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FOREST AVENUE STRUCTURE

EXPIRES: DECEMBER 31, 2070
PARKING STRUCTURE AGREEMENT

(Forest Avenue Structure)

THIS PARKING STRUCTURE AGREEMENT (the "Agreement"), dated as of December 20, 1999, is between THE CITY OF ANN ARBOR, a Michigan municipal corporation (the "City") and THE REGENTS OF THE UNIVERSITY OF MICHIGAN, a Michigan constitutional corporation (the "University"), relates to the parking structure to be constructed on the northwest corner of the intersection of South Forest Avenue and Willard Street in Ann Arbor, Michigan (the "Parking Structure") and confirms the terms and conditions upon which the City and the University (each individually referred to as a "Party" and both collectively referred to as the "Parties") will participate in the construction of the Parking Structure, will use and occupy the Parking Structure and will fund the costs and share the revenues and profits from the construction, operation and disposition of the Parking Structure.

ARTICLE I

Development of Parking Structure

1.1 Land. The Parking Structure will be constructed on the land which is described in Schedule 1.1 (the "Land"). The City already owns the land identified as Subparcel A in Schedule 1.1 (the "Existing Land"). The City, in reliance upon this Agreement, will proceed to acquire the land identified as Subparcel B, Subparcel C and Subparcel D in Schedule 1.1 (the "Additional Land").
1.2 **Conceptual Design.** The Parties shall agree upon a conceptual design for the Parking Structure. (the “Conceptual Design”).

1.3 **Architect.** The City will retain the services of Luckenbach Ziegelman Architects, P.L.L.C. (the “Architects”) to act as the architect for the design and construction of the Parking Structure. The terms of the agreement with the Architects shall be mutually agreeable to the Parties (“Architects Contract”).

1.4 **Plans and Specifications.** The Architects shall prepare the detailed plans and specifications for the Parking Structure (the “Plans & Specifications”). In such development, the Architects will consult regularly with each of the Parties. The final Plans & Specifications will be subject to the acceptance and approval of each of the Parties, which approval shall not be unreasonably withheld or delayed. The City shall cause the Architect to use its best efforts, and the City and the University shall cooperate and use their best efforts, to have the Plans and Specifications completed and approved by November 8, 1999.

1.5 **Budget.** The City and the University shall prepare a detailed budget for the Parking Structure, including an estimated fair market value for the Existing Land, the estimated cost for the acquisition for the Additional Land, the estimated cost for the demolition of the improvements currently located on the Land and the construction of the Parking Structure (the “Budget”). The final Budget will be subject to the acceptance and approval of each of the Parties, which approval shall not be unreasonably withheld or delayed. The City and the University shall cooperate and use their best efforts to have the Budget completed and approved by December 7, 1999.

1.6 **Bid Process and Contracts.** Promptly following the final approval of the Plans & Specifications and Budget, the City will complete the acquisition of the Additional Land, will contract for the demolition of the existing improvements on the Land and will contract for the construction of the Parking Structure. The City will acquire the Additional Land and will award the contracts for demolition and construction (the “Contracts”) by bid in accordance with the procedures required in its Charter and Ordinances and applicable state and federal law. The City will consult with the University regarding the acquisition of the Additional Land and regarding both the “bid package” which is prepared for the Contracts and the bid procedure and the ultimate award of those Contracts. The terms of the Contracts shall be mutually agreeable to the Parties and the amounts payable thereunder shall be consistent with the Budget.

1.7 **Contract Management.** Upon completion of the bid process described in Section 1.6, the City will award the Contracts and thereafter, in consultation with the University, will oversee the performance and completion of the Contracts. If any dispute arises under the
Contracts in the course of demolition or construction, the City will consult with the University regarding such dispute and will resolve that dispute in the manner mutually agreed upon by the City and the University. If the City and the University are unable for any reason to reach agreement regarding the resolution of any such dispute, then the disagreement will be resolved in the manner set forth in Article XI.

1.8 **Substantial Completion.** The City shall deliver written notice to the University not later than thirty (30) days prior to the projected date of substantial completion of the Parking Structure (the "Completion Date"). For purposes of this Agreement, the date of substantial completion will be conclusively established by the certificate issued by the City and delivered to the University. The Parking Structure will be substantially completed when (a) the Parking Structure is completed in all material respects in accordance with the Plans & Specifications, excluding only "punch list items" which do not materially affect the use or occupancy of the Parking Structure and (b) all required permits have been issued by all governmental authorities for the use of the Parking Structure for its intended purposes. If "punch list items" remain uncompleted as of the Completion Date, or if following the Completion Date defects in labor or materials are identified in the construction of the Parking Structure, then the City shall enforce the obligations of third parties under the Contracts to complete such unfinished items or to remedy such defects in labor or materials. The City and the University agree to use their respective best efforts to have the Parking Structure completed and available for use by the Parties on or before June 30, 2001.

1.9 **Payment of Contractors.** The City will be responsible for paying (a) the landowner(s) for the acquisition of the Additional Land, (b) the Architects for the preparation of the Plans & Specifications and the awarding and administration of the Contracts, and (c) the contractors for all labor and materials under the Contracts.

**ARTICLE II**

**Acquisition, Demolition and Construction Costs**

2.1 **Proportionate Share.** The Parties shall share the costs for land acquisition, demolition and construction based on the following percentages: 68.05% by the City and 31.95% by the University. The percentage amount for each Party shall be respectively referred to as its "Proportionate Share"). The Proportionate Shares are based on the percentage of the Parking Structure that will be available to the Parties for their respective use under section 4.1.

2.2 **Payment of Initial Expenses.** Within thirty (30) days after approval of the Budget under section 1.5, the University shall pay to the City an amount equal to its Proportionate Share
for the costs allocated in the Budget for (a) the value of the Existing Land, and (b) the acquisition of the Additional Land.

2.3 Payment of Architects Fees and Construction Costs. The University shall pay its Proportionate Share of the Architects Fees and the demolition and construction costs including the City’s project management costs, as they become due under the Architect Contract and the Contracts and as incurred by the City. The University’s project management costs shall be offset against the foregoing Architects Fees and demolition and construction costs, including the City’s project management costs. The City shall submit an invoice to the University showing the amount due, which amount the University shall pay to the City within 30 days after receipt of the invoice. The following supporting documentation shall be submitted with each invoice: a copy of the Architect’s and contractors’ invoices and any supporting documentation received by the City to support payment under the Architect Contract and the Contracts, and documentation supporting the City’s project management costs. To claim an offset, the University will submit to the City an invoice for such offset with documentation supporting its management costs.

2.4 Financing. The parties understand and acknowledge that either or both may finance or refinance all or a portion of their respective contributions to the capital cost of the Parking Structure with the proceeds of obligations (“Obligations”), the interest on which is excluded from gross income of the holders thereof for federal income tax purposes under the Internal Revenue Code of 1986, as amended (the “Code”). Notwithstanding anything in this Agreement, each of the Parties agrees that it will not take any actions during the time any such Obligations are outstanding which may adversely affect such exclusion, including, but not limited to, selling all or a portion of, or allowing the use (through management contract or otherwise) of all or a portion of, the Parking Structure in a manner resulting in such Obligations being classified as “private activity bonds” pursuant to Code § 141, or taking any action resulting in the Obligation being classified as “arbitrage bonds” pursuant to Code § 148. Either Party may satisfy the requirements of this section by providing the other Party with an opinion of nationally recognized bond counsel satisfactory to such other Party to the effect that a contemplated action does not adversely impair the exclusion from gross income for federal income tax purposes of the holders of the Obligations. The provision of this section 2.4 shall survive termination of this Agreement pursuant to Article X.

