

**PARKING SUBLICENSE AND OPERATING AGREEMENT**  
**[Tempe Gateway Parking Garage]**  
**(C97-250M)**

THIS PARKING SUBLICENSE AND OPERATING AGREEMENT (this “Agreement”) is made and entered into as of \_\_\_\_ day of \_\_\_\_\_, 2011 (the “Commencement Date”), by and between the CITY OF TEMPE, an Arizona municipal corporation and a political subdivision of the State of Arizona (the “City”), and Gateway Tempe LLC., a Washington limited liability company (“Gateway”).

**RECITALS**

- A. The City is a party to that certain Parking Use License and Operating Agreement (“Parking License”) with SA TEMPE LLC, a Delaware limited liability company and its successors, dated as of December 22, 2009, and recorded December 22, 2009 at Document No. 2009-1170351 Official Records of Maricopa County Recorder;
- B. SA TEMPE LLC assigned its interest in the Parking License to Gateway Tempe LLC (“Master Licensor”) pursuant to an Assignment of Parking Agreement dated June 10, 2010, and recorded May 10, 2010 at Document No. 2010-0493400 Official Records of Maricopa County Recorder.
- C. Pursuant to the Parking License, the Master Licensor granted to the City a license to use the Parking Facilities, as defined in the Parking License;
- D. Gateway desires to utilize the Licensee Business Parking Spaces, as defined in the Parking License.

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

**AGREEMENT**

1. **Definitions.** Capitalized terms used herein without definition shall have the meanings given such terms in the Parking License.
2. **Grant of License.** In consideration of the payments to be made by Gateway under Section 6 hereof, City hereby sublicenses to Gateway the 72 Licensee Business Parking Spaces in the Parking Facility during the Licensee Business Use period. The foregoing license shall be subject to the terms and conditions of this Agreement and the Parking License. Gateway shall have the same rights as the City to pedestrian ingress and egress to and from the Parking Facility and all adjacent public thoroughfares over and across such real property as may be designated for such use from time to time by the Master Licensor.

3. **Operation and Maintenance.** Pursuant to the Parking License, Master Licensor has the obligation and responsibility for operation and maintenance of the Parking Facilities. Accordingly, in exercise of its duties, the Master Licensor may (a) enter into contracts with professional managers for the day-to-day operation and maintenance of the Parking Facilities, (b) establish rules and regulations governing the use of all parking spaces within the Parking Facilities, (c) determine the manner in which the Parking Facilities shall be operated, (d) evaluate and implement appropriate security measures, and (e) obtain and maintain appropriate amounts of liability and other insurance coverage with insurance companies licensed to do business in Arizona. Gateway agrees to abide by and be bound by any rules and regulations promulgated by the Master Licensor governing the use of the Parking Spaces that are applicable to the Parking Facility. Gateway acknowledges and agrees that the Master Licensor shall have the authority to make all decisions regarding the operation and maintenance, insurance, security and repair of the Parking Facilities.

4. **Payment of Costs of Operation and Maintenance.** The Parking License allocates the O&M Costs for the Parking Facilities between City and Master Licensor in accordance with Exhibit B thereto. The City shall continue to pay the O&M Costs allocable to the Licensee Business Parking Spaces.

5. **Term.** The term of this Agreement shall begin on the Commencement Date and shall remain in full force and effect until the eighth anniversary thereof (the “Initial Term”). Gateway shall have the option to renew this license for one additional Five (5) year period (the “Additional Term”). If Gateway desires to exercise the option to extend the term, it shall notify City in writing not less than 180 days prior to the end of the Initial Term. The fees for such Additional Term shall be as provided in Section 6 below. All other terms and conditions of this Agreement shall continue for the Additional Term.

6. **Fees.** During the Initial Term (and any Additional Term), Gateway shall remit to the City on the first day of every month, commencing with the first month following the Commencement Date and on the first day of each following month, for the term of the Agreement, the following fee:

Months 1 through 12 - \$1,940.00 per month (25 spaces @ \$40 per space per month plus 47 spaces @ \$20 per space per month)

Years 2 through 13 - \$2,880.00 per month (72 spaces @ \$40 per space per month)

If the Commencement Date does not occur on the first day of the month, then on the Commencement Date, Gateway shall pay to City an amount equal to the foregoing fee prorated for the number of days remaining in the month during which the Commencement Date occurs. Any amounts not paid when due shall bear interest at the rate of 10% per annum from the date due until paid in full, compounded daily.

