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**PARKING SYSTEM AGREEMENT**

dated as of

May [●], 2019

by and between

**THE METROPOLITAN GOVERNMENT  
OF NASHVILLE AND DAVIDSON COUNTY**

and

**PRESTON HOLLOW CAPITAL, LLC**

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**TABLE OF CONTENTS**

	<b><u>Page</u></b>
ARTICLE 1 DEFINITIONS AND INTERPRETATION .....	2
Section 1.1. Definitions.....	2
Section 1.2. Number and Gender .....	23
Section 1.3. Headings .....	23
Section 1.4. References to this Agreement .....	23
Section 1.5. References to Any Person.....	24
Section 1.6. Meaning of Including.....	24
Section 1.7. Meaning of Discretion .....	24
Section 1.8. Meaning of Notice .....	24
Section 1.9. Consents and Approvals .....	24
Section 1.10. Trade Meanings .....	24
Section 1.11. Laws.....	24
Section 1.12. Currency.....	24
Section 1.13. Generally Accepted Accounting Principles .....	24
Section 1.14. Calculation of Time .....	24
Section 1.15. Approvals, Consents and Performance by Metro .....	24
Section 1.16. Incorporation of Schedules .....	25
Section 1.17. Interpretation of Agreement.....	25
ARTICLE 2 THE TRANSACTION; CLOSING; CONDITIONS PRECEDENT; COVENANTS.....	25
Section 2.1. Grant Right to Provide Metered Parking Activities and Use of Metered Parking System Assets.....	25
Section 2.2. Closing .....	26
Section 2.3. Payments and Flow of Funds.....	26
Section 2.4. Conditions Precedent; Termination .....	30
Section 2.5. Execution and Deposit .....	32
Section 2.6. Covenants.....	33
Section 2.7. Intended Treatment for Federal and State Income Tax Purposes .....	36
Section 2.8. Closing Deliveries.....	37
ARTICLE 3 TERMS OF PARKING RIGHTS AND OBLIGATIONS.....	37
Section 3.1. Metro Preservation of Metered Parking System and Present Condition.....	37
Section 3.2. Metered Parking System Operations.....	38
Section 3.3. Operator Engagement .....	41
Section 3.4. Authorizations; Qualifications .....	42
Section 3.5. No Encumbrances .....	43
Section 3.6. [Deliberately Omitted] .....	44
Section 3.7. Rights of Metro to Access and Perform Work on the Metered Parking System.....	44
Section 3.8. Payment of Taxes.....	45
Section 3.9. Utilities.....	45
Section 3.10. Notices of Defaults and Claims .....	46
Section 3.11. Assignment of Operating Agreements and Plans.....	46
Section 3.12. Metro Use of Information and Records .....	47
Section 3.13. Metering Devices .....	47
Section 3.14. Withheld Payments by Metro .....	47
Section 3.15. Naming Rights and Commercial Advertisements and Activities.....	47
Section 3.16. Reversion of Metered Parking System.....	48

Section 3.17. Police, Fire, Emergency, and Public Safety Access Rights .....	48
ARTICLE 4 CAPITAL IMPROVEMENTS; PROJECT ENHANCEMENTS .....	49
Section 4.1. Parking Company Responsibility for Capital Improvements .....	49
Section 4.2. Authorizations Related to Capital Improvements .....	49
Section 4.3. Metro Responsibility for Capital Improvements.....	49
Section 4.4. Required Payment Options .....	49
Section 4.5. Project Enhancements .....	49
ARTICLE 5 MODIFICATIONS .....	50
Section 5.1. Metro Directives .....	50
Section 5.2. Parking Company Requests .....	50
Section 5.3. Performance of Modifications .....	50
ARTICLE 6 OPERATING STANDARDS .....	50
Section 6.1. Compliance with Operating Standards .....	50
Section 6.2. Proposed Operating Standards .....	51
Section 6.3. Modified Operating Standards .....	51
ARTICLE 7 PROJECT REVENUES .....	52
Section 7.1. Metered Parking Fees .....	52
Section 7.2. Designation and Removal of Metered Parking Spaces .....	53
Section 7.3. Notice .....	54
Section 7.4. Payments for Permanent Removal.....	54
Section 7.5. Adjustments to Removal Payment.....	55
Section 7.6. Temporary Closure of Metered Parking Spaces .....	55
Section 7.7. Additional Metered Parking Spaces.....	56
Section 7.8. Changes in Parking Rules, Regulations and Adjudication.....	57
Section 7.9. Compensation for Operational Adjustments.....	57
Section 7.10. Right to Challenge .....	57
Section 7.11. Meter Removal Basket.....	57
Section 7.12. Meter Bagging .....	57
Section 7.13. Residential Permits .....	58
Section 7.14. Special Events .....	58
ARTICLE 8 REPORTING; AUDITS; INSPECTIONS; DAY-TO-DAY MANAGEMENT .....	58
Section 8.1. Reports .....	58
Section 8.2. Information .....	59
Section 8.3. Inspection, Audit and Review Rights of Metro .....	59
Section 8.4. Audits, Assistance, Inspections and Approvals .....	61
Section 8.5. Quarterly Meetings and Annual Meetings .....	61
Section 8.6. Day-to-Day Supervising and Administration Activities .....	64
ARTICLE 9 REPRESENTATIONS AND WARRANTIES .....	65
Section 9.1. Representations and Warranties of Metro.....	65
Section 9.2. Representations and Warranties of Parking Company.....	67
Section 9.3. Non-Waiver.....	68
Section 9.4. Survival .....	68
ARTICLE 10 FINANCE OBLIGATIONS .....	69
Section 10.1. Parking Company’s Obligations, Net Worth Covenant and Performance Guaranty .....	69
Section 10.2. Metro’s Obligations .....	69

Section 10.3. Parking Company’s Obligation for Estoppel Certificates.....	70
Section 10.4. Prohibited Tax Shelter Transactions .....	70
Section 10.5. Ownership of Assets and Priority Rights of Metro.....	70
ARTICLE 11 COMPLIANCE WITH LAWS .....	71
Section 11.1. Compliance with Laws.....	71
Section 11.2. Nondiscrimination.....	71
Section 11.3. MBE Participation .....	71
Section 11.4. Confidentiality .....	71
Section 11.5. Ethical Standards .....	72
Section 11.6. Employment.....	72
Section 11.7. American Disabilities Act.....	73
Section 11.8. Iran Divestment Act.....	73
ARTICLE 12 INDEMNIFICATION.....	73
Section 12.1. Indemnification by Operator.....	73
Section 12.2. Third-Party Claims.....	73
Section 12.3. Direct Claims .....	74
Section 12.4. Failure to Give Timely Notice .....	75
Section 12.5. Reductions and Subrogation .....	75
Section 12.6. Payment and Interest.....	75
Section 12.7. [Intentionally Omitted] .....	75
Section 12.8. Other Matters .....	75
Section 12.9. Offset Rights; Limitations on Certain Damages .....	75
Section 12.10. Survival.....	76
Section 12.11. Operator Provisions. ....	76
ARTICLE 13 INSURANCE.....	76
Section 13.1. Insurance Coverage Required.....	76
Section 13.2. Additional Requirements .....	77
Section 13.3. Damage and Destruction.....	78
ARTICLE 14 ADVERSE ACTIONS .....	79
Section 14.1. Adverse Action and Compensation Event Payment Generally.....	79
Section 14.2. Termination.....	80
Section 14.3. Right of Metro to Remedy .....	81
Section 14.4. Other Actions by Governmental Authorities .....	81
Section 14.5. Beneficial Events .....	81
Section 14.6. . ....	81
ARTICLE 15 DELAY EVENTS AND COMPENSATION EVENT PAYMENT.....	81
Section 15.1. Delay Events .....	81
Section 15.2. Relationship to Compensation Event.....	83
Section 15.3. Payment of Compensation Event Payment.....	83
Section 15.4. Certainty of Compensation Event Payment.....	84
ARTICLE 16 DEFAULTS; LETTERS OF CREDIT.....	84
Section 16.1. Default by Parking Company.....	84
Section 16.2. Defaults by Metro .....	86
Section 16.3. Consequences of Termination or Reversion .....	89
Section 16.4. Termination Other Than Pursuant to Agreement.....	90

ARTICLE 17 RESTRICTIONS ON TRANSFERS .....	91
Section 17.1. Transfers by Parking Company.....	91
Section 17.2. Assignment by Metro.....	92
Section 17.3. Transfers to Facilitate Tax-Exempt Financing.....	92
ARTICLE 18 LENDERS .....	94
Section 18.1. Financing Agreements .....	94
Section 18.2. Notices and Payments to Secured Lender.....	96
Section 18.3. Secured Lender’s Right to Cure.....	97
Section 18.4. Rights of the Secured Lender.....	97
Section 18.5. Termination of this Agreement; New Agreement.....	98
Section 18.6. Recognition of Secured Lender.....	99
Section 18.7. Metro’s Right to Purchase Financing Agreements .....	99
Section 18.8. Assignment and Assumption Agreement.....	100
Section 18.9. Right to Dispute Resolution.....	101
ARTICLE 19 TERMINATION FOR CONVENIENCE BY METRO .....	102
Section 19.1. Termination for Convenience by Metro.....	102
ARTICLE 20 DISPUTE RESOLUTION .....	102
Section 20.1. Scope.....	102
Section 20.2. Informal Dispute Resolution Procedures .....	102
Section 20.3. Mediation .....	102
Section 20.4. General; Jurisdiction .....	102
Section 20.5. Provisional Remedies.....	103
Section 20.6. Tolling.....	103
Section 20.7. Technical Dispute Resolution .....	103
ARTICLE 21 MISCELLANEOUS .....	104
Section 21.1. Notice.....	104
Section 21.2. Entire Agreement .....	104
Section 21.3. Amendment.....	105
Section 21.4. Waiver of Rights .....	105
Section 21.5. Severability .....	105
Section 21.6. Governing Law .....	105
Section 21.7. Submission to Jurisdiction .....	105
Section 21.8. Further Acts .....	106
Section 21.9. Costs.....	106
Section 21.10. Interest.....	106
Section 21.11. Inurement and Binding Effect.....	106
Section 21.12. Information, Intellectual Property, Records.....	106
Section 21.13. No Partnership or Third-Party Beneficiaries.....	109
Section 21.14. Cumulative Remedies .....	109
Section 21.15. Counterparts; Facsimile Execution .....	109

**SCHEDULES**

Schedule 1	Metered Parking System Contracts
Schedule 2	Operating Standards
Schedule 3	Metered Parking System Assets
Schedule 4	Parking Meter Removal
Schedule 5	Parking Fees

Schedule 6	Financial Information
Schedule 7	Special Events
Schedule 8	Metro Projects
Schedule 9	Metro Withheld Payments
Schedule 10	Capital Improvements Plan
Schedule 11	Business Plan

THIS PARKING SYSTEM AGREEMENT (this “Agreement”) is made and entered into as of May [●], 2019 by and between THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, a political subdivision of the State of Tennessee, by and through the Metropolitan Traffic and Parking Commission (“Metro”) and PRESTON HOLLOW CAPITAL, LLC, a Delaware limited liability company (“Parking Company”).

## RECITALS

WHEREAS, Section 11.907 of the Charter provides the following as to the Commission:

Sec. 11.907. - Management and control of parking meters, garages and other traffic facilities.

The commission shall have power to control and manage parking facilities in any metropolitan street or road, including the installation of parking meters or other necessary equipment in connection therewith. The commission shall prescribe and may revise a schedule of service charges in connection with the use of parking meters, a copy of which schedule shall be kept on file and subject to public inspection at the office of the commission and at the office of the metropolitan clerk.

The commission shall also have control and management of any public parking garage or other traffic facilities, and with the acquisition, construction and establishment of the same. The commission may enter into lease agreements with private operators to operate the parking facilities owned by the metropolitan government. The commission is authorized to collect rents, fees or other charges for such parking garage and other traffic facilities as it may operate and manage.

All moneys collected by the commission from parking meters, or any other service charges, shall be remitted by it to the metropolitan treasurer, who shall keep such moneys in a separate account earmarked for traffic and parking improvements; and

WHEREAS, Metro determined that its on-street metered parking program needed modernization, was not as efficient and convenient as it could be, and did not obtain for Metro all the value that it was possible to obtain from this program, for funding traffic and parking improvements, as described in the Charter language quoted above; and

WHEREAS, because the Charter language quoted above authorizes Metro to enter into lease agreements with private operators to operate parking facilities such as on-street metered parking within the rights of way of Metro, this effectively authorizes Metro to utilize a competitive proposal procurement process in contracting for the operation of the on-street metered parking within the rights of way of Metro; and

WHEREAS, Metro accordingly issued RFQ/I – Parking Management and Modernization Services (the “RFQ/I”) with the objective of soliciting respondent qualifications and detailed feedback from parking management experts regarding ways that Metro can improve its Metered Parking System; and

WHEREAS, based on Metro’s review of the RFQ/I submissions, Metro determined to proceed with a formal RFP regarding the Parking Management and Modernization Services (the “RFP”); and

WHEREAS, on April 24, 2019, Metro awarded the RFP to Parking Company and conducted final contract negotiations with Parking Company which have concluded with this Agreement; and

WHEREAS, the Commission has approved the execution and delivery of this Agreement; and

WHEREAS, Metro Council has adopted an ordinance authorizing the execution and delivery of this Agreement; and

WHEREAS, Metro has established a Metered Parking System and Metro desires to grant Parking Company the right, on Metro's behalf, to operate, maintain and improve the Metered Parking System for the Term (as defined herein) of this Agreement, all as hereinafter provided and in consideration of the payments and activities to be made by Parking Company hereunder; and

WHEREAS, Parking Company desires to accept the responsibility, on Metro's behalf, to operate, maintain and improve the Metered Parking System for the Term (as defined herein) of this Agreement, all as hereinafter provided and in consideration of the payments to be made to Parking Company from the revenues of the Metered Parking System hereunder; and

WHEREAS, the Parties intend that Metro will maintain ownership of the Metered Parking System and the right, in Metro's sole discretion, to dictate the means, manner and time in which the Metered Parking System will be operated (including whether to implement changes to rates, meters, hours of operation, system regulations, fees, street usage, curb design and maintenance, meter closures and other key public policy matters), subject to Metro's obligation to make Compensation Event Payments as provided for herein to the extent that Metro's dictates constitute Compensation Events or Adverse Actions; and

WHEREAS, the Parties intend that day to day operational discretion over the Metered Parking System will reside with Parking Company, provided that Parking Company must operate the Metered Parking System in compliance with this Agreement and the agreed Business Plan proposed by Parking Company and updated from time to time with Approval of Metro; and

WHEREAS, Parking Company, with the consent and approval of Metro, intends to retain LAZ Parking Georgia LLC as the initial Operator; and

WHEREAS, Parking Company, with the consent and approval of Metro, intends, promptly after the Closing Date, to assign and transfer this Agreement and the Parking Company Interest to the AZIDA Assignee, with LAZ Parking Georgia LLC continuing as the initial Operator after such assignment and transfer;

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, the Parties hereto, intending to be legally bound, agree as follows:

## **ARTICLE 1 DEFINITIONS AND INTERPRETATION**

**Section 1.1. Definitions.** Unless otherwise specified or the context otherwise requires, for the purposes of this Agreement the following terms have the following meanings:

“AA-Dispute Notice” is defined in Section 14.1(c).

“AA-Notice” is defined in Section 14.1(c).

“AA-Preliminary Notice” is defined in Section 14.1(c).



“Additional Metered Parking Spaces” is defined in Section 7.7(b).

“Adverse Action” is defined in Section 14.1(a).

“Affected Property” means (i) any public or private property, including a park, highway, street, road, roadway, railroad, rail or other transit way, and any ancillary facilities related to any of the foregoing, under the jurisdiction and control of Metro, any other Governmental Authority or any other Person that is located above, within the boundaries of, or intersects with the Metered Parking Spaces or any part thereof and (ii) each Metered Parking Space.

“Affiliate”, when used to indicate a relationship with a specified Person, means a Person that, directly or indirectly, through one or more intermediaries has a Ten Percent (10%) or more voting or economic interest in such specified Person or controls, is controlled by or is under common control with (which shall include, with respect to a managed fund or trust, the right to direct or cause the direction of the management and policies of such managed fund or trust as manager, advisor, supervisor, sponsor or trustee pursuant to relevant contractual arrangements) such specified Person, and a Person shall be deemed to be controlled by another Person, if controlled in any manner whatsoever that results in control in fact by that other Person (or that other Person and any Person or Persons with whom that other Person is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise (for purposes of this definition, a managed fund or trust shall be deemed to be an Affiliate of the Person managing, supervising, sponsoring or advising such fund or trust and a limited partner in a managed fund or trust shall be deemed to be an Affiliate of such fund or trust and of the Person managing, supervising, sponsoring or advising such fund or trust).

“Aggregate Parking Company Contributions” is defined in Section 2.3(d).

“Agreement” is defined in the preamble to this Agreement (including all Schedules referred to herein), as amended from time to time in accordance with the terms hereof.

“Annual Capital Return Payment” is defined in Section 2.3(h)(iv).

“Annual Meeting” means the first Quarterly Meeting occurring after the first of January of each Year.

“Annual Metro Payment” means an annual amount determined as of May 30th of each Year, commencing on the third Contract Year, equal to One Million Five Hundred Thousand Dollars (\$1,500,000) multiplied by a fraction, the numerator of which is the CPI most recently published prior to the date of determination and the denominator of which is the CPI most recently published prior to May 30, 2019. In no event will the Annual Metro Payment be less than \$1,500,000.

“Annual Metro Payment Shortfall” is defined in Section 2.3(h)(i).

“Annual Metro Payment Shortfall Interest” is defined in Section 2.3(h)(i).

“Applicable Parking Violations Fee” means the fine charged for a Parking Violation as of the date of Parking Violation.

“Approval”, “Approved”, “Approves”, “Approved by Metro” and similar expressions mean approved or consented to by Metro in accordance with the provisions of Section 1.15.

“Audit and Review” and similar expressions mean, with respect to any matter or thing relating to the (i) Metered Parking System, the Metered Parking System Operations or this Agreement, the performance by or on behalf of Metro of such reviews, investigations, inspections and audits relating to such matter or thing as Metro may reasonably determine to be necessary in the circumstances, and (ii) all deposits to and disbursements from the Metro Account, or such other such matters relating to Metro’s administration of the Metro Account as Parking Company may reasonably determine to be necessary or appropriate, in each case conducted in accordance with applicable United States industry accepted practices, if any, or as required by Law, but in accordance with the provisions of this Agreement.

“Authorization” means any approval, certificate of approval, authorization, consent, waiver, variance, exemption, declaratory order, exception, license, filing, registration, permit, notarization or other requirement of any Person that applies to the Metered Parking System or is reasonably required from time to time for the Metered Parking System Operations.

“AZIDA Assignee” is defined in Section 17.3(a).

“Bank Rate” means the six month daily yield curve rate for U.S. Treasury (or any successor rate thereto) as most recently reported by the U.S. Department of the Treasury (or any successor thereof) on or before the date of determination or if such yield curve is no longer available, a replacement rate reasonably acceptable to Parties or, absent agreement, by dispute resolution in accordance with Article 20.

“Beneficial Event” means (i) Parking Company’s compliance with or the implementation of any Metro Directive or any modified or changed Operating Standard subject to Section 6.3(b), and (ii) the occurrence of any other event that decreases current or anticipated Project Operating Expenses or Project Capital Expenses or increases current or anticipated Project Revenue, including without limitation, increases to the number of meters, increases in the Metered Parking Fee, increases in the Period of Operation, expansions of the Metered Parking System, beneficial changes in Law adopted by Metro or other such events.

“Bid Date” means April 12, 2019.

“Breach Notice” is defined in Section 21.12(c).

“Breakage Costs” means any breakage costs, make-whole premium payments, termination payments or other prepayment amounts (including debt premiums and interest rate hedge termination costs) that are required to be paid by Parking Company with respect to Parking Company Debt as a result of the early repayment of a Financing Agreement prior to the scheduled maturity date of Parking Company Debt. Such Breakage Costs shall be payable in connection with the principal repayment of any Parking Company Debt.

“Business Day” means any Day that is neither a Saturday, a Sunday nor a Day observed as a holiday by Metro, the State or the United States government.

“Business Plan” means a Document delivered by Parking Company at Closing, Approved by Metro as part of this Agreement and then updated and Approved from time to time by Parking Company and Metro as detailed herein. Parking Company will operate the Metered Parking System in accordance with the Business Plan and all actions taken by Parking Company in accordance with the Business Plan are hereby Approved by Metro. The Business Plan will at all times detail how Parking Company will achieve its goals under this Agreement while operating the Metered Parking System. The Business Plan will be updated from time to time and Approved by Metro as provided for herein. The Business Plan, as

updated from time to time, must include: (i) an executive summary providing an overview of the Metered Parking System performance to date and a narrative description of the business, operations, and activities that Parking Company intends to implement to generate Project Revenue, including any Project Enhancements; (ii) Parking Company's marketing strategy for the Metered Parking System; (iii) the Operations Plan with and accompanying Project Operating Expense budget for the next Contract Year and forecasted for the succeeding five Contract Years; (iv) the Capital Improvements Plan; (v) Parking Company's business plan for generating Other Project Revenues; (vi) financial forecasts for Project Revenue, including Metered Parking System Revenues and Other Project Revenue; and (vii) an overview of the industry and market, including opportunities and competitive challenges. The Business Plan must at all times provide for the operation of the Metered Parking System in accordance with the Operating Standards and the Parking Rules and Regulations. The initial Business Plan is attached hereto as Schedule 11 and is hereby Approved by Metro.

“Capital Expense Account” means an account with a Depository controlled by Parking Company and designated solely for payment of Project Capital Expenses.

“Capital Expense Required Reserve Amount” is an amount initially equal to the Parking Company's projection of anticipated Project Capital Expenses likely to be required during the initial Five (5) Years as of Closing. The Capital Expense Required Reserve Amount will be subject to adjustment from time to time as set forth in Section 2.3(c).

“Capital Improvements” means assets commonly referred to as capital investments (assets with a useful life longer than a year) and dedicated for use solely in connection with the Metered Parking System.

“Capital Improvements Plan” means the plan and rough specifications for repairs (as opposed to ordinary maintenance), installation, removal or replacement of Capital Improvements in the Metered Parking System, including a regularly updated capital expense budget for the next five Contract Years and forecasted for the Term, and schedule for Project Capital Expense investments with planned start and end dates.

“Casualty Cost” is defined in Section 13.3.

“CE-Dispute Notice” is defined in Section 15.3(d).

“CE-Notice” is defined in Section 15.3(a).

“CE-Preliminary Notice” is defined in Section 15.3(a).

“Change in Control” means, with respect to any Person, whether accomplished through a single transaction or a series of related or unrelated transactions and whether accomplished directly or indirectly, either (i) a change in ownership so that Fifty Percent (50%) or more of the direct or indirect voting or economic interests in such Person is transferred to a Person or group of Persons acting in concert, (ii) the power directly or indirectly to direct or cause the direction of management and policy of such Person, whether through ownership of voting securities, by contract, management agreement, or common directors, officers or trustees or otherwise, is transferred to a Person or group of Persons acting in concert or (iii) the merger, consolidation, amalgamation, business combination or sale of substantially all of the assets of such Person; provided however, that notwithstanding anything to the contrary set forth in this definition (A) clauses (i) and (ii) above shall apply to transactions in shares of a publicly traded company or other transactions involving a publicly traded company only if they cause such company to no longer be a publicly traded company, (B) Transfers of direct or indirect ownership interests in Parking Company

or the Operator (as applicable) between or among Persons that are Affiliates (including funds or similar entities managed by such Persons) shall not constitute a “Change in Control” for the purposes of this Agreement, (C) Transfers of shares of Parking Company or its direct or indirect parent pursuant to an initial public offering on the New York Stock Exchange, NASDAQ, London Stock Exchange or comparable securities exchange shall not constitute a “Change in Control,” (D) Transfers of direct or indirect ownership interest in Parking Company by any Equity Participant or its beneficial owner(s) to any Person shall not constitute a “Change in Control” so long as the Equity Participants or their beneficial owner(s) having, in the aggregate, more than Fifty Percent (50%) direct or indirect ownership interest in Parking Company as of the date of this Agreement retain, in the aggregate, more than Fifty Percent (50%) of the rights to elect directors, officers and managers of Parking Company.

“Charter” means the Charter of the Metropolitan Government of Nashville and Davidson County, Tennessee.

“City” means the geographic boundaries of Metro.

“Claim” means any demand, action, cause of action, suit, proceeding, arbitration, claim, judgment or settlement or compromise relating thereto which may give rise to a right to indemnification by Parking Company under Section 12.1.

“Closing” is defined in Section 2.2.

“Closing Date” is defined in Section 2.2.

“Closing Period” means the period between the date hereof up to the Time of Closing.

“Code” means the U.S. Code: Title 26. Internal Revenue Code.

“Commission” means the Metropolitan Traffic and Parking Commission of Metro.

“Compensation Event” means (i) Parking Company’s compliance with or the implementation of any Metro Directive or any modified or changed Operating Standard subject to Section 6.3(b), (ii) the occurrence of an Adverse Action, (iii) a “Delay Event” of the type described in clauses (iv) through (vi) in the definition thereof, (iv) the enactment (after the Bid Date) of a new Law or the modification, amendment or change in enforcement or interpretation of a Law (including a change in the application thereof by any Governmental Authority), in each case by Metro or the Commission, the effect of which actions, individually or in the aggregate, is reasonably expected to be principally borne by Parking Company and not generally by commercial enterprises within Davidson County, (v) the imposition or incurrence of certain Taxes, as contemplated in Section 3.8(b), and (vi) the occurrence of any other event that, under the terms of this Agreement, is explicitly described as a Compensation Event or explicitly requires a Compensation Event Payment, provided that a Compensation Event shall be limited to those actions that cause the Metered Parking System to drop below a level sufficient to pay: (a) Project Operating Expenses (and replenishment of the Operating Expense Account to ensure that the amount on deposit in the Operating Expense Account at no time is less than the amount of the current Operating Expense Required Reserve Amount), (b) Project Capital Expenses (and replenishment of the Capital Expense Account to ensure that the amount on deposit in the Capital Expense Account at no time is less than the amount of the then current Capital Expense Required Reserve Amount), (c) the Annual Metro Payment, (d) any applicable Annual Metro Payment Shortfalls and Annual Metro Payment Shortfall Interest owed to Metro, (e) any Metro Reserve Shortfall Payment and Metro Reserve Shortfall Payment Interest, (f) any deficiency of payments that should have been due to (x) Metro from an Audit and Review and (y) Parking Company from an Audit and Review, and (g) the Annual Capital Return Payment. None

of the Metro Projects will be deemed to give rise to a Compensation Event. A refusal or failure by Metro to authorize modifications of current permitting fees, maintenance practices and other aspects of the Metered Parking System will not constitute a Compensation Event unless such modification is a System Change or is otherwise expressly contemplated in this Agreement. Failure of Metro to make, or cause to be made, the System Changes will constitute a Compensation Event. The enactment of a new Law or the modification, amendment or change in enforcement or interpretation of a Law by any Governmental Authority (including Metro) will not constitute a Compensation Event if of general application to commercial enterprises within Davidson County (e.g. an increase in the minimum wage, requirement of a business license or implementation of a local income tax are laws of general application and would not constitute Compensation Events, whereas a parking fee would be of specific application and constitute a Compensation Event).

“Compensation Event Payment” means compensation payable by Metro to Parking Company in order to restore Parking Company to the same economic position Parking Company would have enjoyed if the applicable Compensation Event had not occurred, which compensation shall be equal to the sum of (i) all Losses that are reasonably attributable to such Compensation Event, plus and without duplication, (ii) the actual and estimated net losses of Parking Company’s present and future Project Revenue that are reasonably attributable to such Compensation Event (i.e. income that Parking Company would have received, either as fees or pursuant to the Waterfall, but for the Compensation Event), less (iii) any offsetting net gains that are reasonably attributable to Beneficial Events since the Contract Date that have either been paid to Parking Company through the Waterfall or that have increased the fair market value of Parking Company's rights under this Agreement, the benefits of which have not been applied to offset prior Compensation Events or Adverse Actions. The Compensation Event Payment will never exceed an amount that would cause Parking Company to receive more than the Metered Parking System Rights Value or to receive, net of other fees and reimbursed expenses, an Internal Rate of Return on Parking Company's Aggregate Parking Company Contributions in excess of the Internal Rate of Return specified in Section 2.3(h)(v).

“Consent” means any Approval, consent, ratification, waiver, exemption, franchise, license, permit, novation, certificate of occupancy or other Authorization, of any Person, including any Consent issued, granted, given, or otherwise made available by or under the authority of any Governmental Authority or pursuant to any applicable Law.

“Consultant” means (i) a consulting firm having experience in the operation and management of metered parking systems jointly appointed by the Parties and (ii) with respect to a technical dispute under Section 20.7, any individual having experience in the operation and management of metered parking systems that is selected by such consulting firm to perform the professional services required to be performed by the Consultant under Section 20.7.

“Contract Year” means (i) in the case of the first Contract Year, the period beginning on the Closing Date and ending of the last day of the month in which the Closing Date occurs, together with the subsequent four (4) calendar Quarters, and (ii) thereafter a period of each successive four (4) Quarters, and in any case ending on the End Date.

“Contractor” means, with respect to a Person, any contractor with whom such Person contracts to perform work or supply materials or labor in relation to the Metered Parking System, including any subcontractor of any tier, supplier or materialman directly or indirectly employed pursuant to a subcontract with a Contractor. For the avoidance of doubt, the Operator (if other than Parking Company) shall be a Contractor of Parking Company.

“Controlling Party” is defined in Section 17.3.

“Day” means a calendar day, beginning at 12:01 a.m. in the central time zone of the United States coinciding with the calendar day.

“Default Expenses” means all expenses, Losses and damages that Metro incurs by reason of a Parking Company Default. If this Agreement terminates by reason of a Parking Company Default, Default Expenses will include, without limitation,

(a) all legal, brokerage, investment and other third-party costs that Metro incurs in connection with a solicitation to secure a Replacement Company; plus

(b) the Present Value, discounted at the Bank Rate then in effect, of costs in excess of the Operations Fee that Metro must pay to a Replacement Company to perform the Metered Parking Activities; plus

(c) any lost Metered Parking System Revenue or Other Project Revenue that Metro incurs by reason of Parking Company’s Default, including during any period of transition of Metered Parking Activities between Parking Company and the Replacement Company; plus

(d) all Project Operating Expenses or Project Capital Expenses that Metro incurs in connection with Metered Parking System Operations during any period prior to engagement of a Replacement Company; and

(e) if Metro engages a Replacement Company, the negative difference, if any, between the Metered Parking System Rights Value and the present dollar value of the consideration that the Replacement Company agrees to pay to assume substantially the same rights and obligations of Parking Company hereunder. If the terms that a Replacement Company will pay to assume substantially the same rights and obligations of Parking Company hereunder differ from the Metered Parking System Rights Value, Metro will, at Parking Company’s expense, engage a financial consultant to provide an opinion of value as to that difference and that financial consultant’s determination will be determinative.

“Delay Event” means (i) an event of Force Majeure, (ii) a failure to obtain, or delay in obtaining, any Authorization from a Governmental Authority (provided that such failure or delay could not have been reasonably prevented by technical and scheduling or other reasonable measures of Parking Company), (iii) the enactment of a new Law or the modification, amendment or change in enforcement or interpretation of a Law (including a change in the application thereof) by any Governmental Authority (other than Metro) arising after the Bid Date, (iv) the enactment of a new Law or the modification, amendment or change in enforcement or interpretation of a Law (including a change in the application thereof) by Metro arising after the Bid Date that relates specifically to the Metered Parking System, (v) a delay caused by the performance of works (including the activities authorized by Section 3.7) carried out by a Governmental Authority or any utility or railway operator or Person not acting under the authority or direction of, or pursuant to a contract, sublease or any other agreement or arrangement with Parking Company or the Operator, (vi) a delay caused by a failure by Metro to perform or observe any of its covenants or obligations under this Agreement, or (vii) a delay caused by the presence in, on, under or around the Metered Parking Spaces of Hazardous Substances, which in each case results in or would result in a delay or interruption in the performance by Parking Company of any obligation under this Agreement; except to the extent that the consequences of such delay or the cause thereof is specifically dealt with in this Agreement or arises by reason of (A) the negligence or intentional misconduct of Parking Company or its Representatives, (B) any act or omission by Parking Company or its Representatives in breach of the provisions of this Agreement or (C) except as contemplated by Section 5.1, lack or insufficiency of funds or failure to make payment of monies or provide required

security on the part of Parking Company. For the avoidance of doubt, a Delay Event shall not include any of the exceptions listed in clauses (i) through (iv) of the definition of Force Majeure.

“Delay Event Dispute Notice” is defined in Section 15.1(e).

“Delay Event Notice” is defined in Section 15.1(e).

“Delay Event Remedy” is defined in Section 15.1(d).

“Depository” means a savings bank, a savings and loan association or a commercial bank or trust company which would qualify as an Institutional Lender, designated by Parking Company, that enters into an agreement with Parking Company to serve as Depository pursuant to this Agreement, provided that such Depository shall have an office, branch, agency or representative located in the City; provided, however, that so long as a Financing Agreement is in effect, the Depository shall be the institution acting as the collateral agent or Depository under the financing secured by such Financing Agreement.

“Designated Senior Person” means such individual who is designated as such from time to time by each Party for the purposes of Article 20 by written notice to the other Party.

“Direct Claim” means any Claim against Parking Company that does not result from a Third-Party Claim.

“Document” is defined in Section 1.15(b).

“Early Termination Option” is defined in Article 19.

“Eligible Investments” means any one or more of the following obligations or securities: (i) direct obligations of, and obligations fully guaranteed by, the United States of America or any agency or instrumentality of the United States of America, the obligations of which are backed by the full faith and credit of the United States of America; (ii) demand or time deposits, federal funds or bankers’ acceptances issued by any Institutional Lender (provided that the commercial paper or the short-term deposit rating or the long-term unsecured debt obligations or deposits of such Institutional Lender at the time of such investment or contractual commitment providing for such investment have been rated “A” (or the equivalent) or higher by a Rating Agency or any other demand or time deposit or certificate of deposit fully insured by the Federal Deposit Insurance Corporation); (iii) commercial paper (including both non-interest-bearing discount obligations and interest-bearing obligations payable on demand or on a specified date not more than one Year after the date of issuance thereof) which has been rated “A” (or the equivalent) or higher by a Rating Agency at the time of such investment; (iv) any money market funds, the investments of which consist of cash and obligations fully guaranteed by the United States of America or any agency or instrumentality of the United States of America, the obligations of which are backed by the full faith and credit of the United States of America and which have been rated “A” (or the equivalent) or higher by a Rating Agency; and (v) other investments then customarily accepted by Metro in similar circumstances; provided, however, that no instrument or security shall be an Eligible Investment if such instrument or security evidences a right to receive only interest payments with respect to the obligations underlying such instrument.

“Encumbrance” means any mortgage, lien, judgment, execution, pledge, charge, security interest, restriction, easement, servitude, option, reservation, lease, claim, trust, deemed trust or encumbrance of any nature whatsoever, whether arising by operation of Law, judicial process, contract, agreement or otherwise created.

“End Date” means the date on which this Agreement expires or is terminated.

“Enforcement Policies and Procedures” means the policies and procedures established by Metro in accordance with the terms of this Agreement, for the administration and enforcement of the Parking Rules and Regulations that are designed to deter Parking Violations, including procedures for the issuance and collection of parking tickets and citations for violations of the Parking Rules and Regulations with respect to the Metered Parking Spaces and Residential Permits, by such means as permitted by Law.

“Environment” means soil, surface waters, ground waters, land, stream sediments, surface or subsurface strata and ambient air.

“Environmental Laws” means any Laws applicable to the Metered Parking System regulating or imposing liability or standards of conduct concerning or relating to the regulation, use or protection of human health or the Environment.

“Equity Participant” means any Person who holds any shares of capital stock, units, partnership or membership interests, other equity interests or equity securities of Parking Company.

“Excess Revenues Reserve Account” means an account established and controlled by Parking Company and funded in accordance with Section 2.3(h)(vi).

“Exempt Persons” means Persons exempted by Law from paying Metered Parking Fees otherwise applicable to members of the general public pursuant to the Tennessee Code Annotated, the Metro Code or other applicable law.

“Existing Metered Parking System Equipment” means, as of the time immediately prior to the Time of Closing, the Personal Property of Metro used in connection with operations of the Metered Parking System set forth on Schedule 3, which Schedule will include the locations of new Metered Parking Spaces.

“Expense Reserve Shortfall” is defined in Section 2.3(g).

“Final Proposal Date” means April 23, 2019.

“Final Removal Payment” is defined in Section 7.5(b).

“Financing Agreement” means any lease, indenture, mortgage, deed of trust, pledge or other security agreement or arrangement, including a securitization transaction with respect to Project Revenue, encumbering any or all of Parking Company Interest or the shares or equity interests in the capital of Parking Company and any of its subsidiaries and any cash reserves or deposits held in the name of Parking Company, in each case that satisfies all of the conditions in Section 18.1. Except as expressly provided herein or consented to in an intercreditor agreement acceptable to Metro, no Financing Agreement may encumber the Project Revenue paid to the Metro Account, nor encumber the Operating Expense Account or Capital Expense Account as those accounts have been pledged to Metro in accordance with the terms of Section 2.3(i).

“Force Majeure” means any event beyond the reasonable control of Parking Company that delays, interrupts or limits the performance of Parking Company’s obligations hereunder or Parking Company’s use of the Metered Parking System, including an intervening act of God or public enemy, war, invasion, armed conflict, act of foreign enemy, blockade, revolution, act of terror, sabotage, civil commotions, interference by civil or military authorities, condemnation or confiscation of property or



equipment by any Governmental Authority, nuclear or other explosion, radioactive or chemical contamination or ionizing radiation, fire, tornado, flooding, earthquake or other natural disaster, riot or other public disorder, epidemic, quarantine restriction, strike, labor dispute or other labor protest, stop-work order or injunction issued by a Governmental Authority, governmental embargo, cyber warfare or cyber security event, except to the extent that the consequence of such event is otherwise specifically dealt with in this Agreement or arises by reason of (i) the negligence or intentional misconduct of Parking Company or its Representatives, (ii) any act or omission by Parking Company or its Representatives in breach of the provisions of this Agreement, (iii) except as contemplated by Section 5.1, lack or insufficiency of funds or failure to make payment of monies or provide required security on the part of Parking Company or (iv) any strike, labor dispute or other labor protest involving any Person retained, employed or hired by Parking Company or its Representatives to supply materials or services for or in connection with the Metered Parking System Operations or any strike, labor dispute or labor protest pertaining to Parking Company that is not of general application that is caused by or attributable to any act (including any pricing or other practice or method of operation) or omission of Parking Company or its Representatives. For purposes of Force Majeure, Governmental Authority does not include Metro.

“Governmental Authority” means any court, federal, state, local or foreign government, department, commission, board, bureau, agency or other regulatory, administrative, governmental or quasi-governmental authority.

“Guarantor” means an entity that meets the asset and net worth requirements under Section 10.1 and provides the Guaranty outlined in Section 10.1.

“Hazardous Substance” means any solid, liquid, gas, odor, heat, sound, vibration, radiation or other substance or emission which is a contaminant, pollutant, dangerous substance, toxic substance, hazardous waste, subject waste, hazardous material or hazardous substance which is or becomes regulated by applicable Environmental Laws or which is classified as hazardous or toxic under applicable Environmental Laws (including gasoline, diesel fuel or other petroleum hydrocarbons, polychlorinated biphenyls, asbestos and urea formaldehyde foam insulation).

“Indemnity Agreement” is defined in Section 12.1.

“Indemnity Payment” is defined in Section 12.5.

“Index” means the Consumer Price Index – South Region, All Items (not seasonally adjusted) as published by the U.S. Department of Labor, Bureau of Labor Statistics; provided, however, that if the Index is changed so that the base year of the Index changes, the Index shall be converted in accordance with the conversion factor published by the U.S. Department of Labor, Bureau of Labor Statistics; provided further that if the Index is discontinued or revised during the Term, such other index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

“Information” means any and all information relating to the Metered Parking System Operations.

“Initial Upfront Payment” is defined in Section 2.3(a).

“Institutional Lender” means (a) the United States of America, any state thereof or any agency or instrumentality of either of them, any municipal agency, public benefit corporation or public authority, advancing or insuring mortgage loans or making payments which, in any manner, assist in the financing, development, operation and maintenance of projects, (b) any (i) savings bank, savings and loan association, commercial bank, trust company (whether acting individually or in a fiduciary capacity) or

insurance company organized and existing under the Laws of the United States of America or any state thereof, (ii) foreign insurance company or commercial bank qualified to do business as an insurer or commercial bank as applicable under the Laws of the United States, (iii) pension fund, foundation or university or college or other endowment fund or (iv) investment bank, pension advisory firm, mutual fund, investment company or money management firm, (c) any “qualified institutional buyer” under Rule 144(A) under the Securities Act or any other similar Law hereinafter enacted that defines a similar category of investors by substantially similar terms or (d) any other financial institution or entity designated by Parking Company and Approved by Metro (provided that such institution or entity, in its activity under this Agreement, shall be acceptable under then current guidelines and practices of Metro); provided, however, that each such entity (other than entities described in clause (c) of this definition) or combination of such entities if the Institutional Lender shall be a combination of such entities shall have individual or combined assets, as the case may be, of not less than Five Hundred Million Dollars (\$500,000,000), which shall include, in the case of an investment or advisory firm, assets controlled by it or under management.