ARTICLE III

Term

3.1 The term of this Agreement (the “Term”) will be for a period beginning on the date hereof and, unless earlier terminated pursuant to Article X, will continue thereafter until
December 31, 2070, the projected useful life of the Parking Structure. The Parties shall undertake all good faith efforts to maximize the useful life of the structure to at least December 31, 2070.

ARTICLE IV

Use of Parking Structure

4.1 Division and Use of the Parking Structure. The City and the University agree to use and to occupy the Parking Structure strictly in accordance with the terms and conditions of this Agreement. The City and the University, as “co-users”, will have the exclusive right to use 100% of the Parking Structure. Unless and until amended pursuant to the provisions of Section 4.4, the respective rights of the City and the University to use the Parking Structure will be as follows:

(a) The City will have the right to use 68.05% of the parking spaces in the Parking Structure, such parking to be used pursuant to permits issued by the City or by the payment of fees by users upon entrance or exit of the Parking Structure as determined by the City (both of which shall be referred to as “City Parking”).

(b) The University will have the right to use 31.95% of the parking spaces in the Parking Structure, with all such parking pursuant to permits issued by the University (“University Parking”).

(c) Except for the Short-Term Parking Area (if agreed to by the Parties under section 4.2 below), all parking will be on a “first come/first served” basis, without any differentiation between City Parking and University Parking.

4.2 Short Term/Permit Parking.

(a) The Parties may agree to designate certain areas as Short-Term Parking or Permit Parking Areas. The Parties may agree in writing from time to time to establish specific hours, specific days or specific weeks or months of the year in which Short-Term Parking is permitted in Permit Parking Area or in which Permit Parking is permitted in Short-Term Parking Area. The Parties shall specify which portion of the Short Term Parking shall be allocated as City Parking and which shall be allocated as University Parking and how revenue from Short Term Parking shall be collected and shared.

(b) If the parties agree to establish a Short Term Parking Area, the City will at all times limit the number of vehicles admitted into the Parking Structure for Short-
Term Parking to the number of parking spaces in the Short-Term Parking Area. The Parties shall agree at the Annual Meeting on appropriate signage and other reasonable means of notifying users of rules concerning hours of operation and use of the Parking Structure.

4.3 **Entry System.** The Parties will annually agree upon an entry and allocation system (either an entry card access system and/or manual system and/or any other system that may be developed in the future) that will limit the number of users for City Parking to that number of spaces that will not exceed the City’s 68.05% allocation of parking spaces in the Parking Structure and that will limit the number of users for University Parking to that number of spaces that will not exceed the University’s 31.95% allocation of the parking spaces in the Parking Structure.

4.4 **Adjustment of Percentage of Parking Spaces.** The City and the University may agree from time to time in writing to adjust their respective percentages of the parking spaces in the Parking Structure. As specified in such agreement, the adjusted percentages may be permanent or may be effective only for a specified period of time. As specified in such agreement, and subject to Section 2.4 hereof, the Proportionate Shares under section 2.1 may be amended as a result of such adjusted percentages.

4.5 **Hours of Operation.** The City and the University will work together to set the hours of operation of the Parking Structure.

**ARTICLE V**

**Management of the Parking Structure**

5.1 **General Manager.** The City will be the general manager of the Parking Structure and, as such, will be responsible for making all arrangements for the management and operation of the Parking Structure and for the fulfillment by the City and the University of their obligations as "co-users" of the Parking Structure. Subject to Section 5.3, such arrangements may include the performance of the management and other functions by departments of the City (the "Departments"), by other governmental entities, including the University (the "Governmental Entities"), or by independent contractors (the "Contractors"). Whether performed by a Governmental Entity or a Contractor, the function will be provided on commercially reasonable terms pursuant to a written contract. If and as required under its Charter or its Ordinances, the contracts for such functions will be awarded through a bid procedure to the lowest qualified bidder. The City will consult with the University on any "bid packages", the bid procedure and the ultimate award of the contracts. The choice of a Department, Governmental Entity or Contractor shall be mutually agreeable to the Parties. The terms of any contract with a Governmental Entity or Contractor shall be mutually agreeable to the Parties. In the event the
City selects a Department to perform a function, the scope and costs of the services to be performed by the Department shall be put in writing and shall be mutually agreeable to the Parties.

5.2 Management Meetings. The City will consult with the University and will give to the University access to all information in the possession of the City regarding the management and operation of the Parking Structure. Consultation will include, at minimum, a meeting between the City and the University in October of each year, beginning with the first October prior to the date that the Parking Structure is projected for completion (or at such other mutually agreed upon date), to discuss proposed management and operation arrangements for the Parking Structure for the next fiscal year beginning July 1st (the “Annual Meeting”). The City and University will schedule the Annual Meeting at a mutually agreeable time. If a condition or situation arises which might adversely impact patron use, structure condition, the operation of the Parking Structure or this Agreement, either the City or the University may request a meeting between the City and the University at a mutually agreeable time within ten (10) days of the request to address the condition or situation. The City and the University will, in addition, meet from time to time during the course of each fiscal year at the request of either Party to discuss any aspects for the management and operation of the Parking Structure which are identified by the Party convening the meeting.

5.3 Indemnification. Each contract made by the City with a Governmental Entity, other than the University, or with a Contractor shall include a specific provision that the Governmental Entity or the Contractor will to the extent permitted by law indemnify and will hold the City and the University harmless from and against any and all claims, liabilities, losses, damages or expenses (including attorney fees) incurred by the City or the University, or their respective successors and assigns, as a result of the breach by such Governmental Entity or Contractor of its obligations under that contract or as a result of any acts or omissions of that Governmental Entity, that Contractor or the employees or agents of the Governmental Entity or Contractor in the performance of its functions at the Parking Structure.

ARTICLE VI

Parking Revenues

6.1 Retention of Parking Revenues. The City shall be entitled to all revenues realized from City Parking in the Parking Structure. The University shall be entitled to all revenues realized from all University Parking in the Parking Structure.
(a) The City will be responsible for the issuance of permits and the collection of revenues for such permits for City Parking. The City reserves absolute discretion regarding the fees that it charges for City Parking.

(b) The University will be responsible for the issuance of permits and the collection of revenues for such permits for University Parking. The University reserves absolute discretion regarding the fees that it will charge for University Parking.

6.2 **Parking Programs.** The City and the University will notify each other regarding their respective parking programs for the Parking Structure for purposes of enforcement and ensuring compliance with the terms of this Agreement.

**ARTICLE VII**

**Day-to-Day Operations, Maintenance and Repair, Renovation and Construction, and Sharing of Costs and Expenses**

7.1 **Day-to-Day Operations.** At each Annual Meeting the City and the University will review and consider revisions to the procedures and standards for day-to-day operation of the Parking Structure and will review and consider new performance objectives for any Department, Governmental Entity or Contractor providing services to the Parking Structure pursuant to Section 5.1. If desired by the City or the University, such review may include direct discussion with representatives of a Department, Governmental Entity or Contractor providing services for the Parking Structure. The day-to-day operation of the Parking Structure will thereafter be conducted in accordance with the procedures, standards and objectives approved by the City and the University at each Annual Meeting. The City and the University confirm their current intention that, in general, the day-to-day operations of the Parking Structure includes, but is not limited to, use and operation of the Parking Structure, monitoring of equipment, cleaning and trash removal, and snow and ice removal, and otherwise will be in conformance with the standards established in the Parking Garage Maintenance Manual published by the National Parking Association/Parking Consultants Council, as revised from time to time, or if such publication is discontinued, in a similar publication of general applicability relating to the management and operation of governmentally owned parking structures. If any dispute arises between the City and the University regarding the procedures or standards for day-to-day operation of the Parking Structure, that dispute will be resolved in the manner specified in Article XI.

