

AMENDED AND RESTATED GALLERY II PARKING GARAGE AGREEMENT

THIS AGREEMENT, entered into as of this ____ day of January, 2012, between THE CITY OF PHILADELPHIA (hereinafter referred to as “City”) and the PHILADELPHIA AUTHORITY FOR INDUSTRIAL DEVELOPMENT (hereinafter referred to as “PAID”).

WITNESSETH:

WHEREAS, Parametric Garage Associates, a Pennsylvania limited partnership (“Parametric”), has constructed a parking garage as part of the overall Market Street East - Gallery II redevelopment project (the “Gallery II Garage Project” or the “Project”), in a manner consistent with the redevelopment plans jointly formulated by the City and the Redevelopment Authority of the City of Philadelphia, now known as the Philadelphia Redevelopment Authority (the “PRA”) in the commercial district known as Market Street East; and

WHEREAS, the PRA owns the ground on which the Project was built and has leased such ground to Parametric pursuant to an Amended and Restated Parking Garage and Development Agreement and Lease dated November 15, 1983 (as amended and supplemented from time to time prior to the date hereof, the “Prior Ground Lease”), which on the date hereof will be extended and amended pursuant to a Second Amended and Restated Parking Garage Development Agreement and Lease (the “Ground Lease”); and

WHEREAS, PAID provided development assistance to Parametric by issuing its \$15,525,000 Parking Revenue Bonds, Series of 1982 (Gallery II Garage Project) (the “1982 Bonds”); and

WHEREAS, the City and PAID entered into an agreement (the “1982 Agreement”) pursuant to the “Industrial and Commercial Project Development Assistance Ordinance”, approved March 1, 1978 (Bill No. 1148), as amended by an Ordinance, approved May 19, 1978 (Bill No 1318) and an

Ordinance approved March 4, 1982 Bill No. 1132) to provide financial assistance to the Gallery II Garage Project and provide for payments on account of debt service on the 1982 Bonds to be made by the City to PAID (the “City Payments”), under certain prescribed conditions which by City Payments were to be repaid by Parametric on or before August 15, 2002; and

WHEREAS, in 1993, PAID, in conjunction with Parametric, refinanced the 1982 Bonds to achieve debt service savings with respect to the financing costs of the Gallery II Garage Project by issuing \$13,755,000 of its Parking Revenue Refunding Bonds, Series of 1993 (Gallery II Parking Garage Project) (the “1993 Bonds”); and

WHEREAS, in connection with the issuance of the 1993 Bonds, and pursuant to the Act of August 23, 1967, P.L. 251, as amended, now known as the Economic Development Financing Law, 73 P.S. §371 et seq., as amended (the “Act”), PAID entered into an agreement entitled Gallery II Garage Agreement dated June 15, 1993 (the “1993 Agreement”) with the City and an Installment Sale Agreement with Parametric dated June 15, 1993 (the “1993 Installment Sale Agreement”); and

WHEREAS, the Act empowers PAID to enter into cooperative agreements with the City for such purpose; and

WHEREAS, PAID acquired from Parametric its interest under the Prior Ground Lease by an instrument of assignment dated as of June 15, 1993, and such assignment has been confirmed as to the Ground Lease, by a further instrument of assignment and confirmation dated January __, 2012 (the “Leasehold Assignment”); and

WHEREAS, in 1998, pursuant to Bill No. 970829 (approved April 13, 1998) the City and PAID agreed to amend the terms of the 1993 Agreement in order to among other things, permit PAID to extend the date by which Parametric was to repay the City Payments to August 15, 2013; and

WHEREAS, the 1993 Bonds have been paid in full, or moneys for the repayment in full of the 1993 Bonds shall have been irrevocably deposited with the bond trustee, on the date hereof, and any prior obligation, agreement, covenant or commitment by or of the City to make any payments on account of the Project or its financing or otherwise on behalf of Parametric has been and shall hereby be terminated; and

WHEREAS, Parametric acknowledges that it owes the PRA moneys on account of back rent and to facilitate the implementation of this Agreement, the PRA has agreed to accept \$5,686,006 in settlement of disputed claims under the Prior Ground Lease, and the City and PAID acknowledge such settlement obligation of Parametric to the PRA (the "PRA Payments"); and

WHEREAS, Parametric continues to owe approximately \$52 million in City Payments to PAID on behalf of the City, and the City and PAID, at the request of Parametric, desire to extend the terms of the 1993 Agreement, as amended, and the 1993 Installment Sale Agreement as amended, to enable Parametric to repay certain City Payments now and to require repayment of the remaining City Payments by Parametric no later than December 31, 2051; and

WHEREAS, the City and PAID acknowledge and agree that Parametric shall repay the outstanding PRA Payments on a parity basis with the outstanding City Payments, which combined payments currently total an aggregate principal amount of approximately \$58 million, through PAID (collectively, the "PAID Loan"); and

WHEREAS, Parametric has applied to a lender, Great American Life Insurance Company (which together with its successors and assigns and with each Subsequent Benefitting Lender, as such term is defined in the Subordination Agreement (defined in Section 8 below) shall hereinafter be referred to as a "Senior Lender") to loan it \$16,000,000 (which together with each Subsequent Benefitting Loan (as such term is defined in the Subordination Agreement) shall hereinafter be referred to as the "Senior Loan"), which, together with other funds of Parametric, will be used to: (i) repay all outstanding 1993 Bonds, (ii) pay approximately [\$15,000,000], less any applicable realty transfer tax, if any (the "Initial PAID Loan Payment") of the PAID Loan, and (iii) pay certain transaction costs associated with the Senior Loan; and

WHEREAS, the balance of the PAID Loan, after payment of the Initial PAID Loan Payment from the proceeds of the Senior Loan, will be evidenced by one or more Promissory Notes from Parametric to PAID (for the benefit of the PRA and the City) and at least the senior of such PAID Notes shall be secured, including by a mortgage and assignment of leases, all such PAID Notes shall be secured by a lien on gross revenues; and

WHEREAS, as a condition of making the Senior Loan, the Senior Lender requires that the balance of the PAID Loan, this Amended and Restated Parking Garage Agreement and the 2012 Installment Sale Agreement (as defined in Section 5.b. below) be subordinated to the Senior Loan, and that any mortgage or security interest securing the repayment of the PAID Loan must be subordinated to the mortgage and security interests of the Senior Lender, pursuant to the Subordination Agreement (as defined in Section 8, below) and that Parametric and PAID mortgage and grant a security interest in each of their respective right, title and interest in and to this Agreement, the Ground Lease and the Project to the Senior Lender; and

WHEREAS, PAID, the PRA and the City are willing to subordinate the PAID Loan and any security therefor to the Senior Loan, provided that adequate cash flow management controls will be in place pursuant to the Escrow Agreement (as hereinafter defined) to maximize cash flow available for repayment of the PAID Loan; and

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, and intending to be legally bound hereby, the parties hereto covenant and agree as follows:

1. This Agreement shall be known as the “2012 Gallery II Parking Garage Agreement” but may also be referred to as the “2012 Parking Garage Agreement” or the “Amended and Restated Parking Garage Agreement” in any further agreements entered into by PAID pursuant hereto. The Recitals set forth above are hereby incorporated herein as if fully set forth in this Section 1.

2. This Agreement is made in accordance with the “Industrial and Commercial Project Development Assistance Ordinance,” approved March 1, 1978 (Bill No. 1148), as amended by an Ordinance approved May 19, 1978 (Bill No. 1318) and as further amended by an Ordinance (Bill No. 545), approved

June 15, 1993 (hereinafter collectively, the “General Assistance Ordinance”), and shall be interpreted in a manner consistent therewith. Unless assigned express definition herein, any term used in this Agreement and defined in the General Assistance Ordinance shall have the meaning assigned to it in the said Ordinance.

3. PAID, as assignee of Parametric, solely in reliance on representations of Parametric contained in the 2012 Installment Sale Agreement (as set forth in Section 6 below), hereby acknowledges and confirms to City that the Ground Lease is currently in force, that PAID has no knowledge of any current defaults under the Ground Lease, and all of Parametric’s right, title and interest in and to the Ground Lease has been assigned to PAID pursuant to the Leasehold Assignment. The City hereby acknowledges that (i) the City has had the opportunity to review the Ground Lease, (ii) that the Ground Lease is acceptable to the City, (iii) the City consents to Parametric’s entering into the Ground Lease, (iv) the City will not challenge, or cause or permit PAID to challenge, the validity, binding nature or effectiveness of the Ground Lease, and (v) the Senior Lender is an intended beneficiary of the foregoing acknowledgement of the City and may rely on them in making the Senior Loan to Parametric.

