

RESOLUTION OF FINANCE COMMITTEE

Approval of Assignment of City of Wausau Parking Space Lease Agreement from Murdock Wausau, Ltd. f/k/a Murdock Wausau Limited Properties to Compass Block 15, LLC

Committee Action: Pending

Fiscal Impact: None

File Number: 08-0710

Date Introduced: October 28, 2014

RESOLUTION

WHEREAS, a Parking Space Lease Agreement was entered into on August 1, 2008 with Murdock Wausau Limited Properties for parking spaces at the McClellan Parking Ramp and Jefferson Street Parking Ramp; and

WHEREAS, an amendment to the lease agreement was approved by the Common Council on September 23, 2014; and

WHEREAS, your Finance Committee, at their October 28, 2014, meeting discussed and approved a request to assign the subject lease to Compass Block 15, LLC.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Wausau that the attached Assignment and Assumption of Lease between Murdock Wausau, Ltd. f/k/a Murdock Wausau Limited Properties and Compass Block 15, LLC is hereby approved.

Approved:

James E. Tipple, Mayor



Office of the City Attorney
Anne L. Jacobson, City Attorney
Tara G. Alfonso, Asst. City Attorney

TEL: (715) 261-6590
FAX: (715) 261-6808

Memorandum

From: Anne L. Jacobson, City Attorney

To: Finance Committee

Date: October 24, 2014

Re: Staff Analysis of Consideration of Assignment and Assumption of Parking Space Lease Agreement Between the City of Wausau and Murdock Wausau, Ltd. f/k/a Murdock Wausau Limited Properties

Purpose: To obtain your approval of an Assignment and Assumption of Lease for Parking Space Lease Agreement between the City of Wausau and Murdock Wausau, Ltd. f/k/a Murdock Wausau Limited Properties.

Facts: The subject lease was entered into on August 1, 2008. The Common Council, at their September 23, 2014 meeting, approved an amendment to the Parking Space Lease Agreement. The Lessee is requesting to assign their rights to Compass Block 15, LLC. Per the lease, any assignment must be approved by the City.

Recommendation: Approval.

cc: Mayor

CONSENT TO ASSIGNMENT OF PARKING SPACE LEASE AGREEMENT

WHEREAS, Murdock Wausau, LTD (f/k/a Murdock Wausau Limited Properties; "Murdock") currently leases parking at the Jefferson Street, Scott Street and McClellan parking ramps under a Parking Space Lease Agreement with the City of Wausau, dated August 1, 2008, which was amended by the Amendment dated _____, 2014, a complete and accurate copy of which is attached at Exhibit A (collectively, the "Parking Lease");

WHEREAS, Compass Block 15, LLC ("Compass") is purchasing from Murdock real property with an office building located at 500 North Third Street in the City of Wausau (PIN 291-2907-253-0267), which real property and office building utilizes parking pursuant to the Parking Lease;

WHEREAS, the purchase agreement between Murdock and Compass requires Murdock to assign the Parking Lease and to Compass, and Compass wishes to take assignment of and assume the Parking Lease in connection with purchasing the real property and office building; and

WHEREAS, it is in the public interest for the City of Wausau to consent to the Assignment of Parking Lease to Compass to continue to serve the real property and office building which Compass is acquiring from Murdock.

NOW, THEREFORE, the City of Wausau hereby consents to the assignment of the Parking Lease to Compass.

CONSENTED AND APPROVED this ____ day of October, 2014:

CITY OF WAUSAU

By: _____

James E. Tipple, Mayor

ATTEST:

Toni Rayala, Clerk

Exhibit A

PARKING LEASE

[See Attached]

ASSIGNMENT AND ASSUMPTION OF LEASE

This Assignment and Assumption of Lease (the "Assignment"), dated as of October 31, 2014 (the "Effective Date), is made by and between Murdock Wausau, Ltd. f/k/a Murdock Wausau Limited Properties ("Assignor") and Compass Block 15, LLC ("Assignee").

WHEREAS, Assignor is presently the Lessee under a five-year lease expiring July 31, 2019; and

WHEREAS, Assignor wishes to Assign and Assignee wishes to assume the Parking Space Lease Agreement as set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. Assignment. As of the Effective Date, Assignor hereby assigns, conveys, transfers, and sets over unto Assignee the Lease.
2. Assumption. Assignee hereby assumes the Lease.
3. Attorney in Fact. Assignor hereby irrevocably constitutes and appoints Assignee as its attorney-in-fact to demand, receive, and enforce the rights of Assignor with respect to the Lease.
4. Binding Effect. This Assignment shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.
5. Counterparts. The parties agree that this Assignment may be executed by the parties in one or more counterparts and each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the date set forth above.

