

**4th AND HIGHLAND PARKING STRUCTURE
PARKING AGREEMENT BETWEEN
CITY OF MILWAUKEE AND MILWAUKEE RIVER HOTEL, LLC**

This Agreement is made as of the ___ day of _____, 2014 by and between the City of Milwaukee, a Wisconsin municipal corporation (the “City”) and Milwaukee River Hotel LLC, a limited liability company organized under the laws of the State of Wisconsin (“Aloft”).

Statement of Background and Purpose

- A. The City, by and through the Redevelopment Authority of the City of Milwaukee, constructed a 980-space parking structure located at 324 W. Highland Avenue, Milwaukee, Wisconsin, generally known as the 4th and Highland Parking Structure, (“the Structure”) in 1987. The Structure was constructed to provide parking for the Bradley Center and surrounding area. The City operates the Structure.
- B. Aloft operates a hotel located at 1230 N. Old World Third Street, Milwaukee, Wisconsin (the “Hotel”), and proposes to accommodate up to 100 of its guests with valet parking in the Structure as Aloft does not own any of its own off-street parking. On-street parking is limited in the area, particularly between December 1 and March 1, when winter parking restrictions are in effect.
- C. Aloft will pay to the City \$70.00 per month, per parking space, payable in advance for 100 parking spaces located on the lowest level and on the second level of the Structure. The \$70 per month, per parking space is applicable to 81-100 spaces. If the number of spaces is decreased to 61 -80 spaces, the rent per space will be \$80 per month. If the total spaces rented are decreased to 60 or fewer, the rent per space charged will equal that charged to the general public for monthly, unreserved parking in the Fourth and Highland garage.
- D. This Agreement was approved by the City’s Common Council by passage of Resolution Number _____ on _____, 2014.

Terms and Conditions

Now, Therefore, in consideration of the foregoing and of the mutual covenants and agreements herein contained, the parties hereto, intending to be legally bound hereby, agree as follows:

- 1. Term: The term of this Agreement shall commence on April 1, 2014. The term shall be month-to-month and may be terminated by either party by providing 30 days written notice to the other party. However, City shall not terminate this Agreement or displace Aloft in favor of another tenant(s) as long as Aloft maintains and meets all of its obligations under this Agreement.

2. Parking Spaces: The City agrees that Aloft shall have a continuing right to use and the City shall make available and provide 100 parking spaces located on the lower level and on the downward ramp of the south side of level two of the Structure (the “Parking Spaces”), subject to the terms set forth in this Agreement. The City will be responsible for locating the Parking Spaces and producing and installing the signs marking the Parking Spaces. The cost of the signs will be borne by Aloft. Aloft may reduce the number of parking spaces upon 30 days prior written notice to the City, however if the number of spaces are reduced, there will be a change in the monthly rate as described in section six (6) below for rates. If reduced by the Hotel, additional increases up to a total of 100 spaces can be made with a thirty-day notice. If Aloft desires additional parking spaces above the 100 parking spaces provided for in this Agreement, Aloft must submit a written request to the City, for which Common Council approval must be granted before being effectuated.
3. Use: The Parking Spaces shall be used by Aloft only for the purpose of valet parking of Hotel guests’ motor vehicles and for no other purpose whatsoever. No motorcycles bicycles or any other vehicle that cannot be moved under its own power such as trailers, boats, etc. may be parked in the Structure. The Parking Spaces shall not be used by employees of Aloft or neighboring businesses. The Parking Spaces are only allowed to be used for parking for Hotel guests. Failure to abide by these terms may result in cancellation of the Agreement. The use of the Structure shall also be subject to such reasonable rules and regulations which the operator may impose on patrons of the Structure generally and shall be applied in a nondiscriminatory manner.
4. City Responsibilities: The City will furnish electrical power to a booth to be installed by Aloft on the lower level of the Structure. The electrical power will be used to operate security cameras focused on the Parking Spaces. Electricity will also be used to power a light in the booth.
5. Aloft Responsibilities: Aloft shall furnish a valet employee who will staff the booth in the Structure daily during the third shift with commencement time varying depending upon the number of parkers anticipated. Start times may commence between 10:00 p.m. and 12:00 a.m. This employee will direct the valet services and view a monitor in the booth that displays transmissions of the security cameras focused on the Parking Spaces.

