

**DEVELOPMENT AGREEMENT**

**between**

**WORCESTER RENAISSANCE LLC,**

**and**

**CITY OF WORCESTER**

**for the**

**CITY SQUARE PROJECT  
WORCESTER, MASSACHUSETTS**

**DATED:** \_\_\_\_\_

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## DEVELOPMENT AGREEMENT

### CITY SQUARE PROJECT WORCESTER, MASSACHUSETTS

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made as of the \_\_\_\_\_ day of June, 2006, by and between WORCESTER RENAISSANCE LLC, a Delaware limited liability company having an address of c/o Berkeley Investments, Inc., 121 High Street, Boston, Massachusetts 02110 (the "Developer"), acting by and through Berkeley as its development agent, and the CITY OF WORCESTER, a municipal corporation organized under a home rule charter adopted under the constitution and laws of The Commonwealth of Massachusetts, with an address at City Hall, 455 Main Street, Worcester, Massachusetts 01608 (the "City").

#### RECITALS

The Project Property consists of approximately 20.2 acres on the westerly side of Worcester Center Boulevard in Worcester, Massachusetts and currently contains the Mall, together with two existing office buildings and above-ground parking garages and a portion of Worcester Center Boulevard. The Project Property is legally described in Exhibit A attached hereto and is shown on the Site Plan attached hereto as Exhibit B.

The Developer acquired a portion of the Project Property by deed dated June 14, 2004 and recorded in the Registry in Book 33956, Page 102, and also owns the Vacuum Cleaner Parcel, which is not part of the Project Property. Worcester Renaissance Towers owns the Office Buildings Parcels. Worcester Renaissance C&D owns Parcels C&D.

The Developer is prepared to undertake the redevelopment of a portion of the Project Property consisting of the Private Project Elements. Starwood is prepared to invest in the redevelopment of the Project Property through its interest in the Developer. Redevelopment and

Construction of the Private Project Elements require public participation in the form of the Construction of the Public Project Elements.

The Project will significantly enhance the role of Worcester as a transit-oriented urban center contributing to the economic development and general welfare of the Commonwealth and will stimulate employment and related opportunities for all residents of the City and the Commonwealth. The Public Project Elements will serve the public interest by correcting the public urban design errors of the past and connecting downtown Worcester and the Project Property with the intermodal transportation center at Union Station, the City's Convention Center and arena facilities and the Worcester Medical Center.

The Parking Garage will be constructed on the Project Property underneath a portion of the Private Project Elements and will require common footings, columns, building support systems, access ways, elevators, and utility and conduit locations. Portions of the new public streets and sidewalks, as well as the Plaza Parcel Improvements, will be constructed over the Parking Garage and the Truck Tunnel located within the Project Property, and will also require common support structures and waterproofing.

As stated in the Special Legislation, public convenience, safety and necessity require that the design and Construction of the Delegated Public Project Elements be accomplished by the Architect and Contractor hired to complete the design and Construction of the Private Project Elements, and combining the design and Construction of the Delegated Public Project Elements with the Private Project Elements will produce economies of scale and, likely, reduce Construction and operational costs. For these reasons, and pursuant to the authority conferred by the Special Legislation, the City is contracting with the Developer to design and Construct the

Delegated Public Project Elements in accordance with the terms and conditions of this Agreement.

## AGREEMENT

NOW THEREFORE, in consideration of the mutual promises set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows.

### ARTICLE 1 DEFINITIONS

For the purposes of this Agreement, unless the context otherwise requires, each capitalized term used in this Agreement and not otherwise defined in this Agreement shall have the meanings specified in Exhibit C, "Definitions", attached hereto. Exhibit numbers for all other Exhibits attached hereto correspond to the Section of this Agreement in which such Exhibit is first mentioned. The content of each exhibit, schedule, appendix or similar attachment hereto, or referenced in this Agreement as being attached hereto, is hereby incorporated into this Agreement as fully as if set forth within the body of this Agreement.

### ARTICLE 2 PROJECT DESCRIPTION AND SCHEDULE

**2.1. Project Description.** The Project consists of the Delegated Public Project Elements, the Direct Public Project Elements, and the Private Project Elements, which are expected to be constructed in three (3) Phases over approximately eight (8) years, as set forth in the Development Program, attached hereto as Exhibit 2.1. As set forth in the Development Program, each Phase is expected to include the following potential components:

- (a) Phase 1:

(i) Building C (existing) - retrofitted, re-skinned, repositioned and re-tenanted  
- Private Project Element.

(ii) Enabling Work - Public Project Element.

(iii) Construction of the Parking Garage - Public Project Element.

(iv) Construction of the Sitework - Public Project Element.

(v) Building D (existing) - retrofitted, re-skinned, repositioned and re-tenanted  
- Private Project Element.

(vi) The two Trigger Buildings, which shall consist of any two of the following three buildings: Building F (new) located over the Parking Garage - new residential condominium with accessory retail; Building H (new) located over the existing basement of the Mall, the Truck Tunnel and a portion of the Parking Garage - medical/clinical/commercial with accessory retail; or Building J (new) – office/accessory retail/commercial - Private Project Element.

(vii) Building I (existing) - retrofitted, re-skinned, repositioned and re-tenanted  
- Private Project Element.

(viii) Building E (existing) - retrofitted, re-skinned, repositioned and re-tenanted  
- Private Project Element.

(b) Phase 2:

(i) Building F, H, or J, if not included in Phase 1. In addition to, or in place of, office/accessory retail/commercial uses, Building J may include housing if it is not a Trigger Building - Private Project Element.

(ii) Building K (new) - retail/housing/commercial - Private Project Element.

(iii) Building L (new) - retail/housing/hotel - Private Project Element.

(c) Phase 3:

(i) Building C (new) - housing/accessory retail/hotel/commercial - Private Project Element.

The Private Project Elements are expected to include a total of approximately 2.1 million gross square feet, including the existing office buildings.

**2.2. Private Project Elements.** The Developer shall cause the Private Investment to be provided to Construct the Private Project Elements. The Private Investment shall include all Construction Costs incurred in the Construction of the Private Project Elements by: (a) the Developer and any of its Affiliates, successors, successors in title, assignees, purchasers, or ground lessees; and (b) the tenants or occupants of any portion of the Private Project Elements. The City agrees that, if the Construction Costs for the Private Project Elements in Phase 1 equal or exceed \$470 million, the Developer shall have no obligation to Commence the Construction of Phases 2 and 3 of the Private Project Elements. If the Construction Costs for the Private Project Elements equal or exceed \$470 million after the Developer has Commenced the Construction of either Phase 2 or Phase 3, the Developer shall have no obligation to complete the Construction of Phase 2 or Phase 3, as the case may be.

**2.3. Delegated Public Project Elements.** The City shall provide the Public Investment and the Developer shall Construct the Delegated Public Project Elements in accordance with Articles 3 and 4 hereof.

**2.4. Direct Public Project Elements.** The City shall, at its sole cost and expense, provide and/or Construct the Direct Public Project Elements, including the modification and/or narrowing of Worcester Center Boulevard. The City anticipates that modifications to Worcester Center Boulevard and adjacent sidewalks, including streetscape, construction of sidewalks and traffic mitigation improvements will be performed by MHD and will request that MHD complete such work no later than completion of the Delegated Public Project Elements, and will use good faith efforts to cooperate with MHD in its efforts to achieve that goal.

The Worcester Center Boulevard Sitework was previously part of the Delegated Public Project Elements and, by agreement of the Parties, has been made part of the Direct Public Project Elements. The Delegated Public Project Elements Budget will be reduced by an amount to be agreed upon between the Parties as the Construction Costs of the Worcester Center Boulevard Sitework once the scope of such work has been defined and bids for such work have been obtained.

In designing and Constructing the modifications to Worcester Center Boulevard, the City agrees to consult reasonably with the Developer, take the Developer's input into consideration and make reasonable efforts to incorporate the Developer's requests into its plans for Worcester Center Boulevard, and not make any changes to Worcester Center Boulevard that are incompatible with the Approved Site Plan. The City shall use reasonable efforts to avoid materially significant impacts to vehicular and pedestrian traffic to and from the Project Property. If the respective traffic consultants for the Developer and the City agree that certain traffic

mitigation measures in addition to those recommended in that certain Traffic Impact Study by Vanasse Associates dated February 2005 are advisable as a result of any changes that the City makes to Worcester Center Boulevard, the City shall provide appropriate signage consistent with the Development Program, and such additional traffic mitigation measures, at its sole cost and expense as part of the Direct Public Project Elements.

Notwithstanding the foregoing, if there is an Event of Default by the Developer and such Event of Default is not cured or resolved as provided in Sections 8.1 and 8.3, then the City shall be excused from any further obligation to Construct the Direct Public Project Elements.

**2.5. Schedule for Construction of Delegated Public Project Elements and Private Project Elements.** The estimated schedule for the Construction of the Delegated Public Project Elements and the Private Project Elements is set forth in the Development Program. The Construction of the Trigger Buildings shall Commence as soon as practical after (a) the demolition of the areas necessary for the Construction of those buildings is completed, and (b) to the extent applicable, the Construction of the portion of the Parking Garage that will provide support for each building has progressed to a point, in the reasonable judgment of the Developer, that will allow Construction of the building above it. Demolition, as part of the Enabling Work, may continue through the remainder of the existing improvements to be demolished as the Construction of the Trigger Buildings commences and continues. Construction of the public roadway portions of the Delegated Public Project Elements shall Commence as soon as practical, in the reasonable judgment of the Developer, after the Construction of the portion of the Parking Garage that will provide support for each roadway section is completed.

The Commencement and delivery dates set forth in the Development Program shall assist the Parties as a general planning guide with respect to the development of the Project. The

Parties acknowledge that the Project is a large, complex development with numerous components that will take several years to complete. The Parties acknowledge that market conditions and other factors may require changes to the Development Program which may include, but are not limited to, changes to (i) building designs and footprints in certain locations, and (ii) the nature, size and scope of proposed uses. To the extent applicable, such changes shall be subject to the requirements of the DIF Statute. The timing of the development and Construction of buildings or improvements will be based on market forces and the Developer's ability to obtain leasing and financing commitments for the various components of the Project which are acceptable to the Developer in its sole discretion. The Parties further acknowledge that the Delegated Public Project Elements Budget, the budget for the Private Project Elements, the Public Investment and the repayment of financing therefor presumes that Construction of the Delegated Public Project Elements and the Private Project Elements will Commence and be completed by certain dates and failure to meet such completion dates will have adverse financial consequences for the City and the Developer. The parties further acknowledge that the Delegated Public Project Elements Budget is based on the best available estimates, but may change, due to time and market forces.

Prior to the Commencement of the Construction of the Parking Garage, the Developer shall deliver to the City an updated schedule for the completion of the Parking Garage, the Sitework and the Trigger Buildings, which shall provide for a one (1) year extension period, after the anticipated date for Final Completion of each of the Trigger Buildings. The updated schedule for Completion shall be subject to approval by the City, which approval shall not be unreasonably withheld or delayed. The Developer's failure to achieve Final Completion of any of such Elements within the time periods set forth on such schedule, subject in each case to Force

Majeure and applicable cure periods, shall constitute an Event of Default pursuant to Sections 8.1(c) and 8.1(d), subject to the provisions thereof. The time periods set forth in Developer's updated schedule for completion shall be extended for a period of time equal to the period of any delays caused by the City's failure to act within any of the time periods required by this Agreement.

**2.6. Obligations of Worcester Renaissance Towers and Worcester Renaissance C&D.**

The Office Buildings Parcels and Parcels C&D are included in the Invested Revenue District. Neither Worcester Renaissance Towers, Worcester Renaissance C&D, nor any of their respective successors who become owners of all or any portions of the Office Buildings Parcels and Parcels C&D shall be liable for the obligations of the Developer under this Agreement to Construct the Delegated Public Project Elements, but each of Worcester Renaissance Towers, Worcester Renaissance C&D and any of their respective successors who become owners of all or any portions of the Office Buildings Parcels and Parcels C&D shall be severally liable for the obligations each such entity has under Section 7.8 of this Agreement with respect to the property owned by such owner.

**2.7. Design Guidelines.** The Developer and Worcester Renaissance C&D agree that the design of the Delegated Public Project Elements and those Private Project Elements included in Phase 1, plus Building J, shall be subject to review by the City pursuant to the Design Guidelines to be prepared by Sasaki Associates, or another architect chosen by the City in its sole discretion, which Design Guidelines shall not be in force or effect unless and until approved in writing by the Developer and the City, which approval shall not be unreasonably withheld. The Design Guidelines shall only apply to the first building built on each of the development parcels in Phase 1 (including Parcels C&D), plus Building J, until a certificate of occupancy has been issued for

the core and shell of such building, and thereafter, the Design Guidelines shall no longer apply to such building nor to the development parcel upon which it is built. The Design Guidelines shall not apply to the Office Buildings Parcels, or any of the buildings to be Constructed in Phases 2 and 3. The Developer and the City agree that the principles for the Design Guidelines shall be as set forth on Exhibit 2.7. The Developer, Worcester Renaissance C&D, and the City agree that the Design Guidelines shall not run with the land, nor burden the title to any portion of the Project Property and that the Developer's and Worcester Renaissance C&D's only obligations with respect to the Design Guidelines are as set forth in this Agreement. If the City causes the Design Guidelines or principles, or any notice of the Design Guidelines or principles, to be recorded at the Registry, the Design Guidelines and principles will terminate immediately and be of no further force or effect. The Developer and Worcester Renaissance C&D shall each require any immediate successor in title to any of the development parcels included in Phase 1, plus Building J, (but specifically excluding mortgagees and other lenders), for which a certificate of occupancy has not been issued as provided in this Section 2.7, to agree in writing (i) to comply with the provisions of this Section 2.7 regarding review by the City of the design of the Project Elements in accordance with the Design Guidelines, and (ii) that such successor in title shall require any future successors in title to comply with the provisions of this Section 2.7 regarding review by the City of the design of the Project Elements in accordance with the Design Guidelines. The foregoing covenant shall be specifically enforceable by the City against the Developer and Worcester Renaissance C&D, and any successors in title, as applicable, provided, however, that upon any transfer of title by the Developer, Worcester Renaissance C&D, or any successors in title in compliance with the foregoing covenant, none of the Developer, Worcester Renaissance C&D, or any such successor in title shall have any further obligations or liability to

the City pursuant to this Section 2.7 with regard to the property so transferred so long as it imposed in writing the design review obligations of this Section 2.7 on its immediate successor.

**ARTICLE 3**  
**CONSTRUCTION OF DELEGATED PUBLIC PROJECT ELEMENTS**

**3.1. Developer's Obligations.** The Developer shall Construct the Delegated Public Project Elements subject to, and in accordance with, the Development Program and the other terms and conditions of this Agreement, provided, however, that the Developer's obligation to Construct all or any part of the Delegated Public Project Elements is contingent upon the City paying for such Construction in accordance with the terms and conditions of this Agreement. The Developer shall directly enter into and have the sole responsibility for all contracts entered into by the Developer for Construction of the Delegated Public Project Elements and all obligations under such contracts, and the City shall not be liable for such contracts other than to make payments for the Delegated Public Project Elements in accordance with this Agreement.

The Developer shall be responsible for sequencing the work on the Project, including, all Private Project Elements and the Delegated Public Project Elements. Subject to the City performing in accordance with the terms of this Agreement, the Developer shall cause the Private Project Elements and the Delegated Public Project Elements to be diligently prosecuted without undue delays, but subject to Force Majeure, through to Final Completion. The Developer shall provide the City and the Construction Program Manager with written notice in accordance with the provisions of Section 9.6 of any Force Majeure event the Developer believes excuses its untimely performance.

Subject to the terms of this Agreement and consistent with the Delegated Public Project Elements Budget, the Approved Design, the Design Guidelines and the Development Program, the Developer shall provide all services reasonably required to coordinate, manage and

administer the Construction of the Delegated Public Project Elements in order to deliver the completed Delegated Public Project Elements in accordance with the terms of this Agreement.

The City shall use good faith efforts to cooperate, reasonably accommodate and coordinate all City initiated or controlled inspections, testing and review of the steel erection in the Parking Garage and above the Parking Garage for the first Trigger Building to reasonably minimize and avoid delay in proceeding from erection of steel in the Parking Garage to the erection of steel for such Trigger Building.

The City, in exercising its rights under this Agreement, shall not unreasonably withhold any required approval or consent in order for the Developer to proceed from the erection of steel in the Parking Garage to the erection of steel in each of the Trigger Buildings above the Parking Garage. It is understood, however, that the City's agreement to not unreasonably withhold any such approval or consent shall not apply to any decisions or approvals required of the City Building Inspector or other City officials in the conduct of their official duties required by applicable laws and/or regulations.

Subject to the prior approval of the City, which approval shall not be unreasonably withheld or delayed, the Developer may (i) order the steel package for the Parking Garage and the first Trigger Building while the Developer is in the process of obtaining GMP's for each structure, and (ii) Commence more nominal earthwork and concrete/rebar work, subject to then predetermined written cancellation penalties for the City for such early release work on the Parking Garage and for the Developer for such early release work on the first Trigger Building, and the \$750,000 cap set forth below. The City shall pay for the early release work that is applicable to the Delegated Public Project Elements in accordance with Sections 4.10 through 4.12. If either the City or the Developer chooses to cancel its early release work, it may do so

provided that if such termination is due to the GMP for the Parking Garage being unacceptable to the City, then the City shall pay its own cancellation costs, plus all other early release work costs, plus one-half of the Developer's cancellation costs, not to exceed for all such items a maximum aggregate cost to the City of \$750,000 and if the termination is due to the GMP for the first Trigger Building being unacceptable to the Developer, then the Developer shall pay its own cancellation costs, plus all other early release work costs, plus one-half of the City's cancellation costs, not to exceed for all such items a maximum aggregate cost to the Developer of \$750,000.

**3.2. Conditions Precedent to Developer's Obligation to Construct the Delegated Public Project Elements.** The Developer shall not be required to Commence Construction of the Delegated Public Project Elements pursuant to this Agreement until each of the following conditions has been satisfied:

(a) For the Enabling Work.

(i) The Developer having received payment for all amounts then due from the City for the First Disbursement and the Second Disbursement in accordance with Section 4.10; and provided further, that the Developer shall not be required to Commence Construction of the Enabling Work if (1) there has not been payment of any amount then due to the Developer from the First Disbursement or the Second Disbursement, and (2) as a result of such non-payment, the Developer would have the right to stop work, as provided in Section 4.10;

(ii) The Developer and the City having agreed upon an allocation of all Documented Costs for those components of the Enabling Work that include Elements from both the Delegated Public Project Elements and the Private Project Elements, and, if Design Development for the Parking Garage and the Sitework has been completed, the Developer and the City having agreed, in general, upon such an allocation for the Construction of the Parking

Garage and the Sitework; provided further, however, that to the extent the Construction Documents for the Parking Garage or for the Sitework require a further allocation due to new items which arise during the design of the Construction Documents, the Parties agree to cooperate in good faith to reasonably allocate such further items based on the same methodology used in determining the general allocations agreed to at the time the Design Development was completed; and

(iii) No Event of Default by the City having occurred and continued beyond the expiration of any applicable grace or cure periods.

(b) For the Construction of the Parking Garage.

(i) The satisfaction of each of the conditions set forth in Section 4.6(g) at the times specified therein;

(ii) The Developer and the City having agreed upon an allocation of Documented Costs for those components of the Parking Garage that include Elements from both the Delegated Public Project Elements and the Private Project Elements;

(iii) No Event of Default by the City having occurred and continued beyond the expiration of any applicable grace or cure periods; and

(iv) If requested by the Developer, and subject to the reasonable approval of the City, the City authorizing the Developer's release of an early bid package for the steel for the Parking Garage and the Commencement of nominal earthwork and concrete/rebar work, as set forth in, and as limited by, Section 3.1.

(c) For the Sitework.

(i) The satisfaction of each of the conditions set forth in Section 4.6(i) at the times specified therein;

(ii) The Developer and the City having agreed upon an allocation of Documented Costs for those components of the Sitework that include Elements from both the Delegated Public Project Elements and the Private Project Elements; and

(iii) No Event of Default by the City having occurred and continued beyond the expiration of any applicable grace or cure periods.

**3.3. Architects, Consultants and Contractors.** The Developer shall:

(a) Retain, upon terms acceptable to the Developer in its sole discretion, the services of the Architect (which shall include the services of a structural engineer, a mechanical engineer and a civil engineer), the Contractor for the Delegated Public Project Elements and the Project Manager, to Construct the Delegated Public Project Elements. The City hereby approves the Contractor as the general contractor and the Architect as the primary architect for the Delegated Public Project Elements. The City shall have the right to review and reasonably approve, within fifteen (15) days of delivery to the City by the Developer, the Developer's contracts with the Architect and the Contractor, and the Architect's contracts with the structural, mechanical and civil engineers, for the Delegated Public Project Elements with respect to scope, compliance with law, total cost, Contractor's fee, Change Order mark up and acknowledgement of the assignment rights in Section 8.5. The Developer shall deliver to the City copies of payment and performance bonds provided by the Contractor insuring the completion of the Delegated Public Project Elements, as required by the Special Legislation and this Agreement;

(b) provide the City with a list of the primary subcontractors for the Delegated Public Project Elements, including a breakdown of the construction budget among such subcontractors; and

(c) cause the Delegated Public Project Elements to be consistent with the Approved Design (including all amendments thereto) approved by the City pursuant to Section 3.5.

**3.4. Construction Program Manager.** The City shall retain a Construction Program Manager chosen by the City in its sole discretion (and may replace the same in its sole discretion). The Construction Program Manager retained by the City shall, initially, be Tishman Construction Corporation of Massachusetts and any replacement shall be a reputable construction management firm experienced in major public and private construction projects. The Project Manager shall be the Developer's direct liaison with the Construction Program Manager and the Construction Program Manager shall designate one individual to be its direct liaison with the Project Manager. The City shall provide the Construction Program Manager and the Project Manager with copies of all notices, appeals, communications, plans, specifications, and other materials required or permitted to be delivered or received pursuant to this Agreement. The Construction Program Manager and the Project Manager shall be available at all reasonable times to discuss and review the performance of the Developer and the City under this Agreement and to attempt to resolve any disputes between them that may arise. The Project Manager shall consult with the City and the Construction Program Manager on a reasonable on-going basis with respect to the permitting, design and Construction of the Delegated Public Project Elements. The Project Manager shall provide the Construction Program Manager with full access at all reasonable times to the Delegated Public Project Elements and to all information relating to, and

to such individuals involved in, the Construction of the Delegated Public Project Elements as the Construction Program Manager may reasonably request.

Within the time periods set forth in this Agreement, the Construction Program Manager shall:

(a) attend meetings, at appropriate intervals, with the Project Manager, the Architect, the Contractor and Consultants, as necessary, to review draft plans, drawings and proposed Change Orders;

(b) review and comment on, for the City's approval, the design and engineering of the Delegated Public Project Elements submitted by the Developer, in accordance with Section 3.5;

(c) based on an Application for Payment and supporting information submitted by the Developer, review, comment on and if consistent with the terms of this Agreement, recommend to the City approval of the amount of, and the allocation of, the Construction Costs to the Delegated Public Project Elements and the Private Project Elements in accordance with Section 4.10;

(d) review, comment on and, if consistent with the terms of this Agreement, approve each Application for Payment presented by the Developer for payment from the Construction Amount, the Contingency Amount - City and the Contingency Amount - Developer within the time periods set forth in Sections 4.10 through 4.14, provided that the Construction Program Manager shall only approve Eligible Contingency Amounts for payment from the Contingency Amount-City or the Contingency Amount - Developer in accordance with Sections 3.6 and 4.4;

(e) issue Certificates for Payment to the City for payment to the Developer from the Construction Amount, the Contingency Amount-City or the Contingency Amount -Developer in accordance with Sections 4.10 through 4.14; and

(f) review, comment on and, if consistent with the terms of this Agreement, recommend to the City approval of all requested changes to the Approved Design and all other Change Orders in accordance with Sections 3.5 and 3.6.

All decisions by the Project Manager and by the Construction Program Manager in the performance of their duties pursuant to this Agreement shall be made in accordance with Section 9.5.

If the City replaces Tishman Construction as its Construction Program Manager, the City will not be relieved from the obligations of the Construction Program Manager, as set forth herein, until a replacement has been found and assumes those obligations.

**3.5. Approval of Plans.**

(a) Major Plan Approvals

Major Plan Approvals for each of the Enabling Work, the Parking Garage and the Sitework shall be made in accordance with the following procedures.

(i) Prior to the first submission of documents to the City, the Developer will make a presentation to the City and the Construction Program Manager to explain the Developer's approach to developing the Project and its overall design. The presentation will be held on the Project Property to allow the City, the Construction Program Manager and their consultants to observe existing conditions and meet the Developer's Consultants performing the work. At the Commencement of the Enabling Work, the Developer shall also provide the

Construction Program Manager with an estimated schedule of expected deliveries of the plans and specifications for the Major Plan Approvals and shall periodically update the Construction Program Manager about any changes in such delivery dates so the Construction Program Manager can adequately plan for the required Plan review process by the Construction Program Manager, its experts and the City.

(ii) For each Major Plan Approval, the Developer will have its Consultants issue for review by the City and the Construction Program Manager a set of design documents appropriate and complete for the stage of design. Each submission will contain civil, geotechnical, structural, architectural, mechanical, electrical, plumbing and fire protection documents appropriate for the stage of design. The Developer will provide four (4) sets for the Construction Program Manager and four (4) sets for the City, which will be delivered to the Construction Program Manager Representative. Drawings shall be at a scale appropriate to the detail requested. Site plans shall be at 1" = 40', drawings for the Enabling Work shall be at 1/16" scale and drawings for the Parking Garage and the Sitework shall be at 1/8" scale. The costs of each submission may be included as Documented Costs to be paid by the City in accordance with Sections 4.10 through 4.12.

(iii) Schematic Design Documents and Design Development Plans will be reviewed at 100% of their respective design stage. Construction Documents will be reviewed at approximately 80% of completed Construction Documents, and again at 100% of completed Construction Documents, in accordance with subsection (b)(iii) below.

(iv) The City and the Construction Program Manager will review the applicable set of documents for a period of two (2) weeks from the date of submittal. At the end

of week two (2), the Developer and its Consultants will make themselves available through a scheduled conference call or meeting, in order to respond to any questions, or provide clarifications requested by, the City and the Construction Program Manager.

(v) Before the end of week three (3), the Construction Program Manager will assemble all of its comments to the documents and submit them to the City in matrix form identifying the drawing number and/or specification section.

(vi) The City will meet with the Construction Program Manager to review comments (if any) as needed, and within six (6) weeks from the date the design documents were delivered to the Construction Program Manager Representative pursuant to subsection (ii) above, the Construction Program Manager will provide either a written approval to the Developer, or the combined written comments and requests of the Construction Program Manager and the City, in electronic format, for changes to the design documents. Any comments and requested changes shall be in matrix form, identifying the drawing number and specification section to which the comment or requested change applies.

(vii) If comments or requested changes are made, the Developer will respond with any questions or requests for clarifications it may have as quickly as reasonably possible, but will endeavor to respond within no more than two (2) weeks after the Construction Program Manager has provided Developer with written notification of comments and requested changes pursuant to subsection (vi). During this time, the Construction Program Manager will provide answers to questions and additional clarifications, as required, as quickly as reasonably possible.

(viii) No later than four (4) weeks after receipt of the comments and requested changes from the Construction Program Manager, but in any event prior to the next issuance of

documents for review and approval, the Developer will provide a response to each comment and requested change indicating how each item has been resolved, or the reasons why the requested change has not been made. This response may be in writing, or by incorporating the comment or requested change into the design documents in which case a written list of where such incorporated change may be found in the design documents shall be provided.

(ix) In the event that the Construction Program Manager does not provide the Developer with the written, electronic notice of comments and requested changes within the time required by subsection (vi), the Developer will not be required to make any of the requested changes or respond to any of the comments.

(b) Review of Plans at Each Stage of Design:

(i) At the City's option, and upon such direction in writing from the City, the Developer and its Consultants shall stop design at the end of Schematic Design, until completion of the review process described above.

(ii) At the end of Design Development, the Parties agree that design of Construction Documents shall continue during the review process for Design Development. If the City requires that changes be made to the Design Development Plans and specifications (excluding any changes required by the City in connection with granting any Required Permits for any portion of the Project), and only if such changes are not required to (i) address prior errors or omissions in the plans or failure of the plans to comply with Applicable Law and building code or (ii) conform Design Development Plans to the prior set of Approved Design plans and specifications for the applicable Element of the Project, then the City agrees to pay for the re-design required by those changes to the plans and specifications that impact the Delegated

Public Project Elements and/or the Private Project Elements, which shall be paid out of the Contingency Amount - City or other City funds if the Contingency Amount - City has been expended. Similarly, if the Developer makes changes to the Private Project Elements plans and specifications that require a change to the Delegated Public Project Elements plans and specifications (other than as a result of a change required by the City in connection with granting any Required Permits for any portion of the Project), and the change is acceptable to the City, the Developer will pay for the cost of the required modifications to the existing plans and specifications for both the Delegated Public Project Elements and the Private Project Elements. If a change to any Element is required by the City in connection with granting any Required Permits for any portion of the Project, the City shall pay for all changes required to be made to the Delegated Public Project Elements and the Developer shall pay for all changes required to be made to the Private Project Elements.

(iii) The City and its consultants agree to review the Construction Documents plans and specifications when they are approximately 80% complete, to submit comments and request changes in accordance with subsection 3.5(a), and to again review the Construction Documents when they are 100% complete. Review of the Construction Documents when they are 100% complete shall not require a full Major Plan Approval in accordance with subsection 3.5(a), but an abbreviated review in accordance with subsection 3.5(a)(iv) above to determine whether the Developer has addressed the comments and requested changes by the Construction Program Manager after reviewing the Construction Documents at 80% completion.

(iv) The cost of the reviews by the Construction Program Manager on behalf of the City pursuant to this Section 3.5 shall be borne by the City.

**3.6. Change Orders** Change Orders are classified into three (3) categories: (a) minor Change Orders, (b) major Change Orders, and (c) Emergencies. This Section identifies the procedures applicable to each category of Change Order.

(a) Minor Change Orders consist of all Change Orders which would increase the GMP by less than \$150,000, extend the Project Schedule by not more than fifteen (15) days, or would reduce the amount of the GMP by any amount.

(b) Major Change Orders consist of all Change Orders which would increase the GMP by an amount equal to or greater than \$150,000, or would extend the Project schedule by more than fifteen (15) days, or which, in the opinion of the Developer and the Construction Program Manager, warrants review as a Major Change Order for any other reason.

(c) In the event of an Emergency, the Developer will only spend such funds as are reasonably required to prevent or mitigate an Emergency until City approval can be obtained. The Developer will notify the City of any such Emergency as soon as practicable, and provide the City with all reasonable information regarding the funds expended by the Developer. All such funds expended by the Developer will be reimbursed by the City to the Developer through the payment approval process set forth in Section 4.10.

All requests for Change Orders shall first be submitted to the Architect, who shall opine on whether the work is already included within the existing scope of the Construction Documents, or, if not included, whether the requested change may be appropriately submitted as a Change Order requiring either an adjustment in price or in time because it constitutes a Net Cost Overrun. All Change Orders approved by the Architect shall be submitted to the Developer who shall, in turn, submit the Change Order to the Change Order Review Board. The Change

Order Review Board shall be composed of one authorized representative of each of the Construction Program Manager, the City, the Contractor, the Architect, and the Developer.

Change Orders shall be reviewed and approved or rejected in accordance with the following procedures:

(d) Minor Change Orders:

(i) All requests for a Minor Change Order shall be processed promptly by the Change Order Review Board, in accordance with the requirements described in this Section 3.6, and a decision shall be made promptly, and in any event, within fifteen (15) days after the date the applicable Minor Change Order request is delivered to the Change Order Review Board.

(ii) The Change Order Review Board shall meet within two (2) business days after submission to review the Minor Change Order request, and shall approve or disapprove the request in writing within the fifteen (15) day period. Approval or disapproval shall be by unanimous vote of the Developer and the Construction Program Manager only (after consultation with the City, which shall not extend the review and decision period), based on all then known circumstances and a written notice, stating the reasons for such approval or disapproval, shall be prepared by the Developer and signed by the Developer and the Construction Program Manager prior to the expiration of the fifteen (15) day period. If approved, a Minor Change Order containing an approval number shall be prepared by the Contractor and signed and issued by the Developer and the Construction Program Manager prior to the expiration of the fifteen (15) day period.

(iii) After submission of a Minor Change Order request, if the Change Order Review Board, by unanimous vote of the Developer and the Construction Program Manager only,

reasonably determines that the scope of work should be aggregated with other required work, and this increases the total amount of the requested Change Order to more than \$150,000, or that the scope of work warrants additional review, then the Change Order shall be reviewed as if it had been originally submitted as a Major Change Order.

(e) Major Change Orders:

(i) All requests for a Major Change Order shall be processed promptly by the Change Order Review Board in accordance with the requirements described in this Section 3.6, and a decision shall be made promptly, and in any event, within thirty (30) days after the date the applicable Major Change Order request is delivered to the Change Order Review Board.

(ii) The Change Order Review Board shall meet within two (2) business days after submission to review the Major Change Order request, and shall approve or disapprove the request in writing within the thirty (30) day period. Approval or disapproval shall be by unanimous vote of the Developer and the Construction Program Manager only (after consultation with the City, which shall not extend the review and decision period), based on all then known circumstances and a written notice, stating the reasons for such approval or disapproval, shall be prepared by the Developer and signed by the Developer and the Construction Program Manager prior to the expiration of the thirty (30) day period. If approved, a Major Change Order containing an approval number shall be prepared by the Contractor and signed and issued by the Developer and the Construction Program Manager prior to the expiration of the thirty (30) day period.

(f) Provisions Applicable to All Change Orders:

(i) All Change Order requests shall be submitted on AIA Document G701.

Minor Change Orders shall be identified by the caption "Minor Change Order Request" and Major Change Orders shall be identified by the caption "Major Change Order Request" and Emergencies shall be identified by the caption "Emergency Change Order Request". The Developer shall deliver one (1) set of each such Change Order request, together with the Architect's approval and any supporting information, to each member of the Change Order Review Board. The Developer shall provide 2 copies of the Change Order request to the Construction Program Manager and 2 copies to the City, all of which shall be delivered to the Construction Program Manager Representative.

(ii) All Change Orders requested by the City (unless required in connection with the issuance of any Required Permits, or to address prior errors or omissions, or failure of the plans to comply with Applicable Law and building code, or failure of the Construction of the Delegated Public Project Elements to comply with the Approved Plans) shall be subject to the approval of the Developer, which shall not be unreasonably withheld or delayed, taking into account any material impacts on any of the Private Project Elements that might result from any such Change Order and the extent to which such impacts will be ameliorated by the City. If the City requests a Change Order, excluding any changes required by the City permitting authorities in connection with granting any Required Permits for any portion of the Project, and only if such changes are not required to (i) address prior errors or omissions or failure of the plans to comply with Applicable Law and building code, or (ii) conform the work to the Approved Design plans and specifications for the applicable Element of the Project, then the City shall pay for the redesign required by such change to the plans and specifications for the Delegated Public Project Elements and/or the Private Project Elements, as well as all increased costs, if any, of

Construction of the portions of the Delegated Public Project Elements and/or the Private Project Elements resulting from such change, which shall be paid out of the Contingency Amount - City or other City funds if the Contingency Amount - City has been expended. Similarly, if the Developer requests a change to the Delegated Public Project Elements due to the design of the Private Project Elements (other than as a result of a change required by the City permitting authorities in connection with granting any Required Permits for any portion of the Project), then the Developer shall pay for the redesign required by such change to the plans and specifications for the Delegated Public Project Elements and/or the Private Project Elements, as well as all increased costs, if any, of Construction of the Delegated Public Project Elements resulting from such change. If a change to any Element is required by the City permitting authorities in connection with granting any Required Permits for any portion of the Project, the City shall pay for all changes required to be made to the Delegated Public Project Elements, and the Developer shall pay for all changes required to be made to the Private Project Elements.

If a Change Order is requested by either the City or the Developer due to the impact on the Delegated Public Project Elements from (1) Force Majeure, (2) items not appropriately required of the Contractor under the contract documents, (3) changes in codes or unexpected or novel interpretations of codes or Applicable Laws by cognizant legal authorities, (4) unforeseen conditions, or (5) loss or damage not covered by insurance, then the City shall pay for the redesign required by such change to the plans and specifications for the Delegated Public Project Elements, as well as all costs of Construction of the Delegated Public Project Elements resulting from such change.

If a Change Order is requested by either the City or the Developer due to an error or omission in either the design or Construction of either the Delegated Public Project Elements or

the Private Project Elements, then the City shall pay for all changes required to be made to the Delegated Public Project Elements and the Developer shall pay for all changes required to be made to the Private Project Elements; provided that, if payments are made by the City pursuant to this paragraph, the Developer shall pursue a claim against the Architect, including a claim under any applicable errors and omissions insurance policy related to the design or Construction of the Delegated Public Project Elements, or assign the Developer's rights to such claim to the City, as the City shall elect.

(iii) As part of the review and negotiation of a requested Change Order, the Developer shall provide the Construction Program Manager with all the cost and pricing data used by the Contractor in computing the amount of the equitable adjustment and the Contractor shall state in writing to the Developer and the City that, to the best of its knowledge and belief, based upon information available to it at the time of such statement, the pricing data delivered to the Developer by the Contractor was accurate, complete and current at the time it was given.

(iv) Change Order adjustments in a GMP shall be determined according to one of the following methods, or a combination thereof, as determined by the Developer and the Construction Program Manager:

(a) Fixed price basis, provided that the fixed price shall be inclusive of items (c)(1) through (c)(4) below and shall be computed in accordance with those provisions.

(b) Estimated lump sum basis to be adjusted in accordance with the contract unit prices or other agreed upon unit prices provided that the unit prices shall be inclusive of all Construction Costs related to such equitable adjustment.

(c) Time and materials basis – to be subsequently adjusted on the basis of actual costs based on (1) through (4) below:

- (1) The cost at prevailing rates for direct labor, materials, supplies and equipment, including costs of transportation and rental costs, exclusive of hand tools;
- (2) Plus the cost of worker's compensation insurance, liability insurance, social security, the Commonwealth's unemployment compensation and all fringe benefits, including union benefits, all applicable permit costs, and sales, use or similar taxes related to the work;
- (3) Plus the applicable percentage agreed to under the GMP for overhead, superintendence and profit, which will be paid to the Contractor and each tier of subcontractors performing the work attributable to the Change Order. No fee shall be paid on allowance items;
- (4) Plus actual direct premium cost of payment and performance bonds requested of the Contractor, provided that there will be an appropriate credit for premiums, if refundable, for a credit Change Order.

(v) Charges for the small tools known as "tools of the trade" are not to be computed in the amount of the change.

(vi) The Change Order Review Board, by vote of the Construction Program Manager and the Developer, only, and in response to the Contractor's request for a Change Order may authorize a Change Order prior to approval of the actual adjustment, if any, in the GMP or any adjustment in the Project schedule, on a "price and proceed" basis. If the requested

Change Order provides for an adjustment to the GMP, the adjustment shall be determined using one of the methods set forth in subsection (f)(iv) above, as determined by the Developer and the Construction Program Manager or lacking agreement, then pursuant to the method in subsection (f)(iv)(c) above. Upon receipt of the authorization to proceed with the work described in the requested Change Order, the Contractor shall promptly proceed with the change in the work involved. The Contractor shall advise the Developer and the Construction Program Manager of the Contractor's agreement or disagreement with the method, if any, provided in the approved Change Order for determining the adjustment in the GMP or contract time. The provisions of subsection (f)(x)(b) below shall also apply. A Change Order signed by the Contractor shall indicate the agreement of the Contractor to the terms of the Change Order, including adjustment in the GMP, and/or contract time or the method for determining them. Such agreement shall be effective immediately upon execution by the City and the Developer and shall be recorded as a Change Order.

If the Contractor disagrees with the method for adjustment in the GMP, the method of the adjustment shall be determined by the Architect on the basis of reasonable expenditures and savings of those performing the work attributable to the change, including a reasonable allowance for overhead and profit. For the purposes of this provision, costs shall be limited to those set forth in subsection (f)(iv)(c) above. Pending final determination of the total cost of such Change Order, actual costs for such changes in the work shall be included in Applications for Payment accompanied by the Change Order indicating the Parties' agreement with part or all of such costs. For any portion of such costs that remains in dispute, the Change Order Review Board, by unanimous vote of the Developer and the Construction Program Manager only, shall make an interim determination for purposes of monthly certification for payment for those costs

and that determination of cost shall adjust the GMP on the same basis as a Change Order, subject to the right of either Party to disagree and assert a claim pursuant to Section 4.17 of this Agreement. When the Developer and the Construction Program Manager reach written agreement upon the adjustments to the GMP, such agreement shall be effective immediately and shall be recorded by execution of an appropriate Change Order by the Developer and the City.

(vii) When a Change Order requires the Developer to provide design services, the Developer shall be compensated for such design services at the designer's hourly rate for the time of any principal or other employee of the designer employed for such work or any principal of a Consultant to the designer set forth in the applicable design contract or otherwise indicated, plus reimbursable costs and expenses at the rate set forth in such contract and if not so indicated, at market rates.

(viii) No Change Order shall be issued with reservations of rights or other conditions unless the Developer and the Construction Program Manager shall expressly approve the same in writing prior to the issuance of the Change Order. Neither the Construction Program Manager, nor Developer, shall be obligated to inform, or obtain consent of, any surety for the Contractor's performance (or for payments to be made by or to any Contractor) as to any Change Order, and no Change Order shall relieve any such surety of its obligations, including any obligations resulting from Change Orders.

(ix) No adjustment in the GMP shall be made unless such Change Order results in changes in the scope, quality or function of the work as set forth in the previously approved GMP contract documents and such change was not reasonably inferable from the intent of the parties as set forth in the GMP contract documents.

(x) If the Construction Program Manager determines that certain work for which the Developer has requested a Change Order under this Agreement does not represent a change in work, the Developer may perform said work under protest and may follow the procedures as described in Section 4.17 of this Agreement to resolve the dispute. Whenever the Developer performs work under protest, the Developer shall comply with the following subsections (a) and (b):

- (a) if the Developer claims compensation for a change not ordered as aforesaid or for any damages sustained, the Developer shall, within thirty (30) days after the Commencement of any such work or the sustaining of any such damage, submit to the Construction Program Manager a written statement of the nature of such work or damage sustained. Except in the case of an Emergency, any work performed or damage sustained prior to the time specified above, even though similar in character, will not be considered as warranting compensation, it being clearly understood that the Commencement of any such work or sustaining of any such damage will be recognized only when and as submitted in writing in accordance with this subsection.
- (b) Notwithstanding the foregoing, if for any work for which a Change Order has been requested, which is to be performed on a time and materials or price and proceed basis, there is a dispute as to the Developer's right to an adjustment to the GMP or the amount thereof and the aggregate value of such disputed time and materials or price and proceed work, together with any other then disputed time and materials or price and proceed work, has

reached one (1%) percent of the then current GMP, the Contractor shall not be required to perform and/or accept Change Order work on a time and materials or price and proceed basis until such disputes are resolved so that the value of all such remaining disputed time and materials or price and proceed work is less than 1%; provided, however, it is understood and agreed that any payment matter resolved by mediation pursuant to Section 4.17(b) for which the City makes the payment required by such mediation in accordance with Section 4.17(b)(vii) shall thereafter not be considered in dispute for purposes of this provision.

(xi) The Architect will have authority to order minor changes in the work not involving adjustment in the GMP or extension of the contract time or material change in the Approved Designs and not inconsistent with the intent of the GMP contract documents. Such changes shall be effected by written Change Order signed by the Architect and shall be binding on the Construction Program Manager, the City and the Developer, provided they are in agreement that the work does not require an adjustment in the GMP or an extension of the contract time or material change in the Approved Designs.

(xii) Unless expressly reserved therein, an executed Change Order shall constitute a final settlement of all matters relating to the change in the work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change, any adjustments to the GMP contract sum, and any and all adjustments to the construction schedule.

Notwithstanding the foregoing provisions of this Section 3.6, no approval by the Construction Program Manager shall be required for any change to the Approved Design which

(a) will not result in a reduction in the quality of Construction; (b) is consistent in all material respects with the design of the Delegated Public Project Elements and the Private Project Elements, and the Design Guidelines; (c) does not cause the Delegated Public Project Elements Budget to be exceeded in the aggregate; (d) does not require use of the Contingency Amount - City or Contingency Amount - Developer to pay for such change unless such use of funds has been previously approved; and (e) does not materially adversely affect the schedule of the work on the Elements of the Project. All other changes shall require approval as provided herein.

**3.7. Delays.** Subject to Force Majeure, in the event the City causes an unreasonable delay:

(a) in achieving the milestones set forth in the Development Program by failing to approve payments, plans and/or Change Orders as required by this Agreement, or by requiring changes or modifications that constitute substantive or material changes from changes or modifications previously made or requested by the City in accordance with Sections 3.5 or 3.6;

(b) by failing, within the time periods set forth in this Agreement, to respond to changes or modifications which were the subject of previous requests by the City and which have been responded to by the Developer in accordance with Sections 3.5 or 3.6;

(c) by failing or unreasonably delaying in providing the Developer with any required information or response in accordance with Sections 3.5 or 3.6; or

(d) by failing, within the applicable time periods provided in Sections 4.10 through 4.14, to respond to any Application for Payment satisfying the requirements of this Agreement for payment or to pay any Certificate for Payment;

then any such delay shall entitle the Developer to exercise any and all of its remedies pursuant to this Agreement. The City shall be solely responsible for any additional Documented Costs

incurred by the Developer, its Contractor, Architect and/or Consultants which arise as a result of any such delay, which costs shall be paid out of the Contingency Amount - City.

**3.8. Developer's Standard of Care.** The Developer shall act in good faith and agrees to perform its obligations hereunder in a commercially reasonable manner consistent with the standard of professional care that would be used by a commercial developer working on projects of this size, scale and complexity and which include a public use. The Developer's relationship to the City hereunder is that of an independent contractor, and neither the Developer nor the City shall represent to any other person that the Developer's relationship to the City hereunder is other than that of an independent contractor. The Developer acknowledges and agrees that it shall be responsible for performing all of the Developer's duties and obligations hereunder, notwithstanding any other activities or ventures of the Developer or its Affiliates. The Developer shall devote sufficient attention and resources to accomplish its obligations under this Agreement and with respect to the Project. The Developer shall use reasonable efforts to cause its employees and contractors to fully and properly perform all necessary duties and obligations with respect to the Project. The Developer may enter into a contract for services relating to the Construction of the Delegated Public Project Elements with an Affiliate of the Developer; provided, however, that any transaction with an Affiliate of the Developer shall be fully disclosed in advance to the City and approved in writing by the City and shall be at current market rates consistent with similar contracts entered into with third parties and negotiated on an arms length basis. In no event shall any of the Public Investment be paid to reimburse any internal costs for the Developer and its Affiliates, including, without limitation, salaries or fees to any of the Developer's employees or principals and none of such costs shall constitute Documented Costs. Notwithstanding the foregoing, the Parties acknowledge and agree that the

Developer shall be paid a Project Management Fee for its services hereunder in the amount indicated in the Delegated Public Project Elements Budget and that such fee shall constitute a Documented Cost.

**3.9. Construction Compliance.** The Developer shall:

(a) provide the services described herein and use reasonable efforts to obtain satisfactory performance from the Contractor, the Architect, the Consultants, and other parties working on the Delegated Public Project Elements;

(b) contract with qualified Consultants for the testing of all soils, cement, concrete, structural or reinforcing steel and any other material or equipment required to be tested under the terms of contracts with Developer;

(c) use reasonable efforts to cause the Contractor to establish and maintain quality control, testing and inspection procedures for all parts of the work being performed in the Construction of the Delegated Public Project Elements and to report to the Construction Program Manager and the Architect any particular work or material that fails to conform;

(d) use reasonable efforts to cause the Contractor (i) to establish, after submitting for review and comment by the Construction Program Manager, safety and fire prevention programs for the Project and (ii) to comply with such programs;

(e) use reasonable efforts to cause the Contractor and the Architect to comply with all applicable insurance requirements set forth in this Agreement; and

(f) deliver to the City copies of 100% payment and 100% performance bonds (naming the City as a dual obligee and otherwise in form and substance and issued by sureties

reasonably acceptable to the City) provided by the Contractor with respect to the Delegated Public Project Elements, as required by this Agreement and the Special Legislation.

**3.10. Required Permits.**

(a) The Developer shall obtain all Required Permits for the Construction of the Delegated Public Project Elements, and shall provide the City with a copy of each before beginning any work. The City shall cooperate with the Developer in obtaining or maintaining any Required Permits, as the Developer may from time to time reasonably request, and the City shall periodically review its construction permitting processes with the Developer in an effort to identify potential permitting or inspection difficulties in connection with the Construction of the Delegated Public Project Elements and to develop ways in which to expedite the issuance of Required Permits and the performance of all inspections required by the City. The City shall join with the Developer as co-applicant under any application for Required Permits for the Delegated Public Project Elements, and the Developer and the City shall cooperate in good faith to process the Required Permits and perform inspections in a manner that will expedite the Construction of the Delegated Public Project Elements. Nothing herein is intended to limit the Developer's right to contest any Required Permits or any limitation or condition thereof.

(b) Subject to the terms of this Agreement, the City shall cooperate with the Developer to facilitate the processing of such plans, permit applications and easements for the benefit of public utilities as are necessary for the Construction of the Project.

(c) Notwithstanding anything in this Agreement to the contrary, nothing contained in this Agreement shall in any way stop, limit or impair the City from exercising or performing any regulatory, policing, legislative, governmental or other powers or functions with respect to the

Project or otherwise, including, by way of illustration but not limitation, inspection of the Project in the performance of such functions. Nor shall anything in this Agreement constitute or imply approval or special handling and/or consideration for or exemption from any permit by the planning, zoning or regulatory authorities of the City, and the Developer shall be required to comply with all procedures and requirements applicable to the Project that would also be applicable to similar development projects in the City.

(d) The Developer is not aware of any licenses that either it or any of its employees are required to obtain in order to perform in accordance with this Agreement. If, at any time during the term of this Agreement, the Developer becomes aware that any such licenses are required, it and/or its employees, as applicable, shall properly obtain all such licenses and maintain them throughout the remainder of the term of this Agreement.

**3.11. Permit Fees.** Pursuant to the Permit Fees Reduction Ordinance, all Permit Fees shall be aggregated and capped at \$2 million. The Developer will make an initial Permit Fees Payment of \$250,000 to the City on the date that the First Disbursement is paid by the City to the Developer; a second Permit Fees Payment of \$750,000 on the earlier of June 15, 2008 or the Commencement of the Enabling Work; and a third Permit Fees Payment of \$1 million on the earlier of June 15, 2009, or the Commencement of the Construction of the Parking Garage. The Developer shall not be obligated to make the second or third Permit Fees Payment hereunder if, on or before the date such payment is due, it has given a termination notice to the City pursuant to Section 4.18. If as a result of such a termination, the Enabling Work does not Commence, the City will refund to the Developer the initial and second Permit Fees Payments, not later than thirty (30) days after receipt of written notice from the Developer (i) that the Enabling Work will not Commence and (ii) of termination of this Agreement pursuant to Section 4.18; provided,

however, that the City may deduct from the initial Permit Fees payment the actual costs incurred by the City for direct personnel expenses, excluding legal expenses. Subject to the provisions of the Permit Fees Reduction Ordinance, the Permit Fees shall apply to all Required Permits, including, but not limited to, those Required Permits set forth on Exhibit 3.11 attached hereto and all costs for inspection and certificates of occupancy. All other terms and conditions of the Permit Fees Reduction Ordinance shall apply to the Construction of the Private Project Elements and the Delegated Public Project Elements. The applicability of the Permit Fees Reduction Ordinance with respect to each tenantable or saleable space within the Project (not including core and shell space) shall expire upon the date of issuance of the first permit for use and occupancy for such tenantable or saleable space and shall expire with respect to the Project Property, in its entirety, on June 30, 2016.

**3.12. Insurance.** The Developer shall cause, as applicable, the Contractor, the Architect, the civil engineer, the structural engineer and the mechanical engineer to procure and maintain the following insurance in connection with the Construction of the Delegated Public Project Elements:

(a) The Developer shall procure and maintain all Risk Builders Risk Insurance with limits equal to one hundred percent (100%) of the completed value of the Delegated Public Project Elements on a "replacement cost" basis. Such insurance shall include the perils of fire, extended coverage, theft, vandalism, malicious mischief, collapse, difference in condition and earthquake. The initial policy limits shall be established prior to the Commencement of the Enabling Work with the prior approval of the City, which shall not be unreasonably withheld or delayed, and thereafter shall be adjusted prior to the Commencement of Construction of each

Element of the Delegated Public Project Elements with the prior approval of the City, not unreasonably withheld or delayed.

The Contractor, the Architect, the civil engineer, the structural engineer and the mechanical engineer shall each procure and maintain the insurance set forth in subsections (b), (c), (e) and (f), and the Developer shall procure and maintain the insurance set forth in subsection (b).

(b) Commercial General Liability coverage insurance with minimum limits (unless waived in writing by the City and the Developer) of: \$1 million each occurrence; \$2 million aggregate; \$2 million completed operations; \$1 million personal injury; \$500,000 medical payments; and \$100,000 fire legal liability;

(c) Statutory workers compensation coverage, as follows:

Coverage A - Statutory  
Coverage States: MA

Coverage B - Employers Liability  
\$500,000 each accident BI by accident  
\$500,000 policy limit BI by disease  
\$500,000 each employee BI by disease

(d) The Architect shall procure and maintain professional liability insurance for all architects and its consultants on a claims made basis expiring no sooner than three (3) years after Final Completion of the Delegated Public Project Elements, with coverage of not less than \$1 million and shall include coverage of the Developer's indemnity of the City pursuant to Section 7.3 and shall contain an endorsement to the effect that no act or omission of the insureds shall affect the obligation of the insurer to pay the full amount of any loss sustained;

(e) Automobile liability insurance on an occurrence basis for bodily injury, including death, property damage and personal injury, with a limit of \$1 million per occurrence. The policy shall provide coverage for owned, non-owned and hired autos and contain an additional insured endorsement in favor of the City and all of its authorized representatives; and

(f) Umbrella liability insurance with a limit of \$10 million per occurrence for the Contractor and each primary subcontractor and a limit of \$5 million per occurrence for the Architect and each sub-subcontractor and annual aggregate underwritten on a "following form" basis to apply in excess of all primary liability coverages and naming the City as an additional insured.

All of the above-prescribed insurance shall (i) be procured from financially sound and reputable insurers qualified to transact business in the Commonwealth, (ii) be in such form and with such provisions as are generally considered standard provisions for the type of insurance involved, (iii) be evidenced by certificates of insurance delivered to the Developer and the City upon the issuance of any policies (and subsequent changes in such policies), (iv) name the City as an additional insured (on liability policies, except workers compensation) or a loss payee (on property policies);

If the insurance policies maintained by Developer require a deductible payment by Developer, each such deductible payment shall be reasonable for the corresponding policy and coverage and shall be reasonably acceptable to the City.

At Developer's election, the insurance to be maintained pursuant to this Section 3.12 may be provided under an Owner Controlled Insurance Program ("OCIP") obtained by the Developer, provided that the OCIP coverages are equivalent to or not less than the coverages specified in this Section.

**3.13. Condemnation; Casualty.** If prior to Final Completion of all Elements of the Delegated Public Project Elements there shall be a taking by eminent domain of substantially all of the portion of the Project Property on which the Delegated Public Project Elements are to be constructed, or which would materially impede access thereto, this Agreement shall terminate and the Parties hereto shall be released and relieved of all further obligations and liability hereunder except for the indemnification obligations set forth in Sections 7.3 and 7.4 hereunder. If less than substantially all of the property described in the immediately preceding sentence is taken by eminent domain and, if, in the reasonable judgment of both Parties, the portion of the property remaining is sufficient to continue to develop the Delegated Public Project Elements and the Private Project Elements, this Agreement shall terminate as to the portion of the property so taken. If, in the reasonable judgment of both Parties, the portion of the property remaining is not sufficient for the development of the Delegated Public Project Elements and the Private Project Elements, this Agreement shall terminate and the Parties hereto shall be released and relieved of all liability hereunder except for the indemnification obligations hereunder. In either case, the City shall settle any taking award applicable to the Delegated Public Project Elements, and shall be entitled to receive and retain any proceeds from such taking, with respect to any property owned by the City pursuant to the Order of Taking.

From the date that Construction of the Parking Garage Commences until Final Completion of all the Delegated Public Project Elements, all insurance proceeds payable with respect to damage or destruction of the Delegated Public Project Elements shall be payable to the City, subject to the terms of this Section 3.13 and the Parking Garage Lease. In the event of the damage or destruction of the Delegated Public Project Elements (or any portion thereof) by fire or other casualty prior to Final Completion, the Developer shall restore or repair the damaged or

destroyed Element, provided, however, that the Developer's obligation to restore or repair shall be limited to the amount of funds made available to the Developer by the City and shall be contingent on the City paying such funds to the Developer in accordance with this Agreement. Subject to the terms of this Agreement with respect to disbursements of any portion of the Construction Amount for the Delegated Public Project Elements, the City shall make any insurance proceeds and the unspent portion of the Construction Amount available to the Developer for such repairs or restoration.

Notwithstanding the foregoing, if there is a casualty during the Construction of the Parking Garage or the Plaza Parcel Improvements, as long as (i) the Written Commitment for the first Trigger Building remains in effect with applicable conditions satisfied and is reasonably expected by the Developer to remain in effect notwithstanding any delays from such casualty and rebuilding, and (ii) there are no existing Developer Events of Default, any insurance proceeds paid to the City as a result of such casualty will be released by the City to the Developer to repair or restore such damage on a monthly basis to pay for Documented Costs in accordance with the terms of this Agreement. After the Final Completion of the Parking Garage, all insurance proceeds payable with respect to damage or destruction of the Parking Garage shall be applied as provided in the Parking Garage Lease.

Subject to the terms of the Parking Garage Lease, following Final Completion of all of the Delegated Public Project Elements and Final Payment to the Developer, or the termination of this Agreement, the City may apply any casualty proceeds to the repair or restoration of the Delegated Public Project Elements or retain such proceeds, as the City determines in its sole discretion.

**3.14. Reporting Requirements.** The Developer shall report to the City and the Construction Program Manager promptly upon discovering that the cost of any category of work for any portion of the Delegated Public Project Elements is reasonably likely to exceed the amount allocated for such item in the Delegated Public Project Elements Budget. The Developer shall report to the City and the Construction Program Manager promptly any material problems with the Delegated Public Project Elements of which it has actual knowledge, including, but not limited to, failure to comply in any material respect with the Approved Design and the Development Program or work not being carried out in a good and workmanlike manner in accordance with approved Construction Documents. The Developer shall advise the City of any legal action commenced in connection with or arising out of the development and Construction of the Project, and shall thereafter keep the City apprised of any material developments with respect to such legal action.

Within ten (10) days after the end of each month, the Developer shall furnish the City and the Construction Program Manager with a Project status report providing the following information on the progress of the Delegated Public Project Elements: (a) general compliance with the Approved Design and the Development Program; (b) the number and amount of any Change Orders and identifying any key action items needing to be addressed by the Developer and/or the City over the forthcoming thirty (30) day period; and (c) any additional documents or information that the City or the Construction Program Manager may reasonably request. The monthly project status reports shall also include a proposed updated Delegated Public Project Elements Budget and any proposed amendments to the Approved Design comparing (a) actual dollars expended and remaining costs for the Delegated Public Project Elements to the approved Delegated Public Project Elements Budget, (b) the actual time expended and work completed

and expected date of completion to the Development Program, and (c) the existing design and proposed modifications to the Design Development Plans

**3.15. Inspection.** For purposes of the administration of this Agreement and not in derogation or expansion of the authority of agents of the City responsible for the enforcement of permit conditions or building, construction, health or safety statutes, codes, ordinances and regulations, upon prior notice to the Developer that is reasonable under the circumstances, the City, its authorized representatives and the Construction Program Manager shall have the right to inspect the Delegated Public Project Elements, provided that such inspections shall not unreasonably interfere with the operations of the Developer or the Contractor.

**3.16. Books and Records; Audit Right.** The Developer shall use commercially reasonable efforts to keep full and detailed books and records and exercise such controls as may be necessary for proper management of the Construction of the Delegated Public Project Elements. All such books and records shall be conditionally assigned to the City such that, if this Agreement is terminated by the City upon an Event of Default by the Developer, such books and records shall become the property of the City. At reasonable times and upon reasonable prior notice to the Developer, the City and the Construction Program Manager shall have access to such records and upon request, copies of any requested records shall be furnished to the City, at the City's sole cost and expense. Upon five (5) days' prior notice to the Project Manager, the City and the Construction Program Manager and any independent, certified public accounting firm shall be afforded reasonable access to, and shall be permitted, to audit, examine, and copy, at reasonable times, all records pertaining to the Construction of the Delegated Public Project Elements. Upon reasonable prior notice, the Developer agrees to provide up to a total of 10 hours of time by its employees to assist the City with its audit of the Delegated Public Project

Elements. In no event will the City's use of the Developer's employees' time in any one day exceed one and a half hours. The City will promptly reimburse the Developer for any of its employees' time used by the City in excess of the daily and/or total limits set forth in this Section, as well as all out of pocket expenses incurred by the Developer in connection with the City's audit. If any audit reveals overpayment to Developer in any aggregate amount greater than ten percent (10%) of the Construction Amount, Developer shall pay the reasonable costs of such audit; otherwise, the cost of such audit shall be paid by the City. The amount of any overpayment disclosed by such audit shall be promptly reimbursed by the Developer to the City and the amount of any underpayment shall be promptly paid by the City to the Developer.

**3.17. Minority, Low Income, and Women Recruitment.** The Developer shall commit to a minimum goal that twenty percent (20%) of the workforce employed to physically construct (as opposed to design, engineering, development, permitting and procurement) the Delegated Public Project Elements and the Private Project Elements shall include individuals who are low-income, female or minority Worcester County residents or any combination thereof, and shall further commit to a goal of utilizing bona-fide minority firms qualified by the State Office of Minority and Women Business Assistance (SOMWBA) or a local certifying agency for at least twenty percent (20%) of the total value of the contracts and subcontracts awarded by the Developer to build the Delegated Public Project Elements and the Private Project Elements. The Developer shall submit to the City Manager a written plan setting forth action steps that it will be taking toward such goals and provide written reports monthly to the City through the Construction Program Manager describing the action steps in the Developer's plan that have been taken, including status and timelines, and the level of the goals that have been achieved. The Developer's obligations to submit a written plan and provide monthly reports set forth in the

previous sentence shall be enforceable in accordance with Section 8.1(e) of this Agreement. Notwithstanding the foregoing, in no event shall the Developer's failure to achieve any of the goals set forth in this Section 3.17 constitute an Event of Default under this Agreement. With regard to the Delegated Public Project Elements, the Developer shall (a) cause the Contractor (and its subcontractors) to comply with Sections 26 through 27F, inclusive, of Chapter 149 of the General Laws relating to prevailing wages, and (b) cause the Contractor and all of its subcontractors to comply with the Responsible Employer Ordinance. The Developer shall not discriminate against any employee, contractor, subcontractor or applicant for employment because of race, color, creed, national origin, age or sex.

**ARTICLE 4  
FUNDING FOR AND PAYMENTS WITH RESPECT TO THE DELEGATED PUBLIC  
PROJECT ELEMENTS**

**4.1. Delegated Public Project Elements Budget.** The Delegated Public Project Elements Budget is attached hereto, as Exhibit 4.1(a). The City shall not be obligated to pay for any item which is not a Documented Cost and is not included in the Delegated Public Project Elements Budget, except for Eligible Contingency Amounts and items contained in an approved Change Order.

The Parties agree that the Delegated Public Project Elements Budget will include the cost of all parking control equipment for the operation of the Parking Garage, but excluding certain operational equipment as set forth in Exhibit 4.1(b), and supplies. Operational equipment and supplies for the operation of the Parking Garage, which shall be provided and paid for through the management agreement for the Parking Garage, and costs shall be allocated between the Parties, as set forth in the Parking Garage Operating and Allocation Agreement and as further adjusted by agreement of the Parties if a third garage is allowed to share in any such equipment and supplies.

#### 4.2. Public Investment

(a) **District Improvement Financing.** The DIF Approval has created an Invested Revenue District consisting of the Project Property. Pursuant to the DIF Approval, the City agrees to raise and expend the Public Investment to Construct the Delegated Public Project Elements in accordance with the terms of this Agreement and the Sources and Uses Statement attached hereto as Exhibit 4.2. The City shall raise such amounts in such manner as it determines in its sole discretion, including through the sale of DIF Bonds. The City agrees to cooperate with the Developer in seeking any necessary amendments to the DIF Approval, subject to any required approval by the City Council and any required approval by the Commonwealth.

(b) **State Funding.** The City agrees to use diligent efforts to obtain State Funding in the amount of \$25 million to pay for a portion of the Construction Costs for the Public Project Elements. Failure to obtain all or a portion of the State Funding shall not relieve the City of its obligation to provide the Public Investment for the Construction of the Delegated Public Project Elements subject to the terms of this Agreement. The City reserves the right, if constraints imposed on all or any portion of State Funding prohibit application of such funds to the Construction of the Delegated Public Project Elements, to apply such State Funding to the Direct Public Project Elements. The City agrees to use good faith efforts to apply any State Funding and federal funding received by it to Construction Costs for the Delegated Public Project Elements before City or Developer funds are expended in order to mitigate debt service on the DIF Bonds and expenditures from the Contingency Amount - City, the Contingency Amount - Developer and the Developer's Debt Service LOC, Revenue Target Shortfall LOC and Default LOC, and, to that end, the City may apply any State Funding to repay any bond anticipation notes issued by the City prior to the issuance of long term bonds pursuant to the DIF Statute.

**4.3. Construction Funds.** The City shall provide up to the Construction Amount to pay for the Documented Costs of Construction of the Delegated Public Project Elements. Subject to any preconditions herein for the release of such funds, the City shall disburse the Construction Amount in accordance with the procedures set forth in Sections 4.10 through 4.14. In no event shall any portion of the Construction Amount or any Contingency Amount be used to pay for any portion of the Direct Public Project Elements, or for any other cost or expense other than the Construction of the Delegated Public Project Elements, provided, however, that any balance of the Construction Amount remaining after Final Completion of all of the Delegated Public Project Elements, Final Payment to the Developer and reimbursement to the Developer pursuant to Section 4.7(a)(i), may be used by the City as it determines in its sole discretion.

**4.4. Contingency Amounts.** The City shall make the Contingency Amount – City available from the Public Investment to pay for Eligible Contingency Amounts. Subject to the provisions of Section 4.7(a), if the Contingency Amount – City is exhausted, Net Cost Overruns shall be paid from the Contingency Amount – Developer. At any time that either the City or the Developer reasonably believes that Net Cost Overruns will eventually exhaust the Contingency Amount-City and the Contingency Amount - Developer, then such Party shall notify the other Party in writing with an explanation of the reasons therefor. In the event that such notice is given by one of the Parties, the City and the Developer agree to use reasonably diligent efforts to seek additional funding in amounts sufficient to complete the Construction of the Delegated Public Project Elements.

Except for disbursements from the Contingency Fund - Developer in accordance with the terms of this Agreement, the Developer shall have no obligation to contribute to the Construction Costs of the Delegated Public Project Elements. Except for disbursements from the Construction

Amount and Contingency Fund - City in accordance with the terms of this agreement, the City shall have no obligation to contribute to the Construction Costs of the Delegated Public Project Elements.

**4.5. Conditions Precedent to Payment.** The City's obligation to make disbursements from the Construction Amount, the Contingency Amount - City and the Contingency Amount - Developer to pay the Developer for the Construction of the Delegated Public Project Elements shall be subject to the prior satisfaction of the following conditions: (a) no Event of Default by the Developer has occurred and has continued beyond the expiration of any applicable grace and cure period or appeal period as set forth in Sections 8.1 and 8.3, and (b) the Developer has complied with the procedures for payment set forth in Sections 4.10 through 4.14. The City shall have the right at any time in its sole discretion to waive the satisfaction of either or both of the foregoing conditions and to make such disbursements to pay for the Construction of the Delegated Public Project Elements.

**4.6. Disbursements for Construction of the Delegated Public Project Elements.** Subject to the provisions of Section 4.5, the City shall make disbursements from the Construction Amount, the Contingency Amount - City and the Contingency Amount - Developer for the Construction of the Delegated Public Project Elements in accordance with the procedures set forth in Sections 4.10 through 4.14 as follows:

(a) **First Disbursement** - to pay for all Documented Costs up to \$10 million incurred in the Construction of the Delegated Public Project Elements prior to the first Application for Payment.

(b) The First Disbursement shall be made upon the satisfaction of the following conditions:

(i) the approval of the DIF Application by the City and the EACC, which condition the Parties agree has been satisfied;

(ii) the enactment into law of the Special Legislation;

(iii) the Commencement of the reconstruction of approximately 165,000 square feet of retail and restaurant space with approximately 25,000 square feet of space for a live theatre in Buildings C and D, which condition the Parties agree has been satisfied;

(iv) the initial sale by the City of DIF Bonds for the Project;

(v) the presentment by the Developer to the City of a title report showing all persons who would have been entitled to damages by reason of the Order of Taking, together with legally binding indemnifications, or waivers, with respect to any right to damages beyond that which is provided in this Agreement from all such persons entitled thereto under Massachusetts General Laws, Chapter 79, Section 7A, each in form and substance reasonably acceptable to the City;

(vi) the Developer being fully prepared, without condition, to convey to the City (and simultaneously with the payment of the First Disbursement, completing such conveyance) the Vacuum Cleaner Parcel, as provided in this Agreement;

(vii) the Developer being fully prepared without condition to enter into (and simultaneously with payment of the First Disbursement entering into (a) the Termination of Ramp and Tunnel Agreements, (b) the Truck Tunnel Service Entrance Easement Agreement, and (c) the Sidewalk Easement Agreement, all as provided in this Agreement;

(viii) the Developer being fully prepared, without condition, to execute and deliver to the City (and simultaneously with payment of the First Disbursement, executing and delivering to the City) the Use Restrictions, as provided in this Agreement; and

(ix) the contract or contracts with the Architect, including thereunder the services of the civil engineer, the structural engineer and the mechanical engineer, that is required to be approved by the City as provided in Section 3.3 shall have been so approved by the City pursuant to Section 3.3 and delivered to the City by the Developer.

Upon the satisfaction of the foregoing conditions, the City shall pay the Developer the First Disbursement for all Documented Costs incurred in the Construction of the Delegated Public Project Elements from June 14, 2004 through the date of the first Application for Payment (including pre-acquisition environmental site assessment work estimated to be approximately \$116,000.00) up to \$10 million, in accordance with the procedures set forth in Sections 4.10 through 4.12. The parties acknowledge that the City authorized the Construction Program Manager to begin its review of the Developer's Application for Payment for the First Disbursement prior to the satisfaction of the foregoing conditions. The Developer may submit multiple Applications for Payment for the First Disbursement but the first payment by the City pursuant to any of such Applications for Payment shall be considered the First Disbursement for purposes of this Agreement. The City shall pay the Developer the First Disbursement within thirty (30) days from the City's receipt of the Certificate for Payment for the First Disbursement and the City shall promptly record the Order of Taking upon the payment of the First Disbursement to the Developer.

(c) Second Disbursement - periodic disbursements from the balance, if any, of the \$10 million referred to in subsection 4.6(a) for all design and design related Documented Costs

for the Delegated Public Project Elements incurred during the period between the First Disbursement and the Enabling Disbursement. Following the First Disbursement, the Second Disbursement may be made at any time prior to the Enabling Disbursement, in accordance with the procedures set forth in Sections 4.10 through 4.12. The total amount of all disbursements for the First Disbursement and the Second Disbursement shall not exceed \$10 million.

(d) Enabling Disbursement - monthly disbursements to pay for all Documented Costs incurred for the Enabling Work.

(e) The Enabling Disbursement shall be made upon the satisfaction of the following conditions:

(i) delivery by the Developer to the City of the Written Commitments for the Trigger Buildings, with a lease agreement and/or a build to suit agreement containing terms that will satisfy the debt service coverage ratio requirements of any construction lender and/or equity investor together with a letter from the Developer to the City confirming in writing that the Developer's cost estimates for each Trigger Building is within ten percent (10%) of the price requirements of the lease and/or build to suit agreement, the construction financing commitment and the equity investment commitment pertaining to the cost of constructing each such building;

(ii) execution and delivery by the Developer or Developer's Affiliate of the Parking Garage Lease, a Notice of Lease, and the Vertical and Horizontal Easement Agreement;

(iii) execution and delivery by the Developer or Developer's Affiliate of the Parking Garage Operating and Allocation Agreement;

- (iv) the approval by the City pursuant to Section 3.5 of 100% Construction Documents for the Enabling Work;
- (v) an executed and delivered GMP for the Construction of the Enabling Work, in the form of the contract approved by the City pursuant to Section 3.3, upon terms and conditions acceptable to the Developer in its sole discretion;
- (vi) the issuance by the Developer of notices to proceed to the Contractor performing the Enabling Work;
- (vii) all issues with regard to TIF's for either of the Trigger Buildings being resolved through negotiation between the Developer and the City and such TIF's being approved by the City Council;
- (viii) the Debt Service LOC and the Contingency Amount LOC (pursuant to Section 4.7(a)) shall have been posted with the City;
- (ix) all Required Permits for the Enabling Work shall have been obtained by the Developer;
- (x) updated written cost estimates from the Developer for the Construction of the Parking Garage and the Sitework, based upon the best information available to the Developer at that time, that indicate, to the reasonable satisfaction of the Developer and the City, that there will be sufficient funds remaining in the Construction Amount, the Contingency Amount - City and the Contingency Amount - Developer to pay for the Construction Costs of the Parking Garage and the Sitework, after deducting the amount of the GMP, and all other estimated Construction Costs, for the Enabling Work, or, at the mutual election of the City and the

Developer, that any additional amount necessary to pay for the Construction Costs of the Parking Garage and the Sitework can be paid from other funds; and

(xi) any contract with the Architect for services in connection with the Enabling Work, including thereunder, the services of the civil engineer, the structural engineer and the mechanical engineer, if applicable, not included in contracts with the Architect previously approved by the City as provided in Section 3.3 shall have been so approved by the City pursuant to Section 3.3 and delivered to the City by the Developer.