4. Upon repayment of the 1993 Bonds, both PAID and the City shall have no further obligations to make any payments whatsoever in connection with the Project. The obligation of the City under the 1982 Agreement and the 1993 Agreement to make payments to PAID on account of debt service on the 1982 Bonds and the 1993 Bonds respectively or to make any other payments whatsoever in support of the Project from this day forward is hereby terminated, and of no further force and effect.

5. PAID covenants and agrees that PAID will provide development assistance to Parametric and the Project at the closing of the Senior Loan, by paying off the 1993 Bonds which remain outstanding with the proceeds of the Senior Loan and other funds held by the bond trustee, and restructuring the repayment of the City Payments and the PRA Payments, all of which is to be accomplished in strict accordance with all the terms and conditions of this Agreement, as follows:

a. PAID has accepted from Parametric, and will confirm in writing, the absolute and irrevocable assignment of Parametric's interest in Parametric's right, title and interest in and under the Ground Lease, together with all of Parametric's rights and privileges as lessee thereunder, subject to all duties and obligations of lessee thereunder;

b. Concurrent with the execution of this Agreement, PAID will enter into an agreement with Parametric amending, restating and confirming the terms and conditions of PAID's continued participation in the continued development of the Project and providing for conveyance to Parametric of PAID's entire interest in the Project and the Ground Lease upon Parametric's full payment of the purchase price established therein and satisfactory performance of all duties and obligations of Parametric thereunder (the "2012 Installment Sale Agreement" or the "Amended and Restated Installment Sale Agreement"), which 2012 Installment Sale Agreement shall strictly conform to all requirements and conditions applicable thereto contained in this Agreement and/or agreements into which PAID is herein authorized and required to enter for the purpose of providing the above-described development assistance. The terms of the 2012 Installment Sale Agreement and any amendments thereto shall be acceptable to the City.

c. Pursuant to a separate agreement in substantially the form attached hereto as Exhibit "A" (the "Participation Agreement"), the City and the PRA acknowledge and agree that (i) Parametric shall repay the outstanding City Payments on a parity basis with the outstanding PRA Payments (subject to clause (ii) hereof), which currently total an aggregate principal amount of approximately \$58 million, through PAID, and (ii) for each dollar repaid by Parametric on account of the PAID Loan, 90.2% shall be transferred to the City on account of the City Payments and 9.8% shall be transferred to the PRA on account of the PRA Payments.

d. The PAID Loan shall be evidenced by one or more promissory notes from Parametric to PAID, which are entered into for the benefit of and may be assigned to the City and the PRA, bearing interest at a rate of 5% per annum.

e. Pursuant to the Escrow Agreement (as defined below), PAID will cause the Escrow Agent (as defined below) to deliver to the City and PRA monthly, in accordance with their respective shares under the Participation Agreement, the amounts paid to PAID under the 2012 Installment Sale Agreement on account of the PAID Loan.

f. Concurrent with the execution of this Agreement, in order to secure the Senior Loan, PAID, in its capacity as seller under the Installment Sale Agreement and as assignee of the Ground Lease pursuant to the Lease Assignment, shall join in Parametric's mortgage and grant of a security interest in and to its right, title and interest in and to the Property, Project, Ground Lease, Improvements and the 2012 Installment Sale Agreement.

g. Concurrent with the execution of this Agreement, in order to secure the PAID Loan, PAID, in its capacity as seller under the Installment Sale Agreement and as assignee of the Ground Lease pursuant to the Lease Assignment, shall join in Parametric's second-priority mortgage and grant of a security interest to secure the PAID Loan, in and to its right, title and interest in and to the Property, Project, Ground Lease, Improvements and the 2012 Installment Sale Agreement.

h. Any notice of an Event of Default in connection with the Senior Loan, received by PAID from the Senior Lender or Parametric, shall be provided to the City, which will provide a copy to the President of City Council.

i. Any agreement entered into in connection with the transactions contemplated hereby shall be governed by Pennsylvania Law.

j. Without, in each case, the prior written consent of the City, and notwithstanding any subordination or other provision of the Subordination Agreement described in Section 8 hereof, the Senior Loan documents may not be amended so as to: (i) increase any debt service coverage covenant from 1.3:1; (ii) increase the amount of the Senior Loan (other than increases to protect the collateral or security of the Senior Lender to the extent that Parametric fails to comply with the

covenants contained in the Senior Lender's mortgage, such as failure to pay taxes, failure to procure insurance, or failure to maintain the project); and (iii) increase the interest rate on the Senior Loan. A provision setting forth these requirements must be included in the Subordination Agreement.

6. The 2012 Installment Sale Agreement shall expressly require and/or provide for the following:

a. Maintenance and operation of the Project by Parametric in strict compliance with terms and conditions not inconsistent with those specified in the Ground Lease.

b. Annual approval by the City (Director of Finance) of the operating budget (including garage operator management company's budget) (the "Operating Budget") at least 60 days prior to the start of each fiscal year (which is currently January 1 through December 31). The Operating Budget shall be delivered to the City at least 90 days prior to the start of the fiscal year. In the event that the City has not explicitly disapproved any aspect of the Operating Budget within 30 days of receipt, it will be deemed approved. Senior Lender shall also have approval rights with respect to Operating Budget; provided that in the event of a disagreement between the Senior Lender and the City, the parties will negotiate in good faith for 20 days to jointly approve the Operating Budget. To the extent the parties cannot reach agreement in such 20 day period, the Parties will submit the dispute to a nationally accredited mediator selected jointly by the Senior Lender and the City; provided further, that the Senior Lender may override the City's disapproval of extraordinary repair, maintenance or capital expenditures, in the event such expenditure is reasonably required or strongly recommended by an independent property inspection report delivered by a qualified engineer to the Senior Lender and the City. Once approved, the Operating Budget may only be amended by written agreement. In order to assure sufficient funds will be available to pay for repairs, maintenance or capital expenditures not included in the Operating Budget, the Escrow Agent (as defined in c. below) will hold a reserve account to be funded with \$100,000 at closing and [\$25,000] per year until the

reserve requirement of \$250,000 is met; to the extent the reserve is used, it shall be replenished out of cash flows in an amount not to exceed [\$100,000] in any one year until such time as the reserve account again reaches \$250,000. To the extent that funds in the reserve account are used for repairs, maintenance or capital expenditures that are covered by insurance, the proceeds of such insurance shall be used to replenish the reserve account up to the reserve requirement prior to the use of any needed cash flows. It shall be a covenant of the 2012 Installment Sale Agreement that the Operating Budget cannot, without the City's and Senior Lender's consent, result in a debt service coverage ratio of less than 1.35:1.0.

c. Collection by Parametric (or its agent) of all parking garage revenues and retail/commercial space rentals (such revenues and rentals together with all other income derived by Parametric from any use or occupancy of the Project being hereinafter referred to as "Gross Revenue of the Project") and daily deposit of the said Gross Revenues of the Project into an escrow account held by an escrow agent (the "Escrow Agent") (procured by PAID at the direction of the City pursuant to procedures required by Section 18 hereof) pursuant to a contract of PAID, with appropriate parties, which may include the Senior Lender, Parametric, the Operator (as defined in the 2012 Installment Sale Agreement) and the PRA (the "Escrow Agreement"). The Gross Revenues of the Project shall be utilized pursuant to adequate cash management controls to maximize net cash flows after payment of operating expenses and debt service on the Senior Loan, as set forth in the Escrow Agreement, including the following:

(i) Payment of Operating Expenses only in accordance with the approved Operating Budget (approved as set forth in b. above) by requisition or direction to the Escrow Agent as set forth in the Escrow Agreement (including limitations on the amounts available each month to the Operator for payment of Operating Expenses). For purposes hereof, the term "Operating Expenses" shall include all applicable taxes, assessments and utility costs; Project maintenance, repair, alteration, insurance and inspection costs; salaries; an operator's fee; professional managerial, supervisory,

administrative, engineering, architectural, legal, auditing and all other consulting services fees; payment of all rentals payable under the Ground Lease; and such other costs as may be expressly identified by the 2012 Installment Sale Agreement, however, the City may permit or direct PAID in writing to vary this definition to the extent that PAID's agreement with the Senior Lender may so require, at no expense to PAID;

