

PARKING GARAGE DEVELOPMENT AGREEMENT AND LICENSE

AMONG

CITY OF SAN ANTONIO, TEXAS,

HEMISFAIR PARK AREA REDEVELOPMENT CORPORATION

AND

ZH DOWNTOWN DEVELOPMENT COMPANY, LLC

FEBRUARY __, 2017

**PARKING GARAGE DEVELOPMENT AGREEMENT AND LICENSE AMONG
THE CITY OF SAN ANTONIO, TEXAS,
HEMISFAIR PARK AREA REDEVELOPMENT CORPORATION, AND
ZH DOWNTOWN DEVELOPMENT COMPANY, LLC**

This PARKING GARAGE DEVELOPMENT AGREEMENT AND LICENSE (this “**Parking Garage Agreement**”) is made and entered into as of the date set forth on the signature page below by and among CITY OF SAN ANTONIO, TEXAS (“**CITY**”), HEMISFAIR PARK AREA REDEVELOPMENT CORPORATION (“**HPARC**”), and ZH DOWNTOWN DEVELOPMENT COMPANY, LLC (“**DEVELOPER**”) as of the Effective Date (herein defined). The CITY, HPARC and DEVELOPER are referred to herein from time to time singularly as a “**Party**” or collectively as the “**Parties**.”

A. CITY is a municipal corporation and home-rule municipality of the State of Texas, acting herein by and through its governing body, the City Council, pursuant to the City Ordinance.

B. Pursuant to the Development Sublease, HPARC has subleased to DEVELOPER the Development Sublease Premises for the development and construction of the Development Sublease Improvements.

C. CITY, HPARC and DEVELOPER concur that the Parking Garage Facilities are needed to provide vehicle parking for the general public and to accommodate the vehicle parking needs of the proposed Development Sublease Improvements.

D. By Parking Garage Sublease of even date, HPARC has subleased to CITY the premises identified therein as the Sublease Premises and herein as the Parking Garage Premises.

E. In performance of its obligations under the Parking Garage Sublease, HPARC has requested DEVELOPER, and DEVELOPER has agreed, to cause to be designed, developed, constructed and delivered to HPARC the Parking Garage Facilities, in accordance with this Parking Garage Agreement.

F. As required by the Parking Garage Sublease, CITY has agreed to fund a portion of the Project Costs of the Parking Garage Facilities, to own and operate a portion of the Parking Garage Facilities as a public parking garage and to license to DEVELOPER the use of the Licensed Parking Spaces.

G. The City Ordinance has authorized CITY to enter into and perform its agreements and obligations under this Parking Garage Agreement and the Parking Garage Sublease.

NOW, THEREFORE, for and in consideration of such mutual obligations of the Parties set forth above and hereinbelow, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

DEFINITIONS AND INTERPRETATIONS

The following terms and phrases appearing in this Parking Garage Agreement have the indicated meaning, unless the context in which such term or phrase is used herein clearly indicates otherwise:

"Affiliate" of a specified Person means a Person who (a) is directly or indirectly controlling, controlled by, or under common control with, the specified Person; (b) owns directly or indirectly thirty-five percent (35%) or more of the equity or voting interests of the specified Person; (c) is a general partner, officer, director, non-financial institution trustee or fiduciary of the specified Person or of any Person described in (a) or (b); or (d) is a son, daughter, spouse, parent, sibling or a relative by marriage of the specified Person.

"Applicable Law" means any law, statute, ordinance, rule, regulation, order or determination of any Governmental Authority or any board of fire underwriters (or other body exercising similar functions), including, the Americans with Disabilities Act and all applicable zoning ordinances and building codes, flood disaster laws, health laws and environmental laws and regulations, or any recorded restrictive covenant or deed restriction applicable to the Parking Garage Premises.

"Business Day" means any day other than a Saturday, a Sunday or a public or bank holiday or the equivalent for banks generally under the laws of the State of Texas. The word **"day,"** as opposed to Business Day, means calendar day.

"Casualty" shall mean damage, destruction or other property casualty to the Project resulting from a fire or other Force Majeure Event.

"Certificate of Commencement of Construction" means the sworn certificate of DEVELOPER in the form attached as Exhibit A of this Parking Garage Agreement, executed in connection with the Alamo Street Garage or Market Street Garage, as applicable.

"Certificate of Substantial Completion" means the sworn certificate of DEVELOPER that the Market Street Garage or South Alamo Garage, as applicable, is Substantially Complete, in the form attached as Exhibit B to of this Parking Garage Agreement.

“**CITY**” means City of San Antonio, Texas, a home rule city under Article 11, Section 5, of the Texas Constitution and Municipal Corporation primarily situated in Bexar County, Texas.

“**City Code**” means the City Code of San Antonio, Texas, enacted by the City Council, which constitutes the code of civil and criminal ordinances of CITY, as amended.

“**City Contribution**” means, collectively, the Market Street City Contribution and the South Alamo City Contribution, each amount paid hereunder being satisfaction of prepaid rental obligations of the CITY to HPARC under the terms of the Parking Garage Sublease, and therefore being paid on behalf of HPARC by CITY as required hereunder and under the Parking Garage Sublease.

“**City Council**” means the City Council of City of San Antonio, Texas, or any successor governing body.

“**City Ordinance**” means Ordinance No. _____ authorizing this Parking Garage Agreement, adopted by the City Council on February ___, 2017.

“**City Percentage**” means a fraction where the numerator is the Minimum City Spaces and the denominator is the total number of Vehicle Parking Spaces in the Parking Garage Facilities.

“**City Representative**” means the person so designated, from time to time, by the City Manager to act in such capacity for the purposes of this Parking Garage Agreement.

“**Conceptual Design Documents**” shall mean drawings and other documents prepared by the Project Architect that establish the conceptual design of the Parking Garage Facilities, illustrating the scale, relationship and inter-connectivity of that portion of the Parking Garage Facilities and the related Development Sublease Improvements.

“**Construction Commencement Date**” means the earlier of (A) the date on which DEVELOPER has given the Construction Notice or (B) on-site construction activities have commenced on either of the Parking Garage Facilities by or on behalf of DEVELOPER.

“**Construction Contract**” means the guaranteed maximum price construction contract(s) for the construction of the Parking Garage Facilities, or portion thereof, in accordance with the Construction Documents for a total contract price within the Project Budget as approved under the terms hereof and requiring a Payment Bond and Performance Bond of the General Contractor and complying with the Construction Contract Requirements.

“**Construction Contract Requirements**” means the terms and conditions set forth in Exhibit F.

“**Construction Documents**” shall mean the documents incorporating the Plans and Specifications and setting forth the design of the Parking Garage Facilities and the requirements for their construction in sufficient detail for the permitting and construction thereof and other improvements to be constructed as part thereof, and where expressly provided for herein, approved by DEVELOPER, CITY and HPARC, to the extent expressly called for hereunder.

“Construction Notice” means the notice to be provided by DEVELOPER to the General Contractor under the Construction Contract to commence construction of the Parking Garage Facilities.

“Contract Documents” means all contracts entered into by DEVELOPER relating to labor, materials or other goods or services for the construction of the Parking Garage Facilities.

“Contractors” mean the contractors (of every level or degree) selected and engaged by DEVELOPER and/or the General Contractor to construct the Parking Garage Facilities.

“Design Drawings” shall mean the drawings and other documents prepared by the Project Architect based on the Conceptual Design Documents that illustrate and describe the refinement of the design of the Parking Garage Facilities, establishing the scope, relationships, forms, size and appearance of the improvements to be constructed by means of plans, sections and elevations, including specifications of major materials and systems and general quality levels, and where expressly provided for herein, approved by DEVELOPER, CITY and HPARC.

“DEVELOPER” means ZH Downtown Development Company, LLC, a Delaware limited liability company.

“Developer Representative” means the person so designated, from time to time, by the Governing Authority of DEVELOPER to act in such capacity for the purposes of this Parking Garage Agreement.

“Development Fee” means seven percent (7.0 %) of the Project Costs actually paid.

“Development Sublease” means the Development Sublease Agreement dated February ___, 2017, between HPARC (therein so called), as sublessor, and DEVELOPER (therein, “Developer”), as sublessee.

“Development Sublease Improvements” means, collectively, the residential, retail, office building and hotel to be constructed on the Development Sublease Premises pursuant to the Development Sublease, including the Market Street Project and the South Alamo Project.

“Development Sublease Premises” means the parcels of land subleased by HPARC to DEVELOPER pursuant to the Development Sublease.

“Due Diligence Period” means as defined and described in Section 3.01.

“Effective Date” means the later of (A) the date on which this Parking Garage Agreement has been duly executed on behalf of each Party or (B) the City Ordinance is effective.

“Environmental Insurance” means a real estate environmental liability policy or policies insuring against environmental liabilities associated with the Parking Garage Premises, which shall be included in the Project Budget as Project Costs.

“Event of Default” means those events described in Section 9.02 of this Parking Garage Agreement.

“Excusable Delay” means a delay by DEVELOPER in achieving any of the deadlines of the DEVELOPER’s pre-construction or construction obligations under this Agreement to the extent caused by (i) a Force Majeure Event, (ii) negligence, gross negligence or willful misconduct of HPARC, CITY or PFC (including any Person employed thereby or any agent, contractor or subcontractor thereof, (iii) any violation of the terms of this Agreement by the CITY or HPARC, whether beyond applicable notice and cure periods or otherwise or any act or omission of the CITY or HPARC (including any Person employed by the CITY or HPARC or of any agent, contractor or subcontractor of the CITY or HPARC) that unreasonably interferes with or delays DEVELOPER’s pre-construction or construction obligations under this Agreement but does not result from (A) the lawful exercise of the CITY’s or HPARC’s rights or obligations under this Agreement or Applicable Law, or (B) the refusal, failure or inability of DEVELOPER, a mortgagee or any other Person to make funds available for any purpose unless such refusal, failure or inability results from other events or circumstances which constitute an Excusable Delay, and (iv) any closure or limitation of access on, over or to S. Alamo Street or Market Street that prevents in whole, or in a material fashion, access to the Premises by DEVELOPER and its ability to reasonably perform its obligations under this Parking Garage Agreement; provided that, as a condition precedent to claiming an Excusable Delay, DEVELOPER has timely provided to CITY and HPARC an Excusable Delay Notice.

“Excusable Delay Notice” means a notice to be given not later than ten (10) business days following DEVELOPER obtaining knowledge of an act, omission, event or circumstance which DEVELOPER claims to be an Excusable Delay that describes (i) such act(s), omission(s), event(s) or circumstance(s), (ii) the adverse impact thereof on the DEVELOPER’s ability to achieve the deadlines under this Agreement and (iii) the anticipated duration of the Excusable Delay.

“Force Majeure Event” means any acts of God or other acts that reasonably prevent a Party’s completion of performance of this Agreement including war, terrorism, sabotage, civil commotion, strife or other violence, riots, strikes, picketing or other labor disputes, extraordinary weather conditions, flood, drought, earthquake, storm, tornado, lightning, windstorm, other natural catastrophe, damage to work in progress by reason of fire or other Casualty, or causes beyond any reasonable control of a Party (other than unavailability of labor or materials due to a party’s inability to pay for labor or materials), acts of a Governmental Authority other than its usual and customary Governmental Functions, or any litigation not brought by DEVELOPER or its Affiliate or resulting from DEVELOPER’s failure to comply with the terms of this Parking Garage Agreement or the Parking Garage Operating Agreement or a breach of the Guaranty.

“Funding Conditions” means the conditions precedent to funding of the City Contribution described in Section 6.04.

“General Contractor” means such general contractor(s) or construction manager(s) as may be selected by DEVELOPER and reasonably approved by HPARC and CITY for the construction of the Parking Garage Facilities.

“Governing Authority” means as defined in Section 1.002(35) of the Texas Business Organizations Code as of the Effective Date.

“Governing Documents” means as defined in Section 1.002(36) of the Texas Business Organizations Code as of the Effective Date.

“Governmental Authority(ies)” means any federal, state and/or local agency, department, commission, board, bureau, administrative or regulatory body or other instrumentality having jurisdiction over the Project.

“Governmental Function” means any regulatory, legislative, permitting, zoning, enforcement (including police power), licensing or other functions which a Governmental Authority is authorized or required to perform.

“Guarantor” means Zachry Hospitality, LLC.

“Guaranty” means that certain Limited Guaranty entered into by Guarantor in favor of CITY and HPARC in the form attached hereto as Exhibit H.

“HPARC Representative” means the person so designated, from time to time, by the Governing Authority of HPARC to act in such capacity for the purposes of this Parking Garage Agreement.

“HPPFC” means Hemisfair Park Public Facilities Corporation,

“Initial Environmental Report” means as defined in Section 3.02A.

“Licensed Parking Spaces” means, collectively, the total number of Vehicle Parking Spaces licensed by CITY to DEVELOPER pursuant to this Parking Garage Agreement, including the South Alamo Licensed Parking Spaces and the Market Street Licensed Parking Spaces, if any.

“Market Street Budget” means the Project Costs of the Market Street Garage, including the Development Fee associated with the Market Street, but excluding the Project Costs for the Market Street Structural Support, as same may be amended from time to time.

“Market Street City Contribution” means an amount equal to the lesser of (A) \$18,000,000 less the South Alamo City Contribution, or (B) the Market Street Budget less the Market Street Percentage thereof.

“Market Street Construction Contract” means the guaranteed maximum price construction contract for the construction of the South Alamo Garage in accordance with the South Alamo Construction Documents for a total contract price within the South Alamo Budget, requiring a Payment Bond and Performance Bond of the General Contractor and complying with the Construction Contract Requirements.

“Market Street Construction Documents” shall mean the documents incorporating the Plans and Specifications and setting forth the design of the South Alamo Garage and the requirements for its construction in sufficient detail for the permitting and construction of the South Alamo Garage and other improvements to be constructed as part thereof, approved by DEVELOPER, CITY and HPARC as set forth and to the extent called for herein.

“Market Street Developer Contribution” means the product of the Market Street Budget multiplied by the Market Street Percentage, plus all Project Costs for the Market Street Structural Support.

“Market Street Garage” means that portion of the Parking Garage Facilities to be designed, developed and constructed in connection with the Market Street Project.

“Market Street Licensed Parking Spaces” means the total number of Licensed Parking Spaces less the number of South Alamo Licensed Parking Spaces.

“Market Street Percentage” means the percentage of the total Vehicle Parking Spaces in the Market Street Garage that are Licensed Parking Spaces pursuant to this Agreement.

“Market Street Project” means a mixed-use commercial building containing residential units and retail space to be developed, constructed and located on the Market Street Tract pursuant to the Development Sublease.

“Market Street Project Schedule” means the written schedule prepared by DEVELOPER and approved by CITY and HPARC, reflecting the agreed target dates for the completion of preconstruction obligations under this Parking Garage Agreement, the commencement of construction and Substantial Completion with respect to the Market Street Garage.

“Market Street Structural Support” means the foundational support system for the Market Street Project including retention system for controlling groundwater inflow during construction and for the completed project.

“Market Street Substantial Completion Date” means the date on which the Market Street Garage is Substantially Complete as identified in the Certificate of Substantial Completion executed by DEVELOPER in accordance with this Parking Garage Agreement.

“Market Street Tract” means that tract of land so identified as a portion of the Development Sublease Premises in the Development Sublease.

“Master Lease” means as defined in Section 1.04B.

“Maximum City Contribution” means the amount \$18,000,000.00.

“Minimum City Spaces” means six hundred (600) Vehicle Parking Spaces unless otherwise agreed by the CITY hereunder.

“New Environmental Defect” means as defined and described in Section 3.02C.

“Parking Garage Facility” or **“Parking Garage Facilities”** means, collectively, up to two multi-story substantially or completely underground facilities on the Parking Garage Premises consisting of a substantially or completely underground parking garage collectively having an anticipated approximately 800 parking spaces, together with related entrance facilities, drive aisles, ramps, elevators, stairs, and all other improvements necessary for ingress, egress and

operation of the facilities.

“Parking Garage Operating Agreement” means as described in Section 7.03 hereof.

“Parking Garage Premises” means the property described on Exhibit C attached hereto, which consists of the real property where the Parking Garage Facilities shall be constructed. The parties acknowledge that as of the date hereof the legal description of the Parking Garage Premises includes the entirety of the subterranean portions of the South Alamo Tract and the Market Street Tract. Upon Substantial Completion of the Market Street Garage or the South Alamo Garage, as applicable, or at a later date mutually agreed to by the Parties, the legal description of the Parking Garage Premises for such relevant Market Street Tract or South Alamo Tract shall be deemed modified and amended to include only the portion thereof within which Parking Garage Facilities have been constructed. Upon the Substantial Completion of each of the Market Street Garage or the South Alamo Garage, upon the request in writing of the City Representative, the HPARC Representative or the Developer Representative to the other Parties, the DEVELOPER shall within sixty (60) days thereafter engage a licensed, independent and qualified engineering firm to create an updated description of the Parking Garage Premises, which shall include a metes and bounds description. Upon the final certified description of the Parking Garage Premises being provided to the parties, HPARC and the CITY shall approve such description in writing, such approval not to be unreasonably withheld, conditioned or delayed, and such description shall replace the description set forth on Exhibit C attached hereto. Each party shall timely pay one-third of the expense of the qualified independent engineer preparing such updated description of the Parking Garage Premises.

“Parking Garage Sublease” means that certain Parking Garage Sublease Agreement of even date herewith between HPARC, as sublessor, and CITY, as sublessee, in the form attached hereto as Exhibit D.

“Payment Bond” means a bond of a corporate surety licensed in the State of Texas, issued solely for the protection and use of those payment beneficiaries who have a direct contractual relationship with DEVELOPER, the General Contractor, a Contractor or material supplier related to the construction of the Parking Garage Facilities or any part thereof, as applicable, or their contractual assignees, in a penal sum equal to the penal sum of the related Performance Bond. A Payment Bond shall authorize payment for (A) labor used to carry out the work under the Construction Contract, (B) materials used or ordered, delivered for use, directly to carry out such Work, (C) specially fabricated material, (D) rental and running repair costs for construction equipment used or required and delivered for use, directly to carry out the Work at the worksite, and (E) power, water, fuel and lubricants used, or ordered and delivered for use, directly to carry out the Work.

“Performance Bond” means a bond of a corporate surety licensed in the State of Texas, issued for the benefit of DEVELOPER, HPARC and CITY, as appropriate, in form reasonably acceptable to CITY, in the penal sum equal to one hundred percent (100%) of the Project Costs of the Parking Garage Facilities to be constructed pursuant to the Construction Contract.

“Permits” means all permits, consents, approvals, authorizations, variances, waivers, certificates and approvals from all Governmental Authorities, utility companies and insurance

rating agencies or other issuers, which are required for the planning, design, construction, completion, use and occupancy of the Parking Garage Facilities.

“Person” means an individual, partnership, corporation, joint stock company, trust (including a business trust), unincorporated association, joint venture, limited liability company or any other entity, the United States, or a federal, state, or political subdivision thereof or any agency or court of such state or subdivision.

“Plans and Specifications” means, collectively, the Conceptual Design Documents, Design Drawings and all amendments thereto.

“Prepaid Costs” means those costs paid by DEVELOPER prior to the satisfaction of the Funding Conditions which are to be reimbursed pursuant to Section 6.05A.

“Project” means, collectively, the entire conceptual planning, site planning, development, construction and equipage of the Parking Garage Facilities to Substantial Completion.

“Project Architect” means the architectural firm selected by DEVELOPER as the primary architect for the Project, it being understood that other firms may be selected by DEVELOPER for the design and site planning of the Project, including any local design firms retained by the primary architect or DEVELOPER on an as-needed basis.

“Project Budget” means, collectively, the Market Street Budget or the South Alamo Budget, approved in accordance with this Parking Garage Agreement.

“Project Costs” means, except for the items specifically excluded below, the hard and soft costs of the Project, including, but not limited to, the costs of studies, surveys, geotechnical, engineering, architectural, professional services, and other preconstruction costs incurred in the ordinary course of project development, architectural, engineering, consulting, permitting, and legal fees, basic construction costs and fees, fees and charges of the General Contractor, subcontractors and suppliers, transportation costs, insurance permits, materials, labor, fixtures and equipment, site development, onsite infrastructure and drainage, environmental remediation, utility relocation, construction oversight and management expenses, pre-opening expenses, construction budget contingencies, any costs of necessary offsite infrastructure relocation which are to be incurred by the General Contractor, and the premiums or any deductible incurred for any Environmental Insurance. The Project Costs will not include (A) any administrative or operating overhead or expenses, (B) costs resulting from any other actions or delays on the part of a Party (beyond the time periods for approvals provided herein), (C) Project Costs of the Market Street Structural Support and (D) Project Costs of the South Alamo Structural Support.

“Project Costs of the Market Street Structural Support” means the incremental costs added to the Project Costs in order to design and construct the Market Street Structural Support.

“Project Costs of the South Alamo Structural Support” means the incremental costs added to the Project Costs in order to design and construct the South Alamo Structural Support.

“Project Schedule” means the schedule provided by DEVELOPER pursuant to Section 3.03C. The Project Schedule may be adjusted from time to time on account of Force Majeure Events and other Excusable Delays.

“Quality Standard” means the substantially similar standard of quality of design, materials and finishes as are included in the St. Mary’s Street Parking Garage, 400 N. St. Mary’s Street, San Antonio, Texas 78205.

“Scheduled Commencement Date” means the date on which the Construction Commencement Date is required to the approved Project Schedule.

“Scheduled Completion Date” means the date by which Substantial Completion is required to occur pursuant to the approved Project Schedule.

“South Alamo Budget” means the Project Costs of the South Alamo Garage, excluding the Project Costs for the South Alamo Structural Support, as same may be amended from time to time.

“South Alamo City Contribution” means South Alamo Budget less a percentage thereof equal to the South Alamo Percentage.

“South Alamo Developer Contribution” means the product of the South Antonio Budget multiplied by the South Alamo Percentage, plus all Project Costs for the South Alamo Structural Support.

“South Alamo Construction Contract” means the guaranteed maximum price construction contract for the construction of the South Alamo Garage in accordance with the South Alamo Construction Documents for a total contract price within the South Alamo Budget, requiring a Payment Bond and Performance Bond of the General Contractor and complying with the Construction Contract Requirements.

“South Alamo Construction Documents” shall mean the documents incorporating the Plans and Specifications and setting forth the design of the South Alamo Garage and the requirements for its construction in sufficient detail for the permitting and construction of the South Alamo Garage and other improvements to be constructed as part thereof, approved by DEVELOPER, CITY and HPARC as set forth and to the extent called for herein.

“South Alamo Garage” means that portion of the Parking Garage Facilities to be designed, developed and constructed in connection with the South Alamo Project consistent with the Plans and Specifications. It is anticipated that the South Alamo Garage shall be of not less than four hundred (400) spaces, provided that the number of parking spaces to be included therein shall be as reflected in the approved Plans and Specifications.

“South Alamo Garage Premises” means the tract of land so described and depicted in Exhibit C.

“South Alamo Licensed Parking Spaces” means the Vehicle Parking Spaces which Developer has elected to license in the South Alamo Garage in accordance with Section 7.01.

“South Alamo Percentage” means the percentage of the total Vehicle Parking Spaces in the South Alamo Garage that are licensed pursuant to this Parking Garage Agreement.

“South Alamo Project” means the hotel building, mixed use commercial buildings and retail space to be developed, constructed and located on the South Alamo Tract pursuant to the Development Sublease.

“South Alamo Project Schedule” means the written schedule prepared by DEVELOPER and approved hereunder by CITY and HPARC, reflecting the agreed target dates for the completion of preconstruction obligations under this Parking Garage Agreement, the commencement of construction and Substantial Completion with respect to the South Alamo Garage.

“South Alamo Structural Support” means the foundational support system for the South Alamo Project including retention system for controlling groundwater inflow during construction and for the completed project.

“South Alamo Substantial Completion Date” means the date on which the South Alamo Garage is Substantially Complete as identified in the Certificate of Substantial Completion executed by DEVELOPER in accordance with this Parking Garage Agreement.

“South Alamo Tract” means that portion of the Development Sublease Premises so identified in the Development Sublease.

“Substantial Completion” or **“Substantially Complete”** means the Project Architect has certified that the subject portion of the Work has been completed in a good and workmanlike manner and in accordance with the Construction Documents and all Applicable Laws, subject only to minor punch-list type items and DEVELOPER has provided to HPARC and to CITY the Certificate of Substantial Completion for the applicable portion of the Work.

“Term” means as defined in Section 1.01 of this Parking Garage Agreement.

“Unknown Conditions” means as defined and described in Section 3.02D.

“Updated Environmental Report” means as defined and described in Section 3.02B.

“Vehicle Parking Space” means each space allocated and designated for parking a single vehicle in the Parking Garage Facilities.

“Work” means the work to be performed in constructing the Parking Garage Facilities and includes, without limitation, activities requiring the expenditure of Project Costs, whether hard costs or soft costs of the Project.

ARTICLE 1. GENERAL TERMS

Section 1.01 Commencement of Term.

The Term (herein so called) of this Parking Garage Agreement will commence on the Effective Date and upon delivery of the Guaranty described in Section 1.06, below and the Master Lease RNDA and Parking Garage Sublease RNDA described in Section 1.05 below.

Section 1.02 Expiration of Term.

The Term will end upon the earlier to occur of:

- A. The expiration or other termination of the Development Sublease, as same may be amended from time to time;
- B. The exercise of a right to terminate this Parking Garage Agreement granted to any Party under the terms of this Parking Garage Agreement; or
- C. The mutual consent of the Parties.

Section 1.03 Parking Garage Sublease.

On the Effective Date, HPARC and CITY shall enter into the Parking Garage Sublease, pursuant to which HPARC shall sublease to CITY and CITY shall accept and sublease from HPARC the Parking Garage Premises. This Parking Garage Agreement is subordinate to the Parking Garage Sublease.

Section 1.04 Subordinate to Master Lease and Parking Garage Sublease.

The license hereby granted to DEVELOPER is subject and subordinate in all respects to:

- A. The Parking Garage Sublease; and
- B. The Master Lease Agreement dated as of December 13, 2014, by and between HPPFC, as landlord, and HPARC, as tenant, covering (among other properties) the Parking Garage Premises, as amended by Amendment to Master Lease Agreement dated June 6, 2016 and Second Amendment to Master Lease Agreement dated February __, 2017 (as amended, the “**Master Lease**”).

Section 1.05 Recognition Agreement.

A. On the Effective Date, as to the Master Lease, CITY shall deliver to DEVELOPER and DEVELOPER shall execute a Recognition, Non-Disturbance and Attornment Agreement executed by HPPFC in form acceptable to DEVELOPER, CITY and HPPFC (the “***Master Lease RNDA***”). The Parties agree that, following the Effective Date, the Recognition Agreement may be amended by the mutual agreement of the City Representative and Developer Representative.

B. On the Effective Date, as to the Parking Garage Sublease, CITY shall deliver to DEVELOPER and DEVELOPER shall execute a Recognition, Non-Disturbance and Attornment Agreement executed by HPARC in form acceptable to DEVELOPER, CITY and HPARC (the “*Parking Garage Sublease RNDA*”).

Section 1.06 Guaranty.

On the Effective Date, DEVELOPER shall deliver to CITY and HPARC counterpart originals of the Guaranty duly executed and acknowledged by Guarantor.

Section 1.07 Minimum City Spaces.

The Parking Garage Facilities shall be designed and constructed in accordance with this Parking Garage Agreement and, unless the CITY agrees otherwise hereunder, in a manner such that the CITY shall receive not less than the Minimum City Spaces.

Section 1.08 City Contribution.

In no event shall the City Contribution exceed the Maximum City Contribution.

Section 1.09 Developer Contribution.

As consideration for the license rights granted to DEVELOPER under this Agreement, DEVELOPER shall fund all Project Costs in excess of the City Contribution.

Section 1.10 Phased Development of Project.

The design, development and construction of the Parking Garage Facilities may be prosecuted in two separate phases. Unless the context clearly indicates otherwise, in such case:

A. References to Construction Contracts shall mean and refer to, and the terms, conditions and requirements applicable to Construction Contracts hereunder shall apply to, each construction contract entered into for each such separate phase.

B. References to a General Contractor or Project Architect shall mean and refer to, and the terms, conditions and requirements applicable to a General Contractor or a Project Architect hereunder shall apply to, each general contractor or project architect performing such services for a phase of the Project, unless the context indicates otherwise. One phase will be the South Alamo Garage which shall be constructed in accordance with the South Alamo Project Schedule, and the other phase will be the development and construction of the Market Street Garage which shall be constructed in accordance with the Market Street Project Schedule.

ARTICLE 2. REPRESENTATIVES

Section 2.01 Appointment of City Representative.

Within ten (10) days following the Effective Date, the City Manager shall identify the person who will be the designated City Representative for the purposes of this Parking Garage Agreement. The City Manager shall have the right, from time to time, to select a different Person as the designated City Representative, with notice to the other Parties of such change. With respect to any action, decision, approval or determination that is to be taken by CITY under this Parking Garage Agreement, the City Representative may take such action or make such decision or determination or grant or withhold such approval as the binding act of CITY, but the City Representative shall not have the right to modify, amend or terminate this Parking Garage Agreement without the approval of City Council.

Section 2.02 Appointment of HPARC Representative.

Within ten (10) days following the Effective Date, the Governing Authority of HPARC shall identify the person who will be the designated HPARC Representative for the purposes of this Parking Garage Agreement. The Governing Authority of HPARC shall have the right, from time to time, to select a different Person as the designated HPARC Representative, with notice to the other Parties of such change. With respect to any action, decision, determination or approval that is to be taken by HPARC under this Parking Garage Agreement, the HPARC Representative may take such action or make such decision or determination or grant or withhold such approval as the binding act of HPARC, but the HPARC Representative shall not have the right to modify, amend or terminate this Parking Garage Agreement without the approval of the Governing Authority of HPARC.

Section 2.03 Appointment of Developer Representative.

Within ten (10) days following the Effective Date, the Governing Authority of DEVELOPER shall identify the person who will be the designated Developer Representative for the purposes of this Parking Garage Agreement. The Governing Authority of DEVELOPER shall have the right, from time to time, to select a different Person as the designated Developer Representative, with notice to the other Parties of such change. The Developer Representative shall represent the interests of DEVELOPER, be responsible for overseeing all aspects of design, construction and development of the Project. Actions, decisions or determinations by the

Developer Representative on behalf of DEVELOPER shall be done in his or her reasonable business judgment. With respect to any action, decision, determination or approval that is to be taken by DEVELOPER under this Parking Garage Agreement, the Developer Representative may take such action or make such decision or determination or grant or withhold such approval as the binding act of DEVELOPER, but the Developer Representative shall not have the right to modify, amend or terminate this Parking Garage Agreement without the approval of the Governing Authority of DEVELOPER.

ARTICLE 3. PRECONSTRUCTION ACTIVITIES

Section 3.01 Due Diligence.