Upon the satisfaction of the foregoing conditions, the City shall thereafter pay to the Developer on a monthly basis all Documented Costs for the Construction of the Enabling Work and the early release work (if such early release work is agreed to, and as capped at \$750,000.00, all as set forth in Section 3.1) in accordance with the procedures set forth in Sections 4.10 through 4.14.

(f) Parking Garage Disbursement - monthly disbursements to pay for all Documented Costs incurred for the Construction of the Parking Garage.

(g) The Parking Garage Disbursement shall be made upon the satisfaction of the following conditions:

(i) a letter from the Developer to the City that, to the Developer's knowledge, the Written Commitments delivered to the City pursuant to Section 4.6(e)(i) remain in full force and effect;

(ii) approval by the City in accordance with Section 3.5 of 100% Construction Documents for the Construction of the Parking Garage and 80% Construction Documents for the Construction of the Sitework;

(iii) an executed and delivered GMP for Construction of the Parking Garage in the form of the contract approved by the City pursuant to Section 3.3, upon terms acceptable to the Developer in its sole discretion;

(iv) updated written cost estimates from the Developer for the Construction of the Sitework, based upon the best information available to the Developer at that time, that indicate, to the reasonable satisfaction of the Developer and the City, that there will be sufficient funds remaining in the Construction Amount, the Contingency Amount - City and the Contingency Amount - Developer to pay for the Construction Costs of the Sitework after deducting Construction Costs for the Enabling Work and the amount of the GMP, and all other estimated Construction Costs, for the Parking Garage, or, at the mutual election of the City and the Developer, that any additional amount necessary to pay for the Construction Costs of the Sitework can be paid from other funds;

(v) the Developer having obtained all Required Permits for the Construction of the Parking Garage;

(vi) the Revenue Target Shortfall LOC, the Default LOC, and the Contingency Amount LOC (pursuant to Section 4.8) shall have been posted with the City and the balance of the Contingency Amount LOC (posted pursuant to Section 4.7(a)) shall remain posted with the City;

(vii) the Developer having received 80% Construction Documents for the first Trigger Building (either H or J) and 100% Design Development Plans for the second Trigger Building;

(viii) the Developer having delivered to the City written confirmation that the Developer has received a GMP price for the Construction of either Building H or Building J that satisfies the conditions of the construction financing commitment, the equity investment commitment and the lease agreement/build to suit agreement pertaining to the cost of such building, and written commitments from the construction Lender, the tenant and/or the equity investors to fund any overages in excess of the GMP due to any allowance, qualifications or assumptions in such GMP arising from the 80% level of design completion;

(ix) updated written estimates for the Construction Costs for the second Trigger Building at 100% Design Development that indicate that such estimates would satisfy the conditions of the construction financing commitment, the equity investment commitment and, if applicable, the lease agreement/build to suit agreement for the cost of such building; and

(x) any contract with the Architect for services in connection with the Construction of the Parking Garage, including thereunder the services of the civil engineer, the structural engineer and the mechanical engineer, not included in contracts with the Architect previously approved by the City as provided in Section 3.3 shall have been so approved by the City pursuant to Section 3.3 and delivered to the City by the Developer.

Upon the satisfaction of the foregoing conditions, the City shall thereafter pay to the Developer on a monthly basis all Documented Costs for the Construction of the Parking Garage, in accordance with the procedures set forth in Sections 4.10 through 4.14, provided, however,

that the City shall pay to the Developer all Documented Costs for the early release work related to the Construction of the Parking Garage (if such early release work is agreed to, and as capped at \$750,000.00, all as set forth in Section 3.1) after the Commencement of the Enabling Work and prior to the satisfaction of the foregoing conditions.

(h) Sitework Disbursement - monthly disbursements to pay for all Documented Costs for the Construction of the Sitework.

(i) The Sitework Disbursement shall be made upon the satisfaction of the following conditions:

(i) an executed and delivered GMP for the Construction of the Sitework in the form of contract approved by the City pursuant to Section 3.3, upon terms and conditions acceptable to the Developer in its sole discretion;

(ii) any contract with the Architect for services in connection with the Construction of the Sitework, including thereunder the services of the civil engineer, the structural engineer and the mechanical engineer, not included in contracts with the Architect previously approved by the City as provide in Section 3.3 shall have been so approved and delivered to the City by the Developer.

(iii) approval by the City of 100% Construction Documents for the Construction of the Sitework; and

(iv) the Developer having obtained all Required Permits for the Construction of the Sitework.

Upon the satisfaction of the foregoing conditions, the City shall thereafter pay to the Developer on a monthly basis all Documented Costs for the Construction of the Sitework, in accordance with the procedures set forth in Sections 4.10 through 4.14.

**4.7. Cost Overruns During, and Debt Service Shortfall From, Enabling Work.**

(a) As a condition to the Commencement of the Enabling Work and the Enabling Disbursement, the Developer will fund the Contingency Amount-Developer to pay for a portion of Net Cost Overruns incurred in the Construction of the Enabling Work, by causing to be issued to the City a Contingency Amount LOC in the amount of \$2 million. The Contingency Amount LOC may be drawn upon by the City only after an amount equal to the total of (i) a portion of the Construction Amount equal to the GMP and all Soft-Costs for the Construction of the Enabling Work and (ii) a portion of the Contingency Amount-City equal to the difference between \$3 million and the amount by which the GMP and all Soft Costs for the Construction of the Enabling Work exceeds \$15.5 million, has been expended for the Construction of the Enabling Work. If the Contingency Amount LOC is reduced to \$1 million due to draw downs for Net Cost Overruns in the Construction of the Enabling Work, the Developer, on a one time basis, will either replenish the Contingency Amount LOC with an additional \$1 million or cause to be issued a new Contingency Amount LOC in the amount of \$1 million to be used for any additional Net Cost Overruns incurred in the Construction of the Enabling Work. The portion of the Contingency Amount - Developer that will be available to pay for Net Cost Overruns during the Enabling Work shall not exceed \$3 million. If the portion of the Contingency Amount-Developer that will be available during the Enabling Work is expended, then any additional Eligible Contingency Amounts incurred during the Enabling Work shall be paid from the Contingency Amount-City. All funds provided by the Developer from the Contingency Fund-

Developer pursuant to this Section 4.7(a) shall be used only to pay for Net Cost Overruns incurred in the Construction of the Enabling Work and shall not be used to pay Debt Service Shortfall (if any), or for any other purpose.

(i) If any portion of the Contingency Amount LOC is drawn down by the City, as provided in Section 4.7(a), then upon Final Completion of all of the Delegated Public Project Elements, any funds remaining in the Contingency Amount - City shall be used to reimburse the Developer for the portion of the Contingency Amount LOC that was drawn down, together with interest on such amount at the then applicable federal funds rate, as it may be adjusted from time to time, plus five (5%) percent, compounded quarterly, from the date of draw down. The City's obligation to reimburse the Developer shall be limited to the amount of funds remaining in the Contingency Amount - City upon Final Completion of the Delegated Public Project Elements. The City, at its option, may make such reimbursement to the Developer at any time prior to Final Completion.

(b) As a condition to the Commencement of the Enabling Work and the Enabling Disbursement, the Developer will also cause to be issued to the City the Debt Service LOC in the amount of \$1 million, which may be drawn upon by the City only to pay for Debt Service Shortfall in accordance with this Section 4.7(b). The Debt Service LOC may only be drawn upon by the City if the Construction of the Parking Garage has not Commenced within twenty-four (24) months after the Commencement of the Enabling Work, as set forth in subsection (b)(i) below. If Construction of the Parking Garage Commences prior to the expiration of such twenty-four (24) month period, then the Debt Service LOC shall not be drawn upon by the City and shall be returned to the Developer as set forth in subsection (b)(ii) below. The Debt Service LOC may be drawn upon only for actual Debt Service Shortfall resulting directly from Construction Costs

for the Enabling Work and the amount of the Second Disbursement; such Construction Costs shall be exclusive of any direct or indirect personnel or administrative costs of the City. The Debt Service LOC may not be drawn upon to pay Construction Costs, Net Cost Overruns, or for any other purpose. Any portion of the Debt Service LOC used to pay for Debt Service Shortfall shall be credited against the Default LOC, as set forth in Section 4.8. Except as provided in this Section 4.7(b), the Developer shall not be liable for Debt Service Shortfall.

(i) The Developer shall have twenty-four (24) months from the Commencement of the Enabling Work to satisfy the conditions to Commence the Construction of the Parking Garage set forth in Section 4.6(g). If Construction of the Parking Garage has not Commenced prior to the expiration of such twenty-four (24) month period, notwithstanding Force Majeure or any cure period for an Event of Default by the Developer, then the City may draw upon the Debt Service LOC to pay Debt Service Shortfall. However, in the event of any occurrence of Force Majeure or an Event of Default by the Developer, the Developer shall have an additional period of time following such twenty-four (24) month period (up to a maximum of two (2) years per event and up to three (3) years in the aggregate for either Force Majeure or Events of Default) to satisfy the conditions for, and to Commence, Construction of the Parking Garage.

(ii) As of the Commencement of the Construction of the Parking Garage, the Debt Service LOC shall no longer be drawn upon by the City to pay for Debt Service Shortfall and shall be returned to the Developer, together with any unexpended cash drawn from the Debt Service LOC.

**4.8. Cost Overruns During, and Revenue Target Shortfall From, Construction.** The balance of the Contingency Amount - Developer remaining after Final Completion of the Enabling Work may be applied to pay for Net Cost Overruns incurred during the Construction of the Parking Garage and the Sitework, but only after application of the entire Contingency Amount - City, as follows. As a condition to the Commencement of the Construction of the Parking Garage and the Parking Garage Disbursement, the Developer will cause to be issued three (3) Letters of Credit: (a) a \$3.05 million Contingency Amount LOC that may be used to pay Net Cost Overruns incurred during the Construction of the Parking Garage and the Sitework after the application of the entire Contingency Amount - City; (b) the Revenue Target Shortfall LOC; and (c) the Default LOC. In addition, the unused balance of the \$2 million Contingency Amount LOC posted at the Commencement of the Enabling Work, plus the unused balance of any replenishment or additional Contingency Amount LOC in the amount of \$1 million, provided pursuant to Section 4.7(a), shall remain posted with the City and may be used to pay Net Cost Overruns incurred during the Construction of the Parking Garage and the Sitework after the application of the entire Contingency Amount - City. The Revenue Target Shortfall LOC and the Default LOC may only be drawn upon to pay for Revenue Target Shortfall as provided in this Section 4.8 and may not be drawn upon to pay Construction Costs, Net Cost Overruns, or for any other purpose. Except as provided in this Section 4.8, the Developer shall not be liable for Revenue Target Shortfall.

(i) If the \$3.05 million Contingency Amount LOC is expended, the Developer, on a one time basis, will either replenish the Contingency Amount LOC with an additional \$2 million, or cause to be issued a new \$2 million Contingency Amount LOC, and

such amount may be drawn upon only for any additional Net Cost Overruns incurred during the Construction of the Parking Garage and the Sitework.

(ii) If a Revenue Target Shortfall exists as of the Revenue Target Shortfall Payment Date, then the City may draw upon the Revenue Target Shortfall LOC and, provided the Developer is in default in its obligations under agreements with its principal tenant or buyer to build one of the Trigger Buildings, and all applicable cure periods have expired, the Default LOC, to pay the Revenue Target Shortfall up to a maximum amount equal to the lesser of the actual amount of the Revenue Target Shortfall, or the total amount of the Revenue Target Shortfall LOC plus, if available, the Default LOC. Notwithstanding the foregoing, the Default LOC shall be returned to the Developer and shall not be drawn upon by the City (1) upon the issuance by the City of a certificate of occupancy for the core and shell of one of the Trigger Buildings for the minimum square footage for such building, as set forth in the DIF Application, or (2) a Trigger Building is not built or completed and the Developer is not in default in its obligations under its agreement with the principal tenant or buyer for such Trigger Building.

#### **4.9. Application of State Funding**

(i) As provided in Section 4.2(b), during the Construction of the Enabling Work and the Construction of the Parking Garage and the Sitework, the City agrees to use good faith efforts to utilize all State Funding received by the City to pay down DIF Bonds that may have been issued to fund, in whole or in part, the First Disbursement, the Second Disbursement, the Construction of the Enabling Work and the Construction of the Parking Garage. Notwithstanding the foregoing and Section 4.2(b), the Parties agree that, for purposes of calculating Debt Service Shortfall prior to the Commencement of the Construction of the Parking Garage, allocations shall be made as set forth in Exhibit 4.7(b), and the application of State

Funding described in this Section 4.9 will not alter the calculation of Expected Revenue. To the extent required, if State Funding has already been otherwise applied by the City in accordance with the terms of this Agreement, for purposes of calculating the Debt Service Shortfall amount for which the Debt Service LOC may be drawn, the State Funding shall be deemed to have been allocated as set forth in Exhibit 4.7(b). Before drawing down any funds from the Debt Service LOC, the City will furnish the Developer with a recalculation of the Debt Service Shortfall for the Enabling Work based upon actual funds advanced and actual interest rates applicable to DIF Bonds issued by the City.

**4.10. Method of Processing Applications for Payment for Delegated Public Project**

**Elements.** Subject to the provisions of this Agreement, pursuant to Applications for Payment using AIA Document G702, or another document reasonably acceptable to the Developer and the City, submitted to the Construction Program Manager by the Developer and Certificates for Payment issued by the Construction Program Manager to the City, the City shall pay the Developer for the Documented Costs of Construction of the Delegated Public Project Elements as set forth below. The City agrees to review and make comments on each Application for Payment within the earliest reasonable time, but in all events within the timetables described in this Section 4.10 and to make payment to the Developer within fifteen (15) days (or thirty (30) days in the case of the First Disbursement or a Final Payment) of receipt of a Certificate for Payment from the Construction Program Manager. If the City does not pay the Developer within such fifteen (15) or thirty (30) day period, as the case may be, and thereafter within the seven (7) day cure period set forth in Section 8.2(b), then upon the expiration of such cure period, and in addition to the Developer's other remedies hereunder, the Developer may, upon written notice to the City and the Construction Program Manager, (i) stop work until payment of the

amount owing together with the Developer's reasonable costs of shut down, delay and start up, and any applicable late charges, have been paid in full or (ii) contribute funds in such amounts as it shall determine in its sole discretion to continue the Construction of the Delegated Public Project Elements and obtain reimbursement from the City, including interest at the then applicable federal funds rate, as it may be adjusted from time to time, plus five percent (5%) compounded quarterly, and all other expenses, in accordance with this Section 4.10. Except as provided in this Section 4.10, Section 3.6(f)(x)(b) and Section 4.17(b)(viii), the Developer shall not have any right to stop work on the Delegated Public Project Elements due to a Dispute with the City.

(a) Prior to submission of the first Application for Payment under any GMP, as set forth below, the Developer shall submit to the Construction Program Manager for review (i) a detailed schedule of values for the Delegated Public Project Elements to be Constructed pursuant to such contract, based on the subcontract contract award values and agreed to general conditions included in City approved GMPs, and (ii) Soft Costs contracts. The Developer shall provide two (2) copies of the schedule of values for the Construction Program Manager and two (2) copies for the City, which shall be delivered to the Construction Program Manager Representative.

(b) Each Application for Payment shall show the percentage of completion of each portion of the Delegated Public Project Elements with respect to each GMP as of the end of the period for which the Application for Payment is submitted. Each Application for Payment shall be based on the GMP and related Soft Costs for the applicable Delegated Public Project Element, and any approved Change Orders, which shall be used as the basis for reviewing the Developer's Applications for Payment. Retention shall be five percent (5%) of only those portions of Construction Costs consisting of GMP and shall not apply to Soft Costs not included in a GMP.

(c) Applications for Payment other than for the First Disbursement and Final Payments.

(i) Not less than five (5) business days prior to the end of each month, the Developer shall submit to the Construction Program Manager a Pencil Application for Payment showing all Documented Costs for which the Developer expects to be reimbursed during the period commencing on the first day of such month and ending on the last day of such month.

(ii) Within four (4) business days after the submittal of the Pencil Application for Payment, the Construction Program Manager shall review the percentage of the actual work completed and stored to date, meet with the Project Manager (the "Pencil Application Meeting") and at such meeting provide to the Developer a detailed list of all proposed adjustments to the Pencil Application for Payment (if any), and allow the Developer to provide additional information to resolve any disagreements concerning Documented Costs.

(iii) The Developer shall resubmit a clean copy of the Application for Payment in final form with all supporting information within approximately three (3) business days after the Pencil Application Meeting. Failure of the Developer to resubmit the Application for Payment within such three (3) business day period shall not constitute an Event of Default by the Developer pursuant to Section 8.1.

(d) Each Application for Payment shall be accompanied by the following:

(i) A duly executed and acknowledged statement by the Developer, in the form attached hereto as Exhibit 4.10(d)(i), identifying each Architect, Consultant, Contractor and supplier with whom the Developer has contracted and for whom payment is sought, the total

amount of each contract, and a copy of each invoice showing the payment amount requested for each party named in the Application for Payment and the amount to be paid to the Developer from such payment;

(ii) A duly executed Waiver of Mechanics' and Materialmen's Liens from each Contractor, subcontractor and material supplier for whom payment is sought, in the form attached hereto as Exhibit 4.10(d)(ii);

(iii) If not already provided, a copy of the applicable contract for which payment is requested;

(iv) Information detailing any payments to the Developer for its own account with respect to the Documented Costs being paid or reimbursed;

(v) For any item including Elements from both Delegated Public Project Elements and Private Project Elements, information on the Private Project Elements reasonably needed or requested by the Construction Project Manager to allocate Documented Costs between the Private Project Elements and the Delegated Public Project Elements; and

(vi) All other information and documentation reasonably requested by the Construction Program Manager relating to Documented Costs shown on the Application for Payment.

(e) The Construction Program Manager shall promptly review each Application for Payment received and, to the extent such Application for Payment is approved, shall issue to the City not later than four (4) business days after the Construction Program Manager's receipt of the Application for Payment, a certified copy of the Application for Payment and a Certificate

for Payment, which Certificate for Payment shall be paid by the City on or before fifteen (15) days after the Construction Program Manager's issuance of the Certificate for Payment.

(f) In the event that the Application for Payment contains mathematical errors, or supporting information is not included, the Construction Program Manager shall return the Application for Payment to the Developer prior to the expiration of the four (4) business day review period set forth above, identifying in writing all remaining issues. The Developer shall revise the Application for Payment to address the issues identified by the Construction Program Manager and return the revised Application for Payment to the Construction Program Manager. The four (4) business day review period set forth above shall start over upon submission of the revised Application for Payment. Promptly after receipt, and in any event within four (4) business days of receipt of the revised Application for Payment, and, if such revisions address the issues identified by the Construction Program Manager, the Construction Program Manager shall certify the revised Application for Payment and submit it and a Certificate for Payment to the City for payment. The City shall make payment to the Developer within fifteen (15) days of receipt of the certified Application for Payment and the Certificate for Payment from the Construction Program Manager.

(g) The amount of each Certificate for Payment issued by the Construction Program Manager shall be computed as follows:

(i) take that portion of the Delegated Public Project Elements Budget properly allocable to completed Construction as determined by multiplying the percentage of completion of each portion of the Delegated Public Project Elements by the share of the Delegated Public Project Elements Budget and any applicable Contingency Amount allocated to

that portion of the Construction of the Delegated Public Project Elements and supported by attached invoices and lien waivers, less retainage of five percent (5%), as set forth above;

(ii) add that portion of the Delegated Public Project Elements Budget properly allocable to materials and equipment delivered and stored at the Project Property for subsequent incorporation in the Project and such materials and equipment suitably stored off the site at a location agreed upon in writing by the City and the Developer and which are insured for full replacement value by Developer;

(iii) add one hundred percent (100%) of all services;

(iv) subtract the aggregate of previous payments made by the City; and

(v) subtract amounts, if any, for which the Construction Program Manager has withheld a Certificate for Payment as provided in Section 4.12.

The City agrees that it will not withhold payment for claims or items in dispute for which there is insurance coverage in accordance with the requirements of this Development Agreement or other adequate insurance coverage.

(h) Applications for Payment of the First Disbursement and each of the Final Payments.

(i) Within fifteen (15) days of receipt of an Application for Payment for either the First Disbursement or Final Payment under any GMP, the Construction Program Manager shall review the Application for Payment and provide the Developer with a detailed list of all proposed adjustments (if any) and allow the Developer to provide additional information to resolve any disagreements concerning Documented Costs. For the First Disbursement, the

Developer shall provide one (1) copy of the Application for Payment for the Construction Program Manager and one (1) copy for the City, which shall be delivered to the Construction Program Manager Representative. For Final Payment, the Developer shall provide two (2) copies of the Application for Payment for the Construction Program Manager and two (2) copies for the City, which shall be delivered to the Construction Program Manager Representative.

(ii) The Developer shall resubmit a clean copy of the Application for Payment in final form with all supporting information within approximately five (5) business days after receipt of the Construction Program Manager's list of all proposed adjustments pursuant to subsection (i). Failure of the Developer to resubmit the Application for Payment within such five (5) business day period shall not constitute an Event of Default by the Developer pursuant to Section 8.1.

(iii) Within ten (10) days of receipt of the Application for Payment in final form, the Construction Program Manager shall review the Application for Payment and to the extent that the Application for Payment is approved, issue to the City a certified copy of the Application for Payment and a Certificate for Payment.

(iv) In the event that the Application for Payment contains mathematical errors, or supporting information is not included, the Construction Program Manager shall return the Application for Payment to the Developer prior to the expiration of the ten (10) day review period set forth above, identifying in writing all issues. The Developer shall revise the Application for Payment to address the issues identified by the Construction Program Manager and return the revised Application for Payment to the Construction Program Manager. The Construction Program Manager shall have four (4) days from receipt to review the revised

Application for Payment and submit any further written comments to the Developer. Within four (4) days of the Construction Program Manager's receipt of the revised Application for Payment and the Developer's written responses (in the event that the Construction Program Manager submits further written comments to the Developer following receipt of the revised Application for Payment), and, if the written responses address the Construction Project Manager's written comments, the Construction Program Manager shall certify the revised Application for Payment and submit it and a Certificate for Payment to the City for payment. The City shall make payment to the Developer within thirty (30) days of receipt of the certified Application for Payment and Certificate for Payment from the Construction Program Manager.

**4.11. Certificate for Payment.**

The issuance of a Certificate for Payment shall constitute representations made by the Construction Program Manager to the City, which may be relied upon by the Developer in the course of its dealings with the City and third parties pursuant to this Agreement, based on its observations at the Project and the data comprising the Application for Payment submitted by the Developer, that, to the best of its knowledge and belief, the Construction of the Delegated Public Project Elements has progressed to the point indicated in the approved Application for Payment and the costs included in the Application for Payment are for completed work constituting Documented Costs for the Delegated Public Project Elements.

**4.12. Construction Program Manager's Decision to Withhold Approval.** The Construction Program Manager may decide not to certify payment and may withhold approval of a portion of a Certificate for Payment if, in the Construction Program Manager's reasonable opinion, the representations to the City required by Section 4.11 cannot be made.

If, having complied with the procedure set forth in Section 4.10, the Developer and the Construction Program Manager cannot agree on a revised amount, the Developer shall submit a clean copy of a revised Application for Payment including only agreed upon items for payment and within four (4) days of receipt of the revised Application for Payment, the Construction Program Manager shall issue a Certificate for Payment for the amount for which the Construction Program Manager is able to make such representations to the City and the provisions of Section 4.17 shall apply for the amount for which the Construction Program Manager does not issue a Certificate for Payment.

**4.13. Completion.**

(a) For purposes of this Agreement, "Substantial Completion" for each Element of the Delegated Public Project Elements shall be deemed to have occurred on the date that (i) such Element has been substantially completed in a good and workmanlike manner in accordance with the Approved Design and all Required Permits, excluding minor field modifications which do not materially affect the operation or completion of such Element and excluding punchlist items, as determined by the Developer and the City, that do not unreasonably interfere with the operation or completion of such Element or the other Delegated Public Project Elements, as certified to the Parties by the Architect and agreed to by the City, (ii) the Architect has issued a Certificate of Substantial Completion for such Element using AIA Document G704 ("Certificate of Substantial Completion"), and (iii) as to the Parking Garage, at least a temporary certificate of occupancy has been issued.

(b) For the purposes of this Agreement, the term "Final Completion" for each Element of the Delegated Public Project Elements shall occur on the date that such Element has been completed in accordance with the Approved Design, excluding minor field modifications

which do not materially affect the operation of such Element or the operation or completion of the other Delegated Public Project Elements or other changes approved by the Construction Program Manager, and that (i) all punch list items have been completed in a good and workmanlike manner, as certified to the Developer and the City by the Architect, (ii) the Architect has issued a final certificate for payment certifying to the Developer that such Element was constructed in accordance with the Approved Design, and (iii) as to the Parking Garage, a final certificate of occupancy has been issued. Final Completion shall not require acceptance by the City of any of the new streets as public ways.

(c) Prior to Substantial Completion of each of the Delegated Public Project Elements, the Developer and the Construction Program Manager shall jointly provide a written punch list detailing the items to be corrected or completed with a cost and time estimate for correction or completion of each such item.

(d) Prior to Final Completion of each of the Delegated Public Project Elements, the Developer shall provide the Construction Program Manager with (i) final lien waivers from the Contractor, all other contractors, construction program managers and subcontractors for such Element, in the form attached hereto as Exhibit 4.10(d)(ii) and (ii) a current written title report for the Project Property confirming that no mechanics liens or other encumbrances related to any Delegated Public Project Elements, including Construction of the Delegated Public Project Elements, encumber the record title to the Project Property.

(e) The Developer shall cause to be collected, assigned and delivered to the Construction Program Manager for review and delivery to the City upon Final Payment for each

Element for the Delegated Public Project Elements all guarantees and warranties related to such Element.

(f) The Developer shall supervise the inspection of building utilities, mechanical systems and equipment for readiness and assist in the start-up and testing of the mechanical systems and equipment of the completed Delegated Public Project Elements.

(g) Upon Final Completion of the new streets, the City shall proceed expeditiously to approve and accept each of the new streets as public ways and thereafter all responsibility for maintenance, operation and repair of such streets shall be the sole responsibility of the City; provided, however, responsibility for support for the streets over the Parking Garage and the Truck Tunnel shall be as set forth in Section 5.2 hereof.

**4.14. Final Payment and Final Certificate for Payment.** Final Payment shall be made by the City to the Developer promptly upon Final Completion, as defined in Section 4.13(b), of such Element, and in any event no later than fifteen (15) days after the issuance of the Construction Program Manager's final Certificate for Payment for such Element. The amount of the Final Payment shall be calculated as follows:

(i) take the sum of the Construction Costs for such Delegated Public Project Element, as set forth in the Delegated Public Project Elements Budget, including all contingencies and all approved Change Orders; and

(ii) subtract the aggregate of previous payments made by the City.

If the Developer requests the Construction Program Manager to issue a final Certificate for Payment for such Element and the Construction Program Manager refuses to do so, the City

and the Developer shall attempt to promptly resolve, in accordance with Section 4.17, any remaining disputes with regard to any items for which the Construction Program Manager has withheld the Certificate for Payment.

Upon Final Completion of all of the Delegated Public Project Elements and receipt of Final Payment by the Developer, all books, records, plans and other written materials related to the Delegated Public Project Elements shall be delivered by the Developer to the City without any representation or warranty as to completeness or accuracy at the location designated by the City for such delivery, provided that the Developer shall be allowed to keep a copy (at Developer's own cost) of the books, records, plans and other written materials related to the Delegated Public Project Elements for its own records.

All outstanding Letters of Credit posted by the Developer with the City pursuant to this Agreement, or the balance thereof then remaining, shall be delivered to the Developer promptly upon Final Completion of all of the Delegated Public Project Elements, except for the Revenue Target Shortfall LOC and the Default LOC, which shall be retained by the City until the Revenue Target Shortfall Payment Date, and the payment of Revenue Target Shortfall has been made, all in accordance with Section 4.8(ii), whereupon any remaining balance of the Revenue Target Shortfall LOC and, if applicable, the Default LOC, shall be returned to the Developer.

**4.15. Liens.** Upon receipt of payment from the City, the Developer shall make, or cause to be made, prompt payment of all monies due and legally owing to all persons or entities doing any work, furnishing any materials or supplies or renting any equipment to the Developer in connection with the Construction of the Delegated Public Project Elements and in all events shall bond or cause to be bonded, with surety companies reasonably satisfactory to the City, or pay or cause to be paid in full forthwith, any mechanics', materialmen's or other lien or encumbrance

that arises against the Project Property. The Developer shall have the right to contest any such lien or encumbrance, provided that the Developer has first satisfied the bond requirements of this Section.

**4.16. Payments; Late Charges.** The City's failure to make due and punctual payment of Applications for Payment or other sums due and payable under this Agreement within seven (7) days of written demand from the Developer that is labeled on the top of the first page thereof in bold face, all capital letters "LATE PAYMENT CHARGE NOTICE" shall obligate the City to pay interest on such amounts at the Default Rate from the date that such payment was due until payment in full is made, which amount of interest shall be an Eligible Contingency Amount to be paid out of the Contingency Amount – City. The City will not be required to appropriate additional funds to pay such interest. The Developer will not be required to give such seven (7) day notice more than four (4) times during any period of twelve (12) consecutive months. Notwithstanding the foregoing, the seven (7) day notice and cure period provided for in this Section shall not apply to the First Disbursement and late charges as provided for in this Section shall apply to the First Disbursement from and after the date that payment is due.

**4.17. Resolution of Disputes.** The City and the Developer shall each seek mutually acceptable solutions to any design, construction, engineering, operating, real estate, financing, and/or legal matters arising from this Agreement and, except for those instances in which either Party is not required to grant or withhold approvals in the reasonable discretion of such Party, both Parties shall use their reasonable efforts to resolve such problems as expeditiously as possible. Any Dispute shall be resolved in the manner set forth below.

(a) Direct Negotiation. Any Dispute arising at any time during or after the construction of the Project shall be resolved, if possible, by negotiation between the Construction

Program Manager and the Project Manager, or any other duly authorized representatives of the City and the Developer. If such duly authorized representatives are unable to resolve any Dispute within ten (10) days after written notice of such Dispute is given by either Party to the other Party, then upon written notice given by either Party to the other, the Dispute shall be submitted to mediation as provided in Section 4.17(b).

(b) Mediation. If any Dispute is submitted to mediation as provided in Section 4.17(a):

(i) The City and the Developer shall each appoint one Mediator. The Party electing to submit the Dispute to mediation shall appoint its Mediator in its notice to the other Party and the other Party shall appoint its Mediator by written notice within five (5) days after receipt of notice of mediation from the first Party. Within three (3) days of the appointment of the second Mediator, the two Mediators shall appoint a third Mediator.

(ii) The Mediators shall review each Dispute and within thirty (30) days after the Dispute is submitted to them, render a decision by majority vote, and notify the Parties in writing of their decision and state the reasons therefor.

(iii) In evaluating a dispute, the Mediators shall consult with or seek information from either Party and may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist the Mediators in rendering a decision.

(iv) If the Mediators request a Party to provide a response to a Dispute or to furnish information, such Party shall respond within five (5) days after receipt of such request

and shall either provide the requested information or advise the Mediators that no information will be furnished. Upon receipt of the Party's response, or if no response is received within such five (5) day period, the Mediators shall proceed to render their decision within the thirty (30) day period set forth in subsection (ii).

(v) If (a) the mediation involves monetary issues and either the City or the Developer wishes to appeal the decision of the Mediators, or (b) if the Mediators fail to take any action within thirty (30) days after the Dispute has been referred to them, either party shall notify the other Party that it intends to exercise its remedies set forth in Section 8.4 within ten (10) days following the earlier of the receipt of the Mediators' written decision or the expiration of such thirty (30) day period. In any litigation resulting from a Party's exercise of its remedies set forth Section 8.4, the court shall hear all evidence and determine the facts de novo. With regard to Disputes involving payment or other monetary issues, if the City and the Developer each fail to give written notice to the other within such ten (10) day period, the Mediators' decision shall, if made within such thirty (30) day period, be final and binding upon the City and the Developer in accordance with G.L. c. 251§1 but subject to G.L. c. 251§§12 and 13. With regard to Disputes involving non-monetary issues, the Mediators' decision, if made within such thirty (30) day period, shall be final and binding upon the City and the Developer in accordance with G.L. c. 251§1 but subject to G.L. c. 251§§12 and 13.

(vi) During mediation and any subsequent litigation, each Party shall pay its own legal fees and expenses. The Developer and the City shall each pay one-half of the Mediators' fees and costs; the City's legal fees and expenses incurred during mediation and any subsequent litigation and its share of the mediators' fees shall not be paid from the Construction Amount, the Contingency Amount-City or the Contingency Amount-Developer. The mediation

shall be held in Worcester, Massachusetts at a location to be designated by the Mediators. Any agreement reached in mediation by the Parties and set forth in a written settlement agreement signed by the Parties shall be enforceable as a settlement agreement in any court having jurisdiction thereof, if the agreement so states.

(vii) Notwithstanding the provisions of clause (v) of this Section 4.17(b), as a condition precedent to the City's right to commence litigation, if the Dispute relates to withholding of payment by the City and the Mediators' decision with respect to such payment or payments is in favor of the Developer, the City shall be required to make such payments to the Developer under a reservation of rights; provided, however, that as a condition to such obligation to make such payment prior to commencing litigation, the Developer shall provide the City with a written guaranty from a guarantor reasonably satisfactory to the City to guaranty the repayment of such payments, with interest, should such litigation result in the entry of a final judgment in favor of the City that such payments or a portion thereof were properly withheld by the City. If it is judicially determined by a judgment in favor of the City that the City is entitled to withhold such payment or a portion thereof, the Developer, or the Developer's guarantor, will repay such payment or such portion thereof, and any interest paid by the City pursuant to Section 4.17(b)(viii), to the City, together with interest at the applicable federal funds rate (based on the average federal funds rate in effect for the period between the time when the payments were made and the time of the favorable judgment for the City), plus three percent (3%), compounded quarterly.

(viii) If the City fails to make any payment due to the Developer pursuant to Section 4.17(b)(ii) within fifteen (15) days of the City's receipt of an Application for Payment for the Mediators' decision in favor of the Developer, then (x) in addition to such payment, the

City shall also pay to the Developer interest on the amount of such payment at the then applicable federal funds rate, as it may be adjusted from time to time, plus five (5%) percent, compounded quarterly, from the receipt of notice from the Party electing mediation as set forth in Section 4.17(a) until payment is made, and (y) in addition to its other remedies, the Developer may contribute funds to continue the Construction of the Delegated Public Project Elements and obtain reimbursement from the City, or stop work, all as set forth in Section 4.10.

(ix) All applicable grace periods and cure periods set forth in Section 8.1 and 8.2 shall be suspended until receipt of the Mediators' decision pursuant to Section 4.17(b)(ii), or the expiration of the thirty (30) day period set forth in Section 4.17(b)(v) if the Mediators fail to render a decision.

#### **4.18. Termination.**

(a) If for any reason the Developer is not able to satisfy the applicable conditions for the Commencement of the Enabling Work (including those conditions set forth in Section 4.6(e)) on or before June 15, 2008 or if, having commenced the Enabling Work, the Developer is not able to satisfy the applicable conditions for the Commencement of the Construction of the Parking Garage (including those conditions set forth in Section 4.6(g)) on or before June 15, 2009, then either Party at any time on or before either of such dates, as the case may be, thereafter may terminate this Agreement upon thirty (30) days notice to the other Party, whereupon this Agreement and all then unperformed obligations hereunder shall terminate, without recourse to either Party, and thereafter be null, void and without effect subject only to the survival of (i) the payment and indemnification obligations set forth herein, and (ii) if the Enabling Work has Commenced, all provisions hereof relating to the Debt Service Shortfall and the Debt Service LOC. If this Agreement terminates either before the Commencement of the

Construction of the Enabling Work, or after the Commencement of the Construction of the Enabling Work and before the Commencement of the Construction of the Parking Garage, as provided herein, (i) the City shall promptly refund any unexpended Permit Fees paid pursuant to Section 3.11 and all unexpended portions of the Contingency Amount -Developer, and shall promptly deliver to the Developer all existing Contingency Amount LOCs issued for the benefit of the City pursuant to this Agreement, (ii) the Debt Service LOC shall remain available to be drawn upon by the City to pay for Debt Service Shortfall in accordance with the terms of this Agreement; provided, however, that the Debt Service LOC may only be drawn upon after twenty-four (24) months have elapsed from the Commencement of Construction of the Enabling Work, (iii) except as provided in subsection (c) below, the Parking Garage Lease, the Parking Garage Operating and Allocation Agreement, the Sidewalk Easement, the Vertical and Horizontal Easement Agreement, the Design Guidelines, and the Use Restrictions shall terminate and be of no further force or effect, and (iv) the Order of Taking, the Termination of Ramp and Tunnel Agreement, and the Truck Tunnel Service Entrance Easement Agreement shall remain in full force and effect.

(b) If, due to an Event of Default by the Developer, and after the expiration of any extension periods due to Force Majeure and/or any applicable grace or cure periods, this Agreement is terminated after the Commencement of the Construction of the Parking Garage, the City may draw upon the Revenue Target Shortfall LOC, the Default LOC and any Contingency Amount LOC's posted by the Developer and apply such funds but only in accordance with, and subject to the terms of this Agreement, and, subject to the last sentence of this Section 4.18(b), this shall be the City's sole and exclusive remedy if this Agreement is terminated after the Commencement of the Construction of the Parking Garage Lease due to an Event of Default by

the Developer. Any unexpended funds from the Contingency Amount LOC's shall be returned to the Developer at Final Completion of the Delegated Public Project Elements. Any unexpended balance of the Revenue Target Shortfall LOC and, if applicable, the Default LOC shall be returned to the Developer promptly after the Revenue Target Shortfall Date and the payment of the Revenue Target Shortfall.

Notwithstanding the limitation of the Developer's liability set forth above, the Developer shall not be excused from liability for fraud and for gross negligence in the Construction of the Delegated Public Project Elements.

(c) If this Agreement terminates either by the entry of a final judgment by a court of competent jurisdiction or a written agreement between the Parties after the Commencement of the Construction of the Parking Garage, then the City, at its election, exercisable by written notice to the Developer at any time within three (3) years after the date of termination (as set forth in such final judgment or written agreement) may choose to complete the Construction of the Parking Garage and the Parking Garage Lease shall continue in effect. Notwithstanding the foregoing, if the City makes such election within such three (3) year period, then, upon the occurrence of an event of Force Majeure or an Event of Default by the City, the City shall have an additional period of time following such three (3) year period up to a maximum of two (2) years per event and up to three (3) years in the aggregate for Force Majeure and for Events of Default, to complete the Construction of the Parking Garage. If (i) the City fails to make such election within such three (3) year period, or (ii) having made such election, the City fails to complete the Construction of the Parking Garage within such three (3) year period, and any extensions of time as provided herein, then the Parking Garage Lease, the Parking Garage Operating and Allocation Agreement, the Vertical and Horizontal Easement Agreement, the

Design Guidelines, the Use Restrictions and the Sidewalk Easement shall terminate and be of no further force or effect. In all events, the Order of Taking, the Termination of Ramp and Tunnel Agreement and the Truck Tunnel Service Entrance Easement Agreement shall remain in full force and effect.

(d) The Parking Garage Lease will terminate automatically if the Construction of the Parking Garage does not Commence within the time period set forth in Section 4.7(b)(i), this Section 4.18, or the earlier termination of this Agreement for any reason. Upon termination of the Parking Garage Lease, the City will promptly execute and deliver to the Developer a termination of Notice of Lease in recordable form.

## **ARTICLE 5 PARKING GARAGE**

### **5.1. Parking Garage Lease and Parking Garage Operating and Allocation Agreement.**

Pursuant to the authority granted by the Special Legislation and simultaneously with the Commencement of the Enabling Work, the Developer and the City shall (a) execute and deliver the Parking Garage Lease in the form attached hereto as Exhibit 5.1, (b) execute and record a Notice of Lease with respect thereto at the Registry, (c) execute and deliver the Parking Garage Operating and Allocation Agreement in the form attached hereto as Exhibit 5.1(a), and (d) execute and record the Vertical and Horizontal Easement Agreement at the Registry.

### **5.2. Easement for Support and Maintenance, Apportionment of Costs.**

(a) Without limiting in any manner the rights and obligations set forth in the Parking Garage Lease, and in addition to rights of inspection and other rights conferred on the Developer in the Parking Garage Lease, the Developer shall reserve for itself and those claiming by, through or under the Developer's Affiliate, the perpetual right and easement, appurtenant to the

Project Property and subject to the obligations contained in this Agreement and in the Parking Garage Lease, to use the portions of the Garage Parcel, the Parking Garage and any other improvements to be constructed thereon as are required for the purpose of furnishing support for the Private Project Elements to be constructed on the Project Property, all upon the terms and conditions set forth in the Vertical and Horizontal Easement Agreement. The Developer shall grant an easement to the City for the sidewalks referenced in the Sidewalk Easement Agreement and for installation and maintenance of the waterproofing above the Parking Garage and for the installation and maintenance of the waterproofing above the Truck Tunnel. The easements referenced in this Section 5.2(a) shall be as set forth in the Sidewalk Easement Agreement, the Truck Tunnel Service Entrance Easement Agreement and the Vertical and Horizontal Easement Agreement.

(b) The Developer has advised the City that the initial cost of Constructing the infrastructure providing such support and waterproofing for the Parking Garage is included in the Delegated Public Project Elements Budget as part of the cost of the Enabling Work and the Construction of the Parking Garage. The City shall be responsible during the term of the Parking Garage Lease, except for the last ten (10) years, at its sole cost and expense, to maintain, repair and replace such infrastructure and waterproofing related to the Parking Garage. During the last ten (10) years of the Parking Garage Lease, the City shall, at its sole cost and expense, maintain such infrastructure and waterproofing related to the Parking Garage, but, subject to the provisions of subsection (e) below, shall only be responsible to pay a share of any capital expenditures related to such infrastructure and waterproofing equal to a fraction, the numerator of which is the number of years then left in the term of the Parking Garage Lease and the denominator of which is the expected useful life of the applicable capital expenditure multiplied

by the cost of such capital expenditure, and the Developer's Affiliate shall pay the balance of such cost. After the term of the Parking Garage Lease has expired, the Developer's Affiliate shall bear all costs (including capital costs) of maintaining such infrastructure and waterproofing.

(c) The City shall be responsible during the term of the Parking Garage Lease, except for the last ten (10) years of the term, at its sole cost and expense to install, maintain, repair and replace the waterproofing under the public streets over the Truck Tunnel. During the last ten (10) years of the Parking Garage Lease term, the City shall, at its sole cost and expense, maintain and repair such waterproofing, provided, however, that if such waterproofing must be replaced or new waterproofing installed, the cost shall be shared between the Developer and the City in the same manner as the waterproofing over the Parking Garage, as set forth in (b) above. The Developer shall provide and maintain at Developer's own cost and expense the infrastructure support for the streets located above the Truck Tunnel and the Developer shall be responsible for the maintenance, repair, and replacement of the waterproofing over the Truck Tunnel after said sixty (60) year period.

(d) The City shall be responsible for maintaining and repairing all municipal water, sewer, electrical and other municipal utility lines located in the Truck Tunnel and the Truck Tunnel Service Entrance, and the Developer will grant to the City any necessary easements for such purposes. All such maintenance and repairs shall be performed at such times and in such a manner so as to not unreasonably interfere with the use and operation of the Truck Tunnel and the Truck Tunnel Service Entrance.

(e) In any instance where the cost of repair, maintenance, or replacement of structural support and waterproofing is to be apportioned between the Developer and/or Developer's

Affiliate and the City as set forth in (b) and (c) above, and the Developer and/or Developer's Affiliate do not, in any instance, agree to bear its portion of such costs, the City shall have the option, instead of making a capital replacement, to undertake only commercially reasonable maintenance and repair activities, provided, that such maintenance and repairs shall be performed in such a manner that the useful life thereof can reasonably be anticipated to extend to the end of the term of the Parking Garage Lease.

(f) From and after the termination of the Parking Garage Lease, the Developer and the City shall use good faith efforts to coordinate the timing and scope of repairs and capital improvements to the Parking Garage and the Truck Tunnel, and repairs and resurfacing of the streets above the Parking Garage and the Truck Tunnel, provided that there is no additional cost to the City as a result of such coordination.

## ARTICLE 6 RELATED TRANSACTIONS

**6.1. Termination of Ramp and Tunnel Agreements.** Simultaneously with the Developer's receipt of payment in full of the First Disbursement, and in partial consideration for such disbursement, the Developer, Worcester Renaissance Towers and Worcester Renaissance C&D and the City shall execute and deliver a Termination of the Ramp and Tunnel Agreements in the form attached hereto as Exhibit 6.1, which shall provide that:

(a) All obligations of the City to maintain the North Portal, as defined in the Ramp and Tunnel Agreements, as a public way open to through traffic shall terminate and be of no further force or effect, and the City may discontinue the North Portal as a public way;

(b) All obligations of the City to construct an elevated pedestrian walkway across the road now known as Worcester Center Boulevard and to re-open the Red Garage Tunnel shall terminate and be of no further force or effect;

(c) The use of the Red Garage Tunnel for pedestrian or vehicular access shall cease; and, at a time designated by the Project Manager, the Developer shall wall up the end of the Red Tunnel under the Project Property and the City shall wall up the end of the Red Tunnel under Worcester Center Boulevard; and thereafter, each Party shall maintain the wall that it erects; and

(d) The City shall grant to the Developer, Worcester Renaissance Towers, and Worcester Renaissance C&D the perpetual and non-exclusive right and easement to use the Truck Tunnel Service Entrance for access to and from the Project Property, the Parking Garage and the Truck Tunnel, subject to the maintenance and structural support obligations as set forth in the Truck Tunnel Service Entrance Easement Agreement.

**6.2. Transfer of Vacuum Cleaner Parcel.**

(a) Simultaneously with its receipt from the City of payment in full of the First Disbursement, and in partial consideration thereof, the Developer shall convey the Vacuum Cleaner Parcel to the City by a good and sufficient quitclaim deed, free from all encumbrances except those set forth in the Commitment for Title Insurance prepared by LandAmerica Title dated November 16, 2005, a copy of which has been provided to the City.

**6.3. Plaza Parcel.**

(a) The Plaza Parcel shall be leased to the City under the Parking Garage Lease. The boundaries of the Plaza Parcel are shown on the Plaza Parcel Plan.

(b) The Plaza Parcel Improvements shall be constructed as part of the Construction of the Delegated Public Project Elements as partial consideration for the restrictive covenant to be recorded by the Developer, as set forth in Section 6.3(c).

(c) Once fully constructed, the Plaza Parcel shall be used, maintained and operated in accordance with the Plaza Parcel public access principles as set forth in Exhibit 6.3(c) attached hereto. Further, the Developer (or other property owner of such parcel) shall record a restrictive covenant running with the land restricting the Plaza Parcel as set forth in Exhibit 6.3(c) at the time that Plaza Parcel is no longer subject to the provisions of the Parking Garage Lease.

**6.4. Transfer of Ramp Parcel.** In partial consideration for and simultaneously with, the transfer of the Vacuum Cleaner Parcel and execution and delivery of the Termination of Ramp and Tunnel Agreements, the City shall convey or release to the Developer all of the City's rights in the Ramp Parcel. The Developer agrees that the City is not making and has not made any warranties or representations of any kind or character, express or implied, with respect to the title or physical condition of the Ramp Parcel, or any improvements thereon, of its suitability for any use or fitness for any particular purpose, including, without limitation, any warranties or representations as to (a) the compliance of the Ramp Parcel in its current or any future state with any Applicable Law, or (b) the release, threat of release, or presence of any oil or hazardous materials on the Ramp Parcel, as those terms are defined in Massachusetts General Laws, Chapter 21E. Further, the Developer acknowledges that any discontinuance of a public way or portion thereof over the Ramp Parcel shall require City Council approval. The Developer acknowledges that the City's planned modification to Worcester Center Boulevard may affect the boundary of the Ramp Parcel, and the boundaries of the Ramp Parcel may need to be adjusted once the modification plans are finalized. Thus, the City shall reserve in the

conveyance or release of the Ramp Parcel an easement for street and sidewalk purposes the exact location of which shall be later determined when Worcester Center Boulevard is modified. The Developer agrees not to contest or make demand for any payment for any taking by eminent domain by the City of any portion of the Ramp Parcel as a result of the modifications to Worcester Center Boulevard, provided, that the taking is consistent with the Approved Site Plan.

**6.5. Sidewalk Easement Agreement.** Simultaneously with the Developer's receipt from the City of payment in full of the First Disbursement, and in partial consideration thereof, the Developer and the City shall execute and deliver the Sidewalk Easement Agreement. The Sidewalk Easement Agreement shall be superior to all mortgages thereafter granted on any portion of the Project Property, except for mortgages encumbering the Office Building Parcels, and existing mortgages on Parcels C&D. Upon completion of the buildings to be constructed on the Project Property, the boundaries of the Sidewalk Easement shall be adjusted to cover only the portions of the Project Property located between the exterior walls of each building on the Project Property and the nearest public street or sidewalk layout line taken by the City pursuant to the Order of Taking. If this Agreement is terminated pursuant to the provisions of Section 4.18, the Sidewalk Easement Agreement shall terminate and the City shall promptly execute and deliver releases of such easements, and any other documents reasonably requested by the Developer, in recordable form.

**6.6. Tax Increment Financing for Parcels H, J & E.** The City shall approve Tax Increment Financing Plans for the commercial uses of Buildings H, J and E on such terms and conditions as may be acceptable to the City. Any TIF for Parcel E shall provide that at least fifty percent (50%) of the rentable space in Building E shall be for entertainment use.

**6.7. Property Information.** The Developer has made available to the City all written information in its possession with respect to title, survey, physical and environmental condition of the Vacuum Cleaner Parcel, the Plaza Parcel and the other portions of the Invested Revenue District where the Delegated Public Project Elements will be located; however, the City agrees that the Developer is not making and has not made any warranties or representations of any kind or character, express or implied, with respect to the title (except for any covenants of title set forth in any instrument of conveyance) or physical condition of such property, or any improvements thereon, or its suitability for any use or fitness for any particular purpose, including without limitation, any warranties or representations as to (i) the compliance of the property in its current or any future state with any Applicable Laws, or (ii) the release, threat of release, or presence of any oil or hazardous materials on such property, as those terms are defined in Massachusetts General Laws, Chapter 21E.

**ARTICLE 7  
REPRESENTATIONS, WARRANTIES, INDEMNIFICATIONS AND CERTAIN  
COVENANTS**

**7.1. Representations and Warranties of the Developer.** The Developer represents and warrants to the City as to itself, and not jointly, as follows:

(a) It is a limited liability company duly organized and validly existing and in good standing under the laws of the State of Delaware and has the right, power and authority to enter into and perform this Agreement. This Agreement has been duly authorized by it and constitutes the valid and binding obligation of it, enforceable in accordance with its terms;

(b) The execution and delivery of this Agreement by it and the performance and observance of its terms and conditions will not (i) violate any provision of its Certificate of Organization or its Operating Agreement or Applicable Laws; nor (ii) conflict with, result in the

breach of or constitute a default under Applicable Laws or any other agreements, instruments, judgments, decrees or orders to which it is a party or by which it is bound;

(c) To its knowledge, no consents of third parties are required that could affect the enforceability of this Agreement against it or impair its power and authority to enter into or perform under this Agreement;

(d) To its knowledge, no order, permission, consent, approval, license, authorization, registration or filing by or with any governmental authority having jurisdiction over it, its activities or the Property is required for the execution, delivery or performance by it of this Agreement;

(e) To its knowledge, but without having made a docket search in any jurisdiction, there is no litigation or administrative proceeding pending or anticipated that would in any way affect its ability to carry out its obligations under this Agreement;

(f) To its knowledge, neither it, nor its representatives or agents (including any principal) has given, offered or agreed to give any person who is an agent, representative or consultant of, employed by, or an officer or elected or appointed official of, the City, any gift, contribution or offer of employment as an inducement for, or in connection with, this Agreement;

(g) To its knowledge, no fees, commission or compensation of any kind has been paid, either directly or indirectly, by or on behalf of it or any of its principals to any person who is an agent, representative or consultant of, employed by, or an officer or elected or appointed

official of, the City, in connection with this Agreement, and no agreement to make any such payment has been made or will be made by or on behalf of the Developer;

(h) To its knowledge, no person or entity who is an agent, representative or consultant of, employed by, or an officer or elected or appointed official of, the City, has any direct or indirect ownership interest in it or any of its Affiliates;

(i) To its knowledge, it has sufficient financial resources of its own or reasonably expects to have such resources available to it to carry out its obligations under this Agreement;  
and

(j) To its knowledge, after inquiry, it is the current owner of all of the property in the Invested Revenue District, except for Worcester Center Boulevard, the Office Building Parcels and Parcels C&D.

Worcester Renaissance Towers represents and warrants to the City as to itself, and not jointly, as to the provisions of Sections 2.6, 6.1, 7.1(k) through 7.1(n), 7.7, 7.8 and 9.22 only, as follows:

(k) It is a limited liability company duly organized and validly existing and in good standing under the laws of the State of Delaware and has the right, power and authority to enter into and perform this Agreement. This Agreement has been duly authorized by it and constitutes the valid and binding obligation of it, enforceable in accordance with its terms.

(l) The execution and delivery of this Agreement by it and the performance and observance of its terms and conditions will not (i) violate any provision of its Certificate of Organization or its Operating Agreement or Applicable Laws; nor (ii) conflict with, result in the

breach of or constitute a default under Applicable Laws or any other agreements, instruments, judgments, decrees or orders to which it is a party or by which it is bound.

(m) To its knowledge, no consents of third parties are required that could affect the enforceability of this Agreement against it or impair its power and authority to enter into or perform under this Agreement.

(n) To its knowledge, after inquiry, it is the current owner of the Office Building Parcels.

Worcester Renaissance C&D represents and warrants to the City as to itself, and not jointly, as to the provisions of Sections 2.6, 2.7, 6.1, 7.1(o) through 7.1(r), 7.7, 7.8 and 9.22 only as follows:

(o) It is a limited liability company duly organized and validly existing and in good standing under the laws of the State of Delaware and has the right, power and authority to enter into and perform this Agreement. This Agreement has been duly authorized by it and constitutes the valid and binding obligation of it, enforceable in accordance with its terms.

(p) The execution and delivery of this Agreement by it and the performance and observance of its terms and conditions will not (i) violate any provision of its Certificate of Organization or its Operating Agreement or Applicable Laws; nor (ii) conflict with, result in the breach of or constitute a default under Applicable Laws or any other agreements, instruments, judgments, decrees or orders to which it is a party or by which it is bound.

(q) To its knowledge, no consents of third parties are required that could affect the enforceability of this Agreement against it or impair its power and authority to enter into or perform under this Agreement.

(r) To its knowledge, after inquiry, it is the current owner of Parcels C&D.

**7.2. Representations and Warranties of the City.** The City represents and warrants to the Developer as follows:

(a) The City has the full right, power and authority to enter into and perform this Agreement in accordance with its terms. This Agreement has been duly authorized by the City in accordance with the requirements of the Worcester City Charter and all Applicable Laws and constitutes the valid and binding obligation of the City, enforceable in accordance with its terms.

(b) The execution and delivery of this Agreement by the City and the performance and observance of its terms and conditions will not (a) violate any provision of the Worcester City Charter or any Applicable Laws nor (b) conflict with, result in the breach of nor constitute a default under any Applicable Laws or any other agreements, instruments, judgments, decrees or orders to which the City is a party or by which it is bound.

(c) The City has the capacity to issue the DIF Bonds in the aggregate amount of \$89,085.00 and to the best of its knowledge, after inquiry, there are no facts either presently existing or with the passage of time that would prevent the City from issuing and/or selling the DIF Bonds. The City has taken all actions necessary to authorize and complete the issuance and sale of the DIF Bonds and no additional consents, approval or authorizations from any Governmental Authority or other third party are necessary in order for the City to issue and sell the DIF Bonds.

(d) The City and the Construction Program Manager are able to perform all of their respective obligations pursuant to this Agreement within the time limits set forth herein, including, but not limited to, reviewing and approving all plans and documents required to be submitted by the Developer and all Applications for Payment.

**7.3. Indemnification by the Developer.** The Developer shall defend, indemnify and hold harmless the City and its officials, officers, employees, agents, contractors (including the Construction Program Manager), subcontractors and representatives (and their respective partners, shareholders, officers, managers, members, employees, agents or representatives) from and against all claims, actions, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including reasonable attorneys' fees, reasonable experts' fees and associated court costs) which arise from or relate in any way to any negligent act or omission by the Developer, and its officers, employees, contractors, subcontractors, agents or representatives undertaken in fulfillment of the Developer's obligations under this Agreement (including but not limited to the falsity of any representation or warranty in Section 7.1 related to the validity or enforceability of this Agreement); provided however that the provisions of this Section 7.3 and Section 7.7 shall not apply to loss, damage or claims which are attributable to the gross negligence or willful misconduct of the City or its officials, officers, employees, agents, contractors, subcontractors or representatives. The foregoing indemnity obligations of the Developer shall survive the expiration or termination of this Agreement for a period equal to the applicable statute of limitations period.

**7.4. Indemnification by the City.** The City shall defend, indemnify and hold harmless Developer and its partners, shareholders, officers, managers, members, employees, agents, contractors, subcontractors and representatives (and their respective partners, shareholders,

officers, managers, members, employees, agents or representatives) from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities and suits (including attorneys' and experts' fees and associated court costs) which arise from or which relate in any way to any negligent act or omission on the part of the City, its officials, officers, employees, agents, or contractors, undertaken in fulfillment of the City's obligations under this Agreement (including but not limited to the falsity of any representation or warranty of the City in Article 7.2 relating to the validity or enforceability of this Agreement); provided, however, that the provisions of this Section 7.4 shall not apply to loss or damage or claims which are attributable to gross negligence or willful misconduct of the Developer and its partners, shareholders, officers, managers, members, employees, agents, contractors, subcontractors or representatives. The foregoing indemnity obligations of the City shall survive the expiration or termination of this Agreement for a period equal to the applicable statute of limitations period.

**7.5. Sovereign Immunity.** Nothing in this Agreement shall be construed as a waiver by the City of governmental sovereign immunity.

**7.6. Change in Zoning.** If during the term of this Agreement, the City shall enact any moratorium, ordinance, resolution or other land use rule or regulation that causes a material adverse effect on (a) the rate, timing or sequencing of the Construction of the Project or (b) the use of the Project or any portion thereof, or which (c) converts an existing or proposed use permitted by right to use not permitted by right, renders any existing or proposed use or structure non-conforming, materially increases any parking or loading requirements or materially changes any dimensional, setback or similar requirements, then the Developer, upon written notice to the City within thirty (30) days of becoming aware of the enactment of such moratorium, ordinance,

resolution or other land use rule or regulation shall be excused or relieved from any of its development obligations under this Agreement which are so materially adversely affected.

**7.7. Representations and Covenants Regarding the Project Property and Ownership.**

Renaissance, Worcester Renaissance Towers, and Worcester Renaissance C&D, severally, but not jointly, represent and warrant to the City that they are owned by Affiliates of Berkeley and Starwood and that to their knowledge, after inquiry, they collectively own one hundred percent (100%) of the land comprising the Project Property (except for the land that is within the layout of Worcester Center Boulevard). Subject to certain exceptions set forth below in this Section 7.7, the Developer covenants and agrees that Berkeley shall retain an economic interest, either directly or indirectly in the Project Property (except for Worcester Center Boulevard) until Final Completion of all of the Delegated Public Project Elements and completion of the Private Project Elements in Phase 1. Further, the Developer covenants and agrees that Young K. Park shall continue as a controlling partner in Berkeley until Final Completion of all of the Delegated Public Project Elements and completion of the Private Project Elements in Phase 1, subject only to his death or mental or physical incapacity. The disposition of Parcel J pursuant to a build to suit agreement and the possible disposition of Parcel K for senior housing are permitted and the restrictions set forth in this Section 7.7 shall not apply with regard to either Parcel J or Parcel K, as the case may be, following the disposition of such Parcel, provided that in the case of Parcel K, the construction of such senior housing occurs within a reasonable period of time after such disposition, considering all of the circumstances related to such construction. Upon thirty (30) days of notice from the Developer and subject to the City's prior reasonable approval, Starwood may be replaced as an equity investor in the Project with an entity that has reasonable experience and sufficient (but not necessarily equivalent) capital to support the Project.

**7.8. Use Restrictions; Subordination.** The Developer, Worcester Renaissance Towers, and Worcester Renaissance C&D, severally, but not jointly, agree that the Use Restrictions are hereby imposed on each parcel of land and the improvements thereon comprising the Project Property (excluding only Worcester Center Boulevard). The Use Restrictions shall be (a) specifically enforceable by the City and/or the Developer, (b) made a matter of record and run with and burden the title to the land in the Invested Revenue District, and (c) superior to any mortgage financing or other form of conveyance of any interest in the land in the Invested Revenue District, all of which mortgages and interests shall be expressly subordinate to the Use Restrictions (except only any present and future mortgages of the Office Buildings Parcels and the existing mortgages of Parcels C&D, but shall be superior to any refinanced mortgages on Parcels C&D). The Use Restrictions shall remain in effect for a period of thirty (30) years from the date that they are recorded at the Registry; provided, however, that if this Agreement shall terminate for any reason, prior to the Commencement of the Construction of the Parking Garage, including an Event of Default by the Developer, then upon the termination of this Agreement, the Use Restrictions shall terminate in their entirety and no longer be of any force or effect. The Developer and the City will cooperate to seek any amendments to the DIF Approval or the Development Program that might be necessary to terminate the Use Restrictions as provided herein. If this Agreement shall terminate for any reason after the Commencement of the Construction of the Parking Garage, the Use Restrictions shall remain in full force and effect, subject to the provisions of Section 4.18.

Except for (i) the Office Buildings Parcels, (ii) Parcels C&D until the existing mortgages are refinanced, and (iii) any portion of the Private Project Elements for which a Certificate of Occupancy for the core and shell has been issued, the Parties and the other owners of land in the

Invested Revenue District shall obtain from each Interested Party a written subordination of its mortgage to the Use Restrictions. Notwithstanding the foregoing, no portion of Phase 2 or Phase 3 that has been transferred to a third party in compliance with Section 7.7 shall be subject to the provisions of this Section 7.8.

**7.9. Letter of Credit Provisions.**

(a) The Developer shall have the right at any time to replace any cash in the Contingency Amount - Developer with a Letter of Credit.

(b) If, at any time, the issuer of a Letter of Credit gives notice of its election not to renew, extend and/or reissue the Letter of Credit, then the Developer shall, on or before ten (10) business days prior to the expiration of the term of the Letter of Credit, deliver to the City (1) a replacement Letter of Credit satisfying all of the above conditions or (2) cash in the full amount of the expiring Letter of Credit; and if the Developer fails to timely deliver to the City a replacement Letter of Credit, such failure shall constitute an Event of Default of the Developer, and the City may draw on the Letter of Credit and use or hold the proceeds of such drawing as the Contingency Amount - Developer. If (x) the City shall reasonably determine that there has been a material adverse change in the creditworthiness of the bank issuing the Letter of Credit and the Developer shall fail, within thirty (30) days after notice, to either provide a replacement Letter of Credit as required above or cash in the full amount of the existing Letter of Credit, or (y) the Developer fails to provide the City with a replacement Letter of Credit as required above or cash in the full amount of the Letter of Credit within thirty (30) days after notice to the Developer that (I) any proceedings under the United States Bankruptcy Code, or under any receivership or insolvency laws are instituted with the issuer of the Letter of Credit as debtor or (II) the bank issuing the Letter of Credit is taken over by the Federal Deposit Insurance

Corporation, the Resolution Trust Corporation or a similar entity, then such failure by the Developer under clauses (x) or (y) of this sentence shall constitute an Event of Default of the Developer and, upon the expiration of sixty (60) days after such notice, the City may draw on the Letter of Credit and use or hold the proceeds of such drawing as part of the Contingency Amount - Developer.

## **ARTICLE 8 EVENTS OF DEFAULT; REMEDIES**

**8.1. Event of Default by Developer.** An Event of Default by the Developer under this Agreement means one or more of the following events:

(a) Any representation or warranty made in this Agreement by the Developer or its Affiliates was materially inaccurate when made or shall prove to be materially inaccurate during the term of this Agreement; or

(b) The Developer fails to maintain or cause to be maintained any insurance or the bonds required under this Agreement; or

(c) The Developer fails to achieve Final Completion of the Parking Garage and the Sitework within the time periods to be established by the Developer and the City pursuant to Section 2.5, subject to extensions for Force Majeure or as provided in Section 8.1(e); or

(d) The Developer fails to achieve Final Completion of the Trigger Buildings within the time periods to be established by the Developer and the City pursuant to Section 2.5, which time periods shall include extensions of up to one (1) year for each building, and subject to extensions for Force Majeure and as provided in Section 8.1(e). Notwithstanding any provision of this Agreement to the contrary, an Event of Default by the Developer with regard to any of its

obligations under this Agreement with regard to any of the Private Project Elements shall not include any act or omission by the Developer due to any default, insolvency, bankruptcy or failure to perform by any existing, future or potential tenant, occupant, buyer or lender for either or both of the Trigger Buildings, any of the other Private Project Elements in Phase I, or Building J; or

(e) The Developer fails to observe or perform any covenant, condition, obligation or agreement (other than that referred to in Section 8.1(b)) required of it under this Agreement and fails to cure, correct or remedy the failure within thirty (30) days after written notice of such failure, or in the case of a failure which cannot with due diligence reasonably be cured within such thirty (30) day period, the Developer fails to proceed within such thirty (30) day period to cure such failure and thereafter to prosecute the curing of such failure with diligence (it being intended in connection with a failure not susceptible of being cured with due diligence within such thirty (30) day period that the time within which to cure the same shall be extended for such period as may be necessary to complete the same with all diligence, but not beyond two (2) years); or

(f) If the Developer shall make an assignment for the benefit of creditors; or if the Developer shall file a voluntary petition in bankruptcy or shall be adjudicated bankrupt or insolvent, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy act or any other present or future applicable federal, state or other statute or law, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of the Developer or of all or any substantial part of its properties or of any interest of the Developer under this Agreement or in the Project.

**8.2. Event of Default by City.** An Event of Default by the City under this Agreement means one or more of the following events:

(a) Any representation or warranty made in this Agreement by the City was materially inaccurate when made or shall prove to be materially inaccurate during the term of this Agreement; or

(b) The City, either directly or through the Construction Program Manager, fails to respond to any items or pay any amounts when due hereunder, or to observe or perform any other covenant, obligation or agreement required of it under this Agreement and fails to cure, correct or remedy the failure (i) in the event of non-payment, within seven (7) days after written notice of such failure in accordance with Section 4.16, and (ii) failure to respond to plans and Change Orders within the time periods specified in Sections 3.5 and 3.6, and (iii) within thirty (30) days in all other cases.

**8.3. Negotiation and Mediation.** Upon the occurrence of an Event of Default by the Developer or the City, the defaulting Party shall, upon written notice from the non-defaulting Party, proceed with negotiation as provided in Section 4.17(a), and, if the Parties are unable to reach agreement during negotiation, they may proceed with mediation as set forth in Section 4.17(b), subject to the provisions set forth therein.

**8.4. Remedies.** Subject to the provisions of Section 4.17, whenever any Event of Default occurs and is not cured in accordance with Section 8.2 of this Agreement, the non-defaulting Party may take any of one or more of the following actions:

(a) Recover damages payable in accordance with the provisions of this Section 8.4;

(b) Seek specific performance of the defaulting Party's full and faithful performance of its obligations under this Agreement;

(c) Terminate this Agreement by written notice to the defaulting Party, provided, however, that the City's obligation to make payments for any of the Delegated Public Project Elements that have, as of the date of the termination, been undertaken or completed pursuant to the provisions of this Agreement, shall survive such termination;

(d) Any and all other remedies (legal, equitable or otherwise) to which the non-defaulting Party may be entitled under this Agreement, at law, in equity or otherwise, including, without limitation, an action in the nature of mandamus or certiorari, an action for injunctive relief, or any similar or equivalent action.

**8.5. Delivery of Records and Assignment of Contracts on Termination.** In the event of the termination of this Agreement including following an Event of Default by the Developer or upon Final Completion of all Delegated Public Project Elements, the Developer shall promptly deliver all material books, records, plans and all other material written materials related to the Construction of the Delegated Public Project Elements to the City. At the request of the City, the Developer shall also assign or caused to be assigned to the City (a) any contracts for the Delegated Public Project Elements entered into by the Developer in its name or in the name of an Affiliate and (b) all license rights held by the Developer in any of the Design Development Plans for the Delegated Public Project Elements in whatever stage such Plans are in as of the date of such termination, provided that the City has paid for all work under such contracts and on such Plans through the date of termination, as well as all reasonable and customary close out costs

charged by the Developer's Consultants. Notwithstanding the foregoing, the City shall not be required to pay any termination fees to any of the Developer's Consultants.

**8.6. Delays; Waivers.** Except as otherwise expressly provided in this Agreement, any delay by the Developer or the City in asserting any right or remedy under this Agreement shall not operate as a waiver of any such rights or limit such rights in any way; and any waiver in fact made by such Party with respect to any Event of Default by the other Party shall not be considered as a waiver of rights with respect to any other Event of Default by the non-defaulting Party or with respect to the particular Event of Default except to the extent specifically waived in writing. It is the intent of the Parties that this provision will enable each Party to avoid the risk of being limited in the exercise of any right or remedy provided in this Agreement by waiver, laches or otherwise.

**8.7. Rights and Remedies Cumulative.** The rights and remedies of the Developer and the City are cumulative, and the exercise by either Party of any one or more of such rights shall not preclude the exercise by it, at the same or different times, of any other right or remedy for any other Event of Default by the other Party.

**8.8. Rights of Lenders.** The City is aware that financing for the Private Project Elements may be provided, in whole or in part and from time to time, by one or more Lenders. In the event of an Event of Default by the Developer, the City shall provide notice of such Event of Default, at the same time notice is provided to the Developer, to any Lender previously identified to the City. If a Lender is permitted, under the terms of its agreement with the Developer, to cure the Event of Default and/or to assume the Developer's position with respect to this Agreement, the City agrees to recognize such rights of Lender and to otherwise permit such Lender to assume all of the rights and obligations of the Developer under this Agreement. The City shall,

at any time upon reasonable request by the Developer, provide to any Lender an Estoppel Certificate as defined in Section 9.16. Upon request by a Lender, the City shall enter into a separate assumption or similar agreement with such Lender, consistent with the provisions of this Section 8.8.

**8.9. Jurisdiction.** The Parties hereby consent and submit to the jurisdiction of the courts of the Commonwealth or federal courts located in the Commonwealth for all purposes in connection with the resolution of controversies or disputes hereunder. The Parties irrevocably consent to the service of process or notice of motion or other application to any of the aforementioned courts, and any papers in connection with any proceedings before any of such courts, by the mailing of copies thereof by certified or registered mail, postage prepaid.

## **ARTICLE 9 MISCELLANEOUS**

**9.1. Use of Words and Phrases.** Use of the singular shall include the plural and use of the plural shall include the singular, as appropriate. Where this Agreement requires the performance of obligations, such performance, unless otherwise stated, may be performed by the Party or any contractor or agent on its behalf.

**9.2. Construction.** The terms and provisions of this Agreement represent the results of negotiations between the Parties, each of which has been or has had the opportunity to be represented by counsel of its own choosing and neither of which has acted under any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings, and the Parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this Agreement that ambiguous or conflicting terms or provisions contained in this Agreement shall be

interpreted or construed against the Party whose attorney prepared the executed Agreement or any earlier draft of the same.

**9.3. Definitions.** Capitalized terms in this Agreement have the meanings ascribed in Exhibit C. All other terms have common meanings unless they are terms of art used in the proper context.

**9.4. Time of the Essence.** Time is of the essence of this Agreement and each provision hereof. All time periods set forth in this Agreement shall be measured in calendar days unless otherwise indicated.

**9.5. Good Faith of Parties and Cooperation.** Except for any matter as expressly stated to be in the sole discretion of a Party, in the performance of this Agreement, the Parties agree that each shall act in good faith and shall not act unreasonably, arbitrarily or capriciously, nor unreasonably withhold or delay any approval required by this Agreement. The Developer and the City shall cooperate fully in all matters relating to the Project and shall promptly respond to all requests for information by the other, including furnishing all documents and services relating thereto reasonably required by the other in connection with the Delegated Public Project Elements. The Developer shall promptly respond to all reasonable requests for information necessary or appropriate to enable the Construction Program Manager to perform its duties hereunder.