(ii) Monthly payments to the Senior Lender in such amounts as will enable Parametric to timely and fully satisfy the Senior Loan; and

(iii) Monthly payment of the balance of net cash flow to PAID in order to enable PAID, on or before December 31, 2051, to fully reimburse City for all payments made by the City to or for the benefit of PAID pursuant to the 1982 Agreement and the 1993 Agreement as amended and restated by this Agreement, with interest at a rate of 5% and to fully reimburse the PRA for the PRA Payments in accordance with the Participation Agreement with interest at a rate of 5%. Pursuant to the Escrow Agreement, PAID shall cause any net cash flow received on account of the PAID Loan to be transmitted to the City and the PRA monthly in accordance with the Participation Agreement.

d. Declaration by PAID of default by Parametric, upon direction of City, in event that Parametric fails to make the payments necessary to fully accomplish the above-described reimbursement to City by December 31, 2051; provided however, that for so long as Parametric shall remit, in accordance with the Escrow Agreement, all available cash flow after payment of Operating Expenses and debt service to the Senior Lender, the City shall not direct PAID to, and PAID shall not, declare such a payment default by Parametric unless and until Parametric fails to make final payment at maturity on December 31, 2051.

e. Confirmation of the selection by Parametric of a Project operator, approved by PAID (as directed by the City) and the Senior Lender, which operator shall be paid an operator's fee

for parking operations, fixed on the basis of a Project operational year which fee shall not exceed 5% of concurrent gross parking revenues, and such other sums for the operation of the Commercial Space as approved in the Operating Budget. Parametric, PAID (as directed by the City) and Senior Lender shall have the right to terminate the garage operation management agreement and shall have to approve any replacement operator.

f. Parametric's right to refinance the Project and terminate the 2012 Installment Sale Agreement upon such terms as will enable PAID to fully satisfy all outstanding PAID indebtedness, including the PAID Loan; provided, however, that nothing contained in this subsection f. shall limit Parametric's right to refinance the Senior Loan with a Subsequent Benefitting Loan, in accordance with the Subordination Agreement.

g. Insurance coverage, secured and maintained by Parametric for the benefit of Parametric, the Senior Lender, PAID, the PRA, the City and the Escrow Agent, as their respective interests are defined in the Subordination Agreement, at least in the amounts and subject to the requirements set forth in the Ground Lease.

h. In an Event of Default under the Senior Loan or at the later of the expiration of ten years from the date hereof or at such time as the Senior Loan has been paid off (as opposed to being refinanced with a Subsequent Benefitting Loan), and such other circumstances as the Senior Lender and PAID (at the direction of the City) may agree, the City may acquire ownership of the Leasehold Estate, if City debt has not been repaid. This shall be documented, as anticipated in the 2012 Installment Sale Agreement, as an option to purchase the garage leasehold for the outstanding balance of the Senior Loan, plus any prepayment premium then due thereunder, which shall be paid to the Senior Lender.

7. In order to provide repayment of a portion of the PAID Loan, PAID, City and PRA agree that Parametric shall borrow up to \$16,000,000 from the Senior Lender; provided that the Initial PAID Loan Payment of the proceeds of such Senior Loan be used to repay a portion of the PAID Loan.

8. PAID, at the direction of the City, shall subordinate the 2012 Installment Sale Agreement, the PAID Loan and any mortgage or pledge securing such PAID Loan to the Senior Loan and any mortgage or pledge securing such Senior Loan, pursuant to the terms and conditions of a reasonable and customary intercreditor and subordination agreement (the "Subordination Agreement"), in form and content reasonably acceptable to the City and the PRA, which shall include a reasonable and customary standstill provision; provided, however, PAID's remedies (on behalf of the City and the PRA) in an event of default by Parametric must include the right to purchase the Leasehold Estate under the Ground Lease for a purchase price equal to the outstanding principal balance, plus any prepayment premium then due under the Senior Loan, which purchase price shall be paid entirely to the Senior Lender. The City acknowledges that, except as expressly permitted under the Subordination Agreement, including certain rights prior to an Event of Default and the purchase of the Leasehold Estate as set forth above, PAID, for itself, the City, and the PRA, shall not be permitted to exercise any rights or remedies against Parametric, the Project, the Ground Lease or in any way related to any of the foregoing while any portion of the Senior Loan remains outstanding. The Senior Lender is an intended beneficiary of the foregoing acknowledgement of the City and may rely on it in making the Senior Loan to Parametric.

9. In addition to all other duties and obligations of PAID under the terms of this Agreement, PAID hereby agrees that:

a. PAID shall enforce against Parametric, for the benefit of the City and the PRA, all obligations of Parametric, with respect to conduct of Parametric's business and operations, imposed by the 2012 Installment Sale Agreement for the purpose of better securing repayment of the PAID Loan, subject to the terms of the Subordination Agreement; and the City reserves the right to enforce PAID's rights and remedies directly.

b. To the extent that the 2012 Installment Sale Agreement may require Parametric to file or cause to be filed with PAID or the Escrow Agent periodic reports which

Parametric is not also required to file directly with City, including reports of Parametric's consulting engineers and certified public accountants, PAID shall promptly cause such copies of such reports to be furnished to the City's Director of Finance.

10. PAID shall not grant or provide development assistance to Parametric other than or in addition to that expressly described by this Agreement, except pursuant to a supplemental agreement with the City, which shall require separate authorization by City Council, if applicable law requires Council authorization. PAID shall not grant or provide development assistance to any other person or entity with respect to the Project except upon specific written consent of City's Director of Commerce; provided however that, without the Senior Lender's consent, no such development assistance shall in any way impair the Senior Loan.

11. PAID shall maintain such records and render to City such financial reports regarding the development assistance provided by PAID pursuant to this Agreement as City's Director of Finance may prescribe, which records shall be subject to audit by the City Controller.

12. PAID shall reserve for itself and for City, as against Parametric, the right to require such financial reports of Parametric and records of Project financial operations as are specified in this Agreement.

13. PAID shall not convey any interest of PAID in the Project, other than authorized by this Agreement, without authorization of City Council, except upon full and complete satisfaction of all outstanding PAID debt service obligations incurred pursuant to the PAID Loan and full reimbursement to City, with interest as required by this Agreement, of all sums paid by the City to PAID or to the bond trustee pursuant to the 1982 Agreement, the 1993 Agreement and this Agreement, or to the Escrow Agent.

14. In the event of termination of PAID's lawful term of existence at any time which this Agreement remains in force, the City shall cause another authority, acceptable to the City, to succeed to all rights and interests of PAID in all real or personal property included in or otherwise related to the Project, subject to all rights of third parties therein, and to succeed to the rights and obligations of PAID under this Agreement. PAID shall to the extent of its ability and at the direction of the City, cooperate in the assignment, transfer or succession of all rights and interests described above. The City acknowledges that in connection with such termination or under any other circumstances in which the City, or another authority should succeed to the rights and interests of PAID in all real and personal property included in the Project or otherwise related to the Project, whether in the City's own name or in the name of another authority, such transfer of all rights and interests of PAID in all real and personal property included in the Project or otherwise related to the Project, including without limitation the tenant's interest in the Ground Lease, shall be under and subject to the Subordination Agreement and the grant of the mortgage and security interest in all such real and personal property by PAID to the Senior Lender, which shall be binding and effective against any such successor. The Senior Lender is an intended beneficiary of the foregoing acknowledgement of the City and may rely on them in making the Senior Loan to Parametric.

15. Notwithstanding any provisions or obligations to the contrary hereinbefore or hereinafter set forth, the liability of PAID under this Agreement, and under all other agreements authorized or required to be entered into by PAID pursuant to this Agreement, shall be limited to PAID's interest in the Leasehold Estate and the Project and the rents, issues and profits therefrom, and the lien of any judgment shall be restricted thereto. PAID shall not assume general liability for the payment of sums due under the 1993 Bonds or for any costs, penalties, taxes, interest, commissions, charges, insurance or any other payments which may be recited therein.

16. PAID shall have no right to offset any amount received by PAID on account of the PAID Loan against any obligations owed by the City or the PRA to PAID.

17. This Agreement shall for all purposes be deemed to be a contract for PAID services under the provisions of Philadelphia Home Rule Charter, Sections 8-200 and 2-309.

