

PARKING, ACCESS, AND MAINTENANCE
AGREEMENT AND EASEMENT

Document Number

Document Title

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AGREEMENT AND EASEMENT**

(PALERMOS PROPERTIES PROJECT)

Recording Area

Name and Return Address

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**PARKING, ACCESS AND MAINTENANCE
AGREEMENT AND EASEMENT**

(PALERMOS PROPERTIES PROJECT)

This NON-EXCLUSIVE PARKING, ACCESS AND MAINTENANCE AGREEMENT AND ESEMENT (this "Agreement") is entered into as of the ____ day of April, 2010 by and among the REDEVELOPMENT AUTHORITY OF THE CITY OF MILWAUKEE, a public body corporate and politic organized and existing under the laws of the State of Wisconsin ("RACM") the CITY OF MILWAUKEE, a Wisconsin municipal corporation ("CITY") and PALERMOS PROPERTIES, a Wisconsin limited liability company ("PALERMOS").

WITNESSETH

WHEREAS, PALERMOS is the owner of certain real property depicted in EXHIBIT A as Lot 1 (the "Palermos Parcel"); and

WHEREAS, PALERMOS is developing a manufacturing facility on the Palermos Parcel; and

WHEREAS, the west boundary of the Palermos Parcel abuts real property which is owned by RACM and a portion of which located immediately beneath the 35th Street viaduct over the Menomonee River Valley; and

WHEREAS, PALERMOS and RACM previously entered into a Non-Exclusive Parking and Maintenance Agreement and Easement (Palermos Parcel 1) dated as of the 30th Day of September, 2005, recorded with the Milwaukee County Register of Deeds on _____, 2005 as Document No. _____, (the "First Parking Easement"); and

WHEREAS, This Agreement encompasses the area subject to the First Parking Easement and additional areas necessary to allow PALERMOS to expand its existing parking

facilities in conjunction with the expansion of the existing manufacturing facilities on the Palermos Parcel; and

WHEREAS, This Agreement replaces and supersedes the First Parking Easement which is to be terminated and released by the execution and delivery of a Release of Easements in substantially the form attached as EXHIBIT B; and

WHEREAS, PALERMOS requires non-exclusive certain rights and easements for the expansion, use and maintenance of surface parking facilities on the area immediately to the west of the Palermos Parcel as depicted on Certified Survey Map No. 2770 and legally described on EXHIBIT C (the "Parking Easement Area"); and

WHEREAS, RACM is the owner of certain real property depicted in EXHIBIT A as Lot 2 ("Lot 2") which is to be improved to create stormwater detention facilities to serve the Palermos Parcel and also incorporated into the overall stormwater facilities developed by RACM to serve the Menomonee Valley Industrial Center (the "Regional Stormwater Management Facilities"); and

WHEREAS, RACM requires certain non-exclusive rights and easements over the Palermos Parcel to provide ingress and egress to Lot 2 to allow for the improvement, use and maintenance of Lot 2 and the outfall depicted on EXHIBIT A as part of the Regional Stormwater Management Facilities; and

WHEREAS, PALERMOS requires certain non-exclusive rights and easements over Lot 2 to allow construction of a stormwater detention basin and to permit the operation, use and maintenance of such stormwater detention basin; and

WHEREAS, RACM and CITY require certain non-exclusive rights and easements over the Palermos Parcel to provide ingress and egress to the Parking Easement Area to allow the

improvement, use, maintenance and reconstruction of the 35th Street viaduct located above the Parking Easement Area; and

WHEREAS, The parties acknowledge and agree that the “31’ wide access easement for Parcel 2” depicted on CSM #7707 and the “45’ wide stormwater drainage easement” depicted on CSM #7701 will be replaced and superseded by this Agreement and are to be terminated and released by the execution and delivery of a Release of Easements in substantially the form attached as EXHIBIT B; and

WHEREAS, In conjunction with the expansion of the existing manufacturing facilities on the Palermos Parcel the driveway access to the Palermos Parcel from South 33rd Court is to be reconfigured and three new public parking spaces will be created and are to be located, in part, on the Palermos Parcel; and

WHEREAS, CITY requires an easement over the Palermos Parcel for the area depicted on EXHIBIT ____ and legally described on EXHIBIT ____ to allow construction of the three new public parking spaces and to permit the improvement operation, use and maintenance of such parking spaces as part of the South 33rd Court right-of-way; and

NOW, THEREFORE, in consideration of terms, conditions and mutual covenants herein and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

I.

