

PARKING AGREEMENT

This Parking Agreement (this "**Agreement**") is executed by and between the City of Austin, a Texas home rule municipal corporation (the "**City**"), and UP Schneider, LP, a Texas limited partnership (the "**Schneider Developer**").

ARTICLE 1

GENERAL

- 1.1 **Background:** The City has constructed its new city hall (the "**City Hall**") on Block 3 shown on the drawing attached to and made a part of this Agreement as Exhibit "A," which includes a parking garage that is intended, in part, to provide public parking for the retailers and restaurants in the five-block area around Block 3 (that five-block area plus Block 3 is labeled on Exhibit "A" and sometimes referred to in this Agreement as the "**2nd Street District**"). An existing historic building (the "**Schneider Building**") is located on Lot 5, Amendment of the Amended Plat of Lots 5 and 6 of the Original City of Austin, a subdivision of Travis County, Texas, according to the map or plat thereof, recorded under Document No. 200200047 of the Official Public Records of Travis County, Texas (the "**Schneider Lot**") (the Schneider Building and the Schneider Lot are referred to collectively in this Agreement as the "**Schneider Property**"). The Schneider Developer wishes to complete the historic renovation of the Schneider Building and lease it to a tenant or tenants for retail or restaurant uses. Any such tenant is referred to in this lease as a "**Schneider Retail Tenant**" and collectively as the "**Schneider Retail Tenants**." In connection with that renovation and change in use, the Schneider Developer wishes to enter into this Agreement with the City concerning validation for customers of the Schneider Retail Tenants and parking for the employees of the Schneider Retail Tenants (collectively, the "**Schneider Retail Tenant Employees**" and individually, a "**Schneider Retail Tenant Employee**") in the City-owned parking garage under Block 3.
- 1.2 **Defined Terms.** A list of defined terms and the section in which they are defined is attached to this Agreement as Exhibit C (i.e., the last Exhibit to this Agreement).

ARTICLE 2

AGREEMENT CONCERNING VALIDATION

- 2.1 **Term of this Agreement.** This Agreement is effective on January 1, 2006 and expires on December 31, 2017 (the "**Expiration Date**"). Unless and until the City and the Schneider Developer enter into a written agreement extending the term of this Agreement beyond the Expiration Date, then the term of this Agreement will expire on the Expiration Date. This automatic expiration occurs even if the City and the Schneider Developer are in negotiations to extend the term of this Agreement when the Expiration Date occurs.
- 2.2 **Description of the Parking Garage:** The parking garage under City Hall is referred to in this Agreement as the "**Parking Garage**." A drawing of the Parking Garage, showing

the levels of parking ("Level B", "Level P1", "Level P2", and "Level P3") and associated ramps, entrance and exit, and the location of the parking garage booth, is attached to this Agreement as Exhibit B. Exhibit B shows the approximate layout of the Parking Garage at this time, but may contain inaccuracies, so that the City makes no representation or warranty concerning Exhibit B. Further, the Parking Garage (including ramps, entrances, exits, and the location of the parking booth) is subject to physical modification by the City if the City believes, in the exercise of its sole and absolute discretion, that those modifications are in the City's best interests.

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 Parking Garage and spaces are available.

(A) There are six separate parking increments during any week, but only the following three of them apply to this Agreement: Council Meeting Days, Standard Days, and Weekend Days. Those three parking increments are described below. The City may alter the days and times set forth below if the City decides to do so, in the exercise of its sole and absolute discretion. Nothing in this Agreement limits access to or use of the 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 8 a.m. until 5 p.m. on those days during which the City Council of the City of Austin is scheduled to meet. Currently, Council Meeting Days are Thursdays, but those days are subject to change and expansion to more than one day at any time.

(2) "Standard Days" are from 8 a.m. until 5 p.m., Monday through Friday, excluding Council Meeting Days.

(3) "Weekend Days" are from 9 a.m. until 5 p.m. on Saturdays and Sundays.

(B) The City will set the rates for all parking. The City makes no representation or warranty concerning the rates or the frequency with which they may be changed.

(C) The City has agreed to provide two hours of Validation for patrons of Schneider Retail Tenants during Standard Days and Council Meeting Days. If and only if, the City charges its standard parking rates on Weekend Days, then the City will provide two hours of Validation for patrons of Schneider Retail Tenants during Weekend Days. If the City institutes a different parking rate for Weekend Days (for example, if the City institutes a flat rate), then the City will not honor any Validations on Weekend Days.

(1) Validation Devices: The Schneider Developer must cause all Schneider Retail Tenants to purchase validation devices from the City and the City will program those devices. These validation devices are currently in the shape of a clamshell and so will be referred to as a "Clamshell." A

Clamshell electronically encrypts the amount of free parking to which the person receiving the validation is entitled onto the parking ticket. When the parking ticket is presented at the exit from the Parking Garage, the reading device in the Parking Garage automatically gives the customer the amount of free parking encrypted onto the ticket. The amount of free parking that may be encrypted onto any parking ticket is limited by the terms of Section 2.3(C)(2) below.

