MCKINLEY PARKING AGREEMENT

This PARKING AGREEMENT ("Agreement") is made and entered into this 10th day of February, 2006, by and between McKinley Financial Center LLC ("Owner"), whose address is 320 North Main Street, Ann Arbor, Michigan 48104 and the City of Ann Arbor, Michigan, a Michigan municipal corporation, whose address is 100 North Fifth Avenue, Ann Arbor, Michigan 48104 (the "City").

WHEREAS, Owner or its affiliates has proposed the following redevelopment plans for the following properties within the next five years (which projects shall hereinafter be referred to collectively as the "McKinley Towne Centre"):  

Parcel #1 (former TCF headquarters) currently has 100,000 s.f. of office on four stories and 8,000 s.f. of retail on the ground floor with surface parking. The redevelopment will eliminate approximately 25 parking spaces, and the driveway onto Liberty will be removed, in order to provide for the construction of 14,000 s.f. of new retail space on the ground level.

Parcel #2 (former rental car site) currently has 24 surface parking spaces with a 378 s.f. structure vacant for over 15 years. This site will be redeveloped with approximately 45 residential units plus at least 3,000 s.f. of ground floor retail.

Parcel #3 (former TCF training center) has 34 surface parking spaces with a 7,076 s.f. structure, and Parcel #4 has a 2,998 s.f. residential building that is currently in use as office space. The two parcels will be redeveloped with approximately 100 on-site parking spaces, approximately 100 for-sale condominiums and approximately 8,000 s.f. ground retail;

WHEREAS, The DDA, as manager of the City's parking structures, reviewed the request and recommended approval of the proposed contract;

WHEREAS, City Council adopted the recommendation of the DDA, and approved a parking contract with the Owner on December 5, 2005 subject to the terms of City Council Resolution R-622-12-05 which is incorporated here by reference;

WHEREAS, Owner currently leases 117 monthly permits and its tenant TCF Bank currently leases 135 permits for a total of 252 permits at the Liberty Square Parking Structure (the "Structure") from Republic Parking, and has requested a contract for the total number of these permits to enable their redevelopment of parcels #1-4 to go forward and has secured or will secure any necessary authority to include the TCF Bank leased permits in Owner's request; and
NOW THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, receipt whereof is hereby acknowledged, the Owner and the City hereby agree as follows:

Subject to the conditions specified in Section 2, the CITY or its authorized agent will make the parking permits available upon the following terms and conditions:

(a) Owner and/or its approved assignees shall be granted the authority to issue permits for up to 252 parking spaces in the Liberty Square Parking Structure ("Structure") for a period of approximately twenty (20) years with no renewals. (the "Term"). Notwithstanding anything in this Agreement to the contrary the City acknowledges that the DDA has previously entered into an agreement with the Owner and/or its affiliates, including but not limited to TCF Bank, for the lease of a total of 252 monthly permits at the Structure. The City agrees that the use of those permits may continue until the commencement of the Term hereunder (for the entire McKinley Towne Centre project) pursuant to the existing agreement between the DDA and the Owner and shall not be subject to the terms and conditions contained herein with respect to such use prior to the commencement of the Term.

(b) The Term shall begin on the date specified by the Owner by written notice to the CITY, which notice shall be delivered by the Owner to the DDA not less than one hundred twenty (120) days prior to the first day of the Term, except that the Term shall not commence until a certificate of occupancy has been issued for the first of the completed projects within the McKinley Towne Centre and terminate twenty years from the date of last certificate of occupancy issued for the project. The Owner will use good faith efforts to advise the DDA of the projected commencement date of the initial Term at least six (6) months prior to that effective date.

(c) The number of parking permits which may be issued to the Owner upon completion of the individual projects in McKinley Towne Centre shall not exceed the following: 107 for Parcel #1, 45 for Parcel #2, and 100 for Parcels #3 and #4. McKinley shall be solely responsible for distribution of the permits among and between the occupants of the parcels; except that no single individual (i.e., leaseholder) occupying any of the individual projects, collectively identified as the McKinley Towne Centre Project, or any portion thereof, shall be assigned more than 59 permits.

(d) The Owner and/or its approved assignees may reduce the number of permits to which it is entitled, but any such reduction shall be permanent unless otherwise agreed to in writing, and at its sole discretion, by the DDA or its successor entity.

(e) The permits issued to the Owner and/or its approved assignees under this Agreement by the DDA shall be made available for use only by individuals who are occupants (i.e., leaseholder or owner, their assignees or sublessees, their officers, visitors and employees) of McKinley Towne Centre ("permit holders"). The Owner and/or its
approved assignees, on or before the first day that they are permitted to issue permits for each of the projects within McKinley Towne Centre, shall provide a schedule to the DDA of each permit holder and the vehicle for which the permit will be utilized (the "permit schedule"). On a monthly basis thereafter, not later than the thirtieth (30th) day of each month for the following month, the Owner and/or its approved assignees shall deliver to the DDA an update of the permit schedule of the permit holders. (If, as of the date of any permit schedule, any permit is not assigned for use by a specific permit holder, then that fact shall be confirmed in such permit schedule and, promptly after the permit is assigned to a specific permit holder, the permit schedule shall be supplemented with the name of the permit holder to whom that permit is assigned and the vehicle for which that permit will be utilized.) Each permit holder, in the use of the Structure, will comply with all applicable ordinances of the City and will comply with all rules and regulations adopted by the DDA for use of the Structure to the extent that such rules and regulations are applicable to all holders of permits for the Structures and such rules and regulations have been furnished by the DDA to the Owner.

(f) The Owner and/or its approved assignees shall pay to the DDA the following fees for each permit issued under this agreement (the "permit fee"): (i) an initial fee for the issuance of a card required to obtain access under the permit, which fee shall be at the then prevailing charge for such access cards, and (ii) a monthly permit fee for each calendar month during which the permit is issued. The monthly permit fees initially shall be Thirty Dollars ($30) plus a sum equal to the then prevailing monthly rates for a parking permit in the Structure, as established by the DDA or its successor body. The DDA, not later than sixty (60) days prior to the commencement of the Term, shall advise the Owner in writing of the then prevailing rates which will provide the basis for the permit fee. Commencing 12 months after the starting date of the Term, and continuing on an annual basis thereafter, the $30 fee will be increased by an amount equivalent to the rise of the consumer price index for the previous 12-month period. The CITY will have the right, from time to time during the Term, to revise the permit fees payable by the Owner under this agreement to correspond to authorized changes in the then prevailing rates by a written notice delivered at least sixty (60) days prior to the effective date of such revision. For purposes of this Agreement, the prevailing rate for a parking space in the Structure will be the rate generally charged to individuals an arm's length basis for monthly parking permits in the Structure. If no other monthly parking permits are issued for the structure, then the prevailing rate will be the rate which is charged for monthly parking permits in the parking Structure operated by the DDA or the City which is nearest to the Structure.

(g) The Owner and/or its approved assignees shall pay to the DDA the total of permit fees for each permit issued under this agreement on a monthly basis, in a single lump sum, not later than the first day of the calendar month for which such permits are issued. (For example, for permits applicable for the month of August, the Owner will receive an invoice from the DDA during the preceding July, and the Owner shall pay the required charges to the DDA on or before that August 1st). The permit fee for each calendar month will be payable for all permits issued by the DDA under this agreement for that month, irrespective of whether the Owner has assigned that permit to a permit holder for use during that month and irrespective of whether the permit
holder has reimbursed the Owner for that permit fee. Any permit fee not paid by the Owner within 5 days of its due date will bear interest at the prime rate (as published by JPMorgan Chase or its successor) plus three percent (3%) from its due date to its date of payment.

(h) If during the Term, renovations or repairs are required to the Structure, the DDA shall use its best efforts to minimize the effect of such repairs or renovations upon the utilization of the permits used under this agreement. If despite such best efforts, the utilization of some or all of these permits must be temporarily suspended, then the DDA shall use its best efforts to arrange for alternative parking arrangements for the affected permit holders at the nearest available locations. If during the Term, as a result of physical damage to the Structure, the Structure cannot be used, the City or the DDA, as the City's manager, shall provide substitute spaces at the Maynard Street Parking Structure (the "Alternative Structure"), until the repair or restoration is completed; provided that if the extent of the damage to the Structure is such that the repair or reconstruction of the Structure would take longer than six (6) months, then the City may elect (upon written notice to the Owner delivered within sixty (60) days after the damage occurred) to permanently discontinue parking at the Structure, and the replacement spaces at the Alternative Structure shall be provided to the Owner for the remainder of the Term and the Alternative Structure shall thereafter be deemed to be the Structure as such term is used herein. Owner will remain liable to the DDA for all permit fees accrued under this Agreement except for spaces which are not available for use by Owner as a result of ongoing repairs or restoration.