7.2 **Sharing of Operating Expenses.** The expense of the day-to-day management will be included in the Annual Operating Budget which is prepared for the Parking Structure pursuant to Section 7.4 and will be funded by the City and the University in the manner prescribed in the
finally approved Annual Operating Budget. The parties shall share all expenses incurred in the operation of the Parking Structure under this Agreement based on their Proportionate Share as defined under section 2.1 unless otherwise specified by mutual written agreement at the Annual Meeting which precedes the fiscal year in which costs are incurred. The City and the University agree to pay their share of operating expenses as required under this Agreement on or before the due dates for payment specified in this Article.

7.3 Sharing of Annual Scheduled Maintenance and Repair, Renovation and Construction Costs. The City and the University each shall be responsible for its Proportionate Share of the costs for all annual scheduled maintenance and repair, renovation and reconstruction of the Parking Structure as is necessary to maintain the Parking Structure in compliance with generally applicable statutes, ordinances, rules, regulations and procedures of any federal, state or local authorities having jurisdiction over the Parking Structure and in compliance with the recommended practices in the National Parking Association Maintenance Manual. Annual scheduled maintenance will include, to the extent not included in the day to day operations of the Parking Structure under section 7.1, but not be limited to, snow removal, maintenance of all signage, striping, sweeping, trash removal, graffiti removal, painting, light bulb replacement, elevator preventative maintenance, maintenance of all equipment, including but not limited to ticket spitters, gate arms and emergency telephones, structure wash downs, landscape upkeep, drain maintenance, window cleaning and similar day-to-day basic maintenance, as well as any other tasks agreed upon by the Parties in the Annual Maintenance Schedule under section 7.5. Repair, renovation and reconstruction will include, but not be limited to, elevator repair and upgrades, assessing joints, concrete repairs, and lighting and electrical repair and upgrades which are from time to time determined under the Renewal Program under Article IX, and other repair and replacement (both capital and non-capital in nature) which is from time to time required to maintain the Parking Structure in good operating condition.

7.4 Annual Operating Budget. The City will prepare and will submit to the University at each Annual Meeting a budget for the fiscal year that begins July 1st following that Annual Meeting (the “Annual Operating Budget”). Each Annual Operating Budget will include, in specific detail, the expenses projected to be incurred during the fiscal year in the day-to-day operation of the Parking Structure pursuant to Section 7.1, in the annual scheduled maintenance and repair, renovation and reconstruction of the Parking Structure pursuant to Section 7.3 and the payment for all utilities, taxes or insurance required under Article VIII and the amounts required to be deposited in the “Renewal Account” pursuant to Article IX. Each Annual Operating Budget shall include a contingency for unexpected maintenance costs. Each Annual Operating Budget shall specify the agreed upon allocation of payments between the City and the University (if different than the Proportionate Share) and shall specify the dates during the fiscal year in which funding must be provided by the City and the University to pay the expenses included in that
Annual Operating Budget. Costs included in each Annual Operating Budget will be payable by the City and by the University on or before the due dates specified in such Annual Operating Budget. The University, by written notice delivered to the City within 45 days following the date of the Annual Meeting, may object to the Annual Operating Budget, specifying in such notice the elements of the Annual Operating Budget to which it objects and proposing modifications in order to make those elements unobjectionable. The University’s failure to deliver such notice within such 45-day period shall constitute its acceptance of the Annual Operating Budget. If the University delivers such notice within such 45-day period, the City and the University shall attempt in good faith to resolve the objections of the University and to approve a revised Annual Operating Budget. If agreement is reached, then the revised Annual Operating Budget shall be effective for the next fiscal year. If agreement is not reached, then the dispute will be resolved in the manner specified in Article XI. Pending such resolution, the City will manage the Parking Structure in accordance with the initially proposed Annual Operating Budget and the City and the University will provide funding in the manner prescribed in the initial Annual Operating Budget. Upon resolution, reconciling payments will be made to the extent required.

7.5 Annual Maintenance and Repair, Renovation and Reconstruction Schedules. The City will provide for the services of one of its Departments, a Governmental Entity or a Contractor to perform all annual scheduled maintenance and repair, renovation and reconstruction of the Parking Structure as defined in section 7.3 in the same manner as set forth in Article V. The City, as part of the Annual Operating Budget for each year, will include a schedule which includes the annual scheduled maintenance and repair, renovation and reconstruction for the Parking Structure which is included in that Annual Operating Budget (the “Annual Maintenance Schedule”). The University’s right to object to the Annual Operating Budget pursuant to Section 7.4 will extend to any objections which the University has to the Annual Maintenance Schedule and any objections to the Annual Maintenance Schedule shall be resolved in the time and manner specified in Section 7.4.

7.6 Special Assessments. If during the course of any fiscal year, either Party determines that expenses were incurred or projected to be incurred in the operation of the Parking Structure which were not contemplated by the Annual Operating Budget for that year, or determines that any annual scheduled maintenance or any repair, renovation or reconstruction for the Parking Structure is required and was not included in the Annual Operating Budget for that fiscal year, then the Party may deliver written notice to the other Party describing in detail such expenses or identifying the item of maintenance, repair, renovation or reconstruction, and specifying the date by which the City and the University must pay their Proportionate Share of such expenses (a “Special Assessment”). Costs included in any Special Assessment will be payable by the City and the University on or before the date(s) specified in such Special Assessment. The receiving Party, by written notice delivered to the other Party within thirty (30)
days following the date of delivery of each Special Assessment, may object to that Special Assessment, specifying in such notice the elements of that Special Assessment to which it objects and proposing modifications in order to make those elements unobjectionable. A Party’s right to object to the Special Assessment extends to any objections which the Party has to the operational expense incurred or proposed, or to the proposed maintenance, repair, renovation or reconstruction. The receiving Party’s failure to deliver such notice within such 30-day period shall constitute its acceptance of the Special Assessment. If the receiving Party delivers such notice of objection within such 30-day period, the City and the University shall attempt in good faith to resolve the objections and to approve a revised Special Assessment. If agreement is reached, then the revised Special Assessment shall be effective for the next fiscal year. If agreement is not reached, then the dispute will be resolved in the manner specified in Article XI.

7.7 Emergency Special Assessments. If a Special Assessment is needed to immediately or promptly correct a condition or situation at the Parking Structure to avoid threat to the health and safety of users or staff members or to avoid permanent and/or substantial damage or permanent and/or substantial deterioration of the Parking Structure, the notice period under Section 7.6 may be shortened to the period of time needed to respond to the condition or situation (“Emergency Special Assessment”). Oral notice shall be given immediately upon discovery of the condition or situation by telephone or in person. Written notice shall be delivered in person and by facsimile on the same date and shall state the period by which objections must be made. If objections are made and agreement cannot be reached on the objections by the time stated in the notice for making the expenditure, pending resolution, the maintenance, repair, renovation or construction shall proceed as set forth in the Emergency Special Assessment and the Parties shall pay their Proportionate Share of the costs noted in the Emergency Special Assessment while the dispute is resolved in the manner specified in Article XI. Upon resolution, reconciling payments of the Emergency Special Assessment will be made to the extent required.

