

**GROUND LEASE
LEASEBACK AGREEMENT**

GROUND LEASE LEASEBACK AGREEMENT made ____ day of _____, 2016 (this "Leaseback Agreement") between THE CITY OF SARATOGA SPRINGS, NEW YORK, a municipal corporation located within the State of New York with an address at 474 Broadway, Saratoga Springs, New York 12866 (hereinafter referred to as the "City") and SARATOGA SPRINGS CITY CENTER AUTHORITY, an entity formed under the Public Authorities Law of the State of New York with an address at 522 Broadway, Saratoga Springs, New York 12866 (hereinafter referred to as the "Authority") (collectively, the "Parties"):

RECITALS:

A) Under a lease agreement dated the 27th day of October, 1983 between SCC Associates, and the City, the City, under Paragraph 15 of said agreement, exercised its option to purchase premises commonly known as the "City Center", Broadway, Saratoga Springs, New York (the "City Center Building Site").

B) Pursuant to a ground lease dated December 21, 2005 by and between the Parties (the "City Center Building Lease"), the City rented the City Center Building Site to the Authority, which City Center Building Lease terminates on December 31, 2032.

C) The City is the owner in fee of the property described on Exhibit A-1 and A-2 (collectively, the "Parking Lot Property"), which property the City has leased to the Authority pursuant to a ground lease dated _____, 2016 (the "Parking Lot Ground Lease").

D) The Parties acknowledge that it is the intent of the Authority to construct or cause to be constructed upon the Parking Lot Property a multi-level parking structure (the "Parking Facility") to include surface parking to support the City Center as well as support economic growth and development in the downtown sector of the City of Saratoga Springs.

E) The Parties also acknowledge that delays are anticipated in the construction of the Parking Facility and therefore desire to have the Authority leaseback the Parking Lot Property to the City pursuant to the terms of this Leaseback Agreement, the intent being to allow for continued availability of public parking until such time as construction of the Parking Facility does commence.

F) For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Authority hereby agree as follows.

1. Leaseback of the Parking Lot Property.

The Authority hereby leases back to the City the Parking Lot Property for the term hereinafter provided subject to the terms and conditions set forth herein.

2. Use.

The City shall, during the term of this Leaseback Agreement, operate the Parking Lot Property consistent with its current use.

3. Title and Condition.

The leaseback of the Parking Lot Property is accepted by the City in its present condition without representation or warranty by the Authority.

4. Duration of Term.

The term of this Leaseback Agreement shall commence as of the Effective Date (as such term is hereinafter defined) and shall expire on the earlier to occur of (i) sixty (60) days following receipt by the City of written notice from the Authority indicating the Authority's intent to commence construction of the Parking Facility or (ii) the termination of the Parking Lot Ground Lease in accordance with its terms (the "Leaseback Term"). The Authority shall be allowed to access the Parking Lot Property during the term of this Leaseback Agreement for the purpose of performing such studies and investigations as are necessary to allow for the completion of a development plan for the Parking Lot Property (hereinafter the "Pre-Construction Work"). The Authority and the City shall be named as an additional insured under liability insurance to be provided by any entity performing such Pre-Construction Work with such insurance to meet the requirements of Section 6 hereof.

5. Operation and Maintenance.

During the term of this Leaseback Agreement the City shall operate and maintain the Parking Lot Property in good operating order and condition, and make all replacements and repairs thereto (whether ordinary, extraordinary, structural or nonstructural, foreseen or unforeseen) as the City deems necessary. All repairs and replacements shall be equal in quality, class and value to the original work.

6. Insurance.

(a) The City agrees that it will carry comprehensive general liability in minimum amounts of \$2,000,000 general aggregate and \$1,000,000 each occurrence (bodily injury and property damage combined in single limits) and an Umbrella liability policy in the minimum amount of \$4,000,000 each occurrence and \$4,000,000 general aggregate and shall cause any contractors or subcontractors performing work on the Parking Lot Property to carry similar levels of general liability insurance. The Authority shall be an additional insured on a primary and non-contributory basis with respect to comprehensive general liability insurance.

(b) The City shall obtain from all of its insurers a waiver of subrogation against the Authority, and shall be entitled to seek from all of its insurers a waiver of subrogation against the City.

(c) All insurance under this Section shall be written by insurers of recognized financial standing which are licensed to do business in New York State. Each policy shall name as insured parties thereunder the City and the Authority, provided that no cancellation thereof shall be effective until at least thirty (30) days after receipt by the named insured

parties of written notice thereof. Insurance coverage may be affected under overall blanket policies of the City so long as such coverage conforms to all of the requirements of this Section.