“Internal Rate of Return” shall mean the annual interest rate which, when used as a discount rate compounded annually, causes (i) the Present Value of the payments made to Parking Company pursuant to Section 2.3(h) hereof from the date of this Agreement through the computation date to equal (ii) the Present Value of the Aggregate Parking Company Contributions made by Parking Company from the date of this Agreement through the computation date. For purposes of the foregoing (but only for the purposes of calculating Internal Rate of Return), (x) any payments to Parking Company under the Waterfall will be deemed to have been paid and received on the first Day of such month and (y) any Aggregate Parking Company Contributions made by Parking Company shall be deemed to occur on the Day on which such Aggregate Parking Company Contributions were made by Parking Company. The Internal Rate of Return shall be calculated in accordance with the “XIRR” function of the most current version of Microsoft Excel.

“Law” means any order, writ, injunction, decree, judgment, law, ordinance, decision, opinion, ruling, policy, statute, code, rule or regulation of any Governmental Authority.

“Letter of Credit” means an irrevocable, unconditional, commercial letter of credit, in favor of Metro, in form and content reasonably acceptable to Metro, payable in U.S. dollars upon presentation of a sight draft and a certificate confirming that Metro has the right to draw under such letter of credit in the amount of such sight draft, without presentation of any other Document, which letter of credit (i) is issued by a commercial bank or trust company that is a member of the New York Clearing House Association and that has a current credit rating of A1 or better by Standard & Poor’s Ratings Services and an equivalent credit rating by another Rating Agency (or an equivalent credit rating from at least two nationally recognized Rating Agencies if the named Rating Agency ceases to publish ratings) (or such other commercial bank or trust company reasonably acceptable to Metro and Approved by Metro prior to the submission of the letter of credit), and (ii) provides for the continuance of such letter of credit for a period of at least one Year or as otherwise provided in this Agreement. The office for presentment of sight drafts specified in the Letter of Credit shall be located at a specified street address within the City or other location acceptable to Metro.

“Loss” or “Losses” means, with respect to any Person, any loss, claim, liability, damage, penalty, charge or out-of-pocket and documented cost or expense actually suffered or incurred by such Person, but excluding any punitive, special, indirect and consequential damages and any contingent liability until such liability becomes actual.

“Material Adverse Effect” means a material adverse effect on the business, financial condition or results of operations of the Metered Parking System taken as a whole; provided, however, that no effect

arising out of or in connection with or resulting from any of the following shall be deemed, either alone or in combination, to constitute or contribute to a Material Adverse Effect: (i) general economic conditions or changes therein; (ii) financial, banking, currency or capital markets fluctuations or conditions (either in the United States or any international market and including changes in interest rates); (iii) conditions affecting the financial services or parking industries generally; (iv) any existing event or occurrence of which Parking Company has actual knowledge as of the Bid Date; (v) any action, omission, change, effect, circumstance or condition contemplated by this Agreement or attributable to the execution, performance or announcement of this Agreement (provided that any such action, omission, change by Metro is not materially inconsistent with the Business Plan) or the Transactions contemplated hereby (except for any litigation relating thereto or to this Agreement (or the matters contemplated herein)); and (vi) negligence, intentional misconduct or bad faith of Parking Company or its Representatives.

“Maximum Metered Parking Fee” means the maximum allowable Metered Parking Fee set by Metro as of any date of determination.

“Measurement Period” means a period equal to the preceding two fiscal Quarters.

“Mediator” is defined in Section 20.3.

“Meter Removal Basket” is defined in Section 7.11.

“Metered Parking Activities” means the activities to be performed by Parking Company as Metro’s agent and as grantee of the rights of Parking Company under this Agreement. Metered Parking Activities includes, without limitation, all activities relating to the management, on Metro's behalf and as Metro's agent, of the day-to-day operations of the Metered Parking System in accordance with the Transition Plan, the Business Plan, the Operating Standards, and the Parking Rules and Regulations, including: (i) identification, purchase, storage, installation, maintenance, operation and removal of Metered Parking System equipment, materials and services that Parking Company deems beneficial to promote the efficient utilization and profitability of the Metered Parking System; (ii) collection and provision to Metro of data necessary to support issuance by Metro of Parking Violations and performing activities required of Parking Company hereunder to support the issuance by Metro of Parking Violations and collection of Applicable Parking Violations Fees, (iii) the collection, as Metro's agent, of Metered Parking Fees, Applicable Parking Violations Fees and other Metered Parking System Revenue and Project Revenue for deposit into the Metro Account, (iv) the licensing and contracting for equipment, services, data and systems that Parking Company deems beneficial to optimize the utility of the Metered Parking System and which [the Commission] approves in accordance with the Business Plan; and (v) such other activities relating to the operation of the Metered Parking System as are designated by Metro to Parking Company to be performed under this Agreement from time to time, as accepted by Parking Company.

“Metered Parking Fee” means the fee charged from time to time by Parking Company as consideration for the privilege of parking a motor vehicle or otherwise making use of Metered Parking Spaces as in effect from time to time.

“Metered Parking Spaces” means those on-street parking spaces or curb areas for which, during periods of time, Metro requires the payment of a Metered Parking Fee for parking a motor vehicle or other use at that space or place for a limited period of time and such designation is effective for all purposes of this Agreement notwithstanding that Exempt Persons using that parking space or place may be exempted from paying the Metered Parking Fee otherwise applicable to members of the general public.

“Metered Parking System” means the Metering Devices, supporting structures, computer systems and software used in connection with the administration of Metered Parking Spaces and the collection of Metered Parking Fees and Temporary Closure Fees therefrom, and all improvements of any and every kind whatsoever forming a part of and used in connection with the operation and maintenance of the metering system associated with the Metered Parking Spaces (including all Metering Devices but excluding any interest in the streets, sidewalks, paving or similar real property).

“Metered Parking System Assets” means: (i) the Existing Metered Parking System Equipment, (ii) all cash receivables due to Metro in connection with the Metered Parking System existing as of the Time of Closing, including any Parking Violation Revenues generated but not collected as of the Time of Closing, and (iii) from and after the Time of Closing, the Personal Property of Parking Company or the Operator used in connection with the operations of the Metered Parking System.

“Metered Parking System Contracts” means the agreements to which Metro is a party relating to the operations of the Metered Parking System that are set forth on Schedule 1.

“Metered Parking System Operations” means (i) the operation, management and maintenance of the Metered Parking System, (ii) the issuance, processing and collection of parking tickets or citations for violations of Parking Rules and Regulations with respect to the Metered Parking Spaces and Residential Permits pursuant to this Agreement, and (iii) all other actions relating to the Metered Parking System that are performed by or on behalf of Parking Company pursuant to this Agreement, for the benefit of the Parties (including, but not limited to, the administration, accounting, and asset management functions of the AZIDA Assignee, the Nonprofit Affiliate, and any custodian or trustee administering the Parking Company Debt described in Section 17.3(a) hereof).

“Metered Parking System Revenue” means, during the Term, the revenues derived from Metered Parking Fees collected by Parking Company from the operation of Metered Parking Spaces.

“Metered Parking System Rights Value” means the payment that Metro must make to Parking Company on the Reversion Date to reimburse Parking Company for its interest in this Agreement in the event of an early termination of this Agreement. The Parties hereto stipulate that the market value of the rights hereunder would be difficult to determine, and agree that the Metered Parking System Rights Value will be a liquidated damage amount equal to the greater of (i) the amount described in Section 18.1(p)(iii) or (ii) the sum of the following:

(i) All amounts then due and owing to the Operator or Parking Company through the Reversion Date relating to expenses incurred in connection with the Metered Parking System or the activities performed hereunder; plus

(ii) All documented costs of unwinding Parking Company’s operations relating to the Metered Parking System, including all costs incurred by Parking Company to terminate the Operator and all existing Contractors providing services in connection with this Agreement (provided that, if requested by the Replacement Company and paid for all services through the Reversion Date, such parties will be obligated in their contracts to provide not less than six month’s services following the Reversion Date to the Replacement Company at the rates charged under their respective contracts); plus

(iii) All costs incurred by Parking Company for material supplies or equipment ordered on or before the date of termination in connection with the Metered Parking System, but not yet received as of the date of termination, that are not accepted by the Replacement Company

of the Metered Parking Systems, less any scrap value that Parking Company generates from the resale of those materials or equipment if delivered; plus

(iv) Any Breakage Costs incurred by Parking Company as the result of an early termination; plus

(v) When combined with all amounts paid to Parking Company under the Waterfall to date, all amounts necessary to repay Parking Company for the Parking Company's Aggregate Parking Company Contributions; plus

(vi) the maximum amount that Parking Company could receive under Section 2.3(h)(vi) if the early termination of this Agreement had not occurred (i.e. an amount which combined with all other amounts received by Parking Company is sufficient to return to Parking Company an Internal Rate of Return on Parking Company's Aggregate Parking Company Contributions equal to the Internal Rate of Return specified in Section 2.3(h)(vi)).

“Metering Devices” means the parking meters, pay and display stations, electronic metering devices, APIs on mobile phone devices, APIs on automobile dashboards, mobile sensors and other similar devices or measurement systems that may be used from time to time in connection with the Metered Parking System Operations to measure utilization of Metered Parking Spaces, including any shelters used to guard the devices and patrons from the elements utilized by Parking Company in its discretion and any other future technology that may be used to perform the Metered Parking System Operations.

“Metro” has the meaning set forth in the introductions paragraph to this Agreement.

“Metro Account” means the segregated account maintained by Metro into which all Project Revenue is to be deposited by Metro and Parking Company, as collected, and from which Metro is obligated under this Agreement to fund the Operating Expense Account and Capital Expense Account in accordance with this Agreement and to disburse or pay any amounts due under the Waterfall.

“Metro Council” means the Metropolitan Council of the Metropolitan Government of Nashville and Davidson County.

“Metro Default” is defined in Section 16.2(a).

“Metro Directive” means a written order or directive prepared by or on behalf of Metro directing Parking Company, to the extent permitted hereby, to add or perform work in respect of the Metered Parking System in addition to that provided for in this Agreement; provided, however, that no such order or directive may order or direct Parking Company to do any act that could reasonably be expected to violate any applicable Law or cause Parking Company to fail to be in compliance with this Agreement. A Project Enhancement required by Metro under Section 4.5(a) hereof shall constitute a Metro Directive.

“Metro Ordinance” is defined in Section 2.4(b).

“Metro Projects” means projects anticipated by Metro that may have an impact on the Metered Parking System Assets as set forth in Schedule 8.

“Metro Reserve Shortfall Payment” is defined in Section 2.3(g).

“Metro Reserve Shortfall Payment Interest” is defined in Section 2.3(g).

“Metro Services” means the services provided by Metro in connection with this Agreement, including the enforcement of traffic and parking regulations, the adjudication of Parking Enforcement cases and the installation or removal of Metered Parking System equipment to the extent required by the Metro Code or Parking Rules and Regulations.

“New Agreement” is defined in Section 18.5(a).

“Non-Metered Parking Spaces” means parking spaces or areas that do not require a Metered Parking Fee but for which the Parking Company retains the responsibility for Parking Enforcement for the space or area, including but not limited to loading zones.

“Nonprofit Affiliate” means (i) an organization created by an entity that has been granted Section 501(c)(3) status under the Internal Revenue Code (a “Nonprofit Organization”) under Section 509(a)(3) of the Internal Revenue Code, as a “supporting organization,” or (ii) a single member limited liability company, created by the Nonprofit Organization as a wholly-owned subsidiary of such Nonprofit Organization.

“Notice Period” is defined in Section 12.2(b).

“Offsets” is defined in Section 12.9.

“Operating Agreement” means any material agreement, contract or commitment to which Parking Company is a party relating to the Metered Parking System Operations as in force from time to time.

“Operating Agreements and Plans” is defined in Section 3.11.

“Operating Expense Account” means an account with a Depository controlled by Parking Company and designated solely for payment of Project Operating Expenses.

“Operating Expense Required Reserve Amount” is an amount initially equal to six (6) months of operating expenses as set forth in the Closing Date Business Plan. The Operating Expense Required Reserve Amount will be adjusted from time to time as set forth in Section 2.3(b).

“Operating Standards” means the standards, specifications, policies, procedures and processes that apply to the operation of, maintenance of, rehabilitation of, Capital Improvements to, and handover to Metro of, the Metered Parking System set forth in Schedule 2, including any plans submitted by Parking Company to Metro as required therein. To the extent that any term or provision set forth in Schedule 2 or incorporated by reference in Schedule 2 conflicts with any term or provision specified in this Agreement, then such term or provision of this Agreement shall govern and shall supersede any such conflicting term or provision.

“Operations Fee” is the fee, detailed in Schedule 5, that Parking Company is charged by the Operator to perform the Metered Parking Activities. The Operations Fee is in addition to actual costs charged by the Operator and third-party Contractors for performance of Metered Parking Activities.

“Operations Plan” means the portion of the Business Plan detailing Parking Company’s operations plan for the Metered Parking System contained in the original Business Plan and updated from time to time as part of the Business Plan. The Operations Plan will detail the process, timelines and procedures by which Parking Company intends to manage the Metered Parking System, including providing processes for bagging meters and the day-to-day operations of Metered Parking Activities, including, but not be limited to, setting forth the time periods necessary for placement and removal of

bagging; the notice to be provided for Temporary Closures upon installation of multi-space metered parking devices; practices and procedures for the issuance of right-of-way permits, including the permitting and regulation of street lane vacations for construction use; and practices and procedures for the issuance and regulation of valet parking right-of-way permits, provided that any such permit shall be subject to the Approval of Metro. The Operations Plan will include intended staffing, procedures for Metered Parking Fee collection, and all other processes and procedures that Parking Company intends to implement to run the Metered Parking System.

“Operator” is defined in Section 3.3(a).

“Operator Parties” means the Operator and its Guarantor under Section 10.1.

“Other Project Revenues” means other revenues derived from Parking Company’s work under this Agreement, including advertising revenue as described in Section 3.15, valet space management fees, fees from loading zones, dynamic or congestion pricing (if any), tolling fees (if any), decal fees, pay-by-app transaction fees, Special Event fees, mobility management services, curb management services and other revenues derived from the Metered Parking Activities and from the Metered Parking System Assets.

“Parking Company” is defined in the preamble to this Agreement.

“Parking Company Debt” means any bona fide debt (including principal, accrued interest and customary lender or financial insurer, agent and trustee fees, costs, premiums, expenses, indemnities and reimbursement obligations (whether liquidated or contingent) with respect thereto, and including all payment obligations under interest rate hedging agreements with respect thereto and reimbursement obligations with respect thereto to any financial insurer) and/or an assignment in connection with a securitization transaction secured by a Financing Agreement relating to the Metered Parking System and granted to a Person pursuant to an agreement entered into prior to the occurrence of any Adverse Action, Metro Default or any event of termination, cancellation, rescinding or voiding giving rise to the payment of amounts for or in respect of termination under this Agreement. The initial Parking Company Debt will consist of the Senior Debt and the Subordinate Debt.

“Parking Company Debt Documents” is defined in Section 17.3.

“Parking Company Default” is defined in Section 16.1(a).

“Parking Company Interest” means the interest of Parking Company in the Metered Parking System created by this Agreement and the rights and obligations of Parking Company under this Agreement.

“Parking Company Reserve Shortfall Payment” is defined in Section 2.3(g)(ii).

“Parking Company Request” means a written request in respect of the Metered Parking System prepared by or on behalf of Parking Company and addressed to Metro seeking to make a fundamental change in the dimensions, character, quality or location of any part of the Metered Parking System; provided, however, that Parking Company Request need not be submitted in connection with operations, maintenance or repair of the Metered Parking System in the ordinary course or any other aspects of Metered Parking System Operations permitted or reserved to Parking Company under this Agreement, including any modification or change to the Operating Standards pursuant to Section 6.2.

“Parking Enforcement” means the issuance of parking tickets or citations for violations of (i) the Parking Rules and Regulations with respect to the Metered Parking Spaces, Non-Metered Parking Spaces

and Residential Permits and (ii) other Laws of Metro with respect to parking meters in effect from time to time, in each case in accordance with the Enforcement Policies and Procedures set forth in the Operating Standards.

“Parking Rights and Obligations” means the rights and obligations of Parking Company relating to the Metered Parking System provided for herein.

“Parking Rules and Regulations” means the rules and regulations issued by the Metro and governing the Metered Parking System.

“Parking Taxes” means taxes imposed on customers of the Metered Parking System by any Governmental Authority pursuant to any tax imposed solely on the privilege of parking a motor vehicle on a public street in Metro, but not including Taxes of general application such as a general sales tax or taxes applicable to both on-street and off-street parking.

“Parking Violations” means citations for violations of Parking Rules and Regulations with respect to the Metered Parking Spaces, Non-Metered Parking Spaces and Residential Permits, provided that Metro may elect in writing to add other types of violations during the Term.

“Parking Violations Revenue” means the revenues derived from any Parking Violations issued during the Term, any related fines imposed by the court (other than actual court costs) and collected by Parking Company or Metro for Parking Violations or citations for violations of Parking Rules and Regulations with respect to the Metered Parking Spaces, Non-Metered Parking Spaces and Residential Permits as well as any agreed upon revenues for other types of violations added in writing by Metro.

“Party” means a party to this Agreement and “Parties” means both of them.

“Period of Operation” means, with respect to each Metered Parking Space, the Days and the period or periods of time during each Day that Metro permits the parking of a motor vehicle in that Metered Parking Space and requires the payment of a Metered Parking Fee for use of that Metered Parking Space.

“Period of Stay” means, with respect to each Metered Parking Space, the period or periods of time that the same motor vehicle may remain continuously parked in such Metered Parking Space.

“Permanent Removal” is defined in Section 7.2(d).

“Permanent Removal Payments” is defined in Section 7.4.

“Permitted Metro Encumbrance” means, with respect to the Metered Parking System: (i) Parking Company Interest; (ii) any Encumbrance that is being contested, or being caused to be contested, by Metro in accordance with Section 3.5(b) (but only for so long as such contest effectively postpones enforcement of any such Encumbrance); (iii) inchoate materialmen’s, mechanics’, workmen’s, repairmen’s, employees’, carriers’, warehousemen’s or other like Encumbrances arising in the ordinary course of business of the Metered Parking System or Metro’s performance of any of its rights or obligations hereunder, and either (A) not delinquent or (B) which are being contested, or are being caused to be contested, by Metro in accordance with Section 3.5(b) (but only for so long as such contest effectively postpones enforcement of any such Encumbrance); (iv) any easement, covenant, condition, right-of-way, servitude, or any zoning, building, environmental, health or safety Law relating to the development, use or operation of the Metered Parking System (or other similar reservation, right and restriction) or other defects and irregularities in the title to the Metered Parking System that do not



materially interfere with the Metered Parking System Operations or the rights and benefits of Parking Company under this Agreement or materially impair the value of Parking Company Interest; (v) the police and regulatory powers of the State with respect to State Roads; (vi) any right reserved to or vested in any Governmental Authority (other than Metro) by any statutory provision or under common law (it being understood and agreed that nothing in this clause (vi) shall limit or otherwise affect Metro's obligations or Parking Company's rights hereunder); (vii) any other Encumbrance permitted hereunder; (viii) any Encumbrances created, incurred, assumed or suffered to exist by Parking Company or any Person claiming through it; (ix) any rights reserved to or vested in Metro by any statutory provision (it being understood and agreed that nothing in this definition shall limit or otherwise affect Metro's obligations or Parking Company's rights hereunder); and (x) any amendment, extension, renewal or replacement of any of the foregoing.

"Permitted Parking Company Encumbrance" means, with respect to Parking Company Interest: (i) any Encumbrance that is being contested in accordance with Section 3.5(a) (but only for so long as such contest effectively postpones enforcement of any such Encumbrance); (ii) any (A) lien or security interest for obligations not yet due and payable to a Contractor or other Person, (B) any statutory lien, deposit or other non-service lien or (C) lien, deposit or pledge to secure mandatory statutory obligations or performance of bids, tenders, contracts (other than for the repayment of borrowed money) or leases, or for purposes of like general nature, any of which are incurred in the ordinary course of business of the Metered Parking System Operations and either (x) not delinquent or (y) which are being contested by Parking Company in accordance with Section 3.5(a) (but only for so long as such contest effectively postpones enforcement of any such Encumbrance); (iii) inchoate materialmen's, mechanics', workmen's, repairmen's, employees', carriers', warehousemen's, or other like Encumbrances arising in the ordinary course of business of the Metered Parking System or Parking Company's performance of any of its rights or obligations hereunder, and either (A) not delinquent or (B) which are being contested by Parking Company in accordance with Section 3.5(a) (but only for so long as such contest effectively postpones enforcement of any such Encumbrance); (iv) any right reserved to or vested in any Governmental Authority by any statutory provision or under common law; (v) any other Encumbrance permitted hereunder; (vi) liens incurred in the ordinary course of business in connection with workers' compensation, unemployment insurance, social security and other governmental rules and that do not in the aggregate materially impair the use, value or operation of the Metered Parking System; (vii) any Encumbrances created, incurred, assumed or suffered to exist by Metro or any Person claiming through Metro; (viii) any Encumbrance, security interest or pledge imposed upon Parking Company and any Affiliate as to Parking Company's and any Affiliate's assets arising from borrowings, financings, leases or similar transactions in the ordinary course of business, or in connection with a Financing Agreement; and (ix) any amendment, extension, renewal or replacement of any of the foregoing.

"Person" means any individual (including, the heirs, beneficiaries, executors, legal representatives or administrators thereof), corporation, partnership, joint venture, trust, limited liability company, limited partnership, joint stock company, unincorporated association or other entity or a Governmental Authority.

"Personal Property" means all tangible and intangible personal property of Parking Company (including inventories) wherever located that is included in or used in connection with the Metered Parking System, but excluding (a) any technology or equipment leased or licensed from unaffiliated third parties or (b) utilized by Parking Company, Operators, Contractors or their Affiliates for purposes unrelated to the Metered Parking System or in common with other business activities unrelated to the Metered Parking System.

"Present Value" means, as of any date of determination, the value of the applicable payments discounted by the appropriate discount rate.

“Preston Hollow” means Preston Hollow Capital, LLC, a Delaware limited liability company.

“Project Capital Expenses” means all capital expenses required to purchase and install Capital Improvements that are required to maintain or improve the Metered Parking System.

“Project Enhancement” means any extensions of, additions to, or modifications to the Metered Parking System Assets undertaken by Parking Company, including (but not limited to) smart city technology and any fees relating to car sharing or ride sharing.

“Project Enhancement Revenue” means revenues generated from Project Enhancements.

“Project Operating Expenses” means all ordinary operating costs relating to the Metered Parking System Operations, including the fees and expenses associated with the administrative, accounting and asset management functions of (i) any trustee or custodian administering Parking Company Debt described in Section 17.3, (ii) the AZIDA Assignee, and (iii) the Nonprofit Affiliate, and further including the Operations Fee (to the extent Approved by Metro). Project Operating Expenses shall specifically exclude all Project Capital Expenses.

“Project Revenue” means collectively, (a) Metered Parking System Revenue, (b) Parking Violations Revenue, (c) Other Project Revenue, and (d) Project Enhancement Revenue.

“Proprietary Information” means confidential or proprietary information, knowledge or data concerning (1) the Parking Company’s businesses, strategies, operations, financial affairs, organizational matters, personnel matters, budgets, business plans, marketing plans, studies, policies, procedures, products, ideas, processes, software systems, trade secrets and technical know-how, and other information regarding the business of the Parking Company. Proprietary Information may include information furnished orally or in writing (whatever the form or storage medium) or gathered by inspection, in each case before or after the Final Proposal Date. However, Proprietary Information does not include information (1) that was or becomes generally available to Metro on a non-confidential basis, if the source of this information was not reasonably known to Metro to be bound by a duty of confidentiality, (2) that was or becomes generally available to the public or within the relevant trade or industry, other than as a result of a disclosure by Metro, directly or indirectly, or (3) that was independently developed by Metro without reference to any Proprietary Information.

“Quarter” means each calendar quarter of each Year. A fiscal Quarter will equal a quarter of Metro’s Fiscal Year, beginning July 1, October 1, January 1 and April 1.

“Quarterly Meeting” is defined in Section 8.5.

“Quarterly Settlement Date” means the last Business Day of the Month following the end of each Quarter or such earlier date in that month as is from time to time agreed by Parking Company and Metro at the Quarterly Meeting.

“Rating Agency” means any of S&P Global Ratings, Moody’s Investors Service, Inc. or Fitch Investors Service, Inc. or any similar entity or any of their respective successors.

“Replacement Company” means the party designated by Metro to assume all responsibilities for Metered Parking System Operations upon the termination of this Agreement, which may be Metro, Operator, any Contractor to Parking Company or any other party designated by Metro by notice to Parking Company.

“Representative” means, with respect to any Person, any director, officer, employee, official, partner, member, owner, agent, lawyer, accountant, auditor, professional advisor, consultant, engineer, Contractor, other Person for whom such Person is at law responsible or other representative of such Person and any professional advisor, consultant or engineer designated by such Person as its “Representative.”

“Required Coverages” is defined in Section 13.1.

“Reserved Metered Parking Spaces” is defined in Section 7.7(a).

“Residential Permits” means residential parking permits for on-street parking.

“Revenue Share” means the payments to be made to Metro and/or Parking Company pursuant to Section 2.3(h)(v) and Section 2.3(h)(vi).

“Reversion Date” means the Business Day immediately following the End Date.

“Schedule” means a schedule attached hereto and incorporated in this Agreement, unless otherwise expressly indicated by the terms of this Agreement.

“Schedule of Parking Fees” means the Maximum Metered Parking Fee schedule for Metered Parking Spaces set forth in Schedule 5.

“Second Upfront Payment” is defined in Section 2.3(a).

“Secured Lender” means the holder or beneficiary of a Financing Agreement. In the case of multiple holders or beneficiaries of a Financing Agreement, the rights of the Secured Lender hereunder will be limited to the holder or beneficiary of a Financing Agreement entitled to the senior most right to payment.

“Secured Lender’s Notice” has the meaning ascribed thereto in Section 18.7(a).

“Secured Lender Notice Requirements” means the delivery by a holder or beneficiary of a Financing Agreement to Metro, not later than ten (10) Days after the execution and delivery of such Financing Agreement by Parking Company, of a true and complete copy of the executed original of such Financing Agreement, with such redactions as necessary to protect confidential, business confidential or other sensitive transactional or proprietary information, together with a notice containing the name and post office address of the holder of such Financing Agreement.

“Securities Act” means the United States Securities Act of 1933, as amended.

“Senior Debt” has the meaning ascribed thereto in Section 17.3(b).

“Senior Debt Cap” has the meaning ascribed thereto in Section 18.1(c).

“Special Event” means any event for which Metro has agreed to offer free or reduced Metered Parking Spaces, which are listed on Schedule 7. Any event that is not listed on Schedule 7 will be considered a Temporary Closure. Metro will have the right to adjust Schedule 7 to include any new or replaced Special Event for public purposes such as holiday parades, sports celebrations, sports competitions and military deployments or homecomings, and political conventions, provided that the

aggregate number of Special Events does not increase by more than four (4) Days of Metered Parking System shutdowns or partial Metered Parking System shutdowns in a Year.

“State” means the State of Tennessee.

“State Roads” means those roadways located in Metro that are owned by, or are under the jurisdiction of, the State.

“Subordinate Debt” has the meaning ascribed thereto in Section 17.3(b).

“Surviving Contracts” is defined in Section 2.6(e).

“System Changes” means those changes to the Parking Rules and Regulations that the Commission changed or recommended for change by the Metro Council at the March 11, 2019 meeting of the Commission, which specifically includes: (i) increasing the Maximum Metered Parking Fee by \$0.25 / hour effective March 11, 2020, with annual increases thereto by the increase in the percentage change in the Index from the prior Year; (ii) revising the hours of operation for the Metered Parking Spaces to between 8am and 10pm Central Time, (iii) amending Metro Code 12.44.010 to implement Metered Parking Fees on Sunday; (iv) amending Metro Code 12.08.170, “Citations for violations”, to increase the Applicable Parking Violations Fee to \$25 per offense for both parking without paying and for overtime parking; (v) allowing the phasing out of Metro Code 12.44.075, “Free metered parking for clean technology vehicles”, over time as determined appropriate by the Commission given the increase in vehicles meeting this criteria, but in all events prior to May 29, 2020; (vi) amending the Metropolitan Code as needed to allow aspects of the enforcement and collection process to be managed by a vendor, including Parking Company in the manner provided for in Schedule 11 (Business Plan) and subject to modification by the Commission from time to time, but only to the extent consistent with Tennessee State Law; (vii) amending Chapter 12.41 of the Metropolitan Code as needed to allow management of the valet parking program to be outsourced to a vendor, including in the manner provided for in Schedule 11 (Business Plan), and subject to modification by the Commission from time to time; (viii) amending Chapter 12.42 of the Metropolitan Code as needed to allow management of the Residential Permit parking program to be outsourced to a vendor, including in the manner provided for in Schedule 11 (Business Plan), and subject to modification by the Commission from time to time; (ix) amending Chapter 12.48 to allow management of loading and unloading zones to be outsourced to a vendor, including in the manner provided for in Schedule 11 (Business Plan), and subject to modification by the Commission from time to time; and (x) allowing for the expansion of the Metered Parking System by up to 2,000 Metered Parking Spaces over the first five year period of the Term in locations and at a rate of installation of at least 500 per Contract Year (or such other rate as may be agreed by the Parties), starting in the second Contract Year. The location of new Metered Parking Spaces will be subject to approval by the Commission in its sole discretion, but in prior consultation with Parking Company. Metro currently anticipates most new Metered Parking Spaces to be installed in years two through five and in areas where there is current but inconsistent metering and in non-downtown areas where on-street parking congestion is highest due to historical lack of meter installation in spite of increasing population density.

“Tax” means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, permit fees, capital stock, franchise, profits, withholding, social security, unemployment, disability, real property, personal property, parking, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated or other tax, levy, impost, stamp tax, duty, fee, withholding or similar imposition of any kind payable, levied, collected, withheld or assessed at any time, including any interest, penalty or addition thereto, whether disputed or not; provided that Tax shall not include any Parking Tax or imposition assessed by Metro with respect to the Metered Parking System.

“Temporary Closure” means any interruption to, or any suspension of, Metered Parking System Operations by Metro, with respect to a Metered Parking Space during the Period of Operation of such Metered Parking Space established by Metro due to street closures, the closure of a street to vehicular traffic, emergency parking bans, weather related closures, sidewalk closures related to building construction, sidewalk construction or repair, street construction or repair, utility work and similar activities; provided, however, an interruption or suspension pursuant to a Special Event shall not be considered a Temporary Closure or result in any Compensation Event Payment.

“Temporary Closure Fee” means the fees related to a Temporary Closure as set forth in Schedule 5.

“Term” means the duration of the rights and obligations of Parking Company under this Agreement as specified in Section 2.1.

“Third-Party Claim” means any Claim asserted against Metro or any of its Representatives, or against the Metered Parking System Assets or Metered Parking System Revenue, by any Person who is not a Party or an Affiliate of a Party, and for which Parking Company, must indemnify Metro or such Representative pursuant to Section 12.1.

“Time of Closing” means 10:00 a.m. central time zone on the Closing Date or such other time on that date as Metro and Parking Company agree in writing that the Closing shall take place.

“Transaction” is defined in Section 2.1.

“Transfer” means to sell, convey, assign, lease, sublease, mortgage, encumber, transfer or otherwise dispose of.

“Transferee” means any Person who obtains Parking Company Interest pursuant to a Transfer.

“Transition Plan” is defined in Section 2.6(h).

“Upfront Payment” is defined in Section 2.3(a).

“Waterfall” means the project waterfall detailing the proposed application on a cash basis of Project Revenue received each Quarter of the Term and detailed in Section 2.3(h).

“Year” means the calendar year.

“Zone” or “Zones” is defined in Schedule 5.

**Section 1.2. Number and Gender.** In this Agreement words in the singular include the plural and vice versa and words in one gender include all genders.

**Section 1.3. Headings.** The division of this Agreement into Articles, Sections and other subdivisions are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The headings in this Agreement are not intended to be full or precise descriptions of the text to which they refer and shall not be considered part of this Agreement.

**Section 1.4. References to this Agreement.** The words “herein,” “hereby,” “hereof,” “hereto” and “hereunder” and words of similar import refer to this Agreement as a whole and not to any particular

portion of it. The words “Article,” “Section,” “paragraph,” “sentence,” “clause” and “Schedule” mean and refer to the specified article, section, paragraph, sentence, clause or schedule of or to this Agreement.

**Section 1.5. References to Any Person.** A reference in this Agreement to any Person at any time refers to such Person’s permitted successors and assignees.

**Section 1.6. Meaning of Including.** In this Agreement, the words “include,” “includes” or “including” mean “include without limitation,” “includes without limitation” and “including without limitation,” respectively, and the words following “include,” “includes” or “including” shall not be considered to set forth an exhaustive list.

**Section 1.7. Meaning of Discretion.** In this Agreement, the word “discretion” with respect to any Person means the sole and absolute discretion of such Person.

**Section 1.8. Meaning of Notice.** In this Agreement, the word “notice” means “written notice,” unless specified otherwise.

**Section 1.9. Consents and Approvals.** Unless specified otherwise, wherever the provisions of this Agreement require or provide for or permit an Approval or Consent by either Party, such Approval or Consent, and any request therefor, must be in writing (unless waived in writing by the other Party).

**Section 1.10. Trade Meanings.** Unless otherwise defined herein, words or abbreviations that have well-known trade meanings are used herein in accordance with those meanings.

**Section 1.11. Laws.** Unless specified otherwise, references to a Law are considered to be a reference to (i) such Law as it may be amended from time to time, (ii) all regulations and rules pertaining to or promulgated pursuant to such Law, (iii) the successor to the Law resulting from recodification or similar reorganizing of Laws and (iv) all future Laws pertaining to the same or similar subject matter. Nothing in this Agreement shall fetter or otherwise interfere with the right and authority of Metro to enact, administer, apply and enforce any Law. Parking Company shall not be entitled to claim or receive any compensation as a result of the enactment, administration, application or enforcement of any Law by Metro, except to the extent that such action by Metro constitutes a Compensation Event hereunder.

**Section 1.12. Currency.** Unless specified otherwise, all statements of or references to dollar amounts or money in this Agreement are to the lawful currency of the United States of America.

**Section 1.13. Generally Accepted Accounting Principles.** All accounting and financial terms used herein, unless specifically provided to the contrary, shall be interpreted and applied in accordance with generally accepted accounting principles in the United States of America, consistently applied.

**Section 1.14. Calculation of Time.** For purposes of this Agreement, a period of Days shall be deemed to begin on the first Day after the event that began the period and to end at 5:00 p.m. (Central Time) on the last Day of the period. If, however, the last Day of the period does not fall on a Business Day, the period shall be deemed to end at 5:00 p.m. (Central Time) on the next Business Day.

**Section 1.15. Approvals, Consents and Performance by Metro.**

(a) *Procedures.* Wherever the provisions of this Agreement require or provide for or permit an Approval or Consent by Metro of or to any action, Person, Document, or other matter contemplated by this Agreement, Parking Company shall seek such Approval or Consent through the Person designated in Section 8.6(a). Metro shall have the right to require the submission of reasonable supporting

documentation or other information in connection with a request for Approval or Consent. Metro will respond to requests for Approval or Consent within a reasonable time, taking into account the urgency and complexity of the request. Nothing herein shall be construed as a limitation on the authority of the Metro Council or the Commission to approve or consent where required by Law, in Metro's reasonable judgment.

(b) *Approved Documents.* Subject to the other provisions hereof, wherever in this Agreement an Approval by Metro is required with respect to any document, proposal, certificate, plan, drawing, specification, contract, agreement, budget, Schedule, report or other written instrument whatsoever (a "Document"), following such Approval such Document shall not be amended, supplemented, replaced, revised, modified, altered or changed in any manner whatsoever without obtaining a further Approval in accordance with the provisions of this Section 1.15.

**Section 1.16. Incorporation of Schedules.** The following attached Schedules are made a part of this Agreement:

Schedule 1	Metered Parking System Contracts
Schedule 2	Operating Standards
Schedule 3	Metered Parking System Assets
Schedule 4	Parking Meter Removal
Schedule 5	Parking Fees
Schedule 6	Financial Information
Schedule 7	Special Events
Schedule 8	Metro Projects
Schedule 9	Metro Withheld Payments
Schedule 10	Capital Improvements
Schedule 11	Business Plan

**Section 1.17. Interpretation of Agreement.** The following documents are included as part of this Agreement: [Note: Insert list of documents agreed to by Metro and Parking Company]. In the event of any conflict or inconsistency between the Articles of this Agreement and the following documents, the conflict or inconsistency will be resolved by applying the following order of document precedence, from highest to lowest:

- (a) any properly executed amendment to this Agreement (most recent with first priority);
- (b) the Articles of this Agreement and Definitions;
- (c) the Schedules to this Agreement; and
- (d) Procurement Nondiscrimination Program forms (incorporated herein by reference).

The RFQ/I, RFP and Parking Company's responses thereto are deemed superseded by this Agreement and will not modify or inform the terms hereof.

## **ARTICLE 2 THE TRANSACTION; CLOSING; CONDITIONS PRECEDENT; COVENANTS**

**Section 2.1. Grant Right to Provide Metered Parking Activities and Use of Metered Parking System Assets.** Upon the terms and subject to the conditions of this Agreement, effective at the Time of Closing: (a) Parking Company shall pay Metro the Initial Upfront Payment (as described in

Section 2.3(a) and fund the Operating Expense Account and Capital Expense Account (as described in Sections 2.3(b) and (c)); (b) Metro shall (i) engage Parking Company, on an exclusive basis for and during the term (the “Term”) commencing on the Closing Date and expiring at 11:59 p.m. on the thirtieth (30<sup>th</sup>) anniversary of the Closing Date (or such later date as may be required to effect a Delay Event Remedy but subject to earlier termination as provided in this Agreement) to perform the Metered Parking Activities in exchange for the right to receive the payments specified in Section 2.3 and elsewhere in this Agreement; (c) Metro shall grant to Parking Company the right to use the Existing Metered Parking System Equipment for the Term, free and clear of any Encumbrances (other than Permitted Metro Encumbrances), and (d) Parking Company shall accept such role and each such grant, or assignment in accordance with the terms hereof, with ownership of the Existing Metered Parking System Equipment retained by Metro (collectively, the “Transaction”). For the avoidance of doubt, and notwithstanding any statements in this Agreement that could be interpreted to the contrary, Parking Company shall perform the Metered Parking Activities during the Term of this Agreement in its capacity as Metro’s agent and subject to Metro’s direction, supervision, and control.

**Section 2.2. Closing.** The closing of the Transaction (the “Closing”) shall take place on July 2, 2019 or such other date as agreed by Parking Company and Metro, but not later than September 1, 2019 (the “Closing Date”). The Closing shall be held at the offices of Waller Lansden Dortch & Davis, LLP, Nashville City Center, 511 Union Street, Suite 2700, Nashville, TN 37219, or such other place agreed to in writing by Metro and Parking Company. At the Time of Closing, Parking Company shall: (a) deliver or cause to be delivered to Metro same-Day funds by wire transfer in the amount of the Initial Upfront Payment, (b) establish the Operating Expense Account and cause it to be funded with the Operating Expense Required Reserve Amount; and (c) establish the Capital Expense Account and cause it to be funded with the Capital Expense Required Reserve Amount; and upon receipt of the Initial Upfront Payment by Metro and evidence of the funding of the Operating Expense Account and the Capital Expense Account, the Transaction shall be effective. Parking Company shall wire the Initial Upfront Payment to bank account(s) and in increments designated by Metro.

### **Section 2.3. Payments and Flow of Funds.**

(a) *Upfront Payment.* The “Upfront Payment” will consist of: (i) an initial upfront payment in the amount of Seventeen Million Dollars (\$17,000,000.00) (the “Initial Upfront Payment”) due on the Closing Date, and (ii) an additional upfront payment in the amount of Seventeen Million Dollars (\$17,000,000.00) (the “Second Upfront Payment”) to be paid to Metro on or after July 1, 2019 and before May 30, 2020. If Parking Company fails to pay Metro either part of the Upfront Payment within five (5) Business Days after such payment is due to Metro, then this Agreement will be immediately terminated by Metro and all Metered Parking System Operations and all assets and rights thereof will be reverted back to the ownership of Metro, unless (i) Metro provides written consent, at Metro’s sole discretion, to extend the payment due date with Parking Company, (ii) such failure is due to Metro refusing payment from Parking Company for any reason, or (iii) Metro is in material breach of its obligations under this Agreement. Any Upfront Payment above the fair market value of the Metered Parking System Assets is an inducement paid in consideration for the rights and privileges granted under this Agreement.

