

**THE OHIO STATE UNIVERSITY**

Re: Summary of Long-Term Lease and Concession Agreement

The following is a summary of the draft Long-Term Lease and Concession Agreement (the "Agreement") to be entered into by and between the Ohio State University (the "University") and a to-be-determined concessionaire (the "Concessionaire").<sup>1</sup>

**Article I. Definitions and Interpretation.** Article I sets forth the defined terms and certain other rules of interpretation used in the Agreement. The following are certain select definitions relating to this summary:<sup>2</sup>

- A. "Parking Facilities" means the Parking Garages and the Parking Lots.
- B. "Parking Garages" means the parking garages described in Part I of Schedule 3; provided, however, "Parking Garages" shall not include the office spaces indentified on Schedule 17, which the University shall have the right to continue to possess with rights of ingress and egress thereto and therefrom.
- C. "Parking Lots" means the parking lots described in Part II of Schedule 3.
- D. "Parking System" means the parking system consisting of the Parking Facilities, the Street Metered Spaces, the Street Permits Spaces and the Parking System Assets, including (i) the computer systems and software set forth on Schedule 14, (ii) each University Leased Property (until such time as that University Leased Property is no longer leased by the University), and (iii) all improvements of any and every kind whatsoever forming a part of and used in connection with the operation and maintenance of the Parking Facilities, but excluding any interest in the streets, sidewalks, paving or similar real property.
- E. "Parking System Assets" means, (i) as of the time immediately prior to the Time of Closing, the personal property of the University used in connection with operations of the Parking System set forth on Part IV of Schedule 3, and (ii) from and after the Time of Closing, the personal property of the Concessionaire or the Operator used in connection with the operations of the Parking System.
- F. "Street Metered Spaces" means those areas depicted on Part III of Schedule 3.
- G. "Street Permit Spaces" means those areas depicted on Part III of Schedule 3.

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<sup>1</sup> This summary is for convenience only and should not be used in lieu of the Long-Term Lease and Concession Agreement.

<sup>2</sup> Initially capitalized terms used in this memorandum and not otherwise defined herein have the meanings set forth in the Agreement.

**Article II. The Transaction; Closing; Conditions Precedent; Covenants.**

- A. Section 2.1: Grant of Concession. At Closing, the Concessionaire shall pay the University \$[\_\_\_\_\_] in exchange for (i) a 50-year lease of the Parking Facilities, (ii) the granting of the right to (A) operate the Parking System and to provide Parking Services, including the use, possession, operation, management, maintenance and rehabilitation of the Parking System, (B) charge the Parking Fees, (C) charge, collect and retain the Parking Revenue and (D) charge, collect and retain the Parking Violation Revenues and retain a portion thereof to compensate the Enforcement Operator, and (iii) the conveyance of the Parking System Assets.
- B. Section 2.2: Closing. Upon receipt of the Closing Consideration, the University shall cancel and return the Closing Deposit and Cash Deposit. All revenues, charges, costs and expenses with respect to Assumed Liabilities shall be prorated between the University and the Concessionaire as of 11:59 p.m. on the day immediately preceding the Closing Date. A change in one basis point in the 30 year mid-market LIBOR swap rate will be reflected by a change of 1/25 of 1% in the Closing Consideration, provided that such change shall not be in excess of 2% without the prior written consent of the Party paying the change.
- C. Section 2.3: Deposit. Concessionaire pays to the University a Cash Deposit or Letter of Credit in an amount of \$40 million, which such deposit shall be retained by the University if the Agreement is terminated for failure of any of the conditions precedent to the University's obligation to close the Transaction.
- D. Section 2.4: Conditions Precedent; Termination. This section sets forth the conditions precedent to each Party's obligation to close the Transaction, as well as the termination rights of both Parties. The conditions precedent are standard for a transaction of this nature including the requirement that the University Transportation and Parking Regulations be amended to allow for the Enforcement Operator. The Agreement may be terminated prior to Closing:
1. by mutual consent of the University and the Concessionaire;
  2. by either the University or the Concessionaire if any Governmental Authority shall have issued an order permanently restraining the Transaction;
  3. by the Concessionaire if any condition precedent to the Concessionaire's obligation to close set forth in Section 2.4(a) is not satisfied;
  4. by the University if any condition precedent to the University's obligation to close set forth in Section 2.4(b) is not satisfied; or
  5. by either the University or the Concessionaire if the Closing has not occurred within 120 days of execution of the Concession Agreement.