7.8 Annual Operating Statement. Not later than September 30th of each fiscal year, the City shall prepare and submit to the University an operating statement for the Parking Structure for the preceding fiscal year (the “Annual Operating Statement”). The City shall include in each such Annual Operating Statement a comparison of actual expenses to expenses included in the Annual Operating Budget for that fiscal year. The City shall include in each Annual Operating Statement a reconciliation of actual expenses in that fiscal year relative to amounts funded by the City and the University under the Annual Operating Budget and, if applicable, Special Assessment(s) or Emergency Special Assessment(s) for that fiscal year and a computation of the resulting surplus or deficiency. If such reconciliation results in a surplus, then the City shall include with such Annual Operating Statement a check to the City for its Proportionate Share of that surplus and a check to the University for its Proportionate Share of that surplus. If the reconciliation results in a deficiency, then the City shall include with the Annual Operating
Statement invoices to the City for payment of its Proportionate Share of such deficiency and to the University for its Proportionate Share of such deficiency (the "Deficiency Assessments"), which invoices shall be payable in full within thirty (30) days after the date of receipt of the invoices. The City will consult with and provide to the University all pertinent information relating to each Annual Operating Statement. The University will have the right, by written notice delivered within thirty (30) days following the delivery of each Annual Operating Statement, to object to that Annual Operating Statement. The City and the University will thereafter attempt in good faith to resolve any such objection. If an agreement is reached, then the Annual Operating Statement will be correspondingly revised and will constitute the Annual Operating Statement for the affected fiscal year. If an agreement cannot be reached, then the objection will be resolved in the manner specified in Article XI.

7.9 **Annual Audit of the Operating Statement.** An annual financial audit of the Operating Statement shall be completed by December 31 of each year by an audit firm mutually agreed upon by the Parties. The costs of the audit will be shared equally by the Parties.

7.10 **Annual Report** At each Annual Meeting, the City and University will prepare an annual report for the fiscal year which begins the next July 1st. The annual report must include the Annual Operating Budget (section 7.4), the Annual Maintenance Schedule (section 7.5), and all repairs, renovations and construction under the Renewal Program (Article IX) for a period of at least the next succeeding five years, together with a projected budget for such repairs, renovations and construction.

**ARTICLE VIII**

**Utilities/Property Taxes/Insurance**

8.1 **Utilities.** The Parties shall be responsible for their Proportionate Share of deposits, connection fees and similar fees required to initiate connections of the utilities to the Parking Structure and all charges for utilities used in the Parking Structure during the Term of this Agreement.

8.2 **Taxes.** If all or any portion of the Land or the Parking Structure is assessed for real property taxes or real property assessments or is subject to any other taxes or payments which are hereafter assessed in lieu of real property taxes or assessments by any governmental entity, other than the City or any other governmental entity acting under authority of the City (the "Impositions"), then the Parties shall be responsible for and shall pay their Proportionate Share
of such Impositions when and as due. If during either of the years in which the Term of this Agreement begins and the Term of this Agreement ends, the Parking Structure is subject to Impositions, then the liability for such Impositions will be allocated between the Parties on a “due-date basis” (i.e., the Impositions included in each tax bill shall be deemed to apply to the twelve (12) month period beginning on the due date of that tax bill).

8.3 Insurance.

(a) The City will procure and maintain insurance for the Parking Structure as outlined below. The premiums and any individual deductibles will be treated as operating expenses for the Parking Structure and included in the Annual Operating Budget pursuant to Section 7.2. The costs of the insurance will be shared by the Parties according to their Proportionate Share. Both the City and the University will be “Named Insureds” on the policies.

   (i) Property Insurance - All risk coverage on a replacement cost basis.

   (ii) General Liability Insurance on an occurrence basis - $10,000,000 per occurrence, $10,000,000 annual aggregate (limits can be satisfied by primary and umbrella insurance combination).

The Parties may add additional insureds to the policies by mutual agreement. If policy limits are exceeded in any one claim or in the aggregate, the Parties will share in the excess loss(es) according to their Proportionate Share. The intent of both Parties is to exclude the Parking Structure location from each Party’s Property Insurance and General Liability Policy (ISO form) and any Umbrella Insurance coverage that either Party may individually carry.

(b) The University and the City will maintain separate individual Workers Compensation Insurance to cover their own employees arising out of the use and/or operation of the Parking Structure.

(c) The following minimum insurance shall be required of a Governmental Entity, other than the University, or a Contractor performing any function relating to the construction, management or operation of the Parking Structure:
(i) **Architects/Engineers:**

- Professional liability insurance in the amount of $2,000,000 per occurrence and $2,000,000 aggregate. If the policy form is “claims made” and the Architect/Engineer changes insurance companies, the new insurance policy must be retroactive to the beginning of the project. The insurance coverage is to continue for six (6) years after the completion date of the project.

- General liability insurance in the amount of $1,000,000 per occurrence and $2,000,000 annual aggregate.

- Motor vehicle liability insurance in the amount of $1,000,000 each occurrence combined single-limit bodily injury and property damage.

- Workers compensation to statutory requirements.

- Employers liability insurance in the amount of $500,000 each accident with a $500,000 disease policy limit and $500,000 disease each employee.

(ii) **Construction:**

- General liability insurance on an occurrence basis in the amount of $5,000,000 per occurrence and $10,000,000 annual aggregate (limits can be satisfied by primary and umbrella insurance combination).

- Builders risk to completed value.

- Motor vehicle liability insurance in the amount of $1,000,000 per occurrence combined single-limit bodily injury and property damage.

- Workers compensation insurance to statutory requirements.
• Employers liability insurance in the amount of $500,000 each accident with a $500,000 disease policy limit and $500,000 disease each employee.

(iii) Management and/or Operation of the Structure:

• General liability insurance on an occurrence basis in the amount of $3,000,000 per occurrence and $3,000,000 annual aggregate.

• Motor vehicle liability insurance in the amount of $3,000,000 each occurrence combined single-limit bodily injury and property damage.

• Workers compensation to statutory requirements

• Employers liability insurance in the amount of $500,000 each accident with a $500,000 disease policy limit and $500,000 disease each employee.

• $100,000 per occurrence blanket fidelity bond and $35,000 per loss broad form money and securities.

• Garage keepers liability insurance in the amount of $2,000,000 per occurrence.

The Contractor or Governmental Entity shall be required to name the City and the University as additional insureds on the general liability and motor vehicle insurance policies required by Subsections 8.3(c)(i), (ii), and (iii) with respect to performance under the contracts; to provide for unconditional notice to both the City and the University during the term of the contract for any action taken in accordance with this Subsection 8.3(c); and to provide for not less than thirty (30) days prior written notice to the City and the University of cancellation, non-renewal, reduction in the amount of insurance, or material change of terms of the policy. Documents showing that the Contractor or Governmental Entity has the required insurance shall be filed with the City and the University before any work is performed. If any of the above coverages expire by their terms during the term of the contract, the Contractor or Governmental Entity shall deliver proof of renewal and/or policies to the City and to the University at least ten (10) days prior to the expiration date. The insurer must be satisfactory to the City and the
University. A certificate of insurance shall not, necessarily, be considered a sufficient showing.

(d) Either Party may request, as of each July 1st during the Term of this Agreement, to increase or decrease the required coverages or to alter the types of insurance required under this Section 8.3. If a dispute arises regarding the required insurance, such dispute shall be resolved in the manner specified in Article XI.

(e) The City Risk Manager or his or her designee and the University Risk Manager or his or her designee shall meet at least annually prior to the Annual Meeting to review risk management issues arising under this Agreement and this Section 8.3.