(b) *Operating Expense Required Reserve Amount.* Parking Company will deposit the Operating Expense Required Reserve Amount on the Closing Date into the Operating Expense Account. Such Operating Expense Account shall be used by Parking Company to fund Project Operating Expenses as needed throughout each Contract Year. The Operating Expense Required Reserve Amount will be updated at each Annual Meeting and will equal 50% of the anticipated Project Operating Expenses for the succeeding one (1) Year. If at any Annual Meeting, the Parties are not able to agree on the appropriate Operating Expense Required Reserve Amount, then the Operating Expense Required Reserve Amount



will not change from the amount last agreed to. The amount in the Operating Expense Account may be reduced below the Operating Expense Required Reserve Amount during any Quarter, but will be restored pursuant to Section 2.3(e)(ii).

(c) *Capital Expense Required Reserve Amount.* Parking Company will deposit the Capital Expense Required Reserve Amount on the Closing Date into the Capital Expense Account. The Capital Expense Account shall be used by Parking Company to fund Project Capital Expenses as needed. The Capital Expense Required Reserve Amount will be updated at each Annual Meeting and will equal the anticipated Project Capital Expenses for the succeeding Five (5) Years.

(d) *Aggregate Parking Company Contributions.* The “Aggregate Parking Company Contributions” shall consist of the following amounts to the extent paid by Parking Company:

- (i) the Initial Upfront Payment;
- (ii) the Second Upfront Payment;
- (iii) the Operating Expense Required Reserve Amount;
- (iv) the Capital Expense Required Reserve Amount;
- (v) any Parking Company Reserve Shortfall Payment described in Section 2.3(g)(ii); and

(vi) Parking Company's aggregate non-recoverable out of pocket third party costs and expenses required to close this transaction, and AZIDA Assignee's aggregate non-recoverable out of pocket third party costs and expenses required to close the tax-exempt financing contemplated in Section 17.3(a), in each case including: (without limitation) attorney fees, due diligence costs, travel charges, and consulting expenses, but excluding any fees associated with Parking Company's or AZIDA's corporate formation or governance up to \$2,000,000 in the aggregate.

(e) *Use of Proceeds in Metro Account.* All Project Revenue will be deposited, when received, into the Metro Account. On each Quarterly Settlement Date, Metro will disburse all available Project Revenue in the Metro Account as of the last day of the Quarter immediately preceding such Quarterly Settlement Date:

(i) first, to replenish the Operating Expense Account to ensure that the amount on deposit in the Operating Expense Account at no time is less than the amount of the then applicable Operating Expense Required Reserve Amount or other such minimum amount as Parking Company and Metro agree; and

(ii) then, to replenish the Capital Expense Account to ensure that the amount on deposit in the Capital Expense Account at no time is less than the amount of the then applicable Capital Expense Required Reserve Amount or such other minimum amount as Parking Company and Metro agree;

(iii) then to pay amounts due Parking Company and Metro in accordance with the Waterfall, subject to offsets and adjustments as provided for herein.

(f) *Use of Funds in Operating Expense Account and Capital Expense Account;* Parking Company will utilize proceeds in the Operating Expense Account and Capital Expense Account as follows:

(i) Parking Company will utilize funds in the Operating Expense Account to pay the Operations Fee to the Operator, plus all Project Operating Expenses as incurred.

(ii) Parking Company will utilize funds in the Capital Expense Account to pay Project Capital Expenses as incurred.

(iii) If on any Quarterly Settlement Date the Operating Expense Account contains amounts in excess of (A) the amounts required to pay all current Project Operating Expenses then due and payable, plus (B) the Operating Expense Required Reserve Amount, the Operating Expense Account will be deemed “fully funded” and Parking Company will remit any excess amounts in the Operating Expense Account to the Capital Expense Account or, if the Capital Expense Account is fully funded, back to the Metro Account to be disbursed in accordance with the Waterfall.

(iv) If on any Quarterly Settlement Date, and after applying all amounts in the Metro Account, the Operating Expense Account is not fully funded, Parking Company will, to the extent of the funds on deposit in the Capital Expense Account, transfer funds from the Capital Expense Account to the Operating Expense Account in an amount sufficient to cause the Operating Expense Account to be fully funded.

(v) If on any Quarterly Settlement Date, the Operating Expense Account is fully funded and the Capital Expense Account contains amounts in excess of the amounts required to pay current Project Capital Expenses plus the Capital Expense Required Reserve Amount, the Capital Expense Account will be deemed “fully funded” and Parking Company will remit such excess back to the Metro Account for disbursement in accordance with the Waterfall.

(g) *Funding Expense Reserve Shortfalls.*

(i) If the Metered Parking System incurs Project Operating Expenses or Project Capital Expenses for which there are insufficient funds in the Metro Account, the Operating Expense Account and the Capital Expense Account, as applicable (an “Expense Reserve Shortfall”), then Metro may elect at the Quarterly Meeting (or earlier if necessary) to fund such Expense Reserve Shortfall (such payment by Metro, a “Metro Reserve Shortfall Payment”) by funding the Metro Reserve Shortfall Payment into the Operating Expense Account or Capital Expense Account, as applicable, from its own funds. Each Metro Reserve Shortfall Payment shall accrue interest from the date paid at a rate of six percent (6%) per Year, compounding annually (the “Metro Reserve Shortfall Payment Interest”) until repaid. Metro Reserve Shortfall Payments and associated Metro Reserve Shortfall Payment Interest will be repaid pursuant to the Waterfall.

(ii) If Metro does not elect by such Quarterly Meeting to fund any Expense Reserve Shortfall, Parking Company must fund such Expense Reserve Shortfall amount (such payment by Parking Company, a “Parking Company Reserve Shortfall Payment”) by funding the Expense Reserve Shortfall into the Operating Expense Account or Capital Expense Account, as applicable, from its own funds (including by using funds in the Excess Revenues Reserve Account) on the next Quarterly Settlement Date (or earlier if necessary). The Parking Company Reserve Shortfall Payment will be added to Parking Company’s Aggregate Parking Company Contribution from

the date paid, and will be repaid to Parking Company pursuant to the Waterfall. Without limiting the foregoing, the Parking Company may use funds in the Excess Revenues Reserve Account to address any Expense Reserve Shortfall arising from or relating to a Force Majeure event.

(h) *Excess Proceeds Waterfall.* After the Operating Expense Account and Capital Expense Account are “fully funded” under Section 2.3(f) above, on the Quarterly Settlement Date, Metro shall cause all remaining Project Revenue in the Metro Account to be allocated and disbursed in the following order and priority (the “Waterfall”):

(i) First, commencing as of the second Contract Year (currently anticipated to begin in the fall of 2020), any remaining Project Revenue shall be utilized to pay Metro each Quarter twenty-five percent (25%) of the Annual Metro Payment. Any shortfall in an Annual Metro Payment owed to Metro as of any Quarterly Settlement Date pursuant to this subsection shall be an “Annual Metro Payment Shortfall”. Annual Metro Payment Shortfalls shall accrue interest in favor of Metro at a rate of six percent (6%) per Year, compounding annually (“Annual Metro Payment Shortfall Interest”).

(ii) Second, any remaining Project Revenue shall be paid to Metro until Metro has received amounts pursuant to this Section 2.3(h)(ii) sufficient to satisfy all Annual Metro Payment Shortfalls and Annual Metro Payment Shortfall Interest owed to Metro.

(iii) Third, any remaining Project Revenue shall be paid to Metro in satisfaction of any Metro Reserve Shortfall Payments and Metro Reserve Shortfall Payment Interest owed to Metro.

(iv) Fourth, any remaining Project Revenue shall be paid pro rata, (A) to Metro to cure any deficiency of payments that should have been due to Metro from an Audit and Review and (B) to Parking Company to cure any deficiency of payments that should have been due to Parking Company from an Audit and Review.

(v) Fifth, any remaining Project Revenue shall be paid to Parking Company until Parking Company has received an amount (the “Annual Capital Return Payment”) which, if such amount was paid to Parking Company quarterly for the remainder of the Term, Parking Company would, over the Term, (1) receive a return of one hundred percent (100%) of Parking Company’s Aggregate Parking Company Contributions and (2) achieve a six percent (6%) Internal Rate of Return on such Aggregate Parking Company Contributions.

(vi) Sixth, any remaining Project Revenue shall be paid fifty percent (50%) to Metro and fifty percent (50%) to Parking Company, until Parking Company has achieved a nine point seventy five percent (9.75)% Internal Rate of Return on Parking Company’s Aggregate Parking Company Contributions.

(vii) Seventh, any remaining Project Revenue shall be paid ninety percent (90%) to Metro and ten percent (10%) to the Excess Revenues Reserve Account.

In any Quarter that a Party is entitled under this Agreement to offset an amount otherwise due the other Party under the Waterfall, that offset will be deducted from the lowest payment due the other Party under the Waterfall and paid directly to the Party entitled to payment.

(i) *Security Interest in Operating Expense Account and Capital Expense Account.* The Parking Company hereby grants, transfers and conveys to Metro a first priority security interest in

Parking Company's right, title and interest to the Operating Expense Account and Capital Expense Account. On the Closing Date, (1) Parking Company shall cause the applicable depository bank to execute a deposit account control agreement in form and substance reasonably acceptable to Metro granting Metro control over the Operating Expense Account and Capital Expense Account if a Parking Company Default occurs, and (2) execute such other documentation relating to the Operating Expense Account and Capital Expense Account as shall be reasonably requested by Metro to secure its interest in those accounts. There shall be no other liens on the Operating Expense Account or the Capital Expense Account, provided that Metro will consent to a concurrent pledge of the Operating Expense Account and Capital Expense Account to the Parking Company's Secured Lender under Parking Company's Financing Agreement, provided that the Secured Lender thereunder executes in favor of Metro an intercreditor agreement reasonably acceptable to Metro. The terms of that intercreditor agreement must provide that in the event of a foreclosure by the Secured Lender, the Secured Lender will only be entitled to utilize, or allow a Replacement Company to utilize, the proceeds in the Operating Expense Account and Capital Expenses Account to in accordance with the terms of this Agreement or any replacement agreement.

(j) *Accounts are Joint Accounts.* The flow of Project Revenue into the Metro Account, the Operating Expense Account and the Capital Expense Account is intended to ensure that public money from the Metered Parking System is paid only to Metro while at the same time ensuring that Parking Company has sufficient funds available to pay Project Operating Expenses and Project Capital Expenses. Parking Company will have full discretion to utilize proceeds in the Operating Expense Account and Capital Expense Account as detailed above, consistent with the requirements of this Agreement and the Business Plan. Regardless of which account Project Revenue is held in, that Project Revenue will constitute joint proceeds of Metro and Parking Company and may only be used in accordance with this Agreement. Proceeds in or distributed from those accounts will only be the sole property of Metro and available to its creditors when actually distributed to Metro in accordance with Section 2.3(h). Proceeds in or distributed from those accounts will only be the sole property of Parking Company and available to Parking Company's creditors when actually distributed to Parking Company in accordance with Section 2.3(h).

#### **Section 2.4. Conditions Precedent; Termination.**

(a) *Conditions for the Benefit of Metro.* Metro shall be obligated to complete the Closing only if each of the following conditions precedent has been satisfied in full at or before the Time of Closing, unless waived by Metro: (i) all representations and warranties of Parking Company in Section 9.2 shall be true and correct in all material respects on and as of the date hereof at and as of the Time of Closing with the same force and effect as if made at and as of such time and date except that representations and warranties that by their terms speak only as of the date of this Agreement or some other date need be true and correct only as of such date; and (ii) Parking Company shall not be in material breach of any material covenant on its part contained in this Agreement which is to be performed or complied with by Parking Company at or prior to the Time of Closing (including the failure of Parking Company to pay the Initial Upfront Payment at Closing in accordance with the terms hereof); (iii) Metro's independent auditors have not objected to Metro's determination that the Upfront Payment constitute current income in the fiscal Year in which they are paid.

(b) *Conditions for the Benefit of Parking Company.* Parking Company shall be obligated to complete the Closing only if each of the following conditions has been satisfied in full at or before the Time of Closing, unless waived by Parking Company: (i) the representations and warranties of Metro set forth in Section 9.1 shall be true and correct in all material respects on and as of the date hereof and at and as of the Time of Closing with the same force and effect as if made at and as of such time and date except that representations and warranties that by their terms speak only as of the date of this Agreement or some other date need to be true and correct only as of such date; (ii) Metro shall not be in material breach of

any material covenant on its part contained in this Agreement which is to be performed or complied with by Metro at or prior to the Time of Closing; (iii) Metro shall have (x) executed and delivered the consents and estoppel certificate contemplated by Section 10.2, and (y) agreed upon the final forms of the assignment and assumption agreement contemplated in Section 17.3(a) and the intercreditor agreement contemplated in Section 18.1(p); (iv) Metro Council shall have adopted an ordinance (the “Metro Ordinance”) authorizing Metro to enter into the Transaction and to comply with all of the obligations and undertakings of Metro contemplated hereunder, to allow Parking Company to comply with all of the obligations and undertakings of Parking Company contemplated hereunder, including each of items identified as (iii)-(ix) in the definition “System Changes”; (v) there shall not have occurred an Adverse Action or a material casualty Loss, destruction or damage to the Metered Parking System; (vi) Metro has obtained all consents of provider contracts necessary for the operation of the Metered Parking System and assignment to Parking Company; (vii) Metro shall have delivered to Parking Company a customary closing opinion from Metro's legal department; (viii) Metro shall have delivered to Parking Company a certificate confirming that each of the conditions set forth above have been satisfied in full by Metro (except any condition that has been waived by Parking Company) at or before the time of Closing; and (ix) the AZIDA Assignee shall have committed in writing, in form and substance satisfactory to the Parking Company (acting reasonably), to issue the long-term tax-exempt financing contemplated in Section 17.3(a) and to assume the obligations of Parking Company under this Agreement as the AZIDA Assignee.

(c) *Mutual Conditions.* Metro and Parking Company shall be obligated to complete the Closing only if each of the following conditions precedent has been satisfied in full at or before the Time of Closing, unless waived by both Metro and Parking Company: (i) there shall be no preliminary or permanent injunction or temporary restraining order or other order issued by a Governmental Authority of competent jurisdiction (including the AZIDA Assignee acting in connection with any long-term tax-exempt financing) or other legal restraint or prohibition enjoining or preventing the consummation of the Transaction or the long-term tax-exempt financing contemplated in Section 17.3(a); and (ii) there shall be no action taken, or omitted, or any Law enacted, entered, enforced or deemed applicable to the Transaction or such long-term tax-exempt financing by any Governmental Authority of competent jurisdiction (including the AZIDA Assignee acting in its capacity as the issuer of tax-exempt obligations relating to the long-term tax-exempt financing) that, in any case, has resulted or (in the case of any pending review or proceeding, if adversely determined) could reasonably be expected to result in such Governmental Authority conditioning or restricting the consummation of the Transaction or such long-term tax-exempt financing in a manner that would impose a material impairment on the Transaction or such long-term tax-exempt financing or materially adversely affect the Metered Parking System Rights Value or make the consummation of the Transaction or the long-term tax-exempt financing illegal.

(d) *Termination.* This Agreement may be terminated at any time prior to the Closing:

(i) by mutual consent of Metro and Parking Company in a written instrument;

(ii) by either Metro or Parking Company, upon notice to the other Party, if any Governmental Authority of competent jurisdiction (including the Arizona Industrial Development Authority acting in its capacity as the issuer of tax-exempt obligations relating to the long-term tax-exempt financing) shall have issued an order, decree or ruling or taken any other action permanently restraining, enjoining or otherwise prohibiting the Transaction or the long-term tax-exempt financing, and such order, decree, ruling or other action has become final and nonappealable or shall have failed to act; *provided; however*, that the right to terminate this Agreement under this Section 2.4(d)(ii) shall not be available to any Party whose failure to comply with any provision of this Agreement or other conduct has been the cause of, or results in such action;

(iii) by Parking Company, upon notice to Metro, if any condition set forth in Section 2.4(b) is not satisfied at the Time of Closing; provided, however, that Parking Company shall not have the right to terminate this Agreement under this Section 2.4(d)(iii) if Parking Company's failure to comply with any provision of this Agreement or other conduct has been the cause of, or resulted in, the failure of such condition or conditions to be satisfied; or

(iv) by Metro, upon notice to Parking Company, if any condition set forth in Section 2.4(a) is not satisfied at the Time of Closing; provided, however, that Metro shall not have the right to terminate this Agreement under this Section 2.4(d)(iv) if Metro's failure to comply with any provision of this Agreement or other conduct has been the cause of, or resulted in, the failure of such condition or conditions to be satisfied.

(e) *Effect of Termination.* In the event of termination of this Agreement by either Metro or Parking Company as provided in Section 2.4(d), this Agreement shall forthwith become void and there shall be no liability or obligation on the part of Metro or Parking Company or their respective Representatives, except as set forth in Section 2.5(c).

## **Section 2.5. Execution and Deposit.**

(a) Parking Company has delivered four (4) signed execution originals of this Agreement to Metro no later than May 31, 2019. Metro will have until June 30, 2019 to return to Parking Company four (4) countersigned execution originals of this Agreement.

(b) If approved by Metro Counsel, Metro shall deliver to Parking Company four (4) countersigned execution originals of this Agreement. If Metro fails to deliver executed originals of this Agreement to Parking Company by June 30, 2019, no contract will be formed. No later than one (1) Business Day after Parking Company's receipt of Metro's signed executed original of this Agreement, Parking Company shall deposit with the Treasurer of Metro either (i) a bank certified check, bank cashier's check or a treasurer's check drawn upon an incorporated bank or trust company payable unconditionally to the order of Metro in the amount Three Million Dollars (\$3,000,000); or (ii) a Letter of Credit with a face amount of Three Million Dollars (\$3,000,000) and a term of at least one hundred twenty (120) Days from the date of Parking Company's execution hereof (in either case, the "Closing Deposit"), to be held by Metro for the sole purpose described in Section 2.5(c).

(c) If upon approval and execution of this Agreement by the Parties, this Agreement is terminated pursuant to Section 2.4(d)(iv) (including as a result of the failure of Parking Company to pay the Initial Upfront Payment at Closing in accordance with the terms hereof so long as said failure is not the result of Metro's actions or omissions), but excluding a termination arising from Section 2.4(a)(iii), then Metro shall be entitled to, without notice to Parking Company, immediately cash such check or draw the full amount of the Closing Deposit upon presentation of a sight draft and a certificate confirming that Metro has the right to draw under the Closing Deposit in the amount of such sight draft (as applicable), and Metro shall be entitled to retain all of the proceeds of the Closing Deposit, in each case as the sole and exclusive remedy or right of Metro against Parking Company hereunder (provided that this limitation shall not apply in the event of fraud or willful breach by Parking Company). If this Agreement is terminated for any other reason, Metro shall return the Closing Deposit in accordance with Parking Company's reasonable instructions, or deliver, in accordance with Parking Company's reasonable instructions, the Closing Deposit and agree to cancel the Closing Deposit, in each case, immediately following any such termination. Except in cases involving fraud or willful breach by Parking Company, the right of Metro to retain the Closing Deposit or to draw the Closing Deposit is intended to be, and shall constitute, liquidated damages that would otherwise be hard to determine, and any payment thereof to Metro shall terminate Metro's rights and remedies in all respects.

(d) At Closing, Parking Company shall be entitled to a full return of the Closing Deposit.

**Section 2.6. Covenants.**

(a) *Cooperation.* During the Closing Period, the Parties shall cooperate with each other in order to permit the Closing to be consummated on the Closing Date. Thereafter, the Parties shall continue to cooperate with each other in order to achieve the assignment and transfer to the AZIDA Assignee, and the issuance by AZIDA Assignee of the long-term tax-exempt financing, in each case as contemplated in Section 17.3(a).

(b) *Reasonable Efforts.* During the Closing Period, each Party shall use all reasonable efforts (i) to take, or cause to be taken, all actions necessary to comply promptly with all requirements under this Agreement and all legal requirements which may be imposed on such Party to consummate the Transaction as promptly as practicable, including, but not limited to, making any necessary filings, and (ii) to obtain (and to cooperate with the other Party to obtain) any Consent of any Governmental Authority or any other public or private third-party which is required to be obtained or made by such Party in connection with the consummation of the Transaction and the long-term tax-exempt financing. Each Party shall promptly cooperate with and promptly furnish information to the other in connection with any such efforts by, or requirement imposed upon, any of them in connection with the foregoing.

(c) *Injunctions.* If any Governmental Authority of competent jurisdiction issues a preliminary or permanent injunction or temporary restraining order or other order before the issuance of the long-term tax-exempt financing, in each case as contemplated in Section 17.3(a) which would prohibit or materially restrict or hinder the Closing and/or the assignment and transfer to the AZIDA Assignee, and the issuance by AZIDA Assignee of the long-term tax-exempt financing, in each case as contemplated in Section 17.3(a), each Party shall use all reasonable efforts to have such injunction, decree or order dissolved or otherwise eliminated or to eliminate the condition that formed the basis for such injunction or order, in each case as promptly as possible.

(d) *Operation of the Metered Parking System.* During the Closing Period, Metro shall operate the Metered Parking System in the ordinary course in a manner consistent with past practice, which shall include using all reasonable efforts to preserve the goodwill of the Metered Parking System and to maintain good business relationships with Persons having business dealings with the Metered Parking System, to maintain the Metered Parking System Assets in normal operating condition and repair in accordance with past practice (ordinary wear and tear excepted), to perform (or cause to be performed) in all material respects all of Metro's obligations under the Metered Parking System Contracts and to cause the Metered Parking System to be operated in all material respects in accordance with all applicable Laws (except to the extent any non-compliance is being contested in good faith by appropriate proceedings and which are disclosed to Parking Company prior to the execution of this Agreement or, if occurring during the Closing Period, within three (3) Days of Metro becoming aware of the noncompliance but in no event less than three (3) Days prior to Closing), all to the end that the Metered Parking System as a going concern shall be unimpaired and delivered to Parking Company at the Time of Closing in a condition not materially worse than the condition as of April 29, 2019. Metro shall not amend, modify, renew, execute or otherwise negotiate (i) any contracts relating to the Metered Parking System or the Metered Parking System Operations, (ii) any valet permits or licenses or (iii) any loading zone permits or licenses after the date hereof up to the Closing Date without the prior written approval of Parking Company, which shall not be unreasonably withheld, conditioned or delayed. Metro, shall, up to and including the Time of Closing, be entitled to all of the cash or cash equivalents in or generated by the Metered Parking System. Without limiting the foregoing, Metro shall not terminate, amend, modify or agree to a waiver of the terms of any Authorization related to the Metered Parking System after April 29,

2019 and before the Time of Closing without Parking Company's consent, which shall not be unreasonably withheld, conditioned or delayed.

(e) *Metered Parking System Contracts.* The Metered Parking System Contracts are listed on Schedule 1. Prior to the Closing Date, Parking Company shall designate any Metered Parking System Contracts that Parking Company intends to administer on behalf of Metro from and after the Closing Date (the "Surviving Contracts"). Following Parking Company's designation, Metro shall designate any remaining Metered Parking System Contracts as Metered Parking System Contracts to be administered solely by Metro following the Closing Date (so long as such retained Metered Parking System Contracts do not adversely affect Parking Company or the Metered Parking System or otherwise interfere with the operation of the Metered Parking System (or any of the rights or remedies of Parking Company hereunder and should not bind Parking Company or the Metered Parking System to any obligations)). All other Metered Parking System Contracts shall be terminated by Metro, effective at the Time of Closing or as soon thereafter as permitted under the terms of the Metered Parking System Contract. Parking Company will not assume any liability relating to any Metered Parking System Contract retained by Metro following the Closing Date or terminated by Metro on the Closing Date (including any liability resulting from the termination thereof). Parking Company will not assume any liability under the Surviving Contracts attributable to (i) periods prior to the Closing (including any liability under any Surviving Contract that arises before or after the Closing that relates to any pre-Closing breach, default or violation of the Surviving Contract by Metro), (ii) any assignment of Metro's post-Closing rights under any Surviving Contract to Parking Company, or (iii) any delegation of Metro's duties or obligations under any Surviving Contract (including the duty and obligation to administer the Surviving Contract) to Parking Company; Metro will retain such liability and pay such liability as and when they become due and payable. On or before the Closing, Metro will advise each counterparty to a Surviving Contract that Metro has designated Parking Company as Metro's agent and that after Closing each such counterparty will take direction from Parking Company but that such counterparty should look solely to Metro for the payment of the liabilities not assumed by Parking Company. From and after Closing, each counterparty to a Surviving Contract will be a Contractor of Parking Company for all purposes hereunder. From and after the Closing, Parking Company will indemnify Metro from and against any claims arising in connection with any Surviving Contract as and to the extent such claims relate to obligations under the Surviving Contracts that Parking Company has assumed in accordance with the terms and provisions of this Section 2.6(e). From and after the Closing, Parking Company will pay all amounts due to the Contractors under the Surviving Contracts that Parking Company has assumed in accordance with the terms and provisions of this Section 2.6(e) from the Operating Expense Account.

(f) *Disclosure of Changes.*

(i) During the Closing Period, each Party shall immediately disclose in writing to the other Party any matter, which becomes known to it, which is inconsistent in any material respect with any of the representations or warranties contained in Article 9. No such disclosure, however, shall cure any misrepresentation or breach of warranty for the purposes of Section 2.4 or Article 12; and

(ii) During the Closing Period, Metro may supplement or amend the Schedules hereto, including one or more supplements or amendments to correct any matter which would constitute a breach of any representation, warranty, covenant or obligation contained herein. No such supplement or amendment shall be deemed to cure any breach for purposes of Section 2.4(a) or for any other purpose.

(g) *Access to Information.* During the Closing Period, but subject to confidentiality obligations binding on Metro with respect to any Person (provided that Metro has disclosed to Parking



Company the existence of the applicable Document that is subject to such confidentiality limitation in order to enable Parking Company to evaluate the materiality and significance of the lack of disclosure based on such limitations) Metro shall (i) give Parking Company and its Representatives reasonable access during normal business hours and on reasonable notice to the Metered Parking System, subject to Metro's policies and regulations regarding safety and security and any other reasonable conditions imposed by Metro, (ii) permit Parking Company and its Representatives to make such inspections as they may reasonably request and (iii) furnish Parking Company and its Representatives with such financial and operating data and other Information that is available with respect to the Metered Parking System as they may from time to time reasonably request. Parking Company shall hold and will cause its Representatives to hold in strict confidence all Documents and Information concerning the Metered Parking System to the extent and in accordance with the terms and conditions of the confidentiality agreement between Metro and Parking Company in connection with the Transaction. After the Closing Date, Parking Company shall at the request of Metro, in connection with claims or actions brought by or against third parties based upon events or circumstances concerning the Metered Parking System, (A) provide reasonable assistance in the collection of Information or Documents and (B) make Parking Company's employees available when reasonably requested by Metro.

(h) *Transition.* During the Closing Period, the Parties shall cooperate with each other to ensure the orderly transition of control, custody, operation, management, maintenance of, and the right to charge and collect Project Revenue (as applicable) in connection with, the Metered Parking System at the Time of Closing. The transition of operations of the Metered Parking System will occur in accordance with the Transition Plan incorporated within Parking Company's Business Plan as updated during the Closing Period by Metro and Parking Company to achieve the objectives outlined in the preceding sentence. During the Closing Period and prior to and following the Closing Date, Parking Company and Metro will jointly cooperate to finalize and implement the Transition Plan with the goal of assuring uninterrupted availability of the Metered Parking System. Metro shall take all efforts as may be necessary in order to ensure such orderly transition and provide to Parking Company with all Information and Documents related to the Metered Parking System Operations. At the request of Parking Company, Metro will provide to Parking Company, for up to nine months following the Closing, the services of any employee whose primary responsibilities relate to the Metered Parking System (or the services of other Metro employees who are assigned for such purpose). All such services shall be provided for an amount equal to the actual cost to Metro (including employment costs and related overhead expenses allocable to such employees, as reasonably determined by Metro), which amount shall be billed to Parking Company as soon as reasonably practicable following the end of each month and shall be payable by Parking Company within Thirty (30) Days of receipt of any such statement, and upon such other reasonable terms and conditions as Metro and Parking Company may agree. During the Closing Period, Parking Company will have the opportunity to interview and hire any current parking system employees without objection from Metro.

(i) *Casualty Loss Prior to Closing.* If prior to the Time of Closing, a material casualty Loss, destruction or damage to the Metered Parking System has occurred and this Agreement has not been terminated under Section 2.4(d), then Metro shall either (i) promptly and diligently repair and rebuild the affected parts of the Metered Parking System to restore them to at least the same condition in which they were before the occurrence of such casualty Loss, destruction or damage or (ii) authorize Parking Company to repair the Metered Parking System and assign to Parking Company all insurance and other proceeds (if any) payable by third-party insurers or other third parties in respect of such casualty Loss, destruction or damage and enforce (with the cooperation of Parking Company) all of its rights, remedies and privileges under any applicable insurance policies with third-party insurers; provided that if no insurance exists or such insurance proceeds are not sufficient to repair and rebuild the affected parts of the Metered Parking System to its prior condition, then Metro shall reimburse Parking Company for that amount representing the difference between the cost to repair and the amount of any insurance proceeds.

(j) *Operational Matters.* Metro shall consult with Parking Company with respect to any Metered Parking System operation matters of a material nature prior to the Time of Closing.

**Section 2.7. Intended Treatment for Federal and State Income Tax Purposes.**

(a) *Tax Treatment.*

(i) *State and Local Option Sales Taxes:* The Parties intend that the Metered Parking Fees paid to the Metro Account will be exempt from State and local option sales taxes given that they are charges made by Metro as a political subdivision of the State of Tennessee for on-street parking and collected by parking meters, as contemplated by Tennessee Code Annotated § 67-6-205(c)(2). Parking Company and Metro agree that Parking Company has no direct claim on any metered parking charges independent of Metro's claim on the metered parking charges. If for any reason State and local option Taxes are applicable to Metered Parking Fees (including if Metered Parking Fee are not deemed to be collected by "meters" or are otherwise subject to sales tax under Tennessee Code Annotated § 67-6-205(c)(2)), such an action will not constitute a Compensation Event or Adverse Action, but Parking Company will be entitled to adjust the Business Plan accordingly, including by increasing the amount held in the Operating Expense Account to reserve for such State and local option sales taxes, to implement processes and procedures for calculating and reporting such sales taxes and to pay those sales taxes from the Operating Expense Account. Further, any local option sales Taxes not charged or recovered directly from customers and actually paid by Parking Company will be treated as an Offset against amounts otherwise due Metro under Section 2.3(h)(i)-(iv) hereof, in order of application. The addition of sales Taxes, if any, to the Metered Parking Fee charged to users will require approval of the Commission.

(ii) The Parties intend for United States federal and state income Tax purposes that (A) the Upfront Payment will be treated as a payment and consideration for the grant to Parking Company of the right to use and operate the Metered Parking System Assets on an exclusive basis and to provide the Metered Parking Activities in accordance with this Agreement; and (B) the Annual Metro Payments and Revenue Share are separate fees and payments from the Upfront Payment and are not a payment for the grant to Parking Company of the right to use and operate the Metered Parking System described in this Section 2.7(a)(ii)(A) or otherwise but is in consideration of the activities Parking Company performs for Metro hereunder.

(iii) Notwithstanding Section 2.7(a)(i) and Section 2.7(a)(ii), this Section 2.7 only sets forth the intentions and agreements of the Parties with respect to United States federal and state income Tax purposes, and no provision of this Agreement is intended to, or shall in any way, transfer any fee interest in real property or improvements comprising the Metered Parking System Assets to Parking Company for purposes of the provisions of Tennessee State Law governing legal title to real property or the common law of the State or any other purpose whatsoever other than for United States federal and state income Tax purposes as described above.

(iv) The Parties believe that the Upfront Payment is a reasonable payment for the grant of the rights described in Section 2.7(a)(ii)(A) based on the fair market value of such rights and that the Annual Metro Payments and Revenue Share are reasonable fees based upon the fair market value of the Metered Parking Activities with respect to the Transaction and is in consideration thereof.

(v) Subject to and consistent with Section 2.7(b), Metro and Parking Company agree that the Upfront Payment will be allocated among the rights that Parking Company is obtaining the use of pursuant to this Agreement using the residual allocation provisions of Section 1060 of the Code as provided therein and otherwise consistent in all respects with the schedule referenced in Section 2.7(b).

(vi) Any Parking Company Compensation paid to Parking Company hereunder shall be deemed an adjustment to the Annual Metro Payments and Revenue Share for tax purposes and shall not be deemed to be an adjustment to the Upfront Payment related to the grant of the rights described in Section 2.7(a)(ii)(A).

(b) *Allocation.* Metro and the Parking Company agree that the Aggregate Parking Company Contributions will be allocated among the assets that the Parking Company is obtaining the use of pursuant to this Agreement using the residual allocation provisions of section 1060 of the Internal Revenue Code of 1986 as provided therein. The Parking Company shall prepare an allocation of the Aggregate Parking Company Contributions (and all other capitalized costs) among the acquired assets in accordance with section 1060 of the Internal Revenue Code of 1986 and the applicable Treasury Regulations. The Parking Company shall deliver such allocation to Metro thirty (30) Days prior to the Closing. In the case of any dispute regarding such allocation between the Parking Company and Metro, either Party may submit the matter for dispute resolution under the provisions of Article 20.

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

### **ARTICLE 3 TERMS OF PARKING RIGHTS AND OBLIGATIONS**

#### **Section 3.1. Metro Preservation of Metered Parking System and Present Condition.**

(a) *Right to Use.* Metro agrees that, subject to Metro's remedies upon a Parking Company Default, Parking Company shall, at all times during the Term, be entitled to the rights and privileges granted to Parking Company hereunder, subject to (i) the provisions contained in this Agreement and (ii) the police and regulatory powers of Metro. Parking Company will limit its actions relating to the Metered Parking System to those approved as part of the Business Plan and otherwise contemplated in this Agreement. Metro shall, at all times during the Term, defend (i) its lawful right to impose fees and charges for the privilege of parking motor vehicles and motorcycles in Metered Parking Spaces and to impose and collect fines for violations of Parking Rules and Regulations related to Metered Parking Spaces and (ii) the rights granted to Parking Company hereunder, or any portion thereof, against any Person claiming any interest adverse to Metro or Parking Company in the Metered Parking System, or any portion thereof, except where such adverse interest arises as a result of the act, omission, negligence, misconduct or violation of Law of Parking Company, its Affiliates or their respective Representatives. Given that at all times during the Term the Metered Parking System will remain a public asset within the public policy control of Metro, Metro will maintain the right to take any actions relating to the Metered Parking System Assets and may direct Parking Company to take any lawful actions in connection with Metered Parking System Operations as Metro deems necessary or beneficial for purposes of public policy, but any losses or increased costs or expenses suffered or incurred by the Parking Company as a result of such action directives may be deemed Compensation Events or Adverse Actions entitling Parking Company to a Compensation Event Payment, or to payment of the Metered Parking System Rights Value if the actions of Metro rise to the level of Adverse Actions.

(b) *Present Condition.* Subject generally to Metro's representations, warranties and covenants, Parking Company understands, agrees and acknowledges that Parking Company (i) by the execution of this Agreement, agrees to accept the Metered Parking System "AS IS" at the Time of Closing and (ii) has inspected the Metered Parking System and is aware of its condition and acknowledges that Metro neither has made nor is making any representation or warranty, express or implied, regarding the condition of the Metered Parking System (or any part thereof) or its suitability for Parking Company's implementation of the Business Plan, except for representations explicitly provided in Section 9.1(d).

### **Section 3.2. Metered Parking System Operations.**

(a) *Continuous Operation of System.* Except as otherwise specifically provided herein, Parking Company shall, at all times during the Term, (i) be responsible for all aspects of the Metered Parking System Operations, and (ii) cause the Metered Parking System Operations to be performed in accordance with the provisions of this Agreement and applicable Law. Parking Company shall, at all times during the Term, cause the Metered Parking System to be continuously operational for use during the applicable Periods of Operation by all members of the public except that Parking Company shall not be obligated to conduct Metered Parking System Operations with respect to a Metered Parking Space (A) during any period of time during which Metro has suspended Metered Parking System Operations with respect to such Metered Parking Space including, but not limited to, any suspension resulting from a Temporary Closure, (B) as specifically permitted under this Agreement, (C) as required by applicable Law, (D) as necessary to comply with any other requirement of this Agreement (including closures related to the installation of Capital Improvements or maintenance or repair activities as required by the Operating Standards), (E) as necessary for Temporary Closures required to address emergencies, public safety, temporary events or closures undertaken to maintain the public way or (F) as necessary to perform maintenance or repairs of the Metering Devices.

(b) *Costs and Expenses.* Except as otherwise specifically provided herein, as Metro's agent, Parking Company shall, at all times during the Term, pay or cause to be paid from the Operating Expense Account all costs and expenses relating to the Metered Parking System Operations as and when the same are due and payable.

(c) *Independent Liabilities.* From Parking Company's own assets (including the Excess Revenues Reserve Account) and not from the Operating Expense Account, Capital Expense Account, Metro Account or other direct Metered Parking System Revenue, Parking Company agrees to assume and discharge or perform when due, all debts, liabilities and obligations whatsoever relating to the Metered Parking System or the Metered Parking System Operations that occur, arise out of or relate to, or are based on facts or actions occurring, during the Term, and which relate to Parking Company's breach of any covenant, representation or warranty set forth in this Agreement or that arise as the result of the negligence or misconduct of Parking Company or its Contractors. Metro shall perform or cause to be performed and discharge or cause to be discharged as and when due, any debts, liabilities and obligations (i) with respect to the Metro Services, (ii) arising out of Metered Parking System Operations (including with respect to any Metered Parking System Contracts) prior to the Time of Closing, (iii) under any Environmental Law, other than to the extent caused by Parking Company's ownership or operation of the Metered Parking System during the Term; (iv) under any collective bargaining agreement or related labor agreement; and (v) with respect to any Metro pension or other Metro retiree benefit or medical plan. Notwithstanding the foregoing provisions of this Section, either Parking Company or Metro will be entitled to utilize proceeds of insurance maintained under the terms of this Agreement to satisfy any liabilities arising in connection with the Metered Parking System, however arising, if and to the extent that the event giving rise to the liability is covered by such insurance policy.

(d) *Right of Entry and Access to the Public Way.* Metro hereby grants to Parking Company and its Representatives the right to enter upon, in, under, over and across the streets, alleys, sidewalks in the public way, all to such extent and at such times as shall be necessary or desirable for Parking Company to access the Metered Parking System (including the Metering Devices and all supporting structures and appurtenances thereto) in order to conduct Metered Parking System Operations, including operating, maintaining, inspecting, repairing and managing Metered Parking System properties, constructing, installing, replacing, testing, dismantling and removing Metering Devices and all supporting structures and appurtenances thereto, interconnecting the same to any electric utility, telephonic or other communication lines, collecting Metered Parking System Revenue, and installing monitoring or observation technology or equipment reasonably necessary for Metered Parking System Operations. The rights granted to Parking Company under this Section 3.2(d) do not create a priority in favor of Parking Company over any other user of the public way and are subject to the Operating Standards and all provisions of Law, including, but not limited to, applicable Metro permit requirements, relating to the conduct of a private business or franchise in the public way.

(e) *Issuance of Parking Tickets.*

(i) Metro's designated law enforcement officers shall have the exclusive right and responsibility, to administer Parking Enforcement. Parking Company, through the Operator, and in accordance with the Enforcement Policies and Procedures, will assist Metro in connection with delivery to Metro enforcement authorities' Information regarding Parking Violations, printing and delivering Metro Approved parking tickets, delivery of notice of Parking Violations, and taking such other actions to assist Metro in Parking Enforcement as specified in the Metro Approved Business Plan. The Schedule for Applicable Parking Violation Fees is set forth in Schedule 5. From time to time Parking Company will recommend improvements to the Enforcement Policies and Procedures for adoption by Metro. From time to time, Parking Company will recommend to Metro modifications to the Business Plan that will allow Parking Company to improve Parking Enforcement and consequently, performance of the Metered Parking System. Metro may change the Enforcement Policies and Procedures as required to comply with federal or Tennessee State Law or as recommended by Parking Company and any such modification will not constitute an Adverse Action. Metro may otherwise change the Enforcement Policies and Procedures as Metro deems necessary, provided that the aggregate result of such modifications, after taking into account any corresponding Beneficial Event, may constitute a Compensation Event or Adverse Action.

(ii) Metro shall remain responsible for the adjudication related to the Parking Enforcement. Adjudication of Parking Enforcement matters by Metro in a manner that is consistent with the historical practices of Metro, including a consistent level of parking tickets that are dismissed or appealed, and that results in an aggregate reduction in Project Revenue or an increase in Project Operating Expenses, may result in a Compensation Event or Adverse Action.