18. Pursuant to Section 17-1408 of the Philadelphia Code, PAID shall abide by the provisions of Chapter 17-1400 of Philadelphia Code in awarding any contract(s) pursuant to this Agreement as though such contracts were directly subject to the provisions of Chapter 17-1400, except that the exception set forth at Subsection 17-1406(8) shall apply to PAID as if PAID were listed in that subsection.

Unless approved by the City to the contrary, any approvals required by the Philadelphia Code Chapter 17-1400 to be performed by the City Solicitor shall be performed by PAID by the General Counsel of the Philadelphia Industrial Development Corporation (“PIDC”) or such other agent of PAID of which PAID shall have given notice to the City; any approvals required to be performed by the Director of Finance shall be performed by PAID by the Senior Vice President for Financing Services of PIDC or such other agent of PAID of which PAID shall have given notice to the City; and any approvals required to be performed by the Mayor shall be performed by PAID by its Chairperson.

19. Any letter, certification or opinion given by the City Solicitor, or his or her deputy, at the time of and in conjunction with the execution of this Agreement or the closing on the Senior Loan, to the effect that the development assistance granted by PAID to Parametric pursuant to this Agreement and/or to the effect that the various agreements and documents entered into by PAID pursuant to authorization contained in this Agreement complies and/or comply with those terms and requirements for such development assistance and/or various agreements as are hereinbefore stated in this Agreement, shall be binding upon the City.

20. Indemnity.

a. To the extent (i) Parametric fails to provide reasonable and timely indemnification against Claims or Losses (as defined below) pursuant to the 2012 Installment Sale Agreement, and (ii) that Claims or Losses are not covered by an insurance policy maintained by a third party (other than PIDC") for the benefit of PAID pursuant to the terms of the 2012 Installment Sale Agreement, the City agrees, to the extent permitted by applicable laws, to indemnify, defend and hold harmless PAID, PIDC and their respective directors, members, officials, officers, employees, agents and representatives (each an "Indemnified Party", and collectively, the "Indemnified Parties"), from and against all suits, claims or causes of action (collectively, "Claims"), and all liabilities, losses, obligations, damages, penalties, costs, charges, expense, judgments and amounts paid in settlement (including, without limitation, reasonable attorneys' fees) of every kind (collectively, "Losses"), which may be imposed upon, incurred by or asserted against an Indemnified Party arising out of or relating to or arising in connection with PAID's entering into this Parking Garage Agreement or the 2012 Installment Sale Agreement, the performance of PAID's obligations hereunder or thereunder, or any acts or omissions relating to PAID's involvement hereunder or thereunder; except in each case to the extent that the Claims and Losses are attributable to the willful misconduct, fraud or gross negligence of any such Indemnified Party.

b. In consideration of this undertaking by the City, PAID shall cooperate with the City to enforce the rights of PAID under any insurance policy maintained by any third party (other than PIDC) under which PAID is an additional or named insured, and to enforce any indemnification rights to which PAID may be entitled under the 2012 Installment Sale Agreement (including any rights against Parametric or any third party) and the City and PAID agree to pursue all such third party insurance policies and indemnitors diligently with respect to all Claims or Losses which may be properly asserted in good faith against them. The City shall be subrogated to the rights of PAID under such insurance policies and indemnification rights; provided, however, it is expressly agreed that the City shall not have, and expressly waives, any right of subrogation under any insurance policies maintained by PAID.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers, thereunto duly authorized as of the day and year first above written.

Approved as to form
Shelley R. Smith, City Solicitor

THE CITY OF PHILADELPHIA

By: _____
[Name, Title]

By: _____
Director of Commerce

By: _____
Director of Finance

THE PHILADELPHIA AUTHORITY FOR
INDUSTRIAL DEVELOPMENT

Attest: _____ (SEAL)
Secretary

By: _____
Chair

EXHIBIT "A"

Participation Agreement

PARTICIPATION AGREEMENT

PARTICIPATION AGREEMENT (this "Participation Agreement"), dated as of the ___ day of January, 2012, is by and between THE CITY OF PHILADELPHIA, a corporation and body politic existing under the laws of the Commonwealth of Pennsylvania (the "City"), and the PHILADELPHIA REDEVELOPMENT AUTHORITY, formerly known as the Redevelopment Authority of the City of Philadelphia, a public body and a body corporate and politic, duly created and organized pursuant to and in accordance with the provisions of the Urban Redevelopment Law of May 24, 1945 of the Commonwealth of Pennsylvania and laws supplemental thereto (the "PRA").

RECITALS:

A. The PRA is the fee owner of the property located at 1027 Filbert Street, Philadelphia, Pennsylvania, being designated as Tax Parcel # 883430501, and more particularly described in **Schedule A** (the "Property").

B. Parametric Garage Associates ("Parametric") and the PRA entered into that certain Amended and Restated Parking Garage Development Agreement and Lease dated March 24, 1982, as amended November 15, 1983, June 15, 1993, and August 12, 1996 (the "Prior Ground Lease"), pursuant to which certain rent remains due and unpaid.

C. The Philadelphia Authority for Industrial Development ("PAID") provided development assistance to Parametric by issuing its \$15,525,000 Parking Revenue Bonds, Series of 1982 (Gallery II Garage Project) (the "1982 Bonds").

D. The City and PAID entered into an agreement (the "1982 Agreement") to provide financial assistance to the Project and provide for payments on account of debt service on the 1982 Bonds to be made by the City to PAID (the "City Payments"), under certain prescribed conditions under which Parametric was to repay the City Payments to PAID, which would then pay them to the City, on or before August 15, 2002.

E. In 1993, PAID, in conjunction with Parametric, refinanced the 1982 Bonds to achieve debt service savings with respect to the financing costs of the Gallery II Garage Project by issuing \$13,755,000 of its Parking Revenue Refunding Bonds, Series of 1993 (Gallery II Parking Garage Project) (the "1993 Bonds").

F. In connection with the issuance of the 1993 Bonds, on or about June 15, 1993, PAID entered into an agreement with the City entitled Gallery II Parking Garage Agreement (the "1993 Parking Garage Agreement") and an Installment Sale Agreement with Parametric (the "1993 ISA"). Pursuant to the 1993 ISA, Parametric assigned its leasehold estate in the Property to PAID.

G. In 1998, the City and PAID agreed to amend the terms of the 1993 Parking Garage Agreement, which in turn permitted PAID to extend the date under the 1993 ISA by which Parametric was to repay the City Payments to August 15, 2013.

H. The City advanced [approximately \$17,000,000; precise number to be set forth in final agreement when determined] in debt service payments, and with interest as stated in the 1993 ISA, as amended, Parametric owes [approximately \$52,000,000; precise number to be set forth in final agreement when determined] in City Payments.

I. Parametric has not paid all rent as required by the Prior Ground Lease. The PRA and Parametric have agreed to settle claims relating to the Prior Ground Lease by fixing the amount Parametric owes the PRA at \$2,017,849 in unpaid back rent and [approximately \$3,668,157; precise number to be included in final agreement] in interest on the Prior Ground Lease, for a total of \$_____ (the "PRA Payments").

J. The 1993 Bonds have been paid in full, or moneys for the repayment in full of the 1993 Bonds shall have been irrevocably deposited with the bond trustee, on the date hereof, and any prior obligation, agreement, covenant or commitment by or of the City to make any payments on account of the Project or its financing or otherwise on behalf of Parametric shall be terminated.

K. As part of the settlement of the amounts due the PRA and the City, Parametric has entered into a Second Amended and Restated Parking Garage Development Agreement and Lease of even date herewith (the "Ground Lease") for a ground leasehold estate in the Property (the "Leasehold"). PAID had previously been assigned Parametric's interest in the Prior Ground Lease, which assignment has been confirmed as continuing to be applicable to the Ground Lease by an instrument executed by Parametric and PAID.

L. In order to finance the amounts due the City and the PRA, Parametric has obtain a loan in the original principal amount of \$16,000,000 (the "Senior Loan") from Great American Life Insurance Company ("Senior Lender") as evidenced by a loan agreement, note, leasehold mortgage and other documentation (as the same may be amended from time to time, the "Senior Loan Documents"). The net proceeds of the Senior Loan (the "Senior Loan Proceeds") will be delivered to the City and the PRA as more fully set forth in this Participation Agreement.