2. Conditions to Effectiveness. The commitment of the DDA to issue permits to the Owner for the Structure on the Terms specified in Section 1 is subject to the satisfaction (or waiver in writing by the DDA):

(a) The Owner, by written notice to the DDA pursuant to Section 7, shall have activated the Term of this agreement as of a date on or before December 31, 2006, or such later date as the City may hereafter designate.

(b) Unless the above condition is satisfied on or before the date specified above for such condition, then all rights and obligations of the parties to this agreement shall be null, void and have no further force or effect, provided however that the City shall first provide the Owner written notice of the Owner's breach and an opportunity to cure that breach as provided in Section 3 below.

3. Default/Termination.

(a) The following will constitute events of default by the Owner under this Agreement.
1. The failure by the Owner to pay any permit fees after the date for payment specified in Section 1(g), which shall be considered a "Monetary Breach" hereunder, and the failure to remedy that breach within fourteen (14) days after the date that the DDA delivers written notice to the Owner identifying such breach and demanding payment of the full amount owing; or

2. The breach by the Owner of any other commitment under this Agreement, which shall be considered a "Non-Monetary Breach" hereunder, and the failure to remedy that breach within thirty (30) days after the date that the DDA delivers written notice identifying such breach and demanding such remedial action. However, if the Non-Monetary Breach cannot reasonably be cured within such thirty (30) days, and if the Owner furnishes a written response to the City within such thirty (30) days explaining the need for more time to cure the breach, and if such explanation is reasonably satisfactory to the City, then the City will grant the Owner such additional time to cure that Non-Monetary Breach as may be reasonably necessary under the circumstances, provided that the Owner must attempt to accomplish the cure of such breach in a reasonably diligent manner.

(b) Upon the occurrence of an event of default, the DDA, by further written notice to the Owner, may terminate this Agreement effective thirty (30) days following the day of delivery of such notice. In such event, the obligation of the DDA to issue permits for the Structure will terminate as of the effective date of such termination, the Owner will remain liable to the DDA for all permit fees accrued under this Agreement through the effective date of termination and the Owner will remain liable to the DDA for any damages incurred by the DDA or the City as a result of such default, provided, however, that any claims by the DDA for lost revenues (as distinguished from other damages which may be incurred by the DDA) due to Owner's failure to utilize and pay for permits issued and/or available pursuant to this Agreement will be limited to accrued but unpaid permit fees through the effective date of termination plus the total of all permit fees for a period of one hundred twenty (120) days after the date of termination for the number of permits in effect on the date of termination plus any interest accruing thereon in accordance with Section 1(g).

(c) If the Owner or its lender holding any first mortgage on all or any part of McKinley Towne Centre furnishes written notice to the City requesting a copy of all notices of breach which are to be sent to the Owner, then the City will send a copy of all notices of any breach by the Owner to that lender, in order to afford the lender an opportunity to cure any breach on the terms granted to the Owner under Subsection 3(a) above. Such notice of breach shall be furnished to the lender at the same time as notice of breach is furnished to the Owner, so that the lender's time period for curing a breach shall begin to run simultaneous with the Owner's time period.
Assignment.

(a) Owner shall make no assignment under this Agreement without prior written consent of the City, which consent shall not be unreasonably withheld, delayed or conditioned, subject to and in accordance with the following:

1. The City shall not withhold its consent to an assignment of this Agreement, in whole or in part, to a proposed assignee if the assignee, its principals, owners, managers and/or affiliated management company have reasonably sufficient financial strength and/or business experience to be reasonably capable of having the assignee fulfill the obligations of the Owner under this Agreement. The parties acknowledge that the intent of the City under this Section 4 is to protect the City’s interest in the operation of the parking structures referred to herein, and the intent is not to address matters concerning the ownership or operation of McKinley Towne Centre. In the event of a partial assignment the City agrees to execute a separate Parking Agreement with the assignee which will contain the same terms and conditions set forth herein but relating only to the specific number of parking spaces assigned. The Owner may assign this Agreement without prior consent of the City to a lender as security for a loan on all or any part of McKinley Towne Centre.

2. The City shall not impose any additional financial or other obligations (directly or indirectly) on the proposed assignee or on Owner as a condition of granting the City’s consent for the proposed assignment, including but not limited to (i) changing the terms of this Agreement in a manner not already authorized herein, or (ii) imposing any requirements concerning the use, residency, occupancy or operation of McKinley Towne Centre. However, the City may require that the proposed assignee agree in writing to be bound by the terms of this Agreement.

3. When the Owner requests written consent for a proposed assignment, the Owner shall provide the City information reasonably appropriate for the City to review the qualifications of the proposed assignee, its principals, owners, managers and/or affiliated management company. The City shall have twenty (20) business days after receipt of this information to, in writing, either approve of the assignment, reject the assignment or make one-time request for specific supplemental information to satisfy any concerns which the City specifically identifies as necessary in order for the City to conclude its review of the assignee in accordance with the terms of Section 4. If the City fails to respond in writing to the Owner within the twenty (20) business day time period, then the City will be conclusively deemed to have consented to the proposed assignment. The same time period of twenty (20) business days shall govern the City's review of any supplemental information furnished by the Owner in accordance with the foregoing terms.
4. Notwithstanding the foregoing, in no event shall the City's consent be required in connection with a foreclosure or judicial sale of McKinley Towne Centre, or a deed in lieu of foreclosure, which is initiated by any bank, savings and loan association, credit union, insurance company, pension plan or other institutional lender holding a bona fide mortgage on the property.

(b) The Owner may assign its rights under this Agreement to a legally established Condominium Association as defined by laws of the State of Michigan. In the event of any such permitted assignment to a Condominium Association, (i) Owner shall notify the City of the assignment in advance and in writing, (ii) the established Condominium Association will be fully liable for the performance of the obligations of the Owner under this Agreement the terms of which shall be incorporated into the establishing document for the Condominium Association; and (iii) the permits shall only be assigned to occupants of McKinley Towne Centre as stated in Section 1(e).

(c) In the event of a complete assignment of this Agreement which is permitted under the foregoing terms, the Owner (and in case of any subsequent transfers or conveyances, the then grantor) shall be automatically freed and relieved from and after the date of such transfer or conveyances of all liability therefor arising on the part of the Owner under this Agreement. However, the Owner (or the then grantor) shall not be excused from payment any amounts which are already at that time due and payable to the City by the Owner hereunder.

5. City Assumption of DDA Rights and Obligations. If the DDA management responsibility for the Structure is for any reason terminated, whether as a result of the termination or amendment of the Master Lease, the DDA is dissolved by action of the City or operation of law, or any other reason, the rights and obligations of the DDA under this Agreement shall transfer to and become the obligation of the City and the Owner's rights and obligations under this Agreement will not be affected in any way by the transfer of the rights and obligations to the City.

6. Binding Effect. This Agreement is binding upon and shall inure to the benefit of the parties hereto and their successors and permitted assigns.

7. Notices. All notices permitted or required under this Agreement shall be in writing and addressed to the parties at their addresses set forth above. Any such notice shall be sent by certified mail, return receipt requested, express overnight delivery requiring a signed delivery receipt, delivered personally or sent by facsimile. Any notice sent certified mail, return receipt requested, will be deemed delivered on the third (3rd) business day after mailing. Any notice sent by express overnight mail delivery will be deemed delivered on the following business day after delivering such notice to the carrier. Any notice given by personal delivery or by facsimile prior to 3:00 p.m. will be deemed delivered on the date of such delivery or, if 3:00 p.m. or later, on the next business day. Any notice that a party fails or refuses to accept will be deemed delivered on the date of such failure or
refusal. The parties hereto may change their addresses for notice purposes by a notice
sent in accordance with the provisions of this Agreement, but no such address shall be a
post office box.

8. Authority. The signatories on behalf of the parties hereto hereby represent and warrant to
the other parties hereto that they are duly authorized to execute and deliver this
Agreement on behalf of such party and that this Agreement is binding upon and
everitable against such party.

9. Applicable Law. This Agreement shall be interpreted and construed in accordance with
the laws of the State of Michigan.

10. Counterparts. This Agreement may be executed in one or more counterparts, each of
which will be deemed an original but all of which together shall constitute but one and
the same Agreement.

11. Entire Agreement. This Agreement constitutes the entire Agreement between the parties
hereto pertaining to the subject matter hereof and supersedes all negotiations, preliminary
agreements and prior to contemporaneous discussions and understandings of the parties
hereto in connection with the subject matter hereto.

12. Amendments. No amendment, change or modification of any of the terms, provisions or
conditions of this Agreement will be effective unless made in writing and signed or
initialed on behalf of the parties hereto by their duly authorized representatives.

13. No Third Party Beneficiaries. The parties acknowledge and agree that this Agreement is
made and entered into for the sole benefit of the Owner, the City, and the DDA, and in no
event shall any other person, entity or agency be considered a party to this Agreement or
a beneficiary under this Agreement. Accordingly, there shall be no third party
beneficiaries under this Agreement, and in no event shall any nonprofit housing entity,
any tenant, any parking permit holder or any other person, entity or agency be entitled to
enforce or claim any right or benefit under this Agreement.
IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day first above written. This Agreement is not intended to create a contractual right for third parties. It may be enforced, amended, or rescinded only by the parties and their successors in interest.

OWNER:

McKINLEY FINANCIAL CENTER, LLC, a Michigan limited liability company

By: McKinley Associates, Inc., a Michigan corporation
   Its: Manager

   By: [Signature]
       Stephen G. Palms
       Its: Executive Vice President

CITY:

CITY OF ANN ARBOR
a Michigan municipal corporation

By: [Signature]
   John Hieftje, Mayor

By: [Signature]
   Jacqueline Beaudry, City Clerk

Approved as to Substance:

[Signature]
       Roger W. Fraser, City Administrator

[Signature]
       Susan Poffley, DDA Executive Director

Approved as a Form:

[Signature]
       Stephen Postema, City Attorney

[Signature]
       Jared Lax, DDA Attorney
FIRST AMENDMENT TO
MCKINLEY PARKING AGREEMENT

The First Amendment ("Amendment") is made and entered into this 18th day of April, 2007, by and between McKinley Financial Center LLC ("Owner") and the City of Ann Arbor, Michigan ("City").

Recitals:

WHEREAS, Owner and City entered into that McKinley Parking Agreement dated February 10, 2006 ("Agreement"), which grants Owner and/or its approved assignees the authority to issue 252 parking permits ("Permits") at the Liberty Square Parking Structure ("Structure"); and

WHEREAS, Owner has entered into a Lease with Google Inc. covering premises located in the building located within Parcel #1 (described in the recitals of the Agreement) which premises consist of approximately 85,763 of rentable square feet ("Google Lease"); and

WHEREAS, Owner and City wish to amend the Agreement to reflect that the City and/or the DDA, under its authority as Manager of the City's parking structures, shall make available certain of these Permits for issuance to Google Inc.

NOW THEREFORE, Owner and City hereby agree as follows:

1. From and after the Commencement Date of the Google Lease and continuing until the Expiration Date of the Google Lease, one hundred ninety (190) Permits ("City Permits") and forty-five (45) temporary Permits ("Assigned Agreement Permits") within the Structure (of the two hundred fifty two (252) Permits covered by the Agreement ("Agreement Permits")), shall be made available to Google Inc. (for issuance and use by Google Inc.) by the City and/or the DDA. Owner shall have no responsibility or authority to issue any of such one hundred ninety (190) City Permits issued to Google Inc. for Google Inc.'s use, nor shall Owner have any responsibility for paying any permit fees with respect to such City Permits until the Google End Date (defined below). Owner's responsibility for the forty-five (45) Assigned Agreement Permits is subject to the conditions stated in Paragraph 1(c) below.

Notwithstanding the foregoing, if the rentable square feet of the premises leased under the Google Lease is reduced below 85,763 sq. ft., then there shall be a proportionate reduction in the total number of City Permits which the City and/or the DDA may issue to Google Inc. and the rights granted to Owner with respect to the remainder shall revert back to Owner and/or its approved assignees for issuance. Upon the earlier of: (a) the Expiration Date of the Google Lease, or (b) the date upon which Google Inc. no longer requires the City Permits from the City and/or the DDA (the last to occur being known as the
"Google End Date"), the City Permits shall revert back to Owner and/or its approved assignee for issuance as Agreement Permits and subject to all applicable conditions under the Agreement. The issuance of City Permits to Google, Inc. under this provision shall not relieve the Owner and/or its approved assignees from issuing Agreement Permits to Google, Inc. to satisfy Google, Inc.'s parking needs (over and above the one hundred ninety (190) City Permits and the forty-five (45) Assigned Agreement Permits) under the terms of Google Lease. Any Agreement Permits issued by Owner and/or its approved assignees to Google, Inc. shall be subject to permit fees as specified in the Agreement.

2. Paragraph 1(b) shall be amended so that the expiration date of the "Term" of the Agreement for the one hundred ninety (190) City Permits and the forty-five (45) Assigned Agreement Permits temporarily assigned to Google, Inc. under the provisions of Paragraph 1(c) as amended below shall be the date twenty (20) years from and after the Google End Date. The commencement of the "Term" for remaining Agreement Permits shall be March 5, 2007 (the date of the Certificate of Occupancy for the first of the completed projects within the McKinley Towne Center) and the expiration date of the "Term" of the Agreement for the remaining Agreement Permits shall be the date twenty (20) years from and after the issuance of the last certificate of occupancy for the projects.

3. Paragraph 1(c) of the Agreement is hereby deleted in its entirety and replaced with a new Paragraph 1(c) in its entirety and replaced with a new Paragraph 1(c) to read as follows:

(c) Owner shall be solely responsible for distribution of the Agreement Permits among and between the occupants of the parcels; except that until such time that construction activities are commenced in connection with the development of Parcel #2 (described in the recitals of the Agreement) forty-five (45) Permits ("Assigned Agreement Permits") shall be allocated for issuance to and use by Google, Inc. during the term of the Google Lease, who shall relinquish same under the terms of notice by the City and/or the DDA, who shall be responsible for issuing the notice to Google, Inc. on receipt, and not until receipt, of written notification by Owner of its application for a certificate of occupancy for Parcel #2 and no Assigned Agreement Permits may be issued by Owner and/or its approved assignees to any other party (as defined in paragraph 1(e) of the Agreement) until a certificate of occupancy is issued for Parcel #2 at which time permits shall be classified as Agreement Permits and subject to all applicable conditions of the Agreement. Owner and/or its approved assignees may issue the remainder of Agreement Permits at any time during the Term of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to the McKinley Parking Agreement the date set forth above.

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OWNER:

McKINLEY FINANCIAL CENTER LLC,
A Michigan limited liability company

By: GPR McKinley Manager LLC,
A Michigan limited liability
company
Its: Manager
By: McKinley Associates, Inc.,
a Michigan corporation
Its: Manager
By: Albert Berriz
Its: CEO

CITY:

CITY OF ANN ARBOR,
a Michigan municipal corporation

By: John Hieftje
Its: Mayor
By: Jacqueline Beaudry
Its: Clerk

Approved as to substance:

Roger W. Fraser, City Administrator

Susan Pollay, DDA Executive Director

Approved as to form:

Stephen K. Postema, City Attorney
REQUEST

- Extend term of lease for 252 parking spaces currently leased by McKinley Towne Centre (MTC) at Liberty Square from month-to-month to 20 years.
- Request will support the major redevelopment and development of the subject site, along with the backfill of a major employer that will exit 350 jobs from CBD on or about 12/31/06.
- The overall development of the site will be completed within 5 years.

SEVEN (7) KEY BENEFITS

1. Downtown Parking
   - No increased burden on Liberty Square – We currently lease 252 spaces and we are only asking for access to 252 spaces.
   - Elimination of 81 surface parking spaces throughout the entire assembly (described below).
   - Addition of 100 below grade parking spaces with no DDA involvement whatsoever (described below).

2. Long term agreement for commitment of 252 parking spaces at Liberty Square for tenants of McKinley’s Division and Liberty properties.

3. Enhanced Land Uses
   - **Parcel #1**
     - Pre-Development
       - 100,000 square feet of office in four stories occupied primarily by a major single user.
     - Post-Development
       - 100,000 square feet of office in four stories occupied by diversified tenant base
• 145 new residential units that will create a business demand in the area.
• Transform the area from vehicle oriented to one that is pedestrian friendly.
• Enhance the corridor to become a destination site with significant ground floor retail uses throughout the entire assembly.
• Catalyst for the redevelopment of the core area along Liberty.