8.4 Inclusion in Annual Operating Budget. The City, in the preparation of each Annual Operating Budget, will include as expenses the projected charges for utilities, Impositions and insurance premiums as defined under this Article VIII. The University’s right to object to the Annual Operating Budget pursuant to Section 7.4 will extend to any objections which the University has to the projected charges for utilities, Impositions and insurance premiums and any such objection shall be resolved in the time and manner specified in Section 7.4.

ARTICLE IX

Plant Renewal Program

9.1 Development of Renewal Program. In order to ensure the long term life of the Parking Structure, the Parties shall jointly prepare a five (5) year plant renewal program (the "Renewal Program") for the Parking Structure on or before October 31, 2001 and shall jointly review and revise that Renewal Program annually thereafter at the Annual Meeting during the continuance of the Term of this Agreement. Either or both Parties may use the services of a consulting engineer, or may rely on in-house staff, to prepare, review and/or revise the Renewal Program. The Renewal Program will detail the preventative maintenance which must be provided by the Parties on an ongoing basis and the repairs, renovation and reconstruction, which must be provided by the Parties on a periodic basis such that the Parking Structure will be in the condition required in Article VII and have an expected life at least until December 31, 2070. By mutual agreement, the Parties may revise the Renewal Program at any time.

9.2 Renewal Accounts. The Parties shall each establish a segregated account (the "Renewal Accounts") into which the Parties, on an annual basis, will deposit funds as hereinafter provided. Each Party shall deposit, on or before June 30 of each year, commencing June 30, 2002, to its respective Renewal Account an amount equal to 1/70th of its Proportionate Share of
the cost of the Contracts (exclusive of the cost of demolition contracts): provided, however, that no deposit shall be required to be made to the extent such deposit would cause the amount on deposit in the City’s Renewal Account to exceed the City’s Proportionate Share of the costs of the Contracts (exclusive of the costs of demolition contracts), inflated or deflated each year, commencing with the year 2003, by the percentage equal to the change in the Consumer Price Index for the previous fiscal year, or the amount on deposit in the University’s Renewal Account to exceed the University’s Proportionate Share of the costs of the Contracts (exclusive of the costs of demolition contracts), inflated or deflated each year, commencing with the year 2003, by the percentage equal to the change in the Consumer Price Index for the previous fiscal year. Investment earnings shall be retained in the respective Renewal Accounts, unless such retention would cause a Renewal Account to exceed its maximum required amount as specified above, in which case investments earnings shall be transferred at the close of each year free and clear to the Party to which the Renewal Account belongs. Amounts on deposit in each Renewal Account shall be invested by or at the direction of the Party owning the Account in investments lawful for such Party, and each Renewal Account shall be valued on May 31 of each year at market by the Party owning such Account.

9.3 **Dispute Resolution for Renewal Program.** If any dispute arises regarding the Renewal Program, such dispute shall be resolved in the manner specified in Article XI.

9.4 **Use of Renewal Accounts.** All amounts required to be deposited in the Renewal Account will be included in the Annual Operating Budgets pursuant to Section 7.4 and shall be paid in the time and manner specified in those Annual Operating Budgets. All amounts deposited in the Renewal Account will be restricted for use only for the purposes specified in the Renewal Program.

**ARTICLE X**

**Termination**

10.1 **Termination.** This Agreement will terminate as follows:

(a) **Expiration by its Terms.** This Agreement will automatically terminate as of the date specified in Section 3.1.

(b) **Termination For Cause.** Either Party shall have the right to terminate this Agreement by written notice if the other Party fails to pay any amounts due under this Agreement and such amount remains unpaid within 30 days after receiving written notice of nonpayment: or other than for nonpayment of amounts due under this Agreement, the
other Party has breached or failed in performance under this Agreement and has not corrected such breach or failure of performance within 60 days after being served with a written notice by the nonbreaching Party clearly setting forth the claimed breach or failure of performance.

(c) **Termination for Repeated Breaches.** In the event three or more total material breaches of any kind or kinds shall occur under this Agreement, including for nonpayment of any amounts due, for which notice of default is given under paragraph (b) of this section 10.1. the nonbreaching Party may elect to terminate the Agreement with a minimum of 60 days prior written notice upon the occurrence of a further material breach and the other Party shall have no right to cure the default.

(d) **Casualty.** If at any time prior to the termination date specified in Section 3.1, the Parking Structure is destroyed or damaged by fire or other casualty (a “Casualty”), then, unless the Parties agree in writing within sixty (60) days following the date of the occurrence of such Casualty to restore the Parking Structure to its condition prior to such Casualty, this Agreement will terminate ninety (90) days following the date of the occurrence of such Casualty. The Parties hereby agree that, unless otherwise mutually agreed by them at such time, the Parking Structure will be restored if the estimated cost of restoration is less than 25% of the original Project Cost (inflated or deflated for each year since the Completion Date by the percentage equal to the change in the Consumer Price Index for the previous year). The cost of such restoration shall be funded by the insurance maintained by the Parties pursuant to Section 8.3(a) and, to the extent not funded by such insurance, by Special Assessments against the Parties pursuant to Section 7.6. If the estimated cost of restoration exceeds 25% of the original Project Cost, then each Party reserves the right in its discretion to decide not to restore the Parking Structure, in which event this Agreement will terminate as of the date specified above. The Parties shall agree upon the estimated cost of restoration of the Parking Structure. If agreement cannot be reached, then the disagreement will be resolved in the manner set forth in Article XI.

(e) **Mutual Agreement.** This Agreement will terminate if, at any time prior to the termination specified in Section 3.1, the Parties mutually agree to the sale or other transfer of the Parking Structure and a discharge of their rights and obligations under this Agreement, effective as of the date of the closing of such sale or transfer. Subject to Section 2.4, the Parties recognize that, under varying circumstances, such sale or transfer may be to one of the Parties acting independently, to a subdivision of one of the Parties or to an independent third party. Each Party reserves the right, in its discretion, to approve of or reject any such proposed sale or transfer.
(f) **Termination Without Cause.** Subject to section 2.4, at any time five (5) years after the Completion Date, either Party shall have the right to terminate the Agreement without cause prior to the date specified in Section 3.1. Unless otherwise agreed upon by the parties, a termination under this Section 10.1(f) will be effective two (2) years following the date that the Party initiating the termination delivers written notice to the other Party of such termination. Upon termination under this section 10.1(f), each Party shall remain responsible for their respective Obligations, if any. The terminating Party shall forfeit its interest in the Parking Structure and shall not be compensated for its Proportionate Share of the value of the “Interest” as defined in section 10.2. The Parties shall do all acts and things and make, execute and deliver such written instruments as shall be reasonably required for the non-terminating Party to obtain all right, title and interests in the Interest without restriction.

(g) Upon termination, the Parties shall cooperate to ensure compliance with Section 2.4. Unless a purchase of the Parking Structure is made under Section 10.3, in the case of termination pursuant to Section 10.1(b) or (c), the Party whose breach resulted in the termination shall bear the costs and burdens of the steps necessary to achieve such compliance. Nothing in this section 10.1(g) or section 2.4 shall prevent a non-breaching party from exercising its remedies, including but not limited to termination of this agreement, under this Article X.

