

724 N. 2ND STREET AND PLANKINTON AVENUE PARKING STRUCTURE PARKING AGREEMENT

This Agreement is made as of the _____ day of _____, 2008 by and between the City of Milwaukee, a Wisconsin municipal corporation (the "City") and Milwaukee Hotel Associates, LLC (the "Developer").

Statement of Background and Purpose

- A. The City owns and operates a 473-space parking structure located at 724 North 2nd Street, Milwaukee, Wisconsin, hereafter known as 2nd and Plankinton Parking Structure ("the Structure"). The Structure was constructed to provide parking for the area surrounding 2nd Street, Plankinton Avenue, Wells Street and Wisconsin Avenue. The Structure is legally described on EXHIBIT "A".
- B. The Developer proposes an investment of \$21 million to purchase the Posner Building located at 152 West Wisconsin Avenue and to renovate a portion of the building into a 160-unit mid-scale hotel as well as redevelop the first floor into retail and restaurant space.
- C. The Developer requires certain parking for this project to include 24-hour hotel parking. The City as the operator of the Structure has agreed to make certain parking available to the Developer as provided for in Section 2 of this Parking Agreement.
- D. This Agreement is subject to Common Council approval.

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, covenants and agree as follows:

- 1. Term: The term of this Agreement shall commence on May 1, 2009, the date on which the hotel will begin occupancy, and shall continue for a period of twenty-five (25) years, thereafter. The term of this Agreement is necessary to meet the requirements of the lender and hotel franchisor. If at the time of termination of this Agreement the Developer still desires access to parking spaces in the Structure, the City and the Developer agree to negotiate in good faith relative to a new agreement upon such terms and conditions as they may then agree.
- 2. Parking Spaces: The City agrees that the Developer shall have a continuing right to use and the City shall make available and provide parking spaces in the Structure, subject to the terms set forth in this Agreement. If the Developer desires additional parking spaces or a change in parking mix beyond what is provided for in this Agreement, the Developer must submit a written request to the City, to which the City must respond within 30 days of the request and, subject to the availability of parking spaces, the approval of such

request shall be mutually agreed upon. If the Developer desires fewer parking spaces, the Developer must provide not less than 30 days written notice to the City of the number of parking spaces requested. Should Developer provide the City with such notice, the City shall only bill for and Developer shall only be responsible for payment relating to the parking spaces indicated in the notice as required by Developer. Unless otherwise indicated in such notice, the reduced number of parking spaces will continue from month to month until such time that Developer seeks to increase or further reduce the number of parking spaces required by notifying the City as outlined above. The City will work cooperatively with the Developer to produce and install informational signs for hotel guests in the Structure. The cost of the signs will be borne by the Developer.

The parking space requirements provided for under this Agreement are as follows:
May 1, 2009 to expiration of this Agreement: 50 24-hour hotel spaces

3. Use: The parking spaces in the Structure shall be used by the Developer only for the purpose of parking motor vehicles for hotel guests 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 use of the Structure shall also be subject to such reasonable rules and regulations, including limits on City responsibility for loss or damage to property or vehicles, which the City or its operator may impose on patrons of the Structure generally and which shall be applied in a nondiscriminatory manner. Developer shall not sub-lease parking spaces or allow the use of parking spaces by persons other than hotel guests without the City's prior written consent.

It is the responsibility of the Developer to inform hotel guests to check into the hotel prior to parking in the Structure. If there are violations of this provision, the City may proceed under paragraph 11.

4. To park hotel patrons in the Structure, the Developer must purchase a hotel validation key card system that is compatible with the Structure's revenue control equipment or provide a means to process the parking of hotel patrons in a manner that is acceptable by the City. The cost of the hotel validation system or any other costs incurred by the Developer associated with processing the parking of hotel patrons will be borne by the Developer.
5. If the Developer desires to use the Structure for valet parking, the Developer must purchase a valet system that is compatible with the Structure's revenue control equipment or provide a means to process valet parking of hotel patrons in a manner that is acceptable by the City. The cost of the valet system or any other costs incurred by the Developer associated with processing valet parking of hotel patrons will be borne by the Developer.
6. Fees: For the parking requirements provided herein, the parking fees will be structured as follows:

24-hour Hotel Spaces

05/01/09 – Contract Expiration – See calculation below.

24-Hour Hotel Spaces: Charges for hotel parking spaces will be incurred by the Developer based on actual use up to a maximum of 50 spaces from May 1, 2009 to expiration of this Agreement.

For each month during the term hereof, the Developer shall pay to the City parking fees in the amount equal to the Hotel Guest Parking Rate (defined below) multiplied by the aggregate number of active keycards for the Structure on each day of the month for which the calculation is being made. The Hotel Guest Parking Rate shall be the rate established by the City annually but with not less than a thirty (30) day prior notice to the Developer, for daily guest parking, equal to the average market rate, determined as described below. Beginning on May 1, 2009 and every year thereafter to contract expiration, the “Hotel Guest Parking Rate” for the Hotel will be based upon the average market rate (rounded to the nearest \$1.00) charged to hotel patrons self-parked at comparable hotels that operate as limited service hotels in the downtown area, as determined by the City. The Developer is prohibited from charging hotel guests a parking rate above the Hotel Guest Parking Rate for vehicles that are self-parked. This prohibition does not extend to vehicles of hotel guests that use valet parking.

