

(6/27/12)

**GARAGE GROUND LEASE AGREEMENT**

**between**

**KING COUNTY,  
a political subdivision of the State of Washington**

**as Garage Ground Lessor**

**and**

**KIRKLAND PARK & RIDE, L.L.C.,  
a Washington limited liability company,**

**as Garage Ground Lessee**

\_\_\_\_\_, 2012

**South Kirkland TOD Garage Project  
Bellevue, Washington**

## Table of Contents

	Page
1. Incorporation of Recitals .....	2
2. Intent to Lease.....	2
2.1 Demise .....	2
2.2 Title to and Condition of Real Property .....	3
2.3 Construction Access .....	3
2.4 Short Plat and Reconfiguration of the Garage Land.....	3
3. Term.....	3
4. Rent.....	3
4.1 Additional Rent.....	3
4.2 Net Lease .....	4
5. Use of the Land.....	4
5.1 Use of Land.....	4
5.2 Garage Ground Lessor's Right to Inspect .....	4
5.3 Quiet Enjoyment of the Garage Land.....	4
5.4 Reservation of Commuter Parking Rights.....	4
6. Impositions and Utilities.....	5
6.1 Impositions .....	5
6.2 Utilities .....	6
7. Development of Garage Project.....	7
7.1 Construction of Garage Project .....	7
7.2 Ownership of Improvements .....	7
8. Liens .....	7
9. Lessee Financing of Garage Project Improvements .....	7
9.1 Construction Loan for Garage Project Improvements.....	7
9.2 Protection of Construction Lender.....	7
9.3 Amendments .....	8
9.4 Insurance Clauses .....	8
9.5 Deed of Trust Not a Prohibited Transfer .....	8
9.6 Construction Lender's Right to Assign .....	8
9.7 No Merger.....	9
9.8 No Subordination of Garage Ground Lease .....	9
9.9 No Fee Subordination .....	10
10. Indemnity and Insurance.....	10
10.1 Ground Lessee's Indemnification.....	10
10.2 Garage Ground Lessor's Indemnification .....	10
10.3 Notice of Claim.....	11
10.4 Contractors' Indemnification.....	11
10.5 Garage Ground Lessee's Insurance .....	11
10.6 Waiver of Subrogation.....	12
10.7 Evidence of Insurance.....	12

11.	Eminent Domain.....	12
11.1	Total Condemnation .....	12
11.2	Partial Condemnation .....	12
12.	Events of Default by Garage Ground Lessee and Garage Ground Lessor's Remedies.....	13
12.1	Events of Default .....	13
12.2	Remedies Upon Garage Ground Lessee's Default .....	14
12.3	Cumulative Rights and Remedies.....	14
12.4	No Waiver.....	14
12.5	Attorneys' Fees.....	14
13.	Bankruptcy.....	14
13.1	Assumption of Garage Ground Lease and Garage Project Lease.....	14
13.2	Assignment of Garage Ground Lease and Garage Project Lease.....	15
13.3	Adequate Protection.....	16
14.	Garage Ground Lessee to Comply with Applicable Laws and Agreements .....	16
14.1	Compliance with Laws .....	16
14.2	Compliance with Agreements.....	17
15.	Hazardous Substances .....	17
15.1	Use .....	17
15.2	Indemnity .....	17
15.3	Obligations of Garage Ground Lessor.....	18
15.4	Remediation of Pre-Existing Hazardous Substances.....	18
15.5	Notification Requirements.....	18
15.6	Inspection Rights.....	19
16.	Notices.....	19
16.1	Addresses.....	19
17.	Assignment and Subleasing.....	20
18.	Miscellaneous .....	20
18.1	Time of Essence.....	20
18.2	No Joint Venture or Agency .....	20
18.3	Amendments.....	20
18.4	Waiver Limitations .....	21
18.5	Governing Law .....	21
18.6	Headings .....	21
18.7	Successors and Assigns .....	21
18.8	No Merger.....	21
18.9	Counterparts; Recording of Memorandum.....	21
18.10	Schedule of Exhibits.....	21

## GARAGE GROUND LEASE AGREEMENT

THIS GARAGE GROUND LEASE AGREEMENT ("Garage Ground Lease") is made for reference purposes as of the 1st day of \_\_\_\_\_, 2012, by and between **KING COUNTY**, a political subdivision of the State of Washington ("Garage Ground Lessor"), and **KIRKLAND PARK & RIDE, LLC**, a Washington limited liability company qualified to do business in the State of Washington ("Garage Ground Lessee").

### RECITALS

A. Garage Ground Lessor is a political subdivision of the State of Washington and is authorized by RCW Chapter 35.56 to provide metropolitan public transportation services in the Seattle-King County metropolitan area. Garage Ground Lessee is a private developer of market rate and affordable housing and mixed use projects duly organized as a limited liability company under the laws of the State of Washington.

B. In January of 1998 Garage Ground Lessor adopted a Transit Oriented Development Program (TOD) to encourage public or private development which creates new mixed income housing development, including related commercial activity, in close proximity to transit facilities and services to increase ridership of Lessor's metropolitan public transportation system, decrease automobile trips and traffic congestion and provide additional fare revenue to support metropolitan public transportation services throughout King County. In 2011, Garage Ground Lessor issued Request for Proposal No.1324-11RLD, dated August 25, 2011 ("RFP") requesting proposals for a project that would provide the greatest financial return for Garage Ground Lessor, expand essential commuter parking up to 853 stalls from 603 stalls, improve the existing transit center, and provide a mixture of market rate housing, affordable housing, associated parking and mixed-use commercial development (collectively, the "Housing Project") and promote the City of Kirkland's emerging vision for the Yarrow Bay Business District. The development of affordable housing is a critical component of Garage Ground Lessor's plans for the real property that is the subject of this Garage Ground Lease. For reasons of economic efficiency, the parties have agreed to a phased approach for the development of the Garage Project, the Transit Center Project and the Housing Project.

C. The transit center, parking garage and Housing Project shall be developed in three discrete phases. Garage Ground Lessor has agreed to enter into this Garage Ground Lease with Garage Ground Lessee on the terms and conditions hereinafter set forth on the express condition that Garage Ground Lessee agree to construct the first phase of the South Kirkland TOD Project, as defined in the Transit Center Project Lease, consisting of an expanded and improved transit center, including temporary relocation of the existing transit center onto the Housing Land (as defined below), which will promote the public welfare by supporting transit ridership along the State Route 520 Corridor, followed immediately by the second phase of development. The second phase of the Kirkland TOD Project involves the construction of a surface parking area for 321 cars and a multi-level 532 stall parking garage (collectively, the "Garage Project"), which will promote the public welfare by providing additional public parking for single-trip transit commuters in King County. Garage Ground Lessor and Garage Lessee shall also enter into a separate ground lease for the Transit Center Land for construction of the Transit Center on the express condition that Garage Ground Lessee, as Transit Center Ground Lessee thereunder, agree

to design, develop, finance, construct, equip and complete the Transit Center on the Transit Center Land and thereafter lease the Transit Center, together with Transit Center Ground Lessee's rights in the Transit Center Land to Garage Ground Lessor (as Transit Center Ground Lessor thereunder) for the monthly rent, and for the term and on the other terms and conditions set forth in the Transit Center Project Lease. The third phase will be the Housing Project and will consist of affordable and market rate housing and mixed-use commercial amenities that will be developed by private developers pursuant to design principles adopted by the City of Kirkland, the City of Bellevue and King County on the Housing Land.

**D.** In order to accommodate the development of all phases of the development, Garage Ground Lessor intends to cause the short platting of the Property into three legal lots consisting of the garage land (hereinafter the "Garage Land"), the transit center land (hereinafter the "Transit Center Land") and the housing land (hereinafter the "Housing Land"). As of the date of this Garage Ground Lease, Garage Ground Lessor has not yet completed the short plat of the Property into the three legal lots to consist of the Garage Land, Transit Center Land and the Housing Land. Garage Ground Lessor and Garage Ground Lessee understand and agree that Garage Ground Lessor intends to lease only the Garage Land to Garage Ground Lessee and that upon completion of the short plat of the Property pursuant to the provisions of Section 2.4 of the Transit Center Ground Lease and this Garage Ground Lease, the legal description of the Garage Land shall be attached to this Garage Ground Lease as **EXHIBIT B** and thereafter all references to the real property demised under this Garage Ground Lease shall refer only to the Garage Land, the legal description of which is then attached to this Garage Ground Lease as **EXHIBIT B**. This Garage Ground Lease shall thereafter be amended so as to exclude the Transit Center Land and the Housing Land from the real property demised hereunder.

