

## **PARKING MANAGEMENT AGREEMENT**

THIS PARKING MANAGEMENT AGREEMENT (the "Agreement") is made and entered into as of the 31st day of July, 2015, by and between MHS, Inc., a Maine nonprofit corporation ("Owner"), and Unified Parking Partners Maine and New Hampshire LLC, a Maine limited liability company ("Manager"):

### **WITNESSETH**

WHEREAS, Owner is the fee-simple owner of that certain real property located at 41 Brown Street in Portland, Maine and depicted on Tax Map 37 as Lot F-12 (the "Property"), on which Property is located a parking lot area with approximately thirty-eight (38) parking spaces and related parking facilities, as depicted on **Exhibit A**; and

WHEREAS, Owner wishes to retain the services of Manager as the exclusive manager of parking services on the Property during the period and per the terms described in Section 2.2.(a) and Manager is willing to provide such services on the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the foregoing and of the full and faithful performance of Manager and Owner of all the terms, conditions, and obligations imposed hereunder, the parties hereto agree as follows:

#### **1. APPOINTMENT OF MANAGER**

(a) **Manager.** Owner hereby appoints Manager as the exclusive parking manager for purposes of managing the parking services provided on the Property, with the responsibilities and upon the terms and conditions set forth herein, and Manager, by its execution hereof, does hereby accept such appointment.

(b) **Tax Identification.** Manager's tax identification number is **46-0893471**. Owner's tax identification number is 01-0211530.

#### **2. PARKING MANAGEMENT SERVICES OF MANAGER; OWNER RESPONSIBILITIES**

**2.1 Parking Management.** Manager shall devote its commercially reasonable efforts to serve Owner as parking manager of the Property through a "pay and display" parking system. Manager makes no representations or warranties with respect to the potential profitability of operation of the Property for such parking purposes.

**2.2 Obligations of Manager.** Without limiting the obligations of Manager under any other provisions of this Agreement, Manager shall devote its commercially reasonable efforts to perform the following parking management, operation, and services during the term of this Agreement:

(a) **Monies Collected.** Manager shall collect all payments from persons parking vehicles on the Property on week nights (Monday, Tuesday, Wednesday, Thursday and Friday) between the hours of 5:00 p.m. and 2:00 a.m. and on all weekends, only the hours between 5:00 p.m. Saturday and ending at 2:00 a.m. on Monday (the foregoing hours are hereinafter referred to as the "Pay and Display Hours"). Owner authorizes Manager to request, demand, collect, receive, and receipt for all such parking services. Manager shall be responsible for the collection, disbursement, handling, and holding of the monies collected to the extent that a normal, reasonable, and prudent business person would be responsible for such collection, disbursement, handling and holding of monies. Notwithstanding the foregoing, or anything else to the contrary herein, in the event Owner wishes to close the Property during the Pay and Display Hours in order to conduct an event and/or allow access to the Property for its employees and guests, upon receipt of at least 48 hours' advance written notice from Owner, Manager shall not collect payments from persons parking vehicles on the Property during the Pay and Display Hours until the conclusion of such event or other Owner designated access period. In addition, Owner's employees and any other Owner authorized parking tenants shall have free, unrestricted access to the Property at all times, including, but not limited to, during the Pay and Display Hours.

(b) **Repairs and Maintenance.** Manager shall advise Owner as to the need for repairs or maintenance of the Property to keep the same in good and functioning condition for parking services, such as restriping, resurfacing, pothole and other pavement repair, lighting repair, and fencing and guardrail repair.

(c) **Equipment Installation.** Manager may make all arrangements at Manager's sole cost for the installation on the Property of the "pay and display" equipment and related signage (together, the "Equipment"). Manager shall have the right to install the Equipment in locations as determined by Manager. Included with the right to install the Equipment on the Property is the right to do all work necessary to install a concrete pad approximately 3' x 3' in size and install bollards surrounding such pad. All Equipment installation by Manager shall be done in compliance with applicable ordinances and codes. Equipment will be installed after August 14, 2015 under the supervision of the MHS Property Manager. Owner is not responsible for damage to the equipment pre or post installation.

(d) **Personnel.** Manager may employ such personnel at such times as are necessary in order to manage and operate the parking services on the Property, including without limitation to check for parking violators, to verify that the Equipment is functioning and to service the Equipment, and to inspect for items needing attention by Owner. All such on-site inspection persons shall be employees of Manager. Manager shall materially comply with all laws relating to the employment by Manager of its employees. The costs and expenses of such employees shall be Manager's responsibility.