(iii) Metro and Parking Company will deposit Parking Violation Revenue in the Metro Account which will be included in Project Revenue, regardless of whether such Parking Violation Revenue resulted from Parking Enforcement conducted by the Operator or Metro's designated law enforcement officers. Parking Violation Revenue collected by other enforcement authorities will not be deposited into the Metro Account or constitute Project Revenue. Metro intends that steps taken by Parking Company to assist Metro in connection with Parking Enforcement pursuant to this Section 3.2(e) shall have the same legal efficacy as Parking Enforcement performed by Metro or its Representatives, provided that approval of issuance of parking tickets, towing, booting and adjudication of Parking Violations must be done under the supervision and with the Approval of Metro.

(iv) Parking Company may delegate its duties under this Section 3.2(e) to a Contractor other than the Operator; provided that such Contractor shall be reasonably acceptable to Metro; and provided further, that any Contractor selected pursuant to this Section 3.2(e) shall be subject to the same restrictions and approval requirements of the Operator in Section 3.3.

(v) Metro, through its law enforcement officers, retains the right to perform all aspects of Parking Enforcement, even if assigned to Parking Company under this Agreement or the Business Plan. If Metro elects to remove Parking Company from aspects of Parking Enforcement: (a) Parking Company shall provide to Metro, at Parking Company's sole cost and expense, parking ticket books or rolls and other items and materials reasonably necessary to enable Metro to perform Parking Enforcement as contemplated by this Section 3.2(e); (b) Metro will be obligated to pay all costs associated with Parking Enforcement without reimbursement of those costs from Project Revenue or from the Metro Account; and (c) Metro will continue to be obligated to remit Parking Violation Revenue to the Metro Account for distribution in accordance with this Agreement. Metro's election to remove Parking Company from material aspects of Parking Enforcement may constitute a Compensation Event or Adverse Action if as a result of Metro's actions, Project Revenue is materially and negatively impacted. The Business Plan (Schedule 11) sets forth the Parties' approach to Parking Enforcement. Notwithstanding the foregoing, for so long as Metro continues to facilitate Parking Enforcement to a level at least comparable to current Parking Enforcement procedures and standards, no Compensation Event or Adverse Action will be deemed to have occurred relating to Parking Enforcement during the lesser of the first year of the Term, or such shorter period as period as Metro and Parking Company reasonably requires to develop refined procedures for Parking Enforcement and to transition to Parking Company those elements of parking specified for transfer to Parking Company under the Business Plan and approved by the Commission. No Compensation Event or Adverse Action will be deemed to have occurred due to changes in Parking Enforcement required by State or Federal law.

(f) *Residential Permits.* Metro reserves the right to designate certain on-street parking that are not Metered Parking Spaces as residential parking requiring a Residential Permit, provided that such designation does not materially affect the Metered Parking System in the surrounding area. Any such on-street parking will not become a part of the Metered Parking System and will not be counted as a Metered Parking Space. If there is a dispute as to whether such additional residential parking will materially impact Parking Company, the Parties shall submit such dispute for resolution by technical arbitration pursuant to Section 20.7. For a fee equal to the reasonable cost of administration payable from the Operating Expense Account, Parking Company shall have the right and responsibility for (i) administering the issuance of Residential Permits for a fee to cover the reasonable costs of administration and (ii) issuing all parking citations for violations of Parking Rules and Regulations related thereto. All fees collected for the issuance of Residential Permits and all Parking Violations Revenue shall be remitted to the Metro Account as Project Revenue.

(g) *Hours of Operation.* Parking Company shall be permitted and obligated to provide the Metered Parking Activities and collect Metered Parking System Revenue seven (7) days a week, fourteen (14) hours a day between 8am and 10pm Central Time, excluding parking holidays. Any change to these hours of operation by Parking Company will require Approval by Metro. Metered Parking Spaces may be offered for less than fourteen (14) hours a day (e.g. to accommodate traffic flow and for other purposes), but will only be counted as Metered Parking Spaces based on the number of hours that the Metered Parking Space is available for collection of Metered Parking System Revenue (e.g. a 100 Metered Parking Spaces that are only authorized for metering seven (7) hours per day will constitute only count as 50 Metered Parking Spaces for purposes of this Agreement).

(h) *Technology.* In order to maximize the return to Metro and improve Metro's transportation infrastructure, Metro and Parking Company may, upon mutual written amendment hereto, agree to provide as part of the Parking Rights and Obligations additional transportation functions that may include the following: Parking Violation processing, Parking Violation collection, Parking Enforcement software and equipment including handheld enforcement units and mobile license plate recognition systems (MLPRS), residential parking permit issuance and enforcement system, vehicle detection and directed enforcement technology, and additional technologies that further contribute to the maximization of the overall value of the Metered Parking System such as automated street sweeper enforcement systems, vehicle detection systems; dynamic rate changes, dynamic changes of time durations and days of payment, dynamic messaging and way-finding systems; and directed enforcement technologies. As part of the Business Plan, Parking Company will make program recommendations and work in tandem with Metro to maximize the total value of the Metered Parking System through the deployment of value-enhancing technologies, products, and activities, in a manner consistent with Metro's overall policy objectives.

### **Section 3.3. Operator Engagement.**

(a) The Metered Parking System Operations shall, at all times during the Term, be under the direction and supervision of an active operator with the expertise, qualifications, experience, competence, skills and know-how to perform the Metered Parking System Operations in accordance with this Agreement (an "Operator") who may be (but is not required to be) Parking Company itself. The Operator on the first Day of the Term shall be LAZ Parking Georgia LLC unless Parking Company has designated another Person to be the Operator and such Person has been Approved in accordance with Section 3.3(b). Parking Company shall not engage an Operator other than LAZ Parking Georgia LLC. or appoint a replacement Operator, unless Metro has Approved such Operator; provided, however, that a Change in Control of an Operator shall be deemed to be the appointment of a replacement Operator subject to Metro's Approval, and if Metro does not provide Parking Company with the relevant Approval, Parking Company shall be entitled to appoint an interim Operator without Metro's Approval for a period of up to one hundred eighty (180) Days from the date of appointment of such interim Operator, so as to avoid any interruption in operations of the Metered Parking System. Any delegation to an Operator shall not relieve Parking Company of any obligations, duties or liability hereunder. Both Parking Company and the Operator will be subject to the control rights of Metro relating to the Metered Parking System as provided for herein. Parking Company shall immediately notify Metro upon the termination or resignation of an Operator. Any agreement between Parking Company and any Operator shall by its terms terminate without penalty at the election of Metro upon three (3) Business Days' notice to such Operator, upon the termination of this Agreement. The Operator shall have no interest in or rights under this Agreement or the Metered Parking System unless the Operator is Parking Company itself. If for any reason Parking Company's rights hereunder are terminated, at Metro's election and conditioned on payment to the Operator (on a current basis) of the Operations Fee (including any unpaid arrears) together with any third-party costs and expenses, Metro may engage the Operator to continue to provide the Metered Parking Activities and the Operator will be obligated to do so continuously until the earlier of the engagement of replacement Operator or 180 Days.

(b) *Approval.* Any proposed replacement Operator must: (i) have demonstrated financial strength and integrity, both directly and in conjunction with its direct or indirect beneficial owners and each of their respective Affiliates; (ii) have capitalization to fulfill the obligations of an Operator; (iii) have experience in operating on street metered parking systems particularly across the United States of America; and (iv) directly and through its direct or indirect beneficial owners, each of their respective officers, directors and employees and each of their respective Affiliates, have a suitable business reputation, including the absence of criminal, civil or regulatory claims or actions against any such Person and the quality of any such Person's past or present performance on other projects. Any replacement

Operator proposed by Parking Company will be deemed acceptable to Metro unless Metro is able to affirmatively demonstrate that the replacement Operator materially fails to satisfy the above factors

(c) *Conflicts of Interest.* Metro recognizes that Operator is a national parking company providing parking services to various businesses in Nashville and around the country and that reasonable accommodation needs to be made in order to engage an experience operator to improve the Metered Parking System. Parking Company be responsible for ensuring that all users of the Metered Parking System are treated in an unbiased and non-discriminatory manner. Parking Company must notify the Parking Commission of each instance in which the Parking Company or Operator is a user of the Metered Parking System or a paid contractor of a user of the Metered Parking System (excluding ordinary employee retail use of the Metered Parking System by the Parking Company or the Operator). If the Parking Company or Operator has such a conflict of interest or potential conflict of interest, Parking Company and Operator are prohibited from favoring themselves or any affiliated entity over similarly situated parties in connection with the granting of permits and licenses, delivery of data or enforcement of Parking Rules and Regulations and other obligations on users of the Metered Parking System. If at any time Metro, acting reasonably, determines that a conflict of interest may exist, Metro may independently or through a third party, and at its own cost and expense, audit whether Parking Company and Operator have provided the Parking System Services in a unbiased and non-discriminatory manner. If the auditor determines that Parking Company or Operator has violated requirements of this Section 3.3(c):

(i) Parking Company will pay, (or cause Operator to pay) to Metro the cost of the audit (if a third party auditor was retained);

(ii) Parking Company will pay, (or cause Operator to pay) to the Metro Account (for distribution in accordance with this Agreement) any amounts that the audit determines should have been deposited into the Metro Account but were not (due to a violation of this Section 3.3(c));

(iii) Parking Company will pay, (or cause Operator to pay) to Metro any other direct and quantifiable damages that Metro incurred by reason of actions of Parking Company in violation of this Section 3.3(c);

(iv) Parking Company shall (or shall cause Operator) cease and desist from such biased or discriminatory behavior in accordance with a conflict resolution plan reasonably acceptable to Metro; and

(v) if Metro so elects, Parking Company shall (or shall cause Operator to) terminate the intercompany arrangement or transaction that gave rise to the violation of this Section 3.3(c).

#### **Section 3.4. Authorizations; Qualifications.**

(a) *Compliance.* Parking Company and Operator shall obtain, comply with, promptly renew and maintain in good standing all Authorizations; provided, however, that if Parking Company is, at any time during the Term, required to obtain any Authorization from a Governmental Authority that Metro was not required to obtain in connection with its operation of the Metered Parking System prior to the Time of Closing, Metro shall use its reasonable efforts to assist Parking Company in obtaining such Authorization. Nothing in this Agreement, including Section 2.1, shall be deemed to waive or modify any Authorization required to be obtained by Parking Company or any other Person in connection with the Metered Parking System, the Metered Parking System Operations or any activities generating Metered Parking System Revenue.



(b) *Qualifications.* Parking Company and Operator shall, as necessary, maintain all franchises, licenses, privileges and qualifications required to carry on its business pertaining to the Metered Parking System Operations.

### **Section 3.5. No Encumbrances.**

(a) *By Parking Company.* Parking Company shall not do any act or thing that will create any Encumbrance (other than a Permitted Parking Company Encumbrance) against the Metered Parking System. Parking Company shall promptly remove any Encumbrance (other than a Permitted Parking Company Encumbrance) against the Metered Parking System unless the Encumbrance came into existence as a result of an act of or omission by Metro or a Person claiming through it which in turn was not caused by an act or omission of Parking Company. Parking Company shall not be deemed to be in default hereunder if Parking Company continuously, diligently and in good faith contests any such Encumbrance, or the validity thereof (or causes such contest), by appropriate legal proceedings that shall operate to prevent the foreclosure of any such Encumbrance; provided that Parking Company has given (i) advance notification to Metro that Parking Company intends to contest the validity or collection of the Encumbrance and (ii) unless a bond or other security is provided in connection with such proceedings, a satisfactory indemnity to Metro or deposited with Metro a Letter of Credit, indemnity bond, surety bond, cash or Eligible Investment reasonably satisfactory to Metro in an amount equal to the amount of the claim or Encumbrance, plus such interest and penalties, court costs, or other charges as Metro may reasonably estimate to be payable by Parking Company at the conclusion of such contest or as is required to provide insurance over any potential Encumbrance. If such Letter of Credit bond, cash or Eligible Investment shall be so deposited, the same shall be held by Metro until such claim or other imposition shall have been released and discharged and shall thereupon be promptly returned to Parking Company, less any amounts reasonably expended by Metro to procure such release or discharge, or any loss, cost, damage, reasonable attorneys' fees or expense incurred by Metro by virtue of the contest of such Encumbrance.

(b) *By Metro.* Metro shall not do any act or thing that will create any Encumbrance (other than a Permitted Metro Encumbrance) against the Metered Parking System, the Project Revenues or the Metro Account and shall promptly remove any Encumbrance (other than a Permitted Metro Encumbrance) against the Metered Parking System, the Project Revenues or the Metro Account that came into existence as a result of an act of or omission by Metro or a Person claiming through Metro. Metro shall not be deemed to be in default hereunder if (i) Metro continuously, diligently and in good faith contests any such Encumbrance, or the validity thereof (or causes such contest), by appropriate legal proceedings that shall operate to prevent the foreclosure of any such Encumbrance; provided that Metro has given advance notification to Parking Company of Metro's intent to contest the validity or collection of the Encumbrance, and (ii) the Encumbrance does not result in a Loss of revenue or additional payments, fees or Project Operating Expenses for Parking Company, unless the amount of Loss of revenue and/or additional payment, fees or Project Operating Expenses is promptly repaid to Parking Company by Metro. This subsection (b) applies to any and all Permitted Metro Encumbrances as of the Closing Date that result in a change of status such that they no longer meet the definition of Permitted Metro Encumbrance (as defined in this Agreement) in any way, including but not limited to, judgments in favor of lien holders, any perfection of any inchoate liens by lien holders or the appearance of any new easements, etc. that were not listed as a Permitted Metro Encumbrance as of Closing, but conditions existed prior to Closing.

(c) *Removal.* Each Party, if requested by the other Party and at such other Party's costs and expense, shall use its reasonable efforts to assist such other Party in attempting to remove any Encumbrance that has come into existence as a result of an act of or omission by such other Party; provided that nothing herein shall obligate Metro to waive, modify or otherwise limit or affect the

enforcement by Metro of any applicable Law with respect to the Metered Parking System or any activities generating Project Revenue.

**Section 3.6. [Deliberately Omitted].**

**Section 3.7. Rights of Metro to Access and Perform Work on the Metered Parking System.**

(a) Metro shall have access to the Metered Parking System and each and every part thereof at all reasonable times and upon reasonable prior notice to perform each of the following at Metro's own cost and expense (other than if pursuant to clause (ii) or (iii)):

(i) to inspect the Metered Parking System or determine whether or not Parking Company is in compliance with its obligations under this Agreement or applicable Law pursuant to Section 8.3;

(ii) if a Parking Company Default then exists, subject to the cure rights of any Secured Lender under Section 18.3, to make any necessary repairs to the Metered Parking System and perform any work therein pursuant to Section 16.1(b)(iii);

(iii) in the event of an emergency or danger that threatens to cause injury to individuals (or damage to property) or to impair the continuous operation of the Metered Parking System or to impair the enforcement of Parking Violations or traffic control regulations and if Parking Company is not then taking all necessary steps to rectify or deal with said emergency or danger, to take actions as may be reasonably necessary to rectify such emergency or danger (in which case, no notice shall be necessary);

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

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

provided, however, that Metro shall use reasonable efforts to minimize interference with the Metered Parking System Operations or the value of the Metered Parking System Assets in connection with any entry pursuant to this Section 3.7(a). None of the foregoing actions in this Section 3.7(a) will obligate Metro to pay Temporary Closure Fees, Compensation Event Payments or otherwise result in an Adverse Action.

(b) *Access Rights.* To the extent that Metro undertakes work or repairs under this Section 3.7 or any other provision of this Agreement, such work or repairs shall be commenced and diligently completed in a good and workmanlike manner, in accordance with any applicable Operating Standards

and in such a manner as not to unreasonably interfere with the conduct of business in or use of such space.

(c) *Effect of Reservation.* Any reservation of a right by Metro and any of its Representatives, grantees, tenants, licensees and others claiming by, through or under Metro to enter the Metered Parking Spaces and to make or perform any repairs, alterations, restoration or other work in, to, above, or about the Metered Parking System which is Parking Company's obligation pursuant to this Agreement, shall not be deemed to (i) impose any obligation on Metro to do so, (ii) render Metro liable to Parking Company or any other Person for the failure to do so or (iii) relieve Parking Company from any obligation to indemnify Metro as otherwise provided in this Agreement. Nothing in this Agreement shall impose any duty upon the part of Metro to do any work required to be performed by Parking Company hereunder and performance of any such work by Metro and any of its Representatives, grantees, tenants, mortgagees, licensees and others claiming by, through or under Metro shall not constitute a waiver of Parking Company's Default in failing to perform the same.

### **Section 3.8. Payment of Taxes.**

(a) Except as otherwise provided in this Section 3.8, Parking Company shall pay when due (from the Operating Expense Account as a Project Operating Expense) all Taxes payable during the Term in respect of the use or conduct of business with respect to the Metered Parking System. Metro reserves the right, without being obligated to do so, to pay the amount of any such Taxes not timely paid and which are not being contested by Parking Company, and the amount so paid by Metro shall be deemed additional consideration hereunder, due and payable from the Operating Expense Account by the Parking Company within Twenty (20) Business Days after written demand by Metro. Parking Company shall have the right to contest in good faith the validity or amount of any Taxes which it is responsible to pay under this Section 3.8, provided that (i) Parking Company has given prior notice to Metro of each such contest, (ii) no contest by Parking Company may involve a reasonable possibility of forfeiture or sale of the Metered Parking System, and (iii) upon the final determination of any contest by Parking Company, if Parking Company has not already done so, Parking Company shall pay any amount found to be due, together with any costs, penalties and interest, from the Operating Expense Account. Without limiting the foregoing, Parking Company shall pay out of the Operating Expense Account, as a Project Operating Expense, any (A) sales, use or similar Tax (as more fully described in Section 2.7); (B) transfer, stamp, deed recording or similar Tax by reason of the execution and delivery of this Agreement; (C) property Taxes, if any; and (D) any Parking Taxes; provided however, that the portion of any such Taxes directly or indirectly received by Metro shall constitute an Other Project Revenue and remitted by Metro to the Metro Account. Notwithstanding anything herein to the contrary, all Taxes (including any current or future Taxes and increases in Taxes) payable during the Term in respect of the use or conduct of business with respect to the Metered Parking System may, subject to the prior approval of the Commission, be passed through by the Parking Company, in its reasonable business judgment, to the users otherwise paying Metered Parking Fees for use of the Metered Parking System, and any such increase to Metered Parking Fees as a result thereof shall not be considered for purposes of calculating rate adjustments pursuant to Schedule 5.

(b) If the Commission denies the approval contemplated in Section 3.8(a), or unreasonably delays in granting such approval, the imposition or incurrence of such Taxes shall constitute a Compensation Event.

**Section 3.9. Utilities.** Parking Company shall pay when due from the Operating Expense Account all charges (including all applicable Taxes and fees) for gas, electricity, light, heat, power, telephone, water and other utilities and services used in the Metered Parking System Operations or supplied to the Metered Parking System during the Term. Upon request of Metro, Parking Company

shall forward to Metro, within Thirty (30) Days following the respective due dates, official receipts, photocopies thereof, or other evidence satisfactory to Metro, of the payment required to be made by Parking Company in accordance with this Section 3.9. Metro does not warrant that any utility services will be free from interruptions caused by war, insurrection, civil commotion, riots, acts of God, government action, terrorism, repairs, renewals, improvements, alterations, strikes, lockouts, picketing, whether legal or illegal, accidents, inability to obtain fuel or supplies or any other causes, and any such interruption of utility services in and of itself shall never be deemed an Adverse Action or an eviction or disturbance of Parking Company's use of the Metered Parking System or any part thereof, or render Metro liable to Parking Company for damages or, unless the same constitutes a Delay Event, relieve Parking Company from performance of Parking Company's obligations under this Agreement.

### **Section 3.10. Notices of Defaults and Claims.**

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

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

**Section 3.11. Assignment of Operating Agreements and Plans.** At the request of Metro, Parking Company shall collaterally assign, to the extent reasonably practicable and subject to the terms and conditions herein, to Metro, in form and substance satisfactory to Metro, all of the right, title and interest of Parking Company in, to and under all or any of the Operating Agreements and all present and future specifications, plans, drawings, Information and documentation in relation to the Metered Parking System Operations except to the extent any of the foregoing involve proprietary information (collectively, the "Operating Agreements and Plans") as collateral security to Metro for the observance and performance by Parking Company of its covenants and obligations under this Agreement and subject, in all cases, to the rights of the Secured Lenders. Parking Company covenants that it shall cause all of the right, title and interest of Parking Company in, to and under all Operating Agreements and Plans entered into or created after the Time of Closing to be collaterally assignable to Metro for the purposes of this Section 3.11. Metro acknowledges that the Operating Agreements and Plans may also be assigned as security to a Secured Lender and that each of Metro and such Secured Lender shall be entitled to use the Operating Agreements and Plans in enforcing their respective security as hereinafter provided. Without limiting the generality of the foregoing, but subject to Metro's assumption of future liabilities under the Operating Agreements and Plans and to Article 18, Metro shall be entitled to use the Operating Agreements and Plans if Metro elects to use the Operating Agreements and Plans to remedy a Parking Company Default under this Agreement. Notwithstanding the foregoing, if any such Secured Lender has

entered into possession or is diligently enforcing and continues to diligently enforce its security, whether by way of appointment of a receiver or receiver and manager, foreclosure or power of sale in accordance with Article 18 or otherwise, or has entered (or is in process to enter) into a New Agreement under Section 18.5, and is using the Operating Agreements and Plans in respect of the Metered Parking System Operations, Metro may not enforce its security and the assignment in favor of the Secured Lender shall have priority at all times over any assignment to Metro. Parking Company shall promptly deliver to Metro, at the sole cost and expense of Parking Company, forthwith after completion or execution and delivery, a copy of each item of the Operating Agreements and Plans.

**Section 3.12. Metro Use of Information and Records.** Metro shall be entitled to access all reasonable records, electronic data, inferential data and other Information collected and retained by Parking Company with respect to the Metered Parking System Operations to the extent needed by Metro in connection with any Metro Services. The foregoing shall not include Parking Company's Proprietary Information. Information is to be provided to Metro in a format determined by Metro and communicated to Parking Company.

**Section 3.13. Metering Devices.** Parking Company shall be required to maintain and operate the Metering Devices in accordance with the Operating Standards. Parking Company will inspect all Metering Devices in a manner designed to identify and promptly repair or replace defective or inoperative Metering Devices. If Parking Company utilizes physical Metering Devices that the general public can identify, Parking Company shall establish a method pursuant to which members of the general public may report inoperative and defective Metering Devices and shall display, at or near each Metering Device, a telephone number and internet address for the reporting of inoperative and defective Metering Devices and other operational problems related to the Metered Parking System and Metered Parking System Operations. Nothing in this Agreement will prohibit Parking Company from using metering technology such as cameras or in-car readers that replace physical on-street Metering Devices.

**Section 3.14. Withheld Payments by Metro.** Parking Company acknowledges and agrees that if Metro is required under applicable Law of general application to withhold a portion of any payment that Metro is obligated to make to Parking Company under this Agreement, Metro will be deemed to have satisfied such payment obligation to Parking Company to the extent of such withholding by Metro. If any such withheld amounts are permitted to be paid to Parking Company, Metro shall pay such amounts to Parking Company whenever permitted by Law. Any items and payment amounts that Metro is legally required to withhold from Parking Company and which the Parties know as of the Closing Date will be listed in Schedule 9 and agreed to by Parking Company prior to Closing as a condition of Closing. Prior to withholding any portion of any payment hereunder, Metro will give reasonable prior notice to Parking Company.

**Section 3.15. Naming Rights and Commercial Advertisements and Activities.**

(a) Parking Company shall provide recommendations relating to naming of the Metered Parking System provided that such name must be Approved by Metro. For any naming of the Metered Parking System Approved by Metro, Parking Company will implement a marketing strategy consistent with the Business Plan. Parking Company grants to Metro an exclusive, non-transferable, royalty free license during the Term and thereafter to use the name chosen for the Metered Parking System together with all logos and marks used in connection with the Metered Parking System Operations.

(b) Parking Company shall also have exclusive rights with respect to commercial advertisements, including (but not limited to) advertising on Metering Devices, websites and advertising dispensed from Metering Devices. Revenue generated from these sources will be included in Other Project Revenues.

### **Section 3.16. Reversion of Metered Parking System.**

(a) Parking Company may invest any money in the Excess Revenues Reserve Account in accordance with the Business Plan approved by Metro. On the Reversion Date, Parking Company shall assign, surrender and deliver to Metro or to any Replacement Company all of its rights, title and interest in the Metered Parking System (including all improvements to the Metered Parking System), the Metered Parking System Assets, the Operating Expense Account, the Capital Expense Account and the Excess Revenues Reserve Account. With respect to any third-party or proprietary software utilized by Parking Company in the operation of the Metered Parking System at the time of the Reversion Date, Parking Company and Metro will use good faith efforts to provide appropriate license rights and terms to Metro for continued operation following reversion. Parking Company will have no obligation to license propriety software or other proprietary intellectual property to Metro after the Reversion Date, but must make reasonable accommodation, at the cost and expense of Metro, to ensure continued Metered Parking System Operations to ensure uninterrupted Metered Parking System Operations through the transaction to Metro or to a replacement Operator.

(b) Parking Company recognizes the public function of the Metered Parking System and will take all actions required to ensure an efficient transition of the Metered Parking System to the Replacement Company, which efforts may include continuing to perform Metered Parking Activities for a period of up to nine months following the termination of this Agreement through the Reversion Date. During such period, the Parties agree that the disposition of Project Revenues, the Waterfall and the payments to the Parking Company and Operator will continue in accordance with the terms of this Agreement. Notwithstanding the occurrence and continuance of a Metro Default hereunder, Parking Company and Operator may only discontinue performance of the Metered Parking Activities prior to the Reversion Date if ordered to stop work by a court of competent jurisdiction or if: (i) there are insufficient funds in the Operating Expense Account to pay expenses of the Metered Parking System, including the Operations Fee, as such amounts become due; (ii) Metro has not otherwise made provision for payment of current expenses (including current Capital Improvement expenses) associated with the Metered Parking System; (iii) such condition continues for 30 Days following delivery of notice from Parking Company to Metro of such circumstances; and (iv) Parking Company is unwilling to fund such deficiencies into the Operating Expense Account or Capital Expense Account (as appropriate) and add the funded amount to Parking Company's Aggregate Parking Company Contributions. In no event shall Parking Company have any obligation to fund any Expenses Reserve Shortfall under Section 2.3(g)(ii) during the period of continuation of services under this Section 3.16(b). In no event shall any extension of the period of service under this Section 3.16(b), nor the deferral of the Reversion Date under this Section 3.16(b), toll or otherwise extend the date of payment of the Metered Parking System Rights Value otherwise due under this Agreement.

**Section 3.17. Police, Fire, Emergency, and Public Safety Access Rights.** Notwithstanding any other provision of this Agreement, at all times during the Term and without notice or compensation to Parking Company, including any Temporary Closure Fee, (i) any police, fire, and emergency services and any other security or emergency personnel retained by or on behalf of Metro shall have access, as required by such services or personnel, to the Metered Parking System; and (ii) any Governmental Authority with jurisdiction over the Metered Parking System shall have access to the Metered Parking System as necessary for emergency management and homeland security purposes, including the prevention of or response to a public safety emergency (so long as any exercise of such jurisdiction, to the extent effected by Metro, shall be strictly in accordance with the terms hereof).

**ARTICLE 4**  
**CAPITAL IMPROVEMENTS; PROJECT ENHANCEMENTS**

**Section 4.1. Parking Company Responsibility for Capital Improvements.** Parking Company shall be responsible for overseeing the installation of all Capital Improvements with respect to the Metered Parking System required to be completed during the Term in accordance with the terms of this Agreement. The Business Plan reflects Parking Company's current projections of all Capital Improvements anticipated during the Term.

**Section 4.2. Authorizations Related to Capital Improvements.** Parking Company's obligation to perform Capital Improvements shall be subject to the issuance by Metro of any and all Authorizations to be issued by Metro and as required by Metro with respect thereto. Metro agrees not to unreasonably withhold, condition or delay the issuance of any such Authorizations. Without limiting the generality of the foregoing, Metro agrees that it will reasonably assist and cooperate with Parking Company in obtaining any and all Authorizations (including any required rights of access over real property that is owned or controlled by Metro) in order for Parking Company to perform Capital Improvements.

**Section 4.3. Metro Responsibility for Capital Improvements.** Metro, at its own cost and expense, shall maintain, repair and rehabilitate any existing or future Affected Property, including Metered Parking Spaces, that provide direct access to or consists of the Metered Parking System in such a manner as to maintain access to and from the Metered Parking System comparable to that in existence as of April 29, 2019 and to a standard not less than that observed by Metro with respect to other public roads and other Affected Property. Nothing in the foregoing sentence will prohibit or restrict Metro from shutting roads, relocating roads or otherwise managing the Metro transportation system. Prior to undertaking any maintenance, repairing or rehabilitation pursuant to this Section 4.3 Metro shall first give prompt notice to Parking Company and will consult with Parking Company as to how to mitigate the effects of such work which is proposed to be carried out. Absent Metro Code or Parking Rules and Regulation restrictions to the contrary, Parking Company will be responsible for installation and removal of all Metered Parking System equipment to facilitate such work (which may constitute a Compensation Event). If Metro Code or Parking Rules and Regulations require that Metro install, maintain or remove any Metered Parking System equipment, Metro will be obligated to do so and will not be entitled to reimbursement from the Metro Account, Operating Expense Account or Capital Expense Account for the cost thereof.

**Section 4.4. Required Payment Options.** Any Metered Parking Space with a Metered Parking Fee of One Dollar (\$1.00) or more per hour must have a payment option at the point of sale other than the cash payment of the Metered Parking Fee. Parking Company shall have 90 days from the Closing Date to implement such measures with respect to the Metered Parking Space in place on the Closing Date. Parking Company shall provide such payment option by use of a credit card or a debit card or similar electronic methods reasonably acceptable to Metro with respect to each Metered Parking Space before any increase of the Metered Parking Fee as set forth on Schedule 5 can occur. Parking Company will be responsible for all costs of removing the old Metering Devices, poles and related infrastructure and repairing any damage caused by such removal (i.e., repairing the holes remaining after such removal) for the installation of new Metering Devices.

**Section 4.5. Project Enhancements.**

(a) Metro agrees that before initiating any procurement for a Project Enhancement or before negotiating or entering into any agreement relating to a Project Enhancement, if the Project Enhancement is not provided for in the currently Approved Business Plan, Metro will: (i) give notice to Parking

Company and (ii) engage in exclusive negotiations with Parking Company for the development of such Project Enhancement. If Metro and Parking Company agree on Project Enhancements, Metro and Parking Company will amend the Business Plan and Operating Standards to provide for the Project Enhancements. It may be a Compensation Event if Metro undertakes any Project Enhancement over the objections of Parking Company.

(b) Parking Company will have the right, at its sole cost and expense (unless Metro agrees to contribute funds for a Project Enhancement) to design, develop, construct, operate and maintain any Project Enhancement Approved as part of the Business Plan.

## **ARTICLE 5 MODIFICATIONS**

**Section 5.1. Metro Directives.** Metro may, at any time during the Term, issue a Metro Directive to Parking Company. A Project Enhancement required by Metro under Section 4.5(a) hereof (and agreed to by Parking Company) shall constitute a Metro Directive. Subject to Metro making available to Parking Company sufficient funds to perform the work required to implement such Metro Directive at or before the time payment for such work is required to be made, and Parking Company having obtained (with the cooperation of Metro) all relevant Authorizations from all relevant Governmental Authorities required for the relevant work, Parking Company shall perform the work required to implement such Metro Directive, and Parking Company will be entitled to a Compensation Event Payment with respect thereto. The addition of or the removal of Metered Parking Spaces by Metro (including any direction to install or remove Metering Devices) is not a Metro Directive and shall not result in a Compensation Event Payment as a Metro Directive but may result in a Compensation Event Payment as provided in Article 7.

**Section 5.2. Parking Company Requests.** If Parking Company wishes at any time during the Term to make a material change in the dimensions, character or quality of any part of the Metered Parking System, then Parking Company may submit to Metro, for Approval, a Parking Company Request with respect to such change and shall submit to Metro for its Approval specific plans with respect to any such work. Parking Company shall not be required to submit a Parking Company Request, and no Approval shall be required, with respect to any Parking Company's actions so long as such actions comply with applicable Operating Standards. Parking Company shall be responsible for all amounts required to implement a Parking Company Request (and any Losses incurred in connection therewith) Approved by Metro. No Parking Company Request shall be implemented unless and until such Parking Company Request has been Approved by Metro.

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

## **ARTICLE 6 OPERATING STANDARDS**

**Section 6.1. Compliance with Operating Standards.** Parking Company shall, at all times during the Term and as Metro's agent, ensure that Metered Parking System Operations comply with the Operating Standards in all material respects (including any changes or modifications to the Operating Standards pursuant to the terms of this Agreement) *provided that* Parking Company shall have a reasonable period of time (a) following the Closing Date to carry out any changes to the operations of the Metered Parking System in order to cause the Metered Parking System to comply with the Operating Standards, and (b) from time to time to comply with the introduction of changes or modifications to the



Operating Standards that are made in accordance with the terms of this Agreement. Metro and Parking Company acknowledge and agree that the Operating Standards shall be construed flexibly in light of their objectives. Parking Company shall have in place procedures that are reasonably designed to achieve compliance with the Operating Standards. The Operating Standards shall not be deemed to be violated by immaterial acts or omissions, including an immaterial failure to comply with specific requirements set forth in the Operating Standards other than actions or omissions that endanger the public health or safety. Except as specifically set forth herein, Parking Company shall perform all work required to comply with and implement the Operating Standards (including the Capital Improvements described therein) as part of the Metered Parking System Operations and paid for out of the Operating Expense Account or Capital Expense Account, as appropriate.

**Section 6.2. Proposed Operating Standards.** As part of its Quarterly report, Parking Company may recommend modifications to the Operating Standards for Metro's consideration and Approval. Parking Company's proposed modifications to the Operating Standards must be accompanied by an explanation of Parking Company's rationale for making its proposal and all relevant supporting Information, certificates, reports, studies, investigations and other materials as are necessary to demonstrate that Parking Company's proposed amendments to the Operating Standards are reasonably designed to achieve the objectives of Business Plan. Metro may request any additional supporting Information, certificates, reports, studies, investigations and other materials as are reasonably required to determine if Parking Company's proposed amendment to the Operating Standards are reasonably designed to achieve the objectives of the Business Plan and otherwise acceptable. Until Metro provides its Approval for the implementation of Parking Company's proposed amended Operating Standards, Parking Company shall not implement the amended Operating Standards and shall implement and comply with the existing Operating Standards. Parking Company's proposed amendments to the Operating Standards will be deemed incorporated into the Operating Standards upon Approval by Metro. If Metro refuses to Approve any proposed amendment to the Operating Standards and Parking Company disagrees with such refusal, Parking Company may not submit the matter to the procedures under the provisions of Article 20.

### **Section 6.3. Modified Operating Standards.**

(a) Metro shall have the right, at any time during the Term, to modify or change the Operating Standards upon notice to Parking Company where necessary to comply with any new Law (other than a Law of Metro) applicable to the Metered Parking System Operations. If Metro modifies the Operating Standards in accordance with the immediately preceding sentence, Parking Company, using funds in the Operating Expense Account, Capital Expense Account or Excess Revenues Reserve Account, as appropriate, shall perform all work required to implement and shall comply with all such modifications and changes and in no event shall Parking Company be excused from compliance with any such modification or change. Parking Company shall have the right to challenge pursuant to Article 20 any modified Operating Standard on the grounds that it does not meet the requirement of this Section 6.3(a). If any change to the Operating Standards is required by reason of a new Law of Metro adopted after the Final Proposal Date that is not a Law of general application to commercial enterprises within Davidson County, such event may constitute a Compensation Event.

(b) If during the Term Metro is of the opinion that a modification or change to the Operating Standards is necessary or desirable but such modification or change is not subject to Section 6.3(a), Metro may upon reasonable written notice to Parking Company modify or change the Operating Standards. Such a modification or change to the Operating Standard may constitute a Compensation Event. In addition to its other rights hereunder, Parking Company will be entitled to deduct the Compensation Event Payment from amounts otherwise due Metro under the Waterfall if a required change in the Operating Standards reduces amounts payable to Parking Company under the Waterfall. At Metro's

request, and subject to the foregoing, Parking Company shall perform all work required to implement changes to the Operating Standards. Parking Company shall comply with all modifications and changes to the Operating Standards, and in no event shall Parking Company be excused from compliance with any such modification or change. Notwithstanding any other provision hereof to the contrary, in no event shall any increased costs or lost revenues resulting from a modification or change to the Operating Standard under this Section 6.3(b) give rise to any obligation to make a Parking Company Reserve Shortfall Payment under Section 2.3(g)(ii). Metro shall have the right to undertake the work, upon reasonable notice to Parking Company, necessary to ensure implementation of and compliance with any such modification or change to the Operating Standards if Parking Company fails to do so within a reasonable period of time which in no event shall be less than 30 Days. To the extent that (i) such work is undertaken by Metro following proper notice to Parking Company and Parking Company's failure to take reasonable steps in furtherance of the modification or change, and (ii) Parking Company was not otherwise entitled to a Compensation Event Payment with respect to the work, Parking Company shall pay to Metro from the Operating Expense Account, Capital Expense Account, or Excess Revenues Reserve Account as appropriate, Metro's cost of such work within ten (10) Business Days following demand therefor.

## **ARTICLE 7 PROJECT REVENUES**

**Section 7.1. Metered Parking Fees.** Metro will have the sole authority to establish, through the Commission, the Metered Parking Fee and Metro hereby authorizes Parking Company and Operator to collect Metered Parking Fees as Metro's agent for deposit into the Metro Account. By means of the Metro Ordinance, Metro has Approved and adopted the Schedule of Parking Fees (Schedule 5) providing the Maximum Metered Parking Fees applicable to each Metered Parking Space. At or before the Time of Closing, Metro shall place in effect the Schedule of Parking Fees. Metro acknowledges that Parking Company has depended upon representations made by Metro regarding the Schedule of Parking Fees now and in the future in its determination of agreement to enter into this Agreement on the terms specified herein. Parking Company shall have the right, without any further act on the part of Metro, at any time during the Term, to increase a Metered Parking Fee for any Metered Parking Space to the Maximum Metered Parking Fee for such Metered Parking Space (as calculated pursuant to the Schedule of Parking Fees), and Metro shall take all required actions to implement such increase. Parking Company shall have the right, without any further act on the part of Metro, at any time during the Term, to reduce a Metered Parking Fee for any Metered Parking Space to a rate lower than the Maximum Metered Parking Fee for such Metered Parking Space (as calculated pursuant to the Schedule of Parking Fees. Such a reduction in rate may be changed at any time in Parking Company's sole discretion. Parking Company will not charge a Metered Parking Fee for any Metered Parking Space in excess of the Maximum Metered Parking Fee for any measurable increment. If, for any reason, Parking Company is prevented from exercising its rights hereunder to charge and collect (on behalf of Metro) the Maximum Metered Parking Fee for any Metered Parking Space (as calculated pursuant to the Schedule of Parking Fees), including as a result of Metro not adjusting the Maximum Metered Parking Fee in accordance with the provisions of Schedule 5, then a Compensation Event may be deemed to have occurred and Parking Company will receive a Compensation Event Payment with respect thereto (from and after the date the applicable Maximum Metered Parking Fee was not able to be charged and collected, as Project Revenue is not received in the Metro Account and therefore unavailable for distribution), in an amount equal (for each affected Metered Parking Space) to the difference between (i) the Metered Parking Fee actually charged with respect to such Metered Parking Space and (ii) the Metered Parking Fee with respect to such Metered Parking Space (as calculated pursuant to the Schedule of Parking Fee. Notwithstanding any other provision hereof to the contrary, if, for any reason, Parking Company is prevented from exercising its rights hereunder to charge and collect (on behalf of Metro) the Maximum Metered Parking Fee for any Metered Parking Space (as calculated pursuant to the Schedule of Parking Fees), Parking Company shall not be obligated to make a

Parking Company Reserve Shortfall Payment under Section 2.3(g)(ii) due to any resulting revenue shortfall.

## **Section 7.2. Designation and Removal of Metered Parking Spaces.**

(a) *Designation, Temporary Closure and Removal.* Any time after the Closing, Metro shall have the right to designate, temporarily close or remove, from time to time, each Metered Parking Space, subject to the terms of this Article 7. All new Metered Parking Spaces designated by Metro during the Term will be subject to the terms of this Agreement. Nothing in this Section shall prevent Parking Company from considering the implementation of on-street permitting devices to increase point-of-sale purchases.

(b) *New Metering Devices.* Parking Company shall be obligated to promptly install Metering Devices with respect to all newly designated Metered Parking Spaces after written notification by Metro of the designation. New Metering Devices will be ordered within ten (10) Business Days of said notice and will be installed within ten (10) Business Days after delivery and necessary testing of the equipment from the supplier to the Operator's location.

