

City Council Workshop Draft  
November 8, 2019

**BIDDEFORD URBAN CORE TRANSPORTATION  
JOINT DEVELOPMENT AGREEMENT**

**BY AND BETWEEN**

**THE CITY OF BIDDEFORD**

**AND**

**BIDDEFORD RIVERWALK COMMUNITY 1 LLC**

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166 **BIDDEFORD URBAN CORE TRANSPORTATION**  
167 **JOINT DEVELOPMENT AGREEMENT**  
168 **BY AND BETWEEN**  
169 **THE CITY OF BIDDEFORD**  
170 **AND**  
171 **BIDDEFORD RIVERWALK COMMUNITY 1 LLC**

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

316 “**Environmental Law**” means any federal or State law, act, statute, ordinance, rule,  
317 regulation, order, decree, permit, or ruling of any federal, State, or administrative regulatory  
318 body, agency, board, or commission or a judicial body, relating to the protection of human health  
319 or the environment or otherwise regulating or restricting the management, use, storage, disposal,  
320 treatment, handling, release, and/or transportation of a Hazardous Material, which are applicable  
321 to the Project, including but not limited to 42 U.S.C. § 9601, et seq. (CERCLA), 42 U.S.C. §  
322 6901 et seq. (RCRA), the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., the  
323 Safe Drinking Water Act, 42 U.S.C. § 300f et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq.,  
324 the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., the Toxic Substances  
325 Control Act, 15 U.S.C. § 2601 et seq., the Emergency Planning and Community Right To Know  
326 Act, 42 U.S.C. § 11001 et seq., and any State equivalent laws as each of the same is amended or  
327 supplemented from time to time.

328  
329 “**Equity Fair Market Value**” or “**Equity FMV**” shall have the meaning set forth in  
330 Section 11.5.

331  
332 “**Equity Member**” means the members of the Developer that contribute shareholders’  
333 equity to the Developer as part of the Developer’s financing of the Project.

334  
335 “**Execution Date**” has the meaning set forth in the Preamble.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

516 **"Permitted Materials"** means any materials or substances regulated by Environmental  
517 Law that are reasonably and customarily used during construction, provided that the same are  
518 used, handled, and stored in compliance with all applicable Environmental Law.  
519

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

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

524 **"Project Budget"** is set forth in Exhibit J.

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

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

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

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

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

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

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

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

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

543 “**Successor Developer**” has the meaning set forth in Section 16.7.1.  
544 “**Successor Development Agreement**” has the meaning set forth in Section 16.7.1.  
545 “**Support Payment**” has the meaning set forth in Section 7.1.  
546 “**Support Payment Date**” has the meaning set forth in Section 7.1.  
547 “**Target Financial Close Date**” has the meaning set forth in Section 2.1.  
548 “**Term**” means the period commencing on the Execution Date and terminating twenty-  
549 five years (25) years after the Effective Operational Date unless terminated earlier or extended  
550 longer in accordance with the terms of this Agreement.  
551 “**Termination by Court Ruling**” shall have the meaning set for in Section 11.9.  
552 “**Termination Compensation**” has the meaning set forth in Section 11.8.1.  
553 “**Termination Compensation for Court Ruling**” has the meaning set forth in Section  
554 11.7.3.  
555 “**Termination Notice**” has the meaning set forth in Section 12.11.3.  
556 “**Transfer**” means to sell, convey, assign, encumber, transfer, or otherwise dispose of.  
557 “**Trustee**” shall mean the trustee selected by the Developer or Financing Party to manage  
558 the Gross Revenues Account in accordance with the Gross Revenues Agreement.  
559 “**Variations**” has the meaning set forth in Section 5.7.2.

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

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

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



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

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

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

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

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

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

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

664 **Section 3.7. Encumbrances.**

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

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

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

690 **Section 3.8. Cooperation.**

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

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

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

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

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

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

710 **ARTICLE 4**  
711 **PARTIES' RESPONSIBILITIES**

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

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

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

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

728 **Section 4.5. Environmental Requirements.**

729 **Section 4.5.1.** The City and the Developer hereby warrant and covenant that each  
730 of them has and shall comply with all provisions of Environmental Law applicable to the Project  
731 including but not limited to the Declaration of Environmental Covenant identified in Section  
732 4.5.5. Each Party shall indemnify, defend, and hold the other Party and its officers, directors,

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

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

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

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

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

766 **ARTICLE 5**  
767 **DESIGN AND CONSTRUCTION**

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

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

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

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

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

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

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

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

801 **Section 5.6. Delivery Schedule.**

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

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<sup>1</sup> Parties to discuss permitting requirements.

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

825                   **Section 5.7. Variations.**

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

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

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

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

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

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

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

876 **ARTICLE 6**  
877 **OPERATIONS AND MAINTENANCE**

878 **Section 6.1. Parking System Management Subcontracting.**

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

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

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

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

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

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

910                   **Section 6.3.2.** Performing the Parking System Management and maintaining the  
911 Parking Facility.

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

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

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

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

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

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

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

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

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

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

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

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

961 **ARTICLE 7**  
962 **PAYMENTS**

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

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

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

978  
 979 **Section 7.1.1.** After payment of the final Support Payment relating to year six (6)  
 980 specified in Section 7.1, the Support Payment shall be adjusted annually (the “**Inflation**  
 981 **Adjustment**”) based upon the lesser of: (i) 3.5% per year and (ii) the escalation factor provided  
 982 from the following formula:

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

983 *Whereby,*

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

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

988  $RFC_0 =$  the amount of the Support Payment paid in the previous year to the  
 989 Developer;

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

992  $CPI_0 =$  the Consumer Price Index averaged for the 12 months of the calendar  
 993 year two years prior to year  $j$ .

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

1000 Parking System revenues, the City agrees, subject to Sections 7.2.1 and 7.2.2 below, to make a  
1001 Stabilization Payment to Developer in an amount equal to the difference between the applicable  
1002 Projected NOI and the actual NOI for such period thereby bringing Developer to 100% of the  
1003 Projected NOI. <sup>2</sup>

1004 7.2.1 Notwithstanding the above, the City may present a written request to the  
1005 Developer to increase the Parking Fees as an alternative to making a Stabilization Payment under  
1006 Section 7.2 within 10 days of receiving a Stabilization Payment request. The written request for  
1007 an increase of the Parking Fees shall set forth an explanation of the basis for such request, the  
1008 amount of such increase including its cost basis and any margin, its anticipated effect on the  
1009 business and financial condition of the City and the Parking System, its competitive effect with  
1010 parking in the area, and the details of the implementation of any such increase.

