

Sponsored by: _____

Seconded by: _____

CITY OF HOBOKEN
ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE CITY OF HOBOKEN TO ENTER INTO THE “PARKING ACCESS AGREEMENT BETWEEN THE CITY OF HOBOKEN AND HUMC OPCO, LLC” RELATING TO CITY OWNED REAL PROPERTY AND CAPITAL IMPROVEMENTS THEREON ON LAND COMMONLY IDENTIFIED AS 302-330 CLINTON STREET, UPON THE SATISFACTION OF THE CONDITIONS SET FORTH HEREIN

WHEREAS, the City of Hoboken is a municipal entity organized under the laws of the State of New Jersey; and

WHEREAS, HUMC OPCO, LLC is a Delaware Limited Liability Company; and

WHEREAS, HUMC OPCO, LLC is a successor in interest to Hoboken Municipal Hospital Authority, which was the assignee of interest in the 2000 Lease and Parking Access Agreement with the Hoboken Parking Authority and its assignee, the City of Hoboken; and

WHEREAS, upon sale of the hospital by Hoboken Municipal Hospital Authority, the rights and obligations under the 2000 Lease and Parking Access Agreement must be assigned to HUMC OPCO, LLC, and such assignment is an integral part of the underlying hospital purchase and sales agreement; and,

WHEREAS, the updated, amended agreement, entitled “Parking Access Agreement Between the City of Hoboken and HUMC OPCO, LLC” (“Agreement”)(*attached hereto as Schedule One*) seeks to reiterate the general intent and substantive covenants of the original agreement, with amendments where necessary to effectuate the Agreement in light of the changed circumstances; and,

WHEREAS, the Agreement specifically provides for access to and reservation of parking spaces within the Midtown Garage, located at 302-330 Clinton Street, as more formally described in Exhibit A of the Agreement; and,

WHEREAS, the Council seeks to authorize the Agreement and all encumbrances of City owned real property and capital improvements expressly described therein by way of the within Ordinance in accordance with applicable laws and case precedent.

NOW THEREFORE BE IT ORDAINED, by the City Council of the City of Hoboken, in the County of Hudson as follows:

1. Subject to the satisfaction of the conditions as set forth in this Ordinance, the City of Hoboken hereby authorizes acceptance of the terms and conditions of the Agreement, which is attached hereto as Schedule One and incorporated herein as if set forth at length herein.

2. Subject to the satisfaction of the conditions as set forth in this Ordinance, the Mayor and City Clerk are hereby authorized to conveying any interest in 302-330 Clinton Street, together with its improvements and appurtenances, and arrange for the recording of the Agreement with the County Registrar, if required by law and/or the other parties to the Agreement.
3. The conditions that are required to be satisfied as set forth in this Ordinance to allow for the effectuation of the granting of the property rights described in the Agreement relating to City owned property and improvements and appurtenances.
4. The Mayor and City Clerk and all other appropriate employees and professionals of the City of Hoboken are hereby authorized and directed to take any and all steps necessary to effectuate the purposes of this Ordinance.
5. The City retains the right to waive minor and immaterial informalities in any documentation provided to satisfy the above conditions.
6. All ordinances or parts thereof in conflict or inconsistent with this Ordinance are hereby repealed, but only to the extent of such conflict or inconsistency, it being the legislative intention that all ordinances or part of ordinances now existing or in effect, unless the same are in conflict or inconsistent with any provision of this ordinance, shall remain in effect.
7. If any section, subsection, sentence, clause, or phrase thereof is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses and phrases of this Ordinance, but shall remain in effect, it being the legislative intent that this Ordinance shall stand, notwithstanding the invalidity of any part thereof.

Section Two: Repeal of Inconsistent Provisions

All ordinances or parts thereof in conflict or inconsistent with this Ordinance are hereby repealed, but only however, to the extent of such conflict or inconsistency, it being the legislative intent that all ordinances or parts of ordinances now existing or in effect unless the same being conflict or inconsistent with any provision of this Ordinance shall remain in effect.

Section Three: Severability

The provisions of this Ordinance are declared to be severable and if any section, subsection, sentence, clause or phrase thereof for any reason be held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses and phrases of this Ordinance, which shall remain in effect; it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section Four: Effective Date

This Ordinance shall take effect upon passage and publication as provided by law.

Section Five: Codification

This Ordinance shall be a part of the code of the City of Hoboken as though codified and fully set forth therein. The City Clerk shall have this Ordinance codified and incorporated in the official copies of the Code.

The City Clerk and the Corporation Counsel are authorized and directed to change any Chapter, Article and/or Section number of the Code of the City of Hoboken in the event that the codification of this Ordinance reveals that there is a conflict between the numbers and the existing Code, and in order to avoid confusion and possible accidental repealers of existing provisions not intended to be repeal.