**9.6. Force Majeure** Whether stated or not, all periods of time in this Agreement are subject to this Section 9.6. Neither the City nor the Developer, as the case may be, shall be considered in default of its obligations under this Agreement in the event of enforced delay due to (a) causes beyond its control and without its fault or negligence, including, but not restricted to, acts of God, acts of public enemy, acts of the federal, state or local government, acts of the other Party, acts of

third parties, litigation concerning the validity and enforceability of this Agreement or relating to transactions contemplated hereby (including the effect of petitions for initiative or referendum), fires, floods, epidemics, quarantine, restrictions, strikes, embargoes, labor disputes, and unusually severe weather or the delays of the Contractor, subcontractors or materialmen due to such causes, nuclear radiation, acts of a public enemy, war, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), declaration of national emergency, insurrection, riot, labor strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain, condemnation, or other taking by the action of any Governmental Authority on behalf of any public, quasi-public, or private entity, or declaration of moratorium or similar hiatus directly affecting any portion of the Project Property (whether permanent or temporary) by any public, quasi-public or private entity except as contemplated by this Agreement; (b) the order, judgment, action, or determination of any court, administrative agency, Governmental Authority or other governmental body (collectively, an "Order") which adversely affects the construction or completion of the Project (except for actions of the City specifically permitted under this Agreement), or the suspension, termination, interruption, denial, or failure of renewal (collectively, a "Failure") of issuance of any permit, license, consent, authorization, or approval necessary to the construction or completion of the Project, unless it is shown that such Order or Failure is the result of the grossly negligent, willful or intentional action or inaction of the Party claiming the delay or is the result of the grossly negligent or willful violation of Applicable Laws; provided, however, that the contesting in good faith of any such Order or Failure shall not constitute or be construed or deemed as a waiver by a Party of Force Majeure; (c) the denial of an application, failure to issue, or suspension, termination, delay or interruption (collectively, a "Denial") in the issuance or renewal of any permit, approval or

consent required or necessary in connection with the construction or completion of the Project, if such Denial is not also the result of a grossly negligent act or omission or willful violation by the Party; provided that the contesting in good faith or the failure in good faith to contest any such Denial shall not constitute or be construed or deemed as such a wrongful or grossly negligent act or omission on the part of the Party; (d) the failure of any Contractor, subcontractor or supplier to furnish services, materials or equipment in connection with the Construction of the Project if such failure is caused by Force Majeure as defined herein, if and to the extent, and only so long as the Party claiming the delay is not reasonably able, after using commercially reasonable efforts, to obtain substitute services, materials or equipment of comparable quality and cost; (e) without limiting the foregoing, but only with respect to excusing the Developer's performance hereunder, any action or inaction of the City, its elected officials, officers, agents (including, but not limited to, the Construction Program Manager), agencies, departments, committees or commissioners which action is reasonably required by Applicable Laws and which unreasonably delays the Developer's ability to comply with any construction schedule or requirement set forth by this Agreement; and (f) bankruptcy, insolvency or similar action, or any foreclosure or other exercise of remedies of any Lender, with respect to any Contractor, subcontractor or supplier of the Developer (collectively, "Force Majeure"). In the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the Party claiming delay shall be extended for a period of the enforced delay; provided that the Party seeking the benefit of the provisions of this Section shall, within ten (10) days after such Party knows of any such enforced delay, first notify the other Parties of the specific delay in writing and claim the right to an extension for the period of the enforced delay; provided, however, that either Party's failure to notify the other Party of an event constituting an enforced delay shall not alter, detract from or

negate its character as an enforced delay if such event of enforced delay was not known or reasonably discoverable by such Party. Notwithstanding anything to the contrary in this Agreement, no Force Majeure event shall excuse performance by the Developer or be considered to continue in effect for more than two (2) years with respect to any such particular Force Majeure event or three (3) in the aggregate for all Force Majeure events. Therefore, should a Force Majeure event or events occur, the delay in the construction or completion of the Project shall be excused for no more than a maximum of two (2) years for any individual event and a maximum of three (3) years in the aggregate and thereafter any further delay shall not be excused and shall be the responsibility of the Party failing to perform. Notwithstanding any provision of this Agreement to the contrary, Force Majeure shall not apply to the Developer's obligations to fund Debt Service Shortfall pursuant to Section 4.7 or Revenue Target Shortfall LOC pursuant to Section 4.8.

**9.7. Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable, in whole or in part under present or future Applicable Laws, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by the severance of such provision from this Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as part of this Agreement, a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and still be legal, valid and enforceable and this Agreement shall be deemed reformed accordingly. Without limiting the generality of the foregoing, if all or any portion of the payments required to be made by the City pursuant to

the terms of this Agreement are determined by a court of competent jurisdiction to be contrary to public policy or otherwise precluded, the Developer and the City shall utilize their best efforts to promptly restructure and/or amend this Agreement, or to enter into a new agreement, which shall reflect the City's agreement to pay for the Construction of the Delegated Public Project Elements to the extent and limited as provided herein.

In the event this Agreement is declared to illegal, invalid or unenforceable, in whole or in part, the Developer shall retain all of its rights, at law or in equity, to seek recovery of all monies expended by it in connection with the Construction of the Delegated Public Project Elements or the Private Project Elements under theories of quantum merit, restitution, quasi-contract, or any similar or other theory of recovery, and nothing in this Agreement shall be construed to limit, waive or restrict in any manner such rights of the Developer.

**9.8. Successors and Assigns.** Except as otherwise specifically set forth herein, all the easements, rights, covenants, agreements, reservations, restrictions and conditions herein contained touch and concern the real estate and shall run with the fee interest in the Project Property and shall inure to and be binding upon the Parties and each subsequent holder of the fee interest in any portion of the Project Property and their respective successors, successors in title, assigns and mortgagees, with the same force and effect for all purposes as though set forth at length in each and every assignment of any such fee interest in any portion of the Project Property or any part thereof. "Assigns" may include Lenders, tenants, holders of easements and ground lessees. Reference in any assignment, or in any mortgage or other evidence of obligation, to the rights and covenants herein described shall be sufficient to create and reserve such rights and covenants to the respective assignees or mortgagees of such fee interest as fully and completely as though said rights and covenants were fully recited and set forth in their entirety in

any such document. Notwithstanding the forgoing, Developer may not assign, transfer or delegate (by sale, assignment, pledge, license or otherwise) any of its obligations to Construct the Delegated Public Project Elements except (a) to an Affiliate of the Developer that is a landowner of land in the Invested Revenue District then with written notice to the City, or (b) with the prior written consent of the City. Any transfer of Developer's obligations under this Agreement by operation of law, merger or consolidation of Developer into or with any other entity, or the sale of all or substantially all of Developer's assets, shall also constitute a transfer requiring the City's prior written consent. Any such transfer or delegation made without the City's consent shall be void and ineffective and shall constitute an Event of Default by Developer under this Agreement.

**9.9. Further Assurances.** At any time and from time to time, each Party hereto agrees, upon the written request of the other Party, to execute and, if required, acknowledge and record, all such amendments hereto or other documents as may be reasonably be required to effectuate the intents and purposes of this Agreement.

**9.10. No Partnership or Joint Venture.** Nothing contained in this Agreement shall be construed to create a partnership or joint venture between the City and the Developer, nor shall either Party be liable for any debts incurred by the other Party in the conduct of its business or affairs, nor shall either Party be deemed the agent or representative of the other Party for any purpose or in any manner under this Agreement and the Developer in undertaking the Delegated Public Project Elements is acting as an independent contractor.

**9.11. Notice.** Any notice required or permitted to be given, delivered or served under this Agreement shall be in writing and shall be given by (a) personal delivery with return receipt, (b) by deposit in the United States mail, certified or registered, return receipt requested, postage

prepaid ("Mail"), addressed to the Parties at the addresses set forth below, or at such other address as a Party may designate from time to time in writing pursuant to the terms of this Section, or (c) any Courier, and addressed:

- (a) in the case of a notice or communication to the Developer, as follows

Worcester Renaissance LLC  
c/o Berkeley Investments, Inc.  
121 High Street  
Boston, MA 02110  
Attn: Young K. Park

With a copy to:

Robert E. Longden, Esquire  
Bowditch & Dewey, LLP  
311 Main Street  
P.O. Box 15156  
Worcester, MA 01615-1056

- (b) in the case of a notice or communication to the City, as follows:

City Manager  
City Hall  
455 Main Street  
Worcester, MA 01608

With a copy to:

City Solicitor  
City Hall

455 Main Street

Worcester, MA 01608

or to such other agent or agents, as the case may be, designated by the Parties.

Notice shall be deemed to have been given on the date on which notice is delivered to its intended recipient if notice is given by personal delivery or courier and on the date of delivery or the date upon which delivery was refused as indicated on the registered or certified mail return receipt.

**9.12. Section Headings.** The Section (and subsection) headings contained in this Agreement are for convenience and reference only and are not intended to define or limit the scope of any provision of this Agreement.

**9.13. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all such counterparts shall constitute one and the same agreement, binding on the Parties.

**9.14. Amendment.** No change or addition is to be made to this Agreement except by written amendment executed by the City and the Developer. However, either Party may, by written notice signed by such Party, waive or release its rights hereunder.

**9.15. Governing Law.** This Agreement shall be governed by and construed in accordance with, the laws of the Commonwealth without reference to conflict of laws principles.

**9.16. Estoppel Certificates.** The City and the Developer shall, without charge, at any time and from time to time, within fifteen (15) days after request by the other Party, certify by written instrument, duly executed, acknowledged and delivered to the Party making such request, or to any other person or entity specified by such Party: (a) that this Agreement is unmodified and in full force and effect, or if there have been any modifications, that the same is in full force and effect as modified and identifying the modifications, and (b) to such Party's knowledge whether

the other Party is in default under any provisions of this Agreement and if such default is known, the nature of such default.

**9.17. Non-liability of City Officials and Employees, Members and Partners of the Developer.** No elected official, officer, representative, agent, attorney or employee of the City, nor the Construction Program Manager, shall be personally liable to the Developer, its successors or assigns in the event of any default or breach by the City or for any amount which may become due to the Developer or its successors or assigns or with respect to any obligation of the City under the terms of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, unless otherwise expressly limited herein, the liability of the Developer under this Agreement shall not be extended to or enforceable against any of the individuals who are shareholders, members, managers, partners, officers, directors, employees, agents, attorneys or representatives of the Developer or any of the Developer's Affiliates (except for Affiliates who are land owners in the Project Property and only to the extent specifically provided for in this Agreement).

**9.18. Business Days.** If the last day of any time period stated in this Agreement or the date on which any obligation to be performed under this Agreement shall fall on a Saturday, Sunday or legal holiday, then the duration of such time period or the date of performance, as applicable shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday or legal holiday.

**9.19. Exhibits.** All Exhibits attached to this Agreement are incorporated into and made an integral part of this Agreement for all purposes by this reference.

**9.20. Integration.** Except as expressly provided herein, this Agreement (including the Exhibits attached hereto) constitutes the entire agreement between the Parties with respect to the

subject matter hereof and supersedes any prior agreement, understanding, negotiation or representation regarding the transactions contemplated by this Agreement.

**9.21. Compliance with Laws.** The City and the Developer shall, at all times, be subject to all Applicable Laws pertinent to this Agreement and the transactions contemplated hereby. In carrying out its obligations under this Agreement, the Developer shall comply with all Applicable Laws (including, without limitation thereto, the DIF statute).

**9.22. Binding Effect.** All of the covenants, conditions and obligations contained in this Agreement shall be binding upon, and inure to the Developer and the City and their respective successors and assigns, provided, however, that the provisions of Sections 2.6, 6.1, 7.1(k), 7.1(l), 7.1(m), 7.1(n), 7.7, and 7.8 only shall be binding upon and inure to Worcester Renaissance Towers, severally, but not jointly; and the provisions of Section 2.6, 2.7, 6.1, 7.1(o), 7.1(p), 7.1(q), 7.1(r), 7.7, and 7.8 only shall be binding upon and inure to Worcester Renaissance C&D, severally, but not jointly. Whenever the term "Party" or the name of any particular Party is used in this Agreement, such term shall include all such successors and assigns subject to the restriction on transfer or delegation of obligations of the Developer in Section 9.8 and subject to the covenants on ownership in Section 7.7.

**9.23. Inspector General.** Notwithstanding anything in this Agreement to the contrary, the City shall submit this Agreement and all proposed amendments hereto to the Office of the Inspector General of the Commonwealth for his review and comment and this Agreement and amendments hereto may not be signed or become effective until fifteen (15) days after such submission.

**9.24. Recording.** Except for the Use Restrictions, the Sidewalk Easement Agreement, the Truck Tunnel Service Entrance Easement Agreement, the Vertical and Horizontal Easement

Agreement, the covenant described in Exhibit 6.3(c), and a Notice of Lease for the Parking Garage Lease, the Parties acknowledge and agree that neither this Agreement, nor any notice or memorandum hereof shall be recorded in the Registry.

[SIGNATURE PAGE TO FOLLOW]

In witness whereof, the City and the Developer have executed this Agreement under seal  
as of the date first above written.

CITY OF WORCESTER

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved as to form:

OFFICE OF THE CITY SOLICITOR

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

WORCESTER RENAISSANCE LLC, a  
Delaware limited liability company

By:

Worcester Renaissance Holdings LLC, a  
Delaware limited liability company,  
its sole member

By: Berkeley Worcester MGR LLC, a  
Delaware limited liability company,  
a manager

By: Berkeley Investments, Inc., a  
Massachusetts corporation,  
its manager, and as development agent for  
Worcester Renaissance LLC

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

Name: Young K. Park

Title: President and  
Treasurer

Joinder

Worcester Renaissance Towers LLC and Worcester Renaissance C&D LLC hereby execute this Agreement for the limited purpose of agreeing to be bound, severally, but not jointly, by the applicable provisions of: for Worcester Renaissance Towers LLC, Sections 2.6, 6.1, 7.1(k), 7.1(l), 7.1(m), 7.1(n), 7.7, 7.8 and 9.22 only and by no other provisions of this Agreement; and for Worcester Renaissance C&D LLC, Sections 2.6, 2.7, 6.1, 7.1(o), 7.1(p), 7.1(q), 7.1(r), 7.7, 7.8 and 9.22 only and by no other provisions of this Agreement

Executed as a sealed instrument this \_\_\_\_ day of May, 2006.

WORCESTER RENAISSANCE TOWERS LLC

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

WORCESTER RENAISSANCE C&D LLC

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

**EXHIBIT A**

**Project Legal Description**

**(SEPARATE DOCUMENT)**

THE LAND IN SAID CITY AND COUNTY OF WORCESTER SHOWN AS PARCELS GA, C, A, GB, T, O, M, F1 AND F-2 ON A PLAN BY THOMPSON-LISTON ASSOCIATES, INC., CIVIL ENGINEERS-LAND SURVEYORS, AND ENTITLED "SUBDIVISION PLAN OF PROPERTIES IN WORCESTER, MASS. OWNED BY WORCESTER REDEVELOPMENT AUTHORITY AND TO BE TRANSFERRED TO WORCESTER CENTER ASSOCIATES WITH THE EXCEPTIONS OF PARCELS 5, 6 AND PARCELS LABELED W.R.A.", AND DATED OCTOBER 21, 1988, AND BEARING A MOST CURRENT REVISION DATE OF DECEMBER 3, 1989, WHICH SAID PLAN IS RECORDED IN PLAN BOOK 332, PLAN 101, WORCESTER DISTRICT REGISTRY OF DEEDS, AND

THE LAND IN SAID CITY AND COUNTY OF WORCESTER SHOWN AS PARCEL 6-A ON PLAN ENTITLED "LAND IN WORCESTER, MASSACHUSETTS, OWNED BY WORCESTER REDEVELOPMENT AUTHORITY" DATED APRIL 30, 1970, PREPARED BY RENEY BROTHERS, INC., REGISTERED ENGINEERS AND SURVEYORS, WORCESTER, MASSACHUSETTS, RECORDED IN PLAN BOOK 343, PLAN 69;

BOUNDED AND DESCRIBED AS FOLLOWS

BEGINNING AT A POINT AT THE SOUTHEASTERLY CORNER OF COMMERCIAL STREET AND THE NORTHERLY SIDE OF FRONT STREET AT A POINT; THENCE RUNNING

N 24° 39' 45" E A DISTANCE OF 251.39' FEET ALONG THE SIDELINE OF COMMERCIAL STREET TO A POINT OF CURVATURE; THENCE RUNNING

NORTHERLY ON A CURVE TO THE LEFT HAVING A RADIUS OF 828.00' FEET A LENGTH OF 148.84' FEET ALONG SAID SIDELINE TO A POINT OF TANGENCY; THENCE RUNNING

N 14° 30' 05" E A DISTANCE OF 182.25' FEET TO A POINT OF CURVATURE AT FOSTER STREET; THENCE RUNNING

NORTHERLY AND EASTERLY ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 12.00' FEET A LENGTH OF 20.12' FEET TO A POINT OF TANGENCY; THENCE RUNNING

S69° 26' 13" E A DISTANCE OF 295.03' FEET ALONG THE SIDELINE OF FOSTER STREET TO A POINT OF CURVATURE; THENCE RUNNING

SOUTHEASTERLY ON A CURVE TO THE RIGHT HAVING A RADIUS OF 856.00' FEET A LENGTH OF 17.51' FEET ALONG THE SIDELINE OF FOSTER STREET TO A POINT AT THE END OF FOSTER STREET AND THE BEGINNING OF WORCESTER CENTER BOULEVARD; THENCE CONTINUING

SOUTHEASTERLY ON A CURVE TO THE RIGHT HAVING A RADIUS OF 856.00' FEET A LENGTH OF 100.29' FEET ALONG THE SIDELINE OF WORCESTER CENTER BOULEVARD TO A POINT OF NON-TANGENCY; THENCE RUNNING

S 18° 15' 41" W A DISTANCE OF 12.19' FEET TO A POINT OF NON-TANGENCY; THENCE RUNNING

SOUTHEASTERLY ON A CURVE TO THE RIGHT HAVING A RADIUS OF 844.00' FEET A LENGTH OF 298.90' FEET ALONG THE SIDELINE OF SAID WORCESTER CENTER BOULEVARD TO A POINT OF COMPOUND CURVATURE; THENCE RUNNING

SOUTHEASTERLY ON A CURVE TO THE RIGHT HAVING A RADIUS OF 1444.00' FEET A LENGTH OF 109.43' FEET ALONG THE SIDELINE OF SAID WORCESTER CENTER BOULEVARD TO A POINT OF COMPOUND CURVATURE; THENCE RUNNING

SOUTHEASTERLY ON A CURVE TO THE RIGHT HAVING A RADIUS OF 500.00' FEET A LENGTH OF 41.81' FEET ALONG THE SIDELINE OF SAID WORCESTER CENTER BOULEVARD TO A POINT OF COMPOUND CURVATURE; THENCE RUNNING

SOUTHERLY ON A CURVE TO THE RIGHT HAVING A RADIUS OF 771.58' FEET A LENGTH OF 168.83' FEET ALONG THE SIDELINE OF SAID WORCESTER CENTER BOULEVARD TO A POINT OF TANGENCY; THENCE RUNNING

S 19° 29' 00" E A DISTANCE OF 54.95' FEET ALONG THE SIDELINE OF SAID WORCESTER CENTER BOULEVARD TO A POINT OF CURVATURE; THENCE RUNNING

SOUTHERLY ON A CURVE TO THE RIGHT HAVING A RADIUS OF 412.00' FEET A LENGTH OF 44.49' FEET ALONG THE SIDELINE OF SAID WORCESTER CENTER BOULEVARD TO A POINT OF NON-TANGENCY AT PARCEL G-1 NOW OR FORMERLY OF THE WORCESTER REDEVELOPMENT AUTHORITY; THENCE RUNNING

S 82° 21' 23" W A DISTANCE OF 8.83' FEET ALONG SAID AUTHORITY PARCEL TO A POINT OF NON-TANGENCY; THENCE RUNNING

SOUTHERLY ON A CURVE TO THE RIGHT HAVING A RADIUS OF 510.83' FEET A LENGTH OF 51.28' FEET ALONG SAID AUTHORITY PARCEL TO A POINT OF NON-TANGENCY; THENCE RUNNING

N 87° 30' 47" E A DISTANCE OF 1.72' FEET ALONG SAID AUTHORITY LAND TO A POINT OF CURVATURES; THENCE RUNNING

SOUTHEASTERLY ON A CURVE TO THE RIGHT HAVING A RADIUS OF 17.33' FEET A LENGTH OF 12.64' FEET TO A POINT OF NON-TANGENCY; THENCE RUNNING

SOUTHWESTERLY ON A CURVE TO THE RIGHT HAVING A RADIUS OF 412.00' FEET A LENGTH OF 339.62' FEET TO A POINT ON THE CURVE AT PARCEL G-2 NOW OR FORMERLY OF THE WORCESTER REDEVELOPMENT AUTHORITY; THENCE RUNNING

N 50° 20' 13" W A DISTANCE OF 4.86' FEET ALONG SAID AUTHORITY LAND TO A POINT OF NON-TANGENCY; THENCE RUNNING

SOUTHWESTERLY ON A CURVE TO THE RIGHT HAVING A RADIUS OF 510.83' FEET A LENGTH OF 27.04' FEET ALONG SAID PARCEL G-2 TO A POINT; THENCE RUNNING

S 50° 20' 13" E A DISTANCE OF 2.14' FEET ALONG SAID AUTHORITY LAND TO A POINT AT WORCESTER CENTER BOULEVARD; THENCE RUNNING

S 42° 08' 32" W A DISTANCE OF 50.13' FEET ALONG THE SIDELINE OF WORCESTER CENTER BOULEVARD TO A POINT OF CURVATURE; THENCE RUNNING

SOUTHWESTERLY ON A CURVE TO THE LEFT HAVING A RADIUS OF 308.00' FEET A LENGTH OF 81.16' FEET ALONG THE SIDELINE OF WORCESTER CENTER BOULEVARD TO A POINT OF TANGENCY; THENCE RUNNING

S 27° 02' 41" W A DISTANCE OF 35.55' FEET ALONG THE SIDELINE OF WORCESTER CENTER BOULEVARD TO A POINT OF CURVATURE; THENCE RUNNING

SOUTHWESTERLY ON A CURVE TO THE RIGHT HAVING A RADIUS OF 292.00' FEET A LENGTH OF 86.41' FEET ALONG THE SIDELINE OF WORCESTER CENTER BOULEVARD TO A POINT OF TANGENCY; THENCE RUNNING

S 44° 00' 00" W A DISTANCE OF 137.89' FEET ALONG WORCESTER CENTER BOULEVARD TO ITS END AT A POINT OF CURVATURE AT FRANKLIN STREET; THENCE RUNNING

SOUTHWESTERLY, WESTERLY AND NORTHWESTERLY ON A CURVE TO THE RIGHT HAVING A RADIUS OF 86.68' FEET A LENGTH OF 114.47' FEET ALONG THE SIDELINE OF FRANKLIN STREET TO A POINT OF TANGENCY; THENCE RUNNING

N60° 20' 22" W A DISTANCE OF 140.07' FEET ALONG THE SIDELINE OF FRANKLIN STREET TO AN ANGLE POINT; THENCE RUNNING

N 55° 04' 42" W A DISTANCE OF 84.88' FEET ALONG THE SIDELINE OF FRANKLIN STREET TO A CORNER POINT AT LAND OF THE ROMAN CATHOLIC BISHOP OF WORCESTER; THENCE RUNNING

N 26° 17' 05" E A DISTANCE OF 244.52' FEET ALONG SAID ROMAN CATHOLIC BISHOP OF WORCESTER TO A CORNER POINT; THENCE RUNNING

N 63° 42' 55" W A DISTANCE OF 119.05' FEET ALONG SAID ROMAN CATHOLIC BISHOP OF WORCESTER TO A CORNER POINT; THENCE RUNNING

S 26° 17' 05" W A DISTANCE OF 25.00' FEET ALONG SAID ROMAN CATHOLIC BISHOP OF WORCESTER TO A CORNER POINT; THENCE RUNNING

N 63° 42' 55" W A DISTANCE OF 119.10' FEET ALONG SAID ROMAN CATHOLIC BISHOP OF WORCESTER TO A CORNER POINT; THENCE RUNNING

S 10° 57' 15" W A DISTANCE OF 77.77' FEET ALONG SAID ROMAN CATHOLIC BISHOP OF WORCESTER TO A CORNER POINT; THENCE RUNNING

N 63° 42' 55" W A DISTANCE OF 159.19' FEET ALONG SAID ROMAN CATHOLIC BISHOP OF WORCESTER AND LAND OF THE CITY OF WORCESTER TO A CORNER POINT AT FRONT STREET; THENCE RUNNING

N 28° 53' 39" E A DISTANCE OF 253.25' FEET ALONG THE SIDELINE OF FRONT STREET TO A POINT OF CURVATURE; THENCE RUNNING

NORTHEASTERLY, NORTHERLY AND NORTHWESTERLY ON A CURVE TO THE LEFT HAVING A RADIUS OF 110.00' FEET A LENGTH OF 177.80' FEET ALONG THE SIDELINE OF FRONT STREET TO A POINT OF TANGENCY; THENCE RUNNING

N 63° 42' 55" W A DISTANCE OF 193.92' FEET ALONG THE SIDELINE OF FRONT STREET TO THE POINT AND PLACE OF BEGINNING.

INCLUDING A PORTION OF WORCESTER CENTER BOULEVARD, AS SHOWN ON THE SITE PLAN

**EXHIBIT B**

**Site Plan**

**(SEPARATE DOCUMENT)**



## EXHIBIT C

### Definitions

**Actual Collected Revenue** means the amount of revenue actually received by the City in a fiscal year from real estate taxes from real property and personal property taxes from personal property in the Invested Revenue District and net revenue (net of all reasonable operating expenses) received from the Parking Garage. The City may calculate the amount of Actual Collected Revenue for each fiscal year based on the amount of Actual Collected Revenue received as of June 1<sup>st</sup> in each fiscal year with the addition of an amount estimated by the City to be the additional Actual Collected Revenue reasonably anticipated to be received in the month of June followed by a later reconciliation of such estimated amounts to actual amounts of Actual Collected Revenue ultimately received by the City for each such fiscal year. If in any fiscal year, certain amounts received by the City after June 30<sup>th</sup> of such fiscal year are included by the City in Actual Collected Revenue for such fiscal year, there shall be a further reconciliation for such fiscal year to reflect such amounts. For purposes of calculating the Actual Collected Revenue, Parking Garage revenues will be net of reasonable operating expenses but will not be net of any amounts paid for capital expenditures as defined under GAAP pursuant to applicable FASB regulations, nor any amounts deposited in or credited to the City's capital reserve fund for the Parking Garage.

**Affiliate of a person or entity** means any manager, member, officer, director or shareholder and any other person, partnership, limited liability company, limited liability partnership, or corporation which directly or indirectly controls, or is controlled by, or is under common control with such person or entity.

**ALTA Survey** means the plan entitled "ALTA/ACSM LAND TITLE SURVEY, NEW WORCESTER CENTER, WORCESTER, MASSACHUSETTS" prepared for Berkeley Investments, Inc. by Judith Nitsch Engineering, Inc., and dated October 5, 2004.

**Applicable Laws** means any federal, state, or local law, statute, ordinance, order or regulation applicable to the Construction or use of any portion of the Project and/or the Project Property.

**Application for Payment** means any request for payment submitted by the Developer to the Construction Program Manager in accordance with Article 4.

**Approved Design** means those Schematic Design Documents, Design Development Plans and Construction Documents, and all changes thereto, approved by the City pursuant to Article 3.

**Approved Site Plan** means the plan entitled, "CitySquare, Berkeley Investments, Inc." drawn by Arrowstreet/Judith Nitsch Engineering, Inc. with an issue date of July 28, 2005 and approved by the Worcester Planning Board on August 24, 2005 pursuant to an application by the Developer for Definitive Site Plan Approval.

**Architect** means Arrowstreet, Inc., and any successors, assigns or replacements reasonably approved by the City to be the architect/architects hired by the Developer and procured through a process that is satisfactory to the Developer, to design all or a portion of the Delegated Public Project Elements, and their consultants.

**Assigns**, as defined in Section 9.8.

**Berkeley** means Berkeley Investments, Inc. in its capacity as development agent for the Developer and as manager and sole member of Berkeley Worcester MGR LLC, a Delaware limited liability company.

**Certificate for Payment** means the certificate signed by the Construction Program Manager approving payment to the Developer based on an Application for Payment as described in Sections 4.10 through 4.14.

**Certificate of Substantial Completion** means the certificate to be issued by the Architect at the time of Substantial Completion of the Delegated Public Project Elements in accordance with Section 4.13.

**Change Order** means any change order approved by the Change Order Review Board pursuant to Section 3.6, including Minor Change Orders and Major Change Orders.

**Change Order Review Board**, as defined in Section 3.6.

**City** means the City of Worcester, Massachusetts.

**City Council** means the Worcester City Council.

**Commence or Commencement** means, with respect to any Construction or the performance of any work, the activities and/or the date constituting commencement of such Construction or work, as set forth in the contract with the Contractor or any subcontractor for such Construction or work; provided, however, that none of the early release work set forth in Section 3.1 shall constitute Commencement of the Construction of the Parking Garage.

**Commonwealth** means The Commonwealth of Massachusetts.

**Construct, Constructing or Constructed** means to perform, performing or have performed, the Construction.

**Construction** means all activities and services, of whatever kind and nature, related to the design, engineering, development, permitting, procurement and construction of any portion of the Delegated Public Project Elements or the Private Project Elements to be performed to Final Completion, including, but not limited to, abatement, demolition, environmental

remediation, site preparation and installation of all utilities, all construction activities, and the management and supervision of such activities and services.

**Construction Amount** means an amount equal to (a) Seventy One Million One Hundred Fifty One Thousand Three Hundred Thirty One Dollars (\$71,151,331.00) minus (b) the cost of the Worcester Center Boulevard Sitework, as determined in accordance with Section 2.4. The Construction Amount shall be used to pay for the Documented Costs of the Delegated Public Project Elements.

**Construction Costs** means all Hard and Soft Documented Costs incurred in connection with the Construction of any of the Delegated Public Project Elements, including, but not limited to, all consulting, management, legal, accounting and financing costs, all costs of relocating former tenants or occupants of the Project Property displaced by the demolition of existing structures, and all costs of pre-occupancy maintenance, repair or replacement of any portion of the Delegated Public Project Elements included in the definition of "project costs" in the DIF Statute.

**Construction Documents** means those plans and documents prepared by the Architect based on the Schematic Design Documents, the Design Development Plans and, once approved by the Developer and the City, the Design Guidelines that set forth in detail the requirements for the Construction of the Delegated Public Project Elements, including, the detailed diagrams of the structural framing, mechanical and electrical systems, and written technical specifications elaborating the nature and performance requirements of systems and materials and required to be submitted and approved by the City as provided in Section 3.5.

**Construction Program Manager** means the construction management firm hired by the City to perform the duties of the Construction Program Manager with respect to the Construction of the Delegated Public Project Elements.

**Construction Program Manager Representative** means, initially, Robert A. Poitras, Vice President, Tishman Construction Corporation of Massachusetts whose address is 84 State Street, Boston, Massachusetts 02109, until written notice of a change in the Construction Program Manager Representative is delivered by the City to the Developer.

**Consultants** means all civil, mechanical, structural, geotechnical, environmental and traffic engineers and any other licensed engineers, landscape architects and professionals retained by the Developer, the Architect or the Contractor to develop and design the Delegated Public Project Elements.

**Contingency Amount - City** means the amount of Ten Million Fifty Thousand Dollars (\$10,050,000.00) to pay for Eligible Contingency Amounts incurred in the Construction of the Delegated Public Project Elements, as provided in Section 4.4.

**Contingency Amount - Developer** means the amount of Eight Million Fifty Thousand Dollars (\$8,050,000.00) to be funded by the Developer to pay for Net Cost Overruns in the Construction of the Delegated Public Project Elements as provided in Section 4.4, which amount may be funded by a cash payment, a Letter of Credit, or a combination of both.

**Contingency Amount LOC(s)** means the portion of the Contingency Amount - Developer which is to be provided by one or more Letters of Credit.

**Contractor** means Turner Construction Company, and any successors, assignees or replacements reasonably approved by the City to be the Contractor hired by the Developer and

procured through a process that is satisfactory to the Developer to Construct the Delegated Public Project Elements.

**Courier** means any recognized express or overnight delivery service with return receipt, delivery charges prepaid.

**Debt Service** means, for any fiscal year, all principal and interest payable with respect to the DIF Bonds resulting directly from the Second Disbursement and Construction Costs for the Enabling Work, excluding any direct or indirect personnel or administrative costs of the City. The amount of the First Disbursement shall not be included in the calculation of Debt Service.

**Debt Service LOC**, as described in Section 4.7.

**Debt Service Shortfall** means, for any fiscal year, the difference between Debt Service and New Collected Revenue. Permit Fees shall not be included in the calculation of Debt Service Shortfall.

**Default LOC** mean a Letter of Credit which may only be drawn upon to pay for Revenue Target Shortfall following the Commencement of the Construction of the Parking Garage, but only in the event that the Developer is in default in its obligations under agreements with its principal tenant or buyer to build one of the Trigger Buildings. The amount of the Default LOC shall be equal to the difference between \$1 million and the total amount drawn down by the City from the Debt Service LOC.

**Default Rate** means three percent (3%) per annum above the prime rate as quoted in the Wall Street Journal or an acceptable substitute if the Wall Street Journal ceases publication.

**Delegated Public Project Elements** means the portion of the Public Project Elements to be Constructed by the Developer and paid for by the City as provided in this Agreement as follows: (a) the relocation of former tenants or occupants of the Project Property displaced by the

demolition of existing structures for the Construction of the Public Project Elements; (b) the Enabling Work; (c) the Construction of the Parking Garage; (d) the Construction of the Sitework; and (e) all Construction Costs incurred in connection with items (a) - (d).

**Delegated Public Project Elements Budget** means the budget approved by the City and the Developer to design and construct the Delegated Public Project Elements, attached hereto as Exhibit 4.1(a), as it may be amended from time to time by any GMP and related Soft Costs, and any approved Change Order.

**Denial**, as defined in Section 9.6.

**Design Development** means the stage of the design process during which the Design Development Plans are being developed.

**Design Development Plans** mean those plans that illustrate and describe the refinement of the design of the Delegated Public Project Elements, establishing the scope, relationships, forms, size and appearance of the Delegated Public Project Elements by means of plans, sections, and elevations, typical construction details and equipment layouts required to be submitted to and approved by the City as provided in Section 3.5. The Design Development Plans shall include specifications that identify major materials and systems and establish in general their quality levels.

**Design Guidelines** means the design guidelines for the Project to be prepared by the City with the assistance of Sasaki Associates and approved by the Developer and the City, such approval not to be unreasonably withheld, the principles for which are set forth in Exhibit 2.7.

**Developer** means Worcester Renaissance LLC and its successors and assignees, acting by and through Berkeley as its development agent.

**Development Program** means the general description of the Project and the development schedule attached hereto as Exhibit 2.1, as it may be amended from time to time.

**DIF Application** means the District Improvement Financing Application for the Project submitted by the City to the EACC pursuant to the DIF Statute.

**DIF Approval** means the approval of the DIF Application by the EACC on September 12, 2005, as amended.

**DIF Bonds** means bonds, bond anticipation notes and other financing instruments permitted by the DIF Statute.

**DIF Revenue** means the incremental real property tax revenues, the personal property tax revenues and the Parking Garage revenues expected to be generated by the development of the Project Property in accordance with the Development Program.

**DIF Statute** means the District Improvement Financing Law, Massachusetts General Laws Chapter 40Q.

**Direct Public Project Elements** means the portion of the Public Project Elements to be Constructed, provided or procured by the City, without any obligation on the part of the Developer or any of its Affiliates, as follows: (a) the Construction of certain modifications to Worcester Center Boulevard and adjacent sidewalks, including streetscape, traffic mitigation improvements and the Worcester Center Boulevard Sitework; (b) the Construction (excluding design, engineering, permitting, abatement, demolition and environmental management) of the physical components of the portion of the new public street shown as New Street D on the Approved Site Plan, to be located within, or abutting, the boundaries of Parcel K, including sidewalks, streetscape, installation of all utilities and all related improvements, using materials consistent with the Construction of the Sitework; (c) the services of the Construction Program

Manager; (d) the services, salaries and ordinary maintenance items incurred by the City for the City's administration and management of the Project; (e) the cost of Construction inspection and code inspection activities by City officials necessitated by the Project; provided, however, that the Developer shall be responsible to pay for required Permit Fees subject to and as reduced by the Permit Fees Reduction Ordinance; (f) the funding of a debt service reserve fund and a capitalized interest fund in connection with the DIF Bonds to be provided by the City pursuant to Section 4.2, if required as part of such financing; (g) transactional costs related to the issuance of the DIF Bonds; and (h) funding of the Contingency Amount - City.

**Dispute** means any dispute between the Developer and the City arising out of or relating to the interpretation, construction or performance of this Agreement, or any breach thereof, including, but not limited to, the Construction Program Manager's withholding of any required approval of budgets, GMP amounts, plans, changes to plans, cost overruns, allocations, Applications for Payment or Certificates of Payment.

**Documented Costs** means costs for which the Developer has provided written evidence reasonably satisfactory to the City demonstrating that such costs have been incurred directly or indirectly by the Developer with respect to the Project and which are (a) eligible as "project costs" as defined in the DIF Statute, and (b) Construction Costs directly related to the Delegated Public Project Elements. Documented Costs shall also include the Developer's Project Management Fee in the amount set forth in the Delegated Public Project Elements Budget.

**EACC** means the Massachusetts Economic Assistance Coordinating Council.

**Element** means any improvement, public or private, that is part of the Project.

**Eligible Contingency Amounts** means (a) any increase in the estimated Construction Costs for any Element as set forth in the Delegated Public Project Elements Budget due to the

amount of a GMP, plus related Soft Costs and Change Orders, for such Element, (b) Net Cost Overruns of Documented Costs in excess of the amount of any GMP plus related Soft Costs incurred in the Construction of the Delegated Public Project Elements, (c) Default Rate interest, if any, owed by the City in accordance with Section 4.16, and (d) reimbursement to the Developer for payments from the Contingency Amount LOC, as described in Section 4.7(a).

**Emergency** means any occurrence which reasonably requires the Developer to take action, and expend funds, to protect public health and/or safety, and/or protect and preserve any of the Delegated Public Project Elements, without first seeking approval of the City for such expenditures, and which is caused by a natural disaster, extreme weather conditions, terrorism, vandalism or any other unforeseen set of circumstances. The Developer will only spend such funds as are reasonably required to mitigate the Emergency unless and until City approval of further expenditure of funds can be obtained.

**Enabling Disbursement**, as described in Section 4.6(d).

**Enabling Work** means the work reasonably required to prepare for and allow (a) the demolition of the Mall and portions of the existing garages on the Project Property, and (b) the Construction of the Parking Garage and the Sitework, including the following:

- (i) All utility terminations, relocations, and cut and cap preparations to permit the relocation of utilities;
- (ii) Asbestos abatement in the Mall;
- (iii) Temporary and new partitions along the new Parking Garage demising line and the Mall demolition line;
- (iv) Structural reinforcement for roads, including areas over and along the Truck Tunnel and the Truck Tunnel Service Entrance;

(v) Waterproofing system and protection slab of the areas (currently watertight within the Mall) over and along the Truck Tunnel, below the location of the new streets and sidewalks;

(vi) Demolition of the Mall, portions of the existing garages and disposal of materials;

(vii) New shear walls in the remaining so-called East Garage on the Project Property (required due to partial garage demolition for Front Street extension), and eliminating existing expansion joints in the remaining garage for structural stability;

(viii) New permanent stair and elevator at the end of the East Garage;

(ix) New insulated perimeter walls for Buildings D and E (due to Mall demolition);

(x) Work associated with the installation of four (4) oil/grease separators for the new streets;

(xi) Other measures reasonably required to prepare the Project Property for Construction of the Parking Garage and the Sitework, to secure the Project Property and to ensure proper safety during and after the Enabling Work.

(xii) Design and engineering work for the foregoing, as well as for the Parking Garage and the Sitework;

(xiii) All Soft Costs related to the foregoing; and

(xiv) A proportionate share of the Project Management Fee.

**Event of Default** means one or more of the events described in Sections 8.1 and 8.2.

**Existing Taxes** means, with respect to any fiscal year, the amount shown in the row labeled "Less - EXIST. Tax" on Exhibit D-1 multiplied by \$1,000,000.

**Expected Revenue** means with respect to any fiscal year, the amount shown in the row labeled as "Net Tax Revenue" on Exhibit D-1 plus the amount shown in the row labeled as "Underground Garage Revenue" on Exhibit D-1, in each case multiplied by \$1,000,000, reduced

by the amount of any TIFs, reduced assessments, reduced tax rates or tax abatements for any land or buildings in Phase 1 for such fiscal year as follows: (a) if the actual assessed values as established by the City for the buildings in Phase 1 once completed are less than the values shown in the column marked "Assessment" on Exhibit D-2 for any fiscal year, then the amount of real estate taxes attributable to the difference in the actual assessed value of the completed buildings in Phase 1 and the assessed values on Exhibit D-2 shall be subtracted from Expected Revenue for such fiscal year; (b) if a tax abatement is granted with respect to any of the buildings in Phase 1 for any fiscal year, the amount of the tax abatement shall be subtracted from Expected Revenue for the fiscal year in which the abatement is actually granted, (c) if the tax rate for commercial property is set below \$25.20 per thousand dollars of assessed valuation, or for residential property is set below \$12.53 per thousand dollars of assessed valuation for any fiscal year, then Expected Revenue shall be reduced by the difference between the lower tax rate(s) and these stated rates, multiplied by the assessed value of the applicable residential or commercial Phase 1 real property and the Private Project Elements thereon in the Invested Revenue District, and (d) if the City approves a Tax Increment Financing Plan (TIF) with respect to any of the buildings in Phase 1, the amount of the tax exemption granted in connection with the TIF (for buildings H, J or E, in excess of the 5% TIF amount by which Expected Revenue has already been reduced) shall be subtracted from Expected Revenue for each applicable fiscal year.

**Failure**, as defined in Section 9.6.

**Final Completion**, as defined in Section 4.13 for the Delegated Public Project Elements.

**Final Payment** means each payment constituting the entire unpaid balance of the Construction Costs for each of the Delegated Public Project Elements set forth in the Delegated

Public Project Elements Budget, as it may be amended by any GMP, related Soft Costs and any approved Change Orders.

**First Disbursement**, as described in Section 4.6(a).

**Force Majeure**, as defined in Section 9.6.

**Garage Parcel** means the subsurface parcel within which the Parking Garage is to be Constructed.

**GMP** means any contract between the Developer and the Contractor for the Construction of any portion of either the Delegated Public Project Elements or the Private Project Elements which provides for a guaranteed maximum price to be paid by the Developer to the Contractor for the work to be performed by the Contractor pursuant to the contract approved by the City as provided in Section 3.3.

**Governmental Authority** means any agency, department, court or other administrative or regulatory authority of any federal, state or local governmental body.

**Hard Costs** means the Construction Costs, including overhead and profit, incurred by the Contractor or any subcontractor in providing labor, materials, and/or equipment, and in satisfying the general conditions of its contract, for the Construction of any portion of the Delegated Public Project Elements.

**Interested Party** means a mortgagee of any land in the Invested Revenue District.

**Invested Revenue District**, as defined in Section 4.2(a) and the DIF Statute, which has the same boundaries as the Project Property, and also is referred to in the DIF Application as the "Worcester CitySquare DIF District", the "Worcester Center DIF District" and the "CitySquare DIF District".

**Lender or Lenders** means one or more bona fide financial institutions, private equity companies or other parties, which, as a part of its primary business, regularly engages in the making of commercial loans to finance the acquisition, construction and development of commercial real estate projects.

**Letter of Credit** means a letter of credit which satisfies all of the following conditions:

(i) the letter of credit must be in a form reasonably approved by the City with an expiration date not less than one (1) year after the date of issue of the letter of credit and with an evergreen or automatic renewal unless prior notice is otherwise given; (ii) the beneficiary of the letter of credit must be the City or the City's designee; (iii) the letter of credit must be irrevocable and unconditional; and (iv) the letter of credit must be issued by a bank reasonably satisfactory to the City.

**Major Change Order** means all Change Orders which would increase a GMP by an amount equal to or greater than \$150,000, or would extend the Project schedule by more than fifteen (15) days, or which, in the opinion of the Developer and the Construction Program Manager, warrants review as a Major Change Order for any other reason.

**Major Plan Approvals** means approvals of Plans at the end of major design stages of Schematic Design, Design Development and Construction Documents.

**Mall** means the retail shopping mall commonly known as the "Worcester Commons Outlet Mall".

**Mediator** means an impartial and reputable architect, contractor or construction program manager in major public and private construction projects.

**MHD** means the Massachusetts Highway Department.

**Minor Change Order** means all Change Orders which would increase a GMP by less than \$150,000, or would reduce the amount of a GMP by any amount.

**Net Cost Overruns** means for Hard Costs, once a GMP has been entered into by the Developer for any of the Delegated Public Project Elements, cost overruns incurred or schedule extensions needed in the Construction of such Element resulting from (i) Change Orders approved by the City, (ii) Force Majeure, (iii) unforeseen conditions, (iv) claims for costs related to items not appropriately required of a contractor under the GMP and the Approved Design, (v) changes in codes and unexpected or novel interpretations of codes or Applicable Laws by cognizant legal authorities, and (vi) losses or damages not covered by insurance. For Soft Costs, budget costs may be adjusted, where appropriate, by Change Order for legitimate Project reasons.

**New Collected Revenue** means, for any fiscal year, Actual Collected Revenue minus Existing Taxes for such fiscal year.

**OCIP** means the Owner Controlled Insurance Program, as described in Section 3.12.

**Office Buildings Parcels** means the portion of the Project Property containing two office buildings and the West Garage owned by Worcester Renaissance Towers by deed recorded in the Registry of Deeds in Book 35383, Page 150.

**Order**, as defined in Section 9.6.

**Order of Taking** means the Order of Taking approved by the City Council on June 28, 2005 for eminent domain takings for the proposed public streets shown on the Taking Plan, and which shall be recorded by the City prior to the First Disbursement pursuant to the Special Legislation and this Agreement.

**Parcel J** means the portion of the Project Property on which Building J will be built, and which will have the same general configuration as shown on the Approved Site Plan.

**Parcel K** means the portion of the Project Property on which Building K will be built, and which will have the same general configuration as shown on the Approved Site Plan.

**Parcels C&D** means the portion of the Project Property owned by Renaissance C&D by deed recorded in the Registry in Book 36941, page 356.

**Parking Garage** means an underground two level public parking garage containing no less than 1,025 parking spaces to be designed and Constructed as part of the Delegated Public Project Elements.

**Parking Garage Disbursement**, as described in Section 4.6(f).

**Parking Garage Lease** means the ground lease between the Developer, as Landlord, and the City, as Tenant, attached hereto as Exhibit 5.1.

**Parking Garage Operating and Allocation Agreement** means the agreement between the Developer, the Developer's Affiliate and the City attached hereto as Exhibit 5.1(a).

**Party or Parties** means the City and/or the Developer, as the context admits.

**Permit Fees** means any and all fees for construction, building or utility permits issued by the City or any department, agency, board or commission thereof, which are necessary for the Construction of any portion of the Delegated Public Project Elements and the Private Project Elements, including, but not limited to, (a) permits for Construction or utilities and utility connection fees; (b) any permits necessary for the Construction of tenant fit-out for tenants or occupants of any portion of the Private Project Elements; (c) all inspection fees; and (d) those permits listed in Exhibit 3.11.

**Permit Fees Payment** means the payments to be made by the Developer to the City pursuant to the Permit Fees Reduction Ordinance, as described in Section 3.11.

**Permit Fees Reduction Ordinance** means Section 29B of Chapter 2 of the Revised Ordinances of 1996 of the City of Worcester, as amended, establishing maximum permit fees for the Project.

**Phase 1**, as defined in Section 2.1.

**Phase 2**, as defined in Section 2.1.

**Phase 3**, as defined in Section 2.1.

**Plaza Parcel** means the parcel designated as such on the Plaza Parcel Plan.

**Plaza Parcel Improvements**, as defined in the Parking Garage Lease.

**Plaza Parcel Plan** means the plan entitled "Preliminary Parcel Plan Ground Floor Plaza Parcel Only" prepared by Arrowstreet, Inc. dated December 1, 2005.

**Private Investment** means not less than \$470 million that the Developer will cause to be invested to Construct the Private Project Elements.

**Private Project Elements** means the redevelopment of a portion of the Project Property by constructing or re-positioning up to approximately 1.5 million square feet of building space consisting of new housing, commercial, office, retail and possibly hotel space, medical - clinical space and entertainment venues and renovated portions of existing retail space within the Mall and the existing parking garages within the Project Property.

**Project** means the CitySquare Project described in the DIF Application and the DIF Approval, including the Public Project Elements and the Private Project Elements, and as further described in Article 2 of this Agreement.

**Project Management Fee** means the fee for the Developer's project management services in connection with the Construction of the Delegated Public Project Elements, in the original amount of \$750,000.00 as set forth in the Delegated Public Project Elements Budget,

which shall be paid prorata on a monthly basis over the periods of the Construction of the Enabling Work, the Parking Garage and Site Work and increased annually by any increase in the Consumer Price Index for all Urban Consumers (CPI-U), Boston, Massachusetts, All Items (1982-1984 equals 100) from May 18, 2005.

**Project Manager** means the person or entity designated by the Developer from time to time as the Developer's project manager for the Project.

**Project Property** means the parcels of land now owned by the Developer, Worcester Renaissance Towers and Worcester Renaissance C&D, together with a portion of Worcester Center Boulevard. The Project Property contains approximately 20.2 acres of land, is described in Exhibit A attached hereto and is shown on the Site Plan, and contains the same area as the Invested Revenue District.

**Public Investment** means an amount up to \$81,201,331 that the City will provide to fund Construction of the Delegated Public Project Elements.

**Public Project Elements** means the Delegated Public Project Elements and the Direct Public Project Elements.

**Ramp and Tunnel Agreements** means the Ramp and Tunnel Agreement dated April 21, 1970 between the City and Joel B. Wilder and Norman B. Leventhal, as Trustees of the Worcester Center Trust, as amended by the Ramp Removal Agreement dated August 21, 2003 by and between the City and Connecticut General Life Insurance and assigned to the Developer as part of a general assignment dated June 14, 2004.

**Ramp Parcel** means the parcel of land owned by the City adjacent to the Project Property on the westerly side of Worcester Center Boulevard which had been the proposed location for the South Portal Ramp, as described in the Ramp and Tunnel Agreements.

**Red Garage Tunnel** means the tunnel extending from the Project Property across Worcester Center Boulevard that previously provided access to and from the Red Garage, as described in the Ramp and Tunnel Agreements and as shown on the ALTA Survey and labeled "Tunnel Underground-Not In Use".

**Registry** means the Worcester District Registry of Deeds.

**Required Permits** means all permits and approvals from any Governmental Authority required for the Construction of any portion of the Project.

**Responsible Employer Ordinance** means Section 35 of Chapter 2 of the Revised Ordinance of 1996 of the City of Worcester, as amended.

**Revenue Target** means an amount equal to the aggregate Expected Revenue beginning with the fiscal year in which the Enabling Work Commences, through the Revenue Target Shortfall Payment Date.

**Revenue Target Shortfall** means an amount equal to the difference between the Revenue Target and the aggregate New Collected Revenue beginning with the fiscal year in which the Enabling Work Commences through the Revenue Target Shortfall Payment Date.

In the event of an adverse change in zoning as provided in Section 7.6, then in calculating Revenue Target Shortfall, Expected Revenue shall be reduced by the amount by which Expected Revenue from any of the buildings in Phase 1 and/or net revenue from the Parking Garage is reduced as a result of such adverse change.

Permit Fees shall not be included in the calculation of Revenue Target Shortfall; however, the amount of the Second Disbursement shall be included in such calculation once the Construction of the Parking Garage Commences.

**Revenue Target Shortfall LOC** means a \$1 million letter of credit which may only be drawn upon to pay for Revenue Target Shortfall following the Commencement of the Construction of the Parking Garage.

**Revenue Target Shortfall Payment Date** means the earlier of (a) June 30 of the first full fiscal year after the Developer completes the Construction of all of the buildings identified in Phase 1 of the Development Program by receiving certificates of occupancy for the core and shell of each building for the minimum aggregate square footage for residential and commercial buildings in Phase 1 as set forth in the DIF Application or (b) June 15, 2013.

**Schematic Design** means the stage of the design process during which the Schematic Design Documents are being developed.

**Schematic Design Documents** means those plans that establish the conceptual design of the Delegated Public Project Elements illustrating the scale and relationship of the Delegated Public Project Elements. The Schematic Design Documents shall include a conceptual site plan, if appropriate, and preliminary building plans, sections and elevations required to be submitted to and approved by the City in accordance with Section 3.5. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

**Second Disbursement**, as described in Section 4.6(c).

**Sidewalk Easement** means the permanent easement over the Project Property granted by the Developer to the City for the Construction, use and maintenance of public sidewalks, as set forth in the Sidewalk Easement Agreement.

**Sidewalk Easement Agreement**, as set forth in Exhibit 6.5.

**Site Plan** means the plan entitled "Area Site Plan" showing the Invested Revenue District, prepared for Berkeley Investments, Inc. by Judith Nitsch Engineering, Inc. and dated January 1, 2005.

**Sitework** means the Plaza Parcel Improvements, the new public streets and sidewalks, the streetscape and all related improvements throughout the Project Property to be Constructed by the Developer as part of the Delegated Public Project Elements, including the design, engineering, permitting, abatement, demolition and environmental management for the portion of the new public street shown as New Street D on the Approved Site Plan, to be located within, or abutting, the boundaries of Parcel K, but excluding (1) the Worcester Center Boulevard Sitework, and (2) except as provided above, the Construction of the physical components of such portion of the new public street shown as New Street D on the Approved Site Plan, to be located within, or abutting, the boundaries of Parcel K, including sidewalks, streetscape installation of all utilities and all related improvements.

**Sitework Disbursement**, as described in Section 4.6(h).

**Soft Costs** means all Construction Costs incurred by the Developer that are not Hard Costs, including, but not limited to, carrying charges, professional services and audit fees, surveys, relocation expenses, insurance, inspection fees, recording and filing fees, architectural and engineering fees, Consultants' fees and the Project Management Fee.

**Sources and Uses Statement** means the statement attached hereto as Exhibit 4.2.

**Special Legislation** means the legislation filed by the City and enacted into law as Chapter \_\_\_ of the Acts of 2006 of the Massachusetts General Court.

**Starwood** means Starwood Worcester LLC, an Affiliate of Starwood Capital Group Global, L.L.C.

**State Funding** means funds provided by the Commonwealth to the City to pay for a portion of the Construction of the Public Project Elements.

**Substantial Completion**, as defined in Section 4.13.

**Taking Plan** means the plan entitled "TAKING AND LAYOUT PLAN CitySquare, Worcester, Massachusetts, Owner: City of Worcester" by Judith Nitsch Engineering Inc. dated June 24, 2005, as revised to delete specific street names.

**Termination of Ramp and Tunnel Agreements**, as set forth in Exhibit 6.1.

**TIF** means a tax increment financing plan pursuant to Massachusetts General Laws Chapter 40, Section 59.

**Trigger Buildings** means any two (2) of Buildings F, H and J for which Written Commitments are delivered to the City pursuant to Section 4.6(e).

**Truck Tunnel** means the tunnel and the loading dock area located under the Project Property as shown on the ALTA Survey, including all utility rooms, loading docks, and corridors and which is connected to the Truck Tunnel Service Entrance.

**Truck Tunnel Service Entrance** means the tunnel extending from the north side of Worcester Center Boulevard to the Project Property and connecting to the Truck Tunnel, and providing access to and from the Project Property.

**Truck Tunnel Service Entrance Easement Agreement** means the Agreement among the Developer, Worcester Renaissance Towers, Worcester Renaissance C&D and the City in the form attached as Exhibit A to the Termination of Ramp and Tunnel Agreement.

**Use Restrictions** means the proposed uses of the Private Project Elements set forth in the DIF Application and the Development Program.

**Vacuum Cleaner Parcel** means a certain parcel of land situated at 36 Washington Square, Worcester, Massachusetts, containing approximately 12,725 square feet of land and more particularly described in a deed to the Developer recorded at the Registry in Book 33956, Page 102 and shown on a plan recorded at the Registry in Plan Book 617, Plan 124. The Vacuum Cleaner Parcel is the former site of a store which sold and serviced vacuum cleaners.

**Vertical and Horizontal Easement Agreement** means the Agreement among the Developer, the Developer's Affiliate and the City, in the form attached as Exhibit G to the Parking Garage Lease.

**West Garage** means the existing parking garage located at the corner of Commercial Street and Foster Street, and included as part of the Office Tower Parcels, as it may be modified during the Construction of the Project.

**Worcester Center Boulevard** means the street in Worcester, Massachusetts now known as Worcester Center Boulevard.

**Worcester Center Boulevard Sitework** means the portion of the Direct Public Project Elements consisting of the sitework and the Construction of sidewalks and streetscape on the portion of the Project Property abutting the westerly side of Worcester Center Boulevard, as provided in Section 2.4.

**Worcester Renaissance C&D** means Worcester Renaissance C&D LLC, a Delaware limited liability company.

**Worcester Renaissance Towers** means Worcester Renaissance Towers LLC, a Delaware limited liability company.

**Written Commitments** means at least two (2) of the following:

(a) **For Building H -**

(1) an executed lease agreement and, if required by the construction Lender or an equity investor, a control and support agreement or a guaranty of the lease. The terms of the lease agreement and the control and support agreement/guaranty shall be approved by the construction Lender and the equity investors and shall satisfy any debt service coverage ratio requirements of the Lender or the equity investors. The lease agreement may be subject to the following conditions: (i) 80% completion of the Construction Documents, and (ii) a GMP price for Building H which provides for a price that satisfies the requirements of the lease agreement, the construction financing commitment and the equity investment commitment pertaining to the cost of constructing such building;

(2) a written commitment for construction financing on terms acceptable to the Developer in its sole discretion from a Lender reasonably satisfactory to the City;

(3) a written commitment for an equity investment from Berkeley and/or Starwood and/or one or more of their respective Affiliates, or from another party reasonably satisfactory to the City and on terms acceptable to the Developer in its sole discretion;

(4) the written commitments for the construction financing and the equity investment must be for periods at least equal to the expected construction period for Building H.

(5) approval by the construction Lender and the equity investors of the amount of any guaranties and the parties who will be giving such guaranties;

(6) The following anticipated conditions to the lease agreement, construction financing commitment and equity investment commitments for Building H are acceptable to the Developer and the City: standard due diligence (title insurance commitment, survey, etc.), 80% completion of Construction Documents, confirmation of final construction schedule and budget, completion guaranty from borrower to Lender and debt service coverage ratio.

**(b) For Building J -**

(1) an executed build to suit agreement or lease agreement approved by the construction Lender and any equity investors which satisfies any debt service coverage ratio requirements of the Lender or the equity investors. The build to suit agreement may be subject to the following conditions: (i) 80% completion of the Construction Documents, and (ii) a GMP price for Building J which provides for a price that satisfies the requirements of the build to suit agreement or lease agreement, the construction financing commitment and the equity investment commitment, if any, pertaining to the cost of constructing such buildings;

(2) a written commitment for construction financing on terms acceptable to the Developer in its sole discretion from the occupant, or a Lender reasonably satisfactory to the City;

(3) a written commitment for an equity investment from Berkeley and/or Starwood and/or one or more of their respective Affiliates, or from another party reasonably satisfactory to the City and on terms acceptable to the Developer in its sole discretion;

(4) the written commitments for the construction financing and the equity investment must be for periods at least equal to the expected Construction period for Building J;

(5) Approval by the Construction Lender and the equity investors of the amount of any guaranties and the parties who will be giving the guaranties;

(6) The following anticipated conditions to the build to suit/lease agreement, Construction financing commitment and equity investment commitment for Building J are acceptable to the Developer and the City; standard due diligence (title insurance commitment, survey, etc.), 80% completion of Construction Documents, confirmation of final construction schedule and budget, completion guaranty from borrower to Lender and debt service coverage ratio.

**(c) For Building F -**

(1) construction financing on terms acceptable to the Developer in its sole discretion from a Lender reasonably satisfactory to the City; a written commitment for an equity investment approved by the Lender from Berkeley and/or Starwood and/or one or more of their respective Affiliates, or from another party reasonably satisfactory to the City on terms acceptable to the Developer in its sole discretion and approval by the Lender and the equity investors of the amount of any guaranties and the parties who will be giving the guarantees.

(2) The written commitments for construction financing and equity investment must be for periods at least equal to the expected construction period for Building F.

(3) The following anticipated conditions to the construction financing commitment and the equity investment commitment for Building F are acceptable to the Developer and the City: standard due diligence (title insurance commitment, survey, etc.), condominium documents complete, marketing plan, 90% completion of Construction Documents, confirmation of final construction schedule and budget, a GMP price for Building F which provides for a price that satisfies the requirements of the construction financing commitment and the equity investment commitment pertaining to the cost of constructing such Building, pre-sales contingency and/or principal repayment guaranty sufficient to satisfy the Construction Lender providing the construction financing for Building F.

DIF Bond Debt Service Analysis - \$56.95 Million Bond plus \$7.135 Million Capitalized I

Year	Bldg	Year Calendar	Total (30 yrs) Fiscal	2	3	4	5	6	7	9	10	11	12	13	14	15			
				2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
				2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	
<b>Cumulative Taxes</b>																			
2005	A	Office	\$ 29.41	\$ 0.69	\$ 0.71	\$ 0.72	\$ 0.74	\$ 0.75	\$ 0.77	\$ 0.78	\$ 0.80	\$ 0.81	\$ 0.83	\$ 0.85	\$ 0.86	\$ 0.88	\$ 0.90	\$ 0.92	
2005		Retail	\$ 1.50	\$ 0.04	\$ 0.04	\$ 0.04	\$ 0.04	\$ 0.04	\$ 0.04	\$ 0.04	\$ 0.04	\$ 0.04	\$ 0.04	\$ 0.04	\$ 0.04	\$ 0.04	\$ 0.05	\$ 0.05	
2005	B	Office	\$ 20.18	\$ 0.48	\$ 0.49	\$ 0.50	\$ 0.51	\$ 0.52	\$ 0.53	\$ 0.54	\$ 0.55	\$ 0.56	\$ 0.57	\$ 0.58	\$ 0.59	\$ 0.60	\$ 0.62	\$ 0.63	
2005		Retail	\$ 0.85	\$ 0.02	\$ 0.02	\$ 0.02	\$ 0.02	\$ 0.02	\$ 0.02	\$ 0.02	\$ 0.02	\$ 0.02	\$ 0.02	\$ 0.02	\$ 0.03	\$ 0.03	\$ 0.03	\$ 0.03	
2005	C1	Retail	\$ 8.00	\$ 0.04	\$ 0.10	\$ 0.16	\$ 0.21	\$ 0.21	\$ 0.22	\$ 0.22	\$ 0.23	\$ 0.23	\$ 0.23	\$ 0.24	\$ 0.24	\$ 0.25	\$ 0.25	\$ 0.26	
2007	D	Retail	\$ 8.83	\$ 0.06	\$ 0.06	\$ 0.06	\$ 0.14	\$ 0.24	\$ 0.25	\$ 0.25	\$ 0.26	\$ 0.26	\$ 0.27	\$ 0.27	\$ 0.28	\$ 0.28	\$ 0.29	\$ 0.29	
2007		Entertainment	\$ 2.26	\$ 0.05	\$ 0.05	\$ 0.06	\$ 0.06	\$ 0.06	\$ 0.06	\$ 0.06	\$ 0.06	\$ 0.06	\$ 0.06	\$ 0.07	\$ 0.07	\$ 0.07	\$ 0.07	\$ 0.07	
2010	E	Commercial	\$ 8.73		\$ 0.07	\$ 0.23	\$ 0.24	\$ 0.24	\$ 0.25	\$ 0.25	\$ 0.26	\$ 0.26	\$ 0.27	\$ 0.27	\$ 0.28	\$ 0.28	\$ 0.29	\$ 0.29	
2008	F	Retail	\$ 2.39		\$ 0.03	\$ 0.06	\$ 0.07	\$ 0.07	\$ 0.07	\$ 0.07	\$ 0.07	\$ 0.07	\$ 0.07	\$ 0.07	\$ 0.08	\$ 0.08	\$ 0.08	\$ 0.08	
2008		Housing	\$ 13.58		\$ 0.16	\$ 0.36	\$ 0.37	\$ 0.38	\$ 0.38	\$ 0.38	\$ 0.39	\$ 0.40	\$ 0.41	\$ 0.42	\$ 0.42	\$ 0.43	\$ 0.44	\$ 0.45	
2008	H or J	Commercial	\$ 26.61		\$ 0.42	\$ 0.71	\$ 0.72	\$ 0.74	\$ 0.75	\$ 0.77	\$ 0.78	\$ 0.80	\$ 0.81	\$ 0.83	\$ 0.84	\$ 0.86	\$ 0.86	\$ 0.88	
2008		Retail	\$ 2.09		\$ 0.03	\$ 0.06	\$ 0.06	\$ 0.06	\$ 0.06	\$ 0.06	\$ 0.06	\$ 0.06	\$ 0.06	\$ 0.06	\$ 0.07	\$ 0.07	\$ 0.07	\$ 0.07	
2008	I	Commercial/Retail	\$ 1.97		\$ 0.02	\$ 0.05	\$ 0.06	\$ 0.05	\$ 0.06	\$ 0.06	\$ 0.06	\$ 0.06	\$ 0.06	\$ 0.06	\$ 0.06	\$ 0.06	\$ 0.06	\$ 0.07	
<b>PHASE 1</b>																			
		Personal Property		\$ 0.04	\$ 0.04	\$ 0.04	\$ 0.04	\$ 0.04	\$ 0.04	\$ 0.04	\$ 0.04	\$ 0.05	\$ 0.05	\$ 0.05	\$ 0.05	\$ 0.05	\$ 0.05	\$ 0.05	
		Residential	\$14	\$ -	\$ -	\$ 0.18	\$ 0.36	\$ 0.37	\$ 0.38	\$ 0.38	\$ 0.39	\$ 0.40	\$ 0.41	\$ 0.42	\$ 0.42	\$ 0.43	\$ 0.44	\$ 0.45	
		Non-Residential	\$113	\$ 1.38	\$ 1.46	\$ 2.12	\$ 2.82	\$ 2.97	\$ 3.03	\$ 3.09	\$ 3.15	\$ 3.22	\$ 3.28	\$ 3.35	\$ 3.41	\$ 3.48	\$ 3.55	\$ 3.62	
		Gross Tax Revenue	\$128	\$ 1.42	\$ 1.50	\$ 2.34	\$ 3.23	\$ 3.38	\$ 3.45	\$ 3.52	\$ 3.59	\$ 3.66	\$ 3.74	\$ 3.81	\$ 3.89	\$ 3.96	\$ 4.04	\$ 4.12	
		Less - TIF Increment on Pro	(\$1)		\$ (0.03)	\$ (0.05)	\$ (0.05)	\$ (0.05)	\$ (0.05)	\$ (0.05)	\$ (0.05)	\$ (0.05)	\$ (0.06)	\$ (0.06)	\$ (0.06)	\$ (0.06)	\$ (0.06)	\$ (0.06)	
		Less - EXIST. Tax	(\$32)	\$ (0.76)	\$ (0.78)	\$ (0.80)	\$ (0.81)	\$ (0.83)	\$ (0.84)	\$ (0.86)	\$ (0.88)	\$ (0.90)	\$ (0.91)	\$ (0.93)	\$ (0.95)	\$ (0.97)	\$ (0.99)	\$ (1.01)	
		Net Tax Revenue	\$94	\$ 0.65	\$ 0.72	\$ 1.52	\$ 2.36	\$ 2.50	\$ 2.55	\$ 2.61	\$ 2.66	\$ 2.71	\$ 2.77	\$ 2.82	\$ 2.88	\$ 2.93	\$ 2.99	\$ 3.05	
		Underground Garage Rever	\$46		\$ 0.03	\$ 0.95	\$ 1.26	\$ 1.26	\$ 1.31	\$ 1.34	\$ 1.36	\$ 1.39	\$ 1.42	\$ 1.45	\$ 1.48	\$ 1.51	\$ 1.54	\$ 1.54	
Interest	Bond	Bond Payment	\$ (125.24)	\$ (0.20)	\$ (1.23)	\$ (2.70)	\$ (3.55)	\$ (3.36)	\$ (3.51)	\$ (4.12)	\$ (4.61)	\$ (4.61)	\$ (4.61)	\$ (4.61)	\$ (4.61)	\$ (4.60)	\$ (4.60)	\$ (4.60)	
State	5 equal	Revenue After Bond	\$16.52	\$0.00	\$ 0.65	\$ 0.52	\$ 0.32	\$ 0.60	\$ 0.21	\$ 0.48	\$ 0.40	\$ (0.13)	\$ (0.54)	\$ (0.45)	\$ (0.37)	\$ (0.28)	\$ (0.20)	\$ (0.10)	\$ (0.01)
		Building Permit Fees	\$1.00	\$ 0.25	\$ 0.75	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Installment		Revenue After Permit Fee	\$ 17.52	\$ -	\$ 0.90	\$ 1.27	\$ 0.32	\$ 0.60	\$ 0.21	\$ 0.48	\$ 0.40	\$ (0.13)	\$ (0.54)	\$ (0.45)	\$ (0.37)	\$ (0.28)	\$ (0.20)	\$ (0.10)	\$ (0.01)
		cumulative	\$ -	\$ 0.90	\$ 2.17	\$ 2.49	\$ 3.09	\$ 3.30	\$ 3.78	\$ 4.18	\$ 4.06	\$ 3.52	\$ 3.07	\$ 2.70	\$ 2.41	\$ 2.22	\$ 2.12	\$ 2.11	

	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32
	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038
	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039
\$	0.93	0.95	0.97	0.99	1.01	1.03	1.05	1.07	1.09	1.12	1.14	1.16	1.18	1.21	1.23	1.26	1.28
\$	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.06	0.06	0.06	0.06	0.06	0.06	0.06	0.06	0.07
\$	0.64	0.65	0.67	0.68	0.69	0.71	0.72	0.74	0.75	0.77	0.78	0.80	0.81	0.83	0.85	0.86	0.88
\$	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.04	0.04	0.04	0.04
\$	0.26	0.27	0.27	0.28	0.29	0.29	0.30	0.30	0.31	0.32	0.32	0.33	0.33	0.34	0.35	0.35	0.36
\$	0.30	0.31	0.31	0.32	0.32	0.33	0.34	0.34	0.35	0.36	0.37	0.37	0.38	0.39	0.40	0.40	0.41
\$	0.07	0.07	0.07	0.08	0.08	0.08	0.08	0.08	0.08	0.09	0.09	0.09	0.09	0.09	0.09	0.10	0.10
\$	0.30	0.30	0.31	0.31	0.32	0.33	0.33	0.34	0.35	0.35	0.36	0.37	0.38	0.38	0.39	0.40	0.41
\$	0.08	0.08	0.08	0.09	0.09	0.09	0.09	0.09	0.09	0.10	0.10	0.10	0.10	0.10	0.11	0.11	0.11
\$	0.46	0.47	0.48	0.49	0.50	0.51	0.52	0.53	0.54	0.55	0.56	0.57	0.58	0.59	0.60	0.62	0.63
\$	0.90	0.91	0.93	0.95	0.97	0.99	1.01	1.03	1.05	1.07	1.09	1.11	1.14	1.16	1.18	1.21	1.23
\$	0.07	0.07	0.07	0.07	0.08	0.08	0.08	0.08	0.08	0.08	0.09	0.09	0.09	0.09	0.09	0.09	0.10
\$	0.07	0.07	0.07	0.07	0.07	0.07	0.08	0.08	0.08	0.08	0.08	0.08	0.08	0.09	0.09	0.09	0.09
\$	0.05	0.05	0.05	0.06	0.06	0.06	0.06	0.06	0.06	0.06	0.06	0.07	0.07	0.07	0.07	0.07	0.07
\$	0.46	0.47	0.48	0.49	0.50	0.51	0.52	0.53	0.54	0.55	0.56	0.57	0.58	0.59	0.60	0.62	0.63
\$	3.70	3.77	3.84	3.92	4.00	4.08	4.16	4.25	4.33	4.42	4.51	4.60	4.69	4.78	4.88	4.97	5.07
\$	4.21	4.29	4.38	4.46	4.55	4.64	4.74	4.83	4.93	5.03	5.13	5.23	5.33	5.44	5.55	5.66	5.77
\$	(0.06)	(0.06)	(0.07)	(0.07)	(0.07)	(0.07)	(0.07)										
\$	(1.03)	(1.05)	(1.07)	(1.09)	(1.11)	(1.14)	(1.16)	(1.18)	(1.21)	(1.23)	(1.25)	(1.28)	(1.31)	(1.33)	(1.36)	(1.39)	(1.41)
\$	3.11	3.18	3.24	3.30	3.37	3.44	3.51	3.65	3.72	3.80	3.87	3.95	4.03	4.11	4.19	4.28	4.36
\$	1.57	1.60	1.63	1.66	1.70	1.73	1.76	1.80	1.84	1.87	1.91	1.95	1.99	2.03	2.07	2.11	2.15
\$	(4.59)	(4.59)	(4.59)	(4.59)	(4.58)	(4.58)	(4.57)	(4.57)	(4.57)	(4.57)	(4.56)	(4.56)	(4.55)	(4.54)	(4.54)	(3.98)	(1.78)
\$	0.09	0.18	0.28	0.38	0.48	0.59	0.70	0.88	0.99	1.10	1.22	1.34	1.46	1.59	1.72	2.40	4.73
\$	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
\$	0.09	0.18	0.28	0.38	0.48	0.59	0.70	0.88	0.99	1.10	1.22	1.34	1.46	1.59	1.72	2.40	4.73
\$	2.19	2.37	2.65	3.03	3.52	4.11	4.80	5.68	6.68	7.77	8.99	10.34	11.80	13.40	15.12	17.52	22.25

\$ (0.25) \$ (1.67) \$ (4.00) \$ (4.15) \$ (3.48) \$ (3.98) \$ (4

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
debt service	0	0	203320	1225814	2704144	3552609	3363300	3512536	4121333	4613986	4609075	4609325	4605175	4606350	4602575	4598713
rounded	0	0	0.20332	1.225814	2.704144	3.552609	3.3633	3.512536	4.121333	4.613986	4.609075	4.609325	4.605175	4.60635	4.602575	4.598713
				\$ 1.54												

Cert of Occup to be issued  
1 Fiscal year after Cert of Occup is issued

Estimated Revenue Target Calculation developed for example purposes.

