**Summary of Key Terms of Marcus Center Parking Structure Lease Agreement**

Original Lease Dated: February 5, 1969
1st Amendment Dated: July 26, 1985
2nd Amendment Dated: March 3, 2015
3rd Amendment Dated: December 24, 2024

**PARTIES:** City and Marcus Center for the Performing Arts, Inc. (Lessee). NOTE: Original lease was with Milwaukee County War Memorial Center, Inc. but Lessee was updated in the 2nd Amendment to Marcus Center for the Performing Arts, Inc. because the War Memorial had assigned its interest in the Original Lease to Marcus Center.

**RENT:** $1 per year due February 1 annually (*Original Lease: Section I on page 3*). Unknown whether the City has ever collected any rent under this lease.

**TERM:**
Original Lease: 50 years – terminates on December 31, 2019.
2nd Amendment: Extended term to December 31, 2022, with an automatic renewal through December 31, 2024, unless either party provides notice of its intent to terminate 90-days prior to December 31, 2022.
3rd Amendment: Extended term to December 31, 2028, with the right of City to terminate earlier upon 180 days-notice if the Common Council approves an agreement to convey the land to a developer for redevelopment of the parcel.

**LEASE PROVISIONS AS AMENDED:**

- CONSTRUCTION OF STRUCTURE. Contemplates a multi-level parking structure of approx. 700 parking spaces for the Performing Arts Center (n/k/a Marcus Center for the Performing Arts) plus a skywalk connecting the 2 buildings. Anticipated construction cost - $1.7M at Lessee's sole cost (*Original Lease: Recitals on page 1 and Section 3 on pages 3-4*). Plans and specifications for the parking structure are subject to approval of DPW Commissioner (*Original Lease: Section IV on page 4*).
- TITLE TO PROPERTY. Lessee owns the parking structure, but shall convey title to the City upon termination of the Lease, "free from all encumbrances and charges." NOTE: Original lease required Lessee to convey ownership of parking structure to City once all mortgage loans are paid off, but 1st Amendment removed this requirement (*Section III amended and Section XI deleted in 1st Amendment*). City owns the land.
- COSTS TO OPERATE. Lessee has "exclusive operation and control of the parking structure and shall be liable exclusively for its operation and for all expenses related to (a) operation; (b) maintenance; (c) all repairs necessary; and (d) avoidance of deterioration." City has no liability or obligation for these costs and "shall not be liable for any loss or losses" (*Original Lease: Section VII on page 5 and reiterated in 1st Amendment*).
- PARKING RATES. Parking rates are determined in consultation with the City (*Original Lease: Section VIII on page 5*).
- INDEMNIFICATION AND INSURANCE. Lessee is required to "indemnify and save the [City] harmless against any and for any and all claims, damages, costs or expenses arising from the

construction of improvements on the leased land or otherwise arising prior to the completion date of the parking structure" and requires Lessee to acquire, prior to completion of the structure, and pay for public liability insurance that insures both the Lessee and the City against "injury to property, person or loss of life arising out of the use and occupancy of the leased premises." Lessee to provide City, upon City's request, with a certificate of insurance confirming the required insurance is held by the Lessee. The insurance obligation continues after completion of the construction as well and shall then also include property loss coverage on the completed parking structure – all without cost to City. With regard to property insurance, the City procures the property insurance coverage on the parking structure and the Lessee typically reimburses the City for that cost. NOTE: Lessee has not reimbursed the City for this cost for 2024 or 2025. Lessee is obligated to replace parking structure and skywalk if substantial damaged (*Original Lease: Section X on pages 6-7*). **While this language in contained in the lease, any lawsuit related to injury on the property or within the structure would likely be filed against both the Lessee and the City. However, the City would have a strong argument that Lessee is obligated to hold harmless and indemnify the City for any liability.**

- EXCESS REVENUE. Original lease stated (and 1st Amendment reiterated) in Section XII that any revenue derived from the operation of the parking structure would be used to pay the following:

  1. Debt service requirements on mortgage loans.
  2. Expenses of operating the parking structure.
  3. Maintenance of parking structure and land.
  4. Repairs to parking structure.
  5. Insurance.
  6. All other related expenses which are directly necessary in the operation of the parking structure as determined by the Lessee and Lessor and not here specifically enumerated.

  Any excess revenue remaining after payment of the items listed would be split evenly between the Lessee and City. It does not appear the City has ever received any share of excess revenue or whether excess revenue ever existed. City has audit rights under the terms of the lease to determine whether excess revenue exists and whether revenue was properly used for the above listed items. Unknown whether the City ever exercised such audit rights. 1st Amendment also added language to address what happens in the event that there is a foreclosure of the mortgage loan on the parking structure protecting the City's rights in the event of foreclosure.

- LONG TERM REHABILITATION AND REPAIR / CAPITAL IMPROVEMENTS. 1st amendment added the following language to Section IV:

  2. In the event that major and substantial rehabilitation and repair becomes necessary, it is agreed that the specific plans, specifications, and cost estimates shall be approved in writing by the Commissioner of Public Works before any rehabilitation and repair shall be commenced and that the funding of such rehabilitation and repair shall be approved in writing by the Comptroller of the City of Milwaukee before any rehabilitation and repair shall be commenced. Such approval shall not be unreasonably withheld.

However, the 1st Amendment did not add any obligation for the City to assist with funding such rehabilitation or repairs – only that the City approve the plans and specifications for such work and Lessee's funding plan for such work. 1st Amendment further states, "A Capital Improvements Program shall be implemented by the Lessee, to be funded as mutually agreed upon by Lessor and Lessee." However, we have no record that the City ever agreed to fund any portion of such Capital Improvements Program (such expenditure of money would require Common Council approval). While negotiating the 3rd Amendment, the City Attorney's Office asked the attorney for the Lessee to provide evidence of such agreement by the City, but he did not provide anything.

- INTERPRETATION / AMBIGUITY. The lease specifically states that if there is an ambiguity or question arising about the interpretation or application of the lease, the parties intend for it to be interpreted in a manner that protects and safeguards the rights and benefits provided to the City (*See Section XIII of Original Lease).*