ASSIGNOR:

MURDOCK WAUSAU, LTD f/k/a MURDOCK
WAUSAU LIMITED PROPERTIES

By: _____

ASSIGNEE:

COMPASS BLOCK 15, LLC

By: _____

CITY OF WAUSAU
PARKING SPACE LEASE AGREEMENT

This parking space lease agreement ("Lease") is made and entered into as of this 1 day of August 2008, by and between the CITY OF WAUSAU, WISCONSIN a Wisconsin municipal corporation, as "LESSOR" or "CITY", and MURDOCK WAUSAU LIMITED PROPERTIES whose address is 500 Third Street Unit 321, Wausau WI 54403, as LESSEE(s):

1. **LEASE.** Subject to the terms and conditions of this Agreement, CITY leases to LESSEE parking spaces to use in common with other Lessees and the public, forty (40) unreserved permit parking spaces in a portion of the Jefferson Street Parking Ramp and thirty (30) unreserved permit parking spaces in a portion of the McClellan Parking Ramp ("PARKING FACILITY"). LESSEE may use and occupy these unreserved permit parking spaces in the Parking Facility on the indicated dates at the indicated times for the parking rates stated below for the following express purposes and no other purpose: parking is for normal passenger vehicles only including pick up trucks and passenger size vans provided they meet any height restriction of the PARKING FACILITY. The CITY shall in no manner be obligated to provide any particular parking space. This lease is transferable and may be assigned with prior written consent of the Lessor not to be unreasonably withheld. A map locating the eligible unreserved permit parking spaces is identified on the PARKING FACILITY map attached and referred to as Exhibit A.

2. **TERMS/DAYS/HOURS.** This lease shall be for the period beginning the 1st day of August, 2008, through the 31st day of July, 2013. LESSEE is authorized to park in the PARKING FACILITY:
 Monday through Friday between the hours of 6:00AM through 6:00PM; or
 Seven (7) days per week a week, twenty four hours per day; or
 _____ days per week _____, between the hours of _____ through _____.

3. **PAYMENTS.** The lease rate shall be:
 In _____ equal annual lease installments of _____ due on _____; or
 In 60 monthly lease payment installments for 70 stalls in an amount equal to 80% of the current Fair Market Parking Permit Rate per leased stall, due, in advance, on the 1st of each month. Current "Fair Market Parking Permit Rate" shall mean the monthly permit fee adopted by the City of Wausau Common Council and charged to the general public for an unreserved parking permit.

4. **FINANCE CHARGES.** Fees/rents not paid within the terms of this agreement are subject to a 1 1/2% per month finance charge.

5. **DURATION.** This lease shall terminate at the earlier of, five years from the lease effective date, the date the PARKING FACILITY ceases to be available to the CITY or at the end of the lease term.

This lease shall be renewable on like-terms for one additional five year term upon at least 120 day notice to Lessor, prior to the end of the first lease term.

