* If the Concessionaire or its Contractors or subtenants desire coverages in addition to the Required Coverages, the Concessionaire and each Contractor or subtenant shall be responsible for the acquisition and cost of such additional coverages. If the Concessionaire or its Contractors or subtenants obtain any property, liability or other insurance coverages in addition to the Required Coverages ("Additional Coverages"), then the Concessionaire or its Contractors shall (i) notify the Authority as to such Additional Coverages, (ii) provide the Authority with any documentation relating to the Additional Coverages, including Certificates of Insurance, that the Authority reasonably requests and (iii) at the Authority's election,

acting reasonably, cause the City and the Authority and their employees, elected or appointed officials, agents and representatives to be named as additional insureds under such Additional Coverages, if that is normally allowed in accordance with good industry practice.

(l) *Cooperation.* The Parties shall do all acts, matters and things as may be reasonably necessary or required to expedite the adjustment of any loss or damage covered by insurance hereunder so as to expedite the release and dedication of proceeds of such insurance in the manner and for the purposes herein contemplated.

(m) *Authority's Right to Modify.* The Authority shall have the right, acting reasonably, to modify, delete, alter or change insurance coverage requirements set forth in Section 13.1 and this Section 13.2 to reflect known and established material changes in insurance coverages for Comparable Public Parking Garages or operations comparable to the Parking Facilities System Operations or known and established material changes in insurance exposures associated with the Parking Facilities System *provided* that the Concessionaire shall not have any obligation to procure or maintain at its cost any additional insurance unless an independent insurance consultant shall have delivered to the Concessionaire its opinion to the effect that the additional coverages are required pursuant to the above-stated criteria and such additional coverages are commercially available at reasonable rates in terms of cost of premium and amount of deductibles. Notwithstanding anything to the contrary herein, if any insurance (including the limits or deductibles thereof) required to be maintained under this Agreement shall not be available at commercially reasonable rates, the Concessionaire shall have the right to request that the Authority consent to waive such requirement and the Authority shall not unreasonably withhold, condition or delay such consent. Any such waiver shall be effective only so long as such insurance shall not be available at commercially reasonable rates, *provided* that during the period of such waiver, the Concessionaire maintains the maximum amount of such insurance otherwise available at commercially reasonable rates.

Section 13.3. **Damage and Destruction.**

(a) *Obligations of Concessionaire.* If all or any part of any of the Parking Facilities System shall be destroyed or damaged during the Term in whole or in part by fire or other casualty of any kind or nature (including any casualty for which insurance was not obtained or obtainable), ordinary or extraordinary, foreseen or unforeseen, the Concessionaire shall: (i) give the Government Parties notice thereof promptly after the Concessionaire receives actual notice of such casualty; (ii) at its sole cost and expense, whether or not insurance proceeds, if any, shall be equal to the estimated cost of repairs, alterations, restorations, replacement and rebuilding (the "Casualty Cost"), proceed diligently to repair, restore or rebuild the same to the condition existing prior to the happening of such fire or other casualty (any such activity being a "Restoration"); and (iii) deposit all insurance proceeds received by the Concessionaire in connection with any Restoration with a Depository; *provided, however*, that if at any time the Casualty Cost exceeds the net insurance proceeds actually deposited with the Depository, then the Concessionaire shall also deposit with the Depository such cash as is sufficient to cover the difference between the Casualty Cost and the net insurance proceeds (collectively,

with any interest earned thereon, the “Restoration Funds”); *provided further* that the procedures of this clause (iii) of this Section 13.3(a) shall only apply to casualty events in which the cost of Restoration exceeds \$1,000,000. Any Restoration undertaken pursuant to this Section 13.3 shall be undertaken in accordance with and subject to the terms of this Agreement. Prior to the commencement of Restoration work, the Concessionaire shall submit to the Authority for Approval by the Authority the plans for the Restoration work and such work shall not be undertaken unless the plans for such work have been Approved by the Authority.

(b) *Rights of Government Parties.* If (i) the Concessionaire shall fail or neglect to commence the diligent Restoration of the Parking Facilities System or the portion thereof so damaged or destroyed, (ii) having so commenced such Restoration, the Concessionaire shall fail to diligently complete the same in accordance with the terms of this Agreement or (iii) prior to the completion of any such Restoration by the Concessionaire, this Agreement shall expire or be terminated in accordance with the terms of this Agreement, the Government Parties may, but shall not be required to, complete such Restoration at the Concessionaire’s expense and shall be entitled to be paid out of the Restoration Funds, but such payment shall not limit the Concessionaire’s obligation to pay each Government Party’s reasonable Restoration expenses, less amounts received by such Government Party from such Restoration Funds. In any case where this Agreement shall expire or be terminated prior to the completion of the Restoration, the Concessionaire shall (x) account to the Government Parties for all amounts spent in connection with any Restoration which was undertaken, (y) pay over or cause the Depositary to pay over to the Authority, for allocation between the Government Parties, within 30 days after demand therefor, the remainder, if any, of the Restoration Funds received by the Concessionaire prior to such termination or cancellation and (z) pay over or cause the Depositary to pay over to the Authority, for allocation between the Government Parties, within 30 days after receipt thereof, any Restoration Funds received by the Concessionaire or the Depositary subsequent to such termination or cancellation. The Concessionaire’s obligations under this Section 13.3(b) shall survive the expiration or termination of this Agreement.

(c) *Payment of Restoration Funds to Concessionaire.* Subject to the satisfaction by the Concessionaire of all of the terms and conditions of this Section 13.3, the Depositary shall pay to the Concessionaire from time to time, any Restoration Funds, but not more than the amount actually collected by the Depositary upon the loss, together with any interest earned thereon, after reimbursing itself therefrom, as well as the Government Parties, to the extent, if any, of the reasonable expenses paid or incurred by the Depositary and the Government Parties in the collection of such monies, to be utilized by the Concessionaire solely for the Restoration, such payments to be made as follows:

(i) prior to commencing any Restoration, the Concessionaire shall furnish the City with an estimate of the cost of such Restoration, prepared by an architect or engineer;

(ii) the Restoration Funds shall be paid to the Concessionaire in installments as the Restoration progresses, subject to Section 13.3(c)(iii), based upon requisitions to be submitted by the Concessionaire to the Depositary and the Authority in

compliance with Section 13.3(d), showing the cost of labor and materials purchased for incorporation in the Restoration, or incorporated therein since the previous requisition, and due and payable or paid by the Concessionaire; *provided, however*, that if any lien (other than a Permitted Concessionaire Encumbrance) is filed against the Parking Facilities System or any part thereof in connection with the Restoration, the Concessionaire shall not be entitled to receive any further installment until such lien is satisfied or discharged (by bonding or otherwise); *provided further* that notwithstanding the foregoing, but subject to the provisions of Section 13.3(c)(iii), the existence of any such lien shall not preclude the Concessionaire from receiving any installment of Restoration Funds so long as such lien will be discharged with funds from such installment and at the time the Concessionaire receives such installment the Concessionaire delivers to the Government Parties and the Depositary a release of such lien executed by the lien or and in recordable form;

(iii) the amount of any installment to be paid to the Concessionaire shall be the amount of Restoration Funds incurred by the Concessionaire in connection therewith, less 10% of such amount as a retainage (which 10% retainage shall (i) be reserved without duplication of any retainage reserved by the Concessionaire under its contracts for the Restoration work and (ii) shall be released to the Concessionaire upon completion of the Restoration work), except that such retainage shall not include any amounts for architects' or engineers' fees or permitting or other governmental fees in connection with the Restoration or with respect to each Contractor upon the final completion of each such Contractor's respective work, *provided* that the unapplied portion of the funds held by the Depositary are sufficient to complete the Restoration; *provided, however*, that all disbursements to the Concessionaire shall be made based upon an architect's or engineer's certificate for payment in accordance with industry standards, and disbursements may be made for advance deposits for material and Contractors to the extent that such disbursements are customary in the industry and *provided* that the unapplied portion of the funds held by the Depositary are sufficient to complete the Restoration; and

(iv) except as provided in Section 13.3(b), upon completion of and payment for the Restoration by the Concessionaire, subject to the rights of any Leasehold Mortgagee, the Depositary shall pay the balance of the Restoration Funds, if any, to the Concessionaire; *provided, however*, that if the insurance proceeds are insufficient to pay for the Restoration (or if there shall be no insurance proceeds), the Concessionaire shall nevertheless be required to make the Restoration and provide the deficiency in funds necessary to complete the Restoration as provided in Section 13.3(a)(iii).

(d) *Conditions of Payment.* The following shall be conditions precedent to each payment made to the Concessionaire as provided in Section 13.3(c):

(i) at the time of making such payment, no Concessionaire Default exists, except if such Concessionaire Default is the result of the damage or destruction for which such payment is being made;

(ii) the Restoration shall be carried out under the supervision of the architect or engineer, and there shall be submitted to the Depositary and the Authority the

certificate of the architect or engineer (or other evidence reasonably satisfactory to the Authority) stating that (A) the materials and other items which are the subject of the requisition have been delivered to the Parking Facilities System (except with respect to requisitions for advance deposits permitted under Section 13.3(c)(iii)), free and clear of all Encumbrances, and no unsatisfied or unbonded mechanic's or other liens have been claimed, except for any mechanic's lien for claims that will be discharged, by bonding or otherwise, with funds to be received pursuant to such requisition (*provided* that a release of such lien is delivered to the Depository in accordance with Section 13.3(c)(ii)), or insured over by title insurance reasonably acceptable to the Government Parties, (B) the sum then requested to be withdrawn either has been paid by the Concessionaire or is due and payable to Contractors, engineers, architects or other Persons (whose names and addresses shall be stated), who have rendered or furnished services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of such Persons in respect thereof, and stating in reasonable detail the progress of the work up to the date of such certificate, (C) no part of such expenditures has been made the basis, in any previous requisition (whether paid or pending), for the withdrawal of Restoration Funds or has been made out of the Restoration Funds received by the Concessionaire, (D) the sum then requested does not exceed the value of the services and materials described in the certificate, (E) the work relating to such requisition has been performed in accordance with this Agreement, (F) the balance of the Restoration Funds held by the Depository will be sufficient upon completion of the Restoration to pay for the same in full, and stating in reasonable detail an estimate of the cost of such completion and (G) in the case of the final payment to the Concessionaire, the Restoration has been completed in accordance with this Agreement.

(e) *Payment and Performance Bonds.* If the Concessionaire obtains payment or performance bonds related to a Restoration (which the Concessionaire may or may not obtain in its sole discretion), the Concessionaire shall name the Government Parties and the Concessionaire and the Leasehold Mortgagee, as their interests may appear, as additional obligees, and shall deliver copies of any such bonds to the Government Parties promptly upon obtaining them. The claims of any such additional obligee with respect to such payment or performance bonds shall rank *pari passu* in priority of payment with the claims of all other additional obligees.

(f) *Benefit of Government Parties.* The requirements of this Section 13.3 are for the benefit only of the Authority and the City, and no Contractor or other Person shall have or acquire any claim against the Authority or the City as a result of any failure of the City or the Authority actually to undertake or complete any Restoration as provided in this Section 13.3 or to obtain the evidence, certifications and other documentation provided for herein.

(g) *Investment of Restoration Funds.* Restoration Funds deposited with a Depository shall be invested and reinvested in Eligible Investments at the direction of the Concessionaire, and all interest earned on such investments shall be added to the Restoration Funds.

(h) *Rights of Leasehold Mortgagee.* The Parties acknowledge and agree that any Restoration Funds not applied to a Restoration as provided in this Section 13.3 shall be subject to the lien or liens of any Leasehold Mortgage.

ARTICLE 14 ADVERSE ACTIONS

Section 14.1. **Adverse Action.**

(a) An “Adverse Action” shall occur if the City, the Authority, the County of Allegheny or the Commonwealth of Pennsylvania takes any action or actions at any time during the Term (including enacting any Law) and the effect of such action or actions, individually or in the aggregate, is reasonably expected (i) to be principally borne by the Concessionaire and (ii) to have a material adverse effect on the fair market value of the Concessionaire Interest (whether as a result of decreased revenues, increased expenses or both), except where such action is in response to any act or omission on the part of the Concessionaire that is illegal (other than an act or omission rendered illegal by virtue of the Adverse Action) or such action is otherwise permitted under this Agreement; *provided, however*, that none of the following shall be an Adverse Action: (A) the development, redevelopment, construction, maintenance, modification or change in the operation of any existing or new parking facility or mode of parking (including a Competing Parking Action) or of transportation (including a road, street or highway) or any park or recreation (including harbor, marina, athletic field or any existing or new stadium) facility whether or not it results in the reduction of Parking Fee Revenues or Other Concessionaire Revenues or in the number of vehicles using the Parking Facilities System; *provided* that a Competing Parking Action shall constitute a Compensation Event with respect to which Concession Compensation shall be payable upon the occurrence thereof, (B) the imposition of a Tax of general application or an increase in Taxes of general application, including parking Taxes of general application imposed on customers or operators of parking facilities, (C) requirements generally applicable to public garage or public parking lot owners and operators.

(b) If an Adverse Action by the City or the Authority occurs, the Concessionaire shall have the right to (i) be paid by the Authority the Concession Compensation with respect thereto (such Concession Compensation, the “AA-Compensation”) or (ii) terminate this Agreement and be paid by the Authority the Parking Facilities System Concession Value. If an Adverse Action by the County of Allegheny or the Commonwealth of Pennsylvania occurs, the Concessionaire shall have the right to AA-Compensation, which AA-Compensation may be provided, at the election of the Authority, in the form of an extension of the Term to the extent that any extension of the Term provides the full amount of AA-Compensation; *provided*, however, that to the extent that an extension of the Term is inadequate to provide the AA-Compensation, the Concessionaire shall have the right to be paid such AA-Compensation by the Authority in cash. The Concessionaire shall elect its remedy by giving notice in the manner described in Section 14.1(c).

(c) If an Adverse Action occurs, the Concessionaire shall give notice (the “AA-Preliminary Notice”) to the Authority within 30 days following the date on which the Concessionaire first became aware of the Adverse Action stating an Adverse Action has occurred. Within 180 days following the date of delivery of the AA-Preliminary Notice, the Concessionaire shall give the Authority another notice (the “AA-Notice”) setting forth (i) details of the effect of said occurrence that is principally borne by the Concessionaire generally and not by others, (ii) details of the material adverse effect of the said occurrence on the fair market value of the Concessionaire Interest, (iii) a statement as to which right in Section 14.1(b) the Concessionaire elects to exercise, and (iv) if the Concessionaire elects to exercise the right to Concession Compensation under Section 14.1(b), the amount claimed as AA-Compensation and details of the calculation thereof. The Authority shall, after receipt of the AA-Notice, be entitled by notice to require the Concessionaire to provide such further supporting particulars as the Authority may reasonably consider necessary. If the Authority wishes to dispute the occurrence of an Adverse Action or the amount of AA-Compensation, if any, claimed in the AA-Notice, the Authority shall give notice of dispute (the “AA-Dispute Notice”) to the Concessionaire within 30 days following the date of receipt of the AA-Notice stating in reasonable detail the grounds for such dispute. If neither the AA-Notice nor the AA-Dispute Notice has been withdrawn within 30 days following the date of receipt of the AA-Dispute Notice by the Concessionaire, the matter shall be submitted to the dispute resolution procedure in Article 19.

(d) If the Concessionaire has elected to exercise its right to AA-Compensation, the Authority shall pay the amount of Concession Compensation claimed to the Concessionaire within 60 days following the date of receipt of the AA-Notice, or if a AA-Dispute Notice has been given, then not later than 60 days following the date of determination of the AA-Compensation (together with interest at the Bank Rate from the date of receipt of the AA-Dispute Notice to the date on which payment is made), *provided* that, subject to the right of the Concessionaire to receive interest at the Bank Rate on the payment owed by the Authority from the date of receipt of the AA-Dispute Notice to the date on which payment is made, the Authority may defer any such payment for an additional 120 days if the Authority determines, in its reasonable discretion, that such additional period is necessary in order to obtain financing or otherwise to obtain the necessary funds to make such a payment.