**E.** Concurrently herewith, Garage Ground Lessor shall enter into the Garage Project Lease as Garage Project Lease Tenant and the Transit Center Ground Lease and Transit Center Project Lease as Transit Center Ground Lessee and Transit Project Lease Tenant, respectively, on the express condition that Garage Ground Lessee execute this Garage Ground Lease and the Transit Center Ground Lease and abide by the terms herein and therein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the parties hereto agree as follows:

**1. Incorporation of Recitals.** Each recital set forth above is incorporated into this Garage Ground Lease as though fully set forth herein. All capitalized terms not otherwise defined in the Recitals or elsewhere in this Garage Ground Lease, shall have the meaning set forth in the Garage Project Lease.

**2. Intent to Lease.**

**2.1 Demise.** Subject to satisfaction of the Conditions Precedent set forth in Section 6 of the Garage Project Lease on or before the Conditions Precedent Satisfaction Date, Garage Ground Lessor hereby leases the Property legally described and depicted on **EXHIBIT A**, attached hereto and made a part of this Garage Ground Lease, to Garage Ground Lessee, and Garage Ground Lessee hereby leases the Property from Garage Ground Lessor upon and subject to the

conditions set forth in this Garage Ground Lease and the Garage Project Lease, and subject to all encumbrances and matters of record as of the date of this Garage Ground Lease.

**2.2 Title to and Condition of Real Property.** Garage Ground Lessee has had an opportunity to and has conducted a thorough investigation of the Property and the Garage Land and is in all material respects knowledgeable and familiar with the present condition and state of repair of the Property and the Garage Land. The Property and the Garage Land is leased to Garage Ground Lessee in its present condition and state of repair on an "AS IS" basis without representation or warranty of any kind by Garage Ground Lessor, and without any representation or warranty by Lessor, express or implied, and expressly without recourse to Garage Ground Lessor as to the physical condition or suitability of the Garage Land for Garage Ground Lessee's intended purposes.

**2.3 Construction Access.** Lessor agrees to provide temporary construction staging rights on a portion of the Garage Land as may be required for the development of the Garage Project, but only to the extent such staging does not interfere with transit operations and commuter access and parking.

**2.4 Short Plat and Reconfiguration of the Garage Land.** Garage Ground Lessee acknowledges that the Property currently consists of a single legal lot and that initially the Garage Ground Lease shall apply to the entirety of the Property, but that Garage Ground Lessor shall cause the Property to be short platted into a minimum of three legal lots, one lot shall constitute the Transit Center Land and the remainder shall then constitute the Garage Land and the Housing Land. Garage Ground Lessor shall cause the short plat of the Property into a minimum of three lots to be completed prior to the Initial Conditions Precedent Satisfaction Date. Upon completion of the short plat, EXHIBIT A shall be deleted and replaced with EXHIBIT B which shall contain the legal description and depiction of the Garage Land and thereafter all reference to the real property demised under this Garage Ground Lease shall mean the Garage Land as legally described in EXHIBIT B attached hereto. Likewise, EXHIBITS C-1 and C-2 of the Garage Project Lease shall be amended and replaced with the legal description and map of the Transit Center Land, Garage Land, and Housing Land which shall be attached to the Garage Project Lease as EXHIBITS D, E, & F, respectively.

**3. Term.** This Garage Ground Lease shall be for a term of twenty-five (25) years commencing on the Effective Date, except that if the Transit Center Project Lease or Garage Project Lease terminate for any reason prior to the Effective Date, this Garage Ground Lease shall also automatically terminate.

**4. Rent.** Garage Ground Lessee shall pay to Garage Ground Lessor as Rent for the Term the sum of \$100.00 payable in whole in advance on or before the Effective Date. Rent is fully earned upon the Effective Date and is nonrefundable.

**4.1 Additional Rent.** From and after the Effective Date, Garage Ground Lessee shall also pay, without notice and without set-off, deduction or abatement, Additional Rent when the same shall be due and payable and in any event prior to delinquency. Additional Rent shall mean all costs, expenses, insurance premiums, Impositions and other payments, excluding Rent, which Garage Ground Lessee is required to pay under the terms of this Garage Ground Lease. In the

event of any non-payment of Additional Rent, Lessor shall have, in addition to any other rights and remedies, all rights and remedies provided for herein or by law for the non-payment of Rent.

**4.2 Net Lease.** This Garage Ground Lease shall be deemed and construed to be a "net lease" and from and after the Effective Date, Garage Ground Lessee shall pay Garage Ground Lessor Rent, Additional Rent and any other payments required hereunder, free of any charges, assessments, Impositions or deductions of any kind and without abatement, deduction or setoff, whether now or hereafter arising or beyond the present contemplation of the parties.

## **5. Use of the Land.**

**5.1 Use of Land.** Garage Ground Lessor reserves all right to use and possession of the Property and the Garage Land prior to the Effective Date. From and after the Effective Date, and except as provided in Section 5.4 herein, the Garage Land shall be used and occupied by Garage Ground Lessee solely for the purpose of the design, development, construction, operation, use, repair and maintenance of the Garage Project pursuant to the terms and conditions set forth in the Garage Project Lease, as well as for construction staging purposes as described in Section 2.3 above. Garage Ground Lessee shall not use or permit the Garage Land to be used for any other purpose without the prior written approval of Garage Ground Lessor, which consent may be withheld by Garage Ground Lessor in its sole and absolute discretion. Garage Ground Lessor would not have entered into this Garage Ground Lease but for the agreement by Garage Ground Lessee to enter into and perform all of its obligations under the Transit Center Project Lease and Transit Center Ground Lease and Garage Project Lease and this Garage Ground Lease including its obligation to construct and complete the Garage Project on or before the Required Completion Date set forth in the Garage Project Lease.

**5.2 Garage Ground Lessor's Right to Inspect.** Garage Ground Lessor shall have the right to inspect the Garage Land at any reasonable time during normal construction hours without prior notice to Garage Ground Lessee. Garage Ground Lessee will comply with all safety requirements of Garage Ground Lessee and the General Contractor. Garage Ground Lessee may, at its option, accompany Garage Ground Lessor during any inspections.

**5.3 Quiet Enjoyment of the Garage Land.** If and so long as Garage Ground Lessee shall pay all Additional Rent and all other amounts payable by Garage Ground Lessee hereunder whenever the same shall become due and shall keep all of the covenants and conditions required to be kept by it under this Garage Ground Lease and shall perform all of its other obligations hereunder, and additionally all of its obligations under the Garage Project Lease, Garage Ground Lessor covenants and agrees that from and after the Effective Date, and except as may otherwise be provided in the Garage Project Lease, Garage Ground Lessor will not interfere with the peaceful and quiet occupation and enjoyment of the Garage Land by Garage Ground Lessee.

**5.4 Reservation of Commuter Parking Rights.** Garage Ground Lessor reserves the right to maintain commuter parking and implement or cause to be implemented the Construction Phasing Plan, attached to the Garage Project Lease as **Exhibit H**, upon the Garage Land.

## 6. Impositions and Utilities.

**6.1 Impositions.** After the Effective Date, Garage Ground Lessee will, at Garage Ground Lessee's sole cost and expense, pay and discharge, on or before the fifteenth (15th) day prior to the last day upon which the same may be paid without interest or penalty, all Impositions. "Impositions" means all real and personal property taxes and assessments (including assessments for special improvements), license and permit fees, charges for public utilities, leasehold excise taxes and other excise taxes, if any, levies, sales use and occupancy taxes any tax or charge assessed against Rent, Additional Rent or the fair market value of the Garage Land and any taxes levied or assessed in addition to or in lieu of, in whole or in part, such taxes, assessments or other charges and all other governmental impositions and charges of any kind and nature, general and special, ordinary and extraordinary, foreseen and unforeseen of every character (including interest and penalties thereon) which at any time from and after the Effective Date of this Garage Ground Lease may be imposed, levied upon or assessed against or which arise with respect to or constitutes a lien upon the Garage Land, the Garage Project, the leasehold estate created by this Garage Ground Lease or any part thereof, or any estate, right or interest therein or any occupancy, use or possession of or activities conducted by Garage Ground Lessee on the Garage Land or any part thereof. Impositions shall not include any tax computed on the basis of Garage Ground Lessor's net income. Garage Ground Lessee shall pay all interest and penalties imposed upon the late payment of any Impositions that Garage Ground Lessee is obligated to pay hereunder.

