

## GROUND LEASE AGREEMENT

**GROUND LEASE AGREEMENT** made \_\_\_\_ day of \_\_\_\_\_, 2016 (this "Lease") 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 (the "Parking Facility Lot") and A-2 (the "Surface Parking Lot" and collectively with the Parking Facility Lot, the "Parking Lot Property"), which property the City now desires to lease to the Authority.

D) The New York State Legislature first created the Authority in Title 21 of the Public Authorities Law, with an effective date of July 27, 1982, for an initial period of twenty five (25) years. Thereafter the Legislature amended the Public Authorities Law, Section 2490-c, so as to extend the corporate existence of the Authority for a total period of fifty (50) years, or until such time as all indebtedness of the Authority is retired.

E) The City has resolved that the fiscal viability and operation of the City Center by the Authority is to the benefit of all of the citizens of the City and that the lease of the Parking Lot Property to the Authority will enhance the fiscal viability and operation of the City Center by the Authority.

F) 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 and that it is the further intent of the parties in providing for the development of the Parking Lot Property to not impede future development of the Surface Parking Lot by the City and/or a third party designated by the City.

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

**1. Lease of the Parking Lot Property; Granting of Easement.**

(a) The City hereby leases to the Authority the Parking Lot Property for the term hereinafter provided and subject to the terms and conditions set forth herein provided that the lease of the Surface Parking Lot shall not extend to the air rights over the Surface Parking Lot, which air rights shall be retained by the City. In furtherance of such limitation, the construction by the Authority of any improvements to the Surface Parking Lot other than parking gates and access control structures shall require the prior approval of the City.

(b) In addition, the City hereby agrees to grant to the Authority an air rights easement over a portion of Maple Avenue to allow for the construction by the Authority of an elevated structure to allow for pedestrian access from and to the parking facility and the City Center as well as parking, said easement to be in the form attached hereto as Exhibit "B".

**2. Use.**

The Authority shall, during the term of this lease, use the Parking Lot Property as a paid parking facility which will at all times be available for public use and for other zoning compliant civic purposes only.

**3. Title and Condition.**

The Parking Lot Property is leased to and accepted by the Authority in its present condition and except as set forth below, without representation or warranty by the City. 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 Lease which are demonstrated to have resulted or arisen from environmental contamination related to the Parking Lot Property which pre-date the Effective Date (as hereinafter defined) (hereinafter, the "Pre-Existing Environmental Contamination") provided, however, that with respect to such Pre-Existing Environmental Contamination (excluding the costs associated with previously disclosed required soil remediation in an amount not to exceed \$110,000 for which the Authority acknowledges responsibility), the City shall have the option of either (i) directly or indirectly incurring the costs of any required environmental remediation relating thereto or (ii) terminating this Lease and reimbursing the Authority for any and all costs incurred to date by the Authority relating to the development of the Parking Lot Property including, but not limited to, any amounts required to pay off any indebtedness incurred by the Authority in connection with such development.

**4. Duration of Term; Rent Due.**

The term of this Lease shall commence as of the Effective Date) and shall expire on December 31, 2032 provided that, upon any extension of the termination date of the City Center Building Lease, such term shall be deemed automatically extended to the earlier to occur of (i) any such extended termination date of the City Center Building Lease or (ii) the 25<sup>th</sup> year anniversary of the Effective Date, (the "Lease Term"). In the event either (i) a building permit with respect to the construction of the Parking Facility (as hereinafter defined) is not issued within three years of the date of this Lease or (ii) such building permit is issued and the Authority does not commence construction of the Parking Facility within one year of the issuance of any such building permit, this Lease shall automatically terminate and be null and void. To allow for continued public access to the Parking Lot

Property prior to commencement of construction thereupon, the parties agree to enter into a lease providing for the leasing of the Parking Lot Property to the City with such lease to terminate 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. Such lease shall provide that the Authority shall be allowed to access the Parking Lot Property during the term thereof 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 consistent with Section 2 hereof (hereinafter the "Pre-Construction Work") provided that (i) the City is 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 and (ii) that the performing of such Pre-Construction Work does not unreasonably interfere with the current use of the Parking Lot Property.

The Authority shall remit to the City on an annual basis base rent (i) in the amount of Fifty Thousand and no/100 Dollars (\$50,000.00) which shall be due and payable within thirty (30) days of the date of issuance of a certificate of occupancy with respect to the Parking Facility (hereinafter, the "CofO Issuance Date") and thereafter on each annual anniversary of the CofO Issuance Date with the amount of base rent subject to 10% increases on each fifth year anniversary of the CofO Issuance Date. In addition, in the event that at any time during the term hereof, the operation of the Parking Facility results in Excess Cash Flow, the Authority agrees to remit to the City on an annual basis within 120 days of the end of each fiscal year of the Authority 50% of Excess Cash Flow. For purposes hereof, the term Excess Cash Flow shall mean earned revenue derived from the operation of the Parking Facility less all (i) debt service charges for the Parking Facility, (ii) base rent payments required hereunder, (iii) actual operation and maintenance expenses for the Parking Facility as determined by the Authority, (iv) adequate funds for the Parking Facility's long term maintenance and capital improvement needs (calculated based upon \$75.00 per each parking space per annum within the Parking Lot Property and not to exceed \$2,000,000.00 in the aggregate) and (v) payment of all applicable state and local fees and taxes.

## **5. Operation and Maintenance; Improvements; Title to Improvements.**

(a) During the term of this Lease the Authority will keep 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 Authority deems necessary. All repairs and replacements shall be equal in quality, class and value to the original work. Upon the expiration or termination of this Lease (unless it shall purchase the Parking Lot Property), the Authority will surrender the Parking Lot Property and the Parking Facility to the City in as good condition as prevailed at the time the Authority completed the construction of the Parking Facility, ordinary wear and tear excepted and shall turn over to the City any un-utilized reserve funds relating to the Parking Facility together with title to any equipment and other personal property (including but not limited to software) purchased by the Authority solely in connection with the operation and maintenance of the Parking Facility. Upon expiration or termination of this Lease, (i) title to all improvements constructed on the Parking Lot Property shall revert to the City and (ii) the City shall be solely liable for any costs and expenses relating to the operation and/or maintenance of the

Parking Facility from and after the date of such expiration or termination. Upon the termination or expiration of this Lease, the Authority agrees to execute all conveyance documents as may be requested by the City to evidence such passing of title to such equipment, personal property and improvements to the City.

(b) Subject to the obtaining of all necessary land use approvals with respect thereto, the Authority shall have the privilege of making such improvements, alterations of or additions to the Parking Lot Property or any part thereof from time to time as it, in the exercise of its sole reasonable discretion, may determine to be desirable for its uses and purposes consistent, however, with the provisions of Section 2 hereof, provided that (i) the fair market value of the Parking Lot Property is not reduced below its value immediately before such improvements, alteration or addition and the usefulness or operating efficiency of the Parking Lot Property is not impaired, (ii) such improvements, additions or alterations are effected with due diligence, in a good and workmanlike manner and in compliance with all applicable legal requirements, (iii) such improvements, additions or alterations are promptly and fully paid for by the Authority and (iv) such improvements, additions or alterations are made, under the supervision of an architect or engineer, who may be an employee of the Authority selected by the Authority. All improvements to and, alterations of and additions to the Parking Lot Property shall constitute a part of the Parking Lot Property subject to this Lease and during the term of this Lease shall be deemed to be owned by, and the property of, the Authority.

