

## PARKING MANAGEMENT AGREEMENT

THIS PARKING MANAGEMENT AGREEMENT (the "Agreement") is made and entered into as of the \_\_\_\_ day of June, 2015, by and between India Newbury Residences LLC, a Maine limited liability company ("Owner"), and Unified Parking Partners Maine and New Hampshire LLC, a Maine limited liability company ("Manager"):

### WITNESSETH

WHEREAS, Owner is the fee-simple owner of that certain real property located at 62 India Street in Portland, Maine and depicted on Tax Map 28 as Lots P-8-9-19-20 (the "Property"), on which Property is located a parking lot area with approximately forty-six (46) parking spaces and related parking facilities, as depicted on **Exhibit A**; and

WHEREAS, Owner wishes to retain the services of Manager as the exclusive manager of parking services on the Property, and Manager is willing to provide such services on the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the foregoing and of the full and faithful performance of Manager and Owner of all the terms, conditions, and obligations imposed hereunder, the parties hereto agree as follows:

#### 1. APPOINTMENT OF MANAGER

(a) **Manager.** Owner hereby appoints Manager as the exclusive parking manager for purposes of managing the parking services provided on the Property, with the responsibilities and upon the terms and conditions set forth herein, and Manager, by its execution hereof, does hereby accept such appointment.

(b) **Tax Identification.** Manager's tax identification number is **46-0893471**. Owner's tax identification number is \_\_\_\_\_.

#### 2. PARKING MANAGEMENT SERVICES OF MANAGER; OWNER RESPONSIBILITIES

2.1 **Parking Management.** Manager shall devote its commercially reasonable efforts to serve Owner as parking manager of the Property through a "pay and display" parking system. Manager makes no representations or warranties with respect to the potential profitability of operation of the Property for such parking purposes.

2.2 **Obligations of Manager.** Without limiting the obligations of Manager under any other provisions of this Agreement, Manager shall devote its commercially reasonable efforts to perform the following parking management, operation, and services during the term of this Agreement:

(a) **Monies Collected.** Manager shall collect all payments from persons parking vehicles on the Property at any and all times. Owner authorizes Manager to request, demand, collect, receive, and receipt for all such parking services. Manager shall be responsible for the collection, disbursement, handling, and holding of the monies collected to the extent that a normal, reasonable, and prudent business person would be responsible for such collection, disbursement, handling and holding of monies.

(b) **Repairs and Maintenance.** Manager shall be responsible for the maintenance of the Property to keep the same in good and functioning condition for parking services, such as restriping, resurfacing, pothole and other pavement repair, lighting repair, and fencing and guardrail repair. Manager shall be responsible for said maintenance at its sole cost and expense, with the exception of snow removal, for which the cost shall be split equally (50/50) between Manager and Owner.

(c) **Equipment Installation.** Manager may make all arrangements at Manager's sole cost for the installation on the Property of the "pay and display" equipment and related signage (together, the "Equipment"). Manager shall have the right to install the Equipment in locations as determined by Manager. Included with the right to install the Equipment on the Property is the right to do all work necessary to install a concrete pad approximately 3' x 3' in size and install bollards surrounding such pad. All Equipment installation by Manager shall be done in compliance with applicable ordinances and codes.

(d) **Personnel.** Manager may employ such personnel at such times as are necessary in order to manage and operate the parking services on the Property, including without limitation to check for parking violators, to verify that the Equipment is functioning and to service the Equipment, and to inspect for items needing attention by Owner. All such on-site inspection persons shall be employees of Manager. Manager shall materially comply with all laws relating to the employment by Manager of its employees. The costs and expenses of such employees shall be Manager's responsibility.

(e) **Insurance Coverage.** The Manager shall provide insurance coverages as outlined in Exhibit B.

(f) **Fee.** Manager shall be responsible for the payment to Owner of a fee in the amount of \$3,450.00 per month for the exclusive right to manage the Property pursuant to this Agreement. Said fee shall be due and payable on the 15<sup>th</sup> day of each month, regardless of whether or not any Gross Revenue (as such term is defined below) is collected by Manager pursuant to this Agreement.

**2.3 Compliance with Laws; Payment of Taxes.** Owner shall comply with all statutes, ordinances, rules and regulations governing the Property and the business conducted therein, other than the "pay and display" parking business managed and operated by Manager pursuant to this Agreement. Owner shall be solely responsible for paying all real estate taxes, ad valorem taxes, special or betterments assessments, and downtown or special district taxes levied against the Property.