- (2) Persons to Whom the Schneider Developer may Grant Validation Rights and Validation Periods. The only persons to whom Schneider Retail Tenants may give Validations are customers of Schneider Retail Tenants who enter the Parking Garage before 5:00 p.m. on any Standard Day or Council Meeting Day or, if applicable, any Weekend Day. The maximum amount of time that can be validated is two 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 Parking Garage for longer than the Validation Period, the customer will be required to pay as if the customer entered the Parking Garage immediately after the end of the Validation Period.
- (3) Fees for Validation: The City will not charge the Schneider Developer a fee for Validations during the period from December 31, 2005 through December 31, 2010. Beginning on January 1, 2011, the City intends to charge a fee determined by the City.
- (4) The Schneider Developer must cause Retailers to Limit Validations to Customers for the Time they are Customers: The Schneider Developer must include in all leases with Schneider Retail Tenants specific prohibitions against giving Validations to anyone who is not patronizing a Schneider Retail Tenant at the time it gives the Validation and against giving multiple validations. Specifically, but not in limitation, no Schneider Retail Tenant may give any Validation to a manager or other employee of that Schneider Retail Tenant (or of any other Schneider Retail Tenant). The Schneider Developer must diligently and in good faith enforce these prohibitions. Any violation of this Section 2.3 by a Schneider Retail Tenant constitutes a breach of this Agreement.
- (5) "Validation," as used in this Agreement, means any method that allows a customer of a Schneider Retail Tenant to park in the public park area of the Parking Garage.

2.4 Schneider Retail Tenant Employee Parking: Certain Schneider Retail Tenant Employees will be entitled to park in the area of the Parking Garage that is only accessed by automatic vehicle identification devices ("AVIs," which are initially expected to be radio frequency transponders) and is designated as being, in whole or in part, for Schneider

Retail Tenant Employees. The City's issuance of an AVI to a Schneider Retail Tenant Employee does not terminate the Schneider Developer's obligations in connection with the applicable Schneider Retail Tenant Employee and the AVI issued to that Schneider Retail Tenant Employee. Rather, the City will be entitled to enforce its rights under this Agreement against the Schneider Developer, the Schneider Retail Tenant Employee, and even, under certain circumstances, the Schneider Retail Tenant that employs the Schneider Retail Tenant Employee.

(A) Limitation on Number of AVIs: The City hereby agrees to issue five AVIs to Schneider Retail Tenant Employees that the Schneider Developer designates and who otherwise meet the requirements of this Section 2.4. If by the 20th day of any calendar month, fewer than five AVIs have been issued or requested for Schneider Retail Tenant Employees, then the City may allocate the unused AVIs to others wishing to park in the Parking Garage as long as the City is able to provide AVIs in accordance with the terms of this Section 2.4 when the Schneider Developer requests the City to do so.

(B) Request for AVIs: The Schneider Developer must submit to the City an AVI request form for each AVI. With this AVI request form, the Schneider Developer must provide all of the information described below. The City reserves the right to refuse to issue an AVI to any person without being required to provide the reasons for its refusal to the Schneider Developer or that person, but the City will provide written notice to the Schneider Developer that the City has refused to issue the AVI. The Schneider Developer may only submit AVI request forms on the 20th day of each calendar month (if the 20th is not a Business Day, then the deadline will be extended to the next Business Day). If the City approves an AVI request form, the City will issue the AVI to the Schneider Developer by the end of that month.

(1) General Information: The Schneider Developer must provide the City with the name of the Schneider Retail Tenant Employee who will be using the AVI, the Schneider Retail Tenant Employee's workplace (which must be within the Schneider Property), and the make, model, type, and license plate of the vehicle (or vehicles) that the proposed Schneider Retail Tenant Employee will or may use with the AVI. If a Schneider Retail Tenant Employee is temporarily driving a vehicle that has not been described in the information provided to the City, then that Schneider Retail Tenant Employee must follow the rules and regulations established by the City for that situation and, until the rules and regulations are established, must check in with the parking office and notify the City of this temporary change. If any of the other information about a Schneider Retail Tenant Employee changes after it is provided to the City, then the Schneider Developer must deliver the new information to the City within 10 days after the change. If a Schneider Retail Tenant Employee does not comply with the rules and regulations for temporary changes in the vehicle that Schneider Retail Tenant Employee uses or if the Schneider Developer does not comply with the requirements concerning other changes, the City

may refuse to recognize the AVI and may demand that the Schneider Developer either return the AVI or provide the City with the new information (including the information concerning a Schneider Retail Tenant Employee's temporary use of a different vehicle) within 10 days. If the Schneider Developer does not comply with that demand within that 10 day period, the Schneider Developer will forfeit the AVI Deposit for that particular AVI.