Valet employees shall bring vehicles into the Structure using the entrance on West Highland Avenue and will utilize the exits on West Highland Avenue and on West Juneau Avenue. The City shall issue to Aloft access card(s) to be used by valet employees that will be programmed to not allow entry for more than one hundred vehicles at any time. Any additional vehicles entering will be charged the parking rate being charged at time of entry. Aloft’s subcontracted valet employees shall not drive vehicles into or out of the Structure at greater than 5 miles per hour.

6. Parking Rates: The initial monthly parking fee shall be \$7,000 (\$70 per space, per month payable in advance as invoiced by City or City’s designee). Any changes in the total number of parking spaces available to Aloft, made pursuant to Section 2 of this

Agreement, shall result in a new monthly parking fee based upon the amount of parking spaces at the monthly parking rate of \$70 per parking space, per month if the total number of spaces equals 81-100 and as may be adjusted as set forth below. If the number of spaces is decreased to 61-80 spaces, the rent per space will be \$80 per month. If the total number of spaces rented is decreased to 60 or fewer, the rent per space charged will equal that charged to the general public for monthly, unreserved parking in the Fourth and Highland garage.

Commencing April 1, 2016, the parking rate may be increased utilizing the same percentage as reflected in the change in the Consumer Price Index for All US Urban Goods and Services comparing December 2013 to December 2015, if there has been any increase in the general monthly parking rate (currently \$90 per month in January 2014). Annually after that the rate will increase only if there has been any increase in the general monthly unreserved parking rate using the same CPI basis to determine the amount to be paid.

7. Default: If either party shall not keep and perform any of the terms, covenants or conditions required of it under this Agreement, and such default shall continue for a period of (a) 10 days after notice in the case of a monetary default and (b) 30 days after notice in the case of a non-monetary default, or in the case of a default which cannot with due diligence be cured within a period of 30 days, if such defaulting party fails to proceed promptly after the service of such notice and with all due diligence to cure the same (it being intended that in connection with a default not susceptible of being cured with due diligence within 30 days, the time of the defaulting party to cure the same shall be extended for such period as may be necessary to complete the same with due diligence), the party giving notice of such default may, provided such party availing itself of such remedy is not itself then in violation of the particular covenant which it is seeking to enforce against the defaulting party: (i) exercise such rights and pursue such remedies as are available at law or in equity, including actions for damages, injunction and/or specific performance or (ii) terminate this Agreement. In the event that within any 12 month period Aloft shall fail to pay timely within the cure period the Parking Fees on two occasions following notice by the City, then the City shall have the right to terminate this Agreement.
8. Successors and Assigns: All of the terms of this Agreement shall be binding upon and inure to the benefit of and be enforceable by and against the respective successors and assigns of the parties hereto, except as otherwise expressly provided herein. Any assignment of this Agreement by Aloft shall first be approved in writing by the City. Such approval shall not be unreasonably withheld or delayed.
9. Indemnification and Insurance: Aloft shall indemnify, defend and hold City and City's agents, employees, successors and assigns harmless from any loss, liability, costs and expenses, including attorneys' fees, arising out of any claim of injury or damage occurring at, in or about the Structure caused by the negligence, misconduct or breach of this Agreement by Aloft, its employees, agents, invitees or by any other person entering the Structure under express or implied invitation of Aloft or arising out of Aloft's use of

the Structure. City shall not be liable or responsible for any loss or damage to any property or person occasioned by theft, fire, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition, or order of a government body or authority (except the City or its agencies) or any other matter beyond control of City or for any injury or damage or inconvenience which may arise through repair or alteration of any part of the Structure, or failure to make repairs, or for any cause whatsoever, except as may result from the negligent acts or omissions of City or City's breach of this Agreement.

Aloft shall furnish or cause to be furnished commercial general liability insurance coverage with a combined single limit of One Million Dollars (\$1,000,000.00) for any one occurrence. This insurance policy shall be endorsed with the City of Milwaukee named as an additional insured. A Certificate of Insurance shall be furnished to the City with a provision requiring 30 days written notice of cancellation, non-renewal or material change. The Certificate of Insurance shall be written in the name of the City of Milwaukee and the name of Aloft as their interest may appear. The Certificate of Insurance shall be accompanied by an Affidavit of No Interest, signed by the authorized representative of the insurance carrier. All certificates shall be sent to:

Department of Public Works
Administration Division
Parking Section
841 North Broadway, Room 501
Milwaukee, Wisconsin 53202.