7. Addition of major “outdoor” and “open spaces” within the plaza area of MTC along Liberty and Division without any DDA funding whatsoever.

CONCLUSION

• Without any additional investment whatsoever at Liberty Square, this request adds seven (7) significant benefits to the CBD and the DDA as outlined above.
MCKINLEY PARKING AGREEMENT

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WHEREAS, Owner or its affiliates has proposed the following redevelopment plans for the following properties within the next five years (which projects shall hereinafter be referred to collectively as the "McKinley Towne Centre"): 

Parcel #1 (former TCF headquarters) currently has 100,000 s.f. of office on four stories and 8,000 s.f. of retail on the ground floor with surface parking. The redevelopment will eliminate approximately 25 parking spaces, and the driveway onto Liberty will be removed, in order to provide for the construction of 14,000 s.f. of new retail space on the ground level.

Parcel #2 (former rental car site) currently has 24 surface parking spaces with a 378 s.f. structure vacant for over 15 years. This site will be redeveloped with approximately 45 residential units plus at least 3,000 s.f. of ground floor retail.

Parcel #3 (former TCF training center) has 34 surface parking spaces with a 7,076 s.f. structure, and Parcel #4 has a 2,998 s.f. residential building that is currently in use as office space. The two parcels will be redeveloped with approximately 100 on-site parking spaces, approximately 100 for-sale condominiums and approximately 8,000 s.f. ground retail;

WHEREAS, The DDA, as manager of the City’s parking structures, reviewed the request and recommended approval of the proposed contract;

WHEREAS, City Council adopted the recommendation of the DDA, and approved a parking contract with the Owner on December 5, 2005 subject to the terms of City Council Resolution R-622-12-05 which is incorporated here by reference;

WHEREAS, Owner currently leases 117 monthly permits and its tenant TCF Bank currently leases 115 permits for a total of 252 permits at the Liberty Square Parking Structure (the "Structure") from Republic Parking, and has requested a contract for the total number of those permits to enable their redevelopment of parcels #1-4 to go forward and has secured or will secure any necessary authority to include the TCF Bank leased permits in Owner’s request; and
NOW THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, receipt whereof is hereby acknowledged, the Owner and the City hereby agree as follows:

1. Subject to the conditions specified in Section 2, the CITY or its authorized agent will make the parking permits available upon the following terms and conditions:

(a) Owner and/or its approved assignees shall be granted the authority to issue permits for up to 252 parking spaces in the Liberty Square Parking Structure ("Structure") for a period of approximately twenty (20) years with no renewals. (the "Term"). Notwithstanding anything in this Agreement to the contrary the City acknowledges that the DDA has previously entered into an agreement with the Owner and/or its affiliates, including but not limited to TCF Bank, for the lease of a total of 252 monthly permits at the Structure. The City agrees that the use of those permits may continue until the commencement of the Term hereunder (for the entire McKinley Towne Centre project) pursuant to the existing agreement between the DDA and the Owner and shall not be subject to the terms and conditions contained herein with respect to such use prior to the commencement of the Term.

(b) The Term shall begin on the date specified by the Owner by written notice to the CITY, which notice shall be delivered by the Owner to the DDA not less than one hundred twenty (120) days prior to the first day of the Term, except that the Term shall not commence until a certificate of occupancy has been issued for the first of the completed projects within the McKinley Towne Centre and terminate twenty years from the date of last certificate of occupancy issued for the project. The Owner will use good faith efforts to advise the DDA of the projected commencement date of the initial Term at least six (6) months prior to that effective date.

(c) The number of parking permits which may be issued to the Owner upon completion of the individual projects in McKinley Towne Centre shall not exceed the following: 107 for Parcel #1, 45 for Parcel #2, and 100 for Parcels #3 and #4. McKinley shall be solely responsible for distribution of the permits among and between the occupants of the parcels; except that no single individual (i.e., lesseeholder) occupying any of the individual projects, collectively identified as the McKinley Towne Centre Project, or any portion thereof, shall be assigned more than 59 permits.

(d) The Owner and/or its approved assignees may reduce the number of permits to which it is entitled, but any such reduction shall be permanent unless otherwise agreed to in writing, and at its sole discretion, by the DDA or its successor entity.

(e) The permits issued to the Owner and/or its approved assignee under this Agreement by the DDA shall be made available for use only by individuals who are occupants (i.e., lesseeholder or owner, their assignees or sublessees, their officers, visitors and employees) of McKinley Towne Centre ("permit holders"). The Owner and/or its
approved assignees, on or before the first day that they are permitted to issue permits for each of the projects within McKinley Towne Centre, shall provide a schedule to the DDA of each permit holder and the vehicle for which the permit will be utilized (the "permit schedule"). On a monthly basis thereafter, not later than the thirtieth (30th) day of each month for the following month, the Owner and/or its approved assignees shall deliver to the DDA an updated schedule of the permit holders. (If, as of the date of any permit schedule, any permit is not assigned for use by a specific permit holder, then that fact shall be confirmed in such permit schedule and, promptly after the permit is assigned to a specific permit holder, the permit schedule shall be supplemented with the name of the permit holder to whom that permit is assigned and the vehicle for which that permit will be utilized.) Each permit holder, in the use of the Structure, will comply with all applicable ordinances of the City and will comply with all rules and regulations adopted by the DDA for use of the Structure to the extent that such rules and regulations are applicable to all holders of permits for the Structures and such rules and regulations have been furnished by the DDA to the Owner.

(f) The Owner and/or its approved assignees shall pay to the DDA the following fees for each permit issued under this agreement (the "permit fee"): (i) an initial fee for the issuance of a card required to obtain access under the permit, which fee shall be at the then prevailing charge for such access cards, and (ii) a monthly permit fee for each calendar month during which the permit is issued. The monthly permit fees initially shall be Thirty Dollars ($30) plus a sum equal to the then prevailing monthly rates for a parking permit in the Structure, as established by the DDA or its successor body. The DDA, not later than sixty (60) days prior to the commencement of the Term, shall advise the Owner in writing of the then prevailing rates which will provide the basis for the permit fee. Commencing 12 months after the starting date of the Term, and continuing on an annual basis thereafter, the $30 fee will be increased by an amount equivalent to the rise of the consumer price index for the previous 12-month period. The CITY will have the right, from time to time during the Term, to revise the permit fees payable by the Owner under this agreement to correspond to authorized changes in the then prevailing rates by a written notice delivered at least sixty (60) days prior to the effective date of such revision. For purposes of this Agreement, the prevailing rate for a parking space in the Structure will be the rate generally charged to individuals an arm's length basis for monthly parking permits in the Structure. If no other monthly parking permits are issued for the Structure, then the prevailing rate will be the rate which is charged for monthly parking permits in the parking Structure operated by the DDA or the City which is nearest to the Structure.

(g) The Owner and/or its approved assignees shall pay to the DDA the total of permit fees for each permit issued under this agreement on a monthly basis, in a single lump sum, not later than the first day of the calendar month for which such permits are issued. (For example, for permits applicable for the month of August, the Owner will receive an invoice from the DDA during the preceding July, and the Owner shall pay the required charges to the DDA on or before that August 1st). The permit fee for each calendar month will be payable for all permits issued by the DDA under this agreement for that month, irrespective of whether the Owner has assigned that permit to a permit holder for use during that month and irrespective of whether the permit
holder has reimbursed the Owner for that permit fee. Any permit fee not paid by the Owner within 5 days of its due date will bear interest at the prime rate (as published by JPMorgan Chase or its successor) plus three percent (3%) from its due date to its date of payment.

(h) If during the Term, renovations or repairs are required to the Structure, the DDA shall use its best efforts to minimize the effect of such repairs or renovations upon the utilization of the permits used under this agreement. If despite such best efforts, the utilization of some or all of these permits must be temporarily suspended, then the DDA shall use its best efforts to arrange for alternative parking arrangements for the affected permit holders at the nearest available locations. If during the Term, as a result of physical damage to the Structure, the Structure cannot be used, the City or the DDA, as the City’s manager, shall provide substitute spaces at the Maynard Street Parking Structure (the “Alternative Structure”), until the repair or restoration is completed; provided that if the extent of the damage to the Structure is such that the repair or reconstruction of the Structure would take longer than six (6) months, then the City may elect (upon written notice to the Owner delivered within sixty (60) days after the damage occurred) to permanently discontinue parking at the Structure, and the replacement spaces at the Alternative Structure shall be provided to the Owner for the remainder of the Term and the Alternative Structure shall thereafter be deemed to be the Structure as such term is used herein. Owner will remain liable to the DDA for all permit fees accrued under this Agreement except for spaces which are not available for use by Owner as a result of ongoing repairs or restoration.