Date of Introduction: October 15, 2011

Introduction:

Councilperson	Yea	Nay	Abstain	No Vote
Theresa Castellano				
Peter Cunningham				
Jen Giattino				
Carol Marsh				
Elizabeth Mason				
David Mello				
Tim Occhipinti				
Michael Russo				
President Ravi Bhalla				

Final Reading:

Councilperson	Yea	Nay	Abstain	No Vote
Theresa Castellano				
Peter Cunningham				
Jen Giattino				
Carol Marsh				
Elizabeth Mason				
David Mello				
Tim Occhipinti				
Michael Russo				
President Ravi Bhalla				

Approved as to Legal Form:

Mark A. Tabakin, Corporation Counsel

Adopted by the Hoboken City Council
By a Vote of ____ Yeas to ____ Nays
On the ____ day of _____, 2011

James Farina, City Clerk

Vetoed by the Mayor for the following reasons: _____

-or-

Approved by the Mayor
On the ____ day of _____, 2011

Dawn Zimmer, Mayor

**PARKING ACCESS AGREEMENT BETWEEN THE CITY OF HOBOKEN AND HUMC
OPCO, LLC**

THIS AGREEMENT (this “Agreement”) is made as of the _____ day of _____, 2011 (the “Effective Date”) between the **CITY OF HOBOKEN** (with its successors and assigns, hereinafter referred to as the “**City**”), a municipal corporation of the State of New Jersey, with municipal offices at 94 Washington Street, Hoboken, New Jersey 07030, and **HUMC OPCO, LLC**, a Delaware limited liability company, with business offices located at 308 Willow Street, City of Hoboken, County of Hudson and State of New Jersey (hereinafter referred to as “OPCO”).

WITNESSETH:

WHEREAS, The Midtown Parking Garage (hereinafter referred to as the “Garage”) was constructed by the City and the Hoboken Parking Authority (the “Parking Authority”) (the predecessor of the current HOBOKEN PARKING UTILITY (“HPU”)) on land deeded to the City by St. Mary’s Hospital (hereinafter referred to as the “Hospital”) on January 3, 2000, and said land is commonly identified as 302-330 Clinton Street, and more particularly described on Exhibit A attached hereto and made a part hereof by reference and incorporation (the Garage, along with all sidewalks, streets, overhangs, canopies and improvements used in connection therewith are collectively hereinafter referred to as the Subject Property); and

WHEREAS, the purpose of the Garage is to provide public parking to the Hoboken community and its visitors, as well as to Hoboken University Medical Center consisting of properties and improvements commonly described as (i) a hospital and related facilities and buildings in which three hundred fifty (350) beds are licensed, located at 308 Willow Avenue, (ii) a family practice center located at 122 Clinton Street, and (iii) a community mental health center located at 307 Willow Avenue (collectively, the “Hospital Facility”) (the real property on which the Hospital Facility is located in more particularly described on Exhibit B attached hereto and made a part hereof by reference and incorporation (the “Real Property”), and the Real Property and all improvements located thereon are hereinafter collectively referred to as the “Real Property Assets”), and the physicians, employees, staff members, patients and visitors of the Hospital Facility and the Real Property Assets; and

WHEREAS, in furtherance of the purposes for which the Garage was constructed, on December 21, 2000 a Lease and Parking Access Agreement (the “Parking Agreement”) was entered into between the Hoboken Parking Authority and the Hospital’s predecessor in interest (the “Hospital’s Predecessor”), wherein the Hospital Facility was granted a ninety-nine (99) year ground lease¹ that provided for a guaranteed number of parking spaces for use by the Hospital staff and physicians, as well as approximately fourteen thousand five Hundred (14,500 sq ft) square feet of commercial space on the ground floor of the Garage structure to be used for medical and health care offices; and

¹ The ground lease was made part of an Asset Transfer Agreement dated January 3, 2000 by and among St. Mary Hospital, Inc., Bon Secours Health System, Inc., the Hoboken Municipal Hospital Authority and Hudson Healthcare, Inc.

WHEREAS, in an effort to prevent the closure of the Hospital's Predecessor and the consequential loss of a vital source of medical services within the Hoboken community, the City created by duly adopted Ordinance, the Hoboken Municipal Hospital Authority (hereinafter referred to as the "HMHA") and HMHA was made responsible for the operation and management of the Hospital; and

WHEREAS, upon the transfer of ownership and operations of the Hospital Facility by the Hospital's Predecessor to the HMHA, the rights and liabilities of the Parking Agreement were also transferred to HMHA by virtue of an Asset Transfer Agreement (with an effective date of January 3, 2007); and

WHEREAS, by virtue of a June 2010 amendatory agreement to the Parking Agreement (hereinafter referred to as the "Amendatory Agreement"), HMHA reserved for use by the Hospital Facility, its staff and visitors approximately twelve and five tenths (12.5%) percent of the Garage's parking capacity, including a specific number of parking spaces set aside on the third Floor of the Garage for the exclusive use of the Hospital Facility's physicians, Monday through Friday from 7:00 a.m. and 7:00 p.m. (the Parking Agreement, as amended by the Amendatory Agreement, is hereinafter collectively referred to as the "Original Parking Agreement"); and

WHEREAS, the Hospital Facility's staff and physicians have access to the Hospital Facility's allotted parking spaces by virtue of individual parking access transponders provided by the HPU; and

WHEREAS, the parties acknowledge that the continued operation of the Hospital Facility provides the Hoboken community with an invaluable benefit and that in order to preserve this benefit, the parties have determined that a sale of the Hospital Facility

and consequential transfer of the current parking access rights within the Garage will further that goal; and