1011 7.2.2 If, after due consideration of the merits of the request, the Developer determines,  
1012 at its discretion, that there is reasonable cause for an increase in the Parking Fees as an  
1013 alternative to making the Stabilization Payment (hereinafter “extraordinary increase”), and, if the  
1014 requested extraordinary increase would otherwise be permitted by Applicable Laws, the  
1015 Developer may elect to implement the new Parking Fee. However, if, after due consideration of  
1016 the merits of the request, the Developer determines, at its discretion, that all or a portion of the  
1017 increase will negatively impact the Project to justify the amount of the requested extraordinary  
1018 increase in Parking Fees, the Developer shall provide the City with a written response explaining  
1019 the reasons for its rejection of all or a portion of the request. Should the request be rejected the  
1020 City shall make the Stabilization Payment less that portion of the increase accepted by Developer  
1021 in line with Section 7.2 promptly and no later than 7 days after receiving the rejection. For the  
1022 avoidance of doubt, notwithstanding the provisions of Section 7.2.1 and 7.2.2, the City shall have  
1023 the right in its discretion to increase the Parking Fees for the Parking System when it determines  
1024 appropriate.

1025 **Section 7.3. Cost Savings and Changed Conditions Costs.**

1026 **Section 7.3.1. Construction Cost Savings.** Following the date of [final  
1027 completion of the Construction Work] the Developer will promptly pay to the City the  
1028 Development Contingencies.

1029 **Section 7.3.2. Operational Cost Savings.**

1030 (i) Following the date of Substantial Completion and subject to Section  
1031 7.3.3, to the extent Developer’s NOI exceeds one-hundred and ten percent (110%) of Projected  
1032 NOI for the same semi-annual period as established in Exhibit E, Developer agrees to make a  
1033 payment to the City in an amount equal to the amount set forth in Section 7.3.2(ii).

1034 (ii) The distribution to the City will be equal to 100% of the first  
1035 \$750,000 of any such annual surplus (over 100% of Projected NOI) and 90% of any additional  
1036 annual surplus (over 100% Projected NOI), with the remaining 10% of such annual surplus  
1037 retained by Developer.

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<sup>2</sup> The final Agreement will include an exhibit identifying additional details.

1038                   **Section 7.3.3. Changed Conditions Costs.** If as a result of the occurrence of a  
1039 Changed Condition the Developer (a) incurs, or will incur, additional costs or (b) will be  
1040 required to make any payments to any Financing Party prior to the achievement by the  
1041 Developer of Substantial Completion (“**Changed Condition Costs**”), the City may elect in its  
1042 sole discretion to fund the Changed Condition Costs. If City declines to do so, Developer may  
1043 elect to advance required amounts to the Construction Contractor or other third parties (including  
1044 any Financing Party) (“**Changed Condition Loans**”). The Changed Condition Loans shall be  
1045 repaid pursuant to a schedule agreed to by the Parties. The repayment to the Developer of the  
1046 Changed Condition Loans shall be made from first, to the extent any exist, any Parking Fees that  
1047 exceed 110% of Projected NOI (for the avoidance of doubt, before any distribution to the City  
1048 pursuant to Section 7.2); second from an increase to the Support Payments as agreed to by the  
1049 Parties; and third from the proceeds of any sale or transfer of the Project as contemplated herein.  
1050 Where neither Party funds the Changed Condition Costs, Section 11.7 shall apply. Upon  
1051 termination of the Agreement for any reason, any amount outstanding under any Changed  
1052 Condition Loan shall be immediately due and payable by the City to Developer. Any extensions  
1053 to the milestones or dates referenced in Section 5.6.2 arising from a Changed Condition shall be  
1054 dealt with in accordance with Section 5.6.2.

1055                   **Section 7.4. Annual Reporting for Calculations.** The calculation of Stabilization  
1056 Payments and Cost Savings reimbursement mechanisms will be referenced against Developer’s  
1057 Annual Report, in accordance with Article 10 of this Agreement. Developer will submit a written  
1058 payment request for any Stabilization Payment to the City on a semi-annual basis within thirty  
1059 (30) days of the end of the applicable semi-annual period (and will be subject to a true-up by  
1060 reference to the Annual Report). Any payments to be made under Sections 7.2 and 7.3, either  
1061 from the City to the Developer or from the Developer to the City, shall be made within fifteen  
1062 (15) days of the notice from the Developer to the City of the calculation of the amount due under  
1063 this Article 7.

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1066

## ARTICLE 8 FEES

1067                   **Section 8.1. Collection of Fees.**

1068                   **Section 8.1.1.** The Developer shall be entitled to bill, collect, receive, deposit,  
1069 and retain all Fees on the Parking System and on the Additional Parking Areas during the Term,  
1070 subject to the terms and conditions set forth in this Agreement. All Fees shall be charged and  
1071 collected in dollars and in accordance with the provisions of all Applicable Law and deposited  
1072 into the Gross Revenues Account

1073                   **Section 8.1.2.** The Developer shall be wholly and exclusively responsible for the  
1074 billing, collection, receipt, deposit, and retention of all Fees on the Parking System and  
1075 Additional Parking Areas during the Term and shall assume all risks associated therewith.

1076  
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**ARTICLE 9  
ASSIGNMENT AND TRANSFER**

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

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

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

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

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

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

1106  
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**ARTICLE 10  
ANNUAL REPORT**

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

- 1111                           (i) Amount of Gross Revenues collected during the prior year;
- 1112                           (ii) Amount of the Financing, including Lender Liabilities;

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

1121 **ARTICLE 11**  
1122 **EVENTS OF DEFAULT, REMEDIES, TERMINATION, AND TERMINATION**  
1123 **COMPENSATION**

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

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

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

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

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

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

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

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

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

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

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

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

1188 the Changed Condition. Termination as a result of Change in Law is set forth in Section 11.7.2  
1189 below.