10.2 **Purchase Option.** Upon termination of the Agreement pursuant to sections 10.1(a), (b), (c), or (d), a Party shall have an option to purchase (the “Option”) from the other Party all rights and interests in the Parking Structure, the Land, and any fixtures or equipment purchased pursuant to this Agreement for the operation and maintenance of the Parking Structure (the “Interest”), in accordance with the provisions of this section 10.2:

(a) **Exercise of Option by the City.** In the event the City chooses to exercise the Option, it shall give written notice to the University (i) fifteen (15) days prior to the effective date of termination under sections 10.1(b), (c) or (d); or (ii) ninety (90) days prior to the effective date of termination under sections 10.1(a). The written notice shall state a specific sum as the value of the Interest (“Purchase Value”) and the purchase price shall be equal to the Purchase Value multiplied by the University’s Proportionate Share. If the University objects to the Purchase Value within thirty (30) days after receipt of the notice from the City, it can require the determination of the Fair Market Value of the Interest. The purchase price shall be the Fair Market Value multiplied by the University’s Proportionate Share. “Fair Market Value” means the fair market value of the Parking Structure, any fixtures and/or equipment purchased for the operation and maintenance of
the Parking Structure, and the Land and shall be based upon an appraisal conducted as follows:

(i) For a period of thirty (30) days following the notice of objection to the Purchase Value, the Parties will attempt to agree on a mutually acceptable appraiser.

(ii) If within that 30-day period the Parties cannot agree on an appraiser, the University shall within fifteen (15) days submit in writing to the City the names of two firms which are professional appraisal firms to serve as the appraiser, neither of which may be an auditor or a recent major consultant to the University. The City shall then have fifteen (15) days to select one of the two firms offered by the University to serve as appraiser. If City does not make its selection within such period, the University may select the appraiser from among the two (2) appraisers proposed.

(iii) The University shall bear all costs of the appraisal.

(iv) The appraiser shall have thirty (30) days in which to conduct its appraisal.

(v) Both Parties shall have an opportunity to discuss the value of the Interest with the appraiser, provided neither Party shall have any discussion regarding value with the appraiser without a representative of the other Party being present or formally waiving the opportunity.

(vi) Both Parties shall reasonably cooperate and promptly obtain and provide available data requested by the appraiser.

(vii) Absent fraud or violation by the appraiser of the requirements of this section, the appraiser’s value shall be binding upon the Parties. Time shall be of the essence for the purpose of this process.

(b) Exercise of Option by the University. In the event the City does not exercise the Option under Section 10.2(a) and the University chooses to exercise the Option, the University shall give written notice to the City (i) ten (10) days prior to the effective date of termination under sections 10.1(b), (c) or (d); or (ii) eighty-five (85) days prior to the effective date of termination under sections 10.1(a). The written notice shall state a specific sum as the value of the Interest (“Purchase Value”) and the purchase price shall be equal to the Purchase Value multiplied by the City’s Proportionate Share. If the
City objects to the Purchase Value within thirty (30) days after receipt of the notice from the University, it can require the determination of the Fair Market Value of the Interest. The purchase price shall be the Fair Market Value multiplied by the City’s Proportionate Share. Fair Market Value shall have the meaning described in section 10.2(a) and shall be determined as follows for purposes of this section 10.2(b):

(i) For a period of thirty (30) days following the notice of objection to the Purchase Value, the Parties will attempt to agree on a mutually acceptable appraiser.

(ii) If within that 30-day period the Parties cannot agree on an appraiser, the City shall within fifteen (15) days submit in writing to the University the names of two firms which are professional appraisal firms to serve as the appraiser, neither of which may be an auditor or a recent major consultant to the City. The University shall then have fifteen (15) days to select one of the two firms offered by the City to serve as appraiser. If University does not make its selection within such period, the City may select the appraiser from among the two (2) appraisers proposed.

(iii) The City shall bear all costs of the appraisal.

(iv) The appraiser shall have thirty (30) days in which to conduct its appraisal.

(v) Both Parties shall have an opportunity to discuss the value of the Interest with the appraiser, provided neither Party shall have any discussion regarding value with the appraiser without a representative of the other Party being present or formally waiving the opportunity.

(vi) Both Parties shall reasonably cooperate and promptly obtain and provide available data requested by the appraiser.

(vii) Absent fraud or violation by the appraiser of the requirements of this section, the appraiser’s value shall be binding upon the Parties. Time shall be of the essence for the purpose of this process.

(c) **The City’s Cross Option.** In the event that the City receives the notice from the University as described in Section 10.2(b), the City shall have a superseding cross-option (the "Cross Option") to purchase the Interest. To exercise the Cross Option,
the City shall give written notice to the University within fifteen (15) days following receipt of the notice described in Section 10.2(b) that it is exercising its option. The Parties shall follow the procedures regarding notice and determination of the Purchase Value and Fair Market Value as set forth in section 10.2(a).

10.3 Purchase Requirement. If the Agreement is terminated pursuant to 10.1(b) or (c) and neither Party exercises an Option to Purchase under section 10.2, the nonbreaching Party under section 10.1(b) or (c) may require the other Party to purchase the Interest for the Fair Market Value by giving written notice within fifteen (15) days after the date of termination. The Fair Market Value shall be determined in accordance with section 10.2(a) above, except that the nonbreaching or nonterminating Party shall select the two appraisers under section 10.2(a)(ii) and the Party purchasing the Interest shall be required to pay for the appraisal under section 10.2(a)(iii). The purchase price shall be the Fair Market Value multiplied by the non-breaching Party’s Proportionate Share.

10.4 Demolition of Parking Structure. In the event of a termination pursuant to any subsection of Section 10.1, unless the rights and obligations of the Parties are acquired and assumed pursuant to Section 10.2 or 10.3, the Parties, within thirty (30) days following the effective date of termination ("Termination Date”), shall cause the Parking Structure to be demolished and removed from the Land and shall return the Land to a condition upon which new construction will be possible without further demolition or refuse removal (the “Demolition”). All costs of the Demolition will be funded first, if applicable, from any proceeds of insurance received under policies maintained by the Parties pursuant to Section 8.3(a); second from any amounts then held in the Renewal Accounts according to the Parties’ respective Proportionate Shares; and third from the Parties in the ratio of their respective Proportionate Shares. Unless otherwise agreed by the Parties at such time, the City, in consultation with the University, will oversee the Demolition and will secure contracts for the Demolition by bid in accordance with the procedures required under its Charter and its Ordinances. If any dispute arises between the City and the University regarding the Demolition, such dispute shall be referred to and conclusively resolved in the manner provided for in Article XI. Following the Demolition, the City will hold title to the Land free of any commitments to the University under this Agreement. Since the Project Costs included the cost and value of the Land, the City will be obligated to reimburse the University for its Proportionate Share of the then fair market value of the Land (the “Land Value”). The City, on or before the Termination Date, will deliver written notice to the University specifying the City’s estimate of the Land Value. The University, within thirty (30) days following the date of delivery of that notice, may by written notice accept or reject the City’s estimate of the Land Value. The failure of the University to deliver any notice within such period shall constitute its acceptance of the City’s estimate of the Land Value. If the University accepts the City’s estimate of the Land Value, then the City shall pay to the University an amount equal
to its Proportionate Share of that estimated Land Value within sixty (60) days following the Termination Date, in exchange for which the University will sign and deliver to the City a QUIT CLAIM DEED disclaiming any interest in the Land. If the University rejects the City’s estimate of the Land Value, then the determination of the Land Value shall be made by a panel of three real estate appraisers licensed in the State of Michigan, the first of whom shall be selected (and compensated) by the City, the second of whom shall be selected (and compensated) by the University and the third of whom shall be selected by the two appraisers first selected and compensated in equal amounts by the City and the University. The standards for determination of the Land Value will be the price which an independent buyer would be willing to pay to an independent seller for the Land, assuming that all Demolition on the Land has been completed and that the interest being sold is a fee simple title without restrictions. The determination of a majority of the panel of appraisers shall be conclusive and binding upon the City and the University and shall not be subject to any challenge or appeal. Not later than sixty (60) days following the date of delivery by the majority of the panel of appraisers of the Land Value, the City shall pay to the University its Proportionate Share of such finally determined Land Value and the University, in exchange, shall sign and deliver to the City a QUIT CLAIM DEED disclaiming all rights and interests in and to the Land.