WHEREAS, HMHA, OPCO and HUMC Holdco, LLC (“Holdco”) are parties to a certain Asset Purchase Agreement dated April 20, 2011 (as amended, modified or restated from time to time, the “APA”) pursuant to which HMHA has agreed to sell and OPCO has agreed to purchase substantially all of the assets of HMHA with respect to the Hospital Facility (the “Hospital Authority Transaction”) including but not limited to the Real Property Assets; and

WHEREAS, pursuant to that certain Purchase and Sale Agreement between Opco and Holdco, as sellers, and MPT of Hoboken Real Estate, LLC (“MPT Real Estate Owner”) and MPT of Hoboken TRS, LLC (“MPT TRS”), as purchasers, dated May 2, 2011 (as amended, modified or restated from time to time, the “PSA”), Opco and Holdco agreed, among other things, to assign to MPT Real Estate Owner the right of Opco and Holdco to purchase the Real Property Assets from HMHA pursuant to the terms of the APA (MPT Real Estate Owner and MPT TRS, together with their successors and assigns, are hereinafter and collectively referred to as “MPT”); and

WHEREAS, pursuant to the APA and PSA and other documents executed contemporaneously herewith by and among MPT Real Estate Owner and certain of its affiliates and Opco and certain of its affiliates, (i) HMHA has sold and conveyed the Real Property Assets to MPT Real Estate Owner, (ii) MPT Real Estate Owner has leased (the “Master Facility Lease”) the Real Property Assets to MPT TRS, and (iii) MPT TRS has subleased the Real Property Assets to Opco pursuant to a lease agreement (the “Facility Lease”); and

WHEREAS, without providing the parking spaces as provided in this Agreement, the Real Property Assets and the Hospital Facility will be left without sufficient parking spaces to operate and use the Real Property Assets and the Hospital Facility in accordance with Applicable Laws; and

WHEREAS, MPT Real Estate Owner and Opco have advised HMHA that continuation of access to the Garage for the use and operation of the Real Property Assets and for the physicians, employees and visitors of the Hospital Facility is a condition precedent to the acquisition of the Real Property Assets by MPT Real Estate Owner and Opco's purchase of the non-real estate assets of HMHA; and

WHEREAS, in order to facilitate the consummation of the Hospital acquisition and provide sufficient parking for the ongoing use and operation of the Hospital; and to be in compliance with the Applicable Laws, the parties hereto desire to enter into a new parking agreement containing the terms, covenants and conditions set forth below;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is mutually agreed by the parties hereto as follows:

1. **GENERAL PROVISIONS**

1.01 **Governing Law**

This Agreement shall be governed and construed according to the Applicable Laws of the State of New Jersey.

1.02 **General Definitions**

Unless specifically provided elsewhere in this Agreement or the context otherwise requires, the following terms and phrases when used in this Agreement shall have the respective meanings set forth in this Section 1.02.

Applicable Law(s) - shall mean any and all federal, state and local laws, rules, regulations, statutes and local ordinances applicable to the ownership, use and operation of the Hospital Facility, the Real Property Assets and the Garage.

Business Days – shall mean each Monday, Tuesday, Wednesday, Thursday and Friday that is not a day on which money centers in the City of New York, New York are authorized or obligated by law or executive order to close.

City - shall mean the City of Hoboken, within the County of Hudson and State of New Jersey, together with any successors in interest.

City/HPU Event of Default – shall mean a breach by the City and/or HPU of any of their obligations hereunder which continue uncured following any notice and cure period specified herein.

Current Use - shall mean the current number of parking transponders made available to the Hospital for its employees, staff and physicians, which number is no greater than one thousand (1,000) transponders, of which four hundred (400) shall allow access to the Garage for hospital physicians, employees and staff, the balance of six hundred (600) transponders shall be provided pursuant to Section 2(c). The 400 parking access transponders shall include access to one hundred ten (110) Reserved Parking spaces and two hundred ninety (290) Unreserved Parking spaces to be utilized with the following specific limitations:

- (i) **Reserved Parking Spaces.** Access to one hundred ten (110) Reserved Parking spaces located on the Third Floor of the Garage and made available by the Hospital Operator to the Hospital Facility's

physicians Monday through Friday between the hours of 7:00 a.m. and 7:00 p.m.

- (ii) **Unreserved Parking Spaces.** Access to a maximum of two hundred ninety (290) non-exclusive first-come, first served Unreserved Parking spaces throughout the Garage to the Hospital's employees and staff for regular working hours (assuming a maximum of seven (7) days a week, eight (8) hours per day) by each such Unreserved Parking space transponder user during such user's working hours at the Hospital (i.e., each Unreserved Parking space transponder shall entitle the user thereof to access Unreserved Parking spaces for a maximum of fifty-six (56) hours during any seven (7) day time period commencing Sunday at midnight and ending at 11:59 p.m. on the following Saturday and accessed solely during designated working hours).

Governing Body - shall mean the Municipal Council of the City, together with any successors in interest.

Governing Documents - shall mean, with respect to any party hereto, as applicable, such party's charter, articles or certificate of incorporation, formation or organization, bylaws or other documents or instruments which establish and/or set forth the rules, procedures and rights, procedures with respect to such party's governance, including, without limitation, any stockholders', limited liability company, operating or partnership agreement related to such party, in each case as amended, restated, supplemental and/or modified and in effect as of the relevant date.

Hospital Operator – shall mean HUMC Opco LLC, a Delaware limited liability company, and all of its successors and assigns, including, without limitation, a Substitute Operator (as defined in Section 4.01(b) below).