- E. Section 2.5: Covenants. This section sets forth certain standard covenants and obligations of the Parties during the period between execution of the Agreement and Closing (the "Closing Period"). This section also sets forth (A) a requirement for the University to provide, upon Concessionaire's request, the services of its employees to Concessionaire for six months following Closing, which such costs shall be borne by the Concessionaire; (B) a requirement for Concessionaire to make known all terms and conditions of employment to University Parking System Employees and to use its best efforts to interview all such employees that apply for potential employment ten Business Days prior to Closing, which any such employment would be at the discretion of the Concessionaire; (C) a requirement that the Parties use commercially reasonable efforts to enter into a lease agreement for office space within the Competing Parking Area for use by the Concessionaire; (D) a requirement that the University assign over all contracts relating to the rehabilitation of the 12th Avenue Garage at Closing and that if such rehabilitation is not completed by December 31, 2012, that such failure shall be a Compensation Event; and (E) a requirement that the University construct 1,400 Parking Spaces within the Competing Parking Area that shall be deemed part of the Parking Facilities.
- F. Section 2.6: Intended Treatment for Federal and State Income Tax Purposes. This section sets forth the intended tax treatment of the Transaction for federal and state income tax purposes.
- G. Section 2.7: Closing Deliveries. At Closing, each Party shall execute and deliver all Documents necessary to effect the Transaction.
- H. Section 2.8: Memorandum of Lease. At Closing, the Parties shall execute and deliver the Memorandum of Lease, which shall be recorded with the Franklin County Recorder.

**Article III. Terms of the Concession.**

- A. Section 3.1: Quiet Enjoyment and Present Condition. The Concessionaire shall be entitled to quiet enjoyment of the Parking System, and the Concessionaire's rights to use the Parking System are subject to the right of the University to monitor compliance with this Agreement to ensure that the Parking System is used and operated as required by the Agreement. Concessionaire agrees to accept the Parking System "AS IS" and acknowledges that it has inspected the Parking System, is aware of its condition and acknowledges that the University makes no representation regarding the condition of the Parking System.
- B. Section 3.2: Parking System Operations.
  - 1. This section states that Concessionaire shall be responsible for all aspects of the Parking System Operations during the Term, including costs, expenses, debts, liabilities and other obligations relating to the Parking System.

2. Additionally, Concessionaire (through the Enforcement Operator) and the University's personnel shall have the exclusive right to administer Parking Enforcement, and the Concessionaire will be responsible for the adjudication related thereto. Concessionaire will collect and retain all Parking Violation Revenue, and the Concessionaire, at the end of each Permit Year, will pay to the University the amount of the Parking Violation Revenue less the costs of collection and adjudication, of equipment purchased and maintained to reduce the cost of Parking Enforcement and of the Enforcement Operator's compensation. The University shall use commercially reasonable means to assist in the collection of Parking Violation Revenue, including conditioning the release of student transcripts and diplomas on the payment of Parking Violations Revenue owed.
  3. This section also provides a grant to the Concessionaire of a right of entry and access to the Public Way, agreement by the Parties to meet annually to discuss enhancements to Parking System Operations, and an agreement to allow the University to continue to operate valet parking services at the level as of the Bid Date.
- C. Section 3.3: Operator. Parking System Operations shall be under the direction and supervision of an experienced operator (the "Operator"). Concessionaire shall not replace Operator without approval of the University. If the Operator fails to operate the Parking System in compliance with the Operating Standards after 30 days notice to the Concessionaire, then the University may cure such failure and direct that Concessionaire remove the Operator, provided that if three such failures occur within a 12-month rolling period, the University may direct that Concessionaire remove the Operator without notice. Upon the University's direction to remove the Operator, if the Operator cures the failure within 45 days, the Concessionaire need not remove the Operator.
- D. Section 3.4: Authorizations; Qualifications. Concessionaire shall obtain and maintain all Authorizations necessary to operate the Parking System and shall maintain its existence and all qualifications necessary to carry on the Parking System Operations.
- E. Section 3.5: No Encumbrances. Neither the University nor the Concessionaire shall do any act that would create any Encumbrance against the Parking System. Each party shall use reasonable efforts to assist the other Party in attempting to remove any Encumbrance that comes into existence as a result of an act or omission by such other Party.
- F. Section 3.6: Single Purpose Covenants. Concessionaire shall be formed solely for purpose of owning the Concessionaire Interest and shall not engage in any unrelated business or possess any unrelated assets.