From and after the Effective Date and continuing for the duration of the “**Due Diligence Period**” as defined in the Development Sublease (and herein so called), DEVELOPER and its agents and representatives shall have access to the Parking Garage Premises to inspect and perform such examinations, inspections, studies and tests as each may deem reasonably necessary in connection with the Parking Garage Project, including environmental site assessments. The results of such due diligence activities shall be shared among the Parties, subject to any confidentiality or other counterparty restrictions that the disclosing Party reasonably may require. If, during the Due Diligence Period, DEVELOPER determines that the Parking Garage Premises is unsuitable for the purposes of a Parking Garage Facility for any reason revealed by such due diligence activities, DEVELOPER may terminate this Parking Garage Agreement by notice to the other Parties, which notice shall identify with particularity the condition or circumstance which, in DEVELOPER’s reasonable opinion, evidences such unsuitability. As obligations to survive such termination, DEVELOPER shall restore at its sole expense any damage caused by it or its contractors (of any degree), agents or representatives to the Parking Garage Premises during the Due Diligence Period. DEVELOPER HEREBY INDEMNIFIES AND HOLDS CITY AND HPARC AND THEIR RESPECTIVE ELECTED OFFICIALS, AGENTS, EMPLOYEES, OFFICERS, REPRESENTATIVES, INDIVIDUALLY AND COLLECTIVELY, HARMLESS FROM ANY DAMAGE OR INJURY CAUSED BY DEVELOPER OR ITS AGENTS, EMPLOYEES OR CONTRACTORS IN CONNECTION WITH SUCH EXAMINATIONS, INSPECTIONS, STUDIES AND TESTS. This indemnity covenant shall survive any termination of this Parking Garage Agreement. Otherwise,

DEVELOPER shall have no further obligation under this Parking Garage Agreement except such obligations as may have accrued prior to such termination and any other matters expressly provided in this Parking Garage Agreement to survive its termination.

Section 3.02 Insurance.

During the Due Diligence Period, DEVELOPER shall investigate the availability of Environmental Insurance for the Parking Garage Premises. DEVELOPER shall inform CITY and HPARC of the status of its efforts from time to time. If DEVELOPER shall determine that Environmental Insurance cannot be obtained, DEVELOPER shall provide notice to CITY and HPARC. If DEVELOPER shall determine that such Environmental Insurance is available, DEVELOPER shall provide notice to CITY of the premiums required for such Environmental Insurance and the available policy limits.

Section 3.03 Environmental Assessment; Unknown Conditions.

A. Initial Environmental Report. During the Due Diligence Period, DEVELOPER shall cause to be conducted by a qualified and independent engineering firm or environmental consultancy a Phase I Environmental Assessment of the Parking Garage Premises and, at its election, may cause to be conducted a Phase II Environmental Site Assessment of the Parking Garage Premises. Prior to the expiration of the Due Diligence Period, DEVELOPER shall deliver a true and correct copy of all such reports to HPARC and CITY (each such report, an “**Initial Environmental Report**”).

B. Updated Environmental Reports. Prior to the Scheduled Commencement Date for the South Alamo Garage and the Market Street Garage, as applicable, DEVELOPER may cause the same qualified and independent engineering firm or environmental consultancy that prepared an Initial Environmental Report or reports (or if such provider no longer exists, a substitute but similarly qualified provider), to conduct a second Phase I Environmental Assessment of the Parking Garage Premises or part thereof and/or Phase II Environmental Site Assessment of the Parking Garage Premises or part thereof (an “**Updated Environmental Report**”). DEVELOPER shall deliver true, correct and complete copies of each Updated Environmental Report to HPARC and CITY within ten (10) business days following its receipt.

C. New Environmental Defect. For purposes hereof, a “**New Environmental Defect**” shall be defined as only an environmental condition that constitutes a

Recognized Environmental Condition as defined in ASTM Standard E-1527-05 that is identified in the Updated Environmental Report and which was not identified in the Initial Environmental Report and for which the Estimated Cost of Remediation is greater than: (1) \$500,000.00 or (2) the deductible amount for which DEVELOPER is responsible under all applicable Environmental Insurance policies that DEVELOPER maintains. For purposes hereof, the **“Estimated Cost of Remediation”** means (a) the highest probability estimate for the cost of remediating the applicable environmental condition, as determined by third party professionals who are not Affiliates of DEVELOPER or HPARC or the CITY and who are selected by DEVELOPER with the approval of HPARC, less (b) the amount of any insurance claims proceeds that DEVELOPER would be entitled to receive under any Environmental Insurance policy that Developer maintains. If a New Environmental Defect is shown in an Updated Environmental Report or is discovered after the commencement of any Work, DEVELOPER shall provide a copy of the Updated Environmental Report promptly to CITY and HPARC. By written notice to the CITY and HPARC delivered anytime within sixty (60) days following the delivery of the Updated Environmental Report to the CITY and HPARC, DEVELOPER may elect to terminate this Agreement wholly or in part as the portion of the Parking Garage Premises affected by the New Environmental Defect (either the Market Street Garage and/or the South Alamo Street Garage, as applicable).

D. **Unknown Conditions.** Each Party contemplates that in performing its due diligence or performing the Work hereunder, there may be discovered on the Parking Garage Premises certain **“New Material Unknown Conditions,”** including (1) heritage site objects, endangered species, protected flora or fauna, (2) utility infrastructure, remaining portions of improvements previously located on the Parking Garage Premises or (3) conditions that would materially and adversely affect ability to construct Project or materially increase the Project Costs of the Project which CITY is unwilling to pay or share, in each case being a condition or circumstance of which the DEVELOPER was unaware prior to the Effective Date and for which either: (i) would cause delay of more than nine (9) months in completion of the Project or (ii) increase the costs of the Project by more than \$500,000.00, based upon the highest probability estimate for the delay or cost associated with addressing the applicable condition, as determined by third party professionals who are not Affiliates of Developer or HPARC or CITY and who are selected by Developer with the approval of HPARC. Upon any such discovery, the discovering

Party shall deliver within ten (10) business days to the other Parties hereto written notice of the discovery of the New Material Unknown Conditions and all facts known thereby related to the New Material Unknown Conditions. By written notice to the CITY and HPARC delivered anytime within sixty (60) days following the discovery of a New Material Unknown Condition, DEVELOPER may elect to terminate this Agreement wholly or in part as the portion of the Parking Garage Premises affected by the New Material Unknown Condition (either the Market Street Garage and/or the South Alamo Street Garage, as applicable).

E. Remediation.

In the event of a New Environmental Defect or an Unknown Condition and the DEVELOPER does not timely terminate this Agreement under this Section 3.03, DEVELOPER shall have the duty to remediate the New Environmental Defect or preserve, remove or remediate the Unknown Condition and shall pay, at its sole cost and expense, any amount by which the available insurance proceeds are insufficient to fund the total remediation costs.

F. Effect of Termination. Upon the exercise of the right of termination described in this Section 3.03, each of the Parties shall have no continuing rights or obligations under this Parking Garage Agreement with respect to such portion of the Parking Garage Premises for which the Parking Garage Agreement was terminated except with respect to Work undertaken prior to such termination and such other obligations that expressly survive termination of this Parking Garage Agreement. If such termination shall result in less than the Minimum City Spaces, CITY may terminate this Parking Garage Agreement. As obligations that shall survive any termination of this Parking Garage Agreement (and not just following a termination authorized by this Section 3.03):

(1) To the extent legally permitted, and if required by CITY or HPARC, DEVELOPER shall restore and repair the Parking Garage Premises or any adjacent property to the extent any damage caused by DEVELOPER or DEVELOPER's permittees;

(2) The indemnities set forth in this Parking Garage Agreement; and

(3) DEVELOPER shall deliver to HPARC copies of all third party reports, studies, or assessments relating to all tests conducted at the Parking Garage Premises by DEVELOPER or its permittees on an "AS IS, WHERE IS" basis, without recourse to DEVELOPER or its contractors or agents, and with no representation or warranty as to the accuracy or completeness of the information contained therein.

Section 3.04 Pre-Construction Deliveries.

Not later than December 31, 2017:

A. Preliminary Project Budget Estimate. DEVELOPER shall prepare and submit to the City Representative and the HPARC Representative, for review and approval, which approval will not be unreasonably conditioned, withheld or delayed, a preliminary Project Budget estimate. CITY and HPARC agree to reasonably cooperate in the development of the Project Budget at the request of DEVELOPER. DEVELOPER shall use good faith and commercially reasonable efforts to design the Parking Garage Facilities in a fashion whereby the Minimum City Spaces shall be constructed for equal to or less than the Maximum City Contribution. Upon receipt, CITY and HPARC shall each have thirty (30) days to review the preliminary Project Budget and to notify DEVELOPER of approval or disapproval. The Parties agree to observe and perform the requirements and terms set forth in Section 4.07 and Section 4.08 in connection with the review of the preliminary Project Budget estimate. Notwithstanding the foregoing, if such preliminary Project Budget estimate reveals that the City Contribution will not support the construction the Minimum City Spaces in the Parking Garage Facilities for less than the Maximum City Contribution, CITY may terminate this Parking Garage Agreement by written notice to DEVELOPER and HPARC within thirty (30) days after delivery of such preliminary Project Budget estimate and upon such a termination the Parties will have no further obligation under this Parking Garage Agreement other than obligations (including funding obligations required under this Parking Garage Agreement) incurred prior to the date of such notice of termination.

B. Preliminary Conceptual Design Drawings. DEVELOPER shall prepare and submit to the City Representative and the HPARC Representative, for review and approval, which approval will not be unreasonably conditioned, withheld or delayed, preliminary conceptual design plans showing the preliminary design of the Parking Garage Facilities and its scale and relationship to the Development Sublease Improvements. CITY and HPARC agree to reasonably cooperate in the development of the conceptual design plans at the request of DEVELOPER. DEVELOPER shall use good faith and commercially reasonable efforts to design the Parking Garage Facilities in a fashion whereby the Minimum City Spaces shall be constructed for equal to or less than the Maximum City Contribution. Upon receipt, CITY and HPARC shall each have thirty (30) days to review the preliminary conceptual design plans and

to notify DEVELOPER of approval or disapproval. The Parties agree to observe and perform the requirements and terms set forth in Section 4.07 and Section 4.08 in connection with the review of the preliminary conceptual design plans. Notwithstanding the foregoing, if such preliminary conceptual design plans reveals that the City Contribution will not support the construction the Minimum City Spaces in the Parking Garage Facilities for less than the Maximum City Contribution, the CITY may terminate this Parking Garage Agreement by written notice to DEVELOPER and HPARC within thirty (30) days after delivery of such preliminary conceptual design plans and upon such a termination the Parties will have no further obligation under this Parking Garage Agreement other than obligations (including funding obligations required under this Parking Garage Agreement) incurred prior to the date of such notice of termination.

C. Project Schedule. DEVELOPER shall provide to the CITY Representative and HPARC Representative, for review and approval, the Project Schedule, such approval not to be unreasonably withheld, conditioned or delayed. The Project Schedule shall include time for adverse weather conditions to the extent normally encountered in the San Antonio, Texas area and the impacts thereof, establish a date for Substantial Completion not later than the Scheduled Completion Date for the Parking Garage Facilities, delineate all phases thereof and set forth a projected date for completion of each phase in sufficient detail to allow the CITY Representative and the HPARC Representative to monitor progress of the Parking Garage Facilities. The Project Schedule shall indicate the good faith estimates of the dates for the starting and completion of the various stages of design and construction and shall be revised as required by the conditions of the Parking Garage Facilities and as approved by the CITY Representative and HPARC Representative, such approval not to be unreasonably withheld, conditioned or delayed. The Parties acknowledge and agree that, notwithstanding any theoretical delay or theoretical extensions of time for completion as may be shown on any schedules or printouts, the Project Schedule shall be governed by this Parking Garage Agreement and shall be extended only in accordance with the procedures set forth in this Parking Garage Agreement. The Project Schedule shall include (A) the design phases, (B) acquisition and approval of Permits and (C) all construction phases. Upon receipt, CITY and HPARC shall each have thirty (30) days to review the Project Schedule and to notify DEVELOPER of approval or disapproval. The Parties agree to observe and perform the requirements and terms set forth in Section 4.07 and Section 4.08 in

connection with the review of the Project Schedule. Dates set forth in this Parking Garage Agreement shall be included in the Project Schedule.

Section 3.05 Termination of Development Sublease as to Market Street Tract.

According to its terms, the Development Sublease may be terminated as to the Market Street Tract prior to May 31, 2018 (a “**Market Street Termination**”). Upon a Market Street Termination, the terms of this Parking Garage Agreement related to the construction of the Market Street Garage shall automatically terminate and expire and the Parties and will have no further obligation under this Parking Garage Agreement as to the Market Street Garage other than obligations (including funding obligations required under this Parking Garage Agreement) reasonably incurred prior to the date of such notice of termination. Following the date of the Market Street Termination in accordance with the terms of the Development Sublease (“**Market Street Termination Date**”):

A. Revised Project Budget. Upon a Market Street Termination, if the preliminary Project Budget estimate called for under Section 3.04A, above, has not been provided to the CITY and HPARC prior to the Market Street Termination Date, DEVELOPER shall develop and deliver to the CITY and HPARC such preliminary Project Budget to take into account the Market Street Termination not later than sixty (60) days after the Market Street Termination Date. If, prior to the Market Street Termination Date, the preliminary Project Budget estimate required under Section 3.04A had been provided to the CITY and HPARC, DEVELOPER shall deliver to the CITY and HPARC a replacement preliminary Project Budget to take into account the Market Street Termination not later than sixty (60) days following the Market Street Termination Date.

B. Revised Project Schedule. If the Project Schedule called for under Section 3.03C, above, has not been provided to the CITY and HPARC prior to the Market Street Termination Date, DEVELOPER shall develop and deliver to the CITY and HPARC the Project Schedule to take into account the Market Street Termination, not later than sixty (60) days following the Market Street Termination Date. If, prior to the Market Street Termination Date, the Project Schedule required under Section 3.04C had been provided to the CITY and HPARC, DEVELOPER shall deliver to the CITY and HPARC an updated Project Schedule to take into account the Market Street Termination, not later than sixty (60) days following the Market Street Termination Date.

C. Revised Plans and Specifications. The Plans and Specifications shall be prepared, if not previously completed, or revised, if previously submitted, to take into account the Market Street Termination, within the time frame set forth in the approved Project Schedule delivered by DEVELOPER.

D. Recalculation of Time Frames. The time frames set forth in this Parking Garage Agreement for submission, review, approval, and objection shall be amended to reflect the terms of set forth in this Section 3.05 and run from the dates of submission required hereunder

E. Reduction of Minimum City Spaces. The revisions to the Plans and Specifications and Project Budget resulting from the Market Street Termination shall not increase the City Contribution or reduced the Minimum City Spaces, unless the CITY has approved such revisions to the Plans and Specifications and Project Budget.

Section 3.06 Duties to be Performed by DEVELOPER.

A. Permitting. DEVELOPER shall direct, coordinate and supervise the preparation of all submissions necessary under Applicable Law in connection with the Permits and negotiate with and act as liaison to the Governmental Authorities in connection with obtaining such Permits. The City shall reasonably cooperate and assist the DEVELOPER, at no cost, in pursuit of the Permits.

B. Pricing. DEVELOPER shall use good faith, commercially reasonable efforts to obtain the best price (taking into account the reputation of relevant vendors and all other reasonable factors) and quality of goods and services, including from Affiliates, in connection with each portion of the Parking Garage Facilities and all construction services to be performed;

C. General Contractor. DEVELOPER shall negotiate, procure and retain the services of the General Contractor, subject to Section 5.01, below, who shall, among other things, execute the construction of the Parking Garage Facilities and manage, supervise and direct construction activities related to the Work.

D. Personnel. DEVELOPER shall investigate, hire, contract with, train, pay, supervise and, when necessary, discharge the personnel reasonably required to be employed or engaged by DEVELOPER in order to properly perform its duties under this Parking Garage Agreement. Such personnel shall in every instance be deemed independent contractors, agents

or employees, as the case may be, of DEVELOPER and not of HPARC or CITY, and all matters pertaining to the employment, engagement, supervision, compensation, promotion and discharge of such independent contractors, agents or employees shall be the sole responsibility of DEVELOPER. All salaries, wages, commissions and other compensation or expense of personnel employed by DEVELOPER hereunder, including so-called fringe benefits, medical and health insurance, pension plans, social security, taxes, workers' compensation insurance and all other expenses of DEVELOPER are and shall be the responsibility of and paid by DEVELOPER. DEVELOPER shall use reasonable efforts to cause all personnel used by DEVELOPER, the Project Architect, the General Contractor and any Contractor in the performance of the design and/or construction of the Parking Garage Facilities to be qualified by training and experience to perform their assigned tasks.

E. Insurance. DEVELOPER shall provide and maintain, directly or indirectly, with responsible companies having an Alfred M. Best Company, Inc. rating of at least A- (or if Alfred M. Best Company, Inc. no longer uses such rating system, then the equivalent or most similar rating under the rating system then in effect) and licensed to do business in the State of Texas, insurance coverage as set forth in Exhibit G. Zachry shall require that the General Contractor to retain the same insurance and the Project Architect, Contractors and other Persons performing design and construction of the Parking Garage Facilities shall procure and maintain insurance coverages in amounts and upon conditions as are customarily and normally provided in projects like the Project. Such insurance, excluding workers' compensation insurance, shall in any event name the CITY and HPARC as additional insureds.

(1) Such insurance shall include waivers by the respective insurance carriers of any and all rights of subrogation against DEVELOPER, CITY, or HPARC, and DEVELOPER shall promptly provide HPARC and the CITY with certificates evidencing such insurance at least sixty (60) days prior to the Construction Commencement Date.

(2) To the extent permitted by Applicable Law, all insurance policies required to be obtained and maintained pursuant to the terms of this Parking Garage Agreement shall provide that neither DEVELOPER, CITY nor HPARC shall be liable to the other Parties or to any insurance company (by way of subrogation or otherwise) insuring any other Party for any loss or damage to property or injury to persons, or any resulting loss of income, or losses under workers' compensation laws and benefits, even though such loss or damage might have been

occasioned by the negligence (whether ordinary or gross) of such Party, its agents or employees, to the extent any such loss or damage is actually covered by insurance benefitting the Party suffering such loss or damage. The previous sentence is not intended to limit the claims of any Party to the face amount or coverage of insurance policies herein provided for or to evidence a waiver by a Party of any claim for damages in excess of the face amount or coverage of any such insurance policies. Neither the issuance of any insurance policy required under this Parking Garage Agreement, nor the minimum limits specified herein with respect to a Party's insurance coverage, shall be deemed to limit or restrict in any way a Party's liability arising under or out of this Parking Garage Agreement.

(3) DEVELOPER shall be liable for any losses, damages or liabilities suffered by CITY or HPARC as a result of DEVELOPER's failure to maintain or cause to be maintained the types and amounts of insurance required under the terms of this Parking Garage Agreement.

(4) At all times prior to the completion of all construction under a Construction Contract, DEVELOPER shall use its reasonable efforts to investigate and make a full timely written report to the insurance carriers as to any accident at the Market Street Garage or South Alamo Garage, as applicable, claim for damages relating to the design and/or construction of the Market Street Garage or South Alamo Garage, as applicable, and material damage to or destruction thereof (and the estimated cost of repair thereof), and prepare and file any and all reports required by any insurance carriers in connection therewith and provide copies thereof to HPARC and CITY.

F. Construction Payments. Subject to CITY's funding of approved Payment/Reimbursement Requests in accordance with this Parking Garage Agreement, DEVELOPER shall timely pay or otherwise satisfy all construction draw requests for which payment is due under each of the Construction Contracts or other documents related to the construction of each parking garage.

G. Record Keeping. DEVELOPER shall maintain at its regular business office separate, true and complete books, records, accounts, journals and files regarding the design and construction of the Parking Garage Facilities, containing Contracts, agreements, all design documents, Construction Documents, shop drawings, change orders, applications for payment, Permits, rental agreements and records, insurance policies, non-proprietary correspondence

directly related to the Market Street Garage or South Alamo Garage, as applicable, receipts, bills, vouchers and any audits obtained by DEVELOPER.

H. Compliance. DEVELOPER shall take such action as may be necessary to cause the Project to comply with the City Code and all other Applicable Laws and promptly furnish to CITY and HPARC copies of all legal notices received by DEVELOPER affecting the Project, including notices from Governmental Authorities and all notices from Persons claiming any default in any financing or payment obligation related to the Project.

I. Litigation. DEVELOPER shall promptly notify CITY and HPARC of any suit, proceeding or action that is initiated or threatened in connection with the Project or against DEVELOPER, HPARC or CITY that could result in (1) a lien against the Market Street Garage or South Alamo Garage, as applicable, (2) a material delay or increase in cost of construction of the Market Street Garage or South Alamo Garage, as applicable, or (3) a claim against HPARC or CITY.

J. As-Built Plans. DEVELOPER shall provide to CITY and HPARC, as soon as reasonably practicable but in no event later than sixty (60) days after the applicable Substantial Completion Date, an original and one (1) sepia print of as-built drawings substantially reflecting and depicting the Market Street Garage or South Alamo Garage, as applicable, as constructed and indicating the changes in and deviations from the Construction Documents and an electronic version thereof.

K. Minority Participation. The CITY, through City Ordinance No. 2016-05-19-0367 as amended, has adopted and implemented a Small Business Economic Development Advocacy (“**SBEDA**”) Program. Information regarding the SBEDA Ordinance may be found on the CITY’s Economic Development Department website and is also available in hard copy form upon request to the CITY. In accordance with the SBEDA Program, this Parking Development Sublease is subject to the SBEDA Affirmative Procurement Initiative(s) and goal(s) as determined by the applicable SBEDA Goal Setting Committee. Upon finalization of the scope of Work for the development of the Parking Garage Facilities, a proposal by DEVELOPER shall be submitted to the Goal Setting Committee for determination regarding the applicability of an Affirmative Procurement Initiative(s), relative goal(s) and required date for return of a Subcontractor/Supplier Utilization Plan. Should DEVELOPER be unable or unwilling to contractually commit to meet the goals set by the Goal Setting Committee, and does not secure a

waiver from the CITY, this Parking Garage Agreement shall be deemed in Non-Compliance and will be subject to penalties and sanctions under the SBEDA Ordinance.

L. Wage Standards. All Construction Contracts will require compliance with the Wage and Labor Standard Provisions for CITY construction projects as set forth in Ordinance 2008-11-20-1045, adopted on November 20, 2008, as the same may be amended, superseded or replaced.

M. Status Meetings. DEVELOPER shall cooperate with HPARC so that the HPARC Representative will be kept apprised of the progress of the design and construction of the Parking Garage Facilities at regular scheduled meetings occurring as reasonably determined by DEVELOPER and HPARC, and permit the HPARC Representative to attend for informational purposes the regularly scheduled status meetings of DEVELOPER, Project Architect and Contractor(s).

In lieu of performing such obligations itself in this Section 3.05, DEVELOPER may cause one or more of such duties to be performed by another Person, but which in no event shall any delegation relieve DEVELOPER of its primary responsibilities set forth herein.

ARTICLE 4. DESIGN OF THE PARKING GARAGE FACILITIES

Section 4.01 Quality Standard.

DEVELOPER shall undertake and assume responsibility in accordance with this Parking Garage Agreement to cause and obtain the permitting, design, and construction of all improvements comprising the Project in accordance with the Quality Standard. It is not anticipated or required that the Parking Garage Facilities have the same appearance or include the identical materials as the Quality Standard but that the materials and finishes of the Parking Garage Facilities be comparable to the Quality Standard.

Section 4.02 Project Architect.

DEVELOPER shall select an architectural firm as Project Architect that is qualified and experienced in the design of facilities that are similar in nature and size as the Parking Garage Facilities. DEVELOPER shall provide to CITY and HPARC copies of its contract with the Project Architect and all amendments thereto.

Section 4.03 Development of Plans.

DEVELOPER shall cause the Project Architect to prepare the Plans and Specifications for Parking Garage Facilities that complies with the Quality Standard and the Minimum City Spaces. The Project Architect shall deliver to the City Representative and HPARC Representative copies of the individual documents/drawings comprising the Plans and Specifications as they become, in the reasonable determination of DEVELOPER, materially completed.

Section 4.04 Minimum City Spaces.

The Parking Garage Facilities shall be designed in a manner such that the CITY shall receive not less than the Minimum City Spaces unless the CITY agrees otherwise.

Section 4.05 Review and Approval by CITY and HPARC.

A. Standard of Review. The Plans and Specifications shall be subject to the review and approval of the City Representative and the HPARC Representative. Approval of the Plans and Specifications by CITY and HPARC shall be limited to confirming their conformity to the Quality Standard, compliance with the requirements of this Parking Garage Agreement and the Minimum City Spaces.

B. Objections. The City Representative or the HPARC Representative, as applicable, shall notify the other Parties in writing notice of any approval or disapproval of the Plans and Specifications within fifteen (15) Business Days after receipt of the submitted documents in the manner required under Section 4.07, below. If a notice of disapproval asserts a failure to meet the Quality Standard such notice shall include written explanations and suggestions regarding such requested changes to obtain conformity with the standard, and the City Representative and HPARC Representative shall meet on an expeditious basis with the Developer Representative and Project Architect to resolve any items of dispute to the reasonable satisfaction of the Parties. The Plans and Specifications approved pursuant to this Section 4.05 may not be materially changed or altered without prior notice to CITY and HPARC with copies of such revised Plans and Specifications. If all such changes or alterations conform to the Quality Standard and otherwise comply with the requirements of this Parking Garage Agreement, the approval of CITY and HPARC shall not be required. To the extent that a portion of the Plans and Specifications have been approved, such approval will continue in effect unless and until there is a subsequent change or alteration that fails to comply with the Quality Standard or to otherwise comply with the requirements of this Parking Garage Agreement. Any

resubmission by DEVELOPER of any proposed Plans and Specifications (or applicable portion thereof) that was disapproved or objected to by the CITY or HPARC shall be approved or disapproved, within ten (10) Business Days after receipt of a complete resubmission which shall be provided and reviewed for approval in the same manner as an original submission. If no approval of the resubmitted documents has been provided in writing by CITY or HPARC within such time period, the resubmitted documents of the Plans and Specifications will be deemed not approved by CITY and HPARC.

C. Revisions to the Project Schedule. During the design process, DEVELOPER shall update the applicable Project Schedule setting forth the dates for delivery of the various components of the Plans and Specifications to adjust for the time consumed by the review and approval process, without approval of the City Representative and the HPARC Representative, and shall promptly provide copies of such revised Project Schedule.

D. Supervision. Subject to the approvals required of CITY and HPARC, DEVELOPER shall retain control of the design process and all aspects of the design and specifications of the Parking Garage Facilities.

Section 4.06 Ownership of Plans.

To the extent allowed or provided for in the Construction Documents, DEVELOPER shall be the owner of all Construction Documents and plans, specifications, drawings, models, samples and the like produced or developed in connection with the design and construction of the Parking Garage Facilities. DEVELOPER shall provide the CITY a nonexclusive license to use all Construction Documents and the plans, specifications, drawings, models, samples and the like produced or developed in connection with the design and construction of the Parking Garage Facilities solely and exclusively for purposes of constructing, re-constructing, using, maintaining, altering, repairing, replacing and adding to the Project.

Section 4.07 Submission of Matters Subject to Review and Approval.

A. Duties of Reviewing Party. When exercising its review and approval or consent authority under any provision of this Parking Garage Agreement and whether or not specifically provided in any such provision, the Party exercising such authority covenants and agrees to act in good faith, with due diligence, and in a commercially reasonable manner and to not unreasonably withhold, condition or delay its approval of or consent to any submission.

B. Submission Requirements. Each document subject to review and consent or approval by a Party shall be submitted under cover of a request which (1) contains the heading or caption “TIME SENSITIVE REQUEST FOR REVIEW/APPROVAL OR CONSENT” (or similar phrase), (2) states that the effective date of such submission is to be presumed to be the first Business Day following the date of dispatch by the submitting Party, (3) shall be properly addressed and sent by same day messenger service or by a nationally recognized overnight courier service for delivery on the morning of the next Business Day), (4) states the date by which a response is required under the terms of this Parking Garage Agreement, (5) identifies the provision of this Parking Garage Agreement pursuant to which review and approval or consent is sought, and (6) identifies (by document or drawing title, identifying number and revision date, or other clear description) all enclosures to such submission. The Party receiving such submission shall review it and shall give the submitting Party a response, approval or consent within any applicable time period specified in this Parking Garage Agreement. The response, if the submission is one that requires approval or consent pursuant to the terms of this Parking Garage Agreement, shall set forth such approval, consent or disapproval, and if disapproved, the detailed reasons for the disapproval. All submissions shall be made to the City Representative, HPARC Representative or Developer Representative, as appropriate.

Section 4.08 Termination upon Failure to Approve.

If, despite their mutual good faith efforts, either CITY or HPARC is unable to provide an approval required under this Parking Garage Agreement upon terms acceptable to DEVELOPER within the specified time frame or on or before the date required in the applicable Project Schedule, or absent such date, a date which makes continuation of that phase of the Project impractical, any Party may deliver written notice to all other Parties notifying them of their intent to terminate this Parking Garage Agreement pursuant to this Section 4.08 if the Parties cannot reach approval within thirty (30) days after receipt of the notice. If such approval is not achieved within such thirty (30) day period, any Party may terminate this Parking Garage Agreement by written notice to the other Parties at any time prior to achieving such approval, and each Party will thereafter have no further obligations under this Parking Garage Agreement other than the expressly surviving obligations set forth herein.

Section 4.09 Effect of Approvals.

The exercise of approval rights under this Parking Garage Agreement is limited to the purposes of this Parking Garage Agreement and does not reflect any commitment, approval, representation, warranty or obligation with respect to the sufficiency, accuracy, completeness or integrity of any matters so approved, all of which are expressly disclaimed by the reviewing Party. Each approval required of CITY under the terms of this Parking Garage Agreement is in addition to and separate from the usual and customary approvals required for construction or development under the City Code. For example, CITY's approval of the Plans and Specifications shall not constitute satisfaction of any requirements of, or the need to obtain any approval by, CITY's Fire Department, Building Inspections Department, Public Works Department, Planning Department or reflect compliance with any covenants, restrictions or covenants imposed by CITY on the Parking Garage Premises prior to the Effective Date.

ARTICLE 5. CONSTRUCTION OF THE PARKING GARAGE FACILITIES

Section 5.01 General Contractor.

The contractor proposed by Developer as General Contractor of the Parking Garage Facilities, or if applicable each of the contractors proposed by DEVELOPER as General Contractor of either the South Alamo Garage or the Market Street Garage respectively, shall be qualified and experienced in the construction of facilities that are similar in nature and size as the relevant Parking Garage Facilities. Upon DEVELOPER's selection of the contractor proposed as General Contractor for the relevant portion of the Project, DEVELOPER shall provide notice of such selection to CITY and HPARC, each of which shall have fifteen (15) Business Days to provide notice of its approval (which will not be unreasonably withheld, conditioned or delayed) or disapproval and a detailed explanation of the reasons for such disapproval. If, despite their mutual good faith, reasonable efforts, CITY and HPARC are unable to approve the proposed General Contractor on or before the date required in the applicable Project Schedule, or absent such date, a date which makes continuation of the Project impractical, any Party may deliver written notice to all other parties notifying them of their intent to terminate this Parking Garage Agreement pursuant to this Section 5.01 if the Parties cannot obtain approval of such General Contractor within thirty (30) days after receipt of the notice. If such approval is not achieved

within such thirty (30) day period, any Party may terminate this Parking Garage Agreement by written notice to the other Parties at any time prior to such approval being achieved.

Section 5.02 Construction Contracts.

A. Affiliate Contracts. DEVELOPER shall have the right to enter into contracts, including the Construction Contract, with its qualified Affiliates for performance of the Work provided such contracts are on terms and conditions no less favorable than would be available on an arms-length basis with qualified Persons who are not its Affiliates. Upon entering into a contract or series of contracts with an aggregated value in excess of \$250,000 with its Affiliate(s), DEVELOPER shall promptly provide to CITY notice and copies of such contract(s) and documentation showing compliance with this Section 5.02A to the reasonable satisfaction of CITY.