M. The PRA, the City, and the Senior Lender desire that the PRA Payments be added to the City Payments. PAID will collect payments of both the City Payments and the PRA Payments from Parametric as part of a unified loan (the "PAID Loan"), and will remit the payments to the City and the PRA as agreed in this Participation Agreement.

N. Pursuant to an Amended and Restated Gallery II Parking Garage Agreement between the City and PAID (the "New Parking Garage Agreement"), and is

entering into an Amended and Restated Installment Sale Agreement (the "New ISA") with Parametric upon completion of which Parametric shall be entitled to the remaining Leasehold, if any. Pursuant to the New ISA, Parametric is signing two new promissory notes in favor of PAID for the benefit of the City and PRA to reflect the PAID Loan. One promissory note (the "Second Priority Note" evidencing the "Second Priority Loan") shall be secured by (1) a second lien mortgage, which PAID shall also execute, in favor of the City in the amount of the Second Priority Note and (2) a pledge of gross revenues that shall be subordinate to the rights and liens of the Senior Lender. The other promissory note (the "Third Priority Note" evidencing the "Third Priority Loan") shall be in the amount of the remaining unpaid balance of the City Payments after payment to the City of the City's Pro-Rata Share, as hereinafter defined, of the Senior Loan Proceeds (the "Balance of the City Payments") plus the unpaid balance of the PRA Payments after payment to PRA of PRA's Pro-Rate Share, as hereinafter defined, of the Senior Loan Proceeds (the "Balance of the PRA Payments"), all as set forth in Section 2, below. The Third Promissory Note shall be secured by a gross revenue pledge that shall be subordinate to the rights and liens of the Senior Lender and to PAID's rights under the Second Priority Note and Second Mortgage.

O. The Second Priority Loan and the Third Priority Loan are the remainder of the PAID Loan; and the Second Priority Note and the Third Priority Note are collectively referred to as the "PAID Notes." Pursuant to the New Parking Garage Agreement, PAID will pledge the PAID Notes and the New ISA pursuant to certain instruments (the "Pledging Documents") to the City for the benefit of the City and PRA; and will also enter into an agreement with the Senior Lender and others concerning loan subordination (the "Subordination Agreement"). The City, Senior Lender, PRA, and PAID shall enter into a cash deposit control agreement establishing a mechanism to establish the distribution of cash flow from the Property for the benefit of payment of, among other things, the Senior Loan, the PAID Loan, the rent and operating expenses (the "Escrow Agreement").

P. The New ISA, the New Parking Garage Agreement, the PAID Notes, the Pledging Documents, the Second Mortgage, the Subordination Agreement, and the Escrow Agreement are collectively referred to, with all other loan documents evidencing and securing the PAID Loan, as the "PAID Loan Documents"). The PAID Loan Documents are intended to benefit both the City and the PRA and to provide for payments to the City and the PRA of cash flow from the Property in order to repay the PAID Loan.

Q. The parties expect that PAID will exercise certain of its responsibilities through an escrow agent or similar agent pursuant to an escrow or agency agreement approved by the City.

R. The City and the PRA desire to set forth their respective rights and obligations with respect to the PAID Loan as hereinafter set forth.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. Assignment of PRA Payments.

The PRA hereby assigns the PRA Payments to the City for purposes of consolidation into the PAID Loan and collection by PAID for the benefit of the City and the PRA.

2. Amount of City Loan and Pro-Rata Shares.

The City and the PRA shall share in the proceeds of the Senior Loan and the PAID Loan by owning the legal and beneficial interests therein as hereinafter set forth.

(a) The Senior Loan Proceeds shall be immediately distributed by PAID after payment of expenses pursuant to Section 14(a) as follows: to the City, the City's Pro-Rata Share, as hereinafter defined, and to the PRA, the PRA's Pro-Rata Share, as hereinafter defined.

(b) All payments made with respect to the PAID Loan or under the PAID Loan Documents, as well as any and all rights or causes of action the City or the PRA has or acquires against Parametric, PAID or any other person or entity in connection with the PAID Loan, the PAID Loan Documents and all or any portion of any collateral (including, without limitation, the Second Mortgage), shall be shared in the following ratio until the City Payments or the PRA Payments have been repaid in full:

| | | |
|------|--------------------------------------|-------|
| (i) | The " <u>City's Pro-Rata Share</u> " | 90.2% |
| (ii) | The " <u>PRA's Pro-Rata Share</u> " | 9.8% |

(c) To the extent the PRA receives any rent from the tenant under the Ground Lease exceeding the monthly installments of base annual rent as a result of provisions of the Ground Lease relating to rent during a holdover tenancy, the PRA will pay the City's Pro-Rata Share of such excess to the City.

(d) The unpaid Balance of the City Payments and the Balance of the PRA Payments shall continue to accrue simple interest at the annual rate of 5%. If the balance of either the City Payments or the PRA Payments (with continuing interest) has been repaid in full but a balance remains on the City Payments or the PRA Payments, then all remaining proceeds of the PAID Loan, any and all rights or causes of action the City or the PRA has or acquires against Parametric or any other person or entity in connection with the PAID Loan, and all or any portion of any collateral (including, without limitation, the Second Mortgage), shall be paid to the City or PRA, as the case may be, until both the City Payments and the PRA Payments (with continuing interest) have been repaid in full.

3. Loan Documents.

The parties acknowledge and agree that except as provided in Section 9:

(a) PAID shall be the legal owner of, and shall have custody of, the PAID Notes and the New ISA.

(b) The City, as party to the New Parking Garage Agreement with direct legal ownership of rights therein, shall be responsible for enforcing the New Parking Garage Agreement with PAID and for monitoring PAID's enforcement of the New ISA, the Subordination Agreement and the Escrow Agreement, and PAID's collection and transmission of funds to the City and the PRA. The PRA and the City shall cooperate in connection with their rights and responsibilities under all PAID Loan Documents.

(c) Without the prior written consent of the other party hereto, neither party shall, or shall cause or permit PAID to, sell, transfer, encumber, convey or dispose of any of the PAID Loan Documents, the PAID Loan or any interest therein.

4. Standard of Care.

The City will administer the New Parking Garage Agreement and the Second Mortgage, and monitor the New ISA, the Subordination Agreement and the Escrow Agreement with the same degree of care, skill and diligence as is customary in the City's usual practices in the ordinary course of business as it administers loans or agreements of similar types held solely by the City (the "Standard of Care"), but the City shall not be liable to the PRA for any action or failure to act or any error of judgment, mistake or oversight whatsoever of the City or any of the City's managers, members, agents, officers, employees or attorneys with respect to the PAID Loan or any PAID Loan Documents unless such action or failure to act results from the willful misconduct or sole negligence of the City or any of the City's managers, members, agents, officers, employees or attorneys. The City may consult with legal counsel and other advisors selected by it, and shall not be liable for any action taken or omitted to be taken in good faith by the City in accordance with the advice of such counsel or advisor, subject to the Standard of Care. The City shall be entitled to rely, and shall be fully protected in relying, upon any note, writing, resolution, notice, statement, certificate, fax, telex, teletype or telecopier message, email, cablegram, radiogram, order or other document that the City reasonably believed to be genuine and that was signed, sent or made by any person that the City believed to be the proper person.

5. Payments, Collections and Disbursements.

(a) In the New Parking Garage Agreement, the City shall require PAID to enter into the Escrow Agreement which, in turn, shall require the escrow agent to remit to the PRA, in like funds as received and at the same time as PAID remits the City's Pro-Rata Share of the funds to the City, the PRA's Pro-Rata Share of the amount of each payment under the PAID Loan Documents, as well as the PRA's Pro-Rata Share of any casualty insurance and condemnation awards paid to PAID for application

to the PAID Loan pursuant to the PAID Loan Documents. The PRA will not charge interest to the City for payments tendered later to the PRA than to the City, but the City and the PRA will cooperate in order to attempt to prevent repeat occurrences, and the PRA, as an intended beneficiary of the Escrow Agreement, does not waive potential claims against the escrow agent.

(b) If any payment received by PAID that is delivered to the PRA is rescinded or otherwise required to be returned by PAID for any reason, then upon notice by PAID or the City, the PRA will forthwith remit to PAID or the City the amount PRA received that is required to be so returned. If the City is required to pay interest on such refund, the PRA shall return such payment with interest. The covenants contained in this subsection (b) shall survive the repayment of the PAID Loan and expiration or sooner termination of this Participation Agreement.

