

COMPREHENSIVE PARKING AGREEMENT

THIS AGREEMENT is made as of the 29 day of August, 2003, by and between the following parties:

"COMMISSION": CULTURAL CENTER COMMISSION, a public benefit corporation with offices at City Hall, 30 Church Street, Rochester, New York 14614;

"PURCHASER": THE SAGAMORE ON EAST, LLC, a limited liability company with offices at 119 Victor Heights Parkway, Victor, New York 14564 (hereinafter "Purchaser").

RECITALS:

WHEREAS, the Commission is the owner of certain real property in the City of Rochester, New York, located at 130-160 East Avenue within the Metro Center for the Arts project area (the "Premises"); and

WHEREAS, the Purchaser wishes to purchase the Premises for construction of a mixed-use development of commercial space, office space and residential units to be known as "The Sagamore on East"; and

WHEREAS, the Purchaser, as a condition of its purchase of the Premises, wishes to insure that its residents are able to park in the adjacent public parking garage at 475 East Avenue, Rochester, New York owned by the Commission; and

WHEREAS, the Commission believes that the Purchaser's proposed purchase and development of the Premises is in accordance with the public purposes and provisions of the applicable laws and requirements under which the Metro Center for the Arts project has been undertaken, and has agreed to provide parking for the Premises, as set forth in this Agreement.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and conditions contained herein, the Commission and the Purchaser agree as follows:

SECTION 1. DEFINITIONS

The following terms, as used in this Agreement, shall have the meanings ascribed to them herein:

"GARAGE": The public parking garage owned by the Commission at 475 East Avenue, Rochester, New York, known as the East End Garage, which is adjacent to the Premises;

"LDA": Land Disposition Agreement between the Commission and the Purchaser for the Commission's sale of the Premises to the Purchaser;

"NON-RESIDENTIAL SPACES": The parking spaces in the Reserved Area which are not Residential Spaces, which parking spaces may only be used by the occupants/tenants of the office and commercial space in The Sagamore on East Project.

"PREMISES": Parcel of land at 130-160 East Avenue in the City of Rochester, New York, containing approximately 0.43 acres of land;

"PROJECT": The construction by the Purchaser on the Premises of a seven-story building containing approximately 107,000 square feet of space, with the first floor containing approximately 13,000 square feet of leasable retail space, the second floor containing approximately 16,000 square feet of leasable commercial space, and the third through seventh floors containing approximately 72,000 square feet of space with twenty-three (23) residential condominiums. The Project may also include pedestrian connections between the Project and the Garage pursuant to the terms of this Agreement. The Project is to be called "The Sagamore on East".

"RESERVED AREA": That portion of the Garage defined in Section 2 of this Agreement, reserve for parking by residents and occupants of The Sagamore on East Project.

"RESIDENTIAL SPACES": Forty-six (46) parking spaces within the Reserved Area to be used solely by the residents of the residential condominium units of The Sagamore on East Project.

SECTION 2. RESERVED PARKING AREA

A. Parking Spaces. The Commission shall establish and reserve on levels 3 and 4 of the southwest portion of the Garage, adjacent to Swan Street and the Premises, an area solely for parking by residents and other occupants of the Project (the "Reserved Area"). The Reserved Area is set forth on Schedule A attached hereto.

The Reserved Area shall contain forty-six parking spaces for the sole use of the residents of the residential condominiums in the Project, and for no other parkers. The forty-six parking spaces shall be termed the "Residential Spaces". The remaining parking spaces in the Reserved Area may only be used by the occupants/tenants of the office and commercial space in the Project. These parking spaces shall be termed the "Non-Residential Spaces".

In any event, any invitees and guests of residents and other occupants of the Project are not entitled to park within the Reserved Area. Parking pursuant to this Agreement may commence upon the City of Rochester's issuance of a Certificate of Occupancy for a least five (5) of the residential condominium units in the Project.

B. General Access. The Commission at all times shall provide vehicular access to the applicable residents and occupants of the Project from Garage entrance(s) on adjoining public street(s) through the Garage to the Reserved Area. Except for emergencies, the

Commission shall provide twenty-four (24) hours advance notice if any repairs, maintenance or construction activities will prevent or impede such access. The Commission to the extent practicable shall minimize any disruptions to such access.