- (2) Background Checks: The Schneider Developer must include with the AVI request a certified statement that the Schneider Developer has conducted a 10-year criminal history check in Texas for that Schneider Retail Tenant Employee and, if the Schneider Retail Tenant Employee has lived anyplace other than Texas during that 10-year period, a 10-year criminal history check for each jurisdiction in which the Schneider Retail Tenant Employee has lived (or a statement that the Schneider Developer has been unable to obtain a 10-year criminal history check in one or more of those other jurisdictions despite the Schneider Developer's good faith effort to do so). This certification must also include a statement that the Schneider Developer's criminal history checks do not show that the applicable Schneider Retail Tenant Employee has been convicted of a felony of violence. The Schneider Developer must retain the results of the criminal history checks in its files during the term of this Agreement. The Schneider Developer must deliver to the City a copy of all background checks and efforts to attempt missing background checks within 10 days after the City delivers written request for that information to the Schneider Developer.
- (C) Obligation to Use AVIs only while Working; Prohibition Against Sharing. Those Schneider Retail Tenant Employees who receive AVIs may only use them while they are working at the Schneider Property. Schneider Retail Tenant Employees who are coming to work may not park in the area of the Parking Garage that is designated for public parking, unless expressly directed to do so by the staff of the Parking Garage (including the staff of any Parking Garage operator). Schneider Retail Tenant Employees are prohibited from sharing AVIs.
- (D) Right to Use AVI Terminates upon Termination of Status as a Schneider Retail Tenant Employee. If any Schneider Retail Tenant Employee ceases to be an employee of a Schneider Retail Tenant in the Schneider Property, then an "AVI Termination Event" will be deemed to have occurred and all rights and privileges of the former Schneider Retail Tenant Employee to use the AVI or park in areas of the Parking Garage designated for Schneider Retail Tenant Employees will automatically terminate. The Schneider Developer must notify the City of the occurrence of each AVI Termination Event within seven days after the AVI Termination Event occurs and must return the applicable AVI to the City within ten days after the AVI Termination Event occurs. If the Schneider Developer does not comply with these requirements, then the Schneider Developer will forfeit the AVI Deposit for that particular AVI although the number of AVIs to

which the Schneider Developer is entitled will not be reduced as a result of that forfeiture of the AVI Deposit. Rather, the Schneider Developer will be required to go through the application process and put up a new AVI Deposit for any replacement AVI.

- (E) Deposits. For each AVI issued under this Section 2.4, the Schneider Developer must provide the City with a deposit in an amount equal to the replacement cost of the AVI (the "AVI Deposit"). If an AVI is lost, then the AVI Deposit is forfeited and the Schneider Developer must provide a new AVI Deposit before the City will issue a new or replacement AVI. There is no other charge to the Schneider Developer for the right to obtain AVIs for Schneider Retail Tenant Employees under the terms of this Section 2.4 and Schneider Retail Tenant Employees are not charged any separate fee for issuance of an AVI.
- (F) Lease Requirements: The Schneider Developer must include in all leases with Schneider Retail Tenants in the Schneider Property an obligation to comply with the terms of this Section 2.4. The Schneider Developer must diligently and in good faith enforce this compliance. Failure of any Schneider Retail Tenant Employee to comply with these requirements will entitle the City to terminate that Schneider Retail Tenant Employee's AVI. If a particular Schneider Retail Tenant's employees violate this Section 2.4 more than six times in any twelve-month period, the City will be entitled to terminate the right of all Schneider Retail Tenant Employees of that Schneider Retail Tenant to have AVIs, may refuse to recognize any AVIs that have been issued to the employees of that Schneider Retail Tenant, and demand that the Schneider Developer return those AVIs, and may enforce this refusal to recognize existing AVIs and issue new AVIs as soon as the sixth violation of a requirement occurs (i.e., without any additional notice to the Schneider Developer). Any violation of this Section 2.4 constitutes a breach of this Agreement.

- 2.5 Other Parking Agreements; District-Wide Parking Agreement. The City may enter into agreements concerning use of the Parking Garage with persons or entities that do not have any connection to the Schneider Property or even the 2nd Street District. Such agreements can include granting reserved parking, permitting valet parking, or granting Validation rights to such persons or entities and their designees. Finally, the City is free to grant any type of parking rights in the Parking Garage it wishes to anyone working at or having business or interest in visiting the City Hall. The City and the Schneider Developer acknowledge that they would both like to work toward a common parking arrangement for all retail businesses (including restaurants) and parking facilities within the 2nd District, but that no such system is currently in place. The Schneider Developer acknowledges the benefit of a parking plan for the Schneider Property and agrees to work with the City toward that end. If the City and the Schneider Developer, working with the other owners in the 2nd Street District, agree to a common plan that requires changes to this Agreement, then both parties agree to amend this Agreement within 30 days after the City, the Schneider Developer, and other owners in the 2nd Street District have agreed upon a new, common parking plan.

- 2.6 Interruption of Parking Rights. If the City determines that the City Hall is at risk for security breaches, then the City may elect to prohibit some or all types of parking from the Parking Garage. This prohibition on access will continue for as long as the City deems prudent. In no event will the City ever be required to allocate any parking for City employees for public parking, nor will the City be deemed to be in violation of this Agreement if it allows its employees and the employees of the retail and restaurant spaces located within City Hall to continue to park in the Parking Garage despite prohibiting others from parking in the Parking Garage.
- 2.7 Maintenance. It may be necessary for the Parking Garage to be closed in whole or in part from time to time to perform routine and emergency maintenance, repairs, and other service to the Parking Garage. The City will not be required to provide alternative parking or to give the Schneider Developer advance notice of any interruptions, even interruptions for which the City itself has advance notice.
- 2.8 Rules and Regulations; Towing. The City may impose reasonable rules relating to the operation of the Parking Garage, such as speed limits, directional signs and arrows, and fire lanes. The City may also post signs advising those using the Parking Garage that non-complying vehicles may be towed at the owner's cost. The City may ticket or tow vehicles that do not comply with those rules and regulations, do not comply with applicable law, or do not comply with posted signs.