- G. Section 3.7: Rights of the University to Access and Perform Work on the Parking System and Utilize Space for Renewable Energy Resources. The University reserves the right to enter and have access to the Parking Facilities in order to inspect the Parking System, make necessary repairs in the event of any Concessionaire Default, install safety measures, rehabilitate or construct Affected Property, and install or maintain utilities, among other things. The University also reserves the right to use portions of the Parking Facilities for installation of renewable energy apparatus. The University shall not be obligated to pay Concession Compensation for access to inspect the Parking System, make necessary repairs in the event of Concessionaire default or in the event of an emergency. The University shall not have access to the cash collections or other intangibles of the Concessionaire.
- H. Section 3.8: Payment of Taxes. Concessionaire shall pay Taxes payable in respect of use or operations of the Parking System, provided, however, the University shall pay when due any Property Tax. Any sales tax attributable to Parking Fees may be passed through to the users and shall not be considered for calculating rate adjustments.
- I. Section 3.9: Utilities. Concessionaire shall pay when due all charges for gas, electricity, light, heat, power, telephone, waters and other utilities and services used in the Parking System, except the University shall be responsible for all stormwater charges.
- J. Section 3.10: Notices of Defaults and Claims. Concessionaire and the University shall promptly notify the other party of any Defaults of which it becomes aware, as well as any material claims, proceedings, disputes or litigation that arise.
- K. Section 3.11: Assignment of Operating Agreements and Plans. At the request of the University, Concessionaire shall collaterally assign to the University all of its right under the Operating Agreement and future plans relating to the Parking System Operations. The Operating Agreements and Plans to be assigned can also be assigned as security to a Leasehold Mortgage, provided that if the Leasehold Mortgagee is enforcing its security interest, the University shall not be entitled to use the Operating Agreements and Plans in enforcing its security.
- L. Section 3.12: Use of Information and Records. The University shall be entitled to access all reasonable records, electronic data and other information collected by Concessionaire to the extent needed by the University in connection with enforcement of parking regulations, identification of Parking Violations, imposition of fines and adjudication of cases. Concessionaire shall be entitled to access all reasonable records, electronic data and other information collected by the University to the extent reasonably required for Concessionaire's performance of its obligations, provided that Concessionaire shall keep such information confidential.

- M. Section 3.13: Parking System Assets. Concessionaire shall maintain and operate the Parking System in accordance with the Operating Standards. Concessionaire will inspect the Parking System Assets and promptly repair and defects.
- N. Section 3.14: Payments by the University. Concessionaire agrees that if the University is required by Law to withhold a portion of any payment that the University is obligated to make to the Concessionaire under the Agreement, the University will be deemed to have satisfied such payment to Concessionaire to the extent of such withholding by the University.
- O. Section 3.15: Naming Rights Other Revenue Activities and Commercial Advertisements and Activities. The University retains exclusive naming rights with respect to the Parking System, including the right to sell or lease any naming rights for the Parking System. The University shall not change the names of any Parking Garages and the Parking System or grant any third party the right to change such names without the prior consent of the Concessionaire. Additionally, Concessionaire shall neither conduct nor permit any commercial activities in the Parking System. The University grants the Concessionaire a license during the Term to use the name of the Parking System along with its trademarks.
- P. Section 3.16: Reversion of Parking System. On the Reversion Date, Concessionaire shall return to the University the Parking System.
- Q. Section 3.17: Police, Fire, Emergency, and Public Safety Access Rights. Any police, fire, and other emergency and security personnel retained by the University shall have access to the Parking System.
- R. Section 3.18: Negotiations with Governmental Authorities. Prior to entering into any agreement with a Governmental Authority that could extend beyond the Term of the Concession to which the University may incur liability, the Concessionaire shall submit such agreement for Approval by the University (which Approval may be withheld in the sole discretion of the University).
- S. Section 3.19: Administration of the Public Way. Concessionaire acknowledges and accepts that the University (depending on whether the University has responsibility for controlling streets and rights of way) will hold and administer the public way. Any action by the University with respect to streets controlled by University that materially restricts access to a Parking Garage or Parking Lot or results in reduction of Parking Revenue above \$100,000 (Adjusted for Inflation) will be a Compensation Event.
- T. Section 3.20: Air Rights. The University reserves, and does not lease to Concessionaire, the air rights of all of the Parking Facilities.
- U. Section 3.21: Ongoing Ancillary Services: The University shall continue to operate ancillary parking services, to include such items as remote bus services, as described in Schedule 19. The failure to provide such services shall constitute a Compensation Event.

**Article IV. Capital Improvements.**

- A. Section 4.1: Concessionaire Responsibility for Capital Improvements. Concessionaire shall be responsible for all capital improvements with respect to the Parking System, including those listed on Schedule 12.
- B. Section 4.2: Authorizations Related to Capital Improvements. Concessionaire's obligation to perform Capital Improvements shall be subject to the issuance by the Governmental Authorities and the University of any and all Authorizations.
- C. Section 4.3: University Responsibility for Capital Improvements. The University shall maintain and repair any sidewalks and roads constituting Affected Property under the jurisdiction of the University that provide access to the Parking System in a manner consistent with the Operating Standards.
- D. Section 4.4: Required Payment Options. Any Parking Space with Parking Fees of \$1.00 or more per hour must have multiple payment options, including cash, debit/ATM card and credit card.

**Article V. Modifications.**

- A. Section 5.1: University Directives. The University may issue a directive to perform work on the Parking System (a "University Directive") to the Concessionaire at any time during the Term. Parking Garages or Parking Lots constructed as the result of a University Directive become part of the Parking System to be operated by Concessionaire, and the University shall pay any Concession Compensation with respect thereto.
- B. Section 5.2: Other Construction. The University may construct additional parking garages, parking lots or other parking facilities in the Competing Parking Area. However, prior to the construction of any parking garage, parking lots or other parking facility that is not part of a larger structure or development, the University must provide Concessionaire with the option to perform such work. If Concessionaire wishes to accept the obligation to perform such work, Concessionaire bears the cost, and the parking garage or lot become part of this Agreement. If Concessionaire elects not perform the work, the University has the option to include or exclude such parking garage or lot from this Agreement.
- C. Section 5.3: Concessionaire Requests. Concessionaire must get University approval to make material changes in the dimensions, character, quality or location of any part of the Parking System, provided that a Concessionaire Request will not be required to install gates and other equipment in ensuring such Parking Facility is a closed-access Parking Facility.
- D. Section 5.4: Performance of Modifications. Concessionaire shall ensure that University Directives and Approved Concessionaire Requests are performed in a good and workmanlike manner.

