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GLEE S. SMITH, JR.
OF COUNSEL

April 30, 2008

RECEIVED

MAY 01 2008

**CITY MANAGERS OFFICE
LAWRENCE, KS**

VIA REGULAR MAIL AND E-MAIL

Mr. David Corliss
City Manager – City of Lawrence
PO Box 708
Lawrence, KS 66044-2268

Re: 123 W. 8th Street Parking Spaces

Dear Dave:

On behalf of Onetwothree, L.L.C. (the “**Company**”), and at the request of City staff, please accept this letter as the Company’s request to appear before the City Commission to finalize the terms of use for eight (8) parking spaces adjacent to 123 W. 8th Street. At the July 24, 2007 City Commission Meeting, the City Commission directed City staff to prepare an agreement related to the use of such spaces.

The City staff prepared the first draft of the *Agreement for Use Of, and Option On, Public Parking Spaces* (the “**Agreement**”), which required the initial payment by the Company of \$200,000.00. Under the first draft, the City would totally or partially refund such cash payment, depending on the extent to which the Company provided the City with up to eight (8) replacement parking spaces during the term of the Agreement. The basis for the first draft was the July 19, 2007 staff report, which stated that “[i]n exchange for these public parking spaces the applicant will provide the City with \$25,000.00 for each space, with the funds to be used by the City to acquire/build additional parking in the downtown area, specifically supporting this portion of downtown.”

By way of background, the July 24, 2007 agenda item appeared at the request of Thomas S. Fritzel, as described in the terms of his letter to you dated July 3, 2007, a copy of which is enclosed for your reference. The revised draft of the Agreement, which substitutes the initial cash payment for a \$200,000.00 letter of credit, is premised on the terms of the July 3, 2007 letter. For example, the first full paragraph on Page Two of the letter states that the eight (8) parking spaces will be replaced within five (5) years of conveyance, or the price of \$25,000.00

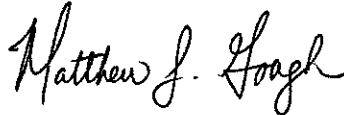
Mr. David Corliss
City Manager – City of Lawrence
April 30, 2008
Page 2

per space would be paid to the City. The letter, like the revised Agreement, does not provide for an initial cash payment.

The revised Agreement makes several compromises not initially contemplated in the July 3, 2007 letter. For example, the Company did not originally offer to provide a \$200,000.00 letter of credit during the term of the Agreement. Furthermore, the City may, during the last two (2) years of the term of the Agreement, identify potential new spaces and notify the Company of such identification, which notification would prompt a maximum 180 day deadline for the Company to either provide replacement parking spaces, convert the potential new spaces into replacement parking spaces, or pay \$25,000.00 for each potential new space (up to eight (8) spaces). In many ways, the revised Agreement is a compromise between the terms of the July 3, 2007 letter and the first draft of the Agreement.

The Commission's action on July 24, 2007 expressly provided that the Commission would consider the final draft of the Agreement at a later date. Please accept this letter as the Company's request to seek the City Commission's approval of the revised Agreement. We look forward to hearing from you.

Very truly yours,

A handwritten signature in black ink that reads "Matthew S. Gough". The signature is written in a cursive, flowing style.

Matthew S. Gough
of Barber Emerson, L.C.

MSG:jsm

cc: Thomas S. Fritzel
Toni Ramirez-Wheeler



Gene Fritzel
Construction Co., Inc.

RECEIVED

JUL 03 2007

CITY MANAGERS OFFICE
LAWRENCE, KS

July 3, 2007

David Corliss
City Manager – City of Lawrence
P.O. Box 708
Lawrence, Kansas 66044

Re: Downtown Redevelopment

Dear Dave:

As we move forward with plans to continue our redevelopment efforts along Vermont Street in downtown Lawrence's Historic Eldridge Redevelopment District, we applaud your recent message to the city commission regarding vertical expansion in downtown Lawrence. In addition to your comments, it was reported that during the goal-setting session, several commissioners said they see a need to "take action in some way to draw more people to downtown." Mayor Hack said there needs to be a "movement to re-energize" Lawrence's downtown. Commissioner Highberger said that efforts should be focused on "encouraging more residential development" downtown. Commissioner Dever said that "the private sector is the one that needs to step up to the plate."

We agree with every one of those assessments. We own businesses and real estate in downtown Lawrence, and so we know the importance of drawing more people to downtown. We want downtown Lawrence to become a true destination. That is the reason we are pushing for redevelopment in the District, to include construction of numerous, additional residential, retail, office, conference and lodging offerings. We are proud to be a contributing member of the downtown Lawrence private sector, and intend to continue our twenty-year tradition of stepping up to initiate and support various developments within the downtown District.

