

LEASE AGREEMENT
between CITY OF MANITOWOC
and 205 N 8th LLC

THIS LEASE AGREEMENT (hereinafter “Lease”) made and entered into on this ____ day of _____ 2018, by and between the City of Manitowoc, a municipal corporation, located at 900 Quay Street, Manitowoc, Wisconsin 54220, County of Manitowoc, Wisconsin (hereinafter “City”) and 205 N 8th LLC, a Wisconsin limited liability company located at 100 Maritime Drive, Suite 3C, Manitowoc, WI 54220 (hereinafter “Lessor”).

WHEREAS, the Lessor is the owner of certain real property and improvements located at 205 N 8th St, Manitowoc, Wisconsin, namely, a building currently used by The Crossing and a parking lot and 714 York Street, Manitowoc, Wisconsin, which contains a building currently occupied by a building previously known as “MC3’s”; and,

WHEREAS, the Lessor desires to lease to City 40 spaces in the parking lot located and/or to be located on the above referenced parcels and City desires to lease said premises from the Lessor; and,

WHEREAS, City shall use the leased premises solely as to provide municipal and public parking; and,

WHEREAS, the parties desire to enter into a Lease Agreement on the terms and conditions as set forth herein;

NOW THEREFORE, the parties do agree as follows:

- I. Leased Premises.** Subject to the terms and conditions of this Lease, Lessor leases to City and City leases from Lessor 40 spaces in parking lot located at 205 N 8th Street (referred to herein as the “Leased Spaces” and the “Leased Premises”), which will be shown on the certified survey map attached as Exhibit “A” once the lot is constructed, for the sole purpose of operating a municipal parking lot. The Leased Spaces are those depicted as such on the attached Exhibit “A.” City recognizes that there are other parking spaces in the parking lot in which the Leased Spaces lie, and that the same may be leased out by Lessor in Lessor’s sole and absolute discretion. Lessor shall not be responsible for ensuring that only those permitted by City are utilizing the Leased Spaces, such responsibility being that of the City throughout the term hereof (though Lessor agrees to provide reasonable assistance in City’s efforts related thereto).
- II. Term.** This Lease shall be in effect for a period of ten years, beginning on June 1, 2019 and expiring on May 31, 2029. This Lease shall automatically renew for successive 10-year terms unless either party gives written notice to the other no later than August 1 of the year before the Lease is set to expire.
- III. Rent.** The rent shall be \$2,200.00 per month for the first five years of the lease, with a 10% increase on June 1, 2024, and a successive 10% increase every five years after that.

Such increases shall continue on an every five-year basis for as long as this Lease continues, including all renewal terms hereof.

IV. Maintenance, Repairs, and Improvements. Lessor shall pave and demarcate the parking lot, install landscaping, and complete all related construction in agreement with City parking lot standards and a City-approved site plan, the approval of which shall not be unreasonably withheld. Upon completion of such Lessor work, City shall accept the Leased Premises in an as-is, condition, without further representations, warranty or other promise made by Lessor except those specifically set forth herein. City shall be obligated for all ongoing maintenance of the entire lot in which the Leased Spaces lie (i.e. including those spaces rented out by other tenants of Lessor), including, without limitation, ongoing sealing and restriping at the reasonable discretion of the City, pothole (and other surface defect) repair, emptying any trash cans placed by City, and general cleaning, snow and ice removal, landscaping and weed abatement (including any flower or other landscaping beds), and insurance (as discussed in more detail in Section VI, below) for the leased spaces. City shall pay for any and all charges of electricity or other utilities if used on the Leased Premises. City shall not erect any structure or sign upon the Leased Premises without first obtaining Lessor's consent, which shall not be unreasonably withheld. Lessor shall have no obligations to provide any security services or utilities (related to the person or property) to the Leased Premises or the parking lot in which the Leased Spaces are located.

V. Taxes. Lessor shall be responsible for all taxes on the property, including real and personal property taxes.

VI. Insurance; Assumption of Risk.

- a. Insurance. City, at its expense, must maintain in place during the Term the following insurance coverage:
 - i. **Commercial General Liability.** City agrees to maintain a commercial general liability policy insuring City's use and occupancy of the Leased Premises with minimum limits of liability of \$1,000,000 each occurrence and \$2,000,000 aggregate. City shall endorse Lessor as an Additional Insured under its commercial general liability insurance with respect to the Leased Premises.
 - ii. **Automobile Liability.** City agrees to maintain a commercial automobile liability policy insuring City's fleet and to include non-owned and hired (including snow removal) liability coverage with minimum limits of liability of \$1,000,000. City shall endorse Lessor as an Additional Insured under its automobile liability insurance with respect to the Leased Premises.
 - iii. **Workers Compensation.** City agrees to maintain a Workers Compensation policy in accordance with applicable statutory requirements.
 - iv. **Other.** If applicable, City shall insure all personal property located on the Leased Premises in an amount equal to no less than 90% of replacement value of such personal property. City is permitted to self-insure for

personal property that does not exceed City's property insurance deductible.