Section 14.2. **Termination.**

(a) If the Concessionaire has elected to exercise its right to terminate this Agreement in connection with an Adverse Action, pursuant to Section 14.1, this Agreement, subject to Section 14.2(c) and Section 14.3, shall terminate 60 days following the date of receipt of the AA-Notice, by the Authority, and the Authority shall pay an amount equal to the aggregate of (i) the Parking Facilities System Concession Value as of the date of termination (which shall be determined as if no Adverse Action has occurred), plus (ii) without duplication, the reasonable out-of-pocket and documented costs and expenses incurred by the Concessionaire as a result of such termination, plus (iii) the Concession Compensation calculated for the period between the date of the Adverse Action and the date of termination, less (iv) any insurance or condemnation proceeds received by the Concessionaire in respect of all or any portion of the Parking Facilities

System as a result of such Adverse Action (collectively, the “Termination Damages”) to the Concessionaire on the Reversion Date or, if the Termination Damages are determined on a date subsequent to the Reversion Date, then not later than 60 days following the date of determination of the Termination Damages (together with interest at the Bank Rate from the Reversion Date to the date on which payment is made), *provided that*, subject to the right of the Concessionaire to receive interest at the Bank Rate on the payment owed by the Authority from the date of receipt of the AA-Dispute Notice to the date on which payment is made, the Authority may defer any such payment for an additional 120 days if the Authority reasonably determines that such additional period is necessary in order to obtain financing to make such a payment; *provided, however*, that any amounts received by the Concessionaire or any Leasehold Mortgagee from any insurance policies payable as a result of damage or destruction to the Parking Facilities System that has not been remedied prior to the Reversion Date, shall, to the extent not used to remedy such effects, be deducted from the amount payable by the Authority to the Concessionaire, so long as the Government Parties has not received any such amounts pursuant to Section 13.3(b).

(b) Any dispute arising out of the determination of the Termination Damages shall be submitted to the dispute resolution procedure in Article 19.

(c) This Agreement shall not terminate pursuant to Section 14.2(a) unless the Concessionaire has first obtained and delivered to the Authority the written consent of the Leasehold Mortgagee to such termination.

(d) Payment of the entire sum of Termination Damages or the AA-Compensation, as the case may be, by the Authority to the Concessionaire, shall constitute full and final satisfaction of all amounts that may be claimed by the Concessionaire for and in respect of the occurrence of the Adverse Action, and, upon such payment, the Authority shall be released and forever discharged by the Concessionaire from any and all liability in respect of such Adverse Action.

Section 14.3. Right of Authority to Remedy an Adverse Action. If the Authority wishes to remedy the occurrence of an Adverse Action, the Authority shall give notice thereof to the Concessionaire within 30 days following the date of receipt of the AA-Notice. If the Authority gives such notice it must remedy the Adverse Action within 180 days following the date of receipt of the AA-Notice, or, if a AA-Dispute Notice, has been given, within 180 days following the final award pursuant to Article 19 to the effect that an Adverse Action occurred. If the Authority elects to remedy the occurrence of an Adverse Action within the applicable period of time, the right of the Concessionaire shall be limited to a claim for AA-Compensation with respect to such Adverse Action.

Section 14.4. Other Actions by Governmental Authorities. In the event that any Governmental Authority (other than the City or the Authority) proposes to take any action at any time during the Term (including or enacting any Law) and the effect of such action is reasonably expected (i) to be principally borne by the Concessionaire and not by others and (ii) to have a material adverse effect on the fair market value of the Concessionaire Interest, except where such action is in response to any act or omission on the part of the Concessionaire that is illegal (other than an act or omission rendered

illegal by virtue of an Adverse Action or such action by any such other Governmental Authority), then at the request of the Concessionaire the Government Parties shall use their reasonable efforts to oppose and challenge such action by any such other Governmental Authority; *provided, however*, that all reasonable out-of-pocket costs and expenses incurred by the Government Parties in connection with such opposition or challenge shall be borne by the Concessionaire.

ARTICLE 15 DELAY EVENTS AND CONCESSION COMPENSATION

Section 15.1. **Delay Events.**

(a) If the Concessionaire is affected by a Delay Event, it shall give notice within 10 Business Days following the date on which it first became aware of such Delay Event to the Government Parties (*provided* that in the case of such Delay Event being a continuing cause of delay, only one notice shall be necessary), which notice shall include (i) a statement of which Delay Event the claim is based upon, (ii) details of the circumstances from which the delay arises and (iii) an estimate of the delay in the performance of obligations under this Agreement attributable to such Delay Event and information in support thereof, if known at that time. The Government Parties shall, after receipt of any such notice, be entitled by notice to require the Concessionaire to provide such further supporting particulars as the Government Parties may reasonably consider necessary.

(b) The Concessionaire shall notify the Government Parties within 10 Business Days following the date on which it first became aware that a Delay Event has ceased.

(c) Subject to the Concessionaire giving the notice required in Section 15.1(a), a Delay Event shall excuse the Concessionaire from whatever performance is prevented by the Delay Event referred to in such notice for such appropriate number of days as the Parties determine, each acting reasonably. If the Parties cannot agree upon the period of extension, then each Party shall be entitled to refer the matter to the dispute resolution procedure in Article 19. This Section 15.1(c) shall not excuse the Concessionaire from the performance and observance under this Agreement of all obligations and covenants not affected by the Delay Event. Notwithstanding the occurrence of a Delay Event, the Concessionaire shall continue its performance and observance under this Agreement of all of its obligations and covenants to the extent that it is reasonably able to do so and shall use its reasonable efforts to minimize the effect and duration of the Delay Event. Nothing herein shall permit or excuse noncompliance with a change to applicable Laws.

(d) If a Delay Event occurs that has the effect of causing physical damage or destruction to the Parking Facilities System that results in the Parking Facilities System being substantially unavailable for Parking Facilities Purposes and such effect continues for a period in excess of 120 days and has a material adverse effect on the fair market

value of the Concessionaire Interest, and insurance policies payable (or that should have been payable but for the breach of an obligation to take out and maintain such insurance policy by the Concessionaire) or condemnation or other similar proceeds are insufficient to restore the Concessionaire to the same economic position as it would have been in the absence of such event, then, notwithstanding Section 2.1, the Concessionaire shall have the right to extend the Term for a period that would be sufficient so to compensate the Concessionaire and to restore it to the same economic position as it would have been in had such Delay Event not occurred (a “Delay Event Remedy”), which time period shall not exceed the length of time during which the Parking Facilities System was substantially unavailable for Parking Facilities Purposes.

(e) If the Concessionaire elects to exercise the right to the Delay Event Remedy, the Concessionaire shall give notice (“Delay Event Notice”) to the Government Parties within 30 days following the date on which the Concessionaire first became aware of its right to the Delay Event Remedy occurring setting forth (i) the details of the Delay Event and its effect on either causing physical damage or destruction to the Parking Facilities System that results in the Parking Facilities System being substantially unavailable for Parking Facilities Purposes or suspending parking fee collection at the Parking Facilities System, (ii) the amount claimed as compensation to restore the Concessionaire to the same economic position as it would have been in had such Delay Event not occurred (including the details of the calculation thereof) and (iii) the details of the relationship between such compensation and the Delay Event Remedy that it proposes. The Government Parties shall, after receipt of the Delay Event Notice, be entitled by notice to require the Concessionaire to provide such further supporting particulars as the Government Parties may reasonably consider necessary. If a Government Party wishes to dispute the occurrence of a Delay Event or the Delay Event Remedy claimed in the Delay Event Notice, the City shall give notice of dispute (the “Delay Event Dispute Notice”) to the Concessionaire within 30 days following the date of receipt of the Delay Event Notice stating the grounds for such dispute, and if neither the Delay Event Notice nor the Delay Event Dispute Notice has been withdrawn within 30 days following the date of receipt of the Delay Event Dispute Notice by the Concessionaire, the matter shall be submitted to the dispute resolution procedure in Article 19.

Section 15.2. Relationship to Compensation Event. Section 15.1 shall not prevent the Concessionaire from receiving Concession Compensation for any Delay Event that constitutes a Compensation Event pursuant to the terms of this Agreement. For the avoidance of doubt, a Competing Parking Action shall not constitute a Delay Event.

Section 15.3. Payment of Concession Compensation.

(a) Except as provided elsewhere in this Agreement, if a Compensation Event occurs, the Concessionaire shall give notice (the “CE-Preliminary Notice”) to the Government Parties within 60 days following the date on which the Concessionaire first became aware of the Compensation Event stating that a Compensation Event has occurred. Within 30 days following the date of delivery of the CE-Preliminary Notice, the Concessionaire shall give the Government Parties another notice (the “CE-Notice”)

setting forth (i) details of the Compensation Event, including an explanation of the reasons that the event constitutes a Compensation Event under the terms of this Agreement and (ii) the amount claimed as Concession Compensation and details of the calculation thereof in accordance with the calculation methodology set forth in the definition of “Concession Compensation”; *provided*, that the failure by the Concessionaire to timely deliver the CE-Preliminary Notice or the CE-Notice shall not limit its remedies hereunder or otherwise reduce the amount of the Concession Compensation.

(b) Except as provided elsewhere in this Agreement, all Concession Compensation due to the Concessionaire shall be due and payable by the Authority within 60 days of the CE-Notice.

(c) If a Government Party wishes to dispute the occurrence of a Compensation Event or the amount of Concession Compensation claimed in the CE-Notice issued by the Concessionaire in accordance with Section 15.3(a), then the Government Parties shall give notice of dispute (the “CE-Dispute Notice”) to the Concessionaire within 30 days following the date of receipt of the CE-Notice stating the grounds for such dispute. If the CE-Dispute Notice has not been withdrawn within 30 days following the date of receipt of the CE-Dispute Notice by the Concessionaire, the matter shall be submitted to the dispute resolution procedure set forth in Article 19. Notwithstanding the foregoing, the Authority shall pay to the Concessionaire any undisputed portion of the Concession Compensation in accordance with the terms of this Agreement during the pendency of any dispute regarding a disputed portion of the Concession Compensation.

ARTICLE 16 DEFAULTS; LETTERS OF CREDIT

Section 16.1. **Default by the Concessionaire.**

(a) *Events of Default.* The occurrence of any one or more of the following events during the Term shall constitute a “Concessionaire Default” under this Agreement:

(i) if the Concessionaire fails to comply with, perform or observe any material obligation, covenant, agreement, term or condition in this Agreement, and such failure continues unremedied for a period of 90 days following notice thereof (giving particulars of the failure in reasonable detail) from a Government Party to the Concessionaire or for such longer period as may be reasonably necessary to cure such failure, *provided*, in the latter case, that the Concessionaire has demonstrated to the satisfaction of the Government Parties, acting reasonably, that (A) it is proceeding, and will proceed, with all due diligence to cure or cause to be cured such failure, (B) its actions can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the Government Parties, acting reasonably and (C) such failure is in fact cured within such period of time;

(ii) if this Agreement or all or any portion of the Concessionaire Interest is Transferred in contravention of Article 17 and such failure continues unremedied for a period of 10 Business Days following notice thereof from a Government Party to the Concessionaire;

(iii) if the Concessionaire fails to comply with the requirements or directives of a final award in a matter submitted to dispute resolution in accordance with Article 19, and such failure continues unremedied for a period of 30 days following notice thereof from a Government Party to the Concessionaire, or for such longer period as may be reasonably necessary to cure such failure, *provided*, in the latter case, that the Concessionaire has demonstrated to the satisfaction of the Government Parties, acting reasonably, that (A) it is proceeding, and will proceed, with all due diligence to cure or cause to be cured such failure, (B) its actions can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the Government Parties, acting reasonably and (C) such failure is in fact cured within such period of time;

(iv) if the Concessionaire (A) admits, in writing, that it is unable to pay its debts as such become due, (B) makes an assignment for the benefit of creditors, (C) files a voluntary petition under Title 11 of the United States Bankruptcy Code, or if such petition is filed against it and an order for relief is entered, or if the Concessionaire files any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future United States bankruptcy code or any other present or future applicable Law, or shall seek or consent to or acquiesce in or suffer the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the Concessionaire or of all or any substantial part of its properties or of the Parking Facilities System or any interest therein, or (D) takes any corporate action in furtherance of any action described in this Section 16.1(a)(iv);

(v) if within 90 days after the commencement of any proceeding against the Concessionaire seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future United States bankruptcy code or any other present or future applicable Law, such proceeding has not been dismissed, or if, within 90 days after the appointment, without the consent or acquiescence of the Concessionaire, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the Concessionaire or of all or any substantial part of its properties or of the Parking Facilities System or any interest therein, such appointment has not been vacated or stayed on appeal or otherwise, or if, within 90 days after the expiration of any such stay, such appointment has not been vacated;

(vi) if a levy under execution or attachment has been made against all or any part of the Parking Facilities System or any interest therein as a result of any Encumbrance (other than a Permitted Concessionaire Encumbrance) created, incurred, assumed or suffered to exist by the Concessionaire or any Person claiming through it, and such execution or attachment has not been vacated, removed or stayed by court order, bonding or otherwise within 60 days after the Concessionaire becomes aware of such

levy, unless such levy resulted from actions or omissions of a Government Party or its Representatives;

(vii) if the Concessionaire repudiates in writing any of its material obligations under this Agreement; or

(viii) if a Concessionaire Default (as such term is defined in the Meters Agreement) shall have occurred and be continuing..

(b) *Remedies of the Government Parties Upon Concessionaire Default.* Upon the occurrence of a Concessionaire Default, a Government Party may, by notice to the Concessionaire with a copy to the Leasehold Mortgagee in accordance with the terms hereof and to the other Government Party, declare the Concessionaire to be in default and may, subject to the provisions of Articles 18 and 19, do any or all of the following as the Government Party, in its discretion, shall determine:

(i) the Government Parties (acting jointly) may terminate this Agreement by giving 60 days' prior notice to the Concessionaire upon the occurrence of (A) a Concessionaire Default that consists of a failure to comply with, perform or observe any Operating Standard if such Concessionaire Default creates a material danger to the safety of Parking Facilities System Operations or a material impairment to the Parking Facilities System or to the continuing use of the Parking Facilities System for Parking Facilities Purposes and the public purpose requirements of Section 3.18 or (B) any other Concessionaire Default; *provided, however*, that the Concessionaire shall be entitled to cure a Concessionaire Default pursuant to Section 16.1(a)(i) by (i) agreeing within such 60-day period to pay any Losses sustained as a result of such Concessionaire Default or (ii) providing the Government Parties with a written work plan within such 60-day period outlining the actions by which the Concessionaire will ensure future compliance with either (x) the obligation, covenant, agreement, term or condition in this Agreement or (y) the requirements or directives of the issued final award in accordance with Article 19 that the Concessionaire failed to perform or observe, which work plan is Approved by the Government Parties, but any failure of the Concessionaire to comply in any material respect with such Approved work plan following 30 days' notice of such failure from the Government Parties to the Concessionaire shall be deemed to be a Concessionaire Default described in Section 16.1(a)(i) and the entitlement of the Concessionaire to cure such Concessionaire Default by the delivery of an Approved work plan shall not apply thereto;

(ii) if the Concessionaire Default is by reason of the failure to pay any monies to another Person, the Government Party may (without obligation to do so) make payment on behalf of the Concessionaire of such monies, and any amount so paid by the Government Party shall be payable by the Concessionaire to the Government Party within five Business Days after demand therefor;

(iii) subject to the cure rights of the Leasehold Mortgagee set forth in Section 18.3, a Government Party may cure the Concessionaire Default (but this shall not obligate a Government Party to cure or attempt to cure a Concessionaire Default or, after having commenced to cure or attempted to cure a Concessionaire Default, to continue to

do so), and all costs and expenses reasonably incurred by a Government Party in curing or attempting to cure the Concessionaire Default, shall be payable by the Concessionaire to the Government Party within five Business Days after written demand therefor; *provided, however*, that (A) the Government Party shall not incur any liability to the Concessionaire for any act or omission of the either Government Party or any other Person in the course of remedying or attempting to remedy any Concessionaire Default and (B) the Government Party's cure of any Concessionaire Default shall not affect the Government Party's rights against the Concessionaire by reason of the Concessionaire Default;

(iv) the Government Parties may seek specific performance, injunction or other equitable remedies, it being acknowledged that damages are an inadequate remedy for a Concessionaire Default;

(v) the Government Parties may seek to recover their Losses arising from such Concessionaire Default and any amounts due and payable under this Agreement and, in connection therewith, exercise any recourse available to any Person who is owed damages or a debt;

(vi) with respect to those Concessionaire Defaults that entitle the Government Parties to terminate this Agreement pursuant to Section 16.1(b)(i), the Government Parties may terminate the Concessionaire's right of possession of the Parking Facilities System, and in such event, the Government Parties or the Government Parties' agents and servants may immediately or at any time thereafter re-enter the Parking Facilities System and remove all Persons and all or any property therefrom, by any available action under law or proceeding at law or in equity, and with or without terminating this Agreement, and repossess and enjoy the Parking Facilities System; *provided, however*, that no reentry by a Government Party shall be construed as an election on its part to terminate this Agreement unless a notice of such intention is given to the Concessionaire; *provided further* that any re-entry or termination of this Agreement made in accordance with this Agreement as against the Concessionaire shall be valid and effective against the Concessionaire even though made subject to the rights of a Leasehold Mortgagee to cure any default of the Concessionaire and continue as in the place of the Concessionaire under this Agreement or a new concession and lease agreement as provided herein;

(vii) the Government Parties may, subject to applicable Law, distraint against any of the Concessionaire's goods situated on the Parking Facilities System and the Concessionaire waives any statutory protections and exemptions in connection therewith;

(viii) subject to the cure rights of the Leasehold Mortgagee set forth in Section 18.3, the Government Parties may close any and all portions of the Parking Facilities System; and

(ix) a Government Party may exercise any of its other rights and remedies provided for hereunder or at law or equity.