Grant of Parking Easement

RACM hereby grants to PALERMOS a perpetual, non-exclusive easement (the “Parking Easement”) upon, in, over and under the Parking Easement Area. The Parking Easement is granted for vehicular parking and pedestrian and vehicular access to and from the Palermos

Parcel; for pedestrian and vehicular circulation within and between portions of the Palermos Parcel; for vehicular and pedestrian ingress and egress over, upon and across the Parking Easement Area to obtain access for the construction, operation, use, maintenance and repair (including reconstruction and restoration) of sidewalks, paving, landscaping and other facilities related to the operation of surface parking facilities serving the Palermos Parcel; and for the benefit of the Palermos Parcel. The Parking Easement is limited in height underneath the 35th Street viaduct and only extends to, but does not include, the bottom surface of the viaduct structure. In addition, the location of all improvements in the Parking Easement Area shall be subject to the prior approval of the City of Milwaukee's Commissioner of Public Works (the "Commissioner"), which approval shall not be reasonably conditioned, delayed or withheld.

II.

Conditions of Grant of the Parking Easement

The Parking Easement is granted to PALERMOS upon, and the parties shall be bound by, the following conditions:

A. CITY's Department of Public Works will continue to have access to the Parking Easement Area for the improvement, maintenance, repair and reconstruction of the 35th Street viaduct, and PALERMOS' use of the land beneath the viaduct shall not unreasonably hinder access by the CITY's agents and employees for such purposes.

B. PALERMOS shall not place any permanent structures in the Parking Easement Area other than pavement, landscaping, lighting and other facilities reasonably related to the maintenance and construction of surface parking facilities, and all as approved by the Commissioner.

C. All construction performed and all improvements located in the Parking Easement Area shall conform with all applicable CITY standards, ordinances, building and zoning codes and all other applicable CITY regulations.

D. In no event shall the construction or installation by PALERMOS of any improvement in the Parking Easement Area interfere with the public's or the CITY's use of the 35th Street viaduct or interfere with any CITY utilities, facilities or other items belonging to the CITY which are located within the Parking Easement Area.

E. All landscaping, pavement, lighting, signs, or other items placed in the Parking Easement Area by PALERMOS shall be installed, maintained, and repaired by PALERMOS at its sole expense.

F. No flammable or hazardous materials shall be stored by PALERMOS within the Parking Easement Area.

G. Parking on the Parking Easement Area shall be available to PALERMOS at all times during which PALERMOS is operating its facility for business, and PALERMOS shall use its best efforts to ensure that parking is only made available to its employees, occupants, contractors, subcontractors, guests, invitees, or agents. CITY and RACM acknowledge that PALERMOS has the right to construct a fence within the Parking Easement to limit parking access as provided in the preceding sentence.

H. CITY shall have the right to require removal of any materials, equipment, supplies, or improvements placed under the viaduct by PALERMOS if and when viaduct maintenance, repair or reconstruction activities so require. CITY shall save harmless PALERMOS from any loss, damage, injury or liability resulting from negligence on the part of CITY in connection with said work; provided that if such loss, damage, injury or liability results

from the joint negligence of CITY and PALERMOS, then the liability therefore shall be borne by them in proportion to their respective degree of negligence; provided further, however, that these provisions are subject to the legal defenses which under law CITY and PALERMOS are entitled to raise.

I. PALERMOS will save and keep CITY and RACM clear and harmless from any claims for personal injuries or property damage asserted against it and caused by any negligence of PALERMOS or persons other than PALERMOS for whom PALERMOS has responsibility or legal liability, arising out the construction, installation or maintenance by PALERMOS of any item in the Parking Easement Area, and shall reimburse CITY for the full amount of such loss or damage.

