

## **LEASE AGREEMENT**

This Lease Agreement is made and entered into on \_\_\_\_\_, 2014, by and between the City of West Allis, a municipal corporation, with principal offices at 7525 West Greenfield Avenue, West Allis, Wisconsin (hereinafter called the "Lessor"), and 7328 Greenfield Avenue LLC, with principal offices at 7326-28 West Greenfield Avenue, West Allis, Wisconsin (hereinafter called the "Lessee");

### **RECEITALS:**

**WHEREAS**, the Lessor is the owner of an Off-Street Parking Lot known as No. 74 N.E. located in Lot 14, Block 8, Otjen, Pullen & Shenner's Subdivision; and,

**WHEREAS**, the Lessee desires to lease a portion of the aforesaid parking lot for on-grade parking; and,

**WHEREAS**, the aforesaid parking lot is not necessary for City purposes at this time and the City is willing to enter into this agreement upon the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, in consideration of the foregoing premises and the mutual representations, warranties, assurances, covenants and agreements hereinafter set forth, the parties agree as follows:

A. Premises. The premises covered by this agreement is City Off-Street Parking Lot No. 74 N.E. Row 2, the eleven (11) northernmost parking spaces in the northernmost off-street parking lot located in Lot 14, Block 8, Otjen, Pullen & Shenner's Subdivision, and is legally depicted and described on Exhibit "A".

B. Term. The term of this lease shall be five (5) years, commencing on \_\_\_\_\_, 2014, and ending on \_\_\_\_\_, 2018, and is subject to three (3) successive renewals for a total not to exceed twenty (20) years unless either party notifies the other thirty (30) days prior to expiration of any such term. The Lessor, in its sole and absolute discretion, reserves the right to terminate this lease during the term hereof upon sixty (60) days prior written notice to the Lessee, with prorated rental reimbursement to the Lessee.

C. Rent. The Lessee shall pay to the Lessor, as base rent in the amount of One Thousand Four Hundred Ten Dollars (\$1,410.00) payable in annual installments beginning on \_\_\_\_\_, 2014.

Upon any renewal, the annual base rent shall be increased commencing on January 1<sup>st</sup> of each such year ("Adjustment Date"), by the increase in the cost of living. As used herein, "increase in the cost of living" shall be the annual percentage increase in the Consumer Price Index immediately preceding the Adjustment Date in question. The Consumer Price Index shall be the index number for the last day for which computation has been made in the columns for "All Items" in the table entitled "Revised Consumer Price Index - Urban Wage Earners and Clerical Workers, Milwaukee Average", 1982-84 base, published semiannually by the Bureau of Labor Statistics of the United States Department of Labor. In the event the Bureau ceases publishing the Index number for the City of Milwaukee, the Index figure for the United States - All Cities shall be used in lieu thereof.

D. Use of Premises. The Lessee shall use the leased premises for on-grade parking of eleven (11) automobiles as parking of automobiles and no other purpose and then only under the following conditions:

1.) 24 hr. Parking for only employees and tenants of 7326 and 7328 W. Greenfield Avenue said Property.

E. Maintenance and Repairs. During the term of this lease, the Lessor shall pay for and make all necessary repairs and perform all required maintenance to keep and maintain the premises in good condition and repair except for damage caused by Lessee's negligence, then such repairs shall be made by the Lessee, its agents or employees at their sole cost and expense in accordance with all applicable governmental rules and regulations. The Lessor shall also keep the premises free from snow and ice.

F. Indemnification. The Lessor shall not have any liability for and the Lessee agrees to indemnify and hold the Lessor harmless from and defend the Lessor against any and all claims, actions, damages, liabilities and expenses, including, without limitation, reasonable attorney's fees in connection with any injury or loss of life to any person or damage to any property occurring in, on or about the leased premises, arising out of:

- 1.) The use and occupancy of the leased premises by the Lessee.
- 2.) The condition of the leased premises.
- 3.) Any breach or default by the Lessee in the performance of any of its obligations under this lease on the Lessee's part to be performed.

The Lessor shall be under no obligation to fulfill the Lessee's obligations in the lease

and the Lessee shall indemnify and defend the Lessor against any claim, liability or proceeding by a third party for the failure of the Lessor to fulfill any of the Lessee's obligations hereunder, and shall pay all costs and expenses, including, without limitations, reasonable attorney's fees incurred or paid by the Lessor in connection with any such claim, litigation or proceeding, and shall satisfy any judgment or fine that may be entered against the Lessor in such litigation or proceeding.