(c) The Authority agrees to establish during the entirety of the Lease Term an advisory committee (the "Advisory Committee") relating to the operation of the Parking Facility to be comprised of the Director of Finance for the City, the Executive Director of the Authority and the Chairperson of the Board of the Authority or other Authority board member as designated by the Authority. The role of the Advisory Committee will be to act as a liaison between the Authority and the City and to consult with the Authority regarding all aspects of the operation of the Parking Facility including, but not limited to, the establishment of parking rates for the use thereof and the management of the civic agora portion of the Parking Facility. Notwithstanding the foregoing, the Authority shall have sole final discretion as to all such matters.

## **6. Insurance.**

(a) The Authority shall during the term of this Lease keep any buildings, structures and other property constituting a part of the Parking Lot Property continuously insured against loss or damage by fire, with standard extended coverage endorsement covering perils of windstorm, hail, explosion, aircraft, vehicles, earthquakes and smoke (except as limited in the standard form of extended coverage endorsement at the time in use in the State of New York) at all times in an amount such that the proceeds of such insurance shall be sufficient to prevent the City and the Authority from becoming a co-insurer of any partial loss under the applicable policies, but in any event in amounts equal to not less than 80% of the actual replacement value of the Parking Lot Property as determined by an expert approved by the Authority.

(b) The Authority 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 City shall be an additional insured on a primary and non-contributory basis with respect to comprehensive general liability insurance.

(c) The Authority agrees that it will carry workers' compensation insurance, disability benefit insurance and such other forms of insurance which the Authority is required by law to provide, covering loss resulting from injury, sickness, disability or death of the employees of the Authority.

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

(e) 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 Authority so long as such coverage conforms to all of the requirements of this Section.

(f) The Authority shall deliver to City on or before the Effective, original or duplicate policies or certificates of insurers evidencing all the insurance which is then required to be maintained by the Authority hereunder, and the Authority shall, promptly after the Authority shall become obligated to maintain any other insurance provided for herein, deliver to the City original or duplicate policies or certificates of insurers evidencing such insurance. The Authority 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. Advances.**

In the event the Authority fails (i) to keep the Parking Lot Property in good operating order and condition as required herein; (ii) to pay impositions as required herein; or (iii) to effect, maintain or renew any insurance required herein, then the City at its option, but without any obligation to do so, may, upon thirty (30) days' notice to the Authority, make necessary repairs, pay impositions and effect insurance. All amounts so advanced therefore by the City or on its behalf shall constitute additional rent hereunder payable by the Authority within sixty (60) days of written demand of the City. Any remedy vested in the City for the collection of such payments hereunder shall also be available to the City for the collection of such additional rent and the failure by the Authority to comply with the foregoing provisions shall constitute an Event of Default hereunder.

## **8. Damage or Destruction.**

(a) If the Parking Lot Property shall be damaged, either partly or totally, the Authority shall promptly give notice of same to the City.

(b) Unless required under the terms of any indebtedness relating to the funding of improvements to the Parking Lot Property to utilize the net proceeds of any insurance claim to

repay such indebtedness, the Authority shall at its cost, repair, restore or reconstruct the Parking Lot Property to substantially its condition, immediately prior to such damage or destruction or to a condition of at least equivalent value and function using the proceeds of all applicable policies of insurance covering such damage or destruction.

(c) Any surplus of insurance proceeds remaining after the completion of all payments for repair, restoration or reconstruction in accordance with this Agreement shall be paid over to the Authority, provided no Event of Default is occurring with respect to this Lease.

(d) Subject to subparagraph (a) hereof, in the event the Authority shall fail to repair, restore or reconstruct or pay the cost of repairing, restoring or reconstructing any such damage or destruction after the lapse of a reasonable time and after due notice given by the City to the Authority, the City may do so on behalf of the Authority and recover the reasonable cost thereof from the Authority and the failure by the Authority to so reimburse the City shall constitute an Event of Default hereunder.

(e) Any insurance proceeds attributable to improvements, machinery, equipment and other property installed on or about the Parking Lot Property to which the Authority shall have paid for directly and retained title shall be paid to the Authority.

## **9. Default.**

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

(i) Failure of the Authority 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 Authority of written notice specifying the nature of such default.

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

(i) The City may re-enter and take possession of the Parking Lot Property without terminating this Lease, and sublease the Parking Lot Property on behalf of the Authority.

(ii) The City may terminate this Lease, and exclude the Authority from possession of the Parking Lot Property and the Parking Facility, and this Lease and all of the estate, right, title and interest herein granted or vested in the Authority regarding the Parking Lot Property and the Parking Facility shall cease and terminate.

(c) The rights and remedies of the City under this Lease shall be cumulative and shall not exclude any other rights and remedies of the City allowed by law with respect to any default under this Lease. Failure by the City 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 Authority 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 Authority with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such default by the Authority be continued or repeated, or of the right to recover possession of the Parking Lot Property by reason thereof.

## **10. Assignment or Sublease.**

(a) The Authority may not at any time assign or transfer this Lease, or sublet the whole or any part of the Parking Lot Property other than in the ordinary course of its business as a convention center and parking garage absent the prior written consent of the City. For purposes hereof, the phrase "in the ordinary course of its business as a convention center and parking garage" shall be deemed to refer to (i) dedication of all or a portion of parking lot spaces within the Parking Lot Property for events occurring at the City Center Building Site and (ii) short term leases of up to 50 parking spaces within the Parking Lot Property to third parties. The foregoing shall not be deemed to require the Authority to obtain the consent of the City with respect to the entering into of any maintenance, security or operation contracts relating to the Parking Facility.

(b) The Authority shall have the right to issue its bond, note or other evidence of indebtedness to secure the repayment of its indebtedness only. The Authority shall have the right to subject its leasehold estate under this Lease to a mortgage or mortgages or to any one or more extensions, increases, modifications, renewals or replacements thereof (the "Mortgage"), and collaterally assign this Lease to the holder of the Mortgage, as more specifically described in Section 11 hereof.

## **11. Liens on the Authority's Leasehold Estate; Rights of Mortgagees.**

(a) Mortgage Authorized. On one or more occasions, without the City's prior consent, the Authority may (i) mortgage or otherwise encumber the Authority's leasehold estate in the Parking Lot Property to one or more Mortgagees under one or more leasehold mortgages (a "Mortgage"), (ii) assign this Lease as security for such Mortgage or Mortgages or (iii) do one or more of the foregoing (i) through (ii).

(b) Notice to City. If the Authority shall, on one or more occasions, mortgage the Parking Lot Property to a Mortgagee, and if the holder of such Mortgage shall provide the City with written notice mailed by certified mail, return receipt requested, of such Mortgage together with a true copy of such Mortgage and the name and address of the Mortgagee, the City and the Authority agree that, following receipt by the City of such notice, the provisions of this Section 11 shall apply in respect to each such Mortgage.