With respect to any Impositions which may be levied against the Garage Land or any improvements Garage Ground Lessee constructs on the Garage Land (collectively the "Improvements"), Additional Rent or other sum payable under this Garage Ground Lease, the leasehold estate created by this Garage Ground Lease or otherwise, or which under the Laws then in force may be evidenced by improvement or other bonds or may be paid either in full or in periodic installments, Garage Ground Lessee may elect to pay such Impositions in only the amount of the periodic installments then due (including interest) so long as such payment does not cause the Impositions to become delinquent or allows the Garage Land or the Improvements thereon to be sold for the non-payment of any such Imposition or subject Garage Ground Lessor to penalties, fines or criminal prosecution.

If Garage Ground Lessee fails to pay any Imposition on or before the fifteenth (15th) day prior to the last day upon which the same may be paid without interest or penalties for the late payment thereof, then the Garage Ground Lessor may pay the same with all interest and penalties lawfully imposed upon the late payment thereof. The amounts so paid by Garage Ground Lessor shall be immediately due and payable by Garage Ground Lessee to Garage Ground Lessor hereunder as Additional Rent.

Garage Ground Lessee, at Garage Ground Lessee's sole cost and expense may, in good faith, contest the validity or amount of any Imposition, in which event Garage Ground Lessee may defer the payment thereof while such contest shall be actively and diligently prosecuted and shall be pending undetermined, provided that:

(a) fifteen (15) days before the contested Imposition becomes delinquent by non-payment, Garage Ground Lessee shall deposit and thereafter maintain with



Garage Ground Lessor an amount of money or other security reasonably satisfactory to Garage Ground Lessor sufficient to pay the contested items together with the interest and penalties thereon accruing during such contest. The money shall be held by Garage Ground Lessor, and shall be applied to the payment of such contested item together with interest and penalties thereon, if any, when the amount or amounts thereof have been finally determined;

(b) no provisions of this Garage Ground Lease shall be construed to require Garage Ground Lessor to allow any such contested items to remain unpaid for such length of time as shall permit the Garage Land or the Improvements, or any part thereof or interest therein, to be sold for the nonpayment thereof or the lien thereon created by such contested item to be foreclosed;

(c) deferral of payment and contest of the Impositions will not subject Garage Ground Lessor to criminal prosecution or fine; and

(d) Garage Ground Lessee shall indemnify, protect, defend and hold Garage Ground Lessor and the Garage Land harmless from and against any loss, cost, damage, liability, interest, attorneys' fees and other expenses arising out of such deferral of payment and contest of the Impositions.

At any time prior to or during the pendency of any such contest, Garage Ground Lessor, after written notice to Garage Ground Lessee, may pay out and apply so much of the money deposited by Garage Ground Lessee as may be required to the payment of any Impositions, together with interest and penalties, which, in Garage Ground Lessor's judgment should be paid to prevent the sale of the Garage Land, or the Improvements or any part thereof. To the extent that the amount of money so deposited with Garage Ground Lessor shall be insufficient to fully satisfy and discharge any such Imposition, together with interest and penalties thereon, Garage Ground Lessor may pay the same and the deficiency so paid by Garage Ground Lessor shall be immediately due and payable by Garage Ground Lessee to Garage Ground Lessor as Additional Rent.

**6.2 Utilities.** Prior to the Effective Date, Garage Ground Lessor shall be solely responsible for and shall pay separately for all charges for Utilities used or consumed at the Garage Land. After the Effective Date, Garage Ground Lessee shall be solely responsible for and shall pay separately for all charges for Utilities used or consumed at the Garage Land during the term of this Garage Ground Lease. Except as otherwise provided in the Garage Project Lease, Garage Ground Lessee shall make any necessary arrangements to have all such services or Utilities billed directly to and paid for directly by Garage Ground Lessee. "Utilities" means all utilities and services furnished to the Garage Land, including without limitation, gas, electricity, water, sewer, storm water, garbage collection and telephone service.

Garage Ground Lessor shall not be liable under this Garage Ground Lease for any loss or damage caused by or resulting from any variation, interruption or failure of Utilities or other services due to any cause whatsoever (other than the Garage Ground Lessor's intentional termination or interruption of such Utilities without legal justification), and no temporary interruption or failure of such Utilities or other services incident to the making of repairs, alterations or improvements or due to accident or strike conditions shall be deemed an eviction

of Garage Ground Lessee or relieve Garage Ground Lessee from any of Garage Ground Lessee's obligations hereunder.

## **7. Development of Garage Project.**

**7.1 Construction of Garage Project.** Garage Ground Lessee agrees that Garage Ground Lessee shall cause the Garage Project to be developed, constructed and completed on the Garage Land pursuant to the Garage Project Lease. Garage Ground Lessee shall not permit any development or construction on the Garage Land except as contemplated by the Garage Project Lease or as otherwise specifically approved in writing by Garage Ground Lessor.

**7.2 Ownership of Improvements.** During the Term, the Garage Project and all other improvements on the Garage Land paid for by Garage Ground Lessee shall be owned by Garage Ground Lessee. Upon the expiration or earlier termination of this Garage Ground Lease, including conveyance of the Garage Project to Garage Ground Lessor pursuant to Sections 21 and 22 of the Garage Project Lease, the Garage Project and all other improvements on the Garage Land shall become the property of Garage Ground Lessor.

**8. Liens.** Garage Ground Lessee covenants and agrees that it shall not during the Term of this Garage Ground Lease suffer or permit any Liens to be attached to, upon or against Garage Ground Lessor's fee interest in the Garage Land for any reason, including without limitation Liens related to financing of the Garage Project, Liens arising out of the possession, use, occupancy, acquisition, construction, repair, or rebuilding of the Garage Project or by reason of the furnishing of labor, services, materials, or equipment to the Garage Land. Garage Ground Lessee shall protect, defend, indemnify and hold Garage Ground Lessor harmless from and against all liabilities, losses, damages, expenses and costs (including reasonable attorneys' fees and costs) incurred in connection with any such Lien, which such obligations shall survive the expiration or earlier termination of this Garage Ground Lease.

## **9. Lessee Financing of Garage Project Improvements.**

**9.1 Construction Loan for Garage Project Improvements.** Garage Ground Lessee shall not have the right to mortgage, pledge, encumber or assign its leasehold interest under this Garage Ground Lease or the Garage Project Lease in whole or in part except to the Construction Lender to secure the Construction Loan as defined in and pursuant to the requirements of Section 10 of the Garage Project Lease. The Deed of Trust and any Security Documents executed to secure the Construction Loan shall be and all times remain subject and subordinate to this Garage Ground Lease.

**9.2 Protection of Construction Lender.** If Garage Ground Lessee shall mortgage its leasehold interest under this Garage Ground Lease and the Garage Project Lease in a financing transaction which meets the requirements of Section 10 of the Garage Project Lease, then so long as such Construction Loan and Deed of Trust remain in full force and effect the provisions of Section 10 (Garage Project Lease Landlord Financing of Garage Project; Rights of Construction Lender), Section 24 (Default by Garage Project Lease Landlord) and Section 34.7 (Notices) of the Garage Project Lease shall apply to, and are by this reference incorporated into this Garage Ground Lease as though fully set forth herein.

**9.3 Amendments.** No agreement between Garage Ground Lessor and Garage Ground Lessee modifying, canceling or surrendering this Garage Ground Lease prior to Closing (as defined in the Garage Project Lease) shall be effective without the prior written consent of the Construction Lender.