7. **Default; Remedies.** It shall be a default if either party fails to perform any of its obligations hereunder and such failure is not cured within thirty (30) days after the other

party gives written notice specifying in reasonable detail the nature of such default. In the event of a default, the nondefaulting party shall have all rights and remedies available at law or in equity. In addition, in the event any such default is not cured within the 30-day period following the notice described above, the nondefaulting party shall have the right to terminate this Agreement immediately and without further notice to the defaulting party. If the defaulting party is the Gateway, then, in that event, all of Gateway's rights under this Agreement shall immediately terminate, and the Gateway shall have no further right to (a) use the Licensee Business Parking Spaces or the Parking Facilities pursuant to this Agreement, or (b) collect any revenues generated therefrom after the date of termination.

8. **Applicability of Parking License.** Gateway acknowledges that its rights and obligations are derived, in part, from the Parking License. Accordingly, nothing in this Agreement is meant to confer any greater rights upon Gateway than are provided to the City in the Parking License. To the extent not inconsistent within anything contained herein, the Gateway agrees to be bound by and be obligated to perform the terms and conditions required under the Parking License during the term of this Agreement.

9. **General.**

9.1. **Notices.** All notices under this Agreement shall be in writing and delivered personally, delivered by a reputable overnight courier service, mailed by registered or certified mail, postage prepaid, return receipt requested, or sent by facsimile transmission (provided any notices delivered by facsimile transmission shall be followed by a confirming hard copy delivered in any other manner for providing notices described in the foregoing) to the parties at the following addresses:

***If to City:*** City Manager  
City of Tempe  
31 East Fifth Street  
Tempe, AZ 85281

***With a copy to:*** City Attorney  
City of Tempe  
31 East Fifth Street  
Tempe, AZ 85281

***If to Licensee:*** Gateway Tempe LLC  
505 Fifth Avenue South, Suite 900  
Seattle, Washington 98104  
Attn: VP of Real Estate

***With a copy to:*** Joseph E. Delaney  
Foster Pepper PLLC  
1111 Third Avenue, Suite 3400  
Seattle, Washington 98101

Or to such other street address as may be designated by the respective parties in writing from time to time.

9.2. **Time of Essence**. Time is of the essence of each and every provision of this Agreement.

9.3. **Further Assurances**. Each party hereby agrees to perform such further acts and to execute and deliver such additional agreements, documents, acknowledgments and instruments as the other party may reasonably require to consummate, evidence, confirm, or carry out the transaction contemplated by this Agreement.

9.4. **Choice of Law**. This Agreement is made and is to be performed in the State of Arizona and shall be governed by the internal, substantive laws of the State of Arizona without regard to any conflict of laws or principles.

9.5. **Relationship of Parties**. No partnership, joint venture or other business relationship is established between the parties to this Agreement. Neither party to this Agreement shall be liable for any acts, omissions or negligence on the part of the other party, its employees, agents, independent contractors, licensees and invitees resulting in either personal injury or property damages to any person.

9.6. **Consents and Approvals**. Wherever this Agreement requires the consent or approval of a party to any act, document, use or other matter, such consent or approval may be given or denied by such party in its reasonable discretion, unless this Agreement expressly provides otherwise.

9.7. **Counterparts**. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

9.8. **Modifications**. Any modifications to this Agreement shall be in writing and signed by the parties hereto.

9.9. **Captions**. The captions used herein are for convenience only and not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.

9.10. **Entire Agreement**. This Agreement, constitute the entire agreement between the parties pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, including, are hereby superseded and merged herein.

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

ATTEST:

***“CITY”***

THE CITY OF TEMPE, an Arizona municipal corporation

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By \_\_\_\_\_  
Hugh L. Hallman, Mayor

\_\_\_\_\_  
City Attorney

STATE OF ARIZONA        )  
  ) ss  
County of Maricopa        )

On this \_\_\_\_ day of \_\_\_\_\_, 2011 before me, the undersigned officer, personally appeared Hugh L. Hallman, who acknowledged himself to be Mayor of the City of Tempe, an Arizona Municipal corporation, and he, in such capacity, being authorized so to do, executed the forgoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

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

Notary Seal:

