

**SECOND AMENDMENT TO PARKING AGREEMENT
BETWEEN THE
CITY OF AUSTIN AND UP SCHNEIDER, L.P.**

This "Second Amendment to Parking Agreement between the City of Austin and UP Schneider, L.P." ("Amendment") is entered into by and between the City of Austin, a Texas home-rule municipal corporation situated in Hays, Travis and Williamson Counties acting by and through its duly authorized City Manager or his designee ("City"), and UP Schneider, L.P., a Texas limited partnership ("Schneider Developer"). The "Effective Date" of this Agreement is April 1, 2011.

Previously the City and Schneider Developer ("Parties") entered into a "Parking Agreement" ("Agreement") on or about December 19, 2005 which set out parking privileges in the City Hall garage ("City Hall Parking Garage") on Block 3 for retail patrons and retail employees connected with the retail business in the historic Schneider Building on Block 2.

Section 2.3(C)(3) of the Agreement, the portion of the Agreement which addresses "Fees for Validation," was set to expire on December 31, 2010. On December 16, 2010, the City Council extended the term of the Agreement for one ninety (90) day extension period. It is the Parties desire to amend the Agreement to create a new validation program extending through December 31, 2017 regarding parking validations the Schneider Developer may provide Schneider Property retail customers.

On December 16, 2010, the City Council authorized the negotiation and execution of this Second Amendment in order to create a consistent parking structure for the 2nd Street District.

AMENDMENT

Section 2.3(A), 2.3(C)(2) and 2.3(C)(3) of the original Agreement between the Parties is replaced in total by the following:

2.3 Public Parking; Validation: Public Parking is parking that is available to anyone at any time, as long as they pay the established fee for public parking in the City Hall Parking Garage (referred to in the original Agreement as the "Parking Garage") and spaces are available.

(A) There are six (6) separate days and times for the City Hall Parking Garage, that are described below (each of which is sometimes referred to as a "Parking Increment"): 1) "Council Meeting Days;" 2) "Council Meeting Evenings;" 3) "Standard Days;" 4) "Standard Evenings;" 5) "Weekend Days;" and 6) "Weekend Evenings." The City may alter the days and times set forth below if the City decides to do so, in the exercise of the City's sole and absolute discretion. Nothing in this Amendment limits access to or use of the City Hall Parking Garage by City employees working at City Hall or impairs the City's right to schedule meetings or functions at City Hall:

(1) Council Meeting Days. Are from 9:00 a.m. until 6:00 p.m. on those days during which the City Council of the City of Austin is scheduled to meet.

Currently, Council Meetings Days are Thursdays, but those days are subject to change and expansion to more than one day at any time.

- (2) Council Meeting Evenings. Are from 6:00 p.m. until the closing time set by the City on those evenings during which the council meeting of the City of Austin is scheduled to meet.
- (3) Standard Days. Are from 9:00 a.m. until 6:00 p.m., Monday through Friday, *excluding* Council Meeting Days.
- (4) Standard Evenings. Are from 6:00 p.m. until the closing time set by the City, Monday through Thursday evenings, *excluding* Council Meeting Evenings.
- (5) Weekend Days. Are from 9:00 a.m. until 6:00 p.m. on Saturdays and Sundays.
- (6) Weekend Evenings. Are Friday, Saturday and Sunday nights from 6:00 p.m. until the closing times set by the City (which may vary depending on the night).

* * *

- (C) The City has agreed to provide two (2) hours of validation for patrons of Schneider Retail Tenants during Standard Days and Council Meeting Days.

* * *

- (2) Persons to Whom the Schneider Developer May Grant Validation Rights and Validation Periods. The only person(s) to whom Schneider Retail Tenants may give Validations are customers of Schneider Retail Tenants who enter the City Hall Parking Garage before 6:00 p.m. on any Standard Weekday or Council Meeting Day. The maximum amount of time that can be validated is two (2) hours. This period of time is referred to as the "Validation Period." A customer is limited to a single Validation for any one parking ticket, regardless of the number of Schneider Retail Tenants on the Schneider Property or even retail tenants in the remainder of the 2nd Street District that the customer patronizes. If the customer parks in the City Hall Parking Garage for longer than the Validation Period, the customer will be required to pay as if the customer entered the City Hall Parking Garage immediately after the end of the Validation Period.
- (3) Fees for Validation. The Parties agree that the City shall charge for Schneider Property Retail Customer Validations provided in the City Hall Parking Garage.

- (a) Reports: The City will provide Schneider Developer with monthly reports setting forth the number of hours of Schneider Property Retail Customer Validations the City granted during the immediately preceding month.
- (b) Reimbursement by Schneider. Using the reports provided by the City under Section 2.3(C)(3)(a) of this Amendment, Schneider Developer shall have thirty (30) days after receipt of the report to reimburse the City the sum total derived from multiplying the number of hours validated during the month of the report by the hourly rate in effect during that calendar year.
- (c) Initial Fee. The hourly rate in effect for April 1, 2011 through December 31, 2011 is three dollars and fifty cents (\$3.50) per hour.
- (d) Annual Review of Validation Fees. The Parties shall review the fee for Validations during the last sixty (60) days of each calendar year beginning with the 2011 calendar year. If the Parties are unable to reach agreement on parking validation rates for a successive calendar year, the Parties agree to have the dispute regarding parking validation rate changes mediated by a neutral third party to retain the parking validation program for all 2nd Street District retail businesses.
- (e) The Parties agree that validation fees paid by Schneider Developer, and not recovered from Schneider Retail Tenants, will be considered a normal operating expense, and can be included in the calculation of Cash Flow under the "Disposition and Development Agreement" between the Parties.


ALL OTHER TERMS AND CONDITIONS IN THE AGREEMENT REMAIN IN FULL FORCE AND EFFECT.

Pursuant to Section 5.14 of the Agreement, this Amendment may be executed in any number of counterparts, each of which is an original and all of which constitute one and the same document.

[signature page follows]

The Parties have executed this Amendment on the dates indicated below, to be effective April 1, 2011.

CITY OF AUSTIN, a Texas
home-rule municipal corporation

By: 
Sue Edwards
Assistant City Manager

Date: April 1, 2011


UP SCHNEIDER, LP, a
Texas limited partnership

By: Intown Austin, LLC,
a Texas limited liability company
its general partner

By: _____
Robert W. Bagwell
Manager

Date: _____, 2011

APPROVED AS TO FORM AND CONTENT:

By: 
Cathie Childs
Assistant City Attorney

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