**9.4 Insurance Clauses.** A standard mortgagee clause naming Construction Lender may be added to any and all insurance policies required to be carried by Garage Ground Lessee hereunder and the Deed of Trust shall so provide.

**9.5 Deed of Trust Not a Prohibited Transfer.** For the purposes of this Section 9, the granting of the Deed of Trust by Garage Ground Lessee to secure a Construction Loan which complies with the requirements of Section 10 the Garage Project Lease shall not be deemed to constitute a prohibited assignment or transfer of this Garage Ground Lease or the leasehold estate hereby created, nor shall Construction Lender, as such, be deemed to be an assignee or transferee of the Garage Ground Lessee's interest under this Garage Ground Lease or of the leasehold estate created hereby so as to require Construction Lender as such to assume the performance of any of the terms, covenants or conditions on the part of the Garage Ground Lessee to be performed prior to foreclosure of the Deed of Trust; provided, however, that upon foreclosure of the Deed of Trust, the Construction Lender or any purchaser at any sale of the Garage Ground Lessee's rights under this Garage Ground Lease in any proceedings for the foreclosure of any Deed of Trust, or the assignee or transferee of the Garage Ground Lessee's rights under this Garage Ground Lease created under any instrument of assignment or transfer in lieu of foreclosure of the Deed of Trust, shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of the Garage Ground Lessee to be performed hereunder from and after the date of such purchase and assignment including any obligation to complete construction of the Garage Project, and shall upon request by Garage Ground Lessor comply with the requirements of Section 10.4 of the Garage Project Lease, including execution of an assumption agreement (or new lease on the same terms and conditions as this Garage Ground Lease and the Garage Project Lease) assuming all rights, duties and obligations of the Garage Ground Lessee under this Garage Ground Lease and the Garage Project Lease (as "Garage Project Lease Landlord" thereto). Any failure by Construction Lender or any such purchaser at any foreclosure sale, or purchaser or assignee of Garage Ground Lessee's interest under this Garage Ground Lease and/or the Garage Project Lease under deed-in-lieu of foreclosure, to execute such an assumption agreement within the time period and in form and substance satisfactory to Garage Ground Lessor as required under the Garage Project Lease shall constitute an Event of Default under this Garage Ground Lease and the Garage Project Lease.

**9.6 Construction Lender's Right to Assign.** Construction Lender, upon acquiring the Garage Ground Lessee's interest under this Garage Ground Lease pursuant to foreclosure, assignment in lieu of foreclosure or other proceedings may, upon acquiring the Garage Ground Lessee's interest under this Garage Ground Lease, or a new lease as provided above and with the written consent of Garage Ground Lessor and compliance with the provisions of Section 10 of the Garage Project Lease, sell and assign such leasehold interest on such terms and to such persons and organizations as are acceptable to Construction Lender and thereafter be relieved of all obligations under this Garage Ground Lease which accrue after the date of such sale or assignment so long as each of the following conditions are met:

(a) There is no default on the part of Construction Lender under this Garage Ground Lease or the Garage Project Lease and no event that with the giving of notice, the passage of time, or both, would constitute an Event of Default under this Garage Ground Lease or the Garage Project Lease and all such defaults having been cured to the reasonable satisfaction of Garage Ground Lessor prior to the effective date of such assignment;

(b) The proposed assignee is either purchasing in an all cash transaction without financing, or has obtained financing which complies with the requirements for a Construction Loan under Section 9 hereof and Section 10 of the Garage Project Lease. In any case where Final Completion of the Garage Project has not occurred, Garage Ground Lessor may also require evidence of financial capacity and/or resources to complete construction of the Garage Project in accordance with the requirements of this Garage Ground Lease and the Garage Project Lease;

(c) As part of such assignment the assignee shall assume the obligations of Garage Ground Lessee under this Garage Ground Lease and Garage Project Lease (as "Garage Project Lease Landlord" thereto) by executing, acknowledging and recording an assumption agreement in form and substance reasonably satisfactory to Garage Ground Lessor. The assignee shall thereafter have all the rights and shall perform all the duties and obligations of Garage Ground Lessee under this Garage Ground Lease and the Garage Project Lease; and

(d) Any such sale or assignment shall not release Construction Lender from any claims or obligations under this Garage Ground Lease or the Garage Project Lease, which arose while Construction Lender or any of its affiliates held the Garage Ground Lessee's interest under this Garage Ground Lease or the Garage Project Lease or was in possession of the Garage Land.

**9.7 No Merger.** So long as the Deed of Trust is in existence, unless the Construction Lender otherwise consents in writing, the fee title to the Garage Land and the leasehold estate of Garage Ground Lessee therein created by this Garage Ground Lease shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said leasehold estate by Garage Ground Lessee or by a third party, by purchase or otherwise. The foregoing shall not apply in the event of termination of this Garage Ground Lease after default by Garage Ground Lessee.

**9.8 No Subordination of Garage Ground Lease.** There shall be no subordination of this Garage Ground Lease to the lien of the Deed of Trust. Upon any foreclosure of Garage Ground Lessee's leasehold interest under this Garage Ground Lease pursuant to a Deed of Trust or a sale of the Garage Ground Lessee's leasehold interest under this Garage Ground Lease pursuant to the trustee's power of sale contained in a Deed of Trust, the Construction Lender shall assume the obligations of Garage Ground Lessee under this Garage Ground Lease and the Garage Project Lease by executing, acknowledging and recording an assumption agreement in form and substance reasonably satisfactory to Garage Ground Lessor. The Construction Lender shall thereafter have all the rights and shall perform all the duties and obligations of Garage Ground Lessee under this Garage Ground Lease and the Garage Project Lease.

**9.9 No Fee Subordination.** Garage Ground Lessor shall not be required to subordinate its interest in the fee estate of the Garage Land to any Deed of Trust.

**10. Indemnity and Insurance.**

**10.1 Ground Lessee's Indemnification.** Garage Ground Lessee shall protect, defend, indemnify, and save harmless Garage Ground Lessor and its officers, officials, employees and agents, from any and all claims, demands, suits, penalties, losses, damages, judgments, or costs of any kind whatsoever (hereinafter "claims"), arising out of or in any way resulting from acts or omissions of Garage Ground Lessee's officers, employees, agents, Contractors and/or subcontractors of all tiers, or the negligence, willful misconduct or breach by Garage Ground Lessee of its obligation under this Lease, to the maximum extent permitted by law, including RCW 4.24.115, as now enacted or as hereinafter amended.

Garage Ground Lessee's obligations under Section 10.1 of this Lease shall include, but not be limited to:

(a) The duty to promptly accept tender of defense and provide defense to Garage Ground Lessor at Garage Ground Lessee's own expense.

(b) The duty to indemnify and defend Garage Ground Lessor from any such claim, demand, and/or cause of action brought by or on behalf of any of Garage Ground Lessee's employees, or agents. The foregoing duty is specifically and expressly intended to constitute a waiver of Garage Ground Lessee's immunity under the Washington Industrial Insurance Act, RCW Title 51, as respects the Garage Ground Lessor only, with a full and complete indemnity and defense of claims made by Garage Ground Lessee's employees. The parties acknowledge that these provisions were mutually negotiated and agreed upon by them.

(c) In the event the Garage Ground Lessor incurs any judgment, award, and/or costs arising from any claim to which it is entitled to be indemnified hereunder, including attorneys' fees, to enforce the provisions of this Section 10.1, all such reasonable fees, expenses, and costs shall be paid by Garage Ground Lessee.

Notwithstanding the provisions contained in this subsection 10.1, Garage Ground Lessee's obligation to indemnify Garage Ground Lessor shall not extend to any claim, demand or cause of action to the extent caused by the negligence, willful misconduct or breach of this Garage Ground Lease by Garage Ground Lessor or its officials, officers or employees.

**10.2 Garage Ground Lessor's Indemnification.** Garage Ground Lessor shall protect, defend, indemnify, and save harmless Garage Ground Lessee and its officers, officials, employees, and agents, from any and all claims, demands, suits, penalties, losses, damages, judgments, or costs of any kind whatsoever (hereinafter "claims"), arising out of or in any way resulting from the negligence or willful misconduct of Garage Ground Lessor's officials, officers or employees acting within the scope of their employment or office or breach by Ground Lessor of its obligations under this Lease, to the maximum extent permitted by law including RCW 4.24.115, as now enacted or as hereinafter amended.