J. PALERMOS shall throughout the term of this Agreement carry, at its expense, insurance in the forms and with at least the coverages set forth on EXHIBIT “____” hereto. RACM retains the right, at its sole discretion to adjust the foregoing coverage limits annually, effective on each January 1 of the term of this Agreement, to such insurance coverages and limits which are customarily provided at that time, by similar enterprises, and are commercially reasonable at that time. Said insurance shall be written by a reputable company licensed in the State of Wisconsin. PALERMOS shall furnish a Certificate of Insurance naming RACM and the CITY as additional named insureds. The Certificate shall provide that the insurance company will furnish RACM and the CITY with a sixty (60) day written notice of cancellation, nonrenewal or material change.

K. After the location and installation of improvements in the Parking Easement Area have been approved by the Commissioner, CITY shall not unreasonably interfere with the use or operation of such improvements; provided, however, that CITY shall have the right to repair,

maintain, replace and/or reconstruct any CITY utility or improvement belonging to CITY. In the course of any such work, the City will in no case be responsible for replacing or paying for replacing any aesthetic plantings or improvements other than ordinary lawns or standard walks, roadways, driveways and parking lot surfacing which were required to be removed in the course of doing such work. However, CITY shall save harmless PALERMOS from any loss, damage, injury or liability resulting from negligence on the part of CTIY in connection with said work; provided that if above loss, damage, injury or liability results from the joint negligence of parties hereto, then the liability therefore shall be borne by them in proportion to their respective degree of negligence; provided further, however, that these provisions are subject to the legal defenses which under law CITY and PALERMOS are entitled to raise.

L. This Agreement, and the easement rights granted herein, may not be assigned or otherwise conveyed or sold to any person or entity that does not also own the Palermos Parcel without the written consent of RACM.

III.

Working Scheduling and Access

All construction or repair work by either PALERMOS or CITY in the Parking Easement Area shall be scheduled in advance by CITY and PALERMOS and coordinated with the Commissioner and PALERMOS or its agent responsible for scheduling such work, except in case of emergency when such notice and approval is not practical. PALERMOS and CITY will cooperate in good faith to ensure that CITY's access to the Parking Easement Area is reasonable and at such times and in such a manner that will avoid or minimize any disruption of or adverse impact on PALERMOS' property and operations (located on either on the Palermos Parcel or the Parking Easement Area). Without limiting the generality of the foregoing, CITY shall advise

PALERMOS from time to time of its expected needs for access to the Parking Easement Area for maintenance, repair or reconstruction of the 35th Street viaduct and PALERMOS and CITY shall endeavor to develop mutually agreeable schedules for such access. In all events, CITY shall give not less than ten (10) days' prior notice to PALERMOS each time that CITY will access the Parking Easement Area for construction or repair (except only in the case of emergency, provided that CITY shall in each such case give PALERMOS as much prior notice as is reasonably possible under the circumstances). Each such notice by CITY shall include the dates and times that such access will commence, the dates and times that such access will conclude, and the nature of the access and work (including without limitation the amount and type of equipment and the number of personnel to be included in such access).

IV.

Safety.

CITY and PALERMOS shall take all precautionary measures to protect the public from hazards related to their respective work on the Parking Easement Area and shall take all necessary steps to minimize impacts to PALERMOS' property and operations (including but not limited to PALERMOS' land, real property improvements, and all personal property). Without limiting the foregoing, in the event of emergency repair or access, CITY and PALERMOS shall work together to minimize disruption and impacts to PALERMOS' property and operations (including but not limited to PALERMOS land, real property, improvements, and all personal property).

V.

Insurance

Any and all private contractors engaged by CITY for work in the Parking Easement Area shall, prior to commencement of any construction work, furnish to PALERMOS a certificate of insurance evidencing the existence of public liability insurance naming PALERMOS as insured in amounts customary for CITY contracts. Any and all private contractors engaged by PALERMOS for work in the Parking Easement Area shall, prior to commencement of any construction work, furnish to CITY a certificate of insurance evidencing the existence of public liability insurance naming CITY as insured in such amount or amounts as CITY may reasonably require.

VI.