Reserved Parking- shall mean the one hundred ten (110) parking spaces located on the third floor of the Garage made available by the Hospital Operator to the Hospital Facility’s physicians on an exclusive basis Monday through Friday between the hours of 7:00 a.m. and 7:00 p.m.

2. PARKING ACCESS

(a) The parties acknowledge that the Garage is owned and operated by the City through the HPU. Nothing in this Agreement shall affect the City and/or HPU’s rights in and title to the Garage except to the extent that by virtue of this Agreement, OPCO and its successors and assigns, and MPT, and its successors and assigns, have obtained the right of access to a portion of the vehicular parking spaces contained within the Garage subject to the terms, covenants and conditions set forth herein.

(b) Subject to the terms and conditions set forth herein, the City or the City by and through HPU shall provide to the Hospital Operator and its physicians, staff members and employees, parking access in the Garage at a level equal to the Current Use. The four hundred (400) parking spaces at the Garage constituting the Current Use shall be accessible to the relevant Hospital employees, staff and physicians through parking access transponders provided by the City to the Hospital Operator or directly to those Hospital employees, staff and physicians by the City through the HPU, in accordance with Article 3 of this Agreement.

(c) For so long as the Hospital Facility is being operated, if any additional parking is required for the employees of the Hospital Facility at a level greater than the Current Use, the City hereby covenants and agrees to provide, or cause HPU to provide, the Hospital Operator with access to an additional three hundred (300) parking spaces first within Garage "G" located at 315 Hudson Street, Hoboken, New Jersey and, if necessary, with an additional three hundred (300) parking spaces within Garage "D" located at 215 Hudson Street, Hoboken, New Jersey, and a parking access transponder for each such parking space.

(d) The term of this Agreement shall commence on the Effective Date and expire ninety-nine (99) years from the Effective Date (the "Term").

3 PARKING FEES

3.01 Monthly Parking Access Fees

(a) Commencing on the full execution of this Agreement and continuing until such time as there may be an adjustment as provided in subparagraph (b) of this Section 3.01, the monthly fee for each parking access transponder issued to the Hospital Operator, a Hospital employee, physician or staff member shall be: (i) for the first three (3) years following the date of execution of this Agreement, Forty-Five Dollars (\$45.00) per month, and (ii) Sixty-Five Dollars (\$65) per month for each year thereafter. Except as otherwise provided in Section 3.01(c), the monthly fee shall be payable by the applicable employee, physician or staff member directly to HPU on or before the tenth (10th) day of each month in accordance with the terms and conditions imposed upon all other monthly parking tenants of the Garage in accordance with any parking

agreements or contracts executed between the applicable Hospital employee, physician or staff member and the HPU.

(b) Except as otherwise set forth in Section 3.01 (a), the monthly fee set forth in the preceding subparagraph (a) shall, on an annual basis, be adjusted in the same proportion as all other monthly fee increases charged to all other monthly parking tenants of HPU, in accordance with any parking agreement or contract executed between HPU and members of the general public.

(c) Hospital Operator shall be responsible for the payment of the monthly parking access fees for the Reserved Parking spaces provided to the Hospital Facility's physicians. Hospital Operator shall not be responsible for the monthly payments of the parking fees for Hospital employees, staff members or any physicians (beyond the Reserved Parking spaces). Each individual Hospital employee, staff member and physician (other than physicians who are provided a Reserved Parking space) shall be billed directly by HPU for the monthly parking fee as provided in Section 3.01(a) and (b).

3.02 Reserved Parking

(a) The Reserved Parking spaces are included in the Current Use.

(b) The Reserved Parking spaces shall be used exclusively by physicians only while engaged in business of the Hospital Facility and within the time limitations set forth in the definition of "Current Use" in Section 1.02 of this Agreement.

(c) Hospital Operator shall be responsible for the distribution of the access transponders relating to the Reserved Parking spaces to the Hospital Facility's physicians. Hospital Operator shall further be responsible for the regular enforcement and patrolling of the Reserved Parking spaces. In the event that Hospital Operator

identifies transient parking illegally within the Reserved Parking spaces, it may notify HPU who shall take prompt appropriate action including, but not limited to, the issuance of a parking summons and/or "booting" the vehicle illegally parked.

(d) Pursuant to Section 3.01 hereof, Hospital Operator shall pay to HPU the monthly parking sums due for the access transponders relating to the Reserved Parking Spaces issued and in use according to the records of the HPU. Payment of the monthly parking access fee for the Reserved Parking spaces shall be paid by Hospital Operator on or before the tenth (10th) day of each month in which the Reserved Parking spaces have been made available by HPU.

(e) In the event that any Hospital or physician holding a Reserved Parking space transponder accesses a Reserved Parking space in excess of the time limitations set forth under the definition of "Current Use" as set forth in Section 1.02 hereof, such Hospital Operator shall be billed an amount equal to applicable parking fee that is the then prevailing market rate for parking being charged to other non-Hospital users of the Garage for each hour in excess of the maximum time limitations set forth in this Agreement. Such additional fees shall be billed directly to the Hospital Operator and shall be payable according to the terms and conditions of this Section 3.02.