Section 16.2. **Defaults by the Government Parties.**

(a) *Authority Events of Default.* The occurrence of any one or more of the following events during the Term shall constitute an “Authority Default” under this Agreement:

(i) if the Authority fails to comply with or observe any material obligation, covenant, agreement, term or condition in this Agreement (other than an Adverse Action) and such failure continues unremedied for a period of 90 days following notice thereof (giving particulars of the failure in reasonable detail) from the Concessionaire to the Authority or for such longer period as may be reasonably necessary to cure such failure, *provided*, in the latter case, that the Authority has demonstrated to the satisfaction of the Concessionaire, acting reasonably, that (A) it is proceeding with all due diligence to cure or cause to be cured such failure, and (B) its actions can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the Concessionaire, acting reasonably and (C) such failure is in fact cured within such period of time;

(ii) if the Authority fails to comply with the requirements or directives of a final award in a matter submitted to dispute resolution in accordance with Article 19 and such default continues unremedied for a period of 30 days following notice thereof from the Concessionaire to the Authority, or for such longer period as may be reasonably necessary to cure such failure, *provided*, in the latter case, that the Authority has demonstrated to the satisfaction of the Concessionaire, acting reasonably, that (A) it is proceeding, and will proceed, with all due diligence to cure or cause to be cured such failure, (B) its actions can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the Concessionaire, acting reasonably and (C) such failure is in fact cured within such period of time;

(iii) if a levy under execution or attachment has been made against all or any part of the Parking Facilities System or the Concessionaire Interest as a result of any Encumbrance (other than a Permitted Authority Encumbrance) created, incurred, assumed or suffered to exist by the Authority or any Person claiming through it, and such execution or attachment has not been vacated, removed or stayed by court order, bonding or otherwise within a period of 60 days, unless such levy resulted from actions or omissions of the Concessionaire or its Representatives or if all or a material part of the Parking Facilities System shall be subject to a condemnation or similar taking by the Authority, the City or any agency of the City; or

(iv) if the Authority (A) admits, in writing, that it is unable to pay its debts as such become due, (B) makes an assignment for the benefit of creditors, (C) files a voluntary petition under Title 9 of the United States Bankruptcy Code, or if such petition is filed against it and an order for relief is entered, or if the Authority files any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future United States bankruptcy code or any other present or future applicable Law, or shall seek or consent to or acquiesce in or suffer the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official

of the Authority, or of all or any substantial part of its properties (in each case, to the extent applicable to a political subdivision), or (D) takes any action in furtherance of any action described in this Section 16.2(a)(iv); or if within 90 days after the commencement of any proceeding against the Authority seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future United States bankruptcy code or any other present or future applicable Law, such proceeding has not been dismissed, or if, within 90 days after the appointment, without the consent or acquiescence of the Authority, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the Authority or of all or any substantial part of its properties (in each case, to the extent applicable to a political subdivision), such appointment has not been vacated or stayed on appeal or otherwise, or if, within 90 days after the expiration of any such stay, such appointment has not been vacated;

(v) if the Authority repudiates in writing any of its material obligations under the Agreement;

(vi) if an “Authority Default” (as defined in the Meters Agreement) shall have occurred and be continuing; or

(vii) if (A) a court of competent jurisdiction enters a final and unappealable judgment order against the Authority in any action, suit or proceeding brought against the Authority, which action, suit or proceeding was not brought by or supported in any way by the Concessionaire, any Operator, any Representative, any Leasehold Mortgagee or any other Person acting on behalf of any of the foregoing or any other Person having an pecuniary interest in this Agreement, and (B) as a result of such final and unappealable judgment order (i) it becomes unlawful for the Authority to comply with or observe any material obligation, covenant, agreement, term or condition in this Agreement or (ii) any material obligation, covenant, agreement, term or condition of the Authority under this Agreement becomes unenforceable against the Authority; and (C) the Parties, acting in good faith and within a reasonable time, are unable to reform this Agreement to conform to the requirements of such judgment order; *provided* that the entry of such judgment order shall not constitute an Authority Default if, within 270 days following the entry of such judgment order, (i) a Law is enacted that validates or confirms the lawful authority of the Authority, or grants to the Authority the lawful authority, to perform its contractual obligations under this Agreement notwithstanding such judgment order or otherwise remedies the Authority Default and (ii) the Authority reimburses the Concessionaire for any unreimbursed Losses attributable to such judgment order and accrued during the period from the date of entry of such judgment order to the date of enactment of such Law.

(b) *City Events of Default.* The occurrence of any one or more of the following events during the Term shall constitute a “City Default” under this Agreement:

(i) if the City fails to comply with or observe any material obligation, covenant, agreement, term or condition in this Agreement (other than an Adverse Action) and such failure continues unremedied for a period of 90 days following notice thereof (giving particulars of the failure in reasonable detail) from the Concessionaire to the City

or for such longer period as may be reasonably necessary to cure such failure, *provided*, in the latter case, that the City has demonstrated to the satisfaction of the Concessionaire, acting reasonably, that (A) it is proceeding with all due diligence to cure or cause to be cured such failure, and (B) its actions can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the Concessionaire, acting reasonably and (C) such failure is in fact cured within such period of time;

(ii) if the City fails to comply with the requirements or directives of a final award in a matter submitted to dispute resolution in accordance with Article 19 and such default continues unremedied for a period of 30 days following notice thereof from the Concessionaire to the City, or for such longer period as may be reasonably necessary to cure such failure, *provided*, in the latter case, that the City has demonstrated to the satisfaction of the Concessionaire, acting reasonably, that (A) it is proceeding, and will proceed, with all due diligence to cure or cause to be cured such failure, (B) its actions can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the Concessionaire, acting reasonably and (C) such failure is in fact cured within such period of time;

(iii) if a levy under execution or attachment has been made against all or any part of the Parking Facilities System or the Concessionaire Interest as a result of any Encumbrance (other than a Permitted Authority Encumbrance) created, incurred, assumed or suffered to exist by the City or any Person claiming through it, and such execution or attachment has not been vacated, removed or stayed by court order, bonding or otherwise within a period of 60 days, unless such levy resulted from actions or omissions of the Concessionaire or its Representatives or if all or a material part of the Parking Facilities System shall be subject to a condemnation or similar taking by the Authority, the City or any agency of the City;

(iv) if the City (A) admits, in writing, that it is unable to pay its debts as such become due, (B) makes an assignment for the benefit of creditors, (C) files a voluntary petition under Title 9 of the United States Bankruptcy Code, or if such petition is filed against it and an order for relief is entered, or if the City files any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future United States bankruptcy code or any other present or future applicable Law, or shall seek or consent to or acquiesce in or suffer the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the City, or of all or any substantial part of its properties (in each case, to the extent applicable to a municipality), or (D) takes any action in furtherance of any action described in this Section 16.2(b)(iv); or if within 90 days after the commencement of any proceeding against the City seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future United States bankruptcy code or any other present or future applicable Law, such proceeding has not been dismissed, or if, within 90 days after the appointment, without the consent or acquiescence of the City, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the City or of all or any substantial part of its properties (in each case, to the extent applicable to a municipality), such appointment has

not been vacated or stayed on appeal or otherwise, or if, within 90 days after the expiration of any such stay, such appointment has not been vacated;

(v) if the City repudiates in writing any of its material obligations under this Agreement; or

(vi) if a “City Default” (as defined in the Meters Agreement) shall have occurred and be continuing; or

(vii) if (A) a court of competent jurisdiction enters a final and unappealable judgment order against the City in any action, suit or proceeding brought against the City, which action, suit or proceeding was not brought by or supported in any way by the Concessionaire, any Operator, any Representative, any Leasehold Mortgagee or any other Person acting on behalf of any of the foregoing or any other Person having an pecuniary interest in this Agreement, and (B) as a result of such final and unappealable judgment order (i) it becomes unlawful for the City to comply with or observe any material obligation, covenant, agreement, term or condition in this Agreement or (ii) any material obligation, covenant, agreement, term or condition of the City under this Agreement becomes unenforceable against the City; and (C) the Parties, acting in good faith and within a reasonable time, are unable to reform this Agreement to conform to the requirements of such judgment order; *provided* that the entry of such judgment order shall not constitute a City Default if, within 270 days following the entry of such judgment order, (i) a Law is enacted that validates or confirms the lawful authority of the City, or grants to the City the lawful authority, to perform its contractual obligations under this Agreement notwithstanding such judgment order or otherwise remedies the City Default and (ii) the City reimburses the Concessionaire for any unreimbursed Losses attributable to such judgment order and accrued during the period from the date of entry of such judgment order to the date of enactment of such Law;

(c) *Remedies of Concessionaire Upon Authority Default.* Upon the occurrence of an Authority Default, the Concessionaire may by notice to the Authority and the City declare the Authority to be in default and may, subject to the provisions of Article 19, do any or all of the following as the Concessionaire, in its discretion, shall determine:

(i) the Concessionaire may terminate this Agreement by giving 60 days’ prior notice to the Authority and the City; *provided, however*, that the Authority shall be entitled to cure an Authority Default pursuant to Section 16.2(a)(i) by (A) agreeing within such 60-day period to pay any Losses sustained as a result of such Authority Default or (B) providing the Concessionaire with a written work plan within such 60-day period outlining the actions by which the Authority will ensure future compliance with either (x) the obligation, covenant, agreement, term or condition in this Agreement or (y) the requirements or directives of the issued final award in accordance with Article 19 that the Authority failed to perform or observe, which work plan is approved by the Concessionaire (which approval shall not be unreasonably withheld, delayed or conditioned), but any failure of the Authority to comply in any material respect with such approved work plan following 60 days’ notice of such failure from the Concessionaire to the Authority and the City shall be deemed to be an Authority Default

described in Section 16.2(a)(i) and the entitlement of the Authority to cure such Authority Default by the delivery of an approved work plan shall not apply thereto; and upon such termination the Authority shall be obligated to pay to the Concessionaire the Parking Facilities System Concession Value plus, without duplication, the reasonable out-of-pocket and documented costs and expenses incurred by the Concessionaire as a result of such termination;

(ii) the Concessionaire may seek specific performance, injunction or other equitable remedies, it being acknowledged that damages are an inadequate remedy for an Authority Default;

(iii) the Concessionaire may seek to recover its Losses caused by the Authority Default and any amounts due and payable under this Agreement and, in connection therewith, exercise any recourse available to any Person who is owed damages or a debt; and

(iv) the Concessionaire may exercise any other rights and remedies provided for hereunder or available at law or equity.

(d) *Remedies of Concessionaire Upon City Default.* Upon the occurrence of an City Default, the Concessionaire may by notice to the City and the City declare the City to be in default and may, subject to the provisions of Article 19, do any or all of the following as the Concessionaire, in its discretion, shall determine:

(i) the Concessionaire may terminate this Agreement by giving 60 days' prior notice to the Authority and the City; *provided, however*, that the City shall be entitled to cure a City Default pursuant to Section 16.2(b)(i) by (A) agreeing within such 60-day period to pay any Losses sustained as a result of such City Default or (b) providing the Concessionaire with a written work plan within such 60-day period outlining the actions by which the City will ensure future compliance with either (x) the obligation, covenant, agreement, term or condition in this Agreement or (y) the requirements or directives of the issued final award in accordance with Article 19 that the City failed to perform or observe, which work plan is approved by the Concessionaire (which approval shall not be unreasonably withheld, delayed, or conditioned), but any failure of the City to comply in any material respect with such approved work plan following 60 days' notice of such failure from the Concessionaire to the Authority and the City shall be deemed to be a City Default described in Section 16.2(b)(i) and the entitlement of the City to cure such City Default by the delivery of an approved work plan shall not apply thereto; and upon such termination the City shall be obligated to pay to the Concessionaire the Parking Facilities System Concession Value plus, without duplication, the reasonable out-of-pocket and documented costs and expenses incurred by the Concessionaire as a result of such termination;

(ii) the Concessionaire may seek specific performance, injunction or other equitable remedies, it being acknowledged that damages are an inadequate remedy for an City Default;

(iii) the Concessionaire may seek to recover its Losses caused by the City Default and any amounts due and payable under this Agreement and, in connection therewith, exercise any recourse available to any Person who is owed damages or a debt; and

(iv) the Concessionaire may exercise any other rights and remedies provided for hereunder or available at law or equity.

(e) *Termination of the Authority.* Upon the termination of the Authority and the transfer of the property of the Authority to the City pursuant to Section 5514 of the Parking Authority Law or as otherwise provided by Law, each Authority Default under Section 16.2(a) shall without amendment of this Agreement constitute a City Default with the effect of granting to the Concessionaire all of the remedies against the City that were available against the Authority under Section 16.2(c) prior to the termination of the Authority.

Section 16.3. **Letters of Credit.**

(a) The Concessionaire shall deliver to the Authority no later than the first day of the Lease Year that is five years prior to the final Lease Year of the Term, a Letter of Credit in the amount then to be calculated equal to the amount that the Engineering Firm reasonably determines is appropriate to cover all costs of capital improvements for the remainder of the Term as set forth in the Concessionaire's capital improvement program required pursuant to the Operating Standards.

(b) Such Letter of Credit shall be replaced on every anniversary of such Lease Year until the date that is two years after (i) the expiration of the Term and (ii) such time as there being no unresolved disputes with respect to the Concessionaire complying with, performing or observing any obligation, covenant, agreement, term or condition in this Agreement with a Replacement Letter of Credit in the amount of the undrawn balance of such Letter of Credit plus the amount of interest that would have been earned on such balance if invested for the next 12-month period at the Bank Rate. Subject to Approval, the required amount of any Letter of Credit with respect to a Lease Year (but only with respect to such Lease Year) may be reduced from time to time (at intervals that may be shorter than one year) by the amount that the Engineering Firm reasonably determines is appropriate such that the amount of the Letter of Credit remains sufficient to cover all costs of capital improvements for the remainder of the Term in light of the condition of the Parking Facilities System (including the Engineering Firm's assessment of the present and future condition of the Parking Facilities System, and all costs and expenses of capital improvements to be performed in connection therewith, during the remaining years of the Term) and the Concessionaire's compliance with this Agreement in connection therewith. Upon the occurrence of a Concessionaire Default (or if there is a dispute as to the occurrence of a Concessionaire Default, upon the final decision of the arbitral panel pursuant to Article 19 that a Concessionaire Default has occurred), the Authority shall have the right (in addition to all other rights and remedies provided in this Agreement, but with the understanding that any other monetary damages that the Authority may recover will be reduced by the amount so drawn, and without the Authority's exercise of such right being deemed a waiver or a cure of the

Concessionaire's failure to perform and whether or not this Agreement is thereby terminated), with three Business Days' prior notice to the Concessionaire, to draw against such Letter of Credit or any replacement thereof, upon presentation of a sight draft and a certificate confirming that the Authority has the right to draw under such Letter of Credit in the amount of such sight draft, up to the amount due to the Authority or the City with respect to such Concessionaire Default.