B. Negotiation. DEVELOPER shall negotiate all Construction Contracts, each of which shall be in such form and content that DEVELOPER determines to be appropriate, in the exercise of its reasonable discretion, but shall in all respects conform to the Construction Contract Requirements. All Construction Contracts shall require Substantial Completion of the applicable Parking Garage Facilities on or prior to the Scheduled Completion Date set forth in the applicable Project Schedule.

C. Review of Construction Contracts. The City Representative and the HPARC Representative each shall have the right to review the Construction Contract, or each Construction Contract if more than one, prior to execution and may object to the contents thereof only if (1) the Construction Contract (i) deviates from the Construction Contract Requirements or (ii) deviates in a material fashion from the approved Construction Documents, Project Budget, Project Schedule, or the other requirements of this Parking Garage Agreement, and (2) in the case of a deviation from the applicable Construction Documents, such deviation is inconsistent with the Quality Standard. Notice of such objection, if any, shall be given in writing by CITY or HPARC, as applicable, to DEVELOPER within fifteen (15) Business Days after its receipt of complete and correct copies of such Construction Contract and such notice shall include written explanations and suggestions regarding such requested changes to obtain conformity with the standard. DEVELOPER will use commercially reasonable efforts to address each objection. If no approval has been provided by CITY or HPARC to DEVELOPER within fifteen (15) Business Days after its receipt of a complete and correct copy of the subject Construction

Contract, CITY and HPARC shall be deemed to have not approved the Construction Contract. A Construction Contract approved by CITY and HPARC may not be materially changed or altered without prior notice to and approval by CITY and HPARC, if such change adversely affects compliance with the Quality Standard or the applicable Project Budget or Project Schedule. Upon the execution of a Construction Contract or any amendments thereto, DEVELOPER promptly shall provide fully signed copies to CITY and HPARC. Any Party may deliver written notice to all other parties notifying them of their intent to terminate this Parking Garage Agreement pursuant to this Section if, despite the mutual good faith, reasonable efforts, the Parties are unable to approve the Construction Contract on or before the expiration of the timeframes set forth above for approval in this subsection, or on or before the date required in the applicable Project Schedule, or absent such date, a date which makes continuation of the Project impractical. If the Parties cannot obtain approval of the Construction Contract within thirty (30) days after receipt of such a notice, any Party may terminate this Parking Garage Agreement by written notice to the other Parties at any time prior to such approval being achieved.

D. Permits and Insurance. DEVELOPER shall require that the Contractors and others performing the Work to obtain the construction permits and any bonds and insurance policies required by this Parking Garage Agreement and shall provide the CITY and HPARC with copies of such permits, bonds and insurance certificates.

E. Non-Discrimination. DEVELOPER shall not, and the Construction Contract shall provide that the General Contractor shall not, and the Contract Documents with other Contractors engaged by DEVELOPER or the General Contractor as a contractor, consultant or supplier shall provide that such Contractors shall not discriminate against any individual or group on account of race, color, sex, age, religion, national origin or disability and shall not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age or disability.

F. Warranty of Construction. Each Construction Contract shall require the General Contractor to provide both general and special express warranties, as follows:

(1) All labor and materials furnished are of good quality, new, free from defective workmanship and comply with the Construction Documents;

(2) All Work will be free from defects for a period of one (1) year following the date of the Certificate of Substantial Completion, and for a like period with respect to corrective Work performed during the initial warranty period; and

(3) The General Contractor shall correct any defects in the Work during such warranty period, at the General Contractor's sole expense, unless such defect was caused by the act or omission of a third party not subject to the supervision or control of the General Contractor.

Section 5.03 Bid Packages.

DEVELOPER shall or shall cause the General Contractor to prepare, negotiate and enter into agreements or otherwise retain the services of the Contractors and such other contractor(s) and/or subcontractor(s) as are necessary or desirable to perform the Work, as DEVELOPER or the General Contractor shall determine, subject to the terms of this Parking Garage Agreement.

Section 5.04 Supervision of Construction.

DEVELOPER shall cause the General Contractor to diligently pursue and prosecute the construction of the Parking Garage Facilities, to Substantial Completion on or before the applicable Scheduled Completion Date, in compliance with the applicable Construction Documents, Construction Contract and Project Budget, subject to Force Majeure Events and Excusable Delays or other adjustments permitted under the applicable Construction Contract. Without limiting the foregoing, DEVELOPER shall or shall cause the General Contractor to:

A. coordinate the Work as it progresses, the inspections of the job site by consultants, review inspection reports, schedule and conduct preconstruction and construction meetings, and implement courses of action when any requirements of the Plans and Specifications, Contracts or other agreements for the design or construction of the Work are not being fulfilled;

B. negotiate for any portion of the Work necessary for the award of Contracts and other agreements as set forth herein, coordinate selections and procedures therefor, coordinate labor among the contractors, and encourage participation by local and minority owned companies;

C. review all applications for payment and supporting documentation prepared by Contractors and others performing the Work and provide DEVELOPER with evidence of such payments;

D. negotiate final payments and/or final settlements without additional Project Costs to the CITY with all parties involved in the construction;

E. cause any known defects in the construction or in the installation of any equipment or fixtures therein to be corrected during construction and applicable warranty periods;

F. hold regular job meetings with General Contractor, contractors and the Project Architect, as appropriate and necessary, during construction to review the progress of construction and completion in accordance with the applicable Project Schedule;

G. advise of any delays or anticipated delays in meeting the applicable Project Schedule and of the actual dates on which the various stages and construction indicated on such Project Schedule are started and completed; and

H. supervise and coordinate the completion of “punch list” items and warranty work following Substantial Completion.

Section 5.05 Progress Reports.

DEVELOPER shall provide to the HPARC Representative and the City Representative written progress reports on a regular basis, but no less often than monthly. Such reports shall describe the status of the design and construction activities and include, but not be limited to, actual versus estimated percentage completion for each component of the subject parking garage, any change in costs incurred in connection with the construction of the parking garage, performance against the applicable Project Schedule, any change in the critical path and revisions to the Project Schedule as of the end of each reporting period. If the Work does not progress in accordance with the dates required by such Project Schedule, or if it is unlikely that such dates will be met based on the then progress of the Work, DEVELOPER may, in the exercise of its reasonable judgment, cause an acceleration of the Work by any available means including utilization of overtime, additional work crews and alternate material suppliers without additional cost to the CITY.

Section 5.06 Correction of Work.

If during construction, DEVELOPER reasonably determines or otherwise becomes aware that construction is not being constructed in accordance with the applicable Construction Documents as they may be modified by the Parties, DEVELOPER shall cause any such nonconforming work to be re-executed by the Person responsible therefor. If, however,

DEVELOPER determines it to be inexpedient to require the correction of such Work, an equitable deduction under the applicable Contract or other remedy reasonably acceptable to DEVELOPER may be pursued, provided, however, that any such action shall not result in any material deviation from the Quality Standard. To the extent the Project Architect determines the same to be reasonably necessary, consistent with sound construction industry practices, DEVELOPER will engage the services of independent testing agencies to verify construction compliance with the Construction Documents and to monitor the General Contractor's quality control program.

Section 5.07 Construction Change Order Procedure.

DEVELOPER may, at any time and from time to time, upon its own initiative, cause changes to the general scope of the construction if it believes that such changes are necessary or desirable, and so long as the changes (A) conform to the Quality Standard, (B) do not reduce the Minimum City Spaces, (C) do not materially delay the Project Schedule, (D) do not increase the Project Budget with the result being the requirement of a City Contribution exceeding a total sum of \$18,000,000 and (E) do not adversely affect access to or use of the Minimum City Spaces. DEVELOPER shall provide the City Representative and the HPARC Representative with written notice of and a copy of each change order prior to its execution by DEVELOPER and a written confirmation that such change order complies with the requirements of this Section 5.07.

Section 5.08 Enforcement.

DEVELOPER shall use commercially reasonable efforts to enforce substantial compliance with the terms of each Construction Contract and all agreements with the Project Architect, General Contractor, Contractors and other contractors, subcontractors and/or design professionals and require their performance substantially in accordance therewith. DEVELOPER shall commence and defend, without additional cost to the CITY, such legal actions and proceedings concerning the design and construction of the Project as are necessary or required in the opinion of DEVELOPER and retain counsel in connection therewith.

Section 5.09 Mechanic's Liens and Claims.

In order to protect against any liens being filed against the Parking Garage Premises, DEVELOPER shall require each General Contractor to provide a Payment Bond and

Performance Bond. Notwithstanding the forgoing, if any lien or claim of lien, whether choate or inchoate, shall be filed against any part of the Parking Garage Premises or improvements thereon by reason of any work, labor, services or materials supplied or claimed to have been supplied by or on behalf of DEVELOPER, or any of its agents or contractors, DEVELOPER shall, at its sole cost and expense, cause the same to be satisfied or discharged of record, or effectively prevent the enforcement or foreclosure thereof by injunction, payment, deposit, bond, order of court or otherwise.

Section 5.10 Returns Required by Law.

DEVELOPER shall execute and file punctually when due all forms, reports and returns relating to the Project required by Applicable Law, including reports relating to the employment of personnel.

Section 5.11 Inspection Rights.

DEVELOPER agrees that the CITY and HPARC shall have the right at all times during normal business hours of DEVELOPER, the Contractors or General Contractor, upon prior reasonably notice to DEVELOPER and during construction hours, to inspect the progress of the construction of the Project. At the option of DEVELOPER, such inspectors shall be accompanied by DEVELOPER or its representative. All inspectors shall comply with all applicable safety requirements and procedures. In conducting any such inspections the CITY and HPARC shall not interfere with the activity of any Persons providing services at the Project and CITY will promptly restore any damage caused by the CITY's inspections. Furthermore, all uninsured damages, losses or expenses, including attorney's fees arising out of any such inspection of the Project, whether by bodily injury, death or property damage, are hereby deemed added to and shall be a part of the Project Budget as a Project Cost, unless the failure to insure is (or would be following any notice and cure period) an Event of Default of DEVELOPER.

Section 5.12 Certificate of Substantial Completion.

A. South Alamo Substantial Completion Date. When the South Alamo Garage is Substantially Complete, DEVELOPER shall execute and deliver to CITY and to HPARC the Certificate of Substantial Completion for the South Alamo Garage.

B. Market Street Substantial Completion Date. When the Market Street Garage is Substantially Complete, DEVELOPER shall execute and deliver to CITY and to HPARC the Certificate of Substantial Completion for the Market Street Garage.

ARTICLE 6. PROJECT BUDGET

Section 6.01 Approval of Project Budget.

DEVELOPER shall modify and refine the preliminary Project Budget estimate provided pursuant to Section 3.04A, above, to reflect its good faith and reasonable estimate of the Project Costs for each parking garage and shall submit it to the City Representative and the HPARC Representative for review and approval, utilizing the submission and approval process set forth in Section 4.07; provided, however, that the CITY and HPARC shall not withhold their approval unless such modified Project Budget is in conflict with a specific requirement set forth in this Parking Garage Agreement. Any disapproval by CITY or HPARC, as applicable, shall state the specific grounds for such action.

Section 6.02 Modifications to the Approved Project Budget.

The Parties understand that modifications to the approved Project Budget may be necessary to reflect changes in Project Costs. Provided that such changes are not in conflict with a specific requirement set forth in this Parking Garage Agreement and do not increase the Prepaid Costs to be reimbursed to DEVELOPER pursuant to Section 6.05A, below, DEVELOPER shall have the right, from time to time, to reallocate budgeted amounts from one category of the Project Budget to one or more other categories of the Project Budget. Any such amendments to the Project Budget shall be provided to the City Representative and the HPARC Representative but shall not require prior approval.

Section 6.03 Application and Filing Fees.

The Project Budget shall include all application, review and filing fees applicable to the improvements to be constructed and all other related fees required by the City Code.

Section 6.04 Funding of City Contribution.

The City Contribution shall not exceed the lesser of \$18,000,000 or the City Percentage of the Project Budget.

The obligation of CITY to fund the City Contribution is subject to the following conditions and requirements (collectively, the “**Funding Conditions**”):

A. The City Percentage has been determined to the mutual satisfaction of CITY and DEVELOPER.

B. The City Representative and HPARC Representative shall have approved the Project Budget covering the Work for which funding is to be made.

C. The City Representative and HPARC Representative shall have approved (or be deemed to have approved), in accordance with Article 4, above, the Plans and Specifications covering the Work for which funding is to be made.

D. The City Representative and HPARC Representative shall have reviewed and approved, in accordance with Section 6.01, above, the Project Budget covering the Work for which funding is to be made.

E. The City Representative and HPARC Representative shall have reviewed and approved, in accordance with Section 5.01, above, the General Contractor for the Work for which funding is to be made.

F. The City Representative and HPARC Representative shall have reviewed and approved, in accordance with Section 5.02, above, the Construction Contract covering the Work for which funding is to be made.

G. DEVELOPER shall have provided confirmation reasonably acceptable to CITY and HPARC that DEVELOPER has available funds to satisfy all of its monetary obligations for the portion of the Project for which funding is requested of CITY.

H. DEVELOPER shall have delivered originally executed copies of the Guaranty, duly signed and acknowledged by Guarantor, to HPARC and CITY.

I. This Parking Garage Agreement and the Development Sublease remain in full force and effect as of the funding date, and no notice of default has been given on or prior to the funding date that remains uncured.

Section 6.05 Progress Payments.

A. Payment/Reimbursement Requests. The City Contribution shall be disbursed by CITY to DEVELOPER (or to third parties, on its behalf) from time to time in progress payments, as follows:

(1) At any time after the Funding Conditions are met but not earlier than July 1, 2018, the DEVELOPER shall be entitled to make a Payment/Reimbursement Request for certain Project Costs set forth on the approved Project Budget paid by DEVELOPER prior to such Funding Conditions having been achieved (i.e., preconstruction costs incurred in the ordinary course of project development, architectural, engineering, consulting, and permitting fees) (the “**Prepaid Costs**”). At any time thereafter, when DEVELOPER and the Project Architect each have determined such amounts should be paid, DEVELOPER shall submit a Payment/Reimbursement Request to the City Representative, with a copy to the HPARC Representative, seeking payment for Prepaid Costs for the Market Street Garage or the South Alamo Garage, minus the relevant Market Street Percentage thereof or South Alamo Percentage thereof, as applicable.

(2) When DEVELOPER has received a request for payment from a General Contractor which complies with the requirements and conditions of the subject Construction Contract and which DEVELOPER and the Project Architect each have determined should be paid, DEVELOPER shall submit a Payment/Reimbursement Request (herein so called) to the City Representative, with a copy to the HPARC Representative, seeking payment of the entire amount of the payment requested by the General Contractor, minus the portion thereof required to be paid by DEVELOPER under the terms of this Parking Garage Agreement.

(3) Each Payment/Reimbursement Request shall be marked “South Alamo Parking Garage” or “Market Street Parking Garage” (as applicable) and shall include (a) written confirmation from DEVELOPER that the requested payment complies with the Project Budget, (b) written confirmation, in form reasonably acceptable to the City Representative, that the DEVELOPER and the Project Architect have approved payment of the Project Costs covered by the Payment/Reimbursement Request and other supporting documentation for the subject Project Costs and have confirmed that the Work covered by the Payment/Reimbursement Request has been duly performed, (c) an unconditional waiver (or partial waiver, as the case may be) of liens by the General Contractor, (d) a conditional waiver of liens, with the only condition being payment of the amount requested, by each other Contractor or other appropriate evidence that DEVELOPER has fully paid for one or more of the Project Costs for which reimbursement is requested, (e) unconditional waivers of lien (or partial waivers, as the case may be) from all Contractors paid pursuant to a prior Payment/Reimbursement Request who had provided

conditional waivers of lien at the time of such payment and (f) invoices for the services rendered or materials furnished as Project Costs for which payment or reimbursement is requested. Notwithstanding the foregoing, no release or waiver of lien shall be required from a Contractor that does not have the ability to place a lien on the Parking Garage Premises.

(4) The City Representative and HPARC Representative will promptly review the Payment/Reimbursement Request, and if the Payment/Reimbursement Request complies with Section 6.05A(3), above, the City Representative shall forward the Payment/Reimbursement Request to CITY's Finance Department for payment, indicating City Representative's approval of the Payment/Reimbursement Request, within seven (7) Business Days of the initial submission of the Payment/Reimbursement Request, which (when so approved) shall be paid by the CITY's Finance Department in the ordinary course of business.

(5) If the City Representative shall approve only part of the amount requested by a Payment/Reimbursement Request, the approved portion of the Project Costs shall be processed, as provided above, and the City Representative shall provide to DEVELOPER a reasonably detailed explanation of the City Representative's disapproval of the remaining portion of the Payment/Reimbursement Request within seven (7) Business Days of the date of its submission. Any dispute between the City Representative and DEVELOPER over payment of a Payment/Reimbursement Request shall be resolved by legal actions and proceedings so as not to delay the Substantial Completion of the subject Project. To this end, the City Representative may fund a Payment/Reimbursement Request under protest, reserving the right to offset any amount paid under protest against future Payment/Reimbursement Requests.

(6) CITY shall fund Payment/Reimbursement Requests only up to the maximum total amount of the *lesser* of (a) the sum of the South Alamo City Contribution and the Market Street City Contribution, or (b) Eighteen Million Dollars (\$18,000,000.00).

B. Developer Fee. Payment/Reimbursement Requests shall include an amount equal to seven percent (7.0%) of that portion of the Payment/Reimbursement Request to be funded by CITY pursuant to Section 6.05A, as the incremental payment of the Development Fee to be paid to the DEVELOPER hereunder, provided, however, that ten percent (10%) of each such incremental Development Fee to be paid by CITY pursuant to Section 6.05A may be retained and "held back" by the CITY to be remitted to the DEVELOPER by the CITY within thirty (30) days after Substantial Completion. For purposes of clarity, and by way of example

only, if the DEVELOPER makes a Payment/Reimbursement Request for Work on the South Alamo Garage in the amount of \$400,000.00 and the South Alamo Percentage is 50%, the incremental Development Fee related thereto would be calculated as 7.00% of the difference between \$400,000.00 minus the South Alamo Percentage thereof, or \$14,000.00, with \$1,400.00 of such amount to be retained by the City for disbursement to the DEVELOPER only upon Substantial Completion.

ARTICLE 7. LICENSED PARKING SPACES

Section 7.01 Identification of Licensed Parking Spaces.

In the Plans and Specifications submitted to CITY and HPARC for review and approval under this Parking Garage Agreement, DEVELOPER shall identify (1) the number of Licensed Parking Spaces, (2) the number of such Licensed Parking Spaces to be located in the South Alamo Garage, (3) location of any reserved Licensed Parking Spaces to be used solely by DEVELOPER for valet parking or other purposes (“**Reserved Spaces**”) and (4) any Licensed Parking Spaces to be segregated physically from other Vehicle Parking Spaces (“**Segregated Spaces**”). Unless identified as a Reserved Space or a Segregated Space, the Licensed Parking Spaces shall not mean and refer to specific, individual Vehicle Parking Spaces within the Parking Garage Facilities but shall mean and refer to an available Vehicle Parking Space located within the applicable Parking Garage Facilities provided that DEVELOPER shall have at all times access to the total number of Licensed Parking Spaces. Within ten (10) days after the Plans and Specifications under the Parking Garage Agreement are approved, the Parties shall attach hereto and initial and date each page thereof, as an Exhibit X, to be made a part hereof for all purposes, to reflect the location of any Reserved Spaces and/or Segregated Spaces.

Section 7.02 Licensed Premises.

CITY hereby licenses to DEVELOPER, and DEVELOPER accepts from CITY, the right of DEVELOPER and its employees, invitees, guests, visitors, permitted licensees and permitted assignees to use, possess, and enjoy the following premises (collectively, the “**Licensed Premises**”) for the indicated purpose (collectively, the “**Permitted Use**”):

A. The South Alamo Licensed Parking Spaces and Market Street Licensed Parking Spaces, if any, from and after the South Alamo Substantial Completion Date and the Market

Street Substantial Completion Date, respectively, for the remainder of the Term as Vehicle Parking Spaces;

B. The related entrance facilities, drive aisles, ramps, elevators, stairs, and all other improvements shown in the Plans and Specifications for ingress to and egress from the Licensed Vehicle Spaces, on a non-exclusive basis, except to the extent the Plans and Specifications reflect exclusive access for DEVELOPER and its permitted parties (such as, for example, for the Segregated Spaces);

C. The portions of the Market Street Parking Garage Premises identified in the Plans and Specifications as lateral and subjacent support of the improvements to be constructed above the elevation of the Market Street Garage, on a non-exclusive basis, which shall include a right to repair and maintain the same; and

D. The portions of the South Alamo Parking Garage Premises identified in the Plans and Specifications as lateral and subjacent support of the improvements to be constructed above the elevation of the South Alamo Garage, on a non-exclusive basis, which shall include a right to repair and maintain the same.

Section 7.03 Operation of Parking Garage

CITY and DEVELOPER shall enter into that Parking Garage Operating Agreement in the form attached hereto and incorporated herein as Exhibit E on or before the first to occur of (A) the South Alamo Substantial Completion Date or (B) the Market Street Substantial Completion Date. The Parties agree and understand that the design and configuration of the Parking Garage Facilities may impact the content of the Parking Garage Operating Agreement and, accordingly, the form of the Parking Garage Operating Agreement may be refined and amended from time to time prior to execution to reflect any approved changes in the Plans and Specifications for the Parking Garage Facilities.

Section 7.04 License Fee. The South Alamo Developer Contribution and the Market Street Developer Contribution, when paid, shall be the fully paid-up license fee for the Term.

Section 7.05 Revenues.

A. DEVELOPER Revenues. Any and all revenues derived from operation or use of Licensed Parking Spaces shall inure solely to the benefit of DEVELOPER, including the DEVELOPER's renting, licensing or subleasing of the Licensed Parking Spaces or any part thereof, or DEVELOPER's sale, assignment or other disposition of its interests in the Licensed

Parking Spaces or any part thereof, whether directly or indirectly, in accordance with this Parking Garage Agreement. DEVELOPER shall be solely responsible for the collection of all such revenues.

B. CITY Revenues. All other revenues derived from the operation of the Parking Garage Facilities or any part thereof, including CITY's renting, licensing or subleasing of the Parking Garage Facilities or any part thereof, or CITY's sale, assignment or other disposition of its leasehold or other interest in the Parking Garage Facilities or any part thereof, whether directly or indirectly, in accordance with this Parking Garage Agreement. CITY shall be solely responsible for the collection of all such revenues.

Section 7.06 Operating Expenses.

For purposes of this Parking Garage Agreement, the term "Operating Expenses" shall mean and refer to all expenses, costs and disbursements of every kind and character attributable to the Parking Garage Premises or any portion thereof (other than any Market Street Structural Support and South Alamo Structural Support) of every kind and nature incurred or expended in connection with the ownership, operation, maintenance or repair of the Parking Garage Premises including all:

A. Supplies, materials and equipment, whether leased or purchased, used in the operation, maintenance or repair of the Parking Garage Premises;

B. Costs of utility services for Parking Garage Premises and maintaining common utility lines;

C. Costs of general maintenance, including costs of maintenance and service agreements, for the Parking Garage Premises and the equipment therein;

D. Costs of insurance relating to the Parking Garage Premises, including the cost of casualty and liability insurance applicable to the Parking Garage Premises;

E. Taxes, whether by taxing districts of authorities presently levying taxes or by others, subsequently created or otherwise, and any other taxes and assessments attributable to the Parking Garage Premises or its operation;

F. Costs of repairs and replacement (whether capital or non-capital or structural or non-structural in nature) except to the extent insured (or self-insured) or paid by third parties;

G. Reasonable and customary management fees involved in the management of the Parking Garage Premises; and

H. Costs incurred to bring the Parking Garage Premises in compliance with changes in laws and governmental rules and regulations applicable to the use of the Parking Garage Premises or any portion thereof.

Section 7.07 Expense Sharing.

The CITY shall timely pay all Operating Expenses. Operating Expenses of the Parking Garage Facilities shall be shared by CITY and DEVELOPER in the accordance with their proportional utilization of the Vehicle Parking Spaces in the Parking Garage Facilities. By example, if there are 200 Licensed Vehicle Spaces and 800 Vehicle Parking Spaces in the Parking Garage Facilities, DEVELOPER shall pay 25% of the Operating Expenses and CITY shall pay 75% of the Operating Expenses. Notwithstanding the foregoing, to the extent there are Segregated Spaces or Reserved Spaces hereunder, DEVELOPER shall undertake and perform any maintenance or repairs to such spaces, at the sole cost and expense of DEVELOPER.

Section 7.08 Reimbursement of Operating Expenses.

CITY shall use commercially reasonable efforts to deliver to DEVELOPER by the 25th day of each calendar month during the Term, commencing on the second (2nd) month following the South Alamo Substantial Completion Date, a statement (“Statement”) which reflects in reasonable detail (1) all Operating Expenses for the Parking Garage Facilities for the preceding calendar month and (2) the portion of such Operating Expenses which DEVELOPER is required to reimburse CITY pursuant to this Article 7. DEVELOPER shall pay over and remit to the CITY the DEVELOPER’s share of the Operating Expenses, as set forth on each monthly Statement, within thirty (30) days after delivery of such Statement to DEVELOPER.

Section 7.09 Audit.

DEVELOPER shall have the right to audit the CITY’s records (and any relevant parking garage management company’s records) regarding Operating Expenses and revenues upon thirty (30) days’ prior written notice, during regular business hours, at the CITY’s offices, which right shall be exercisable not more than once in any calendar year during the Term. DEVELOPER shall pay for the costs of the audit at an hourly or fixed rate, without compensating or awarding the audit firm with any additional compensation, bonuses, or other incentives based on contingencies including over-billing errors identified by the audit. If CITY shall have over-billed DEVELOPER, the amount of such overage shall be reimbursed to DEVELOPER within

thirty (30) days after DEVELOPER's submittal of an audit report acceptable to CITY reflecting such overage. If the audit report discloses an overage exceeding five percent (5%) of DEVELOPER's proportionate share of the Operating Expenses, the CITY shall reimburse the DEVELOPER for all of DEVELOPER's reasonable costs incurred for such audit. The CITY shall retain its books and records regarding Operating Expenses for a period of at least three (3) years following the final billing for the calendar year in question.

ARTICLE 8. REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 8.01 By DEVELOPER.

DEVELOPER hereby makes the following representations, warranties and covenants to CITY and HPARC as of the Effective Date:

A. Existence. DEVELOPER is a Delaware limited liability company duly organized and legally existing under the laws of the State of Delaware.

B. Authorization. DEVELOPER is duly and legally authorized to enter into this Parking Garage Agreement and has complied with all laws, rules, regulations, operating agreements and other documents relating to its existence and authority to act, and the undersigned representative is authorized to act on behalf of and bind DEVELOPER to the terms of this Parking Garage Agreement. DEVELOPER has provided to CITY and HPARC, on or prior to the Effective Date, a certified copy of a resolution of its governing authority authorizing DEVELOPER'S execution of this Parking Garage Agreement through the undersigned representative, together with documents evidencing DEVELOPER'S good standing and authority to transact business in the State of Texas. DEVELOPER has all requisite power to perform all of its obligations under this Parking Garage Agreement. The execution of this Parking Garage Agreement by DEVELOPER does not require any consent or approval which has not been obtained, including the consent or approval of any Governmental Authority.

C. Enforceable Obligations. Assuming due authorization, execution and delivery by each signatory party hereto and thereto, this Parking Garage Agreement, all documents executed by DEVELOPER pursuant hereto and all obligations of DEVELOPER hereunder and thereunder are enforceable against DEVELOPER in accordance with their terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization or other similar laws

affecting the enforcement of creditor's rights generally and by general equity principles (regardless of whether such enforcement is considered in a proceeding in equity or at law).

D. No Legal Bar. The execution and delivery of this Parking Garage Agreement and the performance of its obligations hereunder by DEVELOPER will not conflict with any provision of any Applicable Laws to which DEVELOPER is subject or conflict with, or result in a breach of, or constitute a default under any of the terms, conditions or provisions of any agreement or instrument to which DEVELOPER is a party or by which it is bound or any order or decree applicable to DEVELOPER.

E. Litigation. There are no legal actions or proceedings pending or, to the knowledge of DEVELOPER, threatened against DEVELOPER which, if adversely determined, would materially and adversely affect the financial condition, business or prospects of DEVELOPER or its ability to fulfill its obligations under this Parking Garage Agreement.

F. Documents. All documents made available by DEVELOPER to CITY and/or CITY'S agents or representatives and/or to CITY and/or CITY'S agents or representatives prior to the Effective Date are true, correct and complete copies of the instruments which they purport to be and accurately depict the subject matter addressed therein.

G. Knowledge. DEVELOPER has no knowledge of any facts or circumstances which presently evidence, or with the passage of time would evidence, that any of the representations made by DEVELOPER or any other Party under this Parking Garage Agreement are in any way inaccurate, incomplete or misleading.

Section 8.02 By HPARC.

HPARC hereby makes the following representations, warranties and covenants to and with CITY and DEVELOPER as of the Effective Date:

A. Existence. HPARC has been duly created under the laws of the State of Texas.

B. Authorization. HPARC is duly and legally authorized to enter into this Parking Garage Agreement and has complied with all Applicable Laws to which it may be subject, and the undersigned representative has been duly authorized to act on behalf of and bind HPARC to the terms of this Parking Garage Agreement. HPARC has provided to CITY and DEVELOPER, on or prior to CITY'S execution of this Parking Garage Agreement, a certified copy of a resolution of its governing body authorizing HPARC'S execution of this Parking Garage Agreement through such representative. HPARC has all requisite power to perform all of its

obligations under this Parking Garage Agreement and the execution and performance of this Parking Garage Agreement by HPARC does not require any consent or approval which has not been obtained, including the consent or approval of any Governmental Authority.

C. Enforceable Obligations. Assuming due authorization, execution and delivery by each signatory party hereto and thereto, this Parking Garage Agreement, each document executed by HPARC pursuant hereto and all obligations of HPARC hereunder and thereunder are enforceable against HPARC in accordance with their terms.

D. Litigation. There are no pending legal actions or proceedings which, if adversely determined, would materially and adversely affect the ability of HPARC to fulfill its obligations under this Parking Garage Agreement.

E. Knowledge. HPARC has no knowledge of any facts or circumstances which presently evidence, or with the passage of time would evidence, that any of the representations made by HPARC or any other Party under this Parking Garage Agreement are in any way inaccurate, incomplete or misleading.

F. Notice of Default under Parking Sublease. HPARC hereby agrees to give copies to DEVELOPER of all notices given to the CITY under the Parking Garage Sublease, including but not limited to, notices of default thereunder. HPARC agrees that DEVELOPER shall have the right but not the obligation to cure any default or failure in performance of CITY under the Parking Garage Sublease for a period equal to the greater of thirty (30) days or the cure period afforded the City under the Parking Garage Sublease. HPARC agrees that it shall not seek to terminate the Parking Garage Sublease or exercise any other remedy which would affect the use or possession of the Licensed Parking Spaces during the DEVELOPER's cure period hereunder.