Notwithstanding the previous paragraph contained in this subsection 10.2, Garage Ground Lessor's obligation to indemnify Garage Ground Lessee shall not extend to any claim, demand or cause of action to the extent caused by the negligence, willful misconduct or breach of this Lease by Garage Ground Lessee or its agents or employees.

**10.3 Notice of Claim.** Any party making a claim for indemnification pursuant to this Section 10 (an "Indemnified Party") must give the party from whom indemnification is sought (an "Indemnifying Party") written notice of such claim (an "Indemnification Claim Notice") promptly after the Indemnified Party receives any written notice of any action, lawsuit, proceeding, investigation or other claim (a "proceeding") against or involving the Indemnified Party by a government entity or other third party, or otherwise discovers the liability, obligation or facts giving rise to such claim for indemnification; provided that the failure to notify or delay in notifying an Indemnifying Party will not relieve the Indemnifying Party of its obligations pursuant to this Section 10 except to the extent that the Indemnifying Party's ability to defend against such claim is actually prejudiced thereby. Such notice shall contain a description of the claim and the nature and amount of such loss (to the extent that the nature and amount of such loss is known at such time).

**10.4 Contractors' Indemnification.** Ground Lessee shall include a provision in all Construction Contracts requiring the Contractors to indemnify Ground Lessor, and its officers, officials, employees and agents on terms substantially equivalent to Ground Lessee's indemnification obligations contained in Section 10.1 above, including, without limitation the RCW Title 51 waiver contained in Section 10.1(b).

**10.5 Garage Ground Lessee's Insurance.** Garage Ground Lessee shall, at all times during the Term of this Garage Ground Lease, and in addition to Section 13 of the Garage Project Lease, be subject to the following provisions:

**(a) Property Insurance.** Garage Ground Lessee shall maintain property insurance fully insuring all Garage Project improvements constructed on the Garage Land as well as all of Garage Ground Lessor's personal property and trade fixtures located on the Garage Land against loss or damage by fire and lightning, and insurance against risks customarily covered by extended coverage endorsement, including but not limited to loss by windstorm, hail, explosion, riot, vehicles, smoke damage, vandalism and malicious mischief in amounts sufficient to prevent Garage Ground Lessor from becoming a co-insurer of any loss under the applicable policies, but in any event in amounts not less than the full replacement cost of all buildings, equipment, and other improvements to the Garage Land arising from the Garage Project, including the cost of debris removal. The property insurance policy shall meet the requirements set forth in this Section 10.5 and in applicable sections of the Garage Project Lease.

**(b) General Liability.** Garage Ground Lessee shall maintain commercial general liability insurance, covering the legal liability of Garage Ground Lessee against claims for bodily injury, death or property damage, occurring on, in or about the Garage Land and the Garage Project. The commercial general liability insurance policy shall name Garage Ground Lessor as an additional insured and shall meet the requirements set forth in this Section 10 and in any additional applicable sections of the Garage Project Lease.

(c) **Financially Responsible Insurers.** All of the insurance obtained under this Section 10.5 shall be written by companies which are legally qualified to issue such insurance and which have a Best's rating of no less than A:VIII, or, if not rated by Best's, which have a rating in one of the two highest categories maintained by S&P and Moody's, and shall name Lessor as an additional named insured. Garage Ground Lessor shall be given forty-five (45) days advance notice of any termination or intent to terminate or cancel any policy referred to in this Section 10.

**10.6 Waiver of Subrogation.** Every insurance policy maintained pursuant to Section 10.5 shall provide that the insurer waives all rights of subrogation against a named insured, and any successor to a named insured's interest in the Garage Land or the Garage Project.

**10.7 Evidence of Insurance.** Garage Ground Lessee shall deliver to Garage Ground Lessor prior to the Effective Date of this Garage Ground Lease certificates of insurance evidencing all the insurance which is then required to be maintained by Garage Ground Lessee, and Garage Ground Lessee shall, within forty-five (45) days prior to the expiration of any such insurance, deliver other certificates of insurance evidencing the renewal of such insurance.

## **11. Eminent Domain.**

**11.1 Total Condemnation.** If during the Term but prior to the Final Completion of the Garage Project under the Garage Project Lease there is a taking or damaging of all or any portion of the Garage Land by the exercise of any governmental power, whether by legal proceedings or otherwise by a governmental agency with jurisdiction over the Garage Land or a transfer by Garage Ground Lessor either under threat of condemnation or while legal proceedings for condemnation are pending (a "Condemnation") such that the Garage Project may no longer be constructed in accordance with the Contract Documents as defined in the Garage Project Lease, this Garage Ground Lease and the Garage Project Lease shall terminate, Garage Ground Lessee shall be paid in accordance with Section 19 of the Garage Project Lease and the parties shall have no further obligations hereunder. If there is a Condemnation after the Commencement Date of the Garage Project Lease, such that there can be no reasonable use of the Premises (as defined in the Garage Project Lease) by Garage Ground Lessor, in its capacity as the tenant under the Garage Project Lease as reasonably determined by Garage Ground Lessor, this Garage Ground Lease and the Garage Project Lease shall terminate as of the date the condemnor has the right to possession of the property being condemned, and the condemnation proceeds shall be divided between Garage Ground Lessor and Garage Ground Lessee as provided in Section 19 of the Garage Project Lease.

**11.2 Partial Condemnation.** If during the Term but prior to the Final Completion of the Garage Project under the Garage Project Lease, there is a partial Condemnation of the Garage Land or the Premises, the condemnation proceeds shall be divided between Garage Ground Lessor and Garage Ground Lessee as provided in Section 17 of the Garage Project Lease.

## 12. Events of Default by Garage Ground Lessee and Garage Ground Lessor's Remedies.

**12.1 Events of Default.** A default by Garage Ground Lessee under the Garage Project Lease, the Transit Center Project Lease and/or the Transit Center Ground Lease shall be treated as a default under this Garage Ground Lease and a default under this Garage Ground Lease shall be treated as a default under the Garage Project Lease. To the extent a default by Garage Ground Lessee is not addressed by the Garage Project Lease, or in the event the Garage Project Lease, Transit Center Project Lease and/or Transit Center Ground Lease no longer apply, according to the individual terms thereof, to the Garage Ground Lease, the following occurrences or acts shall constitute an event of default under this Garage Ground Lease:

(a) **Failure to Perform.** If Garage Ground Lessee shall (i) default in making payment when due of any Rent, Additional Rent or any other amount payable by Garage Ground Lessee hereunder which is not cured within seven (7) days after written notice has been given by Garage Ground Lessor to Garage Ground Lessee; or (ii) default in the observance or performance of any other substantial provision of this Garage Ground Lease to be observed or performed by Garage Ground Lessee hereunder, if such default shall continue for thirty (30) days after Garage Ground Lessor shall have given to Garage Ground Lessee written notice specifying such default and demanding that the same be cured, or, with respect to a default under subsection (ii), if by reason of the nature thereof such default cannot be cured by the payment of money and cannot with due diligence be wholly cured within such period of thirty (30) days, if Garage Ground Lessee shall fail to commence to cure such default within such thirty (30) day period or fails to thereafter diligently and continuously prosecute such cure to completion; or

(b) **Garage Ground Lessee's Financial Condition.** Garage Ground Lessee shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other statute or law, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Garage Ground Lessee or Garage Ground Lessee's leasehold interest under this Garage Ground Lease or the Garage Project Lease, or within 60 days after the commencement of any proceeding against Garage Ground Lessee seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy act or any other present or future applicable federal, state or other statute or law, such proceeding shall not have been dismissed or if, within 60 days after the appointment, without the consent or acquiescence of Garage Ground Lessee, of any trustee, receiver or liquidator of Garage Ground Lessee or of Garage Ground Lessee's leasehold interest under this Garage Ground Lease or the Garage Project Lease, such appointment shall not have been vacated or stayed on appeal or otherwise, or if, within 60 days after the expiration of any such stay, such appointment shall not have been vacated.