2005	2006	2007	2008	2009	2010	2011	2012
CIP rate	2006	2007	2008	2009	2010	2011	2012
27.6	2007	2008	2009	2010	2011	2012	2013
CAL	0.66	0.87	1.69	2.43	2.46	2.77	2.80
FY	0.00	0.00	0.00	0.48	0.77	0.96	0.98
16.87	0.66	0.87	1.69	2.91	3.23	3.73	3.78
	\$ 1.54	\$ 3.22	\$ 6.13	\$ 9.36	\$ 13.09	\$ 16.87	

FY when Revenue Target is to be calculated

2006 CAL	2006	2007	2008	2009	2010	2011	2012
CIP rate	2006	2007	2008	2009	2010	2011	2012
FY	2007	2008	2009	2010	2011	2012	2013
\$ 25.20 tax	\$ 0.65	\$ 0.72	\$ 1.52	\$ 2.36	\$ 2.50	\$ 2.55	\$ 2.61
garage	\$ -	\$ -	\$ 0.03	\$ 0.95	\$ 1.26	\$ 1.29	\$ 1.31
Total Annual Target	\$ 0.65	\$ 0.72	\$ 1.54	\$ 3.31	\$ 3.76	\$ 3.84	\$ 3.92

annual total to calc revenue target \$ 0.65 \$ 0.72 \$ 1.54 \$ 3.31 \$ 3.76 \$ 3.84

revenue target \$ 13.83

2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038
4594488	4594488	4588438	4586063	4581950	4580688	4572000	4570475	4565563	4571575	4563100	4555000	4551588	4542313	4536625	3984238	1777575
4.594488	4.594488	4.588438	4.586063	4.58195	4.580688	4.572	4.570475	4.565563	4.571575	4.5631	4.555	4.551588	4.542313	4.536625	3.984238	1.777575

131486084

**EXHIBIT D-2  
Assessment**

<b>Level</b>	<b>YEAR COMP</b>	<b>Bldg.</b>	<b>Use</b>	<b>Building SF by Use</b>	<b>Total Assessment</b>
Rehab	2005	A	Office	275,381	27,538,100
Rehab	2005		Retail	14,000	1,400,000
Rehab	2005	B	Office	188,978	18,897,800
Rehab	2005		Retail	8,000	800,000
Rehab	2005	C	Retail/CC	75,000	8,250,000
New	2006	D	Retail	87,000	9,570,000
New	2006		Live Theater	24,000	2,160,000
Rehab	2005	E	Retail/Ent	84,300	9,273,000
New	2008	F	Retail/Restaurant	23,000	2,530,000
			Housing	165,000	28,875,000
New	2007	H or J	Office / Medical	255,000	28,050,000
New	2007		Retail	20,000	2,200,000
New	2006	I	Retail/Restaurant	19,000	2,090,000

EXHIBIT 2.1  
Development Program

**Phase I:**

<b>Bldg/Item</b>	<b>Use</b>	<b>Gross SF</b>	<b>Construction Schedule Start Date Completion Date</b>
<b>C (Current)</b>	Repositioned Retail, re-tenanting	75,000	Underway  Completion Date 6/30/2006
<b>Enabling Work</b>	Demolition and site preparation		Commence TBD  Completion Date: 9 months after Commencement
<b>Garage</b>	New underground public parking garage  (construction forms support for new roads and buildings; green roof)	480,000	Commence TBD  Completion Date: 24 months after Commencement
<b>Site/Roads</b>	New city streets, sidewalks and green roof on garage		Commence TBD Completion Date *
<b>D</b>	Retrofitted, re-skinned retail/entertainment, repositioned with new tenants	119,000	Commence TBD Completion Date: 8 months
<b>F</b>	Housing, with accessory retail. New construction over new underground garage	188,000	Commence TBD Completion Date: 24 months
<b>H</b>	Commercial with accessory retail, new construction over existing basement and new parking	275,000	Commence TBD Completion Date: 30 months
<b>I</b>	Retrofitted, re-skinned retail/restaurants/commercial; repositioned with new tenants	14,000	Commence TBD Completion Date: 8 months
<b>E</b>	Entertainment and Retail, Commercial	84,300	Commence TBD Completion Date: 20 months
<b>J</b>	Office/Accessory Retail/Housing/Commercial	275,000	Commence TBD Completion Date: 24 months
<b>Phase 2:</b>			
<b>K</b>	Housing/Commercial/Accessory Retail (no big	255,000	Commence TBD

	box discount)		Completion Date: 28 months
<b>L</b>	Retail/Housing/Hotel	25,000	Commence TBD Completion Date: 24 months
<b>Phase 3:</b>			
<b>C (Future)</b>	Housing/Accessory Retail/Hotel/Commercial	320,000	Commence TBD Completion Date: 28 months
	* Finish sitework during the next calendar year's planting season after the construction of the Parking Garage except for areas immediately adjacent to the buildings will need to be completed when the buildings are built and brought on line.		

## EXHIBIT 2.7

### Principles for Design Guidelines

- A. The design should use high quality and creative design solutions to create the centerpiece of downtown Worcester and connect City Hall and the Common with Union Station and Washington Square;
- B. The design shall encourage the use of high quality, durable materials to enhance all aspects of site and building development and convey a sense of permanence;
- C. The design shall maximize opportunities for street activity by incorporating open and inviting ground floors;
- D. The design shall create streetscapes and public spaces that feel comfortable to pedestrians by encouraging inclusion of green space and/or green areas;
- E. The design shall distinguish buildings located at corners as gateways from the rest of the buildings along any street;
- F. The design shall encourage distinctive roof forms, profiles, and cornices to provide a termination to the top of the building in such a manner as to complement and enhance the character of the project and downtown Worcester;
- G. The design shall promote buildings with windows comprising 25-50% of upper facades visible from public rights-of-way and reflecting a rhythm, scale, and proportion compatible with the overall building design;
- H. The design shall ensure that all buildings incorporate elements which break up facade planes and avoid long, uninterrupted horizontal elements;
- I. The design shall extend to the sides and rears of buildings in a manner compatible with the design of the building fronts and prevent any large blank wall surface on facades visible from a public right-of-way; and

The surface of the rear wall on Building E shall be treated in an architecturally acceptable manner.

## EXHIBIT 3.11

### Permits Included in Permit Fee Ordinance

#### Permit and Inspection Fees Included:

1. All Building Permits for construction within the District.
2. All Inspection fees applicable to demolition and construction within the District.
3. Including, without limitation, the following fees:
  - Barricade Placement
  - Drain Permits
  - Sanitary connections
  - Driveway openings
  - Plan reviews
  - Street obstruction permits/blanket permits
  - Street openings
  - Wastewater discharge permits and inspections
  - Backflow preventor inspections
  - Water connection fees
  - Turning water off or on, relative to construction, commissioning or first occupancy
  - Setting meter valves and turning on meters
  - Meter removal and testing
  - Hydrant flow tests
  - Hydrant use fees
  - System development charge
  - Deposit on hydrant meter/backflow units

EXHIBIT 4.1(a)

Delegated Public Project Elements Budget

**Estimated Public Expenses**

2/28/2006

<b>Item</b>	<b>Estimated As of 18-May-05</b>	<b>Estimated As of 28-Feb-06</b>
<b>Construction Hard Costs</b>		
Enabling Work	\$15,433,950	\$18,157,594
New Underground Garage	\$36,672,550	\$38,546,081
Streets / Streetscape / Garage Green Roof	\$8,400,700	\$8,580,000
<b>Total Estimated Hard Costs</b>	<b>\$60,507,200</b>	<b>\$65,283,675</b>
<b>Soft Costs</b>		
Architectural - Garage	\$1,160,440	\$1,399,000
Architectural - Streets / Streetscape	\$526,750	\$680,000
Architectural - Enabling	\$155,000	\$269,000
Architectural - East Garage	\$300,000	\$355,000
Architectural - Masterplan related to above	\$200,000	\$220,000
A&E - Geotech / Environmental / Civil	\$50,000	\$55,000
Pre-Construction Management	\$80,000	\$88,000
Estim A&E Reimbursables @ 11%	\$271,941	\$327,580
Misc. Consultants	\$100,000	\$110,000
Insurance	\$550,000	\$605,000
Developer Project Management	\$750,000	\$825,000
Utility Hookups	\$200,000	\$200,000
Materials Testing	\$250,000	\$250,000
Traffic Details	\$50,000	\$55,000
Tenant Relocations	\$6,000,000	\$6,000,000
<b>Total Estimated Soft Costs</b>	<b>\$10,644,131</b>	<b>\$11,438,580</b>
<b>City Contingency for Hard and Soft Costs</b>	<b>\$8,050,000</b>	<b>\$10,050,000</b>
<b>Berkeley Contingency</b>	<b>\$8,050,000</b>	<b>\$8,050,000</b>
<b>Total Public Funds Required</b>	<b>\$79,201,331</b>	<b>\$86,772,255</b>
<b>Total Public Funds Available</b>	<b>\$79,201,331</b>	<b>\$81,201,331</b>
<b>Estimated Contingency Requirement as of Estimate Date</b>	<b>\$0</b>	<b>(\$5,570,924)</b>
<b>Remaining Combined Contingency</b>	<b>\$16,100,000</b>	<b>\$12,529,076</b>

Note: Additional escalation or price variance after 02/28/06 is estimated

EXHIBIT 4.1(b)

City Parking Garage

Operating Expenses:

Sweeper/Scrubber  
Vehicle  
Golf Carts  
Small Equipment (power washer, vac, power tools)  
Striping (after initial striping as part of the Construction of the Parking Garage)  
CCTV (cameras, cabling, controls)  
Radios  
Small Tools and Equipment  
Operating Permit, if required  
Management Office (4 networked computers, FF&E, supplies, phones, safe)  
Cleaning Supplies

Capital Expenditures:

Cashier Booths  
Ticket Dispensers  
Gates  
Access Card Readers  
Antennas  
AVI Transponders  
Loops Arming\Closing  
Vehicle Detectors  
Pay-on Foot Ticket Acceptors  
Fee Processors w/printer  
Pay-on Foot Machines  
Bollards  
Intercoms  
Intercom Master  
Revenue Control Computer/Server  
Drop Safes in cashier booths  
Access Cards  
Card Card Interface  
Spitter Tickets  
Software  
Installation  
All Wiring (fiber) and Electrical  
Signs  
Initial Striping

EXHIBIT 4.2

City of Worcester, MA  
 CitySquare Project  
 Sources And Uses Statement (Revised)  
 Delegated Public Project Elements

<b>Delegated Public Project Elements</b>	
<b>Sources of Funds</b>	<b>Issue Summary</b>
State Equity Contribution to Project	\$ 25,000,000.00
Par amount of Bonds for Project Elements	\$ 56,200,000.00
<b>Total Sources of Funds</b>	<b>\$ 81,200,000.00</b>
<b>Uses of Funds</b>	
Delegated Public Project Elements - Construction Fund	\$ 71,151,331.00
Delegated Project Contingency	\$ 10,050,000.00
Adjustment for rounding	\$ (1,331.00)
<b>Total Uses of Funds</b>	<b>\$ 81,200,000.00</b>

EXHIBIT 4.2 (PAGE TWO)

City of Worcester, MA  
 CitySquare Project  
 Sources And Uses Statement (Revised)  
 Direct Public Project Elements

<b>DIRECT PUBLIC PROJECT ELEMENTS</b>	
<b>Sources of Funds</b>	
Par amount of Bonds for Project Elements	\$ 3,615,000.00
Par amount of Bonds for Capitalized Interest	\$ 4,270,000.00
Federal Economic Development Grant	\$ 1,750,000.00
Developer Contribution Permit Fees	\$ 2,000,000.00
Premium on Loans	\$ 825,000.00
Federal Transportation Equity Act	\$ 500,000.00
<b>Total Sources of Funds</b>	<b>\$ 12,960,000.00</b>
<b>Uses of Funds</b>	
Capitalized Interest	\$ 4,272,000.00
WCB - widening and renovation project	\$ 3,500,000.00
City - Project Management	\$ 1,000,000.00
Construction Management - Delegated Elements	\$ 1,000,000.00
Deposit to Debt Service Reserve Fund	\$ 1,000,000.00
Bond Issuance and Legal Representation Expenses	\$ 1,685,000.00
D-Street Road Improvements (estimated)	\$ 500,000.00
Adjustment for rounding	\$ 3,000.00
<b>Total Uses of Funds**</b>	<b>\$ 12,960,000.00</b>

\*\* The Direct Public Project Elements Budget will increase to complete the Worcester Center Boulevard Sitework, which is to be performed by the City. Such increase in the Direct Public Project Elements Budget will result in an equivalent decrease in the Delegated Public Project Elements Budget.

EXHIBIT 4.7(b)  
Debt Service Shortfall Calculation

The Parties agree that for the purposes of calculating debt service expenses to determine whether a Debt Service Shortfall exists on DIF Bonds issued for the Construction of the Enabling Work, State Funding, when received by the City, to the extent allowed by any conditions on such funds, will be prorated based on a formula of (x) First Disbursement expenditures to (y) the Enabling Work (including Second Disbursement) expenditures. (Based on current information this is estimated to produce the following allocation: 24% First Disbursement (City) and 76% the Enabling Work (including Second Disbursement) (Developer)). The City will apply its applicable share to the DIF Bonds outstanding and arrive at a new debt service schedule for the Enabling Work debt which will be based upon this calculation.

The percentages of 24% and 76% are estimates and were calculated respectively by adding the approximate dollar value of the First Disbursement (\$6.375 million estimate plus capital interest on that amount during the issuance period (two years) estimated at \$478,125 over two years) for a total of \$6,833,125. This is estimated to be the City's numerator. The estimated the Enabling Work disbursement of \$19,873,950 (\$15,433,950 plus \$668,000 (Second Disbursement) plus \$722,000 (the Enabling Work Soft Costs) plus \$3,000,000.00 contingency, plus capitalized interest on that amount for the issuance period (\$1,490,546 for two years) totaling \$21,364,496; this will be the actual Developer's estimated numerator. The sum of the actual City's numerator and the actual Developer's numerator will be the denominator. The actual prorated percentage formula will be determined as follows: City numerator/ denominator, or  $\$6,833,125/\$28,217,621 = 24\%$ , Developer numerator/denominator or-  $\$21,364,496/\$28,217,621 = 76\%$ .

If the City receives an amount other than \$25 million in State Funding, i.e., \$10 million in lieu of \$25 million, then 24% of \$10 million, or \$2.4 million will be applied to the City's numerator, and 76% or \$7.6 million will be applied to Developer's numerator to arrive at the residual amount of debt outstanding which will be used to calculate a debt service schedule to arrive at the shortfall calculation and to determine whether the Debt Service LOC may be drawn against by the City pursuant to Section 4.7(a) of the Development Agreement.

EXHIBIT 4.10(d)(i)

Developer's Statement

**DEVELOPER'S STATEMENT AND  
CERTIFIED CONTRACTOR/ SUBCONTRACTOR/SUPPLIER LIST  
(To be Submitted with Each Application for Payment)**

**Developer:** Worcester Renaissance LLC

**Architect:** Arrowstreet, Inc.

**Construction  
Program Manager:**

**Project:** CitySquare

**Development  
Agreement:**

**City:** City of Worcester

**Contractor:**

**Property:** Worcester District Registry of Deeds in Book 33956, Page 102

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The undersigned certifies that the following is a true and complete list of: (1) all contractors, subcontractors and suppliers who have furnished materials, supplies and/or labor to the Delegated Public Project Elements of the Project pursuant to the Development Agreement; (2) the current amount of the contracts with such contractor, subcontractors and suppliers; (3) the aggregate amount previously paid prior to the date hereof to such contractors, subcontractors and suppliers; and (4) the amount for such contractors, subcontractors and suppliers requested in the current Application for Payment.

	Contractor/Subcontractor/ Supplier	Contract Amount	Aggregate Amount Previously Paid	Amount Requested in this Application For Payment
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				

- 9.
- 10.
- 11.
- 12.
- 13.
- 14.
- 15.
- 16.
- 17.

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The undersigned individual represents and warrants that he/she is the duly authorized representative of the Developer, empowered and authorized to execute and deliver this statement on behalf of the Developer, and that this statement shall be binding upon the Developer.

All terms used herein and not otherwise defined have the meanings ascribed to them in the Development Agreement.

Signed under the pains and penalties of perjury, this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

DEVELOPER:

Submitted with Application For  
Payment #

\_\_\_\_\_

By:

Name:

Title:

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**EXHIBIT 4.10(d)(ii)**

**Partial Waiver and Release of Lien**

\_\_\_ FINAL

\_\_\_ IN PROGRESS

### CONDITIONAL WAIVER AND RELEASE OF LIENS

The undersigned is a general contractor or subcontractor, materialman or other person furnishing services or labor or material in the construction or repair of improvements upon real estate owned by \_\_\_\_\_ (jobsite information) and described as follows:

\_\_\_\_\_ (job site address)

Upon receipt by \_\_\_\_\_ (subcontractor), of a check from TURNER CONSTRUCTION COMPANY., in the sum of \$ \_\_\_\_\_ and when the check has been paid by the bank upon which its drawn, the undersigned does hereby waive, release and quitclaim in favor of the owner or owners of said real estate, in favor of the City of Worcester and in favor of each and every party making a loan on said real estate, as improved and his or its successors and assigns, all of whom may rely upon this waiver, all right that the undersigned may have to a lien upon the land and improvements above described.

The undersigned confirms it has been paid prior to the date hereof with respect to work on said real estate a total of \$ \_\_\_\_\_ covering all work performed through \_\_\_\_\_ [date] and that all workmen, subcontractors and suppliers to it and its subcontractors have been fully paid for all services rendered, work done and materials furnished through said date.

The undersigned hereby certifies that the amount retainage being held against the undersigned's contract is currently in the amount of \$ \_\_\_\_\_ and that, except for such matters as may be identified below, the current total value of the undersigned's contract is \$ \_\_\_\_\_.

IT IS UNDERSTOOD AND AGREED THAT THIS WAIVER AND RELEASE IS FOR ALL SERVICES RENDERED, WORK DONE AND MATERIAL FURNISHED PRIOR TO THE DATE HEREOF, EXCEPT AS MAY BE PROVIDED IN THE LISTING OF EXCEPTIONS IDENTIFIED BELOW:

EXCEPTIONS:

Witness the following signature and seal this      day of \_\_\_\_\_, 200\_

FIRM: \_\_\_\_\_ (subcontractor),

BY: \_\_\_\_\_  
\_\_\_\_\_

TITLE: \_\_\_\_\_  
\_\_\_\_\_

Subscribed and sworn to before the undersigned, a Notary Public for the County of  
\_\_\_\_\_ (county), State of \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

\_\_\_\_\_

\_\_\_\_\_

Notary Public

My commission expires: \_\_\_\_\_

**EXHIBIT 5.1**

**Parking Garage Ground Lease**

**(SEPARATE DOCUMENT)**

**PARKING GARAGE GROUND LEASE**

between

**WORCESTER RENAISSANCE LLC,**

as Landlord

and

**CITY OF WORCESTER,**

as Tenant

**DATED:** \_\_\_\_\_

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**EXHIBITS:**

Exhibit A	Definitions
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Exhibit F	Tenant Alteration Provisions
Exhibit G	Vertical and Horizontal Easement Agreement
Exhibit 7.2	Specific Maintenance Requirements

## PARKING GARAGE GROUND LEASE

THIS PARKING GARAGE GROUND LEASE (this "Lease") is entered into as of the \_\_\_ day of \_\_\_\_\_, 200\_\_ (the "Effective Date") by and between WORCESTER RENAISSANCE LLC, a Delaware limited liability company, with an address at c/o Berkeley Investments, Inc., 121 High Street, Boston, Massachusetts 02110 ("Landlord") and the CITY OF WORCESTER, Massachusetts, a municipal corporation organized under a home rule charter adopted under the constitution and laws of The Commonwealth of Massachusetts, with an address at City Hall, 455 Main Street, Worcester, Massachusetts 01608 ("Tenant").

### WITNESSETH:

WHEREAS, Landlord and Tenant have entered into a Development Agreement dated \_\_\_\_\_, 2006 (the "Development Agreement") pursuant to which Landlord has agreed to construct the Garage Parcel Improvements and Plaza Parcel Improvements, as hereinafter defined; and

WHEREAS, Landlord and Tenant desire to enter into a lease with respect to the Parking Garage Parcel and the Plaza Parcel, which will be part of the CitySquare project on and in the vicinity of Worcester Center Boulevard in Worcester, Massachusetts (the "CitySquare Project"), upon and subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the mutual receipt and legal sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree to enter into this Lease as follows:

### ARTICLE 1 DEFINITIONS

For the purposes of this Lease, unless the context otherwise requires, each capitalized term used herein and not otherwise defined shall have the meaning specified in Exhibit A ("Definitions") attached hereto. References in Exhibit A to the "Developer" mean the Landlord herein acting as the Developer under the Development Agreement, and references to the "City" mean the Tenant herein. The content of each exhibit, schedule, appendix, or similar attachment hereto, or referenced in this Lease as being attached hereto, is hereby incorporated into this Lease as fully as if set forth within the body of this Lease.

### ARTICLE 2 PREMISES

2.1 **Lease of Premises.** Landlord, for and in consideration of the covenants and agreements hereinafter contained on the part of Tenant to be paid, kept and performed, hereby leases to Tenant, and Tenant hereby leases from Landlord, for the Term (defined in Section 3.1 below) upon the terms and conditions set forth herein, the following described premises:

(a) a parcel of land on which the Plaza Parcel Improvements are to be constructed, the approximate boundaries of which are shown on Exhibit B attached hereto (the "Plaza Parcel"); and

(b) a subsurface parcel within which the Garage Parcel Improvements are to be constructed, which parcel is shown on Exhibit C attached hereto (the "Garage Parcel") (the Garage Parcel and the Plaza Parcel are herein together sometimes referred to as the "Premises"). The Premises are leased as part of the CitySquare Project, as hereafter described.

2.2 **Encumbrances**. The Premises are leased subject to and together with the benefit of the rights and easements granted (the "Encumbrances"), and the rights and easements reserved to Landlord ("Reserved Rights") and other matters, all as set forth in Exhibit D attached hereto, and including:

(i) a Reciprocal Easement, Operating and Use Agreement dated as of December 23, 2004 between Landlord and Worcester Renaissance Towers LLC recorded in the Worcester District Registry of Deeds (the "Registry") in Book 35383, Page 153 as amended by a First Amendment to Reciprocal Easement Agreement dated April 29, 2005, and recorded in the Registry in Book 36636, Page 296, as further amended by a Second Amendment to Reciprocal Easement, Operating and Use Agreement dated as of July 28, 2005 and recorded in the Registry in Book 36941, Page 361 (together, the "Reciprocal Easement Agreement") to the extent that the easements and rights set forth in the Reciprocal Easement Agreement do not, during construction of the Parking Garage, materially adversely affect the design, layout, construction or cost to construct the Parking Garage, and after the Delivery Date, do not materially adversely affect the operation, maintenance, usability or function of the Parking Garage.

(ii) a Heating Plant Agreement dated April 29, 2005 (the "Heating Plant Agreement") to the extent it services the Premises;

(iii) a Parking Garage Operating and Allocation Agreement to be entered into between Landlord and Tenant with respect to the use and operation of the Parking Garage and an adjacent garage owned by Landlord (together, the "Unified Garage"), substantially in the form of Exhibit E annexed hereto (the "Parking Garage Operating and Allocation Agreement");

(iv) a Vertical and Horizontal Easement Agreement among Landlord, Landlord's Affiliate, referred to in Section 14.7 hereof, and Tenant to be executed and recorded in the Registry ("Vertical and Horizontal Easement Agreement").

2.3 **Condition of the Premises**. Tenant acknowledges that it has leased the Premises after a full and complete examination of the Premises, including, without limitation, the Encumbrances, existing structures thereon, the presence of any asbestos, arsenic or other hazardous waste or materials located on the Premises or within such improvements, their present uses and non-uses, and laws, ordinances, and regulations affecting the same, and accepts the same in the same condition in which they or any part thereof now are, subject to the performance and construction of the Improvements in accordance herewith, and assumes all risks in connection therewith, without any representation or warranty, express or implied, in fact or by law, on the part of Landlord, and without recourse to Landlord except for (a) representations and warranties of the Landlord set forth in the Development Agreement, (b) construction warranties in connection with the initial construction of the Garage Parcel Improvements and the Plaza Parcel Improvements. Notwithstanding the foregoing, Landlord represents and warrants that (i)

it has good and clear, record and marketable title to the Premises, free and clear of all liens and encumbrances, except for the Encumbrances and the Reserved Rights, and (ii) there are currently no mortgages or other monetary liens on the Premises.

### ARTICLE 3 TERM

#### 3.1 Term.

(a) This Lease shall commence on the date hereof (the "Term Commencement Date");

(b) Unless sooner terminated as provided herein or in the Development Agreement, the term of this Lease with respect to the Garage Parcel (the "Garage Parcel Term"), shall end on the last day of the month in which the sixtieth (60<sup>th</sup>) anniversary of the date that Final Completion of the Parking Garage is achieved under the Development Agreement and Landlord has turned over operation of the Parking Garage to Tenant (the date of Final Completion and turnover of the operation of the Parking Garage is referred to as the "Delivery Date"); and

(c) Unless sooner terminated as provided herein or in the Development Agreement, the term of this Lease with respect to the Plaza Parcel (the "Plaza Parcel Term") shall end on the date that Final Completion of the Plaza Parcel Improvements is achieved.

The Garage Parcel Term and the Plaza Parcel Term are referred to collectively as the "Term". Until the Delivery Date, Tenant shall have no obligation to comply with any covenants or obligations under this Lease.

#### 3.2 Early Termination.

(a) If the Development Agreement terminates (i) pursuant to the provisions of Section 4.18 thereof, provided that the City has not elected under Section 4.18(c) thereof to proceed with the construction of the Parking Garage, or (ii) because construction of the Garage Parcel Improvements has not commenced within the time periods specified therein, this Lease shall simultaneously terminate and neither Landlord nor Tenant shall have any obligation to the other under this Lease, except for obligations that expressly survive the termination of this Lease. If, notwithstanding the foregoing, there is a termination under Section 4.18 of the Development Agreement and the City elects to proceed with the construction of the Parking Garage as provided in Section 4.18(c) thereof, and if, during the time period for making such election, this Lease has terminated for any reason, the Parties will enter into a new lease on the same terms and conditions as this Lease.

(b) If an Event of Default, as defined in Section 8.1 of the Development Agreement, occurs, then subject to Force Majeure and applicable cure period as provided therein, Tenant may at its option terminate this Lease by written notice to Landlord, in which event this Lease shall terminate as of the date specified in the notice, and neither Landlord nor Tenant shall have any obligation to the other under this Lease, except for obligations that expressly survive the termination of this Lease.

**ARTICLE 4**  
**CONSTRUCTION OF THE IMPROVEMENTS**

4.1 **Improvements.** Landlord shall permit, design and construct the Garage Parcel Improvements and the Plaza Parcel Improvements as provided in, and subject to the terms and conditions of, the Development Agreement, The Garage Parcel Improvements include a two level underground public parking garage containing no fewer parking spaces than the Parking Number (the "Parking Garage"). The Garage Parcel Improvements and the Plaza Parcel Improvements, are herein together sometimes referred to as the "Improvements", which are part of the Delegated Public Project Elements to be constructed by the Landlord pursuant to the Development Agreement and references to Delegated Public Project Elements in the definitions set forth in Exhibit C thereof shall mean, for purposes of this Lease, the Garage Parcel Improvements and the Plaza Parcel Improvements.

4.2 **No Obligation of Landlord.** Except with respect to the initial construction of the Improvements through to Final Completion, or as provided in Section 7.1 hereof, or in the Parking Garage Operating and Allocation Agreement, Landlord shall in no event be required to maintain or repair or to make any alterations, rebuildings, replacements, changes, additions or improvements on or off the Premises during the Term of this Lease.

4.3 **Ownership.** The Improvements and all alterations, additions and changes thereto shall be owned by Tenant and shall, on the expiration or earlier termination of the Term of this Lease, become the property of the Landlord without the necessity of any deed or other conveyance from Tenant to Landlord.

4.4 **Force Majeure.** Neither the Landlord nor the Tenant shall be considered in default of its obligations under this Lease in the event of enforced delay due to Force Majeure and whether stated or not, all periods of time in this Lease are subject to Force Majeure. "Force Majeure" shall have the meaning set forth in the Development Agreement.

**ARTICLE 5**  
**RENT**

5.1 **Rent** Beginning on the Term Commencement Date and continuing for the Term, the Tenant shall pay to the Landlord the amount of \$1.00 per year (the "Rent"). Rent shall be pro-rated for any portion of a month or calendar year at the beginning or end of the Term. All other amounts due from Tenant to Landlord under this Lease (collectively, "Additional Rent") shall be payable at the time specified herein. The Rent and Additional Rent, are together, sometimes herein referred to as "Rent".

5.2 **Landlord's Right To Perform Tenant's Covenants.**

(a) **Performance by Landlord.** If Tenant shall, at any time beyond the expiration of any applicable grace periods provided under this Lease, and subject to Force Majeure, fail to take out, pay for, maintain or deliver any of the insurance policies or certificates provided for in Article 8 hereof, or shall fail to make any payment or perform any other act on its part to be made or performed, then Landlord may, but shall be under no obligation to make any payment or perform any act on Tenant's part to be made or performed as provided in this Lease.

Landlord may enter upon the Premises (after two (2) days' notice to Tenant, except in the event of emergency) for any such purpose, and take all such action thereon, as may be necessary.

(b) **Reimbursement.** All sums so paid by Landlord and all reasonable costs and expenses incurred by Landlord, including, without limitation, reasonable attorneys', consultants' and accountants' fees and expenses, in connection with the performance of any such act, together with interest at the Default Rate from the date of such payment or incurrence by Landlord of such cost and expense, shall constitute Additional Rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord on demand. If Landlord shall exercise its rights under paragraph (a) hereinabove to cure a default of Tenant, Tenant shall not be relieved from the obligation to make such payment or perform such act in the future, and Landlord shall be entitled to exercise any remedy contained in this Lease if Tenant shall fail to pay such Additional Rent to Landlord upon demand. All costs incurred by Landlord under this Section 5.2 shall be presumed to be reasonable in the absence of a showing of bad faith or fraud.

(c) **Entry.** During the progress of any work on the Premises that may under the provisions of this Section 5.2 be performed by Landlord, Landlord may keep and store in the areas in which such work is being conducted all necessary materials, tools, supplies and equipment. Landlord shall not be liable for inconvenience, annoyance, disturbance, loss of business or other damage to Tenant or any subtenant, guest, licensee or operator by reason of making such repairs or the performance of any such work, or on account of bringing materials, tools, supplies and equipment onto the Premises during the course thereof, and the obligations of Tenant under this Lease shall not be affected thereby; provided, however, that Landlord will use commercially reasonable efforts to minimize the impact of its activities on the operations of the Parking Garage.

5.3 **Payments; Late Charges.** Until Tenant shall have been given notice otherwise by Landlord, Tenant shall pay all Rent to Landlord at the address set forth on Page 1. All Rent shall be paid by Tenant to Landlord without notice, demand, abatement, deduction or offset. Except as in this Lease otherwise expressly provided, no abatement, diminution or reduction of rent or charges shall be claimed by or allowed to Tenant, or any person claiming under Tenant, under any circumstances, whether for inconvenience, discomfort, interruption of business, or otherwise, arising from any cause or reason, except for Landlord's gross negligence or willful misconduct. If an Event of Default shall occur in Tenant's payment of Rent or other sums payable under the Lease, Tenant shall, within three (3) business days of written demand, that is labeled on the top of the first page thereof in bold face, all capital letters "LATE PAYMENT CHARGE NOTICE", pay interest on such amounts at the Default Rate from the date such payment was due and payable.

5.4 **No Partnership or Joint Venture.** Nothing contained in this Lease shall be construed to create a partnership or joint venture between Landlord and Tenant or to make Landlord an associate in any way of Tenant in the conduct of Tenant's operations and activities, nor shall Landlord be liable for any debts incurred by Tenant in the conduct of Tenant's operations and activities, and it is understood by the Parties hereto that this relationship is and at all times shall remain that of landlord and tenant.

**ARTICLE 6  
TAXES AND UTILITIES**

6.1 **Impositions.** Landlord shall pay or cause to be paid before any fine, penalty, interest or cost may be added thereto for the non-payment thereof, all taxes, payments in lieu of taxes, assessments, betterments, water and sewer rents, rates and charges, and levies which at any time during the Term of this Lease may be assessed, or imposed upon, or become due and payable (all such taxes, payments in lieu of taxes, assessments, betterments, water and sewer rents, rates and charges, and levies being hereafter referred to as "**Impositions**") in respect of the Premises, but not the Garage Parcel Improvements or the Plaza Parcel Improvements; provided, however, that if, by law, any Imposition may at the option of the taxpayer be paid in installments, Landlord may pay the same in such installments over such period as the law allows and Landlord shall only be liable for such installments as shall become due during the Term of this Lease. Landlord shall have no obligation to pay any Impositions on the Garage Parcel Improvements or the Plaza Parcel Improvements during the Term.

6.2 **Impositions Paid by Tenant.** Tenant shall pay, or cause to be paid before any fine, penalty, interest or cost may be added thereto for the non-payment thereof, all Impositions in respect of the Garage Parcel Improvements and the Plaza Parcel Improvements, it being the intent of the parties that Tenant shall have ownership of the Garage Parcel Improvements during the Garage Parcel Term and of the Plaza Parcel Improvements during the Plaza Parcel Term. If, by law, any Imposition may, at the option of the taxpayer, be paid in installments, Tenant may pay the same in such installments over such period as the law allows and Tenant shall only be liable for such installments as shall become due during the Term of this Lease.

6.3 **Abatements; Contests by Landlord/Tenant.** Landlord may seek a reduction in the valuation of the Premises (but not the Garage Parcel Improvements) and Tenant may seek a reduction in the valuation of the Garage Parcel Improvements and the Plaza Parcel Improvements assessed for tax purposes. Each may contest, in good faith, by appropriate proceedings, at such Party's expense, the amount or validity in whole or in part of any Imposition, and each Party may defer payment thereof if allowed by law, provided that:

(a) the other Party shall not be required to join in any proceedings referred to herein;

(b) Tenant shall not be required to join in or become a party, nominal or otherwise, to any proceeding in which it will oppose The Commonwealth of Massachusetts or any agency, authority, branch, commission, division, office or subdivision of or for The Commonwealth of Massachusetts, nor shall Tenant be required in connection with any such proceeding or otherwise to oppose in any way any policy previously established by Tenant nor to take any position inconsistent with a position previously taken and made public by Tenant; and

(c) the other Party shall not be required to incur any cost in connection with any such contest.

6.4 **Utilities.** Tenant shall pay, as Additional Rent, directly to the utility provider, all charges by any public authority or public utility for water, electricity, telephone, gas, sewer

and other services supplied or rendered to the Premises, and service inspections made therefor, whether called charge, rate, tax, betterment, assessment, fee or otherwise and whether such charges are made directly to Tenant or through or in the name of Landlord ("Utility Charges").

6.5 **No Liability of Landlord.** Landlord shall not be required to furnish to Tenant any facilities or services of any kind whatsoever during the Term, such as, but not limited to, water, steam, heat, gas, hot water, electricity, light and power.

## ARTICLE 7 REPAIRS, MAINTENANCE AND ALTERATIONS

7.1 **Obligation to Repair and Maintain.** Throughout the Term of this Lease, Tenant shall keep, or shall cause the Garage Manager, as defined in the Parking Garage Operating and Allocation Agreement, to keep the Garage Parcel and Garage Parcel Improvements (including, without limitation, all improvements now or hereafter erected thereon, all elevators, doors, windows, ticketing equipment, cashier's booths and their appurtenant equipment, mechanical and manual barriers, directional markers and signs, painting, lights, lighting control equipment, electrical systems, sanitary facilities, plumbing, and all other equipment and appurtenances used in the functioning of the Premises) and all sidewalks, curbs and entrance ways adjoining the same, in first class condition (as defined in Section 7.2), except for (a) reasonable wear and tear, (b) damage from a Taking or from fire or other casualty after the last repair, replacement, restoration or renewal required to be made by Tenant pursuant to its obligations hereunder, and (c) damage caused by Landlord or its employees, contractors, or invitees, and shall perform all maintenance and make all necessary repairs and replacements thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, and foreseen and unforeseen. All maintenance, repairs, and replacements made by Tenant shall be performed in accordance with Section 7.2 in order to keep the Parking Garage in a first class condition. Tenant shall be responsible for maintenance, repair and replacement of all municipal utilities running through the Parking Garage. Tenant shall have no obligation to maintain the Plaza Parcel Improvements.

The Tenant shall be responsible during the Garage Parcel Term, except for the last ten (10) years, at its sole cost and expense, to maintain, repair and replace the infrastructure within the Garage Parcel and the Parking Garage that provides, or will provide, support for the Private Project Elements to be constructed above the Garage Parcel and waterproofing for the Parking Garage. During the last ten (10) years of the Garage Parcel Term, the Tenant shall, at its sole cost and expense, maintain such infrastructure related to the Parking Garage, but, subject to the provisions of the next paragraph, shall only be responsible to pay a share of any capital expenditures related to such waterproofing and infrastructure equal to a fraction, the numerator of which is the number of years then left in the Garage Parcel Term, and the denominator of which is the expected useful life of the applicable capital expenditure determined in accordance with generally accepted accounting principles, multiplied by the cost of such capital expenditure, and the Landlord shall pay the balance of such cost. After the Garage Parcel Term has expired, the Landlord shall bear all costs (including, capital costs) of maintaining such infrastructure and waterproofing.

In any instance where the cost of repair, maintenance or replacement of such structural support and waterproofing is to be apportioned between the Landlord and the Tenant, and the Landlord does not, in any instance, agree to bear its portion of such costs, the Tenant shall have the option instead of making a capital replacement, to undertake only commercially reasonable maintenance and repair activities, provided that such maintenance and repairs shall be performed in such a manner that the useful life thereof can reasonably be anticipated to extend to the end of the Garage Parcel Term.

Capital expenditures with respect to the Garage Parcel and the Garage Parcel Improvements during the last ten (10) years of the Garage Parcel Term shall be paid in the same manner and to the same extent as provided in the two immediately preceding paragraphs of this Section.

Notwithstanding the foregoing in this Section or any other provisions of this Lease to the contrary, Tenant shall only be obligated to repair, maintain and replace the structural elements of the Parking Garage that provide support for the buildings built, or to be built, above the Parking Garage (collectively, the "Building Support") to the extent of Tenant's current and future net revenue from the Parking Garage and Tenant's current and future capital reserves established and funded pursuant to the Parking Garage Operating and Allocation Agreement. If such funds are not available or are insufficient, then Landlord may elect to exercise its rights pursuant to Section 5.2 and make any repairs, maintenance or replacement to the Building Support that Tenant does not have available funds to make. Provided Tenant makes such funds available to Landlord, and if Landlord does not elect to exercise its rights pursuant to Section 5.2, then Tenant shall be excused from its obligation to so maintain, repair or replace the Building Support in such instance. Notwithstanding the foregoing, Landlord's election not to exercise its rights pursuant to Section 5.2 in any one instance shall not relieve Tenant of its future obligations pursuant to this Section 7.1, nor constitute a waiver by Landlord of any of its rights or remedies except as provided herein. In no event shall Tenant be obligated to borrow any amounts therefore. Tenant agrees to apply any available amounts from any capital reserves established for the Parking Garage first to any work needed with respect to the Building Support before using the same for other capital expenditures.

**7.2 Standard Maintenance, and Inspections.** Without limiting the provisions of Section 7.1 above, Tenant shall maintain, or shall cause the Garage Manager to maintain, to the maximum extent practicable, the Parking Garage such that said structure remains in first-class condition for at least the full Garage Parcel Improvements Term in accordance with the specific maintenance requirements listed in Exhibit 7.2 attached hereto.

**7.3 Cleaning; Landscaping; Snow Removal.** Tenant shall put, keep and maintain, or cause the Garage Manager to put, keep and maintain, all portions of the Premises, including interior parking and driving surfaces and entrance and exit ramps, and the sidewalks and curbs and landscaped areas (including, without limitation, the irrigation system therefor) adjoining the same in a clean, well-maintained, and orderly condition, free of dirt, rubbish, snow, ice and unlawful obstructions, and properly dispose of all such dirt, rubbish, snow and ice.

**7.4 Excavation and Shoring.** If any excavation shall be made, or is contemplated to be made, with respect to construction of the CitySquare Project, Tenant shall afford Landlord

and Landlord's employees, contractor's and agents the right to enter upon the Premises for the purpose of performing such work as such person or persons shall consider to be necessary to preserve any of the walls or structures of the Improvements and the Premises from injury or damage and to support the same by proper foundations, provided that such work shall be carried out at such person or persons' sole cost and expense and shall be completed in accordance with plans and specifications approved by Tenant and Landlord, such approvals not to be unreasonably withheld, conditioned or delayed ("Excavation"). The Excavation shall not cause a permanent reduction in the Parking Number, and shall not cause a temporary reduction in the Parking Number by more than is reasonably necessary. Landlord shall repair any damage resulting from the Excavation and, except for Tenant's negligence or willful misconduct, shall to the extent permitted by applicable law save Tenant harmless against and from all liabilities, obligations, damages, penalties, claims, costs, charges, and expenses, including reasonable architects' fees, engineers' and attorneys' fees, which may be imposed upon or incurred by or asserted against Tenant by reason of the Excavation or the negligence or willful misconduct of any person causing the Excavation. Tenant shall not, by reason of any such excavation or work, have any claim against Landlord for damages or indemnity or for suspension, diminution, abatement or reduction of Rent under this Lease. Tenant shall not be liable for any damage resulting from the Excavation unless caused by the negligent or willful misconduct of Tenant. Notwithstanding anything in this Section to the contrary, Landlord shall use commercially reasonable efforts to minimize the impact of any Excavation on the operation of the City Garage to the extent reasonably possible under the circumstances.

**7.5 Alterations.** Following Final Completion of the Garage Parcel Improvements, Tenant may undertake any alterations, additions, changes or improvements to the Garage Parcel Improvements (collectively, "Tenant Work"), provided such Tenant Work (a) does not impair or weaken the strength of the structure, roof or building systems of the Garage Parcel Improvements or any other improvements located on the Premises, including, without limitation, any improvements associated with the CitySquare Project, (b) does not lessen the fair market value of the Garage Parcel Improvements, the Premises, or the CitySquare Project, (c) does not impair the use of the Garage Parcel Improvements for the Permitted Uses, (d) does not affect in any material way the interior appearance, unified way finding, exterior appearance, exterior dimensions (which shall include mechanical penthouses and equipment and communications equipment or otherwise approved by Landlord) interior appearance, signage, lighting, or function of the Garage Parcel Improvements, the Premises, the CitySquare Project, or Landlord's property located adjacent to or above the Premises, or any easement over any streets required in connection therewith, or reduce the number of parking spaces in the Parking Garage, or reduce the aggregate gross square footage of the CitySquare Project, or adversely impact, directly or indirectly, the ability of Landlord or any other person or entity, to develop the CitySquare Project, or adjoining parcels of land, or (for so long as the Parking Garage Operating and Allocation Agreement is in effect) to operate, as a whole, the Unified Garage, and (e) does not affect in any way the function or amount of open space in the Approved Design. Tenant may not undertake any other Tenant Work without the prior written consent of Landlord, which shall include, without limitation, design review by Landlord of the proposed alterations, additions, changes or improvements, provided that Landlord will not unreasonably withhold or delay its consent to Tenant Work which complies with the applicable provisions of clauses (a) through (e) of the foregoing sentence. Notwithstanding the foregoing or any other term or provision of this Lease to the contrary, Tenant shall be allowed without Landlord's consent to undertake such

reasonable alterations as may be necessary to achieve a separation of the Parking Garage from the garage owned by Landlord, at Tenant's sole cost and expense, as contemplated in the Parking Garage Operating and Allocation Agreement, provided that in such instance Landlord and Tenant agree to cooperate with each other to achieve a separation of the two garages.

With respect to any Tenant Work, Tenant shall comply with the requirements of this Article 7 and Article 8, and with the provisions of Exhibit F attached hereto ("Tenant Alteration Provisions")

7.6 **Signs.** Tenant shall not erect any signs on the Premises without the prior written consent of Landlord, which shall not be unreasonably withheld or delayed. In that connection, Tenant shall submit to Landlord an initial signage plan (including, but not limited to, directional signs, price signs, and no trespassing signs), and, thereafter, a plan showing any material changes or additional signs. Any disapproval by Landlord shall specify Landlord's objections.

7.7 **Lighting.** Tenant shall provide and maintain adequate lighting within and around the Parking Garage, including street lights included in the Approved Design. Such lighting shall operate within the Parking Garage at all times.

## ARTICLE 8 INSURANCE AND INDEMNITY

### 8.1 **Casualty Insurance.**

(a) **Extended Coverage.** From and after the Delivery Date, Tenant shall, or shall require the Garage Manager pursuant to the Parking Garage Operating and Allocation Agreement, to keep in full force and effect, Commercial Property Insurance with coverage for perils as set forth under the ISO Special Causes of Loss form on the Garage Parcel Improvements and other improvements located on the Premises, but excluding equipment, trade fixtures, furniture, furnishings and other personal property supplied or installed by Tenant so far as any of the same are not, as a matter of law, part of the real estate, in amounts sufficient at all times to prevent Landlord or Tenant from becoming a co-insurer under the provisions of applicable policies of insurance, but, in any event, at least equal to the full replacement cost thereof, without deduction for depreciation, against all risks of direct physical loss or damage as may from time to time be included within the extended coverage insurance policy and extended to include coverage against vandalism and malicious mischief and such other risks (to the extent obtainable on commercially reasonable terms) as Tenant may reasonably elect. The insurance also shall cover increased cost of construction, demolition and debris removal coverage, and contingent liability arising out of the enforcement of building laws and ordinances governing repair and reconstruction and shall include an agreed amount provision. The replacement cost of the Garage Parcel Improvements and such other improvements as are located on the Premises shall be determined at least once every twelve (12) months by agreement of Landlord and Tenant, or as may be required by the Garage Manager.

(b) **Builder's Risk** During construction of the Garage Parcel Improvements and the Plaza Parcel Improvements, Landlord shall keep in full force and effect, all risk builder's risk and such other insurance as required under the Development Agreement. During any

subsequent construction or alteration of the Garage Parcel Improvements, Tenant shall maintain the same type and amount of insurance as Landlord is required to maintain under the Development Agreement, naming Landlord as an additional insured, provided that the builder's risk insurance shall be in an amount equal to the cost of construction.

8.2 **Liability Insurance.** Tenant shall maintain, or shall cause the Garage Manager pursuant to the Parking Garage Operating and Allocation Agreement, to maintain:

(a) for the mutual benefit of Landlord and Tenant, and naming Landlord as an additional insured, commercial general public liability insurance (including garage liability with auto liability and premises liability with coverage for property in the care, custody, or control of the insured) against claims for personal injury, death, and property damage occurring upon, in or about the Premises, or the Garage Parcel (including, without limitation, personal injury, death, and property damage resulting directly or indirectly from any change, alteration, improvement or repair thereof) with limits reasonably deemed adequate by Landlord to protect against judgments being awarded in Massachusetts for injury, death and property damage. As of the date hereof, a commercial general liability policy, with minimum limits of \$1,000,000 each occurrence; \$2,000,000 aggregate; \$2,000,000 completed operations; \$1,000,000 personal injury; \$500,000 medical payments; and \$100,000 fire, legal liability shall be deemed adequate. The liability limits set forth above (as adjusted) shall be reviewed after every year of the Term to determine their adequacy as described above;

(b) if, at any time, there are any boilers, pressure vessels, pipes or elevators servicing the Parking Garage, boiler insurance, including pressure vessels and pipes, and elevator insurance, both in a reasonable amount.

8.3 **Supplemental Insurance.** Landlord shall maintain, or shall cause to be maintained, for the mutual benefit of Landlord and Tenant, and naming Tenant as additional insured, commercial general public liability insurance against claims for personal injury, death and property damage occurring upon, in or about the Plaza Parcel Improvements (including, without limitation, personal injury, death, and property damage resulting directly or indirectly from any change, alteration, improvement, or repair thereof). As of the date hereof, a commercial general liability policy with minimum limits of \$1,000,000 each occurrence; \$2,000,000 aggregate; \$2,000,000 completed operations; \$1,000,000 personal injury; \$500,000 medical payments; and \$100,000 fire, legal liability shall be deemed adequate.

8.4 **Insurance Carriers, Policies.** All insurance provided for in this Article 8 shall be effected under valid and enforceable policies, issued by insurers of recognized responsibility licensed and doing business in Massachusetts and having a so-called Best's Insurance Rating of A:XI or better, or, if such rating is no longer issued, an equal or better rating by a successor insurance carrier rating service reasonably acceptable to Landlord. Upon the execution of this Lease, and thereafter not less than sixty (60) days prior to the expiration dates from time to time of the policies required pursuant to this Article 8, certificates of such insurance or, upon request of either Party, duplicate originals of the policies, in either case bearing notations evidencing the payment of premiums or accompanied by other evidence reasonably satisfactory to such Party of such payment shall be delivered to the requesting Party by the other Party hereto.

Nothing in this Article 8 shall prevent Landlord or Tenant from taking out insurance of the kind and in the amounts required of such Party provided for under this Article under a blanket insurance policy or policies covering other properties as well as the Premises and the Improvements, as the case may be, provided, however that any such policy or policies of blanket insurance (a) shall specify therein, or in a written statement from the insurers under such policy or policies specifying, the amount of the total insurance allocated to the Premises, the Improvements, as the case may be, which amounts shall not be less than the amounts required by Sections 8.1 and 8.2 hereof, and (b) such amounts so specified shall be sufficient to prevent any of the insureds from becoming a co-insurer within the terms of the applicable policy or policies, and provided further, however, that any such policy or policies of blanket insurance shall otherwise comply as to endorsements and coverage with the provisions of this Article 8.

8.5 **No Separate Insurance.** Neither Landlord nor Tenant shall take out separate insurance concurrent in form or contributing in the event of loss with that required in this Article 8 to be furnished by, or which may reasonably be required to be furnished by Tenant, unless Landlord and Tenant are included therein as the insured, with loss payable as in this Lease provided. Each Party shall promptly notify the other of the placing of any such separate insurance and shall cause the same to be delivered as in Section 8.4 hereof required.

8.6 **Adjustment.** All policies of insurance provided for in Section 8.1 hereof shall name Landlord and Tenant as the insureds as their respective interests may appear. The loss, if any, under such policies shall be adjusted as follows: In case of any particular casualty resulting in damage or destruction pertaining to the Plaza Parcel Improvements prior to the expiration of the Plaza Parcel Term, the loss under such policies shall be adjusted with the insurance companies by Tenant and shall be payable to Tenant and after such date shall be adjusted with Landlord and payable to Landlord. In the case of such damage or destruction pertaining to the Garage Parcel Improvements, the loss shall be adjusted with the insurance companies by Tenant, and the proceeds of any such insurance, as so adjusted, shall be payable to Tenant.

All such policies shall provide that the loss, if any, thereunder shall be adjusted and paid as hereinabove provided. Each such policy shall, to the extent obtainable, contain a provision that no act or omission of Tenant or any sublessee, guest, licensee, operator, or other occupant shall affect or limit the obligation of the insurance company so to pay the amount of any loss sustained.

8.7 **Non-cancellation.** Each policy or certificate issued by an insurer shall, to the extent obtainable, contain an agreement by the insurer that such policy shall not be canceled, non-renewed or substantially modified without at least forty-five (45) days' prior written notice to Landlord or Tenant, as the case may be, and to any mortgagee named therein.

8.8 **Intentionally Omitted.**

8.9 **Waiver of Subrogation.** Landlord and Tenant hereby each waive all rights of recovery against the other or against the officers, employees, agents and representatives of the other, on account of loss or damage occasioned to such waiving Party or its property or the property of others under its control to the extent that such loss or damage is insured against under any insurance policies which either may have in force at the time of such loss or damage, or is

required to be covered by this Lease. Each Party shall, upon obtaining policies of insurance relating to the Premises, or portions thereof, give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Lease, and each Party shall cause each such insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against either Landlord or Tenant in connection with any damage covered by any such policy.

#### **8.10 Indemnification.**

(a) Except for Landlord's gross negligence or willful misconduct, Tenant shall, indemnify, defend and save Landlord harmless against and from all liabilities, obligations, damages, penalties, claims, costs, charges and expenses, including reasonable architects' fees, engineers' and attorneys' fees, which may be imposed upon or incurred by or asserted against Landlord by reason of any of the following occurrences during the Term of this Lease:

(i) any negligence on the part of Tenant;

(ii) any accident, injury or damage to any person or property occurring in, on or about the Premises or any part thereof, including any sidewalk, curb or other area appurtenant to the Premises, unless the same occurs solely as a result of the gross negligence or willful act of Landlord, its employees, contractors, agents, servants, or licensees; and

(b) Except for Tenant's gross negligence or willful misconduct, Landlord shall indemnify, defend and save Tenant harmless against and from all liabilities, obligations, damages, penalties, claims, costs, charges and expenses, including, reasonable architects' fees, engineers' and attorneys' fees, which may be imposed upon or incurred by or asserted against Tenant by reason of any of the following occurrences during the term of this Lease:

(i) any negligence on the part of Landlord;

(ii) any accident, injury or damage to any person or property occurring in, on or about the Landlord's garage or any part thereof, including any sidewalk, curb or other area appurtenant to the Landlord's garage, unless the same occurs solely as a result of the gross negligence or willful act of Tenant, its employees, contractors, agents, servants, or licensees; and

(c) In case any action or proceeding is brought against a Party by reason of any claim arising out of any of the occurrences which the other Party is required, pursuant to the preceding paragraphs, to indemnify and save the other Party harmless against and from, the indemnifying Party, upon written notice from the other Party, shall at the indemnifying Party's expense, defend such action or proceeding using legal counsel reasonably satisfactory to the other Party.

(d) To the extent not covered by insurance proceeds, the foregoing express obligation of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to a Party which would exist at common law or under any other provision of this Lease, and the extent of the obligation of indemnification shall not be limited by any provision of insurance undertaken in accordance with this Article 8, except as modified by

Section 8.9. The provisions of this Section 8.10 shall survive termination or expiration of this Lease.

8.11 **Miscellaneous.** If the Parking Garage Operating and Allocation Agreement is not in effect, Tenant shall pay its pro-rata share of premiums and other costs for insurance and maintenance with respect to the common areas of the CitySquare Project used by the Parking Garage (such as access stairs, ramps and elevators) as part of the operation thereof pursuant to the Reciprocal Easement Agreement.

## ARTICLE 9 USE OF PREMISES

9.1 **Permitted Uses.** Subject to the restrictions and conditions stated in this Lease, Tenant shall use the Garage Parcel for licensing and operation of the Parking Garage for a public parking garage containing no fewer parking spaces than the Parking Number (defined below), for the parking of passenger motor vehicles and bicycles, provided that, subject to Landlord's approval of the layout of such space, space in the Parking Garage not usable for parking (e.g., space under ramps) may be used for storage purposes, and all other accessory facilities, amenities, and improvements in the Approved Design, or otherwise approved by Landlord, in Landlord's reasonable discretion, and all in accordance with the standards set forth in this Article 9 and as included in the Approved Design (collectively, the "Parking Garage Permitted Uses") and for no other uses. The Plaza Parcel shall primarily be used for open space as part of the CitySquare Project in accordance with the Plaza Parcel Access Principles set forth in Exhibit 6.3(c) to the Development Agreement ("Plaza Parcel Permitted Uses"). Upon the expiration of the Plaza Parcel Term, Landlord, or its successor in title to the Plaza Parcel, shall record a restrictive covenant running with the land setting forth the Plaza Parcel Permitted Uses. Tenant shall not, under any circumstances convert the Premises or any portion thereof to a leasehold condominium or leasehold cooperative. Tenant acknowledges that the Premises are being leased to Tenant for a public parking garage for use by the public, including, visitors to the CitySquare Project. For purposes of this Lease, the "Parking Number" shall be 1,025.

9.2 **Building F Spaces.** On or prior to the Delivery Date, Landlord may, by written notice to Tenant, designate up to ten percent (10%) of the parking spaces in the Parking Garage, for exclusive use of owners of condominium units on Parcel F in the CitySquare Project (the "Building F Exclusive Use Parking Spaces"), such exclusive use to commence upon the recording of the master deed for the condominium. Prior to the recording of the master deed, Tenant may rent the Building F Exclusive Use Parking Spaces to the public. The location of the Building F Exclusive Use Spaces shall be immediately below the condominium development. After the initial construction of the Parking Garage and the recording of the master deed for the condominium, the condominium unit owners of Building F (the "Building F Condo Owners"), or the Building F Condominium Association, shall be responsible for the cost of any signage, restriping or other costs in connection with creating parking spaces on the Building F Exclusive Use Parking Spaces. The Building F Condo Owners shall pay the Tenant for the use of Building F Exclusive Use Parking Spaces at rates established in accordance with the Parking Garage Operating and Allocation Agreement, or if the Parking Garage Operating and Allocation Agreement is not in effect, fair market rent as established from time to time by the City with respect to parking rates in the Parking Garage.

Tenant, the Building F Condo Owners and the Building F Condominium Association shall enter into a mutually acceptable agreement (the "Building F. Agreement") regarding the Building F Exclusive Use Parking Spaces, which shall contain at a minimum, the following terms:

(a) each Building F Condo Owner shall pay for the use of its Building F Exclusive Use Parking Spaces at rates established in accordance with the Parking Garage Operating and Allocation Agreement, or if the Parking Garage Operating and Allocation Agreement is not in effect, at a fair market rent as established from time to time by the City with respect to parking rates in the Parking Garage for bulk parking space users;

(b) if a Building F Condo Owner does not pay for the use of its Building F Exclusive Use Parking Space as provided above, Tenant may deny such Building F Condo Owner the right to use its Building F Exclusive Use Parking Space until all past due amounts, plus interest at the Default Rate, have been paid in full;

(c) during the time that any Building F Condo Owner is not permitted to use its Building F Exclusive Use Space due to such owner's failure to pay for parking as required, Tenant may rent such space(s) to the public, either on a daily or a monthly basis;

(d) the failure of the Building F Condo Owners or the Building F Condominium Association to comply with the terms of the Building F Agreement shall give rise to a lien in favor of the Tenant against the applicable unit in Building F; and

(e) the Building F Condo Owners and/or the Building F Condominium Association will have the right to redeem the use of the Building F Exclusive Use Parking Spaces and discharge any liens by paying all past due amounts, including interest at the Default Rate, plus posting one month's parking rental amount as a security deposit. Tenant shall have the right to rent the Building F Exclusive Use Parking Spaces to the general public on a daily or monthly basis until the Building F Agreement is fully executed and in effect

9.3 **Operation of Parking Garage**. Tenant shall operate, or cause the Garage Manager to operate, the Parking Garage as a parking garage in a first class manner similar to first class facilities in prime commercial locations in cities of comparable size and, in any event, in accordance with the provisions of the Parking Garage Operating and Allocation Agreement so long as the Parking Garage Operating and Allocation Agreement is in effect.

9.4 **No Dedication**. Tenant shall not suffer or permit the Premises or any portion thereof to be used in such manner as to impair Landlord's interest and title in and to the Premises, or any portion thereof or in such manner as might constitute a basis for a claim or claims of adverse usage, adverse possession or prescription by the public, or of implied dedication of the Premises or any portion thereof. Landlord hereby consents to the use by Tenant of the Premises and the Parking Garage for public parking, including, parking for the CitySquare Project, subject to the terms of this Agreement and the provisions of the Parking Garage Operating and Allocation Agreement as long as the Parking Garage Operating and Allocation Agreement is in effect.

9.5 **No Waste**. Tenant shall not injure, overload, deface or strip, or cause waste or

damage to, the Premises or the underlying fee or any part thereof; nor commit any nuisance or unlawful conduct; nor permit the emission of any objectionable noise or odor (except to the extent that is customary with the operation of a garage of a similar size, nature and type); nor make any use of the Premises which is improper or offensive; nor permit or suffer any subtenant, guest, licensee, operator, occupant, invitee or others to do any of the foregoing.

9.6 **Legal Requirements.** Throughout the Term of this Lease, Tenant, at its expense, shall promptly comply with and shall cause all subtenants, licensees and operators to promptly comply with all present and future laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments, departments, commissions, boards and officers, foreseen or unforeseen, ordinary as well as extraordinary, which may be applicable to the Premises, or to the use or manner of use of the same or the owners, tenants, licensees, operators, or occupants thereof whether or not such law, ordinance, rule, regulation or requirement is specifically applicable or related to the conduct of the Permitted Uses, or shall affect the Parking Garage or the Garage Parcel Improvements, or shall necessitate structural changes or improvements, or shall interfere with the use and enjoyment of the Premises. The foregoing sentence shall not require Tenant to make any changes or improvements required by any law, ordinance, rule, regulation, or requirement currently in effect governing the construction of the Garage Parcel Improvements which are the responsibility of the Landlord under the Development Agreement. Tenant shall, in the event of any violation or any attempted violation of this Section 9.6 by any subtenant, licensee or operator, take steps, immediately upon knowledge of such violation, as Tenant determines to be reasonably necessary to remedy or prevent the same as the case may be. Any expenses incurred by Landlord with respect to any subsequent amendments or modifications to such permits or licenses shall be reimbursed by Tenant as Additional Rent.

9.7 **Liens.** Tenant shall not directly or indirectly create or permit to be created or to remain, and shall discharge, any lien or encumbrance with respect to, the Premises, the underlying fee or any part thereof or the Rent or any payment thereof; other than (a) this Lease, (b) liens for Impositions not yet payable, or being contested as permitted by Section 6.2 above, (c) the title exceptions listed on Exhibit D, (d) liens in connection with the initial construction of the Garage Parcel Improvements, or (e) liens of mechanics, materialmen, suppliers or vendors, or rights thereto, placed on Tenant's leasehold estate (and not, under any circumstances, Landlord's fee estate) in the ordinary course of business or in the ordinary course of construction, alteration, addition, improvement, or restoration of the Garage Parcel Improvements or any part thereof, for sums which, under the terms of the related contracts, are not yet due or are being contested in good faith.

9.8 **Contests.** Tenant shall have the right, after ten (10) days' prior written notice to Landlord, to contest by appropriate legal proceedings diligently conducted in good faith, in the name of Tenant, without cost or expense to Landlord, the validity or application of any law, ordinance, order, rule, regulation or requirement of the nature referred to in Section 9.6 above, subject to the following:

(a) If, by the terms of any such law, ordinance, order, rule, regulation or requirement, compliance therewith pending the prosecution of any such proceeding may legally be delayed without the incurrence of any lien, charge or liability of any kind against the Premises

or any part thereof and without subjecting Tenant or Landlord to any liability, civil or criminal, for failure so to comply therewith, Tenant may delay compliance therewith until the final determination of such proceeding; and

(b) If any lien, charge or civil liability would be incurred by reason of any such delay, Tenant nevertheless may contest as aforesaid and delay as aforesaid, provided that such delay would not subject Landlord to criminal liability or fine, and provided that Tenant (i) furnishes to Landlord security, reasonably satisfactory to Landlord, against any loss or injury by reason of such contest or delay, and (ii) prosecutes the contest with due diligence; and

(c) Landlord shall cooperate with any proceeding, provided that Landlord shall not be required in connection with any such proceeding or otherwise to oppose in any way any policy previously established by Landlord or to take a position inconsistent with a position previously taken and made public by Landlord.

9.9 **Compliance with Insurance Requirements.** Throughout the Term of this Lease, Tenant or Landlord, as the case may be, at its expense, shall observe and comply with the requirements of all policies of public liability, casualty and all other policies of insurance required to be supplied by Tenant or Landlord hereunder at any time in force with respect to the Premises.

## ARTICLE 10 DAMAGE OR DESTRUCTION

10.1 **Restoration.** In case of damage to or destruction of the Garage Parcel Improvements or any part thereof, by fire or otherwise, prior to the Delivery Date, the provisions of the Development Agreement shall control. Thereafter, in case of damage to or destruction of the Garage Parcel Improvements, or any part thereof, by fire or otherwise, Tenant shall promptly give written notice thereof to Landlord, and Tenant shall restore, repair, replace, rebuild or alter the same as nearly as possible to its condition immediately prior to such damage or destruction, at Tenant's sole cost and expense, to the extent of the available proceeds of insurance. Such restorations, repairs, replacements, rebuildings or alterations shall be commenced as soon as practicable following the occurrence of such damage or destruction to the extent the available proceeds are sufficient and shall thereafter be prosecuted continuously to completion with diligence. In the event that the insurance proceeds are insufficient to fully rebuild and Tenant is unable or unwilling to provide additional funds for restoration, repair or replacement, Landlord shall have the option at its sole cost and expense to make available an amount sufficient to rebuild ("Landlord's Rebuild Fund") and Tenant shall complete the rebuilding to the extent of Landlord's Rebuild Fund made available to Tenant. In such event, Tenant shall pay Landlord 100% of its net revenues from the Parking Garage, plus the amount of Tenant's Capital reserves, during the balance of the Term until the entire Landlord's Rebuild Fund has been repaid, plus Landlord's cost of capital calculated at the federal funds rate, plus 5% (the "Cost of Capital"). If Tenant's net revenue from the Parking Garage and capital reserve during the balance of the Term are insufficient to repay the Landlord's Rebuild Fund plus the Cost of Capital, Tenant shall have no obligation to make up any deficit. After the expiration of the Plaza Parcel Term, Tenant shall have no obligation to restore the Plaza Parcel Improvements after damage or destruction.

10.2 **Restoration Procedures.** All insurance proceeds paid on account of such damage or destruction prior to the Delivery Date shall be paid in accordance with the Development Agreement. Thereafter, in the event of damage to or destruction of the Garage Parcel Improvements, all insurance proceeds shall be paid to Tenant, less the reasonable cost, if any, incurred in connection with adjustment of the loss and the collection thereof, and shall be applied by Tenant together with the Landlord's Rebuild Fund, if any, to the payment of the cost of the aforesaid restoration, repairs, replacement, rebuilding or alterations, including the cost of temporary repairs for the protection of property pending the completion of permanent restoration, repairs, replacements, rebuilding or alterations (all of which temporary repairs, protection of property and permanent restoration, repairs, replacement, rebuilding or alterations are hereinafter collectively referred to as the "Restoration"). In performing the Restoration, the Tenant shall comply with the Tenant Alteration Provisions set forth in Exhibit F and shall provide the Landlord with copies of the following:

(a) Bills from contractors and subcontractors for work and materials in place, describing in reasonable detail such work and materials, and bills for the reasonable fees of any lawyer, architect or engineer for services relating to the Restoration;

(b) Provided that the cost of the Restoration is reasonably estimated by the Tenant to exceed One Hundred Thousand Dollars (\$100,000.00), a certificate of the architect or engineer in charge of the Restoration, or of a third party not in the regular employ of any of the Parties hereto, which architect, engineer or third party is reasonably satisfactory to Tenant and Landlord, stating that (i) the work, materials or services described in the bills were necessary or appropriate and are in place or have been performed, (ii) the amount specified in the bills does not exceed the reasonable cost of such work, materials, or services, (iii) the work or materials described in each bill, to the best knowledge of such architect, engineer or third party, has been supplied by the contractor or subcontractor submitting such bill or by a person who has supplied materials to such contractor or subcontractor, and (iv) to the best knowledge of such architect, engineer or third party, the additional amount, if any, is required to complete the restoration; and

(c) Upon completion of the Restoration, a title search by a title company or licensed abstractor or other evidence satisfactory to the Trustee that there has not been filed with respect to the Garage Parcel Improvements or the Premises any mechanic's or other lien or instrument for the retention of title with respect to any part of the work performed which has not been discharged of record, except liens which will be discharged by payment of the amount then requested or liens with respect to which Tenant has furnished Landlord with a satisfactory bond.

10.3 **No Surrender or Abatement.** Except as otherwise specifically provided herein, no destruction of or damage to the Garage Parcel Improvements or the Plaza Parcel Improvements or any part thereof, by fire or any other casualty, whether or not insured, shall permit Tenant to surrender this Lease or shall relieve Tenant from its liability to pay the full Rent and other charges payable under this Lease or from any of its other obligations under this Lease, and Tenant waives any rights now or hereafter conferred upon it by statute or otherwise to quit or surrender this Lease or the Premises, or any part thereof, or to any suspension, diminution, abatement or reduction of rent on account of any such destruction or damage.

10.4 **Plaza Parcel Improvements.** Any proceeds of insurance from damage to or

destruction of the Plaza Parcel Improvements prior to the expiration of the Plaza Parcel Term shall be applied as provided in the Development Agreement.

## ARTICLE 11 TAKING

11.1 **Award.** In the event that the Premises, or any part thereof, shall be taken in condemnation proceedings or by exercise of any right of eminent domain or by agreement between Landlord, Tenant and those authorized to exercise such right (any such matters being herein referred as a "Taking"), prior to the Delivery Date, the terms of the Development Agreement shall apply to any such Taking. Thereafter, in the event of a Taking, Landlord and Tenant shall have the right to participate in any Taking proceedings or agreement for the purpose of protecting their interests hereunder. Each Party so participating shall pay its own expenses therein.

11.2 **Termination.** If at any time during the Term of this Lease there shall be a Taking of the whole or substantially all of the Premises, this Lease shall terminate and expire on the date of such Taking and the Rent hereunder shall be paid to the date of such Taking. For the purpose of this Article, "substantially all of the Premises" shall be deemed to have been taken if the untaken part of the Premises shall be insufficient for the Restoration of the Garage Parcel Improvements such as to allow the economic and feasible operation thereof either alone or as part of the Unified Garage if the Parking Garage Operating and Allocation Agreement is then in effect. If there is a Taking resulting in the termination of this Lease as above provided, the rights of Landlord and Tenant with respect to the award shall be as follows:

(a) First, to the payment of the costs, fees and expenses incurred by Landlord and Tenant in connection with the collection of the award;

(b) Second, to pay any unpaid balance of Landlord's Rebuild Fund and Cost of Capital;

(c) Third, to pay existing Operating Expenses under the Parking Garage Operating and Allocation Agreement if then in effect or if not then in effect, to pay existing operating expenses of the Parking Garage; and ;

(d) Fourth, all remaining proceeds (the "Remaining Proceeds") shall be divided between Landlord and Tenant prorata, such that Tenant receives a proportion equal to the number of years remaining in the Term divided by the total number of years in the Term, and Landlord receives a proportion equal to the number of years expired of the Term divided by the total number of years in the Term. The amount to which Tenant is entitled to is referred to as the "Garage Award" and the amount to which Landlord is entitled is referred to as the "Project Award".

No such termination of this Lease under this Section 11.2 shall release Tenant from any obligation hereunder for Rent accrued or payable for or during any period prior to the effective date of such termination, and any prepaid rent, taxes and insurance premiums beyond the effective date of such termination shall be adjusted.

11.3 **Restoration.** In the event of a Taking which does not result in the termination of this Lease pursuant to Section 11.2 above:

(a) Tenant shall, promptly after such Taking, restore the Garage Parcel Improvements at Tenant's sole cost and expense to the extent of the taking proceeds received by Tenant, less the costs associated therewith.

(b) Tenant shall be entitled to all of the Remaining Proceeds which shall be made available in the same manner as insurance proceeds as provided in Section 10.2 hereof.

(c) After restoration, any portion of the Remaining Proceeds in excess of the cost of restoration shall be divided between Landlord and Tenant as provided in Section 11.2(d).

(d) Tenant shall have no obligation to restore the Plaza Parcel Improvements after a Taking.

11.4 **Temporary Taking.** If the whole or any part of the Premises shall be the subject of a temporary Taking, this Lease shall remain in full force and Tenant shall continue to pay in full the Rent payable by Tenant hereunder without reduction or abatement, and Tenant shall be entitled to receive any award so made for the period of the temporary Taking which is within the Term.

## ARTICLE 12 TRANSFERS OF TENANT'S INTEREST

12.1 **No Assignment or Subletting by Tenant.** As used in this Lease, "Subletting" includes transactions creating or resulting in one or more subleases, tenancies-at-will, licenses, concessions, or other occupancy arrangements. Tenant covenants not to engage in, negotiate, or permit the assignment, transfer, mortgage, alienation, or pledge (collectively "Assignment") of this Lease or any interest therein, nor engage in, negotiate, or permit any Subletting of all or any part of the Premises, nor suffer any of the foregoing to occur. The foregoing prohibition against Assignment and Subletting shall include voluntary and involuntary Assignment and Subletting, and Assignment and Subletting by operation of law. Any attempted Assignment or Subletting in violation of any of the provisions of this Lease shall be void.