(c) The City shall keep true records and books of account as it would if the City Loan had been made and held solely by the City in which full, true and correct entries shall be made with respect to payments made under the PAID Loan and the PAID Loan Documents. Any reasonable attorney's fees and other expenses incurred by the City in connection with the City's administration of the PAID Loan or for collection of sums in default, fees of special consultants after default, construction advisors reasonably deemed necessary to supervise the PAID Loan after default, or reasonable attorney's, receiver's or trustees' fees in connection with the foreclosure of the security pledged to secure said PAID Loan (and not paid by Parametric) shall be borne by the City and the PRA in an amount equal to their respective Pro-Rata Shares thereof.

(d) Unless otherwise agreed by the parties in writing, all payments made to the City or the PRA shall be by Federal wire transfer of funds.

6. Administration of the PAID Loan.

The City shall have the right, without further approval of the PRA, to exercise, at any time or from time to time, for the benefit of the PRA and the City, the following rights, remedies, powers and authority subject, however, to the provisions of this Participation Agreement and any other PAID Loan Documents:

(a) to instruct PAID to declare the PAID Notes to be or become immediately due and payable upon any default by the maker thereof in the payment of principal or interest or in the performance of or compliance with any term, covenant, condition or provision of any such notes;

(b) upon any such default, to take such steps, institute and prosecute such actions and proceedings and do or omit any acts which, consistent with the City's Standard of Care, are reasonable and appropriate in the City's judgment, which authority shall include, without limitation, the authority (i) to select remedies available under the PAID Loan Documents or otherwise in law or equity; (ii) to make or consent to an amendment of the PAID Loan Documents; (iii) to make or consent to any release, substitution or exchange of any part of the security for the debt secured by the PAID

Loan Documents; and (iv) to defer any payment required under or on account of the PAID Loan Documents;

(c) to discontinue any such action or proceeding so instituted or to adjourn, defer or withdraw the same;

(d) to bid for the Leasehold at any foreclosure sale in an amount not exceeding the entire sum secured by the PAID Loan Documents;

(e) to acquire the title in and to the Leasehold in foreclosure proceedings;

(f) to accept an assignment of the Leasehold in lieu of foreclosure and release-Parametric in consideration of such assignment in lieu of the foreclosure;

(g) to manage, or to hire agents to manage, the foreclosed or acquired Leasehold and rent the same upon such terms and conditions as the City deems to be in the best interests of the City and the PRA;

(h) to sell the foreclosed or acquired Leasehold for cash or to receive as part payment therefor cash or a purchase money note and mortgage, in which the PRA holds an interest equal to the PRA's Pro-Rata Share, which purchase money mortgage shall be held subject to the provisions of this Participation Agreement;

(i) to make advances for the payment of taxes, assessments, water or sewer charges, and all interest and penalties thereon; insurance premiums and for other similar items; and for the payment of any reasonable costs, expenses, appraisals, attorneys' fees or other disbursements or losses or liabilities incurred in the collection of money, the protection or preservation of the security or the enforcement of the rights and remedies of the PRA under the PAID Loan Documents; or for or by reason of the acquisition, operation, ownership or sale of the Leasehold in the event of the acquisition of the same through foreclosure or assignment in lieu of foreclosure;

(j) to collect, sue for and receive and settle or compromise any claims for loss or damage covered by insurance and to exercise its discretion in the proper application and disposition of the net proceeds of such insurance; and

(k) generally, the City shall have full power and authority, in its sole discretion as if it were the sole party in interest, to take or defer from taking, any and all acts with respect to the administration of the PAID Loan Documents, including the right, power and authority to exercise any and all of the rights, remedies and options reserved to the City in, or given by law or equity to the City as the holder of the Second Mortgage and of the Leasehold should it become the owner thereof by foreclosure or otherwise, as may be necessary and appropriate.

7. Property Expenses.

All sums which may have to be and are paid by the City for taxes, assessments, water and sewer charges, insurance premiums and for other similar items and for reasonable costs, expenses, appraisals, attorneys' fees, and other disbursements incurred by the City in the protection of the security or the enforcement of the rights and remedies of the mortgagee with respect to the Second Mortgage, or for or by reason of the acquisition, operation, ownership or sale of the Leasehold in the event of its acquisition through foreclosure or by an assignment in lieu of foreclosure, and any losses incurred in connection with the making of the PAID Loan, to the extent not paid by Parametric or any other person, shall be made and borne by the City and the PRA in accordance with their Pro-Rata Shares thereof.

8. Notice to the PRA.

Notwithstanding any other provision of this Agreement, the City shall give prompt written notice to the PRA of any of the following occurrences with respect to the PAID Loan Documents or, if the City has received written notice thereof, the Senior Loan Documents:

- (a) any Event of Default;
- (b) any declaration of default and the nature of remedies pursued or proposed to be pursued;
- (c) any foreclosure or acceptance of an assignment in lieu of foreclosure, any bid by the City for the Leasehold, or the price of any sale by the City of the Leasehold;
- (d) any action by others which might impair the validity or priority of any of the PAID Loan Documents; and
- (e) any other matter which, in the City's reasonable judgment, materially affects the interests of the City or the PRA in the PAID Loan Documents.

9. Successors and Assigns.

Subject to the restrictions on transfer contained in Section 2(c) hereof, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. Reference to "the City" shall include the City, any assignee of the City's interest in the PAID Loan Documents, and any person that refinances the PAID Loan in whole or in part.

10. Termination.

(a) Except with respect to those matters set forth herein which expressly survive a termination of this Participation Agreement, this Participation Agreement shall terminate upon the occurrence of one of the following:

(i) payment of the PAID Loan in full, with distribution to the PRA of the PRA's Pro-Rata Share and any remaining share; or

(ii) the City's payment of the PRA's Pro-Rata Share of the proceeds of any satisfaction or sale of the PAID Loan Documents or the sale of the Leasehold if same is acquired by foreclosure, or any policies of insurance or any condemnation proceedings.

(b) Upon the termination of Participation Agreement, the City and the PRA shall be released from any further liability or obligation hereunder other than obligations which are expressly required to remain in place following any such termination.

11. Notices.

All notices, requests, demands and other communications under this Participation Agreement shall be in accordance with the following:

[]

12. Administrative Provisions.

(a) With respect to the City's duties under this Participation Agreement, the PRA acknowledges and agrees that:

(i) The City shall not have any duties or responsibilities other than those that are expressly set forth herein, or any fiduciary relationship with the PRA, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Participation Agreement or the other PAID Loan Documents or otherwise exist against the City; and the PRA hereby agrees to assert no claim against the City on any agency theory or any other theory of liability for breach of fiduciary duty, all of which claims the PRA hereby waives.

(ii) The duties of the City shall be mechanical and administrative in nature; the City shall not have by reason of this Participation Agreement or any other PAID Loan Document a fiduciary relationship in respect of the PRA; and nothing in this Participation Agreement or any other PAID Loan Document, expressed or implied, is intended to or shall be so construed as to impose upon the City any obligations in respect of this Participation Agreement or any other PAID Loan Document except as expressly set forth herein.

(iii) The City shall be under no duty to take any discretionary action permitted to be taken by it pursuant to the provisions of this Participation Agreement or any other PAID Loan Document. The City shall be fully justified in failing or refusing to take any action hereunder and under any PAID Loan Document unless it shall first be indemnified to its satisfaction by the PRA pro rata against any and all liability, cost and expense that it may incur by reason of taking or continuing to take any such action. Without limiting the foregoing, the PRA shall not have any right of action

whatsoever against the City as a result of the City acting or refraining from acting hereunder or under any other PAID Loan Document in accordance with the instructions of the PRA.

(b) To the extent not already available to the PRA, the City shall also provide the PRA and/or make available for the PRA's inspection during reasonable business hours and at the PRA's expense, upon the PRA's written request therefor: (i) copies of the PAID Loan Documents; (ii) such information as is then in the City's possession in respect of the current status of principal and interest payments and accruals in respect of the PAID Loan; (iii) copies of all current financial statements in respect of Parametric or other person liable for payment or performance by Parametric of any obligations under the PAID Loan Documents, then in the City's possession with respect to the PAID Loan; and (iv) other current factual information then in the City's possession with respect to the PAID Loan and bearing on the continuing creditworthiness of Parametric. Independently and without reliance upon the City, the PRA, to the extent it deems appropriate, has made and shall continue to make (i) its own independent investigation of the financial condition and affairs of Parametric in connection with the making and the continuance of the PAID Loan and the taking or not taking of any action in connection herewith and (ii) its own appraisal of the creditworthiness of Parametric and, except as expressly provided in this Participation Agreement, the City shall not have any duty or responsibility, either initially or on a continuing basis, to provide the PRA with any credit or other information with respect thereto, whether coming into its possession before the making of the PAID Loan or at any time or times thereafter. Except for notices, reports and other documents expressly required to be furnished to the PRA by the City hereunder, the City shall not have any duty or responsibility to provide the PRA with any credit or other information concerning the business, operations, property, financial and other condition or creditworthiness of Parametric which may come into the possession of the City or any of its officers, directors, employees, agents, attorneys-in-fact or affiliates.

(c) Neither the City nor any of its directors, officers, agents or employees shall be liable to the Parametric or the PRA for any action taken or omitted to be taken by it or them hereunder or under any other PAID Loan Document or in connection herewith or therewith, whether sounding in tort, contract or otherwise except to the extent such action or inaction is determined in a final non-appealable judgment by a court of competent jurisdiction to have arisen from the negligence or willful misconduct of such person.

(d) Provided that none of the following shall be inconsistent with the City's Standard of Care, neither the City nor any of its directors, officers, agents or employees shall be responsible for or have any duty to ascertain, inquire into, or verify (i) any statement, warranty or representation made in connection with any PAID Loan Document or any borrowing under the New ISA or the New Parking Garage Agreement; (ii) the performance or observance of any of the covenants or agreements of any obligor under any PAID Loan Document, including, without limitation, any agreement by an obligor to furnish information directly to the City or the PRA; (iii) the existence or possible existence of any Default or Event of Default; (iv) the validity, enforceability,

effectiveness, sufficiency or genuineness of any PAID Loan Document or any other instrument or writing furnished in connection therewith; or (v) the value, sufficiency, creation, perfection or priority of any Lien on any property.

(e) The City shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default hereunder unless the City has received written notice from a the City, PAID or Parametric referring to this Agreement describing such Default or Event of Default and stating that such notice is a "notice of default"; and in the event that the City receives such a notice, the City shall give prompt notice thereof to the PRA.

(f) The PRA and the City each acknowledge that it has received and approved executed copies of the PAID Loan Documents.

13. Governing Law; Other Provisions.

This Participation Agreement and the rights and obligations of the parties hereunder shall in all respects be governed by, and enforced in accordance with, the laws of the Commonwealth of Pennsylvania (without regard to principles of conflict of laws).

14. Senior Loan Provisions.

(a) The parties hereto agree and acknowledge that payment shall be made from the proceeds of the Senior Loan of all of the fees and expenses incurred by the City and the PRA, respectively (including, without limitation, their respective attorneys' fees) in connection with the PAID Loan, the PAID Loan Documents, the Lease and this Participation Agreement.

(b) If the City shall exercise its right to purchase the Senior Loan pursuant to the Subordination Agreement, the PRA shall have the right, [subject to conditions to be mutually agreed upon by the City and the PRA], to participate in such purchase in accordance with its Pro-Rata Share and such participation shall be governed by provisions substantially similar to those set forth in this Participation Agreement.

15. [Additional standard provisions acceptable to City and PRA.]

IN WITNESS WHEREOF, the parties have executed this Participation Agreement as of the day and year first above written.

**PHILADELPHIA REDEVELOPMENT
AUTHORITY**

By: _____
Name:
Title:

Approved as to form
Shelley R. Smith, City Solicitor

THE CITY OF PHILADELPHIA

By: _____ By: _____
Name: Name:
Title: Title:

By: _____
Name:
Title:

SCHEDULE A

Legal Description

Parcel No. 12-1. All that certain lot or piece of ground situated in the Fifth Ward of the City of Philadelphia beginning at a point formed by the intersection of the southeasterly side of Eleventh street (fifty-five feet nine and one-quarter inches wide) and the northeasterly side of Filbert street (fifty feet six inches wide) (legally open); Thence extending from said point of beginning north ten degrees, forty-one minutes, east along the said southeasterly side of Eleventh street, the distance of one hundred forty-seven feet to a point on the southwesterly side of Cuthbert street (variable width); Thence extending south seventy-nine degrees, nineteen minutes, east along the said southwesterly side of Cuthbert street the distance of sixty feet one inch to a point; Thence extending south ten degrees, forty-one minutes, west partly along the northwesterly side of said Cuthbert street and partly passing through a wall the distance of sixty-seven feet to a point; Thence extending south seventy-nine degrees, nineteen minutes, east the distance of twenty-five feet to a point; Thence extending south eleven degrees, one minute, west passing through a wall the distance of eighty feet to a point on the said northeasterly side of Filbert street; Thence extending north seventy-nine degrees, nineteen minutes, west along the said northeasterly side of Filbert street, the distance of eighty-four feet two and three-quarters inches to a point on the said southeasterly side of Eleventh street, being the first mentioned point and place of beginning.

Parcel No. 12-2. All that certain lot or piece of ground situated in the Fifth Ward of the City of Philadelphia beginning at a point formed by the intersection of the southwesterly side of Arch street (seventy-two feet wide) (legally open) and the southeasterly side of Eleventh street (fifty-five feet nine and one-quarter inches wide); Thence extending from said point of beginning south seventy-nine degrees, nineteen minutes, east along the said southwesterly side of Arch street the distance of thirty-nine feet to a point; Thence extending south eleven degrees, one minute, west passing through a wall the distance of one hundred thirty-three feet to a point on the northeasterly side of Cuthbert street (variable width); Thence extending north seventy-nine degrees, nineteen minutes, west along the said northeasterly side of Cuthbert street, the distance of thirty-eight feet two and three-quarters inches to a point on the said Southeasterly side of Eleventh street; Thence extending north ten degrees, forty-one minutes, east along the said southeasterly side of Eleventh street, the distance of one hundred thirty-three feet to a point on the said southwesterly side of Arch street, being the first mentioned point and place of beginning.

Parcel No. 12-3. All that certain lot or piece of ground situated in the Fifth Ward of the City of Philadelphia beginning at a point formed by the intersection of the northwesterly side of Eleventh street (fifty-five feet nine and one-quarter inches) and the southwesterly side of Arch street (seventy-two feet wide); Thence extending from said point of beginning south ten degrees, forty-one minutes, west along the said northwesterly side of Eleventh street and crossing the bed of Cuthbert street (Cuthbert street west of Eleventh street is intended to be stricken and vacated from the City Plan) the distance of three hundred four feet to a point on the northeasterly side of Filbert street (fifty feet six inches wide) (legally open); Thence extending north seventy-nine degrees, nineteen minutes, west along the said northeasterly side of Filbert street the distance of one hundred and twenty-five feet to a point; Thence extending north eleven degrees, one minute, east partly recrossing the bed of said Cuthbert street, the distance of one hundred and fifty feet to a point; Thence extending south seventy-nine degrees, nineteen minutes, east partly passing within the bed of said Cuthbert street the distance of seven feet to a point; Thence extending north eleven degrees, one minute, east recrossing the bed of said Cuthbert street, the distance of one hundred fifty-four feet to a point on the said southwesterly side of Arch street; Thence

extending south seventy-nine degrees, nineteen minutes, east along the said southwesterly side of Arch street the distance of one hundred sixteen feet two and three-quarters inches to a point on the said northwesterly side of Eleventh street, being the first mentioned point and place of beginning.