1190 **Section 11.6.3. Termination by Court Ruling.** Termination by Court Ruling  
1191 means, and becomes effective upon, (a) issuance of a final order by a court of competent  
1192 jurisdiction after exhaustion of all appeals to the effect that this Agreement is void, voidable,  
1193 and/or unenforceable or impossible to perform in its entirety for reasons beyond the reasonable  
1194 control of Developer, or (b) issuance of a final order by a court of competent jurisdiction after  
1195 exhaustion of all appeals upholding the binding effect on Developer and/or the City of a Change  
1196 in Law that causes impossibility of performance of a fundamental obligation by Developer or the  
1197 City under the Contract Documents or impossibility of exercising a fundamental right of  
1198 Developer or the City under the Contract Documents. The final court order shall be treated as  
1199 the notice of termination and Developer shall so notify the City within thirty (30) days of the  
1200 issuance of such final order. In the event of such termination, Developer will be entitled to  
1201 compensation in an amount equal the Termination Compensation for Court Ruling.

1202 **Section 11.7. Consequences of Termination or Reversion.** Upon the termination,  
1203 because of City Default, Extended Force Majeure or Changed Conditions, or expiration of this  
1204 Agreement, notwithstanding any claims the Parties may have against each other, the following  
1205 provisions shall apply:

1206 **Section 11.7.1.** The City shall pay to the Developer any Termination  
1207 Compensation due to the Developer within thirty (30) days of the termination date.  
1208 **“Termination Compensation”** shall include (i) all amounts owed to Developer by way of  
1209 reimbursement of its equity contribution and expected returns as calculated in accordance with  
1210 the Equity FMV calculation set forth in Exhibit I; plus (ii) outstanding debt Financing including  
1211 Financing expenses and costs incurred as a result of the termination; plus (iii) Lenders’  
1212 Liabilities; plus (iv) the costs to terminate any Developer subcontract (including all associated  
1213 losses of the Developer under the such subcontracts); (v) plus the costs reasonably incurred by  
1214 Developer during the course of such Force Majeure event or effect of such Changed Condition;  
1215 minus (vi) Insurance Proceeds.

1216 **Section 11.7.2.** In the event that this Agreement is terminated as a result of an  
1217 Extended Force Majeure occurrence or Changed Condition, as set forth in this Article 11, the  
1218 City shall also be obligated to pay or reimburse Developer an amount equal to the actual cost to  
1219 repair and restore any physical damage or destruction to the Project, including any delay costs  
1220 directly caused by the Extended Force Majeure event or Changed Condition, provided that  
1221 notification from the Developer to the City of such event or Changed Condition was timely  
1222 made.

1223 **Section 11.7.3.** In the event that this Agreement is terminated in accordance with  
1224 Section 11.6.3 above, the City shall pay to the Developer within 30 days of the Developer’s  
1225 notification referred to in Section 11.6.3 above Termination Compensation for Court Ruling.  
1226 **“Termination Compensation for Court Ruling”** shall include (i) the value of the Equity  
1227 contributed to the project and the value of any Changed Condition Loans; plus (ii) outstanding  
1228 debt Financing including Financing expenses and costs incurred as a result of the termination;  
1229 plus (iii) Lenders’ Liabilities; plus (iv) the costs to terminate any Developer subcontract

1230 (including all associated losses of the Developer under the such subcontracts); (v) plus the costs  
1231 reasonably incurred by Developer during the course of such Force Majeure event or effect of  
1232 such Changed Condition; minus (vi) Insurance Proceeds . Notwithstanding this Section 11.7.3,  
1233 any termination that is a result of Change in Law resulting from an act or failure to act by the  
1234 City will be compensated in accordance with 11.7.1.

1235 **Section 11.7.4.** Subject to the payment of Termination Compensation by the  
1236 City, the Developer shall, without action whatsoever being necessary on the part of the City,  
1237 surrender, transfer, and deliver to the City the Parking System (including all improvements to the  
1238 Parking System).

1239 **Section 11.7.5.** The Developer shall execute and deliver to the City documents  
1240 and other instruments reasonably required by the City to evidence such termination.

1241 **Section 11.7.6.** This Section 11.8 is subject to the rights of the Financing Parties  
1242 set forth herein and shall survive the expiration or any earlier termination of this Agreement.

1243 **Section 11.8. No Other Termination Rights.** Neither Party has the right to terminate  
1244 this Agreement for convenience.

## 1245 **ARTICLE 12**

### 1246 **INSURANCE**

1247  
1248 **Section 12.1. General Requirements.** The amount of all insurance specified herein  
1249 above shall be equal to the full replacement cost of the improvements on the Site, as the same  
1250 shall exist from time to time. If the coverage is available and commercially appropriate, such  
1251 policy or policies shall insure against all risks of direct physical loss or damage. The Developer  
1252 shall be liable for any deductible amount in the event of a loss otherwise covered by such  
1253 insurance. All policies of insurance that this Agreement requires the Developer to carry and  
1254 maintain or cause to be carried or maintained pursuant hereto shall be issued by an insurer  
1255 authorized to do business in the State and having an A.M. Best Company rating of A-IX or better  
1256 (if A.M. Best Company changes its rating system or ceases to provide ratings at some later date,  
1257 then such insurance company shall have a rating from A.M. Best Company (or some other  
1258 comparable rating service if A.M. Best Company ceases to provide ratings) comparable to the  
1259 “A-IX or better” requirement set forth above). All policies shall provide by appropriate language  
1260 that the City is an additional insured or joint loss payee, as applicable, that the insurance afforded  
1261 by such policies is primary insurance, and that all rights of the insurer for contribution or  
1262 otherwise from the City or other insurers of the City are waived. Each such policy shall provide  
1263 that any losses shall be payable notwithstanding any act or failure to act or negligence of the  
1264 Developer, the City, any Financing Party or any other person. The property insurance shall not  
1265 be canceled or lapsed on account of any partial occupancy or use by the City of a portion or  
1266 portions of the Parking System prior to completion but will remain in full force and effect. The  
1267 Developer shall provide that all contractors at whatever tier performing work under this  
1268 Agreement shall comply with the insurance requirements provided herein. Each policy shall  
1269 contain an endorsement, to the extent reasonably available, that will prohibit its cancellation or  
1270 material modification prior to the expiration of thirty (30) days after notice of such proposed  
1271 cancellation or material modification to the City.

1272           **Section 12.2. Evidence of Insurance.** Certificates of insurance evidencing the  
1273 effectiveness of the insurance coverage that the Developer is required hereunder to maintain or  
1274 cause to be maintained shall be delivered to the City Construction prior to any commencing  
1275 Construction Work on the Parking Facility. Duplicate or certified copies of such policies shall  
1276 be delivered to the City within fifteen (15) days of demand. In the event copies of any policy or  
1277 a certificate reasonably satisfactory to the City is not delivered when first required, or any  
1278 insurance is not in effect or does not comply with the requirements hereof, without affecting the  
1279 obligations of the Developer or the rights of the City, and, only if the insurance required hereby  
1280 is not in effect, the City may cause to be purchased insurance complying with the provisions  
1281 hereof, and the Developer agrees to pay all expenses of the City in connection therewith, from  
1282 time to time on demand. Notice of insurance policy changes by the Developer shall be furnished  
1283 to the City.