ARTICLE 3

ASSIGNMENT

The Schneider Developer may assign its rights and obligations under this Agreement to any person or entity to which it assigns its interest in the Schneider Property or the Schneider Property Sublease. In such event, the Schneider Developer will automatically be released from all liability under this Agreement arising from and after the date of that assignment. The City may assign its rights and obligations under this Agreement to anyone to whom it sells or conveys the Parking Garage. In such event, the City will automatically be released from all liability under this Agreement, whether that liability arose before, on, or after the date of that sale or conveyance.

ARTICLE 4

DEFAULT

- 4.1 Default by the Schneider Developer: If the Schneider Developer breaches this Agreement, then the City may send notice to the Schneider Developer of the occurrence of that breach. If that breach is not cured within 30 days after delivery of that notice (which period of time will be extended to the minimum period of time necessary to cure the breach using all diligence if the breach cannot, by its nature, be cured within 30 days), the breach will constitute a "Schneider Developer default" and the City will be entitled to exercise all remedies under this Agreement, at law, or in equity.

- 4.2 Fees for Notices of Breach. If any breach of Section 2.3 a Section 2.4 occurs and the City sends notice of that breach to the Schneider Developer, then the Schneider Developer will be obligated to pay the applicable amount set forth below for each such breach. These amounts compensate the City for the additional work that the City must perform in notifying the Schneider Developer of and addressing the problems arising because of such breach:
- (A) For the first three breaches in any calendar year, \$100 per breach;
 - (B) For the next two breaches in any calendar year, \$250 per breach;
 - (C) For each breach after five breaches in any calendar year, \$500 per breach.
- 4.3 Termination. If any Schneider Developer default occurs, then the City may terminate this Agreement by written notice to the Schneider Developer. The City hereby waives any right it may have to recover from the Schneider Developer any consequential, incidental, special, or punitive damages, including lost profits or revenues, arising out of any Schneider Developer default or any breach by the Schneider Developer of this Agreement

ARTICLE 5

MISCELLANEOUS

- 5.1 Notices. Any notice to be given or to be served upon any party to this Agreement in connection with this Agreement must be in writing, and will be deemed delivered and received when actually received or, if earlier, and regardless of when received (a) three days after being deposited in the United States mail, certified mail, properly addressed, with postage prepaid, or (b) the number of days specified in the contract with a reputable overnight courier service (e.g., one day if sent "next-day" and two days if sent "two day"), if sent by overnight courier service, or (c) on the date upon which a facsimile notice is received by the party receiving the notice. Any party to this Agreement may, at any time by giving five days prior written notice to the other party to this Agreement designate any other address in substitution of the following address or addresses to which any notices must be given. The current addresses for notices are:

If to the City:

City Manager, City of Austin
City Manager's Office

Physical Address:

301 W. Second Street
Austin, Texas 78701

Mailing Address:

P.O. Box 1088
Austin, Texas 78767-1088
Phone: (512) 974-2200
Fax: (512) 974-2833

with a copy to:

City Attorney
City of Austin Law Department
Physical Address:

301 W. Second Street
Austin, Texas 78701

Mailing Address:

P.O. Box 1088
Austin, Texas 78767-1088
Phone: (512) 974-2268
Fax (512) 974-2894

with a copy to:

Building Services Officer
City of Austin Building Services Division
Physical Address:

411 Chicon Street
Austin, Texas 78702

Mailing Address:

P.O. Box 1088
Austin, TX 78767-1088
Phone: (512) 974-3962
Fax: (512) 974-3961

with a copy to:

Harriet Anne Tabb
Bell, Nunnally & Martin
3232 McKinney Avenue
Suite 1400
Dallas, Texas 75204
Phone: (214) 740-1418
Fax: (214) 740-1499

If to the Schneider
Developer:

UP Schneider LP
3699 McKinney Avenue
Suite 857
Dallas, Texas 75204
Attention: Robert Bagwell
(214) 219-1144

with a copy to:

Lawrence J. Brannian
Lawrence J. Brannian, P.C.
8150 North Central Expressway
Suite 1800
Dallas, Texas 75206
(214) 288-4280