2. **Conditions to Effectiveness.** The commitment of the DDA to issue permits to the Owner for the Structure on the Terms specified in Section 1 is subject to the satisfaction (or waiver in writing by the DDA):

(a) The Owner, by written notice to the DDA pursuant to Section 7, shall have activated the Term of this agreement as of a date on or before December 31, 2006, or such later date as the City may hereafter designate.

(b) Unless the above condition is satisfied on or before the date specified above for such condition, then all rights and obligations of the parties to this agreement shall be null, void and have no further force or effect, provided however that the City shall first provide the Owner written notice of the Owner’s breach and an opportunity to cure that breach as provided in Section 3 below.

3. **Default/Termination.**

(a) The following will constitute events of default by the Owner under this Agreement.
1. The failure by the Owner to pay any permit fees after the date for payment specified in Section 1(g), which shall be considered a "Monetary Breach" hereunder, and the failure to remedy that breach within fourteen (14) days after the date that the DDA delivers written notice to the Owner identifying such breach and demanding payment of the full amount owing; or

2. The breach by the Owner of any other commitment under this Agreement, which shall be considered a "Non-Monetary Breach" hereunder, and the failure to remedy that breach within thirty (30) days after the date that the DDA delivers written notice identifying such breach and demanding such remedial action. However, if the Non-Monetary Breach cannot reasonably be cured within such thirty (30) days, and if the Owner furnishes a written response to the City within such thirty (30) days explaining the need for more time to cure the breach, and if such explanation is reasonably satisfactory to the City, then the City will grant the Owner such additional time to cure that Non-Monetary Breach as may be reasonably necessary under the circumstances, provided that the Owner must attempt to accomplish the cure of such breach in a reasonably diligent manner.

(b) Upon the occurrence of an event of default, the DDA, by further written notice to the Owner, may terminate this Agreement effective thirty (30) days following the day of delivery of such notice. In such event, the obligation of the DDA to issue permits for the Structure will terminate as of the effective date of such termination, the Owner will remain liable to the DDA for all permit fees accrued under this Agreement through the effective date of termination and the Owner will remain liable to the DDA for any damages incurred by the DDA or the City as a result of such default, provided, however, that any claims by the DDA for lost revenues (as distinguished from other damages which may be incurred by the DDA) due to Owner's failure to utilize and pay for permits issued and/or available pursuant to this Agreement will be limited to accrued but unpaid permit fees through the effective date of termination plus the total of all permit fees for a period of one hundred twenty (120) days after the date of termination for the number of permits in effect on the date of termination plus any interest accruing thereon in accordance with Section 1(g).

(c) If the Owner or its lender holding any first mortgage on all or any part of McKinley Towne Centre furnishes written notice to the City requesting a copy of all notices of breach which are to be sent to the Owner, then the City will send a copy of all notices of any breach by the Owner to that lender, in order to afford the lender an opportunity to cure any breach on the terms granted to the Owner under Subsection 3(a) above. Such notice of breach shall be furnished to the lender at the same time as notice of breach is furnished to the Owner, so the lender's time period for curing a breach shall begin to run simultaneous with the Owner's time period.
4. **Assignment.**

(a) Owner shall make no assignment under this Agreement without prior written consent of the City, which consent shall not be unreasonably withheld, delayed or conditioned, subject to and in accordance with the following:

1. The City shall not withhold its consent to an assignment of this Agreement, in whole or in part, to a proposed assignee if the assignee, its principals, owners, managers and/or affiliated management company have reasonably sufficient financial strength and/or business experience to be reasonably capable of having the assignee fulfill the obligations of the Owner under this Agreement. The parties acknowledge that the intent of the City under this Section 4 is to protect the City's interest in the operation of the parking structures referred to herein, and the intent is not to address matters concerning the ownership or operation of McKinley Towne Centre. In the event of a partial assignment the City agrees to execute a separate Parking Agreement with the assignee which will contain the same terms and conditions set forth herein but relating only to the specific number of parking spaces assigned. The Owner may assign this Agreement without prior consent of the City to a lender as security for a loan on all or any part of McKinley Towne Centre.

2. The City shall not impose any additional financial or other obligations (directly or indirectly) on the proposed assignee or on Owner as a condition of granting the City's consent for the proposed assignment, including but not limited to (i) changing the terms of this Agreement in a manner not already authorized herein, or (ii) imposing any requirements concerning the use, residency, occupancy or operation of McKinley Towne Centre. However, the City may require that the proposed assignee agree in writing to be bound by the terms of this Agreement.

3. When the Owner requests written consent for a proposed assignment, the Owner shall provide the City information reasonably appropriate for the City to review the qualifications of the proposed assignee, its principals, owners, managers and/or affiliated management company. The City shall have twenty (20) business days after receipt of this information to, in writing, either approve of the assignment, reject the assignment or make one-time request for specific supplemental information to satisfy any concerns which the City specifically identifies as necessary in order for the City to conclude its review of the assignee in accordance with the terms of Section 4. If the City fails to respond in writing to the Owner within the twenty (20) business day time period, then the City will be conclusively deemed to have consented to the proposed assignment. The same time period of twenty (20) business days shall govern the City's review of any supplemental information furnished by the Owner in accordance with the foregoing terms.
4. Notwithstanding the foregoing, in no event shall the City's consent be required in connection with a foreclosure or judicial sale of McKinley Towne Centre, or a deed in lieu of foreclosure, which is initiated by any bank, savings and loan association, credit union, insurance company, pension plan or other institutional lender holding a bona fide mortgage on the property.

(b) The Owner may assign its rights under this Agreement to a legally established Condominium Association as defined by laws of the State of Michigan. In the event of any such permitted assignment to a Condominium Association, (i) Owner shall notify the City of the assignment in advance and in writing, (ii) the established Condominium Association will be fully liable for the performance of the obligations of the Owner under this Agreement the terms of which shall be incorporated into the establishing document for the Condominium Association; and (iii) the permits shall only be assigned to occupants of McKinley Towne Centre as stated in Section 1(e).

(c) In the event of a complete assignment of this Agreement which is permitted under the foregoing terms, the Owner (and in case of any subsequent transfers or conveyances, the then grantor) shall be automatically freed and relieved from and after the date of such transfer or conveyances of all liability thereafter arising on the part of the Owner under this Agreement. However, the Owner (or the then grantor) shall not be excused from payment any amounts which are already at that time due and payable to the City by the Owner hereunder.

5. **City Assumption of DDA Rights and Obligations.** If the DDA management responsibility for the Structure is for any reason terminated, whether as a result of the termination or amendment of the Master Lease, the DDA is dissolved by action of the City or operation of law, or any other reason, the rights and obligations of the DDA under this Agreement shall transfer to and become the obligation of the City and the Owner's rights and obligations under this Agreement will not be affected in any way by the transfer of the rights and obligations to the City.

6. **Binding Effect.** This Agreement is binding upon and shall inure to the benefit of the parties hereto and their successors and permitted assigns.

7. **Notices.** All notices permitted or required under this Agreement shall be in writing and addressed to the parties at their addresses set forth above. Any such notice shall be sent by certified mail, return receipt requested, express overnight delivery requiring a signed delivery receipt, delivered personally or sent by facsimile. Any notice sent certified mail, return receipt requested, will be deemed delivered on the third (3rd) business day after mailing. Any notice sent by express overnight mail delivery will be deemed delivered on the following business day after delivering such notice to the carrier. Any notice given by personal delivery or by facsimile prior to 5:00 p.m. will be deemed delivered on the date of such delivery or, if 5:00 p.m. or later, on the next business day. Any notice that a party fails or refuses to accept will be deemed delivered on the date of such failure or
refusal. The parties hereto may change their addresses for notice purposes by a notice sent in accordance with the provisions of this Agreement, but no such address shall be a post office box.

8. **Authority.** The signatories on behalf of the parties hereto hereby represent and warrant to the other parties hereto that they are duly authorized to execute and deliver this Agreement on behalf of such party and that this Agreement is binding upon and enforceable against such party.

9. **Applicable Law.** This Agreement shall be interpreted and construed in accordance with the laws of the State of Michigan.

10. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original but all of which together shall constitute but one and the same Agreement.

11. **Entire Agreement.** This Agreement constitutes the entire Agreement between the parties hereto pertaining to the subject matter hereof and supersedes all negotiations, preliminary agreements and prior to contemporaneous discussions and understandings of the parties hereto in connection with the subject matter hereto.