1284           **Section 12.3. Cancellation.** The Developer understands and agrees that cancellation of  
1285 any insurance coverage required to be carried and maintained by the Developer under this  
1286 Agreement will constitute a failure to comply in a material respect with a material provision of  
1287 this Agreement.

1288           **Section 12.4. Payment of Premiums.** The Developer shall pay or cause to be paid all  
1289 premiums and other charges with respect to all insurance required herein.

1290           **Section 12.5. Not a Limit on Liability.** The Developer's maintenance of the insurance  
1291 required in accordance with this Article shall affect no limitation on the Developer's liability  
1292 with respect to any loss or damage resulting from the willful misconduct, lack of good faith, or  
1293 negligence of the Developer or any of its officers, agents, servants, employees, or invitees or by  
1294 any failure on the part of the Developer to fully perform its obligations under this Agreement.

1295           **Section 12.6. Notices.** The Developer will provide the City with written notice of any  
1296 and all claims made under any insurance policy applicable to the Project. The Developer will  
1297 also provide notice to the City of any insurance policy applicable to the Project which will expire  
1298 within ninety (90) days.

1299           **Section 12.7. Compliance with Insurance Policies.** Developer agrees it will comply  
1300 with the terms and conditions of all insurance policies applicable to the Project and required by  
1301 this Agreement and will not act in any manner which could result in the cancellation of such  
1302 policy.

1303           **Section 12.8. Right to Cure.** The City shall have the right, but not the obligation, to  
1304 obtain, at the Developer's expense, any insurance policy required under this Agreement which  
1305 the Developer has failed to obtain or has failed to remedy or correct a cancellation thereof.

1306           **Section 12.9. Property Insurance**

1307           **Section 12.9.1.** The Developer shall purchase or caused to be purchased and at  
1308 all times maintain such insurance as will protect the Developer, the City, the Developer's  
1309 representatives, suppliers and employees, subcontractors and sub-subcontractors from loss or  
1310 damage to Construction Work or property in the course of construction, including all machinery,  
1311 materials and supplies on the premises or in transit thereto and intended to become a part of the

1312 finished Construction Work until acceptance by the City. This insurance shall be in the form of  
1313 “Builders All-Risk.” The Developer shall cause such policy or policies of insurance required  
1314 under this Article to be endorsed so as to provide that the insurer or insurers waive any right of  
1315 subrogation against the City. Any deductible provision in such insurance shall not exceed  
1316 \$10,000.00 without prior written approval of the City. Notwithstanding any such deductible  
1317 provision, the Developer shall remain solely liable for the full amount of any item covered by  
1318 such insurance.

1319 **Section 12.9.2.** The City and the Developer waive all rights against each other  
1320 for damages caused by fire or other perils to the extent covered by insurance, or any other  
1321 property insurance applicable to the Construction Work. The Developer shall require, by  
1322 appropriate agreement, written where legally required for validity, similar waivers in favor of the  
1323 City and the Developer by subcontractors, sub-subcontractors and suppliers. With respect to the  
1324 waiver of rights of recovery, the City shall be deemed to be included, to the extent covered by  
1325 property insurance applicable thereto.

1326 **Section 12.10. Insurance.**<sup>3</sup> From and after the Effective Date, the Developer, at its  
1327 expense, shall maintain or cause to be maintained the following coverages in the following  
1328 amounts:

1329 **Section 12.10.1.** Claims under Worker’s or workmen’s compensation, disability  
1330 benefit, and other similar employee benefit acts (with Workers Compensation and Employer’s  
1331 Liability Insurance in amounts not less than those necessary to meet the statutory requirements of  
1332 the state(s) having jurisdiction over any portion of the Construction Work); the Developer will  
1333 require its subcontractors to similarly provide Workmen’s Compensation Insurance for all of the  
1334 latter’s employees; workers’ compensation insurance to the fullest extent required by Applicable  
1335 Law;

1336 **Section 12.10.2.** Commercial general liability insurance, including personal  
1337 injury, bodily injury, and broad form contractual liability coverage, with minimum limits of  
1338 \$5,000,000 per occurrence, \$10,000,000.00 aggregate, and property damage coverage with  
1339 minimum limits of \$5,000,000.00 per occurrence;

1340 **Section 12.10.3.** A policy or policies insuring loss or damage to the Site,  
1341 including the Parking Facility;

1342 **Section 12.10.4.** “Builders risk insurance” during such periods when construction  
1343 activities and improvements are being undertaken on the Site;

1344 **Section 12.10.5.** Business interruption insurance for the Parking Facility;

1345 **Section 12.10.6.** Employers’ Liability - At least \$1,000,000.00 for each accident;

1346 **Section 12.10.7.** Public Liability and Property Insurance - The Developer shall  
1347 take out and maintain during the life of this Agreement such Public Liability and Property  
1348 Damage Insurance as shall protect it and any subcontractor performing work under this

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

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

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

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

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

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

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

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

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

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

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

1388 Unless the City and the Developer agree otherwise, the Termination Notice shall be effective  
1389 thirty (30) days after receipt (or refusal) of the Termination Notice by the other party pursuant to  
1390 Article 11 of this Agreement. In the event that the Agreement is terminated pursuant to this  
1391 subsection, the Developer shall be required to remove or cause to be removed debris from and  
1392 restore the Casualty Property to a reasonably clean and safe condition. To the extent the costs to  
1393 restore the Casualty Property are not fully covered by insurance, such additional costs shall be  
1394 paid to the Developer as Termination Compensation.