G. Survival Upon Termination of Parking Sublease. Upon the termination or expiration of the Parking Garage Sublease, HPARC shall use commercially reasonable efforts to give prior written notice of such termination to DEVELOPER and in all cases shall give written notice of such termination or expiration to DEVELOPER within fifteen (15) days thereafter. Notwithstanding such termination of the Parking Sublease, the Parking Garage Agreement will continue in full force and effect, and the HPARC shall succeed to and assumes all the rights and obligations of the CITY under this Parking Garage Agreement, this Parking Garage Agreement shall continue as a direct agreement between HPARC and DEVELOPER without the necessity

of executing a new agreement, on the same terms and conditions as are in effect under the Parking Garage Agreement immediately preceding the termination or expiration of the Parking Garage Sublease, and DEVELOPER shall continue to have all the rights and obligations of the DEVELOPER under the Parking Garage Agreement and shall attorn to HPARC in such event. The only exceptions to such arrangement are as follows:

1. Payments. Effect of Prepayment by the DEVELOPER under the Parking Garage Agreement. HPARC is not bound to recognize DEVELOPER's payment to the CITY of any amounts under the Parking Garage Agreement if such amounts were paid more than one (1) payment period in advance of when they were due.

2. Existing Defaults. HPARC is not liable in damages for any default by the CITY under the Parking Garage Agreement. However, if DEVELOPER has sent to HPARC the notice required under the terms of Section 8.02F, above, and the default set forth in such notice has not been cured by HPARC after the expiration of HPARC's cure period as set forth in that section, the DEVELOPER's remedies will survive the termination of the Parking Garage Sublease. If an event has occurred that allows the DEVELOPER an immediate remedy without notice and an opportunity to cure to CITY, then in order for DEVELOPER to be entitled to exercise such remedy against HPARC after termination of the Parking Sublease, the DEVELOPER must first give HPARC thirty (30) days' notice and opportunity to cure.

Section 8.03 By CITY.

CITY hereby makes the following representations and covenants to and with DEVELOPER and HPARC as of the Effective Date unless another date is expressly stated to apply and subject to the disclaimer set forth in Section 11.04 hereof:

A. Existence. CITY is a municipal corporation and home rule city of the State of Texas principally situated in Bexar County.

B. Power and Authority. CITY has all requisite municipal corporate power and authority to enter into this Parking Garage Agreement and perform all of its obligations hereunder. The execution and performance by CITY of this Parking Garage Agreement has been duly authorized by the City Ordinance and, except for the additional approval of DEVELOPER

and HPARC, does not require the consent or approval of any other person which has not been obtained, including any Governmental Authority.

C. No Legal Bar. The execution and performance by CITY of this Parking Garage Agreement does not and will not violate any provisions of any contract, agreement, instrument or Governmental Rule to which CITY is a party or is subject.

D. Litigation. There are no pending legal actions or proceedings which, if adversely determined, would materially and adversely affect the ability of CITY to fulfill its obligations under this Parking Garage Agreement.

E. Enforceable Obligations. Assuming due authorization, execution and delivery by each Party hereto and thereto, this Parking Garage Agreement, each document executed by CITY pursuant hereto and all obligations of CITY hereunder and thereunder are enforceable against CITY in accordance with their terms.

F. Notice of Default under Parking Sublease. The CITY hereby agrees to give copies to DEVELOPER of all notices given to the HPARC under the Parking Garage Sublease, including but not limited to, notices of default thereunder. The CITY agrees that DEVELOPER shall have the right but not the obligation to cure any default or failure in performance of HPARC under the Parking Garage Sublease for a period equal to the greater of thirty (30) days or the cure period afforded to HPARC under the Parking Sublease. The CITY agrees that it shall not seek to terminate the Parking Sublease or exercise any other remedy which would affect the use or possession of the Licensed Parking Spaces during the DEVELOPER's cure period hereunder.

Section 8.04 Disclaimer of Parties.

EACH PARTY ACKNOWLEDGES THAT, EXCEPT FOR THE REPRESENTATIONS CONTAINED WITHIN THIS PARKING GARAGE AGREEMENT, NO PARTY HAS MADE, NOR HAS ANY OF THEIR RESPECTIVE EMPLOYEES, OFFICERS, REPRESENTATIVES OR ELECTED OFFICIALS MADE, ANY REPRESENTATION OR WARRANTY WHATSOEVER (WHETHER EXPRESS OR IMPLIED) REGARDING THE PROJECT, THE SUBJECT MATTER OF THIS PARKING GARAGE AGREEMENT OR ANY EXHIBIT HERETO, OTHER THAN THE EXPRESSED OBLIGATIONS CONTAINED IN THIS PARKING GARAGE AGREEMENT. EACH PARTY AGREES THAT NO OTHER PARTY HAS MADE, NOR HAVE THEIR RESPECTIVE EMPLOYEES, OFFICERS,

REPRESENTATIVES AND ELECTED OFFICIALS MADE, ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER AS TO ANY OF THE FOLLOWING:

A. THE ACCURACY OR COMPLETENESS OF ANY INFORMATION SUPPLIED BY ANY PERSON OTHER THAN CITY REPRESENTATIVE OR HPARC REPRESENTATIVE PURSUANT TO THIS PARKING GARAGE AGREEMENT.

B. THE COMPLIANCE WITH APPLICABLE LAWS BY THE PROJECT, THE PARKING GARAGE PREMISES AND ANY PROPOSED IMPROVEMENT.

C. THE ACCURACY OR COMPLETENESS OF ANY FINANCIAL PROJECTIONS, COST ESTIMATES, SCHEDULES OR OTHER MATTERS RELATING TO THE PROJECT OR ANY IMPROVEMENTS REQUIRED TO BE CONSTRUCTED OR FUNDED UNDER THE TERMS OF THIS PARKING GARAGE AGREEMENT.

IT IS UNDERSTOOD AND AGREED BY EACH PARTY (FOR ITSELF AND FOR ANY PERSON CLAIMING BY, THROUGH OR UNDER SUCH PARTY) THAT EACH OF THEM HAS BEEN AND WILL CONTINUE TO BE SOLELY RESPONSIBLE FOR MAKING ITS OWN INDEPENDENT APPRAISAL OF AND INVESTIGATION INTO ALL SUCH MATTERS.

Section 8.05 Reliance.

Each Party agrees and acknowledges that, in entering into this Parking Garage Agreement,

A. Each Party is expressly and primarily relying on the truth and accuracy of the foregoing representations, warranties and covenants of each other Party, without any obligation to investigate the accuracy or completeness thereof;

B. Notwithstanding any investigation thereof by any Party, each Party may continue to rely thereon until this Parking Garage Agreement is or shall be terminated according to its terms;

C. Such representations, warranties and covenants are a material inducement to each Party in making this Parking Garage Agreement and agreeing to undertake and accept its terms; and

D. Each Party would not be willing to do so in the absence of any of such representations, warranties and covenants.

Section 8.06 Additional Covenants of DEVELOPER.

A. INDEMNIFICATION BY DEVELOPER. IN ADDITION TO ANY OTHER INDEMNITY PROVIDED IN THIS PARKING GARAGE AGREEMENT, DEVELOPER COVENANTS AND AGREES TO FULLY INDEMNIFY, DEFEND AND HOLD HARMLESS CITY, HPARC AND THEIR RESPECTIVE ELECTED OFFICIALS, AGENTS, EMPLOYEES, OFFICERS AND REPRESENTATIVES, INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY OR DEATH AND PROPERTY DAMAGE, DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO DEVELOPER'S PERFORMANCE UNDER THIS PARKING GARAGE AGREEMENT, PROVIDED THAT ANY SUCH CLAIM, DAMAGE, LOSS OR EXPENSE (A) IS ATTRIBUTABLE TO BODILY OR PERSONAL INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY INCLUDING THE LOSS OF USE RESULTING THEREFROM, AND (B) IS CAUSED IN WHOLE OR IN PART BY ANY WILLFUL OR NEGLIGENT ACT OR OMISSION OF DEVELOPER, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE OR PERSONNEL, CONSULTANT, GENERAL CONTRACTOR OR SUBCONTRACTOR, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, PERSONNEL, DIRECTORS AND REPRESENTATIVES REGARDLESS OF WHETHER OR NOT CAUSED IN PART BY THE NEGLIGENT ACTS OR OMISSIONS ONE OR MORE OF THE INDEMNIFIED PARTIES. DEVELOPER SHALL PROMPTLY ADVISE EACH OTHER PARTY IN WRITING OF ANY CLAIM OR DEMAND AGAINST SUCH PARTY KNOWN TO DEVELOPER RELATED TO OR ARISING OUT OF DEVELOPER'S ACTIVITIES RELATED TO THIS PARKING GARAGE AGREEMENT AND SHALL INVESTIGATE AND DEFEND SUCH CLAIM OR DEMAND AT DEVELOPER'S EXPENSE TO THE EXTENT THE SAME IS COVERED BY DEVELOPER'S INDEMNITY UNDER THIS SECTION. EACH PARTY WILL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING DEVELOPER OF ANY OF ITS OBLIGATIONS UNDER THIS SECTION.

B. Indemnification Procedures.

(1) If any Person indemnified pursuant to this Parking Garage Agreement (an “Indemnitee”) shall discover or have actual notice of facts giving rise or which may give rise to a claim for indemnification hereunder, or shall receive notice of any claim or demand, with respect to any matter for which indemnification may be claimed, the Indemnitee shall, within twenty (20) days following service of process (or within such shorter time as may be necessary to give the Person obligated to indemnify the Indemnitee (the “Indemnitor”) a reasonable opportunity to respond to such service of process) or within twenty (20) days after any other such notice, notify the Indemnitor in writing thereof together with a statement of such information respecting such matter as the Indemnitee then has; it being understood and agreed that any failure or delay of the Indemnitee to so notify the Indemnitor shall not relieve the Indemnitor from liability hereunder except and solely to the extent that such failure or delay shall have adversely affected the Indemnitor’s ability to defend against, settle, or satisfy any such claim or demand. Following such notice, the Indemnitor shall have the right, at its sole cost and expense, to contest or defend such claim or demand through attorneys, accountants, and others of its own choosing (the choice of such attorneys, accountants, and others being subject to the approval of the Indemnitee, such approval not to be unreasonably withheld) and in the event it elects to do so, it shall promptly notify the Indemnitee of such intent to contest or defend such claim or demand. If within twenty (20) days following such notice from the Indemnitee (or within such shorter time as may be necessary to give the Indemnitor a reasonable opportunity to respond to service of process or other judicial or administrative action), the Indemnitee has not received notice from the Indemnitor that such claim or demand will be contested or defended by the Indemnitor, the Indemnitee shall have the right to (i) authorize attorneys satisfactory to it to represent it in connection therewith or (ii) subject to the approval of the Indemnitor, which approval shall not be unreasonably withheld or delayed, at any time settle, compromise, or pay such claim or demand, in either of which events the Indemnitee shall be entitled to indemnification therefor hereunder.

(2) So long as the Indemnitor is actively contesting or defending against a claim or demand as hereinabove provided, the Indemnitee shall cooperate with the Indemnitor and its counsel in such contest or defense, shall join in making any appropriate counterclaim or cross-claim in connection with the claim or demand, and shall provide such access to the books

and records of the Indemnitee as shall be necessary in connection with such defense or contest, all at the sole cost and expense of the Indemnitor. Notwithstanding that the Indemnitor is actively conducting such defense or contest, any claim or demand may be settled, compromised or paid by the Indemnitee without the consent of the Indemnitor; provided, however, that if such action is taken without the Indemnitor's consent, its indemnification obligations in respect of such claim shall thereby be nullified. Any such claim or demand may be settled, compromised, or paid by the Indemnitor without the Indemnitee's consent, so long as such settlement or compromise does not cause the Indemnitee to incur any present or future material cost, expense, obligation or liability of any kind or nature, or require any admission or action or forbearance from action by Indemnitee.

(3) CITY and HPARC hereby covenant and agree to assert any governmental immunity or defense that may be available to the CITY or HPARC, including, but not limited to, the Texas Tort Claims Act.

(4) In the event any claim or demand involves matters partly within or partly outside the scope of the indemnification by an Indemnitor hereunder, then the attorneys' fees, costs, and expenses of contesting or defending such claim or demand shall be equitably allocated between the Indemnitee and the Indemnitor.

(5) If a conflict of interest exists between the Indemnitee and the Indemnitor with respect to any claim or demand, the Indemnitee shall have the right to participate in the defense of such claim or demand with separate counsel chosen by the Indemnitee, subject to the reasonable approval of the Indemnitor, and paid by the Indemnitor.

C. DEVELOPER Liability. The obligations and liabilities of DEVELOPER hereunder are solely the obligations and liabilities of DEVELOPER and shall not be the obligations or liabilities of the any of the officers, directors, trustees, managers or employees of DEVELOPER. Neither the CITY nor HPARC may seek any remedy under or related to this Parking Garage Agreement against any of the officers, directors, trustees, managers or employees of DEVELOPER, none of whom shall have any personal liability for any indemnification obligation of DEVELOPER hereunder.

D. No Third Party Beneficiary. The provisions of this Article 8 are solely for the benefit of the CITY and HPARC and are not intended to create or grant any rights, contractual or otherwise, to any other Person.

E. Survival. The obligations contained in this Article 8 will survive the expiration or earlier termination of this Parking Garage Agreement.

F. Waiver of Consequential Damages. Each Party waives all present and future claims for consequential damages against the other Parties arising from or related to this Parking Garage Agreement and agrees that such waiver shall survive any termination of this Parking Garage Agreement.

ARTICLE 9. TERMINATION EVENTS, EVENTS OF DEFAULT, AND REMEDIES

Section 9.01 Automatic Termination Events; Termination of Parking Garage Sublease.

The Parties acknowledge that certain obligations and requirements of this Parking Garage Agreement are of fundamental importance to the Parties, such that the breach thereof justifies and requires the automatic termination of this Parking Garage Agreement and that no alternate remedy would appropriately protect the respective interests of the Parties. Each of the following is an automatic termination event that, when it occurs, will result in the automatic termination of this Parking Garage Agreement, other than with respect to those matters which survive termination as expressly stated in this Parking Garage Agreement, without notice or opportunity to cure by any Party:

- A. Termination of the Development Sublease; and
- B. The entry of a non-appealable ruling by a court of competent jurisdiction that (1) the undertakings of CITY pursuant to this Parking Garage Agreement are beyond the authority conferred upon CITY by any Applicable Laws, (2) the CITY did not have authority to enter into this Parking Garage Agreement, (3) prohibits the CITY from funding the City Contribution, or (4) determines that this Parking Garage Agreement is not otherwise valid or enforceable.

Upon any “automatic termination” of this Parking Garage Agreement under this Section 9.01, except resulting from a termination of the Development Sublease upon a default thereunder by DEVELOPER, the DEVELOPER shall be entitled to make a Payment/Reimbursement Request to the CITY for a City Contribution related to any additional costs or expenses required to be paid under the Construction Contract and which may become due or owing for Work performed under the Construction Contract prior to any such termination or which may become due or owing as a result of the termination of the Construction Contract upon the termination of

this Parking Garage Agreement under this Section 9.01 and upon payment of such Payment/Reimbursement Request, subject to any offset rights of CITY that then may exist, CITY shall have no further obligation to DEVELOPER.

If the DEVELOPER or the CITY elects to terminate this Parking Garage Agreement under the terms hereof (whether under this Section or any other Section for which the CITY or DEVELOPER are entitled to elect to terminate this Parking Garage Agreement), then the Parking Garage Sublease shall terminate and expire on such date and DEVELOPER and HPARC agree that the Parking Garage Premises shall automatically become a part of the Development Sublease Premises.

Section 9.02 Events of Default.

Each of the following will be an Event of Default:

A. Monetary Defaults. The failure or omission by either Party to pay amounts required to be paid pursuant to this Parking Garage Agreement when due hereunder, and such failure or omission has continued for sixty (60) days after written notice from the other Party (each such failure or omission referred to herein as a "**Monetary Default**"). It is hereby expressly acknowledged that Monetary Defaults include the failure of a Party to pay monetary damages awarded to the other Party in connection with an Event of Default other than a Monetary Default within sixty (60) days after written demand for payment following the date upon which a judgment from a court of competent jurisdiction or arbitration as herein provided becomes final and non-appealable.

B. Construction Defaults. The failure of DEVELOPER to achieve the construction milestones by the deadlines set forth in the Project Schedule, as same may be extended by Excusable Delay, and such failure continues for ninety (90) days after written notice from CITY, or the failure by DEVELOPER to complete restoration of the improvements following a Casualty by the deadlines set forth in Article 14, as applicable, and such failure continues for ninety (90) days as same may be extended by Excusable Delay, after written notice from CITY (each such failure referred to herein as a "**Construction Schedule Default**"). Notwithstanding the foregoing, the CITY shall have no right to terminate this Parking Garage Agreement due to a Construction Schedule Default unless either (1) such default continues for six (6) months and DEVELOPER does not present a credible plan within such six (6) month period to cure such default and satisfy such milestone prior to the second anniversary of the original deadline set

forth in the Project Schedule, as same may have been extended by Excusable Delay, or (2) DEVELOPER does not cure such default and satisfy such milestone prior to the second anniversary of the original deadline set forth in the Project Schedule, as same may have been extended by Excusable Delay.

C. Non-Monetary Defaults. The breach of any covenant of a Party under this License, any material representation or warranty of a Party is untrue when made or becomes untrue thereafter, or the failure or omission by either Party to observe, keep or perform any of the other terms, agreements or conditions set forth in this Parking Garage Agreement, and such breach, failure or omission has continued for sixty (60) days (or such longer period as may reasonably be required to cure such failure or omission, provided that cure has commenced and such Party is diligently and continuously proceeding to complete such cure) (the "***Non-Monetary Default Cure Period***") after written notice from the other Party (each such failure or omission referred to herein as a "***General Non-Monetary Default***").

D. Insolvency Defaults. The (1) filing for voluntary or involuntary bankruptcy by or against a Party that is not dismissed, withdrawn or otherwise concluded within sixty (60) days of such filing, a general assignment by a Party for the benefit of its creditors, (3) a Party admits in writing its inability to pay its debts when due, (4) a bill in equity or other proceeding for the appointment of a receiver of a Party or other custodian for the business or assets of a Party is filed and consented to by such Party; (5) a receiver or other custodian (permanent or temporary) of a Party's assets or property, or any part thereof, is appointed by any court of competent jurisdiction and such appointment has not been vacated within sixty (60) days of such appointment, (6) a Party shall make a transfer in fraud of its creditors or (7) the transfer of DEVELOPER's license in the Parking Garage Facilities (or any part thereof) under attachment, execution or similar legal process.

E. Termination of Existence. A Party's existence shall have terminated, whether voluntarily or involuntarily.

F. DEVELOPER causes the Construction Commencement Date to occur prior to the satisfaction of all Funding Conditions.

G. DEVELOPER causes the Construction Commencement Date to occur before all approvals by CITY or HPARC under this Parking Garage Agreement have been given.

Section 9.03 Remedies for Uncured Event of Default under Section 9.02.

After delivery of any required notice and expiration of any applicable cure period, any non-defaulting Party may pursue, at its option and without prejudice to any other rights and remedies provided for hereunder or by law, any right or remedy conferred upon or reserved to it under this Parking Garage Agreement and/or at law or in equity. The rights and remedies provided in this Parking Garage Agreement shall be in addition to and cumulative of all other rights and remedies available to a Party, including the remedy of specific performance, and the pursuit of one remedy will not be an election of a sole remedy and will not preclude the right to pursue any or all other available remedies, whether the same be remedies at law and/or equitable remedies, including injunction and relief in the form of mandamus. A Party's failure to exercise any right or remedy as provided in this Parking Garage Agreement shall not be deemed a waiver by such Party of any claim it may have by reason of the other Party's default or the interruption of construction of the Project for which DEVELOPER is responsible under the terms of this Parking Garage Agreement.

Section 9.04 Dispute Resolution.

With respect to any General Non-Monetary Default that CITY or HPARC asserts against DEVELOPER but DEVELOPER disputes in writing within thirty (30) days following receipt of written notice of such default from another Party hereto, such other Party or DEVELOPER may elect to refer such matter to binding arbitration to determine if a General Non-Monetary Default has occurred. If the arbitrator determines that a General Non-Monetary Default has occurred, then DEVELOPER shall cure such General Non-Monetary Default within the Non-Monetary Default Cure Period commencing upon the date of the arbitrator's decision. If DEVELOPER does not cure such General Non-Monetary Default within such Non-Monetary Default Cure Period, then CITY may, at its option, and in addition to and cumulatively with any other rights the CITY may have under this Parking Garage Agreement or at law or in equity, elect to terminate this Parking Garage Agreement, including the License, by giving notice thereof to DEVELOPER ("**General Non-Monetary Default Termination Election**"). If any such General Non-Monetary Default is cured before DEVELOPER's receipt of the General Non-Monetary Default Termination Election, neither CITY or HPARC shall have no right to terminate this Parking Garage Agreement on account of such General Non-Monetary Default.

Section 9.05 Election to Cure.

Either Party may cure, at its option and without any obligation or duty to do so, an Event of Default of the other Party, in which event the defaulting Party shall reimburse the non-defaulting Party on demand for all sums so expended to cure, including reasonable expenses incurred in connection therewith.

Section 9.06 Specific Enforcement.

Either Party may enforce, by all proper and legal suits and other means, its rights hereunder, at law, or in equity, including the collection of sums due hereunder, or specifically enforce performance of this Parking Garage Agreement by the defaulting Party.

Section 9.07 Waiver.

No waiver by a Party hereto of any violation or breach of any of the terms, provisions, conditions and covenants herein contained shall be deemed or construed to constitute a waiver of any other violation or breach of this Parking Garage Agreement. Forbearance any Party to enforce one or more of the remedies upon an Event of Default shall not be deemed or construed to constitute a waiver of such default. Further, it is covenanted and agreed that no waiver at any time of any of the provisions hereof by any Party shall be construed as a waiver of any of the other provisions hereof and that a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions.

Section 9.08 Attorneys' Fees.

In any case where a Party hereto employs attorneys to protect or enforce its rights hereunder and prevails, then the non-prevailing Party agrees to pay to the prevailing Party the reasonable attorney's fees incurred by the prevailing Party.

Section 9.09 Effect of Termination.

Upon a termination by any Party exercising a right of termination provided under this Parking Garage Agreement, each Party will thereafter have no further obligations under this Parking Garage Agreement other than the expressly surviving obligations provided herein.

ARTICLE 10. ASSIGNMENT; COLLATERAL ASSIGNMENT

Section 10.01 Assignment.

The Parties shall not assign (partially or in the entirety) any rights or duties under this Parking Garage Agreement without prior written consent of each other Party, such consent to not be unreasonably withheld; provided, however, that to the extent assignment is approved, the transfer of this Parking Garage Agreement or any of the documents referenced herein shall confer all rights and duties with respect to the development of the Project and the construction of the Parking Garage Facilities. Notwithstanding the balance of this Section, the DEVELOPER shall be entitled to assign its License rights under Article 7 hereof to its sublessees or assignees of portions of the Subleased Property under the Development Sublease, subject to DEVELOPER's compliance with the requirements and conditions set forth in the Development Sublease for assignment or subletting, without the prior written consent of the CITY or the further consent of HPARC; provided, however, DEVELOPER shall give prompt written notice the Parties upon any such assignment.

Section 10.02 Collateral Assignment.

Notwithstanding Section 10.01, above, HPARC and the CITY agree that the DEVELOPER shall have the right, without the further consent of the CITY or HPARC, to convey a security interest in all or a part of DEVELOPER's rights and interests under this Parking Garage Agreement, as security for any indebtedness that DEVELOPER may incur to fulfill its obligations hereunder or for the development the Development Sublease Improvements under the Development Sublease (a “**Developer Mortgage**”, and the owner or owners or holder or holders of all or any of which is a “**Developer Mortgagee**”), subject to compliance with the obligations imposed under this Section 10.02 upon such Developer Mortgagee. The Parties recognize that this Parking Garage Agreement does not create or grant to DEVELOPER any leasehold rights in and to the Parking Garage Premises or the Parking Garage Facilities.

Neither HPARC's right, title and interest in this Parking Garage Agreement, the Master Lease or the Parking Garage Premises nor the CITY's interest in this Parking Garage Agreement or the Parking Garage Sublease shall be subordinated to any Developer Mortgage. No enforcement by the Developer Mortgagee of any rights or remedies contained in the Developer Mortgage and provided by law for the benefit of any Developer Mortgagee that affect the DEVELOPER's rights under this Parking Garage Agreement shall be effective as between HPARC and the CITY and the Developer Mortgagee unless and until a notice of such Developer Mortgage is delivered to HPARC and the CITY in accordance with the notice provisions of this

Parking Garage Agreement, notwithstanding any other form of notice to HPARC or the CITY, actual or constructive. Upon notice to the CITY and HPARC as to DEVELOPER's intent to pledge its rights and interests under this Parking Garage Agreement as collateral for a loan secured by a Developer Mortgage, the HPARC Representative, the CITY Representative and the Developer Mortgagee shall enter into a mutually acceptable recognition and attornment instrument reasonably requested by the Developer Mortgagee providing for terms substantially similar to those set forth in Section 15(f) of the Development Sublease. Upon written request of the Developer Mortgagee, the HPARC Representative and the City Representative will execute, acknowledge and deliver to such Developer Mortgagee a written certificate in form reasonably acceptable to the HPARC Representative and the City Representative certifying (i) that attached to the certificate is a true and correct copy of the Parking Garage Agreement, (ii) to their respective actual knowledge, without duty of inquiry or investigation, this Parking Garage Agreement is in full force and effect (or, if not, so specifying), (iii) whether or not, to their respective actual knowledge, without duty of inquiry or investigation, a default or Event of Default by DEVELOPER has occurred which has not been cured (and if so, specifying the same) or whether or that conditions exist which (but for the passage of time or the giving of notice, or both) would constitute an Event of Default by DEVELOPER, and (iv) any other matters or state of facts regarding this Parking Garage Agreement which are reasonably requested by such Developer Mortgagee.

ARTICLE 11. FORCE MAJEURE EVENTS

Section 11.01 Mitigation.

Each Party shall use commercially reasonable efforts to mitigate any delay in performance by such Party under this Parking Garage Agreement caused by a Force Majeure Event.

Section 11.02 Notice.

To claim that its performance under this Parking Garage Agreement is prevented or delayed by a Force Majeure Event, a Party must provide notice to the other Parties within ten (10) business days after the claiming Party becomes aware of the occurrence of the Force Majeure Event. The notice shall describe the facts and circumstances of the Force Majeure

Event and the anticipated effect thereof on the performance of such Party's obligations, duties, covenants and agreements under this Parking Garage Agreement, which notice shall be supplemented from time to time upon request. The claiming Party shall also give notice to the other Parties of its ability to resume performance under this Parking Garage Agreement within a reasonable time following termination of the Force Majeure Event.

Section 11.03 Effect of Force Majeure Event.

For so long as a Party is unable to perform a duty, obligation, covenant or agreement under this Parking Garage Agreement because of the existence or the effect of a Force Majeure Event, other than an obligation to pay or cause to be paid money, and has provided the notices required by Section 11.02, above, the Party's performance of such duty, obligation, covenant or agreement will be suspended.

ARTICLE 12. SPECIAL PROVISIONS CONCERNING CITY

Section 12.01 City Council Approval.

Notwithstanding anything to the contrary set forth in this Parking Garage Agreement, HPARC and DEVELOPER recognize and agree that any contracts or agreements contemplated to be entered into by CITY under the terms of this Parking Garage Agreement which are not attached as exhibits to this Parking Garage Agreement will be subject to the prior approval of City Council, if the approval of the City Council is required under the terms of City's Charter or other Applicable Laws. Further, any approvals required of CITY for any assignment of this Parking Garage Agreement will be subject to the prior approval of City Council.

Section 12.02 Capacity of CITY.

Without in any way limiting or exercising the obligation, duties, covenants and agreements of CITY as a Party to this Parking Garage Agreement, the Parties agree that any action, omission or circumstance arising out of the exercise or performance of CITY'S required Governmental Functions shall not cause or constitute a default by CITY under this Parking Garage Agreement or any other Project document or give rise to any rights or claims for damages or injury against CITY in its capacity as a Party to this Parking Garage Agreement. DEVELOPER'S remedies for any injury, damage or claim resulting from any other action, omission or circumstance shall be governed by the laws and regulations concerning claims

against CITY as a governmental entity. The provisions hereof shall survive any termination of this Parking Garage Agreement.

Section 12.03 Capacity of Persons Acting on Behalf of CITY.

Notwithstanding anything to the contrary in this Parking Garage Agreement, all references in this Parking Garage Agreement to the City Representative or other employees, agents, representatives, contractors and the like of CITY shall refer only to such persons or entities acting on behalf of CITY in its capacity as a Party to this Parking Garage Agreement, and all such references specifically exclude any employees, agents, representatives, contractors, elected officials and the like acting in connection with the performance of CITY'S required Governmental Functions.

Section 12.04 No Limitation on CITY'S Governmental Functions.

The Parties hereto acknowledge that no representation, warranty, consent, approval or agreement in this Parking Garage Agreement by CITY (as a Party to this Parking Garage Agreement) shall be binding upon, constitute a waiver by or estop CITY from exercising in good faith any of its rights, powers or duties in its required Governmental Functions. For example, approval by CITY of this Parking Garage Agreement shall not constitute satisfaction of any requirements of, or the need to obtain any approval by, CITY in the exercise of its Governmental Functions or as may be required under any Applicable Laws.

Section 12.05 Limitation on Claims.

The City Contribution will be payable in whole or in part from the net proceeds of financial obligations issued by CITY, and no claim for payment of any amount of the City Contribution shall be made, claimed or permitted against any other funds, properties, assets or the general credit of CITY. CITY shall have no obligation to pay any amount in excess of the Market Street City Contribution, if the Market Street Garage is constructed, and the South Alamo City Contribution, if the South Alamo Garage is constructed.

Section 12.06 Goods and Services Contract.

A. CITY passed City Ordinance 2012-11-01-0856 (the "**Ordinance**") and, in accordance with the Ordinance, the CITY adopted P3 Program and the P3 Program Guidelines for the purposes of allowing the CITY and/or its designees to enter into public-private partnerships for the development of land for the CITY and/or its designees by encouraging

private entity participation in various qualifying projects, sharing the risk and expense between the CITY and the contracting private entity and to allow the CITY to participate in cash flow performance by organizing public-private partnerships.

B. These public-private partnerships are documented through a comprehensive development agreement between the CITY and/or its designees and a private sector person or entity.

C. Through this comprehensive development agreement, the assets and professional skills of each sector (public and private) are shared to deliver a facility and/or service (e.g., planning, designing, financing, constructing, operating, maintaining, and owning) for the use of the general public.

D. The CITY may identify qualifying projects consisting of properties owned by the CITY for inclusion in the P3 Program.

E. The CITY established the HPPFC to assist CITY in financing, refinancing or providing public facilities and other facilities directly related thereto, as requested by CITY, relating to the renovation, expansion, redevelopment, construction, acquisition, provisions, conveyance and leasing of land that was formerly a part of Hemisfair, a world exposition recognized by the Bureau International des Expositions (“*Hemisfair*”), and to serve as a land bank.

F. The CITY conveyed fee simple title to certain parcels of land in Hemisfair to HPPFC to further the purposes for which HPPFC was created.

G. The CITY created HPARC to manage and oversee the redevelopment and management of Hemisfair.

H. The CITY has identified Hemisfair as a qualifying project and has appointed HPARC to manage and oversee the redevelopment and management of Hemisfair and, as its designee, to enter into public-private partnerships for the development of the Hemisfair area. HPARC was created to achieve the CITY’s goal of revitalizing the Hemisfair area and creating a spectacular public space in the heart of San Antonio, complete with plazas, courtyards, green spaces, art and cultural amenities, residences and local businesses.