**Article VI. Operating Standards.**

- A. Section 6.1: Compliance with Operating Standards. Concessionaire shall, at all times during the Term, cause the Parking System Operations to comply with the Operating Standards in all material respects.
- B. Section 6.2: Proposed Operating Standards. If the Concessionaire wishes to use operating standards other than the Operating Standards, the Concessionaire must provide notice of such proposed operating standards to the University for Approval.
- C. Section 6.3: Modified Operating Standards. The University has the right to modify the Operating Standards, provided that if such modification is not made in order to comply with law or in accordance with operating standards at Comparable Parking Facilities, the Concessionaire may be entitled to Concession Compensation but only if the amount of Concession Compensation claimed exceeds \$100,000 Adjusted for Inflation during a 360 Day consecutive period.

**Article VII. Revenues, Designation of Permits and Spaces and Closure of Parking Spaces.**

- A. Section 7.1: Schedule of Parking Fees. Parking Fees that may be charged over the Term will be listed in Schedule 5. Concessionaire shall have the right to collect the Parking Fees as well as revenue resulting from parking violations. To the extent Concessionaire wishes to change the Schedule of Parking Fees, Concessionaire must submit such changes to the Parking Advisory Committee for its approval.
- B. Section 7.2: Changes to Permits or Parking Spaces.
  - 1. The University has designated certain Classes of Permits. Prior to the beginning of the Permit Year, the University may change the Classes of Permits. The University may not limit the number of a Class of Permit sold provided that the University can limit the number of a Permit Sub Class based on the availability of Parking Spaces, provided that any limitation by the University on the number of Permits sold shall be a Compensation Event.
  - 2. The University has the right to designate, temporarily close or remove Parking Spaces, provided that any such temporary closures shall be a Compensation Event if not done in response to the Concessionaire's acts or omissions and if it results in a reduction of Parking Revenue of \$100,000 during a 360-day period Adjusted for Inflation.
  - 3. The University has the right to designate new Street Metered Parking Spaces, and the University shall pay any Concession Compensation associated with the installation of Parking Meters associated with those Street Metered Parking Spaces.



4. A Parking Space is deemed to be "permanently removed" by the University upon a written designation by the University or a continuous one year closure by the University.
  5. To the extent Concessionaire wishes to change the designation of Parking Spaces or Permit Classes, Concessionaire must submit such changes to the Parking Advisory Committee for its approval, provided that the Concessionaire may temporarily designate Permit spaces as "transient" or Metered Parking Spaces without the University's consent, as long as such action does not result in the non-availability of Parking Spaces for Permit users entitled to use such Parking Facility. The University may also change the designation of Parking Spaces or Permits Classes provided that any change shall be a Compensation Event.
- C. Section 7.3: Notice. If the University wishes to remove any space, it must provide written notice thereof to the Concessionaire.
- D. Section 7.4: Payments for Permanent Removal. The University may remove up to 2,200 Parking Spaces used for Permit parking during the Term, as described in Schedule 20, without having to pay Concession Compensation. The Permanent Removal of Parking Spaces beyond 2,200 shall result in a Compensation Event, provided that any Concession Compensation shall take into account Additional Parking Spaces added during the Term. If a Permanent Removal results in less than the sum of 27,000 Parking Spaces in the Parking System and 75% of the Parking Spaces added during the Term, the Concessionaire may decide to treat that as (i) an Adverse Action which results in a termination of the Agreement and the obligation of the University to pay the Concessionaire the fair market value of the remaining Term or (ii) a continued Compensation Event.
- E. Section 7.5: Special Events and Global Events.
- F. 1. *Special Events.* The University may temporarily close, take over the use of, or reduce or prohibit Parking Fees to be charged with respect to, all or any portion of the Parking System for Special Events. Permitted Special Events will be listed on Schedule 10, and the University shall have the right to modify Schedule 10 prior to each Permit Year. To the extent that the University does not have knowledge of a Special Event prior to the applicable Permit Year, the University must provide notice to the Concessionaire in advance of the Special Event promptly after the University becomes aware of such Special Event. Any portions of the Parking System affected by the Special Event shall be operated by the Concessionaire, and the University shall reimburse the Concessionaire for its out-of-pocket cost associated with the Special Event beyond those operating expenses that the Concessionaire would have been required to provide absent the Special Event. If there is a Special Event at the Schottenstein Center, the Concessionaire shall continue to operate the affected portion of the Parking System, and the University shall be entitled to the revenue derived therefrom;

provided that the University shall reimburse the Concessionaire for its out-of-pocket cost plus 10% associated with the Special Event.