1395 **Section 12.11.4.** Absent the agreement by the City and the Developer as provided  
1396 herein, if the Developer refuses, or fails promptly to repair, restore, or rebuild or cause the repair,  
1397 restoration, or rebuilding of the Casualty Property, or any part of the Site and improvements  
1398 damaged or destroyed, to the satisfaction of the City, the City may, by ninety (90) days' written  
1399 notice to the Developer, terminate this Agreement without compensation to Developer, except as  
1400 set forth above in Section 11.6 and Section 11.7 and the City may undertake the rebuilding or  
1401 restoration of the Casualty Property, and any other improvement or the damaged or destroyed  
1402 portion thereof, and may complete it, by contract or otherwise, and may take possession of and  
1403 use any materials on the Construction Work site necessary for completing the Construction  
1404 Work. In the event the City elects to rebuild or restore the Casualty Property, all applicable  
1405 insurance proceeds relative to the Casualty Property shall be applied first to complete such  
1406 rebuilding or reconstruction. Subject to the other provisions of this Agreement, the City may  
1407 retain any remaining balance of the insurance proceeds.

1408 **ARTICLE 13**  
1409 **LIABILITY; INDEMNIFICATION**

1410 **Section 13.1. City Liability and Indemnity.** The City shall not be responsible for  
1411 damages to property or injuries or death to persons which occur or arise during the Term of this  
1412 Agreement from or attributable or incident to the condition or state or repair of the Site or the use  
1413 and occupation thereof, or for damages to the property of the Developer, or for damages to the  
1414 property or injuries or death to the person of the Developer's officers, agents, servants,  
1415 employees, or tenants, or others who may be on the Site at their invitation or the invitation of any  
1416 one of them; provided, however, that the City is responsible for any damages to property or  
1417 injuries or death to persons which occur or arise during the Term of this Agreement from or  
1418 attributable or incident to any environmental condition in, on or under the Site existing at  
1419 Execution Date; and provided further, the City is responsible for any loss, damage or destruction  
1420 to property or injuries or death to persons caused by the acts or omissions of the City or its  
1421 officers, agents, employees, or contractors to the extent not covered by insurance required to be  
1422 carried by the Developer under this Agreement and to the extent authorized under Applicable  
1423 Law. Except as otherwise provided in this Agreement, to the fullest extent permitted by  
1424 Applicable Law, the City shall indemnify and hold harmless the Developer Indemnified Parties  
1425 on demand from and against any and all liabilities for losses actually suffered or incurred by such  
1426 Developer Indemnified Party as a result of any Third-Party Claims arising from (i) any failure by  
1427 the City to comply with, observe or perform any of the covenants, obligations, agreements, terms  
1428 or conditions in this Agreement (ii) or any breach by the City of its representations or warranties  
1429 set forth herein (iii) any breach by the City of its representation and warranty relating to certain  
1430 disclosed information [add breach by City of material obligations] (iv) any Hazardous Material  
1431 that exists on the Site as of the Execution Date or migrates to the Site after the Execution Date

1432 from off of the Site; (v) any breach by the City of any Environmental Law that gives rise to any  
1433 liability of the Developer and (vi) any willful misconduct or negligence of a City Indemnified  
1434 Party in connection with the performance of the Project; provided, that the indemnity provided in  
1435 this Section 13.1 shall not extend to losses that are caused by (i) the willful misconduct or  
1436 negligence of Developer or its subcontractors or (ii) a breach by the Developer of its material  
1437 obligations under this Agreement.

1438 **Section 13.2. Developer Liability and Indemnity.** Except as otherwise provided in this  
1439 Agreement, the Developer agrees to assume all risks of loss or damage to property and injury or  
1440 death to persons by reason of or incident to the Developer's possession and/or use of the Site  
1441 during the Term or the activities conducted by the Developer under this Agreement. Except as  
1442 otherwise provided in this Agreement, to the fullest extent permitted by Applicable Law, the  
1443 Developer shall indemnify and hold harmless the City Indemnified Parties on demand from and  
1444 against any and all liabilities for losses actually suffered or incurred by such City Indemnified  
1445 Party as a result of any Third-Party Claims arising from (i) any failure by the Developer to  
1446 comply with, observe or perform any of the covenants, obligations, agreements, terms or  
1447 conditions in this Agreement (ii) or any breach by the Developer of its representations or  
1448 warranties set forth herein (iii) any breach by the Developer of its representation and warranty  
1449 relating to certain disclosed information (iv) any breach by the Developer of any Environmental  
1450 Law that gives rise to any liability of the City except as set forth in Section 4.5 and (vi) any  
1451 willful misconduct or gross negligence of a Developer Indemnified Party in connection with the  
1452 performance of the Project; provided, that the indemnity provided in this Section 13.2 shall not  
1453 extend to losses that are caused by the willful misconduct or negligence of the City or its agents,  
1454 contractors, employees or subcontractors or a breach by the City of its obligations under this  
1455 Agreement.

1456 **Section 13.3. Waiver of Punitive Damages.** Anything therein contained, and anything  
1457 at law to the contrary notwithstanding, in any action or proceeding between the Parties arising  
1458 under or with respect to the Agreement or in any manner pertaining to the Project or to the  
1459 relationship of the Parties thereunder, each Party thereby unconditionally and irrevocably waives  
1460 and releases any right, power or privilege either may have to claim or receive from the other  
1461 Party thereto any punitive or exemplary damages, each party acknowledging and agreeing that  
1462 the remedies herein provided, and other remedies at law and in equity, will in all circumstances  
1463 be adequate. The foregoing waiver and release shall apply in all actions or proceedings between  
1464 the Parties and for all causes of action or theories of liability, whether for breach of the  
1465 Agreement or for violation of any other duty owing by either Party to the other which may in any  
1466 way relate to Developer's management or operation of the Project. Both Parties will further  
1467 acknowledge that they are experienced in negotiating agreements of like kind, have had the  
1468 advice of counsel in connection therewith, and have been advised as to, and fully understand, the  
1469 nature of the waivers therein contained. Affiliates or agents, or its or their officers or employees,  
1470 where the damage or destruction is covered by the insurance policies in effect and maintained by  
1471 the releasing Party.

1472 **Section 13.4. Consequential Damages.** The indemnities shall apply to consequential  
1473 damages only to the extent covered by insurance policies maintained or required to be  
1474 maintained under the Agreement.

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1476

**ARTICLE 14  
RETENTION OF INFORMATION**

1477           **Section 14.1. Developer Maintain.** Developer shall keep and maintain, and cause its  
1478 contractors to keep and maintain, on a computer system accessible to the City upon request,  
1479 appropriate books and records in which complete and accurate entries will be made of its  
1480 transactions relating to the Project or the Agreement, in accordance with GAAP or any other  
1481 generally accepted accounting standards that are acceptable to the City (in its reasonable  
1482 discretion) (collectively, the “**Retained Information**”). The Retained Information must include  
1483 information with respect to and evidence of (i) all matters with respect to the costs of  
1484 construction, (ii) all matters that the Developer is required to certify to the City pursuant to this  
1485 Agreement and (iii) any and all other matters relating to the Developer’s operations at the Site or  
1486 the construction of the Project.

