

Document Number	4 <sup>th</sup> AND HIGHLAND PARKING STRUCTURE PARKING AGREEMENT
Document Title	
Recording Area	
Name and Return Address	
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392-2391-2

Tax Key Number

**4<sup>th</sup> AND HIGHLAND PARKING STRUCTURE  
PARKING AGREEMENT**

This Agreement is made as of the \_\_\_\_ day of \_\_\_\_\_, 2007 by and between the City of Milwaukee, a Wisconsin municipal corporation (the “City”) and Fourth and Highland, LLC (the “Developer”).

Statement of Background and Purpose

- A. The City of Milwaukee, a municipal corporation by and through the City of Milwaukee Redevelopment Authority of the City of Milwaukee, caused the construction of a 980-space parking structure located at 324 W. Highland, Milwaukee, Wisconsin, hereafter known as 4<sup>th</sup> and Highland Parking Structure (“the Structure”) in 1987. The Structure was constructed to provide parking for the Bradley Center and surrounding area. The City owns and operates the Structure. The Structure is legally described on EXHIBIT “A”.
- B. The Developer proposes an investment of \$206 million to develop commercial properties on two sites in the Park East corridor (the “Project”). On the 300 block of W. McKinley Avenue, currently vacant land, this development includes 180-room Kimpton Hotel, 72 luxury high-rise condominiums, street level retail space, spa, health club, nightclub, restaurant and a 327-space parking structure. On the 1200 block of N. Old World Third

Street, currently a parking lot, this development includes an Aloft Hotel by W containing 160 hotel rooms, 13 luxury-lofted condominiums, enclosed parking for the condominiums, meeting and banquet space and street level retail space. The Project also includes acquisition and renovation of the Riverfront Plaza totaling \$12 million over a five-year period to accommodate a new restaurant and to update all common areas, lobbies, restrooms and the building exterior.

- C. During the construction phase and thereafter, the Developer requires certain parking for the Project to include daytime, 24-hour reserved and 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 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 initial term of this Agreement shall commence on November 1, 2007, the date on which parkers will be displaced at the Riverfront Plaza parking lot and moved to the Structure, and shall continue for a period of twenty-five (25) years, thereafter. This Agreement may be extended by one optional fifteen (15) year extension, followed by one optional ten (10) year extension. The term of this Agreement is necessary to meet lenders' requirements to finance the Kimpton and Aloft projects. If at the time of termination of this Agreement, the Developer desires to exercise the options, the approval of such request shall be mutually agreed upon.
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 among monthly daytime unreserved, 24-hour reserved and 24-hour hotel spaces beyond those 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 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 reduced 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 increases or further reduces the number of parking spaces required by notifying the City as outlined above. The City will be responsible for locating the reserved parking spaces and producing and installing the signs marking the spaces reserved. The cost of the signs will be borne by the Developer.

The parking space requirements provided for under this Agreement are as follows:

November 1, 2007 through January 31, 2008: 75 monthly daytime unreserved.

February 1, 2008 through February 28, 2009: 110 monthly daytime unreserved, 75 24-hour reserved.

March 1, 2009 through March 31, 2010: 72 monthly daytime unreserved, 75 24-hour reserved and 80 24-hour hotel spaces.

April 1, 2010 to expiration of lease: 394 monthly daytime unreserved, 50 24-hour hotel spaces.

The City agrees to work with the Developer in good faith to allocate parking spaces to the Developer in the lowest levels of the Structure for the parking described herein.

3. Use: The parking spaces in the Structure shall be used by the Developer only for the purpose of parking motor vehicles for owners, tenants, guests and invitees of the Project 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 owner, tenants, guests and invitees of the Project without City's prior written consent.
4. If the Developer desires to use the Structure to park hotel patrons, 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:

<u>Monthly Daytime Unreserved</u>	<u>Monthly 24-hour Reserved</u>
11/1/07-2/28/09 -- \$55	11/1/07-3/31/12 -- \$140
3/1/09-3/31/12 -- \$75	4/1/12 – Market Rate
4/1/12 – Market rate	

Market rate is defined as the rate established by the City from time to time for the Structure and charged to the public for monthly or reserved parking.