- G. 2. *Global Events.* The University may designate up to 20 Global Events in each Permit Year during which the University may temporarily close, take over the use of, or reduce or prohibit Parking Fees to be charged with respect to all or any portion of the Parking System. The University shall notify the Concessionaire of Global Events of which it has knowledge prior to each Permit Year. To the extent that the University does not have knowledge of a Global Event prior to the applicable Permit Year, the University shall provide notice to the Concessionaire in advance of the Global Event promptly after the University becomes aware of such Global Event. The closure of Parking Spaces during the Global Event shall not constitute a Compensation Event. Any portions of the Parking System affected by a Global Event shall continue to be operated by the Concessionaire during such Global Event, and the University shall reimburse the Concessionaire for the direct out-of-pocket cost associated with the Global Event, provided that the University shall retain any revenue therefrom, including fees associated with the Parking System. The University may designate certain Parking Facilities as not being used during a particular Global Event, in which case the Concessionaire shall operate those Parking Facilities, provided any revenue received by Concessionaire shall be set off against any amount owed to Concessionaire by University under this Concession Agreement.
- H. Section 7.6: Additional Parking Spaces. The University may designate additional Parking Spaces as a University Directive and such spaces shall become part of the Parking System.
- I. Section 7.7: Changes in Parking Rules, Regulations and Adjudication. Any material change to the Enforcement Policies and Procedures not approved by the Concessionaire, shall result in a Compensation Event.
- J. Section 7.8: Increases in Parking Fees. The University and Concessionaire shall negotiate in good faith the allocation of any increase in Parking Revenue resulting from increases in fees other than provided for in Schedule 5.
- K. Section 7.9: Right to Challenge. Any disagreement by the Parties with respect to this Article 7 shall be subject to dispute resolution.
- L. Section 7.10: Mitigation of Temporary Closure: Concessionaire shall provide the University 30 days' notice prior to any temporary closure of any Parking Facility, and both parties will negotiate in good faith to mitigate the effects of such temporary closure.

### **Article VIII. Reporting; Audits; Inspections.**

- A. Section 8.1: Reports. Concessionaire shall provide notice to the University of all emergencies, including environmental incidents, within 12 hours. Concessionaire also must provide notice to the University of all claims in excess of \$25,000

Adjusted for Inflation made by or against the Concessionaire. Concessionaire shall deliver to university audited financial reports within 120 days of the end of each Year.

- B. Section 8.2: Information. At the request of the University, and at the Concessionaire's cost and expense, the Concessionaire shall make available all Information relating to the Parking System but not more frequently than once a quarter, and the University shall keep confidential any such Information that constitutes trade secrets or commercial or financial Information.
- C. Section 8.3: Inspection; Audit and Review Rights of the University. The University, upon ten business days' notice, may carry out an Audit and Review of the Information required to be maintained by Concessionaire under this Agreement. The University shall also have access to the Parking System for inspection and testing.
- D. Section 8.4: Audits, Assistance, Inspections and Approvals. Any reference to University providing assistance to the Concessionaire performing an Audit shall not relieve the Concessionaire from any liability under this Agreement.

**Article IX. Representations and Warranties.**

- A. Section 9.1: Representations and Warranties of the University. The Agreement contains representations and warranties typical for the nature of this transaction, which include the following: (i) organization; (ii) power and authority; (iii) enforceability; (iv) title; (v) no conflicts; (vi) consents; (vii) compliance with law; (viii) litigation; (ix) environmental matters; (x) financial information; (xi) Parking System Contracts; (xii) absence of changes; (xiii) brokers; (xiv) accuracy of information; (xv) Permits; (xvi) Excluded Lease Property; and (xvii) University Leased Property.
- B. Section 9.2: Representations and Warranties of the Concessionaire. The Agreement contains representations and warranties typical for the nature of this transaction and include the following: (i) organization; (ii) power and authority; (iii) enforceability; (iv) no conflicts; (v) consents; (vi) compliance with law; (vii) litigation; (viii) accuracy of information; (ix) representations regarding the Operator; and (x) brokers.
- C. Section 9.3: Non-Waiver. No investigations made by or on behalf of any Party shall have the effect of waiving any representation or warranty made by the other Party.
- D. Section 9.4: Survival. Representations and warranties survive for 24 months except for those listed in this Summary in 9.1(i) – (ix) and 9.2(i) – (ix) which shall last indefinitely.

**Article X. Finance Obligations.**

- A. Section 10.1: Concessionaire's Obligations. Concessionaire shall be responsible for obtaining any financing for the performance of its obligations under the Agreement.
- B. Section 10.2: University's Obligations. The University shall, at the sole cost and expense of the Concessionaire, cooperate with the Concessionaire with respect to documentation reasonably necessary to obtain financing.
- C. Section 10.3: Concessionaire's Obligation for Estoppel Certificates. Concessionaire shall, upon the request of the University, execute and deliver standard consents and estoppel certificates with respect to the Agreement which may be qualified to the best of the knowledge and belief of a designated Representative of the Concessionaire.
- D. Section 10.4: Prohibited Tax Shelter Transactions. Concessionaire agrees that it will not enter into any lease or any other arrangement / transaction that would cause the University to become a party to a “prohibited tax shelter transaction” within the meaning of Section 4965 of the Internal Revenue Code of 1986.