G. Insurance. The Lessee agrees to keep the leased premises insured at its expense by a responsible company licensed to do business in the State of Wisconsin, with coverage as broad as Insurance Service Form CG 00 01 in the amount of at least Five Hundred thousand Dollars (\$500,000.00) for any person injured, One Million Dollars (\$1,000,000.00) for all bodily injury from any one accident and Fifty Thousand Dollars (\$50,000.00) property damage. The insurance policy shall name the Lessor as an additional insured, provide notice of cancellation to the Lessor and shall waive the right of subrogation as against the Lessor. The insurance coverage shall be in a form approved by the West Allis City Attorney.

H. Compliance with Laws. The Lessee shall observe and comply with all rules, regulations and laws now in effect or which may be enacted during the continuance of this lease by any municipal, county, state or federal authorities pertaining to said premises.

I. Assignment. The Lessee shall not assign or sublease any part or all of the leased premises without the Lessor's prior written consent.

J. Surrender of Leased Premises. Upon termination of this lease, either by lapse of time or otherwise, the Lessee shall surrender to the Lessor the leased premises.

The Lessee, at its own expense, shall restore the leased premises to the condition it was in prior to entering into this lease agreement, reasonable wear and tear excepted. In the event the Lessee fails to do so, the Lessor may remove any such improvements and charge the cost thereof to the Lessee.

K. Memorandum of Lease. The parties hereto will, at any time upon the request of either one, promptly execute a memorandum or short form of this lease, in recordable form, containing such of the terms and provisions of this lease as such party may desire to place of record.

L. Default. If the Lessee defaults in the payment of the annual rental payable hereunder, and such default shall continue for five (5) days after written notice thereof shall have been given to the Lessee, or if the Lessee defaults in the performance or observance of any other covenant or condition herein, and such default shall continue for five (5) days after written notice thereof is given to the Lessee, then, in either of the above-described events, the Lessor may elect, without further notice, to terminate this lease and declare the term ended, to reenter the leased premises or any part thereof, to expel and remove the Lessee or any other person occupying the same and to regain and enjoy the lease premises. The foregoing rights shall be without prejudice to any other remedies which the Lessor may have at law or in equity.

M. Notice. Any notice required or permitted under this lease shall be deemed sufficiently given or served if sent by registered or certified mail as follows:

If to the Lessee: Adam W. Purcell  
Aggie's Bakery and Cake Shop LLC  
7328 West Greenfield Avenue  
West Allis, WI 53214

If to the Lessor:           City of West Allis  
                                      7525 West Greenfield Avenue  
                                      West Allis, WI 53214  
                                      Attn: Michael Lewis, Director of Public Works

Notice given in accordance with the provisions of this paragraph shall be deemed received when mailed by first class mail and deposited with the United States Postal Service, postage prepaid.

N.       Amendments. This agreement contains the entire understanding of the parties with respect to the subject matter hereof, and no agreement or understanding, verbal or written, not contained herein will be recognized by either party. This agreement may be amended or supplemented only by written instrument signed by each party.

O.       Successors and Assigns. The terms, covenants and conditions of this lease shall be binding upon and inure to the benefit of the Lessor and the Lessee and their respective heirs, successors and assigns.

P.       This agreement shall be governed by, construed and enforced under and in accordance with the laws of the State of Wisconsin.

**IN WITNESS WHEREOF**, the parties hereto have caused this agreement to be duly executed as of the date, month and year first above written.

(SIGNATURES CONTINUED ON NEXT PAGE)

**IN THE PRESENCE OF:**

**LESSEE, Aggie’s Bakery and Cake Shop LLC**

\_\_\_\_\_

By: \_\_\_\_\_  
Adam W. Purcell, Managing Member

**IN THE PRESENCE OF:**

**LESSOR, City of West Allis**

\_\_\_\_\_

By: \_\_\_\_\_  
Dan Devine, Mayor

\_\_\_\_\_

By: \_\_\_\_\_  
Monica Schultz, City Clerk

Approved as to form  
this \_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Scott Post, City Attorney