C. Maintenance/Repair. The Commission shall be responsible for the maintenance and repair of the Reserved Area, in the same manner and to the same standard used by the Commission (and any Garage operator) in the balance of the Garage outside of the Reserved Area. In the event that the Purchaser wishes a higher standard of maintenance and/or repair, the Purchaser at its expense may undertake such higher standards with the written consent of the Commission, which shall not be unreasonably withheld, provided that the activities do not impair the maintenance, operation and/or repair of the balance of the Garage outside of the Reserved Area

D. Utilities. The Commission shall be responsible for payment of water and electric charges for service to the Reserved Area. However, if the Purchaser installs lights and/or other items connected to utility service, to achieve a higher standard of maintenance and/or repair than the remainder of the Garage, the Purchaser shall be responsible for any increased utility charges resulting from its changes. If the parties cannot agree on the increased charges to be paid by the Purchaser, they shall retain independent, third-party expert(s) to make the determination. The Purchaser shall pay for such independent expert(s).

SECTION 3. RESERVED AREA ALTERATIONS

A. Equipment. The Purchaser, at its sole expense, shall construct, install, maintain, replace and re-construct if necessary, the equipment necessary to restrict the Reserved Area for use by the residents and occupants of The Sagamore on East Project. All installation of equipment shall be subject to the prior written approval of the Commission, which shall not be unreasonably withheld. The Purchaser shall minimize to the extent practicable any disturbance to other areas of the Garage caused by the construction, installation, maintenance, replacement and re-construction of such equipment. The equipment shall remain the property of the Purchaser.

B. Connections. The Purchaser, at its sole expense, shall have the right to construct, repair and replace, if necessary, two pedestrian connections from the Project to the Garage (the "Connections"), at levels 3 and 4. The Connections shall be compatible with the structure and exterior of the Garage. The exact location of the Connections, and the design and construction plans, shall be subject to the prior written approval of the Commission. Any change to the location and plans approved by the Commission shall require the further approval of the Commission.

The Purchaser, at its sole expense, shall be responsible for maintaining the interior and exterior of the Connections in a safe and sanitary condition. The Purchaser shall be solely responsible for monitoring and securing access to and from the Garage

and Project, through the Connections. The Commission shall not be liable for any entry to and from the Garage and Project through the Connections.

SECTION 4. PAYMENT

A. The Purchaser shall pay the Commission for the parking spaces in the Reserved Area as follows:

RESIDENTIAL SPACES: For each of the forty-six (46) Residential Spaces, the residential rate applicable to the general public for parking in one space in the Garage. It is acknowledged that this rate may change from time to time, as determined by the Commission.

NON-RESIDENTIAL SPACES: For each of the Non-Residential Spaces, the "premium parking rate" established by the Commission for the Garage. It is acknowledged that the current premium rate of \$86.00 per month may change from time to time, as determined by the Commission.

The Purchaser shall make the payments based on this section directly to the Commission, or to such other entity as directed by the Commission. Payment for each month shall be made within the first five days of the subsequent month. Payment shall commence upon Purchaser's commencement of the construction of the improvements required to establish the Reserved Area and shall continue throughout the entire term of this Agreement.

B. During any period that the Garage is unusable for parking (as determined by the Commission), the payments to be made pursuant to this Section 4 shall be suspended and abated until either (a) repairs to the existing Garage allow re-opening of the Garage, or (b) a New Parking Structure and/or replacement garage has been constructed and opened for business, with a reserved area similar in utility to the Reserved Area. The payments shall resume on the terms set forth in Section 4. A. when the Reserved Area in the repaired Garage, or such new reserved area in the New Parking Structure and/or replacement garage, as applicable, is open.

SECTION 5. TERM

A. This term of this Agreement shall commence on the date set forth above, and shall terminate at 11:59 p.m. on September 30, 2052, unless sooner terminated as provided in subsection B. herein.