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**ARTICLE 15  
REPRESENTATIONS AND WARRANTIES**

1489           **Section 15.1. Representations and Warranties of the Developer.** The Developer  
1490 hereby represents and warrants to the City as follows:

1491                   **Section 15.1.1. Due Formation.** The Developer is a [Maine limited liability]  
1492 company, duly formed and validly existing and in good standing and has full power and  
1493 authority under the laws of the State of Maine to conduct the business in which it is now engaged  
1494 [and is registered and in good standing as a foreign limited liability company with the State].

1495                   **Section 15.1.2. Execution, Delivery, and Performance.** The Developer has the  
1496 full right, power, and authority to perform the Project as provided in this Agreement and to carry  
1497 out the Developer’s obligations hereunder, and all requisite action necessary to authorize the  
1498 Developer to enter into this Agreement and to carry out its obligations hereunder have been  
1499 taken. This Agreement has been duly executed and delivered by the Developer, and constitutes  
1500 the legal, valid, and binding obligation of the Developer, enforceable against the Developer in  
1501 accordance with its terms. The person signing this Agreement on behalf of the Developer is  
1502 authorized to do so.

1503                   **Section 15.1.3. No Consents.** No consent or authorization of, or filing with, any  
1504 Person (including any Governmental Authority), which has not been obtained or will not be  
1505 obtained, is required in connection with the execution, delivery, and performance of this  
1506 Agreement by the Developer.

1507                   **Section 15.1.4. No Conflicts.** The execution and delivery of this Agreement by  
1508 the Developer, the consummation of the transactions contemplated hereby (including the  
1509 operation of the Parking System in accordance with the terms of this Agreement) and the  
1510 performance by the Developer of the terms, conditions and provisions hereof have not and will  
1511 not contravene or violate or result in a breach of (with or without the giving of notice or lapse of  
1512 time, or both) or acceleration of any material obligations of the Developer under (i) any  
1513 Applicable Law or (ii) any agreement, instrument or document to which the Developer is a party  
1514 or by which it is bound.

1515                   **Section 15.1.5. No Violation.** The execution, delivery, and performance of this  
1516 Agreement by the Developer and the transactions contemplated hereby and the performance by  
1517 the Developer of its obligations hereunder do not violate any of the terms, conditions, or  
1518 provisions of (i) the Developer’s organizational documents, (ii) any judgment, order, injunction,  
1519 decree, regulation, or ruling of any court or other Governmental Authority, or law to which  
1520 Developer is subject, or (iii) any agreement or contract to which the Developer is a party or to  
1521 which it is subject.

1522                   **Section 15.1.6. No Litigation.** There is no litigation, arbitration, administrative  
1523 proceeding, or other similar proceeding pending or threatened in writing against the Developer  
1524 which, if decided adversely to the Developer, (i) would impair the Developer’s ability to enter  
1525 into and perform its obligations under this Agreement, or (ii) would materially adversely affect  
1526 the financial condition or operations of the Developer.

1527                   **Section 15.1.7. No Bankruptcy.** Neither the Developer nor any of its members is  
1528 the subject debtor under any federal, state, or local bankruptcy or insolvency proceeding, or any  
1529 other proceeding for dissolution, liquidation, or winding up of its assets.

1530                   **Section 15.2. Representations and Warranties of the City.** The City hereby  
1531 represents and warrants to the Developer as follows:

1532                   **Section 15.2.1. Execution, Delivery, and Performance.** The City (i) has all  
1533 requisite right, power, and authority to execute and deliver this Agreement and to perform its  
1534 obligations under this Agreement to be signed by the City, and (ii) has taken all necessary action  
1535 to authorize the execution, delivery, and performance of this Agreement by the City. This  
1536 Agreement has been duly executed and delivered by the City, and constitutes the legal, valid, and  
1537 binding obligation of the City, enforceable against it in accordance with its terms. The Person  
1538 signing this Agreement on behalf of the City is authorized to do so.

1539                   **Section 15.2.2. No Violation.** The execution, delivery, and performance by the  
1540 City of this Agreement and the transactions contemplated hereby and the performance by the  
1541 City of its obligations hereunder will not violate any of the terms, conditions, or provisions of (i)  
1542 any judgment, order, injunction, decree, regulation, or ruling of any court or other Law to which  
1543 the City is subject, or (ii) any agreement or contract to which the City is a party or to which it is  
1544 subject.

1545                   **Section 15.2.3. No Litigation.** There is no litigation, arbitration, administrative  
1546 proceeding, or other similar proceeding pending or threatened in writing against the City which,  
1547 if decided adversely to the City, (i) would impair the City’s ability to enter into and perform its  
1548 obligations under this Agreement, or (ii) would materially adversely affect the financial  
1549 condition or operations of the City, which has not been disclosed in writing to the Developer.

1550                   **Section 15.2.4. No Consents.** No consent or authorization of, or filing with, any  
1551 Person, which has not been obtained, is required in connection with the execution, delivery, and  
1552 performance of this Agreement by the City.

1553                   **Section 15.2.5. No Conflicts.** The execution and delivery of this Agreement by  
1554 the City, the consummation of the transactions contemplated hereby (including the operation of

1555 the Parking System in accordance with the terms of this Agreement) and the performance by the  
1556 City of the terms, conditions and provisions hereof have not and will not contravene or violate or  
1557 result in a breach of (with or without the giving of notice or lapse of time, or both) or  
1558 acceleration of any material obligations of the City under (i) any Applicable Law or (ii) any  
1559 agreement, instrument or document to which the City is a party or by which it is bound.

1560 **Section 15.2.6. Competing Parking Area.** The City covenants that it will inform  
1561 Developer if and when any competitive parking lot is being contemplated by the City within [one  
1562 (1) mile] of the Site so that Developer may provide feedback and recommendations on any  
1563 required changes to the operations of the Project.

1564 **Section 15.2.7. Environmental Cap and Buffer.** The Site does not incorporate or  
1565 impact the area identified as the Capped Area and its Buffer in the Declaration of Environmental  
1566 Covenant, dated September 3, 2015, and recorded in the York County Registry of Deeds in Book  
1567 17098, Pages 898-921.