Aloft must, upon notice of cancellation of the policy, obtain or cause to be obtained a replacement policy consistent with the requirements in this Agreement. Failure of Aloft to maintain or cause to be maintained the required insurance coverage will not relieve Aloft of any contractual responsibility or obligation.

Aloft shall be responsible for any damages to persons or property resulting from Aloft's use of the Structure, including members of the public, employees of the City, Aloft and all public and private property, including structures and utilities above and below ground within the Structure, unless resulting from the negligent acts or omissions of City. Aloft shall furnish and maintain all necessary safety equipment to provide adequate protection of persons and property within the Structure.

Aloft waives its rights to recovery from the City of any amount paid by insurance or otherwise for damages to the Structure; provided, however, if actual repair or restoration costs exceed insurance proceeds or other recovered funds, Aloft shall, to the extent it is liable for such repairs or restoration under this Agreement, be responsible to pay any such excess costs.

10. Notices: Any notice, request, demand, approval or consent given or required to be given under this Agreement shall be in writing, and shall be given by (a) personal delivery, or (b) overnight delivery service with proof of delivery, or (c) United States Postal Service,

postage prepaid, registered or certified mail, return receipt requested, sent to the intended addressee at the address set forth below, or to such other address in the continental United States as the addressee shall have designated by written notice sent in accordance herewith, or (d) facsimile transmission sent to the intended addressee at the facsimile number set forth below, or to such other number in the continental United States as the addressee shall have designated by Notice to the other party hereto, with the original machine generated transmit confirmation report as evidence of transmission (provided that such facsimile is confirmed by overnight delivery service or by mail in the manner previously described) and shall be deemed to have given either at the time of personal delivery, or, in the case of overnight delivery service, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of mail, two working days after deposit with or delivery to the United States Postal Service or in the case of facsimile, upon receipt, or (e) emailed to the email address as listed below as long as an acknowledgement is received by the sender indicating receipt by the receiving party. Unless changed in accordance with the preceding sentence, the addresses for notices given pursuant to this Agreement shall be as follows:

If to Operator: Ghassan Korban
Commissioner of Public Works
841 N. Broadway, Room 501
Milwaukee, WI 53202
Facsimile: 414-286-3953
Email: gkorba@milwaukee.gov

If to Aloft: Edward G. Carow, Manager
731 North Jackson St; Suite 600
Milwaukee, WI 53202
Email: ed@jacksonstreetholdings.com

with a copy to:

Jon S. Herreman, Esq.
Mallery & Zimmerman, S.C.
731 North Jackson Street, Suite 900
Milwaukee, WI 53202
Email: jherreman@mzmilw.com
Tel: 414-727-6262

11. Headings: The Article and Section headings herein are for convenience and reference only and in no way define or limit the scope and content of this Agreement or in any way affect its provisions.
12. Applicable Law: This Agreement shall be governed and construed in accordance with the laws of the State of Wisconsin.

13. Counterpart Execution: This Agreement may be signed in several counterparts, each of which shall be deemed an original, and all such counterparts shall constitute one and the same instrument. The signature of a signatory to any counterpart may be removed and attached to any other counterpart. Any counterpart to which is attached the signatures of all signatories shall constitute an original of this Agreement.

14. 60 Day Notice to Vacate: Should the Structure be required by the City for any public purpose other than parking, as determined by the City's Commissioner of Public Works, this Agreement can be cancelled by the City by providing a 60-day prior written notice to Aloft to vacate the premises. All rights and obligations of Aloft will terminate upon such vacation.

The parties have caused this Agreement to be executed on their behalf by their duly authorized officers as of the day and year first above written.

Milwaukee River Hotel LLC

[Name, Title] Date

City of Milwaukee

Ghassan Korban, Commissioner of Public Works Date

Martin Matson, Comptroller Date

Approved as to form, execution and content
this ____ day of _____, 2014.

Assistant City Attorney