(c) Definitions. (i) The term "Mortgage" as used in this Section 11 shall include a mortgage, a deed of trust, a deed to secure debt, or other security instrument by which the Authority's leasehold estate is mortgaged, assigned, or otherwise transferred, to secure a debt or other obligation, including, without limitation, obligations to reimburse the issuer of a letter of credit.

(ii) The term "Mortgagee" as used in this Section 11 shall refer to a holder of a Mortgage in respect to which the notice provided for by subsection (b) of this Section 11 has been given and received and as to which the provisions of this Section 11 are applicable.

(d) Default Notice. The City, upon providing the Authority any notice of: (i) default under this Lease or (ii) a termination of this Lease, shall at the same time provide a copy of such notice to every Mortgagee. No such notice by the City to the Authority shall be deemed to have been duly given unless and until a copy thereof has been so provided to every Mortgagee. From and after such notice has been given to a Mortgagee, such Mortgagee shall have the same period, after the giving of such notice upon it, for remedying any default or causing the same to be remedied, as is given the Authority after giving of such notice to the Authority, plus in each instance, the additional periods of time specified in subsections (e) and (f) of this Section 11 to remedy, commence remedying or cause to be remedied the defaults specified in any such notice. The City shall accept such performance by or at the instigation of such Mortgagee as if the same had been done by the Authority. The City authorizes each Mortgagee to take any such action at such Mortgagee's option and does hereby authorize entry upon the premises by the Mortgagee for such purpose.

(e) Notice to Mortgagee. (i) Anything contained in this Lease to the contrary notwithstanding, if any default shall occur which entitles the City to terminate this Lease, the City shall have no right to terminate this Lease unless, contemporaneously with notice of default to the Authority, the City shall notify every Mortgagee of said default specifying the nature of the default and the time period for the default to be cured. Following expiration of the cure period the City shall again notify every Mortgagee of the City's intent to terminate the Lease at least 30 days in advance of the proposed commencement date of such termination if such default is capable of being cured by the payment of money, and at least 60 days in advance of the proposed commencement date of such termination if such default is not capable of being cured by the payment of money (including without limitation, an adjudication of bankruptcy against the Authority's appointment of a receiver, trustee or liquidator for any portion of the Authority's property or abandonment of the Parking Lot Property by the Authority). The provisions of subsection (f) below of this Section 11 shall apply if, during such 30 or 60 day termination notice period, any leasehold Mortgagee shall:

- (1) notify the City of such Mortgagee's desire to nullify such notice, and
- (2) pay or cause to be paid all payments then due and in arrears as specified in the termination notice to such leasehold Mortgagee and which may become due during such 30 or 60-day period, and
- (3) comply in good faith, with reasonable diligence and continuity, or commence to comply with all non-monetary requirements of this Lease then in default and reasonably susceptible of being complied with by such Mortgagee.

(ii) Any notice to be given by the City to a Mortgagee pursuant to any provision of this Section 11 shall be deemed properly addressed if sent to the address located in the continental United States set forth in the notice referred to in subsection (b).

(f) Procedure On Default.

(i) The City will not exercise any right, power or remedy with respect to any default hereunder unless the Authority or its Mortgagee shall have failed to remedy such default within the time periods set forth in (e) above (the "Mortgagee Grace Period"), provided that (a) if such default is of such a nature that it cannot, with the exercise of due diligence, be cured within such periods, the City shall not be entitled to re-enter the Parking Lot Property or to serve a notice of termination upon the Authority or Mortgagee, nor shall such default be regarded as a default for any of the purposes of the Lease, if the Authority or Mortgagee shall have commenced the cure of such default within the thirty (30) or sixty (60) days referred to herein and so long as the Authority or Mortgagee shall thereafter proceed with all due diligence to complete the cure of such default and the time of the Authority or Mortgagee within which to cure the default shall be extended from such period as may be necessary to complete the cure with all due diligence and (b) if the nonpayment default is of a nature that possession of the Parking Lot Property by the Mortgagee is reasonably necessary for the Mortgagee to remedy the default, the Mortgagee Grace Period shall not be deemed to have commenced until such time as the Mortgagee shall have obtained possession of the Parking Lot Property, but without limiting any other provision hereof, the Mortgagee shall begin with due diligence and diligently pursue all actions reasonably necessary and/or desirable to obtain possession of the Parking Lot Property, including, but not limited to, the commencement of a mortgage foreclosure action/proceeding. None of the foregoing shall waive or release the Authority with respect to such default.

(ii) Nothing in this subsection (f) of this Section 11, however, shall be construed to extend this Lease beyond the original term hereof, nor to require a Mortgagee to continue such foreclosure proceedings after the default has been cured. If the default shall be cured and the Mortgagee shall discontinue such foreclosure proceedings, this Lease shall continue in full force and effect as if the Authority had not defaulted under this Lease.

(iii) If a Mortgagee is complying with subsection (f)(i) of this Section 11, upon the acquisition of the Authority's estate herein by such Mortgagee or its designee or any other purchaser at a foreclosure sale or otherwise this Lease shall continue in full force and effect as if the Authority had not defaulted under this Lease.

(iv) For the purposes of this Section 11 the making of a Mortgage shall not be deemed to constitute an assignment or transfer of this Lease or of the leasehold estate hereby created, nor shall any Mortgagee, as such, be deemed to be an assignee or transferee of this Lease or of the leasehold estate hereby created so as to require such Mortgagee, as such, to

assume the performance of any of the terms, covenants or conditions on the part of the Authority to be performed hereunder, but the purchaser at any sale of this Lease and of the leasehold estate hereby created in any proceedings for the foreclosure of any Mortgage, or the assignee or transferee of this Lease and of the leasehold estate hereby created under any instrument of assignment or transfer in lieu of the foreclosure of any Mortgage shall be deemed to be an assignee or transferee within the meaning of this Section 11, and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of the Authority to be performed hereunder from and after the date of such purchase and assignment, but only for so long as such purchaser or assignee is the owner of the leasehold estate.

(v) Any Mortgagee or other party who acquires the leasehold estate of the Authority pursuant to foreclosure, assignment in lieu of foreclosure or other proceedings may, upon acquiring the Authority's leasehold estate, without further consent of the City, sell and assign the leasehold estate subject to the terms, provisions and conditions of this Lease, and thereafter be relieved of all obligations under this Lease.

(vi) Notwithstanding any other provisions of this Lease, any sale of this Lease and of the leasehold estate hereby created in any proceedings for the foreclosure of any Mortgage, or the assignment or transfer of this Lease and of the leasehold estate hereby created in lieu of the foreclosure of any Mortgage shall be deemed to be a permitted sale, transfer or assignment of this Lease and of the leasehold estate hereby created.

(vii) The Authority has the right to assign to any Mortgagee the Authority's right to elect to accede to a rejection of this Lease by the City or the City's trustee in bankruptcy.