10.5 Terms Applicable to a Party’s Purchase of Interest. The following terms apply to the Purchase of the Interest of either Party.

(a) The purchasing Party shall pay the entire purchase price at the closing.

(b) The closing for the sale of the Interest shall occur on a mutually acceptable date within ninety (90) days following receipt of the notices described in Section 10.2 or the appraisal.

(c) The Parties shall cooperate in seeking whatever legal approvals are reasonably necessary to effect the transfer of the Interest and in preparing joint press releases explaining the transfer.

(d) Each Party shall do all acts and things and make, execute and deliver such written instruments as shall be reasonably required for the purchasing Party to acquire all right, title and interests in the Interest without restriction.

(e) While a balance remains unpaid, the selling Party shall have a continuing security interest in the Interest until the full balance is paid.
(f) The Purchase Price shall be adjusted for amounts payable by one Party to the other. If there is a dispute as to an amount owed, the purchasing Party shall place in an interest bearing escrow account disputed amounts owed from or to it, pending resolution of the dispute. When the dispute is resolved the escrow account shall be paid out accordingly along with prorated accumulated interest.

10.6 **Terms for Sale to Third Party.** If the termination is pursuant to Section 10.1(e), the following shall apply:

(a) At the closing, the Purchaser shall agree, to the extent permitted by law, to indemnify and to hold each of the Parties harmless from and against any and all loss, liability or damage resulting from its ownership and operation of the Parking Structure following that closing; and

(b) At and after such closing, all proceeds realized from the sale of the interests of the Parties under this Agreement and with respect to the Parking Structure, net of any expenses required to complete such sale, shall be allocated and paid to the Parties according to their respective Proportionate Shares.

10.7 **Rights and Obligations Upon Termination.** As of the Termination Date, the rights and obligations of the Parties under this Agreement with respect to the Parking Structure shall be as follows:

(a) **Use of Parking Structure.** From and after the Termination Date, the rights of the Parties to use and the obligations of the Parties to maintain and pay for the Parking Structure under the terms of this Agreement shall terminate for all purposes.

(b) **Special Assessments.** Each Party shall remain obligated for and shall pay when and as due all Special Assessments and other expenses which have accrued prior to the Termination Date and shall pay all such amounts when and as otherwise due under this Agreement.

10.8 **Intent Regarding Proportionate Share.** The City and the University confirm their intention that, upon termination of this Agreement and the continuing rights and obligations of the Parties to use and maintain the Parking Structure, they will share in any residual value and will bear any residual liability under this Agreement and with respect to the Parking Structure in the ratio of their respective Proportionate Shares. To the extent that any issue arises upon termination of this Agreement that is not specifically addressed by the subsections of this Article
X, then the Parties agree that such issue will be resolved in a manner consistent with such sharing principle.

ARTICLE XI

Dispute Resolution

11.1 Concurrent Actions. Whenever this Agreement contemplates negotiations or agreements in the future, or resolution of differences of opinion among the Parties, or requires approval by one Party or concurrent approval of the Parties, the Parties each shall use good faith efforts to agree on the matter at issue. Such efforts shall include, but not be limited to, face-to-face meetings between representatives of the Parties, a written request for approval or agreement, and such other actions as may reasonably facilitate agreement among the Parties. No Party shall, upon receiving a request from the other Party, unreasonably withhold or delay its decision regarding such matters.

11.2 Standards for Parties’ Actions. In considering, taking or approving any action contemplated by this Agreement that affects or may affect the relationship of the Parties or the purposes of this Agreement or the Parking Structure, the Parties’ deliberations and actions shall be reasonable and shall be guided by and consistent with the objectives of the relationship as contemplated by this Agreement.

11.3 Informal Procedures. Whenever a dispute arises under this Agreement, either Party may provide a written notice to the other Party requesting a meeting to discuss the area of dispute. At the initial stages, operations management representatives of both Parties will make good faith efforts to resolve the matter in the manner described in Paragraph 11.1. If the dispute cannot be resolved to the mutual satisfaction of the Parties at the operations management level, then the matter shall be referred by the representatives of each Party to the next higher decision maker who shall proceed in the manner described in Paragraph 11.1 and shall be referred to successively higher levels of decision making authority until resolved to the mutual satisfaction of the parties, provided, however, that the final level of decision shall be by the Associate Vice President for Facilities and Operations on behalf of the University and the City Administrator on behalf of the City. Although each Party is required to hear out the other Party in good faith, and although both Parties must agree to attend meetings with the other Party at the earliest opportunity possible, neither Party is required to change its position concerning the dispute.

11.4 Mediation. If a dispute cannot be resolved under section 11.3 within 60 days after informal procedures are initiated by either Party above the operations management level, either Party may request that the dispute be mediated under the procedures set forth in this section. The
Parties shall mutually agree upon a third party mediator within ten (10) days after the request is made. The costs of the mediation will be shared equally by the Parties. The parties shall act in good faith in selecting a mediator and in attempting to resolve the dispute through the mediation process. If the dispute is not resolved through mediation within six (6) months after the mediation is initiated, either party may pursue whatever legal and equitable remedies are available to them as a result of the dispute.

ARTICLE XII

Notices

12.1 Notices. Any notice permitted or required under this Agreement shall be in writing and shall be deemed "delivered" as follows: if by mail, on the third business day following deposit with the U. S. Postal Service, postage prepaid, to the address of the addressee as set forth below; if by facsimile transmission, on the next business day following of confirmed transmission to the fax number of the addressee as set forth below; and if by personal delivery, on the date of actual physical delivery to the addressee.

If to the City:

City Administrator
The City of Ann Arbor
100 North Fifth Avenue
P. O. Box 8647
Ann Arbor, MI 48107-8647

Telephone: (734) 994-2650
Fax: (734) 994-8297

With a copy to:

City Attorney
The City of Ann Arbor
100 North Fifth Avenue
P. O. Box 8647
Ann Arbor, MI 48107-8647
Telephone: (734) 994-2670
Fax: (734) 994-4954
If to the University:

Associate Vice President for Facilities and Operations
The University of Michigan
3040 Fleming Administration Building
503 Thompson Street
Ann Arbor, MI 48109-1340
Telephone: (734) 764-3402
Fax: (734) 936-8730

With a copy to:

Director, Parking and Transportation Services
The University of Michigan
508 Thompson Street
Ann Arbor, MI 48109-2414
Telephone: (734) 764-7529
Fax: (734) 763-4540

And with a copy to:

Vice President and General Counsel
The University of Michigan
4010 Fleming Administration Building
Ann Arbor, MI 48109-1340
Telephone: (734) 764-0304
Fax: (734) 763-5648

Either party, by notice in the manner described in this Section 12.1, may change its address, telephone number or fax number for purposes of notice under this Agreement.

ARTICLE XIII

Miscellaneous Provisions

13.1 Litigation and Applicable Law. This Agreement is being made under and shall be interpreted in accordance with the laws of the State of Michigan.
13.2 **Independent Status.** During the term of this Agreement, the Parties shall remain separate and independent corporate entities. Each party shall, with respect to its employees providing services in connection with the Parking Structure:

(a) Pay, or cause to be paid, all compensation and fringe benefits;

(b) Withhold, or cause to be withheld, all applicable federal, state and local taxes, including FICA;

(c) Make or cause to be made, any and all required payments relating to such employees, including any unemployment compensation fund payments; and

(d) Maintain, or cause to be maintained workers compensation insurance, as required by Michigan law.