Notwithstanding the foregoing provisions of this Section 12.1, Tenant may otherwise make parking spaces in the Parking Garage available for the use of tenants, subtenants, occupants, employees, customers, business agents, invitees, and guests of the CitySquare Project, and the public generally, all as further contemplated and provided in Article 9 hereof and in compliance with the terms of this Lease and the Parking Garage Operating and Allocation Agreement.

## ARTICLE 13 TERMINATION AND DEFAULT

13.1 **Surrender.** Tenant shall on the last day of the Term, or upon any earlier termination of this Lease, quit and peacefully surrender and deliver up the Premises, including the Garage Parcel Improvements and the Plaza Parcel Improvements (unless already

surrendered) and all other improvements to the Premises, to the possession and use of Landlord without delay and in first class condition (excepting only reasonable wear and tear, and damage from a Taking or from a fire or other casualty after the last repair, replacement, restoration or renewal required to be made by Tenant, all as provided under this Lease). The Premises shall be surrendered free and clear of all liens and encumbrances, other than those existing at the commencement of the Term or created or suffered by Landlord, as evidenced by a title insurance policy to be delivered at Tenant's cost and expense, and shall be surrendered without any payment by Landlord on account of the Garage Parcel Improvements, the Plaza Parcel Improvements, or any other improvements which may be on the Premises and Tenant shall have no ongoing rights, easements, or interest by implication, necessity, or otherwise in the Garage Parcel Improvements or the Plaza Parcel Improvements. Upon or at any time after the expiration or earlier termination of this Lease, Landlord may, without further notice, enter upon and re-enter the Premises and possess and repossess itself thereof, by force, summary proceedings, ejectment or otherwise, and may dispossess Tenant and remove Tenant and all other persons and property from the Premises, and may have, hold and enjoy the Premises and the right to receive all income from the same.

13.2 **Events of Default.** If any one or more of the following events (herein called "Events of Default") shall occur:

(a) If Tenant shall fail to maintain insurance as required by Article 8 above for a period of three (3) business days after notice from Landlord to Tenant specifying such failure that is labeled on the top of the front page thereof in bold face, all capital letters "DEFAULT NOTICE"; or

(b) If the Premises shall be abandoned or deserted by Tenant, it being understood that the Premises shall be deemed abandoned or deserted if the Parking Garage is not operated on the Premises in accordance with the provisions of Article 9 for a period of thirty (30) consecutive days for any reason other than the process of restoration following a casualty or taking (which restoration requires more than thirty (30) days to be completed). Notwithstanding the foregoing, upon fourteen (14) days' prior written notice to Landlord, the City may choose not to operate and to temporarily vacate the Parking Garage during the Term for a period not to exceed ninety (90) days during any five (5) consecutive year period, so long as it continues to comply with the covenants of the Lease and, provided that Landlord shall have the right, exercisable upon written notice to the City, to operate the Parking Garage during all or any portion of the period of time that Tenant temporarily vacates the Parking Garage; or

(c) If default shall be made by Tenant in the performance of or compliance with any of the agreements, terms, covenants or conditions in this Lease, other than those referred to in paragraphs (a), (b), and (d) of this Section 13.2, for a period of thirty (30) days after notice from Landlord to Tenant specifying the items in default, that is labeled on the top of the front page thereof in bold face, all capital letters "DEFAULT NOTICE", or in the case of a default or a contingency which cannot with due diligence be cured within the thirty (30) day period, Tenant fails to proceed within such thirty (30) day period to cure the same and thereafter to prosecute the curing of such default with diligence (it being intended in connection with a default not susceptible of being cured with diligence within such thirty (30) day period that the

time of Tenant within which to cure the same shall be extended for such period as may be necessary to complete the same with all diligence); or

(d) If Tenant shall initiate the appointment of a receiver to take possession of all or any portion of the Premises or Tenant's leasehold estate for whatever reason, or Tenant shall make an assignment for the benefit of creditors, or Tenant shall initiate voluntary proceedings under any bankruptcy or insolvency law or law for the relief of debtors; or if there shall be initiated against Tenant any such proceedings which are not dismissed within sixty (60) days,

then, and in any such event, Landlord at any time thereafter may give written notice to Tenant specifying such Event or Events of Default and stating that this Lease and the Term hereby demised shall expire and terminate on the date specified in such notice, which shall be at least ten (10) days after the giving of such notice, and upon the date specified in such notice this Lease and the Term thereby demised and all rights of Tenant under this Lease shall expire and terminate, unless prior to the date specified for termination the Event or Events of Default shall have been cured, and Tenant shall remain liable as hereinafter provided and all buildings and improvements constructed upon the Premises shall become the property of Landlord without the necessity of any deed or conveyance from Tenant to Landlord. Tenant agrees upon request of Landlord to immediately execute and deliver to Landlord any deeds, releases or other documents deemed necessary by Landlord to evidence the vesting in Landlord of the ownership of all structures, alterations, additions and improvements, including, but not limited to, the Garage Parcel Improvements and the Plaza Parcel Improvements.

13.3 **Relet.** At any time or from time to time after any such expiration or termination, Landlord may relet the Premises or any part thereof for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term of this Lease), on such conditions (which may include concessions or free rent and alterations of the Premises) and for such uses as Landlord, in its good faith discretion, may determine, and may collect and receive the rents therefor. Landlord shall in no way be responsible or liable for any failure to relet the Premises or any part thereof; or for any failure to collect any rent due upon any such reletting.

13.4 **Remedies.** No such expiration or termination of this Lease shall relieve Tenant of its liability and obligations under this Lease, and such liability and obligations shall survive any such expiration or termination. In the event of any such expiration or termination, whether or not the Premises or any part thereof shall have been relet, Tenant shall pay to Landlord the Rent and all other charges required to be paid by Tenant up to the time of such expiration or termination of this Lease, and thereafter Tenant, until the end of what would have been the Term of this Lease in the absence of such expiration or termination, shall be liable to Landlord for, and shall pay to Landlord, as and for liquidated and agreed current damages for Tenant's default, the equivalent of the amount of the Rent and charges which would be payable under this Lease by Tenant if this Lease were still in effect, less the net proceeds of any reletting after deducting all Landlord's expenses incurred in good faith in connection with such reletting, including, without limitation, all repossession costs, brokerage and management commissions, operating expenses, legal expenses, reasonable attorney's fees, alteration costs, and expenses of preparation for such reletting.

Tenant shall pay such current damages (herein called "Deficiency") to Landlord on the date(s) on which the Rent and Additional Rent would have been payable under this Lease if this Lease were still in effect, and Landlord shall be entitled to recover from Tenant each Deficiency as the same shall arise.

At any time after any such expiration or termination, in lieu of collecting any further Deficiencies as aforesaid, Landlord shall be entitled to recover from Tenant and Tenant shall pay to Landlord, on demand, as and for liquidated and agreed final damages for Tenant's default, an amount equal to the value of the excess of the Rent and Additional Rent reserved hereunder for the unexpired portion of the Tenant over the then fair and reasonable rental value of the Premises for the same period, minus any such Deficiencies for such period previously recovered from Tenant.

13.5 **No Waiver.** No failure by either Landlord or Tenant to insist upon the strict performance of any agreement, term, covenant or condition hereof or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial Rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such agreement, term, covenant or condition. No agreement, term, covenant or condition hereof to be performed or complied with by either Landlord or Tenant, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by the other Party. No waiver by Landlord or Tenant of any breach shall affect or alter this Lease, but each and every agreement, term, covenant and condition hereof shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

13.6 **Injunctive Relief.** In the event of any breach or threatened breach by Landlord or Tenant of any of the agreements, terms, covenants or conditions contained in this Lease, the other Party shall be entitled to enjoin such breach or threatened breach and shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise as though re-entry, summary proceedings, and other remedies were not provided for in this Lease.

13.7 **Remedies Cumulative.** Each right and remedy provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord or Tenant of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the Party in question of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

## ARTICLE 14 MISCELLANEOUS

14.1 **Quiet Enjoyment.** Tenant, upon paying the Rent and other charges herein provided for and observing and keeping all covenants, agreements and conditions of this Lease on its part to be kept, shall quietly have and enjoy the Premises during the Term of this Lease without hindrance by anyone claiming by, through or under Landlord as such, subject, however, to the exceptions, reservations and conditions of this Lease. The foregoing shall not create any

liability on the part of Landlord for any Encumbrances or Reserved Rights.

**14.2 Entry on Premises by Landlord.** Tenant shall permit Landlord and its authorized representatives to enter the Premises upon three (3) business days' prior notice at all reasonable times (and in the event of an emergency, in which event such entry shall be reasonable under the exigent circumstances) for the purpose of performing its obligations under this Lease, complying with the provisions of any Required Permits, exercising any rights reserved to Landlord hereunder, including, without limitation, Landlord's Reserved Rights, inspecting the same for compliance with the covenants and obligations of this Lease, and/or to gather empirical data relative to the usage of the Premises as it affects the neighboring street system, or traffic conditions, or the overall supply of parking in the general area, provided that such entry shall be conducted so as not to unreasonably interfere with the conduct of business therein by Tenant, except in the event of an emergency, in which event such interference shall be as reasonably necessary or appropriate under the exigent circumstances. Notwithstanding anything in this Section to the contrary, in any entry on the Premises, Landlord shall use commercially reasonable efforts to minimize the impact on the operations of the Parking Garage to the extent reasonably possible under the circumstances.

**14.3 Notices.** Any and all notices, demands, requests, submissions, approvals, consents, disapprovals, objections, offers or other communications or documents required to be given, delivered or served, or which may be given, delivered or served, under or by the terms and provisions of this Lease or pursuant to law or otherwise, shall be in writing and shall be delivered by hand or sent by registered or certified mail, return receipt requested, addressed if to Tenant to:

City Manager  
City Hall  
455 Main Street  
Worcester, MA 01608

with a copy to:

City Solicitor  
City Hall  
455 Main Street  
Worcester, MA 01608

or to such other address as Tenant may from time to time designate by written notice to Landlord, or if to Landlord addressed to:

or if to Renaissance addressed to:

Worcester Renaissance LLC  
c/o Berkeley Investments, Inc.  
121 High Street  
Boston, MA 02110  
Attn: Young K. Park

with a copy to:

Robert E. Longden, Esquire  
Bowditch & Dewey, LLP  
311 Main Street, P.O. Box 15156  
Worcester, MA 01615-0156

or to such other address as Landlord may from time to time designate by written notice to Tenant, or to such other agent or agents as may be designated in writing by either Party. The earlier of: (i) the date of delivery by hand, (ii) the date received as shown on the return receipt, or (iii) the date of delivery or upon which delivery was refused as indicated on the registered or certified mail return receipt or statement of the hand delivery courier shall be deemed to be the date such notice or other submission was given.

14.4 **Severability.** If any term or provision of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

14.5 **Estoppel Certificates.** Landlord and Tenant shall, without charge, at any time and from time to time, within ten days after request by the other, certify by written instrument, duly executed, acknowledged and delivered to the Party making such request, or any other person, firm or corporation specified by such Party:

(a) that this Lease is unmodified and in full force and effect, or, if there have been any modifications, that the same is in full force and effect as modified and stating the modifications;

(b) whether or not, to the best knowledge of the person executing the certificate on behalf of Landlord or Tenant, there are then existing any claimed set-offs or defenses against the enforcement of any of the agreements, terms, covenants or conditions hereof and any modifications hereof upon the part of the other Party hereto to be performed or complied with, and, if so, specifying the same;

(c) the dates, if any, to which the Rent and other charges hereunder have been paid;

(d) the date of expiration of the current Term; and

(e) the Rent then payable under this Lease.

14.6 **Subordination.** This Lease shall be superior to any and all mortgages, deeds of trust, ground leases and other instruments in the nature of a mortgage, now or any time hereafter, a lien or liens on the property of which the Premises are a part. Any future ground landlord or mortgagee shall deliver a commercially reasonable agreement to subordinate its mortgage, deed of trust, ground lease or other instrument in the nature of a mortgage to the terms of this Lease.

14.7 **Transfer of Landlord's Interest in Garage Parcel.** Tenant acknowledges that Landlord intends to convey its fee simple interest in the Garage Parcel to an Affiliate, in order to facilitate the financing of CitySquare Project improvements located above the Garage Parcel ("Transfer"). Landlord and Tenant agree with respect to the Transfer as follows:

(a) The Transfer shall occur on a date specified in a notice from Landlord to Tenant (the "Transfer Date");

(b) Affiliate shall assume Landlord's obligations under this Lease as of the Transfer Date by an assumption agreement in form reasonably satisfactory to Affiliate and the City;

(c) Landlord will not be released from any obligations under this Lease until final completion of the Garage Parcel Improvements and the Plaza Parcel Improvements, as set forth in the Development Agreement; and

(d) In order to facilitate the development and use of the Parking Garage and the CitySquare Project improvements to be located above the Parking Garage and the use and operation of the Unified Garage, on or before the Transfer Date, Landlord, Affiliate, and the City shall execute and deliver the Vertical and Horizontal Easement Agreement substantially in the form of Exhibit G hereto.

Any Affiliate to whom the Garage Parcel is conveyed may, thereafter, convey the Garage Parcel to a third party after complying with the provisions of Section 14.7(a) and (b), provided that the provisions of Section 14.7(c) shall continue to apply to Landlord.

14.8 **No Brokers.** Landlord and Tenant mutually represent that they have dealt with no broker in connection with this Lease. Landlord and Tenant agree to indemnify and save the other harmless from any and all loss, cost, damage or expense incurred arising from their respective dealing with a broker.

14.9 **Accord and Satisfaction.** No acceptance by Landlord of a lesser sum than the Rent then due shall be deemed to be other than on account of the earliest installment of such Rent due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment of Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such installment or pursue any other remedies provided in this Lease.

14.10 **Integration.** All prior understandings and agreements between the parties are merged within this Lease, which alone fully and completely sets forth the understanding of the parties; and this Lease may not be changed or terminated orally or in any manner other than by an agreement in writing and signed by the Party against whom enforcement of the change or termination is sought.

14.11 **Bind and Inure.** The covenants and agreements herein contained shall bind and inure to the benefit of Landlord, its successors and assigns, and Tenant, its successors and assigns.

14.12 **Notice of Lease.** Landlord and Tenant mutually agree to execute herewith, in triplicate, a Notice of Lease in recordable form with respect to this Lease, and with a reference to the Parking Garage Operating and Allocation Agreement, which shall be recorded forthwith with the Registry, and agree to execute, upon termination of this Lease for whatever cause, a Notice of Termination of Lease in recordable form for recording with the Registry.

14.13 **No Merger.** There shall be no merger of this Lease or of the leasehold created hereby with the fee estate in the Premises by reason of the fact that Landlord may acquire or hold, directly or indirectly, the leasehold estate hereby created or an interest herein or in such leasehold estate, unless Landlord executes and records an instrument affirmatively electing otherwise.

14.14 **Landlord's Liability.** Anything contained in this Lease to the contrary notwithstanding, but without limitation of Tenant's equitable rights and remedies, Landlord's liability under this Lease shall be enforceable only out of Landlord's interest in the Premises; and there shall be no other recourse against, or right to seek a deficiency judgment against, Landlord, nor shall there be any personal liability on the part of any member of its board of directors or any officer or employee of Landlord, with respect to any obligations to be performed hereunder.

14.15 **Captions.** The captions of this Lease are for convenience and reference only and in no way define, limit or describe the scope or intent of this Lease nor in any way affect this Lease.

14.16 **Table of Contents.** The Table of Contents preceding this Lease but under the same cover is for the purpose of convenience and reference only and is not to be deemed or construed in any way as part of this Lease, nor as supplemental thereto or amendatory thereof.

14.17 **Massachusetts Law Governs.** This Lease shall be governed exclusively by, and construed in accordance with, the laws of The Commonwealth of Massachusetts.

14.18 **Time of the Essence.** Time shall be of the essence hereof.

14.19 **Tenant Cooperation With Other Development.** Tenant agrees to cooperate reasonably with Landlord and any other Party seeking to develop or occupy the CitySquare Project or any portion of the remaining land owned by Landlord or Landlord's Affiliates in the vicinity of the Premises, provided such cooperation shall not require Tenant to incur any expense or other obligation unless Landlord or such other Party is willing to pay such expense or fulfill such obligation. Tenant agrees to cooperate reasonably with Landlord or any other Party in order to create a consistent marketing image and approach for the Parking Garage and the CitySquare Project provided the same do not have a material adverse effect on the Garage Parcel Improvements or their operations, or require Tenant to incur any expense or impose any obligation on Tenant unless Landlord or such other Party is willing to pay such expense or fulfill such obligation.

Notwithstanding anything in this Agreement to the contrary, nothing contained in this Agreement shall in any way stop, limit or impair the Tenant from exercising or performing any regulatory, policing, legislative, governmental or other powers or functions with respect to the City Square Project or otherwise, including, by way of illustration but not limitation, inspection

of the City Square Project in the performance of such functions. Nor shall anything in this Agreement constitute or imply approval or special handling and/or consideration for or exemption from any permit by the planning, zoning or regulatory authorities of the Tenant, and the Landlord shall be required to comply with all procedures and requirements applicable to the City Square Project that would also be applicable to similar development projects to the Tenant.

14.20 **Holding Over.** If Tenant occupies the Premises after the expiration or earlier termination hereof Tenant shall be a tenant-at-sufferance subject to all of the terms and provisions of this Lease except that Rent shall be two hundred percent (200%) of the fair market rent for the Premises for every day Tenant occupies the Premises after such expiration or termination. Tenant shall be liable for all damages incurred by Landlord as a result of such holding over. Such a holding over, even if with the consent of Landlord, shall not constitute an extension or renewal of this Lease. For avoidance of doubt, the Parties agree to deliver an agreement in recordable form memorializing the Delivery Date, the end of the Garage Parcel Term and the end of the Plaza Parcel Term.

14.21 **Future Assurances.** At any time and from time to time, each Party agrees, upon the written request of the other Party, to execute and, if required, acknowledge and record, all such amendments hereto or other documents as may reasonably be required to effectuate the intents and purposes of this Agreement. The Parties further agree to consent to modifications to this Agreement to the extent that any such modifications are reasonably requested by a prospective mortgagee of the other Party, provided that modifications so requested do not adversely affect the rights of either Party under this Agreement.

14.22 **Parking Garage Allocation Agreement.** Landlord and Tenant are simultaneously entering into the Parking Garage Operating and Allocation Agreement and agree that so long as the Parking Garage Operating and Allocation Agreement is in effect, to the extent that there is any inconsistency between the terms of the Parking Garage Operating Allocation Agreement and the terms of this Lease, the terms of the Parking Garage Operating and Allocation Agreement shall control.

14.23 **Sovereign Immunity.** Nothing in this Lease shall be construed as a waiver by Tenant of governmental sovereign immunity.

[SIGNATURE PAGE TO FOLLOW]

EXECUTED as of the date first set forth above as an instrument under seal.

**CITY OF WORCESTER**

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

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

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

Approved as to form:

**OFFICE OF THE CITY SOLICITOR**

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

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

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

**WORCESTER RENAISSANCE LLC, a**

Delaware limited liability company

By: Worcester Renaissance Holdings LLC, a  
Delaware limited liability company,  
its sole member

By: Berkeley Worcester MGR LLC, a  
Delaware limited liability company,  
a manager

By: Berkeley Investments, Inc., a  
Massachusetts corporation,  
its manager

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

Name: Young K. Park

Title: President and Treasure

Exhibit A

Definitions

**Additional Rent**, as defined in Section 5.1.

**Affiliate of a person or entity** means any manager, member, officer, director or shareholder and any other person, partnership, limited liability company, limited liability partnership, or corporation which directly or indirectly controls, or is controlled by, or is under common control with such person or entity.

**Applicable Laws** means any federal, state or local law, statute or ordinance or regulation applicable to the construction of the Improvements or the use of any portion of the Premises.

**Approved Design** means those Schematic Design Documents, Design Development Plans and Construction Documents, and all changes thereto, approved by the City pursuant to Article 3 of the Development Agreement.

**Assignment**, as defined in Section 12.1.

**Building F Agreement**, as defined in Section 9.2.

**Building F Condo Association**, as defined in Section 9.2.

**Building F Condo Owners**, as defined in Section 9.2.

**Building F Exclusive Use Parking Spaces**, as defined in Section 9.2.

**Building Support**, as defined in Section 7.1.

**CitySquare Project** means the Project, as defined in the Development Agreement.

**Code**, as defined in Section 9.2.

**Construction Program Manager** means the construction management firm hired by the City to perform the duties of the Construction Program Manager with respect to the Construction of the Delegated Public Project Elements.

**Cost of Restoration**, as defined in Section 10.2.

**Cost of Capital**, as defined in Section 10.2.

**Default Rate** means three percent (3%) per annum above the prime rate as quoted in the *Wall Street Journal* or an acceptable substitute if the *Wall Street Journal* ceases publication.

**Deficiency**, as defined in Section 13.4.

**Delegated Public Project Elements** means the portion of the Public Project Elements to be constructed by the Developer and paid for by the City as provided in the Development Agreement, including the Garage Parcel Improvements and the Plaza Parcel Improvements.

**Delivery Date**, as defined in Section 3.1.

**Development Agreement**, as defined in the Preambles.

**Effective Date**, as set forth in the Preambles.

**Encumbrances**, as defined in Section 2.2.

**Events of Default**, as defined in Section 13.2.

**Final Completion**, as defined in Section 4.13 of the Development Agreement for the Delegated Public Project Elements.

**Force Majeure**, as defined in Section 4.4.

**Garage Award**, as defined in Section 11.2.

**Garage Manager**, as defined in the Parking Garage Operating and Allocation Agreement.

**Garage Parcel**, as defined in Section 2.1.

**Garage Parcel Improvements**, as defined in Section 4.1.

**Garage Parcel Term**, as defined in Section 3.1.

**Garage Parcel Rent**, as defined in Section 5.1.

**Governmental Authority** means any agency, department, court or other administrative or regulatory authority of any federal, state or local governmental body.

**Heating Plant Agreement**, as defined in Section 2.2.

**Impositions**, as defined in Section 6.1.

**Improvements**, as defined in Section 4.1.

**Landlord**, as defined in the Preambles.

**Landlord's Rebuild Fund**, as defined in Section 10.1.

**Lease**, as defined in the Preambles.

**Parking Garage**, as defined in Section 4.1.

**Parking Garage Operating and Allocation Agreement**, as defined in Section 2.2.

**Parking Garage Permitted Uses**, as defined in Section 9.1.

**Parking Number**, as defined in Section 9.1.

**Party or Parties** means the Landlord and/or the Tenant, as the context admits.

**Plaza Parcel**, as defined in Section 2.1.

**Plaza Parcel Improvements**, as defined in Section 4.1.

**Plaza Parcel Permitted Uses**, as defined in Section 9.1.

**Plaza Parcel Rent**, as defined in Section 5.1.

**Plaza Parcel Term**, as defined in Section 3.1.

**Premises**, as defined in Section 2.1.

**Private Project Elements** means the portions of the CitySquare Project that are to be constructed by the Developer as provided in the Development Agreement.

**Project Award**, as defined in Section 11.2.

**Project Manager** means the person or entity designated by the Developer from time to time for the CitySquare Project.

**Reciprocal Easement Agreement**, as defined in Section 2.1.

**Registry**, as defined in Section 2.2.

**Remaining Proceeds**, as defined in Section 11.2.

**Rent**, as defined in Section 5.1.

**Required Permits** means all permits and approvals from any Governmental Authority required for the construction of any portion of the Improvements.

**Reserved Rights**, as defined in Section 2.2.

**Restoration**, as defined in Section 10.2.

**Subletting**, as defined in Section 12.1.

**Taking**, as defined in Section 11.1.

**Tenant**, as defined in the Preambles.

**Tenant Work**, as defined in Section 7.5.

**Term**, as defined in Section 3.1.

**Term Commencement Date**, as defined in Section 3.1.

**Unified Garage**, as defined in Section 2.2.

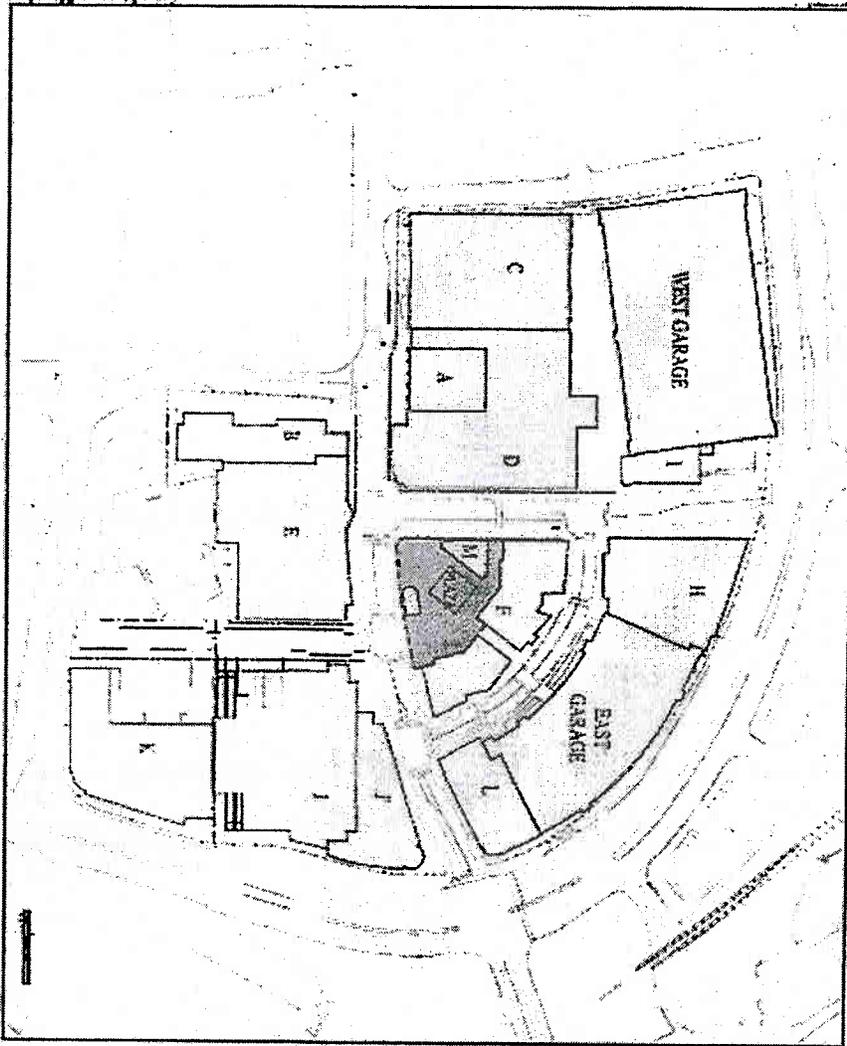
**Utility Charges**, as defined in Section 6.4.

**Vertical and Horizontal Easement Agreement**, as defined in Section 2.2.

**Worcester Center Boulevard** means the street in Worcester, Massachusetts now known as Worcester Center Boulevard.

**Exhibit B**

**Plan Showing Plaza Parcel**



Architectural details and notes including a scale bar, a legend for 'PLAZA PARCEL' and 'GARAGE', and a title block with the name 'ARCHITECTURE'.

Exhibit C

**Plan Showing Garage Parcel**





Exhibit D

Encumbrances, Landlord's Reserved Rights and Other Matters to which Premises Subject

A. As to the Garage Parcel

To grant easements and other rights to allow Building K to connect to and use the ramps under Building J for access to and from the Parking Garage, provided that such grant will not reduce the number of parking spaces in the Parking Garage below 1,025 and users of the easements will use commercially reasonable efforts to minimize the impact on the operations of the Parking Garage to the extent reasonably possible under the circumstances.

B. As to the Plaza Parcel

1. The Plaza Parcel Public Access Principles set forth in Exhibit 6.3(c) of the Development Agreement.
2. The Sidewalk Easement Agreement between Landlord, Worcester Renaissance Towers LLC, Worcester Renaissance C & D LLC and the Tenant, as set forth in Exhibit 6.5 of the Development Agreement.

Exhibit E

**Parking Garage Operating and Allocation Agreement**

**PARKING GARAGE OPERATING AND ALLOCATION AGREEMENT**

between

**WORCESTER RENAISSANCE LLC**

and

**CITY OF WORCESTER**

**DATED:** \_\_\_\_\_

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Exhibit A	Plan Showing Unified Garage
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## PARKING GARAGE OPERATING AND ALLOCATION AGREEMENT

THIS PARKING GARAGE OPERATING AND ALLOCATION AGREEMENT (this "Agreement") is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_ by and between WORCESTER RENAISSANCE LLC, a Delaware limited liability company, with an address at c/o Berkeley Investments, Inc., 121 High Street, Boston, Massachusetts 02110 ("Renaissance") and the CITY OF WORCESTER, Massachusetts, a municipal corporation organized under a home rule charter adopted under the constitution and laws of The Commonwealth of Massachusetts, acting by and through its Off-Street Parking Board, established under Chapter 365 of the Acts of 1955, with an address at City Hall, 455 Main Street, Worcester, Massachusetts 01608 (the "City").

### WITNESSETH:

WHEREAS, Renaissance and the City (each, sometimes individually referred to as a "Party" and together the "Parties") have entered into a lease dated \_\_\_\_\_, 200\_\_ (the "Parking Garage Lease"), pursuant to which the City has leased a subsurface parcel for a 60 year period as more particularly set forth in the Parking Garage Lease (the "Garage Parcel") in which the Parking Garage Improvements, as defined in the Parking Garage Lease, are to be constructed by Renaissance pursuant to the terms of a Development Agreement between Renaissance and the City dated \_\_\_\_\_, 2006 (the "Development Agreement") in connection with the CitySquare project (the "CitySquare Project"); and

WHEREAS, the Garage Parcel and Garage Parcel Improvements are to be used under the Parking Garage Lease for the operation of a public garage for the parking of passenger motor vehicles (the "City Garage"); and

WHEREAS, Renaissance and the City intend that the City Garage be used and operated in conjunction with an adjacent garage owned by Renaissance (the "Renaissance Garage") in such a manner so as to create the physical appearance of a single unified garage having no dividing walls between them, sharing common access and egress through one or more of their entrances, exits and passageways, sharing common parking control equipment, systems, software and operations, using common and unified wayfinding, signage and coloration to the extent reasonably feasible, and providing unobstructed access to parking throughout the City Garage and the Renaissance Garage (the "Unified Garage"); and

WHEREAS, Renaissance and the City wish to set forth in this Agreement the terms and provisions that will govern the use and operation of the City Garage and the Renaissance Garage as the Unified Garage.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and to be observed and performed by the Parties hereto, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

## **ARTICLE 1 DEFINITIONS**

For purposes of this Agreement, unless the context otherwise requires, each capitalized term used in this Agreement and not otherwise defined in this Agreement shall have the meaning specified below. The content of each Exhibit referenced in this Agreement as being attached hereto, is hereby incorporated into this Agreement as fully as if set forth within the body of this Agreement.

**Agreement** shall mean this Parking Garage Operating and Allocation Agreement and all exhibits hereto as it, and they, may be amended and restated from time to time.

**Applicable Laws** shall mean any federal, state, or local law, statute or ordinance, order or regulation applicable to the operation of the Unified Garage.

**Building F Exclusive Use Parking Spaces** shall have the meaning given such term in Section 4.6.

**Capital Expense Differential** shall have the meaning given such term in Section 5.6.

**Cash Flow** shall have the meaning given such term in Section 5.4.

**City** shall have the meaning given such term in the preamble to this Agreement.

**City Capital Reserve** shall have the meaning given such term in Section 6.3.

**City Capital Reserve Amount** shall have the meaning given such term in Section 6.3.

**CPI** shall mean the Consumer Price Index for All Urban Consumers (CPI-U), Boston, Massachusetts, All Items (1982 - 1984 equals 100) published by the United States Department of Labor Bureau of Labor Statistics.

**City Garage** shall have the meaning given such term in the recitals to this Agreement.

**CitySquare Project** shall have the meaning given such terms in the recitals to this Agreement.

**Creditor Party** shall have the meaning given such term in Section 8.2.

**Default Rate** shall have the meaning given such term in Section 5.9.

**Defaulting Party** shall have the meaning given such term in Section 8.1

**Delivery Date** shall have the meaning set forth in the Parking Garage Lease.

**Development Agreement** shall have the meaning given such term in Section 3.1.

**Effective Date** shall have the meaning given such term in Section 3.1.

**Emergency Situation** shall mean a situation (a) which immediately impairs, or threatens immediate impairment of the structural support of the Unified Garage; (b) causing, or threatened to cause, injury to person or persons, or substantial damage to the Unified Garage or the other property in or about the Unified Garage; or (c) causing, or threatening to cause, an interruption in the business of Renaissance or the City, or the Unified Garage or either of the Renaissance Garage or the City Garage.

**Entity** shall have the meaning given such term in Section 5.9.

**Extended Term** shall have the meaning given such term in Section 3.1.

**Fair Market Rates** shall have the meaning given such term in Section 5.9.

**Force Majeure** shall have the meaning given such term in Section 9.1.

**Garage Manager** shall mean the entity appointed by Renaissance to manage the Unified Garage as provided in Section 5.7.

**Garage Parcel** shall have the meaning given such term in the recitals to this Agreement.

**Garage Regulations** shall have the meaning given such term in Section 4.4.

**Governmental Authority** means any agency, department, event or other administrative or regulation authority of any federal, state or local governmental body.

**Gross Revenues** shall have the meaning given such term in Section 5.9.

**Indemnifying Party** shall have the meaning given such term in Section 7.3.

**Interest Expense Differential** shall have the meaning given such term in Section 5.6.

**Interest Expense Differential Repayment Date** shall have the meaning given such term in Section 5.6.

**Net Revenues** shall have the meaning given such term in Section 5.9.

**Non-Paying Party** shall have the meaning given such term in Section 5.5.

**Operating Budget** shall have the meaning given such term in Section 5.2.

**Operating Deficit** shall have the meaning given such term in Section 5.5.

**Operating Expenses** shall have the meaning given such term in Section 5.9.

**Parking Garage Lease** shall have the meaning given such term in the recitals to this Agreement.

**Party/Parties** shall have the meaning given such term in the recitals to this Agreement.

**Party Loan** shall have the meaning given such term in Section 5.5.

**Paying Party** shall have the meaning given such term in Section 5.5.

**Person** shall have the meaning given such term in Section 5.9.

**Reserve** shall have the meaning given such term in Section 6.3.

**Renaissance Capital Reserve Amount** shall have the meaning given such term in Section 6.3.

**Renaissance Garage** shall have the meaning given such term in the recitals to this Agreement.

**Tender Date** shall have the meaning given such term in Section 5.5.

**Term** shall have the meaning given such term in Section 3.1.

**Unified Garage** shall have the meaning given such term in the recitals to this Agreement.

**Unified Garage Interest** shall have the meaning given such term in Section 5.6

## ARTICLE 2 DESCRIPTION OF GARAGES

2.1 **The City Garage.** The City Garage consists of an underground two-level garage located beneath a portion of the CitySquare Project containing at least 1,205 spaces for parking passenger motor vehicles, which is to be constructed by Renaissance pursuant to the terms of the Development Agreement and leased to the City pursuant to the Parking Garage Lease. The City Garage is sometimes referred to with references to the City as "its Garage".

2.2 **Renaissance Garage.** The Renaissance Garage consists of a six (6) level garage, with two (2) levels below and four (4) levels above ground, containing approximately 900 spaces for parking passenger motor vehicles. The Renaissance Garage is sometimes referred to with reference to Renaissance as "its Garage".

2.3 **Unified Garage.** The Unified Garage consists of the City Garage and the Renaissance Garage together, and is shown on the plan attached hereto as Exhibit A.

## ARTICLE 3 TERM

3.1 **Term.** The term of this Agreement shall begin on the Delivery Date (as defined in the Parking Garage Lease) (the "Effective Date") and shall end at 11:59 p.m. on the last day of the month in which the fifteenth (15<sup>th</sup>) anniversary of the Delivery Date occurs (the "Term") subject to all of the terms of this Agreement, unless earlier terminated as provided in this Agreement. This Agreement shall be automatically extended for successive three (3) year terms (each an "Extended Term"), unless either Party elects to terminate this Agreement at the

end of the Term or Extended Term by giving the other Party notice no later than sixty (60) days prior to the expiration of the Term, or any Extended Term. Notwithstanding the foregoing, this Agreement shall automatically terminate if the Parking Garage Lease is terminated.

3.2 **Termination of Agreement.**

(a) If neither Party elects to terminate this Agreement in accordance with the provisions of Section 3.1 hereof, this Agreement shall terminate on the last day of the Garage Parcel Term (as defined in the Parking Garage Lease), and the parties shall have no further obligations to each other, except for obligations that expressly survive the Term of this Agreement.

(b) In the event that either Party elects to terminate this Agreement in accordance with the provisions of Section 3.1 hereof, the Party who elects to terminate shall pay the cost and perform, or cause to be performed, any construction necessary in separating the access and ticketing points for the Unified Garage and creating physical barriers to separate the City Garage and the Renaissance Garage and shall pay the cost of all additional furniture, fixtures and equipment necessary (after dividing up the existing furniture, fixtures and equipment between the two garages) to operate the City Garage and the Renaissance Garage as separate garages. The separation shall be completed prior to the end of the Term, or the Extended Term, as appropriate, and shall be performed so as to provide, to the extent feasible, seamless operation of both Garages during separation.

**ARTICLE 4  
USE OF UNIFIED GARAGE**

4.1 **Use.** The Unified Garage shall be used for the purpose of parking motorized vehicles and bicycles and for accessory uses and for no other purposes.

4.2 **No Structural Overload.** Neither Party shall take any action or otherwise suffer or permit any use of the Unified Garage that would result in (a) exceeding the applicable floor load limitations, or (b) any structural overload or lateral or seismic stress on any portion of the Unified Garage.

4.3 **Compliance with Laws.** Each Party shall comply with all laws, rules, orders, ordinances, regulations and requirements now or hereafter enacted or promulgated by the United States of America, The Commonwealth of Massachusetts, the City and any other agency or other governmental authority now or hereafter having jurisdiction over the Unified Garage and such Party.

4.4 **Garage Regulations.** The Parties shall abide by regulations with respect to the use, operation and occupation of the Unified Garage as they may be amended from time to time by the Parties in consultation with the Garage Manager (the "Garage Regulations"). The initial Garage Regulations are attached hereto as Exhibit B. As provided therein, any valet or tandem parking arrangements are subject to the City's review and approval (which can be undertaken as part of the review and approval of the Operating Budget), which approval shall not be unreasonably withheld or delayed.

4.5 **The City Garage.** In addition to the foregoing, the City agrees that the City Garage shall be used in accordance with the provisions of the Parking Garage Lease, together with benefits of the appurtenant rights and easements, and subject to the Encumbrances and Reserved Rights, as defined therein.

4.6 **Building F Exclusive Use Parking Spaces.** Renaissance shall have the exclusive right to designate up to 10% of the parking spaces in the City Garage, for the exclusive use of owners of condominium units in Building F of the CitySquare Project ("Building F Exclusive Use Parking Spaces"), all subject to and as provided in the Parking Garage Lease.

## ARTICLE 5 OPERATION OF UNIFIED GARAGE

5.1 **Operation of Unified Garage.** The Parties acknowledge and agree that the Renaissance Garage and the City Garage shall be maintained, operated and managed as the Unified Garage by the Garage Manager, subject to and upon the terms and conditions set forth in this Article 5, including, but not limited to, the following matters:

(a) to collect Gross Revenues from the operation of the Unified Garage and to distribute the Net Revenues therefrom to the Parties on a quarterly basis;

(b) to put, keep and maintain all portions of the Unified Garage, including interior parking and driving surfaces and entrance and exit ramps, in good repair and in a well-maintained, and orderly condition, free of dirt, rubbish, snow, ice and unlawful obstructions, and to properly dispose of all such dirt, rubbish, snow and ice;

(c) to take good care of the Unified Garage (including, without limitation, all improvements now or hereafter erected thereon, all elevators, doors, windows, ticketing equipment, cashier's booths and their appurtenant equipment, mechanical and manual barriers, mechanical systems, directional markers and signs, painting, lights, and all other equipment and appurtenances used in the functioning of the Unified Garage) and all sidewalks, curbs and entrance ways adjoining the same, and to keep the Renaissance Garage and the City Garage in good order and first class condition, and to make all necessary structural and non-structural repairs and replacements thereto, provided, however, that in no event, shall the foregoing be deemed to include any repairs required to be made to the Renaissance Garage or the City Garage resulting from any damage from a taking in condemnation proceedings or by the exercise of any right of eminent domain or by an agreement in lieu thereof, or from fire or other casualty;

(d) to keep the Unified Garage open to the public during the hours specified in the Garage Regulations, with periodic manned patrols and camera surveillance;

(e) to prepare, submit and maintain, or to cause the Garage Manager to prepare, submit and maintain, such statements, audits, books and records as are required to be prepared, submitted and maintained with respect to the Unified Garage, pursuant to the provisions of this Agreement;

(f) to obtain and maintain the liability insurance coverage with respect to the Unified Garage as required by this Agreement;

(g) to establish cash reserves for capital repairs and replacements, liability insurance and general maintenance; and

(h) to perform such other obligations with respect to the maintenance, management and operation of the Unified Garage as the Garage Manager or the Parties may from time to time determine by unanimous consent.

Nothing in this Section 5.1 shall modify, limit or otherwise impair any obligation of Renaissance or the City under the Parking Garage Lease.

5.2 **Operating Budget.** Renaissance (and/or the Garage Manager) shall prepare and the City shall approve, which approval shall not be unreasonably withheld or delayed, as soon as practicable following the date hereof, and thereafter, annually, at least ninety (90) days prior to the end of each calendar year, a detailed annual budget (or revision and update, as the case may be) for the ensuing fiscal year (the "Operating Budget"), which annual budget shall cover all operations (including maintenance, repairs and capital expenditures) of the Unified Garage and shall project Gross Revenues and Operating Expenses for such fiscal year, and shall specify amounts, if any, that are projected to be applied during such fiscal year from the capital reserves maintained as provided in Section 6.3 hereof and any other capital expenditures to be otherwise funded. Such budget or revised and updated budget, as the case may be, shall become the Operating Budget upon such approval thereof by the City, provided, however, that until such approval, the Unified Garage shall be operated in accordance with the then-existing Operating Budget. Renaissance will not cause the Garage Manager to, and the Garage Manager shall not, incur expenses in excess of the Operating Expenses and expected capital expenditures in an approved Operating Budget without obtaining the City's approval, which approval shall not be unreasonably withheld or delayed.

5.3 **Unified Garage Gross Revenues.** Gross Revenues shall be collected and applied to pay Operating Expenses in accordance with the Operating Budget.

5.4 **Distribution of Cash Flow.**

(a) Cash flow from Net Revenues ("Cash Flow"), if any, shall be distributed to the Parties, on a quarterly basis, in accordance with their respective Unified Garage Interests.

(b) Notwithstanding anything to the contrary contained in this Section 5.4, each Party expressly acknowledges and agrees that any amounts to be distributed to such Party pursuant to this Section 5.4, shall be first applied in the following order of priority: (i) to repay any Party Loans made to such Party to fund any Operating Deficits (in proportion to the outstanding balances of such Party Loans, with amounts so paid to be applied first to interest accrued and unpaid, and then to outstanding principal), and (ii) to replenish any capital reserves that such Party has failed to maintain in accordance with the provisions of Section 6.3 hereof.

5.5 **Operating Deficits.**

(a) In the event that Gross Revenues for any quarterly period are not sufficient to pay the Operating Expenses for such period (whether already incurred or reasonably projected to be incurred within ninety (90) days after the date of projection) (an "Operating Deficit"), each Party shall, at the times and subject to the conditions set forth in this Section 5.5, be obligated to pay, in cash, an amount equal to, and not less than, such Party's proportionate share of such Operating Deficit, with such share being based upon the respective Unified Garage Interests of the Parties as of the date the Operating Deficit was incurred.

(b) The Parties shall pay any amounts required pursuant to paragraph (a) above within five (5) days of notice thereof (such date being hereinafter referred to as the "Tender Date") from the Garage Manager or such other person as the Parties may, from time to time designate.

(c) In the event that either Party (the "Non-Paying Party") fails to make any payment required, pursuant to the provisions of this Section 5.5, on or before the Tender Date, the other Party (the "Paying Party") that has tendered or caused to be tendered its share of the requested payment on or before the Tender Date may elect to proceed as follows:

(i) The Paying Party may elect (but shall have no obligation to do so), by written notice given to the Non-Paying Party within ten (10) days after the Tender Date, to make a loan to other Non-Paying Party (each a "Party Loan") of all or any portion of the amount requested of such Non-Paying Party, by paying the proceeds thereof in payment of such Non-Paying Party's required payment.

(ii) Any such Party Loan (A) shall bear interest at the Default Rate, determined daily and compounded monthly, (B) shall be due and payable (as to both principal and interest) on the first (1<sup>st</sup>) anniversary of the date of making thereof, and (C) shall be paid (if not sooner paid or payable) out of Cash Flow distributed to the Non-Paying Party in accordance with Section 5.4.

(iii) In the event any Party Loan is not paid when due, then, at any time thereafter while such Party Loan remains unpaid, in addition to those rights and remedies available to such Paying Party, pursuant to Article 8 hereof, the Paying Party may, upon not less than ten (10) days' prior written notice to the Non-Paying Party, elect, as of the date set forth in the notice of such election (and provided that the Party Loan has not been paid in full on or before such date), to treat the failure to repay such Party Loan as a material default thereunder and exercise its remedies available at law or in equity to compel repayment of such Party Loan in accordance with the terms thereof (other than a termination of this Agreement).

5.6 **Calculation of Unified Garage Interests.** The Parties' rights to receive distributions of Cash Flow shall be determined as provided below in accordance with such Party's interest in the Unified Garage (the "Unified Garage Interest"), with each Party's Unified Garage Interest being calculated as follows:

(a) Beginning on the Effective Date and continuing until the earlier to occur of (i) the City recovering an amount equal to the difference between the cost of taxable debt issued and tax exempt debt which otherwise would have been issued on the same dates (the

"Interest Expense Differential") for direct and indirect costs to develop, design and construct the City Garage or (ii) the date which is thirty (30) years after the Effective Date (the "Interest Expense Differential Repayment Date"), the City's Unified Garage Interest shall be 60% and Renaissance's Unified Garage Interest shall be 40%.

(b) After the Interest Expense Differential Repayment Date, the City's Unified Garage Interest shall be 55% and Renaissance's Unified Garage Interest shall be 45%, except as follows: if the City Garage and the Renaissance Garage continue to be operated as a Unified Garage pursuant to the terms of this Agreement after thirty (30) years from the Effective Date, then if any capital expenditures are required for the City Garage that, in the aggregate over any three (3) year period, exceed an amount equal to the future value of \$5 million (adjusted by the CPI, from the Effective Date to the date of such capital expenditures) (the "Capital Expense Differential"), then (i) the City shall be allowed to spend the then existing balance in the City's Capital Reserve, plus 100% of the future balances in the City's Capital Reserve, to pay for such capital expenditures (including the principal amount of any borrowing therefor) and the City shall be allowed to spend as well 50% of the future balances in the City's Capital Reserve to pay the debt service (i.e., interest payments and charges and fees on such borrowing) incurred to finance such capital expenditures, and (ii) for all amounts of such capital expenditures in excess of the future value of \$5 million, Renaissance shall contribute toward the payment of the Capital Expense Differential by reverting to the 60%/40% Unified Garage Interests set forth in Section 5.6(a) until the Capital Expense Differential is recovered by the City. The City, at its sole expense, shall provide Renaissance with an annual accounting of the payment of the Interest Expense Differential and the Capital Expense Differential, and Renaissance shall have the right to audit the City's annual accounting at Renaissance's expense.

(c) Each Party further expressly acknowledges and agrees that, in the event of a reduction or increase in the number of physical parking spaces available for use in such Party's Garage, each Party's Unified Garage Interest shall be recalculated and adjusted based upon the number of available physical parking spaces within each Party's Garage relative to the number of available physical parking spaces in the Unified Garage. Notwithstanding the foregoing, no such recalculation and adjustment shall be made during any time period when the provisions of clauses (a) and (b) of this Section 5.6 are applicable.

(d) Each Parties' share of any Operating Deficits shall be determined based on the number of physical parking spaces available in each Party's Garage relative to the number of available physical parking spaces in the Unified Garage without taking into account any Differential adjustment.

5.7 **Day to Day Management of the Unified Garage.** The Parties intend to engage a single entity, which is an experienced garage operator (the "Garage Manager"), to manage and oversee all day to day operations of the Unified Garage on behalf of the Parties in accordance with the Operating Budget and otherwise in accordance with the terms and conditions of this Agreement. The appointment or removal of any such entity, and the terms and conditions of any such management agreement, shall be determined by Renaissance.

5.8 **Establishment of Parking Rates.** Subject to the City's review and approval which will not be unreasonably withheld or delayed, the Developer shall set the rates

for all parking in the Unified Garage and will use its best efforts to maintain Fair Market Rates provided that the Fair Market Rates shall, in no event be less than the average rates for structured parking facilities located in the central business district of Worcester, Massachusetts at the time of such determination, with an average revenue per space on a garage-wide basis.

5.9 **Definitions.** Capitalized terms used in this Article, and not otherwise defined in this Agreement, shall have the following meanings:

(a) **Default Rate** shall mean three percent (3%) per annum above the prime rate as quoted in the *Wall Street Journal*, or an acceptable substitute if the *Wall Street Journal* ceases publication.

(b) **Entity** shall mean any general partnership, limited partnership, corporation, joint venture, trust, limited liability company, limited liability partnership, business trust, cooperative or association.

(c) **Fair Market Rates** shall mean rates then prevailing for parking spaces provided in comparable structured parking facilities located in the central business district of Worcester, Massachusetts, taking into consideration the nature of the facility (e.g. surface or structured, open or enclosed, heated or non-heated, attended or non-attended), the hours of operation, demand, and the manner in which the parking spaces in question are made available (e.g. parking lot as opposed to valet parking basis).

(d) **Gross Revenues** shall mean the gross receipts of every kind and nature from the operation of the Unified Garage, including, without limitation, revenues from the parking of vehicles within the Unified Garage, any rentals, fees or other income made in, upon or from the Unified Garage, but excluding (i) the proceeds of a casualty or taking or (ii) any fees received by any Person other than Renaissance or the City for providing valet parking services, provided that such Person has paid the Unified Garage the applicable rate for the parking of valet vehicles in the Unified Garage.

(e) **Net Revenues** shall mean, for any period, the amount, computed on a cash basis, equal to the excess of (i) the sum of Gross Revenues, investment income, and amounts released from reserves over (ii) the sum of Operating Expenses and any increase in reserves.

(f) **Operating Expenses** shall mean all actual and reasonable expenses incurred in connection with the operation, cleaning, maintenance, repair, up-keep, security and management of the Unified Garage, including, without limitation (i) all salaries, wages, fringe benefits, payroll taxes and worker's compensation insurance premiums related thereto with respect to any employees engaged (but only the extent so engaged) in management, operation, cleaning, maintenance, landscaping, repair, upkeep and security of the Unified Garage; (ii) all charges and other costs related to the provision of heat (including, oil, electricity, steam and/or gas), air-conditioning, and water (including, sewer rents, rates and charges), telephone, and other services and utilities to the Unified Garage; (iii) all costs, including material and equipment costs, for cleaning and janitorial services (including, without limitation, trash removal) for the Unified Garage; (iv) all costs of liability insurance relating to the Unified

Garage; (v) all normal and routine costs of maintaining and repairing the Unified Garage (including snow removal, sweeping, striping, landscaping, lighting, security, operation and repair of heating and air-conditioning equipment, elevators, escalators, and any other equipment or systems) and all nonstructural repairs and replacements necessary to keep the Unified Garage in good working order, repair, appearance and condition; (vi) the costs of capital equipment used solely in connection with the operation of the Unified Garage, such as, without limitation, ticket booths, garage sweepers, security cars or vehicles, and office computers; (vii) annual license and permit fees and other annual governmental charges associated with the operation of the Unified Garage; and (viii) all payments under any parking management, operating or services contracts. Operating Costs shall not include, except as expressly otherwise provided above: (1) depreciation of capital improvements or equipment and/or amortization of the costs thereof; (2) any costs or expenses resulting from any damage from a taking in condemnation proceedings or by the exercise of any right of eminent domain or by an agreement in lieu thereof, or from fire or other casualty; (3) any costs or expenses associated with the capital maintenance or replacement of the structure or mechanical systems of the Unified Garage; or (4) income taxes and other taxes of similar nature.

(g) **Person** shall mean any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so admits.

## ARTICLE 6 MAINTENANCE AND REPAIR - DAMAGE TO THE IMPROVEMENTS

6.1 **General Covenant To Maintain and Repair.** Except to the extent the same are to be performed as a part of the operation of the Unified Garage pursuant to Article 5 hereof, each Party shall, at its sole cost and expense, keep its Garage in first class condition and make all repairs therein and thereon, ordinary and extraordinary, to keep the same in first class condition, whether or not necessitated by wear, tear, obsolescence or defects, latent or otherwise, and further agrees that it shall not suffer or commit, and shall use all reasonable precaution to prevent, waste to such property.

6.2 **Damage By Fire or Other Casualty; Condemnation.** If the Parking Garage Lease remains in effect after any damage, destruction or Taking (as provided in the Parking Garage Lease) of all or a portion of the City Garage, this Agreement shall remain in effect, provided that the Unified Garage Interest of each Party shall be recalculated as provided in Section 5.6 as appropriate. If the Parking Garage Lease is terminated as a result of any damage, destruction or Taking of all or a portion of the City Garage, this Agreement shall terminate as of the date of the termination of the Parking Garage Lease.

6.3 **Capital Reserves** Each Party shall establish commercially reasonable reserves for items of capital maintenance, repair and replacement of its Garage, and shall, upon request of the other Party, provide evidence of the amount of such reserves.

(a) **City Capital Reserve.** The City shall establish a reserve for items of capital maintenance, repair and replacement of the City Garage (the "City Capital Reserve"). Based on the advice of its Consultant, Desman Consultants, the City shall fund the City Capital

Reserve in cash in the amount of \$100 per space per fiscal year (the "City Capital Reserve Amount") based on the number of spaces in the City Garage. The City shall not be required to pay the City Capital Reserve Amount for the first fiscal year following the date that the City Garage is first open for operations. The City Capital Reserve Amount shall be phased in during each fiscal year of the Term of this Agreement as follows: (i) for years 1, 2, 3 and 4 following the year in which the City Garage is first open for operations, the City Capital Reserve Amount shall be \$0 in year 1, then funded to be \$33 per parking space in year 2, \$66 per parking space in year 3 and \$100 per parking space in year 4; (ii) thereafter, for each year of the Term of this Agreement, the City Capital Reserve Amount shall increase by the percentage increase in the CPI during the previous fiscal year. No later than April of each year, the City shall determine whether Net Revenues from the operation of the City Garage are likely to be adequate to fund payment of the City Capital Reserve Amount for such fiscal year and, if the determination is that there will be a shortfall in Net Revenue for such year, the City will, in June of such fiscal year, budget for the next fiscal year the additional funds to make up such shortfall which shall be paid not later than August 31 of the following fiscal year. The City will be permitted to further defer payment of the City Capital Reserve Amount provided that all such deferred payments shall be paid in full on or before June 30, 2012. The City's obligation to maintain the City Capital Reserve shall terminate upon the termination of this Agreement.

(b) Renaissance Capital Reserve. Renaissance shall establish a reserve for items of capital maintenance, repair and replacement of the Renaissance Garage ("Renaissance Capital Reserve"). Based on the advice of its Consultant, Walker Parking, Renaissance shall fund the Renaissance Capital Reserve in cash in the amount of \$100 per space per year (the "Renaissance Capital Reserve Amount") based on the number of spaces in the Renaissance Garage. Renaissance shall be allowed to phase in the Renaissance Capital Reserve, beginning in the first fiscal year that the City Garage is open for business, by funding to a balance of \$0 per parking space in year 1, \$33 per parking space in year 2, \$66 per parking space in year 3, and \$100 per parking space in year 4. Thereafter, for each year of the Term of this Agreement, the Renaissance Capital Reserve Amount shall increase by the percentage increase in the CPI during the previous fiscal year.

The City acknowledges and agrees that, if a lender holding a first mortgage on the Renaissance Garage shall require Renaissance to establish a capital reserve, then the reserve required under this Section 6.3 shall be deemed satisfied to the extent of the reserve so established; provided, however, that such reserve shall at all times be at least equal to the amounts required to be maintained pursuant to this Section 6.3(b) during each year of the Term of this Agreement.

All calculations of increases in the Parties' Capital Reserve Amounts and payments thereof shall be made on June 30th of each year and shall be pro-rated for any portion of a year at the beginning or end of the Term of this Agreement.

## ARTICLE 7 INSURANCE

7.1 Maintenance of Insurance. The Parties shall, at all times during the term of this Agreement, maintain (or cause to be maintained) the insurance coverages required under

the Parking Garage Lease (meaning and intending for Renaissance to maintain on the Renaissance Garage the same property insurance coverages as the City is required to maintain on the City Garage under the Parking Garage Lease), and shall maintain a single liability insurance policy for the Unified Garage, naming each Party and its mortgagees, as insureds as their interests may appear.

7.2 **Insurance Requirements.** Each Party shall comply with all rules, regulations and requirements of any insurance rating bureau having jurisdiction over the Unified Garage or any portion thereof, if non-compliance would increase the rate of premium of any policy of insurance maintained by the Party and shall not make or permit to be made any use of the Unified Garage which may be dangerous to persons or property, and shall not permit to be brought into the Unified Garage any hazardous materials, oils or fluids, such as gasoline, kerosene, naphtha and benzene or any explosives, unless any such oils and fuels are properly stored in compliance with all applicable codes and ordinances; provided, however, that the foregoing provision shall in no event prohibit or materially limit the use of the Renaissance Garage or the City Garage for its principal anticipated use as a parking garage, nor prohibit the storage within the tanks of parked automobiles in the Renaissance Garage or City Garage, of oil or gasoline.

7.3 **Indemnification.** Except to the extent the same is covered by insurance maintained hereunder or as provided herein or under the Parking Garage Lease, each Party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other Party from and against all expenses, liabilities, obligations, damages, penalties, claims, actions and costs (including reasonable attorneys' fees and expenses) paid in connection with loss of life, bodily injury or damage to property (i) caused by the negligence or willful misconduct of the Indemnifying Party, its officers, employees, contractors, subtenants or agents (expressly excluding, however, the negligence or willful misconduct of the Garage Manager), or (ii) otherwise occurring in the Indemnifying Party's Garage to the extent such loss or damage does not arise from the operation of the Unified Garage, or the acts or omissions of the other Party.

## ARTICLE 8 DEFAULT AND REMEDIES

8.1 **Default.** If at any time a Party (the "Defaulting Party") shall fail to pay or perform any of its obligations hereunder, then the other Party may give written notice to the Defaulting Party labeled on the top of the first page thereof in bold face, all capital letters "DEFAULT NOTICE", specifying the respect or respects in which it is not proceeding to pay or perform such obligations and if, upon expiration of thirty (30) days after the giving of such notice (or within such lesser period as may be appropriate in an Emergency Situation), the Defaulting Party is still not paying or performing such obligation, then, subject to Force Majeure, such other Party may, without limitation of such other remedies as may be available at law or in equity, undertake to pay or perform such obligation and may take all reasonable steps to carry out the same. The Party paying or performing any such obligation may collect from the Defaulting Party any and all costs and expenses incurred in connection therewith.

8.2 **Interest on Unpaid Amounts.** Any amount payable by one Party to the other Party under this Agreement (including, without limitation, any amounts payable by one

Party to the other Party pursuant to Section 5.5 or Section 8.1 hereof) shall be due and payable within thirty (30) days after receipt of the statement therefor. If, at any time, a Party shall fail within ten (10) days after written demand therefor to pay to the other Party (the "Creditor Party") any sum of money due the Creditor Party pursuant to this Agreement (which demand is labeled on the top of the first page thereof in bold face, all capital letters "DEFAULT NOTICE"), then, the amount so owed shall bear interest from the date the same was initially due until paid in full at the Default Rate.

8.3 **Cumulative Remedies.** The rights and remedies of the Creditor Party provided for in this Article 8 or elsewhere in this Agreement, are cumulative and not intended to be exclusive of any other remedies to which Creditor Party may be entitled at law or in equity. The exercise by such Party of any right or remedy to which it is entitled hereunder shall not preclude or restrict the exercise of any other such right or remedy.

8.4 **No Right of Set-Off.** Each claim of either Party arising under this Agreement shall be separate and distinct, and no defense, or set-off, arising against the enforcement of any lien or other claim of any Party shall thereby be or become a defense or set-off against the enforcement of any other lien or claim.

8.5 **Delays; Waivers.** Except as otherwise expressly provided in this Agreement, any delay by either Party in asserting any right or remedy under this Agreement shall not operate as a waiver of any such rights or limit such rights in any way; and any waiver in fact made by such Party with respect to any default by the other Party shall not be considered as a waiver of rights with respect to any other default by the non-defaulting Party, or with respect to the particular default, except to the extent specifically waived, in writing. It is the intent of the Parties that this provision will enable each Party to avoid the risk of being limited in the exercise of any right or remedy provided in this Agreement by waiver, laches or otherwise.

8.6 **Rights of Lenders.** The City is aware that financing for the CitySquare Project may be provided, in whole or in part and from time to time, by one or more lenders. In the event of an Event of Default by Renaissance, the City shall provide notice of such Event of Default, at the same time notice is provided to Renaissance, to any lender previously identified in writing to the City. If a lender is permitted, under the terms of its agreement with Renaissance, to cure the default and/or to assume Renaissance's position with respect to this Agreement, the City agrees to recognize such rights of lender and to otherwise permit lender to assume all of the rights and obligations of Renaissance under this Agreement. Any mortgage, deed of trust, ground lease and other instruments in the nature of a mortgage, now or any time hereafter, a lien or liens on either of the Garages shall be subject and subordinate to this Agreement. Any future ground landlord or mortgagee shall deliver a commercially reasonable agreement to confirm the subordination of its mortgage, deed of trust, ground lease or other instrument in the nature of a mortgage to the terms of this Agreement. Renaissance represents and warrants that there are currently no mortgages or other monetary liens affecting the Renaissance Garage.

**ARTICLE 9**  
**MISCELLANEOUS**

9.1 **Force Majeure.** Neither Renaissance nor the City, as the case may be, shall be considered in default of its obligations under this Agreement in the event of enforced delay due to (a) causes beyond its control and without its fault or negligence, including, but not restricted to, acts of God, acts of public enemy, acts of the federal, state or local government, acts of the other Party, acts of third parties, litigation concerning the validity and enforceability of this Agreement or relating to transactions contemplated hereby (including the effect of petitions for initiative or referendum), fires, floods, epidemics, quarantine, restrictions, strikes, embargoes, labor disputes, and unusually severe weather or the delays of any contractor, subcontractors or materialmen due to such causes, nuclear radiation, acts of a public enemy, war, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), declaration of national emergency, insurrection, riot, labor strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain, condemnation, or other taking by the action of any Governmental Authority on behalf of any public, quasi-public, or private entity, or declaration of moratorium or similar hiatus directly affecting any portion of the Unified Garage (whether permanent or temporary) by any public, quasi-public or private entity; (b) the order, judgment, action, or determination of any court, administrative agency, Governmental Authority or other governmental body (collectively, an "Order") which adversely affects the operation of the Unified Garage, or the suspension, termination, interruption, denial, or failure of renewal (collectively, a "Failure") of issuance of any permit, license, consent, authorization, or approval necessary to the operation of the Unified Garage, unless it is shown that such Order or Failure is the result of the grossly negligent, willful or intentional action or inaction of the Party claiming the delay or is the result of the grossly negligent or willful violation of Applicable Laws; provided, however, that the contesting in good faith of any such Order or Failure shall not constitute or be construed or deemed as a waiver by a Party of Force Majeure; (c) the denial of an application, failure to issue, or suspension, termination, delay or interruption (collectively, a "Denial") in the issuance or renewal of any permit, approval or consent required or necessary in connection with the operation of the Unified Garage, if such Denial is not also the result of a grossly negligent act or omission or willful violation by the Party; provided that the contesting in good faith or the failure in good faith to contest any such Denial shall not constitute or be construed or deemed as such a wrongful or grossly negligent act or omission on the part of the Party; and (d) the failure of any contractor, subcontractor or supplier to furnish services, materials or equipment in connection with the operation of the Unified Garage if such failure is caused by Force Majeure as defined herein, if and to the extent, and only so long as the Party claiming the delay is not reasonably able, after using commercially reasonable efforts, to obtain substitute services, materials or equipment of comparable quality and cost (collectively, "Force Majeure"). In the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the Party claiming delay shall be extended for a period of the enforced delay; provided that the Party seeking the benefit of the provisions of this Section shall, within ten (10) days after such Party knows of any such enforced delay, first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the enforced delay; provided, however, that either Party's failure to notify the other Party of an event constituting an enforced delay shall not alter, detract from or negate its character as an enforced delay if such event of enforced delay was not known or reasonably discoverable by such Party. Notwithstanding anything to the contrary in this Agreement, no Force Majeure event shall

excuse performance by any Party or be considered to continue in effect for more than two (2) years with respect to any such particular Force Majeure event or three (3) in the aggregate for all Force Majeure events and thereafter any further delay shall not be excused and shall be the responsibility of the Party failing to perform

9.2 **Notices.** Any and all notices, demands, requests, submissions, approvals, consents, disapprovals, objections, offers or other communications or documents required to be given, delivered or served, or which may be given, delivered or served, under or by the terms and provisions of this Agreement or pursuant to law or otherwise, shall be in writing and shall be delivered by hand or sent by registered or certified mail, return receipt requested, addressed if to City to:

City Manager  
City Hall  
455 Main Street  
Worcester, MA 01608

with a copy to:

City Solicitor  
City Hall  
455 Main Street  
Worcester, MA 01608

or to such other address as City may from time to time designate by written notice to Renaissance;

or if to Renaissance addressed to:

Worcester Renaissance LLC  
c/o Berkeley Investments, Inc.  
121 High Street  
Boston, MA 02110  
Attn: Young K. Park

with a copy to:

Robert E. Longden, Esquire  
Bowditch & Dewey, LLP  
311 Main Street, P.O. Box 15156  
Worcester, MA 01615-0156

or to such other address as Renaissance may from time to time designate by written notice to City, or to such other agent or agents as may be designated in writing by either Party. The earlier of: (i) the date of delivery by hand, or (ii) the date received as shown on the return receipt, or (iii) the date of delivery or upon which delivery was refused as indicated on the

registered or certified mail return receipt or the statement of the hand delivery courier shall be deemed to be the date such notice or other submission was given.

9.3 **Severability.** If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

9.4 **Interference with Other Party's Operations.** In fulfilling obligations and exercising rights under this Agreement, each Party shall use its best efforts to keep interference with the property of the other Party and the operations of the other Party to a minimum and, to that end, except in Emergency Situations, will give to the other Party reasonable advance written notice, but not less than ten (10) days' notice of work which may so interfere, and will arrange with the other Party for reasonable and definite times and conditions under which any such work shall be done.

9.5 **Invalid Provisions.** The invalidity of any covenant, restriction, condition, limitation or any other part or provisions of this Agreement shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Agreement.

9.6 **Headings for Reference Only.** The headings of Articles and Sections in this Agreement are for convenience of reference only and shall not in any way limit or define the content or substances of the Articles or Sections.

9.7 **Amendment Procedure.** This Agreement may be amended only by an instrument signed and duly acknowledged by (a) Renaissance, (b) the City, and (c) any mortgagee of Renaissance of which the City has notice and which has subordinated its mortgage to this Agreement. Any amendment to this Agreement shall be recorded in the Registry and shall become effective upon such recording.

9.8 **Waiver.** The Parties waive a trial by jury of any and all issues arising in any action or proceeding between them or their successors or assigns under or connected with this Agreement, or any of its provisions, or any negotiations in connection therewith.

9.9 **Integration.** All prior understandings and agreements between the Parties are merged within this Agreement, which alone fully and completely sets forth the understanding of the Parties; and this Agreement may not be changed or terminated orally or in any manner other than by an agreement in writing and signed by the Party against whom enforcement of the change or termination is sought.

9.10 **Bind and Inure.** The covenants and agreements herein contained shall be binding on and inure to Renaissance, and the City, and their respective successors and assigns. Notwithstanding the foregoing, the City may not assign its rights and obligations hereunder without the prior written consent of Renaissance. The City agrees that Renaissance may assign its interest in this Agreement to any successor Person or to any lender providing financing for the CitySquare Project without the consent of, but with prior notice to, the City.

9.11 **Limitation of Liability.** Anything contained in this Agreement to the contrary notwithstanding, but without limitation of the City's equitable rights and remedies, Renaissance's liability under this Agreement shall be enforceable only out of Renaissance's interest in the Renaissance Garage; and there shall be no other recourse against, or right to seek a deficiency judgment against, Renaissance, nor shall there be any personal liability on the part of any member, manager, or officer or employee of Renaissance, with respect to any obligations to be performed hereunder.

9.12 **Captions.** The captions of this Agreement are for convenience and reference only and in no way define, limit or describe the scope or intent of this Agreement, nor in any way affect this Agreement.

9.13 **Table of Contents.** The Table of Contents preceding this Agreement but under the same cover is for the purpose of convenience and reference only and is not to be deemed or construed in any way as part of this Agreement, nor as supplemental thereto or amendatory thereof.

9.14 **Massachusetts Law Governs.** This Agreement shall be governed exclusively by, and construed in accordance with, the laws of The Commonwealth of Massachusetts.

9.15 **Time of the Essence.** Time shall be of the essence hereof.

9.16 **No Partnership or Joint Venture.** Nothing contained in this Agreement shall be construed to create a partnership or joint venture between the City and Renaissance, nor shall either Party be liable for any debts incurred by the other Party in the conduct of its business or affairs, nor shall either Party be deemed the agent or representative of the other for any purpose or in any manner under this Agreement, except as otherwise expressly provided for herein.

9.17 **Further Assurances.** At any time and from time to time, each Party agrees, upon the written request of the other Party, to execute and, if required, acknowledge and record, all such amendments hereto or other documents as may reasonably be required to effectuate the intents and purposes of this Agreement. The Parties further agree to consent to modifications to this Agreement to the extent that any such modifications are reasonably requested by a prospective mortgagee of the other Party, provided that modifications so requested do not materially or adversely affect the rights of either Party under this Agreement.

9.18 **Estoppel Certificate.** The Parties shall, without charge, at any time and from time to time, within ten (10) days after request by any requesting Party, certify by written instrument, duly executed, acknowledged and delivered to the Party making such request, or to any other person or entity specified by such requesting Party: (a) that this Agreement is unmodified and in full force and effect, or if there have been any modifications, that the same is in full force and effect as modified and identifying the modifications, and (b) whether the requesting Party is in default under any provisions of this Agreement, and if such default exists, the nature of such default.

9.19 **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all such counterparts shall constitute one and the same agreement, binding on the Parties.

9.20 **Sovereign Immunity.** Nothing in this Agreement shall be construed as a waiver by the City of governmental sovereign immunity.

9.21 **Record Notice.** The Parties hereby agree that reference to this Agreement shall be included in the Notice of Lease to be recorded in the applicable real estate records pursuant to the Parking Garage Lease.

[SIGNATURE Page TO FOLLOW]

EXECUTED as of the date first set forth above as an instrument under seal.

**CITY OF WORCESTER**

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

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

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

Approved as to form:

**OFFICE OF THE CITY SOLICITOR**

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

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

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

**WORCESTER RENAISSANCE LLC, a**

Delaware limited liability company

By: Worcester Renaissance Holdings LLC, a  
Delaware limited liability company,  
its sole member

By: Berkeley Worcester MGR LLC, a  
Delaware limited liability company,  
a manager

By: Berkeley Investments, Inc., a  
Massachusetts corporation,  
its manager

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

Name: Young K. Park

Title: President and Treasurer

**EXHIBIT A**

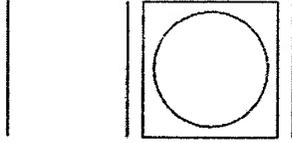
**Plan Showing Unified Garage**





CITY SQUARE

Berkeley  
Investments  
Inc.

