

**2nd /PLANKINTON PARKING STRUCTURE
PARKING AGREEMENT BETWEEN
CITY OF MILWAUKEE AND MO STREET DEVELOPMENT, LLC**

This Agreement is made as of the ___ day of _____, 2015 by and between the City of Milwaukee, a Wisconsin municipal corporation (the “City”) and Mo Street Development, LLC, a limited liability company organized under the laws of the State of Wisconsin (“Mo Street”).

Statement of Background and Purpose

- A. The City constructed a 480-space parking structure located at 724 N 2nd Street, Milwaukee, Wisconsin, generally known as the 2nd/Plankinton Parking Structure, (“the Structure”) in 1960. The Structure was constructed to provide parking for monthly, transient and event parkers in the area. The City operates the Structure through a management contractor.
- B. Mo Street is redeveloping the Posner Building into apartments, located at 152 W Wisconsin Avenue, Milwaukee, Wisconsin, and proposes to accommodate between 15 -75 of its tenants with unreserved parking in the Structure. Mo Street plans to construct up to 39 off-street parking spaces, but has a need for 114 tenant parking spaces. On-street parking is limited in the area, particularly between December 1 and March 1, when winter parking restrictions are in effect.
- C. Mo Street plans to allow each tenant to contract individually with the City’s parking management company on a month-to-month basis for parking. After January 1, 2017 each tenant will pay the market rate at the garage, which in 2015 is \$120 per space, per month.

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 August 1, 2015, for one thirty-five (35) year term, to expire on July 31, 2050. Upon expiration of this the initial term, the agreement may be extended upon mutual agreement of both parties every five (5) years, beginning August 1, 2050, up to a total of an additional thirty-five (35) years, to expire on July 31, 2085.
- 2. **Parking Spaces:** The City agrees that Mo Street’s tenants shall have a continuing right during the term to use and the City shall make available and provide parking spaces located in any unreserved space within the Structure (the “Parking Spaces”), subject to the terms set forth in this Agreement. The term shall be month-to-month and may be terminated by either party providing 30 days written notice to the other party. However,

City shall not terminate the individual parker(s) of Mo Street in favor of another tenant(s) as long as the individual parker(s) remain in good standing with their lease, and as long as Mo Street maintains and meets all of its obligations under this agreement. If Mo Street desires additional or fewer parking spaces than what is provided for in this Agreement, Mo Street must submit a written request to the City.

The minimum spaces that the City must make available to tenants of Mo Street are as follows:

August 1, 2015	15
September 1, 2015	23
October 1, 2015	28
November 1, 2015	36
December 1, 2015	44
January 1, 2016	46
February 1, 2016	46
March 1, 2016	48
April 1, 2016	50
May 1, 2016	58
June 1, 2016	62
July 1, 2016	66
August 1, 2016 +	75

However, if the minimum number of spaces have not been requested by Mo Street tenants within 25 days in advance of the start of each month, City can lease those spaces to other parkers not affiliated with Mo Street. After August 1, 2016, the maximum number of spaces which can be added within 25 days in advance of the start of each month is five (5) spaces.

3. Use: The Parking Spaces shall be used by Mo Street's tenants only for the purpose of parking motor vehicles and for no other purpose whatsoever. No motorcycles, bicycles or any other vehicle that is unable to be moved under its own power such as trailers, boats, etc. may be parked in the Structure. Failure to abide by these terms may result in cancellation of a parking agreement with a tenant. 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 allow for patrons needing assistance at any entrance or exit gate or at any pay station or pay-in-lane machine to press an assistance button 24 hours per day.
5. Mo Street Responsibilities: Mo Street shall advise their tenants to sign up for their monthly parking by calling the City's management contractor at 414-286-8401. Each tenant must pay a \$20 administrative fee as well as the first month's rental in advance. The City shall issue Mo Street's tenants access card(s) that will be programmed to not

allow entry for more than one vehicle at any time. Lost, misplaced or damaged cards will be replaced at a cost of \$20.

Parker may enter the Structure using the entrance on either N. Plankinton Avenue or N. Second Street. Any additional vehicles entering will be charged the applicable parking rate at time of entry. Mo Street's tenant parkers shall not drive vehicles into or out of the Structure at greater than 5 miles per hour.

6. Fees: The monthly parking rate charged to Mo Street's tenants shall commence at \$100 per month in August 2015 and will remain \$100 until December 31, 2016 regardless of any increase in the rate charged to the general public for monthly unreserved parking. Individual tenants will pay the City's management contractor for their parking. Failure to pay for their parking in advance will be subject to termination of the parking agreement with an individual tenant.

Commencing January 1, 2017, the parking rate charged to Mo Street's tenants will be increased to the same rate that is being charged to the general public for monthly unreserved parking, and for the duration of this Agreement, shall remain equal to the rate charged to the general public for monthly unreserved parking.

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.
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 Mo Street shall first be approved in writing by City. Such approval shall not be unreasonably withheld or delayed.
9. Indemnification and Insurance: Mo Street 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 Mo Street, its employees, or agents. 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 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.

Mo Street shall furnish 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 Mo Street 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.

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

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

Mo Street waives its rights to recovery from the City of any amount paid by insurance or otherwise for damages to the Structure. If actual repair or restoration costs exceed insurance proceeds or other recovered funds, Mo Street shall be responsible to pay all excess costs.

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

If to Mo Street: Mo Street Development, LLC
172 N Broadway, 2nd Floor
Milwaukee, WI 53202
Email: kastrigenz@gmail.com

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 written notice to Mo Street to vacate the premises. All rights and obligations of Mo Street 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.

Mo Street Development, 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 _____, 2015.

Assistant City Attorney

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KZB:kzb