I. To facilitate the goals of the CITY, HPPFC, and HPARC and the corresponding development of certain parcels of land in the Hemisfair Northwest Quadrant Public Private Development (which parcels are partially the subject of this Lease), HPARC presented a request

for qualifications (the “**RFQ**”) soliciting a private sector partner who can deliver to the CITY and HPARC an ambitious, inspiring and pragmatic plan to develop the Property, which RFQ contemplated the development of the Parking Garage Facilities for the benefit of the CITY and HPARC and the Hemisfair.

J. In response to the RFQ, DEVELOPER submitted a response dated August 11, 2015 for development of certain parcels of land in the Hemisfair Northwest Quadrant Public Private Development.

K. After receipt of multiple responses to the RFQ, HPARC presented a Request for Proposals (as supplemented, the “**RFP**”) seeking the provision of services by a high quality regional/national urban real estate developer to perform the services of designing, financing, contracting and operating improvements on the Market Street Tract and the South Alamo Tract, including the development of the Parking Garage Facilities. Any agreement for the provision of the services would ultimately be included in a comprehensive development agreement (of the form referenced in Section 12.06C above).

L. HPARC issued the RFP seeking assistance in achieving its goal of creating a “walkable urban district that offers recreational, cultural and educational experiences across multiple parks, arts plaza, mid-and-high-rise mixed use development.”

M. On February 23, 2016 HPARC informed DEVELOPER that, as a result of the submissions by DEVELOPER to the RFP and the RFQ, it was selected as the party with whom HPARC would enter into negotiations with for the development of the Market Street Tract and the South Alamo Tract. The development of the properties by HPARC will be accomplished, in part, through long-term leases.

N. As part of DEVELOPER’s services, DEVELOPER will procure and provide development services for HPARC, for the benefit thereof and the benefit of the CITY, and currently intends to do so, in part, by entry into and performance of this Parking Garage Agreement and the designing, facilitating the construction of, contributing to the cost of development of and causing the construction of the Parking Garage Facilities servicing the Hemisfair Park and downtown San Antonio area.

O. This Parking Garage Agreement is a comprehensive development agreement described in Paragraph C above and sets forth the terms and conditions pursuant to which

DEVELOPER will provide the goods and services requested by HPARC, for the benefit of the CITY, namely, planning, designing, financing, and constructing the Parking Garage Facilities.

P. HPARC and the CITY and DEVELOPER expressly acknowledge and agree that, in accordance with this Parking Garage Agreement, DEVELOPER is providing goods and services directly to and for the benefit of HPARC and the CITY, and the goods and services provided by DEVELOPER to HPARC directly and substantially benefit HPARC and the CITY.

Q. The development of the Parking Garage Facilities will provide revenues to the CITY and allow for the use and enjoyment of the Hemisfair civic park by the residents of the CITY and visitors of the Hemisfair park.

R. Without limiting the scope of the provisions of goods and services by DEVELOPER to HPARC and the CITY under the terms of this Parking Garage Agreement and the transactions contemplated by this Parking Garage Agreement, HPARC and the CITY and DEVELOPER agree that the goods and/or services are being provided in conjunction with: (1) the improvements to be planned, designed, financed, constructed, and maintained in part by DEVELOPER under the terms of this Parking Garage Agreement; and (2) pursuant to the transactions contemplated hereby, to provide revenue to the CITY from the Parking Garage to be designed, developed, constructed and delivered to HPARC, for use by the CITY, pursuant to the terms and conditions of this Parking Garage Agreement.

ARTICLE 13. CASUALTY DURING PROJECT DEVELOPMENT

If, at any time during the Term but prior to Substantial Completion of the Project, there is any Casualty to the Project or any part thereof, then DEVELOPER shall (A) use all reasonable efforts to promptly secure the area of damage or destruction to safeguard against injury to persons or property and, promptly thereafter, remediate any hazard and restore the Project to a safe condition whether by repair or by demolition, removal of debris and screening from public view, and (B) to the extent allowed by law and subject to the actual receipt of adequate insurance proceeds, promptly commence and thereafter proceed with reasonable diligence (subject to a reasonable time allowance for the purpose of adjusting the insurance loss) to repair, restore, replace or rebuild the Project as nearly as practicable to a condition which is at least substantially equivalent to that existing immediately prior to such damage or destruction, to the extent of available insurance proceeds.

ARTICLE 14. CASUALTY FOLLOWING SUBSTANTIAL COMPLETION

Section 14.01 Minor Casualty Event.

In the event a Parking Garage Facilities (including any Market Street Structural Support and South Alamo Structural Support) should be damaged by fire or other casualty and, in the CITY's reasonable opinion, supported by the opinion of an independent qualified contractor, the rebuilding or repairs can be completed within two hundred seventy (270) days after the commencement of repairs to or rebuilding of the Parking Garage Facilities (a "***Minor Casualty Event***"), or if the damage should be more serious but neither party elects to terminate this License pursuant to the balance of this Section 9.01, then the CITY shall as promptly as reasonably possible (and in all events within 120 days) either (a) commence the repair of such damage (including as to any Market Street Structural Support and South Alamo Structural Support), or (b) commence the construction replacement Parking Garage Facilities in the same location (including as to any Market Street Structural Support and South Alamo Structural Support), in each case so that the DEVELOPER shall have access to the relevant number of Licensed Parking Spaces provided for herein in a condition of similar quality, character and utility for DEVELOPER's purposes.

Section 14.02 Major Casualty Event. In the event the Parking Garage Facilities should be damaged by fire or other casualty and, in the CITY's reasonable opinion, supported by the opinion of an independent qualified contractor, the rebuilding or repairs cannot be completed within two hundred seventy (270) days after the commencement of repairs to or rebuilding of the Parking Garage Facilities (a "**Major Casualty Event**"), the CITY shall deliver such determination, supported by the opinion of an independent qualified contractor, within sixty (60) days after such event. Within thirty (30) days after delivery of such a notice either Party shall be entitled to terminate this License as to the relevant Parking Garage Facilities on the Market Street Tract, the South Alamo Tract or both, as applicable, upon written notice to the other (such notice being a "**Casualty Termination Notice**").

Section 14.03 Restoration.

Should neither Party timely terminate this License upon a Major Casualty Event under the immediately preceding paragraph, as to the relevant damaged Parking Garage Facilities, the CITY shall either (a) commence the repair of such damage (including as to any Market Street

Structural Support and/or South Alamo Structural Support as relevant), (b) commence the construction replacement Parking Garage Facilities in the same location (including as to any Market Street Structural Support and/or South Alamo Structural Support, as relevant), in each case so that the DEVELOPER shall have access to the relevant number of Licensed Parking Spaces provided for herein in a condition of similar quality, character and utility for DEVELOPER's purposes. To the extent that the costs of repair and/or reconstruction shall exceed the available insurance proceeds, the DEVELOPER shall pay the DEVELOPER's Percentage of such costs as the work progresses.

Section 14.04 Termination In Lieu of Restoration.

Upon timely delivery of a Casualty Termination Notice by either Party as to one or both Parking Garage Facilities and the related termination of this License the Parking Garage Sublease between the CITY and HPARC shall terminate and expire contemporaneously with this License as to the Market Street Tract and/or the South Alamo Tract, as relevant. In such an event, as set forth in the Development Sublease and the Parking Garage Sublease, the relevant South Alamo Tract and/or Market Street Tract for which this License and the Parking Garage Sublease was terminated shall become and be deemed "Premises" under the Development Sublease, and DEVELOPER shall be entitled but not obligated to commence with any desired repairs or reconstruction of the Parking Garage Facilities for the use of substantially the same number of Parking Spaces as the number of Licensed Parking Spaces hereunder or the development of an alternative parking structure and facility with substantially the same number of Parking Spaces as the number of Licensed Parking Spaces hereunder. In the event the DEVELOPER does commence with repairs or reconstruction of the Parking Garage Facilities or any alternative parking structure and facility pursuant to the previous sentence, then DEVELOPER shall be entitled to the portion of the proceeds of the insurance maintained by the CITY for the purpose of repair or reconstruction of the Parking Garage Facilities (in a number of Vehicle Parking Spaces substantially similar to the number of Licensed Parking Spaces hereunder) and the CITY hereby assigns such proceed thereto; *provided, however*, that any proceeds remaining in excess after the completion of such repairs or reconstruction shall be distributed to the CITY after reimbursement to the DEVELOPER for any out of pocket expenses incurred in such repair or reconstruction activities, such as any required deductible payment.

ARTICLE 15. CONDEMNATION

Section 15.01 Termination Due to Total Taking.

If, during the Term, all or substantially all of the Parking Garage Facilities is condemned or taken by any legal entity having the power of eminent domain (“*Condemning Authority*”), or is transferred in lieu thereof (collectively, a “*Taking*” or “*Taken*”, as applicable), this License shall likewise terminate as of the date the Parking Garage Premises vests in the Condemning Authority. Such termination will not benefit the Condemning Authority and will be without prejudice to the rights of either CITY or DEVELOPER to recover just and adequate compensation from the Condemning Authority for their respective interests.

Section 15.02 Partial Taking.

If, during the Term, any portion of the Parking Garage Facilities is Taken and this License is not terminated as provided in Section 10.01 above, then (a) this License will terminate only as to the portion of the Parking Garage Facilities so Taken as of the date that title to such portion of the Parking Garage Premises vests in such Condemning Authority (provided, however, that such termination will not benefit such Condemning Authority and will be without prejudice to the rights of either CITY or DEVELOPER to recover just and adequate compensation from the Condemning Authority), and (b) this License will not terminate as to the portion of the Parking Garage Premises not Taken.

ARTICLE 16. MISCELLANEOUS PROVISIONS

Section 16.01 Notices.

The Parties contemplate that they will engage in informal communications with respect to the subject matter of this Parking Garage Agreement. However, any formal notices or other communications required or permitted to be given by one Party to another by this Parking Garage Agreement shall be given in writing addressed to the Party to be notified at the address set forth below for such Party, (a) by delivering the same in person, (b) by depositing the same in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the Party to be notified, or (c) by depositing the same with a nationally recognized courier service guaranteeing “next day delivery,” addressed to the Party to be notified, or (d) by sending the same by telefax with confirming copy sent by mail. Notice deposited in the United

States mail in the manner hereinabove described shall be deemed effective from and after the date following such deposit. Notice given in any other manner shall be effective only if and when received by the Party to be notified. For the purposes of notice, the addresses of the Parties, until changed as provided below, shall be as follows:

CITY: City of San Antonio
100 Military Plaza, 1st Floor
San Antonio, Texas 78207
Attention: City Manager

With copies to: City Clerk
100 Military Plaza, 2nd Floor
San Antonio, Texas 78205, and

City Attorney
100 Military Plaza, 3rd Floor
San Antonio, Texas 78205

DEVELOPER: 2330 N Loop 1604 W
P.O. Box 33240
San Antonio, TX 78265-3240
Attention: Mr. Rene Garcia

With a copy to: Hornberger Fuller & Garza Incorporated
Attn: Drew R. Fuller, Jr.
7373 Broadway, Suite 300
San Antonio, Texas 78209

HPARC: Hemisfair Park Area Redevelopment Corporation
Attn: Chief Executive Officer
434 South Alamo
San Antonio, Texas 78205

With a copy to: Golden Steves Cohen & Gordon LLP
Attn: Stephen L. Golden
300 Convent Street, Suite 2600
San Antonio, Texas 78205

The Parties may, from time to time, change their respective addresses, and each has the right to specify as its address any other address within the United States of America by giving at least five days written notice to the other Parties.

Section 16.02 Business Days.

If any date or any period provided in this Parking Garage Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating the notice shall be extended to the first business day following such Saturday, Sunday, or legal holiday.

Section 16.03 Time.

Time is of the essence in all things pertaining to the performance of this Parking Garage Agreement.

Section 16.04 Severability.

If any provision of this Parking Garage Agreement is illegal, invalid, or unenforceable under present or future laws such that the legitimate expectations of any Party hereunder is incapable of being realized and cannot be reformed to validly and legally meet such thwarted expectations, then, and only in that event, it is the intention of the Parties hereto that this Parking Garage Agreement shall terminate in all respects. In any other event, it is the intention of the Parties that the remainder of this Parking Garage Agreement will not be affected.

Section 16.05 Waiver.

Any failure by a Party hereto to insist upon strict performance by the other Party of any material provision of this Parking Garage Agreement shall not be deemed a waiver thereof or of any other provision hereof, and such Party will have the right at any time thereafter to insist upon strict performance of any and all of the provisions of this Parking Garage Agreement.

Section 16.06 Reservation of Rights.

To the extent not inconsistent with this Parking Garage Agreement, each Party reserves all rights, privileges, and immunities under applicable laws.

Section 16.07 Further Documents.

The Parties agree that at any time after execution of this Parking Garage Agreement, they will, upon request of another Party, execute and deliver such further documents and do such further acts and things as any other Party may reasonably request in order to effectuate the terms of this Parking Garage Agreement.

Section 16.08 Incorporation of Exhibits and Other Documents by Reference.

All exhibits and other documents attached to or referred to in this Parking Garage Agreement are incorporated herein by reference for the purposes set forth in this Parking Garage Agreement.

Section 16.09 Governing Law; Venue.

THIS PARKING GARAGE AGREEMENT, AND THE ACTIONS OF THE PARTIES HEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS (EXCLUDING PRINCIPLES OF CONFLICTS OF LAW). VENUE SHALL BE IN BEXAR CITY, TEXAS.

Section 16.10 Attorneys' Fees.

If any Party to this Parking Garage Agreement defaults in the performance of any covenants, obligations or agreements of such Party contained in this Parking Garage Agreement and the other Party thereto places the enforcement of this Parking Garage Agreement, or any part thereof, or the exercise of any other remedy therein provided for such default, in the hands of an attorney who files suit upon the same (either by direct action or counterclaim), the non-prevailing Party shall pay to the prevailing Party its reasonable attorneys' fees and costs of court. In addition to the foregoing award of attorneys' fees to the prevailing Party, the prevailing Party shall be entitled to its attorneys' fees incurred in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Parking Garage Agreement into any judgment on this Parking Garage Agreement.

Section 16.11 No Oral Modification.

Any agreement hereafter made shall be ineffective to change, waive, modify, discharge, terminate, or effect an abandonment of this Parking Garage Agreement in whole or in part unless such agreement is in writing and signed by the Party against whom such charge, waiver, modification, discharge, termination or abandonment is sought to be enforced.

Section 16.12 No Party Deemed Drafter.

Each Party has thoroughly reviewed and revised this Parking Garage Agreement (including each exhibit hereto) and has had the advice of counsel prior to execution hereof, and the Parties agree that none of them shall be deemed to be the drafter hereof.

Section 16.13 Multiple Counterparts.

This Parking Garage Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but taken together shall constitute only one document. The Parties agree to circulate for execution all executed such counterparts in order that each Party may obtain a counterpart executed by all Parties.

Section 16.14 Entire Agreement, Amendment and Waiver, Survival.

This Parking Garage Agreement, together with the exhibits hereto and the documents referenced herein, constitute the entire agreement of the Parties hereto with respect to the subject matter hereof and supersedes all prior written and oral agreements and understandings with respect to such subject matter. Neither this Parking Garage Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by the Party against which the enforcement of the termination, amendment, supplement, waiver or modification shall be sought, and in the case of CITY, approved by action of City Council. No failure or delay of any Party in exercising any power or right under this Parking Garage Agreement will operate as a waiver thereof, nor will any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right of power, preclude any other or future exercise thereof or the exercise of any other right or power. All of the representations and warranties of each Party contained in this Parking Garage Agreement shall survive the execution, delivery and acceptance of this Parking Garage Agreement and any termination hereof. Unless otherwise set forth in this Parking Garage Agreement, all agreements of the Parties contained in this Parking Garage Agreement which must survive to afford each respective Party the anticipated benefits of such agreements shall likewise survive, whether or not identified in this Parking Garage Agreement to so survive.

Section 16.15 Meaning.

All terms and words used in this Parking Garage Agreement, regardless of the number and gender in which they are used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context or sense of this Agreement or any section or clause herein may require, the same as if such words had been fully and properly written in number and gender. Unless expressly stated otherwise, references to "include" or "including" in this Parking Garage Agreement (and exhibit hereto) means

"including, without limitation." The terms "hereto," "herein" or "hereunder" refer to this Parking Garage Agreement as a whole and not to any particular Article or Section hereof.

Section 16.16 Headings.

The headings of the various articles, sections and other subdivisions of this Parking Garage Agreement are for convenience of reference only and shall not modify, define or limit any of the terms or provisions of this Parking Garage Agreement.

Section 16.17 Parties in Interest.

The terms of this Parking Garage Agreement shall be binding upon, and insure to the benefit of, the Parties hereto and their successors and permitted assigns. Nothing in this Parking Garage Agreement, whether express or implied, shall be construed to give any person (other than the Parties hereto and their successors and permitted assigns and as expressly provided herein) any legal or equitable right, remedy or claim under or in respect of this Parking Garage Agreement or any covenants, conditions or provisions contained herein or any standing or authority to enforce the terms and provisions of this Parking Garage Agreement.

Section 16.18 Notices of Changes in Fact.

Promptly after either Party becomes aware of same, such Party will notify the other Party of:

A. Any change in any material fact or circumstance represented or warranted by such Party in this Parking Garage Agreement; and

B. Any default, event or condition which, with notice or lapse of time or both, could become a breach by such Party under this Parking Garage Agreement, specifying in each case, the nature thereof and what action the Party has taken and proposes to take with respect thereto.

[Remainder of page intentionally blank; signatures appear on following pages.]

EXECUTION COPY

THEREFORE, IN WITNESS WHEREOF, the Parties have executed this Parking
Garage Development Agreement and License as of this _____ day of February, 2017.

DEVELOPER:

ZH DOWNTOWN DEVELOPMENT
COMPANY, LLC

By:  _____

Name: Rene M. Garcia

Title: VP Development

HPARC:

**HEMISFAIR PARK AREA
REDEVELOPMENT CORPORATION**

By: _____
Andres Andujar, Chief Executive Officer

CITY:

CITY OF SAN ANTONIO, TEXAS

By _____

Name: _____

Title: _____

Date: _____

ATTEST:

City Clerk

APPROVED:

City Attorney

EXHIBIT A TO PARKING GARAGE DEVELOPMENT AGREEMENT
CERTIFICATE OF COMMENCEMENT OF CONSTRUCTION

DATE: _____, 20__

AFFIANT: ZH DOWNTOWN DEVELOPMENT COMPANY, LLC
 2330 N. Loop 1604 W
 San Antonio, Texas 78265-3240

Unless defined herein, each capitalized term or phrase used in this Certificate of Commencement of Construction ("**Certificate of Commencement of Construction**") will have the meaning ascribed to such term or phrase in the Parking Garage Development Agreement and License (the "**Parking Garage Agreement**") dated February __, 2017, between Affiant, City of San Antonio, Texas ("**CITY**") and Hemisfair Park Area Redevelopment Corporation ("**HPARC**"), which is incorporated herein by reference for all purposes.

The person signing this Certificate of Commencement of Construction has been duly sworn. Under oath, the undersigned swears the following information is true and correct:

1. Representations of Affiant. The undersigned person has been duly authorized by Affiant to sign this Certificate of Commencement of Construction as its agent and representative and deliver it to CITY and to HPARC in accordance with the terms of the Parking Garage Agreement.

2. Description of Construction Obligations. Affiant entered into the Parking Garage Agreement and agreed to commence construction the *[Market Street Garage/South Alamo Garage]* in accordance with the Project Schedule. The Construction Commencement Date for the *[Market Street Garage/South Alamo Garage]* has occurred, being _____, 201__.

3. Liability for False Statements. Affiant is aware that CITY and HPARC are relying upon the truth and accuracy of this Certificate of Commencement of Construction and that Affiant will be liable to CITY and to HPARC for all damages, attorney's fees, and other expenses incurred because of any false statement contained in this Certificate of Commencement of Construction. For the purpose of clarity, the individual executing this Certificate below is executing the same in his or her capacity as an authorized representative of Affiant and on behalf of the Affiant only, and not in their individual capacity, and shall have no personal liability for any representations set forth herein.

AFFIANT:

Printed Name _____

SWORN AND SUBSCRIBED to before me on this _____ day of _____, 201__, by _____.

[Seal]

Notary Public, State of Texas

EXHIBIT B TO PARKING GARAGE DEVELOPMENT AGREEMENT

CERTIFICATE OF SUBSTANTIAL COMPLETION

DATE: _____, 201__

AFFIANT: ZH DOWNTOWN DEVELOPMENT COMPANY, LLC
 2330 N. Loop 1604 W
 San Antonio, Texas 78265-3240

Unless defined herein, each capitalized term or phrase used in this Certificate of Substantial Completion ("**Certificate of Substantial Completion**") will have the meaning ascribed to such term or phrase in the Parking Garage Development Agreement and License (the "**Parking Garage Agreement**") dated February __, 2017, between Affiant, City of San Antonio, Texas ("**CITY**") and Hemisfair Park Area Redevelopment Corporation ("**HPARC**"), which is incorporated herein by reference for all purposes.

The person signing this Certificate of Substantial Completion has been duly sworn. Under oath, the undersigned swears the following information is true and correct:

1. Representations of Affiant. The undersigned person has been duly authorized by Affiant to sign this Certificate of Substantial Completion as its agent and representative and deliver it to CITY and to HPARC in accordance with the terms of the Parking Garage Agreement.

2. Description of Construction Obligations. Affiant entered into the Parking Garage Agreement and agreed to construct the [*Market Street Garage/South Alamo Garage*], as therein provided. Construction of the Improvements commenced on _____, 201__. The [*Market Street Garage/South Alamo Garage*] was Substantially Complete on _____, 201__.

3. Liability for False Statements. Affiant is aware that CITY and HPARC are relying upon the truth and accuracy of this Certificate of Substantial Completion and that Affiant will be liable to CITY and to HPARC for all damages, attorney's fees, and other expenses incurred because of any untruthful or inaccurate statement contained in this Certificate of Substantial Completion. For the purpose of clarity, the individual executing this Certificate below is executing the same in his or her capacity as an authorized representative of Affiant and on behalf of the Affiant only, and not in their individual capacity, and shall have no personal liability for any representations set forth herein.

AFFIANT:

Printed Name _____

SWORN AND SUBSCRIBED to before me on this _____ day of _____, 201__, by _____.

[Seal]

Notary Public, State of Texas

EXECUTION COPY

EXHIBIT C TO PARKING GARAGE AGREEMENT

DESCRIPTION OF PARKING GARAGE PREMISES

[ATTACHED]

LEGAL DESCRIPTION OF MARKET STREET TRACT

METES AND BOUNDS DESCRIPTION

FOR

LAND BANK TRACT 1

A 2.140 acre, or 93233 square feet more or less, tract of land comprised of all of that 1.484 acre tract described in deed to the Hemisfair Park Public Corporation recorded in Volume 16485, Pages 42-49 and as Lease Tract 1 to Hemisfair Park Area Redevelopment Corporation in deed recorded in Volume 17362, Pages 2119-2137, both of the Official Public Records of Real Property of Bexar County, Texas said 2.140 acres being 1.439 acres out of Lot 14, Block 3 and 0.045 acres out of the Public Waterway in Block 3 of the H.B. Gonzalez Convention Center Subdivision recorded in Volume 9677, Pages 10-12 of the Deed and Plat Records of Bexar County, Texas and 0.656 acre tract surveyed previously out of the Market Street right-of-way established in the Civic Center Project No 5 Tex. R-83 Urban Renewal Agency City of San Antonio subdivision recorded in Volume 9518, Pages 123-126 of the Deed and Plat Records of Bexar County, Texas and all in New City Block 13814 of the City of San Antonio, Bexar County, Texas. Said 2.140 acre tract being more fully described as follows, with bearings based on the Texas Coordinate System established for the South Central Zone from the North American Datum of 1983 NAD 83 (NA2011) epoch 2010.00;

BEGINNING: At an "+" in concrete set for the north corner of said 1.484 acre tract, being an angle of that 8.926 acre tract as described in Deed of dedication recorded in Volume 16485, Pages 22-41 and on the southwest right-of-way line of the said Market Street right-of-way, a 125-foot right-of-way as established in said Civic Center Project No 5 Tex. R-83 Urban Renewal Agency City of San Antonio subdivision, and being the west corner of said 0.656 acre tract and being S 75°00'34", a distance of 165.78 feet from a ½" iron rod with cap marked "Pape-Dawson" set for a curve return of said right-of-way and said Lot 14;

THENCE: N 14°59'26" E, over and across said Market Street right-of-way with the northwest line of said 0.656 acre tract, a distance of 59.40 feet to the north corner of said 0.656 acre tract and the herein described tract;

THENCE: S 75°00'34" E, over and across said Market Street right-of-way with the northeast line of said 0.656 acre tract, a distance of 481.25 feet to the east corner of said 0.656 acre tract;

THENCE: S 15°01'04" W, over and across said Market Street right-of-way with the southeast line of said 0.656 acre tract, at 59.40 feet passing a brass nail stamped "Pape-Dawson set for an angle corner of said 1.484 acre tract and of said 8.926 acre tract, and being the south corner of said 0.656 acre tract, and continuing with a southeast line of said 1.484 acre tract a total distance of 145.40 feet to a brass nail stamped "Pape-Dawson set for a south corner of said 1.484 acre tract and a reentrant corner of said 8.926 acre tract, and being the southernmost corner of the herein described tract;

THENCE: Continuing with the line of said 1.484 acre tract and said 8.926 acre tract the following bearings and distances:

N 75°00'34" W, a distance of 111.81 feet to a point;

S 15°01'04" W, a distance of 69.00 feet to a point;

N 75°00'34" W, a distance of 297.97 feet to a point;

N 33°54'50" W, a distance of 94.71 feet to a point;

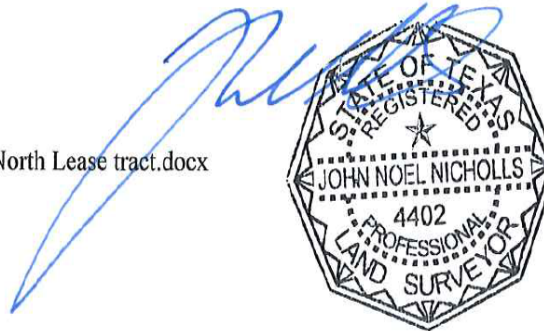
THENCE: N 14°59'26" E, a distance of 92.75 feet to the POINT OF BEGINNING, and containing 2.140 acres in the City of San Antonio, Bexar County, Texas. Said tract being described in accordance with a survey made on the ground and a survey description and map prepared under job number 7645-30 by Pape-Dawson Engineers, Inc.

PREPARED BY: Pape-Dawson Engineers, Inc.

DATE: January 19, 2017

JOB NO. 7645-30

DOC. ID. N:\CIVIL\7645-30\Word\7645-30 North Lease tract.docx



LEGAL DESCRIPTION OF SOUTH ALAMO TRACT

METES AND BOUNDS DESCRIPTION

FOR

LAND BANK TRACT 2

A 2.254 acre, or 98,191 square feet more or less, tract of land comprised of 1.542 acres and 0.192 acres out of Lot 14, Block 3 and all of that called 0.0875 acres, surveyed as 0.094 acres, dedication to the right-of-way of South Alamo Street of the H.B. Gonzalez Convention Center subdivision recorded in Volume 9677, Pages 10-12 of the Deed and Plat Records of Bexar County, Texas, and 0.457 acres of a remaining portion of Lot 12, Block 3 of the Civic Center, Project No. 5 Tex R-83 Urban Renewal Agency City of San Antonio, Texas subdivision recorded in Volume 9518, Pages 122-126 of the Deed and Plat Records of Bexar County, Texas, and all but said 0.094 acres being also out of that 3.360 acre tract described in deed to Hemisfair Park Public Facilities Corporation recorded in Volume 16485, Pages 50-60 and as Lease Tract 2 to the Hemisfair Park Area Redevelopment Corporation recorded in Volume 17362, Pages 2119-2137 both of the Official Public Records of Real Property of Bexar County, Texas. And said 2.254 acres being in New City Block 13814 of the City of San Antonio, Bexar County, Texas. Said 2.254 acre tract being more fully described as follows, with bearings based on the Texas Coordinate System established for the South Central Zone from the North American Datum of 1983 NAD 83 (NA2011) epoch 2010.00;

BEGINNING: At a brass nail stamped "Pape-Dawson" on the east right-of-way line of said South Alamo Street, a variable width public right-of-way, at the southwest corner of said 0.094 acre right-of-way dedication and of said H.B. Gonzalez Convention Center subdivision, said brass nail set for a corner of said 3.360 acre tract;

THENCE: With the west line of said 0.094 acre right-of-way dedication the following bearings and distances:

N 17°29'05" E, a distance of 259.15 feet to a brass nail set for a point of curvature;

Along a tangent curve to the left, said curve having a radius of 863.00 feet, a central angle of 08°16'32", a chord bearing and distance of N 13°20'49" E, 124.54 feet, for an arc length of 124.65 feet to a point of cusp and northernmost corner of the herein described tract at an angle of Lot 14 of said H.B. Gonzalez Convention Center subdivision and said 3.360 acre tract, being also an angle of that 8.926 acre tract as described in Deed of Dedication recorded in Volume 16485, Pages 22-41 of the Official Public Records of Real Property of Bexar County, Texas;

THENCE: Departing said right-of-way and with the common line of said 3.360 acre tract and said 8.926 acre tract the following bearings and distances:

Along a non-tangent curve to the right, said curve having a radial bearing of S 76°33'23" W, a radius of 113.50 feet, a central angle of 17°43'06", a chord bearing and distance of S 04°35'04" E, 34.96 feet, for an arc length of 35.10 feet to a set ½" iron rod with cap marked "Pape-Dawson";

S 75°00'34" E, a distance of 115.70 feet to a point;

S 33°54'50" E, a distance of 94.26 feet to a point;

S 14°59'26" W, at 301.97 feet passing a south line of said Lot 14, and continuing over and across said Lot 12 for a total distance of 349.64 feet to a set mag nail and washer stamped "Pape-Dawson";

S 75°00'34" E, at 24.91 feet passing a west line of said Lot 14 and continuing over and across said Lot 14 for a total distance of 89.59 feet to a point;

THENCE: Departing said line and over and across said Lot 14 and said 3.360 acre tract the following bearings and distances:

S 15°01'04" W, a distance of 115.67 feet to a point;

S 47°30'40" W, a distance of 34.14 feet to a point;

N 41°52'18" W, at 55.32 feet passing the aforementioned west line of said Lot 14, and continuing over and across said Lot 12 for a total distance of 139.77 feet to a point;

THENCE: Continuing over and across said Lot 12 and said 3.360 acre tract the following bearings and distances:

N 67°03'01" W, a distance of 21.88 feet to a point;

N 14°21'21" E, a distance of 21.22 feet to a point;

N 67°52'31" W, a distance of 29.51 feet to a point;

N 22°34'54" E, a distance of 36.42 feet to a point;

THENCE: N 74°27'39" W, at 15.8 feet passing the northeast corner of that 0.2156 acre tract save and except tract to the lease recorded in the aforementioned Volume 17362, Pages 2119-2137 of the Official Public Records of Real Property of Bexar County, Texas and continuing 80.9 feet with the north line of said 0.2156 acre tract and continuing 20.0 feet for a total distance of 116.70 feet to a point on the west line of said Lot 12 and said 3.360 acre tract and being the aforementioned east right-of-way line of South Alamo Street;

THENCE: N 17°29'05" E, with said east right-of-way line of said South Alamo Street and east line of said Lot 12 and said 3.360 acre tract a distance of 64.13 feet to the POINT OF BEGINNING, and containing 2.254 acres in the City of San Antonio, Bexar County, Texas. Said tract being described in accordance with a survey made on the ground and a survey description and map prepared under job number 7645-30 by Pape-Dawson Engineers, Inc.