(g) New Lease. In the event of the termination of this Lease prior to the last day of the Lease Term of this Lease, the City agrees that the Lease shall nevertheless remain in full force and effect and shall continue in favor of each Mortgagee to the extent of their respective interests and priorities. The City shall, in addition to providing the notices of default and termination as required by subsection (d) and (e) above of this Section 11, provide each Mortgagee with written notice that the Lease has been terminated, together with a statement of all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, then known to the City. In addition, the City agrees to enter into a new lease ("New Lease") of the Parking Lot Property with such Mortgagee or its designee (which obligations shall survive the termination of this Lease) for the remainder of the term of this Lease (or such shorter term as Mortgagee may elect), effective as of the date of termination, upon the terms, covenants and conditions (including all options to renew but excluding requirements which are not applicable or which have already been fulfilled) of this Lease; and contemporaneously with the continuation provided for herein or the execution and delivery of a New Lease, shall turn over to the Mortgagee named therein or its designee the moneys, if any, then being held by the City pursuant to this Lease, which the Authority would have been entitled to receive but for such termination, provided that:

(i) Such Mortgagee shall make written request upon the City for such New Lease, within 60 days after the date such Mortgagee receives the City's notice of termination of this Lease given pursuant to this subsection (g).

In the event of a controversy as to the net amount to be paid to the City pursuant to this subsection (g)(i), the payment obligation shall be satisfied if the City shall be paid the amount not in controversy, and the Mortgagee or its designee shall agree to pay any additional sum ultimately determined to be due and the obligation shall be adequately secured.

(ii) Such Mortgagee or its designee shall pay or cause to be paid to the City at the time of the execution and delivery of such New Lease, any and all sums which would at the time of execution and delivery thereof be due pursuant to this Lease but for such termination and, in addition thereto, all reasonable expenses, including reasonable attorney's fees, which the City shall have incurred by reason of such termination and the execution and delivery of the New Lease and which have not otherwise been received by the City from the Authority or other party in interest under the Authority. Upon the execution of such New Lease, the City shall allow to the tenant named therein as an offset against the sums otherwise due under this subsection (g)(i) or under the New Lease, an amount equal to the net income derived by City from the Parking Lot Property during the period from the date of termination of this Lease to the date of the beginning of the lease term of such New Lease.

(iii) Such Mortgagee or its designee shall agree to remedy any of the Authority's defaults of which said Mortgagee was notified by the City's notice of termination and which are reasonably susceptible of being so cured by Mortgagee or its designee.

(iv) Any New Lease made pursuant to this subsection (g) hereof shall retain the priority of this Lease with respect to any mortgage or other lien, charge or encumbrance on the fee of the Parking Lot Property and the tenant under such New Lease shall have the same right, title and interest in and to the Parking Lot Property and any improvements thereon as the Authority had under this Lease.

(v) The tenant under any such New Lease shall be liable to perform the obligations imposed on the tenant by such New Lease only during the period such tenant has ownership of such leasehold estate.

(h) New Lease Priorities. If more than one Mortgagee shall request a New Lease pursuant to Section 11 (g)(i) hereof, the City shall enter into such New Lease with the Mortgagee whose mortgage is prior in lien, or with the designee of such Mortgagee. The City, without liability to the Authority or any Mortgagee with an adverse claim, may rely upon the designation of the Authority and any Mortgagee as the basis for determining the appropriate Mortgagee who

is entitled to such New Lease or an order or a court of the State of New York of competent jurisdiction.

(i) Mortgagee Need Not Cure Specified Defaults. Nothing herein contained shall require any Mortgagee or its designee as a condition to its exercise of rights hereunder to cure any default of the Authority not reasonably susceptible of being cured by such Mortgagee or its designee, including but not limited to the bankruptcy defaults, in order to comply with the provisions of subsections (e) or (f) of this Section 11 or as a condition of entering into the New Lease provided for by Section 11(g) hereof. Notwithstanding the foregoing, the Mortgagee or its designee will be required to pay all amounts required to be paid hereunder and fulfill all of the Authority's other obligations under this Lease.

(j) Eminent Domain. The proceeds arising from an exercise of the power of eminent domain with respect to the Parking Facility shall be paid 100% to the Authority or its Mortgagee. The City shall not have any rights to such proceeds but shall have rights as to proceeds relating to the fee interest in and to the underlying land.

(k) Casualty Loss. A Standard Mortgagee Clause naming each Mortgagee may be added to any and all insurance policies required to be carried by the Authority and the insurance proceeds will be applied in the manner specified in this Lease and the Mortgagee shall so provide, except that the Mortgagee may provide a manner for the disposition of such proceeds, if any, payable directly to the Authority (but not such proceeds, if any, payable jointly to the City and Authority) pursuant to the provisions of this Lease.

(l) Proceedings. The Authority shall give each Mortgagee prompt notice of any legal proceedings or arbitration between the City and the Authority involving obligations under this Lease. Each Mortgagee shall have the right to intervene in any such proceedings and be made a party to such proceedings, and the parties hereto do hereby consent to such intervention. In the event that any Mortgagee shall not elect to intervene or become a party to any such proceedings, the City shall give the Mortgagee notice of, and a copy of, any award or decision made in any such proceedings, which shall be binding on all Mortgagees not intervening after receipt of notice of such proceedings.

(m) No Merger. So long as any Mortgagee is in existence, unless all Mortgagees shall otherwise expressly consent in writing, the fee title to the Parking Lot Property and the leasehold estate of the Authority therein created by this Lease shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said leasehold estate by the City or by the Authority or by a third party, by purchase or otherwise.

(n) Future Amendments. In the event on any occasions hereafter the Authority seeks to mortgage or collaterally assign the leasehold estate created hereby, the City agrees to amend this Lease from time to time to the extent reasonably requested by a bank or other financial institution proposing to make a loan to the Authority secured by a lien upon Authority's

leasehold estate, provided that such proposed amendments do not adversely affect the rights of the City or its interest in the Premises. All reasonable expenses incurred by the City in connection with any such amendment shall be paid by the Authority. No substantial and material modification, surrender or cancellation of the Lease, except as otherwise provided in the Lease, shall be effective without written approval of the Mortgagee nor shall the acquisition of both the fee and leasehold estates in the Premises in one entity effect a merger thereof.

(o) Notices. Notices from the City to the Mortgagee shall be mailed to the address furnished City pursuant to Section 11 (b) hereof, and those from the Mortgagee to the City shall be mailed to the address designated pursuant to the provisions of Section 13 hereof. Such notices, demands and requests shall be given in the manner described in Section 13 and shall in all respects be governed by the provisions of that section.

(p) Erroneous Payments. No payment made to the City by a Mortgagee shall constitute agreement that such payment was, in fact, due under the terms of this Lease; and a Mortgagee having made any payment to the City pursuant to the City's wrongful, improper or mistaken notice or demand shall be entitled to the return of such payment or portion thereof provided it shall have made demand there for not later than one year after the date of its payment.

(q) Bankruptcy. The City acknowledges that as between the City and any Mortgagee, its nominee or purchaser at a foreclosure or other sale, this Lease shall not be deemed to be terminated notwithstanding the rejection of this Lease by operation of law, by the Authority or its representative, or by any trustee appointed in the Authority's bankruptcy case, pursuant to the Bankruptcy Code or any other insolvency law. The Mortgagee shall be deemed to have satisfied its obligation to commence foreclosure proceedings or cause the Authority's interest in this Lease to be sold under a power of sale by asserting a claim in the Authority's case under the Bankruptcy Code or any other insolvency proceeding, and the Mortgagee shall not be deemed to have failed to satisfy such obligation if the Mortgagee is unable to do so as a result of the provisions of Section 362 of the Bankruptcy provision of any other insolvency law.