Remedies

In the event of any failure on the part of PALERMOS or CITY in the performance of any obligation hereunder relative to the Parking Easement Area, the party to whom such obligation is owed shall have the right to perform such obligation after first giving the failing party or parties not less than fifteen (15) days' notice of intention to do so, unless the failing party or parties shall within such fifteen (15) day period commence to perform such obligation and continue diligently therewith until such obligation be fully performed. Each party shall have a license to enter the Parking Easement Area to such extent as is necessary for the taking of such measures, and the failing party or parties shall pay to the performing party all costs incurred by the latter in accomplishing such performance. Any sum of money not paid when due shall bear interest until paid at the annual rate equal to the prime rate of interest in effect as the base rate on corporate loans at large U.S. money center commercial banks as published by the Wall Street Journal on the date of the described notice, adjusted with each change in such published rate, plus three percent (3%) or such other measure agreed to by the parties. All the rights granted to the parties

hereto by the provisions of this paragraph shall be in addition to all other rights which shall at such time be available by law. Enforcement of this Agreement may be by proceedings at law or in equity against any person or persons violating or attempting or threatening to violate any covenant herein, either to restrain or prevent such violation or to obtain any other relief. In the event a suit should be brought to enforce this Agreement, the prevailing party shall be entitled to recover its costs, including reasonable attorney's fees from the non-prevailing party.

VII.

Grant of Detention Basin Easement

RACM hereby grants to PALERMOS a perpetual, non-exclusive drainage easement upon, in, over and under Lot 2 (the "Detention Basin Easement"). The Detention Basin Easement is granted for the purpose of draining stormwater from the Palermos Parcel into a detention basin, to be constructed by PALERMOS on Lot 2, on a permanent basis. The location and design of all improvements on Lot 2 shall be subject to the prior approval of the Commissioner, which approval shall not be unreasonably conditioned, delayed or withheld.

VIII.

Conditions of Grant

A. RACM shall retain ownership of Lot 2 and designate and include it as part of the Menomonee Valley Industrial Center Stormwater Management Facility. Lot 2 shall be made subject to that certain Menomonee Valley Industrial Center Drainage Easement and Stormwater Management Facility Maintenance Agreement dated as of _____, 2010 (the "Stormwater Facility Easement").

B. Lot 2 shall be maintained and kept in good order by RACM or the party responsible for maintenance of the Regional Stormwater Management Facilities under the terms

of the Stormwater Facility Easement. Notwithstanding the foregoing, PALERMOS shall also have access to Lot 2 at all times for the improvement, operation, use and maintenance of Lot 2 for a stormwater detention basin to serve the Palermos Parcel.

C. PALERMOS expressly agrees to indemnify and hold RACM harmless from and against any and all claims or demands for damages, costs, loss of use expenses, consequential damage, or any other thing whatsoever arising out of the construction of the detention basin, and the actions of PALERMOS in the operation, maintenance or use of Lot 2 for storm water detention.

D. No above grade structures other than fencing are permitted within Lot 2.

IX.

Grant of Public Maintenance Easement

PALERMOS hereby grants to RACM and CITY a perpetual, non-exclusive easement (the "Public Maintenance Easement") over the variable width access area depicted along the South line of the Palermos Parcel and the "15' wide storm sewer easement for the benefit of the City of Milwaukee" as each are depicted on Certified Survey Map No. 2770, (collectively the "Public maintenance Easement Area"). The Public Maintenance Easement is granted for ingress and egress to the Parking Easement Area and Lot 2 to allow RACM and CITY to improve, maintain, repair and reconstruct the Regional Stormwater Management Facilities, including the outfall depicted on EXHIBIT A and located within the 15' wide storm sewer easement for the benefit of the City of Milwaukee, and the 35th Street Viaduct.

X.

Conditions of Grant of the Public Maintenance Easement

The Public Maintenance Easement is granted to RACM and CITY upon, and the parties shall be bound by, the following conditions:

- A. all

XI.

Grant of Public Parking Space Easement

PALERMOS hereby grants to CITY a perpetual easement (the “Public Parking Easement”) over the area depicted on EXHIBIT ___ and legally described on EXHIBIT ____ (the “Public Parking Easement Area”) to permit the improvement, operation and maintenance of three public parking spaces in conjunction with the southerly terminus of the South 33rd Court right-of-way.

XII.