(c) **Events of Garage Project Lease Landlord Default Under Garage Project Lease.** An uncured default by Garage Ground Lessee pursuant to Section 24 of the Garage Project Lease shall constitute a default under this Garage Ground Lease.



**12.2 Remedies Upon Garage Ground Lessee's Default.** In the event of any default by Garage Ground Lessee as defined hereinabove which default remains uncured after the expiration of the respective period set forth above, unless specifically subject to the notice and cure provisions of Section 24 of the Garage Project Lease, Garage Ground Lessor may exercise any right or remedy which may be available to Garage Ground Lessor under the Garage Project Lease, or at law or equity, including but not limited to actions for damages, and/or injunctive relief, and termination of Garage Ground Lessee's right to possession by any lawful means in which event this Garage Ground Lease and the Garage Project Lease shall terminate and Garage Ground Lease Lessee shall immediately surrender possession of the Garage Land to Garage Ground Lessor.

**12.3 Cumulative Rights and Remedies.** The rights and remedies reserved to Garage Ground Lessor herein, including those not specifically described, shall be cumulative, and except as provided by Washington statutory law in effect at the time, Garage Ground Lessor may pursue any and all such rights and remedies at the same time or independently.

**12.4 No Waiver.** No delay or omission of Garage Ground Lessor to exercise any right or remedy shall, except as expressly provided herein, be construed as a waiver of any such right or remedy or of any default by Garage Ground Lessee hereunder. The acceptance by Garage Ground Lessor of Rent or any Additional Rent hereunder shall not be a waiver of any preceding breach or default by Garage Ground Lessee of any provision hereof, other than the failure of Garage Ground Lessee to pay the particular Rent or Additional Rent accepted, regardless of Garage Ground Lessor's knowledge of such preceding breach or default at the time of acceptance of such Rent or Additional Rent, or, except as expressly set forth herein, a waiver of Garage Ground Lessor's right to exercise any remedy available to Garage Ground Lessor by virtue of such breach or default.

**12.5 Attorneys' Fees.** If either party incurs any expenses, including but not limited to reasonable attorneys' fees, consultant and expert witness fees, in connection with any action or proceeding instituted by any party by reason of any default or alleged default of a party hereunder, the party prevailing in such action or proceeding shall be entitled to recover its reasonable expenses from the other party hereof. For purposes of this provision, in any action or proceeding instituted pertaining to this Garage Ground Lease, a party shall be deemed the prevailing party if (i) judgment is entered substantially in favor of said party or (ii) before trial or judgment the other party shall pay all or any portion of the charges claimed by said party, or the other party shall eliminate the condition(s), cease the act(s) or otherwise cure the omissions(s) claimed by said party to constitute a default by the other party hereunder.

**13. Bankruptcy.** To the extent applicable and in effect, the Garage Project Lease shall control in the event Garage Ground Lessee becomes a Debtor as described in this Section 13. To the extent not applicable or in effect, the following shall control:

**13.1 Assumption of Garage Ground Lease and Garage Project Lease.** If Garage Ground Lessee becomes a Debtor under Chapter 7 of the Bankruptcy Code or a petition for reorganization or adjustment of debts is filed concerning Garage Ground Lessee under Chapters 11 or 13 of the Bankruptcy Code, or a proceeding is filed under Chapter 7 of the Bankruptcy Code and is transferred to Chapters 11 or 13 of the Bankruptcy Code, the

Bankruptcy Trustee or Garage Ground Lessee, as applicable, as Debtor and as Debtor-In-Possession, may not elect to assume this Garage Ground Lease unless, at the time of such assumption, the Bankruptcy Trustee or Garage Ground Lessee has also assumed the Garage Project Lease and the Bankruptcy Trustee or Garage Ground Lessee, as applicable has:

(a) Cured all defaults under the Garage Ground Lease and/or Garage Project Lease (as applicable) and paid all sums due and owing under same, as applicable, or provided Garage Ground Lessor with "Adequate Assurance" (as defined below) that: (i) within ten (10) days from the date of such assumption, the Bankruptcy Trustee or Garage Ground Lessee (as applicable) will completely pay all sums then due and owing under this Garage Ground Lease and/or Garage Project Lease (as applicable) and compensate Garage Ground Lessor for any actual pecuniary loss resulting from any existing default or breach of same (as applicable), including without limitation, Garage Ground Lessor's reasonable costs, expenses, accrued interest, and attorneys' fees incurred as a result of the default or breach; and (ii) within twenty (20) days from the date of such assumption, the Bankruptcy Trustee or Garage Ground Lessee (as applicable) will cure all non-monetary defaults and breaches under this Garage Ground Lease and/or Garage Project Lease (as applicable) or, if the nature of such non-monetary defaults is such that more than twenty (20) days are reasonably required for such cure, that the Bankruptcy Trustee or Garage Ground Lessee (as applicable) will commence to cure such non-monetary defaults within twenty (20) days and thereafter diligently prosecute such cure to completion; and (iii) the assumption will be subject to all of the provisions of this Garage Ground Lease and the Garage Project Lease.

(b) For purposes of this Section 13.1, Garage Ground Lessor and Garage Ground Lessee (as applicable) acknowledge that, in the context of a bankruptcy proceeding involving Garage Ground Lessee (as applicable) at a minimum, "Adequate Assurance" shall mean: (i) the Bankruptcy Trustee or Garage Ground Lessee (as applicable) has and will continue to have sufficient unencumbered assets after the payment of all secured obligations and administrative expenses to assure Garage Ground Lessor that the Bankruptcy Trustee or Garage Ground Lessee (as applicable) will have sufficient funds and/or income to fulfill the obligations of Garage Ground Lessee (as applicable) under this Garage Ground Lease and Garage Project Lease (including Garage Ground Lessee's obligations to construct the Garage Project) and (ii) the Bankruptcy Court shall have entered an order segregating sufficient cash payable to Garage Ground Lessor and/or the Bankruptcy Trustee or Garage Ground Lessee, (as applicable) shall have granted a valid and perfected first lien and security interest and/or mortgage in or on property of Bankruptcy Trustee or Garage Ground Lessee (as applicable) acceptable as to value and kind to Garage Ground Lessor, to secure to Garage Ground Lessor the obligation of the Bankruptcy Trustee or Garage Ground Lessee (as applicable) to cure the monetary and/or non-monetary defaults and breaches under this Garage Ground Lease and the Garage Project Lease within the time periods set forth above.

**13.2 Assignment of Garage Ground Lease and Garage Project Lease.** If the Bankruptcy Trustee or Garage Ground Lessee (as applicable) has assumed this Garage Ground Lease and the Garage Project Lease pursuant to the provisions of this Section 13 for the purpose of assigning Garage Ground Lessee's interest hereunder to any other person or entity, such interest may be assigned only after the Bankruptcy Trustee or Garage Ground Lessee (as applicable) or the proposed assignee has complied with all of the terms, covenants and

conditions of this Garage Ground Lease and Garage Project Lease (as applicable) including, without limitation, those with respect to (a) the Permitted Use of the Premises; (b) the construction of the Garage Project for the Fixed Price; and (c) granting Garage Ground Lessor the option to purchase the Premises at the Option Price set forth in the Garage Project Lease. Garage Ground Lessor and Garage Ground Lessee acknowledge that such terms, covenants and conditions are commercially reasonable in the context of a bankruptcy proceeding of Garage Ground Lessee. Any person or entity to which this Garage Ground Lease and the Garage Project Lease is assigned pursuant to the provisions of the Bankruptcy Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Garage Ground Lease and the Garage Project Lease on and after the date of such assignment. Any such assignee shall upon request execute and deliver to Garage Ground Lessor an instrument confirming such assignment.