(r) Mortgagee Obligations. No Mortgagee or its nominee shall become liable under the provisions of this Lease unless and until such time as it becomes, and then only for as long as it remains, the owner of the Authority's interest in this Lease, and such liability shall be limited to such Mortgagee's or nominee's interest in this Lease.

(s) Authority Cure. Nothing herein contained shall be deemed to require the Mortgagee to continue with any foreclosure or other proceedings or, in the event the Mortgagee shall otherwise acquire possession of the Parking Lot Property, to continue such possession after the Event of Default in respect of which the City shall have given the notice provided for in this Section 11 shall be remedied by Authority. If prior to any sale pursuant to any proceeding brought to foreclose any leasehold mortgage, or if prior to the date on which the Authority's

interest in this Lease and the Parking Lot Property shall otherwise be extinguished, the Event of Default in respect of which the City shall have given the notice provided for in this Section 11 shall have been remedied and possession of the Parking Lot Property shall be restored to Authority, the obligation of the Mortgagee, pursuant to the notice to be given to the City under Section 11(b), shall be null and void and have no further effect.

(t) Upon the request of the Authority, the City shall execute and deliver an agreement in substantially the form as attached hereto as Exhibit "C."

## **12. Indemnification.**

The Authority agrees to defend, indemnify and hold the City 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 Lease 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.

## **13. Notices.**

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

(b) All notices, requests, demands or other communications with respect to this Lease, 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.

**14. Amendments.**

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

**15. Severability.**

If any clause, provision or section of this Lease 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.

**16. Inspection of Parking Lot Property.**

The Authority will permit the City, or its duly authorized agents, at all reasonable times to enter upon, examine and inspect the Parking Lot Property subject to the safety and security requirements of the Authority.

**17. Development of Surface Parking Lot.**

Pursuant to Section 1 of this Lease, the City has retained air rights over the Surface Parking Lot so as to allow for future development thereof. In the event the City determines to develop or cause a third party to develop all or a portion of the Surface Parking Lot, the City shall have the option to either (i) proceed with such development based upon its retention of such air rights or (ii) , terminate this Lease as to the Surface Parking Lot (the "Termination Option"). The Termination Option shall be exercisable at any time from and after the two year anniversary of the CofO Issuance Date and upon no less than six (6) months prior written notice to the Authority (hereinafter, the "Termination Date"), with such notice to be accompanied by (i) an ingress and egress easement from the City in favor of the Authority and which allows for continued access to the remaining portion of the Parking Lot Property over the Surface Parking Lot, such to be in form and substance satisfactory to the City and the Authority in the exercise of their reasonable discretion as well as any Mortgagee and (ii) an agreement between the City and the Authority mutually acceptable to the City and the Authority in the exercise of their reasonable discretion as well as any Mortgagee providing reasonable assurances to the Authority and such Mortgagee that during any construction occurring on the Surface Parking Lot from and after the Termination Date, the Authority will continue to have ingress and egress access to the remaining portion of the Parking Lot Property. Any development of the Surface Parking Lot pursuant to this paragraph shall be conditioned upon receipt by the Authority from the City of the Lost Revenue Payment (as hereinafter described) on or before the completion of any improvements constructed upon the Surface Parking Lot or on such later date as shall be mutually agreeable to the parties, which the parties agree is intended to compensate the Authority for the temporary and/or permanent loss of revenue associated with the operation of the Surface Parking Lot which results from the development of the Surface Parking Lot. For purposes hereof, the Lost Revenue Payment shall be calculated by multiplying the average of the anticipated annual revenue which would have been generated by the parking spaces lost to the Authority as a result of such development (hereinafter, the "Lost Parking Spaces") by (i) with

respect to any permanent loss of parking spaces, the remaining term of this Lease (with such anticipated revenue to be calculated based upon all available historical operational results to consist of not less than two years of post CofO Issuance Date operations) and (ii) with respect to any temporary loss of parking spaces, the period during which such the revenue associated with such parking spaces was lost. In the event the Surface Parking Lot is developed without the exercise of the Termination Option, the Authority shall be named as an additional insured under comprehensive general liability insurance applicable to the Surface Parking Lot in the amounts required by paragraph 6 (b) hereof and on a primary and non-contributory basis. In the event of the exercise by the City of the Termination Option, the parties acknowledge and agree that it may be necessary to either modify this Lease or enter into a separate lease to allow for the restoration of control by the Authority as to any parking spaces within the Surface Parking Lot which are able to be returned for use by the Authority following the completion of construction of any improvements upon the Surface Parking Lot in accordance with the provisions of this paragraph.

**18. Effective Date; Counterparts.**

This Lease 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.

**19. Governing Law.**

This Lease 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 Lease 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 Parking Facility Lot]

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Exhibit A-2  
[Description of Surface Parking Lot]

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Exhibit B  
Form of Air Rights Easement

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**AIR RIGHTS EASEMENT AGREEMENT**

**THIS AIR RIGHTS EASEMENT AGREEMENT**, is entered into this \_\_\_ day of \_\_\_\_\_, 2016 (the “Effective Date”), by and between the **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 (“Grantor”), 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 (“Grantee”) for the purposes hereinafter set forth.

**WITNESSETH:**

**WHEREAS**, Grantor is the owner of Maple Avenue, a City right-of-way located in the City of Saratoga Springs, Saratoga County, New York;

**WHEREAS**, Grantee is the owner of a leasehold interest in property adjacent to the West boundary of Maple Avenue (the “West Parcel”) and is the owner of a ground leasehold interest in property adjacent to the East boundary of Maple Avenue (the “East Parcel”), as more particularly described in Exhibit “A”, attached hereto and incorporated herein by reference (the “Project Property”);

**WHEREAS**, Grantee intends on developing and constructing a parking facility on the East Parcel of the Project Property (the “Parking Facility”) to service an existing convention center on the West Parcel of the Project Property (the “Convention Center”), the Parking Facility and Convention Center being hereinafter sometimes collectively referred to as the “Facility”, a site plan of which is attached hereto and incorporated herein, by reference, as Exhibit B (the “Site Plan”);

**WHEREAS**, Grantee has requested that grantor convey to it an air rights easement over that portion of Maple Avenue adjacent to the Project to allow Grantee to construct a structure over Maple Avenue which would allow for parking as well as pedestrian access to and from the Parking Facility and the Convention Facility;

**NOW, THEREFORE**, in consideration of the sum of Ten Dollars (\$10.00) in hand paid by Grantee, and such other consideration as is described herein below, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Grant of Easement**. Grantor does hereby give, grant and convey unto Grantee, and its successors and assigns as described in paragraph 9, an exclusive easement for and in the air rights over that portion of Maple Avenue within the City of Saratoga Springs, located west of Rock Street and east of Ellsworth Jones Place, more particularly depicted and described in Exhibit “C”, attached hereto and incorporated herein by reference (the “Easement Area”), for the purposes of constructing, operating and maintaining an approximately \_\_\_\_\_ square foot structure over Maple Avenue connecting the Parking Facility and the Convention Facility for parking as well as pedestrian access and ingress and egress over Maple Avenue (the “Connector”). The parties recognize that currently the Easement Area is only an approximation of where the Connector will be located. Upon completion of construction of the Connector, an as-built survey of same shall be prepared together with a revised legal description of the Easement Area and this Easement shall be amended in recordable form by the parties to attach the as-built legal description of the Easement Area and thereafter all references to the Easement Area shall be as so amended.