B. This Agreement shall sooner terminate upon the occurrence of any of the following:

1. The Purchaser fails to obtain title to the Premises within the deadline(s) set forth in the LDA, including within any extensions of time granted by the Commission; or

2. The Purchaser fails to comply with any of the Conditions Subsequent set forth in the Deed conveying title from the Commission to the Purchaser, including if applicable the failure to cure such default within any "cure" periods specified in the Deed (the Conditions Subsequent are also set forth in Section 4 of the LDA); or

3. In the event that the Garage becomes unusable for parking (subject, however, to subsection D. herein); or

4. In the event that the Purchaser defaults in or violates the terms and provisions of this Agreement, and fails to end, cure or remedy such default or violation within thirty (30) days of receipt of a written notice from the Commission specifying the default or violation (or if the default or violation cannot be reasonably cured, ended or remedied within such 30 day period, the Purchaser has not diligently commenced to cure, end or remedy such default or violation within such thirty day period and fails to diligently thereafter continue to cure, end or remedy such default or violation until cured, ended or remedied).

C. In the event that this Agreement terminates pursuant to Section B. 3. herein, any applicable provisions of this Agreement regarding "Partial Garage Demolition", construction of a "New Parking Structure", demolition of the entire Garage, and/or construction of a new parking garage larger than the New Parking Structure, shall remain in effect in accordance with the terms of such provisions.

D. In the event that the Garage becomes unusable for parking as determined by the Commission, this Agreement shall be applicable and shall continue in effect for either a replacement garage, or New Parking Structure, as applicable, provided that:

1. The Commission authorizes construction of a replacement garage, or New Parking Structure, as applicable, within eighteen (18) months from the date the Garage becomes unusable for parking; and

2. Construction of the replacement garage, or New Parking Structure, as applicable, is completed within fifty-four (54) months from the date the Garage becomes unusable for parking.

The Agreement shall then remain in effect for the balance of the original term ending June 30, 2052, or the forty-nine (49) year renewal term set forth in subsection E. if the renewal option has been exercised, whichever is applicable.

E. The Purchaser shall have the option, during the original term of this Agreement, to extend the term of this Agreement for an additional period of forty-nine (49) years on the

same terms and conditions set forth herein, by Purchaser's written notice of exercising this option given to the Commission pursuant to Section 18 herein, on or before December 31, 2051. There shall be no further renewal option during the additional 49-year term of this Agreement.

HOWEVER, this option shall not be in effect if this Agreement is sooner terminated either pursuant to (i) subsections B. 1., B. 2., and/or B. 4. of this Section 5, or (ii) subsection B. 3. of this Section 5 and not continued in effect pursuant to subsection D. above.

SECTION 6. DESIGNATED ACCOUNT

A. The Commission shall appropriate and deposit in a separate, interest-bearing designated account (the "Account") all payments collected from the Purchaser or any subsequent owner(s) of The Sagamore on East condominium, for reserved parking spaces in the East End Garage, until the Account balance, including interest, reaches the "Equalized Balance". Subsequent payments for such reserved parking spaces shall then be used as general revenue of the Garage. All interest earned on the Designated Account shall be added to the Designated Account.

The "Equalized Balance" shall be the balance of the Designated Account (including interest) in the year when such balance equals or exceeds the "Benchmark" amount for the same year. The following are the "Benchmark" amounts and years:

<u>YEAR</u>	<u>BENCHMARK AMOUNT</u>
1	\$408,074 Dec 1 2005 - Nov. 30 2006
2	\$416,310
3	\$424,713
4	\$433,286
5	\$442,032
6	\$450,954
7	\$460,056
8	\$469,342
9	\$478,815
10	\$488,480
11	\$498,339
12	\$508,398
13	\$518,660
14	\$529,129
15	\$539,809 Dec 1 2021 - Nov. 30 2022

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B. The purpose of the Account will be to pay for the future demolition of that portion of the existing Garage (the "Partial Garage Demolition") required to accommodate

construction of a 46-space covered parking lot for 130 East Avenue (the "New Parking Structure"), and to pay for the New Parking Structure, provided that:

1. The existing garage becomes unusable for parking; and
2. The owner of the existing garage does not proceed with the Partial Garage Demolition and the construction of the New Parking Structure; and

C. The Account will be terminated and the funds in the Account deposited in the existing garage reserve fund, upon the occurrence of either of the following:

1. The owner of the existing Garage proceeds with the Partial Garage Demolition or demolition of the entire Garage, and then proceeds with the construction of either the New Parking Structure or an entire new garage;
2. If the funds in the Account are insufficient to pay for the Partial Garage Demolition and the construction of the New Parking Structure, and the owner of the existing Garage and the owner(s) of 130 East Avenue do not agree on the financing for the Partial Garage Demolition and the construction of the New Parking Structure within eighteen (18) months from the date the existing garage is declared unusable for parking.