**13.3 Adequate Protection.** Upon the filing of a petition by or against Garage Ground Lessee under the Bankruptcy Code, Garage Ground Lessee as Debtor and as Debtor-In-Possession, and any Bankruptcy Trustee who may be appointed agree to adequately protect Garage Ground Lessor as follows: (i) to perform each and every obligation of Garage Ground Lessee under this Garage Ground Lease and the Garage Project Lease until such time as same are either rejected or assumed by Order of the Bankruptcy Court; (ii) to pay all monetary obligations required under this Garage Ground Lease and the Garage Project Lease, including without limitation, the payment of Rent, Additional Rent, Impositions and Utilities and any other sum payable by Garage Ground Lessee, as applicable, under this Garage Ground Lease and the Garage Project Lease which is considered reasonable compensation for the use and occupancy of the Garage Land; (iii) provide Garage Ground Lessor a minimum of thirty (30) days prior written notice, unless a shorter period is agreed to in writing by the parties, of any proceeding relating to any assumption of this Garage Ground Lease or the Garage Project Lease or any intent to abandon the Garage Land, the Premises or Garage Project, which abandonment shall be deemed a rejection of this Garage Ground Lease and the Garage Project Lease; and (iv) to perform for the benefit of Garage Ground Lessor as otherwise required under the Bankruptcy Code. The failure of Garage Ground Lessee to comply with the above shall result in an automatic rejection of this Garage Ground Lease and the Garage Project Lease.

#### **14. Garage Ground Lessee to Comply with Applicable Laws and Agreements.**

**14.1 Compliance with Laws.** Garage Ground Lessee shall not use the Garage Land, Transit Center Land or Housing Land or permit anything to be done in or about the Garage Land, Transit Center Land or Housing Land or Garage Project which will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated. Garage Ground Lessee shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force, and obtain all permits, licenses or other approvals required by governmental agencies or bodies. Garage Ground Lessee shall further comply with the requirements of any board or fire insurance underwriters or other similar bodies now or hereafter constituted, relating to, or affecting the condition, use or occupancy of the Garage Land, Transit Center Land or Housing Land, as context may dictate.

**14.2 Compliance with Agreements.** Garage Ground Lessee and Garage Ground Lessor shall comply with all insurance policies and applicable agreements to which Garage Ground Lessee and/or Garage Ground Lessor, as applicable, is a party or by which it is bound, now or hereafter in effect, and all agreements of which Garage Ground Lessee and/or Garage Ground Lessor has notice and which are now in effect and applicable to the Garage Ground Lease Land, including Federal Transit Authority requirements and the requirements of public agencies awarding grants or loans associated with affordable housing.

**15. Hazardous Substances.**

**15.1 Use.** Garage Ground Lessee, its officers, directors, agents, employees or contractors shall not use the Garage Land in a manner that violates any applicable federal, state or local law, regulation or ordinance, including, but not limited to, any such law, regulation or ordinance pertaining to air and water quality, the handling, transportation, storage, treatment, usage or disposal of Hazardous Substances, air emissions, other environmental matters, and all zoning and other land use matters. Neither Garage Ground Lessee nor Garage Ground Lessor shall not cause or permit the release or disposal of any Hazardous Substances on or from the Garage Land.

**15.2 Indemnity.** Garage Ground Lessee agrees to protect, indemnify, defend (with counsel satisfactory to Garage Ground Lessor) and hold Garage Ground Lessor in its capacity as ground lessor under this Garage Ground Lease and its officers and employees, harmless from any claims, judgments, damages, penalties, fines, expenses, liabilities or losses arising after the Effective Date of this Garage Ground Lease and arising out of or relating to the presence, release or disposal of Hazardous Substances placed or released on the Garage Land during the term of this Garage Ground Lease. Notwithstanding the foregoing, in no event shall Garage Ground Lessee be obligated to indemnify Garage Ground Lessor under this Garage Ground Lease, from any such claims, judgments, damages, penalties, fines, expenses, liabilities or losses relating to the presence, release or disposal of Hazardous Substances that were either (a) present in the soil, groundwater or soil vapor on or under the Garage Land as of the Effective Date of this Garage Ground Lease ("Pre-Existing Hazardous Substances") or (b) released or disposed on or under the Garage Land after the Effective Date by Garage Ground Lessor, its officers or employees, excluding any claim, judgment, damage, penalty, fine, expense, liability or loss resulting from (i) the negligent actions or omissions of Garage Ground Lessee, its general contractor, any subcontractor or their respective agents, employees, contractors, subcontractors or invitees, or (ii) Garage Ground Lessee's breach of any contractual obligation under the Garage Project Lease or this Garage Ground Lease.

The indemnification provided by this Section 15.2 shall also specifically cover, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision or other third party because of the presence or suspected presence of Hazardous Substances in the soil, groundwater, or soil vapor on or under the Garage Land. Such costs may include, but not be limited to, diminution in the value of the Garage Land, damages for the loss or restriction on use of parking stalls or rentable or useable space in any improvements now or hereafter located on the Garage Land, sums paid in settlements of claims,

attorney's fees, consultant's fees and expert fees. This indemnification shall survive the termination of the Garage Project Lease or this Garage Ground Lease.

**15.3 Obligations of Garage Ground Lessor.** Garage Ground Lessor shall be solely responsible for all claims, judgments, damages, penalties, fines, expenses, liabilities or losses relating to the presence, release or disposal of Pre-Existing Hazardous Substances, including without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of the presence or suspected presence of Pre-Existing Hazardous Substances. Such costs may include, but not be limited to, sums paid in settlements of claims, attorney's fees, consultant's fees and expert fees.

**15.4 Remediation of Pre-Existing Hazardous Substances.** If Garage Ground Lessee discovers during construction of the Garage Project that Pre-Existing Hazardous Substances exist in the soil or in the ground water at or originating from the Garage Land, Garage Ground Lessee shall promptly notify Garage Ground Lessor of its discovery of Pre-Existing Hazardous Substances. Garage Ground Lessor shall diligently cause such Pre-Existing Hazardous Substances to be remediated to the applicable cleanup standards under applicable Environmental Laws in light of Garage Ground Lessee's intended lease of the Garage Project to Garage Ground Lessor under the Garage Project Lease for use as a public parking garage. . If either (a) Garage Ground Lessor fails to commence all cleanup, remediation, removal or restoration work required by applicable Environmental Laws within thirty (30) days after receipt of Garage Ground Lessee's notice of its discovery of Pre-Existing Hazardous Substances, or (b) Garage Ground Lessor commences the foregoing work within such thirty (30) day period, but fails to diligently and continuously prosecute all required work to completion, then Garage Ground Lessee may, at its option and upon ten (10) days notice to Garage Ground Lessee, cause such cleanup, remediation, removal or restoration work ("Remediation") to be performed. In such event, and subject in all instances to Garage Ground Lessor's reasonable and timely written approval of Garage Ground Lessee's proposed plan for Remediation (the "Remediation Plan"), Garage Ground Lessor shall promptly reimburse Garage Ground Lessee for all costs reasonably incurred by Garage Ground Lessee pursuant to the Remediation Plan in performing Remediation.

**15.5 Notification Requirements.** Garage Ground Lessee shall promptly notify Garage Ground Lessor in writing of all spills or releases of any Hazardous Substances, all failures to comply, with any federal, state, or local law, regulation or ordinance, all inspections of the Garage Land by any regulatory entity concerning the same, all notices, orders, fines or communications of any kind from any governmental entity or third party that relate to the existence of or potential for environmental pollution of any kind existing on or resulting from the use of the Garage Land or any activity conducted thereon, and all responses or interim cleanup action taken by or proposed to be taken by any government entity or private party on the Garage Land.

Upon request by Garage Ground Lessor, Garage Ground Lessee shall provide Garage Ground Lessor with a written report (a) listing the Hazardous Substances that were used or stored on the Garage Land; (b) discussing all releases of Hazardous Substances that occurred or were discovered on the Garage Land and all compliance activities related to Hazardous Substances, including all contacts with and all requests from third parties for cleanup or

compliance; (c) providing copies of all permits, manifests, business plans, consent agreements or other contracts relating to Hazardous Substances executed or requested during that time period; and (d) including such other information requested by Garage Ground Lessor. The report shall include copies of all documents and correspondence related to such activities and written reports of verbal contacts.