(c) The Concessionaire shall replace each Letter of Credit with a replacement Letter of Credit (the "Replacement Letter of Credit") at least 30 days prior to the expiry date of a Letter of Credit which is expiring. If the Concessionaire does not deliver to the Authority a Replacement Letter of Credit within such time period, the Authority shall have the right (in addition to all other rights and remedies provided in this Agreement and without the Authority's exercise of such right being deemed a waiver or a cure of the Concessionaire's failure to perform and whether or not this Agreement is thereby terminated) to immediately draw the full amount of the Letter of Credit upon presentation of a sight draft and a certificate confirming that the Authority has the right to draw under such Letter of Credit in the amount of such sight draft. After the Concessionaire delivers to the Authority a Replacement Letter of Credit complying with the provisions of this Agreement, the Authority shall deliver in accordance with the Concessionaire's reasonable instructions the Letter of Credit being replaced (except to the extent that at such time no sight draft under such Letter of Credit is outstanding and unpaid). Any Replacement Letter of Credit shall be upon the same terms and conditions as the Letter of Credit replaced and satisfy the requirements for a Letter of Credit, but in any event (i) the amount of each Replacement Letter of Credit, except as provided in Sections 16.3(a) and (b), shall equal or exceed the amount of the Letter of Credit being replaced at the time of replacement and (ii) the date of the Replacement Letter of Credit shall be its date of issuance. The expiry date of the Replacement Letter of Credit, as referred to in the opening paragraph of such Replacement Letter of Credit, shall be not earlier than one year later than the expiry date of the Letter of Credit being replaced.

(d) If this Agreement is terminated by the Authority prior to the expiration of the Term as a result of a Concessionaire Default, the Authority shall have the right (in addition to all other rights and remedies provided in this Agreement and without the Authority's exercise of such right being deemed a waiver or a cure of the Concessionaire's failure to perform), with three Business Days' prior notice to the Concessionaire, to draw against any Letter of Credit, upon presentation of a sight draft and a certificate confirming that the Authority has the right to draw under such Letter of Credit in the amount of such sight draft, up to the amount due to the Authority pursuant to the terms of this Agreement.

(e) The Authority will accept the Letters of Credit to be delivered pursuant to this Section 16.3 (and pursuant to Section 2.3) as security for the Concessionaire's obligations under this Agreement, in place of a cash deposit in the same amount, with the understanding that the Letters of Credit are to be the functional equivalent of a cash deposit. The Concessionaire's sole remedy in connection with the improper presentment or payment of sight drafts drawn under the Letter of Credit shall be the right to obtain from the Authority a refund of the amount of any sight draft the proceeds of which were drawn inappropriately or misapplied and the reasonable costs incurred by the

Concessionaire as a result of such inappropriate draw or misapplication; *provided, however*, that at the time of such refund, the Concessionaire increases the amount of the Letter of Credit to the amount (if any) then required under the applicable provisions of this Agreement. The Concessionaire acknowledges that the presentment of sight drafts drawn under the Letter of Credit could not under any circumstances cause the Concessionaire injury that could not be remedied by an award of money damages, and that the recovery of money damages would be an adequate remedy therefor. The Concessionaire shall not request or instruct the issuer of the Letter of Credit to refrain from paying any sight draft drawn under a Letter of Credit.

(f) If the Authority desires to assign its rights and obligations in accordance with Section 17.2 of this Agreement, the Concessionaire shall cooperate so that concurrently with the effectiveness of such assignment, either Replacement Letters of Credit as described in Section 16.3(c) for, or appropriate amendments to, the Letters of Credit then held by the Authority, in either case identifying as beneficiary the appropriate party after the assignment becomes effective, shall be delivered to the Authority, at no cost to the Concessionaire.

(g) The Concessionaire shall obtain and furnish all Letters of Credit and Replacement Letters of Credit at its sole cost and expense and shall pay all charges imposed in connection with the Authority's presentation of sight drafts and drawing against the Letters of Credit or Replacement Letters of Credit.

(h) In lieu of any Letter of Credit to be provided by the Concessionaire pursuant to the terms of this Section 16.3, the Concessionaire shall, at the Concessionaire's sole discretion, have the option to deposit with a Depository for the benefit of the Authority, as collateral security, cash or Eligible Investments in an amount equal to the amount of such Letter of Credit at the time of such deposit. Such Depository shall invest and reinvest such amounts in Eligible Investments at the direction of the Authority, *provided* that earnings thereon shall be paid to the Concessionaire not less frequently than quarterly. If, at any time during the Term, the Authority would have the right to draw any amount on a Letter of Credit for which the Concessionaire has substituted cash or Eligible Investments pursuant to this Section 16.3(h), the Depository shall pay such amount to the Authority from such cash deposit or Eligible Investments in accordance with the terms of this Section 16.3 and all rights and remedies of the Authority and the Concessionaire with respect to such cash deposits or Eligible Investments, if any, shall be the same as those provided in this Section 16.3 with respect to any Letter of Credit; *provided, however*, that the certification that would have been provided by the Authority with the sight draft had cash or Eligible Investments not been so substituted shall be made to the Depository and delivered to the Depository together with the Authority's written demand for payment.

(i) If Letters of Credit shall not in the future be available at commercially reasonable terms and rates or shall not be a commercially reasonable form of security in similar transactions, the Concessionaire shall furnish the Authority with comparable security instruments or Eligible Investments that then are commonly used in similar transactions and which are Approved; and if no such comparable security instruments shall be available, the Concessionaire shall deposit with the Authority cash as security.

Section 16.4. **Consequences of Termination or Reversion.** Upon the termination of this Agreement, notwithstanding any claims the Parties may have against each other and subject to Section 16.2(b)(iii), Section 16.2(c)(iii), Section 16.2(d)(ii) and Article 18, the following provisions shall apply:

(a) the Concessionaire shall, without action whatsoever being necessary on the part of any Government Party, well and truly surrender and deliver to the Authority the Parking Facilities System (including all improvements to the Parking Facilities System), the Parking Facilities System Assets and all tangible and intangible personal property of the Concessionaire (including inventories) that is located on the Parking Facilities System and used in connection with the Parking Facilities System Operations (except in the case of a termination in the circumstance contemplated by Section 13.3(b)) in good order, condition and repair (reasonable wear and tear excepted), determined reasonably in accordance with the then applicable Operating Standards, free and clear of all Encumbrances other than (w) Permitted Concessionaire Encumbrances set forth in clause (iv), clause (viii) and clause (ix) as it pertains to clauses (iv) and (viii) of the definition of that term, (x) Permitted Authority Encumbrances, (y) those created by or suffered to exist or consented to by the Authority or any Person claiming through it, and (z) with respect to any property added to the Parking Facilities System after the Time of Closing, title defects affecting such property in existence on the date such property is added to the Parking Facilities System;

(b) the Concessionaire hereby waives any notice now or hereafter required by Law with respect to vacating the Parking Facilities System on the Reversion Date;

(c) to the extent not prohibited by law, the Concessionaire expressly waives all rights now or hereafter conferred by the Pennsylvania Landlord and Tenant Act of 1951, Act of April 6, 1951 (P.L. 69, No. 20) as amended, 68 P.S. § 250.101 *et seq.*, including, without limitation, any provision of such Act requiring notice to Concessionaire to vacate the Parking Facilities System at the end of the Term, and Concessionaire covenants and agrees to give up quiet and peaceable possession, without further notice from the Authority or City;

(d) the Authority shall, as of the Reversion Date, assume full responsibility for the Parking Facilities System Operations, and as of such date, the Concessionaire shall have no liability or responsibility for Parking Facilities System Operations occurring after such date;

(e) the Concessionaire shall be liable for all costs, expenses and other amounts for which it is liable or responsible hereunder incurred up to but not including the Reversion Date, and the Authority shall be liable for all costs, expenses and amounts incurred in connection with the Parking Facilities System Operations on and after the Reversion Date;

(f) the Authority shall have the option by providing notice to the Concessionaire of requiring that the Concessionaire assign, without warranty or recourse to the Concessionaire, to the fullest extent permitted by Authorizations and applicable Law, all of its right, title and interest in, to and under (in each of the following cases, to

the extent assignable) all or any of the Operating Agreements then in effect and all Authorizations to the Authority or its nominee for the remainder of their respective terms; *provided, however*, that if the Authority exercises such option, the right, title and interest of the Concessionaire in, to and under such Operating Agreements and Authorizations shall be assigned to the Authority or its nominee as of the Reversion Date and the Concessionaire shall surrender the Parking Facilities System to the Authority and shall cause all Persons claiming under or through the Concessionaire to do likewise, and the Authority shall assume in writing, pursuant to an assumption agreement satisfactory to the Concessionaire, the Concessionaire's obligations under the Operating Agreements that arise in respect of, or relate to, any period of time falling on and after the Reversion Date; *provided further* that if the Authority does not exercise such option, the Concessionaire shall, unless the Authority has granted to a Leasehold Mortgagee or its nominee a new concession agreement containing the same provisions as are contained in this Agreement, take such steps as are necessary to terminate the Operating Agreements to the extent permitted thereunder and in accordance with the terms thereof;

(g) all plans, drawings, specifications and models prepared in connection with construction at the Parking Facilities System and in the Concessionaire's possession and all "as-built" drawings shall become the sole and absolute property of the Authority, and the Concessionaire shall promptly deliver to the Authority all such plans, drawings, specifications and models and all such as-built drawings (but may keep copies of those plans, drawings, specifications and models that were developed by the Concessionaire or its Representatives);

(h) the Concessionaire, at its sole cost and expense, shall promptly deliver to the Authority copies of all records and other documents relating to the Parking Fee Revenues and Other Concessionaire Revenues that are in the possession of the Concessionaire or its Representatives and all other then existing records and information relating to the Parking Facilities System as the Authority, acting reasonably, may request;

(i) the Concessionaire shall execute and deliver to the Authority a quitclaim deed in recordable form or other release or other instrument reasonably required by the Authority or its title insurer to evidence such expiration or termination;

(j) the Concessionaire shall assist the Authority in such manner as the Authority may require to ensure the orderly transition of control, operation, management, maintenance and rehabilitation of the Parking Facilities System, and shall, if appropriate and if requested by the Authority, take all steps as may be necessary to enforce the provisions of the Operating Agreements pertaining to the surrender of the Parking Facilities System;

(k) the Authority and the Concessionaire shall make appropriate adjustments, including adjustments relating to any Operating Agreements assigned to the Authority, fees and other similar charges collected on and after the Reversion Date that are incurred prior to the Reversion Date, and utilities, and any adjustments and payment therefor shall be made by the appropriate Party on the Reversion Date, but shall be subject to readjustment if necessary because of error in matters such as information, calculation, payments and omissions that are identified within the period of 180 days following the

Reversion Date; *provided, however*, that the Authority and the Concessionaire acknowledge that certain adjustments or readjustments may have to be made when a third party provides to the Authority or the Concessionaire a final adjustment amount in respect of a matter, and for such matters the adjustment and readjustment date shall each be correspondingly extended; and

(l) if this Agreement is terminated as a result of an Adverse Action, the payment by the Authority to the Concessionaire of the amounts required under Article 14 or Article 19 shall constitute full and final settlement of any and all Claims the Concessionaire may have against the Government Parties for and in respect of the termination of this Agreement and upon such payment, the Concessionaire shall execute and deliver all such releases and discharges as the Government Parties may reasonably require to give effect to the foregoing.

(m) This Section 16.4 shall survive the expiration or any earlier termination of this Agreement.

Section 16.5. Termination Other Than Pursuant to Agreement. If this Agreement is terminated by the Authority or the City other than pursuant to Section 16.1 or is canceled, rescinded or voided during the Term for any reason over the objection and without action by the Concessionaire, any Leasehold Mortgagee and their respective Affiliates, the Authority shall pay to the Concessionaire the Parking Facilities System Concession Value as of the date of such termination, cancellation, rescinding or voiding, plus, without duplication, the reasonable out-of-pocket and documented costs and expenses incurred by the Concessionaire as a direct result of such termination, cancellation, rescinding or voiding. The Government Parties hereby acknowledge and agree that they may only terminate this Agreement in accordance with the express terms hereof and shall not, in any event, have the right to terminate this Agreement for convenience.

ARTICLE 17 RESTRICTIONS ON TRANSFERS

Section 17.1. **Transfers by the Concessionaire.**

(a) The Concessionaire shall not Transfer, or otherwise permit the Transfer of, any or all of the Concessionaire Interest to or in favor of a Transferee, unless (i) the Authority has Approved (based upon a determination in accordance with Section 17.1(b)) such proposed Transferee (unless it is a Leasehold Mortgagee permitted under Article 18) and (ii) the proposed Transferee (unless it is a Leasehold Mortgagee permitted under Article 18) enters into an agreement with the Government Parties in form and substance satisfactory to the Authority, acting reasonably, wherein the Transferee acquires the rights and assumes the obligations of the Concessionaire and agrees to perform and observe all of the obligations and covenants of the Concessionaire under this Agreement. Any Transfer made in violation of the foregoing provision shall be null and void ab initio and of no force and effect.

(b) Approval of a proposed Transferee may be withheld if the Authority reasonably determines that (i) such proposed Transfer is prohibited by applicable Law, (ii) such proposed Transferee's entering into this Agreement with the Government Parties is prohibited by Law, (iii) such proposed Transfer would result in a violation of Law, (iv) such proposed Transfer would result in a Tax liability to a Government Party (unless such Government Party shall have received indemnification, as determined in the Government Party's discretion, with respect thereto) or (v) such proposed Transferee is not capable of performing the obligations and covenants of the Concessionaire under this Agreement, which determination shall be based upon and take into account the following factors: (a) the ability of the Transferee to operate (or cause the Operator to operate) the Parking Facilities System in a manner that will result in the operation of the Parking Facilities System in accordance with the public purposes of the Authority as set forth in the Parking Authority Law and Section 3.18; (b) the financial strength and integrity of the proposed Transferee, its direct or indirect beneficial owners, any proposed managers or operating partners and each of their respective Affiliates; (c) the experience of the proposed Transferee or the Operator to be engaged by the proposed Transferee in operating parking garages and performing other relevant projects; (d) the background and reputation of the proposed Transferee, its direct or indirect beneficial owners, any proposed managers or operating partners, each of their respective officers, directors and employees and each of their respective Affiliates (including the absence of criminal, civil or regulatory claims or actions against any such Person and the quality of any such Person's past or present performance on other projects); and (e) the Operator engaged by the proposed Transferee, including the ability of the Operator to meet the requirements then generally applied by the City to applicants for a license to operate a Public Garage.

(c) No Transfer of all or any of the Concessionaire Interest (except a Transfer to a Leasehold Mortgagee or its nominee upon the Leasehold Mortgagee's exercise of remedies under its Leasehold Mortgage and a subsequent transfer to the transferee of the Leasehold Mortgagee or its nominee that has been Approved under Section 17.1(b)) shall be made or have any force or effect if, at the time of such Transfer there has occurred a Concessionaire Default that has not been remedied or an event that with the lapse of time, the giving of notice or otherwise would constitute a Concessionaire Default.

(d) A Change in Control of the Concessionaire shall be deemed to be a Transfer of the Concessionaire Interest for purposes of the foregoing provisions.

(e) Nothing contained in the foregoing shall be deemed to prohibit or limit the Concessionaire from changing its organizational form or status (including a change from a limited liability company to a corporation or limited partnership), *provided* that such change in organizational form or status does not result in a Change of Control of the Concessionaire.