PREPARED BY: Pape-Dawson Engineers, Inc.

DATE: January 20, 2018

JOB NO. 7645-30

DOC. ID. N:\CIVIL\7645-30\Word\7645-30 South Lease tract.docx

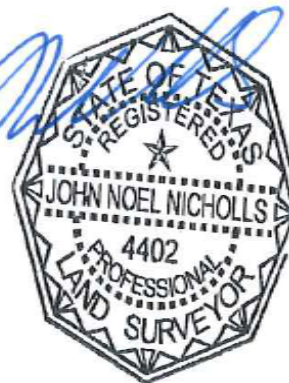


EXHIBIT D TO PARKING GARAGE AGREEMENT

FORM OF PARKING GARAGE SUBLEASE
[ATTACHED]

PARKING GARAGE SUBLEASE

BY AND BETWEEN

**HEMISFAIR PARK AREA REDEVELOPMENT CORPORATION
AND
CITY OF SAN ANTONIO, TEXAS**

FEBRUARY ____, 2017

PARKING GARAGE SUBLEASE

This Parking Garage Sublease (this “***Parking Garage Sublease***”) is entered into by and between HEMISFAIR PARK AREA REDEVELOPMENT CORPORATION, a Texas local government corporation formed under Subchapter D of Chapter 431 of the Texas Transportation Code (“***HPARC***”), as Sublessor, and CITY OF SAN ANTONIO, TEXAS, a Texas municipal corporation (“***CITY***”), as Sublessee, as of the _____ day of February, 2017 (“***Sublease Execution Date***”). CITY and HPARC are sometimes collectively referred to herein as the “***Parties***” and individually as a “***Party***.”

RECITALS

This Parking Garage Sublease is entered into pursuant to the Parking Garage Development Agreement and License (“***Parking Garage Agreement***”) dated February __, 2017, by and among HPARC, CITY and ZH Development Company, LLC, a _____ corporation (“***DEVELOPER***”). Unless the context clearly indicates otherwise, each capitalized word or phrase not defined in this Parking Garage Sublease will have the meaning given to such capitalized word or phrase in the Parking Garage Agreement, which is incorporated herein by reference for all purposes.

Pursuant to the Parking Garage Agreement and subject to the terms, conditions and limitations therein set forth:

C. CITY is a municipal corporation and home-rule municipality of the State of Texas, acting herein by and through its governing body, the City Council, pursuant to the City Ordinance.

D. HPARC holds a leasehold interest in and to the Parking Garage Premises pursuant to the Master Lease.

E. CITY, as subtenant, is willing to enter into a sublease of the Parking Garage Premises upon the terms and conditions hereof, including the construction of the Parking Garage Facilities pursuant to the Parking Garage Agreement, and HPARC, sublessor, is willing to enter into a sub-sublease of the Parking Garage Premises for and in consideration of the City Consideration.

F. DEVELOPER is obligated to construct or cause to be constructed the Parking Garage Facilities on the Parking Garage Premises pursuant to the Parking Garage Agreement

For the purposes of this Parking Garage Sublease, any act, approval, review, consent or execution on behalf CITY shall be accomplished by the City Representative, and any act, approval, review, consent or execution on behalf of HPARC shall be accomplished by the HPARC Representative, as those representatives are selected and replaced, from time to time, pursuant to Article 2 of the Parking Garage Agreement.

ARTICLE I. SUBLEASE

Section 1.01 Sublease of Parking Garage Premises.

HPARC hereby subleases to CITY and CITY hereby subleases from HPARC the Parking Garage Premises upon the terms and conditions set forth in this Parking Garage Sublease as of the Sublease Execution Date.

Section 1.02 Master Lease.

This Parking Garage Sublease is subject to that certain Master Lease Agreement dated as of December 13, 2014, by and between the Hemisfair Park Public Facilities Corporation, a Texas local government corporation, as Landlord (“**LANDLORD**”) and HPARC, as tenant, covering (among other properties) the Parking Garage Premises. The Master Lease Agreement has been amended by LANDLORD and HPARC, by that certain Amendment to Master Lease Agreement dated June 6, 2016 and that certain Second Amendment to Master Lease Agreement dated February __, 2017. References in this Parking Garage Sublease to the “**Master Lease**” mean and refer to the Master Lease Agreement as so amended. Notwithstanding any other provision contained herein, this Parking Garage Sublease is subject and subordinate in all respects to the Master Lease, which is incorporated herein by reference for all purposes.

ARTICLE II. TERM AND RENEWAL

Section 2.01 Term of Sublease.

This Parking Garage Sublease shall be effective from and after the Sublease Execution Date and will terminate on the same day on which the term of the Master Lease expires or is terminated, whichever shall first occur, unless this Parking Garage Sublease is terminated on an earlier date as herein provided (the “**Term**”).

ARTICLE III. RENT

Section 3.01 Rent.

In accordance with the Parking Garage Agreement and in the manner and at the times therein set forth, CITY shall pay to DEVELOPER the City Contribution. Such payment shall be considered “**Rent**” for the purposes of this Parking Garage Sublease, and HPARC hereby confirms to CITY the benefit accruing to HPARC by virtue of such payment.

Section 3.02 Net Lease.

This is an absolutely net lease. All costs and expenses arising out of this Parking Garage Sublease for the use, repair, maintenance, occupancy, reconstruction, insurance and taxes of the Parking Garage Facilities are chargeable to and payable by CITY without any contribution by HPARC.

Section 3.03 Revenues.

Any and all revenues derived from CITY’s operation of the Parking Garage Facilities or any part thereof, or CITY’s licensing, renting or subleasing of the Parking Garage Facilities or any part thereof, or CITY’s sale, assignment or other disposition of its leasehold or other interest in the

Parking Garage Facilities or any part thereof, whether directly or indirectly, shall inure solely to the benefit of CITY, and HPARC shall have no right, title or interest therein.

ARTICLE IV. PURPOSE; OPERATION OF PARKING GARAGE FACILITIES

Section 4.01 Permitted Use.

CITY shall use and operate the Parking Garage Facilities continuously as a public parking garage which is open and available to the general public on a non-discriminatory basis pursuant to a published fee schedule, at CITY's sole expense. In no event shall the terms, conditions and provisions of this Section 4.01 restrict CITY's ability (a) to enter into management agreements pursuant to which a third party may perform all or some of CITY's obligations under this Parking Garage Sublease on behalf of CITY or (b) to grant rights (including naming rights) for the Parking Garage Facilities or (c) to grant licenses to third parties, including the license to DEVELOPER of the Licensed Parking Spaces pursuant to the Parking Garage License Agreement.

Section 4.02 No Obligation to Provide Security Services.

CITY acknowledges and agrees that HPARC has no duty or obligation of any kind or character to provide any security or surveillance services at the Parking Garage Facilities and that each person accessing or using any part of the Parking Garage Facilities shall do so at his or her own risk. Even if HPARC or CITY does at any time use the services of security personnel and/or any surveillance services, such services shall be obtained solely for the benefit of the party providing such services and no third party may rely upon such services or actions by such party to imply, mean or guarantee that they will be thereby protected from acts of crime and injury, theft or damage to person or property in the Parking Garage Facilities.

ARTICLE V. MAINTENANCE OF PARKING GARAGE FACILITIES

Section 5.01 Maintenance Standard.

CITY shall cause, at its sole cost and expense, the Parking Garage Facilities to be cleaned and maintained in a condition and manner consistent with Class A public parking garages in the San Antonio central business district area (as applicable, the "*Facility Standard*"). Compliance with the Facility Standard shall include, without limitation, the following as necessary: (a) all normal maintenance and repairs of the Parking Garage Facilities, including snow removal, repainting of stall markings, and the replacement or repair of signs, parking garage entrances and exits, entry gates, ticket dispensing equipment and other automated equipment, (b) routine removal of trash, refuse or litter from the Parking Garage Facilities and (c) periodic painting or freshening the public spaces comprising the Parking Garage Facilities. The need and timing for maintenance activities shall be within the sole discretion of CITY.

Section 5.02 Repair Obligations.

Excluding restoration following a Casualty, CITY shall have the exclusive right and obligation to repair the Parking Garage Facilities (including all portions of the exterior and interior and structural and non-structural elements of the Parking Garage Facilities). If any legal requirements or insurance requirements may be satisfied in one or more ways, CITY shall have

the sole discretion as to how and when to comply with such requirements. CITY shall determine if any events, circumstances or conditions shall give rise to the need for any repairs.

ARTICLE VI. TAXES.

CITY is responsible for paying all of the real estate taxes, assessments and governmental charges (if any), plus additional amounts, if any, in penalties, interest, attorney's fees, collection penalties and/or other amounts (collectively, "***Taxes***") that may be assessed against the Parking Garage Facilities or any part or portion thereof, as well as any other charges, taxes and/or impositions now in existence or hereinafter imposed by any federal, state, county, municipal or other government or any governmental or quasi-governmental subdivision, agency, department, commission, board, bureau, office or instrumentality of them based upon the privilege of renting the Parking Garage Facilities or upon the amount of rent collected therefor or which are added to a tax or charge previously included within the definition of Taxes.

ARTICLE VII. LIABILITY

CITY and the officers, directors, managers, employees, elected officials, agents and representatives of CITY (collectively, the "*CITY Parties*") shall neither have nor incur any liability for the performance of the CITY's obligations under this Parking Garage Sublease or the obligations of HPARC under the Master Lease, and HPARC shall not seek any damages of any kind or character, arising or accruing under this Parking Garage Sublease or the Master Lease against any of the CITY Parties. Without limiting the foregoing, the CITY's liability for any obligations arising or accruing under this Parking Garage Sublease, directly or indirectly, shall not exceed and shall be strictly limited to the value of CITY's subleasehold interest in the Parking Garage Facilities, and neither HPARC nor its officers, directors, managers, employees, agents or representatives shall not look to any other property or assets of any of the CITY Parties in seeking either to enforce this Parking Garage Sublease or to satisfy a judgment for CITY's failure to perform such obligations, if any. HPARC acknowledges that this Parking Garage Sublease does not and cannot create general obligations of CITY and waives all claims and causes of action against the CITY Parties for CITY's failure to perform any of its obligations under this Parking Garage Sublease. The non-recourse provisions of this Parking Garage Sublease shall survive any termination or expiration of this Parking Garage Sublease.

ARTICLE VIII. ASSIGNMENT, SUBLEASE, LICENCES AND SUBORDINATION

Section 8.01 By CITY.

Upon notice to but without the consent of HPARC, CITY shall have the right at any time during the Term, without limitation, (a) to assign this Parking Garage Sublease or any interest herein, (b) to sublease the Parking Garage Premises (or any part thereof or interest therein), and (c) to grant exclusive and non-exclusive licenses to use all or any part of the Parking Garage Facilities. Such notice to HPARC shall be given not less than sixty (60) days prior to the effective date of any such assignment, sublease or license and provide to HPARC the opportunity to request one or more amendments to this Parking Garage Sublease prior to the effective date of such assignment, sublease or license.

Section 8.02 By HPARC.

HPARC may not assign, or collaterally assign, its interest in this Parking Garage Sublease with the prior consent of CITY. Notwithstanding the foregoing, HPARC may assign its interest in this Parking Garage Sublease to an assignee wholly-owned and controlled by CITY.

ARTICLE IX. CASUALTY

Section 9.01 Restoration.

Subject to the provisions of the Parking Garage Agreement concerning restoration following Casualty which shall be controlling for so long as the Parking Garage Agreement continues in effect, if the Parking Garage Facilities shall be wholly or partially damaged or destroyed by Casualty and subject to available funding, CITY shall cause the Parking Garage Facilities to be restored to its prior condition, unless this Parking Garage Sublease is thereby terminated. If this Parking Garage Sublease is terminated, the proceeds of any and all insurance policies or self-insurance programs payable in connection with such fire or other casualty shall be paid to CITY, and HPARC shall have no right or interest therein or right to require the restoration of the damaged or destroyed Parking Garage Facilities.

Section 9.02 Sublease Termination.

If the Parking Garage Facilities is wholly or partially damaged by fire or other casualty, this Parking Garage Sublease shall not terminate unless the Parking Garage Agreement shall have likewise terminated.

ARTICLE X. CONDEMNATION.

Subject to the terms of the Parking Garage Agreement, which shall be controlling for so long as such Parking Garage Agreement remains in effect, if all or part of the Parking Garage Facilities is condemned or taken Subject to any taking by any legal entity having by any legal entity having the power of eminent domain ("**Condemning Authority**"), or is transferred in lieu thereof (collectively, a "**Taking**" or "**Taken**", as applicable):

Section 10.01 Taking of Substantially the Entire Parking Garage Facilities.

If all or substantially all of the Parking Garage Facilities is Taken, this Parking Garage Sublease shall likewise terminate as of the date the Parking Garage Premises vests in the Condemning Authority. Such termination will not benefit the Condemning Authority and will be without prejudice to the rights of either CITY or HPARC to recover just and adequate compensation from the Condemning Authority for their respective interests.

Section 10.02 Taking of Less than Entire Parking Garage Facilities.

If any lesser portion of the Parking Garage Facilities is Taken and this Parking Garage Sublease is not terminated as provided in Section 10.01 above, then (a) this Parking Garage Sublease will terminate only as to the portion of the Parking Garage Facilities so Taken as of the date that title to such portion of the Parking Garage Premises vests in such Condemning Authority (provided, however, that such termination will not benefit such Condemning Authority and will be without prejudice to the rights of either CITY or HPARC to recover just and

adequate compensation from the Condemning Authority), and (b) this Parking Garage Sublease will not terminate as to the portion of the Parking Garage Premises not Taken.

ARTICLE XI. **DEFAULT**

Section 11.01 Events of Default.

The failure of a Party to substantially perform any of the obligations or agreements to be performed by such Party under this Parking Garage Sublease within sixty (60) days after written notice from the other Party of such failure shall be an “*Event of Default*” hereunder; provided, however, that if such performance cannot be accomplished within such sixty (60) day period, then no Event of Default shall occur unless the defaulting Party fails to commence such performance within such sixty (60) day period and fails to diligently prosecute such performance to conclusion within one hundred twenty (120) days after written notice from the non-defaulting Party.

Section 11.02 Remedies.

(a) Either Party may, at its option, cure an Event of Default, in which event the defaulting Party shall reimburse the non-defaulting Party on demand for all sums so expended to cure, including reasonable expenses incurred in connection therewith.

(b) Either Party may enforce, by all property and legal suits or other means, its rights hereunder, at law or in equity.

Section 11.03 No Waiver.

No waiver by HPARC or CITY of any violation or breach of any of the terms, provisions, conditions and covenants herein contained shall be deemed or construed to constitute a waiver of any other violation or breach of this Parking Garage Sublease. Forbearance by HPARC or CITY to enforce one or more of the remedies upon an Event of Default shall not be deemed or construed to constitute a waiver of such Event of Default. Further, it is covenanted and agreed that no waiver at any time of any of the provisions hereof by HPARC or CITY shall be construed as a waiver of any of the other provisions hereof and that a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions.

Section 11.04 Attorney's Fees.

In any case where CITY or HPARC employs attorneys to protect or enforce its rights hereunder and prevails, then the non-prevailing Party agrees to pay to the prevailing Party the reasonable attorney's fees incurred by the prevailing Party.

ARTICLE XII. **NOTICES**

Any notice to be given or to be served in connection with this Parking Garage Sublease must be in writing, and may be given by (a) facsimile transmission and shall be deemed to have been given and received on the date sent with confirmation of transmission if sent during the normal business hours of the recipient on a business day and if sent at other times then such transmission shall be deemed received on the next succeeding business day, (b) certified or

registered mail and shall be deemed to have been given and received on the date a certified or registered letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mails; and (c) if given otherwise, it shall be deemed to have been given when delivered to and received by the party to whom it is addressed. Such notices shall be given at the following address:

TO HPARC: Hemisfair Park Area Redevelopment Corporation
434 South Alamo
San Antonio, Texas 78205
Attention: Andres Andujar, HPARC Representative

With a copy to: Golden Steve Cohen & Gordon LLP
Attn: Stephen L. Golden
300 Convent Street, Suite 2600
San Antonio, Texas 78205

TO CITY: City of San Antonio
100 Military Plaza
San Antonio, TX 78207
Attention: Lori Houston, City Representative

With copies to: City Clerk
100 Military Plaza, 2nd Floor
San Antonio, Texas 78205, and

City Attorney
100 Military Plaza, 3rd Floor
San Antonio, Texas 78205,

or to such other place as a notice party shall subsequently notify to the other notice parties in writing.

ARTICLE XIII. MISCELLANEOUS

Section 13.01 Force Majeure.

Whenever performance is required of any party under this Parking Garage Sublease, the obligation for such performance will be extended as provided in this Section 13.01. If completion of performance is delayed at any time by reason of acts of God, war, terrorism, civil commotion, riots, strikes, picketing or other labor disputes, extraordinary weather conditions, damage to work in progress by reason of fire or other casualty or causes beyond any reasonable control of a party (other than unavailability of labor or materials or financial reasons), acts of the State, Federal or local government in its sovereign capacity (other than the usual and customary observance and enforcement of Laws), including a moratoria (each, a “***Force Majeure Event***”), then, the time for performance as specified in this Parking Garage Sublease will be appropriately extended by the time of the delay actually caused.

Section 13.02 Relationship of Parties.

EXECUTION COPY

Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers or any other similar such relationship between the parties hereto. It is understood and agreed that no provision contained herein nor any acts of the parties hereto creates a relationship other than the relationship of landlord and tenant.

Section 13.03 Legal Construction.

THIS PARKING GARAGE SUBLEASE SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, and all obligations of the parties created hereunder are performable in Bexar County, Texas. The parties hereto further agree that any court of proper jurisdiction sitting in San Antonio, Bexar County, Texas, shall be the proper forum for any legal actions or proceedings brought hereunder.

Section 13.04 Severability.

If one or more of the provisions contained in this Parking Garage Sublease shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. In such event, it is the intention of the parties hereto that the remainder of this Parking Garage Sublease shall not be affected thereby, and it is also the intention of the parties to this Parking Garage Sublease that in lieu of each clause or provision of this Parking Garage Sublease that is illegal, invalid or unenforceable, there be added as a part of this Parking Garage Sublease a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

Section 13.05 Captions.

The Captions contained in this Parking Garage Sublease are for purposes of convenience only and shall not, in any way, modify, amend or affect the provisions hereof.

Section 13.06 Authority.

The signer of this Parking Garage Sublease for HPARC and CITY hereby represents and warrants that he or she has full authority to execute this Parking Garage Sublease on behalf of HPARC and CITY (as applicable).

Section 13.07 Entire Agreement.

This Parking Garage Sublease contains the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon and no other agreements (except for applicable provisions in the Master Lease which are expressly referenced in this Parking Garage Sublease), oral or otherwise, regarding the subject matter of this Parking Garage Sublease shall be deemed to exist or to bind the parties hereto, it being the intent of the parties that none of the HPARC nor CITY shall be bound by any term, condition or representation not herein written (except for applicable provisions in the Master Lease and the Parking Garage Development Agreement).

Section 13.08 Drafter.

Each Party has thoroughly reviewed and revised this Parking Garage Sublease (including each exhibit hereto) and has had the advice of counsel prior to execution hereof, and the Parties agree that none of them shall be deemed to be the drafter hereof.

Section 13.09 Brokers.

HPARC and CITY respectively warrant and represent to each other that it has had no dealings with any broker in connection with this Parking Garage Sublease and that it knows of no other person who is or might be entitled to a commission, finder's fee or other like payment in connection with this Parking Garage Sublease and each party hereunder does hereby agree to indemnify, defend and hold the other harmless from and against any and all loss, liability and expenses that the other party may incur should such warranty and representation by such party prove incorrect.

Section 13.10 Time is of the Essence.

Time is of the essence with respect to the performance of every provision of this Parking Garage Sublease in which time of performance is a factor.

Section 13.11 Amendments in Writing; Successor and Assigns.

This Parking Garage Sublease may only be changed, modified or amended by an instrument in writing, executed by the parties hereto. The terms of this Parking Garage Sublease shall inure to the benefit of, and shall be binding upon and enforceable against, HPARC, CITY and their respective successors and permitted assigns.

Section 13.12 Recognition Agreements.

Upon request, HPARC promptly shall execute and deliver a Recognition, Non-Disturbance and Attornment Agreement (“**Recognition Agreement**”) as may be reasonably requested by CITY for the benefit of a third party having a leasehold, lien or license subordinate to this Parking Garage Sublease, in form reasonably acceptable to HPARC, CITY and such third party. The Recognition Agreement, among other terms, shall obligate HPARC to recognize the rights of such third party upon any termination of this Parking Garage Sublease and agree to provide notice and cure rights for any default of CITY under this Parking Garage Sublease, as provided in such Recognition Agreement.

Section 13.13 Estoppel Certificate.

CITY and HPARC will, at any time and from time to time, upon not less than ten (10) days prior written request by the other Party, execute, acknowledge and deliver to the requesting Party a certificate, certifying that (a) this Parking Garage Sublease is unmodified and in full effect (or setting forth any modifications and that this Parking Garage Sublease is in full effect as modified); (b) the Rent payable and the dates to which the Rent has been paid; (c) any default of which CITY or HPARC, as applicable, may have knowledge; (d) the commencement and expiration dates of this Parking Garage Sublease; and (e) such other matters as may reasonably be requested by CITY or HPARC.

Section 13.14 Meaning.

All terms and words used in this Parking Garage Sublease, regardless of the number and gender in which they are used, shall be deemed and construed to include any other

number, singular or plural, and any other gender, masculine, feminine or neuter, as the context or sense of this Agreement or any section or clause herein may require, the same as if such words had been fully and properly written in number and gender. Unless expressly stated otherwise, references to "include" or "including" in this Parking Garage Sublease (and exhibit hereto) means "including, without limitation." The terms "hereto," "herein" or "hereunder" refer to this Parking Garage Sublease as a whole and not to any particular Article or Section hereof.
Section 13.15 Memorandum of Sublease.

This Parking Garage Sublease shall not be recorded. On the Sublease Execution Date, HPARC and CITY shall execute a Memorandum of Parking Garage Sublease, in the form attached hereto as Exhibit "A" which may be recorded in Bexar County, Texas. Upon the expiration or earlier termination of this Parking Garage Sublease, CITY shall, at its expense, within five (5) business days following said expiration or termination, file a release of this Parking Garage Sublease in the Official Public Records of Real Property of Bexar County, Texas. This obligation shall survive the expiration of the Term or earlier termination of this Parking Garage Sublease.

[\[Remainder of page intentionally blank; signatures appear on following pages.\]](#)

EXECUTION COPY

EXECUTED AND AGREED TO as of the Sublease Execution Date appearing on the first page of this Parking Garage Sublease.

HPARC:

HEMISFAIR PARK AREA REDEVELOPMENT
CORPORATION

By: _____

Name: _____

Title: _____

[Signatures continue on following page.]

CITY:

CITY OF SAN ANTONIO, TEXAS

By: _____
_____ City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

EXHIBIT "A"
(Memorandum of Sublease)

After recording return to:
City Attorney
100 Military Plaza, 3rd Floor
San Antonio, Texas 78205

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

MEMORANDUM OF SUBLEASE

THIS MEMORANDUM OF SUBLEASE (the "Memorandum of Sublease") is entered into as of this ____ day of February, 2017, by and between HEMISFAIR PARK AREA REDEVELOPMENT CORPORATION, a Texas local government corporation formed under Subchapter D of Chapter 431 of the Texas Transportation Code ("HPARC"), and CITY OF SAN ANTONIO, TEXAS, a Texas municipal corporation ("CITY").

W I T N E S S E T H:

A. HPARC and CITY entered into that certain Parking Garage Sublease Agreement (the "Sublease") dated February ____, 2017 (the "Effective Date") relating to the real property in the City of San Antonio, Texas, being more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Parking Garage Premises").

B. HPARC and CITY desire to execute and record this Memorandum of Sublease to provide record notice of the Sublease and certain terms and conditions contained in the Sublease.

NOW, THEREFORE, for and in consideration of the mutual covenants contained in this Memorandum of Sublease and in the Sublease, HPARC and CITY hereby agree as follows:

1. Premises. As of the Effective Date, HPARC leases to CITY, and CITY rents from HPARC, the Parking Garage Premises.
2. Term. The term of the Sublease commenced on the Effective Date and shall continue in force and effect until the termination of the Master Lease Agreement Hemisfair Development dated effective December 11, 2014, by and between Hemisfair Park Public Facilities Corporation, as Landlord, and HPARC, as Tenant, as amended, as more fully described in Memorandum of Lease dated July 23, 2015, of record in Book 17362, Page 2119, Official Public Records of Real Property of Bexar County, Texas.
3. Incorporation of Sublease and Master Lease. The provisions of the Sublease and the Master Lease are incorporated into this Memorandum of Sublease as if set out in full. In the event of any conflict or inconsistency between the terms of this Memorandum of Sublease and the terms of the Sublease, the terms of the Sublease will govern and control for all purposes.

[Signatures appear on following pages.]

EXECUTION COPY

HPARC and CITY have caused this Memorandum of Sublease to be executed on the day, month and year set out above.

HPARC:

Hemisfair Park Area Redevelopment Corporation,
a Texas local government corporation

By: _____

Name: Andres Andujar

Title: Chief Executive Officer

STATE OF TEXAS §

COUNTY OF BEXAR §

This instrument was acknowledged before me on _____, 2017, by Andres Andujar, the Chief Executive Officer of Hemisfair Park Area Redevelopment Corporation, a Texas local government corporation, on behalf of said corporation.

Notary Public in and for the State of Texas

My commission expires: _____

[Signatures continue on following page.]

EXECUTION COPY

CITY:

CITY OF SAN ANTONIO, TEXAS,
a Texas municipal corporation

By: _____
Name: _____
Title: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

[Assistant] City Attorney

STATE OF TEXAS §

COUNTY OF BEXAR §

This instrument was acknowledged before me on the ____ day of December, 2017, by
_____, _____ of **CITY OF SAN ANTONIO, TEXAS**, a
Texas municipal corporation, on behalf of said municipal corporation.

Notary Public in and for the State of Texas
My commission expires: _____

EXECUTION COPY

**EXHIBIT “A” TO MEMORANDUM OF SUBLEASE
LEGAL DESCRIPTION
[Attached.]**

LEGAL DESCRIPTION OF MARKET STREET TRACT

METES AND BOUNDS DESCRIPTION

FOR

LAND BANK TRACT 1

A 2.140 acre, or 93233 square feet more or less, tract of land comprised of all of that 1.484 acre tract described in deed to the Hemisfair Park Public Corporation recorded in Volume 16485, Pages 42-49 and as Lease Tract 1 to Hemisfair Park Area Redevelopment Corporation in deed recorded in Volume 17362, Pages 2119-2137, both of the of the Official Public Records of Real Property of Bexar County, Texas said 2.140 acres being 1.439 acres out of Lot 14, Block 3 and 0.045 acres out of the Public Waterway in Block 3 of the H.B. Gonzalez Convention Center Subdivision recorded in Volume 9677, Pages 10-12 of the Deed and Plat Records of Bexar County, Texas and 0.656 acre tract surveyed previously out of the Market Street right-of-way established in the Civic Center Project No 5 Tex. R-83 Urban Renewal Agency City of San Antonio subdivision recorded in Volume 9518, Pages 123-126 of the Deed and Plat Records of Bexar County, Texas and all in New City Block 13814 of the City of San Antonio, Bexar County, Texas. Said 2.140 acre tract being more fully described as follows, with bearings based on the Texas Coordinate System established for the South Central Zone from the North American Datum of 1983 NAD 83 (NA2011) epoch 2010.00;

BEGINNING: At an "+" in concrete set for the north corner of said 1.484 acre tract, being an angle of that 8.926 acre tract as described in Deed of dedication recorded in Volume 16485, Pages 22-41 and on the southwest right-of-way line of the said Market Street right-of-way, a 125-foot right-of-way as established in said Civic Center Project No 5 Tex. R-83 Urban Renewal Agency City of San Antonio subdivision, and being the west corner of said 0.656 acre tract and being S 75°00'34", a distance of 165.78 feet from a ½" iron rod with cap marked "Pape-Dawson" set for a curve return of said right-of-way and said Lot 14;

THENCE: N 14°59'26" E, over and across said Market Street right-of-way with the northwest line of said 0.656 acre tract, a distance of 59.40 feet to the north corner of said 0.656 acre tract and the herein described tract;

THENCE: S 75°00'34" E, over and across said Market Street right-of-way with the northeast line of said 0.656 acre tract, a distance of 481.25 feet to the east corner of said 0.656 acre tract;

THENCE: S 15°01'04" W, over and across said Market Street right-of-way with the southeast line of said 0.656 acre tract, at 59.40 feet passing a brass nail stamped "Pape-Dawson set for an angle corner of said 1.484 acre tract and of said 8.926 acre tract, and being the south corner of said 0.656 acre tract, and continuing with a southeast line of said 1.484 acre tract a total distance of 145.40 feet to a brass nail stamped "Pape-Dawson set for a south corner of said 1.484 acre tract and a reentrant corner of said 8.926 acre tract, and being the southernmost corner of the herein described tract;

THENCE: Continuing with the line of said 1.484 acre tract and said 8.926 acre tract the following bearings and distances:

N 75°00'34" W, a distance of 111.81 feet to a point;

S 15°01'04" W, a distance of 69.00 feet to a point;

N 75°00'34" W, a distance of 297.97 feet to a point;

N 33°54'50" W, a distance of 94.71 feet to a point;

THENCE: N 14°59'26" E, a distance of 92.75 feet to the POINT OF BEGINNING, and containing 2.140 acres in the City of San Antonio, Bexar County, Texas. Said tract being described in accordance with a survey made on the ground and a survey description and map prepared under job number 7645-30 by Pape-Dawson Engineers, Inc.

PREPARED BY: Pape-Dawson Engineers, Inc.