24-hour Hotel Spaces

3/1/09-Contract Expiration – See calculation below.

24-Hour Hotel Spaces: Charges for hotel parking spaces will be incurred by Hotel Operator based on actual use up to a maximum of 80 spaces from March 1, 2009 to March 31, 2010, and up to a maximum of 50 spaces from April 1, 2010 to contract expiration.

For each month during the term hereof, the Hotel Operator 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 Hotel Operator, for daily guest parking, equal to the average market rate, determined as described below. Beginning on March 1, 2009 and every year thereafter to contract expiration, the Hotel Guest Parking Rate for the Aloft 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 Hotel Guest Parking Rate for the Kimpton 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 full service hotels in the downtown area, as determined by the City. The Hotel Operator 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 on the first of each month with payment due by the 15<sup>th</sup> of each month. This includes parking spaces made available under paragraph 2 in the previous month other than for 24-hour hotel spaces as provided 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 Kimpton Hotel by October 1, 2010 and a Certificate of Occupancy for the Aloft Hotel by October 1, 2009 and a binding commitment from each hotel chain to operate a

commercial property under its national name. If the Developer fails to deliver a Certificate of Occupancy for either or both hotels by the dates herein, the City shall have the right to proportionately reduce the number of parking spaces made available to the Developer for the Project as a whole.

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 Parking Structure during the Repair period; and
  - c) Makes commercially reasonable efforts to allocate available parking spaces within the Parking Structure to Developer during the Repair period; and
  - d) Remedies with all deliberate speed any damage to the Parking Structure caused by the Repairs, and
  - e) Notwithstanding the foregoing, in the event that Developer incurs a loss of the parking spaces made available under paragraph 2 and paragraph 6, then Developer shall be entitled to a parking fee abatement during the Repair period for the number of parking spaces which are lost during the Repair period. The parking fee abatement will be calculated by dividing the number of days the parking space(s) are lost by Developer during the Repair period by the total number of days in the same month.
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 so 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 Operator: Jeffrey J. Mantes  
Commissioner of Public Works  
841 N. Broadway, Room 501  
Milwaukee, WI 53202  
Facsimile: 414-286-3953  
Email: jeffrey.mantes@milwaukee.gov

If to Developer: Robert C. Ruvin, Manager  
Fourth and Highland, LLC  
270 E. Highland Avenue, Suite A  
Milwaukee, WI 53202  
Facsimile: 414-765-9091  
Email: rob@ruvindevelopment.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 instrument 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 instrument.

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

[Signature page to follow]

City of Milwaukee

By: \_\_\_\_\_  
Jeffrey J. Mantes, Commissioner

Countersigned:  
\_\_\_\_\_  
Comptroller

Fourth and Highland, LLC

By: \_\_\_\_\_

Approved as to form, execution and content this \_\_\_\_ day of \_\_\_\_\_, 2007

\_\_\_\_\_  
Assistant City Attorney

Signature of Jeffrey Mantes, Commissioner of Public Works of the City of Milwaukee  
authenticated as of the \_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
Assistant City Attorney

Signature of \_\_\_\_\_ authenticated as of the \_\_\_\_ day of  
\_\_\_\_\_, 2007.

\_\_\_\_\_  
Attorney

This Agreement was drafted by the City of Milwaukee.

1047-2007-2523:125117



## **EXHIBIT “A”**

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

Parcel 1 of Certified Survey Map No. 5020, recorded on September 29, 1987, on Reel 2145, Image 2471-2474, as Document No. 6110059, being a redivision of part of Lot 2 and all of Lots 3, 6, 7, 10, 11, 14 and 15, the vacated alley lying between Lots 7 and 10 and vacated portions of North Fourth Street and West Juneau Avenue in Block 42 in the Plat of the Town of Milwaukee on the West side of the River, being a part of the Northeast  $\frac{1}{4}$  of Section 29, Town 7 North, Range 22 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin.

Tax Key No: 392-2391-2

Address: 324 West Highland Avenue