(f) In the event that Hospital Operator fails to make any payment by the tenth (10th) day of the month, and fails to cure such failure after five (5) Business Days' prior written notice of such failure to Hospital Operator, HPU may impose a late charge in the amount of five percent (5%) of the past due amount which shall be deemed due and owing to HPU by Hospital Operator and shall be payable by Hospital Operator at the time of payment of the overdue monthly parking access fee for the Reserved Parking

spaces. In the event that the Hospital Operator fails to make payment by the thirtieth (30th) day after payment is due, the City shall have the right at its election to shut off the parking access transponders provided pursuant to this Section 3.02, until such time as the Hospital Operator makes full and complete payment of all monies due and owing (including late charges) for the Reserved Parking spaces.

3.03 Unreserved Parking

(a) Opco has advised that it wishes to continue to have parking access made available to the Hospital's employees and staff, provided that such parking access is made available to the Hospital employees and staff directly from the City and/or HPU. Accordingly, the City and HPU shall make two hundred and ninety (290) parking access transponders available to the employees and staff of the Hospital Facility and Hospital Operator, to be utilized within the time limitations set forth for in the definition of "Current Use" in Section 1.02 of this Agreement. The availability of these Unreserved Parking access transponders shall be on a first-come, first-serve basis and the Unreserved Parking access transponders shall be utilized by the Hospital employees and staff of the Hospital Facility and the Hospital Operator solely during the times in which such employees and staff are scheduled and are in attendance at work (in all cases within the time limitations set forth under the definition of "Current Use" in Section 1.02 of this Agreement.

(b) The City shall cause HPU to issue an Unreserved Parking access transponder to each Hospital employee, staff member and physician (other than physicians being provided a Reserved Parking Space) who has completed the HPU's standard parking agreement and has submitted the completed agreement directly to the

HPU. The Hospital employees, staff members and physicians (other than physicians being provided a Reserved Parking Space) shall be personally liable for the payment of the monthly parking access fees and shall pay such fees directly to the HPU according to the terms and conditions of the standard parking agreement.

(c) In the event that any Hospital employee, staff member or physician (other than physicians being provided a Reserved Parking Space) holding and Unreserved Parking Space accesses an Unreserved Parking Space in excess of the time limitations set forth under the definition of "Current Use" as set forth in Section 1.02 hereof, such employee, staff member or physician shall be billed an amount equal to applicable parking fee that is the then prevailing market rate for parking being charged to other non-Hospital users of the Garage for each hour in excess of the maximum time limitations set forth in this Agreement. Such additional fees shall be billed directly to the employee, staff member or physician and shall be payable according to the terms and conditions of the standard parking agreement and as set forth in this Section 3.03.

(d) In the event that any Hospital employee, staff member or physician (other than physicians being provided a Reserved Parking Space) fails to make any payment by the tenth (10th) day of the month, HPU may impose a late charge in the amount of five percent (5%) of the past due amount. In addition, a failure on the part of any employee, staff member or physician (other than physicians being provided a Reserved Parking Space) to pay the monthly parking fee will subject the individual to having his/her parking access transponder shut off pursuant to the terms and provisions of HPU's parking application and Hospital Operator shall not be responsible for any of the

payments or fees owed by any employee, staff member or physician (other than as set forth in Section 3.02 for the Reserved Parking Spaces).

4 Collateral Assignment; Assignments and Transfers

4.01 Collateral Assignment

(a) The City acknowledges that, pursuant to the PSA, Opco has, contemporaneously herewith, executed in favor of MPT a Collateral Assignment of Parking Agreement (the “**Collateral Assignment**”) by which Opco has collaterally assigned to MPT all of Opco’s right, title and interest in, to and under this Agreement and the parking spaces and transponders being made available to the Hospital Facility hereunder and the City hereby consents to such collateral assignment.

(b) Upon the occurrence of an event of default under the Facility Lease, the Collateral Assignment, or under any other document executed in connection therewith (collectively the “**Documents**”), so long as all of the terms, covenants, conditions and obligations required to be performed and fulfilled by Hospital Operator under this Agreement are performed and fulfilled, MPT shall have the right, but not the obligation, at the sole discretion of MPT, but only after written notice to the City notifying the City of its intent to exercise such right (a) to assume Opco’s rights, interests, duties and obligations under this Agreement, and/or (b) to designate a replacement or substitution for the operator of the Hospital Facility under this Agreement, which replacement may be selected in the sole discretion of MPT (a "Substitute Operator") and which Substitute Operator shall have the right, without the prior written consent of the City, to collaterally assign all of its right, title and interest hereunder to MPT.

(c) MPT shall have the right, at its sole option, to subject this Agreement and the parking spaces and transponders being made available to the Hospital Facility hereunder to an assignment or sublease as deemed necessary by MPT provided that it submits to the City written notice of the intended assignment or sublease within ten (10) Business Days of the effectuation of such assignment or sublease. Such written notice shall include the name and address of the intended assignee or sublessee, as the case may be.

(d) From and after the date of the execution and delivery of the Documents and prior to any assignment and assumption of this Agreement as contemplated by this Section 4.01, Opco and the Hospital Operator shall remain liable to the City for any and all covenants, duties and obligations under this Agreement.

(e) Copies of all notices, demands, consents and requests that the City and/or HPU delivers to Opco, or that Opco delivers to the City and/or HPU, shall also contemporaneously therewith be delivered to MPT in the same manner as set forth herein at the addresses set forth in Section 6.