**Article XI. Compliance.**

- A. Section 11.1: Compliance with Laws. Concessionaire must observe and comply with all applicable Laws and must notify the University within seven days after receiving notice from a Governmental Authority that the Concessionaire may have violated any Laws.
- B. Section 11.2: Non-Discrimination. The Concessionaire shall comply with all applicable federal, state and local Laws regarding non-discrimination and shall cause all Contractors to do the same.
- C. Section 11.3: Compliance with Wage and Hour Laws. The Concessionaire shall comply with all applicable Laws governing employment and/or employee wages and hours.
- D. Section 11.4: Non-Collusion. Concessionaire swears that it is the contracting party, and that it has not entered into any combination, collusion or agreement to receive or pay any money for the execution of the Agreement other than that called for by the Agreement.
- E. Section 11.5: Conflict of Interest. Concessionaire certifies that neither it nor any of its representatives has or will have any conflict of interest, direct or indirect, with the University during the performance of the Agreement.
- F. Section 11.6: Drug-Free Workplace Certification. Concessionaire agrees to make a good faith effort to provide and maintain a drug-free workplace. Concessionaire shall notify the University within 10 days after receiving actual notice that

Concessionaire or its employees have been convicted of a criminal drug violation in the Concessionaire's workplace.

- G. Section 11.7: Minority-Owned and Women-Owned Business Enterprises. Concessionaire is required to use good faith efforts to obtain the participation of M.B.E./W.B.E. in its Parking System Operations.
- H. Section 11.8: Financial and Audit Standards. Concessionaire shall observe and comply, in all material respects, with GAAP.

**Article XII. Payment Obligations.**

- A. Section 12.1: Certain Payment Obligations of the Concessionaire. Concessionaire has a payment obligation to the University and its Representatives for losses related to various items including (i) breach of representations and covenants, (ii) Assumed Liabilities, (iii) Taxes attributable to the Transfer, and (iv) brokerage fees.
- B. Section 12.2: Certain Payment Obligations of the University. Without limiting any other remedy available under this Agreement, University has a payment obligation to the Concessionaire and its Representatives for losses related to various items including (i) breach of representations and covenants, (ii) Excluded Liabilities, and (iii) brokerage fees.
- C. Section 12.3: Agency for Representatives. University and Concessionaire accept such payment obligation in favor of each of its Representatives as agent for such Representatives, which, in the case of Concessionaire, includes Leasehold Mortgagee.
- D. Section 12.4: Third Party Claims. Sets forth the procedure for Third Party Claims.
- E. Section 12.5: Direct Claims. Sets forth the procedure for Direct Claims.
- F. Section 12.6: Failure to Give Timely Notice. Failure to provide notice properly may relieve the Obligor from paying certain losses.
- G. Section 12.7: Reductions and Subrogation. If, after receiving a payment, a Loss is reduced by insurance or otherwise, the Obligee shall reimburse the Obligor.
- H. Section 12.8: Payment and Interest. All amounts owned under this Article 12 shall bear interest.
- I. Section 12.9: Limitation on Certain Claims. The maximum liability of the University, without limiting any other remedy under the Agreement, shall not exceed 50% of the Closing Consideration, but such limits shall not apply to breaches of certain fundamental representations and warranties or to claims for fraud, intentional misrepresentation or intentional breach. The maximum liability

of the Concessionaire, without limiting any other remedy under the Agreement, shall not exceed 50% of the Closing Consideration, but such limits shall not apply to breaches of certain fundamental representations and warranties or to claims for fraud, intentional misrepresentation or intentional breach

- J. Section 12.10: Other Matters. With respect to claims by Concessionaire's employees, the Concessionaire waives its immunity to which it would be entitled under worker's compensation law. Any Losses for which Obligor may be liable shall be net of amounts recovered under insurance policies.
- K. Section 12.11: Offset Rights; Limitations on Certain Damages. Each Party's payment obligations shall be subject to its defense and offset rights. No party is liable for indirect or consequential damages.
- L. Section 12.12: Governmental Immunity. The University shall not waive its rights and privileges pursuant to its governmental immunity.
- M. Section 12.13: Survival. The indemnity provisions survive the termination of the Agreement.