Conditions of Grant of Public Parking Space Easement

[Public Access, Maintenance as part of ROW, Liability?]

XIII.

Miscellaneous

A. Binding Effect. All the terms, conditions, covenants and other provisions contained in this Agreement, including the benefits and burdens, shall run with the land and shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and assigns, including, but without limitation, all subsequent owners of the Palermos Parcel, the Parking Easement Area, Lot 2 and the Public Parking Space Easement Area or any part thereof and all persons claiming under them. The rights and obligations granted hereunder shall be appurtenant to and encumber any sale of the Palermos Parcel.

B. Non-Use. Non-use or limited use of the easement rights granted herein shall not prevent the benefiting party from later use of the same to the fullest extent authorized herein.

C. Severability. If a term, covenant, or condition of this Agreement or the application thereof to any person or circumstance shall be deemed invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each term, covenant and condition shall be valid and enforceable to the fullest extent permitted by law.

D. Non-Waiver. No delay or omission by any party in exercising any right or power accruing upon any default, non-compliance or failure of performance of any of the provisions of this Agreement shall be construed to be a waiver thereof. A waiver by a party of any of the obligations of another party shall not be construed to be a waiver of any subsequent obligation or breach of any other term, covenant or condition of this Agreement.

E. Non Dedication. Nothing contained herein shall be deemed to be a gift or

dedication of any portion of the easements granted hereunder to the general public or for any public purpose whatsoever.

F. Notices. All notices, demands, certificates, or other communications under this Agreement shall be in writing. They shall be deemed given (a) when hand delivered to the address below; (b) when transmitted by facsimile to the number below with electronic confirmation of receipt; or (c) two business days after being mailed by first-class mail, postage pre-paid, to the address below. Any party may, by written notice to the other parties, designate a change of address for these purposes.

If to CITY: City of Milwaukee
 Department of Public Works
 Attention: Commissioner
 841 North Broadway
 Milwaukee, WI 53202
 Fax: (414) 286-0395

If to RACM: Redevelopment Authority of the City of Milwaukee
 809 North Broadway
 Milwaukee, WI 53202
 Attn: Commissioner
 Fax: (414) 286-5900

If to PALERMOS: PALERMOS PROPERTIES LLC
 3301 West Canal Street
 Milwaukee, WI 53208
 Attn: Angelo Fallucca

With a copy to: Dean B. Richards
 Reinhart Boerner Van Deuren, S.C.
 P.O. Box 2265
 Waukesha, WI 53187
 Fax:

PALERMOS PROPERTIES LLC

**REDEVELOPMENT AUTHORITY
OF THE CITY OF MILWAUKEE**

By: _____

By: _____
Lois A. Smith, Chair

By: _____
David P. Misky
Assistant Executive Director/Secretary

CITY OF MILWAUKEE

By: _____
Tom Barrett, Mayor

By: _____
Ronald D. Leonhardt, City Clerk

Countersigned:

By: _____
W. Martin Morics, City Comptroller

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this _____ day of _____, 2010, Lois A. Smith, Chair, to me known to be the person who executed the foregoing instrument and to me known to be such, and acknowledged that he executed the foregoing instrument as such officer as the deed of the Redevelopment Authority of the City of Milwaukee, by its authority.

Notary Public, State of Wisconsin
My Commission: _____

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this _____ day of _____, 2010, the Redevelopment Authority of the City of Milwaukee, David P. Misky, Assistant Executive Director, to me known to be the person who executed the foregoing instrument and to me known to be such of said and acknowledged that he executed the foregoing instrument as such officer as the deed of the Redevelopment Authority of the City of Milwaukee, by its authority.

Notary Public, State of Wisconsin
My Commission: _____

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this _____ day of _____, 2010, Palermos Properties LLC, to me known to be the person who executed the foregoing instrument and to me known to be such of said and acknowledged that he executed the foregoing instrument as such officer as the deed of Palermo Properties, LLC, by its authority.

Notary Public, State of Wisconsin
My Commission: _____

1089-2008-2874:156199

Notes:

1. Reference release of easement on CSM.
2. Access to construct detention basin.
3. RACM right to assign access to entity maintaining Regional Stormwater Facility.