In those twenty years, we have never asked the city for anything, but to actualize the commissioners' visions from the goal-setting session, the city will need to be involved in a number of ways – many of which are non-financial. First and foremost, the city should work to encourage additional private investment in downtown. Secondly, the city should form TIF and TDD boundaries to take advantage of the redevelopment that will occur within those boundaries. To assist in that effort, we will submit our proposed TIF and TDD boundaries in the next few weeks for the city's review. The city also may need to help encourage the relocation of occupants of certain under-developed downtown footprints (including, as an example, the USPS distribution facility), so land can be redeveloped with the type of vertical, multi-use, foot-traffic-attracting redevelopment you and the commissioners envision. The city will likely need to abandon some parking spaces to allow for the expansion of buildings in downtown Lawrence, with the

Corliss Letter
July 3, 2007
Page Two

understanding that those spaces will be replaced through the construction of new parking facilities to be built in conjunction with the redevelopment. Those new parking facilities are already necessary to serve the aquatic center, the library and the senior center, and will become even more necessary to serve the redevelopment.

With that in mind, we are requesting that the city allow us to use eight public parking spaces immediately adjacent to the building at 123 W. 8th Street, on the south side of the building. Our plan to add a stair and elevator tower (for life/safety and accessibility reasons) and additional office space to the south side of that building, as part of a complete renovation, has been approved by the Historic Resources Commission. Our request for those parking spaces is to facilitate that expansion, and I am asking that you place this request on the July 10th city commission agenda. Those parking spaces will be replaced through the construction of a new parking facility in the northwest quadrant of downtown Lawrence within the next five years. If, for some reason, the facility is not either under construction or built in that time, we will agree to pay the city \$25,000.00 for each space.

Our company already has a long history of development and redevelopment in downtown Lawrence, and we are committed to advancing your vision and the vision of the commissioners by stepping up and investing millions more of our own private development dollars in this effort. Hopefully, our actions will encourage others in Lawrence to similarly invest in the kind of redevelopment that will be extremely beneficial to the long-term viability of downtown Lawrence, through the generation of considerable additional sales, real estate and transient guest taxes, and increased foot-traffic. Downtown Lawrence can "re-energize" its status in this community as the major destination point, but not without true cooperation between the city and the private sector.

Please contact me with any questions or comments regarding this request.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thomas Fritzel', with a long horizontal line extending to the right.

Thomas Fritzel

**AGREEMENT FOR USE OF, AND OPTION ON,
PUBLIC PARKING SPACES**

THIS AGREEMENT, is made this _____ of _____, 2008 (the "**Effective Date**"), by and between the **City of Lawrence, Kansas**, a municipal corporation (hereinafter "the **City**") and **Onetwothree, L.L.C.**, a Kansas Limited Liability company (hereinafter "the **Developer**").

R E C I T A L S

WHEREAS, the City is the owner of record of the public parking lot generally described as VERMONT STREET, SOUTH ½ OF LOT 48 and LOTS 50, 52, 54, 56, 58, 60, 62, 64, 66 AND 68, commonly known as Parking Lot Number _____ (the "**Lot**"); and

WHEREAS, the Developer is the owner of the property legally described as VERMONT STREET, LOT 46 AND NORTH ½ OF LOT 48, commonly known as 123 West 8th Street in Lawrence, Douglas County, Kansas; and

WHEREAS, the Developer has submitted a site plan to the Lawrence-Douglas County Metropolitan Planning Department for improvements to the building at 123 West 8th Street, including an addition to the building at such location. The proposed addition to the building among other things includes an additional means of egress from the building, stairs and an elevator for Americans With Disabilities Act (ADA) compliance. The Developer intends the improvements to transform the building into additional premium quality office space in the downtown area; and

WHEREAS, the improvements in the submitted site plan referenced above require the use of eight public parking spaces in the City's public parking lot located adjacent to the building at 123 West 8th Street, on the south side of the building, during the renovation of the building and the construction of the addition to the building and such use may continue following completion of the proposed improvements; and

WHEREAS, it is a goal of the City Commission to enrich downtown Lawrence by reasonably accommodating worthwhile development; and

WHEREAS, the City Commission also recognizes that providing adequate and convenient public parking for the businesses and offices located in downtown Lawrence is vital to the success of downtown Lawrence;

Now therefore, the parties, in consideration of the promises hereinafter provided, agree as follows:

1. **Recitals.** The recitals set forth above are a part of this Agreement.
2. **Term.** The term of this Agreement shall be for a period of four (4) years commencing on the Effective Date (the "**Term**").
3. **Conveyance.** Promptly following the Effective Date of this Agreement, the City shall transfer to the Developer, by warranty deed, fee simple title to eight (8) public parking spaces along the north boundary of the Lot, which public parking spaces are located immediately south of and adjacent to the building located at 123 West 8th Street, as depicted in Exhibit A attached hereto and incorporated herein by reference and legally described as follows (the "**Conveyed Parking Spaces**"):

[insert legal description].

4. **Reconveyance.** On or before the expiration of the Term of this Agreement, the Developer shall either (i) provide the City with up to eight (8) replacement hard-surfaced parking spaces located within the Boundary Area, as approved by the City, provided that such approval shall not be unreasonably withheld or delayed, or (ii) if the Developer is unable to provide a total of eight (8) replacement parking spaces as provided herein, the Developer shall pay to the City an amount equal to \$200,000.00, less \$25,000.00 for each replacement parking space actually provided by Developer to the City (e.g., if the Developer shall provide only 6 replacement parking spaces, the Developer shall pay to the City \$200,000.00 - \$150,000.00 = \$50,000.00). The term "**Boundary Area**" shall mean that portion of downtown Lawrence that is north of 9th Street, West of Massachusetts Street, South of 6th Street and East of Kentucky Street, unless the City otherwise agrees to accept replacement parking spaces located outside the Boundary Area.