(c) *New Metered Parking Spaces.* Metro will be obligated to designate new Metered Parking Spaces in the amounts and dates set forth on Schedule 3 effective as of the Closing. If Metro does not designate these new Metered Parking Spaces when contemplated in Schedule 3, then the difference may be considered a Compensation Event and, if so, Parking Company will be entitled to a Compensation Event Payment by reason of Metro's failure to designate new Metered Parking Spaces, in an amount equal (for each affected Metered Parking Space) to the Metered Parking Fee with respect to such non-designated Metered Parking Space (as calculated pursuant to the Schedule of Parking Fees). Section 7.7 in its entirety is not applicable to the new Metered Parking Spaces referenced in this Section 7.2(c) and is only applicable after these spaces are designated by Metro. For purposes of clarity, no Metered Parking Spaces referenced in this Section will be Reserved Metered Parking Spaces nor will they match the definition of such.

(d) *Deemed Removal.* A Metered Parking Space shall be deemed to be removed (a "Permanent Removal") by Metro for the purposes of this Article 7 upon the earlier to occur of (i) the receipt of written notice by Metro to Parking Company that such closure is a permanent removal of such Metered Parking Space and (ii) six (6) months of continued closure of the Metered Parking Space. If a Metered Parking Space ceases to be designated by Metro as a Metered Parking Space, then Parking Company must immediately cease to collect Metered Parking Fees with respect to such parking space and within Five (5) Business Days after notification and, upon the direction of Metro, shall proceed to remove all Metering Devices with respect thereto, including repairing any damage caused by such removal (i.e., repairing the holes remaining after such removal) unless Metro requires that Metro employees repair such damage. The cost of Metering Device removal (and any related repair) will be an operating expense paid for from the Operating Expense Account.

(e) *Replacement Metered Parking Space.* If a Metered Parking Space is added within ninety (90) Days before or after a Metered Parking Space is designated for Permanent Removal pursuant to Section 7.2(d), then Metro may designate such Metered Parking Space as a replacement Metered Parking Space (a "Replacement Metered Parking Space") and such removed Metered Parking Space will not be considered a Permanent Removal or result in a Compensation Event unless Parking Company objects in writing as provided in this Section 7.2(e). If a Permanent Removal occurs, Parking Company agrees to cooperate with Metro in the ninety (90) Day period after such removal to identify and designate a Replacement Metered Parking Space. Parking Company shall have six (6) months from the date the Replacement Metered Parking Space become operational to provide written notice to Metro of its

reasonable objection to the designation of the Metered Parking Space as a Replacement Metered Parking Space which notice shall provide a detailed explanation for such objection along with all applicable data as to why such Replacement Metered Parking Space is not an adequate substitution. If Metro agrees with such objection, then the designation of the Metered Parking Space as a Replacement Metered Parking Space shall not be effective, and the provisions of Section 7.2 shall apply. If Metro disagrees with such objection, then the Parties shall resolve the dispute pursuant to Article 20. For purposes of determining whether a new Metered Parking Space should be considered a Replacement Metered Parking Space, the removal and addition of multiple Metered Parking Spaces shall be considered in the aggregate in such determination and not just individually. By way of example, if five (5) Metered Parking Spaces are removed and ten (10) Metered Parking Spaces are added during the ninety (90) Day period after such removal, all of the additional Ten (10) Metered Parking Spaces will be considered Replacement Metered Parking Spaces in determining whether there is an adequate substitution for the removed Metered Parking Spaces.

(f) *Remote metering and other systems.* Nothing in this Section shall prevent Parking Company from considering the implementation of on-street permitting devices to increase point-of-sale purchases. Nothing in this Agreement will prohibit Parking Company from installing new metering technology inconsistent with traditional coin and credit card collection systems (e.g. monthly passes, licensed place invoicing or automatic account debiting), provided that such new technology and new systems are Approved as part of the Business Plan.

**Section 7.3. Notice.** Any designation or removal of a Metered Parking Space by Metro pursuant to this Article 7 shall be provided in writing to Parking Company prior to such designation or removal.

**Section 7.4. Payments for Permanent Removal.** The Permanent Removal of Metered Parking Spaces during the Term: (a) of less than thirty percent (30%) of the Metered Parking Spaces in effect as of the Bid Date, or (b) which during the Measurement Period, based on Parking Company's most recent reporting to Metro, accounted for less than thirty percent (30%) of the Project Revenues, may result in a Compensation Event. The Permanent Removal of Metered Parking Spaces during the Term: (a) of more than thirty percent (30%) of the Metered Parking Spaces in effect as of the Bid Date, and (b) which during the Measurement Period, based as reflected in Parking Company's most recent reporting to Metro, accounted for more than thirty percent (30%) of the Project Revenues, may result in an Adverse Action or continue to be treated as a Compensation Event in Parking Company's continuing sole discretion. In the event of a Compensation Event under this Section 7.4, Parking Company shall be entitled to the Compensation Event Payment as set forth in Schedule 4 (the "Permanent Removal Payment"), in an amount equal (for each Permanent Removal of Metered Parking Spaces) to the Maximum Metered Parking Fee with respect to such Permanent Removal of Metered Parking Spaces (as calculated pursuant to the Schedule of Parking Fees) multiplied by a percentage, reflected as a fraction, equal to the average percentage of the Maximum Metered Parking Fees actually collected on those Metered Parking Spaces subject to Permanent Removal in the most recent financial reporting by the Parking Company at a Quarterly Meeting (or in the case of Metered Parking Spaces for which meters are not yet installed, the percentage of the Maximum Metered Parking Fees budgeted for collection during the year following installation of a meter). Metro's obligation to make the Permanent Removal Payment will be subject to the limitation provided for in Section 14.5. Metro will be entitled to end a Compensation Event or Adverse Action or the obligation to make the Permanent Removal Payment at any time by consenting to a Beneficial Event reasonably acceptable to Parking Company and of equal or greater value to Metered Parking System Revenue anticipated to be earned from the removed Metered Parking Spaces, such as by increasing the number of Metered Parking Spaces. Notwithstanding any other provision hereof to the contrary, Parking Company shall not be obligated to make a Parking Company Reserve Shortfall Payment under Section 2.3(g)(ii) due to any revenue shortfall arising from a Permanent Removal.

### **Section 7.5. Adjustments to Removal Payment.**

(a) Within sixty (60) Days after the end of each Quarter, or as soon as reasonably practicable thereafter, Parking Company shall deliver to Metro a statement setting forth: (i) the aggregate number of Permanent Removals in each Zone during such Quarter and during the Term, and (ii) the Permanent Removal Payment for each such Permanent Removal calculated in accordance with Section 7.4. Parking Company will be entitled to recover the Permanent Removal Payment by offsetting amounts otherwise due Metro under the Waterfall, or from Metro directly if the amounts due Metro under the Waterfall are insufficient to make the Permanent Removal Payment.

(b) If Metro disputes Parking Company's Permanent Removal Payment determination, the Parties shall attempt in good faith to determine the final Permanent Removal Payment (the "Final Removal Payment"). If the Parties cannot reach an agreement on the Final Removal Payment, they agree to engage a Consultant to determine the Final Removal Payment. In making its determination, the Consultant shall use all data related to such Metered Parking Space(s) collected by Parking Company up to the date of removal; provided, that if the Consultant is unable to reach a conclusion on this basis, the Consultant shall review such additional information and perform such additional procedures as the Consultant deems reasonably necessary. The determination of the Consultant shall be made as promptly as practicable following the date on which the dispute is submitted, shall be set forth in a written statement delivered to the Parties, and shall be final, binding and conclusive on the Parties. The fees and any expenses of the Consultant shall be paid by the Parties within Fifteen (15) Days of such determination as follows: (a) if the Consultant adopts the position of Metro, Parking Company shall bear such fees and expenses; (b) if the Consultant adopts the position of Parking Company, Metro shall bear such fees and expenses; or (c) if the Consultant adopts a position other than Parking Company's or Metro's, Metro and Parking Company shall bear such fees and expenses equally. If a retainer is required by the Consultant, the retainer shall be split equally between the Parties; provided, however, that the retainer shall be considered part of the fees and expenses of the Consultant and if either Party has paid a portion of such retainer, that Party will be entitled to be reimbursed by the other Party to the extent required by this Section 7.5(b). If a Party does not comply with the procedure and time requirements contained herein or such other procedure or time requirements as the Parties otherwise elect in writing, the Consultant shall render a decision based solely on the evidence it has which was timely filed by either of the Parties. The Consultant's resolution of the dispute shall be conclusive and binding upon the Parties and nonappealable.

### **Section 7.6. Temporary Closure of Metered Parking Spaces.**

(a) *Administration.* Parking Company, as agent for Metro, shall be exclusively responsible for the administration and operation of any Temporary Closures in accordance with the Operating Standards. Parking Company shall be entitled to collect and retain the applicable Temporary Closure Fee (as set forth in Schedule 5) from any Person, including Metro, requesting such Temporary Closure in accordance with this Section 7.6 and deposit the Temporary Closure Fee into the Metro Account as Other Project Revenue. Notwithstanding any other provision hereof to the contrary, Parking Company shall not be obligated to make a Parking Company Reserve Shortfall Payment under Section 2.3(g)(ii) due to any revenue shortfall arising from a Temporary Closure.

(b) *Third-Party Temporary Closure Fee.* Parking Company shall charge, collect and deposit in the Metro Account the applicable Temporary Closure Fee from any Person (other than Metro), in advance, in respect of any Temporary Closure requested by such Person in accordance with the Operating Standards.

(c) *Metro Temporary Closure Fee.* Except as otherwise specified herein, Parking Company shall charge, collect and retain the applicable Temporary Closure Fee from Metro, quarterly in arrears, in

respect of any Temporary Closure requested by Metro in accordance with the Operating Standards. Any Temporary Closure of an aggregate duration of greater than four (4) hours in any Day shall be treated as a Temporary Closure for the entire Day and any Temporary Closure of an aggregate duration of four (4) hours or less shall be disregarded. Any unpaid Temporary Closure Fee as of the end of each Quarter will be deducted from amounts due Metro under the Waterfall, and, if such amounts are insufficient to pay such Temporary Closure Fee in full, any shortfall shall constitute a Compensation Event.

(d) *Existing Permits.* Unless approved by the Commission, no permit issued for loading zones, valet, food truck service, or other use of the Metered Parking Spaces will be modified by Metro or Parking Company during the term of the permit and the holders of those permits will be entitled, *visa vie* the Parking Company, to use those permits in accordance with the terms of use in effect at the time of their grant. At time of renewal of a permit, the terms of the permit may be modified to the terms of such permit then approved by the Commission. Any increase in such permits over the numbers in place on April 29, 2019 may constitute a Compensation Event.

### **Section 7.7. Additional Metered Parking Spaces.**

(a) During the Term and subject to the provisions of Section 7.2(b) and Schedule 3, Metro may designate Additional Metered Parking Spaces (as such term is defined below) and each Additional Metered Parking Space shall immediately become part of the Metered Parking System; provided however, if Metro designates an aggregate increase of more than ten percent (10%) of Additional Metered Parking Spaces in any Zone without the consent of Parking Company, and Parking Company determines and notifies Metro that such addition is not economically viable (such Metered Parking Spaces referred to herein as the “Reserved Metered Parking Spaces”), Metro shall be responsible for the initial costs related to the addition of such Reserved Metered Parking Spaces to the Metered Parking System. In either case, Parking Company shall promptly undertake to install (if needed) a Metering Device for each such Additional Metered Parking Space and to commence Metered Parking System Operations with respect to such Metered Parking Space.

(b) In the case of additional designated Metered Parking Spaces that are not Reserved Metered Parking Spaces (such Metered Parking Spaces, the “Additional Metered Parking Spaces”):

(i) Parking Company shall pay from the Operating Expense Account, Capital Expense Account, or Excess Revenues Reserve Account as applicable, all initial costs and expenses related to the such addition of such Additional Metered Parking Spaces to the Metered Parking System, including all costs and expenses related to the acquisition cost of any new Metering Device required in respect thereof and the installation of such Metering Device by Parking Company; and

(ii) Parking Company shall install (if necessary) a Metering Device for such Additional Metered Parking Space and shall commence Metered Parking System Operations with respect to such Additional Metered Parking Space, in each case, in accordance with the Operating Standards and such Additional Metered Parking Space.

(c) Metro shall pay to Parking Company all initial costs and expenses related to the addition of Reserved Metered Parking Spaces to the Metered Parking System, including all costs and expenses related to the acquisition cost of any new Metering Device required in respect thereof and the installation of such Metering Device by Parking Company. If Metro fails to pay the cost of Reserved Metered Parking Spaces, as of the end of each Quarter the cost of Reserved Metered Parking Spaces will be deducted from amounts due Metro under the Waterfall. Parking Company shall install (if necessary) a Metering Device for each such Reserved Metered Parking Space and shall commence Metered Parking

System Operations with respect to such Reserved Metered Parking Space, in each case, in accordance with the Operating Standards. The designation and creation of any Reserved Metered Parking Space may constitute a Compensation Event if the designation of Reserved Metered Parking Space results in an overall decrease in Metered Parking System Revenue.

**Section 7.8. Changes in Parking Rules, Regulations and Adjudication.** Any material change to the parking rules, regulation and adjudication (i.e., changes in citation fines, penalties for unpaid parking citation fines, booting, impoundment or vehicle tow away) governing the Metered Parking Spaces or the Residential Permits may result in a Compensation Event or a Beneficial Event depending on the impact of such change on the Project Revenue.

**Section 7.9. Compensation for Operational Adjustments.**

(a) *Decreases in Maximum Metered Parking Fees.* Any (i) decrease in the Maximum Metered Parking Fee (other than as set forth in Section 7.1 with respect to a voluntary deduction by Parking Company) or (ii) failure to increase Maximum Metered Parking Fee according to the Schedule of Parking Fees or (iii) inability of Parking Company to exercise its right hereunder to charge and collect (on behalf of Metro) the Maximum Metered Parking Fee for any Metered Parking Space (as calculated pursuant to the Schedule of Parking Fees, including as a result of Metro not adjusting the Maximum Metered Parking Fee in accordance with the provisions of Schedule 5, may constitute a Compensation Event. A decrease in the Maximum Metered Parking Fee in any Year of greater than thirty percent (30%) of the Maximum Metered Parking Fee prior to such reduction may result in an Adverse Action. The Compensation Event Payment for a reduction in Metered Parking Fees shall be determined pursuant to the methodology set forth in Schedule 4.

(b) *Decreases in Period of Operation.* Any decrease in the Period of Operation of the Metered Parking Spaces may result in a Compensation Event. A decrease in the Period of Operation in any Year of greater than Thirty Percent (30%) of the applicable Period of Operation prior to such reduction may result in an Adverse Action. The Compensation Event Payment for a reduction in Metered Parking Fees shall be determined pursuant to the methodology set forth in Schedule 4.

(c) *Changes in Period of Stay.* Due to the difficulty in calculating the impact of a change in the Period of Stay on the Metered Parking System Revenue, Metro and Parking Company agree that no Compensation Event Payment will be due as the result of reasonable adjustment to rules relating to Periods of Stay.

**Section 7.10. Right to Challenge.** Unless otherwise stated, if a Party objects to any determination made by the other Party pursuant to this Article 7, the objecting Party shall have the right to submit such determination (at any time including after the date of such determination) for resolution by technical arbitration pursuant to Section 20.7.

**Section 7.11. Meter Removal Basket.** *Meter Removal Basket.* During the Term, Metro may remove up to One Hundred and Fifty (150) Metered Parking Spaces (“Meter Removal Basket”) from the Metered Parking System without Parking Company being entitled to request and/or receive any kind of compensation from Metro including any Compensation Event Payment; provided, however, if the number of Metered Parking Spaces (not including Reserved Metered Parking Spaces) increases, then the Meter Removal Basket will increase by the same proportion. Such increase, if any, shall be made in January on an annual basis based on the number of Metered Parking Spaces at the end of the prior Year.

**Section 7.12. Meter Bagging.** As part of the Business Plan, Parking Company shall submit and prepare an Operations Plan, which shall include parking meter practices and procedures for Temporary

Closures of Metered Parking Spaces and bagging or removal and storage of meters during closure. No Metered Parking Fee may be collected on bagged meters, however Parking Company will be entitled to collect Other Project Revenues in connection with Metered Parking Spaces that are subject to Temporary Closure such as valet fees or construction storage, construction easement, loading and unloading or food truck/retail usage fees if those fees are Approved by Metro either as part of the Business Plan or otherwise.

**Section 7.13. Residential Permits.** Metro shall assist Parking Company in developing as part of the Operations Plan, a plan for the administration and issuance of Residential Permits. The plan shall include, but not be limited to, provisions governing the following: (a) the geographical area for which Parking Company will issue Residential Permits; (b) time periods for which the Residential Permits will be valid; (c) decals or other identifying markers that will be provided customers to represent the Residential Permit; (d) on-street signage regarding Residential Permits; (e) nominal cost charged to consumers for purchase of Residential Permits; and (f) the process and procedures for the registration of Residential Permits, which may include an online system for registration. Any final plan for the issuance of Residential Permits must be Approved by Metro.

**Section 7.14. Special Events.** Metro may temporarily close, take over the use of or reduce or prohibit Metered Parking Fees to be charged with respect to all or any portion of the Metered Parking System for Special Events, as more particularly described in the Operating Standards. A Special Event shall not constitute a Compensation Event to the extent identified on Schedule 7 attached hereto (as modified from time to time in accordance with this Section 7.14). Metro shall have the right to modify Schedule 7 prior to each Contract Year and no Compensation Event Payment will be owed with respect to any such modifications, provided that the Metered Parking Spaces subject to and associated with the Special Events listed on the revised Schedule 7 are commensurate with those of the previous Schedule 7 with respect to (A) quantity; (B) location; (C) the time period during which such Metered Parking Spaces are affected; and (D) the days of the week during which such Metered Parking Spaces are affected.

## **ARTICLE 8 REPORTING; AUDITS; INSPECTIONS; DAY-TO-DAY MANAGEMENT**

### **Section 8.1. Reports.**

(a) *Incident Management and Notifications.* Parking Company shall provide notice to Metro of all emergencies within twelve (12) hours of being known to Parking Company or the Operator and promptly provide notice to Metro of all material accidents and incidents (including without limitation, incidents relating to information security breaches) occurring with respect to the Metered Parking System, and of all claims in excess of Twenty Five Thousand Dollars (\$25,000) made by or against Parking Company, or potential claims in excess of Twenty Five Thousand Dollars (\$25,000) that Parking Company reasonably expects to make against, or to be made against it by, third parties.

(b) *Environmental Incident Management and Notifications.* Parking Company shall provide notice to Metro within twelve (12) hours following Parking Company's becoming aware of the discharge, dumping, spilling (accidental or otherwise) of any reportable quantity, as defined under applicable Environmental Law, of Hazardous Substances occurring with respect to the Metered Parking System, the time, the agencies involved, the damage that has occurred and the remedial action taken. Parking Company shall be financially responsible and shall pay the costs and expenses of any remediation required as a result of any such discharge, dumping or spilling of Hazardous Substances caused by the willful misconduct or negligent action of, or permitted by the negligent inaction of, Parking Company or any of its Representatives and such amounts will not be payable from the Operating Expense Account or



the Capital Expense Account. Parking Company shall not be financially responsible for the actions of third parties except for those actions consented to by Parking Company or any of its Representatives.

### **Section 8.2. Information.**

(a) *Furnish Information.* At the request of Metro, Parking Company shall, at Parking Company's cost and expense and at any and all reasonable times during the Term: (i) make available or cause to be made available (and, if requested by Metro, furnish or cause to be furnished) to Metro all Information relating to the Metered Parking System Operations (other than Proprietary Information), this Agreement or the Metered Parking System as may be specified in such request and as shall be in the possession or control of Parking Company or its Representatives, and (ii) permit Metro, after giving ten (10) Business Days' prior notice to Parking Company (which notice shall identify the Persons that Metro requests to be present for an interview and describe with reasonable specificity the subject matter to be raised in the interview) request Parking Company's approval, which shall not be unreasonably withheld, to discuss the obligations of Parking Company under this Agreement with any of the directors, officers, employees or managers of Parking Company, the Operator or their respective Representatives at times and places acceptable to all attendees (it being agreed that Parking Company shall have the right to be present during any such discussions with the Operator or Representatives of Parking Company or the Operator), for the purpose of enabling Metro to determine whether Parking Company is in compliance with this Agreement. For the avoidance of doubt, this Section 8.2(a) does not impose a requirement to retain Information not otherwise retained in the normal course of business or required to be retained by applicable Law.

(b) *Confidentiality.* If Information is protected as confidential by an exception to the Tennessee Public Records Act, Metro shall endeavor to keep confidential any Information obtained from Parking Company or its Representatives; provided, however, that Metro shall have the right to determine, in its reasonable discretion, whether applicable Law requires disclosure of any such Information. If Metro determines that applicable Law does not apply to any such Information, Metro shall provide reasonable notice to, and shall consult with, Parking Company prior to disclosure of such Information. Parking Company may initiate an action seeking to prevent the disclosure of Information that Metro determines not to be confidential pursuant to this Section 8.2(b), but in such event Parking Company shall reimburse Metro for the reasonable costs and expenses (including attorneys' fees of the prevailing party) incurred by Metro in connection with such action from Parking Company's own funds and not from the Operating Expense Account. Notwithstanding anything to the contrary herein, Metro and Parking Company may disclose the United States federal tax treatment and tax structure of the Transaction.

### **Section 8.3. Inspection, Audit and Review Rights of Metro.**

(a) *Audit Right.* In addition to the rights set out in Section 8.2, Metro may, at all reasonable times, upon ten (10) Business Days' prior notice cause a Representative designated by it to, carry out an Audit and Review of the Information required to be maintained or delivered by Parking Company under this Agreement in connection with the performance of the Metered Parking System Operations for the purpose of verifying the Information contained therein and shall be entitled to make copies thereof and to take extracts therefrom, at Metro's expense, but, subject to Section 8.2(b). Prior to initiating any such Audit and Review Metro and Parking Company shall reach mutual agreement as to the scope of the Audit and Review, the Information to be shared during such process and the manner in which such Information is shared with Metro. Parking Company shall, at reasonable times, make available or cause to be made available to Metro or its designated Representative such Information and material as may reasonably be required by Metro or its designated Representative for its purposes and otherwise provide such cooperation as may be reasonably required by Metro in connection with the same. The Audit and Review may include an audit of all payments to and from the Operating Expense Account and Capital Expense

Account and an audit to review whether distributions in accordance with the Waterfall were accurately made and allocated to the Parties. Metro will be responsible for all costs associated with the Audit and Review. If the Audit and Review concludes that as a result of errors, omissions or non-compliance with this Agreement Metro has received less than the amount due to Metro under the Waterfall, such deficiency will be paid to Metro out of the Waterfall. If the Audit and Review concludes that Parking Company has received less than the amount due Parking Company under the Waterfall, such deficiency will be paid to Parking Company pursuant to the Waterfall. Metro will pay all costs of the Audit and Review. Either Party will be entitled to object to the results of the Audit and Review and such objection will be resolved by under Article 20 as provided herein.

(b) *Annual Report or Accounts.* In addition to the rights set out in Section 8.2, and in line with the provisions set forth in Section 8.3(a), Metro will have the right to carry out an Audit and Review of Parking Company's annual report or accounts as related to this Agreement, including without limitation Parking Company's financial performance hereunder and payments made to Metro, and Parking Company will surrender those annual reports or accounts to Metro or its designee as per their request, for Audit and Review purposes. Parking Company shall have its annual reports and accounts for any given Contract Year duly completed and verified within the first one hundred and twenty (120) Days of the immediately following Contract Year and shall be able to deliver them to Metro within a term not to exceed ten (10) Business Days following Metro's prior notice.

(c) *Inspection Right.* Metro and its Representatives shall, at all reasonable times and upon reasonable prior notice, have access to the Metered Parking System and every part thereof and Parking Company shall and shall cause its Representatives to, furnish Metro with every reasonable assistance for inspecting the Metered Parking System and the Metered Parking System Operations for the purpose of auditing the Information or ascertaining compliance with this Agreement and applicable Law subject to reasonable restrictions on access to confidential and proprietary information as determined by Parking Company.

(d) *Tests.* Metro and its Representatives shall, with the prior consent of Parking Company (which shall not be unreasonably withheld, conditioned or delayed), be entitled, at the sole cost and expense of Metro, and at any time and from time to time, to perform or cause to be performed any test, study or investigation in connection with the Metered Parking System or the Metered Parking System Operations as Metro may reasonably determine to be necessary in the circumstances and Parking Company, at the cost and expense of Metro, shall, and shall cause its Representatives to, furnish Metro or its Representatives with reasonable assistance in connection with the carrying out of such tests, procedures, studies and investigations.

(e) *No Waiver.* Failure by Metro or its Representatives to inspect, review, test or audit Parking Company's responsibilities under this Agreement or any part thereof, or the performance by Parking Company of the Metered Parking Activities, or the Information, shall not constitute a waiver of any of the rights of Metro hereunder or a release of any of the obligations or liabilities of Parking Company hereunder. Inspection, review, testing or Audit not followed by a notice of Parking Company Default shall not constitute a waiver of any Parking Company Default or constitute an acknowledgement that there has been or will be compliance with this Agreement and applicable Law.

(f) *No Undue Interference.* In the course of performing its inspections, reviews, tests and audits hereunder, Metro shall minimize the effect and duration of any disruption to or impairment of the Metered Parking System Operations or Parking Company's rights or responsibilities under this Agreement, having regard to the nature of the inspections, reviews, tests and audits being performed, except as necessary in the case of investigations of possible criminal conduct or Metro Ordinance violations.

(g) *Protection of Parking Company Information and Facilities.* Notwithstanding anything to the contrary, Metro shall ensure that all of its Representatives shall comply with the confidentiality obligations herein and as reasonably requested by Parking Company. Parking Company must consent to any Representative who is not an employee of Metro prior to said Representative receiving access to Parking Company Information, software, facilities or equipment including but not limited to the Metered Parking System and Metered Parking System Assets.

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

**Section 8.5. Quarterly Meetings and Annual Meetings.** On or before the twentieth (20th) Day following the end of each fiscal Quarter during the Term, Metro and, at its option, the Commission, through its Representative, will meet (the “Quarterly Meeting”) with Parking Company and the Operator and their Representatives. Parking Company will submit any documents required for a Quarterly Meeting or Annual Meeting not less than ten (10) Days prior to the meeting. Metro, the Commission and its Representatives and Parking Company and its Representatives may agree to such modifications to the substance, format and content of the Quarterly Meeting and Annual Meeting as they deem most efficient.

(a) *Quarterly Meeting.* At the Quarterly Meeting, Parking Company will provide a review of at least the following, supported by a financial report in such form as Metro and Parking Company agree:

(i) the financial and operational performance of the Metered Parking System over the preceding fiscal Quarter, including mapping showing the existing Metered Parking Spaces, planned Metered Parking Spaces, Metered Parking Spaces subject to Permanent Removal and the percentage of the Maximum Metered Parking Fee collected on Metered Parking Spaces over the preceding twelve months and budgeted for collection on Metered Parking Spaces subject to Permanent Removal over the succeeding twelve months, but now not collectible;

(ii) any divergences that may have occurred during the preceding fiscal Quarter in Metered Parking System Operations from the requirements of this Agreement and the Business Plan;

(iii) any recommended modifications to the Agreement or the Business Plan or Operating Standards, in the understanding that Parking Company will be expected to evidence its ability to adopt new technologies, deploy best practices, and to constantly improve efficiency and optimization of resources while managing the Metered Parking System Operations and generate additional Project Revenue;

(iv) all deposits to and disbursements from the Metro Account that have occurred in the prior fiscal Quarter (to the extent Metro has provided the corresponding account information);

(v) all deposits to and disbursements from the Operating Expense Account and Capital Expense Account occurring during the prior fiscal Quarter;

(vi) all disbursements from the Metro Account (to the extent Metro has provided the corresponding account information), the Operating Expense Account or the Capital Expense Account occurring during the prior fiscal Quarter to satisfy amounts due under the Waterfall;

(vii) all disbursements from the Metro Account or Capital Expense Account into the Operating Expense Account anticipated to be required in the current Quarter to restore the Operating Expense Account to include not less than the Operating Expense Required Reserve Amount, together with such additional amounts as may be required to pay Project Operating Expenses due during the current fiscal Quarter and pay any unpaid Project Operating Expenses outstanding from prior fiscal Quarters;

(viii) all disbursements from the Metro Account or Operating Expense Account into the Capital Expense Account anticipated to be required in the current Quarter to restore the Capital Expense Account to include not less than the Capital Expense Required Reserve Amount, together with such additional amounts as may be required to pay Project Capital Expenses due during the current fiscal Quarter and pay any unpaid Project Capital Expenses outstanding from prior fiscal Quarters;

(ix) any Compensation Events, Beneficial Events or Adverse Actions deemed to have occurred during the prior fiscal Quarter (to the extent Parking Company is aware of the same);

(x) a review of all Contractors performing Metered Parking Activities and any disputes or claims that have arisen with respect to those Contractors;

(xi) a current accounting of all amounts due each Party hereunder, together with a payment authorization to be signed off on by each Party and:

- (1) approving all payments to be made on the next Quarterly Settlement Date from the Metro Account, the Operating Expense Account or the Capital Expense Account to fund the other accounts or to pay amounts due any Party under the Waterfall,
- (2) specifying the amount of any Expense Reserve Shortfall that Metro will fund on the next Quarterly Settlement Date to the Operating Expense Account or Capital Expense Account,
- (3) specifying the amount of any Expense Reserve Shortfall that Metro will fund on the next Quarterly Settlement Date to the Operating Expense Account or Capital Expense Account,
- (4) specifying any other amounts due from Metro or Parking Company on the next Quarterly Settlement Date to the Operating Expense Account, the Capital Expense Account, the Metro Account or to the other Party in accordance with this Agreement.
- (5) specifying any amount that is in dispute and not yet paid pending resolution of the dispute.

If the Parties are unable to agree at such Quarterly Meeting on any transfer or payment described in this clause (ix), all transfers and payments, other than the Disputed Amount (as defined below), will be made on the relevant Quarterly Settlement Date. Metro will be liable to Parking Company for any losses and damages that Parking Company suffers if for any reason Metro breaches its obligations hereunder to authorize the transfer or payment of amounts at a Quarterly Meeting.

In furtherance of the foregoing, and in order to facilitate the Parking Company's payment of scheduled debt service on its Senior Debt when due, Metro and the Parking Company, both acting reasonably, will work together to agree (no later than the applicable Quarterly Settlement Date) the amounts of any disputed transfer or payment (such as agreed amounts, the "Disputed Amounts"). If Metro and the Parking Company are unable to agree on the quantum of the Disputed Amounts by such Quarterly Settlement Date, the quantum of such Disputed Amounts (for purposes of this Section 8.5(a)) shall be as set forth in the most current Project Operating Expense budget, capital expense budget or Business Plan, as applicable. If such Disputed Amounts relate to the funding of the Operating Expense Account or the Capital Expense Account under Section 2.3(f), or the transfers or payments completed in Section 2.3(h)(i), (ii), (iii) or (iv), the aggregate of such Disputed Amounts shall be retained by Metro in the Metro Account (pending resolution of the relevant disputes), with the remaining funds (if any) in the Metro Account after such retention being applied in accordance with Section 2.3(h)(v) and (vi).

Any failure by Parking Company to report any Compensation Events, Adverse Actions, claim or dispute under this Section 8.5 shall in no way act as a waiver of Parking Company's rights under this Agreement.

(b) *Annual Meeting.* At the Annual Meeting, Parking Company and Metro will review all of the items for a Quarterly Meeting and Parking Company will provide:

(i) recommended changes to the Project Operating Expense budget for the succeeding Contract Year, together with a forecast for the succeeding five Contract Years of the Term, which can include adjustments for changes to minimum wage, unionization and other mandated cost items by the Governmental Authority;

(ii) recommended changes to capital expense budget for the succeeding five Contract Years of the Term, together with a forecast for the remainder of the Term;

(iii) recommended increases or decreases to the Operating Expense Required Reserve Amount based on anticipated Project Operating Expenses anticipated by Parking Company over the succeeding Contract Year of the Term;

(iv) recommended increase or decreases in the Capital Expense Required Reserve Amount based on the projected Project Capital Expenses anticipated by Parking Company over the succeeding five Contract Years of the Term;

(v) a forecast of Metered Parking System Revenue for the next Contract Year of the Term and the next five Contract Years of the Term; and

(vi) a forecast of Project Revenue, Project Operating Expenses and Project Capital Expenses for the Contract Year with a comparison against prior Contract Year financial performance.

(c) *Approval and Disapproval of Documents and Funding.*

(i) Metro will have up ten (10) Days following a Quarterly Meeting or Annual Meeting to Approve or object to any payments or documents not Approved at the Quarterly or Annual Meeting. If Metro fails to provide comments, raise questions, or expressly refuses to accept part or all of the documents submitted by Parking Company within the above referred 10-Day term, then Parking Company's payments or documents will be deemed Approved by Metro. Absent reasonable objection by Metro to the disbursements requested by Parking Company, and contingent on the occurrence of the Quarterly Meeting and receipt of supporting documentation reasonably requested by Metro, on or before the last Day of the calendar month following the end of each Quarter, Metro will direct disbursements of available funds in the Metro Account to the Operating Expense Account, the Capital Expense Account and to the designated accounts of Metro and Parking Company for receipt of funds under the Waterfall. If Metro reasonably objects to proposed disbursements and the Parties are not able to resolve the disagreement, Metro will authorize disbursements in the amount not subject to dispute and withhold any amounts subject to dispute for resolution as provided in Article 20. Metro agrees that it shall not object to any disbursements proposed by Parking Company if such disbursements conform to the Business Plan, Operations Plan or Capital Improvements Plan, as applicable, previously approved by Metro, unless there has been a change of circumstances that has resulted in such plans being outdated. Metro will have no obligation to modify the Business Plan or the Operating Standards or to Approve payments or documents not conforming to the Business Plan or the Operating Standards most recently Approved by Metro.

(ii) Notwithstanding an objection by Metro, to ensure that Parking Company is able to pay current expenses as they become due, Parking Company may (x) utilize any amounts in the Operating Expense Account or Capital Expense Account to pay current expenses of the Metered Parking System and (y) require disbursements by Metro from the Metro Account into the Operating Expense Account and Capital Expense Account as Parking Company deems necessary to allow Parking Company to pay current expenses.

(d) *Metro Account Information.* Parking Company may, from time to time (but no more than once per Quarter) request an Audit and Review with respect to Metro's administration of the Metro Account. Further, Metro shall promptly provide to Parking Company such information and documentation pertaining to the Metro Account as Parking Company may reasonably request from time to time, including such information as is required in order for Parking Company to fulfill its obligations under this Section 8.5.

#### **Section 8.6. Day-to-Day Supervising and Administration Activities.**

(a) *Designation by Metro.* For purposes of overseeing and administering day-to-day operations, having direct contact with Parking Company and, in general, verifying compliance with the terms and conditions of this Agreement, Metro will notify Parking Company the name, title and full contact details of the Representative that will represent Metro vis-à-vis Parking Company. Said designation will take place no later than the Closing Date. Until said designation is revoked or canceled by Metro, Metro's Representative will continue serving as Metro's direct and immediate contact with Parking Company.

(b) *Designation by Parking Company.* In order to facilitate Metro's overseeing and administering activities related to day-to-day operations hereunder, including having contact with Metro and, in general, verifying compliance with the terms and conditions of this Agreement, Parking Company will notify Metro the name, title and full contact details of Parking Company's Representative that will represent Parking Company vis-à-vis Metro. Said designation will take place no later than the Closing Date. Until said designation is revoked or canceled by Parking Company, or as per Metro's reasonable

request, Parking Company's Representative will continue serving as Parking Company's direct and immediate contact with Metro.

(c) For clarity purposes, and unless otherwise expressly notified by one Party to the other Party, the Parties acknowledge that their Representative to be designated for purposes of Section 8.6(a) and Section 8.6(b) will not be authorized or empowered to amend or modify any term or condition under this Agreement or any Schedules hereof, or waive any right by any of the Parties or the exercise of any remedy against the other Party, all as set forth herein.

## **ARTICLE 9 REPRESENTATIONS AND WARRANTIES**

**Section 9.1. Representations and Warranties of Metro.** Metro makes the following representations and warranties to Parking Company as of the date hereof and as of the Closing Date and acknowledges that Parking Company and its Representatives are relying upon such representations and warranties in entering into this Agreement and in consummating the Transaction:

(a) *Organization.* Metro is a municipal corporation and political subdivision duly organized and existing under the Laws of the State.

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

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

(d) *Title.* At the Time of Closing, Metro will have good and sufficient title to the Metered Parking System necessary for the Metered Parking System Operations pursuant to this Agreement, subject only to Permitted Metro Encumbrances. Subject to any and all Permitted Metro Encumbrances existing at the Time of Closing, there is no recorded or unrecorded agreement, contract, option, commitment, right, privilege or other right of another binding upon, or which at any time in the future may become binding upon, Metro to sell, Transfer, convey, subject to lien, charge, grant a security interest in, or in any other way dispose of or materially encumber the Metered Parking System. Subject to any and all Permitted Metro Encumbrances, the recorded or unrecorded restrictions, exceptions, easements, rights of way, reservations, limitations, interests and other matters that affect title to the Metered Parking System (or any portion thereof) do not materially adversely affect Parking Company's ability to operate the Metered Parking System in accordance with the terms hereof. No indebtedness for borrowed money of Metro is or will be secured by any right or interest in the Metered Parking System or the revenues or income therefrom and no judgment lien exists or shall exist in any revenue derived from or generated with respect to the Metered Parking System.

(e) *No Conflicts.* The adoption of the Metro Ordinance, execution and delivery of this Agreement by Metro, the consummation of the Transactions contemplated hereby (including the operation of the Metered Parking System in accordance with the terms of this Agreement) and the performance by Metro of the terms, conditions and provisions hereof has not and will not contravene or

violate or result in a breach of (with or without the giving of notice or lapse of time, or both) or acceleration of any material obligations of Metro under (i) any applicable Law or (ii) any agreement, instrument or document to which Metro is a party or by which it is bound.

(f) *Consents.* No Consent is required to be obtained by Metro from, and no notice or filing is required to be given by Metro to or made by Metro with, any Person (including any Governmental Authority) in connection with the execution, delivery and performance by Metro of this Agreement or the consummation of the Transactions contemplated hereby.

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

(i) Metro has operated and is operating the Metered Parking System in compliance, in all material respects, with all applicable Laws and Metro is not in breach of any applicable Law that would have a Material Adverse Effect on the operations of the Metered Parking System or on Parking Company Interest. There are no Authorizations from any Governmental Authority necessary for the operation of the Metered Parking System as currently being operated.

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

(h) *Financial Information.* The financial information of Metro relating to the Metered Parking System attached hereto as Schedule 6, fairly presents the revenues, operating expenses and net revenues of the Metered Parking System as of the dates and for the periods stated in such financial information.

(i) *Metered Parking System Contracts.* Each Metered Parking System Contract is in full force and effect, has been made available for review by Parking Company and subject to Section 2.6(e) that was not selected to be assumed by Parking Company shall be terminated at the Time of Closing in accordance with Section 2.6(e) without liability or obligation to Parking Company. Metro is not in material breach of its obligations under any Metered Parking System Contract, and no act or event has occurred which, with notice or lapse of time, or both, would constitute a material breach thereof, and to the knowledge of Metro no other party to any Metered Parking System Contract is in material breach of its obligations under any Metered Parking System Contract, and no act or event has occurred with respect to any such party, which with notice or lapse of time, or both, would or is reasonably be expected to constitute a material breach thereof. The Metered Parking System Contracts are all of the material contracts and agreements (i) to which Metro is a party that relate to the Metered Parking System Operations or (ii) that bind the Metered Parking System in any material respect.

(j) *Brokers.* Except for Loop Capital Markets LLC, whose fees will be paid by Metro on or prior to the Closing Date, there is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of Metro who might be entitled to any fee or commission from Metro in connection with the Transactions contemplated by this Agreement. There is also no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of Metro who might be entitled to any fee or commission from Parking Company in connection with the Transactions contemplated by this Agreement.



(k) *Accuracy of Information.* To the knowledge of Metro, the factual and past historical information regarding the Metered Parking System that Metro provided to Parking Company in the virtual data room established in connection with the procurement was accurate in all material respects at the time such information was provided remains true as of the date this representation is given.

**Section 9.2. Representations and Warranties of Parking Company.** Parking Company makes the following representations and warranties to Metro as of the date hereof and as of the Closing Date (and acknowledges that Metro is relying upon such representations and warranties in entering into this Agreement and in consummating the Transaction):

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

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

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

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

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

(f) *Compliance with Law; Litigation.* Parking Company is not in breach of any applicable Law that could have a Material Adverse Effect on the operations of the Metered Parking System. Neither Parking Company nor any Affiliate of Parking Company is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of Persons with which Metro may not do business under applicable Law: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and solely with respect to Parking Company and its parent, the Debarred List. There is no action, suit or proceeding, at Law or in equity, or before or by any Governmental Authority, pending nor, to the best of Parking Company's knowledge, threatened against Parking Company prior to or at the Time of Closing, which will have a Material Adverse Effect on (i) the Transactions contemplated by this Agreement or (ii) the validity or enforceability of this

Agreement. Parking Company understands and acknowledges that all employees and contractors are required to abide by all applicable Federal, State and local laws, including but not limited to the Metropolitan Code.