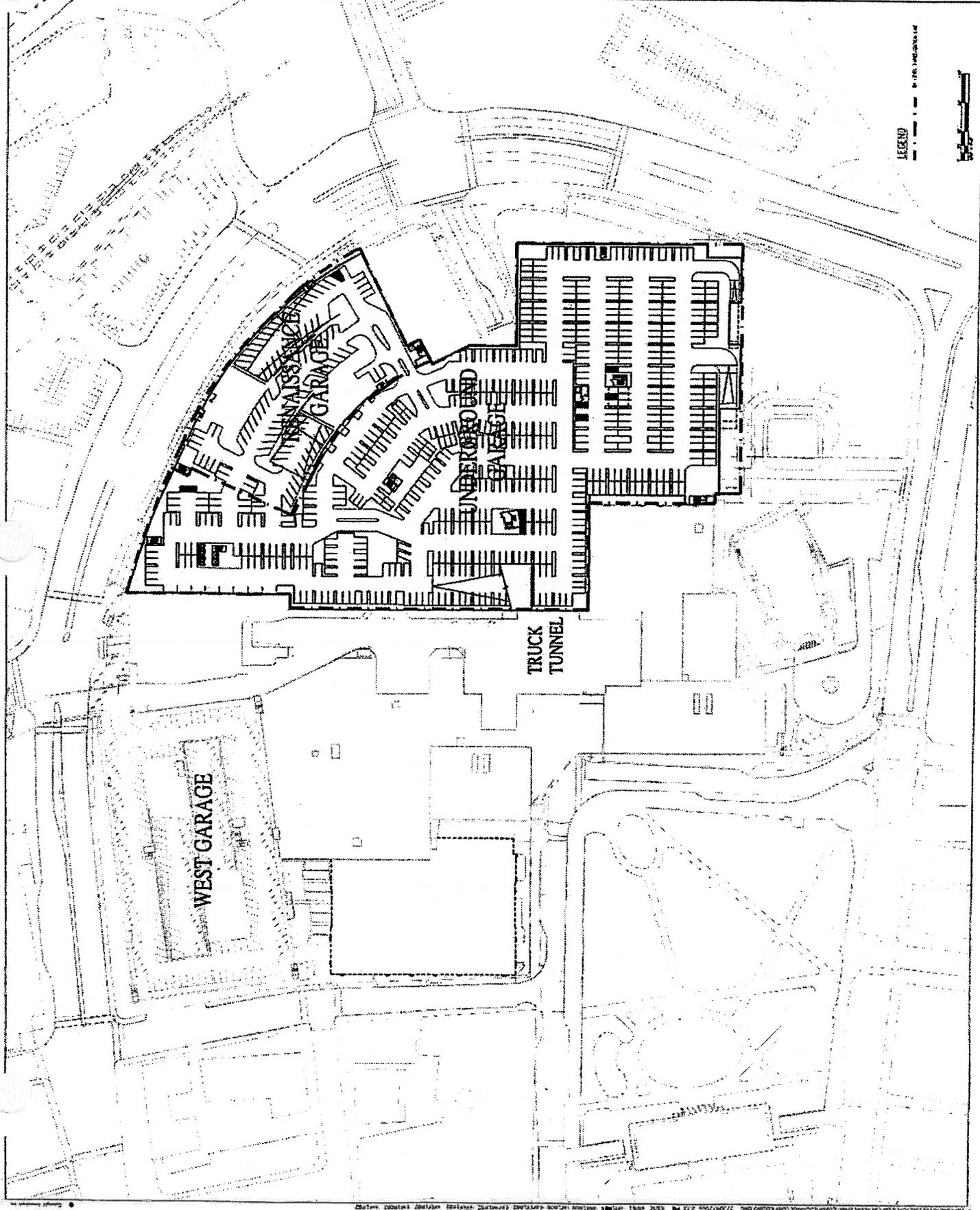


ARROW STREET  
Architects  
Urban Bridge  
Planners  
Applicable Act No. 100  
and the State Building Code  
100-100-1000, 100-100-1001  
100-100-1002

Project No.	
Scale	
Date	
Author	
Checker	
Project Name	
Project Location	
Project Description	
Project Status	
Project Budget	
Project Schedule	
Project Team	
Project Contact	
Project Address	
Project Phone	
Project Fax	
Project Email	
Project Website	
Project Social Media	
Project Other	

Drawing Title  
**UNIFIED PARKING  
GARAGE  
LEVEL B2**

1" = 80'-0"  
Drawing Number  
**2 OF 2**



LEGEND  
1" = 80'-0"  
DRAWING NUMBER  
2 OF 2

## **EXHIBIT B**

### **Garage Regulations**

The following are regulations for the use, operation and occupation of the Unified Garage (the "Garage") which, as of the date hereof, consists of the City Garage and the Renaissance Garage, as defined in the Parking Garage Operating and Allocation Agreement between Worcester Renaissance LLC and the City of Worcester (the "Parking Garage Operating and Allocation Agreement"). It is acknowledged that the manager of the Unified Garage (the "Garage Manager") may contract with third-parties to comply with these regulations and may, with the consent of Renaissance and the City modify and amend these regulations.

#### **1. MAINTENANCE**

a. Garage Manager shall maintain all elevators, booths, signs, fire and safety apparatus, electrical systems, electronic revenue traffic control equipment, and other related fixtures in a manner consistent with the operation of a first-class garage. Garage Manager shall also be responsible for replacement of light bulbs for all Garage lighting, including exterior signage lights, stairway lights, exit signs, etc., as well as replacement of damaged or malfunctioning lighting fixtures.

b. Garage Manager shall remove rubbish and debris from the parking decks and provide proper snow removal and de-icing on an as needed basis.

c. Garage Manager shall keep all drains free and clear of any and all debris by cleaning drains, as needed.

d. Garage Manager shall clean and sweep the access and egress ramps, as needed.

e. The Garage floors, parking deck, stairwells, and surrounding sidewalks shall be power swept and/or vacuumed, as may be required.

f. All trash receptacles shall be emptied daily, or more frequently, as necessary.

g. Garage Manager shall engage an exterminator for inspection and placement of rodent control, as needed.

h. All broken glass, bottles, cans, spilled food, and any other refuse and material shall be cleaned-up and removed as soon as Garage Manager becomes aware of the condition.

i. Garage Manager shall maintain the parking deck coating and shall paint and restripe parking lines, floor markings, pedestrian area markings and other painted surfaces, as needed.

#### **2. OPERATIONS**

a. **Hours of Operation.** The Garage shall be continuously open to the public from 7:00 a.m. to 12:00 midnight, Sunday through Thursday and from 7:00 a.m. to 2:00 a.m. Friday and Saturday. Garage Manager shall at all times maintain, in a conspicuous place in the Garage, pricing signs as required by Massachusetts law or municipal regulations.

b. **Services to be Performed by Garage Manager:**

i. Garage Manager shall provide service that is prompt and efficient. Garage Manager's employees shall conduct themselves at all times in an orderly, courteous manner with members of the public.

ii. Garage Manager may provide emergency service to the public including, but not limited, to the following:

- (1) Jump-start vehicles;
- (2) Lock-out assistance;
- (3) Inflating and/or changing tires; and
- (4) Car search assistance.

iii. Garage Manager shall be responsible for the removal and disposal of abandoned vehicles in accordance with applicable Massachusetts laws.

iv. Garage Manager shall be responsible for administering any monthly pass programs, including distributing passes and collecting payment for passes.

c. **Parking Rates**

i. The parking rate structure for the Garage may be adjusted from time to time subject to approvals and requirements as provided in the Parking Garage Operating and Allocation Agreement.

ii. A patron shall pay the full day's fee for each day parked if a ticket is lost. Such notice shall be posted at each entrance and exit. All fee adjustments and refunds shall be considered an exception transaction and the number and value of such exception transactions shall be recorded by Garage Manager. Additionally, Garage Manager shall exercise reasonable discretion in giving refunds or making "on-site" fee adjustments when situations occur such as those listed below:

(1) Delay in exiting as a result of parking lot equipment malfunctions.

(2) Delay in exiting as a result of inclement weather of such severity that a patron cannot reasonably be expected to retrieve an automobile without outside assistance.

(3) Delay in retrieving an automobile due to a patron's physical incapacitation as a result of emergency or injury in the Garage.

(4) Delay in retrieving an automobile found to have been stolen and where a police report has been filed by its owner. The patron shall be responsible for the parking fee up to the date a stolen vehicle report is filed with police.

d. Valet Parking

Valet parking may be made available to the public subject to and in accordance with the requirements of this paragraph. If valet parking is made available, all cars parked by a valet attendant will be located in the valet nest area, as designated by the Garage Manager. On occasions when the volume of valet parking requests exceeds the designated spaces in this area, the Garage Manager may "tandem park" cars. Notwithstanding the foregoing, all valet or tandem parking arrangements shall be subject to the review and approval of the City which shall not be unreasonably withheld or delayed. Such review and approval for valet and/or tandem parking arrangements may be included in and as part of the Operating Budget approved by the City.

e. Maintenance of Records and Tickets

i. Garage Manager shall maintain a record of parking tickets, a bulk stock of parking tickets, and documentation pertaining to transfers from bulk stock to the ticket dispenser. The bulk stock shall be kept in a secure storage area with limited access.

ii. Tickets lost by patrons shall be accounted for by a "lost ticket" form provided by Garage Manager. Said form shall be completed and signed by the patron losing said ticket.

f. Revenue Collection and Deposit of Gross Receipts

The Garage Manager shall establish a commercial bank account, which will be used for the deposit of gross receipts of the Garage. This account shall receive all public parking gross receipts, deposits and any other income generated by the Garage.

g. Revenue Control Procedures

The entrance lane, equipped with non-resettable mechanical meters housed inside of the parking gates, will count the number of vehicles entering. The patron will either use a transponder or pull a ticket in order to enter the entrance gate. The exit lane will also be equipped with non-resettable mechanical meters housed inside of the parking gates, counting the number of vehicles exiting the facility.

If "pay on foot" operations are excluded, cashier stations shall be located at one or more designated locations and each will be staffed by a cashier from 7 am to 12 midnight Sunday through Thursday and from 7 am to 2 am on Friday and Saturday. Staffing will be adjusted based on business volumes. When cashier stations are closed, the cashiering function

will be performed by the staff at locations to be determined, but where public access is available and reasonably covenant.

The fee computers used by the cashiers shall record all cash sales, validations and void transactions by cashiers. There shall be no-void, no-sale or open drawer keys on the fee computers. Shift totals are summarized by category. All cash shall be deposited by cashier in the drop safe located at each cashier station, or in the Garage office.

The Garage Manager shall prepare a Daily Sales Report using the data from the fee computers, (entrance/exit meter readings), and Cashier Shift Reports. The Daily Sales Report is a reconciliation of the total transactions issued daily and the physical inventory, taken later in the evening is used to reconcile the entrances to paid exits. All validations and no-charge tickets are accounted for during this reconciliation process. Also, a reconciliation of total revenue by register as compared to cash dropped is shown on the Daily Sales Report. Should the Garage Manager determine unexplained discrepancies with any of the above, the Garage Manager will investigate and take the necessary corrective action, including employee disciplinary action if warranted.

#### h. Security

Garage Manager shall assist in the development of a security program within the Garage. The security program will coordinate the combined efforts of Garage Manager's employees, City of Worcester Police, Fire Department, Emergency Medical Services (EMS) and others as may be affected.

### 3. PARKING EQUIPMENT

#### a. Barrier Gates

i. Barrier gates shall be equipped with an articulated arm which shall have the capability of retracting instantaneously upon impact with a vehicle or pedestrian. Gates shall have a counter feature which permits each opening and/or closing to be identified by the control system.

ii. Gates shall be opened, in the inbound direction, upon the issuance of a ticket or actuation by a card reader. Gates shall be closed when the vehicle clears a closure loop.

iii. Gates shall be opened, in the outbound direction, upon actuation by a lag time reader/receiver or by a card reader.

iv. Gates shall be fully interoperable with an automatic vehicle identification (AVI) technology and system for monthly passholders.

#### b. Ticket Dispenser

i. Ticket dispensers shall be actuated only when the presence of a vehicle is identified by an arming loop and upon push button operation. Ticket dispensers will have programmable audio messages to assist customers in the use of the equipment.

ii. Tickets shall be imprinted and encoded upon issuance by the ticket dispensers and upon computation of the fee by the fee computer, with the audit trail information normally provided by the proposed parking system.

c. Automated Parking Fee Collection

Garage Manager shall ensure that the parking control system (i.e. equipment, software, barrier gate operation, ticket dispensing, etc.) shall have the capability to incorporate AVI technology for monthly passholders, the specifications for which will be set forth in the Management Agreement with the Garage Manager.

d. Minimum Software Capabilities

i. Program fee computers with rate structures

ii. Monitor and report current and daily counts of entry and exit lane and ramp loops, gate activity, fee computer transactions and tickets issued.

iii. Monitor and report revenues by cashier and shift.

iv. Generate monthly bills for cardholders.

v. Store, analyze and report on historic counts, transactions and revenues.

4. HIRING PROCESS

The Garage Manager is responsible for staff hiring. Job descriptions must exist for all positions, including skill requirements, educational requirements and licenses needed, if necessary. Driving records must be reviewed for all valet attendants. All applicants go through the standard screening process established for the Garage, which includes:

i. application and screening interview

ii. interview by the Garage Manager

iii. two work reference checks

iv. background check (credit, criminal, education)

v. drug test

vi. offer letter sent

vii. Garage Manager shall not discriminate against any applicant because of race, color, creed, national origin, age or sex

5. EMPLOYEE TRAINING

a. Training.

The Garage Manager is responsible for all staff training. Each new employee will work a minimum of one shift with an existing employee and supervisor to learn all aspects of the position. No employee will be allowed to work independently without the approval of his/her supervisor.

b. Customer Service Training

The customer service training program is taught by the Garage Manager. All employees (including managerial staff members) are required to attend. This program is designed to familiarize employees with customer service standards and techniques, and has been devised so that each employee will:

- i. recognize that customer satisfaction is each employee's first priority,
- ii. improve communications by interacting with the customers on a "one on one" basis, whether the customer is in the parking facility or on the telephone,
- iii. build goodwill and trusting relationships with customers to ensure satisfaction (which helps to keep customers returning to a facility again and again), and
- iv. recognize and fulfill their role as an employee at the facility and as a member of the Garage team.

The customer service program begins with an introduction and overview of Garage. It also focuses on how critical first-class customer service is to the effective operation of the parking facility. This discussion provides each employee with an awareness that he or she plays a vital role in the success of the facility.

c. Performance Standards.

Every employee attends a training course at the inception of employment and each employee acknowledges, in writing, that he or she has read and understands these requirements.

## Exhibit F

### Tenant Alteration Provisions

1. **General Provisions.** Tenant may not demolish the Garage Parcel Improvements or any portion thereof without the prior written approval of Landlord. Tenant shall not alter, improve or replace (or permit alterations, improvements or replacements to) the Garage Parcel Improvements, except in accordance with the Lease to which this Exhibit I is attached and with the prior written approval from Landlord, which approval shall not be unreasonably withheld or delayed. Any such alterations, improvements or replacements shall include in the construction contract therefor a provision obligating the general contractor to furnish and record, prior to commencement of work, a statutory lien bond purchased at Tenant's expense protecting Landlord's interest therein against any lien arising in connection with work performed under the construction contract and a performance bond purchased at the expense of Tenant or the general contractor. Any such alterations, improvements, or replacements approved by Landlord shall be undertaken at Tenant's own expense and shall at all times comply with the provisions of the Lease, including, without limitation, provisions regarding insurance and indemnity obligations, and with plans and specifications (which shall be prepared by and at the expense of Tenant) theretofore submitted to and approved in writing by Landlord. Landlord may, without limiting other remedies available to it, direct in writing that Tenant modify, reconstruct or remove any work done without prior written approval of the Landlord.

2. **Approval of Plans and Design.** Any alteration, improvement or replacement of the Garage Parcel Improvements shall be constructed in accordance with the final Plans and specifications, including, without limitation, the Design of the Garage Parcel Improvements, which have been approved in writing by Landlord or its designee (collectively the "Plans") which approval shall not be unreasonably withheld or delayed. "Design of the Garage Parcel Improvements" shall mean (a) height, design, massing and siting of each element of the Garage Parcel Improvements; (b) exterior building materials and colors used in each element of the Garage Parcel Improvements, including, without limitation, exterior walls, doors, roofs and foundations; (c) location of major utility lines, walkways and access driveways in the Garage Parcel Improvements; (d) location and designs of exterior and interior lighting; (e) location and design of entrances and exits and all other elements of building facade; (f) structural design of the Garage Parcel Improvements; (g) exterior signage on the Garage Parcel Improvements; and (viii) landscaping that will occur as part of the Garage Parcel Improvements.

As soon as possible, but not more than thirty (30) days after Landlord receives the Plans, Landlord shall approve or disapprove the same, it being understood that Landlord may approve all or only parts of the Plans provided that such approval shall not be unreasonably withheld or delayed. In the event Landlord fails to approve or disapprove any Plans or revised Plans submitted hereunder within such thirty-day period, Tenant shall give written notice to Landlord of Landlord's failure to so notify Tenant of its approval or disapproval and the Plans shall be deemed to have been approved by Landlord ten (10) days after Landlord's receipt of said notice from Tenant unless Landlord notifies Tenant otherwise prior to the expiration of such ten (10) days. In the event Landlord disapproves all or any part of the alteration, improvement or replacement of the Garage Parcel Improvements, as described in the initial submission of the Plans or in any subsequent resubmission of the Plans as revised, Landlord shall submit

comments to Tenant with its disapproval explaining Landlord's grounds for disapproval and Tenant shall submit revised Plans to Landlord as soon as possible and Landlord shall approve or disapprove the Plans, as revised, in accordance with the procedures set forth above.

3. **Authorization.** Tenant, at its own cost and expense, shall seek and obtain any and all necessary permits, licenses, approvals and authorizations appropriate to or required for the alteration, improvement or replacement of the Garage Parcel Improvements and the use and operation thereof (the "Authorizations"). Landlord shall reasonably cooperate at Tenant's expense with Tenant in securing the Authorizations necessary from time to time for performance of any construction, alterations, repairs or other work permitted to be done by Tenant under the Lease and for the use and operation of the Garage Parcel Improvements.

4. **Construction of the Garage Parcel Improvements.** Any construction by Tenant pursuant to the provisions hereof shall be at its sole risk, without cost or expense to Landlord. Tenant shall not commence construction other than required test borings and the like (which shall not unreasonably disturb Landlord, the Garage Parcel or the CitySquare Project and any disturbance created shall be restored by Tenant to the original condition of the Garage Parcel) nor shall Tenant be deemed to have commenced construction until the latest of the following dates: the date on which (a) Tenant's Plans have been approved by Landlord pursuant to Section 2. hereof; (b) Tenant has obtained the Authorizations as required to permit proper execution of the Plans to commence; or (c) Tenant has demonstrated to Landlord that sufficient funds are available to Tenant to make all payments required to complete the construction. After Tenant shall have commenced construction, Tenant shall thereafter continue such construction diligently to completion with interruption, subject to Force Majeure. Tenant shall provide Landlord with such information on the status of the design and construction, including proceedings or negotiations to obtain approvals of contracts relating thereto, as Landlord may reasonably request. Tenant's selection of a contractor and architect and any substitutes for those originally selected for the construction, as well as the contracts relating thereto, shall be subject to Landlord's written approval, which approval shall not be unreasonably withhold or delayed. Landlord may, at its own expense, engage an architect or other consultant to inspect the construction in progress to ensure that it conforms with all standards and requirements hereof, including the Plans approved by Landlord. The architect or consultant engaged by Landlord shall be allowed by Tenant to inspect any and all aspects of the construction in progress as often as desired by Landlord without prior notice to Tenant. If the architect or consultant hired by Landlord determines that the construction in progress does not conform with all standards and requirements of this Lease, he shall meet with Tenant's contractor to discuss the issue and develop modifications to ensure that the construction conforms with the Lease and the provisions hereof.

5. **Certain Construction Requirements.** All construction on the Garage Parcel shall be performed in a good and workmanlike manner in accordance with Applicable Laws, using building supplies and materials having a quality no less than that provided for in the Plans, and otherwise with first class building supplies and materials, by a general contractor of recognized skill, competence and integrity as approved by Landlord. All Tenant's contractors shall carry worker's compensation insurance covering all of such contractor's employees, and public liability insurance including property damage in amounts reasonably approved by

Landlord, and in compliance with Article 8 of the Lease. Whenever construction is in progress on the Garage Parcel, Tenant shall carry so-called builder's risk insurance in an amount reasonably approved by Landlord, and in compliance with Article 8 of the Lease. All such insurance shall also name as insureds the contractor and any other parties designated by Landlord. Certificates for all such insurance shall be delivered to Landlord before any such construction work is begun. If the Garage Parcel Improvements are damaged during the course of construction, Tenant shall be responsible for all repairs at no cost to Landlord.

All capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Lease.

Exhibit G

Vertical and Horizontal Easement Agreement

**VERTICAL AND HORIZONTAL  
EASEMENT AGREEMENT**

among

**WORCESTER RENAISSANCE LLC,**

and

**AFFILIATE,**

and

**CITY OF WORCESTER**

**DATED:** \_\_\_\_\_

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**EXHIBITS:**

- EXHIBIT A Description of Garage Parcel
- EXHIBIT B Description of Air Rights Parcel
- EXHIBIT C Description of Renaissance Garage
- EXHIBIT D List of Plans
- EXHIBIT D-1 Arrowstreet 1/04/06 Draft - Limited Common Interest Plan, Level B1, SK-062b
- EXHIBIT D-2 Arrowstreet 1/04/06 Draft - Limited Common Interest Plan, Level 1, SK-062c
- EXHIBIT D-3 Arrowstreet 1/04/06 Draft - Limited Common Interest Plan, Level B2, SK-062a
- EXHIBIT E Plan Entitled, "Area Site Plan New Worcester Center, Worcester, Massachusetts" prepared for Berkeley Investments, Inc. by Judith Nitsch Engineering, Inc. dated April 25, 2005

## VERTICAL AND HORIZONTAL EASEMENT AGREEMENT

This VERTICAL AND HORIZONTAL EASEMENT AGREEMENT (this "Agreement") is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2006 (the "Effective Date") by and among WORCESTER RENAISSANCE LLC, a Delaware limited liability company, with an address at c/o Berkeley Investments, Inc., 121 High Street, Boston, Massachusetts 02110 ("Renaissance"), \_\_\_\_\_, LLC, a Delaware limited liability company, with an address at c/o Berkeley Investments, Inc., 121 High Street, Boston, Massachusetts 02110 ("Affiliate"), and the CITY OF WORCESTER, Massachusetts, a municipal corporation organized under a home rule charter adopted under the constitution and laws of The Commonwealth of Massachusetts, with an address at City Hall, 455 Main Street, Worcester, Massachusetts 01608 (the "City").

### WITNESSETH:

Terms not otherwise defined below shall have the meanings given such terms in Article 1 of this Agreement.

**WHEREAS**, Worcester Garage LLC (the "Affiliate") and the City are parties to a lease dated \_\_\_\_\_, 2006 ("Parking Garage Lease") pursuant to which the City has leased a subsurface parcel of land, which parcel is more particularly described in Exhibit A attached hereto (the "Garage Parcel"), within which Renaissance will construct an underground two level public parking garage containing no less than 1,025 parking spaces (the "City Garage") pursuant to the terms of a Development Agreement between Renaissance and the City dated \_\_\_\_\_, 2006 (the "Development Agreement"); and

**WHEREAS**, Renaissance conveyed its fee simple interest in the Garage Parcel to Affiliate, subject to the terms of this Agreement, by deed dated \_\_\_\_\_ and recorded simultaneously herewith in the Registry in Book \_\_\_\_\_, Page \_\_\_\_\_ ("Renaissance Deed"), and has assigned its interest as landlord, under the Parking Garage Lease to Affiliate by an assignment dated \_\_\_\_\_; and

**WHEREAS**, the Air Rights Parcel consists of the volume of space lying above the horizontal plane and within the vertical planes of the perimeter of the Garage Parcel, and is further described in Exhibit B attached hereto (the "Air Rights Parcel"); and

**WHEREAS**, the Garage Parcel is located beneath portions of the Air Rights Parcel on which there will be constructed public streets, buildings, sidewalks and other improvements on the Project Property, as part of the CitySquare Project; and

**WHEREAS**, Renaissance and the City, as tenant under the Parking Garage Lease, have entered into a Garage Operating and Allocation Agreement ("Parking Garage Operating and Allocation Agreement") in order to manage and operate the City Garage and adjacent private garage owned by Renaissance, more particularly described in Exhibit C attached hereto (the "Renaissance Garage") as a unified garage (the "Unified Garage"); and

WHEREAS, Renaissance, Affiliate, and the City wish to establish certain rights and easements in order to facilitate the use and development of the Air Rights Parcel, the Garage Parcel, the Project Property and the City Garage during the term of the Parking Garage Lease, and to facilitate the use and operation of the Unified Garage during the term of the Parking Garage Operating and Allocation Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and to be observed and performed by the Parties hereto, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

## ARTICLE 1 DEFINITIONS

For the purposes of this Agreement, unless the context otherwise requires, each capitalized term used in this Agreement and not otherwise defined in this Agreement shall have the meaning specified below. The content of each Exhibit referenced in this Agreement as being attached hereto, is hereby incorporated into this Agreement as fully as if set forth within the body of this Agreement.

1.1 **Adjacent Project Property** shall have the meaning given such term in Section 2.1 of this Agreement.

1.2 **Agreement** means this Vertical and Horizontal Easement Agreement and all exhibits hereto, as it, and they, may be amended and restated from time to time.

1.3 **Air Rights Parcel** shall have the meaning given such term in the recitals and as described in **Exhibit B**.

1.4 **Air Rights Parcel Common Systems Excluded Elements** shall mean the Common Systems Excluded Elements that are to remain the property of and be maintained by Renaissance.

1.5 **Applicable Laws** means any federal, state, or local law, statute, ordinance, order or regulation applicable to the use or operation of the Project Improvements.

1.6 **Approved Plans** means the Design Development Plans for the City Garage, as defined in Section 3.5 of the Development Agreement showing the location of the Common Systems, the Common Systems Excluded Elements, the City Garage Common Systems Excluded Elements, the Renaissance Garage Common Systems Excluded Elements, and the Air Rights Parcel Common Systems Excluded Easements. .

1.7 **City** shall have the meaning given such term in the preamble to this Agreement.

1.8 **City Garage** shall have the meaning given such term in the recitals to this Agreement.

1.9 **City Garage Common Systems Excluded Elements** shall mean those Common Systems Excluded Elements that are to remain the property of and be maintained by the City.

1.10 **CitySquare Project** shall have the meaning given such term in the District Improvement Financing Application submitted by the City to the Massachusetts Economic Assistance Coordinating Council for the Project Property.

1.11 **Common Systems** shall mean the security, emergency power, electricity, telephone, condensers, lines, panels, switches, meters, conduits, and other equipment related thereto, all common Structural Components, and all common stairs, elevators, and means of access as are located in either the Air Rights Parcel or the Garage Parcel and that provide service to both the Air Rights Parcel and the Garage Parcel, but expressly excluding from such definition any portion of any such equipment or systems located within and serving only the Air Rights Parcel or the Garage Parcel.

1.12 **Common Systems Excluded Elements** shall mean those portions of the building equipment and utility systems that are expressly excluded from the definition of "Common Systems" contained herein and that are to remain the property of, and be maintained by, a particular Party.

1.13 **Creditor Party** shall have the meaning given such term in Section 5.2 of this Agreement.

1.14 **Default Rate** shall mean three percent (3%) per annum above the prime rate as quoted in the *Wall Street Journal*, or an acceptable substitute if the *Wall Street Journal* ceases publication.

1.15 **Defaulting Party** shall have the meaning given such term in Article 5 of this Agreement.

1.16 **Development Agreement** shall have the meaning given such term in the recitals.

1.17 **Effective Date** shall mean the date set forth in the preamble to this Agreement.

1.18 **Emergency Situation** shall mean a situation (a) which immediately impairs or threatens immediate impairment of the structural support of the Project Improvements; (b) causing or threatening to cause injury to a person or persons or substantial damage to the Project Improvements or other property in, on or about the Project Improvements; or (c) causing or threatening to cause an interruption in the business of any Party.

1.19 **Garage Parcel** shall have the meaning given such term in the recitals.

1.20 **Parking Garage Lease** shall have the meaning given such term in the recitals.

1.21 **Parking Garage Operating and Allocation Agreement** shall have the meaning given such term in the recitals.

1.22 **Parties** shall mean Renaissance, the City, and Affiliate, collectively.

1.23 **Party** shall mean Renaissance, the City, or Affiliate, individually.

1.24 **Plans** shall mean the plans identified in Exhibit D attached hereto.

1.25 **Project Improvements** shall mean the streets, buildings, and other improvements to be constructed within the Air Rights Parcel and the City Garage, as part of the CitySquare Project.

1.26 **Project Property** shall mean the property comprising the CitySquare Project as shown on a plan entitled "Area Site Plan New Worcester Center, Worcester, Massachusetts", prepared by Berkeley Investments, Inc. by Judith Nitsch Engineering, Inc. dated April 25, 2005, a copy of which is attached as Exhibit E, and includes, among other things, the Air Rights Parcel, the Renaissance Garage, the City Garage and the Garage Parcel.

1.27 **Registry** shall mean the Worcester District Registry of Deeds.

1.28 **Renaissance Garage** shall have the meaning given such term in the recitals.

1.29 **Renaissance Garage Common Systems Excluded Elements** shall mean those Common Systems Excluded Elements that are to remain the property of and be maintained by Renaissance.

1.30 **Structural Components** shall mean all interior and exterior structural or load-bearing members, footings, caissons, foundations, columns, beams, walls, floors, roofs and all other structural or load-bearing vertical and horizontal supports which constitute a part of the Project Improvements or the City Garage.

1.31 **Unified Garage** shall have the meaning given such term in the recitals.

## ARTICLE 2 EASEMENTS IN FAVOR OF THE GARAGE PARCEL

2.1 **Grant of Easements.** Renaissance grants to Affiliate (and to the City during the term of the Parking Garage Lease), with quitclaim covenants, subject to matters of record in the Registry, except for any mortgages, the following easements into, on, over, under, across, upon, and through portions of the Air Rights Parcel, the Renaissance Garage and portions of the Project Property owned by Renaissance located adjacent to the Air Rights Parcel and the Garage Parcel (the "Adjacent Project Property") in favor of the Garage Parcel:

(a) **Encroachment Easement.** A perpetual non-exclusive easement for the maintenance of encroachments within the Air Rights Parcel, the Renaissance Garage and the Adjacent Project Property, in the event and to the extent that, by reason of the original construction of the City Garage or any addition, alteration or reconstruction thereof, minor surveying errors or the subsequent settlement or shifting causes any part of the City Garage to encroach or hereafter encroach upon any part of the Air Rights Parcel, the Renaissance Garage and the Adjacent Project Property; provided, however, that it shall be understood and agreed that, notwithstanding the foregoing, Renaissance shall not be required to suffer or permit any such encroachment (other than an encroachment required to enable the City to maintain 1,025

parking spaces in the City Garage) if the same materially interferes with the reasonable use and enjoyment of the Air Rights Parcel, the Renaissance Garage or Adjacent Project Property;

(b) Emergency Easement. A perpetual non-exclusive easement during an Emergency Situation for ingress and egress by persons, vehicles and equipment through the Air Rights Parcel, the Renaissance Garage and the Adjacent Project Property to the extent reasonably necessary to remedy such Emergency Situation;

(c) Construction, Maintenance and Repair Easement. A perpetual non-exclusive easement for ingress and egress by persons, vehicles and equipment over, on, across and through the Air Rights Parcel, the Renaissance Garage and the Adjacent Project Property to the extent reasonably necessary to permit the construction, maintenance, repair, alteration and replacement of the City Garage, including the construction, maintenance, repair, alteration and replacement of the waterproofing above the City Garage, as provided in the Parking Garage Lease;

(d) Support Easement. A perpetual non-exclusive easement for ingress and egress by persons, vehicles and equipment over, on, across and through the Air Rights Parcel, the Renaissance Garage and the Adjacent Project Property to the extent reasonably necessary to permit the construction, maintenance, repair, alteration and replacement of the Structural Components within the Garage Parcel;

(e) Systems Easement. A perpetual non-exclusive easement for ingress and egress by persons, vehicles and equipment over, on, across and through the Air Rights Parcel and the Renaissance Garage, to the extent reasonably necessary to permit the construction, maintenance, repair, alteration and replacement of any (i) building or utility systems that service only the Garage Parcel, or (ii) Common Systems or City Garage Common Systems Excluded Elements;

(f) Sign Easement. A non-exclusive easement during the term of the Parking Garage Lease, for ingress and egress by persons, vehicles and equipment over, on, across and through the Air Rights Parcel and the Renaissance Garage, to the extent reasonably necessary to permit the construction, maintenance, repair, alteration and replacement of signs on and within the Air Rights Parcel and the Renaissance Garage which provide directions to the City Garage or instructions regarding the manner of payment for parking in the City Garage with the size, location and content of such signs to be approved by Renaissance, such approval not to be unreasonably withheld or delayed;

(g) Pedestrian and Vehicular Access/Egress Easement. A non-exclusive easement for pedestrians and vehicles over, on, across and through the stairways, elevators, and ramps within the Air Rights Parcel for access to and egress from the Garage Parcel in the locations shown on the Plan attached as Exhibit D-1, numbered 1,2,5,6,7 and 8, and the Plan attached as Exhibit D-2, numbered 5, 6, 7, 9 and 10, as such locations may be adjusted pursuant to Section 4.1 hereof. Notwithstanding any provisions of this Agreement to the contrary, except as may be necessary in cases of an Emergency Situation, Renaissance shall provide access to and egress from the Garage Parcel through the Air Rights Parcel at times and in a manner suitable to a first-class garage development; and

(h) **Pedestrian and Vehicular Access/Egress Easement (Renaissance Garage).**

A perpetual non-exclusive easement over, on, across and through all garage entrances, exits and passageways located in the Renaissance Garage for pedestrian and vehicular traffic associated with parking in the Garage Parcel in the locations shown on the Plan attached as Exhibit D-1, numbered 3a, 3b and 3c, and the Plan attached on Exhibit D-3, numbered 3a, 3b and 3c, as such locations may be adjusted pursuant to Section 4.1 hereof.

2.2 **Limitations on Use of Easements.** Each easement created under this Article 2 and which provides or requires, for its enjoyment, ingress and egress on, over, under, across, upon or through the Air Rights Parcel, the Renaissance Garage and the Adjacent Project Property, shall be subject to such reasonable limitations as Renaissance may, from time to time, impose to preclude any unreasonable interference with the development, use, operation and security of the Air Rights Parcel, the Renaissance Garage and the Project Property, but shall in all instances allow reasonable access and rights to use each such easement for the benefit of the Garage Parcel.

2.3 **Easements Run With the Garage Parcel.** The easements set forth in this Article 2 shall be binding upon the Air Rights Parcel, the Renaissance Garage and the Adjacent Project Property, and run in favor of and inure to the Garage Parcel. Until the Parking Garage Lease is terminated, the City and Affiliate shall have the right to use all easements granted herein, to enforce the provisions of this Agreement and to extend the rights to use the easements granted herein to tenants, subtenants, guests, invitees and licensees and to employees and agents and contractors and subcontractors performing any repairs, maintenance or replacements. Upon termination of the Parking Garage Lease, the City's rights to utilize the easements granted herein and to enforce the provisions of this Agreement shall terminate simultaneously, except as provided under Section 4.18(c) of the Development Agreement and only in the event the City elects to proceed with such construction.

2.4 **Easement Designation and Relocation.** Renaissance shall have the right to relocate any easements which burden the Air Rights Parcel, the Renaissance Garage and the Adjacent Project Property, any easements, so long as: (a) such relocation does not have a material adverse effect on the Garage Parcel or the operations of the City Garage and the City and Affiliate approve such relocation, which approval shall not be unreasonably withheld, (b) Renaissance shall pay all reasonable costs relating thereto, and (c) such relocation, and any work performed in connection therewith, shall be performed by Renaissance at its sole cost and expense, without interruption of business operations on the Garage Parcel, and in accordance with the standards set forth in the Parking Garage Operating and Allocation Agreement.

### ARTICLE 3

#### EASEMENTS IN FAVOR OF THE AIR RIGHTS PARCEL, RENAISSANCE GARAGE AND PROJECT PROPERTY

3.1 **Grant of Easements.** Affiliate hereby grants to Renaissance, with quitclaim covenants, subject to matters of record in the Registry, except for any mortgages, the following easements into, on, over, under, across, upon and through the Garage Parcel in favor of the Air Rights Parcel, the Renaissance Garage and the Adjacent Project Property:

(a) Encroachment Easement. A perpetual non-exclusive easement for the maintenance of encroachments within the Garage Parcel in the event and to the extent that, by reason of the original construction of the Project Improvements, the Renaissance Garage, improvements on the Adjacent Project Property, or any addition, alteration or reconstruction thereof, minor surveying errors or the subsequent settlement or shifting causes any part of the Project Improvements, the Renaissance Garage or any improvements on the Adjacent Project Property to encroach or hereafter encroach upon any part of the Garage Parcel; provided, however, that it shall be understood and agreed that, notwithstanding the foregoing, the Affiliate and the City shall not be required to suffer or permit any such encroachment if the same materially interferes with the reasonable use and enjoyment of the Garage Parcel, including the City Garage;

(b) Emergency Easement. A perpetual non-exclusive easement during an Emergency Situation for ingress and egress by persons, vehicles and equipment through the Garage Parcel, including the City Garage to the extent reasonably necessary to remedy such Emergency Situation;

(c) Construction, Maintenance and Repair Easement. A perpetual non-exclusive easement for entry upon and for ingress and egress by persons, vehicles and equipment over, on, across and through the Garage Parcel to permit the construction, maintenance, repair, alteration and replacement of the City Garage in accordance with the Development Agreement, and to the extent reasonably necessary to permit the construction, maintenance, repair, alteration and replacement of the Project Improvements, the Renaissance Garage, and improvements on portions of the Project Property adjacent to the Air Rights Parcel and the Garage Parcel by Renaissance;

(d) Support Easement. A perpetual non-exclusive easement in and to the Structural Components for the support of the Project Improvements, the Renaissance Garage, and the Adjacent Project Property, and for ingress and egress by persons, vehicles and equipment over, on, across and through the Garage Parcel and the City Garage to the extent reasonably necessary to permit the maintenance, repair, alteration and replacement of such Structural Components;

(e) Systems Easement. A perpetual non-exclusive easement for ingress and egress by persons, vehicles and equipment over, on, across and through the Garage Parcel and the City Garage to the extent reasonably necessary to permit the construction, maintenance, repair, alteration and replacement of any: (i) building or utility system that services only the Project Improvements, the Renaissance Garage, or the Adjacent Project Property; or (ii) Common Systems or Air Rights Parcel Common Systems Excluded Elements; and Renaissance Garage Common System Excluded Elements.

(f) Sign Easement. A non-exclusive easement during the term of the Parking Garage Lease, for ingress and egress by persons, vehicles and equipment over, on, across and through the Garage Parcel and the City Garage to the extent reasonably necessary to permit the maintenance, repair, alteration and replacement of signs on and within the Garage Parcel which provide directions to the Project Improvements, the Renaissance Garage, or the Adjacent Project

Property with the size, location and content of such signs to be approved by the City, such approval not to be unreasonably withheld or delayed;

(g) Pedestrian and Vehicular Access/Egress Easement. A non-exclusive easement over, on, across and through the stairways, elevators, and ramps within the Garage Parcel and the City Garage for access to and egress from the Project Improvements and in the locations shown on that Plan attached as Exhibit D-1, numbered 1,2,4,5,6,7 and 8; on the Plan attached as Exhibit D-2, numbered 5,6,7,9 and 10; and on the Plan attached as Exhibit D-3, numbered 1,2,4,5,6,7 and 8, as such locations may be adjusted pursuant to Section 4.1 hereof. Notwithstanding any provisions of this Agreement to the contrary, except as may be necessary in cases of an Emergency Situation, as set forth herein, the City shall provide access to and egress from the Air Rights Parcel and the Adjacent Project Property through the Garage Parcel at times and in a manner suitable to a first- class mixed use office and retail development; and

(h) Pedestrian and Vehicular Access/Egress Easement (City Garage). A perpetual non-exclusive easement over, in, across and through all garage entrances, exits and passageways located in the Garage Parcel for pedestrian and vehicular traffic associated with parking in the Renaissance Garage in the locations shown on the Plan attached as Exhibit D-1, numbered 3a, 3b and 3c, and on the Plan attached as Exhibit D-3, numbered 3a, 3b and 3c, as such locations may be adjusted pursuant to Section 4.1.

3.2 Limitations on Use of Easements. Each easement created under this Article 3 and which provides or requires, for its enjoyment, ingress and egress on, over, under, across, upon or through the Garage Parcel and the City Garage shall be subject (except in an Emergency Situation) to such reasonable limitations as the City may, from time to time, impose to preclude any unreasonable interference with the use, development, operation, and security of the Garage Parcel or the City Garage, but shall in all instances allow reasonable access and rights to use each such easement for the benefit of the Air Rights Parcel, the Renaissance Garage and the Adjacent Project Property.

3.3 Easements Run With Air Rights Parcel, Renaissance Garage and Project Property. The easements set forth in this Article 3 shall be binding upon the Garage Parcel and inure to the Air Rights Parcel, the Renaissance Garage and the Adjacent Project Property, and may be assigned and apportioned by Renaissance. Renaissance may extend the benefits of such easements to its mortgagees, tenants, sub-tenants, beneficiaries, guests, invitees and licensees and to its employees and agents and their contractors and subcontractors performing any repairs, maintenance or replacements within the Garage Parcel.

3.4 Easement Relocation. Affiliate (and the City during the term of the Parking Garage Lease) shall have the right to relocate any easements which burden the Garage Parcel so long as: (a) such relocation does not have a material adverse effect on the Air Rights Parcel, the Renaissance Garage or the business operations conducted thereon, and the then owner of the Air Rights Parcel or the Renaissance Garage approve such relocation, which approval shall not be unreasonably withheld; (b) the Party performing its relocation shall pay all reasonable costs relating thereto, and (c) such relocation and any work performed in connection therewith, shall be performed at the Party's sole cost and expense, and without interruption of business operations on the Air Rights Parcel, the Renaissance Garage and the Adjacent Project Property in

accordance with the standards set forth in the Parking Garage Operating and Allocation Agreement.

#### ARTICLE 4

#### INITIAL LOCATION OF EASEMENTS; ADDITIONAL EASEMENTS; INDEMNITY

4.1 **Initial Location of Easements.** The Parties acknowledge that, because construction within the Project Property has not yet commenced, the precise location of the easements granted herein cannot yet be determined and the Plans show the anticipated locations of certain of the easements. The Parties agree that the identity and location of the Common Systems, the Common Systems Excluded Elements, the City Garage Common Systems Excluded Elements, the Renaissance Garage Common Systems Excluded Elements and the Air Rights Parcel Common System Excluded Elements, will be determined as part of the Approved Design for the City Garage, as defined in the Development Agreement. The Parties agree that the Pedestrian and Vehicular Access/Egress Easements described above shall be generally located in the areas shown on the Plans, provided that Renaissance will reasonably consider changes to such locations requested by the City during the preparation of the Schematic Design Documents for the City Garage. In considering such changes, Renaissance agrees to consult reasonably with the City, take the City's input into consideration and make reasonable efforts to incorporate the City's requests into its preparation of the Schematic Design Documents for the City Garage, so long as such requested changes do not materially adversely affect vehicular and/or pedestrian traffic or the design, development and/or operation of the Air Rights Parcel, the Renaissance Garage, the City Garage, or any portion of the remainder of the Project Property.

Within ninety (90) days after issuance of a certificate of occupancy for the first building constructed within the Air Rights Parcel, the Parties will execute and record an amendment to this Agreement with the As-Built Plans, the cost of which shall be Construction Costs for the Delegated Public Project Elements, as such terms are defined in the Development Agreement.

4.2 **Additional Easements.** Subject to the provisions of this Agreement, if at any time after the date hereof: (a) additional emergency exits are required by Applicable Laws or by insurance underwriting requirements generally applicable to use of the Garage Parcel or the Air Rights Parcel; (b) any other additional easements are necessary or desirable to effectuate the purposes of this Agreement, or in connection with the Project Improvements; or (c) any of the easements granted in this Agreement need, in the judgment of the Parties, to be terminated, relocated or suspended, then each Party shall, within a reasonable time after written request therefor by another Party, grant such additional easement or consent to such termination, suspension or relocation of any of the easements granted herein, provided: (i) if required by the applicable Party's mortgagee(s), the burdened Party has received the approval and consent thereto from its mortgagee(s); (ii) no Party granting any such easement shall be required to incur any costs or expenses in order to provide such easement, (iii) the use of such additional easement will not unreasonably burden or unreasonably interfere with the rights of another Party or of any tenants of another Party; and (iv) the benefited Party shall pay all costs and expenses in connection with the granting of any such additional easement, including all engineering fees, recording charges, and legal fees and expenses reasonably incurred by the burdened Party. If any new easement is created in accordance herewith, this Agreement shall be amended, if necessary, by the Parties, and such additional easement shall have the same force, effect and

priority as if such additional easement had been originally contained herein. If there is any dispute regarding the granting of additional easements hereunder, or in connection with the termination, suspension or relocation of any of the easements granted herein, the same shall be resolved according to the Dispute Resolution Process.

4.3 **Indemnity.** The benefited Party shall defend, indemnify and hold harmless the burdened Party and its officials, officers, employees, agents, contractors, subcontractors and representatives (and their respective partners, shareholders, officers, managers, members, employees, agents or representatives) from and against all claims, actions, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including reasonable attorneys' fees, reasonable experts' fees and associated court costs) which arise from or relate in any way to any negligent act or omission by the benefited Party, and its officers, employees, contractors, subcontractors, agents or representatives undertaken in the exercise of the benefited Party's rights under this Agreement; provided, however, that the provisions of this Section 4.3 shall not apply to loss, damage or claims which are attributable to the gross negligence or willful misconduct of the burdened Party or its officials, officers, employees, agents, contractors, subcontractors or representatives. The foregoing indemnity obligations of the Parties shall survive the expiration or termination of this Agreement for a period equal to the applicable statute of limitations period.

4.4 **No Unreasonable Interference.** All of the easements granted pursuant to Articles 2 and 3 have been granted subject to the condition that the use of any such easement by a Party shall not unreasonably interfere with the use and enjoyment by the granting Party of its own property rights; provided, however, that this provision shall not apply to the easements granted in Sections 2.1(a) and 3.1(a). Before entering the property of a granting Party to perform construction, maintenance, repairs, alterations or replacements authorized hereunder, a Party shall give the granting Party reasonable advance notice, except in an Emergency Situation.

## ARTICLE 5 DEFAULT AND REMEDIES

5.1 **Default.** If at any time a Party (the "Defaulting Party") shall fail to pay or perform any of its obligations hereunder, then the other Parties may give written notice to the Defaulting Party specifying the respect or respects in which it is not proceeding to pay or perform such obligations and if, upon expiration of thirty (30) days after the giving of such notice (or within such lesser period as may be appropriate in an Emergency Situation), the Defaulting Party is still not paying or performing such obligation, then, subject to Force Majeure, such other Parties may, without limitation of such other remedies as may be available at law or in equity, undertake to pay or perform such obligation and may take all reasonable steps to carry out the same. The Party paying or performing any such obligation may collect from the Defaulting Party any and all costs and expenses incurred in connection therewith.

5.2 **Interest on Unpaid Amounts.** Any amount payable by one Party to another Party under this Agreement shall be due and payable within thirty (30) days after receipt of the statement therefor. If, at any time, a Party shall fail within thirty (30) days after written demand therefor to pay to another Party (the "Creditor Party") any sum of money due the Creditor Party

pursuant to this Agreement, then, the amount so owed shall bear interest from the date the same was initially due until paid in full at the Default Rate.

5.3 **Cumulative Remedies.** The rights and remedies of the Creditor Party, provided for in this Article 5 or elsewhere in this Agreement, are cumulative and not intended to be exclusive of any other remedies to which Creditor Party may be entitled at law or in equity. The exercise by such Party of any right or remedy to which it is entitled hereunder shall not preclude or restrict the exercise of any other such right or remedy

5.4 **No Right of Set-Off.** Each claim of a Party arising under this Agreement shall be separate and distinct, and no defense, or set-off, arising against the enforcement of any lien or other claim of any Party shall thereby be or become a defense or set-off against the enforcement of any other lien or claim.

5.5 **Rights of Lenders.** The City is aware that financing for the Project Improvements may be provided, in whole or in part and from time to time, by one or more lenders. Renaissance and Affiliate agree that any mortgages on the Project Improvements held by such lender will be subordinated to this Agreement. In the event of a default by Renaissance or Affiliate, the City shall provide notice of such default, at the same time notice is provided to the defaulting Party, to any lender previously identified to the City by said defaulting Party. If a lender is permitted, under the terms of its agreement with Renaissance or Affiliate, to cure the default and/or to assume the defaulting Party's position with respect to this Agreement, the City shall recognize those rights of lender granted in the lender's agreement with Renaissance and to otherwise permit lender to assume all of the rights and obligations of the defaulting Party under this Agreement.

5.6 **Estoppel Certificates.** Each Party shall, without charge, at any time and from time to time, within ten (10) days after request by another Party, certify by written instrument, duly executed, acknowledged and delivered to the Party making such request, or any other person, firm or corporation specified by such Party:

(a) that this Agreement is unmodified and in full force and effect, or, if there have been modifications, that the same is in full force and effect, as modified, and stating the modification; and

(b) whether or not, to the best knowledge of the person executing the certificate, there are then existing defaults of any Party hereunder.

## ARTICLE 6 RESOLUTION OF DISPUTES

6.1 **Dispute Resolution Process.** All Parties shall use their reasonable efforts to resolve, as expeditiously as possible, any dispute as to the interpretation, construction or performance of this Agreement (each, a "Dispute"), and in the event that a Dispute cannot be resolved by agreement of the Parties, any Party may file suit to resolve such Dispute through litigation.

**ARTICLE 7  
MISCELLANEOUS**

7.1 **No Merger** Unless Renaissance elects otherwise, there shall be no merger of the rights, estates and easements granted hereby on account of the fact that the interests of Renaissance and the City hereunder may from time to time be held, directly or indirectly, by the same person or persons.

7.2 **Delays; Waivers.** Except as otherwise expressly provided in this Agreement, any delay by any Party in asserting any right or remedy under this Agreement shall not operate as a waiver of any such rights or limit such rights in any way; and any waiver in fact made by such Party with respect to any default by another Party shall not be considered as a waiver of rights with respect to any other default by the non-defaulting Party, or with respect to the particular default, except to the extent specifically waived, in writing. It is the intent of the Parties that this provision will enable each Party to avoid the risk of being limited in the exercise of any right or remedy provided in this Agreement by waiver, laches or otherwise.

7.3 **Notices.** Any and all notices, demands, requests, submissions, approvals, consents, disapprovals, objections, offers or other communications or documents required to be given, delivered or served, or which may be given, delivered or served, under or by the terms and provisions of this Agreement or pursuant to law or otherwise, shall be in writing and shall be delivered by hand or sent by registered or certified mail, return receipt requested, addressed if to the City to:

City Manager  
City Hall  
455 Main Street  
Worcester, MA 01608

with a copy to:

City Solicitor  
City Hall  
455 Main Street  
Worcester, MA 01608

or to such other address as the City may from time to time designate by written notice to Renaissance or Affiliate,

or if to Renaissance or Affiliate addressed to:

Worcester Renaissance LLC or Affiliate  
c/o Berkeley Investments, Inc.  
121 High Street  
Boston, MA 02110  
Attn: Young K. Park

with a copy to:

Robert E. Longden, Esquire  
Bowditch & Dewey, LLP  
311 Main Street, P.O. Box 15156  
Worcester, MA 01615-0156

or to such other address as Renaissance or Affiliate may from time to time designate by written notice to the City, or to such other agent or agents as may be designated in writing by any Party. The earlier of: (i) the date of delivery by hand, (ii) the date received as shown on the return receipt, or (iii) the date of delivery or upon which delivery was refused as indicated on the registered or certified mail return receipt or statement of the hand delivery courier shall be deemed to be the date such notice or other submission was given.

7.4 **Severability.** If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

7.5 **Interference with Other Parties' Operations.** In fulfilling obligations and exercising rights under this Agreement, each Party shall use its best efforts to keep interference with the property of the other Parties and the operations of the other Parties to a minimum and, to that end, except in Emergency Situations, will give to the other Parties reasonable advance written notice, but not less than ten (10) days' notice of work which may so interfere, and will arrange with the other Parties for reasonable and definite times and conditions under which any such work shall be done.

7.6 **Invalid Provisions.** The invalidity of any covenant, restriction, condition, limitation or any other part or provisions of this Agreement shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Agreement.

7.7 **Headings for Reference Only.** The headings of Articles and Sections in this Agreement are for convenience of reference only and shall not in any way limit or define the content or substances of the Articles or Sections.

7.8 **Amendment Procedure.** This Agreement may be amended only by an instrument signed and duly acknowledged by (a) Renaissance, (b) Affiliate, (c) the City, and (d) any mortgagees of Renaissance and Affiliate, of which the City has received prior written notice, if required by such mortgagees. Any amendment to this Agreement shall be recorded in the Registry and shall become effective upon such recording.

7.9 **Waiver.** The Parties waive a trial by jury of any and all issues arising in any action or proceeding between them or their successors or assigns under or connected with this Agreement, or any of its provisions, or any negotiations in connection therewith.

7.10 **Integration**. All prior understandings and agreements between the Parties are merged within this Agreement, which alone fully and completely sets forth the understanding of the Parties; and this Agreement may not be changed or terminated orally or in any manner other than by an agreement in writing and signed by the Party against whom enforcement of the change or termination is sought.

7.11 **Bind and Inure**. The covenants and agreements herein contained shall be binding on and inure to Renaissance, Affiliate, and the City, and their respective successors and assigns. Notwithstanding the foregoing, the City may not assign its rights and obligations hereunder. The City agrees that Renaissance and Affiliate may assign their interests in this Agreement to any successor person or entity, or to any lender providing financing for the CitySquare Project without the consent of, but with prior notice to, the City.

7.12 **Limitation of Liability**. Anything contained in this Agreement to the contrary notwithstanding, but without limitation of the City's equitable rights and remedies, the liability of Renaissance under this Agreement shall be enforceable only out of the interest of Renaissance, or its successors in the Renaissance Garage, the liability of Affiliate shall be limited to the interest of Affiliate, or its successors, in the Garage Parcel and the City Garage, and there shall be no other recourse against, or right to seek a deficiency judgment against, Renaissance or Affiliate, or their respective successors, nor shall there be any personal liability on the part of any member, manager, or officer or employee of Renaissance or Affiliate, or their respective successors, with respect to any obligations to be performed hereunder.

7.13 **Captions**. The captions of this Agreement are for convenience and reference only and in no way define, limit or describe the scope or intent of this Agreement, nor in any way affect this Agreement.

7.14 **Table of Contents**. The Table of Contents preceding this Agreement, but under the same cover, is for the purpose of convenience and reference only and is not to be deemed or construed in any way as part of this Agreement, nor as supplemental thereto or amendatory thereof.

7.15 **Massachusetts Law Governs**. This Agreement shall be governed exclusively by, and construed in accordance with, the laws of The Commonwealth of Massachusetts.

7.16 **Time of the Essence**. Time shall be of the essence hereof.

7.17 **No Partnership or Joint Venture**. Nothing contained in this Agreement shall be construed to create a partnership or joint venture among the City, Renaissance and Affiliate, nor shall any Party be liable for any debts incurred by or among Parties in the conduct of its business or affairs, nor shall any Party be deemed the agent or representative of the other for any purpose or in any manner under this Agreement, except as otherwise expressly provided for herein, nor shall any third Parties have any rights to enforce this Agreement, except as otherwise expressly provided herein.

7.18 **Further Assurances**. At any time and from time to time, each of the Parties hereto agrees, upon the written request of any other Party, to execute and, if required, acknowledge and record, all such amendments hereto or other documents as may reasonably be

required to effectuate the intents and purposes of this Agreement. Without limiting the generality of the foregoing, each of the Parties further agrees to consent to modifications to this Agreement to the extent that any such modifications are reasonably requested by a prospective mortgagee of any Party, provided that modifications so requested do not limit any grant of easement or materially or adversely effect the rights of any Party under this Agreement.

7.19 **Sovereign Immunity.** Nothing in this Agreement shall be construed as a waiver by the City of governmental sovereign immunity.

7.20 **Parking Garage Lease Subject to this Agreement.** The City, by its signature hereto, covenants and agrees that the Parking Garage Lease is, and at all times shall be, subject to this Agreement and any amendments hereof.

[SIGNATURE PAGE TO FOLLOW]

Executed as of the date first set forth above as an instrument under seal.

**CITY OF WORCESTER**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved as to form:

**OFFICE OF THE CITY SOLICITOR**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**WORCESTER RENAISSANCE LLC, a**

Delaware limited liability company

By: Worcester Renaissance Holdings LLC, a  
Delaware limited liability company,  
its sole member

By: Berkeley Worcester MGR LLC, a  
Delaware limited liability company,  
a manager

By: Berkeley Investments, Inc., a  
Massachusetts corporation,  
its manager

By: \_\_\_\_\_  
Name: Young K. Park  
Title: President and Treasurer

**AFFILIATE**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

THE COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

On this \_\_\_ day of \_\_\_\_\_, 200\_\_, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_ proved to me through satisfactory evidence of identification, namely a driver's license issued by the Commonwealth of Massachusetts, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose as Mayor of the City of Worcester.

\_\_\_\_\_  
Notary Public:  
My commission expires:

THE COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

On this \_\_\_ day of \_\_\_\_\_, 200\_\_, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_ proved to me through satisfactory evidence of identification, namely a driver's license issued by the Commonwealth of Massachusetts, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose as Solicitor of the City of Worcester.

\_\_\_\_\_  
Notary Public:  
My commission expires:

THE COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

On this \_\_\_ day of \_\_\_\_\_, 200\_\_ before me, the undersigned Notary Public, personally appeared Young K. Park, President and Treasurer of Berkeley Investments, Inc., the manager of Berkeley Worcester MGR LLC a manager of Worcester Renaissance Holdings LLC, the sole member of Worcester Renaissance LLC, proved to me through satisfactory evidence of identification, namely a driver's license issued by The Commonwealth of Massachusetts, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose as President and Treasurer of Berkeley Investments, Inc., the manager of Berkeley Worcester MGR LLC, a manager of Worcester Renaissance Holdings LLC, the sole member of Worcester Renaissance LLC.

\_\_\_\_\_  
Notary Public:  
My commission expires:

THE COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

On this \_\_\_ day of \_\_\_\_\_, 200 \_\_, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_ proved to me through satisfactory evidence of identification, namely a driver's license issued by the Commonwealth of Massachusetts, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose as

\_\_\_\_\_

\_\_\_\_\_  
Notary Public:

My commission expires:

**EXHIBIT A**  
**Description of Garage Parcel**





**EXHIBIT B**  
**Description of Air Rights Parcel**



**EXHIBIT C**  
**Description of Renaissance Garage**



**EXHIBIT D**  
**List of Plans**

1. Arrowstreet 1/04/06 Draft - Limited Common Interest Plan, Level B1, SK-062b
2. Arrowstreet 1/04/06 Draft - Limited Common Interest Plan, Level 1, SK-062c
3. Arrowstreet 1/04/06 Draft - Limited Common Interest Plan, Level B2, SK-062a
4. Plan Entitled, "Area Site Plan New Worcester Center, Worcester, Massachusetts"  
prepared for Berkeley Investments Inc. by Judith Nitsch Engineering, Inc. dated April 25,  
2005

**EXHIBIT D-1**

**Arrowstreet 1/04/06 Draft - Limited Common Interest Plan, Level B1, SK-062b**



EXHIBIT D-2

Arrowstreet 1/04/06 Draft - Limited Common Interest Plan, Level 1, SK-062c



EXHIBIT D-3

Arrowstreet 1/04/06 Draft - Limited Common Interest Plan, Level B2, SK-062a



**EXHIBIT E**

**Plan Entitled, "Area Site Plan New Worcester Center, Worcester, Massachusetts" prepared for Berkeley Investments Inc. by Judith Nitsch Engineering, Inc. dated April 25, 2005**

**[Separate Document]**



**EXHIBIT 7.2**

**Specific Maintenance Requirements**

**Specific Maintenance Requirements to be agreed upon by the Parties, based on mutual recommendations of Desman Consultants, as parking consultant for the City, and Walker Parking, as parking consultant for the Developer, to be received within thirty (30) days after the City approves Design Development Plans for the Parking Garage.**

EXHIBIT 5.1(a)

Parking Garage Operating and Allocation Agreement

(SEPARATE DOCUMENT)

**PARKING GARAGE OPERATING AND ALLOCATION AGREEMENT**

between

**WORCESTER RENAISSANCE LLC**

and

**CITY OF WORCESTER**

**DATED:** \_\_\_\_\_

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**EXHIBITS:**

Exhibit A	Plan Showing Unified Garage
Exhibit B	Garage Regulations

## PARKING GARAGE OPERATING AND ALLOCATION AGREEMENT

THIS PARKING GARAGE OPERATING AND ALLOCATION AGREEMENT (this "Agreement") is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ by and between WORCESTER RENAISSANCE LLC, a Delaware limited liability company, with an address at c/o Berkeley Investments, Inc., 121 High Street, Boston, Massachusetts 02110 ("Renaissance") and the CITY OF WORCESTER, Massachusetts, a municipal corporation organized under a home rule charter adopted under the constitution and laws of The Commonwealth of Massachusetts, acting by and through its Off-Street Parking Board, established under Chapter 365 of the Acts of 1955, with an address at City Hall, 455 Main Street, Worcester, Massachusetts 01608 (the "City").

### WITNESSETH:

**WHEREAS**, Renaissance and the City (each, sometimes individually referred to as a "Party" and together the "Parties") have entered into a lease dated \_\_\_\_\_, 200\_\_ (the "Parking Garage Lease"), pursuant to which the City has leased a subsurface parcel for a 60 year period as more particularly set forth in the Parking Garage Lease (the "Garage Parcel") in which the Parking Garage Improvements, as defined in the Parking Garage Lease, are to be constructed by Renaissance pursuant to the terms of a Development Agreement between Renaissance and the City dated \_\_\_\_\_, 2006 (the "Development Agreement") in connection with the CitySquare project (the "CitySquare Project"); and

**WHEREAS**, the Garage Parcel and Garage Parcel Improvements are to be used under the Parking Garage Lease for the operation of a public garage for the parking of passenger motor vehicles (the "City Garage"); and

**WHEREAS**, Renaissance and the City intend that the City Garage be used and operated in conjunction with an adjacent garage owned by Renaissance (the "Renaissance Garage") in such a manner so as to create the physical appearance of a single unified garage having no dividing walls between them, sharing common access and egress through one or more of their entrances, exits and passageways, sharing common parking control equipment, systems, software and operations, using common and unified wayfinding, signage and coloration to the extent reasonably feasible, and providing unobstructed access to parking throughout the City Garage and the Renaissance Garage (the "Unified Garage"); and

**WHEREAS**, Renaissance and the City wish to set forth in this Agreement the terms and provisions that will govern the use and operation of the City Garage and the Renaissance Garage as the Unified Garage.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein and to be observed and performed by the Parties hereto, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

## ARTICLE 1 DEFINITIONS

For purposes of this Agreement, unless the context otherwise requires, each capitalized term used in this Agreement and not otherwise defined in this Agreement shall have the meaning specified below. The content of each Exhibit referenced in this Agreement as being attached hereto, is hereby incorporated into this Agreement as fully as if set forth within the body of this Agreement.

**Agreement** shall mean this Parking Garage Operating and Allocation Agreement and all exhibits hereto as it, and they, may be amended and restated from time to time.

**Applicable Laws** shall mean any federal, state, or local law, statute or ordinance, order or regulation applicable to the operation of the Unified Garage.

**Building F Exclusive Use Parking Spaces** shall have the meaning given such term in Section 4.6.

**Capital Expense Differential** shall have the meaning given such term in Section 5.6.

**Cash Flow** shall have the meaning given such term in Section 5.4.

**City** shall have the meaning given such term in the preamble to this Agreement.

**City Capital Reserve** shall have the meaning given such term in Section 6.3.

**City Capital Reserve Amount** shall have the meaning given such term in Section 6.3.

**CPI** shall mean the Consumer Price Index for All Urban Consumers (CPI-U), Boston, Massachusetts, All Items (1982 - 1984 equals 100) published by the United States Department of Labor Bureau of Labor Statistics.

**City Garage** shall have the meaning given such term in the recitals to this Agreement.

**CitySquare Project** shall have the meaning given such terms in the recitals to this Agreement.

**Creditor Party** shall have the meaning given such term in Section 8.2.

**Default Rate** shall have the meaning given such term in Section 5.9.

**Defaulting Party** shall have the meaning given such term in Section 8.1

**Delivery Date** shall have the meaning set forth in the Parking Garage Lease.

**Development Agreement** shall have the meaning given such term in Section 3.1.

**Effective Date** shall have the meaning given such term in Section 3.1.

**Emergency Situation** shall mean a situation (a) which immediately impairs, or threatens immediate impairment of the structural support of the Unified Garage; (b) causing, or threatened to cause, injury to person or persons, or substantial damage to the Unified Garage or the other property in or about the Unified Garage; or (c) causing, or threatening to cause, an interruption in the business of Renaissance or the City, or the Unified Garage or either of the Renaissance Garage or the City Garage.

**Entity** shall have the meaning given such term in Section 5.9.

**Extended Term** shall have the meaning given such term in Section 3.1.

**Fair Market Rates** shall have the meaning given such term in Section 5.9.

**Force Majeure** shall have the meaning given such term in Section 9.1.

**Garage Manager** shall mean the entity appointed by Renaissance to manage the Unified Garage as provided in Section 5.7.

**Garage Parcel** shall have the meaning given such term in the recitals to this Agreement.

**Garage Regulations** shall have the meaning given such term in Section 4.4.

**Governmental Authority** means any agency, department, event or other administrative or regulation authority of any federal, state or local governmental body.

**Gross Revenues** shall have the meaning given such term in Section 5.9.

**Indemnifying Party** shall have the meaning given such term in Section 7.3.

**Interest Expense Differential** shall have the meaning given such term in Section 5.6.

**Interest Expense Differential Repayment Date** shall have the meaning given such term in Section 5.6.

**Net Revenues** shall have the meaning given such term in Section 5.9.

**Non-Paying Party** shall have the meaning given such term in Section 5.5.

**Operating Budget** shall have the meaning given such term in Section 5.2.

**Operating Deficit** shall have the meaning given such term in Section 5.5.

**Operating Expenses** shall have the meaning given such term in Section 5.9.

**Parking Garage Lease** shall have the meaning given such term in the recitals to this Agreement.

**Party/Parties** shall have the meaning given such term in the recitals to this Agreement.

**Party Loan** shall have the meaning given such term in Section 5.5.

**Paying Party** shall have the meaning given such term in Section 5.5.

**Person** shall have the meaning given such term in Section 5.9.

**Reserve** shall have the meaning given such term in Section 6.3.

**Renaissance Capital Reserve Amount** shall have the meaning given such term in Section 6.3.

**Renaissance Garage** shall have the meaning given such term in the recitals to this Agreement.

**Tender Date** shall have the meaning given such term in Section 5.5.

**Term** shall have the meaning given such term in Section 3.1.

**Unified Garage** shall have the meaning given such term in the recitals to this Agreement.

**Unified Garage Interest** shall have the meaning given such term in Section 5.6

## **ARTICLE 2 DESCRIPTION OF GARAGES**

2.1 **The City Garage.** The City Garage consists of an underground two-level garage located beneath a portion of the CitySquare Project containing at least 1,205 spaces for parking passenger motor vehicles, which is to be constructed by Renaissance pursuant to the terms of the Development Agreement and leased to the City pursuant to the Parking Garage Lease. The City Garage is sometimes referred to with references to the City as "its Garage".

2.2 **Renaissance Garage.** The Renaissance Garage consists of a six (6) level garage, with two (2) levels below and four (4) levels above ground, containing approximately 900 spaces for parking passenger motor vehicles. The Renaissance Garage is sometimes referred to with reference to Renaissance as "its Garage".

2.3 **Unified Garage.** The Unified Garage consists of the City Garage and the Renaissance Garage together, and is shown on the plan attached hereto as Exhibit A.

## **ARTICLE 3 TERM**

3.1 **Term.** The term of this Agreement shall begin on the Delivery Date (as defined in the Parking Garage Lease) (the "Effective Date") and shall end at 11:59 p.m. on the last day of the month in which the fifteenth (15<sup>th</sup>) anniversary of the Delivery Date occurs (the "Term") subject to all of the terms of this Agreement, unless earlier terminated as provided in this Agreement. This Agreement shall be automatically extended for successive three (3) year terms (each an "Extended Term"), unless either Party elects to terminate this Agreement at the

end of the Term or Extended Term by giving the other Party notice no later than sixty (60) days prior to the expiration of the Term, or any Extended Term. Notwithstanding the foregoing, this Agreement shall automatically terminate if the Parking Garage Lease is terminated.

### 3.2 Termination of Agreement.

(a) If neither Party elects to terminate this Agreement in accordance with the provisions of Section 3.1 hereof, this Agreement shall terminate on the last day of the Garage Parcel Term (as defined in the Parking Garage Lease), and the parties shall have no further obligations to each other, except for obligations that expressly survive the Term of this Agreement.

(b) In the event that either Party elects to terminate this Agreement in accordance with the provisions of Section 3.1 hereof, the Party who elects to terminate shall pay the cost and perform, or cause to be performed, any construction necessary in separating the access and ticketing points for the Unified Garage and creating physical barriers to separate the City Garage and the Renaissance Garage and shall pay the cost of all additional furniture, fixtures and equipment necessary (after dividing up the existing furniture, fixtures and equipment between the two garages) to operate the City Garage and the Renaissance Garage as separate garages. The separation shall be completed prior to the end of the Term, or the Extended Term, as appropriate, and shall be performed so as to provide, to the extent feasible, seamless operation of both Garages during separation.

## ARTICLE 4 USE OF UNIFIED GARAGE

4.1 Use. The Unified Garage shall be used for the purpose of parking motorized vehicles and bicycles and for accessory uses and for no other purposes.

4.2 No Structural Overload. Neither Party shall take any action or otherwise suffer or permit any use of the Unified Garage that would result in (a) exceeding the applicable floor load limitations, or (b) any structural overload or lateral or seismic stress on any portion of the Unified Garage.

4.3 Compliance with Laws. Each Party shall comply with all laws, rules, orders, ordinances, regulations and requirements now or hereafter enacted or promulgated by the United States of America, The Commonwealth of Massachusetts, the City and any other agency or other governmental authority now or hereafter having jurisdiction over the Unified Garage and such Party.

4.4 Garage Regulations. The Parties shall abide by regulations with respect to the use, operation and occupation of the Unified Garage as they may be amended from time to time by the Parties in consultation with the Garage Manager (the "Garage Regulations"). The initial Garage Regulations are attached hereto as Exhibit B. As provided therein, any valet or tandem parking arrangements are subject to the City's review and approval (which can be undertaken as part of the review and approval of the Operating Budget), which approval shall not be unreasonably withheld or delayed.

4.5 **The City Garage.** In addition to the foregoing, the City agrees that the City Garage shall be used in accordance with the provisions of the Parking Garage Lease, together with benefits of the appurtenant rights and easements, and subject to the Encumbrances and Reserved Rights, as defined therein.

4.6 **Building F Exclusive Use Parking Spaces.** Renaissance shall have the exclusive right to designate up to 10% of the parking spaces in the City Garage, for the exclusive use of owners of condominium units in Building F of the CitySquare Project ("Building F Exclusive Use Parking Spaces"), all subject to and as provided in the Parking Garage Lease.

## ARTICLE 5 OPERATION OF UNIFIED GARAGE

5.1 **Operation of Unified Garage.** The Parties acknowledge and agree that the Renaissance Garage and the City Garage shall be maintained, operated and managed as the Unified Garage by the Garage Manager, subject to and upon the terms and conditions set forth in this Article 5, including, but not limited to, the following matters:

- (a) to collect Gross Revenues from the operation of the Unified Garage and to distribute the Net Revenues therefrom to the Parties on a quarterly basis;
- (b) to put, keep and maintain all portions of the Unified Garage, including interior parking and driving surfaces and entrance and exit ramps, in good repair and in a well-maintained, and orderly condition, free of dirt, rubbish, snow, ice and unlawful obstructions, and to properly dispose of all such dirt, rubbish, snow and ice;
- (c) to take good care of the Unified Garage (including, without limitation, all improvements now or hereafter erected thereon, all elevators, doors, windows, ticketing equipment, cashier's booths and their appurtenant equipment, mechanical and manual barriers, mechanical systems, directional markers and signs, painting, lights, and all other equipment and appurtenances used in the functioning of the Unified Garage) and all sidewalks, curbs and entrance ways adjoining the same, and to keep the Renaissance Garage and the City Garage in good order and first class condition, and to make all necessary structural and non-structural repairs and replacements thereto, provided, however, that in no event, shall the foregoing be deemed to include any repairs required to be made to the Renaissance Garage or the City Garage resulting from any damage from a taking in condemnation proceedings or by the exercise of any right of eminent domain or by an agreement in lieu thereof, or from fire or other casualty;
- (d) to keep the Unified Garage open to the public during the hours specified in the Garage Regulations, with periodic manned patrols and camera surveillance;
- (e) to prepare, submit and maintain, or to cause the Garage Manager to prepare, submit and maintain, such statements, audits, books and records as are required to be prepared, submitted and maintained with respect to the Unified Garage, pursuant to the provisions of this Agreement;

(f) to obtain and maintain the liability insurance coverage with respect to the Unified Garage as required by this Agreement;

(g) to establish cash reserves for capital repairs and replacements, liability insurance and general maintenance; and

(h) to perform such other obligations with respect to the maintenance, management and operation of the Unified Garage as the Garage Manager or the Parties may from time to time determine by unanimous consent.

Nothing in this Section 5.1 shall modify, limit or otherwise impair any obligation of Renaissance or the City under the Parking Garage Lease.