13.3 **No Authority to Contract.** A Party shall not have authority to contract for or in the name of the other Party as to any matter whatsoever and neither Party shall expressly or impliedly represent itself to another person to have such authority, except (i) as expressly provided elsewhere in this Agreement; or (ii) as specifically authorized in a writing signed by the Party granting such authority and directed to the other Party to which such authority is granted.

13.4 **No Assignment.** Neither Party shall have the right to assign its rights or delegate its obligations under this Agreement unless with the prior written consent of the other Party. Each Party reserves its absolute discretion regarding any proposed assignment or delegation by the other Party.

13.5 **Entire Agreement.** This 31 page document, including Schedules, constitutes the entire agreement between the City and the University with respect to the subject matter hereof, supersedes any prior agreements between the them with respect to the subject matter hereof and shall not be subject to amendments or cancellation unless by a document which is signed by the City and the University.

13.6 **Access to Books, Documents and Records.** Each Party shall have the right to inspect all books and records of the other Party relating to the operation of the Parking Structure and the Parties’ obligations under this Agreement.

13.7 **Waiver.** No right or remedy conferred upon or reserved to a Party in this Agreement is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy or legally existing upon
the occurrence of a breach to this Agreement. The failure of a Party to insist at any time upon the strict observance or performance of any of the provisions of this Agreement or to exercise any right or remedy as provided in this Agreement, shall not impair any such right or remedy or be construed as a waiver or relinquishment thereof with respect to a subsequent breach(es). Every right and remedy given by this Agreement to the Parties may be exercised from time to time and as often as may be deemed expedient by the Parties.

13.8 Interpretation and Severability. This Agreement shall be construed and applied in such manner as to minimize unenforceability of any provision. In the event that any provision of the Agreement, in whole or in part (or the application of any provision to a specific situation), is held to be invalid or unenforceable, if possible, such provision shall be deemed rewritten and revised in a manner which eliminates the offending language but maintains the overall intent, in context, of the Agreement. However, if that is not possible, the offending language shall be deemed removed, with the Agreement otherwise remaining in full force and effect, so long as doing so would not result in substantial unfairness or injustice to either of the Parties.

13.9 Force Majeure. A Party shall not be liable for any failure, liability or delay to perform under this Agreement, if such failure, inability or delay is due to war, strike, fire, explosion, sabotage, accident, casualty, governmental law or regulation or any other cause beyond the reasonable control of the Party so failing, and due diligence is used in curing such cause and in resuming performance.

13.10 No Third Party Benefits. This Agreement shall not be construed to create in any person or entity not a Party, any right, claim, benefit or defense with respect to the Parties, or in any party claiming by, through or under either of them, with respect to any loss, cost, damage, claim or cause of action arising under or pursuant to the terms of this Agreement.

13.11 Encumbrances. No Party shall permit any construction, mechanics', materialmen's or other liens to attach to any portion of the Parking Structure or any interest of a Party in the Parking Structure, except with the prior written consent of both Parties. No Party shall have the right to subject the Parking Structure or the Lands to any mortgage or deed of trust securing the obligations of such Party, except with the prior written consent of both Parities. A Party who violates this Section 13.11 shall, to the extent permitted by law, indemnify, defend and hold harmless the other Party, their board members, officers, and employees from and against any and all such encumbrances, mortgages, deeds of trust or liens and the costs of discharging the same, including reasonable attorneys' fees, interest and court costs.
13.12 **Recording of Agreement.** This Agreement shall be recorded in the Washtenaw County Register of Deeds.

EXECUTED as of the day and year first above written.

WITNESS: 

REGENTS OF THE UNIVERSITY OF MICHIGAN

[Signature]  
Sue Ellen Burnett  
[Print Name]

Robert Kasdin  
Executive Vice President and Chief Financial Officer

[Signature]  
Stephany Anderson  
[Print Name]

WITNESS: 

CITY OF ANN ARBOR

[Signature]  
Ingrid B. Sheldon  
Mayor

[Signature]  
[Print Name]
[Signature]  
Winifred W. Northcross  
City Clerk

[Print Name]  

[Signature]  

[Print Name]  

Approved as to Substance:

Neal G. Berlin  
City Administrator

Approved as to Form:

Abigail Elias  
City Attorney

Signed or attested before me on January 10, 2003, by Robert Kasdin, the Executive Vice President and Chief Financial Officer of the Regents of the University of Michigan.

M. Catherine Rector  
Notary Public  
Washtenaw Co. Michigan  
My commission expires Aug. 2, 2002

Signed or attested before me on ______________, 19__, by Ingrid B. Sheldon, the Mayor of the City of Ann Arbor, and Winifred W. Northcross, the City Clerk for the City of Ann Arbor.

________________________, Notary  
County, State of Michigan  
My commission expires: __________
13.12 **Recording of Agreement.** This Agreement shall be recorded in the Washtenaw County Register of Deeds.

EXECUTED as of the day and year first above written.

WITNESS:  

REGENTS OF THE UNIVERSITY OF MICHIGAN

[Signature]  

Robert Kasdin  
Executive Vice President and Chief Financial Officer

[Print Name]

WITNESS:  

CITY OF ANN ARBOR

[Signature]  

Ingrid B. Sheldon  
Mayor

[Print Name]

[Signature]  

Eileen Goldman  
[Print Name]
Yvonne Car!
[Signature]
Yvonne Car!
[Print Name]

Eileen Goldman
[Signature]
Eileen Goldman
[Print Name]

Approved as to Substance:

A/23
12.22.99

Neal G. Berlin
City Administrator

Approved as to Form:

Abigail Elias
12.22.99
City Attorney

Signed or attested before me on __________, 19__, by Robert Kasdin, the Executive Vice President and Chief Financial Officer of the Regents of the University of Michigan.

__________________________
Notary

__________________________
County, State of Michigan
My commission expires: __________

Signed or attested before me on December 27, 1999, by Ingrid B. Sheldon, the Mayor of the City of Ann Arbor, and Winifred W. Northcross, the City Clerk for the City of Ann Arbor.

__________________________
Notary

__________________________
County, State of Michigan
My commission expires: __________

__________________________
EILEEN C. GOLDMAN
NOTARY PUBLIC - WASHTENAW COUNTY, MI
MY COMMISSION EXPIRES 10/21/09

31
Schedule 1.1

"Land"

Lot 8, Lot 9, South 180 feet of East 30 feet of Lot 7, and South 48 feet of Lot 10; all of Block 1 of R. S. Smith’s Second Addition to the City of Ann Arbor.

Subparcel A, the “Existing Land”

East 33 feet of South 44 feet of Lot 4, South 44 feet of Lots 5 and 6, North 27 feet of Lot 6, North 66 feet of Lot 7, East 132 feet of Lots 8 and 9, and Lot 10; all of Block 1 of R. S. Smith’s Second Addition.

Subparcels B, C, & D, the “Additional Land”

East 1/2 of West 1/3 of Lots 8 and 9; Block 1 of R. S. Smith’s Second Addition.

West 1/2 of West 1/3 of Lots 8 and 9; Block 1 of R. S. Smith’s Second Addition.

East 30 feet of South 132 feet of Lot 7; Block 1 of R. S. Smith’s Second Addition.

Tax ID ## 09-28-310-020
    09-28-310-017
    09-28-310-016
    09-28-318-015

Negotiated Document
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Abigail Elias, City Attorney
City of Ann Arbor
P.O. Box 8647
Ann Arbor, MI 48107-8647