**2.4 Waiver of Claims.** Owner and Manager hereby waive and release the other party of, and from, any and all right of recovery, claim, action, or cause of action against such party, and its principals, managers, members, agents, officers, directors and employees, for any loss or damage that may occur to the Property, improvements to the Property, or personal property within the Property (including the Equipment), by reason of fire or the elements, or other casualty or commonly insured peril, regardless of cause or origin, including negligence of such party, and its principals, managers, members, agents, officers, directors and employees.

**2.5 Indemnification by Manager.** Manager agrees to indemnify, defend and hold the Owner and its affiliates and each of their respective employees, officers, directors, members, managers and agents harmless from and against any and all losses, costs, expenses, attorneys' fees, suits, liabilities, damages, or claim for damages, in any way arising out of (a) any acts or omissions of Manager, its agents or employees in connection with or arising out of this Agreement or the services performed by Manager under this Agreement ; (b) any breach of this Agreement by Manager or provided such failure was not caused by the negligence of Owner; or (c) any acts of Manager beyond the scope of Manager's authority hereunder or any willful misconduct by Manager or intentional breach of this Agreement. The foregoing indemnity shall survive the termination of this Agreement.

### **3. REVENUE SPLIT; RECORDS**

**3.1 Revenue Split.** The parties have agreed that, from the Gross Revenue (as such term is defined below) collected by Manager each month for the Property, Owner and Manager shall each be paid fifty percent (50%) of such Gross Revenue, which payment shall be made by Manager on the 15<sup>th</sup> day of each month during the term of this Agreement.

The term "Gross Revenue," as used in this Agreement, shall include any and all revenues obtained by Manager from the "pay and display" equipment to be installed on the Property by Manager pursuant to this Agreement, but in all cases subject to the deduction of the monthly fee paid to Owner pursuant to section 2.2(f) above.

**3.2 Records.** Manager shall maintain its standard comprehensive system of office records, books, and accounts, which shall belong to Manager. Owner and others designated by Owner shall have at all reasonable times access to such records, accounts, and books pertaining directly to the Property and Manager's parking services under this Agreement.

3.3 **Monthly Reports.** On or before the 15th day of each month during the term of this Agreement, Manager shall deliver to Owner an income statement representing the parking operations of the Property by Manager for the prior month. Manager shall use Manager's standard chart of accounts format in preparing the foregoing.

3.4 **VIP Passes.** Upon execution of this Agreement, Manager shall provide Owner with four (4) VIP passes to be used at any parking facilities managed by Manager.

#### 4. **TERM AND TERMINATION**

4.1 **Term.** Subject to the provisions of Section 4.2 below, this Agreement shall be for a term of eighteen (18) months, commencing on or about July 1, 2015 and terminating at midnight on December 31, 2016.

4.2 **Termination by Owner.** Owner may terminate this Agreement at any time during the term upon thirty (30) days prior written notice to Manager, with or without cause.

4.3 **Obligations After Termination.** Upon the termination of this Agreement as provided above, the Manager shall:

(a) **Removal of Equipment.** The Manager shall, at its cost and expenses, remove all Equipment and use reasonable efforts to replace and restore any damage resulting therefrom. The Equipment shall remain the sole property of Manager at all times, including following the expiration or any early termination of this Agreement, and Manager may enter upon the Parking Project at any time to remove such Equipment.

(b) **Termination of Obligations; Right to Compensation.** Upon any termination pursuant to this Section 4, the obligations of the parties hereto shall cease as of the date specified in the notice of termination, except those obligations that expressly or by their nature survive the termination of this Agreement; and, provided further that Manager and Owner shall be entitled to receive any payments which may be due hereunder at the time of such termination or expiration.

#### 5. **NO AGENCY**

Manager shall be responsible for the actions of its employees, for the supervision of all persons performing services in connection with the operation of the Property for parking purposes, and for determining the manner and time of performance of all parking services. Nothing herein contained shall be construed to establish Manager as an employee of the Owner.

#### 6. **DISPUTE RESOLUTION**

The parties agree that, in the event of a dispute arising out of or related to this Agreement, either party may initiate and both parties shall thereafter participate in good faith mediation pursuant to the Commercial Mediation Rules of the American Arbitration Association or such other mediation procedure as to which the parties may agree. In the event that the dispute is not resolved by mediation, the dispute shall, at the option of either party, be subject to arbitration by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association, or such other arbitration procedure as to which the parties may agree in writing, provided however that (i) any arbitration shall involve a single arbitrator, (ii) the arbitrator shall be bound by and follow the substantive law of Maine as if the dispute were tried in a court of law and (iii) all issues that may in any manner relate to the controversy or dispute shall be resolved in the arbitration. The prevailing party shall be entitled to reimbursement of its arbitrator or court costs and reasonable attorneys' fees and any other payments ordered by such arbitrator.