4.02 Assignments and Transfers

(a) Except upon the occurrence of an Event of Default on the part of the Hospital Operator, and/or Opco (but only after the expiration of all cure periods as provided herein), this Agreement and the rights, interests and obligations hereunder shall not, in total or in part, be terminated, assigned, transferred (whether by mortgage, pledge or grant of a security interest or otherwise), amended, modified or substituted in any way whatsoever without the prior written consent of MPT, which consent may be withheld at the sole discretion of MPT.

(b) Except upon the termination of this Agreement as expressly provided herein, the total parking spaces and transponders being made available to the Hospital Facility hereunder shall not, in full or in part, be subleased, licensed or permitted to be used by any other person or entity without the prior written consent of MPT, which may be withheld at the sole discretion of MPT.

5 Certification of Compliance; Use of Real Property

5.01 Certification of Compliance

(a) The City hereby certifies that by virtue of this Agreement, the parking spaces (defined herein as the Current Use) being made available as provided herein will cause the use of the Real Property Assets as a hospital facility to be in full compliance with and satisfy all zoning regulations and parking requirements of the Applicable Laws including all ordinances of the City, including, without limitation, Ordinance amending Chapter 196 of the Code of the City of Hoboken Zoning, Article 11, Off-Street Parking and Loading Regulations, including Chapter 196, Section 39, adopted June 7, 2000, and the parking requirements under the municipal zoning ordinances and the requirements specified under the Resolution of the Hoboken Planning Board, dated July 7, 1998.

(b) The parties hereto acknowledge and agree that MPT is relying on the certifications and agreements set forth in this Agreement and specifically as set forth in this Section 5.01 and in Section 5.02 in purchasing the Real Property Assets and in entering into the Documents.

5.02 Use of Real Property Assets

- (a) If, during the Term, the Real Property Assets cease to be used as a hospital or other healthcare facility, this Agreement shall not terminate but shall remain in full force and effect; subject, however, to the following terms and conditions: From and after the date that the City receives written notice from MPT or the Real Property Owner that the Real Property Assets will no longer be used as a hospital or other healthcare facility but will be converted to a different use, the City shall guarantee, or cause the HPU to guarantee, that MPT and/or any subsequent fee owner of the Real Property Assets (the "Real Property Owner") shall continue to have access to that number of parking spaces within the Garage defined as the Current Use (meaning four hundred (400) parking spaces), and a parking access transponder for each such parking space, provided that either MPT or the Real Property Owner shall pay to the HPU commencing on the date that is thirty (30) days after the above-referenced written notice and each month thereafter, an amount equal to the monthly parking fee that is the then prevailing market rate for parking being charged to other monthly parkers within the Garage, multiplied by Four Hundred (400). If the date upon which the adjusted monthly parking fee begins on a day other than the first of the month then the monthly parking fee for the subject month shall be pro-rated so that the monthly parking fee shall be due and payable on the first day of each month thereafter. In no event shall the Real Property Owner be denied the right to access and use any

other parking at the Garage or at any other parking facility owned and operated by the City and/or HPU provided that MPT and/or the Real Property Owner makes an application to the City or to HPU for such additional parking and such additional parking spaces are available to the general public. In no event shall the City and/or the HPU provide MPT and/or the Real Property Owner with any preferential access to such additional parking spaces. The City shall issue, or cause HPU to issue, the parking access transponders as provided in this Section 5.02 to MPT and/or the Real Property Owner. MPT and/or the Real Property Owner shall be responsible for the distribution of the access transponders relating to the parking spaces provided pursuant to this Section 5.02.

- (b) Except as expressly set forth in this Section 5.02 all of the other terms, provisions and conditions of this Agreement shall remain in full force and effect, regardless of any proposed change of use. Notwithstanding anything contained in this Agreement and in this Section 5.02 to the contrary, the Real Property Owner shall have the right and option to assign or sublease its rights and interest in and to the parking access and spaces provided for in this Agreement (and a parking access transponder for each such parking space) without the prior written consent of the City or HPU. In the event Real Property Owner assigns its rights and interest in and to the parking access and spaces (and transponders) to a new tenant of the Real Property Assets, (1) such tenant shall have the right to collaterally assign back to Real Property Owner its rights and interests in

the parking access and spaces (and transponders) without the prior written consent of the City or HPU provided that the Real Property Owner is not in default of this Agreement, and (2) the City and/or HPU shall immediately notify Real Property Owner of any default by such tenant (such as, but not limited to non-payment of parking fees) under this Agreement and Real Property Owner shall have the right to cure any such default by such tenant.

- (c) Notwithstanding anything contained herein to the contrary, at any time after the Change in Use, Real Property Owner shall have the right and option to terminate this Agreement at any time upon sixty (60) days prior written notice to the City.