**15.6 Inspection Rights.** Garage Ground Lessor, its officers, employees and agents, shall have the right, but not the duty, to inspect the Garage Land and Garage Ground Lessee's relevant environmental and land use documents at any time and to perform such tests on the Garage Land as are reasonably necessary to determine whether Garage Ground Lessee is complying with the terms of this Garage Ground Lease. If Garage Ground Lessee is not in compliance with this Garage Ground Lease, Garage Ground Lessor, without waiving or releasing any right or remedy it may have with respect to such noncompliance, shall have the right to immediately enter upon the Garage Land to remedy any contamination caused by Garage Ground Lessee's failure to comply notwithstanding any other provision of this Garage Ground Lease. Garage Ground Lessor shall use reasonable efforts to minimize interference with Garage Ground Lessee's business but shall not be liable for any interference caused thereby.

## 16. Notices.

**16.1 Addresses.** All notices, requests, demands, instructions or other documents to be given hereunder to any party shall be in writing and shall either be personally delivered to the party at the appropriate address set forth below (in which event such notice shall be deemed effective only upon such delivery) or delivered by mail, sent by registered or certified mail, return receipt requested, as follows:

If to Garage Ground Lessor:

King County  
Property Services Division  
500 King County Administration Building  
500 Fourth Avenue  
Seattle, WA 98104  
Facsimile: (206) 205-5070

If to Garage Ground Lessee:

Kirkland Park & Ride, LLC  
Attn: Gary A. Young  
11624 SE 5th Street, Suite 200  
Bellevue, WA 98005  
Facsimile: (425) 586-7700

And to: Imagine Housing  
 Attn: Eric Evans  
 10604 NE 38th Place, Suite 215  
 Kirkland, WA 98033  
 Facsimile: (425) 576-5194

And to: [Construction Lender]

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Facsimile: ( ) \_\_\_\_\_

For the purpose of this Section 16, addresses for notice may be changed by giving written notice of such change in the manner herein provided for giving notice. Garage Ground Lessee, Imagine Housing and the Construction Lender are collectively referred to herein as "Garage Ground Lessee Notice Parties". Any notice sent to Garage Ground Lessee under the Garage Ground Lease shall simultaneously be sent to all Garage Ground Lessee Notice Parties.

**17. Assignment and Subleasing.** Garage Ground Lessee shall not assign, transfer or encumber its interest in this Garage Ground Lease, the Garage Project Lease or in the Premises (except to Construction Lender in accordance with the provisions set forth in Section 9 of this Garage Ground Lease and Section 10 of the Garage Project Lease) or sublease the Garage Land or the Premises, in whole or in part, without the prior written consent of Garage Ground Lessor, which consent may be withheld by Garage Ground Lessor in its sole and absolute discretion. Any request by Garage Ground Lessee for such consent shall be in writing which shall set forth the details as to the proposed assignment, mortgage or subletting and have annexed thereto a copy of the proposed assignment, mortgage or sublease. Except as otherwise expressly provided herein, any attempted assignment, transfer, mortgage, encumbrance or subletting without Garage Ground Lessor's consent shall be void and shall constitute a breach of this Garage Ground Lease and the Garage Project Lease. Any transfer of Garage Ground Lessee's interest in this Garage Ground Lease, the Garage Project Lease or in the Premises as a result of merger, consolidation or liquidation shall be deemed to be a prohibited assignment within the meaning of this Section 17.

**18. Miscellaneous.**

**18.1 Time of Essence.** Time is of the essence in regard to performance of the covenants and agreements stated herein.

**18.2 No Joint Venture or Agency.** Nothing contained in this Garage Ground Lease nor any of the acts of the parties hereto shall be construed nor is it the intent of the parties, to create a joint venture or partnership between Garage Ground Lessor and Garage Ground Lessee, nor is either party the agent or representative of the other, and nothing in this Garage Ground Lease shall be construed to create any such agency relationship or to hold either party liable to anyone for goods delivered or services performed at the request of the other party.

**18.3 Amendments.** No change in or addition to or waiver or termination of this Garage Ground Lease any part hereof, shall be valid unless made in writing and signed by or on

behalf of the party charged therewith. Garage Ground Lessor and Garage Ground Lessee agree to negotiate in good faith regarding any amendments to this Garage Ground Lease that may be requested or required by Construction Lender in connection with the financing of the Garage Project.

**18.4 Waiver Limitations.** The waiver by either party of any term, covenant or condition herein contained on the part of the other party to be performed shall not be deemed a waiver of such term, covenant or condition for any subsequent breach of the same or any other term, covenant or condition herein contained.

**18.5 Governing Law.** This Garage Ground Lease shall be construed in accordance with and governed by the laws of the State of Washington.

**18.6 Headings.** The article, section and paragraph headings herein contained are for the purposes of identification and reference convenience only and shall not be considered in construing this Garage Ground Lease.

**18.7 Successors and Assigns.** Subject to the provisions hereof restricting the sublease or assignment by Garage Ground Lessee, all the terms and provisions of this Garage Ground Lease shall be binding upon and to the benefit of and be enforceable by the parties and the successors and assigns of the parties.

**18.8 No Merger.** In no event shall the leasehold interest of Garage Ground Lessee hereunder merge with any estate of Garage Ground Lessor in or to the Garage Land or the leasehold interest of the Garage Ground Lessor as Garage Project Lease Tenant under the Garage Project Lease. In the event that Garage Ground Lessor acquires the leasehold interest of Garage Ground Lessee, such leasehold interest shall not merge with the Garage Ground Lessor's fee interest in the Garage Land or the leasehold interest of Garage Ground Lessor under the Garage Project Lease, and this Garage Ground Lease and the Garage Project Lease shall remain in full force and effect until otherwise terminated pursuant to provisions thereof.

**18.9 Counterparts; Recording of Memorandum.** This Garage Ground Lease may be executed in several counterparts, each of which shall be deemed an original for all purposes. Either Garage Ground Lessor or Garage Ground Lessee shall have the right to record a memorandum of this Garage Ground Lease in a form comparable to that provided in the Garage Project Lease and the parties shall cooperate in execution of such memorandum.

**18.10 Schedule of Exhibits.** This Garage Ground Lease includes the following exhibits attached hereto and incorporated herein by this reference.

- |           |  |
|-----------|--|
| EXHIBIT A | Legal Description and Map of Property  |
| EXHIBIT B | Legal Description and Map of Garage Land (to be attached following completion of Short Plat of Property) |



IN WITNESS WHEREOF, Garage Ground Lessor and Garage Ground Lessee have executed this Garage Ground Lease as of the date set forth in the first paragraph of this Garage Ground Lease to evidence their agreement to the terms of this Garage Ground Lease.

DATED the date first above written.

GARAGE GROUND LESSOR:

**KING COUNTY,**  
a political subdivision of the  
State of Washington

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

GARAGE GROUND LESSEE:

Kirkland Park & Ride, LLC,  
a Washington limited liability company

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

STATE OF WASHINGTON }  
COUNTY OF KING } ss.

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that [he/she] signed this instrument, on oath stated that [he/she] was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of **KING COUNTY**, a political subdivision of the State of Washington, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Printed Name \_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington,  
residing at \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

STATE OF WASHINGTON }  
COUNTY OF KING } ss.

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that s/he signed this instrument, on oath stated that s/he was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of \_\_\_\_\_, LLC, a Washington limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Printed Name \_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington,  
residing at \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION AND DIAGRAM OF PROPERTY**

Certain real property situated in King County, Washington and more particularly described as follows:

All of Lot D of City of Kirkland Short Plat Number 78-8-1, recorded under King County Recording Number 7808281050, in King County, Washington, separated as follows:

**PARCEL A:**

APN 202505-9081-05 (Bellevue):

That portion of Lot D of City of Kirkland Short Plat Number 78-8-1, recorded under King County Recording Number 7808281050, in King County, Washington, lying within the Northwest quarter of the Northeast quarter of Section 20, Township 25 North, Range 5 East, W.M.

**PARCEL B:**

APN 202505-9230-05 (Kirkland):

That portion of Lot D of City of Kirkland Short Plat Number 78-8-1, recorded under King County Recording Number 7808281050, in King County, Washington, lying within the Northeast quarter of the Northwest quarter of Section 20, Township 25 North, Range 5 East, W.M.

**EXHIBIT B**

**LEGAL DESCRIPTION AND DIAGRAM OF GARAGE LAND**

**(To be attached to this Garage Ground Lease following completion of Short Plat of Property)**