7. NOTICES; MISCELLANEOUS

(a) Notices. Unless otherwise specifically provided, all notices, demands, statements, and communications required or desired to be given hereunder shall be in writing and shall be sent by U.S. Postal Service first class registered or certified mail, if intended for Owner, addressed to:

India Newbury Residences LLC  
35 Fay Street, Suite 107B  
Roxbury, MA 02118

And if intended for Manager, addressed to:


Unified Parking Partners Maine and New Hampshire LLC  
496 Congress Street, Unit 2B  
Portland, Maine 04101

or to such other address as shall from time to time have been designated by written notice by either party to the other party as herein provided.

(b) Miscellaneous. The captions of this Agreement are inserted only for the purposes of convenient reference and do not define, limit, or prescribe the scope or intent of this Agreement or any part hereof. Words used herein shall include both the plural and singular, and the masculine shall include the feminine and neuter genders. This Agreement shall be construed in accordance with the laws of the State of Maine, without application of choice of law principles. Owner and Manager hereby each represent and warrant to the other that the execution and delivery of this Agreement is authorized by all necessary entity action. The person signing below on behalf of Owner and Manager respectively represent that he/she is authorized to execute and deliver this Agreement on behalf of Owner and Manager respectively and to contractually bind Owner and Manager respectively. This Agreement embodies the entire understanding of the parties and there are no further agreements or understanding, written or oral, in effect between the parties relating to the subject matter hereof.

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

**OWNER:**  
**INDIA NEWBURY RESIDENCES, LLC**

  
\_\_\_\_\_  
By: *GORDON REBER*  
Its duly-authorized: *MANAGER*

**MANAGER:**  
**UNIFIED PARKING PARTNERS  
MAINE AND NEW HAMPSHIRE LLC**


  
\_\_\_\_\_  
By: Daniel McNutt  
Its duly-authorized Manager

EXHIBIT A

[Attach Plan of Property]

## EXHIBIT B – INSURANCE REQUIREMENTS

The Manager shall purchase and maintain in effect insurance coverage with insurance companies satisfactory to the Owner. Manager shall maintain the following minimum coverages.

- 1) **Commercial General Liability (CGL)** with limits of insurance not less than \$1,000,000 each occurrence and \$2,000,000 annual aggregate.
  - A) If the CGL coverage contains a General Aggregate Limit, such General Aggregate shall apply separately to each project and location.
  - B) CGL coverage shall be written on ISO Occurrence form CG00 01 10/93 or a substitute form providing equivalent coverage and shall cover liability arising from premises and operations, independent contractors, products-completed operations and personal and advertising injury and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
  - C) Owner shall be included as additional insured on the CGL, using ISO Additional Insured Endorsement CG 20 10 11/85 or both CG 20 10 10 01 and CG 20 37 10/01 or an equivalent coverage to the additional insured. This insurance for the additional insured shall be as broad as the coverage provided for the named insured manager. It shall apply as primary insurance on a non contributing basis before any other insurance or self insurance, including any deductible, maintained by or provided to, the additional insured.
  
- 2) **Automobile Liability**
  - A) Business auto liability with limits not less than \$1,000,000 each accident.
  - B) Business auto coverage must include coverage for the liability arising out of the use of all owned, leased hired and non-owned automobiles.
  - C) Garage keepers Legal Liability with limits of not less than \$250,000 each accident.
  
- 3) **Commercial Umbrella**
  - A) Umbrella Liability with limits of not less than \$5,000,000 per occurrence and \$5,000,000 aggregate.
  
- 4) **Workers Compensation and Employers Liability**
  - A) Workers Compensation coverage will be written to include all employees, including all executive officers.

Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Manager's Work. These certificates and the insurance policies required shall contain a provision that coverages afforded under the policies will not be cancelled, changed or allowed to expire until at least 30 days prior written notice has been given to the Owner

**Waiver of Subrogation:** Manager shall waive all rights of subrogation against Owner for recovery of damages to the extent these damages are covered by commercial general liability policy (CGL).

**Notice of Material Change or Cancellation** No policy will permit cancellation or modification without (30) days prior written notice of cancellation or modification to Owner

**Certificate of Insurance:** A Certificate of Insurance shall be provided to Owner before commencing work. Attached to each certificate of insurance shall be a copy of the Additional Insured Endorsement that is part of the Managers Commercial General Liability (CGL) policy.