12. **Amendments.** No amendment, change or modification of any of the terms, provisions or conditions of this Agreement will be effective unless made in writing and signed or initialed on behalf of the parties hereto by their duly authorized representatives.

13. **No Third Party Beneficiaries.** The parties acknowledge and agree that this Agreement is made and entered into for the sole benefit of the Owner, the City, and the DDA, and in no event shall any other person, entity or agency be considered a party to this Agreement or a beneficiary under this Agreement. Accordingly, there shall be no third party beneficiaries under this Agreement, and in no event shall any nonprofit housing entity, any tenant, any parking permit holder or any other person, entity or agency be entitled to enforce or claim any right or benefit under this Agreement.
IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day first above written. This Agreement is not intended to create a contractual right for third parties. It may be enforced, amended, or rescinded only by the parties and their successors in interest.

OWNER:

MCKINLEY FINANCIAL CENTER, LLC, a Michigan limited liability company

By: McKinley Associates, Inc., a Michigan corporation
Its: Manager

By: [Signature]
Stephen G. Palms
Its: Executive Vice President

CITY:

CITY OF ANN ARBOR
a Michigan municipal corporation

By: [Signature]
John Hieftje, Mayor

By: [Signature]
Jacqueline Beaudry, City Clerk

Approved as to Substance:
Roger W. Fraser, City Administrator

Susan Poffenbarger, DDA Executive Director

Approved as to Form:
Stephen Postema, City Attorney

Jarrod Lax, DDA Attorney
FIRST AMENDMENT TO
MCKINLEY PARKING AGREEMENT

The First Amendment ("Amendment") is made and entered into this 18th day of April, 2007, by and between McKinley Financial Center LLC ("Owner") and the City of Ann Arbor, Michigan ("City").

Recitals:

WHEREAS, Owner and City entered into that McKinley Parking Agreement dated February 10, 2006 ("Agreement"), which grants Owner and/or its approved assignees the authority to issue 252 parking permits ("Permits") at the Liberty Square Parking Structure ("Structure"); and

WHEREAS, Owner has entered into a Lease with Google Inc. covering premises located in the building located within Parcel #1 (described in the recitals of the Agreement) which premises consist of approximately 85,763 of rentable square feet ("Google Lease"); and

WHEREAS, Owner and City wish to amend the Agreement to reflect that the City and/or the DDA, under its authority as Manager of the City's parking structures, shall make available certain of these Permits for issuance to Google Inc.

NOW THEREFORE, Owner and City hereby agree as follows:

1. From and after the Commencement Date of the Google Lease and continuing until the Expiration Date of the Google Lease, one hundred ninety (190) Permits ("City Permits") and forty-five (45) temporary Permits ("Assigned Agreement Permits") within the Structure (of the two hundred fifty two (252) Permits covered by the Agreement ("Agreement Permits")), shall be made available to Google Inc. (for issuance and use by Google Inc.) by the City and/or the DDA. Owner shall have no responsibility or authority to issue any of such one hundred ninety (190) City Permits issued to Google Inc. for Google Inc.'s use, nor shall Owner have any responsibility for paying any permit fees with respect to such City Permits until the Google End Date (defined below). Owner's responsibility for the forty-five (45) Assigned Agreement Permits is subject to the conditions stated in Paragraph 1(c) below.

Notwithstanding the foregoing, if the rentable square feet of the premises leased under the Google Lease is reduced below 85,763 sq. ft., then there shall be a proportionate reduction in the total number of City Permits which the City and/or the DDA may issue to Google Inc. and the rights granted to Owner with respect to the remainder shall revert back to Owner and/or its approved assignees for issuance. Upon the earlier of: (a) the Expiration Date of the Google Lease, or (b) the date upon which Google Inc. no longer requires the City Permits from the City and/or the DDA (the last to occur being known as the
"Google End Date"), the City Permits shall revert back to Owner and/or its approved assignee for issuance as Agreement Permits and subject to all applicable conditions under the Agreement. The issuance of City Permits to Google, Inc. under this provision shall not relieve the Owner and/or its approved assignees from issuing Agreement Permits to Google, Inc. to satisfy Google, Inc.'s parking needs (over and above the one hundred ninety (190) City Permits and the forty-five (45) Assigned Agreement Permits) under the terms of Google Lease. Any Agreement Permits issued by Owner and/or its approved assignees to Google, Inc. shall be subject to permit fees as specified in the Agreement.

2. Paragraph 1(b) shall be amended so that the expiration date of the "Term" of the Agreement for the one hundred ninety (190) City Permits and the forty-five (45) Assigned Agreement Permits temporarily assigned to Google, Inc. under the provisions of Paragraph 1(c) as amended below shall be the date twenty (20) years from and after the Google End Date. The commencement of the "Term" for remaining Agreement Permits shall be March 5, 2007 (the date of the Certificate of Occupancy for the first of the completed projects within the McKinley Towne Center) and the expiration date of the "Term" of the Agreement for the remaining Agreement Permits shall be the date twenty (20) years from and after the issuance of the last certificate of occupancy for the projects.

3. Paragraph 1(c) of the Agreement is hereby deleted in its entirety and replaced with a new Paragraph 1(c) in its entirety and replaced with a new Paragraph 1(c) to read as follows:

(c) Owner shall be solely responsible for distribution of the Agreement Permits among and between the occupants of the parcels; except that until such time that construction activities are commenced in connection with the development of Parcel #2 (described in the recitals of the Agreement) forty-five (45) Permits ("Assigned Agreement Permits") shall be allocated for issuance to and use by Google, Inc. during the term of the Google Lease, who shall relinquish same under the terms of notice by the City and/or the DDA, who shall be responsible for issuing the notice to Google, Inc. on receipt, and not until receipt, of written notification by Owner of its application for a certificate of occupancy for Parcel #2 and no Assigned Agreement Permits may be issued by Owner and/or its approved assignees to any other party (as defined in paragraph 1(e) of the Agreement) until a certificate of occupancy is issued for Parcel #2 at which time permits shall be classified as Agreement Permits and subject to all applicable conditions of the Agreement. Owner and/or its approved assignees may issue the remainder of Agreement Permits at any time during the Term of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to the McKinley Parking Agreement the date set forth above.
OWNER:

MCKINLEY FINANCIAL CENTER LLC,
a Michigan limited liability company

By:  GPR McKinley Manager LLC,
     A Michigan limited liability
     company
     Its: Manager

By:  McKinley Associates, Inc.,
a Michigan corporation
     Its: Manager

By:  Albert Berriz
     Its: CEO

CITY:

CITY OF ANN ARBOR,
a Michigan municipal corporation

By:  John Hieftje
     Its: Mayor

By:  Jacqueline Beaudry
     Its: Clerk

Approved as to substance:

Roger W. Fraser, City Administrator

Susan Pollay, DDA Executive Director

Approved as to form:

Stephen K. Postema, City Attorney
MCKINLEY PARKING AGREEMENT

This PARKING AGREEMENT ("Agreement") is made and entered into this 10th day of February, 2006, by and between McKinley Financial Center LLC ("Owner"), whose address is 320 North Main Street, Ann Arbor, Michigan 48104 and the City of Ann Arbor, Michigan, a Michigan municipal corporation, whose address is 100 North Fifth Avenue, Ann Arbor, Michigan 48104 (the "City").

WHEREAS, Owner or its affiliates has proposed the following redevelopment plans for the following properties within the next five years (which projects shall hereinafter be referred to collectively as the "McKinley Towne Centre"):

Parcel #1 (former TCF headquarters) currently has 100,000 s.f. of office on four stories and 8,000 s.f. of retail on the ground floor with surface parking. The redevelopment will eliminate approximately 25 parking spaces, and the driveway onto Liberty will be removed, in order to provide for the construction of 14,000 s.f. of new retail space on the ground level.

Parcel #2 (former rental car site) currently has 24 surface parking spaces with a 378 s.f. structure vacant for over 15 years. This site will be redeveloped with approximately 45 residential units plus at least 3,000 s.f. of ground floor retail.

Parcel #3 (former TCF training center) has 34 surface parking spaces with a 7,076 s.f. structure, and Parcel #4 has a 2,998 s.f. residential building that is currently in use as office space. The two parcels will be redeveloped with approximately 100 on-site parking spaces, approximately 100 for-sale condominiums and approximately 8,000 s.f. ground retail.