(g) *RFQ.* All of the information in the response to the RFQ (#1207658) delivered by or on behalf of Parking Company to Metro in connection with the execution of this Agreement is true, accurate, and correct in all material respects (except for such Information that has been subsequently supplemented or that related to a specified date).

(h) *Operator.* To the extent the Operator is not Parking Company, Parking Company represents and warrants as follows: To the knowledge of Parking Company without any independent investigation into the accuracy thereof: (i) the Operator is duly organized, validly existing and in good standing under the Laws of the State of its organization; (ii) the capital stock of the Operator (including options, warrants and other rights to acquire capital stock) is owned by the Persons set forth in the written certification that Parking Company delivered to Metro prior to the Closing Date; (iii) the Operator has the power and authority to do all acts and things and execute and deliver all other documents as are required hereunder to be done, observed or performed by it in connection with its engagement by Parking Company; (iv) the Operator has all necessary expertise, qualifications, experience, competence, skills and know-how to perform the Metered Parking System Operations in accordance with this Agreement; and (v) the Operator is not in breach of any applicable Law that would have a Material Adverse Effect.

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

**Section 9.3. Non-Waiver.** No investigations made by or on behalf of any Party at any time shall have the effect of waiving, diminishing the scope of or otherwise affecting any representation or warranty made by the other Party in this Agreement or pursuant to this Agreement. No waiver by a Party of any condition, in whole or in part, shall operate as a waiver of any other condition.

#### **Section 9.4. Survival.**

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

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

or settlement of that Claim, provided such determination or settlement is being pursued diligently and in good faith by the applicable Party.

## **ARTICLE 10 FINANCE OBLIGATIONS**

**Section 10.1. Parking Company's Obligations, Net Worth Covenant and Performance Guaranty.** Except with respect to Metro's funding of costs and expenses related to Metro Directives as contemplated by Section 5.1, Parking Company shall be responsible for obtaining any financing for the performance of Parking Company's obligations under this Agreement, which financing shall comply with all requirements of this Agreement. Metro wants to ensure that, at all time during this Agreement, Parking Company's obligations under this Agreement remain supported by an entity of financial substance. At the Closing and at each Annual Meeting, Parking Company will provide Metro with a third-party audited financial statement or other financial Information acceptable to Metro confirming that the Operator has a balance sheet that includes liquid assets in excess of \$2,000,000 (independent of accounts receivable under this Agreement or the Operating Expense Account or Capital Expense Account maintained under to this Agreement) and a tangible net worth in excess of \$10,000,000, independent of the value of this Agreement, goodwill and other intangible assets. The Operator may satisfy the obligations under this Section 10.1 directly, or by delivery to Metro of a guaranty in form and substance reasonably satisfactory to the Parties (the "Guaranty") from an entity that concurrently with the Guaranty can provide an audited financial statement or other financial information acceptable to Metro confirming that the Guarantor satisfies the above financial tests. If for any reason and at any time the Operator or, if there is a Guarantor, such Guarantor, fails to meet the financial tests provided for in this Section or if the Guarantor defaults on its obligations under the Guaranty, Parking Company will be deemed in default hereunder. The obligations of any Guarantor hereunder will not be a guaranty of financial performance of the Metered Parking System, but limited to a guaranty that any representations and warranties given by the Operator at the Closing are true and correct as of the Closing, and that the Operator will faithfully perform its obligations under the Operating Agreement, including a guaranty that the Operator will not misdirect funds, will satisfy its indemnification obligations, will not voluntarily declare bankruptcy, will not violate Law, will maintain insurance as required under the Operating Agreement, will satisfy third-party claims against Metro arising from system operations and from the actions of the Operator, and will otherwise operate the Metered Parking System in accordance with the Operating Agreement.

In no event shall the Guarantor's obligations under the Guaranty exceed \$500,000 in the aggregate (less any amounts actually paid by the Operator with respect to such guaranteed obligations), except in the case of fraud, willful misconduct, or deliberate violation of Law, in each case by the Operator or the Guarantor. The Operator and the Guarantor, will be liable under this Section 10.1 for the acts or omissions of any subcontractor to the Operator (including any replacement Operator performing the limited conflict of interest operations functions under Section 3.3(c)) that, if performed or not performed by Operator, would constitute a violation by Operator of the requirements of this Section 10.1.

**Section 10.2. Metro's Obligations.** Metro shall, to the extent consistent with applicable Law and at the sole cost and expense of Parking Company, cooperate with Parking Company with respect to documentation reasonably necessary to obtain, maintain and replace financing for the performance of the obligations of Parking Company hereunder. Metro's cooperation may include reviewing, Approving and executing documents which substantiate the terms of this Agreement and making Information and material available to Parking Company's lenders to facilitate financing to the extent permitted by applicable Law and contractual obligations with third parties and to the extent reasonable in the circumstances. If requested to do so by Parking Company, Metro shall use its reasonable efforts to cause Metro's independent public accountants to consent to the preparation, use and inclusion of certain financial information regarding the Metered Parking System in connection with Parking Company's

public or private offering of securities, as the case may be. Further, Metro shall, promptly upon the request of Parking Company or any Secured Lender, execute, acknowledge and deliver to Parking Company, or any of the parties specified by Parking Company, standard consents and estoppel certificates with respect to this Agreement which may be qualified to the best of the knowledge and belief of a designated Representative of Metro. Nothing herein shall require Metro to incur any additional obligations or liabilities or to take any action, give any consent or enter into any document inconsistent with the provisions of this Agreement.

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

**Section 10.4. Prohibited Tax Shelter Transactions.** Parking Company covenants and agrees that it shall not enter into any lease, sublease, management agreement, operating agreement or other similar arrangement or other transaction that would cause Metro to become a party to a "*prohibited tax shelter transaction*" within the meaning of Section 4965 of the Internal Revenue Code of 1986 (it being agreed that, for purposes of this Section 10.4, Metro shall not be treated as having become a party to any such transaction solely by virtue of the execution of this Agreement). A violation of this Section 10.4 by Parking Company shall entitle Metro to (a) recover from Parking Company, to the extent permitted by applicable Law, the amount of any Tax liability to which Metro or any Metro official is subject and (b) require Parking Company, at Parking Company's expense, to prepare timely all statements and returns, and to maintain all lists and similar information that Metro becomes obligated to disclose, file or maintain with any taxing authority or participant or otherwise as a result of such transaction.

**Section 10.5. Ownership of Assets and Priority Rights of Metro** To facilitate Parking Company's management of the Metered Parking System as Metro's agent, Metro hereby grants to Parking Company the right to use all current Metered Parking System Assets for the Term. Parking Company may from time to time purchase additional equipment and make other capital investments utilizing proceeds in the Operating Expense Account or Capital Expense Account in accordance with the Business Plan. For ease of operations, insurance, depreciation and maintenance, Metro hereby authorizes Parking Company to take title to such additional Metered Parking System Assets. Parking Company may sell, either as owner or as Metro's agent, any Personal Property and the proceeds thereof will constitute Project Revenue for deposit into the Metro Account. Upon termination of this Agreement, and notwithstanding any dispute relating to this Agreement or default of Metro under this Agreement, Parking Company shall, within 10 Days of Metro's request, quitclaim and Transfer by bill of sale, by deed, bill of sale, transfer of title document or other conveyance method, and without additional consideration, all Metered Parking System Assets to Metro or to such party as Metro directs. Parking Company hereby grants a security interest in and to all Metered Parking System Assets including all Personal Property and Capital Improvements hereafter included in the Metered Parking System, for purposes of securing Parking Company's obligations under this Section 10.5, which security interest must at all times have first priority over all other creditors of Parking Company. This security interest is in addition to the security interest granted in the Capital Expense Account and Operating Expense Account pursuant to Section 2.3(i). Parking Company will execute such financing statements, account control agreements, pledge agreements or other documents, and take such other reasonable actions, as Metro shall reasonably request from time to time for purposes of allowing Metro to perfect the security interests granted under this Section 10.5 and Section 2.3(i). Nothing in this Section 10.5 or Section 2.3(i) will prohibit Parking Company from entering into a Financing Agreement with a Secured Lender under which Parking

Company grants a security interest to a Secured Lender in the equity interests in Parking Company, Parking Company's rights to payments under the Waterfall, any accounts into which Parking Company has directed that money's due Parking Company hereunder are to be paid or any monetary claim that Parking Company may have against Metro for payments due Parking Company hereunder. On behalf of Metro, Parking Company will be entitled to sell and or replace any Metered Parking System Assets that have become obsolete, reached the end of their useful life or are otherwise due for replacement pursuant to the Business Plan, and, provided that Parking Company pays any proceeds of sale of Metered Parking System Assets into the Metro Account, Metro's lien on those Metered Parking System Assets will be deemed terminated and released. At Parking Company's Request, Metro covenants to execute any documents releasing its lien on any Metered Parking System Assets sold pursuant to the preceding sentence.

## **ARTICLE 11 COMPLIANCE WITH LAWS**

**Section 11.1. Compliance with Laws.** Parking Company agrees to comply with all federal, state, and local laws, rules, and regulations applicable to Parking Company in performing work pursuant to this Agreement. Specifically, Parking Company, Operator and each Contractor must covenant to abide by the Metro Nashville Code of Conduct: Administrative Code 5-20 & Public Utilities Code §130051.20, §130051.25, & §130685.

### **Section 11.2. Nondiscrimination.**

(a) *Metro's Nondiscrimination Policy.* It is the policy of Metro not to discriminate on the basis of race, creed, color, national origin, age, sex, or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities.

(b) *Nondiscrimination Requirement.* No person shall be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in Metro's contracted programs or activities, on the grounds of race, creed, color, national origin, age, sex, disability, or any other classification protected by federal or Tennessee State Constitutional or statutory Law; nor shall they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with Metro or in the employment practices of Metro's Contractors. Parking Company certifies and warrants that it will comply with this nondiscrimination requirement. Parking Company shall, upon request, be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.

(c) *Covenant of Nondiscrimination.* Parking Company has committed to the Covenant of Nondiscrimination when registering with Metro to do business.

**Section 11.3. MBE Participation.** Parking Company shall at all times comply with the MBE goals, targets and procedure set forth in the Business Plan, as updated from time to time.

### **Section 11.4. Confidentiality.**

(a) Tennessee Code Annotated §10-7-504(i) specifies that information which would allow a person to obtain unauthorized access to confidential information or to government property shall be maintained as confidential. "Government property" includes electronic information processing systems, telecommunication systems, or other communications systems of a governmental entity subject to this chapter. Such records include: (A) Plans, security codes, passwords, combinations, or computer programs

used to protect electronic information and government property; (B) Information that would identify those areas of structural or operational vulnerability that would permit unlawful disruption to, or interference with, the services provided by a governmental entity; and (C) Information that could be used to disrupt, interfere with, or gain unauthorized access to electronic information or government property.

(b) The foregoing listing is not intended to be comprehensive, and any information which Metro marks or otherwise designates as anything other than “*Public Information*” will be deemed and treated as sensitive information, which is defined as any information not specifically labeled as “*Public Information*”. Information which qualifies as “sensitive information” may be presented in oral, written, graphic, and/or machine-readable formats. Regardless of presentation format, such information will be deemed and treated as sensitive information.

(c) Parking Company may have access to sensitive Information. Parking Company is required to maintain such Information in a manner appropriate to its level of sensitivity. All sensitive Information must be secured at all times including, but not limited to, the secured destruction of any written or electronic Information no longer needed. The unauthorized access, modification, deletion, or disclosure of any Metro Information may compromise the integrity and security of Metro, violate individual rights of privacy, and/or constitute a criminal act.

(d) Upon the request of Metro, Parking Company shall return all Information in whatever form, in a format chosen by Metro. In the event of any disclosure or threatened disclosure of Metro Information, Metro is further authorized and entitled to immediately seek and obtain injunctive or other similar relief against Parking Company, including but not limited to emergency and ex parte relief where available.

(e) Parking Company will be entitled to disclose any confidential information of Metro only if compelled to do so pursuant to: (i) a judicial or administrative order; or (ii) any other requirement imposed upon it by applicable law. Prior to making such a disclosure, to the extent allowed pursuant to applicable law, Parking Company shall provide Metro with as much prior notice of its intent to disclose as it is reasonably possible to give under the circumstances; this notice should describe the content of the information to be disclosed and the nature of the authority compelling disclosure and provide the contact information for the person requesting disclosure, if applicable. This Section shall be applicable to information that Metro deems to be confidential information but Parking Company does not. As used in this section, “confidential information” means information that is not subject to public inspection under the Tennessee Public Records Act (Tennessee Code Annotated Section 10-7-101 et seq.).

**Section 11.5. Ethical Standards.** Parking Company hereby represents that it has not been retained or retained any persons to solicit or secure a Metro contract upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. Breach of the provisions of this Section is, in addition to a breach of this Agreement, a breach of ethical standards, which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under any of Metro’s contracts.

**Section 11.6. Employment.** Parking Company shall not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, or which is in violation of applicable laws concerning the employment of individuals with disabilities. Parking Company shall not knowingly employ, permit, dispatch, subcontract, or instruct any person who is an undocumented and/or unlawful worker to perform work in whole or part under the terms of this Agreement. Violation of either of these

provisions may result in suspension or debarment if not resolved in a timely manner, not to exceed ninety (90) Days, to the satisfaction of Metro.

**Section 11.7. American Disabilities Act.** Parking Company assures Metro that all Metered Parking Activities shall be completed in full compliance with the Americans with Disabilities Act (also known as ADA) 2010 ADA Standards for Accessible Design, enacted by law March 15, 2012, as has been adopted by Metro. Parking Company will ensure that participants with disabilities will have communication access that is equally effective as that provided to people without disabilities. Information shall be made available in accessible formats, and auxiliary aids and services shall be provided upon the reasonable request of a qualified person with a disability.

**Section 11.8. Iran Divestment Act.** In accordance with the Iran Divestment Act, Tennessee Code Annotated § 12-12-101 et seq., Parking Company certifies that to the best of its knowledge and belief, neither Parking Company nor any of its Contractors or subcontractors are on the list created pursuant to Tennessee Code Annotated § 12-12-106. Misrepresentation may result in civil and criminal sanctions, including contract termination, debarment, or suspension from being a contractor or subcontractor under any Metro contracts.

## **ARTICLE 12 INDEMNIFICATION**

**Section 12.1. Indemnification by Operator.** Subject to the limitations of Section 10.1 and Section 12.11, Operator shall indemnify and hold harmless Metro and each of its Representatives from and against any Losses actually suffered or incurred by Metro or any such Representative, based upon, arising out of, occasioned by or attributable to (i) any failure by the Operator or each of their respective Representatives to comply with, observe or perform any of the covenants, obligations, agreements, terms or conditions in this Agreement that are passed through to the Operator in the Operating Agreement, or any breach by Operator of their representations or warranties set forth in in the Operating Agreement, (ii) any Claims, damages, costs, and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omissions of Operator, its officers, employees, and/or agents, including their sub or independent Contractors, in connection with the performance of this Agreement or (iii) any Claims, damages, penalties, costs, and attorney fees arising from any failure of Operator, its officers, employees, and/or agents, including its sub or independent Contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws, provided, however, that, except with respect to Claims resulting from Third-Party Claims, Claims are made in writing within a period of three (3) years following the earlier of (i) the expiration of the Term, (ii) the termination of the Operator (in which event the successor Operator shall deliver to Owner an Indemnity Agreement substantially similar to the Indemnity Agreement required under this Section 12.1), or (iii) the earlier termination of this Agreement, or within such shorter period as may be prescribed by the applicable statute of limitations. Parking Company will cause Operator to deliver to Owner at Closing, and maintain during the term of this Agreement, an indemnity agreement (the "Indemnity Agreement") from the Operator in favor of Owner and in form reasonably agreed between the Operator, Owner and Parking Company and conforming to the requirements of this Section 12.1.

### **Section 12.2. Third-Party Claims.**

(a) *Notice of Third-Party Claim.* If Metro receives notice of the commencement or assertion of any Third-Party Claim, Metro shall give Parking Company, Operator, and Guarantor reasonably prompt notice thereof, but no later than Thirty (30) Days after receipt of such notice of such Third-Party Claim. Such notice to Parking Company, Operator, and Guarantor shall describe the Third-Party Claim

in reasonable detail (and include a copy of any complaint or related documents) and shall indicate, if reasonably practicable, the estimated amount of the Loss that has been or may be sustained by Metro.

(b) *Defense of Third-Party Claim.* Parking Company, Operator, and/or Guarantor may participate in or assume the defense of any Third-Party Claim by giving notice to that effect to Metro not later than Thirty (30) Days after receiving notice of that Third-Party Claim (the “Notice Period”). Parking Company’s, Operator’s, and Guarantor’s right to do so shall be subject to the rights of any insurer or other Party who has potential liability in respect of that Third-Party Claim. Parking Company, Operator, and Guarantor each agrees to pay all of its own expenses of participating in or assuming each defense. Metro shall cooperate in good faith in the defense of each Third-Party Claim, even if the defense has been assumed by Parking Company, Operator, and/or Guarantor and may participate in such defense assisted by counsel of its own choice at its own expense. If Metro has not received notice within the Notice Period that Parking Company, Operator, and/or Guarantor has elected to assume the defense of such Third-Party Claim, Metro may assume such defense, assisted by counsel of its own choosing and Operator and/or Guarantor shall be liable for all reasonable costs and expenses paid or incurred in connection therewith and any Loss suffered or incurred by Metro with respect to such Third-Party Claim.

(c) *Assistance for Third-Party Claims.* Parking Company, Operator and Metro will use all reasonable efforts to make available to Parking Company, Operator, and/or Guarantor, (i) those employees whose assistance, testimony and presence is necessary to assist Parking Company, Operator, and/or Guarantor, as the case may be, in evaluating and in defending any Third-Party Claim, and (ii) all Documents, records and other materials in the possession of such party reasonably required by Parking Company, Operator, and/or Guarantor, as the case may be, for its use in defending any Third-Party Claim, and shall otherwise co-operate with Parking Company, Operator, and/or Guarantor, as the case may be. Parking Company, Operator, and Guarantor shall be responsible for all reasonable expenses associated with making such Documents, records and materials available and for all expenses of any employees made available by Metro to Parking Company pursuant to this Section 12.2(c), which expense shall not exceed the actual cost to Metro associated with such employees.

(d) *Settlement of Third-Party Claims.* If Parking Company, Operator, and/or Guarantor elects to assume the defense of any Third-Party Claim in accordance with Section 12.2(b), Parking Company, Operator, and/or Guarantor, as the case may be, shall not be liable for any legal expenses subsequently incurred by Metro in connection with the defense of such Third-Party Claim. However, if Parking Company fails to take reasonable steps necessary to defend diligently such Third-Party Claim within Thirty (30) Days after receiving notice from Metro that Metro bona fide believes on reasonable grounds that Parking Company has failed to take such steps, Metro may, at its option, elect to assume the defense of and to compromise or settle the Third-Party Claim assisted by counsel of its own choosing and Parking Company shall be liable for all reasonable costs and expenses paid or incurred in connection therewith. Metro shall not settle or compromise any Third-Party Claim without obtaining the prior written consent of Parking Company unless such settlement or compromise is made without any liability to and does not require any action on the part of, Parking Company.

**Section 12.3. Direct Claims.** Any Direct Claim shall be asserted by giving Parking Company, Operator, and Guarantor reasonably prompt notice thereof, but not later than Ninety (90) Days after Metro becomes aware of such Direct Claim. Operator and Guarantor shall then have a period of Thirty (30) Days within which to respond in writing to such Direct Claim. If Operator and/or Guarantor does not so respond within such Thirty (30) Day period, Operator and Guarantor shall be deemed to have rejected such Claim, and, in such event, Metro may submit such Direct Claim to the dispute resolution process set forth in Article 20.



**Section 12.4. Failure to Give Timely Notice.** A failure to give timely notice in accordance with this Article 12 shall not affect the rights or obligations of any Party except and only to the extent that, as a result of such failure, a Party which was entitled to receive such notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise directly and materially damaged as a result of such failure. However, this Section 12.4 shall have no effect whatever on the survival provisions set out in Section 9.4 and the rights of the Parties with respect thereto.

**Section 12.5. Reductions and Subrogation.** If the amount of any Loss incurred by Metro at any time subsequent to the making of an indemnity payment hereunder (an “Indemnity Payment”) is reduced by any recovery, settlement or otherwise under or pursuant to any insurance coverage, or pursuant to any claim, recovery, settlement or payment by or against any other Person, the amount of such reduction (less any costs, expenses (including Taxes) or premiums incurred in connection therewith), together with interest thereon from the date of payment thereof at the Bank Rate, shall promptly be repaid by Metro to Parking Company, Operator, and/or Guarantor, as the case may be. Upon making a full Indemnity Payment, Operator and/or Guarantor shall, to the extent of such Indemnity Payment, be subrogated to all rights of Metro against any third-party in respect of the Loss to which the Indemnity Payment relates. Until Metro recovers full payment of its Loss, any and all claims of Parking Company against any such third-party on account of such Indemnity Payment shall be postponed and subordinated in right of payment to Metro’s rights against such third-party.

**Section 12.6. Payment and Interest.** All amounts to be paid by Operator, and Guarantor hereunder shall bear interest at a rate per annum equal to the Bank Rate, calculated annually and payable quarterly, both before and after judgment, from the date that Metro disbursed funds, suffered damages or Losses or incurred a Loss, liability or expense in respect of a Loss for which Operator is liable to make payment pursuant to this Article 12, to the date of payment by Parking Company to Metro.

**Section 12.7. [Intentionally Omitted].**

**Section 12.8. Other Matters: Losses of Net Insurance.** For purposes of this Article 12, the amount of any Losses for which indemnification is provided hereunder shall be net of any amounts recovered by Metro under insurance policies with respect to such Losses, it being understood that the obligations of Metro hereunder shall not be so reduced to the extent that any such recovery results in an increase in Metro’s insurance premiums, or results in any other additional cost or expense to Metro. Operator may utilize the proceeds of any insurance policy maintained by Parking Company or Operator and paid for with Project Revenue to satisfy Operator's indemnification obligations hereunder, provided that any increase in Parking Company’s or Operator's insurance premiums will be due from Operator directly and not deemed a Project Operating Expense.

**Section 12.9. Offset Rights; Limitations on Certain Damages.** Each Party’s obligations under this Agreement are subject to, and each Party shall have the benefit of, all defenses, counterclaims, rights of offset or recoupment or other claims and rights, including the right to deduct payments due to the other Party hereunder (collectively, “Offsets”) which such Party may have at any time against such other Party (or any of their respective successors and assigns) or any transferee or assignee of any such other Party’s rights as against such Party or any part thereof or interest therein contingent or otherwise, and no Transfer or assignment of this Agreement or any other obligation of such other Party, or of any rights in respect thereof, pursuant to any plan of reorganization or liquidation or otherwise shall affect or impair the availability to each Party of the Offsets. To the extent permitted by law, in no event shall any Party be liable to the other Party under this Agreement for consequential, indirect, exemplary or punitive damages (except for claims for fraud or for intentional misrepresentation or intentional breach).

**Section 12.10. Survival.** This Article 12 shall remain in full force and effect in all circumstances and shall not be terminated by any breach (fundamental, negligent or otherwise) by any Party of its representations, warranties or covenants hereunder or by any termination or rescission of this Agreement by any Party.

**Section 12.11. Operator Provisions.**

(a) The Parking Company shall, no later than the Closing Date, cause the Operator to include indemnity provisions substantially similar to those in this Article 12 in the Operating Agreement, for the benefit of Metro, subject to the following terms and conditions:

(i) Limitation of Liability of the Operator Parties. Except as provided in Section 12.11(a)(iv), the maximum liability of the Operator Parties, on a combined basis, to Metro, Metro's Representatives and the Parking Company, on a combined basis, under or in connection with the Operating Agreement and the Guaranty (including the aggregate amount of any payments on termination and any indemnities) in any operating year shall not exceed the management fee paid to the Operator in the immediately prior operating year (or, in the case of the first operating year, scheduled to be paid for such year under the Business Plan).

(ii) Limitation of Consequential Damages. In no event shall the Operator Parties be liable to Metro or Metro's Representatives for compensation for any loss of income, profits, goodwill, or business opportunity or any indirect or consequential loss.

(iii) Maximum Liability. Notwithstanding Section 12.11(a)(i), the maximum liability of the Operator Parties, on a combined basis, to Metro or Metro's Representatives, on a combined basis, in any operating year with respect to liabilities that are covered (or are required to be covered) by insurance policies shall be limited to the per occurrence and aggregate limits of such insurance policies (or such required insurance policies). In addition, the limitation of liability provided for in Section 12.11(a)(i) shall not apply to the extent:

- (1) of any fraud of the Operator, any of its Affiliates or their respective subcontractors;
- (2) of any gross negligence or willful misconduct of the Operator, any of its Affiliates or their respective subcontractors; or
- (3) of any liability of the Operator payable from insurance proceeds.

**ARTICLE 13  
INSURANCE**

**Section 13.1. Insurance Coverage Required.** During the Term of this Agreement, for any and all awards, Parking Company shall, as a Project Operating Expense, obtain and maintain in full force and effect for the duration of this Agreement, including any extension(s), the types and amounts of insurance identified below (the "Required Coverages"). Required limits may be achieved through a combination of primary and excess liability insurance. Required Coverages may be provided by professional consultants or the Operator to avoid the cost of duplicative policies.

(a) *Workers' Compensation and Employer's Liability.* Parking Company shall maintain (i) Workers' Compensation Insurance with statutory limits required by the State or other applicable laws and (ii) Employer's Liability Insurance with limits of not less than One Hundred Thousand Dollars (\$100,000) for each accident or illness or disease, as required by the Laws of the State. Parking Company shall also require each of its subcontractors to provide Workers' Compensation Insurance for all of the subcontractor's employees to be engaged in work under this Agreement unless such employees are covered by Parking Company's Workers' Compensation Insurance coverage.

(b) *Commercial General Liability (Primary and Umbrella).* Parking Company shall provide or cause to be provided Commercial General Liability Insurance or equivalent with limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage liability.

(c) *Automobile Liability (Primary and Umbrella).* When any motor vehicles (owned, non-owned or hired) are used in connection with work to be performed, Parking Company shall provide or cause to be provided Automobile Liability Insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence or accident for bodily injury and property damage. Automobile Liability Insurance shall include coverage for loading and unloading hazards. Such insurance shall contain or be endorsed to contain a provision that includes Metro, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of Parking Company.

(d) *Professional Liability.* When any architects, engineers, construction managers or any other professional consultants perform work in connection with this Agreement, Professional Liability Insurance covering Parking Company's negligent acts, errors or omissions shall be maintained with limits of not less than Five Million Dollars (\$5,000,000) per claims made basis. When policies are renewed or replaced, the policy retroactive date shall coincide with, or precede, start of work in connection with this Agreement. A claims-made policy which is not renewed or replaced shall have an extended reporting period of two (2) Years.

(e) *Cyber Liability Insurance.* Parking Company shall provide or cause to be provided Cyber Liability Insurance or equivalent with limits of not less than One Million Dollars (\$1,000,000) per occurrence.

(f) *Garage Keepers Liability.* Parking Company shall provide or cause to be provided Garage Keepers Liability Insurance or equivalent in the amount of not less than One Million Dollars (\$1,000,000).

### **Section 13.2. Additional Requirements.**

(a) *Evidence of Insurance.* Parking Company shall deliver or cause to be delivered to Metro, original standard ACORD form Certificates of Insurance evidencing the Required Coverages on or before the Closing Date, naming Metro as an additional insured on a primary, non-contributory basis, and identifying the project name, the RFP, purchase order, or this Agreement's number on the ACORD document. Each Required Coverage shall be signed by the insurer responsible for the risks insured against or by the insurer's authorized Representative. Parking Company shall furnish Metro with original certificates and amendatory endorsements effecting coverage required by Section 13.1 and provide that such insurance shall not be cancelled, allowed to expire, or be materially reduced in coverage except on 30 Days' prior written notice to:

DEPARTMENT OF LAW  
INSURANCE AND RISK MANAGEMENT  
METROPOLITAN COURTHOUSE, SUITE 108  
PO BOX 196300  
NASHVILLE, TN 37219-6300

Parking Company agrees to provide certified copies of endorsements and policies if requested by Metro in the event that Metro is included in any law suit along with Parking Company.

(b) *Additional Insured.* All insurance policies shall contain or be endorsed to contain a provision that includes Metro, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of work or operations performed by or on behalf of Parking Company, including materials, parts, or equipment furnished in connection with such work or operations. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed insureds.

(c) *Primary Insurance.* For any claims related to this Agreement, Parking Company's insurance coverage shall be primary insurance with respect to Metro, its officers, officials, employees, and volunteers. Any insurance or self-insurance programs covering Metro, its officials, officers, employees, and volunteers shall be in excess of Parking Company's insurance and shall not contribute with it.

(d) *Deductibles.* All Required Coverages may contain deductibles or self-insured retentions. Any and all deductibles or self-insured retentions on Required Coverages shall be borne by Parking Company or its Contractors and subcontractors shall be responsible for its own deductibles and/or self-insured retentions. Parking Company will be entitled to pay any deductibles or self-insured retentions from the Operating Expense Account or Capital Expense Account, except to the extent that the Loss for which the deductible is payable arises by reason of the breach by Parking Company of this Agreement or by reason of the willful misconduct of Parking Company.

(e) *Replacement/Maintenance of Coverage.* Parking Company agrees to replace certificates, policies, and/or endorsements for any such insurance expiring prior to the completion of the Metered Parking Activities. Parking Company agrees to maintain the Required Coverages from the Closing Date until the end of the Term. Failure to maintain or renew coverage and to provide evidence of renewal may be treated by Metro as a material breach of this Agreement. If Parking Company has or obtains primary and excess policy(ies), it shall ensure that there is no gap between the limits of the primary policy and the deductible features of the excess policies.

(f) *Insurance Providers.* The Required Coverages shall be with an insurer licensed to do business in the State and having A.M. Best Company ratings of no less than A-. Modification of this standard may be considered upon appeal to the Metro Director of Risk Management Services.

(g) *Insurance Requirements of Contractors and Subcontractors.* Parking Company shall require all Contractors and subcontractors to maintain the Required Coverages during the Term (unless the Contractor's or subcontractor's employees are covered by Parking Company's insurance) in the same manner as specified for Parking Company. Parking Company shall require each Contractor and subcontractor to have all necessary insurance and maintain the proper certificates of insurance.

**Section 13.3. Damage and Destruction.** If all or any part of any of the Metered Parking System shall be destroyed or damaged during the Term in whole or in part by tornado, earthquake, fire or other casualty of any kind or nature (including any casualty for which insurance was not obtained or

obtainable), ordinary or extraordinary, foreseen or unforeseen, Parking Company shall: (i) give Metro notice thereof promptly after Parking Company receives actual notice of such casualty; and (ii) at its sole cost and expense, whether or not insurance proceeds, if any, shall be equal to the estimated cost of repairs, alterations, restorations, replacement and rebuilding (the “Casualty Cost”), proceed diligently to repair, restore or rebuild the same to the condition existing prior to the happening of such fire or other casualty (any such activity being a “Restoration”). Metro may include Casualty Costs associated with Restoration and not paid for by third-party insurance maintained pursuant to this Agreement as a Project Capital Expense subject to reimbursement from the Capital Expense Account in accordance with Section 2.3(d). Any proceeds received from insurance maintained by Parking Company in excess of Casualty Costs will be deemed Project Revenue and paid the Metro Account.

## **ARTICLE 14 ADVERSE ACTIONS**

### **Section 14.1. Adverse Action and Compensation Event Payment Generally.**

(a) Subject to Section 14.5 below, an “Adverse Action” shall occur if (x) Metro or the Commission (or any subdivision or agency of any of the foregoing) takes any action or actions at any time during the Term (including enacting any Law) and the effect of such action or actions, individually or in the aggregate, is reasonably expected (i) to be principally borne by Parking Company and (ii) to have a Material Adverse Effect, except where such action is in response to any act or omission on the part of Parking Company that is illegal (other than an act or omission rendered illegal by virtue of the Adverse Action), (y) any Compensation Event Payment due hereunder (including under Section 7.4 or Section 7.9) is not paid to Parking Company in full (as and when the related Losses, including lost or reduced revenues, or increased costs or expenses are actually suffered or incurred) by means of an Offset or deduction from amounts otherwise due to Metro hereunder (including under the Waterfall), or (z) the State, Metro or the Commission (or any subdivision or agency of any of the foregoing) enacts (after the Bid Date) a new Law or any modification, amendment or change in enforcement or interpretation of a Law (including a change in the application thereof), including those of general application to commercial enterprises within Davidson County, that, individually or in the aggregate, is reasonably expected have a Material Adverse Effect, provided, however, that none of the following shall be an Adverse Action: (A) subject to Section 3.8, the development, redevelopment, construction, maintenance, modification or change in the operation of any existing or new parking facility or mode of parking or of transportation (including a road, street or highway) whether or not it results in the reduction of Metered Parking System Revenue or in the number of vehicles using the Metered Parking System, (B) the imposition of a federal Tax of general application or an increase in federal Taxes of general application, including federal Parking Taxes of general application imposed on customers or operators of parking facilities; or (C) subject to Section 7.4 (and the payment in full of any related Compensation Event Payment), the addition or permanent removal of Metered Parking Spaces in accordance with Article 7. Notwithstanding the foregoing, the imposition of any Parking Taxes of general application imposed on customers or operators of parking facilities by the State shall be considered an Adverse Action if all or a portion of the proceeds of such tax are remitted to Metro and Metro does not provide a corresponding payment to Parking Company for inclusion in Project Revenues.

(b) If an Adverse Action occurs, Parking Company shall have the right to (i) deem such Adverse Action a Compensation Event requiring a Compensation Event Payment as provided under Section 15.3 below, or (ii) terminate this Agreement and be paid by Metro the Metered Parking System Rights Value, in either case by giving notice in the manner described in Section 14.1(c).

(c) If an Adverse Action occurs under (x) Section 14.1(a)(x), Parking Company shall give notice (an “AA- Preliminary Notice”) to Metro within Thirty (30) Days following the date on which

Parking Company first became aware of such Adverse Action, or (y) Section 14.1(a)(y), Parking Company may, in its discretion, give a AA- Preliminary Notice to Metro at any time during the continuation of such Adverse Action, in each case stating that an Adverse Action has occurred. Within One Hundred Eighty (180) Days following the date of delivery of the AA-Preliminary Notice, Parking Company shall give Metro another notice (the “AA-Notice”) setting forth (i) details of the impact (if any) of the said occurrence on the fair market value of Parking Company Interest, (ii) details (if any) of any offsetting Beneficial Events since the execution date of this Agreement that have increased the fair market value of Parking Company’s rights under this Agreement, the benefits of which have not been applied to offset prior Compensation Events or Adverse Actions; (iii) a statement as to which right in Section 14.1(b) Parking Company elects to exercise, and (iv) if Parking Company elects to exercise the right to receive a Compensation Event Payment under Section 14.1(b), the amount claimed as a Compensation Event Payment (taking into account Beneficial Events (if any) as required under the definition of Compensation Event Payment). The delivery of an AA-Preliminary Notice or an AA-Notice with respect to a claimed Adverse Action under Section 14.1(a)(y) shall in no way toll or otherwise release Metro from its obligations hereunder to make payment of the underlying Compensation Event Payment. Metro shall, after receipt of the AA-Notice, be entitled by notice delivered to Parking Company no later than Thirty (30) Days following the date of receipt of the AA-Notice, to require Parking Company to provide such further supporting particulars as Metro may reasonably consider necessary. If Metro wishes to dispute the occurrence of an Adverse Action or the amount of a Compensation Event Payment, if any, claimed in the AA-Notice, Metro shall give notice of dispute (the “AA-Dispute Notice”) to Parking Company within Thirty (30) Days following the date of receipt of the AA-Notice stating in reasonable detail the grounds for such dispute. If neither the AA-Notice nor the AA-Dispute Notice has been withdrawn within Thirty (30) Days following the date of receipt of the AA-Dispute Notice by Parking Company, the matter shall be submitted to the dispute resolution procedure in Article 20.

(d) If Parking Company has elected to exercise its right under Section 14.1(b) to a Compensation Event Payment, Parking Company will be entitled to deduct the amount of the Compensation Event Payment from amounts otherwise due to Metro under this Agreement (including under the Waterfall). Parking Company shall receive interest on any Compensation Event Payment that remains unpaid at the Bank Rate until paid. Except in the case of an Adverse Action rising to the level of an actual or practical termination of this Agreement, Metro will have no independent direct obligation to make Compensation Event Payments.

(e) In determining the Compensation Event Payment due to Parking Company, the terms of Section 15.3 shall apply.

(f) If Parking Company elects to provide its own capital (whether in the form of debt, equity or otherwise) with respect to compliance with or implementation of a Metro Directive or a modified or changed Operating Standard (other than a modified Operating Standard described in Section 6.3(a)) or any other Compensation Event, Parking Company may elect to treat such additional capital as Aggregate Parking Company Contributions under the Waterfall.

#### **Section 14.2. Termination.**

(a) If Parking Company has elected to exercise its right to terminate this Agreement in connection with an Adverse Action pursuant to Section 14.1 this Agreement, subject to Section 14.2(c) and Section 14.4, shall terminate Sixty (60) Days following the date of receipt of the AA-Notice by Metro, and Metro shall pay the Metered Parking System Rights Value.

(b) Any dispute arising out of the determination of the Metered Parking System Rights Value shall be submitted to the dispute resolution procedure in Article 20.

(c) Payment of the entire sum of Metered Parking System Rights Value by Metro to Parking Company, shall constitute full and final satisfaction of all amounts that may be claimed by Parking Company for and in respect of the occurrence of the Adverse Action, as the case may be, and, upon such payment, Metro shall be released and forever discharged by Parking Company from any and all liability in respect of such Adverse Action.

(d) This Agreement shall not terminate pursuant to Section 14.2(a) unless Parking Company has first obtained and delivered to Metro the written consent of the Secured Lender to such termination.

**Section 14.3. Right of Metro to Remedy.** If Metro wishes to remedy the occurrence of an Adverse Action under Section 14.1(a)(x), Metro shall give notice thereof to Parking Company within thirty (30) Days following the date of receipt of the AA-Notice. If Metro gives such notice it must remedy the applicable Adverse Action within One Hundred Eighty (180) Days following the date of receipt of the AA-Notice or, if a AA-Dispute Notice has been given, within One Hundred Eighty (180) Days following the final award pursuant to Article 20 to the effect that an Adverse Action occurred. If Metro elects to remedy the occurrence of an Adverse Action under Section 14.1(a)(x) within the applicable period of time, the right of Parking Company shall be limited to a claim for a Compensation Event with respect to such Adverse Action.

**Section 14.4. Other Actions by Governmental Authorities.** If any Governmental Authority other than Metro or the Commission (or any subdivision or agency of any of the foregoing) proposes to take any action at any time during the Term (including enacting any Law) and the effect of such action is reasonably expected (i) to be principally borne by Parking Company (and not by others) and (ii) to have a Material Adverse Effect, except where such action is in response to any act or omission on the part of Parking Company that is illegal (other than an act or omission rendered illegal by virtue of an Adverse Action or such action by any such other Governmental Authority), then at the request of Parking Company, Metro shall use its reasonable efforts to oppose and challenge such action by any such other Governmental Authority; provided, however, that all reasonable out-of-pocket costs and expenses incurred by Metro in connection with such opposition or challenge shall be deemed Project Operating Expenses paid from the Operating Expense Account.

#### **Section 14.5. Beneficial Events.**

*Offset for Beneficial Events.* Any determination of whether a Compensation Event or Adverse Action has occurred will be made only after taking into account any offsetting Beneficial Event. Any determination of amounts due from Metro to Parking Company as the result of a Compensation Event or Adverse Action, will be offset by any increase in Project Revenue occurring as the result of a Beneficial Event.

### **ARTICLE 15 DELAY EVENTS AND COMPENSATION EVENT PAYMENT**

#### **Section 15.1. Delay Events.**

(a) If Parking Company is affected by a Delay Event, it shall give notice as soon as practicable but in no event later than Five (5) Business Days following the date on which it first became aware of such Delay Event and the resulting delay to Metro (provided that in the case of such Delay Event being a continuing cause of delay, only one notice shall be necessary), which notice shall include (i) a statement of which Delay Event the claim is based upon, (ii) details of the circumstances from which the delay arises and (iii) an estimate of the delay in the performance of obligations under this Agreement attributable to such Delay Event and information in support thereof, if known at that time. Metro shall,

after receipt of any such notice, be entitled by notice to require Parking Company to provide such further supporting particulars as Metro may reasonably consider necessary.

(b) Parking Company shall notify Metro within Five (5) Business Days following the date on which it first became aware that a Delay Event has ceased.

(c) Subject to Parking Company giving the notice required in Section 15.1(a), a Delay Event shall excuse Parking Company from whatever performance is prevented by the Delay Event referred to in such notice for such appropriate number of Days as Metro and Parking Company jointly determine, each acting reasonably. If Metro and Parking Company cannot agree upon the period of extension, then either Party shall be entitled to refer the matter to the dispute resolution procedure in Article 20. This Section 15.1(c) shall not excuse Parking Company from the performance and observance under this Agreement of all obligations and covenants not affected by the Delay Event. Notwithstanding the occurrence of a Delay Event, Parking Company shall continue its performance and observance under this Agreement of all of its obligations and covenants to the extent that it is reasonably able to do so and shall use its reasonable efforts to minimize the effect and duration of the Delay Event. Nothing herein shall permit or excuse noncompliance with a change to applicable Laws.