1568 **ARTICLE 16**  
1569 **PROJECT FINANCING**

1570 **Section 16.1. Developer Obligations.** The Developer shall be solely responsible for  
1571 obtaining any financing for the construction of the Project and the performance of its obligations  
1572 under this Agreement, which financing shall comply with all requirements of this Agreement. On  
1573 or prior to the Effective Date, the Developer shall demonstrate to the reasonable satisfaction of  
1574 the City that it has secured sufficient financing (in the form of both committed senior debt  
1575 financing and committed subordinated equity financing) for the Project Budget. The financing  
1576 on this Project shall not be cross-collateralized with any other project.

1577 **Section 16.2. City Obligations.** The City agrees, to the extent consistent with  
1578 Applicable Law, to cooperate in good faith with the Developer with respect to the Developer's  
1579 documentation reasonably necessary to obtain and maintain financing for the performance of the  
1580 obligations of the Developer hereunder. Nothing herein shall require the City to provide any  
1581 funding for the Project or to incur any obligations or liabilities or to take any action, give any  
1582 consent, or enter into any document inconsistent with the provisions of this Agreement.

1583 **Section 16.3. Financing Party.** During the Term, the City acknowledges that the  
1584 Developer will finance its rights to payment pursuant to this Agreement. The holder or holders  
1585 and each beneficiary of any such payment right including any Equity Members or debt holders  
1586 shall be referred to herein as the "**Financing Party.**" The City agrees to execute an estoppel  
1587 certificate and/or a subordination, non-disturbance agreement, and attornment agreement, and an  
1588 assignment of the Agreement to a special purpose entity for the purposes of financing, as may  
1589 reasonably be required by a Financing Party so as to facilitate financing, evidence its consent to  
1590 any such financing and conditional or collateral assignment of this Agreement and to certify as to  
1591 the status of this Agreement and to the performance of the Developer hereunder as of the date of  
1592 such certification. Within ten (10) days of assigning or encumbering any portion of its interest in  
1593 all or any portion of the Project, the Developer shall furnish to the City a written notice thereof  
1594 setting forth the name and address of any debt holder Financing Party.

1595           **Section 16.4. Foreclosure by Financing Party.** If the Financing Party or any purchaser  
1596 acquiring from the Financing Party its interest in the Project after the Financing Party has  
1597 foreclosed shall acquire the Developer’s Interest by virtue of the default by the Developer under  
1598 this Agreement or otherwise, then this Agreement shall continue in full force and effect (it being  
1599 understood that this Agreement is not subordinate to any such financing), so long as: (i) the  
1600 Financing Party or such purchaser is not in default hereunder, notwithstanding any payoff or  
1601 satisfaction of the obligation underlying the Financing; (ii) the Financing Party or such purchaser  
1602 is diligently taking such action as is reasonable under the circumstances to cure all continuing  
1603 Developer Defaults; and (iii) all monetary Developer Defaults are cured. In such event, for the  
1604 period of time during which the Financing Party or any purchaser at foreclosure continues to  
1605 hold Developer’s Interest, the Financing Party or such purchaser shall become liable and fully  
1606 bound by the provisions of this Agreement and provided the Financing Party or any purchaser at  
1607 foreclosure does not disturb the City’s rights hereunder, the City will attorn to the Financing  
1608 Party and/or such purchaser, for the balance of the Term and on all other terms and conditions  
1609 herein set forth.

1610           **Section 16.5. Rights of the Financing Party.**

1611           **Section 16.5.1.** With respect to the Financing Party, the City agrees that the  
1612 following shall apply and the City and the Developer agree that the Financing Party shall be a  
1613 third party beneficiary only for the purposes of enforcing the following and to the extent the  
1614 Financing Party is expressly granted other rights under this Agreement or succeeds to the  
1615 Developer’s Interest for the purpose of enforcing the rights granted to it:

1616                           (i) Any notice with respect to a default from the City to the Developer  
1617 shall be simultaneously delivered to the Financing Party at its registered address, provided that  
1618 delivery of the notice or failure to deliver notice to the Financing Party shall not extend the time  
1619 for the Developer to cure any default.

1620                           (ii) The City will not accept any cancellation by the Developer or enter  
1621 into any material modification of this Agreement without the prior written consent thereto of the  
1622 Financing Party.

1623           **Section 16.5.2.** The City will accept all performance of this Agreement from the  
1624 Financing Party as complying with the requirements and obligations of the Developer. In the  
1625 event the Financing Party elects to cure any such Developer Default, the Financing Party shall  
1626 diligently begin to cure and, within forty-five (45) days from the date the Developer’s fails to  
1627 cure such Developer Default, replace the Developer with a party consented to by the City,  
1628 provided that if the City and the Financing Party fail to agree within said forty-five (45) day  
1629 period on a replacement Developer, then the entity that controls the Financing Party shall form  
1630 an entity to take ownership of the ownership interests in the Developer, and (a) diligently take  
1631 such action as is reasonable under the circumstances to cure all continuing Developer Defaults  
1632 (provided that the Financing Party or such replacement owner shall not be required to cure any  
1633 non-monetary Developer Defaults not capable of cure by the Financing Party or such  
1634 replacement owner); and (b) ensure all monetary Developer Defaults are cured within thirty (30)  
1635 days

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

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

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

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

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



1717 email, to the other Party at the address of such other Party set forth below or at such other  
1718 address as such other Party may designate by notice specifically designated as a notice of a  
1719 change of address and given in accordance herewith; provided, however, that notice of change of  
1720 address shall not be effective until the date of receipt hereof. Rejection or other refusal to accept  
1721 or inability to deliver because of changed address of which no notice has been received shall also  
1722 constitute receipt. Any such notice, demand, or request shall be addressed as follows:

1723 City: James A. Bennett, City Manager  
1724 City of Biddeford  
1725 205 Main Street  
1726 Biddeford, Maine 04005

1727  
1728 With a copy to: Keith R. Jacques, Esq.  
1729 Woodman Edmands, et al  
1730 234 Main Street  
1731 P.O. Box 468  
1732 Biddeford, Maine 04005

1733  
1734 Developer: [insert]

1735  
1736 With a copy to: [insert]

1737

1738

1739

## ARTICLE 19 CITY ACKNOWLEDGEMENT

1740 The City acknowledges that it has entered into this Agreement after sufficient review and  
1741 consultation, upon the advice of counsel, and is an educated and informed Party to this  
1742 Agreement.