2. **Connector**. The Easement Area herein granted shall at every point be a minimum of \_\_\_\_\_ (\_\_\_\_\_) feet above the level of the street below the connector, and a maximum of \_\_\_\_\_ (\_\_\_\_\_) feet above the level of the street below the Connector. The Easement Area shall be a maximum of \_\_\_\_\_ (\_\_\_\_\_) feet wide. The foregoing measurements and dimensions are more particularly illustrated on the plans and specifications for the Connector. The Connector shall be constructed substantially in accordance with plans and specifications approved by the Grantor.

3. **Termination.** This Easement and the rights granted hereunder shall terminate and be of no further force and effect on such date on which the Grantee has no continuing leasehold rights in and to the East Parcel and upon such termination date, title to all improvements constructed in the Easement Area shall automatically revert to the Grantor.

4. **Pedestrian Egress and Ingress.** The Easement Area shall be used exclusively by Grantee (and its successors and assigns as described in paragraph 9 herein below) for the installation, renovation, construction, maintenance and repair of the Connector for parking as well as pedestrian ingress, egress and access to and from the Parking Facility and the Convention Facility over Maple Avenue, provided, however, that pedestrian traffic across the Connector by members of the general public shall be freely permitted during all normal operating hours of the Project.

5. **Grantee's Default.** The following events shall be a material breach and default of this Easement Agreement by the Grantee ("Event of Default"):

(a) After construction of the Connector is completed, the catastrophic, non-intentional destruction of the connector structure and failure to rebuild the same within three (3) years after such destruction;

(b) After construction of the Parking Facility is completed, the intentional destruction or demolition of any part of the Convention Facility or Parking Facility that results in the Connector no longer being useful for the purposes intended herein;

(c) Grantee's failure to comply at all times with any term, condition, duty and obligation contained herein; and

(e) Grantee's failure to operate and maintain the Connector in accordance with applicable laws, codes and regulations.

6. **Termination of Easement Agreement Upon Event of Default.** Upon the occurrence of an Event of Default described above, the Grantor shall provide written notice of

such breach to Grantee (“Notice of Breach”), and Grantee’s failure to cure such breach within sixty (60) calendar days from the date of its receipt of the Notice of Breach shall result in the immediate termination of this Easement Agreement and the rights granted hereunder shall automatically revert to the Grantor; provided, however, that if the nature of the breach is such that it cannot reasonably be cured within such 60 day period, then the Grantee shall have up to an additional sixty (60) days to cure such breach provided that it diligently undertakes and pursues such cure, and further provided that the Grantee provides the Grantor with documentation evidencing that it is diligently undertaking and pursuing such cure to the Grantor’s reasonable satisfaction, but in any event, the Grantee shall not have more than ninety (90) days from its receipt of the Notice of Breach to cure such breach. The Grantee shall be obligated to remove the Connector, at its expense, within a reasonable period of time (not to exceed sixty (60) days) after the termination of this Easement Agreement.

This Easement Agreement may not be terminated except for cause as provided in this section, subject to the Lender’s rights contained in Section 7 below.

7. **Lender Protections.** The covenants contained in this Section 7 are granted by the Grantor to any lender of Grantee or its successors or assigns (the “Lender”) holding a Mortgage (as defined below) on any portion of the Project or the Project Property.

(a) **Definition.** “Mortgage,” as the term is used in this Agreement, shall mean and include any mortgage, deed of trust and/or assignment of this Agreement made as security for indebtedness of Grantee or any successor or assign related to any part of the Project or the Project Property.

(b) **Notices.** If Grantee shall mortgage and encumber its interest in any portion of the Project or the Project Property with a Lender, Grantee or Lender shall give Grantor prompt notice of such Mortgage and furnish Grantor with a complete and correct copy of the Mortgage, together with the name and address of the Lender (the “Lender Notice”). If Grantor shall give any Notice of Breach, as defined in section 6 above to Grantee hereunder, Grantor shall simultaneously give a copy of such Notice of Breach by registered or certified mail, return receipt requested, to the Lender at the address theretofore designated by the Lender. No Notice of Breach given by Grantor to Grantee shall be binding upon or affect the Lender unless a copy of such Notice of Breach shall be given to the Lender pursuant to this Section. In the case of an assignment of the Mortgage or change in address of the Lender, the assignee or Lender, by written notice to Grantor, may change the address to which a copy of the Notice of Breach are to be sent. Grantor shall not be bound to recognize any assignment of such Mortgage unless and until Grantor shall be given written notice thereof, a copy of the executed assignment, and the name and address of the assignee. Thereafter, such assignee shall be deemed to be the Lender hereunder with respect to the Mortgage being assigned. If the Mortgage is held by more than one person, corporation or other entity, no provision of this Agreement requiring Grantor to give a Notice of Breach or copies thereof to the Lender shall be binding upon Grantor unless and until all of said holders shall designate in writing one of their number to receive a copy of such Notice of Breach and shall have given to Grantor an original executed counterpart of such designation.

(c) **Performance of Covenants.** The Lender shall have the right to perform any term, covenant or condition and to remedy any default by Grantee hereunder

within the time periods specified herein, and Grantor shall accept such performance with the same force and effect as if furnished by Grantee; provided, however, that the Lender shall not thereby or hereby be subrogated to the rights of Grantor.

(d) **Default by Grantee.** In the event of an “Event of Default”, Grantor agrees that Lender may enter the Easement Area to seek to cure a default and such entrance shall not be deemed to give Lender possession. Upon the occurrence of an Event of Default, Grantor agrees not to terminate this Agreement unless and until Grantor provides a copy of the Notice of Breach to any Lender and the Lender shall have failed to cure such Event of Default within thirty (30) calendar days following delivery of such notice. However, if the Event of Default is such that it cannot reasonably be cured within such thirty (30) day period, Grantor agrees not to terminate this Agreement unless and until Grantor provides a copy of the Notice of Breach to any Lender and such Lender shall have failed to cure such Event of Default within ninety (90) calendar days following delivery of such notice provided that it diligently undertakes and pursues such cure, and further provided that the Lender provides the Grantor with documentation evidencing that it is diligently undertaking and pursuing such cure to the Grantor’s reasonable satisfaction; provided further, however, if such Event of Default cannot practicably be cured by the Lender without taking possession of the Project or the Project Property, or if such Event of Default is not susceptible of being cured by the Lender, then Grantor shall not terminate this Agreement, accelerate the Reconstructed Bridge Rent, or otherwise interfere with Grantee’s or Lender’s possession and quiet enjoyment of the Easement estate created hereby if and as long as:

(i) In the case of an Event of Default which cannot practicably be cured by the Lender without taking possession of the Project or the Project Property (with the burden of proof being on the Lender), the Lender has delivered to Grantor, prior to the date on which Grantor shall be entitled to give notice of termination of this Agreement, a written undertaking wherein the Lender agrees that it will cure such Event of Default (the "Lender Undertaking"), provide Grantor with documentation evidencing that it is so diligently proceeding to cure such Event of Default and provide reasonable evidence of such cure to Grantor once the cure has occurred. Furthermore, the Lender shall proceed diligently to obtain possession of the Project or the Project Property as Lender (including possession by receiver) and shall provide Grantor with documentation evidencing that it is so diligently proceeding, and, upon obtaining such possession, shall proceed diligently to cure such Event of Default in accordance with the Lender Undertaking (including delivery of all required documentation and evidence) but in no event shall the Lender have more than one hundred eighty (180) days after obtaining possession of the Project or Project Property to cure such Event of Default; and

(ii) In the case of an Event of Default which is not susceptible to being cured by the Lender (for example, the insolvency of Grantee), the Lender shall institute foreclosure proceedings in connection with the Mortgage and diligently prosecute the same to completion and shall provide Grantor with documentation evidencing that it is so diligently proceeding (unless in the meantime it shall acquire Grantee's easement estate hereunder, either in its own name or through a nominee, by assignment in lieu of foreclosure) and, upon such completion of foreclosure or acquisition and the Lender curing any and all other Events of Default (in accordance with

the other terms of this Section, if any), such Event of Default shall be deemed to have been cured.

The Lender shall not be required to obtain possession or to continue in possession as Lender of the Project or the Project Property pursuant to subsection (i) above, or to continue to prosecute foreclosure proceedings pursuant to subsection (ii) above in order to obtain the forbearance referenced above, if and when such Event of Default shall be cured by the Grantee to the Grantor's sole satisfaction. Nothing herein shall preclude Grantor from exercising any of its rights or remedies with respect to any other Event of Default by Grantee during any period of such forbearance, but in such event the Lender shall have all of its rights provided for herein. If the Lender, its nominee, or a purchaser in a foreclosure sale, shall acquire title to Grantee's interest hereunder and shall cure all Events of Default which are susceptible of being cured by the Lender or by said purchaser, as the case may be, and reasonable evidence of said cure is provided to the Grantor by the Lender or by said purchaser, as the case may be, then prior Events of Default which are not susceptible to being cured by the Lender or by said purchaser shall no longer be deemed Events of Default hereunder.

(e) **Foreclosure.** Foreclosure of any Mortgage, or any sale thereunder, or any conveyance of the Easement estate hereunder from Grantee to any Lender (or its designee) or any third party purchaser through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of Grantor or constitute a breach of any provision of or a default under this Agreement, and upon Grantor being provided notice of such foreclosure, sale or conveyance Grantor shall recognize the Lender (or such designee) or such third party purchaser as the Grantee

hereunder. In such event, Grantor shall cooperate to the extent reasonably practical (at no out-of-pocket cost to the Grantor) with taking such action as may be necessary to evict Grantee from the Easement Area.

(f) **Lender Loss Payable.** Grantor agrees that the names of each Lender may be added to the “Loss Payable Endorsement” of any and all insurance policies required to be carried by Grantee under this Agreement on condition that the insurance proceeds are to be applied in the manner specified herein, provided, however, that the Lender may provide in the Mortgage a manner for the disposition of that portion of the proceeds, if any, payable directly to the Grantee, so long as those provisions are not inconsistent with the provisions of this Agreement. Lender shall have the right to participate with the Grantor in the adjustment of losses with any insurance company with respect to any damage or destruction of the Reconstructed Bridge.

(g) **New Easement Agreement.** In the event of the rejection or termination of this easement agreement in a bankruptcy proceeding or by reason of the disaffirmance hereof by a receiver, liquidator or trustee for Grantee or its property (the “Termination”), Grantor agrees to enter into a new easement agreement of the Easement Area with the Lender (or its designee), at the rent, and upon the terms, provisions, covenants and agreements as herein contained and subject to the rights, if any, of any parties then in possession of any part of the Easement Area, provided that:

(i) The Lender shall make written request upon Grantor for the new easement agreement within thirty (30) days after the date of Termination (the “New Agreement Notice”); and

(ii) The Lender (or its designee) shall pay to Grantor at the time of the execution and delivery of the new Agreement any and all sums which would, at the time of the execution and delivery thereof, be due and unpaid pursuant to this Agreement but for its termination, and in addition thereto any expenses, including reasonable attorneys' fees, to which Grantor shall have been subjected by reason of the Event of Default; and

(iii) The Lender (or its designee) shall perform and observe all covenants herein contained on Grantee's part to be performed which are susceptible to being performed by the Lender, and shall further remedy any other conditions which Grantee under the terminated Agreement was obligated to perform under its terms, to the extent the same are curable or may be performed by the Lender; and

(iv) The grantee under the new easement agreement shall have the same right, title and interest in and to the Easement Area as Grantee had under the terminated Agreement immediately prior to its termination; and

(v) Any redevelopment or change in use of the Project Property occurring after or as a result of the Termination complies at all times with all applicable state and local codes, laws, rules and regulations.

(h) **No Obligation to Cure.** Nothing herein contained shall require any Lender to enter into a new easement agreement pursuant to this Section, or to cure any default of Grantee referred to above. Any entry on the Easement Area to cure a default shall not be deemed to give Lender possession.

(i) **No Personal Liability.** In the event any Lender or its designee becomes the Grantee under this Agreement or under any new easement agreement obtained hereunder, the Lender or its designee shall be personally liable for the obligations of Grantee under this Agreement or a new Agreement only for the period of time that the Lender or its designee remains the actual holder of the Grantee's interest and occupies the Easement Area, and only to the extent provided in this Agreement or such new Agreement. No Lender shall have any personal liability beyond its interest in the Easement Area or the Project for the performance or payment of any covenant, liability, warranty or obligation hereunder or under any new easement agreement or this Agreement.

(j) **Material Notices.** The Grantor hereto shall give the Lender notice of any condemnation proceedings promptly after Grantor has received notice of the same or of any pending adjustment of insurance claims promptly after Grantor has received notice of the same, as each may relate to the Easement Area, and any Lender shall have the right to intervene therein and become a party to such proceedings. The Grantor does hereby consent to such intervention. In the event that any Lender shall not elect to intervene or become a party to the proceedings, such Lender shall receive notice and a copy of any award or decision made in connection therewith.

(k) **Merger.** If both the easement estate and fee simple estate in the Easement Area are simultaneously held by the Grantee, its successors or assigns while the Mortgage is in effect, then such easement and fee simple estates shall remain separate and distinct estates (and not merge) without the Lender's written consent.

8. **Indemnification.** Grantee shall indemnify, defend and hold harmless Grantor from all claims, losses and damages, including those for personal injury and property damage, arising from any use utilization of the easement privileges herein granted. Grantee shall be solely responsible for maintaining the Connector, and is required to maintain the Connector in a safe manner and in accordance with all applicable laws and regulations. In the event of any damage to Maple Avenue as a result of the construction, use or maintenance of the Connector, Grantee shall repair such damage and restore the surface of said street to its original condition.