(d) Except as provided in the immediately following sentence, if a Delay Event occurs that has the effect of causing physical damage or destruction to a material part of the Metered Parking System that results in the Metered Parking System being substantially unavailable for the performance of Metered Parking Activities and such effect continues for a period in excess of One Hundred Twenty (120) Days (contiguous or non-contiguous within a Three Hundred Sixty (360)-Day period) and has a Material Adverse Effect, or if insurance policies payable (or that should have been payable but for the breach of an obligation to take out and maintain such insurance policy by Parking Company) or condemnation or other similar proceeds are insufficient to restore Parking Company to the same economic position as it would have been in the absence of such event, then, notwithstanding Section 2.1, Parking Company shall have the right to extend the Term for a period that would be sufficient so to compensate Parking Company and to restore it to the same economic position as it would have been in had such Delay Event not occurred (a "Delay Event Remedy").

(e) If Parking Company elects to exercise the right to the Delay Event Remedy, Parking Company shall give notice ("Delay Event Notice") to Metro within five (5) Business Days following the date on which Parking Company first became aware of its right to the Delay Event Remedy occurring setting forth (i) the details of the Delay Event and its effect on either causing physical damage or destruction to the Metered Parking System that results in the Metered Parking System being substantially unavailable for the performance of Metered Parking Activities or suspending the collection of Metered Parking Fees at the Metered Parking System, (ii) the amount claimed as compensation to restore Parking Company to the same economic position as it would have been in had such Delay Event not occurred (including the details of the calculation thereof) and (iii) the details of the relationship between such compensation and the Delay Event Remedy that it proposes. Metro shall, after receipt of the Delay Event Notice, be entitled by notice to require Parking Company to provide such further supporting particulars as Metro may reasonably consider necessary. If Metro wishes to dispute the occurrence of a Delay Event or the Delay Event Remedy claimed in the Delay Event Notice, Metro shall give notice to dispute (the "Delay Event Dispute Notice") to Parking Company within Thirty (30) Days following the date of receipt of the Delay Event Notice stating the grounds for such dispute, and if neither the Delay Event Notice nor the Delay Event Dispute Notice has been withdrawn within Thirty (30) Days following the date of receipt of the Delay Event Dispute Notice by Parking Company, the matter shall be submitted to the dispute resolution procedure in Article 20.



**Section 15.2. Relationship to Compensation Event.** Section 15.1 shall not prevent Parking Company from receiving a Compensation Event Payment or any other compensation from Metro provided for in this Agreement for any Delay Event that constitutes a Compensation Event pursuant to the terms of this Agreement.

**Section 15.3. Payment of Compensation Event Payment.**

(a) Except as provided elsewhere in this Agreement, if a Compensation Event occurs, Parking Company shall give notice (the “CE-Preliminary Notice”) to Metro within Thirty (30) Days following the date on which Parking Company first became aware of the Compensation Event stating that a Compensation Event has occurred. Within Thirty (30) Days following the date of delivery of the CE-Preliminary Notice, Parking Company shall give Metro another notice (the “CE-Notice”) setting forth (i) details of the Compensation Event, including an explanation of the reasons that the event constitutes a Compensation Event under the terms of this Agreement; (ii) details of any offsetting net gains that are reasonably attributable to Beneficial Events since the Contract Date that have either been paid to Parking Company through the Waterfall or that have increased the fair market value of the Parking Company Interest, the benefits of which have not been applied to offset prior Compensation Events or Adverse Actions; and (iii) the amount claimed as a Compensation Event Payment and details of the calculation thereof in accordance with the calculation methodology set forth in the definition of “Compensation Event Payment”; provided, that the failure by Parking Company to timely deliver the CE-Preliminary Notice or the CE-Notice shall not limit its remedies hereunder or otherwise reduce the amount of the Compensation Event Payment, except to the extent such failure materially prejudices Metro, and in any such case such remedies or amount shall only be limited or reduced to the extent of such prejudice.

(b) All Compensation Event Payments due to Parking Company shall be due and payable by Metro from amounts otherwise due to Metro hereunder (including under the Waterfall).

(c) The amount of any Compensation Event Payment shall be payable by Metro as and when the related Losses, including lost or reduced revenues, or increased costs or expenses, are actually suffered or incurred, and not in advance. If any Compensation Event Payment due to Parking Company are not paid to Parking Company in full in accordance with the immediately preceding sentence (including if the amounts otherwise due to Metro hereunder (including under the Waterfall) are insufficient to make such payment), (i) it will constitute an Adverse Action under Section 14.1(a)(y), and (ii) notwithstanding any other provision hereof to the contrary, Parking Company shall not be obligated to make a Parking Company Reserve Shortfall Payment under Section 2.3(g)(ii) due to any revenue shortfall arising from the failure to make such Compensation Event Payment in full.

(d) If Metro wishes to dispute the occurrence of a Compensation Event or the amount of a Compensation Event Payment claimed in the CE-Notice issued by Parking Company in accordance with Section 15.3(a), then Metro shall give notice of dispute (the “CE-Dispute Notice”) to Parking Company within Thirty (30) Days following the date of receipt of the CE-Notice stating the grounds for such dispute. If the CE-Dispute Notice has not been withdrawn within Thirty (30) Days following the date of receipt of the CE-Dispute Notice by Parking Company, the matter shall be submitted to the dispute resolution procedure set forth in Article 20. Parking Company will be entitled to recover any undisputed portion of the Compensation Event Payment in accordance with the terms of this Agreement during the pendency of any dispute regarding a disputed portion of the Compensation Event Payment.

(e) Instead of making a Compensation Event Payment as contemplated in Section 15.3(b), the Parties may, in their discretion, agree that such Compensation Event Payment will instead be made by means of an extension to the Term, either of fixed duration, or of variable duration until such time as Parking Company has been made whole for the Losses (including the projected amount of the future

unfunded Losses) arising from the relevant Compensation Event (and any financing costs arising under a financing approved by Metro under Section 15.3(f)).

(f) Parking Company may, subject to Metro's approval, obtain debt financing for a portion or the full amount of unfunded Losses (including the projected amount of the future unfunded Losses) arising from a Compensation Event that (i) is being addressed by means of an extension in the Term under Section 15.3(e), and/or (i) constitutes an Adverse Action under Section 14.1(a)(y). Parking Company will only consider such debt financing if Parking Company determines, among other things, that such financing, combined with any projected payments from Metro under Section 15.3(b), will make funds available in such time and in such amounts as are required to make payments as and when they become due. If Parking Company proposes to obtain such financing, it will submit a financing proposal for Metro's review and approval, specifying, among other things, whether or not the Senior Debt Cap requires to be modified to facilitate such financing. Metro will reject or accept the financing proposal, in its discretion, within 30 Days of receipt.

**Section 15.4. Certainty of Compensation Event Payment.** Reference herein that an event may constitute a Compensation Event, Adverse Action or entitle Parking Company to a Compensation Event Payment are not intended to indicate that the payment is not required, but rather to indicate that offsetting Beneficial Events, or other factors may overcome the negative impact on Parking Company.

## **ARTICLE 16 DEFAULTS; LETTERS OF CREDIT**

### **Section 16.1. Default by Parking Company.**

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

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

(ii) if this Agreement or all or any portion of Parking Company Interest is Transferred in contravention of Article 17 and such Transfer or action continues unremedied for a period of ten (10) Business Days following notice thereof from Metro to Parking Company and Secured Lender;

(iii) if Parking Company fails to comply with the requirements or directives of a final award in a matter submitted to dispute resolution in accordance with Article 20, and such failure continues unremedied for a period of Thirty (30) Days following notice thereof from Metro to Parking Company and Secured Lender, or for such longer period as may be reasonably necessary to cure such failure, provided, in the latter case, that Parking Company has demonstrated to the satisfaction of Metro, that (A) it is proceeding, and will proceed, with all due diligence to cure or cause to be cured such failure, (B) its actions can be reasonably expected to cure or cause to be

cured such failure within a reasonable period of time acceptable to Metro, and (C) such failure is in fact cured within such period of time;

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

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

(vi) if a levy under execution or attachment has been made against all or any part of the Metered Parking System or any interest therein as a result of any Encumbrance (other than a Permitted Parking Company Encumbrance) created, incurred, assumed or suffered to exist by Parking Company or any Person claiming through it, and such execution or attachment has not been vacated, removed or stayed by court order, bonding or otherwise within Sixty (60) Days after Parking Company becomes aware of such levy, unless such levy resulted from actions or omissions of Metro or its Representatives; or

(vii) Parking Company repudiates in writing any of its material obligations under this Agreement.

(b) *Remedies of Metro Upon Parking Company Default.* Upon the occurrence, and during the continuance, of a Parking Company Default, Metro may, by notice to Parking Company and the Secured Lender, declare Parking Company to be in default and may, subject to the provisions of Article 18, do any or all of the following as Metro, in its discretion, shall determine:

(i) Metro may terminate this Agreement by giving thirty (30) Days' prior notice to Parking Company and Secured Lender upon the occurrence of (A) a Parking Company Default that consists of a failure to comply with, perform or observe any Operating Standard if such Parking Company Default creates a material danger to the safety of Metered Parking System Operations or a material impairment to the Metered Parking System or to the continuing use of the Metered Parking System or (B) any other Parking Company Default; provided, however, that Parking Company shall be entitled to cure a Parking Company Default pursuant to Section 16.1(a)(i) by providing Metro with a written work plan within such thirty (30)-Day period outlining the actions by which Parking Company will ensure future compliance with either (x) the

obligation, covenant, agreement, term or condition in this Agreement or (y) the requirements or directives of the issued final award in accordance with Article 20 that Parking Company failed to perform or observe, which work plan is Approved by Metro, but any failure of Parking Company to comply in any material respect with such Approved work plan following thirty (30) Days' notice of such failure from Metro to Parking Company shall be deemed to be a Parking Company Default described in Section 16.1(a)(i) and the entitlement of Parking Company to cure such Parking Company Default by the delivery of an Approved work plan shall not apply thereto. Upon such termination Metro will pay to Parking Company the Metered Parking System Rights Value less Metro's Default Expenses.

(ii) If Parking Company Default is by reason of the failure to pay any monies, Metro may (without obligation to do so) make payment on behalf of Parking Company of such monies, and any amount so paid by Metro shall be payable by Parking Company to Metro within Three (3) Business Days after demand therefor;

(iii) subject to the cure rights of the Secured Lender set forth in Section 18.3, Metro may cure a Parking Company Default (but this shall not obligate Metro to cure or attempt to cure a Parking Company Default or, after having commenced to cure or attempted to cure a Parking Company Default, to continue to do so), and all costs and expenses reasonably incurred by Metro in curing or attempting to cure Parking Company Default, shall be payable by Parking Company to Metro within three (3) Business Days after written demand therefor; provided, however, that (A) Metro shall not incur any liability to Parking Company for any act or omission of Metro or any other Person in the course of remedying or attempting to remedy any Parking Company Default and (B) Metro's cure of any Parking Company Default shall not affect Metro's rights against Parking Company by reason of Parking Company Default; Metro may seek specific performance, injunction or other equitable remedies, it being acknowledged that damages are an inadequate remedy for a Parking Company Default;

(iv) Metro may seek to recover its Losses arising from such Parking Company Default and any amounts due and payable under this Agreement and, in connection therewith, exercise any recourse available to any Person who is owed damages or a debt;

(v) with respect to those Parking Company Defaults that entitle Metro to terminate this Agreement pursuant to Section 16.1(b)(i), and subject to the cure or replacement rights of the Secured Lender under Section 18.3, Metro may terminate Parking Company's right to use, operate, maintain and rehabilitate the Metered Parking System and Parking Company's right to collect and retain Metered Parking System Revenue, and in such event, Metro or Metro's agents and servants may immediately or at any time thereafter take possession and control of the Metered Parking System, by any available action under law or proceeding at Law or in equity, and with or without terminating this Agreement, and undertake any and all of the Metered Parking System Operations; provided, however, that no such action by Metro shall be construed as an election on its part to terminate this Agreement unless a notice of such intention is given to Parking Company and Secured Lender; and

(vi) Metro may exercise any of its other rights and remedies provided for hereunder or at law or equity.

## **Section 16.2. Defaults by Metro.**

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

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

(ii) if Metro fails to comply with the requirements or directives of a final award in a matter submitted to dispute resolution in accordance with Article 20 and such default continues unremedied for a period of Thirty (30) Days following notice thereof from Parking Company to Metro, or for such longer period as may be reasonably necessary to cure such failure, provided, in the latter case, that Metro has demonstrated to the satisfaction of Parking Company, acting reasonably, that (A) it is proceeding, and will proceed, with all due diligence to cure or cause to be cured such failure, (B) its actions can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to Parking Company, acting reasonably and (C) such failure is in fact cured within such period of time;

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

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

(v) if (A) a court of competent jurisdiction enters a final and unappealable judgment order against Metro in any action, suit or proceeding brought against Metro, which

action, suit or proceeding was not brought by or supported in any way by Parking Company, any Operator, any Representative, any Secured Lender or any other Person acting on behalf of any of the foregoing or any other Person having an pecuniary interest in this Agreement, and (B) as a result of such final and unappealable judgment order (i) it becomes unlawful for Metro to comply with or observe any material obligation, covenant, agreement, term or condition in this Agreement or (ii) any material obligation, covenant, agreement, term or condition of Metro under this Agreement becomes unenforceable against Metro; and (C) the Parties, acting in good faith and within a reasonable time, are unable to reform this Agreement to conform to the requirements of such judgment order; provided that the entry of such judgment order shall not constitute a Metro Default if, within 180 Days following the entry of such judgment order, (i) a Law is enacted that validates or confirms the lawful authority of Metro, or grants to Metro the lawful authority, to perform its contractual obligations under this Agreement notwithstanding such judgment order or other-wise remedies Metro Default and (ii) Metro reimburses Parking Company for any unreimbursed Losses attributable to such judgment order and accrued during the period from the date of entry of such judgment order to the date of enactment of such Law; or

(vi) Metro repudiates in writing any of its material obligations under this Agreement.

(b) *Remedies of Parking Company Upon Metro Default.* Upon the occurrence, and during the continuance, of a Metro Default, Parking Company may by notice to Metro declare Metro to be in default and may, subject to the provisions of Article 20, do any or all of the following as Parking Company, in its discretion, shall determine:

(i) Parking Company may terminate this Agreement by giving Sixty (60) Days' prior notice to Metro; provided, however, that Metro shall be entitled to cure a Metro Default pursuant to Section 16.2(a)(i) by (i) agreeing within such Sixty (60)-Day period to pay any Losses sustained as a result of such Metro Default or (ii) providing Parking Company with a written work plan within such Sixty (60)-Day period outlining the actions by which Metro will ensure future compliance with either (x) the obligation, covenant, agreement, term or condition in this Agreement or (y) the requirements or directives of the issued final award in accordance with Article 20 that Metro failed to perform or observe, which work plan is approved by Parking Company (which approval shall not be unreasonably withheld, delayed or conditioned), but any failure of Metro to comply in any material respect with such approved work plan following Thirty (30) Days' notice of such failure from Parking Company to Metro shall be deemed to be a Metro Default described in Section 16.2(a)(i) and the entitlement of Metro to cure such Metro Default by the delivery of an approved work plan shall not apply thereto; and upon such termination Metro shall pay to Parking Company the Metered Parking System Rights Value;

(ii) Parking Company may exercise any of its rights or remedies at Law or in equity;

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

(iv) Parking Company may seek specific performance, injunction or other equitable remedies, it being acknowledged that damages are an inadequate remedy for a Metro Default; and

(v) Parking Company may seek to recover its Losses arising from such Metro Default and any amounts due and payable under this Agreement and, in connection therewith, exercise any recourse available to any Person who is owed damages or a debt.

**Section 16.3. Consequences of Termination or Reversion.** Upon the termination or expiration of this Agreement, notwithstanding any claims the Parties may have against each other and subject to all other provisions of this Agreement, the following provisions shall apply:

(a) Parking Company shall, by deed, bill of sale, Transfer of title or other conveyance method, without action whatsoever being necessary on the part of Metro, surrender, Transfer and deliver to Metro the Metered Parking System (including all improvements to the Metered Parking System), the Metered Parking System Assets and all Personal Property, in good order, condition and repair (reasonable wear and tear excepted), determined reasonably in accordance with the then applicable Operating Standards, free and clear of all Encumbrances other than (w) Permitted Parking Company Encumbrances set forth in clause (i), (ii), (iii), (iv), (vi), and (vii) of the definition of that term, (x) Permitted Metro Encumbrances, (y) those created by or suffered to exist or consented to by Metro or any Person claiming through it, and (z) with respect to any property added to the Metered Parking System after the Time of Closing, title defects affecting such property in existence on the date such property is added to the Metered Parking System;

(b) Parking Company hereby waives any notice now or hereafter required by Law with respect to Transfer of the Metered Parking System on the Reversion Date;

(c) Metro shall, as of the Reversion Date, assume full responsibility for the Metered Parking System Operations, and as of such date, Parking Company shall have no liability or responsibility for Metered Parking System Operations occurring after such date;

(d) Parking Company shall be liable for all costs, expenses and other amounts for which it is liable or responsible hereunder incurred up to but not including the Reversion Date (subject to Section 3.16(b)), and Metro shall be liable for all costs, expenses and amounts incurred in connection with the Metered Parking System Operations on and after the Reversion Date;

(e) Metro shall have the option, subject to the rights of any Secured Lender, or its designee or nominee, to enter into a New Agreement, by providing notice to Parking Company and Secured Lender of Metro's requirement that Parking Company assign to Metro or its nominee all of Parking Company's right, title and interest in, to and under (in each of the following cases, to the extent assignable) all or any of the Operating Agreements then in effect and all Authorizations for the remainder of their respective terms, without warranty or recourse and to the fullest extent permitted by Authorizations and applicable Law. If Metro exercises such option, the right, title and interest of Parking Company in, to and under such Operating Agreements and Authorizations shall be assigned to Metro or its nominee as of the Reversion Date and Parking Company shall surrender the Metered Parking System to Metro and shall cause all Persons claiming under or through Parking Company to do likewise, and Metro shall assume in writing, pursuant to an assumption agreement satisfactory to Parking Company, Parking Company's obligations under the Operating Agreements that arise in respect of, or relate to, any period of time falling on and after the Reversion Date. If Metro does not exercise such option, Parking Company shall take such steps as are necessary to terminate the Operating Agreements to the extent permitted thereunder and in accordance with the terms thereof;

(f) Parking Company, at its sole cost and expense, shall promptly deliver to Metro copies of all records and other documents relating to the Metered Parking System Revenue that are in the possession of Parking Company or its Representatives and all other then existing records and Information relating to the Metered Parking System as Metro, acting reasonably, may request;

(g) Parking Company shall execute and deliver to Metro a Transfer of title documents and other instruments reasonably required by Metro to evidence such termination;

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

(i) Metro and Parking Company shall make appropriate adjustments, including adjustments relating to any Operating Agreements assigned to Metro, Metered Parking Fees and other similar charges collected on and after the Reversion Date that are incurred prior to the Reversion Date, and utilities, and any adjustments and payment therefor shall be made by the appropriate Party on the Reversion Date, but shall be subject to readjustment if necessary because of error in matters such as Information, calculation, payments and omissions that are identified within the period of One Hundred Eighty (180) Days following the Reversion Date; provided, however, that Metro and Parking Company acknowledge that certain adjustments or readjustments may have to be made when a third-party provides to Metro or Parking Company a final adjustment amount in respect of a matter, and for such matters the adjustment and readjustment date shall each be correspondingly extended; and

(j) if this Agreement is terminated as a result of an Adverse Action, the payment by Metro to Parking Company of the amounts required under Article 14 or Article 20 shall constitute full and final settlement of any and all Claims that Parking Company may have against Metro for and in respect of the termination of this Agreement and upon such payment, Parking Company shall execute and deliver all such releases and discharges as Metro may reasonably require to give effect to the foregoing.

This Section 16.3 shall survive the expiration or any earlier termination of this Agreement.

#### **Section 16.4. Termination Other Than Pursuant to Agreement.**

(a) *Termination for Insufficient Funds from Operations.* If markets change or if for other reasons Parking Company's operation of the Metered Parking System is no longer a viable business, both Metro and Parking Company desire to have a mechanism for terminating this Agreement. At any Quarterly Meeting following July 1, 2022, either Metro or Parking Company may terminate this Agreement and accelerate the Reversion Date to the first Day of the next Quarter if during the Six (6) Quarter's preceding that Quarterly Meeting, Project Revenue has been insufficient to fully fund the Operating Expense Account and the Capital Expense Account and to allow for Waterfall payments sufficient to pay the Annual Metro Payments due for those Quarters together with all Annual Metro Payment Shortfalls and all Annual Metro Payment Shortfall Interest due and outstanding. Parking Company may invalidate any such notice to terminate delivered by Metro by depositing into the Metro Account on the next Quarterly Settlement Date sufficient funds to fully fund the Operating Expense Account and Capital Expense Account, pay the Annual Metro Payment due for the preceding Quarter and satisfy all Annual Metro Payment Shortfalls and all Annual Metro Payment Shortfall Interest due and outstanding. Amounts funded by Parking Company into the Metro Account pursuant to this Section 16.4(a) will be added to the Parking Company's Aggregate Parking Company Contributions. Notwithstanding the foregoing, Metro shall have no right to terminate under this Section 16.4(a) if the reason for such insufficiency of funds is Metro's failure to make a Compensation Event Payment in full in accordance with Section 15.3(c). If Parking Company fails to fund a Parking Company Reserve Shortfall Payment under Section 2.3(g)(ii) when required to do so hereunder, termination of this Agreement pursuant to this Section 16.4(a) will constitute Metro's sole remedy. Metro must provide the Secured Lender at least thirty (30) days notice and right to cure Parking Company's failure to fund prior to Metro exercising remedies under this Section 16.4(a).



(b) If this Agreement is terminated by Metro other than pursuant to Section 16.4(a) or is otherwise canceled, rescinded or voided during the Term for any reason over the objection and without action by Parking Company, Metro shall pay to Parking Company the Metered Parking System Rights Value without reduction for Metro's Default Expenses (except in the case of a termination under Section 16.1(b)(i), in which case Metro's Default Expenses may be deducted from such Metered Parking System Rights Value payment). Parking Company hereby acknowledges and agrees that in addition to Metro being entitled to terminate this Agreement in accordance with the express terms hereof, Metro shall also have the right to terminate this Agreement for convenience, as set forth under Article 19 hereof. If this Agreement is terminated pursuant to Section 16.4(a) by reason of a change in Law invalidating this Agreement or negatively impacting the Parking Company's income under this Agreement, but which would not have negatively impacted the income of the Metered Parking System if it had been owned and operated entirely by Metro or another Operator, Metro will pay to Parking Company the Metered Parking System Rights Value.

## **ARTICLE 17 RESTRICTIONS ON TRANSFERS**

### **Section 17.1. Transfers by Parking Company.**

(a) Subject in all respects to the collateral assignment of Parking Company Interest to the Secured Lender, and exercise by the Secured Lender of its foreclosure rights pursuant to such assignment as set forth in Article 18 and except as otherwise provided in Section 17.3, Parking Company shall not Transfer, or otherwise permit the Transfer of any or all of Parking Company Interest to or in favor of a Transferee (other than a Secured Lender under Article 18), unless (i) (A) Metro has Approved (based upon a determination in accordance with Section 17.1(b)) such proposed Transferee, (B) ten (10) Contract Years have passed, or (C) the Metered Parking System has generated sufficient Project Revenue to make distributions under the Waterfall under Section 2.3(h)(vi) (i.e. a 90/10 Project Revenue split) for twelve consecutive Quarters, and (ii) the proposed Transferee (other than a Secured Lender under Article 18) enters into an agreement with Metro in form and substance satisfactory to Metro, acting reasonably, wherein the Transferee acquires the rights and assumes the obligations of Parking Company and agrees to perform and observe all of the obligations and covenants of Parking Company under this Agreement including to comply with any outstanding, non-defaulted, Metered Parking System Contracts and other contracts signed by Parking Company relating to the Metered Parking System and the Metered Parking System Operations, which will be assigned to Transferee. Parking Company will contract for service, and will cause the Operator to contract for service, the Metered Parking System Contracts and other contracts signed by Parking Company relating to the Metered Parking System and the Metered Parking System Operations, for so long as Parking Company controls the Metered Parking System, in the understanding that any Parking Company shall not engage or appoint a replacement Operator unless Metro has Approved such Operator. Any Transfer made in violation of the foregoing provision shall be null and void *ab initio* and of no force and effect. Any Transferee other than the AZIDA Assignee must be registered and approved to be transactional with Metro in accordance with Metro's customary procedures prior to the assignment of Parking Company's interest to the Transferee.

(b) Approval of a proposed Transferee may only be withheld if Metro reasonably determines that (i) such proposed Transfer is prohibited by applicable Law, (ii) such proposed Transferee's entering into this Agreement with Metro is prohibited by Law, (iii) such proposed Transfer would result in a violation of Law, (iv) such proposed Transfer would result in a Tax liability to Metro (unless Metro shall have received indemnification, as determined in Metro's discretion, with respect thereto) or (v) such proposed Transferee is not capable of performing the obligations and covenants of Parking Company under this Agreement, which determination shall be based upon and take into account the following factors: (a) the financial strength and integrity of the proposed Transferee, its direct or indirect beneficial

owners, any proposed managers or operating partners and each of their respective Affiliates; (b) the experience of the proposed Transferee or the Operator to be engaged by the proposed Transferee in operating metered parking systems and performing other relevant projects particularly across the United States of America; (c) the background and reputation of the proposed Transferee, its direct or indirect beneficial owners, any proposed managers or operating partners, each of their respective officers, directors and employees and each of their respective Affiliates (including the absence of criminal, civil or regulatory claims or actions against any such Person and the quality of any such Person's past or present performance on other projects); and (d) the Operator engaged by the proposed Transferee, including the ability of the Operator to meet the Operating Standards.

(c) No Transfer of all or any of Parking Company Interest (except for a Transfer to a Secured Lender or its nominee upon its exercise of remedies under the Financing Agreement and any subsequent Transfer to the Transferee of the Secured Lender that has been Approved under Section 17.1(b)) shall be made or have any force or effect if, at the time of such Transfer there has occurred a Parking Company Default that has not been remedied or an event that with the lapse of time, the giving of notice or otherwise would constitute a Parking Company Default.

(d) A Change in Control of Parking Company at any level shall be deemed to be a Transfer of Parking Company Interest for purposes of the foregoing provisions unless Parking Company remains an Affiliate of Guarantor after the Change in Control.

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

(f) Neither (i) a change of ownership that is attributable to a management agreement, operating agreement or other similar arrangement that is subject and subordinate in all respects to the rights of Metro under this Agreement, nor (ii) the creation of a trust or any other transaction or arrangement that is solely a transfer of all or part of Parking Company's economic interest under this Agreement to another entity shall be deemed to be a Transfer of Parking Company Interest for purposes of Section 17.1(a).

**Section 17.2. Assignment by Metro.** Metro shall have the right to Transfer any or all of Metro's interest in the Metered Parking System and this Agreement, provided that it shall be jointly and severally liable with the Transferee for the performance and observance of the obligations and covenants of Metro under this Agreement, the Transferee must not be a direct competitor with Parking Company and its Affiliates, the Transferee, its direct or indirect beneficial owners, any a proposed managers or operating partners and each of their respective Affiliates must possess the financial strength and integrity in order to fulfill the monetary obligations and duties of Metro and any agreement entered into by Metro under this Agreement (including agreeing directly with any Secured Lender to be bound by the agreement entered into in accordance with Section 18.3) and that any such Transfer by Metro shall not materially limit or reduce any of Parking Company's other rights, benefits, remedies or privileges under this Agreement nor shall it materially impair Metro's ability to meet its obligations under this Agreement and, provided further, any such Transfer shall be subject to the rights and Encumbrances of Parking Company and of the Secured Lender under any Secured Lender.

### **Section 17.3. Transfers to Facilitate Tax-Exempt Financing.**

(a) Notwithstanding the provisions of Section 17.1, the Parties acknowledge and agree that, on or prior to the Closing Date (or within a reasonably practical time thereafter), Preston Hollow, as the

Parking Company, will assign and transfer its rights in the Metered Parking System, this Agreement, Parking Company Interest and the rights and obligations of the Parking Company under this Agreement to the Arizona Industrial Development Authority, a nonprofit corporation designated a political subdivision of the State of Arizona (the “AZIDA Assignee”), which AZIDA Assignee will enter into an assignment and assumption agreement in form and substance satisfactory to Metro, acting reasonably, wherein the AZIDA Assignee acquires the rights and assumes the obligations of the Parking Company and agrees to perform and observe all of the obligations and covenants of the Parking Company under this Agreement. In consideration for such assignment and transfer to the AZIDA Assignee by Preston Hollow, the AZIDA Assignee will make a certain payment to Preston Hollow, which payment will be financed by means of a long-term tax-exempt financing. The AZIDA Assignee will observe such covenants by executing an asset development and project management services agreement, in form and substance satisfactory to Metro, with a Nonprofit Affiliate (as defined below) of Provident Resources Group Inc., a Georgia nonprofit corporation and entering into, or causing the Nonprofit Affiliate to enter into, an operating agreement, in form and substance satisfactory to Metro, with LAZ Parking Georgia LLC, as the Operator, to operate the Metered Parking System in a manner consistent with the provisions set forth in this Agreement, with each of such contracts intended to qualify under IRS Revenue Procedure 2017-13 as not giving rise to “private business use” within the meaning of the Internal Revenue Code. Metro acknowledges such expectation and agrees to reasonably cooperate with the Parking Company in order to facilitate such assignment and assumption, asset management, operation, and such long-term tax-exempt financing, such cooperation to include the execution and delivery by Metro of such recitals, certifications, and agreements as may be reasonably required in order for tax counsel to conclude that interest on the obligations issued to accomplish such financing will be excluded from gross income under Section 103 of the Internal Revenue Code. **ANY OBLIGATIONS ISSUED TO FACILITATE SUCH LONG-TERM FINANCING SHALL NOT BE OBLIGATIONS OF METRO OR THE STATE OF TENNESSEE, ARE NOT A PLEDGE OF AND DO NOT INVOLVE THE FAITH AND CREDIT OR THE TAXING POWER OF METRO OR THE STATE OF TENNESSEE, AND DO NOT CONSTITUTE A DEBT OF METRO OR THE STATE OF TENNESSEE. SUCH OBLIGATIONS SHALL BE PAYABLE SOLELY FROM REVENUES GENERATED FROM THE OPERATION OF THE METERED PARKING SYSTEM UNDER THIS AGREEMENT OR THE PROCEEDS THEREOF.**

(b) The long-term tax-exempt financing contemplated in Section 17.3(a) will be Parking Company Debt issued by the AZIDA Assignee, not more than 60% of which will be senior Parking Company Debt (the “Senior Debt”) and not less than 40% of which will be subordinate Parking Company Debt (the “Subordinate Debt”). The Senior Debt and the Subordinate Debt will constitute the initial Parking Company Debt. The AZIDA Assignee will apply the proceeds of the Parking Company Debt to compensate Preston Hollow for the assignment and transfer to the AZIDA Assignee described in Section 17.3(a), and to provide for all associated costs and expenses. Preston Hollow will purchase 100% of the Senior Debt and 100% of the Subordinate Debt upon the issuance thereof. Pursuant to the terms of the Parking Company Debt and the instrument under which the Parking Company Debt is issued (collectively, the “Parking Company Debt Documents”), (i) the owner of a majority of the outstanding principal amount of the Subordinate Debt (the “Controlling Party”) will be authorized to act on behalf of all owners of the Parking Company Debt to give any consents, authorizations and approvals, to exercise any rights and direct any remedies, and to take any other action as may be taken by such owners with respect to the Parking Company Debt under the Parking Company Debt Documents. Furthermore, except under certain conditions set forth in the Parking Company Debt Documents, the Controlling Party will be granted certain additional control rights under the Parking Company Debt Documents as are customary in connection with financings similar to the Parking Company Debt, including, under certain circumstances, the right to terminate the contract with the Operator and approve any new Operator, the right to approve or disapprove any transfer or assignment of the concession granted hereunder by the AZIDA Assignee, the right to approve or disapprove any additional Parking Company Debt, the right to make additional

loans to the AZIDA Assignee in order to address shortfalls in funds available for the operation and maintenance of the Metered Parking System and other related purposes, and the right to approve or disapprove any major transactional changes or actions under the Parking Company Debt Documents or in the operation of the Metered Parking System. Such authorizations and rights of the Controlling Party will be set forth in the Parking Company Debt Documents and the Parking Company Debt Documents shall expressly provide that such authorizations and rights of the Controlling Party may not be amended or modified without the prior written consent of Metro. Metro will have the ability to verify that the authorizations and rights of the Controlling Party and Metro described above are set forth in the Parking Company Debt Documents.

(c) Preston Hollow, as the owner of the Subordinate Debt, will be the initial Controlling Party. Preston Hollow shall not, without the consent of Metro (which consent shall not be unreasonably withheld, conditioned or delayed), sell, convey, transfer, assign or otherwise dispose of its Subordinate Debt in a manner or in an amount that would result in Preston Hollow no longer owning at least a majority of the outstanding principal amount of the Subordinate Debt (and thereby no longer being, or retaining the rights granted to, the Controlling Party). The obligations of Preston Hollow under this paragraph shall not be assumed by the AZIDA Assignee, shall survive the assignment to the AZIDA Assignee contemplated in Section 17.3(a) and shall, subsequent to such assignment, continue to be binding on Preston Hollow.

(d) A Nonprofit Affiliate shall be organized exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, including without limitation the ownership, use, operation, maintenance, support and/or improvement of the Metered Parking System, exclusively for the benefit and support of Metro or the AZIDA Assignee and to lessen the burdens of government with respect to Metro or the AZIDA Assignee, under and in accordance with the terms of this Agreement. Metro may recommend persons to be appointed by the Nonprofit Organization to serve on the governing board and/or operating committee of the Nonprofit Affiliate, to ensure significant involvement, contribution and participation by Metro in the Nonprofit Affiliate's use and operation of the Metered Parking System, for the exclusive support and benefit of Metro and the AZIDA Assignee.

(e) Notwithstanding anything herein to the contrary, the liability of the AZIDA Assignee and the Nonprofit Affiliate under this Agreement and each obligation of the AZIDA Assignee and the Nonprofit Affiliate hereunder (including, but not limited to its indemnity obligations) shall be "limited recourse obligations" and, accordingly, the Metro's sole source of satisfaction of such obligations shall be limited to the AZIDA Assignee's interest and the Nonprofit Affiliate's interest in (i) this Agreement, (ii) the Metered Parking System, (iii) the Metered Parking System Assets, and (iv) the rents, issues and surplus received by the AZIDA Assignee and the Nonprofit Affiliate related to the foregoing.

(f) Metro shall not seek to obtain payment or recourse from any member or beneficial owner of the AZIDA Assignee and the Nonprofit Affiliate or from any assets of the Nonprofit Organization, recourse being limited to the AZIDA Assignee's assets and the Nonprofit Affiliate's assets as set forth above. Notwithstanding anything herein to the contrary, no member, director, officer or trustee of the Nonprofit Organization shall have any personal liability to Metro whatsoever arising under this Agreement, and none of the assets of such members, directors, officers or trustees shall be subject to judgment, foreclosure or seizure by Metro for any matter arising under this Agreement.

## **ARTICLE 18 LENDERS**

**Section 18.1. Financing Agreements.** Parking Company shall have the right, at its sole cost and expense, to grant one or more Financing Agreements, secured by Parking Company Interest and/or

Project Revenue if at the time any such Financing Agreement is executed and delivered to the Secured Lender, no Parking Company Default exists and upon and subject to the following terms and conditions:

(a) a Financing Agreement may not cover any property of, or secure any debt issued or guaranteed by, any Person other than Parking Company, but may cover shares or equity interests in the capital of Parking Company and any cash reserves or deposits held in the name of Parking Company other than the Operating Expense Account and the Capital Expense Account;

(b) a Financing Agreement may not cover any Metered Parking System Assets, whether leased or owned by Parking Company or Operator or any Contractor;

(c) with the goal of avoiding Parking Company being overleveraged and subject to an involuntary transition of control, the Senior Debt will, subject to Section 15.3(f), be capped at any time at sixty percent (60%) of the Aggregate Parking Company Contributions (the “Senior Debt Cap”);

(d) the holder of any Subordinate Debt shall not be entitled to the rights of a Secured Lender hereunder, unless and until the Senior Debt has been repaid in full;

(e) a holder of Subordinate Debt who succeeds to the rights of a Secured Lender, will be deemed as Secured Lender for purposes of this Agreement, but the Senior Debt Cap will not be increased by reason of the subordinate lender acquiring the Secured Lender's interest;

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

(g) no Financing Agreement or other instrument purporting to mortgage, pledge, encumber, or create a lien, charge or security interest on or against any or all of Parking Company Interest shall extend to or affect the fee simple interest in the Metered Parking System, Metro's interest hereunder or Metro's reversionary interests and estates in and to the Metered Parking System or any part thereof;

(h) Metro shall have no liability whatsoever for payment of the principal sum secured by any Financing Agreement, or any interest accrued thereon or any other sum secured thereby or accruing thereunder, and, except for violation by Metro of express obligations set forth herein or in any other agreement with the Secured Lender, the Secured Lender shall not be entitled to seek any damages or other amounts against Metro for any or all of the same;

(i) Metro shall have no obligation to any Secured Lender in the enforcement of the rights and remedies of Metro under this Agreement or by Law provided, except as expressly set forth in this Agreement or in any agreement with the Secured Lender and unless such Secured Lender has provided Metro with notice of its Financing Agreement in accordance with the Secured Lender Notice Requirements;

(j) each Financing Agreement shall provide that if Parking Company is in default under the Financing Agreement and the Secured Lender gives notice of such default to Parking Company, then the Secured Lender shall give notice of such default to Metro;

(k) subject to the terms of this Agreement, all rights acquired by a Secured Lender under any Financing Agreement shall be subject and subordinate to all of the provisions of this Agreement and to all of the rights of Metro hereunder;

(l) while any collateral assignment to Secured Lenders is outstanding, Metro shall not agree to any amendment or modification of this Agreement that could reasonably be expected to have a material adverse effect on the rights or interests of the Secured Lenders or agree to a voluntary surrender or termination of this Agreement by Parking Company without the consent of the Secured Lenders;

(m) notwithstanding any enforcement of the security of any Financing Agreement, Parking Company shall remain liable to Metro for the payment of all sums owing to Metro under this Agreement and the performance and observance of all of Parking Company's covenants and obligations under this Agreement; and a Secured Lender shall not, by virtue of its Financing Agreement, acquire any greater rights or interest in the Metered Parking System than Parking Company has at any applicable time under this Agreement, and each Secured Lender, Metro and Parking Company shall enter into a consent agreement in a form acceptable to all parties; provided that such consent agreement shall be in a customary form and shall include the rights and protections provided to the Secured Lenders in this Agreement;

(n) while any Financing Agreement is outstanding, Metro shall not agree to any amendment or modification of this Agreement that could be reasonably expected to have a Material Adverse Effect on the rights or interests of the Secured Lender or agree to a voluntary surrender or termination of this Agreement by Parking Company without the consent of the Secured Lenders;

(o) while any Senior Debt is outstanding, Metro shall not Offset against amounts due to Parking Company if such Offset would result in the Secured Lender not receiving any scheduled payment of principal and interest on their Senior Debt; and

(p) at Parking Company's request, Metro will promptly execute an intercreditor agreement with Parking Company's secured Lenders;

(i) affirming the secured Lender's rights hereunder;

(ii) confirming that Metro shall not Offset against amounts due to Parking Company if such Offset would result in the Secured Lender not receiving any scheduled payment of principal and interest on their Senior Debt; and

(iii) agree that the Metered Parking Systems Rights Value will never be less than the lesser of (A) the outstanding principal balance of, plus accrued interest (not including penalties or default interest) on, the Senior Debt, or (B) the Senior Debt Cap.

**Section 18.2. Notices and Payments to Secured Lender.** Whenever a Financing Agreement exists as to which Metro has been provided notice by the holder thereof in accordance with the Secured Lender Notice Requirements, Metro shall, simultaneously with providing Parking Company any required default notice under this Agreement, provide a copy of such default notice to such Secured Lender, and no such notice to Parking Company shall be effective against the Secured Lender until a copy thereof is duly provided to such Secured Lender at its address specified in its notice given to Metro in accordance with the Secured Lender Notice Requirements. With respect to a Financing Agreement regarding which Metro has been provided notice in accordance with the Secured Lender Notice Requirements, unless the Secured Lender has otherwise advised Metro in writing, all payments to Parking Company to be made by

Metro under this Agreement shall be made to the institution acting as the Depository under the financing secured by such Financing Agreement.