(f) Neither (i) a change of ownership that is attributable to a lease, sublease, concession, management agreement, operating agreement or other similar arrangement that is subject and subordinate in all respects to the rights of the Government Parties under this Agreement, nor (ii) the creation of a trust or any other transaction or arrangement that is solely a transfer of all or part of the Concessionaire's economic

interest under this Agreement to another entity shall be deemed to be a Transfer of the Concessionaire Interest for purposes of Section 17.1(a).

Section 17.2. Assignment by the Authority. The Authority shall have the right to Transfer any or all of the Authority's interest in the Parking Facilities System and this Agreement, *provided* that it shall be jointly and severally liable with the Transferee for the performance and observance of the obligations and covenants of the Authority under this Agreement and any agreement entered into by the Authority under this Agreement (including agreeing directly with any Leasehold Mortgagee to be bound by the agreement entered into in accordance with Section 18.3) and that any such Transfer by the Authority shall not materially limit or reduce any of the Concessionaire's other rights, benefits, remedies or privileges under this Agreement.

Section 17.3. Assignment by the City. The City shall have the right to Transfer any or all of the City's interest in the Parking Facilities System and this Agreement, *provided* that it shall be jointly and severally liable with the Transferee for the performance and observance of the obligations and covenants of the City under this Agreement and any agreement entered into by the City under this Agreement (including agreeing directly with any Leasehold Mortgagee to be bound by the agreement entered into in accordance with Section 18.3) and that any such Transfer by the City shall not materially limit or reduce any of the Concessionaire's other rights, benefits, remedies or privileges under this Agreement.

ARTICLE 18 LENDER'S RIGHTS AND REMEDIES

Section 18.1. Leasehold Mortgages. The Concessionaire shall have the right, at its sole cost and expense, to grant one or more (subject to Section 18.7) Leasehold Mortgages, secured by the Concessionaire Interest, Parking Fee Revenues or Other Concession Revenues if at the time any such Leasehold Mortgage is executed and delivered to the Leasehold Mortgagee, no Concessionaire Default exists unless any such Concessionaire Default will be cured pursuant to Section 18.3 in connection with entering into such Leasehold Mortgage, and upon and subject to the following terms and conditions:

(a) a Leasehold Mortgage may not cover any property of, or secure any debt issued or guaranteed by, any Person other than the Concessionaire, but may cover shares or equity interests in the capital of the Concessionaire and any cash reserves or deposits held in the name of the Concessionaire;

(b) no Person other than an Institutional Lender shall be entitled to the benefits and protections accorded to a Leasehold Mortgagee in this Agreement; *provided, however*, that lessors and lenders to the Concessionaire (and lenders to a Leasehold Mortgagee that is a Lessor) may be Persons other than Institutional Lenders so long as any Leasehold Mortgage securing the loans made by such Persons is held by an Institutional Lender acting as collateral agent or trustee;

(c) no Leasehold Mortgage or other instrument purporting to mortgage, pledge, encumber, or create a lien, charge or security interest on or against any or all of the Concessionaire Interest shall extend to or affect the fee simple interest in the Parking Facilities System, the Government Parties interest hereunder or their reversionary interests and estates in and to the Parking Facilities System or any part thereof;

(d) the Government Parties shall have no liability whatsoever for payment of the principal sum secured by any Leasehold Mortgage, or any interest accrued thereon or any other sum secured thereby or accruing thereunder, and, except for violation by a Government Party of express obligations set forth herein, the Leasehold Mortgagee shall not be entitled to seek any damages or other amounts against a Government Party for any or all of the same;

(e) the Government Parties shall have no obligation to any Leasehold Mortgagee in the enforcement of the rights and remedies of the Government Parties under this Agreement or by Law provided, except as expressly set forth in this Agreement and unless such Leasehold Mortgagee has provided the Government Parties with notice of its Leasehold Mortgage in accordance with the Leasehold Mortgagee Notice Requirements;

(f) each Leasehold Mortgage shall provide that if the Concessionaire is in default under the Leasehold Mortgage and the Leasehold Mortgagee gives notice of such default to the Concessionaire, then the Leasehold Mortgagee shall give notice of such default to each Government Party;

(g) subject to the terms of this Agreement, all rights acquired by a Leasehold Mortgagee under any Leasehold Mortgage shall be subject and subordinate to all of the provisions of this Agreement and to all of the rights of the Government Parties hereunder;

(h) while any Leasehold Mortgage is outstanding, the Government Parties shall not agree to any amendment or modification of this Agreement that could reasonably be expected to have a material adverse effect on the rights or interests of the Leasehold Mortgagee or agree to a voluntary surrender or termination of this Agreement by the Concessionaire without the consent of the Leasehold Mortgagee;

(i) notwithstanding any enforcement of the security of any Leasehold Mortgage, the Concessionaire shall remain liable to the Government Parties for the payment of all sums owing to the Government Parties under this Agreement and the performance and observance of all of the Concessionaire's covenants and obligations under this Agreement; and

(j) a Leasehold Mortgagee shall not, by virtue of its Leasehold Mortgage, acquire any greater rights or interest in the Parking Facilities System than the Concessionaire has at any applicable time under this Agreement, other than such rights or interest as may be granted or acquired in accordance with Section 18.2, 18.3, 18.4 or 18.5; and each Leasehold Mortgagee, the Authority, the City and the Concessionaire shall enter into a consent agreement in a form acceptable to all parties; *provided* that such

consent agreement shall be in a customary form and shall include the rights and protections provided to the Leasehold Mortgagees in this Agreement.

Section 18.2. Notices and Payments to Leasehold Mortgagees. Whenever a Leasehold Mortgage exists as to which the Government Parties has been provided notice by the holder thereof in accordance with the Leasehold Mortgage Notice Requirements, the Government Parties shall, simultaneously with providing the Concessionaire any required notice under this Agreement, provide a copy of such notice to such Leasehold Mortgagee, and no such notice to the Concessionaire shall be effective against the Leasehold Mortgagee until a copy thereof is duly provided to such Leasehold Mortgagee at its address specified in its notice given to the Government Parties in accordance with the Leasehold Mortgage Notice Requirements (or any subsequent change of address notice given to the Government Parties pursuant to the requirements of Section 20.1). With respect to a Leasehold Mortgage regarding which the Government Parties has been provided notice in accordance with the Leasehold Mortgage Notice Requirements, unless the Leasehold Mortgagee has otherwise advised the Government Parties in writing, all payments to the Concessionaire to be made by the Government Parties under this Agreement shall be made to the institution acting as the collateral agent or depository under the financing secured by such Leasehold Mortgage.

Section 18.3. Leasehold Mortgagee's Right to Cure. The Leasehold Mortgagee shall have a period of 60 days with respect to any Concessionaire Default beyond any cure period expressly provided to the Concessionaire herein, in which to cure or cause to be cured any such Concessionaire Default; *provided, however*, that such 60-day period shall be extended if the Concessionaire Default may be cured but cannot reasonably be cured within such period of 60 days, and the Leasehold Mortgagee begins to cure such default within such 60-day period (or if possession is necessary in order to effect such cure, the Leasehold Mortgagee files the appropriate legal action to foreclose the liens of the Leasehold Mortgage (or takes other appropriate action to effect a transfer of title to the property subject to such liens) and take possession of the Parking Facilities System within such period) and thereafter proceeds with all due diligence to cure such Concessionaire Default (including by proceeding with all due diligence to effect such foreclosure and during such foreclosure action (to the extent practicable) and thereafter to effect such a cure) within a reasonable period of time acceptable to the Authority, acting reasonably; *provided* further that if a Leasehold Mortgagee's right to cure a Concessionaire Default has not expired, and the Leasehold Mortgagee is acting to cure such Concessionaire Default in accordance with this Section 18.3 then the Government Parties shall not exercise their right to terminate this Agreement by reason of such Concessionaire Default. In furtherance of the foregoing, the Government Parties shall permit the Leasehold Mortgagee and its Representatives the same access to the Parking Facilities System as is permitted to the Concessionaire hereunder. The Government Parties shall accept any such performance by a Leasehold Mortgagee as though the same had been done or performed by the Concessionaire. Any payment to be made or action to be taken by a Leasehold Mortgagee hereunder as a prerequisite to keeping this Agreement in effect shall be deemed properly to have been made or taken by the Leasehold Mortgagee if such payment is made or action is taken by a nominee, agent or assignee of the rights of such Leasehold Mortgagee.

Section 18.4. Rights of the Leasehold Mortgagee.

(a) Subject to the provisions of this Agreement, a Leasehold Mortgagee may (i) enforce its Leasehold Mortgage in any lawful way, (ii) acquire the Concessionaire Interest in any lawful way or (iii) take possession of in any lawful way and manage the Parking Facilities System. Upon foreclosure of (or without foreclosure upon exercise of any contractual or statutory power of sale under such Leasehold Mortgage or a deed in lieu) and subject to the provisions of Article 17 (applied to the Leasehold Mortgagee as if it were the Concessionaire), a Leasehold Mortgagee may Transfer the Concessionaire Interest; *provided, however*, that no Transfer by a Leasehold Mortgagee shall be effective unless the Transfer is made in accordance with Section 17.1. Any Person to whom the Leasehold Mortgagee Transfers the Concessionaire Interest (including such Leasehold Mortgagee) shall take the Concessionaire Interest subject to any of the Concessionaire's obligations under this Agreement.

(b) Except as provided in Section 18.3, unless and until a Leasehold Mortgagee (i) forecloses or has otherwise taken ownership of the Concessionaire Interest or (ii) has taken possession or control of the Concessionaire Interest, whether directly or by an agent as a mortgagee in possession or a receiver or receiver and manager has taken possession or control of the Concessionaire Interest by reference to the Leasehold Mortgage, the Leasehold Mortgagee shall not be liable for any of the Concessionaire's obligations under this Agreement or be entitled to any of the Concessionaire's rights and benefits contained in this Agreement, except by way of security. If the Leasehold Mortgagee itself or by an agent or a receiver or a receiver and manager is the owner, or is in control or possession of, the Concessionaire Interest, it shall be bound by all liabilities and obligations of the Concessionaire under this Agreement (including the obligation to engage an Operator). Once the Leasehold Mortgagee goes out of possession or control of the Concessionaire Interest or Transfers the Concessionaire Interest to another Person in accordance with the provisions of this Agreement, the Leasehold Mortgagee shall cease to be liable for any of the Concessionaire's obligations under this Agreement accruing thereafter and shall cease to be entitled to any of the Concessionaire's rights and benefits contained in this Agreement, except, if the Leasehold Mortgage remains outstanding, by way of security.

Section 18.5. Termination of this Agreement; New Agreement.

(a) Without prejudice to the rights of a Leasehold Mortgagee under Section 18.3, if this Agreement is terminated prior to the expiration of the Term due to a Concessionaire Default (in which case the Authority shall notify the Leasehold Mortgagee of such termination) or if this Agreement is rejected or disaffirmed pursuant to any bankruptcy Law or proceeding or other similar Law or proceedings affecting creditors' rights generally with respect to a bankruptcy proceeding relating to the Concessionaire or otherwise, the Government Parties agree to enter into a new concession and lease agreement of the Parking Facilities System with the Leasehold Mortgagee (or its designee or nominee, *provided* that such designee or nominee either is controlled by the Leasehold Mortgagee or is Approved by the Authority as Transferee under Section 17.1) for the remainder of the original stated Term upon all of the covenants, agreements, terms, provisions and limitations of this Agreement (the "New

Agreement”), effective as of the date of such termination, but only on and subject to the satisfaction of all of the following requirements and conditions: (i) such Leasehold Mortgagee commits in writing to the Government Parties, in a notice delivered to the Government Parties, within 30 days after the Authority delivers the termination notice to Leasehold Mortgagee (or, if later, upon the termination of any cure period granted to the Leasehold Mortgagee pursuant to Section 18.3) or within 30 days after the effective date of such rejection or disaffirmance, as the case may be, that the Leasehold Mortgagee (or its designee or nominee) will enter into the New Agreement, which notice is accompanied by a copy of such New Agreement, duly executed and acknowledged by the Leasehold Mortgagee (or its designee or nominee); (ii) the Leasehold Mortgagee (or its designee or nominee) pays or causes to be paid to the Authority, at the time of the execution and delivery of the New Agreement, all amounts which, at the time of the execution and delivery thereof, would have been past-due or due and payable in accordance with the provisions of this Agreement but for such termination; (iii) provided the Authority furnishes a statement or invoice for such costs the Leasehold Mortgagee pays or causes to be paid to each Government Party all reasonable costs and expenses (including legal fees), Taxes, fees, charges and disbursements paid or incurred by such Government Party in connection with such defaults and termination, the recovery of possession from the Concessionaire, and in connection with the preparation, execution and delivery of the New Agreement and related agreements and documents specified in such statement or invoice; and (iv) such Leasehold Mortgagee (or its designee or nominee), at the time of such written request, cures all defaults under this Agreement (curable by the payment of money) existing immediately prior to the termination of this Agreement, or, if such defaults cannot be cured by the payment of money, such Leasehold Mortgagee (or its designee or nominee) commits to the Government Parties in the New Agreement to proceed both promptly and diligently, upon the execution of the New Agreement, to cure all such other defaults and, if possession is necessary in order to cure such other Concessionaire Defaults, to proceed both promptly and diligently to obtain the possession required to cure any such other defaults (and such cure shall be a covenant in the New Agreement).

(b) Nothing contained in this Section 18.5 shall be deemed to limit or affect the Government Parties’ interests in and to such Parking Facilities System upon the expiration of the Term of the New Agreement. The provisions of this Section 18.5 shall survive the termination of this Agreement and shall continue in full force and effect thereafter to the same extent as if this Section 18.5 were a separate and independent contract made by the Government Parties, the Concessionaire and the Leasehold Mortgagee and, if the Leasehold Mortgagee satisfies the conditions to a New Agreement from the effective date of such termination of this Agreement to the date of execution and delivery of the New Agreement, the Leasehold Mortgagee may use and enjoy the leasehold estate created by this Agreement without hindrance by the Government Parties, but only on and subject to the terms and provisions of this Agreement.

(c) If the circumstances described in Section 18.5(a) occur, and a Government Party determines, based on the written legal advice of counsel, that termination of this Agreement and the entry into a New Agreement by and among the Government Parties and the Leasehold Mortgagee could violate applicable provisions of the Laws of the

Commonwealth governing procurement by the Authority or the City then, in lieu of entering in a New Agreement and in satisfaction of their obligations under this Section 18.5, the Government Parties agree to enter into an Assignment and Assumption Agreement pursuant to Section 18.9.

Section 18.6. **Right to Arbitration.** In each case specified in this Agreement in which resort to arbitration is authorized, the Leasehold Mortgagee shall have the right and privilege if an event of default under the Leasehold Mortgage then exists and notice has been given to each Government Party as contemplated by Section 18.1(vi), in the Concessionaire's name, place and stead, to obtain and participate in such arbitration upon notice to the Government Parties in accordance with Article 20, *provided* that the Leasehold Mortgagee agrees to be bound by the decision of the arbitration panel.

Section 18.7. **Recognition of Leasehold Mortgagee.** If there is more than one Leasehold Mortgagee, only that Leasehold Mortgagee, to the exclusion of all other Leasehold Mortgagees, whose notice was earliest received by the Authority pursuant to the Leasehold Mortgagee Notice Requirements, shall have the rights as a Leasehold Mortgagee under this Article 18, unless such Leasehold Mortgagee has designated in writing another Leasehold Mortgagee to exercise such rights.

Section 18.8. **Authority's Right to Purchase Leasehold Mortgage.**

(a) If any default by the Concessionaire has occurred under a Leasehold Mortgage, or any act, condition or event has occurred which would permit a Leasehold Mortgagee to declare all or part of the indebtedness secured by a Leasehold Mortgage to be immediately due and payable (or, in the case of a Leasehold Mortgage that is a lease, to terminate the lease), then the Authority shall have 30 days after the date on which such Leasehold Mortgagee shall serve notice upon the Authority in writing ("Leasehold Mortgagee's Notice") that such Leasehold Mortgagee intends to commence proceedings to foreclose the Leasehold Mortgage or, in the case of a Leasehold Mortgagee that is a Lessor to terminate the lease (stating the calculation of the purchase price pursuant Section 18.8(c)), during which 30-day period the Authority shall have the right and option (the "Authority's Option") to purchase from all Leasehold Mortgagees their Leasehold Mortgages, upon the terms and subject to the conditions contained in this Section 18.8.