9. **Insurance.** At all times that this easement is in effect, Grantee shall be required to maintain commercial general liability insurance in an amount equal to Two Million Dollars (\$2,000,000.00) for personal injury and One Million Dollars (\$1,000,000.00) for property damage. Such insurance policy shall name Grantor as loss payee or an additional insured. Grantee shall provide Grantor with a certificate of insurance evidencing the required coverage, naming Grantor as loss payee or additional insured, and requiring that the insurer provide thirty (30) days prior written notice of cancellation to Grantor.

10. **Notices.** All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested; to the following addresses:

If to the Grantor, to:

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

If to Grantee, to:

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

11. **Signage.** Grantee shall not place or allow to be placed any signage on the exterior of the Connector within the Easement Area, except for signs identifying and marketing the Parking Facility and the Convention Facility, subject to Grantor's prior approval. Such signage shall comply with all applicable laws and regulations.

12. **Maple Avenue Pedestrian and Vehicular Traffic.** In addition to such other uses as may be consistent with Grantor's ownership of Maple Avenue, Grantor covenants to utilize the surface area of Maple Avenue for public road purposes and pedestrian passage; provided, however, that Grantor may open and close Maple Avenue to vehicular and pedestrian traffic at such times and in such manner as may be in the interest of the public health, safety and welfare (as determined solely by the Grantor).

13. **Extraordinary Costs Due to Reconstructed Bridge.** Grantee shall pay Grantor for any extraordinary costs incurred by Grantor in the construction or maintenance by Grantor of any utilities in, on or under Maple Avenue, if such extraordinary costs are due to the existence of the Connector.

14. **Covenant Running with the Land.** This air rights easement and Grantee's rights, privileges, liabilities and obligations contained herein shall run with and benefit the owner of the Project Property and shall inure to the benefit of and be binding upon the Grantee hereto and their successors and assigns.

15. **Grantee's Right to Grant License or Lease.** Grantee shall be authorized to grant a license or lease to guests, customers, tenants or permittees of Grantee to utilize the rights and privileges of Grantee hereunder.

16. **Captions.** The captions and headings of sections or paragraphs used in this Easement Agreement are for convenient reference only and shall not limit, define or otherwise affect the substance or construction of provisions of this Easement Agreement.

17. **Amendment.** The terms and conditions of this Easement Agreement shall not be amended in any manner except by a written instrument, duly executed by the parties hereto.

DRAFT

IN WITNESS WHEREOF, the parties have executed this instrument on the date and year first above written.

**CITY OF SARATOGA SPRINGS, NEW YORK**

By: \_\_\_\_\_  
Mayor

**SARATOGA SPRINGS CITY CENTER AUTHORITY**

By: \_\_\_\_\_  
Executive Director

STATE OF NEW YORK )

)ss.:

COUNTY OF )

On the \_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK )

)ss.:

COUNTY OF )

On the \_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**EXHIBIT "A"**

Legal Description of the Project Property (East Parcel and West Parcel)

DRAFT

**EXHIBIT "B"**  
Attach Project Site Plan

DRAFT

**EXHIBIT "C"**  
Easement Area

DRAFT

Exhibit C  
Form of Recognition Agreement  
RECOGNITION AGREEMENT

This Recognition Agreement (this "Agreement") is made as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ by and among **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 ("Owner"), **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 ("Authority") and \_\_\_\_\_, a \_\_\_\_\_ organized and existing under the laws of \_\_\_\_\_ having an address of \_\_\_\_\_ ("Mortgagee").

Introductory Provisions

A. The Owner is the present owner of certain property located at York Street and High Rock Avenue in the City of Saratoga Springs, County of Saratoga, State of New York as more particularly described in Schedule A attached hereto and made a part hereof (the "Premises").

B. Authority is the ground lessee of the Premises pursuant to a ground lease agreement executed by Owner, as landlord and Authority, as tenant, dated \_\_\_\_\_, a memorandum of which was recorded in the Saratoga County Clerk's Office on \_\_\_\_\_ as Instrument # \_\_\_\_\_ (as amended, the "Ground Lease").

C. Mortgagee is the holder of a certain mortgage in the original principal amount of \$ \_\_\_\_\_ of even date herewith from Authority (as amended or supplemented from time to time, the "Mortgage") which encumbers the Authority's interest in the Premises and which is to be recorded in the office of the Saratoga County Clerk simultaneously herewith.

G. Mortgagee, Authority, and Owner desire to confirm their understanding with respect to the Ground Lease and the Mortgage.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and agreements contained herein, and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, Mortgagee, Authority, and Owner, agree to the foregoing and as follows:

1. Leasehold Mortgage. Each of Owner and Authority acknowledge and agree that the Mortgage constitutes a Mortgage (as defined in Section 11 of the Ground Lease) and that Mortgagee constitutes a Mortgagee (as defined in Section 11 of the Ground Lease) and that as such, the Mortgage and Mortgagee as holder thereof is entitled to all of the rights and benefits accorded by the Ground Lease with respect to a Mortgage and a Mortgagee. The City represents and warrants that the Ground Lease is unmodified and is in full force and effect and that to the best of its knowledge, no Event of Default (as defined in the Ground Lease) has occurred and is continuing.

2. Notices. Any notice or communication required or permitted hereunder shall be in writing, and shall be given or delivered: (i) by United States mail, registered or certified, postage fully

prepaid, return receipt requested or (ii) by recognized courier service or recognized overnight delivery service; and in any event addressed to the party for which it is intended and, at each party's address set forth above or such other address as such party may have previously specified by notice given or delivered in accordance with the foregoing. Any such notice shall be deemed to have been given and received five (5) days after deposit in the United States mail as required herein or one (1) business day after delivery to a recognized courier service or recognized overnight delivery service as provided.

3. No Oral Change. This Agreement may not be modified orally or in any manner than by an agreement in writing signed by the parties hereto or their respective successors in interest.

4. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective heirs, personal representatives, successors and assigns, and any purchaser or purchasers at foreclosure of the Property or any portion thereof, and their respective heirs, personal representatives, successors and assigns.

5. Captions. Captions and headings of sections are not parts of this Agreement and shall not be deemed to affect the meaning or construction of any of the provisions of this Agreement.

6. Counterparts. This Agreement may be executed in several counterparts each of which when executed and delivered is an original, but all of which together shall constitute one instrument.

7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

8. Miscellaneous.

(a) This Agreement may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed shall be an original, but all of which shall together constitute one and the same instrument.

(b) Any suit, action or proceeding arising out of or relating to this Agreement may be instituted in the United States of America in any Federal Court for the Northern District of New York or any State Court sitting in Saratoga County, New York.

(c) In the event of a conflict between the terms and provisions of this Agreement and the terms and provisions of the Ground Lease, the terms and provisions of this Agreement shall govern and control.

**NEXT PAGE IS SIGNATURE PAGE**

OWNER:

THE CITY OF SARATOGA SPRINGS, NEW YORK

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

AUTHORITY:

SARATOGA SPRINGS CITY CENTER  
AUTHORITY

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

MORTGAGEE:

\_\_\_\_\_

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

STATE OF NEW YORK     )  
  )ss.:  
COUNTY OF                     )

On the \_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK     )  
  )ss.:  
COUNTY OF                     )

On the \_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

STATE OF \_\_\_\_\_     )  
  )ss.:  
COUNTY OF                     )

On the \_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

SCHEDULE "A"

DESCRIPTION

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