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

#### **Section 18.4. Rights of the Secured Lender.**

(a) Subject to the provisions of this Agreement, a Secured Lender may (i) enforce its Financing Agreement in any lawful way, (ii) acquire Parking Company Interest in any lawful way or (iii) take possession of in any lawful way and manage the Metered Parking System. Upon foreclosure of (or without foreclosure upon exercise of any contractual or statutory power of sale under such Financing Agreement or a deed in lieu) and subject to the provisions of Article 17 (applied to the Secured Lender as if it were Parking Company, except that Section 17.1(c) will not apply), a Secured Lender may Transfer Parking Company Interest; provided, however, that no Transfer by a Secured Lender shall be effective unless the Transfer is made in accordance with Section 17.1. Any Person to whom the Secured Lender Transfers Parking Company Interest (including such Secured Lender) shall take Parking Company Interest subject to any of Parking Company's obligations under this Agreement. Any Operator selected by the Secured Lender must be Approved by Metro. At any time following and during the continuance of a Parking Company Default, Metro will be entitled to assume the Operator's role or designate a Replacement Company to assume Parking Company's role with the goal of ensuring uninterrupted operations of the Metered Parking System. However, Metro's or a Replacement Company's assumption of the Operator's roll will not bar the Secured Lender from exercising its rights hereunder to assume Metered Parking System manager's role, subject to reasonable transition requirements as Metro shall impose to ensure uninterrupted operation of the Metered Parking System and subject to the right of Metro to pay the Replacement Company from amounts in the Operating Expense Account or Capital Expense Account as applicable.

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

#### **Section 18.5. Termination of this Agreement; New Agreement.**

(a) Without prejudice to the rights of a Secured Lender under Section 18.3, if this Agreement is terminated prior to the expiration of the Term due to a Parking Company Default (in which case Metro shall notify the Secured Lender of such termination) or if this Agreement is rejected or disaffirmed pursuant to any bankruptcy Law or proceeding or other similar Law or proceedings affecting creditors' rights generally with respect to a bankruptcy proceeding relating to Parking Company or otherwise, Metro agrees to enter into a new parking rights agreement of the Metered Parking System with the Secured Lender (or its designee or nominee, provided that such designee or nominee either is controlled by the Secured Lender (or by the holders of Parking Company Debt)) or is Approved by Metro as Transferee under Section 17.1) for the remainder of the original stated Term upon all of the covenants, agreements, terms, provisions and limitations of this Agreement (the "New Agreement"), effective as of the date of such termination, but only on and subject to the satisfaction of all of the following requirements and conditions: (i) such Secured Lender commits in writing to Metro, in a notice delivered to Metro, within Thirty (30) Days after Metro delivers the termination notice to Secured Lender (or, if later, upon the termination of any cure period granted to the Secured Lender pursuant to Section 18.3) or within Thirty (30) Days after the effective date of such rejection or disaffirmance, as the case may be, that the Secured Lender (or its designee or nominee) will enter into the New Agreement, which notice is accompanied by a copy of such New Agreement, duly executed and acknowledged by the Secured Lender (or its designee or nominee); (ii) the Secured Lender (or its designee or nominee) pays or causes to be paid to Metro, at the time of the execution and delivery of the New Agreement, all amounts which, at the time of the execution and delivery thereof, would have been past-due or due and payable in accordance with the provisions of this Agreement but for such termination; (iii) provided Metro furnishes a statement or invoice for such costs the Secured Lender pays or causes to be paid to Metro all reasonable costs and expenses (including legal fees), Taxes, fees, charges and disbursements paid or incurred by Metro in connection with such defaults and termination, the recovery of possession from Parking Company, and in connection with the preparation, execution and delivery of the New Agreement and related agreements and documents specified in such statement or invoice; and (iv) such Secured Lender (or its designee or nominee), at the time of such written request, cures all defaults under this Agreement (curable by the payment of money) existing immediately prior to the termination of this Agreement, or, if such defaults cannot be cured by the payment of money, such Secured Lender (or its designee or nominee) commits to Metro in the New Agreement to proceed both promptly and diligently, upon the execution of the New Agreement, to cure all such other defaults to the extent such defaults are capable of cure by a Person other than the original Parking Company and, if possession is necessary in order to cure such other Parking Company Defaults,



to proceed both promptly and diligently to obtain the possession required to cure any such other defaults (and such cure shall be a covenant in the New Agreement).

(b) Nothing contained in this Section 18.5 shall be deemed to limit or affect Metro's interests in and to such Metered Parking System upon the expiration of the Term of the New Agreement. The provisions of this Section 18.5 shall survive the termination of this Agreement and shall continue in full force and effect thereafter to the same extent as if this Section 18.5 were a separate and independent contract made by Metro, Parking Company and the Secured Lender and, if the Secured Lender satisfies the conditions to a New Agreement from the effective date of such termination of this Agreement to the date of execution and delivery of the New Agreement, the Secured Lender may enjoy the rights created by this Agreement without hindrance by Metro, but only on and subject to the terms and provisions of this Agreement. In all events Secured Lender must engage an Operator with experience operating comparable on-street metered facilities comparable to the Metered Parking System and Metro reserves the right to reasonably Approve any Operator selected by Secured Lender.

(c) If the circumstances described in Section 18.5(a) occur, and Metro determines, based on the written legal advice of counsel, that termination of this Agreement and the entry into a New Agreement by and among Metro and the Secured Lender could violate applicable provisions of the Laws of the State of Tennessee governing procurement by Metro then, in lieu of entering in a New Agreement and in satisfaction of its obligations under this Section 18.5, Metro agrees to enter into an Assignment and Assumption Agreement pursuant to Section 18.8.

**Section 18.6. Recognition of Secured Lender.** If there is more than one Secured Lender, only that Secured Lender, to the exclusion of all other Secured Lender, whose notice was earliest received by Metro pursuant to the Secured Lender Notice Requirements, shall have the rights as a Secured Lender under this Article 18, unless such Secured Lender has designated in writing another Secured Lender to exercise such rights. Such Secured Lender may act as agent for a group or syndicate of one or more Institutional Lenders and such Secured Lender and Institutional Lenders may freely assign or sell interests and/or participations in the loans to any other Institutional Lender.

**Section 18.7. Metro's Right to Purchase Financing Agreements.**

(a) If any default by Parking Company has occurred under a Financing Agreement and has not been cured within applicable cure periods, or any act, condition or event has occurred which would permit a Secured Lender to declare all or part of the indebtedness secured by a Financing Agreement to be immediately due and payable (or, in the case of a Financing Agreement that is a lease, to terminate the lease), then Metro shall have thirty (30) Days after the date on which such Secured Lender shall serve notice upon Metro in writing ("Secured Lender's Notice") that such Secured Lender intends to commence proceedings to foreclose the Financing Agreement, during which thirty (30) Day period Metro shall have the right and option (the "Metro's Option") to purchase from all Secured Lender their Financing Agreements, upon the terms and subject to the conditions contained in this Section 18.7.

(b) Metro's Option shall be exercised by notice served upon Parking Company and all Secured Lender within such Thirty (30) Day period. Time shall be of the essence as to the exercise of Metro's Option. If Metro's Option is duly and timely exercised, Metro shall purchase and all Secured Lender shall assign their Financing Agreements to Metro (or its designee) on the date which is Sixty (60) Days after the date on which a Secured Lender's Notice is served upon Metro. The closing shall take place at a mutually convenient time and place.

(c) The purchase price payable by Metro shall be equal to the aggregate amounts secured by such Financing Agreements (including principal, interest, fees, premiums, Breakage Costs and other

costs, expenses and any other amounts secured thereby) as of the closing date of the purchase. The purchase price shall be paid in full in cash at closing by wire transfer or other immediately available funds. The purchase price shall be paid by Metro to each respective Secured Lender, to be applied by the Secured Lender to the amounts secured by the Financing Agreement owed to such Secured Lender, subject to the priorities of lien of such Financing Agreements.

(d) At the closing and upon payment in full of the purchase price each Secured Lender shall assign its Financing Agreement to Metro, together with any security interest held by it in Parking Company Interest, without recourse, representations, covenants or warranties of any kind, provided that such Financing Agreements and security interests shall be deemed modified to secure the amount of the aggregate purchase price paid by Metro to all Secured Lender (rather than the indebtedness theretofore secured thereby) payable on demand, with interest and upon the other items referred to in this Section 18.7(d). Each such assignment shall be in form for recordation or filing, as the case may be. Metro shall be responsible for paying any Taxes payable to any Governmental Authority upon such assignment. Such assignment shall be made subject to such state of title of the Metered Parking System as shall exist at the date of exercise of Metro's Option.

(e) Any Financing Agreement shall contain an agreement of the Secured Lender to be bound by the provisions of this Section 18.7, and Metro shall have the right to receive all notices of default under any Financing Agreement.

#### **Section 18.8. Assignment and Assumption Agreement.**

(a) The provisions of this Section 18.8 shall be in effect whenever either (i) Metro has made the determination contemplated by Section 18.5(c) or (ii) Metro, with the written consent of the Secured Lender, have determined to proceed under this Section 18.8 in lieu of under Section 18.5.

(b) Without prejudice to the rights of a Secured Lender under Section 18.3, if either (i) Metro have given a notice of termination of this Agreement due to Parking Company Default pursuant to Section 16.1(b), or (ii) this Agreement is rejected or disaffirmed pursuant to any bankruptcy Law or proceeding or other similar Law or proceedings affecting creditors' right generally with respect to a bankruptcy proceeding relating to Parking Company or otherwise, Metro agrees to cooperate with a Secured Lender in order to effectuate such Secured Lender's rights under the Financing Agreement to step-in, assume or assign this Agreement, in accordance with the procedures, terms and conditions of this Section 18.8.

(c) Upon notification and satisfaction of all of the conditions and requirements in Section 18.8(d), Metro agrees that this Agreement shall not be deemed terminated, but may be assumed by a Secured Lender or by a designee or nominee of such Secured Lender who is either controlled by the Secured Lender (or by the holders of Parking Company Debt) or is Approved by Metro as a Transferee under Section 17.1, for the remainder of the original stated Term of this Agreement, and as evidence of such assignment and assumption Metro agrees to execute an amended and restated parking rights agreement for the Metered Parking System upon all of the covenants, agreements, terms, provisions and limitations of this Agreement (the "Assignment and Assumption Agreement").

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

(i) Such Secured Lender must commit in writing to Metro, in a notice delivered to Metro within the later of Thirty (30) Days after Metro delivers the termination notice to Secured

Lender or upon the termination of any cure period granted to such Secured Lender pursuant to Section 18.3, or within Thirty (30) Days after the effective date of any rejection or disaffirmance of this Agreement in a bankruptcy proceeding, as the case may be, that such Secured Lender (or its designee or nominee) will assume this Agreement and enter into the Assignment and Assumption Agreement, which notice is accompanied by a copy of such Assignment and Assumption Agreement duly executed and acknowledged by such Secured Lender (or its designee or nominee).

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

(iii) Such Secured Lender (or its designee or nominee) shall pay or cause to be paid to Metro all reasonable costs and expenses (including legal fees), Taxes, fees, charges and disbursements paid or incurred by Metro in connection with such defaults and notice of termination, the recovery of possession from Parking Company, and in connection with the preparation, execution and delivery of the Assignment and Assumption Agreement and related agreements and documents. Metro shall provide an invoice to such Secured Lender of such costs, and the Secured Lender or its designee or nominee shall pay such invoiced costs within Five (5) Days of the receipt of such invoice.

(iv) Such Secured Lender (or its designee or nominee), at the time of the notice provided under Section 18.8(d)(i), shall cure all defaults under this Agreement (including all such defaults curable by the payment of money) existing immediately prior to the notice of termination issued pursuant to Section 16.1(b), or, if such defaults cannot be cured by the payment of money, such Secured Lender (or its designee or nominee) shall commit to Metro in the Assignment and Assumption Agreement to proceed both promptly and diligently, upon the execution of the Assignment and Assumption Agreement, to cure all such other defaults to the extent such defaults are capable of cure by a Person other than the original Parking Company and, if possession is necessary in order to cure such other Parking Company Defaults, to proceed both promptly and diligently to obtain the possession required to cure any such other defaults (and such obligation to cure shall be a covenant in the Assignment and Assumption Agreement).

(e) If a Secured Lender gives Metro a notice as provided in Section 18.8(d)(i), Metro and Secured Lender agree to cooperate with respect to taking any appropriate actions required to regain and Transfer possession of the Metered Parking System and the Metered Parking System Assets, including (i) seeking surrender of possession in any bankruptcy proceedings; (ii) seeking relief from any automatic stay in bankruptcy provisions and pursuit of Tennessee State Law remedies to obtain possession and to foreclose on the Financing Agreement interest and assume Parking Company's position as provided in Section 18.4 of this Agreement; provided that any costs incurred by Metro under this provision shall be reimbursed by the Secured Lender (or its designee or nominee) as provided in Section 18.8(d)(iii).

**Section 18.9. Right to Dispute Resolution.** In each case specified in this Agreement in which resort to dispute resolution is authorized, a Secured Lender shall have the right and privilege if an event of default under the Financing Agreement then exists and notice has been given to Metro as contemplated by Section 18.1(g), in Parking Company's name, place and stead, to obtain and participate in such dispute resolution upon notice to Metro in accordance with Article 20; provided that the Secured Lender agrees to be bound by the outcome of the dispute resolution process.

**ARTICLE 19**  
**TERMINATION FOR CONVENIENCE BY METRO**

**Section 19.1. Termination for Convenience by Metro.** Metro has the option, in its sole discretion and without cause, to terminate for its convenience (“Early Termination Option”) Parking Company for a fixed sum equal to the Metered Parking System Rights Value. Metro may exercise this option by the delivery of written notice to Parking Company. If exercised, the Reversion Date shall occur on the date specified in Metro’s notice of election. A payment in the amount of the Metered Parking System Rights Value shall be due from Metro to Parking Company by same Day wire transfer. Any amounts that are not determinable on the Reversion Date will be prorated to the best of the Parties’ knowledge and re-prorated on the date that is 90 Days following the Reversion Date. Parking Company will reasonably cooperate with Metro and its Representatives in calculating the Metered Parking System Rights Value. All Parking Company operations shall cease on the Reversion Date. Notwithstanding anything to the contrary, if the Early Termination Option is exercised, Parking Company shall turn over Metered Parking System to Metro, subject to normal wear and tear, as it would have had the Agreement run its full Term, including, but not limited to complying with the provisions set forth in Section 16.3.

**ARTICLE 20**  
**DISPUTE RESOLUTION**

**Section 20.1. Scope.** Any dispute arising out of, relating to, or in connection with this Agreement shall be resolved as set forth in this Article 20.

**Section 20.2. Informal Dispute Resolution Procedures.** The Parties shall attempt in good faith to resolve such dispute within Fifteen (15) Business Days following receipt by one Party of notice of such dispute from the other Party. If the Parties are unable to resolve the dispute within such period of Fifteen (15) Business Days, and upon notice by either Party to the other, the dispute shall be referred to the Designated Senior Person of each Party. The Designated Senior Persons shall negotiate in good faith to resolve the dispute, conferring as often as they deem reasonably necessary. Statements made by Representatives of the Parties during the dispute resolution procedures set forth in this Section 20.2 and in Section 20.3 and documents specifically prepared for such dispute resolution procedures shall be considered part of settlement negotiations and shall not be admissible as evidence in any other litigation or dispute resolution proceeding between the Parties without the mutual consent of the Parties.

**Section 20.3. Mediation.** Mediation of a dispute under this Agreement may not be commenced until the earlier of: (i) such time as both of the Designated Senior Persons, after following the procedures set forth in Section 20.2, conclude in good faith that amicable resolution through continued negotiation of the matter does not appear likely; or (ii) Fifteen (15) Business Days after the notice referring the dispute to the Designated Senior Persons, pursuant to Section 20.2. If, after such time period, the dispute remains unresolved, the Parties shall attempt to resolve the dispute through mediation. The mediator for such dispute shall be an attorney in good standing in the State who is registered with the State as a civil mediator (the “Mediator”). The Parties shall attempt, in good faith to agree on a Mediator. If the Parties cannot so agree within Fifteen (15) Days after it is determined that the Designated Senior Persons cannot resolve the dispute, the Parties jointly shall petition the judge of the Davidson County Circuit Court to order a list of five qualified Mediators from which the Parties shall strike. The claiming Party shall strike first. After striking is complete, the remaining individual shall serve as Mediator. If the Mediator selected by striking is unable or unwilling to serve or is otherwise disqualified, the previously stricken Mediators shall be designated in inverse order until a Mediator is selected.

**Section 20.4. General; Jurisdiction.** Unless the Parties otherwise agree, if mediation as set forth in Section 20.3 does not resolve the dispute within Thirty (30) Business Days from the date the

Mediator is selected or such longer period as the Parties may mutually agree, the dispute shall be exclusively and finally settled by the competent courts located in the jurisdiction of Metro which will have exclusive jurisdiction over any dispute between the Parties arising out of or relating to the Agreement, including, without limitation, formation, validity, interpretation, construction, operation, performance, breach and associated remedies, termination or cancellation, and enforcement. The Parties consent to service and jurisdiction and waive any other venue to which they might be entitled by virtue of domicile, habitual residence, or otherwise. The Agreement will be deemed to have been made, executed, and delivered in the State of Tennessee.

The Parties shall be entitled to discover all documents and information reasonably necessary for a full understanding of any legitimate issue raised in the litigation. The Parties may use all methods of discovery available under the Federal Rules of Civil Procedure subject to time limits set forth therein. Each Party shall bear its own attorney fees, expenses, and costs. The award shall include interest at the Bank Rate from the date of any breach or violation of this Agreement as determined in the judicial resolution until paid in full.

**Section 20.5. Provisional Remedies.** No Party shall be precluded from initiating a proceeding in a court of competent jurisdiction for the purpose of obtaining any emergency or provisional remedy to protect its rights that may be necessary and that is not otherwise available under this Agreement, including temporary and preliminary injunctive relief and restraining orders and the appointment of a receiver or receiver and manager in connection with the collection and retention of Project Revenue.

**Section 20.6. Tolling.** If a Party receiving a notice of default under this Agreement contests, disputes or challenges the propriety of such notice by making application to the dispute resolution procedure in this Article 20, any cure period that applies to such default shall be tolled for the time period between such application and the issuance of a final award or determination.

**Section 20.7. Technical Dispute Resolution.** Prior to either Party submitting a dispute to a court for resolution, the Parties may agree to submit any technical dispute, designated as such under this Agreement, including any technical dispute with respect to Article 7 that is submitted pursuant to Section 7.10 to the Consultant and once such technical dispute has been submitted to the Consultant then the other dispute resolutions mechanisms provided for in this Article 20 shall not apply. The Consultant shall determine any unresolved disputed items within Three (3) Business Days of the submission of such dispute to the Consultant, unless the Consultant has good cause to extend such date for determination. The submission shall be in the form of written statements of position by one or both of the Parties, which statements shall be provided to both the other Party and the Consultant, with each Party having an opportunity to respond to such written statements of the other Party and any requests for statements or information by the Consultant, including in-person meetings. The Parties shall each bear their own costs with respect to the submission of such dispute to the Consultant and shall bear equally the cost of the Consultant with respect to such dispute. The Consultant's award shall be in writing and state the reasons upon which it is based. The decision of the Consultant shall be final and binding on the Parties, unless either Party expressly reserves the right to submit the dispute to the dispute resolution process otherwise provided for in this Article 20. Within One (1) Business Day after its receipt of the decision, any Party may request the Consultant to interpret the decision or to correct any clerical, typographical or computation errors therein. The other Party shall have a right to comment within One (1) Business Day of its receipt of the requesting Party's request for interpretation and/or correction. If the Consultant considers the request justified, it shall comply with such request within Three (3) Business Days after its receipt of such request. The correction and/or interpretation of the decision shall take the form of an addendum and shall constitute part of the decision.

**ARTICLE 21  
MISCELLANEOUS**

**Section 21.1. Notice.** All notices, other communications and Approvals required or permitted by this Agreement shall be in writing, shall state specifically that they are being given pursuant to this Agreement and shall be delivered, sent by facsimile (with hard copy sent via mail), certified or registered mail (return receipt requested and postage prepaid), addressed as follows:

- (a) in the case of Metro:

[●]

[●]

Attention: \_\_\_\_\_

With a copy to:

Baker & McKenzie LLP  
300 East Randolph Street  
Suite 5000  
Chicago, IL 60601  
Attention: Michael Smith

- (b) in the case of Parking Company:

Preston Hollow Capital  
1717 Main Street  
Suite 3900  
Dallas, TX 75201  
Attention: John Dinan

with a copy to:

Nixon Peabody LLP  
799 9th Street NW  
Suite 500  
Washington, DC 20001-5327  
Attention: Mitchell Rapaport

or such other persons or addresses as either Party may from time to time designate by notice to the other. A notice, other communication or Approval shall be deemed to have been sent and received (i) on the Day it is delivered, or if such Day is not a Business Day or if the notice is received after ordinary office hours (time of place of receipt), the notice, other communication or Approval shall be deemed to have been sent and received on the next Business Day, or (ii) on the Fourth (4th) Business Day after mailing if sent by U.S. registered or certified mail.

**Section 21.2. Entire Agreement.** This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, negotiations, discussions and understandings, written or oral, between the Parties. There are no representations, warranties, conditions or other agreements, whether direct or collateral, or express or implied, that form part of or affect this Agreement, or that induced any Party to enter into this Agreement or on which reliance is placed by any Party, except as specifically set forth in this Agreement. The Parties

acknowledge and agree that (i) each has substantial business experience and is fully acquainted with the provisions of this Agreement, (ii) the provisions and language of this Agreement have been fully negotiated and (iii) no provision of this Agreement shall be construed in favor of any Party or against any Party by reason of such provision of this Agreement having been drafted on behalf of one Party rather than the other.

**Section 21.3. Amendment.** This Agreement may be modified only by written amendment executed by all Parties and their signatories hereto. All change orders, where required, shall be executed in conformance with section 4.24.020 of the Metropolitan Code of Laws.

**Section 21.4. Waiver of Rights.** Any waiver of, or consent to depart from, the requirements of any provision of this Agreement shall be effective only if it is in writing and signed by the Party giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of any Party to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of such right. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right. No waiver of any provision of this Agreement shall affect the right of any Party to enforce such provision or to exercise any right or remedy available to it.

**Section 21.5. Severability.** Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by applicable Law. The invalidity of any one or more phrases, sentences, clauses or Sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part thereof. If any provision of this Agreement or the application thereof to any Person or circumstance is held or deemed to be or determined to be invalid, inoperative or unenforceable in any particular case in any particular jurisdiction or jurisdictions because it conflicts with any other provision or provisions hereof or of any applicable Law, or public policy, or for any other reason, (i) such circumstance shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever, and (ii) the Parties shall negotiate in good faith to amend this Agreement to implement the provisions set forth herein. If the Parties cannot agree on an appropriate amendment, either Party may refer the matter for determination pursuant to the dispute resolution procedure in Article 20. If, by means of the dispute resolution procedure, the Parties are unable, as a result of applicable Law, to resolve the matter in a manner that effectively entitles Metro to have the same rights after the aforesaid determination of invalidity or unenforceability as before, Metro shall have the right to enact, and cause to come into force, any Law to provide for the same or substantially the same rights as were determined to be invalid or unenforceable.

**Section 21.6. Governing Law.** The validity, construction, and effect of this Agreement and any and all extensions and/or modifications thereof shall be governed by the Laws of the State of Tennessee. Tennessee Law shall govern regardless of any language in any attachment or other document that Parking Company may provide; provided, however, that with respect to the existence, corporate powers, legal capacity, rights (including, without limitation, rights to indemnification and exculpation from liability), privileges, powers, obligations, and liabilities of the Arizona Industrial Development Authority and the persons associated with the Arizona Industrial Development Authority, as applicable, this Agreement shall be governed by the laws of the State of Arizona, excluding conflicts of law principles.

**Section 21.7. Submission to Jurisdiction.** Subject to Article 20, any action or proceeding against Parking Company or Metro relating in any way to this Agreement may be brought and enforced in the federal or state courts in Davidson County, Tennessee, and each of Parking Company and Metro hereby irrevocably submits to the jurisdiction of such courts with regard to any such action or proceeding, and irrevocably waives, to the fullest extent permitted by applicable Law, any objection it may have now

or hereafter have to the laying of venue of any such action or proceeding in such courts and any claim that any such action or proceeding brought in any such court has been brought in an inconvenient forum. Service of process on Metro may be made, either by registered or certified mail addressed as provided for in Section 21.1. Service of process on Parking Company may be made either by registered or certified mail addressed as provided for in Section 21.1 or by delivery to Parking Company's registered agent for service of process in the State. If Parking Company is presented with a request for Documents by any administrative agency or with a subpoena duces tecum regarding any Documents which may be in its possession by reason of this Agreement, Parking Company shall give prompt notice to Metro. Metro may contest such process by any means available to it before such Documents are submitted to a court or other third-party; provided, however, that Parking Company shall not be obligated to withhold such delivery beyond that time as may be ordered by the court or administrative agency or required by Law, unless the subpoena or request is quashed or the time to produce is otherwise extended.

**Section 21.8. Further Acts.** The Parties shall do or cause to be done all such further acts and things as may be reasonably necessary or desirable to give full effect to this Agreement. Without limiting the foregoing, each Party will, at any time and from time to time, execute and deliver or cause to be executed and delivered such further instruments and assurances and take such further actions as may be reasonably requested by the other Party in order to cure any defect in the execution and/or delivery of this Agreement.

**Section 21.9. Costs.** Except as otherwise provided in this Agreement, each Party shall be responsible for its own costs and expenses incurred in connection with performing and observing its obligations and covenants under this Agreement.

**Section 21.10. Interest.** Any amount payable under this Agreement and not paid when due (including any Compensation Event Payment) shall bear interest at a variable nominal rate per annum equal on each Day to the lesser of (a) the Bank Rate then in effect plus 5%, and (b) the maximum lawful rate of interest that may be charged under the Law of the State of Tennessee from the date such payment is due until payment and both before and after judgment.

**Section 21.11. Inurement and Binding Effect.** This Agreement shall inure to the benefit of the Parties and their respective permitted successors and assigns and be binding upon the Parties and their respective successors and assigns.

**Section 21.12. Information, Intellectual Property, Records.**

(a) *Information Ownership.* All Information collected, stored, processed and transmitted as part of the Metered Parking System Operations is and shall always be the sole property of Metro. Any Information provided to the Parking Company and any Representatives, including Information provided by Metro customers or residents or visitors, is only to be used to fulfill the contracted services. Any additional Information that is inferred or determined based on primary Information that is provided to the Parking Company and any Representatives, i.e. "second-order data", is only to be used to fulfill the contracted services. This Information is not to be used for marketing or commercial purposes and the Parking Company and any Representatives assert no rights to this Information outside of fulfilling the contracted services. Storage of this information is not allowed outside United States' jurisdiction. Parking Company hereby waives any and all statutory and common law liens it may now or hereafter have with respect to Metro Information. Nothing in this Agreement or any other agreement between Metro and Parking Company shall operate as an obstacle to Metro's right to retrieve any and all Metro Information from Parking Company or its agents or to retrieve such Information or place such Information with a third-party for provision of services to Metro, including without limitation, any outstanding payments, overdue payments and/or disputes, pending legal action, or arbitration. Upon



Metro's request, Parking Company shall supply Metro with an inventory of Metro Information that Parking Company stores and/or backs up.

(b) *Software License.* Parking Company warrants and represents that it is the owner of or otherwise has the right to perform the Metered Parking Activities as detailed in the Business Plan.

(c) *Information Security Breach Notification.* In addition to the notification requirements in any business associate agreement with Metro, when applicable, Parking Company shall notify Metro of any data breach within twenty-four (24) hours of Parking Company's knowledge or reasonable belief (whichever is earlier) that such breach has occurred ("Breach Notice") by contacting the Metro ITS Help Desk. The Breach Notice should describe the nature of the breach, the scope of the Information compromised, the date the breach occurred, and the identities of the individuals affected or potentially affected by the breach as well as specific Information about the data compromised so that Metro can properly notify those individuals whose Information was compromised. Parking Company shall periodically update the Information contained in the Breach Notice to Metro and reasonably cooperate with Metro in connection with Metro's efforts to mitigate the damage or harm of such breach.

(d) *Virus Representation and Warranty.* Parking Company shall not introduce into Metro's systems, network, or infrastructure, any type of software routines or element which is designed to or capable of unauthorized access to or intrusion upon, disabling, deactivating, deleting, or otherwise damaging or interfering with any system, equipment, software, data, or the Metro network. In the event of a breach of this subsection, Parking Company shall compensate Metro for any and all harm, injury, damages, costs, and expenses incurred by Metro resulting from the breach. For Parking Company managed systems, Parking Company shall install and maintain ICSA Labs certified or AV-Test approved anti-virus software and, to the extent possible, use real time protection features. Parking Company shall maintain the anti-virus software in accordance with the anti-virus software provider's recommended practices. In addition, Parking Company shall ensure that: (i) anti-virus software checks for new anti-virus signatures no less than once per Day; and (ii) anti-virus signatures are current and no less recent than two versions/releases behind the most current version/release of the anti-virus signatures for the anti-virus software.

(e) *Copyright, Trademark, Service Mark, or Patent Infringement.*

(i) Parking Company shall, at its own expense, be entitled to and shall have the duty to defend any suit that may be brought against Metro to the extent that it is based on a claim that the products or services furnished infringe a copyright, trademark, service mark or patent. Parking Company shall further indemnify and hold harmless Metro against any award of damages and costs made against Metro by a final judgment of a court of last resort in any such suit. Metro shall provide Parking Company immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available Information and reasonable cooperation, assistance and authority to enable Parking Company to do so. No costs or expenses shall be incurred for the account of Parking Company without its written consent. Metro reserves the right to participate in the defense of any such action. Parking Company shall have the right to enter into negotiations for and the right to effect settlement or compromise of any such action, but no such settlement or compromise shall be binding upon Metro unless approved by the Metro Department of Law Settlement Committee and, where required, the Metro Council.

(ii) If the activities performed under this Agreement are likely to, or do become, the subject of such a claim of infringement, then without diminishing Parking Company's obligation to satisfy the final award, Parking Company may at its option and expense: (i) procure for Metro

the right to continue using the products or services that are the subject of such claim; (ii) replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to Metro, so that they become non-infringing; or (iii) remove the products or discontinue the services and cancel any future charges pertaining thereto; provided; however, that Parking Company will not exercise the removal option above until Parking Company and Metro have determined that the procure and/or replace options are impractical.

(iii) Parking Company shall have no liability to Metro; however, if any such infringement or claim thereof is based upon or arises out of: (x) the use of the products or services in combination with apparatus or devices not supplied or else approved by Parking Company; (y) the use of the products or services in a manner for which the products or services were neither designated nor contemplated; or (z) the claimed infringement in which Metro has any direct or indirect interest by license or otherwise, separate from that granted herein.

(f) *Maintenance of Records.* Parking Company shall maintain documentation for all charges against Metro. The books, records, and documents of Parking Company, insofar as they relate to work performed or money received under this Agreement, shall be maintained for a period of three (3) full Years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by Metro or its duly appointed Representatives. The records shall be maintained in accordance with generally accepted accounting principles. In the event of litigation, working papers and other documents shall be produced in accordance with applicable laws and/or rules of discovery. All documents and supporting materials related in any manner whatsoever to this Agreement or any designated portion thereof, which are in the possession of Parking Company or Contractor or subcontractor shall be made available to Metro for inspection and copying upon written request from Metro. Said documents shall also be made available for inspection and/or copying by any state, federal or other regulatory authority, upon request from Metro. Said records include, but are not limited to, all drawings, plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, or other writings or things which document the procurement and/or performance of this Agreement. Said records expressly include those documents reflecting the cost, including all Contractor's or subcontractor's records and payroll records of such Contractor or subcontractor.

(g) *Monitoring.* Parking Company's activities conducted and records maintained pursuant to this Agreement shall be subject to monitoring and evaluation by Metro, the Department of Finance, the Division of Internal Audit, or their duly appointed Representatives. Metro shall have the option of reviewing and performing a security assessment of the Information security management practices of Parking Company. Metro shall have the right to conduct such audits by use of its own employees and internal audit staff, or by use of outside consultants and auditors.

(h) *Metro Property.*

(i) Any Metro property, including but not limited to books, records, and equipment that is in Parking Company's possession shall be maintained by Parking Company in good condition and repair, and shall be returned to Metro by Parking Company upon termination of this Agreement. All goods, documents, records, and other work product and property produced during the performance of this Agreement are deemed to be Metro property. Metro property includes, but is not limited to, all documents which make up this Agreement; all other documents furnished by Metro; all goods, records, reports, information, data, specifications, computer programs, technical reports, operating manuals and similar work or other documents, conceptual drawings, design documents, closeout documents, and other submittals by Parking Company; and, all other original works of authorship, whether created by Metro or Parking Company embodied in any tangible medium of expression, including, without limitation, pictorial, graphic,

sculptural works, two (2) dimensional works, and three (3) dimensional works. Any of Parking Company's works of authorship comprised within the work product (whether created alone or in concert with Metro or a third-party) shall be deemed to be "works made for hire" and made in the course of services rendered and, whether pursuant to the provisions of Section 101 of the U.S. Copyright Act or other applicable law, such work product shall belong exclusively to Metro. Parking Company grants Metro a non-exclusive, perpetual, worldwide, fully paid up, royalty-free license, with rights to sublicense through multiple levels of sublicenses, to reproduce, make, have made, create derivative works of, distribute, publicly perform and publicly display by all means, now known or later developed, such rights.

(ii) Except as to contracts involving sensitive Information, Parking Company may keep one (1) copy of the aforementioned documents upon completion of this Agreement; provided, however, that in no event shall Parking Company use, or permit to be used, any portion of the documents on other projects without Metro's prior written authorization. Parking Company shall maintain sensitive Information securely and if required by Metro, provide secured destruction of said Information. Distribution and/or reproduction of Metro sensitive Information outside of the intended and Approved use are strictly prohibited unless permission in writing is first received from the Metro Chief Information Security Officer. The storage of Metro sensitive Information to third-party hosted network storage areas, such as Microsoft Skydrive, Google Docs, Dropbox, or other cloud storage mechanisms, shall not be allowed without first receiving permission in writing from the Metro Chief Information Security Officer.

**Section 21.13. No Partnership or Third-Party Beneficiaries.** The Parties acknowledge that Parking Company is performing the Metered Parking Activities as an agent of Metro and that Parking Company at no time owns the Metered Parking Spaces or retains the right to retain ownership of the Metered Parking System Assets following termination of Parking Company. While Parking Company and Metro will be a co-beneficiary of the Operating Expense Account and Capital Expense Account, Parking Company assumes a fiduciary role with respect to amounts held therein and agrees to apply such funds solely as permitted under this Agreement. Metro similarly agrees to apply funds in the Metro Account solely as permitted under this Agreement for the mutual benefit of Parking Company and Metro. Except as provided in this Section 21.13 or as otherwise expressly provided for in this Agreement, this Agreement is not in any way be construed or intended to create fiduciary duties between the Parties as partners or to create the relationship of principal and agent between or among any of the Parties. None of the Parties hereto shall hold itself out in a manner contrary to the terms of this paragraph. No Party shall be deemed to have knowledge of the other Party, nor shall either Party become liable to any third-party for any representation, act, or omission of any other Party contrary to the terms of this Agreement or by reason of the negligence or willful misconduct of the other Party. Neither Metro nor Parking Company will have any responsibility for the method by which the other Party accounts for the transactions specified in this Agreement, or the characterization of this Agreement, or of the income or expenses incurred hereunder, for income tax purposes.

**Section 21.14. Cumulative Remedies.** The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided at law or in equity.

**Section 21.15. Counterparts; Facsimile Execution.** This Agreement may be executed in any number of counterparts which, taken together, shall constitute one and the same agreement. This Agreement shall be effective when it has been executed by each Party and delivered to both Parties. To evidence the fact that it has executed this Agreement, a Party may send a copy of its executed counterpart to the other Party by facsimile transmission. Such Party shall be deemed to have executed and delivered

this Agreement on the date it sent such facsimile transmission. In such event, such Party shall forthwith deliver to the other Party an original counterpart of this Agreement executed by such Party.

IN WITNESS WHEREOF, Metro has caused this Agreement to be duly executed on its behalf by its Traffic and Parking Commission pursuant to due authorization of Metro Council and Parking Company has caused this Agreement to be duly executed pursuant to due authorization, all as of the day and year first above written.

METROPOLITAN GOVERNMENT OF  
NASHVILLE AND DAVIDSON COUNTY

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

PRINTED: \_\_\_\_\_

ITS: CHAIR, TRAFFIC AND PARKING COMMISSION

FILED:

\_\_\_\_\_  
METROPOLITAN CLERK

APPROVED AS TO AVAILABILITY OF FUNDS:

\_\_\_\_\_  
DIRECTOR OF FINANCE

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
ASSISTANT METROPOLITAN ATTORNEY

PRESTON HOLLOW CAPITAL, LLC, PARKING COMPANY

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

NAME: \_\_\_\_\_

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

**SCHEDULE 1**

**METERED PARKING SYSTEM CONTRACTS**

[To be attached from original solicitation.]

**SCHEDULE 2**

**OPERATING STANDARDS**

[To be provided by Parking Company]



**SCHEDULE 3**

**METERED PARKING SYSTEM ASSETS**

[To be attached from original solicitation]

**SCHEDULE 4**

**PARKING METER REMOVAL**

[To be provided by Parking Company.]

**SCHEDULE 5**

**PARKING FEES**

[To be provided by Parking Company.]

**SCHEDULE 6****FINANCIAL INFORMATION**

	<b><u>2012</u></b>	<b><u>2013</u></b>	<b><u>2014</u></b>	<b><u>2015</u></b>	<b><u>2016</u></b>	<b><u>2017</u></b>	<b><u>2018</u></b>
<b>Revenue Generating Spaces</b>	2,018	1,954	1,910	1,931	1,894	1,810	1,867
<b>Operating Revenue</b>	\$1,483,501	\$1,307,883	\$1,295,961	\$1,268,371	\$1,243,373	\$1,270,386	\$1,325,907
<b>Operating Expenses</b>	\$490,400	\$537,400	\$641,300	\$621,222	\$565,300	\$585,385	\$602,939
<b>Net Operating Income</b>	\$993,101	\$770,483	\$654,661	\$647,149	\$678,073	\$685,001	\$722,968
<b>Parking Violations Revenue</b>	\$608,690	\$789,625	\$815,635	\$644,432	\$636,650	\$769,215	\$795,115
<b>Total Revenue</b>	\$2,092,191	\$2,097,508	\$2,111,596	\$1,912,803	\$1,880,023	\$2,039,601	\$2,121,022

Note: Operating revenue includes meter occupancy permits, meter parking, Residential Permit parking, loading zone permits, valet parking permits, and green parking permits.

**SCHEDULE 7**

**SPECIAL EVENTS**

[To be provided under separate cover.]

<b>EVENT***</b>	<b>DURATION AND APPROXIMATE TIME OF YEAR</b>	<b>METER LOCATION</b>	<b>METERS REQUESTED</b>
None			

## SCHEDULE 8

### METRO PROJECTS

1. 3<sup>rd</sup> Avenue bikeway – Spring 2019 pilot.
  - Length: KVB to Charlotte for pilot, long term continues south of KVB to Lindsley Avenue.
  - Timing: Hopefully in May, but it is awaiting a repaving project in March scheduled by MPW.
  - Impacts: All parking, valet, and loading zones will be removed. Might impact on-street parking on side streets to accommodate valet and loading.
  - Proposed Design: Two travel lanes with a protected two-way bike facility on the east side of the street.
  - Engagement: CM O’Connell has met with DOT team and highly supportive. We are currently working on a Steering Committee with a meeting in mid to late March. This will coincide with Commerce Street.
2. Commerce Street bikeway – Spring 2019 pilot.
  - Length: 9th Avenue to 2<sup>nd</sup> Avenue
  - Timing: Hopefully in May with the 3<sup>rd</sup> Avenue bikeway.
  - Impacts: Likely can keep parking on one side of the street on most blocks.
  - Proposed Design: Unknown at this point but the width is very wide.
  - Engagement: Same as above.
3. Union Street/Woodland – Likely Fall 2019 or early 2020. Awaiting Notice to Proceed on grant funding and Council elections to be resolved.
  - Length: 3<sup>rd</sup> Avenue to Five Points potential pilot, long term west along Union Street to 9<sup>th</sup> Avenue
  - Timing: Late 2019 or early 2020. Awaits a Notice to Proceed from TDOT.
  - Impacts: No parking impacts between 3<sup>rd</sup> and Five Points, potential impacts within the Five Points business district.
  - Proposed Design: Unknown.
  - Engagement: CM Withers has met with the DOT Team. We will be developing a Steering Committee over the Spring of 2019. That Steering Committee will first work on neighborways on adjacent streets before this major spine.

**SCHEDULE 9**

**METRO WITHHELD PAYMENTS**

None.

**SCHEDULE 10**

**CAPITAL IMPROVEMENTS**

[To be provided by Parking Company.]



**SCHEDULE 11**

**BUSINESS PLAN**

[To be provided by Parking Company.]