D. In the event that the Account is expended in whole or in part during the first twenty (20) years for the construction of either the New Parking Structure or an entire new garage, the Account shall be replenished and administered, on the same terms and conditions set forth in subsections A., B., and C. above, with Year 1 in subsection A. being the first full calendar year of operation of the entire new garage or the New Parking Structure on which the original Account funds were expended. This subsection D. shall apply only once, and shall not apply to the replenished Account.

SECTION 7. NEW PARKING STRUCTURE

In the event that the existing Garage becomes unusable for parking, and the funds in the Designated Account are sufficient to pay for Partial Garage Demolition and the construction of the New Parking Structure, **as determined by the Commission**, the Commission shall proceed with the Partial Garage Demolition and the construction of the New Parking Structure for use by the Project. The Partial Garage Demolition and construction of the New Parking Structure shall be completed within eighteen (18) months from the determination that the existing Garage is unusable for parking.

Even if the funds in the Designated Account are sufficient to pay for Partial Garage Demolition and the construction of the New Parking Structure, the Commission, in its discretion, may demolish the entire existing Garage and construct a replacement garage larger than the New Parking Structure. If a replacement garage is to be constructed, the

demolition and construction of the replacement garage shall be completed within twenty-four (24) months from the determination that the existing Garage is unusable for parking.

The Commission shall notify the Purchaser within one hundred twenty (120) days from the determination that the existing Garage is unusable for parking: (a) whether the funds in the Designated Account are sufficient for the Commission to undertake Partial Garage Demolition and the construction of the New Parking Structure, and (b) if the funds are sufficient, whether the Commission will proceed with the Partial Garage Demolition and the construction of the New Parking Structure, or will demolish the entire existing Garage and construct a replacement garage larger than the New Parking Structure.

SECTION 8. LEGAL REQUIREMENTS

Purchaser's use of the Reserved Area, the balance of Garage, and the Connections shall comply with all law, orders, regulations, rules, ordinances, and requirements of the Federal, State, County and local Governments and "Environmental Laws" defined in Section 13 herein (collectively the "Legal Requirements"), whether such laws, orders, regulations, rules or requirements relate to structural repairs, changes or alterations to or in and about the premises or any buildings or improvements thereon or to repairs, changes or alterations incident to or as the result of any use or occupation of the premises, or use of the adjacent sidewalks, and whether the same now are in force, or that may, at any time in the future, be enacted or directed; and the Purchaser shall pay all costs, expenses, claims, fines, penalties and damages that may in any manner arise out of or be imposed on the Commission because of the failure of the Purchaser to comply with the Legal Requirements.

SECTION 9. LIENS/ASSIGNMENTS/MORTGAGING

A. Assignments. Except as set forth in this Section 9, this Agreement may not be mortgaged, assigned or otherwise transferred in whole or in part by the Purchaser. The Commission specifically consents to the assignment or other transfer by the Purchaser of its interest in this Agreement to (1) the "The Sagamore on East" Condominium (acting by its Board), and/or (2) the lender(s) providing construction financing for the construction of the Project. This Agreement is assignable by the Commission (and any subsequent owner) to subsequent owner(s) of the Garage.

B. Mortgages. This Agreement shall not, in any event, be subject or subordinate in any manner to any fee and/or leasehold mortgage or other security interest, assignment, lease (including all subleases and other subordinate tenancies), building loan agreement, trust indenture, or any other type of lien, encumbrance or agreement whatever affecting the Premises and/or the Project.

C. Liens. If any mechanic's, materialman's or other liens or order for the payment of money shall be filed against the Garage and/or the real property on which the Garage is

situated, for or arising out of any labor or material furnished or alleged to have been furnished or to be furnished to, or for, the Purchaser or by any reason of any change, alteration or addition or the cost or expense thereof, or any contract relating thereto, or against the Commission as owner of the Garage and the real property on which it is situated, the Purchaser shall cause the same to be canceled and discharged of record, by bond or otherwise within ninety (90) days at the expense of the Purchaser.