5.2 **Operating Budget.** Renaissance (and/or the Garage Manager) shall prepare and the City shall approve, which approval shall not be unreasonably withheld or delayed, as soon as practicable following the date hereof, and thereafter, annually, at least ninety (90) days prior to the end of each calendar year, a detailed annual budget (or revision and update, as the case may be) for the ensuing fiscal year (the "Operating Budget"), which annual budget shall cover all operations (including maintenance, repairs and capital expenditures) of the Unified Garage and shall project Gross Revenues and Operating Expenses for such fiscal year, and shall specify amounts, if any, that are projected to be applied during such fiscal year from the capital reserves maintained as provided in Section 6.3 hereof and any other capital expenditures to be otherwise funded. Such budget or revised and updated budget, as the case may be, shall become the Operating Budget upon such approval thereof by the City, provided, however, that until such approval, the Unified Garage shall be operated in accordance with the then-existing Operating Budget. Renaissance will not cause the Garage Manager to, and the Garage Manager shall not, incur expenses in excess of the Operating Expenses and expected capital expenditures in an approved Operating Budget without obtaining the City's approval, which approval shall not be unreasonably withheld or delayed.

5.3 **Unified Garage Gross Revenues.** Gross Revenues shall be collected and applied to pay Operating Expenses in accordance with the Operating Budget.

5.4 **Distribution of Cash Flow.**

(a) Cash flow from Net Revenues ("Cash Flow"), if any, shall be distributed to the Parties, on a quarterly basis, in accordance with their respective Unified Garage Interests.

(b) Notwithstanding anything to the contrary contained in this Section 5.4, each Party expressly acknowledges and agrees that any amounts to be distributed to such Party pursuant to this Section 5.4, shall be first applied in the following order of priority: (i) to repay any Party Loans made to such Party to fund any Operating Deficits (in proportion to the outstanding balances of such Party Loans, with amounts so paid to be applied first to interest accrued and unpaid, and then to outstanding principal), and (ii) to replenish any capital reserves that such Party has failed to maintain in accordance with the provisions of Section 6.3 hereof.

5.5 **Operating Deficits.**

(a) In the event that Gross Revenues for any quarterly period are not sufficient to pay the Operating Expenses for such period (whether already incurred or reasonably projected to be incurred within ninety (90) days after the date of projection) (an "Operating Deficit"), each Party shall, at the times and subject to the conditions set forth in this Section 5.5, be obligated to pay, in cash, an amount equal to, and not less than, such Party's proportionate share of such Operating Deficit, with such share being based upon the respective Unified Garage Interests of the Parties as of the date the Operating Deficit was incurred.

(b) The Parties shall pay any amounts required pursuant to paragraph (a) above within five (5) days of notice thereof (such date being hereinafter referred to as the "Tender Date") from the Garage Manager or such other person as the Parties may, from time to time designate.

(c) In the event that either Party (the "Non-Paying Party") fails to make any payment required, pursuant to the provisions of this Section 5.5, on or before the Tender Date, the other Party (the "Paying Party") that has tendered or caused to be tendered its share of the requested payment on or before the Tender Date may elect to proceed as follows:

(i) The Paying Party may elect (but shall have no obligation to do so), by written notice given to the Non-Paying Party within ten (10) days after the Tender Date, to make a loan to other Non-Paying Party (each a "Party Loan") of all or any portion of the amount requested of such Non-Paying Party, by paying the proceeds thereof in payment of such Non-Paying Party's required payment.

(ii) Any such Party Loan (A) shall bear interest at the Default Rate, determined daily and compounded monthly, (B) shall be due and payable (as to both principal and interest) on the first (1<sup>st</sup>) anniversary of the date of making thereof, and (C) shall be paid (if not sooner paid or payable) out of Cash Flow distributed to the Non-Paying Party in accordance with Section 5.4.

(iii) In the event any Party Loan is not paid when due, then, at any time thereafter while such Party Loan remains unpaid, in addition to those rights and remedies available to such Paying Party, pursuant to Article 8 hereof, the Paying Party may, upon not less than ten (10) days' prior written notice to the Non-Paying Party, elect, as of the date set forth in the notice of such election (and provided that the Party Loan has not been paid in full on or before such date), to treat the failure to repay such Party Loan as a material default thereunder and exercise its remedies available at law or in equity to compel repayment of such Party Loan in accordance with the terms thereof (other than a termination of this Agreement).

**5.6 Calculation of Unified Garage Interests.** The Parties' rights to receive distributions of Cash Flow shall be determined as provided below in accordance with such Party's interest in the Unified Garage (the "Unified Garage Interest"), with each Party's Unified Garage Interest being calculated as follows:

(a) Beginning on the Effective Date and continuing until the earlier to occur of (i) the City recovering an amount equal to the difference between the cost of taxable debt issued and tax exempt debt which otherwise would have been issued on the same dates (the

"Interest Expense Differential") for direct and indirect costs to develop, design and construct the City Garage or (ii) the date which is thirty (30) years after the Effective Date (the "Interest Expense Differential Repayment Date"), the City's Unified Garage Interest shall be 60% and Renaissance's Unified Garage Interest shall be 40%.

(b) After the Interest Expense Differential Repayment Date, the City's Unified Garage Interest shall be 55% and Renaissance's Unified Garage Interest shall be 45%, except as follows: if the City Garage and the Renaissance Garage continue to be operated as a Unified Garage pursuant to the terms of this Agreement after thirty (30) years from the Effective Date, then if any capital expenditures are required for the City Garage that, in the aggregate over any three (3) year period, exceed an amount equal to the future value of \$5 million (adjusted by the CPI, from the Effective Date to the date of such capital expenditures) (the "Capital Expense Differential"), then (i) the City shall be allowed to spend the then existing balance in the City's Capital Reserve, plus 100% of the future balances in the City's Capital Reserve, to pay for such capital expenditures (including the principal amount of any borrowing therefor) and the City shall be allowed to spend as well 50% of the future balances in the City's Capital Reserve to pay the debt service (i.e., interest payments and charges and fees on such borrowing) incurred to finance such capital expenditures, and (ii) for all amounts of such capital expenditures in excess of the future value of \$5 million, Renaissance shall contribute toward the payment of the Capital Expense Differential by reverting to the 60%/40% Unified Garage Interests set forth in Section 5.6(a) until the Capital Expense Differential is recovered by the City. The City, at its sole expense, shall provide Renaissance with an annual accounting of the payment of the Interest Expense Differential and the Capital Expense Differential, and Renaissance shall have the right to audit the City's annual accounting at Renaissance's expense.

(c) Each Party further expressly acknowledges and agrees that, in the event of a reduction or increase in the number of physical parking spaces available for use in such Party's Garage, each Party's Unified Garage Interest shall be recalculated and adjusted based upon the number of available physical parking spaces within each Party's Garage relative to the number of available physical parking spaces in the Unified Garage. Notwithstanding the foregoing, no such recalculation and adjustment shall be made during any time period when the provisions of clauses (a) and (b) of this Section 5.6 are applicable.

(d) Each Parties' share of any Operating Deficits shall be determined based on the number of physical parking spaces available in each Party's Garage relative to the number of available physical parking spaces in the Unified Garage without taking into account any Differential adjustment.

5.7 **Day to Day Management of the Unified Garage.** The Parties intend to engage a single entity, which is an experienced garage operator (the "Garage Manager"), to manage and oversee all day to day operations of the Unified Garage on behalf of the Parties in accordance with the Operating Budget and otherwise in accordance with the terms and conditions of this Agreement. The appointment or removal of any such entity, and the terms and conditions of any such management agreement, shall be determined by Renaissance.

5.8 **Establishment of Parking Rates.** Subject to the City's review and approval which will not be unreasonably withheld or delayed, the Developer shall set the rates

for all parking in the Unified Garage and will use its best efforts to maintain Fair Market Rates provided that the Fair Market Rates shall, in no event be less than the average rates for structured parking facilities located in the central business district of Worcester, Massachusetts at the time of such determination, with an average revenue per space on a garage-wide basis.

5.9 **Definitions.** Capitalized terms used in this Article, and not otherwise defined in this Agreement, shall have the following meanings:

(a) **Default Rate** shall mean three percent (3%) per annum above the prime rate as quoted in the *Wall Street Journal*, or an acceptable substitute if the *Wall Street Journal* ceases publication.

(b) **Entity** shall mean any general partnership, limited partnership, corporation, joint venture, trust, limited liability company, limited liability partnership, business trust, cooperative or association.

(c) **Fair Market Rates** shall mean rates then prevailing for parking spaces provided in comparable structured parking facilities located in the central business district of Worcester, Massachusetts, taking into consideration the nature of the facility (e.g. surface or structured, open or enclosed, heated or non-heated, attended or non-attended), the hours of operation, demand, and the manner in which the parking spaces in question are made available (e.g. parking lot as opposed to valet parking basis).

(d) **Gross Revenues** shall mean the gross receipts of every kind and nature from the operation of the Unified Garage, including, without limitation, revenues from the parking of vehicles within the Unified Garage, any rentals, fees or other income made in, upon or from the Unified Garage, but excluding (i) the proceeds of a casualty or taking or (ii) any fees received by any Person other than Renaissance or the City for providing valet parking services, provided that such Person has paid the Unified Garage the applicable rate for the parking of valet vehicles in the Unified Garage.

(e) **Net Revenues** shall mean, for any period, the amount, computed on a cash basis, equal to the excess of (i) the sum of Gross Revenues, investment income, and amounts released from reserves over (ii) the sum of Operating Expenses and any increase in reserves.

(f) **Operating Expenses** shall mean all actual and reasonable expenses incurred in connection with the operation, cleaning, maintenance, repair, up-keep, security and management of the Unified Garage, including, without limitation (i) all salaries, wages, fringe benefits, payroll taxes and worker's compensation insurance premiums related thereto with respect to any employees engaged (but only the extent so engaged) in management, operation, cleaning, maintenance, landscaping, repair, upkeep and security of the Unified Garage; (ii) all charges and other costs related to the provision of heat (including, oil, electricity, steam and/or gas), air-conditioning, and water (including, sewer rents, rates and charges), telephone, and other services and utilities to the Unified Garage; (iii) all costs, including material and equipment costs, for cleaning and janitorial services (including, without limitation, trash removal) for the Unified Garage; (iv) all costs of liability insurance relating to the Unified

Garage; (v) all normal and routine costs of maintaining and repairing the Unified Garage (including snow removal, sweeping, striping, landscaping, lighting, security, operation and repair of heating and air-conditioning equipment, elevators, escalators, and any other equipment or systems) and all nonstructural repairs and replacements necessary to keep the Unified Garage in good working order, repair, appearance and condition; (vi) the costs of capital equipment used solely in connection with the operation of the Unified Garage, such as, without limitation, ticket booths, garage sweepers, security cars or vehicles, and office computers; (vii) annual license and permit fees and other annual governmental charges associated with the operation of the Unified Garage; and (viii) all payments under any parking management, operating or services contracts. Operating Costs shall not include, except as expressly otherwise provided above: (1) depreciation of capital improvements or equipment and/or amortization of the costs thereof; (2) any costs or expenses resulting from any damage from a taking in condemnation proceedings or by the exercise of any right of eminent domain or by an agreement in lieu thereof, or from fire or other casualty; (3) any costs or expenses associated with the capital maintenance or replacement of the structure or mechanical systems of the Unified Garage; or (4) income taxes and other taxes of similar nature.

(g) **Person** shall mean any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so admits.

## ARTICLE 6 MAINTENANCE AND REPAIR - DAMAGE TO THE IMPROVEMENTS

6.1 **General Covenant To Maintain and Repair.** Except to the extent the same are to be performed as a part of the operation of the Unified Garage pursuant to Article 5 hereof, each Party shall, at its sole cost and expense, keep its Garage in first class condition and make all repairs therein and thereon, ordinary and extraordinary, to keep the same in first class condition, whether or not necessitated by wear, tear, obsolescence or defects, latent or otherwise, and further agrees that it shall not suffer or commit, and shall use all reasonable precaution to prevent, waste to such property.

6.2 **Damage By Fire or Other Casualty; Condemnation.** If the Parking Garage Lease remains in effect after any damage, destruction or Taking (as provided in the Parking Garage Lease) of all or a portion of the City Garage, this Agreement shall remain in effect, provided that the Unified Garage Interest of each Party shall be recalculated as provided in Section 5.6 as appropriate. If the Parking Garage Lease is terminated as a result of any damage, destruction or Taking of all or a portion of the City Garage, this Agreement shall terminate as of the date of the termination of the Parking Garage Lease.

6.3 **Capital Reserves** Each Party shall establish commercially reasonable reserves for items of capital maintenance, repair and replacement of its Garage, and shall, upon request of the other Party, provide evidence of the amount of such reserves.

(a) **City Capital Reserve.** The City shall establish a reserve for items of capital maintenance, repair and replacement of the City Garage (the "City Capital Reserve"). Based on the advice of its Consultant, Desman Consultants, the City shall fund the City Capital

Reserve in cash in the amount of \$100 per space per fiscal year (the "City Capital Reserve Amount") based on the number of spaces in the City Garage. The City shall not be required to pay the City Capital Reserve Amount for the first fiscal year following the date that the City Garage is first open for operations. The City Capital Reserve Amount shall be phased in during each fiscal year of the Term of this Agreement as follows: (i) for years 1, 2, 3 and 4 following the year in which the City Garage is first open for operations, the City Capital Reserve Amount shall be \$0 in year 1, then funded to be \$33 per parking space in year 2, \$66 per parking space in year 3 and \$100 per parking space in year 4; (ii) thereafter, for each year of the Term of this Agreement, the City Capital Reserve Amount shall increase by the percentage increase in the CPI during the previous fiscal year. No later than April of each year, the City shall determine whether Net Revenues from the operation of the City Garage are likely to be adequate to fund payment of the City Capital Reserve Amount for such fiscal year and, if the determination is that there will be a shortfall in Net Revenue for such year, the City will, in June of such fiscal year, budget for the next fiscal year the additional funds to make up such shortfall which shall be paid not later than August 31 of the following fiscal year. The City will be permitted to further defer payment of the City Capital Reserve Amount provided that all such deferred payments shall be paid in full on or before June 30, 2012. The City's obligation to maintain the City Capital Reserve shall terminate upon the termination of this Agreement.

(b) Renaissance Capital Reserve. Renaissance shall establish a reserve for items of capital maintenance, repair and replacement of the Renaissance Garage ("Renaissance Capital Reserve"). Based on the advice of its Consultant, Walker Parking, Renaissance shall fund the Renaissance Capital Reserve in cash in the amount of \$100 per space per year (the "Renaissance Capital Reserve Amount") based on the number of spaces in the Renaissance Garage. Renaissance shall be allowed to phase in the Renaissance Capital Reserve, beginning in the first fiscal year that the City Garage is open for business, by funding to a balance of \$0 per parking space in year 1, \$33 per parking space in year 2, \$66 per parking space in year 3, and \$100 per parking space in year 4. Thereafter, for each year of the Term of this Agreement, the Renaissance Capital Reserve Amount shall increase by the percentage increase in the CPI during the previous fiscal year.

The City acknowledges and agrees that, if a lender holding a first mortgage on the Renaissance Garage shall require Renaissance to establish a capital reserve, then the reserve required under this Section 6.3 shall be deemed satisfied to the extent of the reserve so established; provided, however, that such reserve shall at all times be at least equal to the amounts required to be maintained pursuant to this Section 6.3(b) during each year of the Term of this Agreement.

All calculations of increases in the Parties' Capital Reserve Amounts and payments thereof shall be made on June 30th of each year and shall be pro-rated for any portion of a year at the beginning or end of the Term of this Agreement.

## ARTICLE 7 INSURANCE

7.1 Maintenance of Insurance. The Parties shall, at all times during the term of this Agreement, maintain (or cause to be maintained) the insurance coverages required under

the Parking Garage Lease (meaning and intending for Renaissance to maintain on the Renaissance Garage the same property insurance coverages as the City is required to maintain on the City Garage under the Parking Garage Lease), and shall maintain a single liability insurance policy for the Unified Garage, naming each Party and its mortgagees, as insureds as their interests may appear.

7.2 **Insurance Requirements.** Each Party shall comply with all rules, regulations and requirements of any insurance rating bureau having jurisdiction over the Unified Garage or any portion thereof, if non-compliance would increase the rate of premium of any policy of insurance maintained by the Party and shall not make or permit to be made any use of the Unified Garage which may be dangerous to persons or property, and shall not permit to be brought into the Unified Garage any hazardous materials, oils or fluids, such as gasoline, kerosene, naphtha and benzene or any explosives, unless any such oils and fuels are properly stored in compliance with all applicable codes and ordinances; provided, however, that the foregoing provision shall in no event prohibit or materially limit the use of the Renaissance Garage or the City Garage for its principal anticipated use as a parking garage, nor prohibit the storage within the tanks of parked automobiles in the Renaissance Garage or City Garage, of oil or gasoline.

7.3 **Indemnification.** Except to the extent the same is covered by insurance maintained hereunder or as provided herein or under the Parking Garage Lease, each Party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other Party from and against all expenses, liabilities, obligations, damages, penalties, claims, actions and costs (including reasonable attorneys' fees and expenses) paid in connection with loss of life, bodily injury or damage to property (i) caused by the negligence or willful misconduct of the Indemnifying Party, its officers, employees, contractors, subtenants or agents (expressly excluding, however, the negligence or willful misconduct of the Garage Manager), or (ii) otherwise occurring in the Indemnifying Party's Garage to the extent such loss or damage does not arise from the operation of the Unified Garage, or the acts or omissions of the other Party.

## ARTICLE 8 DEFAULT AND REMEDIES

8.1 **Default.** If at any time a Party (the "Defaulting Party") shall fail to pay or perform any of its obligations hereunder, then the other Party may give written notice to the Defaulting Party labeled on the top of the first page thereof in bold face, all capital letters "DEFAULT NOTICE", specifying the respect or respects in which it is not proceeding to pay or perform such obligations and if, upon expiration of thirty (30) days after the giving of such notice (or within such lesser period as may be appropriate in an Emergency Situation), the Defaulting Party is still not paying or performing such obligation, then, subject to Force Majeure, such other Party may, without limitation of such other remedies as may be available at law or in equity, undertake to pay or perform such obligation and may take all reasonable steps to carry out the same. The Party paying or performing any such obligation may collect from the Defaulting Party any and all costs and expenses incurred in connection therewith.

8.2 **Interest on Unpaid Amounts.** Any amount payable by one Party to the other Party under this Agreement (including, without limitation, any amounts payable by one

Party to the other Party pursuant to Section 5.5 or Section 8.1 hereof) shall be due and payable within thirty (30) days after receipt of the statement therefor. If, at any time, a Party shall fail within ten (10) days after written demand therefor to pay to the other Party (the "Creditor Party") any sum of money due the Creditor Party pursuant to this Agreement (which demand is labeled on the top of the first page thereof in bold face, all capital letters "DEFAULT NOTICE"), then, the amount so owed shall bear interest from the date the same was initially due until paid in full at the Default Rate.

8.3 **Cumulative Remedies.** The rights and remedies of the Creditor Party provided for in this Article 8 or elsewhere in this Agreement, are cumulative and not intended to be exclusive of any other remedies to which Creditor Party may be entitled at law or in equity. The exercise by such Party of any right or remedy to which it is entitled hereunder shall not preclude or restrict the exercise of any other such right or remedy.

8.4 **No Right of Set-Off.** Each claim of either Party arising under this Agreement shall be separate and distinct, and no defense, or set-off, arising against the enforcement of any lien or other claim of any Party shall thereby be or become a defense or set-off against the enforcement of any other lien or claim.

8.5 **Delays; Waivers.** Except as otherwise expressly provided in this Agreement, any delay by either Party in asserting any right or remedy under this Agreement shall not operate as a waiver of any such rights or limit such rights in any way; and any waiver in fact made by such Party with respect to any default by the other Party shall not be considered as a waiver of rights with respect to any other default by the non-defaulting Party, or with respect to the particular default, except to the extent specifically waived, in writing. It is the intent of the Parties that this provision will enable each Party to avoid the risk of being limited in the exercise of any right or remedy provided in this Agreement by waiver, laches or otherwise.

8.6 **Rights of Lenders.** The City is aware that financing for the CitySquare Project may be provided, in whole or in part and from time to time, by one or more lenders. In the event of an Event of Default by Renaissance, the City shall provide notice of such Event of Default, at the same time notice is provided to Renaissance, to any lender previously identified in writing to the City. If a lender is permitted, under the terms of its agreement with Renaissance, to cure the default and/or to assume Renaissance's position with respect to this Agreement, the City agrees to recognize such rights of lender and to otherwise permit lender to assume all of the rights and obligations of Renaissance under this Agreement. Any mortgage, deed of trust, ground lease and other instruments in the nature of a mortgage, now or any time hereafter, a lien or liens on either of the Garages shall be subject and subordinate to this Agreement. Any future ground landlord or mortgagee shall deliver a commercially reasonable agreement to confirm the subordination of its mortgage, deed of trust, ground lease or other instrument in the nature of a mortgage to the terms of this Agreement. Renaissance represents and warrants that there are currently no mortgages or other monetary liens affecting the Renaissance Garage.

**ARTICLE 9  
MISCELLANEOUS**

9.1 **Force Majeure.** Neither Renaissance nor the City, as the case may be, shall be considered in default of its obligations under this Agreement in the event of enforced delay due to (a) causes beyond its control and without its fault or negligence, including, but not restricted to, acts of God, acts of public enemy, acts of the federal, state or local government, acts of the other Party, acts of third parties, litigation concerning the validity and enforceability of this Agreement or relating to transactions contemplated hereby (including the effect of petitions for initiative or referendum), fires, floods, epidemics, quarantine, restrictions, strikes, embargoes, labor disputes, and unusually severe weather or the delays of any contractor, subcontractors or materialmen due to such causes, nuclear radiation, acts of a public enemy, war, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), declaration of national emergency, insurrection, riot, labor strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain, condemnation, or other taking by the action of any Governmental Authority on behalf of any public, quasi-public, or private entity, or declaration of moratorium or similar hiatus directly affecting any portion of the Unified Garage (whether permanent or temporary) by any public, quasi-public or private entity; (b) the order, judgment, action, or determination of any court, administrative agency, Governmental Authority or other governmental body (collectively, an "Order") which adversely affects the operation of the Unified Garage, or the suspension, termination, interruption, denial, or failure of renewal (collectively, a "Failure") of issuance of any permit, license, consent, authorization, or approval necessary to the operation of the Unified Garage, unless it is shown that such Order or Failure is the result of the grossly negligent, willful or intentional action or inaction of the Party claiming the delay or is the result of the grossly negligent or willful violation of Applicable Laws; provided, however, that the contesting in good faith of any such Order or Failure shall not constitute or be construed or deemed as a waiver by a Party of Force Majeure; (c) the denial of an application, failure to issue, or suspension, termination, delay or interruption (collectively, a "Denial") in the issuance or renewal of any permit, approval or consent required or necessary in connection with the operation of the Unified Garage, if such Denial is not also the result of a grossly negligent act or omission or willful violation by the Party; provided that the contesting in good faith or the failure in good faith to contest any such Denial shall not constitute or be construed or deemed as such a wrongful or grossly negligent act or omission on the part of the Party; and (d) the failure of any contractor, subcontractor or supplier to furnish services, materials or equipment in connection with the operation of the Unified Garage if such failure is caused by Force Majeure as defined herein, if and to the extent, and only so long as the Party claiming the delay is not reasonably able, after using commercially reasonable efforts, to obtain substitute services, materials or equipment of comparable quality and cost (collectively, "Force Majeure"). In the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the Party claiming delay shall be extended for a period of the enforced delay; provided that the Party seeking the benefit of the provisions of this Section shall, within ten (10) days after such Party knows of any such enforced delay, first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the enforced delay; provided, however, that either Party's failure to notify the other Party of an event constituting an enforced delay shall not alter, detract from or negate its character as an enforced delay if such event of enforced delay was not known or reasonably discoverable by such Party. Notwithstanding anything to the contrary in this Agreement, no Force Majeure event shall

excuse performance by any Party or be considered to continue in effect for more than two (2) years with respect to any such particular Force Majeure event or three (3) in the aggregate for all Force Majeure events and thereafter any further delay shall not be excused and shall be the responsibility of the Party failing to perform

9.2 **Notices.** Any and all notices, demands, requests, submissions, approvals, consents, disapprovals, objections, offers or other communications or documents required to be given, delivered or served, or which may be given, delivered or served, under or by the terms and provisions of this Agreement or pursuant to law or otherwise, shall be in writing and shall be delivered by hand or sent by registered or certified mail, return receipt requested, addressed if to City to:

City Manager  
City Hall  
455 Main Street  
Worcester, MA 01608

with a copy to:

City Solicitor  
City Hall  
455 Main Street  
Worcester, MA 01608

or to such other address as City may from time to time designate by written notice to Renaissance;

or if to Renaissance addressed to:

Worcester Renaissance LLC  
c/o Berkeley Investments, Inc.  
121 High Street  
Boston, MA 02110  
Attn: Young K. Park

with a copy to:

Robert E. Longden, Esquire  
Bowditch & Dewey, LLP  
311 Main Street, P.O. Box 15156  
Worcester, MA 01615-0156

or to such other address as Renaissance may from time to time designate by written notice to City, or to such other agent or agents as may be designated in writing by either Party. The earlier of: (i) the date of delivery by hand, or (ii) the date received as shown on the return receipt, or (iii) the date of delivery or upon which delivery was refused as indicated on the

registered or certified mail return receipt or the statement of the hand delivery courier shall be deemed to be the date such notice or other submission was given.

9.3 **Severability.** If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

9.4 **Interference with Other Party's Operations.** In fulfilling obligations and exercising rights under this Agreement, each Party shall use its best efforts to keep interference with the property of the other Party and the operations of the other Party to a minimum and, to that end, except in Emergency Situations, will give to the other Party reasonable advance written notice, but not less than ten (10) days' notice of work which may so interfere, and will arrange with the other Party for reasonable and definite times and conditions under which any such work shall be done.

9.5 **Invalid Provisions.** The invalidity of any covenant, restriction, condition, limitation or any other part or provisions of this Agreement shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Agreement.

9.6 **Headings for Reference Only.** The headings of Articles and Sections in this Agreement are for convenience of reference only and shall not in any way limit or define the content or substances of the Articles or Sections.

9.7 **Amendment Procedure.** This Agreement may be amended only by an instrument signed and duly acknowledged by (a) Renaissance, (b) the City, and (c) any mortgagee of Renaissance of which the City has notice and which has subordinated its mortgage to this Agreement. Any amendment to this Agreement shall be recorded in the Registry and shall become effective upon such recording.

9.8 **Waiver.** The Parties waive a trial by jury of any and all issues arising in any action or proceeding between them or their successors or assigns under or connected with this Agreement, or any of its provisions, or any negotiations in connection therewith.

9.9 **Integration.** All prior understandings and agreements between the Parties are merged within this Agreement, which alone fully and completely sets forth the understanding of the Parties; and this Agreement may not be changed or terminated orally or in any manner other than by an agreement in writing and signed by the Party against whom enforcement of the change or termination is sought.

9.10 **Bind and Inure.** The covenants and agreements herein contained shall be binding on and inure to Renaissance, and the City, and their respective successors and assigns. Notwithstanding the foregoing, the City may not assign its rights and obligations hereunder without the prior written consent of Renaissance. The City agrees that Renaissance may assign its interest in this Agreement to any successor Person or to any lender providing financing for the CitySquare Project without the consent of, but with prior notice to, the City.

9.11 **Limitation of Liability.** Anything contained in this Agreement to the contrary notwithstanding, but without limitation of the City's equitable rights and remedies, Renaissance's liability under this Agreement shall be enforceable only out of Renaissance's interest in the Renaissance Garage; and there shall be no other recourse against, or right to seek a deficiency judgment against, Renaissance, nor shall there be any personal liability on the part of any member, manager, or officer or employee of Renaissance, with respect to any obligations to be performed hereunder.

9.12 **Captions.** The captions of this Agreement are for convenience and reference only and in no way define, limit or describe the scope or intent of this Agreement, nor in any way affect this Agreement.

9.13 **Table of Contents.** The Table of Contents preceding this Agreement but under the same cover is for the purpose of convenience and reference only and is not to be deemed or construed in any way as part of this Agreement, nor as supplemental thereto or amendatory thereof.

9.14 **Massachusetts Law Governs.** This Agreement shall be governed exclusively by, and construed in accordance with, the laws of The Commonwealth of Massachusetts.

9.15 **Time of the Essence.** Time shall be of the essence hereof.

9.16 **No Partnership or Joint Venture.** Nothing contained in this Agreement shall be construed to create a partnership or joint venture between the City and Renaissance, nor shall either Party be liable for any debts incurred by the other Party in the conduct of its business or affairs, nor shall either Party be deemed the agent or representative of the other for any purpose or in any manner under this Agreement, except as otherwise expressly provided for herein.

9.17 **Further Assurances.** At any time and from time to time, each Party agrees, upon the written request of the other Party, to execute and, if required, acknowledge and record, all such amendments hereto or other documents as may reasonably be required to effectuate the intents and purposes of this Agreement. The Parties further agree to consent to modifications to this Agreement to the extent that any such modifications are reasonably requested by a prospective mortgagee of the other Party, provided that modifications so requested do not materially or adversely affect the rights of either Party under this Agreement.

9.18 **Estoppel Certificate.** The Parties shall, without charge, at any time and from time to time, within ten (10) days after request by any requesting Party, certify by written instrument, duly executed, acknowledged and delivered to the Party making such request, or to any other person or entity specified by such requesting Party: (a) that this Agreement is unmodified and in full force and effect, or if there have been any modifications, that the same is in full force and effect as modified and identifying the modifications, and (b) whether the requesting Party is in default under any provisions of this Agreement, and if such default exists, the nature of such default.

9.19 **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all such counterparts shall constitute one and the same agreement, binding on the Parties.

9.20 **Sovereign Immunity.** Nothing in this Agreement shall be construed as a waiver by the City of governmental sovereign immunity.

9.21 **Record Notice.** The Parties hereby agree that reference to this Agreement shall be included in the Notice of Lease to be recorded in the applicable real estate records pursuant to the Parking Garage Lease.

[SIGNATURE Page TO FOLLOW]

EXECUTED as of the date first set forth above as an instrument under seal.

**CITY OF WORCESTER**

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

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

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

Approved as to form:

**OFFICE OF THE CITY SOLICITOR**

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

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

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

**WORCESTER RENAISSANCE LLC, a**

Delaware limited liability company

By: Worcester Renaissance Holdings LLC, a  
Delaware limited liability company,  
its sole member

By: Berkeley Worcester MGR LLC, a  
Delaware limited liability company,  
a manager

By: Berkeley Investments, Inc., a  
Massachusetts corporation,  
its manager

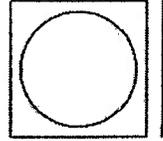
By: \_\_\_\_\_

Name: Young K. Park

Title: President and Treasurer

**EXHIBIT A**

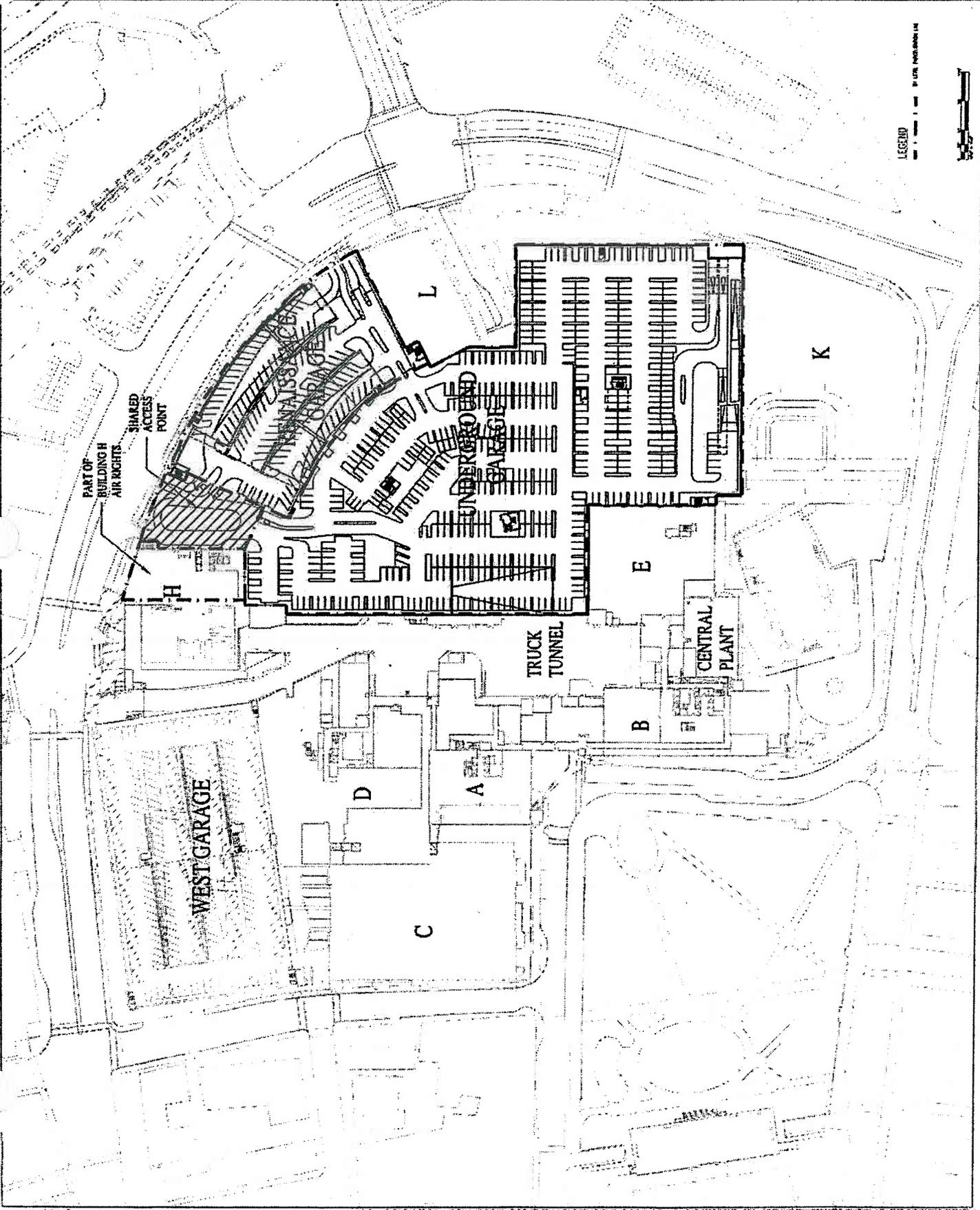
**Plan Showing Unified Garage**

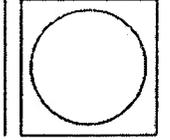


**ARROW STREET**  
 ARCHITECTS  
 5800 UNIVERSITY AVENUE  
 BERKELEY, CA 94704  
 TEL: (415) 841-1100  
 FAX: (415) 841-1101  
 WWW.ARROWSTREET.COM

NO.	DATE	DESCRIPTION
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2	11/15/01	REVISED PER COMMENTS
3	12/15/01	REVISED PER COMMENTS
4	01/15/02	REVISED PER COMMENTS
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UNIFIED PARKING GARAGE LEVEL B1



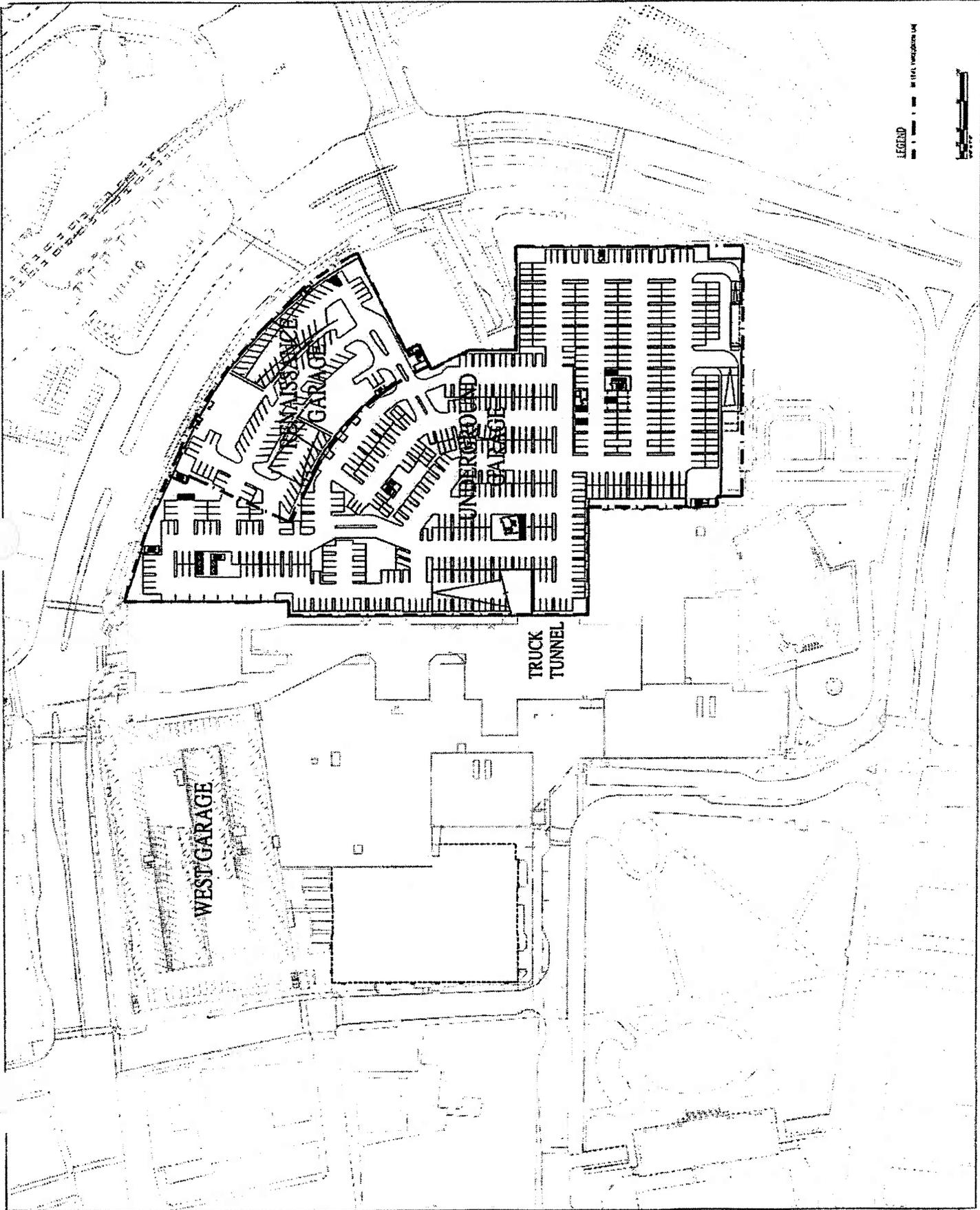


**ARROW STREET**  
 ARCHITECTURE  
 8750 BAYVIEW  
 BERKELEY, CA 94704  
 TEL: (415) 841-1000  
 FAX: (415) 841-1001  
 WWW.ARROWSTREET.COM

NO.	DATE	DESCRIPTION
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Project No. **UNIFIED PARKING GARAGE LEVEL B2**

Scale: 1" = 10'-0"  
 Drawing Number: **2 OF 2**



## EXHIBIT B

### Garage Regulations

The following are regulations for the use, operation and occupation of the Unified Garage (the "Garage") which, as of the date hereof, consists of the City Garage and the Renaissance Garage, as defined in the Parking Garage Operating and Allocation Agreement between Worcester Renaissance LLC and the City of Worcester (the "Parking Garage Operating and Allocation Agreement"). It is acknowledged that the manager of the Unified Garage (the "Garage Manager") may contract with third-parties to comply with these regulations and may, with the consent of Renaissance and the City modify and amend these regulations.

#### 1. MAINTENANCE

a. Garage Manager shall maintain all elevators, booths, signs, fire and safety apparatus, electrical systems, electronic revenue traffic control equipment, and other related fixtures in a manner consistent with the operation of a first-class garage. Garage Manager shall also be responsible for replacement of light bulbs for all Garage lighting, including exterior signage lights, stairway lights, exit signs, etc., as well as replacement of damaged or malfunctioning lighting fixtures.

b. Garage Manager shall remove rubbish and debris from the parking decks and provide proper snow removal and de-icing on an as needed basis.

c. Garage Manager shall keep all drains free and clear of any and all debris by cleaning drains, as needed.

d. Garage Manager shall clean and sweep the access and egress ramps, as needed.

e. The Garage floors, parking deck, stairwells, and surrounding sidewalks shall be power swept and/or vacuumed, as may be required.

f. All trash receptacles shall be emptied daily, or more frequently, as necessary.

g. Garage Manager shall engage an exterminator for inspection and placement of rodent control, as needed.

h. All broken glass, bottles, cans, spilled food, and any other refuse and material shall be cleaned-up and removed as soon as Garage Manager becomes aware of the condition.

i. Garage Manager shall maintain the parking deck coating and shall paint and restripe parking lines, floor markings, pedestrian area markings and other painted surfaces, as needed.

#### 2. OPERATIONS

a. Hours of Operation. The Garage shall be continuously open to the public from 7:00 a.m. to 12:00 midnight, Sunday through Thursday and from 7:00 a.m. to 2:00 a.m. Friday and Saturday. Garage Manager shall at all times maintain, in a conspicuous place in the Garage, pricing signs as required by Massachusetts law or municipal regulations.

b. Services to be Performed by Garage Manager:

i. Garage Manager shall provide service that is prompt and efficient. Garage Manager's employees shall conduct themselves at all times in an orderly, courteous manner with members of the public.

ii. Garage Manager may provide emergency service to the public including, but not limited, to the following:

- (1) Jump-start vehicles;
- (2) Lock-out assistance;
- (3) Inflating and/or changing tires; and
- (4) Car search assistance.

iii. Garage Manager shall be responsible for the removal and disposal of abandoned vehicles in accordance with applicable Massachusetts laws.

iv. Garage Manager shall be responsible for administering any monthly pass programs, including distributing passes and collecting payment for passes.

c. Parking Rates

i. The parking rate structure for the Garage may be adjusted from time to time subject to approvals and requirements as provided in the Parking Garage Operating and Allocation Agreement.

ii. A patron shall pay the full day's fee for each day parked if a ticket is lost. Such notice shall be posted at each entrance and exit. All fee adjustments and refunds shall be considered an exception transaction and the number and value of such exception transactions shall be recorded by Garage Manager. Additionally, Garage Manager shall exercise reasonable discretion in giving refunds or making "on-site" fee adjustments when situations occur such as those listed below:

(1) Delay in exiting as a result of parking lot equipment malfunctions.

(2) Delay in exiting as a result of inclement weather of such severity that a patron cannot reasonably be expected to retrieve an automobile without outside assistance.

(3) Delay in retrieving an automobile due to a patron's physical incapacitation as a result of emergency or injury in the Garage.

(4) Delay in retrieving an automobile found to have been stolen and where a police report has been filed by its owner. The patron shall be responsible for the parking fee up to the date a stolen vehicle report is filed with police.

d. Valet Parking

Valet parking may be made available to the public subject to and in accordance with the requirements of this paragraph. If valet parking is made available, all cars parked by a valet attendant will be located in the valet nest area, as designated by the Garage Manager. On occasions when the volume of valet parking requests exceeds the designated spaces in this area, the Garage Manager may "tandem park" cars. Notwithstanding the foregoing, all valet or tandem parking arrangements shall be subject to the review and approval of the City which shall not be unreasonably withheld or delayed. Such review and approval for valet and/or tandem parking arrangements may be included in and as part of the Operating Budget approved by the City.

e. Maintenance of Records and Tickets

i. Garage Manager shall maintain a record of parking tickets, a bulk stock of parking tickets, and documentation pertaining to transfers from bulk stock to the ticket dispenser. The bulk stock shall be kept in a secure storage area with limited access.

ii. Tickets lost by patrons shall be accounted for by a "lost ticket" form provided by Garage Manager. Said form shall be completed and signed by the patron losing said ticket.

f. Revenue Collection and Deposit of Gross Receipts

The Garage Manager shall establish a commercial bank account, which will be used for the deposit of gross receipts of the Garage. This account shall receive all public parking gross receipts, deposits and any other income generated by the Garage.

g. Revenue Control Procedures

The entrance lane, equipped with non-resettable mechanical meters housed inside of the parking gates, will count the number of vehicles entering. The patron will either use a transponder or pull a ticket in order to enter the entrance gate. The exit lane will also be equipped with non-resettable mechanical meters housed inside of the parking gates, counting the number of vehicles exiting the facility.

If "pay on foot" operations are excluded, cashier stations shall be located at one or more designated locations and each will be staffed by a cashier from 7 am to 12 midnight Sunday through Thursday and from 7 am to 2 am on Friday and Saturday. Staffing will be adjusted based on business volumes. When cashier stations are closed, the cashiering function

will be performed by the staff at locations to be determined, but where public access is available and reasonably covenant.

The fee computers used by the cashiers shall record all cash sales, validations and void transactions by cashiers. There shall be no-void, no-sale or open drawer keys on the fee computers. Shift totals are summarized by category. All cash shall be deposited by cashier in the drop safe located at each cashier station, or in the Garage office.

The Garage Manager shall prepare a Daily Sales Report using the data from the fee computers, (entrance/exit meter readings), and Cashier Shift Reports. The Daily Sales Report is a reconciliation of the total transactions issued daily and the physical inventory, taken later in the evening is used to reconcile the entrances to paid exits. All validations and no-charge tickets are accounted for during this reconciliation process. Also, a reconciliation of total revenue by register as compared to cash dropped is shown on the Daily Sales Report. Should the Garage Manager determine unexplained discrepancies with any of the above, the Garage Manager will investigate and take the necessary corrective action, including employee disciplinary action if warranted.

#### h. Security

Garage Manager shall assist in the development of a security program within the Garage. The security program will coordinate the combined efforts of Garage Manager's employees, City of Worcester Police, Fire Department, Emergency Medical Services (EMS) and others as may be affected.

### 3. PARKING EQUIPMENT

#### a. Barrier Gates

i. Barrier gates shall be equipped with an articulated arm which shall have the capability of retracting instantaneously upon impact with a vehicle or pedestrian. Gates shall have a counter feature which permits each opening and/or closing to be identified by the control system.

ii. Gates shall be opened, in the inbound direction, upon the issuance of a ticket or actuation by a card reader. Gates shall be closed when the vehicle clears a closure loop.

iii. Gates shall be opened, in the outbound direction, upon actuation by a lag time reader/receiver or by a card reader.

iv. Gates shall be fully interoperable with an automatic vehicle identification (AVI) technology and system for monthly passholders.

#### b. Ticket Dispenser

i. Ticket dispensers shall be actuated only when the presence of a vehicle is identified by an arming loop and upon push button operation. Ticket dispensers will have programmable audio messages to assist customers in the use of the equipment.

ii. Tickets shall be imprinted and encoded upon issuance by the ticket dispensers and upon computation of the fee by the fee computer, with the audit trail information normally provided by the proposed parking system.

c. Automated Parking Fee Collection

Garage Manager shall ensure that the parking control system (i.e. equipment, software, barrier gate operation, ticket dispensing, etc.) shall have the capability to incorporate AVI technology for monthly passholders, the specifications for which will be set forth in the Management Agreement with the Garage Manager.

d. Minimum Software Capabilities

i. Program fee computers with rate structures

ii. Monitor and report current and daily counts of entry and exit lane and ramp loops, gate activity, fee computer transactions and tickets issued.

iii. Monitor and report revenues by cashier and shift.

iv. Generate monthly bills for cardholders.

v. Store, analyze and report on historic counts, transactions and revenues.

4. HIRING PROCESS

The Garage Manager is responsible for staff hiring. Job descriptions must exist for all positions, including skill requirements, educational requirements and licenses needed, if necessary. Driving records must be reviewed for all valet attendants. All applicants go through the standard screening process established for the Garage, which includes:

i. application and screening interview

ii. interview by the Garage Manager

iii. two work reference checks

iv. background check (credit, criminal, education)

v. drug test

vi. offer letter sent

vii. Garage Manager shall not discriminate against any applicant because of race, color, creed, national origin, age or sex

## 5. EMPLOYEE TRAINING

### a. Training.

The Garage Manager is responsible for all staff training. Each new employee will work a minimum of one shift with an existing employee and supervisor to learn all aspects of the position. No employee will be allowed to work independently without the approval of his/her supervisor.

### b. Customer Service Training

The customer service training program is taught by the Garage Manager. All employees (including managerial staff members) are required to attend. This program is designed to familiarize employees with customer service standards and techniques, and has been devised so that each employee will:

- i. recognize that customer satisfaction is each employee's first priority,
- ii. improve communications by interacting with the customers on a "one on one" basis, whether the customer is in the parking facility or on the telephone,
- iii. build goodwill and trusting relationships with customers to ensure satisfaction (which helps to keep customers returning to a facility again and again), and
- iv. recognize and fulfill their role as an employee at the facility and as a member of the Garage team.

The customer service program begins with an introduction and overview of Garage. It also focuses on how critical first-class customer service is to the effective operation of the parking facility. This discussion provides each employee with an awareness that he or she plays a vital role in the success of the facility.

### c. Performance Standards.

Every employee attends a training course at the inception of employment and each employee acknowledges, in writing, that he or she has read and understands these requirements.

**EXHIBIT 6.1**

**Termination of Ramp and Tunnel Agreement**

**(SEPARATE DOCUMENT)**

**EXHIBIT 6.1 TO DEVELOPMENT AGREEMENT**

**TERMINATION OF  
RAMP AND TUNNEL AGREEMENT**

among

**WORCESTER RENAISSANCE LLC,  
WORCESTER RENAISSANCE TOWERS LLC,  
WORCESTER RENAISSANCE C & D LLC**

and

**CITY OF WORCESTER**

**DATED:** \_\_\_\_\_

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**EXHIBITS:**

**Exhibit A     Truck Tunnel Service Entrance Easement Agreement**

**TERMINATION OF  
RAMP AND TUNNEL AGREEMENT**

This **TERMINATION OF RAMP AND TUNNEL AGREEMENT** (this "Agreement") is made as of the \_\_\_ day of \_\_\_\_\_, 2006 ("Effective Date"), by and among **WORCESTER RENAISSANCE LLC** ("Worcester Renaissance"), **WORCESTER RENAISSANCE TOWERS LLC** ("Worcester Renaissance Towers"), and **WORCESTER RENAISSANCE C & D LLC** ("Worcester Renaissance C & D"), Delaware limited liability companies, having an address c/o Berkeley Investments, Inc., 121 High Street, Boston, Massachusetts 02110, and the **CITY OF WORCESTER**, a municipal corporation organized under a home rule charter adopted under the constitution and laws of The Commonwealth of Massachusetts, with an address at City Hall, 455 Main Street, Worcester, Massachusetts 01608 (the "City").

**WITNESSETH:**

Terms not otherwise defined below shall have the same meaning as set forth in Article 1 of this Agreement.

**WHEREAS**, Worcester Renaissance acquired title to the Project Property by a deed recorded in the Registry in Book 33956, Page 102;

**WHEREAS**, Worcester Renaissance Towers acquired title to a portion of the Project Property by a deed from Worcester Renaissance recorded in the Registry in Book 35383, Page 150 and by a deed from Worcester Renaissance recorded in the Registry in Book 36636, Page 269;

**WHEREAS**, Worcester Renaissance C & D acquired title to a portion of the Project Property by deed from Worcester Renaissance recorded in the Registry in Book 36941, Page 356;

**WHEREAS**, the Project Property has the benefit of the unrecorded Ramp and Tunnel Agreements which provide, among other things, access to and from the Project Property by means of certain ramps and tunnels, including the Truck Tunnel Service Entrance, the North Portal, and the Red Garage Tunnel, and which set forth certain construction, maintenance and repair obligations with regard to the Truck Tunnel Service Entrance, the North Portal, the Red Garage Tunnel and the Elevated Pedestrian Walkway; and

**WHEREAS**, the Project will require public participation in the form of the construction of new public ways, sidewalks and streetscape through the Project Property, construction of the Parking Garage and certain modifications to Worcester Center Boulevard which will render the Ramp and Tunnel Agreements unnecessary and modify other obligations therein.

**NOW THEREFORE**, in consideration of the mutual covenants contained herein and to be observed and performed by the Parties hereto and other good and valuable consideration the

receipt and legal sufficiency of which are hereby acknowledged, the Parties hereto covenant and agree that the Ramp and Tunnel Agreements are hereby terminated, pursuant to the terms hereof.

## ARTICLE 1 DEFINITIONS

For the purposes of this Agreement, unless the context otherwise requires, each capitalized term used in this Agreement and not otherwise defined in this Agreement shall have the meaning specified below. The content of each Exhibit referenced in this Agreement as being attached hereto, is hereby incorporated into this Agreement as fully as if set forth within the body of this Agreement.

- 1.1 **Agreement** means this Termination of Ramp and Tunnel Agreement and all Exhibits hereto, as it, and they, may be amended and restated from time to time.
- 1.2 **ALTA Survey** means the plan entitled "ALTA/ACSM LAND TITLE SURVEY, NEW WORCESTER CENTER, WORCESTER, MASSACHUSETTS" prepared for Berkeley Investments, Inc. by Judith Nitsch Engineering, Inc., and dated October 5, 2004.
- 1.3 **City** means the City of Worcester.
- 1.4 **Development Agreement** means that Development Agreement dated \_\_\_\_\_, 2006 by and between Worcester Renaissance and the City.
- 1.5 **Effective Date** means the date set forth in the preamble to this Agreement.
- 1.6 **Elevated Pedestrian Walkway** means the elevated walkway that was to have been constructed by the City over Worcester Center Boulevard from the Project Property, to provide pedestrian access to the bus terminal located on the easterly side of Worcester Center Boulevard.
- 1.7 **North Portal** means the public access road constructed by the City, located on the easterly side of Worcester Center Boulevard, providing access to the Project Property.
- 1.8 **Parking Garage** means the underground two-level public parking garage to be constructed by Worcester Renaissance on behalf of the City, as further described in the Development Agreement.
- 1.9 **Party** means Worcester Renaissance, Worcester Renaissance Towers, Worcester Renaissance C & D, or the City, individually.
- 1.10 **Parties** means the Worcester Renaissance, Worcester Renaissance Towers, Worcester Renaissance C & D and the City, collectively.
- 1.11 **Project** means the CitySquare Project as described in the District Improvement Financing Application for the Project Property by the City to the Massachusetts Economic Assistance Coordinating Council.

1.12 **Project Property** means the parcels of land now owned by Worcester Renaissance, Worcester Renaissance Towers, Worcester Renaissance C & D, together with a portion of Worcester Center Boulevard, all as further described in the Development Agreement.

1.13 **Ramp and Tunnel Agreements** means the unrecorded Ramp and Tunnel Agreement dated April 21, 1970 between the City and Joel B. Wilder and Norman B. Leventhal, as Trustees of the Worcester Center Trust, as amended by the unrecorded Ramp Removal Agreement dated August 21, 2003 by and between the City and Connecticut General Life Insurance.

1.14 **Red Garage Tunnel** means the tunnel extending from the Project Property under Worcester Center Boulevard that previously provided access to and egress from the Project Property, and labeled "Underground Tunnel No Longer In Use" on the ALTA Survey.

1.15 **Registry** means the Worcester District Registry of Deeds.

1.16 **Truck Tunnel** means the loading dock area located under the Project Property which includes all utility rooms, loading docks, and corridors shown on the ALTA Survey as "Truck Tunnel Underground" and connected to the Truck Tunnel Service Entrance.

1.17 **Truck Tunnel Service Entrance** means the underground service tunnel extending from the northerly side of Worcester Center Boulevard to the Project Property, providing access to the Project Property, and labeled "Truck Tunnel Underground" on the ALTA Survey and shown on a plan entitled "DEPARTMENT OF PUBLIC WORKS CITY OF WORCESTER, MASSACHUSETTS, EAST CENTRAL URBAN RENEWAL AREA, A NEW STREET ROADWAY CONSTRUCTION PLAN STA. 0+00 TO STA." 6+00 Scale: 1" = 20', May 1970, Contract No. 10 - Sheet No. 10 of 81, prepared for the Department of Public Works of the City of Worcester by Fay, Spofford & Thorndike, Inc. dated May, 1970.

1.18 **Worcester Center Boulevard** means the street in Worcester, Massachusetts now known as Worcester Center Boulevard and shown on the ALTA Survey.

1.19 **Worcester Renaissance** shall have the meaning given such term in the preamble to this Agreement.

1.20 **Worcester Renaissance C & D** shall have the meaning given such term in the preamble to this Agreement.

1.21 **Worcester Renaissance Towers** shall have the meaning given such term in the preamble to this Agreement.

## ARTICLE 2 OBLIGATIONS

2.1 **Termination of Obligations.** All agreements and obligations contained in the Ramp and Tunnel Agreements, including, but not limited to, those with respect to the North Portal, Elevated Pedestrian Walkway, Red Garage Tunnel, the Truck Tunnel, and the Truck Tunnel Service Entrance, are hereby terminated. From and after the Effective Date, all

obligations formerly governed by the Ramp and Tunnel Agreements with respect to any improvements that form a part of the North Portal, Elevated Pedestrian Walkway, Red Garage Tunnel, Truck Tunnel Service Entrance or any other such improvements shall be the obligations of the owners on whose property such improvements are located. Notwithstanding the foregoing, the Parties agree that: (a) Worcester Renaissance will erect a wall completely covering the end of the Red Garage Tunnel on its property, and the City will likewise erect a wall completely covering the end of the Red Garage Tunnel under Worcester Center Boulevard; and (b) each Party shall, at its own cost and expense, maintain the wall that it has constructed pursuant to (a) above.

2.2 **Truck Tunnel Service Entrance.** Notwithstanding anything contained in this Agreement to the contrary, the City hereby agrees to grant to Worcester Renaissance, Worcester Renaissance Towers and Worcester Renaissance C & D the easement described in, and the Parties hereby agree to execute, the Truck Tunnel Service Entrance Easement Agreement, in the form attached hereto as Exhibit A, simultaneously with the execution of this Agreement. The rights of the Parties with respect to the repair, replacement and maintenance of the Truck Tunnel Service Entrance are set forth in the Truck Tunnel Service Easement Agreement.

2.3 **Authority.** Worcester Renaissance has succeeded to all of the rights and obligations in the Ramp and Tunnel Agreements held by predecessors in interest of the Project Property, pursuant to the terms of an Assignment and Assumption Agreement Re: Leases and Contracts dated June 24, 2004 between Worcester Renaissance and Worcester Center Realty Trust, under Declaration of Trust dated March 31, 1989 and recorded in the Registry in Book 12012, Page 365, except rights and obligations held by the City, and no person or entity other than Worcester Renaissance and the City has any rights and obligations under the Ramp and Tunnel Agreements. Worcester Renaissance hereby agrees to indemnify the City against any loss, costs or damages resulting from a judicial determination by a court of competent jurisdiction that a person or entity other than Worcester Renaissance has rights or obligations under the Ramp and Tunnel Agreements, other than the City and any successor or assignee of the City.

### ARTICLE 3 MISCELLANEOUS

3.1 **Notices.** Any and all notices, demands, requests, submissions, approvals, consents, disapprovals, objections, offers or other communications or documents required to be given, delivered or served, or which may be given, delivered or served, under or by the terms and provisions of this Agreement or pursuant to law or otherwise, shall be in writing and shall be delivered by hand or sent by registered or certified mail, return receipt requested, addressed

in the case of a notice or communication to the City, as follows:

City Manager  
City Hall  
455 Main Street  
Worcester, MA 01608

with a copy to:

City Solicitor  
City Hall  
455 Main Street  
Worcester, MA 01608

if to Worcester Renaissance:

Worcester Renaissance LLC  
c/o Berkeley Investments, Inc.  
121 High Street  
Boston, MA 02110  
Attn: Young K. Park

with a copy to:

Robert E. Longden, Esquire  
Bowditch & Dewey, LLP  
311 Main Street, P.O. Box 15156  
Worcester, MA 01615-1056

if to Worcester Renaissance C & D:

Worcester Renaissance C & D LLC  
c/o Berkeley Investments, Inc.  
121 High Street  
Boston, MA 02110  
Attn: Young K. Park

with a copy to:

Robert E. Longden, Esquire  
Bowditch & Dewey, LLP  
311 Main Street, P.O. Box 15156  
Worcester, MA 01615-1056

if to Worcester Renaissance Towers:

Worcester Renaissance Tower LLC  
c/o Berkeley Investments, Inc.  
121 High Street  
Boston, MA 02110  
Attn: Young K. Park

with a copy to:

Robert E. Longden, Esquire  
Bowditch & Dewey, LLP  
311 Main Street, P.O. Box 15156  
Worcester, MA 01615-1056

or to such other address as any Party may from time to time designate by written notice to the other Party. The earlier of: (a) the date of delivery by hand or (b) the date of delivery or upon which delivery was refused as indicated on the registered or certified mail return receipt shall be deemed to be the date such notice or other submission was given.

3.2 **Severability.** If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law,

3.3 **Headings for Reference Only.** The headings of Articles and Sections in this Agreement are for convenience of reference only and shall not in any way limit or define the content or substance of the Articles or Sections.

3.4 **Waiver.** The Parties hereto waive a trial by jury of any and all issues arising in any action or proceeding between them or their successors or assigns under or connected with this Agreement or any of its provisions or any negotiations in connection therewith.

3.5 **Integration.** All prior understandings and agreements between the Parties are merged within this Agreement, which alone fully and completely sets forth the understanding of the Parties; and this Agreement may not be changed or terminated orally or in any manner other than by an agreement in writing and signed by the Party against whom enforcement of the change or termination is sought.

3.6 **Bind and Inure.** The covenants and agreements herein contained shall be binding on and inure to the Parties, and their respective successors and assigns. Notwithstanding the foregoing, the City may not assign its rights and/or obligations under this Agreement. The City agrees that any other Party to this Agreement may assign its interest in this Agreement to any successor person or entity, or to any lender providing financing for the Project without the consent of, but with prior notice to, the City.

3.7 **Limitation of Liability.** Anything contained in this Agreement to the contrary notwithstanding, but without limitation of the City's equitable rights and remedies, the liability of Worcester Renaissance, Worcester Renaissance Towers, or Worcester Renaissance C & D under this Agreement shall be enforceable only out of the defaulting Party's interest in the Project Property, and there shall be no other recourse against, or right to seek a deficiency judgment against any non-defaulting Party, either jointly or severally, nor shall there be any

personal liability on the part of any of their respective members, managers, or officers or employees, either jointly or severally, with respect to any obligations to be performed hereunder.

3.8 **Captions.** The captions of this Agreement are for convenience and reference only and in no way define, limit or describe the scope or intent of this Agreement, nor in any way affect this Agreement.

3.9 **Table of Contents.** The Table of Contents preceding this Agreement, but under the same cover, is for the purpose of convenience and reference only and is not to be deemed or construed in any way as part of this Agreement, nor as supplemental thereto or amendatory thereof.

3.10 **Massachusetts Law Governs.** This Agreement shall be governed exclusively by, and construed in accordance with, the laws of The Commonwealth of Massachusetts.

3.11 **Time of the Essence.** Time shall be of the essence hereof.

3.12 **Further Assurances.** At any time and from time to time, each of the parties hereto agrees, upon the written request of any other party, to execute and, if required, acknowledge and record, all such amendments hereto or other documents as may reasonably be required to effectuate the intents and purposes of this Agreement.

3.13 **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all such counterparts shall constitute one and the same agreement, binding on the parties.

3.14 **Sovereign Immunity.** Nothing in this Agreement shall be construed as a waiver of sovereign immunity.

[SIGNATURE PAGE TO FOLLOW]

Executed as of the date first set forth above as an instrument under seal.

**CITY OF WORCESTER**

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

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

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

Approved as to form:

**OFFICE OF THE CITY SOLICITOR**

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

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

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

**WORCESTER RENAISSANCE LLC, a**

Delaware limited liability company

By: Worcester Renaissance Holdings LLC, a  
Delaware limited liability company,  
its sole member

By: Berkeley Worcester MGR LLC, a  
Delaware limited liability company,  
a manager

By: Berkeley Investments, Inc., a  
Massachusetts corporation,  
its manager

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

Name: Young K. Park

Title: President and Treasurer

**WORCESTER RENAISSANCE TOWERS LLC**

a Delaware limited liability company

By: Worcester Renaissance Holdings LLC, a  
Delaware limited liability company,  
its sole member

By: Berkeley Worcester MGR LLC, a  
Delaware limited liability company,  
a manager

By: Berkeley Investments, Inc., a  
Massachusetts corporation,  
its manager

By: \_\_\_\_\_  
Name: Young K. Park  
Title: President and Treasurer

**WORCESTER RENAISSANCE C & D LLC**

a Delaware limited liability company

By: Worcester Renaissance Holdings LLC, a  
Delaware limited liability company,  
its sole member

By: Berkeley Worcester MGR LLC, a  
Delaware limited liability company,  
a manager

By: Berkeley Investments, Inc., a  
Massachusetts corporation,  
its manager

By: \_\_\_\_\_  
Name: Young K. Park  
Title: President and Treasurer

EXHIBIT A

TRUCK TUNNEL SERVICE ENTRANCE EASEMENT AGREEMENT

EXHIBIT A TO TERMINATION OF RAMP AND TUNNEL AGREEMENT

TRUCK TUNNEL SERVICE ENTRANCE EASEMENT AGREEMENT

among

WORCESTER RENAISSANCE LLC,  
WORCESTER RENAISSANCE TOWERS LLC,  
WORCESTER RENAISSANCE C & D LLC

and

CITY OF WORCESTER

DATED: \_\_\_\_\_

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## TRUCK TUNNEL SERVICE ENTRANCE EASEMENT AGREEMENT

THIS TRUCK TUNNEL SERVICE ENTRANCE EASEMENT AGREEMENT (this "Agreement") dated this \_\_\_ day of \_\_\_\_\_, 2006 ("Effective Date"), is by and among WORCESTER RENAISSANCE LLC ("Worcester Renaissance"), WORCESTER RENAISSANCE TOWERS LLC ("Worcester Renaissance Towers"), and WORCESTER RENAISSANCE C & D LLC ("Worcester Renaissance C & D"), Delaware limited liability companies, having an address c/o Berkeley Investments, Inc., 121 High Street, Boston, Massachusetts 02110 (Worcester Renaissance, Worcester Renaissance Towers and Worcester Renaissance C & D all hereinafter collectively referred to as the "Grantees"), and the CITY OF WORCESTER, a municipal corporation organized under a home rule charter adopted under the constitution and laws of The Commonwealth of Massachusetts, with an address at City Hall, 455 Main Street, Worcester, Massachusetts 01608 (the "City").

### WITNESSETH

Terms not otherwise defined below shall have the same meaning as set forth in Article 1 of this Agreement.

WHEREAS, Worcester Renaissance acquired title to the Project Property by deed dated June 14, 2004 and recorded in the Registry in Book 33956, Page 102 ("Renaissance Parcels");

WHEREAS, Worcester Renaissance Towers acquired title to a portion of the Project Property, by a deed from Worcester Renaissance recorded in the Registry Book 35383, Page 150 and by a deed from Worcester Renaissance recorded in the Registry in Book 36636, Page 269 ("Renaissance Towers Parcels");

WHEREAS, Worcester Renaissance C & D acquired a portion of the Project Property by deed from Worcester Renaissance recorded in the Registry in Book 36941, Page 356 ("Renaissance C & D Parcel");

WHEREAS, the City acquired the Truck Tunnel Service Entrance by two separate deeds from the Worcester Redevelopment Authority recorded in the Registry in Book 4940, Page 510 and in Book 16772, Page 389 (the "City Parcels"); and

WHEREAS, the City has agreed to grant the Grantees a non-exclusive easement for the use of the Truck Tunnel Service Entrance pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and to be observed and performed by the Parties hereto, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

### ARTICLE 1 DEFINITIONS

For the purposes of this Agreement, unless the context otherwise requires, each capitalized term used in this Agreement and not otherwise defined in this Agreement shall have

the meaning specified below. The content of each exhibit, if any, referenced in this Agreement as being attached hereto, is hereby incorporated into this Agreement as fully as if set forth within the body of this Agreement.

1.1 Agreement means this Truck Tunnel Service Entrance Easement Agreement and all exhibits hereto, if any, as it, and they, may be amended and restated from time to time.

1.2 ALTA Survey means the plan entitled "ALTA/ACSM LAND TITLE SURVEY, NEW WORCESTER CENTER, WORCESTER, MASSACHUSETTS" prepared for Berkeley Investments, Inc. by Judith Nitsch Engineering, Inc., and dated October 5, 2004.

1.3 Applicable Laws means any federal, state, or local law, statute, ordinance, order or regulation applicable to the use or operation of the Project Property.

1.4 City means the City of Worcester.

1.5 City Parcels shall have the meaning given such term in the preamble to this Agreement.

1.6 CitySquare Project means the project described in the District Improvement Financing Application submitted by the City to Massachusetts Economic Assistance Coordinating Council for the Project Property.

1.7 Creditor Party shall have the meaning given such term in Section 4.2 below.

1.8 Default Rate means three percent (3%) per annum above the prime rate as quoted in the Wall Street Journal or an acceptable substitute if the Wall Street Journal ceases publication.

1.9 Defaulting Party shall have the meaning given such term in Section 4.1 below.

1.10 Development Agreement means that Development Agreement dated \_\_\_\_\_, 2006 by and between Worcester Renaissance and the City.

1.11 Effective Date shall mean the date set forth in the preamble to this Agreement.

1.12 Grantees shall have the meaning given such term in the preamble to this Agreement.

1.13 Force Majeure shall have the meaning given such terms in Section 5.2 below.

1.14 Governmental Authority means any agency, department, court or other administrative or regulatory authority of any federal, state, or local governmental body.

1.15 Municipal Utilities means any municipal utility for water, electricity, telephone, gas, sewer and other services, including, without limitation, all underground and above ground lines, poles, wires, manholes, valves, and connection serving the general public.

1.16 Non-Performing Party shall have the meaning given such term in Section 6.2 below.

1.17 Parking Garage means the underground two-level public parking garage to be constructed by Worcester Renaissance for the City in accordance with the Development Agreement.

1.18 Parking Garage Lease means the ground lease between Worcester Renaissance, as Landlord, and the City, as Tenant for the Parking Garage, notice of which will be recorded in the Registry.

1.19 Party means any Grantee or the City, individually.

1.20 Parties means the Grantees and the City, collectively.

1.21 Project Property shall mean the property comprising the CitySquare Project as shown on a plan entitled "Area Site Plan New Worcester Center, Worcester, Massachusetts", prepared by Berkeley Investments by Judith Nitsch Engineering, Inc. dated April 25, 2005, a copy of which is attached as Exhibit B.

1.22 Registry means the Worcester District Registry of Deeds.

1.23 Renaissance Parcels shall have the meaning given such term in the preamble to this Agreement.

1.24 Renaissance C & D Parcel shall have the meaning given such term in the preamble to this Agreement.

1.25 Renaissance Towers Parcels shall have the meaning given such term in the preamble to this Agreement.

1.26 Roadway Construction Plan means the plan entitled "DEPARTMENT OF PUBLIC WORKS CITY OF WORCESTER, MASSACHUSETTS, EAST CENTRAL URBAN RENEWAL AREA, A NEW STREET ROADWAY CONSTRUCTION PLAN STA. 0+00 TO STA." 6+00 Scale: 1" = 20', May 1970, Contract No. 10 - Sheet No. 10 of 81, prepared for the Department of Public Works of the City of Worcester by Fay, Spofford & Thorndike, Inc. dated May, 1970.

1.27 Structural Components means all interior and exterior structural or load-bearing members, footings, caissons, foundations, columns, beams, walls, floors, roofs and all other structural or load-bearing vertical and horizontal supports which constitute a part of the Truck Tunnel Service Entrance.

1.28 Truck Tunnel means the loading dock area located under the Project Property which includes all utility rooms, loading docks, and corridors shown on the ALTA Survey as "Truck Tunnel Underground" and connected to the Truck Tunnel Service Entrance.

1.29 Truck Tunnel Service Entrance means the tunnel extending from the northerly side of the Project Property under Worcester Center Boulevard and surfacing on the City Parcel, shown as the "Service Tunnel" on the Roadway Construction Plan and as "Truck Tunnel Underground" on the ALTA Survey.

1.30 Worcester Center Boulevard means the street in the City of Worcester now known as Worcester Center Boulevard and shown on the ALTA Survey.

1.31 Worcester Renaissance shall have the meaning given such term in the preamble to this Agreement.

1.32 Worcester Renaissance C & D shall have the meaning given such term in the preamble to this Agreement.

1.33 Worcester Renaissance Towers shall have the meaning given such term in the preamble to this Agreement.

## ARTICLE 2 GRANT OF TRUCK TUNNEL EASEMENT

2.1 Grant of Easements. The City grants to the Grantees, with quitclaim covenants subject only to matters of record in the Registry as of the date of this Agreement and listed in Exhibit A, attached hereto and made a part hereof, and the terms of this Agreement the following perpetual easements into, on, over, under, across, upon, and through the Truck Tunnel Service Entrance in favor of the Grantees:

(a) Use Easement. A non-exclusive easement for ingress and egress by persons, vehicles and equipment in and through the Truck Tunnel Service Entrance for purposes of ingress and egress to the Truck Tunnel. Said easement includes a designated turn-off lane located along Worcester Center Boulevard.

(b) General Construction Maintenance and Repair Easement. A non-exclusive easement for entry upon and for ingress and egress by persons, vehicles and equipment over the City Parcels and the Truck Tunnel Service Entrance for the construction, maintenance, repair, alteration and replacement of the Truck Tunnel Service Entrance and the Structural Components, provided, however, that the Grantees shall have no obligation to provide either lateral or subjacent support to the City Parcels or the streets above or adjacent to the Truck Tunnel Service Entrance.