- 5.2 Interest: If either party fails to pay the other party any amount under this Agreement when it is due, that amount will bear interest from the date it is due until the date it is paid at the lesser of the rate of interest set forth in Section 2251.025 of the Texas Government Code, as it may be amended from time to time, or the maximum rate of interest permitted under applicable law.
- 5.3 Attorneys Fees: If any party to this Agreement institutes any action or proceeding in court or any arbitration or similar proceeding to enforce any provision of this Agreement or for damages by reason of any alleged breach of any provision of this Agreement or for any other judicial remedy, each prevailing party will be entitled to receive from each losing party all reasonable attorneys' fees and all court costs in connection with those proceedings.
- 5.4 Approvals and Consents: Unless another standard is expressly set forth in this Agreement, the City and the Schneider Developer may each withhold any approvals or consents required or permitted under this Agreement in the exercise of its sole and absolute discretion. Any consent or approval must be in writing and signed by the party whose consent or approval is required or requested in order for it to be binding upon that party.
- 5.5 No Waiver: No waiver by either party of any breach of this Agreement may be deemed a waiver of any other breach. No waiver of any breach of this Agreement may be inferred from the action of a party. Any waiver of a breach must be in writing and signed by the waiving party.
- 5.6 Modifications: No modification, waiver, or discharge of this Agreement is valid unless it is in writing and signed by the parties to this Agreement. Any amendments to this Agreement must be approved by the City Manager and may require approval of the City Council.
- 5.7 Severability: If any material provision (as defined below) contained in this Agreement is held by a final, non-applicable discretion of a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, this Agreement will terminate in its entirety and be of no further force or effect. If any provision contained in this Agreement that does not constitute a material (a "non-material provision") is held by a final, non-applicable discretion of a court of competent jurisdiction to be invalid, illegal, or unenforceable, such invalidity, illegality or unenforceability will not affect any other provision of this Agreement. This Agreement will be construed as if such invalid, illegal, or unenforceable non-material provision had never been contained in this Agreement. The following provisions constitute "material provisions:" Sections 2.1, 2.3, 2.4 and Article 4.
- 5.8 Gender, Number, and Inclusivity: Whenever the context requires, the use in this Agreement of (a) the neuter gender includes the masculine and the feminine, (b) the singular number includes the plural, and (c) the use of the words "including," or "includes" or "can include" is deemed to include the phrase, "without limitation," unless

the statement specifically states that the term "including" is meant to be limited to the specified items in such statement.

- 5.9 Captions: Captions in this Agreement are inserted for convenience of reference and do not define, describe, or limit the scope or intent of this Agreement or any of its terms.
- 5.10 Exhibits: Any reference to an Exhibit to this Agreement automatically incorporates that Exhibit into this Agreement.
- 5.11 Entire Agreement: This Agreement, together with all other written documents referred to in this Agreement, embodies the entire agreement and understanding between the parties regarding the subject matter of this Agreement. Any and all prior or contemporaneous oral or written representations, agreements, understandings, or statements not set forth in this Agreement are of no force and effect.
- 5.12 Authority of Signatories: Each signatory and party to this Agreement hereby warrants and represents to the other party that it has legal authority and capacity to enter into this Agreement and that all resolutions and other necessary actions have been taken to enable each such signatory and party to enter into this Agreement.
- 5.13 No Presumption against the Drafter of this Agreement: No inference, assumption, or presumption can be drawn from the fact that a party or its attorney prepared or drafted this Agreement. It is conclusively presumed that both parties participated equally in the preparation and drafting of this Agreement and were represented by competent counsel.
- 5.14 Counterparts and Facsimile Execution: This Agreement may be executed in any number of counterparts, each of which is an original and all of which constitute one and the same document. It is not necessary that the signature or acknowledgment of, or on behalf of, the City or the Schneider Developer appear on each counterpart. All counterparts collectively constitute one instrument. It is not necessary in making proof of this Agreement to produce or account for more than a single counterpart containing the respective signatures and acknowledgments of, or on behalf of, the City or the Schneider Developer. Any signature or acknowledgment page to any counterpart may be detached from a counterpart and attached to another counterpart in order that all signatures and acknowledgments appear on one document, although such action is not necessary to make this Agreement enforceable. The City and the Schneider Developer intend that any facsimile of a signature to this Agreement will have the effect of an original and it is not necessary to confirm facsimile execution by delivery of the signature page or full or partial version of this Agreement that was transmitted by facsimile.
- 5.15 Binding Nature of this Agreement: Subject to the provisions of this Agreement restricting or prohibiting assignment, this Agreement binds and inures to the benefit of the successors and permitted assigns of the respective parties.
- 5.16 No Third Party Beneficiaries: This Agreement has been made and is made solely for the benefit of the City and the Schneider Developer and their respective successors and permitted assigns. Nothing in this Agreement confers any rights or remedies under or by reason of this Agreement on any persons other than the parties to this Agreement and

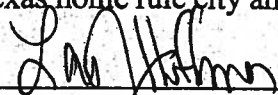
their respective successors and permitted assigns. Nothing in this Agreement relieves or discharges the obligation or liability of any third persons to any party to this Agreement.