SECTION 10. COVENANTS/REPRESENTATIONS AND WARRANTIES

A. By Commission

The Commission covenants, represents and warrants to the Purchaser as follows:

1. The Commission is a public corporation duly established and validly existing under the laws of the State of New York, and has full right and lawful authority to enter into this Agreement and perform all its duties and obligations hereunder.

2. All necessary and appropriate actions have been taken, including without limitation adoption of all necessary resolutions of the Commission and any necessary approvals by the Rochester City Council and the Monroe County Legislature to allow the Commission to enter into, acquire and perform its obligations under this Agreement.

3. The Commission has all requisite power, right and legal authority to execute, deliver and perform its obligations under this Agreement and has taken all action necessary to authorize the execution and deliver of, and the performance and observance of its obligations under, this Agreement.

B. By Purchaser:

The Purchaser covenants, represents and warrants to the Commission as follows:

1. The Purchaser is a limited liability company duly established and validly existing under the laws of the State of New York, and has full right and lawful authority to enter into this Agreement and perform all its duties and obligations hereunder.

2. There are no actions, suits or proceedings at law or in equity, or by or before any court, governmental instrumentality or other agency or regulatory authority, pending against the Purchaser, to the best of Purchaser's knowledge, threatened in writing against (a) the Premises and/or the Project, (b) the Purchaser, or (c) any other person, entity or property with respect to the Premises and/or the Project which would have a material adverse effect on the Purchaser's development of the Premises for the Project, the use and occupancy of the Premises or the Project or which questions the validity of this Agreement or the transactions contemplated hereby.

3. The Purchaser will cooperate with the Commission in implementing this Agreement, and shall promptly commence and diligently proceed to complete as quickly as possible all steps and take all affirmative actions necessary, or which may be necessary, and appropriate for the implementation of this Agreement.

4. The execution, delivery, performance or observance by the Purchaser of this Agreement will not violate or contravene any provisions of (a) any Federal, state or local law, (b) any order or decree of any court, governmental authority, bureau or agency, or (c) any mortgage, indenture, security agreement, contract, document undertaking or other agreement or instrument to which the Purchaser is a party or is binding upon it or any of its property or assets.

5. The Purchaser has all requisite power, right and legal authority to execute, deliver and perform its obligations under this Agreement and has taken all action necessary to authorize the execution and delivery of, and the performance and observance of its obligations under, this lease. This Agreement, when executed and delivered, will constitute a legal, valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its terms, without the joinder of any party.

SECTION 11. CONDEMNATION

In the event that the Garage or any part thereof shall be taken in condemnation proceeding or by exercise of any right of eminent domain, the Commission shall be entitled to the full amount of any condemnation award regarding its fee interest in the Garage. The Purchaser shall not be entitled to any portion of any condemnation award for fee interest because of this Agreement. In no event shall this Agreement be termed, deemed or considered a leasehold interest.

SECTION 12. OPERATING AGREEMENT

The parties acknowledge that it is the normal practice of the Commission to retain an independent operator to manage and operate the Garage, pursuant to an operating agreement. The terms of any such operating agreement executed subsequent to the execution of this Agreement shall be consistent with the terms of this Agreement. The Commission agrees that in the event that the current operating agreement is inconsistent with this Agreement, that the Commission shall obtain the agreement of the operator to conform any inconsistent provisions of the operating agreement with the terms of this Agreement.

SECTION 13. ENVIRONMENTAL INDEMNIFICATION

A. The Commission hereby agree to indemnify, defend and hold the Purchaser harmless from (a) any and all liability for injury to persons or to property and (b) any expense the Purchaser may incur, including but not limited to reasonable attorney fees

and experts, which liability and expense result from the presence of Hazardous Substances in, on, or beneath the Garage, and/or removal or other remediation of any such Hazardous Substances, except to the extent the presence or release of Hazardous Substances results from or arises out of the activities of the Purchaser, its agents, employees, contractors, invitees, successors and/or assigns.

B. The Purchaser hereby agree to indemnify, defend and hold the Commission harmless from (a) any and all liability for injury to persons or to property and (b) any expense the Commission may incur, including but not limited to reasonable attorney fees and experts, which liability and expense result from the presence of Hazardous Substances in, on, or beneath the Garage, and/or removal or other remediation of any such Hazardous Substances to the extent the presence or release of Hazardous Substances results from or arises out of the activities of the Purchaser, its agents, employees, contractors, invitees, successors and/or assigns.