**Article XIII. Insurance.**

- A. Section 13.1: Insurance Coverage Required. Concessionaire is required to provide and maintain insurance coverages typical for this nature of transaction, including (i) workers' compensation and employer's liability; (ii) commercial general liability; (iii) automobile liability; (iv) garage liability; (v) builder's risk; (vi) professional liability; (vii) property; (viii) and railroad protective liability.
- B. Section 13.2: Additional Requirements. Concessionaire must provide original Certificates of Insurance evidencing the Required Coverages within 5 business days following renewal and must provide 60 days' notice in the event coverage is canceled. Certain other additional insurance requirements are set forth that are typical for this nature of transaction, including the provision that if any of the Required Coverages are not available on a commercially reasonable basis, the Concessionaire may obtain insurance that best approximates the Required Coverages, subject to the University's approval.
- C. Section 13.3: Damage and Destruction. If part of any of the Parking System is destroyed or damaged by tornado or other casualty of any kind, the Concessionaire shall (i) give the University notice; (ii) proceed diligently to repair the same; and (iii) deposit all insurance proceeds received with a Depository for approved distributions to the Concessionaire (only if the Restoration costs exceed \$1 million). Prior to any Restoration work, the Concessionaire must submit such plans to the University for approval.

**Article XIV. Adverse Actions.** An Adverse Action is an action taken by the University that significantly diminishes the value of the Concession to the Concessionaire and is action that is (i) principally borne by Concessionaire and (ii) has a material

adverse effect on the fair market value of the Concessionaire Interest, but the following are NOT Adverse Actions (A) development of a new parking facility by the University, (B) new State or Federal Taxes, or (C) subject to Article 7, the addition or removal of Parking Spaces. In the event an Adverse Action occurs, the Concessionaire may, at its election, either (i) receive Concession Compensation (the value of the loss); or (ii) terminate the Agreement and receive the fair market value of the Concession for the remainder of the Term. If the University wishes to remedy the Adverse Action, it shall provide notice within 30 days and remedy the Adverse Action within 120 days.

**Article XV. Delay Events and Concession Compensation.**

- A. Section 15.1: Delay Events. A Delay Event is an event such as Force Majeure and other limited events beyond the Concessionaire's reasonable control that cause a delay to by the Concessionaire in performing its obligations. In the event that Concessionaire is affected by a Delay Event it must provide notice to the University and the Concessionaire receives an extension of time to perform the obligation for which it was delayed. If the Delay Event exceeds 120 continuous days (or 120 days in total during a 360 day period) and it results in a Material Adverse Effect, then the Concessionaire shall have the right to extend the Term for a period of time sufficient to compensate the Concessionaire and to restore it to the same economic position as it would have been in had such Delay Event not occurred, provided that the Term shall not be extended to the extent it would subject either Party to a leasehold tax or conveyance fee.
- B. Section 15.2: Relationship to Compensation Event. The Concessionaire may also receive Concession Compensation for a Delay Event if the Concession Agreement separately provides for Concession Compensation to be paid.
- C. Section 15.3: Notice of Compensation Events: If a Compensation Event occurs, Concessionaire shall give the University notice within 30 days, provided that such failure to give notice shall not limit the remedies unless such delay materially prejudices the University.
- D. Section 15.4: Incremental Payments of Concession Compensation: Sets forth the procedure for determination and payment of Settlement Compensation during the Permit Year when the Concession Compensation Balance exceeds \$1 million.
- E. Section 15.4: Settlement Compensation: Sets forth the procedure for determination and payment of Settlement Compensation at the end of the Permit Year, including the procedure related to the Negative Concession Compensation Balance whereby if the University has paid more Concession Compensation than required, the University can either use that negative balance as a credit against future Concession Compensation or demand payment from Concessionaire under certain circumstances.

**Article XVI. Defaults; Letters of Credit.**

- A. Section 16.1: Default by the Concessionaire. This section sets forth (i) the events that constitute a "Concessionaire Default" under the Agreement. Such events are typical for this nature of transaction and include, among other things, (A) failing to comply with covenants, (B) transferring its interest, (C) failing to comply with requirements of a final award resulting from dispute resolution, and (D) admitting that it is unable to pay its debts or otherwise files bankruptcy; and (ii) the remedies of the University upon a Concessionaire Default.
- B. Section 16.2: Default by the University. This section sets forth (i) the events that constitute a "University Default" under the Agreement. Such events are typical for this nature of transaction and include, among other things, (A) failing to comply with covenants, (B) failing to comply with requirements of a final award resulting from dispute resolution, and (C) admitting that it is unable to pay its debts or otherwise files bankruptcy; and (ii) the remedies of the University upon a Concessionaire Default. A University Default shall not include any failure to perform obligations as a result of Force Majeure.
- C. Section 16.3: Letters of Credit. Concessionaire shall deliver five years prior to the final Concession Year, a Letter of Credit or cash deposit in the amount that the University determines is appropriate to cover all costs of Capital Improvements for the remainder of the Term. Such Letter of Credit shall be replaced on every anniversary of such Concession Year until the date that is at least two years after the expiration of the Term.
- D. Section 16.4: Consequences of Termination or Reversion. This section sets forth the procedure to be followed upon the termination or expiration of the Agreement, including Concessionaire's surrendering of the Parking System.
- E. Section 16.5: Termination other than pursuant to Agreement. If the Agreement is terminated by the University other than because of a Concessionaire Default, the University shall pay to the Concessionaire the fair market value of the Concessionaire Interest as of the date of such termination plus the reasonable out-of-pocket expenses incurred by the Concessionaire as a direct result of such termination.