(c) Utility Easement. A non-exclusive easement for ingress and egress by persons, vehicles and equipment over the City Parcels and the Truck Tunnel Service Entrance to the extent necessary to permit the installation, maintenance, repair, alteration and replacement of any utility system(s) and related components located within the Truck Tunnel Service Entrance; provided, however, that the Grantees shall have no obligation to maintain, repair or replace any Municipal Utilities.

(d) Sign Easement. A non-exclusive easement for the installation, maintenance, repair and replacement of signs on and within the Truck Tunnel Service Entrance.

(e) Easements Run With the Land. The easements set forth in this Article 2 shall be binding upon the City, its successors and assigns, and run in favor of and inure to the benefit of the Grantees and their respective successors and assigns and may be assigned and apportioned by the Grantees.

(f) Limitation of Easements. The Grantees hereby acknowledge that:  
(i) Worcester Renaissance shall have the right, by recording a separate instrument in the Registry, to limit the benefit of the easements granted herein to any portion of the Project Property owned from time to time by Worcester Renaissance or any successor or assign thereof; and (ii) Parcel GA, as shown on the ALTA Survey, which is currently part of the Renaissance Towers Parcels, shall have the benefit of the easements granted herein until such time as Parcel GA is sold, leased or otherwise conveyed as a separate parcel. The City shall not grant a license, easement or other such property interest to any other party that would obstruct, prevent, or interfere with the Grantees' use of the Truck Tunnel Service Entrance and the easements granted herein.

### ARTICLE 3 MAINTENANCE OBLIGATIONS

3.1 Maintenance Obligations. The City and Grantees agree that from and after the Effective Date, the replacement, repair and maintenance obligations of each of the Parties with respect to the Truck Tunnel Service Entrance shall be as follows:

(a) Maintenance Obligations of Worcester Renaissance.

(i) Except as otherwise provided in Section 3.1(c) below, Worcester Renaissance shall, at its sole cost and expense, maintain, repair and replace all elements of the Truck Tunnel Service Entrance, including, but not limited to, the Structural Components of the Truck Tunnel Service Entrance in order to keep the Truck Tunnel Service Entrance in good operating condition, excluding, however, the maintenance, repair, and replacement of any Municipal Utilities, which obligation shall be retained solely by the City. Worcester Renaissance shall, within a reasonable period of time after receipt of written notice from the City, Worcester Renaissance Towers or Worcester Renaissance C & D, perform any and all necessary maintenance, repairs and replacements to the Truck Tunnel Service Entrance, including the Structural Components of the Truck Tunnel Service Entrance, but excluding any Municipal Utilities. Notwithstanding the foregoing, when such maintenance, repair or replacement is made necessary as the result of the City's undertaking its maintenance obligations hereunder in a manner that adversely affects Worcester Renaissance's ability to perform its maintenance obligations, or of the City's failure to perform the maintenance obligations required of the City hereunder, then the City shall, at its sole cost and expense, undertake any and all such maintenance, repairs, and/or replacements within a reasonable period of time after receipt of written notice from Worcester Renaissance.

(ii) Worcester Renaissance shall, at its sole cost and expense, and to its sole satisfaction, perform all items of normal maintenance of the Truck Tunnel Service Entrance such as snow plowing, sanding and salting, painting where necessary, replacing of light bulbs and the like, repairing of potholes, and other pavement defects and other normal maintenance

relating to the blacktop surface of the Truck Tunnel Service Entrance. Notwithstanding the foregoing, when the patching or resurfacing of the blacktop in the Truck Tunnel Service Entrance is made necessary as the result of the City's performance or failure to perform its maintenance obligations pursuant to Section 3.1(c), then the City, and not Worcester Renaissance, shall be responsible for such patching and resurfacing obligations, in which event, the City shall, at its sole cost and expense, make any and all such repairs, within a reasonable period of time after receipt of written notice from Worcester Renaissance.

(iii) Nothing herein shall prohibit or otherwise restrict Worcester Renaissance from seeking reimbursement for any costs incurred under Sections 3.1(b)(i)-(ii) above from Worcester Renaissance Towers, Worcester Renaissance C & D, or any successor, or assign thereof.

(b) Maintenance Obligations of Worcester Renaissance Towers and Worcester Renaissance C & D. Worcester Renaissance Towers and Worcester Renaissance C & D shall have no maintenance obligations under this Agreement with respect to the Truck Tunnel Service Entrance, but hereby agree to be responsible for their proportionate share of any costs incurred by Worcester Renaissance under Sections 3.1(a)(i)-(ii). The Grantees may agree to otherwise release themselves of the obligations of this Agreement by recoding a separate instrument with the Registry which instrument shall be signed by all the Grantees then party to this Agreement.

(c) Maintenance Obligations of the City. The City shall have the following maintenance obligations with respect to the Truck Tunnel Service Entrance:

(i) the City shall, in perpetuity, at its sole cost and expense, maintain, repair and replace any Municipal Utilities that are located in the Truck Tunnel Service Entrance; and

(ii) the City shall, at its sole cost and expense, maintain, repair and replace the waterproofing under the public ways over the Truck Tunnel Service Entrance. Worcester Renaissance and the City agree to coordinate in good faith with respect to repairs, capital improvements and waterproofing of the Truck Tunnel Service Entrance, and repairs and resurfacing of the streets above the Truck Tunnel Service Entrance.

#### ARTICLE 4 DEFAULT AND REMEDIES

4.1 Default. If a Party (the "Defaulting Party") shall fail to pay or perform any of its obligations hereunder, then the other non-defaulting Parties may give written notice to the Defaulting Party specifying the respect or respects in which it is not proceeding to pay or perform such obligations and if, upon expiration of thirty (30) days after the giving of such notice, as appropriately extended for Force Majeure, the Defaulting Party is still not paying or performing such obligation, then, subject to Force Majeure, such other Parties may pursue such other remedies as may be available at law or in equity.

4.2 Interest on Unpaid Amounts. Any amount payable by one Party to another Party under this Agreement shall be due and payable within thirty (30) days after receipt of the

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statement therefor. If, at any time, a Party shall fail within thirty (30) days after written demand therefor to pay to another Party (the "Creditor Party") any sum of money due the Creditor Party pursuant to this Agreement, then, the amount so owed shall bear interest from the date the same was initially due until paid in full at the Default Rate.

4.3 Cumulative Remedies. The rights and remedies of the Creditor Party, provided for in this Article 4 or elsewhere in this Agreement, are cumulative and not intended to be exclusive of any other remedies to which Creditor Party may be entitled at law or in equity. The exercise by such Party of any right or remedy to which it is entitled hereunder shall not preclude or restrict the exercise of any other such right or remedy.

4.4 No Right of Set-Off. Each claim of a Party arising under this Agreement shall be separate and distinct, and no defense, or set-off, arising against the enforcement of any lien or other claim of any Party shall thereby be or become a defense or set-off against the enforcement of any other lien or claim.

4.5 Delays; Waivers. Except as otherwise expressly provided in this Agreement, any delay by any Party in asserting any right or remedy under this Agreement shall not operate as a waiver of any such rights or limit such rights in any way; and any waiver in fact made by such Party with respect to a default by another Party shall not be considered as a waiver of rights with respect to any other default by the non-defaulting Party, or with respect to the particular default, except to the extent specifically waived, in writing. It is the intent of the Parties that this provision will enable each Party to avoid the risk of being limited in the exercise of any right or remedy provided in this Agreement by waiver, laches or otherwise.

4.6 Rights of Lenders. The City is aware that financing for the Project Property may be provided, in whole or in part and from time to time, by one or more lenders. In the event of a default by any Grantee, the City shall provide notice of such default, at the same time notice is provided to the Defaulting Party, to any lender previously identified, in writing, to the City by said Defaulting Party. If a lender is permitted, under the terms of its agreement with such Defaulting Party, to cure the default and/or to assume the Defaulting Party's position with respect to this Agreement, the City agrees to recognize such rights of lender granted in lender's agreement with such Defaulting Party and to otherwise permit lender to assume all of the rights and obligations of the defaulting Party under this Agreement:

## ARTICLE 5 MISCELLANEOUS

5.1 No Merger. Unless Grantees elect otherwise, there shall be no merger of the rights, estates and easements granted hereby on account of the fact that the interests of the Grantees and the City hereunder may from time to time be held, directly or indirectly, by the same person or persons.

5.2 Force Majeure. Whether stated or not, all periods of time in this Agreement are subject to this Section 5.2. Neither the City nor the Grantees, as the case may be, shall be considered in default of its obligations under this Agreement in the event of enforced delay due to (a) causes beyond its control and without its fault or negligence, including, but not restricted

to, acts of God, acts of public enemy, acts of the federal, state or local government, acts of the other Party, acts of third parties, litigation concerning the validity and enforceability of this Agreement or relating to transactions contemplated hereby (including the effect of petitions for initiative or referendum), fires, floods, epidemics, quarantine, restrictions, strikes, embargoes, labor disputes, and unusually severe weather or the delays of a contractor, subcontractors or materialmen due to such causes, nuclear radiation, acts of a public enemy, war, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), declaration of national emergency, insurrection, riot, labor strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain, condemnation, or other taking by the action of any Governmental Authority on behalf of any public, quasi-public, or private entity, or declaration of moratorium or similar hiatus directly affecting any portion of the Project Property (whether permanent or temporary) by any public, quasi-public or private entity except as contemplated by this Agreement; (b) the order, judgment, action, or determination of any court, administrative agency, Governmental Authority or other governmental body (collectively, an "Order") which adversely affects the construction or completion of the CitySquare Project, as defined in the Development Agreement (except for actions of the City specifically permitted under this Agreement), or the suspension, termination, interruption, denial, or failure of renewal (collectively, a "Failure") of issuance of any permit, license, consent, authorization, or approval necessary to the construction or completion of the CitySquare Project, unless it is shown that such Order or Failure is the result of the grossly negligent, willful or intentional action or inaction of the Party claiming the delay or is the result of the grossly negligent or willful violation of Applicable Laws; provided, however, that the contesting in good faith of any such Order or Failure shall not constitute or be construed or deemed as a waiver by a Party of Force Majeure; (c) the denial of an application, failure to issue, or suspension, termination, delay or interruption (collectively, a "Denial") in the issuance or renewal of any permit, approval or consent required or necessary in connection with the construction or completion of the CitySquare Project, if such Denial is not also the result of a grossly negligent act or omission or willful violation by the Party; provided that the contesting in good faith or the failure in good faith to contest any such Denial shall not constitute or be construed or deemed as such a wrongful or grossly negligent act or omission on the part of the Party; (d) the failure of any contractor, subcontractor or supplier to furnish services, materials or equipment in connection with the Construction of the CitySquare Project if such failure is caused by Force Majeure as defined herein, if and to the extent, and only so long as the Party claiming the delay is not reasonably able, after using commercially reasonable efforts, to obtain substitute services, materials or equipment of comparable quality and cost; (e) without limiting the foregoing, but only with respect to excusing the Grantee's performance hereunder, any action or inaction of the City, its elected officials, officers, agents (including, but not limited to, the Construction Program Manager, as defined in the Development Agreement), agencies, departments, committees or commissioners which action is reasonably required by Applicable Laws and which unreasonably delays the Grantee's ability to comply with any construction schedule or requirement set forth by this Agreement; and (f) bankruptcy, insolvency or similar action, or any foreclosure or other exercise of remedies of any lender, with respect to any contractor, subcontractor or supplier of the Grantee (collectively, "Force Majeure"). In the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the Party claiming delay shall be extended for a period of the enforced delay; provided that the Party seeking the benefit of the provisions of this Section shall, within ten (10) days after such Party knows of any such enforced

delay, first notify the other Parties of the specific delay in writing and claim the right to an extension for the period of the enforced delay; provided, however, that either Party's failure to notify the other Party of an event constituting an enforced delay shall not alter, detract from or negate its character as an enforced delay if such event of enforced delay was not known or reasonably discoverable by such Party. Notwithstanding anything to the contrary in this Agreement, no Force Majeure event shall excuse performance by Grantees or be considered to continue in effect for more than two (2) years with respect to any particular Force Majeure event or three (3) years in the aggregate for all Force Majeure events.

5.3 Notices. Any and all notices, demands, requests, submissions, approvals, consents, disapprovals, objections, offers or other communications or documents required to be given, delivered or served, or which may be given, delivered or served, under or by the terms and provisions of this Agreement or pursuant to law or otherwise, shall be in writing and shall be delivered by hand or sent by registered or certified mail, return receipt requested, addressed if to City to:

City Manager  
City Hall  
455 Main Street  
Worcester, MA 01608

with a copy to:

City Solicitor  
City Hall  
455 Main Street  
Worcester, MA 01608

or to such other address as the City may from time to time designate by written notice to Grantee;

or if to Worcester Renaissance addressed to:

Worcester Renaissance LLC  
c/o Berkeley Investments, Inc.  
121 High Street  
Boston, MA 02110  
Attn: Young K. Park

with a copy to:

Robert E. Longden, Esquire  
Bowditch & Dewey, LLP  
311 Main Street, P.O. Box 15156  
Worcester, MA 01615-0156

or if to Worcester Renaissance Towers addressed to:

Worcester Renaissance Towers LLC  
c/o Berkeley Investments, Inc.  
121 High Street  
Boston, MA 02110  
Attn: Young K. Park

with a copy to:

Robert E. Longden, Esquire  
Bowditch & Dewey, LLP  
311 Main Street, P.O. Box 15156  
Worcester, MA 01615-0156

or if to Worcester Renaissance C & D LLC addressed to:

Worcester Renaissance C & D LLC  
c/o Berkeley Investments, Inc.  
121 High Street  
Boston, MA 02110  
Attn: Young K. Park

with a copy to:

Robert E. Longden, Esquire  
Bowditch & Dewey, LLP  
311 Main Street, P.O. Box 15156  
Worcester, MA 01615-0156

or to such other address as the Grantees may from time to time designate by written notice to City, or to such other agent or agents as may be designated in writing by any Party. The earlier of: (a) the date of delivery by hand, or (b) the date of delivery or upon which delivery was refused as indicated on the registered or certified mail return receipt shall be deemed to be the date such notice or other submission was given.

5.4 Severability. If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

5.5 Interference with Other Parties' Operations. In fulfilling obligations and exercising rights under this Agreement, the Parties shall use their best efforts to keep interference with the property of the other Parties and the operations of the other Parties to a minimum and, to that end, except in the event of Force Majeure, will give to the other Parties reasonable advance written notice, but not less than ten (10) days' notice of work which may so interfere, and will

arrange with the other Parties for reasonable and definite times and conditions under which any such work shall be done.

5.6 Headings for Reference Only. The headings of Articles and Sections in this Agreement are for convenience of reference only and shall not in any way limit or define the content or substances of the Articles or Sections.

5.7 Amendment Procedure. This Agreement may be amended only by an instrument signed and duly acknowledged by: (a) the Grantees; (b) the City; and (c) any mortgagees of the Grantees of which the City has received prior written notice, if required by such mortgagees. Any amendment to this Agreement shall be recorded in the Registry and shall become effective upon such recording.

5.8 Waiver. The Parties waive a trial by jury of any and all issues arising in any action or proceeding between them or their successors or assigns under or connected with this Agreement, or any of its provisions, or any negotiations in connection therewith.

5.9 Integration. All prior understandings and agreements between the Parties are merged within this Agreement, which alone fully and completely sets forth the understanding of the Parties; and this Agreement may not be changed or terminated orally or in any manner other than by an agreement in writing and signed by the Party against whom enforcement of the change or termination is sought.

5.10 Bind and Inure. The covenants and agreements herein contained shall be binding on and inure to the Grantees and the City, and their respective successors and assigns. Notwithstanding the foregoing, the City may not assign its rights and/or obligations hereunder. The City agrees that the Grantees may assign their respective interests in this Agreement to any successor person or entity, or to any lender providing financing for the Project without the consent of, but with prior notice to, the City, provided that such assignment to a lender does not relieve the Grantees of their obligations hereunder.

5.11 Limitation of Liability. Anything contained in this Agreement to the contrary notwithstanding, but without limitation of the City's equitable rights and remedies, the liability of any defaulting Grantee under this Agreement shall be enforceable only out of the defaulting Grantee's respective interest in the Project Property, and there shall be no other recourse against, or right to seek a deficiency judgment against the non-defaulting Grantees, either jointly or severally, nor shall there be any personal liability on the part of any of their respective members, managers, officers or employees, with respect to any obligations to be performed hereunder.

5.12 Captions. The captions of this Agreement are for convenience and reference only and in no way define, limit or describe the scope or intent of this Agreement, nor in any way affect this Agreement.

5.13 Table of Contents. The Table of Contents preceding this Agreement, but under the same cover, is for the purpose of convenience and reference only and is not to be deemed or construed in any way as part of this Agreement, nor as supplemental thereto or amendatory thereof.

5.14 Massachusetts Law Governs. This Agreement shall be governed exclusively by, and construed in accordance with, the laws of The Commonwealth of Massachusetts.

5.15 Time of the Essence. Time shall be of the essence hereof.

5.16 No Partnership or Joint Venture. Nothing contained in this Agreement shall be construed to create a partnership or joint venture between the City and the Grantees, nor shall either party be liable for any debts incurred by the other party in the conduct of its business or affairs, nor shall either party be deemed the agent or representative of the other for any purpose or in any manner under this Agreement, except as otherwise expressly provided for herein.

5.17 Further Assurances. At any time and from time to time, each of the parties hereto agrees, upon the written request of any other party, to execute and, if required, acknowledge and record, all such amendments hereto or other documents as may reasonably be required to effectuate the intents and purposes of this Agreement. Without limiting the generality of the foregoing, each of the parties further agrees to consent to modifications to this Agreement to the extent that any such modifications are reasonably requested by a perspective mortgagee of any party, provided that modifications so requested do not limit any grant of easement or adversely affect the rights of any party under this Agreement.

5.18 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all such counterparts shall constitute one and the same agreement, binding on the parties.

5.19 Sovereign Immunity. Nothing in this Agreement shall be construed as a waiver of sovereign immunity.

[SIGNATURE PAGE TO FOLLOW]

Executed as an instrument under seal as of the day and year first above written.

**CITY OF WORCESTER**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved as to form:

**OFFICE OF THE CITY SOLICITOR**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**WORCESTER RENAISSANCE LLC, a  
Delaware limited liability company**

By: Worcester Renaissance Holdings LLC, a  
Delaware limited liability company,  
its sole member

By: Berkeley Worcester MGR LLC, a  
Delaware limited liability company,  
a manager

By: Berkeley Investments, Inc., a  
Massachusetts corporation,  
its manager

By: \_\_\_\_\_  
Name: Young K. Park  
Title: President and Treasurer

**WORCESTER RENAISSANCE TOWERS LLC, a  
Delaware limited liability company**

**By: Worcester Renaissance Holdings LLC, a  
Delaware limited liability company,  
its sole member**

**By: Berkeley Worcester MGR LLC, a  
Delaware limited liability company,  
a manager**

**By: Berkeley Investments, Inc., a  
Massachusetts corporation,  
its manager**

**By: \_\_\_\_\_  
Name: Young K. Park  
Title: President and Treasurer**

**WORCESTER RENAISSANCE C & D LLC, a  
Delaware limited liability company**

**By: Worcester Renaissance Holdings LLC, a  
Delaware limited liability company,  
its sole member**

**By: Berkeley Worcester MGR LLC, a  
Delaware limited liability company,  
a manager**

**By: Berkeley Investments, Inc., a  
Massachusetts corporation,  
its manager**

**By: \_\_\_\_\_  
Name: Young K. Park  
Title: President and Treasurer**

THE COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

On this \_\_\_ day of \_\_\_\_\_, 200\_\_, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_ proved to me through satisfactory evidence of identification, namely a driver's license issued by The Commonwealth of Massachusetts, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose as Mayor of the City of Worcester.

\_\_\_\_\_  
Notary Public

My commission expires:

THE COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

On this \_\_\_ day of \_\_\_\_\_, 200\_\_, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_ proved to me through satisfactory evidence of identification, namely a driver's license issued by The Commonwealth of Massachusetts, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose as Solicitor of the City of Worcester.

\_\_\_\_\_  
Notary Public

My commission expires:

THE COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

On this \_\_\_ day of \_\_\_\_\_, 200\_\_, before me, the undersigned Notary Public, personally appeared Young K. Park, President and Treasurer of Berkeley Investments, Inc., the manager of Berkeley Worcester MGR LLC, a manager of Worcester Renaissance Holdings LLC, the sole member of Worcester Renaissance LLC, Worcester Renaissance Towers LLC, and Worcester Renaissance C & D LLC, proved to me through satisfactory evidence of identification, namely a driver's license issued by The Commonwealth of Massachusetts, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose as President and Treasurer of Berkeley Investments, Inc., the manager of Berkeley Worcester MGR LLC, a manager of Worcester Renaissance Holdings LLC, the sole member of Worcester Renaissance LLC, Worcester Renaissance Towers LLC, and Worcester Renaissance C & D LLC.

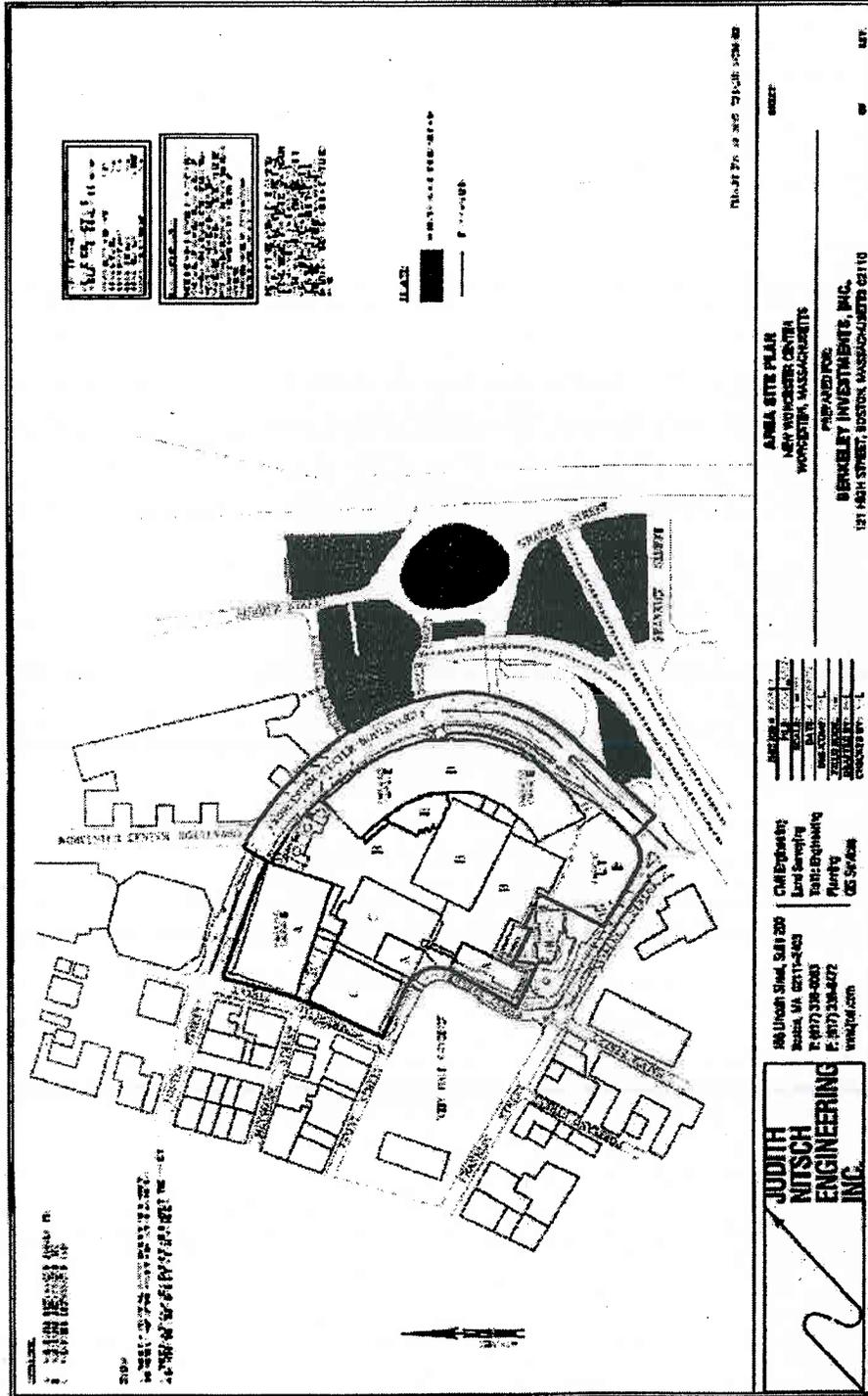
\_\_\_\_\_  
Notary Public

My commission expires:

**EXHIBIT A**  
**List of Encumbrances**

**TO BE PROVIDED BY THE CITY**

**EXHIBIT B**  
Plan



**JUDITH NITSCH ENGINEERING INC.**  
 100 Lincoln Blvd, Suite 200  
 Needham, MA 02451-4403  
 P: (617) 338-4083  
 F: (617) 338-4072  
 www.jne.com

**CHARLES R. NITSCH**  
 Principal  
 P: (617) 338-4083  
 F: (617) 338-4072  
 www.jne.com

**ANMA SITE PLAN**  
 NEW WINDSOR CENTER  
 WINDSOR COMMONS, MASSACHUSETTS

**CREATED BY:**  
 BERKELEY INVESTMENTS, INC.  
 121 FAIR STREET, DUXSBURY, MASSACHUSETTS 01928

**DATE:** 08/11/08

## EXHIBIT 6.3(c)

### Plaza Parcel Public Access Principles

The Developer will record a Declaration of Restrictive Covenants and Conditions (the "Covenant") with respect to the Plaza Parcel which will provide, among other things, that, for as long as the Plaza Parcel is used and maintained as a plaza in connection with the Project:

(a) The portion of the Plaza Parcel, other than what is subject to the easements for streets and sidewalks in favor of the City under the Order of Taking and the Sidewalk Easement Agreement (such portion is referred to as the "Plaza Open Space Area") may be used by the general public subject to the terms of the Covenant. The Covenant will run with the Plaza Parcel and will be enforceable by the Developer and the City.

(b) It is anticipated that the Plaza Parcel will be conveyed, subject to the Covenant, to a separate entity, the beneficial ownership of which will be held by the owners of property within the Project.

(c) The Plaza Open Space Area will be, generally, open to the public for permitted uses and activities between the hours of 7:00 AM and 10:00 PM, subject to rules and regulations to be established by the Developer, in its reasonable discretion, from time to time.

(d) The Covenant will provide that the use of the Plaza Open Space Area by the general public shall not be deemed, construed or interpreted as a dedication of the Plaza Open Space Area to any of the following: (1) a public use or purpose under the prior public use doctrine; (2) Article 97 of the Massachusetts Constitution, or any policies, regulations, guidance documents, or opinions interpreting said Article 97; or (3) a restriction on future development rights with respect to the Plaza Parcel or the Plaza Open Space Area. By holding the land open to public recreational and other uses without imposition of a fee, the Developer, its successors and assigns shall be entitled to and afforded the liability limitations and protections set forth in M.G.L. c. 21, section 17C.

(e) The Covenant will provide that landscaping and improvements within the Plaza Open Space Area will be situated so as to promote seating, walking and gathering and that retail uses will be limited in order to encourage and enhance such uses by the general public.

(f) The Developer may establish periods during which the Plaza Open Space Area may be closed for maintenance, repair and/or for special events, and will post a calendar of regularly scheduled maintenance, repair and/or special events. The Developer may temporarily terminate access to the Plaza Open Space Area for security purposes, Force Majeure, and/or in the event of any Emergency, and will endeavor to provide the City with prior written notice of any such termination of access, to the extent practicable.

(g) The Developer will be permitted to relocate and/or reconfigure the Plaza Open Space Area, upon prior written notice to the City, at any time and from time to time as

determined in the sole discretion of the Developer, its successors and assigns. Any such relocation or reconfiguration shall preserve an open area roughly equivalent to the Plaza Parcel Open Space Area in the same general area as the Plaza Parcel, and which relocated or reconfigured area shall be subject to the Covenant.

(h) The City shall have the right at reasonable times during regular business hours upon reasonable prior written notice to the Developer to enter upon the Plaza Open Space Area and to examine and inspect the Plaza Open Space Area and the Plaza Open Space Area improvements to ensure compliance with the terms of the Covenant but will do so in a manner and at such times as will not unreasonably disturb, and subject to the rights of, any then users of the Plaza Open Space Area. The Developer agrees that the City and its duly authorized agents will have rights of access to the Plaza Open Space Area without prior notice in the event of an Emergency, or to ensure public safety. The City will, by and through the Worcester Police Department, respond when called by the Developer to provide security for the Plaza Open Space Area, at no additional cost to the Developer. If the Developer requires a police detail because of activities taking place on the Plaza Open Space Area, the City will provide such police detail at the Developer's cost.

(i) The Developer will be responsible for properly cleaning and maintaining the Plaza Open Space Area and the Plaza Open Space Area improvements as required in its sole reasonable discretion. Maintenance will include, without limitation, landscaping in a manner appropriate for the season and removal of all rubbish and debris, snow and ice removal from the Plaza Open Space Area and the Plaza Open Space Area improvements, and will not commit or permit waste or impairment of or to the Plaza Open Space Area or the Plaza Open Space Area improvements.

(j) The Developer will be solely responsible and pay for all operating costs of the Plaza Open Space Area, including, to the extent applicable, all real estate taxes and assessments, all insurance costs, all costs of the improvements not otherwise undertaken by the City under the Development Agreement or otherwise, all costs of complying with applicable laws relating to the use of the Plaza Open Space Area, to the extent activities occur thereon, which costs shall be funded through the Plaza Common Area Assessment pursuant to the terms of the Restated Reciprocal Easement, Operating and Use Agreement, in all cases subject to the right to contest the appropriateness of such matters by all legal means.

(k) The Covenant will terminate upon the earliest to occur of: (i) a material change in the use of the Plaza Parcel; (ii) any breach by the City of the Development Agreement; or (iii) upon the expiration of thirty (30) years from the date of recording the Covenant.

(l) The Developer will adhere to all applicable provisions or statutes, codes and ordinances of the City of Worcester, The Commonwealth of Massachusetts and other applicable laws in its operation and maintenance of the Plaza Open Space Area.

(m) The Developer shall not discriminate against any employee, contractor or applicant for employment with respect to the use, operation and maintenance of the Plaza Open Space Area and the Plaza Open Space Area improvements because of race, color, creed, national

origin, age or sex, and the Developer shall not discriminate against or in the use of the Plaza Open Space Area because of race, color, creed, national origin, age or sex.

EXHIBIT 6.5

Sidewalk Easement Agreement

**SIDEWALK EASEMENT AGREEMENT**

**among**

**WORCESTER RENAISSANCE LLC,  
WORCESTER RENAISSANCE TOWERS LLC,  
WORCESTER RENAISSANCE C & D LLC**

**and**

**CITY OF WORCESTER**

**DATED: \_\_\_\_\_**

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Exhibit A - Project Property Plan

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## SIDEWALK EASEMENT AGREEMENT

THIS SIDEWALK EASEMENT AGREEMENT (this "Agreement") dated this \_\_\_\_\_ day of \_\_\_\_\_, 2006 is by and among WORCESTER RENAISSANCE LLC ("Worcester Renaissance"), WORCESTER RENAISSANCE TOWERS LLC ("Worcester Renaissance Towers") and WORCESTER RENAISSANCE C & D LLC ("Worcester Renaissance C & D"), Delaware limited liability companies having an address of c/o Berkeley Investments, Inc., 121 High Street, Boston, Massachusetts 02110 (Worcester Renaissance, Worcester Renaissance Towers and Worcester Renaissance C & D, all hereinafter collectively referred to as the "Grantors"), and the CITY OF WORCESTER, a municipal corporation organized under a home rule charter adopted under the constitution and laws of The Commonwealth of Massachusetts, with an address at City Hall, 455 Main Street, Worcester, Massachusetts 01608 (the "City").

### RECITALS

Terms not otherwise defined below shall have the same meaning as set forth in Article 1 of this Agreement.

**WHEREAS**, Worcester Renaissance acquired title to the Project Property by deed dated June 14, 2004 and recorded in the Registry in Book 33956, Page 102;

**WHEREAS**, Worcester Renaissance Towers acquired title to a portion of the Project Property by a deed from Worcester Renaissance recorded in the Registry in Book 35383, Page 150 and by a deed from Worcester Renaissance recorded in the Registry in Book 36636, Page 269;

**WHEREAS**, Worcester Renaissance C & D acquired title to a portion of the Project Property by deed from Worcester Renaissance recorded in the Registry in Book 36941, Page 356;

**WHEREAS**, the City intends to take, by eminent domain, portions of the Project Property for the construction of certain public ways in accordance with the Order of Taking and the Taking Plan;

**WHEREAS**, the City has agreed, pursuant to the terms of the Development Agreement and this Agreement, to install, maintain and replace the waterproofing under the public ways and Sidewalks located over the Truck Tunnel and over the Parking Garage;

**WHEREAS**, the City has agreed, pursuant to the terms of the Development Agreement and this Agreement, to install, maintain and repair the Municipal Utilities located within the Truck Tunnel; and

**WHEREAS**, the Grantors have agreed, pursuant to the terms of the Development Agreement and this Agreement, to grant the City a non-exclusive easement for the construction, repair, maintenance and replacement of the: (a) Sidewalks within the Sidewalk Easement; (b) waterproofing located under the public ways and Sidewalks and over the Truck Tunnel and Parking Garage; and (c) the Municipal Utilities.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and to be observed and performed by the Parties hereto, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

## ARTICLE 1 DEFINITIONS

For the purposes of this Agreement, unless the context otherwise requires, each capitalized term used in this Agreement and not otherwise defined in this Agreement, shall have the meaning specified below. The content of each exhibit, if any, referenced in this Agreement as being attached hereto, is hereby incorporated into this Agreement as fully as if set forth within the body of this Agreement.

- 1.1 **Agreement** means this Sidewalk Easement Agreement and all exhibits attached hereto, if any, as it, and they, may be amended and restated from time to time.
- 1.2 **ALTA Survey** means the plan entitled "ALTA/ACSM LAND TITLE SURVEY, NEW WORCESTER CENTER, WORCESTER, MASSACHUSETTS" prepared for Berkeley Investments, Inc. by Judith Nitsch Engineering, Inc., and dated October 5, 2004.
- 1.3 **Applicable Laws** means any federal, state, or local law, statute, ordinance, order or regulation applicable to the use or operation of the Project Property.
- 1.4 **City** means the City of Worcester.
- 1.5 **CitySquare Project** shall have the meaning given such term in the District Improvement Financing Application submitted by the City to the Massachusetts Economic Assistance Coordinating Council for the Project Property.
- 1.6 **Creditor Party** shall have the meaning given such term in Section 6.2 below.
- 1.7 **Default Rate** means three percent (3%) per annum above the prime rate as quoted in the Wall Street Journal, or an acceptable substitute if the Wall Street Journal ceases publication
- 1.8 **Defaulting Party** shall have the meaning given such term in Section 6.1 below.
- 1.9 **Development Agreement** means that certain Development Agreement between Worcester Renaissance and the City of even date herewith.
- 1.10 **Force Majeure** shall have the meaning given such term in Section 7.2 below.
- 1.11 **Governmental Authority** means any agency, department, court or other administrative or regulatory authority of any federal, state, or local governmental body.
- 1.12 **Grantors** shall have the meaning given such term in the preamble to this Agreement.

1.13 **Municipal Utility** means any municipal utility for water, electricity, telephone, gas, sewer and other services, including without limitation, all underground and above ground lines, poles, wires, manholes, valves and connections serving the general public.

1.14 **Non-Performing Party** shall have the meaning given such term in Section 8.2 below.

1.15 **Order of Taking** means the Order of Taking approved by the City Council on June 28, 2005 for eminent domain takings for proposed public streets shown on the Taking Plan.

1.16 **Parking Garage Lease** means the ground lease between Worcester Renaissance, its affiliate, as landlord, and the City, as tenant, dated \_\_\_\_, 2006 notice of which was recorded in the Registry in Book \_\_\_\_, Page \_\_\_\_.

1.17 **Party** means any Grantor or the City, individually.

1.18 **Parties** means the Grantors and the City, collectively.

1.19 **Private Project Elements** means the portions of the CitySquare Project that are to be constructed by the Developer as provided in the Development Agreement.

1.20 **Project Property** means the property comprising the CitySquare Project, as shown on a plan entitled "Area Site Plan New Worcester Center, Worcester, Massachusetts," prepared by Berkeley Investments, Inc. by Judith Nitsch Engineering, Inc. dated April 25, 2005, a copy of which is attached hereto as **Exhibit A**.

1.21 **Registry** means the Worcester District Registry of Deeds.

1.22 **Sidewalk Easement** shall have the meaning given such term in Section 2.1(a) of this Agreement.

1.23 **Sidewalks** means all those sidewalks on the Project Property, whether or not yet in existence, that are shown on the plan entitled "SIDEWALK EASEMENT DIAGRAM" prepared by Arrowsstreet, dated May 30, 2006, attached hereto as **Exhibit B**, including, without limitation, areas: (a) adjacent to the layout line taken by the City pursuant to the Order of Taking; and (b) between the exterior walls of each building on the Project Property and the layout lines taken by the City pursuant to the Order of Taking. The depth of the Sidewalks shall be limited to the upper plane of the Truck Tunnel and the Parking Garage.

1.24 **Taking Plan** means the plan entitled, "TAKING AND LAYOUT PLAN CITY SQUARE, WORCESTER, MASSACHUSETTS" by Judith Nitsch Engineering Inc. dated June 24, 2005, as revised to delete specific street names.

1.25 **Truck Tunnel** means the tunnel and the loading dock area located under the Project Property, and shown on the ALTA Survey as the "Truck Tunnel Underground".

1.26 **Worcester Center Boulevard** means the street in the City of Worcester now known as Worcester Center Boulevard and shown on the ALTA Survey.

1.27 Worcester Renaissance shall have the meaning given such term in the preamble to this Agreement.

1.28 Worcester Renaissance C & D shall have the meaning given such term in the preamble to this Agreement.

1.29 Worcester Renaissance Towers shall have the meaning given such term in the preamble to this Agreement.

## ARTICLE 2 GRANT OF EASEMENTS

2.1 Grant of Easements. The Grantors grant to the City, with quitclaim covenants subject only to matters of record in the Registry, the following easements in favor of the City:

(a) Sidewalk Easement A perpetual, non-exclusive easement into, on, over, under, across, and upon the Sidewalks in favor of the City for purposes of: (i) ingress and egress by persons, vehicles and equipment to the extent necessary for the construction, installation, maintenance, repair, alteration and replacement of the Sidewalks, any Municipal Utility located on, under or within the Sidewalks, as of the date of this Agreement, or any public street signs located on and within the Sidewalks; and (ii) ingress and egress by persons over the Sidewalks to be used for all purposes for which sidewalks are commonly used in the City of Worcester (the "Sidewalk Easement"). The width of the Sidewalk Easement (the distance between the outer edge of the layout lines taken by the City pursuant to the Order of Taking and the exterior walls of each building on the Project Property) shall automatically adjust upon the completion of the construction of the exterior walls of the building(s) to be built on the Project Property. The Parties agree, upon request of the other and at such requesting Party's sole cost and expense, to execute and record a separate amendment to this Agreement, including an appropriate plan to be attached to such amendment, reflecting such adjusted Sidewalk Easement area.

Notwithstanding the foregoing, the Parties agree that there is excluded from the Sidewalk Easement the Plaza Parcel as shown on the plan entitled "PLAZA PARCEL PLAN" prepared by Arrowstreet and dated December 1, 2005, attached hereto as Exhibit C. Requests by the Developer to exclude other portions of the Project Property from the Sidewalk Easement will be considered by the City on a case by case basis depending on the design and construction of the Private Project Elements, and the City's consent to any such request shall not be unreasonably withheld or delayed, provided that such exclusion is consistent with the existing and planned appearance of the streetscape and the applicable Design Guidelines.

(b) Parking Meter Easement and Public Light Fixtures. A perpetual exclusive easement into, on, over, under, across and upon the Sidewalks for the installation, repair, replacement and maintenance of parking meters and public light fixtures on the Sidewalks. The Grantors reserve the right to approve the location of any such meters or public lights, which approval shall not be unreasonably withheld.

(c) Waterproofing Easement for Parking Garage and the Truck Tunnel. A non-exclusive easement into, on, over, under, across and upon those portions of the Project

Property located over the Truck Tunnel, the Parking Garage, and the Sidewalks in favor of the City for purposes of the City, maintaining and repairing the waterproofing, located under the public ways and Sidewalks over the Parking Garage and Truck Tunnel, pursuant to the following terms:

(1) The City shall be responsible during the term of the Parking Garage Lease, except for the last ten (10) years, to maintain, repair and replace the waterproofing under the public ways and Sidewalks located over the Parking Garage. During the last ten (10) years of the Parking Garage Lease, the City shall, at its sole cost and expense, maintain such waterproofing over the Parking Garage, but, subject to the provisions of subsection (3) below, shall only be responsible to pay a share of any capital expenditures related to such waterproofing equal to a fraction, the numerator of which is the number of years then left in the term of the Parking Garage Lease and the denominator of which is the expected useful life of the applicable water proofing multiplied by the cost of such waterproofing, and the Grantors shall pay the balance of such cost. After the term of the Parking Garage Lease has expired, the Grantors shall bear all costs (including capital costs) of maintaining such waterproofing.

(2) The City shall be responsible during the term of the Parking Garage Lease, except for the last ten (10) years of the term, at its sole cost and expense to install, maintain, repair and replace the waterproofing under the public streets and Sidewalks located over the Truck Tunnel. During the last ten (10) years of the Parking Garage Lease term, the City shall, at its sole cost and expense, maintain and repair such waterproofing, provided, however, that if such waterproofing must be replaced or new waterproofing installed, the cost shall be shared between the Grantors and the City in the same manner as the waterproofing over the Parking Garage, as set forth in 2.1(c)(1) above. The Grantors shall provide and maintain, at Grantors' own cost and expense, the infrastructure support for the streets located above the Truck Tunnel and the Grantors shall be responsible for the maintenance, repair, and replacement of the waterproofing over the Truck Tunnel after the expiration of the term of the Parking Garage Lease. After the term of the Parking Garage Lease has expired, the Grantors shall bear all costs (including capital costs) of maintaining such waterproofing.

(3) In any instance where the cost of repair, maintenance, or replacement of the waterproofing is to be apportioned between the Grantors and the City as set forth in (1) and (2) above, and the Grantors do not, in any instance, agree to bear their portion of such costs, the City shall have the option, , to undertake only commercially reasonable maintenance and repair activities of such waterproofing, provided, that such maintenance and repairs shall be performed in such a manner that the useful life thereof can reasonably be anticipated to extend to the end of the term of the Parking Garage Lease.

(4) From and after the termination of the Parking Garage Lease, the Grantors and the City shall use good faith efforts to coordinate the timing and scope of repairs and capital improvements to the Parking Garage and the Truck Tunnel, and repairs and resurfacing of the streets above the Parking Garage and the Truck Tunnel, provided that there is no additional cost to the City as a result of such coordination.

(d) Municipal Utility Easement. A perpetual non-exclusive easement into, on, over, under, across, upon, and through the Truck Tunnel for the installation, repair, replacement

and maintenance of all Municipal Utilities located in the Truck Tunnel. All such installation, repair, replacement and maintenance shall be performed at such times and in such a manner so as to not unreasonably interfere with the use and operation of the Truck Tunnel.

(e) Easements Run With the Land. The easements set forth in this Article 2 shall be binding upon the Grantors, their successors and assigns, and burden the Project Property, except as specifically stated otherwise.

(f) Easement Termination. The easements set forth in this Article 2 shall automatically terminate in the event that the Development Agreement is terminated pursuant to Section 4.18 thereof, in which event the City shall promptly execute and deliver releases of such easements in recordable form.

### ARTICLE 3 THE CITY'S RESTRICTION ON USE

3.1 Restriction on Use. Except as otherwise stated in this Agreement, the City's exercise of any and all of the rights and easements granted herein shall be at the sole cost and expense of the City, and shall be exercised so as to not interfere with Grantors' use or operation of the Project Property, except to the extent reasonably necessary for the exercise of the rights and easements hereby granted.

3.2 Grantor's Use Restriction. The easements granted herein shall be subject to such reasonable limitations as the Grantors may, from time to time, impose to preclude any unreasonable interference with the use and operation of the Project Property and to assure the security of the Project Property.

### ARTICLE 4 GRANTORS' RESERVATION OF RIGHTS

4.1 Grantor's Reservation. Notwithstanding the grant of the easements herein, the Grantors reserve the right to:

(a) use the easement areas for all purposes consistent with Grantors' respective normal business operations in connection with the development and operation of the Project Property, provided that such uses do not unreasonably interfere with the rights and easements granted hereby;

(b) grant to any person, firm, corporation or other entity, any easements or rights, over, under, across and through the Sidewalks or Truck Tunnel, including without limitation the right to construct, replace and maintain staircases, entryways, planters and sitting areas within the Sidewalk area, provided that same do not materially interfere with the City's use of the Sidewalks or Truck Tunnel for the purposes stated herein and that any damage to the Sidewalks caused thereby shall be repaired at the cost of such easement holder; and

(c) grant to any person, firm, corporation or other entity, any easements or rights to install, maintain or replace any signs, banners, awnings, overhangs or any other

encroachment over the Sidewalk Easement, provided that same do not materially interfere with the City's use of the Sidewalks or Truck Tunnel for the purposes stated herein.

## ARTICLE 5 MAINTENANCE OBLIGATIONS

5.1 **Maintenance Obligations.** The City and the Grantors agree that the construction, replacement, maintenance and repair obligations of each of the Parties with respect to the Sidewalks and Municipal Utilities shall be as follows:

(a) **The City Maintenance Obligations.**

(1) The City shall, at its sole cost and expense, maintain, repair and replace the Sidewalks, including, repairing of all cracks, potholes, and defects in the Sidewalks in the ordinary course and as currently undertaken by the City's Department of Public Works. The City shall, within a reasonable period of time, after receipt of written notice from one or all of the Grantors, make any and all necessary maintenance, repairs and replacements to the Sidewalks.

(2) The City shall, at its sole cost and expense, maintain, repair and replace the Municipal Utilities in the ordinary course and as currently undertaken by the City's Department of Public Works. The City shall, within a reasonable period of time after receipt of written notice from one or all of the Grantors make any and all necessary maintenance, repairs and replacements to the Municipal Utilities.

(3) The City shall, at its sole cost and expense, maintain, repair and replace the waterproofing under the public ways and Sidewalks located above the Parking Garage and Truck Tunnel, as provided in Section 2.1(c) of this Agreement and as may be further set forth in the Parking Garage Lease and the Development Agreement.

(b) **Grantors' Maintenance Obligations.**

(1) The Grantors shall, at their sole cost and expense, perform all items of normal cleaning and clearing of the Sidewalks, such as snow plowing, sanding and salting, excluding repairing of cracks, potholes, and other Sidewalk defects which shall be performed by the City, as provided in Section 5.1(a) above.

(2) Notwithstanding the above, a Party shall only be responsible for that portion of the Sidewalk located within such Party's respective parcel.

(3) The Grantors shall have no maintenance obligations with regard to Municipal Utilities.

(4) The Grantors shall have no maintenance obligations with regard to the waterproofing under the public ways and Sidewalks located above the Parking Garage and/or the Truck Tunnel except as specifically set forth in Section 2.1(c) of this Agreement, the Parking Garage Lease and/or the Development Agreement.

## ARTICLE 6 DEFAULT AND REMEDIES

6.1 **Default.** If a Party (the "Defaulting Party") shall fail to pay or perform any of its obligations hereunder, then the other Parties may give written notice to the Defaulting Party specifying the respect or respects in which it is not proceeding to pay or perform such obligations and if, upon expiration of thirty (30) days after the giving of such notice, as appropriately extended for Force Majeure, the Defaulting Party is still not paying or performing such obligation, then, subject to Force Majeure, such other non-defaulting Party or Parties may pursue such remedies as may be available at law or in equity.

6.2 **Interest on Unpaid Amounts.** Any amount payable by one Party to another Party under this Agreement shall be due and payable within thirty (30) days after receipt of the statement therefor. If, at any time, a Party shall fail within thirty (30) days after written demand therefor to pay to another Party (the "Creditor Party") any sum of money due the Creditor Party pursuant to this Agreement, then, the amount so owed shall bear interest from the date the same was initially due until paid in full at the Default Rate.

6.3 **Cumulative Remedies.** The rights and remedies of the Creditor Party, provided for in this Article 6 or elsewhere in this Agreement, are cumulative and not intended to be exclusive of any other remedies to which Creditor Party may be entitled at law or in equity. The exercise by such Party of any right or remedy to which it is entitled hereunder shall not preclude or restrict the exercise of any other such right or remedy.

6.4 **No Right of Set-Off.** Each claim of a Party arising under this Agreement shall be separate and distinct, and no defense, or set-off, arising against the enforcement of any lien or other claim of any Party shall thereby be or become a defense or set-off against the enforcement of any other lien or claim.

6.5 **Delays; Waivers.** Except as otherwise expressly provided in this Agreement, any delay by any Party in asserting any right or remedy under this Agreement shall not operate as a waiver of any such rights or limit such rights in any way; and any waiver in fact made by such Party with respect to a default by another Party shall not be considered as a waiver of rights with respect to any other default by the non-defaulting Party, or with respect to the particular default, except to the extent specifically waived, in writing. It is the intent of the Parties that this provision will enable each Party to avoid the risk of being limited in the exercise of any right or remedy provided in this Agreement by waiver, laches or otherwise.

6.6 **Rights of Lenders.** The City is aware that financing for the Project Property may be provided, in whole or in part and from time to time, by one or more lenders. In the event of a default by the Grantors, the City shall provide notice of such default, at the same time notice is provided to the Defaulting Party, to any lender previously identified to the City by said Defaulting Party. If a lender is permitted, under the terms of its agreement with such Defaulting Party, to cure the default and/or to assume the Defaulting Party's position with respect to this Agreement, the City agrees to recognize such rights of lender granted in lender's agreement with such Defaulting Party and to otherwise permit lender to assume all of the rights and obligations of the Defaulting Party under this Agreement.

6.7 **Subordination.** This Agreement, and any amendments thereto, shall be superior to any and all mortgages, deeds of trust, ground leases and other instruments in the nature of a mortgage, now or any time hereafter, a lien or liens on the property of which the Project Property are a part. Any future mortgagee shall deliver a commercially reasonable agreement to subordinate its mortgage, deed of trust, ground lease or other instrument in the nature of a mortgage to the terms of this Agreement.

## ARTICLE 7 MISCELLANEOUS

7.1 **No Merger** Unless Grantors elect otherwise, there shall be no merger of the rights, estates and easements granted hereby on account of the fact that the interests of the Grantors and the City hereunder may from time to time be held, directly or indirectly, by the same person or persons.

7.2 **Force Majeure.** Whether stated or not, all periods of time in this Agreement are subject to this Section 7.2. Neither the City nor the Grantors, as the case may be, shall be considered in default of its obligations under this Agreement in the event of enforced delay due to (a) causes beyond its control and without its fault or negligence, including, but not restricted to, acts of God, acts of public enemy, acts of the federal, state or local government, acts of the other Party, acts of third parties, litigation concerning the validity and enforceability of this Agreement or relating to transactions contemplated hereby (including the effect of petitions for initiative or referendum), fires, floods, epidemics, quarantine, restrictions, strikes, embargoes, labor disputes, and unusually severe weather or the delays of a contractor, subcontractors or materialmen due to such causes, nuclear radiation, acts of a public enemy, war, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), declaration of national emergency, insurrection, riot, labor strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain, condemnation, or other taking by the action of any Governmental Authority on behalf of any public, quasi-public, or private entity, or declaration of moratorium or similar hiatus directly affecting any portion of the Project Property (whether permanent or temporary) by any public, quasi-public or private entity except as contemplated by this Agreement; (b) the order, judgment, action, or determination of any court, administrative agency, Governmental Authority or other governmental body (collectively, an "Order") which adversely affects the construction or completion of the CitySquare Project (except for actions of the City specifically permitted under this Agreement), or the suspension, termination, interruption, denial, or failure of renewal (collectively, a "Failure") of issuance of any permit, license, consent, authorization, or approval necessary to the construction or completion of the CitySquare Project, unless it is shown that such Order or Failure is the result of the grossly negligent, willful or intentional action or inaction of the Party claiming the delay or is the result of the grossly negligent or willful violation of Applicable Laws; provided, however, that the contesting in good faith of any such Order or Failure shall not constitute or be construed or deemed as a waiver by a Party of Force Majeure; (c) the denial of an application, failure to issue, or suspension, termination, delay or interruption (collectively, a "Denial") in the issuance or renewal of any permit, approval or consent required or necessary in connection with the construction or completion of the CitySquare Project, if such Denial is not also the result of a grossly negligent act or omission or willful violation by the Party; provided that the contesting in good faith or the failure in good faith to contest any such Denial shall not constitute or be

construed or deemed as such a wrongful or grossly negligent act or omission on the part of the Party; (d) the failure of any contractor, subcontractor or supplier to furnish services, materials or equipment in connection with the Construction of the CitySquare Project if such failure is caused by Force Majeure as defined herein, if and to the extent, and only so long as the Party claiming the delay is not reasonably able, after using commercially reasonable efforts, to obtain substitute services, materials or equipment of comparable quality and cost; (e) without limiting the foregoing, but only with respect to excusing the Grantor's performance hereunder, any action or inaction of the City, its elected officials, officers, agents (including, but not limited to, the Construction Program Manager, as defined in the Development Agreement), agencies, departments, committees or commissioners which action is reasonably required by Applicable Laws and which unreasonably delays the Grantor's ability to comply with any construction schedule or requirement set forth by this Agreement; and (f) bankruptcy, insolvency or similar action, or any foreclosure or other exercise of remedies of any lender, with respect to any contractor, subcontractor or supplier of the Grantee (collectively, "Force Majeure"). In the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the Party claiming delay shall be extended for a period of the enforced delay; provided that the Party seeking the benefit of the provisions of this Section shall, within ten (10) days after such Party knows of any such enforced delay, first notify the other Parties of the specific delay in writing and claim the right to an extension for the period of the enforced delay; provided, however, that either Party's failure to notify the other Party of an event constituting an enforced delay shall not alter, detract from or negate its character as an enforced delay if such event of enforced delay was not known or reasonably discoverable by such Party. Notwithstanding anything to the contrary in this Agreement, no Force Majeure event shall excuse performance by Grantees or be considered to continue in effect for more than two (2) years with respect to any particular Force Majeure event or three (3) years in the aggregate for all Force Majeure events.

**7.3 Notices.** Any and all notices, demands, requests, submissions, approvals, consents, disapprovals, objections, offers or other communications or documents required to be given, delivered or served, or which may be given, delivered or served, under or by the terms and provisions of this Agreement or pursuant to law or otherwise, shall be in writing and shall be delivered by hand or sent by registered or certified mail, return receipt requested, addressed if to City to:

City Manager  
City Hall  
455 Main Street  
Worcester, MA 01608

with a copy to:

City Solicitor  
City Hall  
455 Main Street  
Worcester, MA 01608

or to such other address as the City may from time to time designate by written notice to Grantor;

or if to Worcester Renaissance addressed to:

Worcester Renaissance LLC  
c/o Berkeley Investments, Inc.  
121 High Street  
Boston, MA 02110  
Attn: Young K. Park

with a copy to:

Robert E. Longden, Esquire  
Bowditch & Dewey, LLP  
311 Main Street, P.O. Box 15156  
Worcester, MA 01615-0156

or if to Worcester Renaissance Towers addressed to:

Worcester Renaissance Towers LLC  
c/o Berkeley Investments, Inc.  
121 High Street  
Boston, MA 02110  
Attn: Young K. Park

with a copy to:

Robert E. Longden, Esquire  
Bowditch & Dewey, LLP  
311 Main Street, P.O. Box 15156  
Worcester, MA 01615-0156

or if to Worcester Renaissance C & D LLC addressed to:

Worcester Renaissance C & D LLC  
c/o Berkeley Investments, Inc.  
121 High Street  
Boston, MA 02110  
Attn: Young K. Park

with a copy to:

Robert E. Longden, Esquire  
Bowditch & Dewey, LLP  
311 Main Street, P.O. Box 15156  
Worcester, MA 01615-0156

or to such other address as the Grantors may from time to time designate by written notice to City, or to such other agent or agents as may be designated in writing by any Party. The earlier of: (a) the date of delivery by hand, or (b) the date of delivery or upon which delivery was refused as indicated on the registered or certified mail return receipt shall be deemed to be the date such notice or other submission was given.

7.4 **Severability**. If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

7.5 **Interference with Other Parties' Operations**. In fulfilling obligations and exercising rights under this Agreement, the Parties shall use their best efforts to keep interference with the property of the other Parties and the operations of the other Parties to a minimum and, to that end, except in Emergency Situations, will give to the other Parties reasonable advance written notice, but not less than ten (10) days' notice of work which may so interfere, and will arrange with the other Parties for reasonable and definite times and conditions under which any such work shall be done.

7.6 **Invalid Provisions**. The invalidity of any covenant, restriction, condition, limitation or any other part or provisions of this Agreement shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Agreement.

7.7 **Headings for Reference Only**. The headings of Articles and Sections in this Agreement are for convenience of reference only and shall not in any way limit or define the content or substances of the Articles or Sections.

7.8 **Amendment Procedure**. This Agreement may be amended only by an instrument signed and duly acknowledged by (a) the Grantors, (b) the City, and (d) any mortgagees of the Grantors of which the City has received prior written notice, if required by such mortgagees. Any amendment to this Agreement shall be recorded in the Registry and shall become effective upon such recording.

7.9 **Waiver**. The Parties waive a trial by jury of any and all issues arising in any action or proceeding between them or their successors or assigns under or connected with this Agreement, or any of its provisions, or any negotiations in connection therewith.

7.10 **Bind and Inure**. The covenants and agreements herein contained shall be binding on and inure to the Grantors and the City, and their respective successors and assigns. Notwithstanding the foregoing, the City may not assign its rights and/or obligations hereunder. The City agrees that the Grantors may assign their respective interests in this Agreement to any successor person or entity, or to any lender providing financing for the Project without the

consent of, but with prior notice to, the City, provided that such assignment to a lender does not relieve the Grantors of their obligations hereunder.

7.11 **Limitation of Liability.** Anything contained in this Agreement to the contrary notwithstanding, but without limitation of the City's equitable rights and remedies, the liability of any defaulting Grantor under this Agreement shall be enforceable only out of the defaulting Grantor's respective interest in the Project Property, and there shall be no other recourse against, or right to seek a deficiency judgment against the non-defaulting Grantors, either jointly or severally, nor shall there be any personal liability on the part of any of their respective members, managers, officers or employees, with respect to any obligations to be performed hereunder.

7.12 **Captions.** The captions of this Agreement are for convenience and reference only and in no way define, limit or describe the scope or intent of this Agreement, nor in any way affect this Agreement.

7.13 **Table of Contents.** The Table of Contents preceding this Agreement, but under the same cover, is for the purpose of convenience and reference only and is not to be deemed or construed in any way as part of this Agreement, nor as supplemental thereto or amendatory thereof.

7.14 **Massachusetts Law Governs.** This Agreement shall be governed exclusively by, and construed in accordance with, the laws of The Commonwealth of Massachusetts.

7.15 **Time of the Essence.** Time shall be of the essence hereof.

7.16 **No Partnership or Joint Venture.** Nothing contained in this Agreement shall be construed to create a partnership or joint venture between the City and the Grantors, nor shall either party be liable for any debts incurred by the other party in the conduct of its business or affairs, nor shall either party be deemed the agent or representative of the other for any purpose or in any manner under this Agreement, except as otherwise expressly provided for herein.

7.17 **Further Assurances.** At any time and from time to time, each of the parties hereto agrees, upon the written request of any other party, to execute and, if required, acknowledge and record, all such amendments hereto or other documents as may reasonably be required to effectuate the intents and purposes of this Agreement. Without limiting the generality of the foregoing, each of the parties further agrees to consent to modifications to this Agreement to the extent that any such modifications are reasonably requested by a perspective mortgagee of any party, provided that modifications so requested do not limit any grant of easement or adversely affect the rights of any party under this Agreement without the consent of such party.

7.18 **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all such counterparts shall constitute one and the same agreement, binding on the Parties.

7.19 **Sovereign Immunity.** Nothing in this Agreement shall be construed as a waiver by the City of governmental sovereign immunity.

[SIGNATURE PAGE TO FOLLOW]

Executed as an instrument under seal as of the day and year first above written.

**CITY OF WORCESTER**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved as to form:

**OFFICE OF THE CITY SOLICITOR**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**WORCESTER RENAISSANCE LLC, a  
Delaware limited liability company**

By: Worcester Renaissance Holdings LLC, a  
Delaware limited liability company,  
its sole member

By: Berkeley Worcester MGR LLC, a  
Delaware limited liability company,  
a manager

By: Berkeley Investments, Inc., a  
Massachusetts corporation,  
its manager

By: \_\_\_\_\_  
Name: Young K. Park  
Title: President and Treasurer

**WORCESTER RENAISSANCE TOWERS LLC, a  
Delaware limited liability company**

By: Worcester Renaissance Holdings LLC, a  
Delaware limited liability company,  
its sole member

By: Berkeley Worcester MGR LLC, a  
Delaware limited liability company,  
a manager

By: Berkeley Investments, Inc., a  
Massachusetts corporation,  
its manager

By: \_\_\_\_\_  
Name: Young K. Park  
Title: President and Treasurer

**WORCESTER RENAISSANCE C & D LLC, a  
Delaware limited liability company**

By: Worcester Renaissance Holdings LLC, a  
Delaware limited liability company,  
its sole member

By: Berkeley Worcester MGR LLC, a  
Delaware limited liability company,  
a manager

By: Berkeley Investments, Inc., a  
Massachusetts corporation,  
its manager

By: \_\_\_\_\_  
Name: Young K. Park  
Title: President and Treasurer

THE COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

On this \_\_\_ day of \_\_\_\_\_, 200\_\_, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_ proved to me through satisfactory evidence of identification, namely a driver's license issued by The Commonwealth of Massachusetts, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose as Mayor of the City of Worcester.

\_\_\_\_\_  
Notary Public

My commission expires:

THE COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

On this \_\_\_ day of \_\_\_\_\_, 200\_\_, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_ proved to me through satisfactory evidence of identification, namely a driver's license issued by The Commonwealth of Massachusetts, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose as Solicitor of the City of Worcester.

\_\_\_\_\_  
Notary Public

My commission expires:

THE COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

On this \_\_\_ day of \_\_\_\_\_, before me, the undersigned Notary Public, personally appeared Young K. Park, President and Treasurer of Berkeley Investments, Inc., the manager of Berkeley Worcester MGR LLC a manager of Worcester Renaissance Holdings LLC, the sole member of Worcester Renaissance LLC, proved to me through satisfactory evidence of identification, namely a driver's license issued by The Commonwealth of Massachusetts, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose as President and Treasurer of Berkeley Investments, Inc., the manager of Berkeley Worcester MGR LLC, a manager of Worcester Renaissance Holdings LLC, the sole member of Worcester Renaissance LLC, Worcester Renaissance Towers LLC, and Worcester Renaissance C & D LLC.

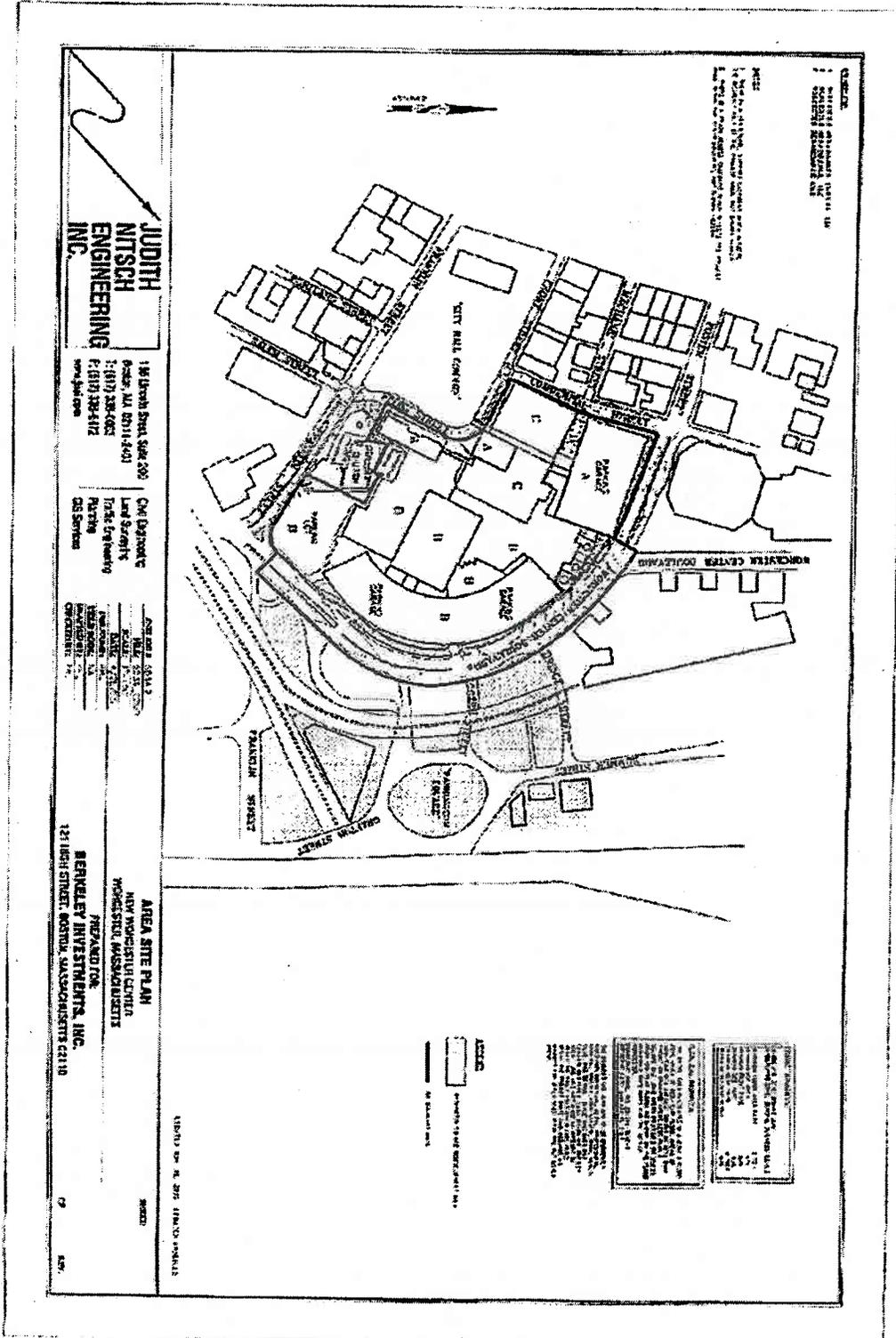
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Notary Public

My commission expires:

# EXHIBIT A

## PROJECT PROPERTY PLAN



**JUDITH NITSCH ENGINEERING INC.**  
 18 Lincoln Street, Suite 200  
 Boston, MA 02111-4431  
 T: (617) 288-4025  
 F: (617) 288-4112  
 www.jne.com

ONE DESIGN  
 LAND SURVEYING  
 PLANNING  
 CIVIL SERVICES

AREA 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

**AREA SITE PLAN**  
 NEW NORFOLK CENTER  
 WYOMING STREET, MASSACHUSETTS  
 PREPARED FOR:  
**BERKELEY INVESTMENTS, INC.**  
 121 HIGH STREET, BOSTON, MASSACHUSETTS 02110

**LEGEND**  
 1. EXISTING BUILDING FOOTPRINT  
 2. EXISTING PARKING LOT  
 3. EXISTING STREET  
 4. EXISTING DRIVEWAY  
 5. EXISTING UTILITY  
 6. EXISTING LANDSCAPE  
 7. EXISTING FENCE  
 8. EXISTING SIGNAGE  
 9. EXISTING LIGHTING  
 10. EXISTING TREES  
 11. EXISTING WATERWAYS  
 12. EXISTING UTILITIES  
 13. EXISTING EROSION CONTROL  
 14. EXISTING SECURITY  
 15. EXISTING ACCESSORIES

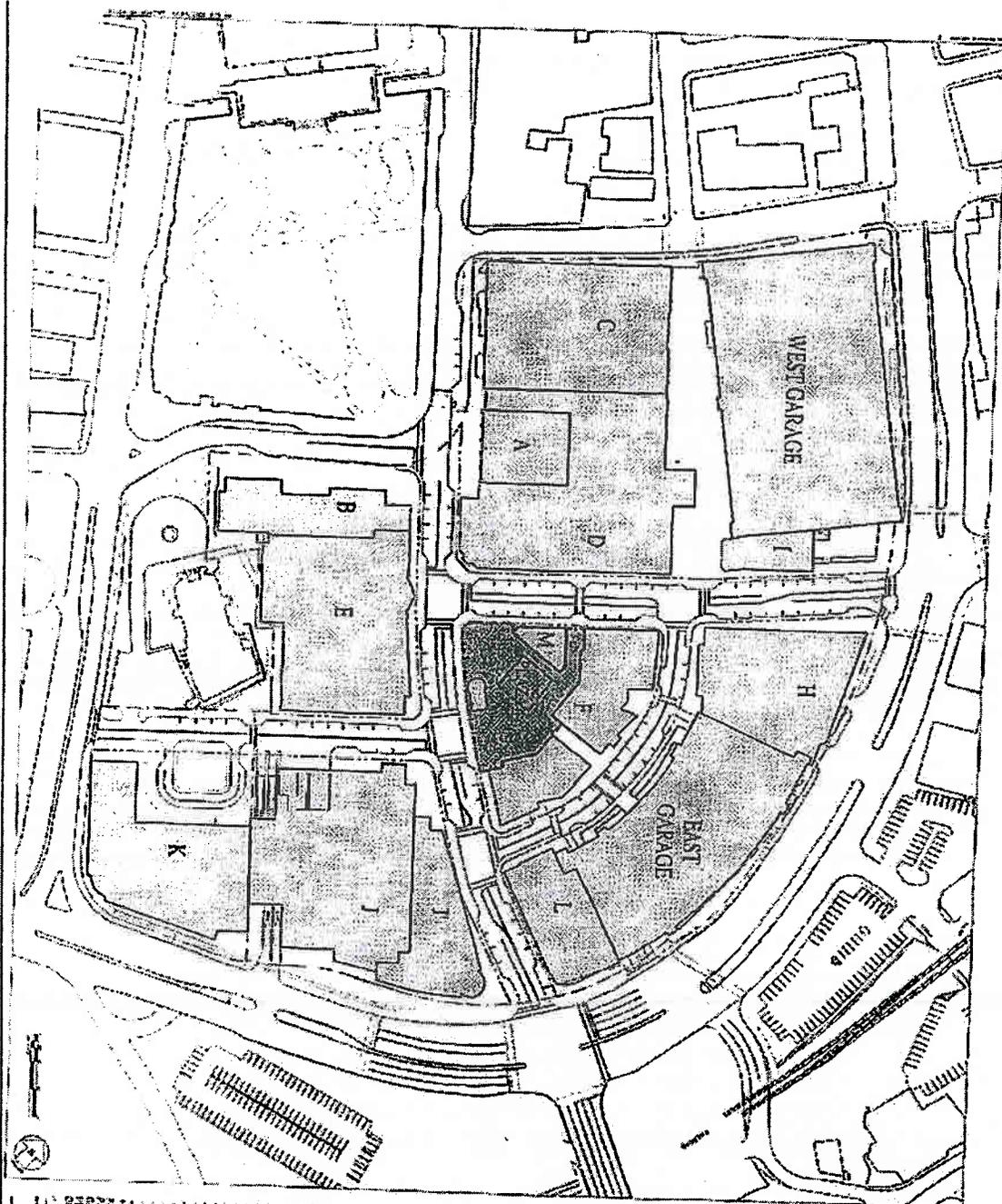
**NOTES**  
 1. THIS PLAN IS A PRELIMINARY SITE PLAN AND IS SUBJECT TO THE APPROVAL OF THE CITY OF BOSTON.  
 2. THE CITY OF BOSTON HAS REVIEWED THIS PLAN AND HAS ISSUED A PERMIT TO CONSTRUCT.  
 3. THE PERMIT TO CONSTRUCT IS VALID FOR 180 DAYS FROM THE DATE OF ISSUANCE.  
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 10. THE PERMIT TO CONSTRUCT IS VALID FOR 180 DAYS FROM THE DATE OF ISSUANCE.



EXHIBIT C

PLAZA PARCEL PLAN

prepared by Arrowstreet and dated December 1, 2005

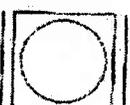


SK-061

PREPARED BY  
ARROWSTREET  
ARCHITECTS  
PLAZA PARCEL PLAN  
12/01/05

NO.	DESCRIPTION	DATE
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50	PLAZA PARCEL PLAN	12/01/05

ARROWSTREET  
ARCHITECTS  
1201 10th Street, Suite 100  
San Francisco, CA 94103  
Tel: 415.774.2000  
Fax: 415.774.2001  
www.arrowstreet.com



PLAZA  
PARCEL PLAN  
12/01/05

Reddy  
Investments  
Inc.