Parcel No. 12-4 (Air Rights, only, above and over Eleventh street). All that certain lot or piece of ground situated in the Fifth Ward of the City of Philadelphia being spaces bounded on the bottom by an approximate elevation of fifty-five and five-tenths feet above City Datum extending upward to an approximate elevation of one hundred eighteen and five-tenths feet; and bounded on the sides by the vertical projection of planes beginning at the intersection of the southerly side of Arch street (seventy-two feet wide – legally open sixty-six feet) and the westerly side of Eleventh street (fifty-five feet nine and one-quarter inches wide); Thence extending eastward along the southerly side of Arch street, crossing Eleventh street fifty-five feet nine and one-quarter inches to the easterly side of Eleventh street; Thence extending southward along the easterly side of Eleventh street; one hundred thirty-three feet to the northerly side of Cuthbert Street (twenty-four feet wide); Thence extending eastward along the northerly side of Cuthbert street, thirty-eight feet two and three-quarters inches to a point; Thence extending southward along a line parallel to Eleventh street and crossing Cuthbert street, twenty-four feet to the southerly side of Cuthbert street; Thence extending westward along the southerly side of Cuthbert street, thirty-eight feet one inch to the easterly side of Eleventh street; Thence extending southward along the easterly side of Eleventh street, one hundred forty-seven feet to the northerly side of Filbert street (fifty feet six inches wide); Thence extending westward along the northerly side of Filbert street and crossing Eleventh street, fifty-five feet nine and one-quarter inches to the westerly side of Eleventh street; Thence extending northward along the westerly side of Eleventh street, three hundred four feet to the southerly side of Arch street, being the first mentioned point and place of beginning.

THE AMENDED LEASED PREMISES EXCLUDES THE FOLLOWING PARCELS:

Hotel Lobby Parcel No. 1B. All that certain lot or piece of ground lying below a horizontal plane fifty five and five-tenths feet above Philadelphia City Datum, said elevation being the bottom surface of the structural ‘T’ beam supporting the garage floor slab and beginning at the point of intersection of the southerly side of Arch street (seventy-two feet wide) with the westerly side of Eleventh street (fifty-five feet nine and three-eighths inches wide); Thence from said point of beginning extending south eleven degrees one minute zero seconds west, along the said westerly side of Eleventh street one hundred twenty-nine feet nine inches to a point; Thence north seventy-eight degrees fifty-nine minutes zero seconds west sixty feet seven and one-half inches to a point; Thence north eleven degrees one minute zero seconds east, along the centerline of the building columns one hundred twenty-nine feet nine inches to a point on the southerly side of Arch street; Thence south seventy-eight degrees fifty-nine minutes zero seconds east, along the said southerly side of Arch street, sixty feet seven and one-half inches to the point and place of beginning.

Hotel Service Parcel No. 1C. All that certain lot or piece of ground lying below a sloping plane which is forty-six and nine hundredths feet above Philadelphia City Datum on the north side and fifty-seven and sixty-four hundredths feet above Philadelphia City Datum on the south side, said plane being the underside of the structural ramp leading from Arch street to the garage parking, and beginning at an interior point located the following two courses and distances from the point of intersection of the southerly side of Arch street (seventy-two feet wide) with the westerly side of Eleventh street (fifty-five feet nine and three-eighths inches wide), north seventy-eight degrees fifty-nine minutes zero seconds west, along the said southerly side of Arch street sixty feet seven and one-half inches to a point; Thence south eleven degrees one minute zero seconds west ninety-seven feet eleven and one-half inches to the

point of beginning; Thence from said point of beginning south eleven degrees one minute zero seconds west one hundred forty-two feet nine and one-half inches to a point; Thence north seventy-eight degrees fifty-nine minutes zero seconds west nineteen feet one inch to a point; Thence north eleven degrees one minute zero seconds east one hundred forty-two feet nine and one-half inches to a point; Thence south seventy-eight degrees fifty-nine minutes zero seconds east nineteen feet one inch to the point and place of beginning.

Parcel No. 1. All that certain lot or parcel of ground lying above a horizontal plane one hundred six and forty-two hundredths feet above Philadelphia City Datum, said elevation being seven feet above the highest level of the existing garage slab floor and beginning at the point of intersection of the northerly side of Filbert street (fifty feet six inches wide) with the westerly side of Eleventh street (fifty-five feet nine and three-eighths inches wide); Thence from said point of beginning extending north seventy-eight degrees fifty-nine minutes west along the said northerly side of Filbert street one hundred twenty-five feet zero inches to a point; Thence north eleven degrees twenty minutes east one hundred fifty feet zero inches to a point; Thence south seventy-eight degrees fifty-nine minutes east seven feet zero inches to a point; Thence north eleven degrees twenty minutes east one hundred fifty-four feet zero inches to a point on the southerly side of Arch street (seventy-two feet wide); Thence south seventy-eight degrees fifty-nine minutes east along the said southerly side of Arch street one hundred sixteen feet three and three-quarters inches (one hundred sixteen feet two and three-quarters inches by deed) to a point on the westerly side of Eleventh street; Thence south eleven degrees one minute west along the said westerly side of Eleventh street three hundred four feet zero inches to the point and place of beginning.

Parcel No. 2 (Air Rights Estate above Eleventh street and Cuthbert street). All that certain lot or parcel of ground lying between a horizontal plane one hundred six and forty-two hundredths feet above Philadelphia City Datum, said elevation being seven feet above the highest level of the existing garage floor slab and a horizontal plane one hundred eighteen and five-tenths feet above Philadelphia City Datum and beginning at the point of intersection of the northerly side of Filbert street (fifty feet six inches) with the westerly side of Eleventh street (fifty-five feet nine and three-eighths inches wide); Thence from said point of beginning extending north eleven degrees one minute east along the said westerly side of Eleventh street three hundred four feet zero inches to a point on the southerly side of Arch street (seventy-two feet wide); Thence south seventy-eight degrees fifty-nine minutes east crossing the bed of Eleventh street fifty-five feet nine and three-eighths inches to a point on the easterly side of Eleventh street; Thence south eleven degrees one minute west along the said easterly side of Eleventh street one hundred thirty-three feet zero inches to a point on the northerly side of Cuthbert street (twenty-four feet wide); Thence south seventy-eight degrees fifty-nine minutes east along the said northerly side of Cuthbert street thirty-eight feet two and five-eighths inches to a point; Thence south eleven degrees twenty-one minutes west crossing the bed of Cuthbert street twenty-four feet zero inches to a point on the southerly side of Cuthbert street; Thence north seventy-eight degrees fifty-nine minutes west along the said southerly side of Cuthbert street thirty-eight feet seven-eighths inches to a point on the easterly side of Eleventh street; Thence south eleven degrees one minute west along the said easterly side of Eleventh street one hundred forty-seven feet zero inches to a point on the northerly side of Filbert street; Thence north seventy-eight degrees fifty-nine minutes west crossing the bed of Eleventh street fifty-five feet nine and three-eighth inches to the point and place of beginning.

Parcel No. 3. All that certain lot or parcel of ground lying above a horizontal plane one hundred six and forty-two hundredths feet above Philadelphia City Datum, said elevation being seven feet above the highest level of the existing garage slab floor and beginning at the point of intersection of the northerly side of Filbert street (fifty feet six inches wide) with the easterly side of Eleventh street (fifty-

five feet nine and three-eighths inches), Thence from said point of beginning extending north eleven degrees one minute east along the said easterly side of Eleventh street one hundred forty-seven feet zero inches to a point on the southerly side of Cuthbert street (twenty-four feet wide); Thence south seventy-eight degrees fifty-nine minutes east along the said southerly side of Cuthbert street sixty feet seven-eighths inches to a point; Thence south eleven degrees twenty-one minutes west sixty-seven feet zero inches to a point; Thence south seventy-eight degrees fifty-nine minutes east twenty-five feet zero inches to a point; Thence south eleven degrees twenty-one minutes west eighty feet zero inches to a point on the northerly side of Filbert street; Thence north seventy-eight degrees fifty-nine minutes west along the said northerly side of Filbert street eighty-four feet two and five-eighths inches to the point and place of beginning.

Parcel No. 4. All that certain lot or parcel of ground lying above a horizontal plane one hundred six and forty-two hundredths feet above Philadelphia City Datum, said elevation being seven feet above the highest level of the existing garage slab floor and beginning at the point of intersection of the easterly side of Eleventh street (fifty-five feet nine and three-eighths inches wide) with the southerly side of Arch street (seventy-two feet wide); Thence from said point of beginning extending south seventy-eight degrees fifty-nine minutes east along the said southerly side of Arch street thirty-eight feet eleven and seven-eighths inches to a point; Thence south eleven degrees twenty-one minutes west one hundred thirty-three feet zero inches to a point on the northerly side of Cuthbert street (twenty-four feet wide); Thence north seventy-eight degrees fifty-nine minutes west along the said northerly side of Cuthbert street thirty-eight feet two and five-eighths inches to a point on the easterly side of Eleventh street; Thence north eleven degrees one minute east along the said easterly side of Eleventh street, one hundred thirty-three feet to the point and place of beginning.