- 5.17 Governing Law: This Agreement is to be governed by and construed in accordance with the laws of the State of Texas, and the obligations of the parties created under this Agreement are performable in Travis County, Texas. Venue for all purposes is in Travis County, Texas.
- 5.18 Time: Time is of the essence in the performance of the parties' respective obligations contained in this Agreement.
- 5.19 Conflicts of Interest: No officer, employee, independent consultant, or elected official who is involved in the development, evaluation, or decision-making process in connection with this Agreement may have a financial interest, direct or indirect, in this Agreement, although this prohibition does not apply to the salaries and benefits City employees receive for their work on this Agreement. Any willful violation of this Section 5.19 constitutes impropriety in office and may result in disciplinary action up to and including dismissal. If the Schneider Developer knew or should have known of a violation of this Section 5.19 then the City may, among other things, terminate this Agreement.
- 5.20 Warranty Against Payment of Consideration for this Agreement: The Schneider Developer warrants that it has not offered or given, and will not offer or give, any officer, employee, independent consultant, or elected official any money or other consideration with a view toward securing this Agreement, securing favorable treatment with respect to awarding, amending, or interpreting this Agreement. If the Schneider Developer has violated or violates this Section 5.20, then the City may, among other things, terminate this Agreement. If the Schneider Developer has violated or violates this Section 5.20, then the City may, among other things, terminate this Agreement.
- 5.21 Non-Liability for the City: No member, official, or employee of the City is or can be personally liable to the Schneider Developer or any successor in interest, for any claims arising because of a breach by the City, for any amount which may become due to the Schneider Developer or to its successor, under this Agreement, or for any obligations under the terms of this Agreement. No partner, officer, director, or employee of the Schneider Developer is or can be personally liable to the City or any successor in interest for any claims arising because of a breach by the Schneider Developer, for any amount which may become due to the City or to its successor, under this Agreement, or for any obligations under the terms of this Agreement.
- 5.22 Relation of the Parties: Nothing in this Agreement may be construed to make the City and the Schneider Developer partners or joint venturers, make the Schneider Developer the agent of the City, or render either party liable for any obligation of the other.
- 5.23 Damage. The Schneider Developer cannot do or permit any one else to do anything that damages or defaces the Parking Garage.

5.24 NO SECURITY. THE CITY IS NOT OBLIGATED TO PROVIDE SECURITY FOR THE PARKING GARAGE, MAKES NO REPRESENTATION OR WARRANTY THAT IT WILL PROVIDE SECURITY FOR THE PARKING GARAGE, AND MAKES NO REPRESENTATION OR WARRANTY THAT IF IT DOES PROVIDE SECURITY, WHAT FORM THE SECURITY WILL TAKE AND WHETHER OR NOT THE SECURITY WILL BE EFFECTIVE. PERSONAL PROPERTY LEFT IN PARKED VEHICLES IS AT VEHICLE OWNER'S RISK. THIS AGREEMENT DOES NOT CREATE A BAILMENT AND THE CITY IS NOT A BAILEE

THE CITY:

CITY OF AUSTIN
a Texas home rule city and municipal corporation

By: 
Laura Huffman, Assistant City Manager
Date of Signature: 12/20/05

DEVELOPER:

UP SCHNEIDER LP,
a Texas limited partnership

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


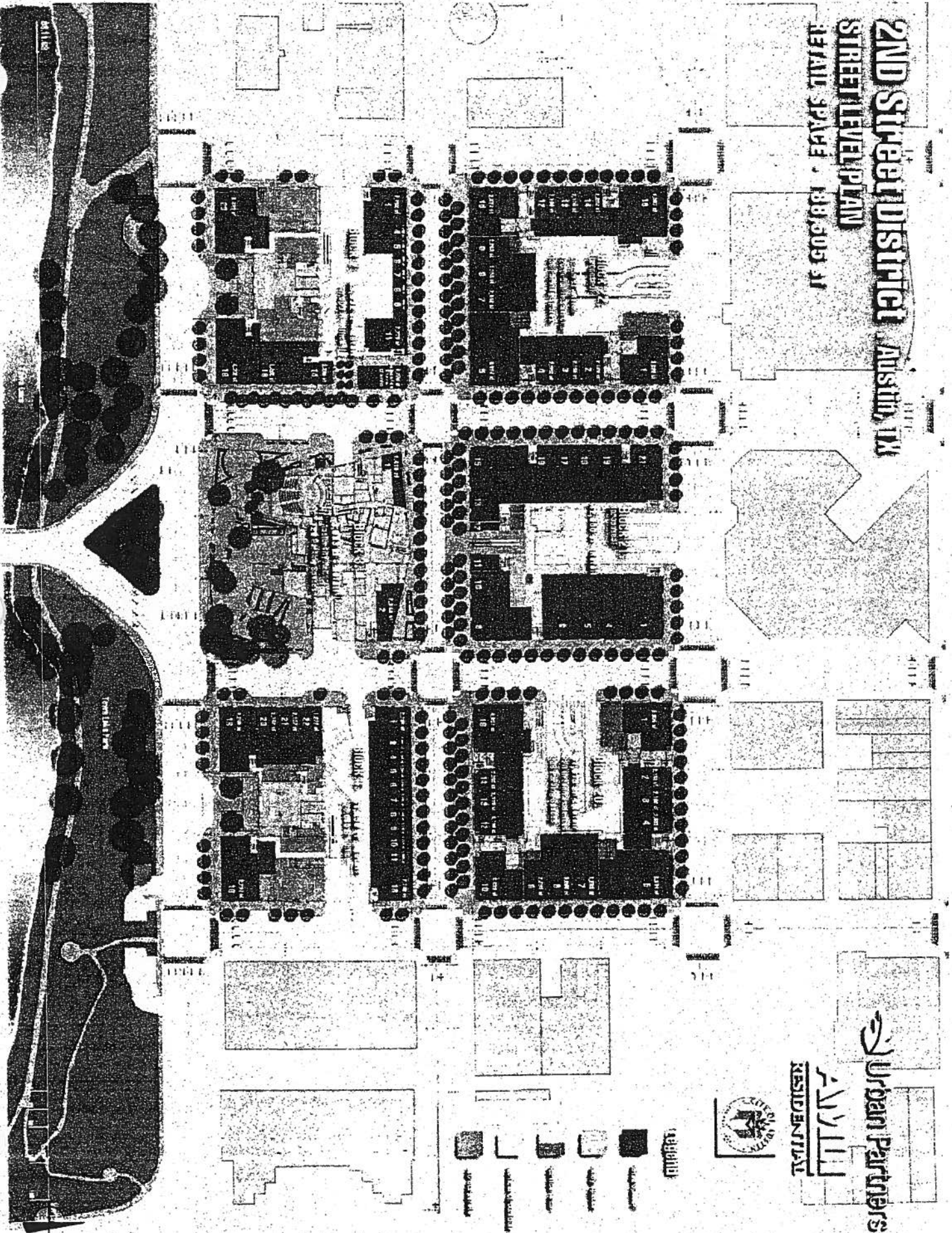
By: 
Robert W. Bagwell, Manager
Date of Signature: 12/19/2005