6. **RULES.** By signature below, LESSEE expressly acknowledges receipt of PARKING FACILITY rules. LESSEE expressly agrees to provide a copy of said Rules to agents, employees, tenants or guests who utilize the PARKING FACILITY. LESSEE is solely responsible to the CITY for any violation of rules by LESSEE's users.
7. **VEHICLES PARKED AT OWNER'S RISK.** LESSEE understands and expressly agrees that the CITY will not accept the vehicle in bailment or for safekeeping; nor shall the CITY be responsible for loss or damage to any vehicle or its contents by fire, vandalism, theft or any other cause, nor for loss, damage or injury by or to other customers or any other individual personal injury of any nature. LESSEE expressly acknowledges that the CITY shall have no duty to provide security, and expressly does not assume any obligation to provide for the security of the PARKING FACILITY or to protect individuals using the PARKING FACILITY, or vehicles or property in the PARKING FACILITY, from criminal activity.
8. **DAMAGED PROPERTY.** If LESSEE, or his/her guests or agents, damages any personal property at the PARKING FACILITY, or damages any PARKING FACILITY equipment, in addition to any liability LESSEE may have for any claims, losses or costs arising out of such damage, the CITY may terminate this Agreement.
9. **TERMINATION.** An event of default shall deemed to occur should any of the following events happen:
- failure to timely pay fee or invoice;
 - repeated failure of LESSEE, or of his/her guests or agents, to obey the rules of the CITY concerning security, safety, or preservation of the CITY Parking Facilities, during the term of the agreement; or
 - failure of the LESSEE to comply with any other term or condition of this agreement, including any addenda or amendments hereto.
- In the event of default, the CITY shall notify LESSEE in writing, and the CITY may terminate this agreement immediately upon notice to said LESSEE, without penalty or liability to the CITY.
10. **FORCE MAJEURE/OCCUPANCY DISRUPTION.** If the PARKING FACILITY or any portion thereof shall be destroyed or damaged by fire or other calamity, acts of God or other causes beyond the reasonable control of LESSEE or CITY, then this Agreement shall terminate upon at least five (5) days written notice, if practical, to the other party that an event of "Force Majeure" has occurred and prevented performance by the party experiencing the event of "Force Majeure". In the event of a termination by reason of "Force Majeure", the CITY shall not be liable or responsible to the LESSEE for any damages caused hereby and LESSEE waives all claims against the CITY for damages sustained by reason of such termination, except that any unearned portion of payments shall be abated or if previously paid refunded.
11. **PARKING FACILITY CLOSURE.** The CITY reserves the right to close the PARKING FACILITY for repairs and maintenance. When closing the PARKING FACILITY, the CITY shall seek to avoid any inconveniences to LESSEE. CITY will provide as much advance notice as is possible and will provide alternate parking during the closure period.

12. **RIGHT TO REMOVE.** The CITY reserves the right to remove or expel from the PARKING FACILITY any person engaging in or conducting him/herself in a manner disruptive, abusive or offensive to other patrons at or in the PARKING FACILITY. Neither the CITY, nor any of its employees shall be liable to the LESSEE for any damages that may be sustained by LESSEE through the CITY's exercise of such right.
13. **NO ASSIGNMENT.** The LESSEE may not assign its rights, obligations or duties hereunder without first receiving written consent by the CITY of Wausau.
14. **NONWAIVER.** The CITY's acceptance of rent or failure to complain of any action, non-action or default of LESSEE, whether singular or repetitive, shall not constitute a waiver of any of the CITY's rights. If LESSEE's payment of any sum due the CITY is accompanied by written conditions or is represented by LESSEE to be a settlement or satisfaction of any obligation, the CITY may accept and deposit such moneys without being bound by such conditions or representations unless the CITY expressly agrees in a separate written instrument. The CITY's waiver of any right of the CITY, or any default of the LESSEE shall not constitute a waiver of any other right or constitute waiver of any other default or subsequent default.
15. **ATTORNEY FEES.** If the CITY is required to file suit to collect any amount owed it under this Agreement, CITY shall be entitled to collect reasonable attorney's fees for its prosecution of the suit.
16. **ENTIRE AGREEMENT/AMENDMENTS.** This agreement constitutes the entire Agreement between the parties, and supercedes any and all previous written or oral agreements or representations between the parties. This agreement may only be amended in writing signed by both parties.
17. **SEVERABILITY.** If any covenant, condition, provision, term or agreement of this Lease is, to any extent, held invalid or unenforceable, the remaining portion thereof and all other covenants, conditions, provisions, terms and agreements of this Lease will not be affected by such holding, and will remain valid and in force to the fullest extent permitted by law.
18. **NOTICES.** Any notice under this Agreement shall be given by certified mail, overnight mail, or by personal delivery, and shall be effective upon receipt. Notice shall be sent to the address for the receiving party as designated herein: For LESSEE: As listed on page one of this Agreement. For CITY: City Clerk, City of Wausau, 407 Grant Street, Wausau, WI 54403.

ATTACHMENT A

Eligible unreserved permit parking areas are as follows:

1. McClellan Ramp

Parking stalls are available on a first come first serve basis. Permit parking is available at any stall except: metered stalls and specifically signed stalls (such as stalls reserved for customer parking).

2. Jefferson Street Parking Ramp

Parking stalls are available on a first come first serve basis at all levels 4 and above.

The City reserves the right to modify these areas in the future.

Parking permits are designated for a specific ramp and are not considered interchangeable.