C. For purposes of this Agreement, the following terms shall have the indicated meanings:

"Environmental Laws" mean all federal, state and local environmental, health, chemical use, safety and sanitation laws, statutes, ordinances and codes relating to the protection of the environment and/or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances and the legally enforceable rules, regulations, policies, guidelines, interpretations, decisions, orders and directives of federal, state and local governmental agencies and authorities with respect thereto.

"Hazardous Substance" means, without limitation, any flammable explosives, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum and petroleum products, methane, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials, as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Section 2601, et seq.), Articles 15 and 27 of the New York State Environmental Conservation Law or any other currently applicable Environmental Law and the regulations promulgated thereunder.

SECTION 14. INDEMNIFICATION

A. The Purchaser will defend, indemnify and hold the Commission harmless against any and all claims, suits, damages or causes of action for damages arising during the

term of this Agreement, and against any orders or decrees or judgments which may be entered therein, brought for damages or alleged damages resulting from any injury to person and/or property or loss of life sustained in or about the Garage (including but not limited to the Reserved Area) and the Connections, by any person or persons whatever, to the extent such damages or alleged damages results from or arises out of the activities of the Purchaser, its agents, employees, contractors, invitees, successors and/or assigns, unless the foregoing results from fraud, wilful misconduct, or an intentional or negligent act or omission of the Commission. The foregoing indemnities shall apply irrespective of the application of any rule of comparative or apportioned liability. These indemnitees shall survive the expiration of the term of this Agreement.

B. The Commission shall not in any event whatsoever be liable for any injury or damage to any property or to any person happening on, in or about the Garage and within the Reserved Area and Connections, nor for any injury or damage to the Reserved Area and Connections, or to any property belonging to the Purchaser or any other person which may arise from any other cause whatsoever, unless the foregoing results from the fraud, wilful misconduct, or an intentional or negligent act or omission of the Commission.

SECTION 15. EARLY CLOSURE

A. The Commission may permanently close all or a substantial portion of the Garage (including the Reserved Area) prior to the termination of this Agreement for safety reasons, if licensed professional engineers determine that it is economically or practically infeasible to restore the Garage to a safe condition, or if the City of Rochester in its governmental capacity orders such closure. Such closure shall also be deemed a determination that the Garage is "unusable for parking" as this phrase is used in this Agreement.

SECTION 16. INSURANCE

A. The Purchaser covenants that, from the commencement of the use of the Reserved Areas by the residents/occupants of the Project and thereafter at all times during the term of this Agreement, it shall maintain, at its expense, general liability insurance for the use of the Garage (including the Reserved Areas) which shall afford protection to the limit of \$5,000,000 in the event of injury or death to a single person and to the limit of \$5,000,000 in the event of any one accident, and to the limit of \$1,000,000 for property damage.

B. Such limits shall be reviewed by the Commission and the Purchaser every five (5) years. If the U.S. Consumer Price Index for All Urban Consumers ("CPI") shall increase during the term by more than five percent (5%) over that index prevailing at commencement of this Agreement, then the said limits of liability shall be increased by the same percentage amount as the percentage increase in said CPI.

C. The insurance may be in a separate policy or covered under an umbrella policy, provided the coverage required herein is evidenced by a separate endorsement or certificate. The insurance coverage shall be issued in the name of the Purchaser and the Commission, as their interests may appear, and shall be endorsed to extend coverage as an additional insured in the name of the City of Rochester and the County of Monroe, as their interests may appear. Each such insurance policy shall be placed with a financially sound and reputable insurer licensed to business in the State, and shall not contain any exclusions on municipalities or corporate governmental agencies, or the personnel, employees, invitees, licensees or agents of municipalities or corporate governmental agencies. Each said expiration clause requiring the insurer, thirty (30) days prior to cancellation or expiration, to notify the Commission of such cancellation or expiration except that in the case of nonpayment, the time period shall be ten (10) days. A bona fide certificate of insurance, evidencing the coverage provided in the policies, shall be delivered to the Commission.