(b) The Authority's Option shall be exercised by notice served upon the Concessionaire and all Leasehold Mortgagees within such 30-day period. Time shall be of the essence as to the exercise of the Authority's Option. If the Authority's Option is duly and timely exercised, the Authority shall purchase and all Leasehold Mortgagees shall assign their Leasehold Mortgages to the Authority (or its designee) on the date which is 60 days after the date on which a Leasehold Mortgagee's Notice is served upon the Authority. The closing shall take place at a mutually convenient time and place.

(c) The purchase price payable by the Authority shall be equal to the aggregate amounts secured by such Leasehold Mortgages (including principal, interest, fees, premiums, breakage and other costs, expenses (including attorneys' fees) and any other amounts secured thereby) as of the closing date of the purchase. The purchase price

shall be paid in full in cash at closing by wire transfer or other immediately available funds. The purchase price shall be paid by the Authority to each respective Leasehold Mortgagee, to be applied by the Leasehold Mortgagee to the amounts secured by the Leasehold Mortgage owed to such Leasehold Mortgagee, subject to the priorities of lien of such Leasehold Mortgages.

(d) At the closing and upon payment in full of the purchase price each Leasehold Mortgagee shall assign its Leasehold Mortgage to the Authority, together with any security interest held by it in the Concessionaire Interest, without recourse, representations, covenants or warranties of any kind, *provided* that such Leasehold Mortgages and security interests shall be deemed modified to secure the amount of the aggregate purchase price paid by the Authority to all Leasehold Mortgagees (rather than the indebtedness theretofore secured thereby) payable on demand, with interest and upon the other items referred to in this Section 18.8(d). Each such assignment shall be in form for recordation or filing, as the case may be. The Authority shall be responsible for paying any Taxes payable to any Governmental Authority upon such assignment. Such assignment shall be made subject to such state of title of the Parking Facilities System as shall exist at the date of exercise of the Authority's Option.

(e) Any Leasehold Mortgage shall contain an agreement of the Leasehold Mortgagee to be bound by the provisions of this Section 18.8.

(f) The Authority shall have the right to receive all notices of default under any Leasehold Mortgage, but the Authority shall not have the right to cure any default under any Leasehold Mortgage, except to the extent provided in this Section 18.8.

Section 18.9. Assignment and Assumption Agreement.

(a) The provisions of this Section 18.9 shall be in effect whenever either (i) a Government Party has made the determination contemplated by Section 18.5(c) or (ii) the Government Parties, with the written consent of the Leasehold Mortgagee, have determined to proceed under this Section 18.9 in lieu of under Section 18.5.

(b) Without prejudice to the rights of a Leasehold Mortgagee under Section 18.3, if either (i) the Government Parties have given a notice of termination of this Agreement due to Concessionaire Default pursuant to Section 16.1(b), or (ii) this Agreement is rejected or disaffirmed pursuant to any bankruptcy Law or proceeding or other similar Law or proceedings affecting creditors' right generally with respect to a bankruptcy proceeding relating to the Concessionaire or otherwise, the Government Parties agree to cooperate with a Leasehold Mortgagee in order to effectuate such Leasehold Mortgagee's rights under the Leasehold Mortgage to step-in, assume or assign this Agreement, in accordance with the procedures, terms and conditions of this Section 18.9.

(c) Upon notification and satisfaction of all of the conditions and requirements in Section 18.9(d), the Government Parties agree that this Agreement shall not be deemed terminated, but may be assumed by a Leasehold Mortgagee or by a designee or nominee of such Leasehold Mortgagee who is either controlled by the

Leasehold Mortgagee or is Approved by the Authority as a Transferee under Section 17.1, for the remainder of the original stated Term of this Agreement, and as evidence of such assignment and assumption the Government Parties agree to execute an amended and restated concession and lease agreement for the Parking Facilities System upon all of the covenants, agreements, terms, provisions and limitations of this Agreement (the "Assignment and Assumption Agreement").

(d) This Agreement may be so assigned and assumed pursuant to an Assignment and Assumption Agreement upon and subject to satisfaction of all of the following requirements and conditions:

(i) Such Leasehold Mortgagee must commit in writing to the Government Parties, in a notice delivered to the Government Parties within the later of 30 days after the Authority delivers the termination notice to Leasehold Mortgagee or upon the termination of any cure period granted to such Leasehold Mortgagee pursuant to Section 18.3, or within 30 days after the effective date of any rejection or disaffirmance of this Agreement in a bankruptcy proceeding, as the case may be, that such Leasehold Mortgagee (or its designee or nominee) will assume this Agreement and enter into the Assignment and Assumption Agreement, which notice is accompanied by a copy of such Assignment and Assumption Agreement duly executed and acknowledged by such Leasehold Mortgagee (or its designee or nominee).

(ii) Such Leasehold Mortgagee (or its designee or nominee) shall pay or cause to be paid to the Authority, at the time of the execution and delivery of the Assignment and Assumption Agreement, all amounts which, at the time of the execution and delivery thereof, would have been past-due or due and payable in accordance with the provisions of this Agreement.

(iii) Such Leasehold Mortgagee (or its designee or nominate) shall pay or cause to be paid to each Government Party all reasonable costs and expenses (including legal fees), Taxes, fees, charges and disbursements paid or incurred by such Government Party in connection with such defaults and notice of termination, the recovery of possession from the Concessionaire, and in connection with the preparation, execution and delivery of the Assignment and Assumption Agreement and related agreements and documents. The Government Parties shall provide an invoice to such Leasehold Mortgagee of such costs, and the Leasehold Mortgagee or its designee or nominee shall pay such invoiced costs within five days of the receipt of such invoice.

(iv) Such Leasehold Mortgagee (or its designee or nominee), at the time of the notice provided under Section 18.9(b)(i), shall cure all defaults under this Agreement (including all such defaults curable by the payment of money) existing immediately prior to the notice of termination issued pursuant to Section 16.1(b), or, if such defaults cannot be cured by the payment of money, such Leasehold Mortgagee (or its designee or nominee) shall commit to the Government Parties in the Assignment and Assumption Agreement to proceed both promptly and diligently, upon the execution of the Assignment and Assumption Agreement, to cure all such other defaults and, if possession is necessary in order to cure such other Concessionaire Defaults, to proceed both promptly and diligently to obtain the possession required to cure any such other

defaults (and such obligation to cure shall be a covenant in the Assignment and Assumption Agreement).

(e) If a Leasehold Mortgagee gives the Government Parties a notice as provided in Section 18.9(d)(i), the Government Parties and Leasehold Mortgagee agree to cooperate with respect to taking any appropriate actions required to regain and transfer possession of the Parking Facilities System and the Parking Facilities System Assets, including (i) seeking surrender of possession in any bankruptcy proceedings; (ii) seeking relief from any automatic stay in bankruptcy provisions and pursuit of state law remedies to obtain possession and to foreclose on the Leasehold Mortgage interest and assume the Concessionaire's position as provided in Section 18.4 of this Agreement; *provided* that any costs incurred by the Government Parties under this provision shall be reimbursed by the Leasehold Mortgagee (or its designee or nominee) as provided in Section 18.9(d)(iii).

ARTICLE 19 DISPUTE RESOLUTION

Section 19.1. **Scope.** Any dispute arising out of, relating to, or in connection with this Agreement, including any question as to whether such dispute is subject to arbitration, shall be resolved as set forth in this Article 19.

Section 19.2. **Informal Dispute Resolution Procedures.** The Parties shall attempt in good faith to resolve such dispute within 15 days following receipt by the other Parties of notice of such dispute. If the Parties are unable to resolve the dispute within such 15-day period, and upon notice by a Party to the other Parties, the dispute shall be referred to the Designated Senior Person of each Party. The Designated Senior Persons shall negotiate in good faith to resolve the dispute, conferring as often as they deem reasonably necessary. Statements made by representatives of the Parties during the dispute resolution procedures set forth in this Section 19.2 and in Section 19.3 and documents specifically prepared for such dispute resolution procedures shall be considered part of settlement negotiations and shall not be admissible as evidence in any arbitration or other litigation proceeding among or between the Parties without the mutual consent of all Parties.

Section 19.3. **Mediation.** Mediation of a dispute under this Agreement may not be commenced until the earlier of: (i) such time as all of the Designated Senior Persons, after following the procedures set forth in Section 19.2, conclude in good faith that amicable resolution through continued negotiation of the matter does not appear likely; or (ii) 15 days after the notice referring the dispute to the Designated Senior Persons, pursuant to Section 19.2 has been received by all of the Designated Senior Persons. If, after such time period, the dispute remains unresolved, the Parties shall attempt to resolve the dispute through mediation administered by the AAA under its Commercial Mediation Procedures before resorting to binding arbitration, as provided by Section 19.4. The Parties agree that any period of limitation applicable to the assertion of a claim shall be deemed tolled during the conduct of informal dispute resolution under Section 19.2 and

mediation under this Section 19.3, and that any claim of any Party shall be deemed not to have accrued until the mediation is terminated.

Section 19.4. **Arbitration.**

(a) *Arbitration Process.* If the procedures described in Sections 19.2 and 19.3 do not result in resolution of the dispute within 30 Business Days following a reference to mediation, the dispute shall be resolved by arbitration in accordance with the AAA Rules then in effect. Any Party may initiate the arbitration, as provided in the AAA Rules. Any arbitration conducted pursuant to this Section 19.4 shall be governed by the statutory arbitration provisions of the Arbitration Act. The place of arbitration shall be Pittsburgh, Pennsylvania unless the Parties agree otherwise. The arbitral panel shall determine the rights and obligations of the Parties in accordance with the substantive laws of the Commonwealth of Pennsylvania and without regard to conflicts of laws principles thereof. Except as agreed by the Parties, the arbitral panel shall have no power to alter or modify any terms or provisions of this Agreement, or to render any award that, by its terms or effects, would alter or modify any term or provision of this Agreement. The Parties shall be entitled to reasonable production of relevant, non-privileged documents, carried out expeditiously. If the Parties are unable to agree upon such document production, the arbitral panel shall have the power, upon application of any Party, to make all appropriate orders for production of documents by any Party. At the request of any Party, the arbitral panel shall have the discretion to order the examination by deposition of any witness to the extent the arbitral tribunal deems such examination appropriate or necessary. The arbitral panel shall be composed of three arbitrators, one to be selected by the Authority, one to be selected by the Concessionaire and the third (who shall act as chairman of the panel) to be selected by the two previously-selected arbitrators. If, within 15 Business Days, the two previously-selected arbitrators cannot agree on the selection of the third arbitrator, then the third arbitrator shall be selected by the AAA pursuant to the AAA Rules. Once the arbitral panel has been composed, the arbitrators shall act as neutrals and not as party arbitrators, and no Party shall engage in any *ex parte* communication with any member of the arbitral panel. Each Party shall bear its own attorney fees, expenses, and costs. Any award of monetary damages shall include interest at the Bank Rate from the date of any breach or violation of this Agreement or the incurring of any obligation as determined in the arbitral award until paid in full. Any award of monetary damages shall be in writing and state the reasons upon which it is based. The award shall be final and binding on the Parties, subject only to such review and other proceedings as provided by the Arbitration Act. Judgment on the award may be entered by any court with competent jurisdiction in accordance with the Arbitration Act.

(b) *Remedy of Arbitration Not Available.* If it is determined by a final and unappealed order of a tribunal of competent jurisdiction or by written agreement of the Parties that arbitration pursuant to the Arbitration Act cannot provide a remedy for or resolution of a dispute for any reason relating to a lack of jurisdiction or a constraint arising from an immunity (“Determination”), then the Parties shall present the dispute to such court or other tribunal of competent jurisdiction or other applicable dispute resolution process which possesses jurisdiction and the power to afford relief not limited by immunity. The presentation to the other forum may be accomplished by transfer order

in connection with a Determination or by a submission by a Party or Parties in which case the submission shall be deemed timely if so submitted within sixty (60) Business Days of any such Determination. Irrespective of whether the subsequent presentation is accomplished by transfer or submission by a Party or Parties, any applicable period of limitation shall be deemed tolled during the conduct of arbitration or any proceedings relating to the arbitration or to the rendering of the Determination, and the Parties further waive the defense of the application of any period of limitation with respect to the submission in the subsequent forum. For clarification, it is the intent of the Parties that no Party shall be precluded from presenting a claim on the basis of timeliness (and the Parties hereby waive any defenses relating to timeliness) arising from the need to present the dispute in a different forum as provided for and subject to the conditions of this Section 19.4.

Section 19.5. Provisional Remedies. No Party shall be precluded from initiating a proceeding in a court of competent jurisdiction for the purpose of obtaining any emergency or provisional remedy to protect its rights that may be necessary and that is not otherwise available under this Agreement or to enforce or execute upon a judgment entered in accordance with this Agreement, including temporary preliminary and permanent injunctive relief and restraining orders, writs of mandamus, and the appointment of a receiver or receiver and manager in connection with the collection and retention of Other Concessionaire Revenues.

Section 19.6. Tolling. If a Party receiving a notice of default under this Agreement contests, disputes or challenges the propriety of such notice by making application to the dispute resolution procedure in this Article 19, any cure period that applies to such default shall be tolled for the time period between such application and the issuance of a final award or determination.

Section 19.7. Technical Arbitration.

(a) *Informal Dispute Resolution by Engineering Firm.* The Parties may agree to submit any engineering or technical dispute under this Agreement to the Engineering Firm, which submission may be made without submitting the engineering or technical dispute to engineering arbitration pursuant to Section 19.7(b) or to the dispute resolution process described in Sections 19.2 through 19.4 and once such technical dispute has been submitted to the Engineering Firm then the time limits set out in Section 19.2, Section 19.3 and Section 19.4 shall no longer apply. The Engineering Firm shall determine any unresolved disputed items within three Business Days of the submission of such dispute to the Engineering Firm, unless the Engineering Firm has good cause to extend such date for determination. The submission shall be in the form of written statements of position by one or more of the Parties, which statements shall be provided to all Parties and the Engineering Firm, with each Party having an opportunity to respond to such written statements of the other Parties and any requests for statements or information by the Engineering Firm, including in-person meetings. The Parties shall each bear their own costs with respect to the submission of such dispute to the Engineering Firm and shall bear equally the cost of the Engineering Firm with respect to such dispute. The Engineering Firm's decision shall be in writing and state the reasons upon which it is based. The decision of the Engineering Firm shall be final and binding

on the Parties, unless a Party expressly reserves the right, at the time of the submission of the engineering or technical dispute to the Engineering Firm, to submit the dispute to engineering arbitration pursuant to Section 19.7(b) or to the dispute resolution process described in Sections 19.2 through 19.4. The Parties agree that any period of limitation applicable to the assertion of a dispute shall be deemed tolled during the conduct of informal dispute resolution under Section 19.7(a) and any dispute shall be deemed not to have accrued until the informal dispute resolution process is terminated. Within three Business Days after its receipt of the decision, any Party may request the Engineering Firm to interpret the decision or to correct any clerical, typographical or computation errors therein. The other Parties shall have a right to comment within three Business Days of its receipt of the requesting Party's request for interpretation and/or correction. If the Engineering Firm considers the request justified, it shall comply with such request within three Business Days after its receipt of such request. The correction and/or interpretation of the decision shall take the form of an addendum and shall constitute part of the decision.

