



Edwin M. Lee, Mayor  
Philip A. Ginsburg, General Manager

## **FIRST AMENDMENT TO PARKING GROUND LEASE**

THIS FIRST AMENDMENT TO PARKING GROUND LEASE (the "Amendment"), dated for reference purposes only as of November 17, 2011, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City" or "Landlord"), acting by and through its Recreation and Park Commission (the "Commission") and TOWER VALET PARKING, INC., a California corporation ("Tenant").

### **RECITALS**

A. City and Tenant entered into that certain Parking Ground Lease, dated for reference purposes as of July 1, 2007 (the "Lease"), pursuant to which City leased to Tenant that surface parking lot located at 701 Lombard Street, San Francisco, California, as more particularly described in the Lease (the "701 Lombard Lot"). The term of the Lease has expired, and Tenant presently occupies the 701 Lombard Lot on a month-to-month basis.

B. The 701 Lombard Lot is the site of future construction that is projected to commence in calendar year 2012, and prior to the date of such construction City desires to make certain parking spaces within the 701 Lombard Lot available to City CarShare, a California non-profit corporation ("City CarShare"), and Zipcar, Inc., a Delaware corporation ("Zipcar"), for City CarShare and Zipcar and their respective members or customers to park and retrieve vehicles used in connection with such parties' self-service, unattended car sharing programs.

C. City and Tenant presently desire to amend the terms and conditions of the Lease to revise the base rent, to require Tenant to offer specified parking spaces to City CarShare and Zipcar, and to extend the term of the Lease to the earlier of November 17, 2013, or 60 days after the date City provides Tenant with notice that City will require Tenant to cease operating its premises on the 701 Lombard Lot as a public parking lot in order to facilitate City's construction project, all on the terms and conditions set forth below.

### **AGREEMENT**

NOW THEREFORE, City and Tenant hereby agree as follows:

1. Defined Terms. Unless otherwise specified, each capitalized term contained herein shall have the same meaning as set forth in the Lease.

2. Extension of Term; Early Termination. Effective as of the date hereof, the Term is extended through November 17, 2013 (the "Extended Expiration Date"), subject to the provisions of Section 3 below, and provided that City may elect to terminate the Lease prior to the Extended Expiration Date by providing Tenant with not less than sixty (60) days prior written notice (the "Termination Notice") of the date on which the Lease will terminate (the "Early Termination Date"), and effective as of the Early Termination Date the Lease Term shall expire and Tenant shall surrender the Premises to City in the condition required by Section 20 of the Lease. Notwithstanding the foregoing, if City determines that Tenant may operate the Premises beyond the termination date stated in the Termination Notice, City, at the sole election of the General Manager of the Recreation and Park Department, may notify Tenant of the later date on which City will require Tenant to cease operation of the Premises, and City and Tenant may agree in writing to terminate this Lease on or prior to such later date stated in such notice, rather than the date stated in the original Termination Notice, and in such event such mutually agreed upon date shall be the Early Termination Date for the purposes of the Lease.

3. Offer of Parking Spaces to Zipcar and City CarShare. During the remainder of the Term, Tenant agrees to offer to sublease and make available (i) to City CarShare, the three (3) parking spaces identified as the City CarShare Spaces on the attached Exhibit A-1 (the "City CarShare Spaces"), and (ii) to Zipcar, the eleven (11) parking spaces identified as the Zipcar Spaces on the attached Exhibit A-1 (the "Zipcar Spaces"). Tenant shall make the City CarShare Spaces available to City CarShare, and the Zipcar Spaces available to Zipcar, at a monthly rental rate of \$300 per parking space (or such revised rental amount as approved by the General Manager of the Recreation and Park Department), and otherwise subject to all of the terms and provisions of the Lease. If, at any point during the Term, City CarShare elects not to sublease or license the City CarShare Spaces from Tenant or breaches the terms of the sublease or other agreement between Tenant and City CarShare, then Tenant may terminate the sublease or other agreement and exercise other available remedies against City CarShare, and Tenant shall thereafter not be required to offer the City CarShare Spaces to City CarShare. If, at any point during the Term, Zipcar elects not to sublease or license the Zipcar Spaces from Tenant or breaches the terms of the sublease or other agreement between Tenant and Zipcar, then Tenant may terminate the sublease or other agreement and exercise other available remedies against Zipcar, and Tenant shall thereafter not be required to offer the Zipcar Spaces to Zipcar. City shall have not liability or responsibility for the acts or omissions of City CarShare or Zipcar.

4. Base Rent. Effective as of November 17, 2013, the monthly Base Rent payable under the Lease shall be increased to \$4,600 per month. Adjustments to Base Rent which do not occur on the first day of a calendar month shall be appropriately prorated based on the number of days in such month. The adjusted monthly Base Rent payable shall be effective upon the execution of this Lease Amendment.

5. Use of Premises. Tenant shall use the Premises for the operation of a surface parking lot providing hourly and monthly parking, on all the terms and conditions specified in the Lease. Tenant may provide valet parking services on the terms and conditions set forth in Section 6 below. Tenant shall not sublease, license, or otherwise provide any parking spaces in

the Premises to any entity providing car sharing or like operations except to City CarShare and Zipcar, and except as may otherwise be approved by the General Manager of the Recreation and Park Department in his or her sole discretion.

6. Cooperation with City CarShare and Zipcar. For so long as City CarShare and Zipcar rent the City CarShare Spaces or the Zipcar Spaces, respectively, Tenant acknowledges that City CarShare and Zipcar and their members and customers shall at all times have the right to pedestrian and vehicular access to the City CarShare Spaces or the Zipcar Spaces, respectively. If Tenant elects to operate its business on the Premises in a manner that may temporarily obstruct pedestrian or vehicular ingress to and egress from the City CarShare and Zipcar Spaces, Tenant shall move the affected City CarShare and Zipcar Spaces or otherwise take such measures as may be needed to ensure that City CarShare and Zipcar have, at all times, the ability to access and use their vehicles in the Lombard Lot (e.g., by providing parking valet services). Further, if access to the Lombard Lot will be restricted, Tenant will cooperate City CarShare and Zipcar and its customers to provide access cards, passes, bumper stickers, decals or other appropriate identification as required for the operation of the Lombard Lot.

7. Counterparts. This Amendment may be executed in counterparts, each of which shall constitute an original but all of which shall constitute one document.

8. Entire Agreement. This Amendment sets forth the entire understanding of the parties on the subject matter of this Amendment. There are no agreements between Landlord and Tenant relating to the Lease other than those set forth in writing and signed by the parties. Neither party has relied upon any understanding, representation or warranty not set forth herein, either oral or written, as an inducement to enter into this Amendment.

9. Lease in Full Force and Effect; Amendment Prevails. Except as amended hereby, the Lease remains unmodified and in full force and effect. To the extent the provisions of this Amendment conflict with the provisions of the Lease, this Amendment shall prevail.

[No further text this page.]

City and Tenant have executed this Amendment as of the date first written above.

**CITY:** CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
PHILIP GINSBURG, General Manager  
Recreation and Park Department

**TENANT:** TOWER VALET PARKING, INC.,  
a California corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**APPROVED BY  
RECREATION AND PARK COMMISSION  
PURSUANT TO RESOLUTION NO. \_\_\_\_\_ DATED: \_\_\_\_\_**

\_\_\_\_\_  
Margaret McArthur, Commission Liaison

**APPROVED AS TO FORM:**

DENNIS HERRERA,  
City Attorney

By: \_\_\_\_\_  
Anita L. Wood  
Deputy City Attorney