D. The Purchaser agrees to pay the premiums for each insurance policy as they accrue.

SECTION 17. DESTRUCTION

A. If, during the term of this Agreement, the Garage shall be destroyed or damaged in whole or in part by fire or other cause, the Commission shall give the Purchaser immediate notice thereof. If practically and economically feasible (based on the type and extent of damage, the estimated remaining useful life of the structure, and the availability of insurance proceeds) [this, however, is not a commitment by the Commission to have insurance or any particular amount of insurance], the Commission shall promptly, at its own cost and expense, repair, rebuild, and replace the same, at least to the extent of the value and as nearly as possible to the character of the Garage and the equipment therein existing immediately prior to such occurrence. The Commission shall give the Purchaser written notice within one hundred twenty (120) days of such occurrence whether or not the damage will be repaired.

B. If the damage set forth in subsection A. above is not repaired, it shall be deemed a determination that the Garage is "unusable for parking" as this phrase is used in this Agreement.

C. This Section 17 shall be subject to the terms and provisions of Section 4. B. and Section 5.

SECTION 18. NOTICES

Any notice, demand or request required or agreed to be given under the Agreement by either party shall be sufficiently given or served if in writing and signed by the party giving it and either (a) personally delivered (including delivery by an overnight

express delivery service if a receipt is obtained) or (b) mailed by certified mail, return receipt requested, addressed to the party to be notified as follows:

TO CITY: Commissioner of Economic Development
City Hall - 30 Church Street
Rochester, New York 14614

TO PURCHASER: David Christa, Member
The Sagamore on East, LLC
119 Victor Heights Parkway
Victor, New York 14564

or to such other address as the Commission and/or the Purchaser may from time to time designate by giving notice thereof in writing. Service shall be complete upon such mailing except in case of a notice to change an address in which case service shall be complete when the notice is received by the addressee.

SECTION 19. MISCELLANEOUS

A. The captions of this Agreement are for convenience of reference only and in no way define, limit or describe the scope or intent of this Agreement or in any way affect this Agreement.

B. This Agreement cannot be changed or terminated orally, but only by an instrument in writing executed by the party against whom enforcement of any waiver, change, modification or discharge is sought. The Trustee must consent to any amendment, which consent shall not be unreasonably withheld.

C. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

D. The agreements, terms, covenants and conditions herein shall bind and inure to the benefit of the Commission, the Purchaser, the City of Rochester and the County of Monroe, and their respective successors and (except as otherwise provided herein) assigns.

E. If any provision of this Agreement is held invalid by a court of law, the remainder of this Agreement shall not be affected thereby, if such remainder would then continue to conform to the laws of the State of New York.

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

G. The parties hereto agree that they will promptly and duly execute and deliver to the other such documents and assurances and take such further action as the other party may from time to time reasonably request to carry out more effectively the intent and purpose of the Agreement, or to establish and protect the rights and remedies created or intended to be created hereunder in favor of any party.

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

CULTURAL CENTER COMMISSION

By: [Signature]
Name: Fahen Kw
Title: Designated Agent

THE SAGAMORE ON EAST, LLC

By: [Signature]
Name: PATRICK TOBIN Member

Patricia J. Cronin

my Commission expires 3/22/96

STATE OF NEW YORK)
COUNTY OF MONROE) ss:
CITY OF ROCHESTER)

On the 29th day of August in the year 2003 before me,
the undersigned, a Notary Public in and for said State, personally appeared Fashun
Ku, personally known to me or proved to me on the basis of
satisfactory evidence to be the individual whose name is subscribed to the within
instrument and acknowledged to me that he executed the same in his capacity, and
that by his signature on the instrument, the individual, or the person upon behalf of
which the individual acted, executed the instrument.

Dorinda J. Cronin
Notary Public

STATE OF NEW YORK)
COUNTY OF MONROE) ss:
CITY OF ROCHESTER)
TOWN OF VICTOR

my Commission Expires 3/23/06

On the 26th day of August in the year 2003 before me,
the undersigned, a Notary Public in and for said State, personally appeared _____
PATRICK TIGIN, personally known to me or proved to me on the basis of
satisfactory evidence to be the individual whose name is subscribed to the within
instrument and acknowledged to me that he executed the same in his capacity, and
that by his signature on the instrument, the individual, or the person upon behalf of
which the individual acted, executed the instrument.

Lisa M. Guran
Notary Public

LISA M. GURAN
Notary Public, State of New York
Qualified in Monroe County
My Commission Expires 3/23/06