EXHIBIT "A"

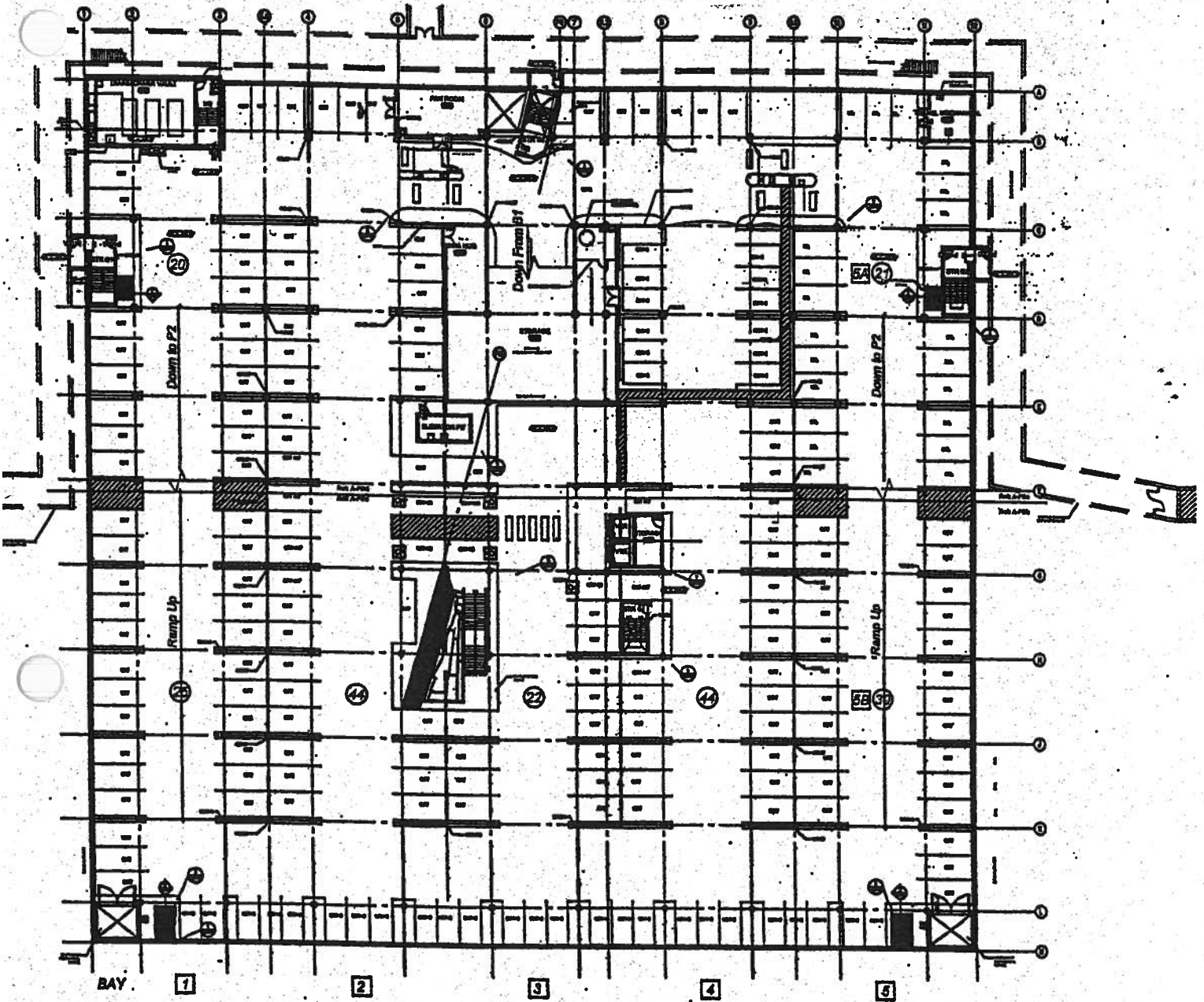
2ND STREET DISTRICT Austin, TX
STREET LEVEL PLAN
RETAIL SPACE - 188,000 SF