WHEREAS, The DDA, as manager of the City’s parking structures, reviewed the request and recommended approval of the proposed contract;

WHEREAS, City Council adopted the recommendation of the DDA, and approved a parking contract with the Owner on December 5, 2005 subject to the terms of City Council Resolution R-622-12-05 which is incorporated here by reference;

WHEREAS, Owner currently leases 117 monthly permits and its tenant TCF Bank currently leases 135 permits for a total of 252 permits at the Liberty Square Parking Structure (the "Structure") from Republic Parking, and has requested a contract for the total number of these permits to enable their redevelopment of parcels #1-4 to go forward and has secured or will secure any necessary authority to include the TCF Bank leased permits in Owner’s request; and
NOW THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, receipt whereof is hereby acknowledged, the Owner and the City hereby agree as follows:

1. Subject to the conditions specified in Section 2, the CITY or its authorized agent will make the parking permits available upon the following terms and conditions:

(a) Owner and/or its approved assignees shall be granted the authority to issue permits for up to 252 parking spaces in the Liberty Square Parking Structure ("Structure") for a period of approximately twenty (20) years with no renewals. (the "Term"). Notwithstanding anything in this Agreement to the contrary the City acknowledges that the DDA has previously entered into an agreement with the Owner and/or its affiliates, including but not limited to TCF Bank, for the lease of a total of 252 monthly permits at the Structure. The City agrees that the use of those permits may continue until the commencement of the Term hereunder (for the entire McKinley Towne Centre project) pursuant to the existing agreement between the DDA and the Owner and shall not be subject to the terms and conditions contained herein with respect to such use prior to the commencement of the Term.

(b) The Term shall begin on the date specified by the Owner by written notice to the CITY, which notice shall be delivered by the Owner to the DDA not less than one hundred twenty (120) days prior to the first day of the Term, except that the Term shall not commence until a certificate of occupancy has been issued for the first of the completed projects within the McKinley Towne Centre and terminate twenty years from the date of last certificate of occupancy issued for the project. The Owner will use good faith efforts to advise the DDA of the projected commencement date of the initial Term at least six (6) months prior to that effective date.

(c) The number of parking permits which may be issued to the Owner upon completion of the individual projects in McKinley Towne Centre shall not exceed the following: 107 for Parcel #1, 45 for Parcel #2, and 100 for Parcels #3 and #4. McKinley shall be solely responsible for distribution of the permits among and between the occupants of the parcels; except that no single individual (i.e., leaseholder) occupying any of the individual projects, collectively identified as the McKinley Towne Centre Project, or any portion thereof, shall be assigned more than 59 permits.

(d) The Owner and/or its approved assignees may reduce the number of permits to which it is entitled, but any such reduction shall be permanent unless otherwise agreed to in writing, and at its sole discretion, by the DDA or its successor entity.

(e) The permits issued to the Owner and/or its approved assignees under this Agreement by the DDA shall be made available for use only by individuals who are occupants (i.e., leaseholder or owner, their assignees or sublessees, their officers, visitors and employees) of McKinley Towne Centre ("permit holders"). The Owner/and or its
approved assignees, on or before the first day that they are permitted to issue permits for each of the projects within McKinley Towne Centre, shall provide a schedule to the DDA of each permit holder and the vehicle for which the permit will be utilized (the "permit schedule"). On a monthly basis thereafter, not later than the thirtieth (30th) day of each month for the following month, the Owner and/or its approved assignees shall deliver to the DDA an update of the permit schedule of the permit holders. (If, as of the date of any permit schedule, any permit is not assigned for use by a specific permit holder, then that fact shall be confirmed in such permit schedule and, promptly after the permit is assigned to a specific permit holder, the permit schedule shall be supplemented with the name of the permit holder to whom that permit is assigned and the vehicle for which that permit will be utilized.) Each permit holder, in the use of the Structure, will comply with all applicable ordinances of the City and will comply with all rules and regulations adopted by the DDA for use of the Structure to the extent that such rules and regulations are applicable to all holders of permits for the Structures and such rules and regulations have been furnished by the DDA to the Owner.

(f) The Owner and/or its approved assignees shall pay to the DDA the following fees for each permit issued under this agreement (the "permit fee"): (i) an initial fee for the issuance of a card required to obtain access under the permit, which fee shall be at the then prevailing charge for such access cards, and (ii) a monthly permit fee for each calendar month during which the permit is issued. The monthly permit fees initially shall be Thirty Dollars ($30) plus a sum equal to the then prevailing monthly rates for a parking permit in the Structure, as established by the DDA or its successor body. The DDA, not later than sixty (60) days prior to the commencement of the Term, shall advise the Owner in writing of the then prevailing rates which will provide the basis for the permit fee. Commencing 12 months after the starting date of the Term, and continuing on an annual basis thereafter, the $30 fee will be increased by an amount equivalent to the rise of the consumer price index for the previous 12-month period. The CITY will have the right, from time to time during the Term, to revise the permit fees payable by the Owner under this agreement to correspond to authorized changes in the then prevailing rates by a written notice delivered at least sixty (60) days prior to the effective date of such revision. For purposes of this Agreement, the prevailing rate for a parking space in the Structure will be the rate generally charged to individuals an arm's length basis for monthly parking permits in the Structure. If no other monthly parking permits are issued for the Structure, then the prevailing rate will be the rate which is charged for monthly parking permits in the parking Structure operated by the DDA or the City which is nearest to the Structure.

(g) The Owner and/or its approved assignees shall pay to the DDA the total of permit fees for each permit issued under this agreement on a monthly basis, in a single lump sum, not later than the first day of the calendar month for which such permits are issued. (For example, for permits applicable for the month of August, the Owner will receive an invoice from the DDA during the preceding July, and the Owner shall pay the required charges to the DDA on or before that August 1st). The permit fee for each calendar month will be payable for all permits issued by the DDA under this agreement for that month, irrespective of whether the Owner has assigned that permit to a permit holder for use during that month and irrespective of whether the permit
holder has reimbursed the Owner for that permit fee. Any permit fee not paid by the Owner within 5 days of its due date will bear interest at the prime rate (as published by JPMorgan Chase or its successor) plus three percent (3%) from its due date to its date of payment.

(h) If during the Term, renovations or repairs are required to the Structure, the DDA shall use its best efforts to minimize the effect of such repairs or renovations upon the utilization of the permits used under this agreement. If despite such best efforts, the utilization of some or all of those permits must be temporarily suspended, then the DDA shall use its best efforts to arrange for alternative parking arrangements for the affected permit holders at the nearest available locations. If during the Term, as a result of physical damage to the Structure, the Structure cannot be used, the City or the DDA, as the City’s manager, shall provide substitute spaces at the Maynard Street Parking Structure (the “Alternative Structure”), until the repair or restoration is completed; provided that if the extent of the damage to the Structure is such that the repair or reconstruction of the Structure would take longer than six (6) months, then the City may elect (upon written notice to the Owner delivered within sixty (60) days after the damage occurred) to permanently discontinue parking at the Structure, and the replacement spaces at the Alternative Structure shall be provided to the Owner for the remainder of the Term and the Alternative Structure shall thereafter be deemed to be the Structure as such term is used herein. Owner will remain liable to the DDA for all permit fees accrued under this Agreement except for spaces which are not available for use by Owner as a result of ongoing repairs or restoration.

2. Conditions to Effectiveness. The commitment of the DDA to issue permits to the Owner for the Structure on the Terms specified in Section 1 is subject to the satisfaction (or waiver in writing by the DDA):

(a) The Owner, by written notice to the DDA pursuant to Section 7, shall have activated the Term of this agreement as of a date on or before December 31, 2006, or such later date as the City may hereafter designate.

(b) Unless the above condition is satisfied on or before the date specified above for such condition, then all rights and obligations of the parties to this agreement shall be null, void and have no further force or effect, provided however that the City shall first provide the Owner written notice of the Owner’s breach and an opportunity to cure that breach as provided in Section 3 below.

3. Default/Termination.

(a) The following will constitute events of default by the Owner under this Agreement.
1. The failure by the Owner to pay any permit fees after the date for payment specified in Section 1(g), which shall be considered a "Monetary Breach" hereunder, and the failure to remedy that breach within fourteen (14) days after the date that the DDA delivers written notice to the Owner identifying such breach and demanding payment of the full amount owing; or

2. The breach by the Owner of any other commitment under this Agreement, which shall be considered a "Non-Monetary Breach" hereunder, and the failure to remedy that breach within thirty (30) days after the date that the DDA delivers written notice identifying such breach and demanding such remedial action. However, if the Non-Monetary Breach cannot reasonably be cured within such thirty (30) days, and if the Owner furnishes a written response to the City within such thirty (30) days explaining the need for more time to cure the breach, and if such explanation is reasonably satisfactory to the City, then the City will grant the Owner such additional time to cure that Non-Monetary Breach as may be reasonably necessary under the circumstances, provided that the Owner must attempt to accomplish the cure of such breach in a reasonably diligent manner.