1743

1744

## ARTICLE 20 MISCELLANEOUS PROVISIONS

1745 **Section 20.1. Number and Gender.** In this Agreement, words in the singular include  
1746 the plural and vice versa and words in one gender include all genders.

1747 **Section 20.2. Headings.** The division of this Agreement into Articles, Sections, and  
1748 other subdivisions is for convenience of reference only and shall not affect the construction or  
1749 interpretation of this Agreement. The headings in this Agreement are not intended to be full or  
1750 precise descriptions of the text to which they refer and shall not be considered part of this  
1751 Agreement.

1752 **Section 20.3. References to this Agreement.** The words “herein,” “hereby,” “hereof,”  
1753 “hereto,” and “hereunder” and words of similar import refer to this Agreement as a whole and  
1754 not to any particular portion of it. The words “Article,” “Section,” “paragraph,” “sentence,”  
1755 “clause,” and “Schedule” mean and refer to the specified article, section, paragraph, sentence,  
1756 clause, or schedule of or to this Agreement.

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

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

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

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

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

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

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

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

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

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

1796           **Section 20.14. Incorporation of Exhibits.** The Exhibits are integral to, and are made a  
1797 part of, this Agreement. In the event of any conflict between the terms of this Agreement and the  
1798 terms of any Exhibit, the terms of this Agreement shall control.

1799           **Section 20.15. Order of Precedence.** In the event of a conflict between the terms and  
1800 conditions of this Agreement and any exhibit or attachment, the order of precedence shall be as  
1801 follows: (a) Agreement terms and conditions; (b) all other exhibits attached to this Agreement.

1802           **Section 20.16. Governmental Authority.** This Agreement is not intended to supersede  
1803 the authority granted by law to any regulatory board or agency of the City. Therefore, nothing in  
1804 this Agreement shall be construed or implied to require the City's Planning, Zoning or other  
1805 regulatory boards or agencies (however designated) to approve the plans for any aspect of the  
1806 Project or other action required under this Agreement.

1807           **Section 20.17. Nondiscrimination.** The Developer agrees that it will not discriminate  
1808 against any person because of race, color, religion, sex, gender, age, military status, sexual  
1809 orientation, marital status, national origin or physical or mental disability in the hiring, discharge,  
1810 promotion or demotion, or to discriminate in matters of compensation, terms, conditions, or  
1811 privileges of employment or in the furnishing, or by refusing to furnish, to such person or  
1812 persons the use of any Site, including any and all services, privileges, accommodations, and  
1813 activities identified in this Agreement. The Developer agrees to inset this provision in all  
1814 subcontracts related to work to be performed with regard to the Project.

1815           **Section 20.18. No Employment of Illegal Aliens.** By executing this Agreement,  
1816 Developer certifies that, at the time of execution of this Agreement, Developer does not  
1817 knowingly employ or contract with an illegal alien who will perform work under the Joint  
1818 Development Agreement. Developer agrees to participate in the E-Verify Program, to confirm  
1819 the employment eligibility of all employees who are newly hired for employment to perform  
1820 work under this Agreement. Developer will not knowingly employ or contract with an illegal  
1821 alien to perform work under this Agreement. Developer will not enter into a contract with a sub  
1822 consultant or subcontractor that fails to certify to the Developer that such sub consultant or  
1823 subcontractor will not knowingly employ or contract with an illegal alien to perform work under  
1824 the Joint Development Agreement. Developer certifies that it has confirmed the employment  
1825 eligibility of all employees who are newly hired for employment to perform work under the Joint  
1826 Development Agreement, through participation in the E-Verify Program. Developer is  
1827 prohibited from using the E-Verify Program procedures to undertake pre-employment screening  
1828 of job applicants while performing its obligations under this Agreement, and it is otherwise  
1829 required to comply with any and all federal requirements related to use of the E-Verify Program  
1830 including, by way of example, all program requirements related to employee notification and  
1831 preservation of employee rights. If Developer obtains actual knowledge that a sub consultant or  
1832 subcontractor performing work under the Agreement knowingly employs or contracts with an  
1833 illegal alien, the Developer will notify such sub consultant or subcontractor and the City within  
1834 three (3) days. The Developer will also then terminate such sub consultant or subcontractor if  
1835 within three (3) days after such notice the sub consultant or subcontractor does not stop  
1836 employing or contracting with the illegal alien, unless during such three-day period the sub  
1837 consultant or subcontractor provides information to establish that the sub consultant or  
1838 subcontractor has not knowingly employed or contracted with an illegal alien.



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

1851

1852   **CITY OF BIDDEFORD**

1853

1854 By: \_\_\_\_\_

1855 Name: James A. Bennett,

1856

1857 Title: City Manager, City of Biddeford

1858

1859

1860

1861   **BIDDEFORD RIVERWALK COMMUNITY 1 LLC**

1862 By: \_\_\_\_\_

1863 Name: \_\_\_\_\_

1864 Title: \_\_\_\_\_

1865

1866

**EXHIBIT A**

**MAP OF PARKING SYSTEM SITE**

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

DRAFT

**EXHIBIT A1**

**MAP OF SITE**

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

**EXHIBIT B**

**DESIGN**

[The City's design for the Parking Facility]

## EXHIBIT C

### O&M MANAGEMENT PLAN

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

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

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

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

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

## **EXHIBIT D**

### **CONSTRUCTION SCHEDULE**

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

**EXHIBIT E**

**FORECAST NET OPERATING INCOME**

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

**EXHIBIT F**  
**[RESERVED]**

**EXHIBIT G-1**

**EFFECTIVE DATE CERTIFICATE**

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

Dated: \_\_\_\_\_

**BIDDEFORD RIVERWALK COMMUNITY 1 LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT G-2**

**EFFECTIVE OPERATIONAL DATE CERTIFICATE**

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

Dated: \_\_\_\_\_

BIDDEFORD RIVERWALK COMMUNITY 1 LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT H**

**CITY PERMIT LIST**

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

## EXHIBIT I

### FAIR MARKET VALUE PROCESS

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

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

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

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

**EXHIBIT J**  
**PROJECT BUDGET**

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

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

**EXHIBIT K**

**[RESERVED]**

**EXHIBIT L**

**ADDITIONAL PARKING AREAS**

**SURFACE LOTS**

Operational Subcontractor will manage the following City owned parking lots:

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

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

## **EXHIBIT M**

### **RIVERWALK CONNECTIONS**

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

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