(b) *Engineering Arbitration.* The Parties may agree to submit any engineering or technical dispute under this Agreement to engineering arbitration, which submission may be made without submitting the engineering or technical dispute to the Engineering Firm pursuant to Section 19.7(a) or to the dispute resolution process described in Sections 19.2 through 19.4. Any arbitration conducted pursuant to this Section 19.7(b) shall be governed by the statutory arbitration provisions of the Arbitration Act. Such engineering arbitration shall be conducted by an independent engineering arbitrator, which shall be an engineering firm with nationally recognized engineering experience related to Comparable Public Parking Garages and that is acceptable to the Parties (and if the Parties fail to agree upon the independent engineering arbitrator within five Business Days after the Parties agree to submit the dispute to engineering arbitration, then the Authority and the Concessionaire shall each appoint an independent engineering arbitrator and both such arbitrators shall be instructed to select a third independent engineering arbitrator to conduct the engineering arbitration). If the Party-appointed engineering arbitrators are unable to agree upon a third engineering arbitrator within five Business Days after they are instructed by the Parties to select a third arbitrator, the Engineering Firm shall select the independent engineering arbitrator to conduct the engineering arbitration as soon as possible. Such submission shall be in the form of written statements of position by one or more of the Parties, which statements shall be provided to all Parties and the independent engineering arbitrator, with each Party having an opportunity to respond to such written statements and any requests for statements or information by the independent engineering arbitrator, including in-person meetings; *provided, however*, that all such submissions by a Party shall be made within 10 Business Days following appointment of the independent engineering arbitrator and, notwithstanding any provision herein to the contrary, any unresolved disputed items shall be determined by the independent engineering arbitrator within seven Business Days following receipt by the independent engineering arbitrator of the Parties' submissions of information unless such independent engineering arbitrator has good cause to extend such date for determination. The Parties shall each bear their own costs with respect to the arbitration of any such engineering dispute and the Concessionaire on the one hand and the Government Parties on the other shall bear equally the cost of retaining such

independent engineering arbitrator. The independent engineering arbitrator's award shall be in writing and state the reasons upon which it is based. Within one Business Day after its receipt of the decision, any Party may request the independent engineering arbitrator to interpret the decision or to correct any clerical, typographical or computation errors therein. The other Parties shall have a right to comment within one Business Day of its receipt of the requesting Party's request for interpretation and/or correction. If the independent engineering arbitrator considers the request justified, it shall comply with such request within three Business Days after its receipt of such request. The correction and/or interpretation of the decision shall take the form of an addendum and shall constitute part of the decision. The independent engineering arbitrator's award shall be final and binding on the Parties, subject only to review and other proceedings as provided by the Arbitration Act.

Section 19.8. City and Authority Liability and Further Remedies.

(a) The City hereby guarantees to the Concessionaire for the benefit of the Concessionaire (i) the full and prompt payment when due of each and all of the payments required to be credited or made by the Authority under this Agreement; and (ii) the full and prompt performance and observance of each and all of the Authority's obligations. In the event of an Authority Default (as provided under Section 16.2), if and to the extent that the Authority is unable or fails to fulfill any of its payment or other obligations, the Concessionaire may proceed to enforce this guaranty.

(b) In fulfillment of their respective obligations under this Agreement, the City and the Authority shall take any and all actions necessary, including, without limitation, using their best efforts to lease City or Authority assets or to borrow funds, in order to finance any obligation to pay the Parking Facilities System Concession Value or any other amounts due and payable to the Concessionaire arising from this Agreement; *provided*, that in connection with any borrowing or leasing, the City and the Authority shall not adversely impact any of the rights and remedies of the Concessionaire hereunder unless this Agreement shall have been terminated in accordance with the terms hereof. The term "best efforts" means all legally permissible actions that a prudent person, acting in good faith and desirous of achieving the result, would use to achieve that result as expeditiously as possible, including the expeditious undertaking and diligent prosecution of any applications or submissions required to obtain necessary approvals from any other Governmental Authority or Person. Without limiting the generality of the foregoing, in the exercise of such "best efforts" to the extent necessary to raise required funds, the City covenants to take any and all actions allowed or required under the applicable law (including the Local Government Unit Debt Act, 53 Pa.C.S. §8001 *et seq.* ("LGUDA")), to approve and issue any debt required to pay and satisfy the Parking Facilities System Concession Value or other amounts due and payable to the Concessionaire arising under this Agreement, including but not limited to presentation and diligent prosecution of a petition to the appropriate courts for the incurrence of "unfunded debt" as defined under the LGUDA. Nothing in this Section 19.8(b) shall diminish or release the City or the Authority from their obligations under this Agreement, or alter or modify any of their obligations under this Agreement, to pay the Parking Facilities System Concession Value or any other amounts arising hereunder, notwithstanding their inability to lease or borrow any funds.

ARTICLE 20
MISCELLANEOUS

Section 20.1. **Notice.** All notices, other communications and approvals required or permitted by this Agreement shall be in writing, shall state specifically that they are being given pursuant to this Agreement and shall be addressed as follows:

(a) in the case of the Authority:

Attention: _____

with a copy to:

Attention: _____

(b) in the case of the City:

Attention: _____

with a copy to:

Attention: _____

(c) in the case of the Concessionaire:

Attention: _____

with a copy to:

Attention: _____

or such other persons or addresses as a Party may from time to time designate by notice to the other Parties. A notice, other communication or approval shall be deemed to have been sent and received (i) on the day it is delivered, or if such day is not a Business Day or if the notice is received after ordinary office hours (time of place of receipt), the notice, other communication or approval shall be deemed to have been sent and received on the next Business Day, or (ii) on the fourth Business Day after mailing if sent by United States registered or certified mail.

Section 20.2. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, negotiations, discussions and understandings, written or oral, between the Parties. There are no representations, warranties, conditions or other agreements, whether direct or collateral, or express or implied, that form part of or affect this Agreement, or that induced any Party to enter into this Agreement or on which reliance is placed by any Party, except as specifically set forth in this Agreement. The Parties acknowledge and agree that (i) each has substantial business experience and is fully acquainted with the provisions of this Agreement, (ii) the provisions and language of this Agreement have been fully negotiated and (iii) no provision of this Agreement shall be construed in favor of any Party or against any Party by reason of such provision of this Agreement having been drafted on behalf of one Party rather than the other Parties.

Section 20.3. **Amendment.** This Agreement may be amended, changed or supplemented only by a written agreement signed by the Parties.

Section 20.4. **Waiver of Rights.** Any waiver of, or consent to depart from, the requirements of any provision of this Agreement shall be effective only if it is in writing and signed by the Party giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of any Party to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of such right. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right.

Section 20.5. **Severability.** Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by applicable Law. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part thereof. If any provision of this Agreement or the application thereof to any Person or circumstances is held or deemed to be or determined to be invalid, inoperative or unenforceable in any particular case in any particular jurisdiction or jurisdictions because it conflicts with any other provision or provisions hereof or of any applicable Law, or public policy, or for any other reason, (i) such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever, and (ii) the Parties shall negotiate in good faith to amend this Agreement to implement the provisions set forth herein. If the Parties cannot agree on an appropriate amendment, any Party may refer the matter for determination pursuant to the dispute resolution procedure in Article 19. If, by means of the dispute resolution procedure, the Parties are unable, as a result of applicable Law, to resolve the matter in a

manner that effectively entitles a Government Party to have the same rights after the aforesaid determination of invalidity or unenforceability as before, the Government Party shall have the right to enact, and cause to come into force, any Law to provide for the same or substantially the same rights as were determined to be invalid or unenforceable.

Section 20.6. **Governing Law.** This Agreement shall be governed by, and interpreted and enforced in accordance with, the laws in force in the Commonwealth of Pennsylvania (excluding any conflict of laws rule or principle which might refer such interpretation to the laws of another jurisdiction).

Section 20.7. **Submission to Jurisdiction.** Subject to Article 19, any action or proceeding against any Party relating in any way to this Agreement may be brought and enforced in the federal or state courts in the Commonwealth of Pennsylvania in the County of Allegheny, and each of the Parties hereby irrevocably submits to the jurisdiction of such courts with regard to any such action or proceeding, and irrevocably waives, to the fullest extent permitted by applicable Law, any objection it may have now or hereafter have to the laying of venue of any such action or proceeding in such courts and any claim that any such action or proceeding brought in any such court has been brought in an inconvenient forum. Service of process on the Authority may be made, either by registered or certified mail addressed as provided for in Section 20.1 or by personal delivery on the Chair of the Authority. Service of process on the City may be made, either by registered or certified mail addressed as provided for in Section 20.1 or by personal delivery on the City Clerk of the City. Service of process on the Concessionaire may be made either by registered or certified mail addressed as provided for in Section 20.1 or by delivery to the Concessionaire's registered agent for service of process in the Commonwealth of Pennsylvania. If the Concessionaire is presented with a request for Documents by any administrative agency or with a *subpoena duces tecum* regarding any Documents which may be in its possession by reason of this Agreement, the Concessionaire shall give prompt notice to the Authority and to the City. The Government Party may contest such process by any means available to it before such Documents are submitted to a court or other third party; *provided, however*, that the Concessionaire shall not be obligated to withhold such delivery beyond that time as may be ordered by the court or administrative agency or required by Law, unless the *subpoena* or request is quashed or the time to produce is otherwise extended.

Section 20.8. **Further Acts.** The Parties shall do or cause to be done all such further acts and things as may be reasonably necessary or desirable to give full effect to this Agreement. Without limiting the foregoing, each Party will, at any time and from time to time, execute and deliver or cause to be executed and delivered such further instruments and take such further actions as may be reasonably requested by the other Parties in order to cure any defect in the execution and/or delivery of this Agreement.

Section 20.9. **Costs.** Except as otherwise provided in this Agreement, each Party shall be responsible for its own costs and expenses incurred in connection with performing and observing its obligations and covenants under this Agreement.

Section 20.10. **Interest.** Any amount payable under this Agreement and not paid when due shall bear interest at a variable nominal rate per annum equal on each day to

the Bank Rate then in effect plus 3%, from the date such payment is due until payment and both before and after judgment.

Section 20.11. **Inurement and Binding Effect.** This Agreement shall inure to the benefit of the Parties and their respective permitted successors and assigns and be binding upon the Parties and their respective successors and assigns.

Section 20.12. **No Partnership or Third Party Beneficiaries.** Nothing contained in this Agreement shall constitute or be deemed to create a partnership, joint venture or principal and agent relationship between or among any of the Parties. Except as expressly provided herein to the contrary (including with respect to such rights as are expressly granted to each Leasehold Mortgagee pursuant to this Agreement), no term or provision hereof shall be construed in any way to grant, convey or create any rights or interests to any Person not a party to this Agreement.

Section 20.13. **Cumulative Remedies.** The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law.

Section 20.14. **Non-Liability of Public Officials.** The Concessionaire and any assignee or Contractor may not charge any official, officer, employee, advisor or consultant of a Government Party personally with any liability or expenses of defense or hold any official, officer, employee, advisor or consultant of a Government Party personally liable to them under any term or provision of this Agreement or because of the Government Party's execution, attempted execution or any breach of this Agreement.

Section 20.15. **Charter Limitations and Appropriations.** This Agreement is subject to the City of Pittsburgh Home Rule Charter, and the liability of the City under this Agreement is limited to the amounts which have been or may be, from time to time, appropriated therefore by the City.

Section 20.16. **Counterparts; Facsimile Execution.** This Agreement may be executed in any number of counterparts which, taken together, shall constitute one and the same agreement. This Agreement shall be effective when it has been executed by each Party and delivered to all Parties. To evidence the fact that it has executed this Agreement, a Party may send a copy of its executed counterpart to the other Parties by facsimile transmission. Such Party shall be deemed to have executed and delivered this Agreement on the date it sent such facsimile transmission. In such event, such Party shall forthwith deliver to the other Parties an original counterpart of this Agreement executed by such Party.

(Intentionally Left Blank)

IN WITNESS WHEREOF, the Authority has caused this Agreement to be duly executed on its behalf by its _____ pursuant to due authorization of the Board; the City has caused this Agreement to be duly executed on its behalf by its Mayor pursuant to due authorization of the its City Council and the Concessionaire has caused this Agreement to be duly executed pursuant to due authorization, all as of the day and year first above written.

PUBLIC PARKING AUTHORITY OF PITTSBURGH

By: _____

CITY OF PITTSBURGH

By: _____
Mayor

[CONCESSIONAIRE]

By: _____
(Name)
(Title)

SCHEDULE 1

Parking Facilities System

SCHEDULE 2

Parking Lot Initial Values

SCHEDULE 2
PARKING LOT INITIAL VALUES

Lot	Address	Surface Area	Spaces	% of Facilities Concession Value
12th and East Carson	1217 Carson Street	10,700	35	0.31%
18th and Carson	1800 East Carson Street	14,400	41	0.76%
18th and Sidney	18th & Sidney	13,500	45	0.54%
19th and Carson	1916 Carson Street	12,000	27	0.29%
20th and Sidney	20th & Sidney	25,000	80	0.03%
42nd/Butler	4200 Butler Street	8,500	22	0.03%
5224 Butler St.	121 Beatty Street	5,000	12	0.03%
Ansley/Beatty	65 Asteroid Way	7,500	23	0.03%
Asteroid/Warrington	5737 Beacon Street	4,400	13	0.03%
Beacon/Bartlett	1541 Beechview Ave	25,000	69	0.73%
Beechview Ave.	916 Brookline Blvd	7,000	17	0.03%
Brookline Blvd.	2702 Brownsville Rd	25,040	28	0.03%
Brownsville/Sankey	5224 Butler Street	24,500	80	0.03%
Douglas/Phillips	5819 Phillips Avenue	18,000	45	0.03%
East Ohio Street	529 Foreland Ave	28,000	88	0.04%
Eva/Beatty	120 S. Beatty Street	48,000	130	0.03%
Forbes/ Shady	5801 Forbes Avenue	14,500	59	0.82%
Forbes/Murray	1648 Shady Avenue	27,700	72	1.07%
Friendship/Cedarville	203-233 Cedarville	30,000	90	0.44%
Harvard/Beatty	5910 Harvard Street	23,000	61	0.03%
Homewood/Zenith	Kelly & Zenith Rd	7,500	24	0.03%
Ivy/Bellefonte	726 Ivy Street	25,000	74	1.68%
JCC/Forbes	5738 Forbes Avenue	22,500	72	0.55%
Main/Alexander	431 Main Street	18,000	29	0.03%
Observatory Hill	3901 Perrysville Ave	8,500	23	0.03%
Penn Circle North	5900 Penn Circle North	46,000	125	0.03%
Sheridan/Harvard	6226 Harvard Street	15,000	41	0.03%
Sheridan/Kirkwood	6117 Kirkwood Street	30,000	114	0.03%
Shiloh	118 Virginia Ave	27,764	73	0.03%
Tamello	135 Tamello Street	25,000	76	0.03%
Taylor Street	Taylor St & Corday Way	10,000	26	0.16%
Walter/Warrington	Walter & Warrington Ave	5,600	15	0.03%

SCHEDULE 3

Initial Schedule of Parking Rates

**SCHEDULE 3
INITIAL SCHEDULE OF PARKING RATES**

3.1 Attended Parking Facilities - Parking rates for each attended facility will increase in accordance to the following schedule:

	Effective Date	1 Hr or less	2 Hrs or less	4 Hrs or less	4 Hrs to 24 Hrs	5 Hrs or less	5 Hrs to 24 hrs	6 Hrs or less	6 Hrs to 24 Hrs	Evening Rate (Flat Fee)	Regular Day Lease Rate	Gold Reserve Lease Rate	Gold Lease Rate	Platinum Lease Rate	Night Lease Rate	Shift Lease Rate	
Third Avenue ⁽¹⁾	October 1, 2010	\$ 7.00	\$ 9.00	\$ 12.00	\$ 16.00					\$ 5.00	\$ 290.00	\$ 340.00	\$ 325.00		\$ 100.00		
	October 1, 2011	\$ 8.00	\$ 10.00	\$ 13.00	\$ 17.00					\$ 6.00	\$ 300.00	\$ 350.00	\$ 335.00		\$ 110.00		
	October 1, 2012	\$ 10.00	\$ 12.00	\$ 15.00	\$ 19.00					\$ 6.00	\$ 350.00	\$ 400.00	\$ 385.00		\$ 110.00		
	October 1, 2013	\$ 12.00	\$ 14.00	\$ 17.00	\$ 21.00					\$ 6.50	\$ 375.00	\$ 425.00	\$ 410.00		\$ 110.00		
	October 1, 2014	\$ 13.00	\$ 15.00	\$ 18.00	\$ 22.00					\$ 6.50	\$ 400.00	\$ 450.00	\$ 435.00		\$ 120.00		
Ninth & Penn ⁽¹⁾	October 1, 2010	\$ 5.00	\$ 7.00	\$ 9.00	\$ 12.00					\$ 6.00	\$ 225.00	\$ 275.00		\$ 300.00	\$ 100.00		
	October 1, 2011	\$ 6.00	\$ 8.00	\$ 10.00	\$ 13.00					\$ 6.00	\$ 250.00	\$ 300.00		\$ 315.00	\$ 110.00		
	October 1, 2012	\$ 8.00	\$ 10.00	\$ 12.00	\$ 15.00					\$ 7.00	\$ 275.00	\$ 325.00		\$ 315.00	\$ 110.00		
	October 1, 2013	\$ 10.00	\$ 12.00	\$ 14.00	\$ 17.00					\$ 9.00	\$ 300.00	\$ 350.00		\$ 325.00	\$ 110.00		
	October 1, 2014	\$ 12.00	\$ 14.00	\$ 16.00	\$ 19.00					\$ 10.00	\$ 350.00	\$ 400.00		\$ 350.00	\$ 120.00		
Smithfield Liberty ⁽¹⁾	October 1, 2010	\$ 7.00	\$ 9.00	\$ 12.00	\$ 16.00					\$ 6.00	\$ 290.00	\$ 340.00		\$ 315.00	\$ 100.00	\$ 135.00	
	October 1, 2011	\$ 8.00	\$ 10.00	\$ 13.00	\$ 17.00					\$ 6.00	\$ 300.00	\$ 350.00		\$ 315.00	\$ 110.00	\$ 135.00	
	October 1, 2012	\$ 10.00	\$ 12.00	\$ 15.00	\$ 19.00					\$ 7.00	\$ 350.00	\$ 400.00		\$ 320.00	\$ 110.00	\$ 135.00	
	October 1, 2013	\$ 12.00	\$ 14.00	\$ 17.00	\$ 21.00					\$ 7.00	\$ 375.00	\$ 425.00		\$ 320.00	\$ 110.00	\$ 145.00	
	October 1, 2014	\$ 13.00	\$ 15.00	\$ 18.00	\$ 22.00					\$ 8.00	\$ 400.00	\$ 450.00		\$ 330.00	\$ 120.00	\$ 145.00	
Ft Duquesne & Sixth ⁽¹⁾	October 1, 2010	\$ 5.00	\$ 7.00	\$ 9.00	\$ 12.00					\$ 6.00	\$ 225.00	\$ 275.00			\$ 100.00		
	October 1, 2011	\$ 6.00	\$ 8.00	\$ 10.00	\$ 13.00					\$ 6.00	\$ 250.00	\$ 300.00			\$ 110.00		
	October 1, 2012	\$ 8.00	\$ 10.00	\$ 12.00	\$ 15.00					\$ 7.00	\$ 275.00	\$ 325.00			\$ 110.00		
	October 1, 2013	\$ 10.00	\$ 12.00	\$ 14.00	\$ 17.00					\$ 9.00	\$ 300.00	\$ 350.00			\$ 110.00		
	October 1, 2014	\$ 12.00	\$ 14.00	\$ 16.00	\$ 19.00					\$ 10.00	\$ 350.00	\$ 400.00			\$ 120.00		
Mellon Square ⁽¹⁾	October 1, 2010	\$ 9.00	\$ 11.00	\$ 14.00	\$ 18.00					\$ 6.00	\$ 290.00			\$ 325.00	\$ 100.00		
	October 1, 2011	\$ 10.00	\$ 12.00	\$ 15.00	\$ 19.00					\$ 6.00	\$ 300.00			\$ 325.00	\$ 100.00		
	October 1, 2012	\$ 12.00	\$ 14.00	\$ 17.00	\$ 21.00					\$ 7.00	\$ 350.00			\$ 340.00	\$ 100.00		
	October 1, 2013	\$ 14.00	\$ 16.00	\$ 19.00	\$ 23.00					\$ 9.00	\$ 375.00			\$ 340.00	\$ 100.00		
	October 1, 2014	\$ 15.00	\$ 17.00	\$ 20.00	\$ 24.00					\$ 10.00	\$ 400.00			\$ 350.00	\$ 110.00		
Wood Allies ⁽¹⁾	October 1, 2010	\$ 5.00	\$ 7.00	\$ 9.00	\$ 12.00					\$ 5.00	\$ 225.00				\$ 100.00		
	October 1, 2011	\$ 6.00	\$ 8.00	\$ 10.00	\$ 13.00					\$ 5.00	\$ 250.00				\$ 110.00		
	October 1, 2012	\$ 8.00	\$ 10.00	\$ 12.00	\$ 15.00					\$ 6.00	\$ 275.00				\$ 110.00		
	October 1, 2013	\$ 10.00	\$ 12.00	\$ 14.00	\$ 17.00					\$ 6.00	\$ 300.00				\$ 110.00		
	October 1, 2014	\$ 12.00	\$ 14.00	\$ 16.00	\$ 19.00					\$ 7.00	\$ 350.00				\$ 120.00		
Oliver ⁽¹⁾	October 1, 2010	\$ 7.00	\$ 9.00	\$ 12.00	\$ 16.00					\$ 6.00	\$ 290.00			\$ 315.00	\$ 100.00		
	October 1, 2011	\$ 8.00	\$ 10.00	\$ 13.00	\$ 17.00					\$ 6.00	\$ 300.00			\$ 325.00	\$ 110.00		
	October 1, 2012	\$ 10.00	\$ 12.00	\$ 15.00	\$ 19.00					\$ 7.00	\$ 350.00			\$ 335.00	\$ 110.00		
	October 1, 2013	\$ 12.00	\$ 14.00	\$ 17.00	\$ 21.00					\$ 7.00	\$ 375.00			\$ 345.00	\$ 110.00		
	October 1, 2014	\$ 13.00	\$ 15.00	\$ 18.00	\$ 22.00					\$ 8.00	\$ 400.00			\$ 355.00	\$ 120.00		
First Avenue ⁽¹⁾	October 1, 2010	\$ 4.00	\$ 6.00	\$ 8.00	\$ 11.00					\$ 5.00	\$ 225.00				\$ 100.00	\$ 125.00	
	October 1, 2011	\$ 5.00	\$ 7.00	\$ 9.00	\$ 12.00					\$ 5.00	\$ 250.00				\$ 100.00	\$ 125.00	
	October 1, 2012	\$ 7.00	\$ 9.00	\$ 11.00	\$ 14.00					\$ 6.00	\$ 275.00				\$ 110.00	\$ 135.00	
	October 1, 2013	\$ 9.00	\$ 11.00	\$ 13.00	\$ 16.00					\$ 6.00	\$ 300.00				\$ 110.00	\$ 135.00	
	October 1, 2014	\$ 11.00	\$ 13.00	\$ 15.00	\$ 18.00					\$ 7.00	\$ 350.00				\$ 120.00	\$ 140.00	
Second Avenue Plaza	October 1, 2010	\$8.00 All Day Including Shuttle Service									-	\$ 150.00				-	-
	October 1, 2011	\$9.00 All Day Including Shuttle Service									-	\$ 160.00				-	-
	October 1, 2012	\$10.00 All Day Including Shuttle Service									-	\$ 170.00				-	-
	October 1, 2013	\$10.00 All Day Including Shuttle Service									-	\$ 170.00				-	-
	October 1, 2014	\$12.00 All Day Including Shuttle Service									-	\$ 185.00				-	-
Transportation Center ⁽¹⁾	October 1, 2010	\$ 5.00	\$ 5.00	\$ 7.00		\$ 9.00		\$ 9.00	\$ 13.00	\$ 5.00	\$ 260.00				\$ 100.00		
	October 1, 2011	\$ 6.00	\$ 6.00	\$ 8.00		\$ 10.00		\$ 10.00	\$ 14.00	\$ 6.00	\$ 260.00				\$ 100.00		
	October 1, 2012	\$ 7.00	\$ 7.00	\$ 9.00		\$ 11.00		\$ 11.00	\$ 15.00	\$ 6.00	\$ 270.00				\$ 110.00		
	October 1, 2013	\$ 8.00	\$ 8.00	\$ 10.00		\$ 12.00		\$ 12.00	\$ 16.00	\$ 7.00	\$ 280.00				\$ 110.00		
	October 1, 2014	\$ 9.00	\$ 9.00	\$ 11.00		\$ 13.00		\$ 13.00	\$ 17.00	\$ 8.00	\$ 300.00				\$ 120.00		
Forbes-Semple	October 1, 2010	\$ 3.50	\$ 5.00	\$ 7.00	\$ 10.00					\$ 5.00	\$ 225.00				\$ 100.00		
	October 1, 2011	\$ 3.00	\$ 5.00	\$ 8.00	\$ 11.00					\$ 5.00	\$ 250.00				\$ 100.00		
	October 1, 2012	\$ 3.00	\$ 5.00	\$ 10.00	\$ 13.00					\$ 6.00	\$ 275.00				\$ 100.00		
	October 1, 2013	\$ 4.00	\$ 6.50	\$ 11.00	\$ 15.00					\$ 6.00	\$ 300.00				\$ 100.00		
	October 1, 2014	\$ 3.50	\$ 6.00	\$ 12.00	\$ 16.00					\$ 7.00	\$ 350.00				\$ 110.00		
Shadyside	October 1, 2010	\$ 3.75				\$ 8.00	\$ 10.00			\$ 5.00	\$ 200.00				\$ 100.00		
	October 1, 2011	\$ 4.00				\$ 8.00	\$ 10.00			\$ 5.00	\$ 200.00				\$ 100.00		
	October 1, 2012	\$ 4.00				\$ 10.00	\$ 12.50			\$ 6.00	\$ 250.00				\$ 100.00		
	October 1, 2013	\$ 5.00				\$ 10.00	\$ 12.50			\$ 6.00	\$ 250.00				\$ 100.00		
	October 1, 2014	\$ 5.00				\$ 12.00	\$ 15.00			\$ 7.00	\$ 300.00				\$ 110.00		

3.2 Metered Parking Lots - The following parking rates per hour for metered parking lots will be enforceable from 8:00 A.M. to 10:00 P.M. Eastern, Monday through Saturday, and 1:00 P.M. to 10:00 P.M. Eastern on Sunday.

Locations	October 1, 2010	October 1, 2011	October 1, 2012	October 1, 2013	October 1, 2014
Beacon/Bartlett, Forbes / Murray, Forbes/Shady, JCC, Ivy/Bellefonte, Taylor Street, Friendship/Cederville, 18 th /Sidney, East Carson, 19 th /Carson, 18 th /Carson	\$1.50	\$1.50	\$2.00	\$2.00	\$2.50
Sheridan/Kirkwood, Tamello/Beatty, Eva/Beatty, Harvard/Beatty, Ansley/Beatty, Penn Circle Northwest, Douglas/Phillips, 42 nd /Butler, 20 th /Sidney, East Ohio	\$1.00	\$1.25	\$1.50	\$1.75	\$2.00
Sheridan/Harvard, Homewood/Zenith, 5224 Butler Street, Brownsville/Sankey, Walter/Warrington, Asteroid/Warrington, Shiloh, Brookline Boulevard Garage, Beechview Boulevard Garage, Main/Alexander, Observatory Hill	\$1.00	\$1.00	\$1.25	\$1.25	\$1.50

Note:

- Facility also offers Downtown Housing Lease Rate per City ordinance, which is calculated via the following:
Downtown Housing Lease Rate = Regular Lease Rate - (Daily Lease Rate - (Daily Lease Rate/(1 + Parking Tax)))

SCHEDULE 4
Operating Standards

SCHEDULE 5

Parking Facilities System Assets

Part 1 – Authority Parking Facilities

Part 2 – City Parking Facilities

SCHEDULE 6

Parking Facilities System Contracts

SCHEDULE 7

Required Capital Improvements

SCHEDULE 8

Form of Legal Opinion of the Authority and the City

[Letterhead of Counsel to Authority and City]

[Closing Date]

[to be provided by K&L Gates]

Ladies and Gentleman:

Very truly yours,

[K&L Gates]

SCHEDULE 9

Form of Legal Opinion of the Concessionaire

[Letterhead of Counsel to the Concessionaire]

[Closing Date]

[PPAP]

[City]

Ladies and Gentleman:

We have acted as special counsel to _____, a _____ (the “Concessionaire”), in connection with the lease of the Parking Facilities System, and the grant of the right to operate the Parking Facilities System, from the City and the Authority to the Concessionaire pursuant to the Parking Facilities System Concession and Lease Agreement, dated as of _____, 20__ (the “Agreement”), by and among the Authority, the City and Concessionaire. This opinion is being delivered to you pursuant to Section 2.4(b) of the Agreement. Capitalized terms used and not otherwise defined herein shall have the respective meanings set forth in the Agreement.

We have examined originals or copies, certified or otherwise identified to our satisfaction, of (i) the Agreement; and (ii) such other records and writings as we have deemed necessary as the basis for the opinions set forth below. In connection with such examination, we have assumed the genuineness of all signatures, the legal capacity of all natural persons, the authenticity of all documents submitted to us as originals, the conformity to authentic, original documents of all documents submitted to us via facsimile or otherwise as certified, conformed or photostatic copies, and the completeness of all records of corporate proceedings provided to us.

We express no opinion as to the applicability or effect of the laws of any state or jurisdiction other than the laws of the State of [•].

Based on and subject to the foregoing and the qualifications referred to below, we are of the opinion that, on the date hereof:

1. The Concessionaire is duly organized, validly existing and in good standing as a _____ under the laws of the _____.
2. The Concessionaire has the power and authority to enter into the Agreement and to do all acts and things and execute and deliver all other documents as are required under the Agreement to be done, observed or performed by the Concessionaire in accordance with the terms thereof.
3. The Concessionaire has duly authorized, executed and delivered the Agreement, and the Agreement constitutes a valid and legally binding obligation of the

Concessionaire, enforceable against it in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

This opinion is rendered solely for your information in connection with the transaction described above and may not be relied upon by you in any other capacity or for any other purpose and may not be used or relied upon by any other Person for any purpose without our express prior written consent.

Very truly yours,

[Counsel to the Concessionaire]

SCHEDULE 10

Form of Memorandum of Lease

SCHEDULE 11

Advertising Policy

1. All advertising shall comply with all applicable Laws, including all generally applicable ordinances, rules, regulations, requirements and specifications promulgated by the Authority.
2. Commercial advertising that proposes transactions that would constitute unlawful discrimination or would be illegal for any other reason is not permitted.
3. Advertising that is legally obscene is not permitted. In addition, sexually explicit advertising depicting nudity (male or female genitals, pubic areas or buttocks with less than a fully opaque covering; female breasts with less than a fully opaque covering or any part of the areola or nipples; or the covered genitals in a discernibly turgid or otherwise recognizable state) or sexual intercourse or other sexual acts is not permitted.
4. Advertising that portrays graphic violence, such as through the depiction of human or animal bodies, body parts or fetuses in states of mutilation, dismemberment, disfigurement or decomposition, is not permitted.
5. Advertising that is directed to inciting or producing imminent lawless action and is likely to incite or produce such action, including unlawful action based on a person's or persons' race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital or parental status, military discharge status or source of income, is not permitted.
6. Advertising shall not contain City or Authority graphics or representations without the express written Approval of the City or the Authority, as applicable.
7. No advertising containing or conveying an implied or declared City or Authority endorsement, rejection or opinion respecting any product or service is permitted.
8. The Concessionaire shall not place advertising on the public way within the boundaries of the City without the Approval of the City, which the City may withhold at its discretion.

SCHEDULE 12

List of Authorizations

SCHEDULE 13
Insurance Policies

SCHEDULE 14

Competing Parking Areas Map

Pittsburgh Parking System – Non Compete Region



— Non-compete area boundaries

Exhibit A

Parking Facilities System Resolution

Exhibit B

Parking Facilities System Ordinance

Exhibit C

Parking Authority Term Ordinance