(b) Upon the occurrence of an event of default, the DDA, by further written notice to the Owner, may terminate this Agreement effective thirty (30) days following the day of delivery of such notice. In such event, the obligation of the DDA to issue permits for the Structure will terminate as of the effective date of such termination, the Owner will remain liable to the DDA for all permit fees accrued under this Agreement through the effective date of termination and the Owner will remain liable to the DDA for any damages incurred by the DDA or the City as a result of such default, provided, however, that any claims by the DDA for lost revenues (as distinguished from other damages which may be incurred by the DDA) due to Owner's failure to utilize and pay for permits issued and/or available pursuant to this Agreement will be limited to accrued but unpaid permit fees through the effective date of termination plus the total of all permit fees for a period of one hundred twenty (120) days after the date of termination for the number of permits in effect on the date of termination plus any interest accruing thereon in accordance with Section 1(g).

(c) If the Owner or its lender holding any first mortgage on all or any part of McKinley Towne Centre furnishes written notice to the City requesting a copy of all notices of breach which are to be sent to the Owner, then the City will send a copy of all notices of any breach by the Owner to that lender, in order to afford the lender an opportunity to cure any breach on the terms granted to the Owner under Subsection 3(a) above. Such notice of breach shall be furnished to the lender at the same time as notice of breach is furnished to the Owner, so the lender's time period for curing a breach shall begin to run simultaneous with the Owner's time period.
4. **Assignment.**

(a) Owner shall make no assignment under this Agreement without prior written consent of the City, which consent shall not be unreasonably withheld, delayed or conditioned, subject to and in accordance with the following:

1. The City shall not withhold its consent to an assignment of this Agreement, in whole or in part, to a proposed assignee if the assignee, its principals, owners, managers and/or affiliated management company have reasonably sufficient financial strength and/or business experience to be reasonably capable of having the assignee fulfill the obligations of the Owner under this Agreement. The parties acknowledge that the intent of the City under this Section 4 is to protect the City's interest in the operation of the parking structures referred to herein, and the intent is not to address matters concerning the ownership or operation of McKinley Towne Centre. In the event of a partial assignment the City agrees to execute a separate Parking Agreement with the assignee which will contain the same terms and conditions set forth herein but relating only to the specific number of parking spaces assigned. The Owner may assign this Agreement without prior consent of the City to a lender as security for a loan on all or any part of McKinley Towne Centre.

2. The City shall not impose any additional financial or other obligations (directly or indirectly) on the proposed assignee or on Owner as a condition of granting the City’s consent for the proposed assignment, including but not limited to (i) changing the terms of this Agreement in a manner not already authorized herein, or (ii) imposing any requirements concerning the use, residency, occupancy or operation of McKinley Towne Centre. However, the City may require that the proposed assignee agree in writing to be bound by the terms of this Agreement.

3. When the Owner requests written consent for a proposed assignment, the Owner shall provide the City information reasonably appropriate for the City to review the qualifications of the proposed assignee, its principals, owners, managers and/or affiliated management company. The City shall have twenty (20) business days after receipt of this information to, in writing, either approve of the assignment, reject the assignment or make one-time request for specific supplemental information to satisfy any concerns which the City specifically identifies as necessary in order for the City to conclude its review of the assignee in accordance with the terms of Section 4. If the City fails to respond in writing to the Owner within the twenty (20) business day time period, then the City will be conclusively deemed to have consented to the proposed assignment. The same time period of twenty (20) business days shall govern the City's review of any supplemental information furnished by the Owner in accordance with the foregoing terms.
4. Notwithstanding the foregoing, in no event shall the City's consent be required in connection with a foreclosure or judicial sale of McKinley Towne Centre, or a deed in lieu of foreclosure, which is initiated by any bank, savings and loan association, credit union, insurance company, pension plan or other institutional lender holding a bona fide mortgage on the property.

(b) The Owner may assign its rights under this Agreement to a legally established Condominium Association as defined by laws of the State of Michigan. In the event of any such permitted assignment to a Condominium Association, (i) Owner shall notify the City of the assignment in advance and in writing, (ii) the established Condominium Association will be fully liable for the performance of the obligations of the Owner under this Agreement the terms of which shall be incorporated into the establishing document for the Condominium Association; and (iii) the permits shall only be assigned to occupants of McKinley Town Centre as stated in Section 1(e).

(c) In the event of a complete assignment of this Agreement which is permitted under the foregoing terms, the Owner (and in case of any subsequent transfers or conveyances, the then grantor) shall be automatically freed and relieved from and after the date of such transfer or conveyances of all liability thereafter arising on the part of the Owner under this Agreement. However, the Owner (or the then grantor) shall not be excused from payment any amounts which are already at that time due and payable to the City by the Owner hereunder.

5. City Assumption of DDA Rights and Obligations. If the DDA management responsibility for the Structure is for any reason terminated, whether as a result of the termination or amendment of the Master Lease, the DDA is dissolved by action of the City or operation of law, or any other reason, the rights and obligations of the DDA under this Agreement shall transfer to and become the obligation of the City and the Owner's rights and obligations under this Agreement will not be affected in any way by the transfer of the rights and obligations to the City.

6. Binding Effect. This Agreement is binding upon and shall inure to the benefit of the parties hereto and their successors and permitted assigns.

7. Notices. All notices permitted or required under this Agreement shall be in writing and addressed to the parties at their addresses set forth above. Any such notice shall be sent by certified mail, return receipt requested, express overnight delivery requiring a signed delivery receipt, delivered personally or sent by facsimile. Any notice sent certified mail, return receipt requested, will be deemed delivered on the third (3rd) business day after mailing. Any notice sent by express overnight mail delivery will be deemed delivered on the following business day after delivering such notice to the carrier. Any notice given by personal delivery or by facsimile prior to 5:00 p.m. will be deemed delivered on the date of such delivery or, if 5:00 p.m. or later, on the next business day. Any notice that a party fails or refuses to accept will be deemed delivered on the date of such failure or
refusal. The parties hereto may change their addresses for notice purposes by a notice sent in accordance with the provisions of this Agreement, but no such address shall be a post office box.

8. **Authority.** The signatories on behalf of the parties hereto hereby represent and warrant to the other parties hereto that they are duly authorized to execute and deliver this Agreement on behalf of such party and that this Agreement is binding upon and enforceable against such party.

9. **Applicable Law.** This Agreement shall be interpreted and construed in accordance with the laws of the State of Michigan.

10. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original but all of which together shall constitute but one and the same Agreement.

11. **Entire Agreement.** This Agreement constitutes the entire Agreement between the parties hereto pertaining to the subject matter hereof and supersedes all negotiations, preliminary agreements and prior to contemporaneous discussions and understandings of the parties hereto in connection with the subject matter hereto.

12. **Amendments.** No amendment, change or modification of any of the terms, provisions or conditions of this Agreement will be effective unless made in writing and signed or initialed on behalf of the parties hereto by their duly authorized representatives.

13. **No Third Party Beneficiaries.** The parties acknowledge and agree that this Agreement is made and entered into for the sole benefit of the Owner, the City, and the DDA, and in no event shall any other person, entity or agency be considered a party to this Agreement or a beneficiary under this Agreement. Accordingly, there shall be no third party beneficiaries under this Agreement, and in no event shall any nonprofit housing entity, any tenant, any parking permit holder or any other person, entity or agency be entitled to enforce or claim any right or benefit under this Agreement.
IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day first above written. This Agreement is not intended to create a contractual right for third parties. It may be enforced, amended, or rescinded only by the parties and their successors in interest.

OWNER:

McKINLEY FINANCIAL CENTER, LLC, a Michigan limited liability company

By: McKinley Associates, Inc., a Michigan corporation
Its: Manager

By:
Stephen G. Palms
Its: Executive Vice President

CITY:

CITY OF ANN ARBOR
a Michigan municipal corporation

By:
John Hieftje, Mayor

By:
Jacqueline Beaudry, City Clerk

Approved as to Substance:

Roger W. Fraser, City Administrator

Susan Pollay, DDA Executive Director

Approved as to Form:

Stephen Postema, City Attorney

Jerald Lax, DDA Attorney