6 Notices

All notices, demands, consents, approvals, requests and other communications under this Agreement shall be in writing and shall be (a) delivered in person, (b) sent by certified mail, return receipt requested, (c) delivered by a recognized delivery service, or (d) sent by facsimile transmission and addressed as follows:

If to the City: City of Hoboken
94 Washington Street
Hoboken, New Jersey 07030
Attn: Mayor
Phone: (201) 420-2000
Fax: (201) 420-9513

with a copy to: Mark Tabakin, Esq.
City of Hoboken, City Hall
94 Washington Street
Hoboken, New Jersey 07030
Phone: (201) 420-2000
Fax: (201) 792-1858

if to Opco: HUMC Opco LLC
c/o HUMC Holdco, LLC
2000 Market Street, 20th Floor
Philadelphia, PA 19103
Attn: General Counsel
Phone: (215) 299-2170
Fax: (215) 299-2150

with a copy to: Burton J. Jaffe, Esq.
Fox Rothschild LLP
997 Lenox Drive, Building 3
Lawrenceville, New Jersey 08648
Phone: (609) 895-6630
Fax: (609) 896-1469

if to MPT: MPT of Hoboken Real Estate, LLC
MPT of Hoboken TRS, LLC
1000 Urban Center Drive, Suite 501
Birmingham, Alabama 35242
Attn: Legal Department
Phone: (205) 969-3755
Fax: (205) 969-3756

with a copy to: Thomas O. Kolb, Esq.
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
1600 Wells Fargo Tower
420 20th Street North
Birmingham, Alabama 35203
Phone: (205) 250-8321
Fax: (205) 322-8007

or to such other address as either party may hereafter designate in writing, and shall be effective upon receipt. A notice, demand, consent, approval, request and other communication shall be deemed to be duly received if delivered in person or by a recognized delivery service, when left at the address of the recipient and if sent by facsimile, upon receipt by the sender of an acknowledgment or transmission report generated by the machine from which the facsimile was sent indicating that the facsimile was sent in its entirety to the recipient's facsimile number; provided that if a notice, demand, consent, approval, request or other communication is served by hand

or is received by facsimile on a day which is not a Business Day, or after 5:00 p.m. on any Business Day at the addressee's location, such notice or communication shall be deemed to be duly received by the recipient at 9:00 a.m. (based upon New York City, New York time) on the first Business Day thereafter.

7 Original Parking Agreement

Upon the execution and delivery of this Agreement by each of the parties hereto, the Original Parking Agreement is and shall be terminated in its entirety and shall be deemed null and void and of no force or effect.

8 Events of Default

8.01 Hospital Operator/Real Property Owner Event of Default

Upon the occurrence of a Hospital Operator or Real Property Owner event of default as the case may be and such Hospital Operator's or Real Property Owner's (as the case may be) event of default is not cured by Hospital Operator or the Real Property Owner within a period of thirty (30) days after receipt by Hospital Operator or the Real Property Owner, as the case may be, of written notice thereof from the City, unless such failure cannot with due diligence be cured within a period of thirty (30) days, in which case such failure shall not be deemed to continue so long as Hospital Operator or the Real Property Owner, as the case may be, commences to cure such failure within the thirty (30) day period and proceeds with due diligence to complete the curing thereof within sixty (60) days after receipt by Hospital Operator or as the case may be, the Real Property Owner of the City's notice of default (it being understood and agreed that in no event shall any cure period exceed sixty (60) days), the City shall have the right at its election, then or at any time thereafter, to pursue any one or more remedies which may

be permitted by the Applicable Law, including but not limited to the termination of this Agreement, by other provisions of this Agreement or otherwise, without notice or demand, except as hereinafter provided.

8.02 City/HPU Event of Default

Upon the occurrence of a City/HPU Event of Default and such City/HPU Event of Default is not cured by the City or HPU within a period of thirty (30) days after receipt by the City or HPU of written notice thereof from the Hospital Operator and/or MPT, unless such failure cannot with due diligence be cured within a period of thirty (30) days, in which case such failure shall not be deemed to continue so long as the City or HPU commences to cure such failure within the thirty (30) day period and proceeds with due diligence to complete the curing thereof within sixty (60) days after receipt by the City HPU of the Hospital Operator or MPT's notice of default (it being understood and agreed that in no event shall any cure period exceed sixty (60) days), Hospital Operator or MPT shall have the right at its election, then or at any time thereafter, to pursue any one or more remedies which may be permitted by law, by other provisions of this Agreement or otherwise, without notice or demand, except as hereinafter provided.

8.03 Right and Option of MPT to cure a Hospital Operator Event of Default

Notwithstanding anything to the contrary in this Agreement, before exercising any remedy available to the City, the City shall provide MPT with written notice as provided in Section 6 of this Agreement of the event of default by Hospital Operator giving rise to same (the "Default Notice") and, thereafter, the opportunity to cure such breach or

default. After MPT receives a Default Notice, MPT shall have a period of thirty (30) days beyond the time available to Hospital Operator in which to cure the event of default by Hospital Operator, or, in the event that such cure cannot be completed within such cure period, MPT shall have such reasonable period of time as is required to diligently prosecute such cure to its completion but in no event shall the period of time to cure the event of default exceed sixty (60) days beyond the time available to the Hospital Operator to cure the aforementioned event of default. MPT shall have no obligation to cure (and shall have no liability or obligation for not curing) any breach or default by Hospital Operator.

9 Non-disturbance Agreement

In connection with any proposed financing or refinancing of the Subject Property and as a precondition of same, the City shall cause the applicable lender to enter into a non-disturbance agreement, in form and substance reasonably satisfactory to MPT or the Real Property Owner, whereby such lender and its successors and assigns agree that (i) the rights of Opco, Substitute Operator and/or MPT, and their respective successors and assigns, shall not be disturbed in its or their peaceful enjoyment of the Subject Property, the parking spaces and transponders, and (ii) this Agreement shall not be terminated or cancelled, except in accordance with the terms hereof.