DATE: January 19, 2017

JOB NO. 7645-30

DOC. ID. N:\CIVIL\7645-30\Word\7645-30 North Lease tract.docx



LEGAL DESCRIPTION OF SOUTH ALAMO TRACT

**METES AND BOUNDS DESCRIPTION
FOR
LAND BANK TRACT 2**

A 2.254 acre, or 98,191 square feet more or less, tract of land comprised of 1.542 acres and 0.192 acres out of Lot 14, Block 3 and all of that called 0.0875 acres, surveyed as 0.094 acres, dedication to the right-of-way of South Alamo Street of the H.B. Gonzalez Convention Center subdivision recorded in Volume 9677, Pages 10-12 of the Deed and Plat Records of Bexar County, Texas, and 0.457 acres of a remaining portion of Lot 12, Block 3 of the Civic Center, Project No. 5 Tex R-83 Urban Renewal Agency City of San Antonio, Texas subdivision recorded in Volume 9518, Pages 122-126 of the Deed and Plat Records of Bexar County, Texas, and all but said 0.094 acres being also out of that 3.360 acre tract described in deed to Hemisfair Park Public Facilities Corporation recorded in Volume 16485, Pages 50-60 and as Lease Tract 2 to the Hemisfair Park Area Redevelopment Corporation recorded in Volume 17362, Pages 2119-2137 both of the Official Public Records of Real Property of Bexar County, Texas. And said 2.254 acres being in New City Block 13814 of the City of San Antonio, Bexar County, Texas. Said 2.254 acre tract being more fully described as follows, with bearings based on the Texas Coordinate System established for the South Central Zone from the North American Datum of 1983 NAD 83 (NA2011) epoch 2010.00;

BEGINNING: At a brass nail stamped "Pape-Dawson" on the east right-of-way line of said South Alamo Street, a variable width public right-of-way, at the southwest corner of said 0.094 acre right-of-way dedication and of said H.B. Gonzalez Convention Center subdivision, said brass nail set for a corner of said 3.360 acre tract;

THENCE: With the west line of said 0.094 acre right-of-way dedication the following bearings and distances:

N 17°29'05" E, a distance of 259.15 feet to a brass nail set for a point of curvature;

Along a tangent curve to the left, said curve having a radius of 863.00 feet, a central angle of 08°16'32", a chord bearing and distance of N 13°20'49" E, 124.54 feet, for an arc length of 124.65 feet to a point of cusp and northernmost corner of the herein described tract at an angle of Lot 14 of said H.B. Gonzalez Convention Center subdivision and said 3.360 acre tract, being also an angle of that 8.926 acre tract as described in Deed of Dedication recorded in Volume 16485, Pages 22-41 of the Official Public Records of Real Property of Bexar County, Texas;

THENCE: Departing said right-of-way and with the common line of said 3.360 acre tract and said 8.926 acre tract the following bearings and distances:

Along a non-tangent curve to the right, said curve having a radial bearing of S 76°33'23" W, a radius of 113.50 feet, a central angle of 17°43'06", a chord bearing and distance of S 04°35'04" E, 34.96 feet, for an arc length of 35.10 feet to a set ½" iron rod with cap marked "Pape-Dawson";

S 75°00'34" E, a distance of 115.70 feet to a point;

S 33°54'50" E, a distance of 94.26 feet to a point;

S 14°59'26" W, at 301.97 feet passing a south line of said Lot 14, and continuing over and across said Lot 12 for a total distance of 349.64 feet to a set mag nail and washer stamped "Pape-Dawson";

S 75°00'34" E, at 24.91 feet passing a west line of said Lot 14 and continuing over and across said Lot 14 for a total distance of 89.59 feet to a point;

THENCE: Departing said line and over and across said Lot 14 and said 3.360 acre tract the following bearings and distances:

S 15°01'04" W, a distance of 115.67 feet to a point;

S 47°30'40" W, a distance of 34.14 feet to a point;

N 41°52'18" W, at 55.32 feet passing the aforementioned west line of said Lot 14, and continuing over and across said Lot 12 for a total distance of 139.77 feet to a point;

THENCE: Continuing over and across said Lot 12 and said 3.360 acre tract the following bearings and distances:

N 67°03'01" W, a distance of 21.88 feet to a point;

N 14°21'21" E, a distance of 21.22 feet to a point;

N 67°52'31" W, a distance of 29.51 feet to a point;

N 22°34'54" E, a distance of 36.42 feet to a point;

THENCE: N 74°27'39" W, at 15.8 feet passing the northeast corner of that 0.2156 acre tract save and except tract to the lease recorded in the aforementioned Volume 17362, Pages 2119-2137 of the Official Public Records of Real Property of Bexar County, Texas and continuing 80.9 feet with the north line of said 0.2156 acre tract and continuing 20.0 feet for a total distance of 116.70 feet to a point on the west line of said Lot 12 and said 3.360 acre tract and being the aforementioned east right-of-way line of South Alamo Street;

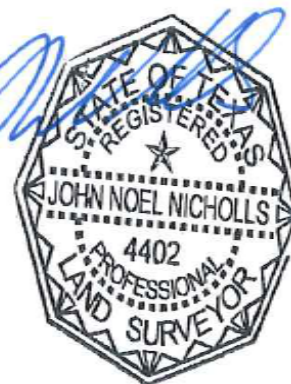
THENCE: N 17°29'05" E, with said east right-of-way line of said South Alamo Street and east line of said Lot 12 and said 3.360 acre tract a distance of 64.13 feet to the POINT OF BEGINNING, and containing 2.254 acres in the City of San Antonio, Bexar County, Texas. Said tract being described in accordance with a survey made on the ground and a survey description and map prepared under job number 7645-30 by Pape-Dawson Engineers, Inc.

PREPARED BY: Pape-Dawson Engineers, Inc.

DATE: January 20, 2018

JOB NO. 7645-30

DOC. ID. N:\CIVIL\7645-30\Word\7645-30 South Lease tract.docx



EXECUTION COPY

EXHIBIT E TO PARKING GARAGE DEVELOPMENT AGREEMENT

FORM OF PARKING GARAGE OPERATING AGREEMENT

[ATTACHED]

PARKING GARAGE OPERATING AGREEMENT

BY AND BETWEEN

CITY OF SAN ANTONIO, TEXAS

AND

ZH DOWNTOWN DEVELOPMENT COMPANY, LLC

_____, 201__

PARKING GARAGE OPERATING AGREEMENT

This Parking Garage Operating Agreement (this “*Operating Agreement*”) is entered into by and between CITY OF SAN ANTONIO, TEXAS, a Texas municipal corporation (“*CITY*”), as licensor, and ZH DOWNTOWN DEVELOPMENT COMPANY, LLC, a Delaware limited liability company (“*DEVELOPER*”) as of the _____ day of _____, 201__ (“*Effective Date*”). CITY and DEVELOPER are sometimes collectively referred to herein as the “*Parties*” and individually as a “*Party*.”

RECITALS

This Operating Agreement is executed by the Parties pursuant to the terms of the Parking Garage Development and License Agreement (“*Parking Garage Agreement*”) dated February __, 2017, between the Parties and Hemisfair Park Area Redevelopment Corporation (“*HPARC*”). Unless the context clearly indicates otherwise, each capitalized word or phrase not defined in this Operating Agreement will have the meaning given to such capitalized word or phrase in the Parking Garage Agreement, which is incorporated herein by reference for all purposes.

The Parking Garage Agreement required the design, construction and equipping of underground (in whole or in part) facilities on the Parking Garage Premises consisting of a parking garage or parking garages of _____ parking spaces, together with related entrance facilities, drive aisles, ramps, elevators, stairs, and all other improvements necessary for ingress, egress and operation of the facilities (therein, and herein, “*Parking Garage Facilities*”).

Pursuant to the Parking Garage Agreement, CITY has licensed to DEVELOPER the use of the Licensed Parking Spaces.

Pursuant to Section 7.03 of the Parking Garage Agreement, in consideration of the mutual benefits accruing under the Parking Garage Agreement and hereunder, the Parties have entered into this Operating Agreement to evidence their mutual agreements concerning the operation of the Parking Garage Facilities and to define and describe their respective rights and obligations.

For the purposes of this Operating Agreement, any act, approval, review, consent or execution on behalf CITY shall be accomplished by the City Representative, and any act, approval, review, consent or execution on behalf of DEVELOPER shall be accomplished by the Developer Representative, as those representatives are selected and replaced, from time to time, pursuant to ARTICLE 2 of the Parking Garage Agreement.

ARTICLE XIV. TERM AND TERMINATION

Section 14.01 Term.

This Operating Agreement shall commence on the above Effective Date and continue in force and effect until the expiration or earlier termination of the Parking Garage Agreement (the “***Term***”).

Section 14.02 Termination.

Upon termination, whether by the passage of time or by a Party exercising a right of termination provided under this Operating Agreement, no Party will thereafter have any further obligation under this Operating Agreement except for payment of any monetary obligations or other claims accrued or incurred by either Party prior to the effective date thereof and the surviving obligations provided herein.

ARTICLE XV. USE OF PARKING FACILITIES

Section 15.01 City Parking Spaces and Licensed Parking Spaces

(a) City Parking Spaces. All Vehicle Parking Spaces other than the Licensed Parking Spaces (the “***City Parking Spaces***”) will be paid public parking available to the general public on a first-come, first-served basis, provided that CITY may license, sublease, assign or use the CITY Parking Spaces in any manner CITY may elect.

(b) Licensed Parking Spaces. The Licensed Parking Spaces shall be comprised of the Reserved Spaces, Segregated Spaces and any other Vehicle Parking Spaces in the Parking Garage Facilities necessary to aggregate the total number of Licensed Parking Spaces. As to any Reserved Spaces or Segregated Spaces, DEVELOPER may take such actions as DEVELOPER determines to be reasonably necessary to exclude the general public from accessing or using the Reserved Spaces and/or Segregated Spaces, at DEVELOPER’s sole cost and expense, including signage, gates, barriers, cones and other suitable measures for the exclusive management and operation by the DEVELOPER. The actions taken by DEVELOPER shall not restrict or hinder the use of any City Parking Spaces or any entrance facilities, drive aisles, ramps, elevators, stairs, and all other improvements necessary for ingress to and egress from the City Parking Spaces.

Section 15.02 Daily Parking Garage Operations.

CITY shall operate the Parking Garage Facilities continuously, at the CITY’s sole expense (subject to the reimbursement rights described herein and DEVELOPER’s obligations concerning Segregated Spaces, if any) by sufficient and qualified operating staff (by any through contract or management agreement or otherwise), in a manner consistent with the CITY’s rights and obligations under the Parking Garage Agreement and as set forth herein. Continuing access to the Licensed Parking Spaces shall be available to DEVELOPER or DEVELOPER’s invitees, guests or permitted sub licensees, except to the extent operations may be restricted or hindered due to (a) emergencies, (b) enforcement of Applicable Laws, (c) street closures, street repairs and construction, and other off-site circumstances, (d) Force Majeure Events, (e) necessary

maintenance and repairs to the Parking Garage Facilities, and (f) the exercise of rights of third parties under any licenses, subleases, use agreements or assignments granted by CITY (provided that the same shall not diminish or materially interfere with the rights of DEVELOPER hereunder). Notwithstanding any other provision contained herein, however, CITY may elect to prevent ingress during hours to be reasonably determined by CITY as to the use of and access to the Vehicle Parking Spaces which are not Licensed Parking Spaces (the “***City Parking Spaces***”), provided further that the Parking Garage Facility shall be operated continuously as to the Licensed Parking Spaces, except as to the extent of the restrictions (a)-(f) above in this Section 2.02 shall apply.

Section 15.03 Identification of Licensed Parking Spaces.

The Licensed Parking Spaces are identified in the approved Plans and Specifications, including the Reserved Spaces, Segregated Spaces and number of other Licensed Parking Spaces (“***Non-Reserved Parking Spaces***”). All of the Reserved Spaces and Segregated Spaces shall be located in the areas so identified and described in the approved Plans and Specifications. Each Non-Reserved Parking Space shall not mean and refer to a specific, individual Vehicle Parking Space within the Parking Garage Facilities but shall mean and refer to a Vehicle Parking Space which may be located in an available parking space throughout the applicable Parking Garage Facilities.

ARTICLE XVI. OPERATIONS

Section 16.01 General Operations.

CITY shall supervise, direct, control, manage and operate the Parking Garage Facilities in an efficient and businesslike manner consistent with Class A public parking garages in the San Antonio central business district area (the “***Facility Standard***”). Compliance with the Facility Standard shall include, as Operating Expenses and without limitation, the following as necessary:

(a) All normal maintenance and repairs of the Parking Garage Facilities, including snow removal, repainting of stall markings, and the replacement or repair of signs, parking garage entrances and exits, entry gates, ticket dispensing equipment and other automated equipment,

(b) The provision of and maintenance of sanitary receptacles within the Parking Garage Facilities in which refuse or trash may be placed and the routine removal of trash, refuse or litter from the Parking Garage Facilities,

(c) Periodic painting or freshening the public spaces comprising the Parking Garage Facilities,

(d) Cleaning services throughout the Parking Garage Facilities, including stairwells, elevators, all parking and driveway areas, and storage areas,

(e) Regular inspection, replacement, maintenance and repair of elevators and related systems (as set forth in Section 4.03, below),

- (f) Inspection, replacement, maintenance and repair of parking control equipment,
- (g) Inspection, replacement, maintenance and repair of glass, windows, doors and hardware, and
- (h) Inspection, replacement, maintenance and repair of electrical, lighting and plumbing systems.

Revenues from operations and expenses of operation, maintenance and repair shall be accounted, invoiced, shared and reimbursed in accordance with the Parking Garage Agreement.

Section 16.02 Segregated Spaces and/or Reserved Spaces.

Notwithstanding the foregoing, the aforementioned enumerated duties may be performed for the Segregated Spaces and/or Reserved Spaces by DEVELOPER, at DEVELOPER's sole cost and expense, but shall be performed in a manner consistent with the Facility Standard. In addition, DEVELOPER may adopt and implement reasonable payment collection protocols and systems for the collection of payments from the patrons electing to utilize the Segregated Spaces or Reserved Spaces (such as, for example, by payment at an above-ground valet counter for valet parking services). Any such systems or operations shall be coordinated with and shall not impede CITY's operation of the Parking Garage Facility and all related costs and expenses shall be borne solely by the DEVELOPER.

Section 16.03 Third Party Management Company.

CITY may engage a professional management company to perform the management duties for the operation and maintenance of the Parking Garage Facilities by subcontract, as an Operating Expense. Such subcontract shall be subject to and consistent with this Operating Agreement and CITY shall remain fully obligated and responsible under this Operating Agreement to the same extent as if CITY had not entered into the subcontract.

Section 16.04 Claims and Demands.

CITY shall notify DEVELOPER of any claim, demand or charge asserted or threatened concerning the Licensed Parking Spaces received by CITY. DEVELOPER shall notify CITY of any claim, demand or charge asserted or threatened concerning the City Parking Spaces received by DEVELOPER.

Section 16.05 Parking Garage Rules and Regulations

(a) By CITY. CITY may issue rules and regulations for the use of the Parking Garage Facilities ("**General Parking Garage Regulations**"), which shall be subject to DEVELOPER's approval to the extent that such rules and regulations apply to or directly affect the Licensed Parking Spaces, such approval to be not unreasonably withheld. CITY shall enforce the General Parking Garage Regulations as an Operating Expense.

(b) By DEVELOPER. DEVELOPER may issue rules and regulations applicable to the Licensed Parking Spaces ("**Limited Parking Garage Regulations**"), which shall be subject to CITY's approval, such approval to be not unreasonably withheld) to the extent they may be in conflict with the General Parking Garage Regulations or affect the City Parking

Spaces. Enforcement of the Limited Parking Garage Regulations shall be at the sole cost and expense of DEVELOPER.

Section 16.06 Emergency.

In the event of an emergency, either Party may initiate corrective measures to prevent or mitigate any impending damage to or catastrophic effect on the Parking Garage Facilities or any part thereof or danger to natural persons resulting from the destruction or failure of any facility or component of the Parking Garage Facility after (a) making reasonable efforts under the circumstances to notify the other Party of the emergency and (b) giving the other Party a reasonable amount of time under the circumstances to take corrective action.

Section 16.07 Towing.

CITY may tow without notice any vehicles that are illegally stored or abandoned or improperly parked in the Parking Garage Facilities other than the Reserved Spaces or the Segregated Spaces and shall notify DEVELOPER if CITY removes any such vehicles from a Non-Reserved Parking Space. CITY shall have no obligation to tow vehicles in the Reserved Spaces or in the Segregated Spaces.

Section 16.08 No Obligation to Provide Security Services.

Neither CITY nor DEVELOPER has any duty or obligation of any kind or character to provide security or surveillance services at the Parking Garage Facility. Each person accessing or using any part of the Parking Garage Facility shall do so at his or her own risk. Even if DEVELOPER or CITY does at any time use the services of security personnel and/or any surveillance services, such services shall be obtained solely for the benefit of the Party providing such services and no third party may rely upon such services or actions by such Party to imply, mean or guarantee that they will be thereby protected from acts of crime and injury, theft or damage to person or property in the Parking Garage Facility. Nothing herein shall prevent CITY from providing security or surveillance services for the Parking Garage Facilities as an Operating Expense or, if CITY has not done so, to prevent DEVELOPER from providing security or surveillance services for all or part of the Licensed Parking Spaces, at DEVELOPER's sole cost and expense.

ARTICLE XVII. MAINTENANCE, REPAIR AND ALTERATIONS

Section 17.01 Maintenance by CITY.

The Parking Garage Facility shall be cleaned, equipped, operated and maintained by CITY, as an Operating Expense, in a condition and manner consistent with Facility Standard. The need and timing for maintenance activities to meet the Facility Standard shall be within the sole, but reasonable, discretion of CITY, provided that the CITY shall cause all such work to be completed in a manner so as to minimize interference with the Parking Garage Facilities and in a good, prompt and workmanlike manner. Should the City fail to properly perform its obligations under this Section 4.01, DEVELOPER may provide notice to the City Representative identifying such failure(s). If CITY shall fail to commence to perform such obligations within fifteen (15) days after the City Representative's receipt of such notice or respond to such notice disputing the alleged failure(s), then the DEVELOPER may perform such obligations, and the CITY shall

reimburse the reasonable out-of-pocket expenses incurred by DEVELOPER within thirty (30) days after DEVELOPER has provided to the City Representative a detailed description of the work performed by DEVELOPER and invoices evidencing such out-of-pocket expenses.

Section 17.02 Maintenance by DEVELOPER.

Notwithstanding Section 4.01, above, as to the Segregated Spaces and/or Reserved Spaces, DEVELOPER shall be entitled to elect, with at least fifteen (15) days' advance written notice to the CITY, from time to time, to undertake any cleaning and cosmetic maintenance of such spaces and adjacent ramps and throughways, at the sole cost and expense of DEVELOPER.

Section 17.03 Elevators.

CITY shall secure a maintenance agreement for the elevators in the Parking Garage Facilities with a reputable and responsible elevator maintenance company as an Operating Expense. CITY shall provide to DEVELOPER a copy of any written maintenance reports or logs created or received by CITY relating to the elevators or provided by the elevator maintenance company.

Section 17.04 Signage and Graphics.

(a) General signage. CITY shall maintain and post signage that is required by Applicable Laws, is appropriate to facilitate vehicular and pedestrian circulation through the Parking Garage Facilities or is required or needed to warn patrons of malfunctioning equipment and hazards. DEVELOPER shall have the right to approve all such signage. CITY shall have no obligation to provide signage for or related to Reserved Spaces or Segregated Spaces.

(b) Reserved Spaces and Segregated Spaces. DEVELOPER shall keep all Reserved Spaces and Segregated Spaces adequately marked and identified at all times to distinguish the unavailability of those parking spaces for use by the general public. DEVELOPER shall provide all signage for these parking spaces required by Applicable Laws, including signage required for handicapped parking, or as may be appropriate to facilitate vehicular and pedestrian circulation. CITY shall have the right to approve all such signage.

(c) Cooperation. CITY and DEVELOPER shall cooperate in establishing consistent and coordinate signage for the Parking Garage Facilities and in providing the necessary information and a reasonable time period for the exercise of the approval rights described in this Section 4.04.

Section 17.05 Equipment and Supplies.

CITY shall obtain, provide and replace all equipment, inventory and supplies that may be required from time to time in the performance of its duties under this Operating Agreement, as Operating Expenses.

ARTICLE XVIII. REPAIRS AND ALTERATIONS

Section 18.01 Obligations to Repair.

(a) By CITY. Excluding restoration following a Casualty, CITY shall repair the Parking Garage Facility including all portions of the exterior and interior and structural and non-structural elements of the Parking Garage Facility (other than any Market Street Structural Support and South Alamo Structural Support), as an Operating Expense, and shall regularly perform all necessary or preventative repairs in accordance with the Facility Standard. If any legal requirements or insurance requirements may be satisfied in one or more ways, CITY shall have the sole discretion as to how and when to comply with such requirements. CITY shall determine if any events, circumstances or conditions shall give rise to the need for any repairs.

(b) By DEVELOPER. Any and all repairs to any Market Street Structural Support and South Alamo Structural Support systems shall be performed exclusively by DEVELOPER and at its sole cost and expense, but all related plans, specifications and procedures shall be subject to the prior written consent of CITY, which consent shall not be delayed or withheld unreasonably. Notwithstanding Section 5.01(a), above, upon not less than thirty (30) days' prior notice to CITY, DEVELOPER may elect to perform all or part of the necessary or preventative repairs of the Segregated Spaces and/or Reserved Spaces, at DEVELOPER's sole expense, so long as such election does not impair or delay the efforts by the CITY to repair the Parking Garage Facilities or increase the costs thereof materially.

Section 18.02 Alterations.

Except as otherwise set forth in this Operating Agreement, alterations to the Parking Garage Facilities shall be mutually approved by CITY and DEVELOPER, such approvals to be not unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, DEVELOPER may undertake non-structural alterations of the Segregated and/or Reserved Spaces provided that such alternations do not hinder or impair the operation of the Parking Garage Facilities.

ARTICLE XIX. TAXES.

CITY is responsible for paying, as an Operating Expense, all of the real estate taxes, assessments and governmental charges (if any), plus additional amounts, if any, in penalties, interest, attorney's fees, collection penalties and/or other amounts that may be assessed against the Parking Garage Facility or any part or portion thereof, as well as any other charges, taxes and/or impositions now in existence or hereinafter imposed by any federal, state, county, municipal or other government or any governmental or quasi-governmental subdivision, agency, department, commission, board, bureau, office or instrumentality of them based upon the privilege of renting the Parking Garage Facility or upon the amount of rent collected therefor (collectively, "**Taxes**") or which are added to a tax or charge previously included within the definition of Taxes. The CITY shall provide written evidence to the DEVELOPER of timely payment of any Taxes prior to delinquency.

ARTICLE XX. INSURANCE REQUIREMENTS; LIABILITY

Section 20.01 Property Insurance.

At all times during the Term, as an Operating Expense, either

(a) CITY will maintain (1) standard fire and extended coverage insurance covering the Parking Garage Facilities in an amount not less than the full replacement value of the Parking Garage Facilities (including as to any Market Street Structural Support and South Alamo Structural Support), and (2) commercial general liability insurance with respect to all common areas of the Parking Garage Facilities in an amount not less than a combined single limit of \$2,000,000; or

(b) CITY will self-insure either or both of such insurance obligations, provided that the CITY shall from time to time upon the request of the DEVELOPER provide reasonable evidence confirming CITY's obligation to self-insure such insurance coverages in such amounts.

(c) All policies of insurance to be procured by the CITY (except to the extent self-insured) shall be issued by insurance companies and on forms and with such endorsements that are either generally required by CITY's Risk Management Department (but in all events in forms and with such endorsements as are customarily carried by owners of parking garages of substantially similar size and quality in metropolitan areas in the State of Texas) or are otherwise reasonably acceptable to the DEVELOPER. All policies of insurance delivered to DEVELOPER must contain a provision that the company writing the policy will give DEVELOPER notice in writing in advance of any cancellation or lapse or the effective date of any reduction in the amounts of insurance. Each such policy must be endorsed (and a certificate of insurance provided to DEVELOPER not less than thirty (30) days prior to the Scheduled Completion Date for the South Alamo Garage) to show waiver of subrogation in favor of the DEVELOPER consistent with Section 7.03, below, and reflect DEVELOPER as an additional insured by endorsement reasonably acceptable to DEVELOPER.

B. By DEVELOPER. Nothing herein shall prevent DEVELOPER from obtaining property insurance covering the Parking Garage Facilities or any portion thereof, at DEVELOPER's expense. If obtained, DEVELOPER shall provide to CITY evidence that such insurance policy or policies are in force.

Section 20.02 Liability Insurance.

DEVELOPER shall obtain, prior to the South Alamo Substantial Completion Date, commercial general liability on an occurrence form providing for bodily injury, property damage, products liability and completed operations, independent contractors, broad form contractual liability, broad form property damage and explosion, collapse and underground hazards, including liability coverage for DEVELOPER's invitees for any act or omission which may occur by or to any invitee in the Parking Garage Premises, with limits of liability of:

- A. \$2,000,000.00 General Aggregate (per location)
- B. \$1,000,000.00 Products and Completed Operations Aggregate
- C. \$1,000,000.00 Personal and Advertising Injury Limit
- D. \$1,000,000.00 Each Occurrence

- E. \$50,000.00 Fire Damage
- F. \$5,000.00 Medical Expense.

This policy must be endorsed (and a certificate of insurance provided to CITY not less than thirty (30) days prior to the Scheduled Completion Date for the South Alamo Garage) to show waiver of subrogation in favor of CITY consistent with Section 7.03, below, and reflect CITY as an additional insured by endorsement reasonably acceptable to CITY's Risk Management Department.

Section 20.03 Waiver of Subrogation.

To the extent each Party can obtain such an endorsement on the relevant policy, each Party hereby waives all claims that arise or may arise in its favor against the other Party, or anyone claiming through or under them, by way of subrogation or otherwise, during the Term or any extension or renewal thereof, for any injury to or death of any person or persons or the theft, destruction, loss of, or damage to, any of its property (a "**Loss**") caused by casualty, theft, fire, third parties, or any other matter, to the extent the same is insured against by it under any insurance policy that covers Parking Garage Facility or relevant party, or is required to be insured against by it under the terms hereof (whether or not the loss or damage is caused by the fault or negligence [but not as to the sole negligence, gross negligence or willful conduct] of the other Party or anyone for whom the other Party is responsible). These waivers are in addition to, and not in limitation of, any other waiver or release in this Operating Agreement. Since these mutual waivers preclude the assignment of any claim by way of subrogation (or otherwise) to any insurance company (or any other person), each Party shall immediately give each insurance company issuing to it policies of fire and extended coverage insurance written notice of the terms of these mutual waivers, and have the insurance policies properly endorsed, if necessary, to prevent the invalidation of the insurance coverages by reason of these waivers.

Section 7.04 Limitations on Liability.

(a) **CITY and the officers, directors, managers, employees, elected officials, agents and representatives of CITY (collectively, the "*City Parties*") shall neither have nor incur any liability for the performance of the CITY's obligations under this Operating Agreement, and DEVELOPER shall not seek any damages of any kind or character, arising or accruing hereunder against the CITY Parties.** Without limiting the foregoing, the CITY's liability for any obligations arising or accruing under this Operating Agreement, directly or indirectly, shall not exceed and shall be strictly limited to the CITY's revenues from the operation of the Parking Garage Facilities, and neither DEVELOPER nor its officers, directors, managers, employees, agents or representatives shall not look to any other property or assets of any of the City Parties in seeking either to enforce this Operating Agreement or to satisfy a judgment for CITY's failure to perform such obligations, if any. DEVELOPER acknowledges that this Operating Agreement does not and cannot create general obligations of CITY.

(b) DEVELOPER and the officers, directors, managers, employees, elected officials, agents and representatives of DEVELOPER (collectively, the "*DEVELOPER Parties*") shall neither have nor incur any liability for the performance of the DEVELOPER's obligations under this Operating Agreement, and the CITY shall not seek any damages of any kind or character, arising or accruing under this Operating Agreement against the DEVELOPER Parties. Without limiting the foregoing, DEVELOPER's liability for any obligations arising or accruing under this Operating Agreement, directly or indirectly, shall not exceed and shall be strictly

limited to the value of DEVELOPER's licensed interests in the Parking Garage Facility, and neither the CITY nor its officers, directors, managers, employees, agents or representatives shall not look to any other property or assets of any of the DEVELOPER Parties in seeking either to enforce this Operating Agreement or to satisfy a judgment for DEVELOPER's failure to perform such obligations, if any.

ARTICLE XXI. ASSIGNMENT

Section 21.01 By CITY.

CITY shall have the right to assign its rights and duties under this Operating Agreement or any interest herein in connection with an approved assignment of the CITY's rights or duties under the Parking Garage Agreement, subject to the terms and conditions set forth therein.

Section 21.02 By DEVELOPER.

DEVELOPER shall have the right to assign its rights and duties under this Operating Agreement in connection with an approved assignment or collateral assignment of the DEVELOPER's rights and duties under the Parking Garage Agreement, subject to the terms and conditions set forth therein.

ARTICLE XXII. CASUALTY; CONDEMNATION

If the Parking Garage Facilities should be damaged by Casualty, the exercise of the rights, duties and obligations of the Parties under Article 14 of the Parking Garage Agreement shall determine if and to the extent that this Operating Agreement shall continue in force and effect. As to any portion of the Parking Garage Facilities damaged by Casualty, this Operating Agreement shall be suspended as to the use and occupancy of the damaged areas until the damaged Parking Garage Facilities have been rebuilt or restored, but this Operating Agreement shall remain in full force and effect with respect to the portion of the Parking Garage Facilities that remains operable for the Permitted Use.

ARTICLE XXIII. CONDEMNATION.

If all or any part of the Parking Garage Facilities is condemned or taken by any legal entity having the power of eminent domain, the exercise of the rights, duties and obligations of the Parties under Article 15 of the Parking Garage Agreement shall determine if and to the extent that this Operating Agreement shall continue in force and effect. As to any partial taking, this rights and obligations of the Parties hereunder shall continue as to the portion of the Parking Garage Facilities not so taken.

ARTICLE XXIV. DEFAULT

Section 24.01 Default. Each of the following events shall constitute an "*Event of Default*" hereunder:

A. Monetary Defaults. The failure or omission by either Party to pay amounts required to be paid pursuant to this Operating Agreement when due hereunder, and such failure or omission has continued for sixty (60) days after written notice from the other Party (each such failure or omission referred to herein as a "*Monetary Default*"). It is hereby

expressly acknowledged that Monetary Defaults include the failure of a Party to pay monetary damages awarded to the other Party in connection with an Event of Default other than a Monetary Default within sixty (60) days after written demand for payment following the date upon which a judgment from a court of competent jurisdiction or arbitration as herein provided becomes final and non-appealable.

B. Non-Monetary Defaults. The breach of any covenant of a Party under this Operating Agreement, and the failure or omission by either Party to observe, keep or perform any of the other terms, agreements or conditions set forth in this Operating Agreement, and such breach, failure or omission has continued for sixty (60) days (or such longer period as may reasonably be required to cure such failure or omission, provided that cure has commenced and such Party is diligently and continuously proceeding to complete such cure) (the "**Non-Monetary Default Cure Period**") after written notice from the other Party (each such failure or omission referred to herein as a "**General Non-Monetary Default**").

C. Insolvency Defaults. The (1) filing for voluntary or involuntary bankruptcy by or against a Party that is not dismissed, withdrawn or otherwise concluded within sixty (60) days of such filing, a general assignment by a Party for the benefit of its creditors, (3) a Party admits in writing its inability to pay its debts when due, (4) a bill in equity or other proceeding for the appointment of a receiver of a Party or other custodian for the business or assets of a Party is filed and consented to by such Party; (5) a receiver or other custodian (permanent or temporary) of a Party's assets or property, or any part thereof, is appointed by any court of competent jurisdiction and such appointment has not been vacated within sixty (60) days of such appointment, (6) a Party shall make a transfer in fraud of its creditors or (7) the transfer of DEVELOPER's license in the Parking Garage Facilities (or any part thereof) under attachment, execution or similar legal process.

E. Termination of Existence. A Party's existence shall have terminated, whether voluntarily or involuntarily.

F. Default under Parking Garage Agreement. An "Event of Default" (as defined therein) of DEVELOPER shall occur under the Parking Garage Agreement.
Section 24.02 Remedies.