Urban Partners
RESIDENTIAL



EXHIBIT "B"

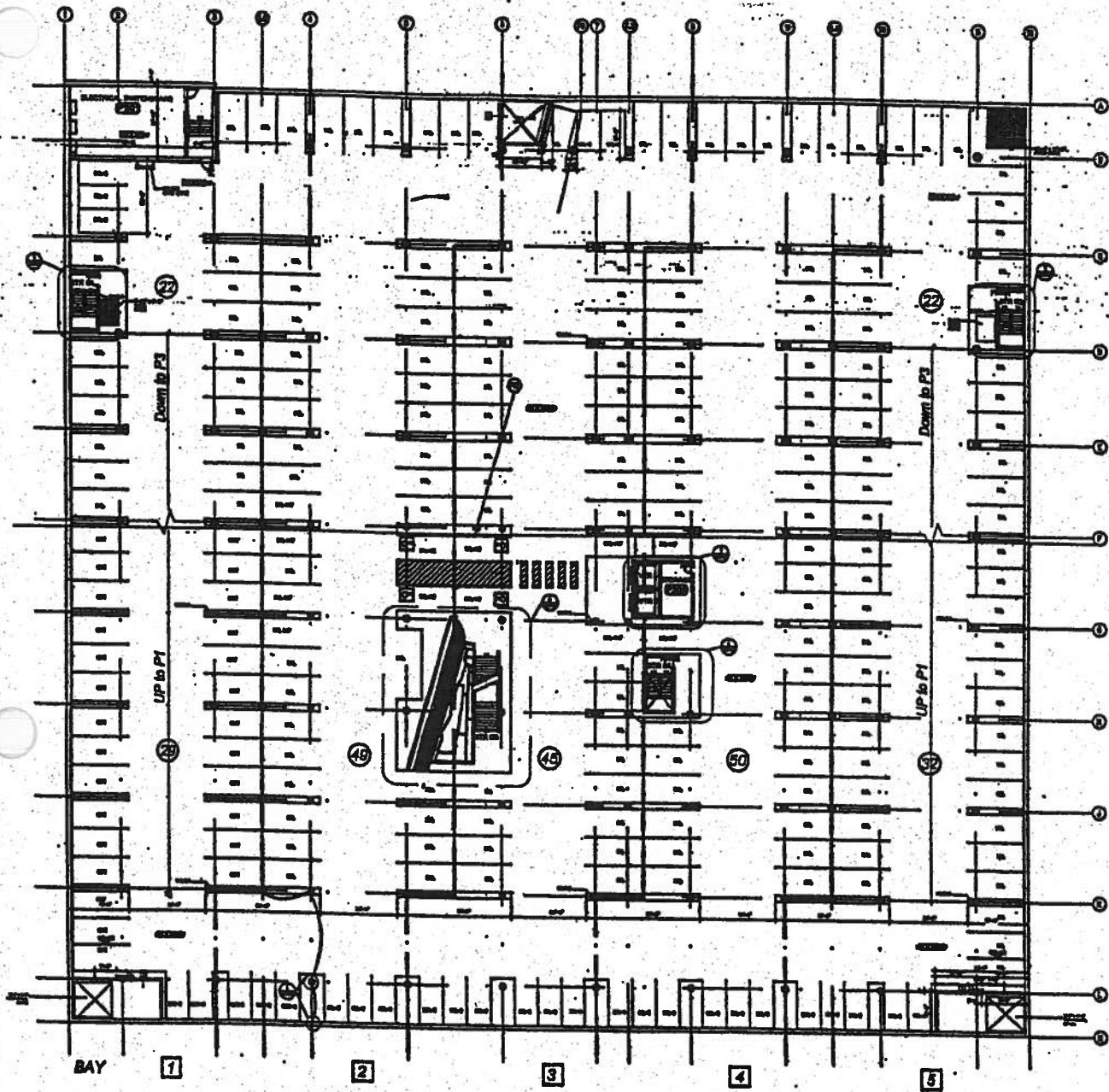


Level P1

Austin City Hall Parking Facility

06.21.04

Scale 1"=50'-0"



Level P2

Austin City Hall Parking Facility

06.21.04

Scale 1"=50'-0"

EXHIBIT "C"

(Index of Defined Terms)

<u>Defined Term</u>	<u>Section Reference</u>	<u>Page Number</u>
2 nd Street District	1.1	1
Agreement	Intro	1
AVIs	2.4	3
City	Intro	1
City Hall	1.1	1
Clamshell	2.5(C)(1)	6
Council Meeting Days	2.3(1)	2
Expiration Date	2.1	1
Material provisions	5.10	11
non-material provision	5.10	11
Parking Garage	2.2	1
Schneider Building	1.1	1
Schneider Developer	Intro	1
Schneider Developer default	4.2	8
Schneider Lot	1.1	1
Schneider Property	1.1	1
Schneider Retail Tenant	1.1	1
Schneider Retail Tenant Employee	1.1	1
Schneider Retail Tenant Employees	1.1	1
Schneider Retail Tenants	1.1	1
Standard Days	2.3(2)	2
Validation	2.3(C)(5)	2
Validation Period	2.5(C)(2)	6
Weekend Days	2.3(3)	2