10 Maintenance of Subject Property

The City through the HPU, at its sole cost and expense, shall (i) operate, maintain and keep the Garage in a good, safe and clean state of repair, including, without limitation, security, parking attendants, the maintenance (which includes the removal of trash, debris and ice), striping, paving, lighting, repair and replacement of all

areas and improvements located in the Garage, and the operation and maintenance of all utility services located within and serving the Garage, and (ii) keep the Garage insured in commercially reasonable amounts for properties of like kind and use.

11 Miscellaneous

(a) In their dealings with each other, the parties hereto agree that they shall act in good faith.

(b) The undersigned individuals, in their capacities as officers of the applicable party, hereby certify that they are duly authorized to execute and deliver this Agreement on behalf of such party and have received all authorizations and consents required in order to execute this Agreement.

(c) Each of the parties hereto represent and warrant that (i) it has full power and authority to execute and deliver this Agreement, and such execution and delivery have been consented to and approved by all applicable boards, councils and all other applicable governing bodies as required by such party's Governing Documents, and copies of the necessary and required approvals and consents are attached hereto as **Exhibit C** and made a part hereof by reference and incorporation, and no other or further consent, approval or acknowledgment of any party is required, (ii) this Agreement constitutes the valid and legally binding obligations of each of the parties hereto, and are enforceable against each party hereto in accordance with the respective terms hereof, and (iii) each of the parties' execution, delivery and performance of this Agreement and the consummation of the transaction contemplated hereby, will not, with or without the giving of notice and/or the passage of time: (A) violate or conflict with any provision of any of the parties' Governing Documents; (B) violate any provision of any

law to which any party is subject; (C) violate or conflict with any judgment, order, writ or decree of any court applicable to any party; (iv) result in or cause the creation of a lien on the Real Property Assets or any of the assets of the Hospital Facility; or (D) result in the breach or termination of any provision of, or create rights of acceleration or constitute a default under, the terms of any indenture, mortgage, deed of trust, contract, agreement, bond financing or other instrument to which the party is a party or by which or any of its or their assets is or are bound.

(d) This Agreement, together with all exhibits, schedules and the other documents referred to herein, embody and constitute the entire understanding between the parties with respect to the transactions contemplated herein, and all prior to contemporaneous agreements, understandings, representations and statements (oral or written) are merged into this Agreement. Except as expressly provided in Section 4.02(a), neither this Agreement, any exhibit or schedule attached hereto, nor any provision hereof or thereof may be modified or amended except by an instrument in writing signed by the parties hereto and MPT.

(e) If any provision of this Agreement shall be invalid, illegal or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby and shall be enforced to the fullest extent permitted by law.

(f) Nothing contained in this Agreement or otherwise shall constitute a waiver or relinquishment any of the parties hereto of any rights and remedies under any Applicable Laws.

(g) Nothing herein shall be deemed to limit any right of recovery that any of the parties hereto have under the Applicable Laws or under any provisions of this Agreement.

(h) There have been no oral representations by either of the parties hereto which are not contained in this Agreement. This Agreement constitutes the entire agreement between the parties and there shall be no modifications other than as expressly provided herein.

(i) Subject to the express limitations set forth herein, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(j) This Agreement may be simultaneously executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

(k) The parties hereto and their respective counsel have participated in the drafting and redrafting of this Agreement and the general rules of construction which would construe any provisions of this Agreement in favor of or to the advantage of one party as opposed to the other as a result of one party drafting this Agreement as opposed to the other or in resolving any conflict or ambiguity in favor of one party as opposed to the other on the basis of which party drafted this Agreement are hereby expressly waived by all parties to this Agreement.

(l) The parties hereto acknowledge that they have read and understand this Agreement, that they have had the ability to consult with an attorney of their own choosing before signing this Agreement, have been afforded an opportunity to

deliberate as to whether to enter into this Agreement, that they understand the terms and effects of this Agreement, and that they execute this Agreement voluntarily.

(m) The parties hereto shall, contemporaneously herewith, enter into a short form memorandum of this Agreement, in form suitable for recording under the laws of the State of New Jersey, Hudson County, and Opco shall pay any recording costs in connection therewith.

(n) The parties hereto stipulate, acknowledge and agree that MPT shall be deemed to be a third party beneficiary of this Agreement.

(o) The City hereby covenants that neither the bond financing currently in place relating to the Garage, nor any contemplated or other refinancing thereof, will have any affect on this agreement or on the use and enjoyment of the rights and privileges granted hereunder.

(p) HPU executes this Agreement acknowledging and agreeing to the terms, conditions and provisions set forth herein.

[Intentionally Blank]

[Signatures on following pages]

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

CITY:

CITY OF HOBOKEN

By: _____
Dawn Zimmer, Mayor

ATTEST:

CITY OF HOBOKEN

By: _____
Its: _____

OPCO:

HUMC OPCO, LLC

By: _____
Name: _____
Its: _____

HPU:

HOBOKEN PARKING UTILITY

By: _____
Name: Ian Sacs
Its: Director

ATTEST:

By: _____
Name: _____
Title: _____