**Article XVII. Restrictions on Transfers.**

- A. Section 17.1: Transfers by Concessionaire. Subject to the rights of the Leasehold Mortgagee, Concessionaire may not Transfer any portion of its interest that would result in the Concessionaire directly owning 50 percent or less of the Concessionaire Interest as of the date of entering into the Agreement unless (i) the University has approved, and (ii) the proposed Transferee assumes the obligations of Concessionaire. The University may withhold its consent in various instances, and the University can take into account financial strength, experience with parking facilities, reputation and Operator.



- B. Section 17.2: Assignment by the University. The University may Transfer any or all of its interest but must remain jointly and severally liable.

**Article XVIII. Dispute Resolution.**

- A. Section 18.1: Scope. Any dispute arising out of the Agreement is to be resolved in accordance with this Article 18.
- B. Section 18.2: Informal Dispute Resolution Procedures. If the Parties are unable to resolve any dispute within 15 Business Days, the dispute shall be referred to the Designated Senior Person of each Party. The Designated Senior Persons shall negotiate in good faith to resolve the dispute.
- C. Section 18.3: Mediation. If Designated Senior Persons do not resolve the dispute in 15 Business Days, the Parties shall attempt to resolve the dispute through mediation administered by the AAA.
- D. Section 18.4: Litigation. If mediation does not resolve the dispute within 30 Business Days, then the Parties shall present the dispute to a court of competent jurisdiction.
- E. Section 18.5: Provisional Remedies. No Party shall be precluded from initiating a proceeding in a court of competent jurisdiction for the purpose of obtaining any emergency or provisional remedy.
- F. Section 18.6: Tolling. If a Party receiving a notice of default under the Agreement contests the propriety of such notice, any cure period that applies to such default shall be tolled for the time period between such application and the issuance of a final award or determination.

**Article XIX. Lenders.**

- A. Section 19.1: Leasehold Mortgages. The Concessionaire may grant Leasehold Mortgages subject to various restrictions such as the Concessionaire not being in default, the mortgage may only be in favor of an Institutional Lender, the mortgage may not extend to the fee simple interest of the property, the University shall have no liability, etc. While any Leasehold Mortgage is outstanding, the University shall not amend the Agreement in a way that shall have a material adverse effect on the Leasehold Mortgagee without its consent.
- B. Section 19.2: Notices and Payments to Leasehold Mortgagees: All required notices to be made by the University to the Concessionaire must also be made to the Leasehold Mortgagee. All payments by the University to the Concessionaire shall be made to the Leasehold Mortgagee.
- C. Section 19.3: Leasehold Mortgagee's Right to Cure: The Leasehold Mortgagee shall have 60 days after a Concessionaire Default to cure the default. If the

Leasehold Mortgagee is working to cure the default, the University may not terminate the Concession Agreement.

- D. Section 19.4: Rights of the Leasehold Mortgagee: The Leasehold Mortgagee may enforce its rights in any lawful way, including taking possession of the Parking System. Upon taking possession, Leasehold Mortgagee may transfer the Parking System subject to Section 17.1, except it shall not be subject to the requirement that all Concessionaire Defaults must be cured upon a Transfer. Prior to taking possession of the Parking System, Leasehold Mortgagee is not liable for any of the Concessionaire's obligations.
- E. Section 19.5: Termination of this Agreement; New Agreement: If the University terminates the Concession Agreement, the University agrees to enter into a New Agreement for the Parking System with the Leasehold Mortgagee, provided the Leasehold Mortgagee cures any Concessionaire Default.
- F. Section 19.6: Recognition of Leasehold Mortgagee: The Leasehold Mortgagee whose notice was earliest received by the University shall be the only one who shall have the rights as a Leasehold Mortgagee under the Concession Agreement.
- G. Section 19.7: University's Right to Purchase Leasehold Mortgages. In the event of a default and if the Leasehold Mortgagee wishes to foreclose on the Mortgage, the University may purchase the Mortgage.
- H. Section 19.8: Assignment and Assumption Agreement: If (i) the University has determined that a New Agreement between the University and Leasehold Mortgagee would violate law or (ii) the University and the Leasehold Mortgagee mutually agree, then Leasehold Mortgagee and the University shall enter into an Assignment and Assumption Agreement whereby the Leasehold Mortgagee assumes the Concession Agreement in the event of a Concessionaire Default, provided Leasehold Mortgagee cures such Concession Default.
- I. Section 19.9: Right to Dispute Resolution: In the event of default, the Leasehold Mortgagee shall have the right to participate in the dispute resolution process set forth in Article 18.

**Article XX. Miscellaneous.** Article 20 contains the miscellaneous provisions standard for an agreement of this nature, including, among other items, (i) notice requirements, (ii) amendment procedure, (iii) governing law (Ohio), and (iv) waiver of jury trial.