7. Payment of Parking Fees: The Developer will be billed by the 15th of each month with payment due by the end of each month for 24-hour hotel parking spaces used in the previous month as provided for in paragraph 6. If there is a change to the billing party, the Developer must provide not less 30 days written notice to the City.
8. Contingency: The Developer is required to deliver to the City a Certificate of Occupancy for the Hotel by May 1, 2009 and a binding commitment from the hotel chain to operate a commercial property under its national name. If the Developer fails to deliver a Certificate of Occupancy for the hotel by May 1, 2009, this Parking Agreement shall automatically terminate.
9. Maintenance/Repairs: Temporary repair and maintenance work by the City on the Structure (“Repairs”) may be undertaken by the City from time to time. Repairs that limit access to the Structure or the use of parking spaces within the Structure which are executed with all deliberate speed shall not be deemed to impair Developer’s rights under this Agreement and Developer shall not have any claim for loss of business or loss of use of parking spaces under this Agreement as long as the City:
 - a) Provides Developer with at least fourteen (14) days written notice prior to commencement of Repairs or, in case of an emergency, the longest reasonable notice possible; and
 - b) Provides reasonable temporary access to the Structure during the Repair period; and
 - c) Makes commercially reasonable efforts to allocate available parking spaces within the Structure to Developer during the Repair period; and

- d) Remedies with all deliberate speed any damage to the Structure caused by the Repairs.
10. Damage/Destruction: In the event that the Structure, or a substantial portion thereof, shall be destroyed or so badly damaged by fire or some other cause as to render all or substantially all of the Structure unfit for use and occupancy by Developer, and the City elects, in its sole discretion, not to restore or rebuild the Structure, or if the Structure cannot be restored with reasonable diligence within one hundred twenty (120) working days from said destruction or damage, then this Agreement may be terminated by either party upon written notice to the other as provided herein. In the event of such termination, Developer shall pay rental for the Structure only up to the time the Structure is rendered unfit for use and occupancy by Developer, at the rates herein specified, and Developer hereby waives any and all claims for damages or compensation should this Agreement be so terminated.
11. 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) ten (10) days after notice in the case of a monetary default and (b) thirty (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 thirty (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 thirty (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 twelve (12) month period the Developer 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.
12. Assignment: The Developer may not assign any of its interest in this Agreement or its obligations hereunder without the prior written consent of the City's Commissioner of Public Works; provided, however, that Developer may collaterally assign certain of its rights and obligations in this Agreement to a lender providing financing for the Project or to a purchaser of all or a portion of the Project without consent, provided that all documents and instruments evidencing such assignment shall be reasonably acceptable, in form and substance, to the City's Commissioner of Public Works.
13. 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.

14. Notices: Any notice, request, demand, approval or consent given or required to be given under this Agreement shall, except as otherwise expressly provided herein, be in writing, and shall be given by (a) personal delivery, or (b) overnight delivery service with proof of delivery, or (c) United States Mail, 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) email to the Commissioner of Public Works' address as listed below as long as an acknowledgement is received by the sender indicating receipt by the City. Unless changed in accordance with the preceding sentence, the addresses for notices given pursuant to this Agreement shall be as follows:

If to City: Commissioner of Public Works
841 N. Broadway, Room 501
Milwaukee, WI 53202
Facsimile: 414-286-3953
Email: jeffrey.mantes@milwaukee.gov

If to Developer: Milwaukee Hotel Associates, LLC
152 W. Wisconsin Avenue
Milwaukee, WI 53203
Facsimile: 414-272-3825
Email: charles@gabaldonproperties.com

15. 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.
16. Applicable Law: This Agreement shall be governed and construed in accordance with the laws of the State of Wisconsin.
17. 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.

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

[Signature page to follow]

City of Milwaukee

By: _____
Jeffrey J. Mantes, Commissioner

Countersigned:

Comptroller

Milwaukee Hotel Associates, LLC

By: _____

Approved as to form, execution and content this ____ day of _____, 2008

Assistant City Attorney

Signature of Jeffrey Mantes, Commissioner of Public Works of the City of Milwaukee
authenticated as of the ____ day of _____, 2008.

Assistant City Attorney

Signature of _____ authenticated as of the ____ day of
_____, 2008.

Attorney

This Agreement was drafted by the City of Milwaukee.

1047-2007-3178:126951

EXHIBIT “A”

(EXHIBIT “A” consists of a legal description for the Structure).

Original plat of the town of Milwaukee west of the river in description sec (20 & 29)-7-22. Part block 59-vac alleys and lands com SE corner lot 7-TH W 150.55' Measured-TH N 100'-TH E 130.99'-TH NE 33/49'-TH W 159.12'-TH N 2'-TH E 75'-TH S 0.25'-TH E 50.48'-TH N 88.25'-TH SE 141.52'-TH SW 52.29'-TH W 61.60' M/L (D)-TH S to Beginning.

Tax Key No: 361-0646-113-3

Address: 724 N. 2nd Street