5. **Letter of Credit.** To secure the Developer's obligations to the City during the Term of this Agreement as described in paragraph 4 above, the Developer shall, upon conveyance by the City to the Developer of the Conveyed Parking Spaces, obtain and provide to the City, as beneficiary, an irrevocable standby letter of credit (the "**Letter of Credit**") in the face amount of \$200,000.00 (calculated at the rate of \$25,000.00 for each of the 8 Conveyed Parking Spaces). The Letter of Credit shall be issued by a federally-insured financial institution, with such terms and conditions as shall be reasonably acceptable to the City. The Letter of Credit shall remain in place for the Term of this Agreement, whether by annual renewals of the Letter of Credit, or a single Letter of Credit issued for the entire Term. If, for any reason, the City draws upon the Letter of Credit pursuant to the terms of this Agreement, or if the Developer directly funds the cost of any replacement parking space provided to

the City as provided herein, the outstanding face amount of the Letter of Credit required herein and the Developer's obligations to the City, as described in paragraph 4 above, shall be reduced by the amount of such draw or payment

6. **Notice of Replacement Parking.** Any time during the final two (2) years of the Term of this Agreement, to the extent that the Developer has not yet provided to the City eight (8) replacement parking spaces in accordance with paragraph 4 above, if the City identifies within the Boundary Area one or more potential replacement parking space(s) or real estate that can be feasibly and economically converted to parking spaces, the City shall notify the Developer in writing, addressed or delivered to the Developer at 643 Massachusetts Street, Suite 300, Lawrence, Kansas 66044, that potential parking space(s) have been identified and the location(s) thereof. Upon receipt of such notice, the Developer shall have the lesser of 180 days or the expiration of the Term of this Agreement to either (i) offer to the City an equal or greater number (not to exceed 8) of replacement parking spaces acceptable to the City as provided in paragraph 4 above, (ii) agree to acquire, pave, and finish the replacement parking spaces identified in the City's notice, as may be reasonably necessary, or (iii) pay to the City the amount of \$25,000.00 multiplied by the number of replacement parking spaces identified in the City's notice (not to exceed 8). In no instance shall the Developer's liability under this Agreement exceed the amount of \$200,000.00. Nothing in this Agreement shall limit or disqualify the Conveyed Spaces as possible replacement parking space(s) to be provided to the City in satisfaction of the Developer's obligations under this Agreement, provided, however that the condition and state of repair of the Conveyed Spaces shall be comparable to that on the Effective Date of this Agreement, normal wear and tear excepted.

7. **Compliance with Law.** Upon transfer by the City of the Conveyed Parking Spaces to the Developer, the Developer shall comply with appropriate City code and policies as related to the Conveyed Parking Spaces, and the Developer will assume full ownership and responsibility of the Conveyed Parking Spaces.

8. **Work Site.** The Developer shall be responsible for ensuring that the construction activity at 123 West 8th Street does not negatively affect, impede, delay or inconvenience the use of the City's remaining public parking spaces in the Lot. The Developer shall be responsible for maintaining its work site in a safe manner removing hazards to the persons and motor vehicles using the City's public parking lot.

9. **Indemnification.** The Developer agrees to at all times save and hold harmless the City from all liability, costs, damages, and expenses of any kind, for the payment of which the City may become liable by reason of any claim or damages arising from the failure of the Developer, the Developer's employees,

contractors, subcontractors, agents, engineers, architects, consultants, or servants to exercise due care and diligence during the construction and renovation of 123 West 8th Street and the use of the Conveyed Parking Spaces adjacent to 123 West 8th Street, provided that the same shall not be caused by the negligent act or omission of the City, or the City's employees or agents.

10. **Amendment.** This Agreement, and any exhibits attached hereto, may be amended only by the mutual consent of the parties, and by the execution of an amendment by the Parties.

11. **No Oral Agreement.** Except as otherwise expressly provided herein, this Agreement and all documents incorporated herein by reference supersedes all prior agreements, negotiations, discussions, both oral and written, relative to the subject matter of this Agreement.

12. **Severability.** If any part of this Agreement is held unenforceable by a court of competent jurisdiction, the balance of the Agreement shall remain enforceable according to the terms thereof.

13. **Governing Law.** This Agreement shall be governed by Kansas law.

This Agreement has been duly authorized and executed by the parties as of the Effective Date.

CITY OF LAWRENCE, KANSAS

David L. Corliss, City Manager

**ONETWOTHREE, L.L.C.,
a Kansas limited liability company**

By: Thomas S. Fritzel, Manager

EXHIBIT A

DEPICTION OF THE CONVEYED SPACES

Insert Illustration of Conveyed Spaces