After delivery of any required notice and expiration of any applicable cure period, any non-defaulting Party may pursue, at its option and without prejudice to any other rights and remedies provided for hereunder or by law, any right or remedy conferred upon or reserved to it under this Operating Agreement and/or at law or in equity. The rights and remedies provided in this Operating Agreement shall be in addition to and cumulative of all other rights and remedies available to a Party, including the remedy of specific performance, and the pursuit of one remedy will not be an election of a sole remedy and will not preclude the right to pursue any or all other available remedies, whether the same be remedies at law and/or equitable remedies, including injunction and relief in the form of mandamus.

Section 24.03 No Waiver.

No waiver by DEVELOPER or CITY of any violation or breach of any of the terms, provisions, conditions and covenants herein contained shall be deemed or construed to constitute a waiver of any other violation or breach of this Operating Agreement. Forbearance by DEVELOPER or CITY to enforce one or more of the remedies upon an Event of Default shall not be deemed or construed to constitute a waiver of such default. Further, it is covenanted

and agreed that no waiver at any time of any of the provisions hereof by DEVELOPER or CITY shall be construed as a waiver of any of the other provisions hereof and that a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions.

Section 24.04 Dispute Resolution.

With respect to any General Non-Monetary Default that a Party asserts against the other Party (the “**Defaulting Party**”), but the Defaulting Party disputes in writing within thirty (30) days following receipt of notice of such default, either CITY or DEVELOPER may elect to refer such matter to binding arbitration to determine if a General Non-Monetary Default has occurred. If the arbitrator determines that a General Non-Monetary Default has occurred, then the Defaulting Party shall cure such General Non-Monetary Default within the Non-Monetary Default Cure Period commencing upon the date of the arbitrator’s decision. If the Defaulting Party does not cure such General Non-Monetary Default within such Non-Monetary Default Cure Period, then the other Party at its option but without any duty or obligation to do so, may cure such General Non-Monetary Default and in addition to and cumulatively with any other rights the non-Defaulting Party may have under this Operating Agreement or at law or in equity, be reimbursed by the Defaulting Party all sums expended to cure such General Non-Monetary Default.

Section 24.05 Attorney's Fees.

In any case where CITY or DEVELOPER employs attorneys to protect or enforce its rights hereunder and prevails, then the non-prevailing Party agrees to pay to the prevailing Party the reasonable attorney's fees incurred by the prevailing Party.

ARTICLE XXV. NOTICES

Any notice to be given or to be served in connection with this Operating Agreement must be in writing, and may be given by (a) facsimile transmission and shall be deemed to have been given and received on the date sent with confirmation of transmission if sent during the normal business hours of the recipient on a business day and if sent at other times then such transmission shall be deemed received on the next succeeding business day, (b) certified or registered mail and shall be deemed to have been given and received on the date a certified or registered letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mails; and (c) if given otherwise, it shall be deemed to have been given when delivered to and received by the party to whom it is addressed. Such notices shall be given at the following address:

TO DEVELOPER: 2330 N Loop 1604 W
P. O. Box 33240
San Antonio, Texas 78265-3240
Attention: Rene Garcia

With copy to: Hornberger Fuller & Garza Incorporated
Attn: Drew R. Fuller, Jr.
7373 Broadway, Suite 300
San Antonio, Texas 78209

TO CITY: City of San Antonio
100 Military Plaza
San Antonio, TX 78207
Attention: Lori Houston, City Representative

With copies to: City Clerk
100 Military Plaza, 2nd Floor
San Antonio, Texas 78205, and

City Attorney
100 Military Plaza, 3rd Floor
San Antonio, Texas 78205,

or to such other place as a notice party shall subsequently notify to the other notice parties in writing.

ARTICLE XXVI. MISCELLANEOUS

Section 26.01 Force Majeure.

Whenever performance is required of any party under this Operating Agreement, the obligation for such performance will be extended as provided in this Section 12.01. If completion of performance is delayed at any time by reason of acts of God, war, terrorism, civil commotion, riots, strikes, picketing or other labor disputes, extraordinary weather conditions, damage to work in progress by reason of fire or other casualty or causes beyond any reasonable control of a party (other than unavailability of labor or materials or financial reasons), acts of the State, Federal or local government in its sovereign capacity (other than the usual and customary observance and enforcement of Applicable Laws), including a moratoria (each, a “**Force Majeure Event**”), then, the time for performance as specified in this Operating Agreement will be appropriately extended by the time of the delay actually caused.

Section 26.02 Relationship of Parties.

Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers, landlord and tenant or any other similar such relationship between the parties hereto. It is understood and agreed that no provision contained herein nor any acts of the Parties hereto shall render either Party liable for the debts or obligations of the other Party.

Section 26.03 Compliance with Applicable Laws and Insurance Policies.

CITY and DEVELOPER shall comply with all Applicable Laws relating to the performance of their respective duties and obligations under this Operating Agreement and shall observe and comply with the requirements of all policies of insurance with respect to the Parking Garage Facilities and any machinery or equipment used in connection with the Parking Garage Facilities. Without limiting the foregoing, each Party shall comply with all laws and regulations for the cleanup of any hazardous materials or liquids that may spill as a result of accidents, fires, automobile malfunctions or other events.

Section 26.04 Good Faith.

The Parties to this Operating Agreement agree to cooperate and otherwise act in good faith with respect to the promises and duties contemplated by this Operating Agreement and the efficient and safe operation, management and maintenance of the Parking Garage Facilities.

Section 26.05 Survival.

Any provision of this Operating Agreement that by its nature and effect is required to be kept, observed or performed after the expiration or termination of the Term shall survive the Term and remain binding upon and for the benefit of the Parties until fully observed, kept or performed. Provisions in this Operating Agreement requiring specific rights, duties or obligations to survive termination are not to be construed to limit the application of this Section 13.05.

Section 26.06 Legal Construction.

THIS OPERATING AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, and all obligations of the parties created hereunder are performable in Bexar County, Texas. The parties hereto further agree that any court of proper jurisdiction sitting in San Antonio, Bexar County, Texas, shall be the proper forum for any legal actions or proceedings brought hereunder.

Section 26.07 Severability.

If one or more of the provisions contained in this Operating Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. In such event, it is the intention of the parties hereto that the remainder of this Operating Agreement shall not be affected thereby, and it is also the intention of the parties to this Operating Agreement that in lieu of each clause or provision of this Operating Agreement that is illegal, invalid or unenforceable, there be added as a part of this Operating Agreement a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

Section 26.08 Captions.

The Captions contained in this Operating Agreement are for purposes of convenience only and shall not, in any way, modify, amend or affect the provisions hereof.

Section 26.09 Authority.

The signer of this Operating Agreement for DEVELOPER and CITY hereby represents and warrants that he or she has full authority to execute this Operating Agreement on behalf of DEVELOPER and CITY (as applicable).

Section 26.10 Entire Agreement.

This Operating Agreement contains the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon and no other agreements (except for applicable provisions in the Parking Garage Agreement which are expressly referenced in this Operating Agreement), oral or otherwise, regarding the subject matter of this

Operating Agreement shall be deemed to exist or to bind the parties hereto, it being the intent of the parties that none of the DEVELOPER nor CITY shall be bound by any term, condition or representation not herein written (except for applicable provisions in the Parking Garage Agreement).

Section 26.11 Drafter.

Each Party has thoroughly reviewed and revised this Operating Agreement (including any exhibits hereto) and has had the advice of counsel prior to execution hereof, and the Parties agree that none of them shall be deemed to be the drafter hereof.

Section 26.12 Time is of the Essence.

Time is of the essence with respect to the performance of every provision of this Operating Agreement in which time of performance is a factor.

Section 26.13 Amendments in Writing; Successor and Assigns.

This Operating Agreement may only be changed, modified or amended by an instrument in writing, executed by the Parties hereto. The terms of this Operating Agreement shall inure to the benefit of, and shall be binding upon and enforceable against, DEVELOPER, CITY and their respective successors and permitted assigns.

Section 26.14 Reservation of Rights.

To the extent not inconsistent with this Operating Agreement, each Party reserves all rights, privileges, and immunities under Applicable Laws.

Section 26.15 City Council Approval.

Notwithstanding anything to the contrary set forth in this Operating Agreement, DEVELOPER recognizes and agrees that any contracts or agreements contemplated to be entered into by CITY under the terms of this Operating Agreement which are not attached as exhibits to this Operating Agreement will be subject to the prior approval of City Council, if the approval of the City Council is required under the terms of City's Charter or other Applicable Laws. Further, any approvals required of CITY for any assignment of this Operating Agreement will be subject to the prior approval of City Council.

Section 26.16 Capacity of CITY.

Without in any way limiting or exercising the obligation, duties, covenants and agreements of CITY as a Party to this Operating Agreement, the Parties agree that any action, omission or circumstance arising out of the exercise or performance of CITY'S required Governmental Functions shall not cause or constitute a default by CITY under this Parking Garage Agreement or give rise to any rights or claims for damages or injury against CITY in its capacity as a Party to this Operating Agreement. DEVELOPER'S remedies for any injury, damage or claim resulting from any other action, omission or circumstance shall be governed by the laws and regulations concerning claims against CITY as a governmental entity. The provisions hereof shall survive any termination of this Operating Agreement.

Section 26.17 Capacity of Persons Acting on Behalf of City.

Notwithstanding anything to the contrary in this Operating Agreement, all references in this Operating Agreement to the City Representative or other employees, agents,

representatives, contractors and the like of CITY shall refer only to such persons or entities acting on behalf of CITY in its capacity as a Party to this Operating Agreement, and all such references specifically exclude any employees, agents, representatives, contractors, elected officials and the like acting in connection with the performance of CITY'S required Governmental Functions.

Section 26.18 No Limitation on CITY's Governmental Functions.

The Parties hereto acknowledge that no representation, warranty, consent, approval or agreement in this Operating Agreement by CITY (as a Party to this Operating Agreement) shall be binding upon, constitute a waiver by or estop CITY from exercising any of its rights, powers or duties in its required Governmental Functions. For example, approval by CITY of this Operating Agreement shall not constitute satisfaction of any requirements of, or the need to obtain any approval by, CITY in the exercise of its Governmental Functions or as may be required under any Applicable Laws.

Section 13.19 Limitation on Funding Obligations.

The financial expenditures of CITY will be payable in whole or in part from the revenues of CITY derived from the operation of the Parking Garage Facilities or other funds appropriated by CITY for such purposes, and no claim for payment of any funding obligation of CITY shall be made, claimed or permitted against any other funds, properties, assets or the general credit of CITY.

Section 26.19 Goods and Services. ***[UNDER DISCUSSION BY CITY].***

Section 26.20 Memorandum of Operating Agreement.

This Operating Agreement shall not be recorded. On the Effective Date, DEVELOPER and CITY shall execute a Memorandum of Operating Agreement in mutually agreeable form and content, if requested by the other Party, which may be recorded in the Official Public Records of Bexar County, Texas at the expense of the requesting Party. Upon the expiration or earlier termination of this Operating Agreement, any Party may, at its expense, file a release of this Operating Agreement in the Official Public Records of Real Property of Bexar County, Texas.

[\[Remainder of page intentionally blank; signatures appear on following pages.\]](#)

EXECUTION COPY

EXECUTED AND AGREED TO as of the Effective Date appearing on the first page of
this Operating Agreement.

DEVELOPER:

ZH DOWNTOWN DEVELOPMENT COMPANY,
LLC

By: _____

Name: _____

Title: _____

[Signatures continue on following page.]

CITY:

CITY OF SAN ANTONIO, TEXAS

By: _____
_____ City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

**EXHIBIT F TO PARKING GARAGE DEVELOPMENT AGREEMENT
CONSTRUCTION CONTRACT REQUIREMENTS**

1. The Construction Contract shall provide that the General Contractor has visited the site and is aware of all site conditions that are observable or determinable from testing results or other information furnished to General Contractor by DEVELOPER and will comply with those provisions of Article 5 of the Parking Garage Agreement that are expressly applicable to the General Contractor.

2. Intentionally deleted.

3. The Construction Contract will require the General Contractor to acknowledge that it has reviewed Exhibit F to the Parking Garage Agreement and that as a result of such review it has no present actual knowledge of any conflicts between the Parking Garage Agreement and the General Contractor's obligations under the Construction Contract.

4. The Construction Contract shall provide that all payments made to the General Contractor thereunder shall be based upon and allocated to a schedule of values set forth the Plans and Specifications.

5. Subject to Section 6.05A(3), the Construction Contract shall provide that the General Contractor shall furnish a waiver of lien from the General Contractor and its Contractors as a condition of payment which, except for any retainage withheld under the terms of the Construction Contract, shall cover the Work for which payment is requested and shall be conditioned only upon receipt of the payment requested.

6. The General Contractor will not enter into any subcontract with any Affiliate of the General Contractor unless HPARC and CITY have approved such arrangement.

7. The General Contractor shall afford access to the site and all areas of the Work to permit CITY and HPARC to inspect the progress of the Work.

8. The Construction Contract shall provide that DEVELOPER's obligations and rights thereunder are assumable by CITY or HPARC upon the termination of the Parking Garage Agreement. In the event of such termination, CITY or HPARC may, but shall not be obligated to, elect to assume the rights and obligations of DEVELOPER under the Construction Contract. Such assumption shall be effective provided that notice thereof shall be furnished to the General Contractor within ten (10) business days of the termination of the Parking Garage Agreement. In the event of a termination of the Parking Garage Agreement, CITY also shall have the option to elect to terminate the Construction Contract for convenience, without penalty to CITY.

9. To the extent required for the General Contractor's means and methods, the Construction Contract Documents shall require the General Contractor to be responsible for acceptable trenching and shoring procedures, which are, at a minimum, in accordance with TEX. GOV'T CODE, Section 2166.303 and TEX. H. & S. CODE, Subchapter C, Sections 756.021, et seq.

10. The Construction Contract shall separately allocate and identify the discrete costs of the South Alamo Structural Support and the Market Street Structural Support.

11. The Construction Contract shall require the General Contractor to submit to DEVELOPER, CITY and HPARC, for review, a comprehensive Quality Control program (DEVELOPER shall be responsible for quality assurance). This plan shall be in sufficient detail so as to allow DEVELOPER, CITY and HPARC to understand whom, how, and when the General Contractor will undertake such pro-active measures.

12. The Construction Contract shall require the General Contractor to submit to DEVELOPER and CITY, within 60 days from Substantial Completion of the Work covered thereby, a complete assignment of, and reference manual showing, all the warranties and guarantees provided by the General Contractor and subcontractors for such Work. Such warranties and guarantees shall have effective dates that begin no sooner than the date of acceptance by DEVELOPER of the work product (if prior to Substantial Completion of the Work) and shall be assigned to CITY.

13. The Construction Contract shall require the General Contractor to prepare at least monthly a progress report in a form, in sufficient detail, and of a character approved by DEVELOPER, submitting copies to HPARC. The progress report shall specify, among other things, status of construction activities, an estimated percentage of completion, whether the Project is on schedule and budget, and if not, the reasons therefore, an analysis of contingency (used and unused), and the revised Project Schedule, if any. The progress report shall also include status of compliance with the SBEDA Program and the Wage Standards.

14. The General Contractor shall prepare a complete submittal log that identifies all the submittals required by the Construction Contract. The submittal log shall, as a minimum, list the following items to be submitted:

- Submittals required by technical specifications
- Listing of Contractors
- Insurance certificates
- Performance and payment bonds
- Permits, fees and other items to be paid or obtained
- Payment applications
- Schedule of values
- Project closeout submittals.

15. The Construction Contract shall require the General Contractor, and the subcontractors for each trade or division of the Work, under the direction of General Contractor, to keep a complete and accurate record of all changes or deviations from the Construction Contract. The General Contractor shall prepare or cause to be prepared legible and neat freehand drawings certifying the as-built conditions of the mechanical and electrical systems. All such changes shall be neatly and correctly shown on the drawings affected, or in the specifications, with appropriate supplementary notes. The record set of prints of drawings, shop drawings and specifications shall be kept at the construction site for inspection of Architect, HPARC,

DEVELOPER and CITY and shall be delivered to CITY in good condition within sixty (60) days after the time of Substantial Completion of the Work covered by the Construction Contract.

16. The Construction Contract shall require that the appropriate subcontractor shall, under the direction of General Contractor, furnish to CITY a complete set of manuals, containing the manufacturers' instructions for maintenance and operation of each item of equipment and apparatus, building systems and components thereof, furnished under the Construction Contract and any additional data specifically required under the various sections of the specifications for each division of the Work.

17. The Construction Contract shall require the General Contractor to provide and maintain temporary barricades and fences that shall be sufficient height and completeness for security and safety purposes as appropriate for the construction site, in accordance with good construction industry practices. The General Contractor will maintain such barricades and fences. The General Contractor shall provide gates at locations where required for access to the enclosed area.

18. The Construction Contract shall require that the General Contractor keep construction site (as it is defined in the Plans and Specifications) clear and free of debris and waste materials, and, to the extent it is legally able to do so, to repair any damage caused by General Contractor or its subcontractors. The General Contractor will use its reasonable efforts to control dust so that it does not disturb persons within the immediate vicinity of the site.

19. The Construction Contract shall require that the General Contractor acknowledge that the only obligations of CITY and HPARC are contained in the Parking Garage Agreement and all payments by CITY are limited to the City Contribution, as defined in the Parking Garage Agreement. The Construction Contract shall require the General Contractor to look solely to DEVELOPER for all payments, penalties and damages and to hold CITY and HPARC harmless from any and all claims, damages, losses and expenses of the General Contractor and its subcontractors arising under the construction documents between General Contractor and DEVELOPER in excess of the City Contribution.

20. The Construction Contract shall require the General Contractor to fulfill the requirements of the limited sales, excise, and use tax rules and regulations applicable to its Work. The Construction Contract shall require the General Contractor to pay any taxes applicable to its Work.

21. The Construction Contract shall require the General Contractor to obtain all permits and approvals, and pay all fees and expenses, if any, associated with National Pollutant Discharge Elimination System (NPDES) regulations administered by the Environmental Protection Agency (EPA) and local authorities, if applicable, that require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for the project.

22. The Construction Contract shall include an indemnity provision in which, among other things, to the fullest extent permitted by law, the General Contractor indemnifies, defends and holds harmless DEVELOPER, and their respective agents, consultants, representatives, and employees from and against all claims, damages, losses, and expenses, including but not limited

to, attorney's fees and costs incurred in connection therewith, arising out of, or resulting from the performance of the work, provided that any such claim, damage, loss or expense (A) is attributable to bodily or personal injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom, and (B) is caused in whole or in part by any willful or negligent act or omission of General Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by the negligent acts or omissions one or more of the indemnified parties. **The Construction Contract shall also include CITY and HPARC in each indemnity that is given to DEVELOPER and each policy of insurance to be provided by the General Contractor shall be endorsed to name CITY and HPARC as an additional insured.**

23. The Construction Contract shall provide that the General Contractor shall not permit a mechanic, contractor, materialman, artisan, or laborer lien to attach to the Parking Garage Premises or the Parking Garage Facilities, or any of the improvements of whatever nature or kind so erected or to be erected by virtue of the Construction Contract.

24. The Construction Contract shall require the General Contractor to indemnify and hold DEVELOPER, HPARC and CITY harmless from any liens, claims, security interest or encumbrances filed by the General Contractor, subcontractors, or anyone claiming by, through or under the General Contractor for items covered by payments made to the General Contractor.

25. The Construction Contract shall provide that the General Contractor maintain adequate books, payrolls, and records reasonably satisfactory to DEVELOPER in connection with any and all Work performed by or through the General Contractor hereunder. General Contractor agrees to retain all such books, payrolls, and records (including data stored in computers) for a period of not less than three (3) years after completion of the Work. DEVELOPER, HPARC and CITY and their duly authorized representatives shall be afforded reasonable and timely access to all of the General Contractor's books, records, correspondence and other data and information relating to the Construction Contract and the Work.

26. The Construction Contract shall require the General Contractor's contracts and subcontracts to contain the language required by TEX. LABOR CODE Section 406.096 and 28 TAC 110.110.

27. The Construction Contract shall require the General Contractor to furnish a Performance Bond and a Payment Bond meeting all statutory requirements of the State of Texas (including as applicable Chapter 53 of the Texas Property Code, Chapter 2253 of the Texas Government Code and Section 3503.005 of the Texas Insurance Code), in form and substance satisfactory to DEVELOPER. Each Bond shall be in a penal sum which is not less than the Contract Sum. The bonds shall be executed by a responsible corporate surety acceptable to DEVELOPER and CITY, holding a current certificate of authority from the United States Department of Treasury to issue bonds to the federal government ("Treasury Listed"), and duly licensed and authorized by the State of Texas to issue surety bonds in Texas. If the risk insured exceeds ten percent (10%) of the surety company's capital and surplus, the surety must reinsure such excess in a manner acceptable to DEVELOPER and CITY. All bonds shall be accompanied by an executed Dual or Multiple Obligatee Rider naming CITY as additional obligee.

28. The Construction Documents shall require that payments due and unpaid under the Construction Contract shall bear interest at a rate no greater than that provided in the Texas Prompt Payment Act, Tex. Gov't Code Chapter 2251.

29. The Construction Documents shall require General Contractor to certify in writing that no materials used in the work contain lead or asbestos materials in them in excess of amounts allowed by laws, codes, rules and regulations of Governmental Authorities, the Federal Environmental Protection Agency (EPA) standards and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive, and taking into account the nature of the Project and the improvements being constructed. The General Contractor shall provide this written certification as part of submittals under the section in the project manual related to Contract closeout.

EXHIBIT G TO PARKING GARAGE DEVELOPMENT AGREEMENT

INSURANCE REQUIREMENTS

1. **Commercial General Liability Insurance** (combined single Limit for Bodily Injury and Property Damage Liability). DEVELOPER and General Contractor each shall provide and maintain Commercial General Liability Insurance (the “**CGL Policy**”) written on an occurrence basis, primary insurance as regards any other insurance carried by each such insured, and in such amount and such policy limits so that the coverage and limits are adequate to maintain the Umbrella Policy described below without gaps in coverage between the CGL Policy and the Umbrella Policy and the following minimum policy limits:

- a. \$2,000,000 General Aggregate
- b. \$2,000,000 Products/Completed Operations Aggregate
- c. \$2,000,000 Personal Injury
- d. \$2,000,000 Each Occurrence

Coverage provided shall include the following:

- (1) Premises/operations,
- (2) Contractor’s Protective for Contractor’s liability arising out of the hire of Subcontractors (Independent Contractors),
- (3) Aggregate Limits of Insurance Per Project,
- (4) Broad Form Contractual Liability specifically in support of, but not limited to, the indemnity provisions of the Construction Contract,
- (5) Personal Injury Liability with Employment and Contractual exclusions removed,
- (6) Broad Form Property Damage including Completed Operations,
- (7) Product/Completed Operations for a period of two years following acceptance of Contractor’s Work,
- (8) All other “Broad Form CGL” coverages, and
- (9) Explosion, collapse, and underground damage to property of others (XCU) where such exposures exist.

2. **All Builders’ Risk Insurance / Installation Floater.** DEVELOPER and General Contractor each shall provide and maintain All Risk Builder’s Risk Insurance (“**Builder’s Risk Policy**”) with respect to their respective construction activities under the Parking Garage Agreement, insuring the interest of DEVELOPER, CITY, HPARC, General Contractor and the Contractors as their interest may appear, set forth in the single policy, including coverage against collapse and the coverage available under the so-called Installation Floater, written on the completed value basis in an amount not less than the Contract Price of the Construction Contract (including subcontracts) and all authorized and approved Change Orders. Coverage will include all materials, supplies and equipment that are specifically intended for installation into the Work while such materials, supplies and equipment are temporarily located off the Site of the Work on the

purpose of repair, adjustment or storage at the risk of one of the insured parties. Coverage will not include any tools or clothing of workmen or of any tools, equipment, protective fencing, scaffolding, temporary structures, forms and equipment, or other property owned, rented, or used by Contractor, any Subcontractors or Subcontractors and used in the performance of the Work, unless the value of such items is included in the Cost of the Work and such items are specifically identified in the Construction Contract.

3. **Workers' Compensation/Employers' Liability.** Statutory Workers' Compensation Insurance Coverage [as defined in Sec. 402.011(44) of the Texas Labor Code (1995)] with statutory limits for all of Contractor's workers at the site of the project. In case any work is sublet, the Contractor shall require all Subcontractors similarly to provide Workers' Compensation insurance for all the Subcontractors' employees unless such employees are covered by the protection afforded by the Contractor, or, when applicable, Contractor has complied with the requirements for joint agreements with independent contractors under Sections 406.141- 406.145, Texas Labor Code (1995).

Additionally, employer's liability insurance policy affording protection of not less than the following amounts:

\$1,000,000	Bodily Injury by Accident — Each Accident
\$1,000,000	Bodily Injury by Disease — Each Employee
\$1,000,000	Bodily Injury by Disease — Policy Limit

4. **Umbrella Liability Insurance.** DEVELOPER and General Contractor each shall provide and maintain an excess or umbrella liability insurance policy (the "**Umbrella Policy**") providing coverage in excess of the limits specified above (except for Workers' Compensation Insurance). Such policy shall have the same inception and expiration dates as the underlying liability policies and coverage no less broad than those in the primary policies or program. Minimum limits shall be:

\$50,000,000	Each occurrence
\$50,000,000	Annual aggregate

When commercially available, all such policies described above shall be written on an Occurrence (not Claims made) basis. In addition, the foregoing insurance coverages may be provided under an Owners Controlled Insurance Policy ("**OCIP**") or Contractor Controlled Insurance Policy ("**CCIP**") acceptable to the CITY, such acceptance not to be unreasonably withheld, conditioned, or delayed.

5. **Error and Omissions Insurance.** When commercially available DEVELOPER and General Contractor each shall provide and maintain an owner's protective professional indemnity umbrella policy ("**OPPI Policy**") specific to the Project. The OPPI Policy shall be in the amount of \$5,000,000 and shall have an extended reporting period two (2) years after the date of Substantial Completion of such portion of the Project.

EXHIBIT H TO PARKING GARAGE AGREEMENT
LIMITED GUARANTY

This Limited Guaranty ("Guaranty"), effective _____, 2017, is made by _____ ("Guarantor") to and for the benefit of the HEMISFAIR PARK AREA REDEVELOPMENT CORPORATION, a Texas local government corporation formed under Subchapter D of Chapter 431 of the Texas Transportation Code ("HPARC") and CITY OF SAN ANTONIO, a Texas municipal corporation ("CITY"), collectively sometimes herein, the "Benefitted Parties." Capitalized terms not otherwise defined herein have the meanings specified in the Parking Garage Agreement (as defined below).

Recitals

A. DEVELOPER _____, a _____ limited liability company ("DEVELOPER"), CITY and HPARC are parties to that certain Parking Garage Agreement (the "Agreement") effective as of the date hereof, pertaining to that certain real property located in the City of San Antonio, Bexar County, Texas, more particularly described in the Agreement. Capitalized words or phrases that are not defined herein will have the meaning ascribed to such capitalized words and phrases in the Agreement, unless the context clearly indicates another meaning.

Guaranty

In consideration of the foregoing and to induce CITY and HPARC to enter into the Agreement, Guarantor agrees as follows:

1. Subject to paragraph 9 below, Guarantor unconditionally and absolutely guarantees to the Benefitted Parties the prompt and full payment and performance when due and owing of all present and future obligations of DEVELOPER under the Agreement that are not timely paid or performed by DEVELOPER in accordance with the terms of the Agreement.
2. Guarantor shall perform all obligations under this Guaranty strictly in accordance with the terms and provisions of the Agreement.
3. Guarantor waives (a) presentment and demand for payment of any indebtedness to DEVELOPER or Guarantor, and (b) protest and notice of dishonor or default to DEVELOPER or Guarantor to which DEVELOPER or Guarantor might otherwise be entitled under a guaranty.
4. This Guaranty is an absolute, continuing and unconditional guaranty of payment and performance and not of collection. Notice to Guarantor of any and all defaults is waived and consent is hereby given to all extensions of time that the Benefitted Parties may grant to DEVELOPER in the payment or performance of any of the terms or provisions of the Agreement and/or to the waiving in whole or in part of any such payment or performance, and/or to the releasing of DEVELOPER in whole or in part from any such

performance, and/or to the adjusting of any dispute in connection with the Agreement, and/or to the assignment of the Agreement to any other entity; and no such defaults, extensions, waivers, releases, adjustments, or assignments, with or without the knowledge of Guarantor, shall affect or discharge the liability of Guarantor. Guarantor and the Benefitted Parties hereby waive any and all right to a trial by jury in any action or proceeding to enforce this Guaranty. Guarantor and the Benefitted Parties further agree that the prevailing party in any action to enforce this Guaranty will be entitled to receive from the other party all reasonable expenses, including legal fees and disbursements paid or incurred by the prevailing party in any action seeking to enforce this Guaranty. Guarantor agrees that it is not necessary for the Benefitted Parties, in order to enforce this Guaranty, to institute suit or exhaust its legal remedies against DEVELOPER; but the sole condition precedent to enforcement of the obligations of Guarantor hereunder is that DEVELOPER does not timely perform its payment or performance obligations in accordance with the terms of the Agreement.

5. This Guaranty shall not be impaired by, and Guarantor hereby consents to (i) any modification, supplement, extension or amendment of the Agreement to which the parties thereto may hereafter agree, (ii) any assignment of the Agreement, (iii) any exercise or non-exercise of any right, remedy, power, or privilege under or in respect of this Guaranty or the Agreement; or (iv) any assignment or transfer of the assets of DEVELOPER to, or any consolidation or merger of DEVELOPER with or into any other person, partnership, or corporation, or any disposition by Guarantor of any interest in DEVELOPER. The liability of Guarantor hereunder is primary, direct, unconditional and co-extensive with that of the DEVELOPER and may be enforced without requiring the Benefitted Parties first to resort to any other right, remedy or security. The enforceability of this Guaranty shall not be affected by any bankruptcy proceeding or other proceeding affecting the rights of creditors of DEVELOPER, nor by discharge or modification of DEVELOPER's liability under the Agreement in any bankruptcy proceeding. Guarantor shall have no right of subrogation, reimbursement or indemnity whatsoever, nor any right of recourse to security for the debts and obligations of DEVELOPER to the Benefitted Parties, unless and until all of said debts and obligations have been satisfied in full.
6. This Guaranty is governed as to its validity, construction and performance by the laws of the State of Texas, without regard to its conflict of law provisions.
7. Subject to paragraph 9 below, Guarantor agrees that this Guaranty is a continuing and irrevocable guaranty and shall remain in full force and effect until all payment and performance obligations under the Agreement have been paid and performed as set forth in the Agreement. Nothing in this paragraph 7 shall be construed to diminish in any way the effect of paragraph 9 below.
8. This Guaranty is binding upon Guarantor, its successors and assigns, and inures to the benefit of the Benefitted Parties and its successors and assigns.
9. Upon Substantial Completion of the Project in accordance with the Agreement, this Guaranty shall terminate completely, including as to all obligations of DEVELOPER

under the Agreement, including those arising prior to the date of Substantial Completion, provided that the obligations of Guarantor under this Guaranty shall continue and remain in full force and effect with respect to the payment of the Developer Contribution and other payment obligations for the period prior to the date of Substantial Completion.

STATE OF TEXAS

COUNTY OF BEXAR

Before me, on this day personally appeared_____, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Notary Public

Commission Data:

(NOTARIAL SEAL)