- v. **Umbrella.** City agrees to maintain an umbrella policy insuring City's use and occupancy of the Leased Premises with minimum limits of liability of \$2,000,000 each occurrence and aggregate. Umbrella policy must provide excess coverage over the general liability and automobile policies.
 - vi. **Insurance Policy Requirements.** All policies of insurance shall be issued by an insurer licensed to do business in the State of Wisconsin and with a minimum A.M. Best Rating of A- VII or as otherwise agreed to by Lessor. City shall furnish a certificate evidencing such insurance to Lessor, along with the confirmation that such insurance complies with all of the terms of this Lease. Such policies of insurance shall contain provisions preventing their cancellation, discontinuance or alteration without at least a 30-day notice. Tenant agrees to notify Lessor of any policy cancellation.
- b. Assumption of Risk. City acknowledges and agrees that by use of the Leased Spaces, the City assumes all risk of loss or damage to property, including, without limitation, property damage, and all risk of personal injury, including but not limited to death, attributable to any cause other than the gross negligence or intentional misconduct of Lessor. Accordingly, as between Lessor and City, City shall be solely liable for any claims, demands, losses, penalties, fines, fees, charges, assessments, liabilities, damages, judgments, orders, decrees, actions, administrative or other proceedings, costs and expenses (collectively, the "Damages") arising on or resulting from this Lease (including City's breach hereof) or the use of the Leased Premises by City or anyone claiming by, through or under City (including, without limitation, City's employees, subcontractors, invitees and City's customers and guests) including, without limitation, any personal injury or death, property damage or other losses incurred by any such persons or to any property located on or around the Leased Premises, the parking spaces thereon, and any ingress and egress thereto, except to the extent such Damages are caused solely by the gross negligence or intentional misconduct of Lessor. City shall indemnify, defend, and hold Lessor harmless from and against any such Damages, including reasonable attorneys' fees related thereto.

VII. Damage to Premises. If during the term of this Lease the improvements located upon the Leased Premises shall be significantly damaged or destroyed by fire, explosion, the elements, an act of God or any other casualty, either party shall have the option to terminate the Lease upon such damage or destruction.

VIII. Termination. This Lease may be terminated by either party upon 30 calendar days prior written notice to the other party as follows:

- a. By either party upon a default of any covenant, term or condition of this Lease Agreement hereof by the other party, which default is not cured within 30 calendar days (or, for such defaults which may not be cured within such a 30-day period, such cure shall have commenced within such 30 day period) of receipt of written notice of default to the other party

- b. Notwithstanding Section VIII.a., above, Lessor may terminate if City does not pay rental amounts required hereunder within five (5) days of the due date therefor;
- c. By either party if Lessor is unable to obtain or maintain any license, insurance, permit or governmental approval necessary for the operation and/or repairs of the improvements, facilities or business, including, but not limited to, copyright license and the compliance with Americans with Disability Act or any other laws or governmental restrictions;
- d. By City if it determines in its sole but reasonable discretion that the improvements become unusable due to the parking lot coming into significant disrepair.

IX. Surrender at End of Lease Term. On the last day of the date of termination of this Lease, Lessees shall peaceably and quietly leave, surrender and deliver the entire Leased Premises to the Lessor.

X. Assignment. The parties agree that Lessor may assign the Lease to a successor, and that City may sublease parking spots within the lot pursuant to the City's standard parking lot lease form (altered to account for such document being executed as a sublease) provided, however, that such subleasing, assignment or licensing of the Leased Premises (in whole or in part) shall not relieve the City of its obligations under this Lease (including, without limitation, those set forth in Section VI, above) and such standard parking lot sublease shall obligate any sublessor to comply with the provisions of this Lease, in each such sublease case all references herein to the "City" shall be deemed to refer to such subtenant and any reference herein to Lessor shall be deemed to refer to the City of Manitowoc.

XI. Integration. This Agreement represents the entire understanding of the City and Lessor as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder.

XII. Notice and Demand. Any notice, demand or communication under this Agreement by any party to the other party shall be given or delivered by first class mail, registered or certified mail, postage paid, return receipt requested or delivered in person as follows to:

CITY: CITY CLERK
900 Quay Street
Manitowoc, WI 54220

LESSOR: 205 N 8th LLC
c/o Peter Allie
100 Maritime Drive, Suite C
Manitowoc, WI 54220

The above addresses or designated party may be changed at any time by the parties by giving notice in writing in the manner provided above.

- XIII. Amendments.** This Lease is the entire Agreement between the parties and can only be modified or changed in writing executed in the same manner as this document by all parties.
- XIV. Severability.** If any provision of this Lease is deemed by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and such remainder would then continue to be valid and enforceable to the fullest extent permitted by law.
- XV. Section Headings.** The section titles have been inserted in this Lease primarily for convenience, and do not define, limit or construe the contents of such paragraphs. If headings conflict with the text, the text shall control.
- XVI. Governing Law.** This Lease shall be deemed to have been made in Manitowoc County, Wisconsin, and shall be governed by, construed under, and enforced in accordance with, the law of the State of Wisconsin, except as otherwise provided herein. All actions or proceedings relating directly or indirectly to this Lease, whether sounding in contract or tort, shall be litigated only in the Circuit Court located in Manitowoc County, Wisconsin. All parties to this Lease hereby subject themselves to the jurisdiction of the Circuit Court for Manitowoc County, Wisconsin.
- XVII. Relationship of Parties.** Nothing in this Lease, nor any act of the Lessor or City, shall be deemed or construed to create any relationship of third party beneficiary, of principal or agent, employment, of limited or general partners or owners, of joint venture or of any association whatsoever between the parties hereto.
- XVIII. Construction.** All parties have contributed to the drafting of this Agreement. In the event of a controversy, dispute or contest over the meaning, interpretation, validity or enforcement of this document or any of its terms or conditions, there shall be no inferences, presumption or conclusion drawn whatsoever against any party whatsoever by virtue of that party having drafted the document or any portion thereof.
- XIX. Waiver.** No waiver of any default under this Lease shall constitute or operate as a waiver of any prior or subsequent default hereunder, and no delay, failure or omission in exercising or enforcing any right, privilege or option under this Lease shall constitute a waiver, abandonment or relinquishment thereof.

The remainder of this page is intentionally left blank.

6