(d) The City shall deliver to the Authority on or before the Effective Date, original or duplicate policies or certificates of insurers evidencing all the insurance which is then required to be maintained by the City hereunder, and the City shall, promptly after the City shall become obligated to maintain any other insurance provided for herein, deliver to the Authority original or duplicate policies or certificates of insurers evidencing such insurance. The City shall, within thirty (30) days prior to the expiration of any such insurance deliver such original or duplicate policies or certificates of insurers evidencing the renewal of such insurance.

7. Default.

(a) The following event shall constitute an “Event of Default” hereunder:

(i) Failure of the City to observe and perform any covenant, condition or agreement hereunder on its part to be performed and continuance of such failure for a period of ninety (90) days after receipt by the City of written notice specifying the nature of such default.

(b) Whenever any Event of Default hereof shall have occurred and be continuing, the Authority may take any one or more of the following remedial steps:

(i) The Authority may re-enter and take possession of the Parking Lot Property without terminating this Leaseback Agreement.

(ii) The Authority may terminate this Leaseback Agreement.

(c) The rights and remedies of the Authority under this Leaseback Agreement shall be cumulative and shall not exclude any other rights and remedies of the Authority allowed by law with respect to any default under this Leaseback Agreement. Failure by the Authority to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon default by the City hereunder shall not be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce by mandamus or other appropriate legal remedy a strict compliance by the City with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such default by the City be continued or repeated.

8. Indemnification.

The City agrees to defend, indemnify and hold the Authority harmless from and in respect of any and all liabilities, losses, damages, costs, expenses (including reasonable attorneys’ fees and expenses), causes of action, suits, claims, demands or judgments arising during the term of this Leaseback Agreement upon or about the Parking Lot Property or resulting from or arising out of or in any way connected with the equipping, use, management or occupancy of the Parking Lot Property except that the obligation of the City to so defend, indemnify and hold harmless shall not extend to any liabilities, losses, damages, costs, expenses (including reasonable attorneys’ fees and expenses), causes of action, suits, claims, demands or judgments arising out of any Pre-Construction Work undertaken by the Authority or its agents, vendors or employees.

9. Notices.

(a) All notices, including communications and statements which are required or permitted under the terms of this Leaseback Agreement, shall be in writing, except as otherwise provided herein.

(b) All notices, requests, demands or other communications with respect to this Leaseback Agreement, whether or not herein expressly provided for, shall be in writing signed by the party or its attorney and shall be deemed to have been duly given only when (i) mailed by United States First-Class, certified or registered mail, postage prepaid, return receipt requested, or (ii) when actually delivered via a nationally recognized overnight courier service, or (iii) by facsimile transmittal followed by hard copy as provided in (i) or (ii) above, to the parties at their respective addresses as first above written. Any such addresses for the giving of notice may be changed by either party by giving notice thereof in writing to the other.

(c) Notices may be sent to the parties at the following addresses:

TO THE AUTHORITY: Saratoga Springs City Center Authority
522 Broadway
Saratoga Springs, New York 12866
Attention: Executive Director

TO THE CITY: City of Saratoga Springs
474 Broadway
Saratoga Springs, New York 12866
Attention: Mayor

Such addresses shall be subject to change from time to time to such other addresses as may have been specified in written notice given by one party to another.

10. Amendments.

This Leaseback Agreement may be amended only with the concurring written consent of the parties hereto and of any assignee thereof.

11. Severability.

If any clause, provision or section of this Leaseback Agreement be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof.

12. Effective Date; Counterparts.

This Leaseback Agreement shall become effective upon its delivery (the "Effective Date"). It may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

13. Governing Law.

This Leaseback Agreement shall be governed by and construed under the laws of the State of New York.

IN WITNESS WHEREOF, the City has caused its corporate name to be hereunto subscribed by its duly authorized Mayor and attested under the seal of the City by its Mayor and the Authority has caused this Leaseback Agreement to be executed.

CITY OF SARATOGA SPRINGS

By: _____
Name: _____
Title: _____
Per Council Approval (date) _____

SARATOGA SPRINGS CITY CENTER AUTHORITY

By: _____
Name: _____
Title: _____

Exhibit A-1

[Description of Portion of Parking Lot Property upon which parking garage is to be constructed]

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Exhibit A-2

[Description of Portion of Parking Lot Property upon which surface parking lot to be constructed]

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