(e) **Insurance Coverage.** Manager shall, at its sole expense, cause to be placed and kept in force comprehensive or commercial general liability insurance, on an occurrence (not claims made) form, in an amount not less than \$3,000,000 each occurrence, which insurance may be obtained by blanket or umbrella coverage with respect to Manager's operations generally. Manager shall name Owner as an additional insured on Manager's commercial general liability insurance policy.

### 2.3 **Obligations of Owner.**

(a) **Maintenance and Repairs.** Owner agrees to promptly perform or cause others to perform, at Owner's own expense, all maintenance and repairs identified by Manager as provided in Section 2.2(b) above. Owner shall be responsible, at its own expense, for having the Property cleared of snow and sanded promptly after snowfall and continuously cleared of snow during heavy snowfall to keep the parking spaces and drive lanes reasonably passable for vehicles. Owner shall be responsible at its own expense for sweeping the Property in the spring to remove sand, gravel and debris. In the event that Owner fails to promptly perform or have performed the foregoing maintenance and repair activities, and Owner's failure impairs the functioning of the Parking Project for parking purposes, in Manager's reasonable discretion, Manager may perform such functions on behalf of Owner and the cost thereof shall be deducted from Owner's share of the revenue split pursuant to Section 3.1 below.

(b) **Compliance with Laws; Payment of Taxes.** Owner shall comply with all statutes, ordinances, rules and regulations governing the Property and the business conducted therein, other than the "pay and display" parking business managed and operated by Manager pursuant to this Agreement. Owner shall be solely responsible for paying all real estate taxes, ad valorem taxes, special or betterments assessments, and downtown or special district taxes levied against the Property.

(c) **Insurance Coverage.** Owner shall, at its sole expense, cause to be placed and kept in force comprehensive or commercial general liability insurance, on an occurrence (not claims made) form, in an amount not less than \$3,000,000 each occurrence with respect to the Property. Owner shall name Manager as an additional insured on Owner's commercial general liability insurance policy.

2.4 **Waiver of Claims.** Owner and Manager hereby waive and release the other party of, and from, any and all right of recovery, claim, action, or cause of action against such party, and its principals, managers, members, agents, officers, directors and employees, for any loss or damage that may occur to the Property, improvements to the Property, or personal property within the Property (including the Equipment), by reason of fire or the elements, or other casualty or commonly insured peril, regardless of cause or origin, including negligence of such party, and its principals, managers, members, agents, officers, directors and employees.

### 3. **REVENUE SPLIT; RECORDS**

**3.1 Revenue Split.** The parties have agreed that Owner and Manager shall each be paid fifty percent (50%) of the Gross Revenue (as such term is defined below) collected by Manager each month for the Property, which payment shall be made by Manager on the 15<sup>th</sup> day of each month during the term of this Agreement.

The term "Gross Revenue," as used in this Agreement, shall include any and all revenues obtained by Manager from the "pay and display" equipment to be installed on the Property by Manager pursuant to this Agreement.

Notwithstanding the foregoing, if Manager is obligated to exercise its self-help rights pursuant to section 2.3(a) above, then, prior to making the payments set forth above, Manager shall be reimbursed for all actual and verifiable expenses incurred by Manager in connection with the foregoing. In addition, in the case of any enforcement actions by Manager, Manager shall retain one hundred percent (100%) of the fees collected by Manager for the removal of wheel clamps/vehicle boot immobilizers from unauthorized parkers.

**3.2 Records.** Manager shall maintain its standard comprehensive system of office records, books, and accounts, which shall belong to Manager. Owner and others designated by Owner shall have at all reasonable times access to such records, accounts, and books pertaining directly to the Property and Manager's parking services under this Agreement.

**3.3 Monthly Reports.** On or before the 15th day of each month during the term of this Agreement, Manager shall deliver to Owner an income statement representing the parking operations of the Property by Manager for the prior month. Manager shall use Manager's standard chart of accounts format in preparing the foregoing.

#### **4. TERM AND TERMINATION**

**4.1 Term.** Subject to the provisions of Section 4.2 and 4.3 below, this Agreement shall be for a term of one (1) year, commencing on or about July 31, 2015, with parking lot monitoring to begin on November 1, 2015, as described in Section 2.2.(a), and terminating at midnight on the anniversary of such date. This Agreement shall automatically renew for successive additional one (1) year periods thereafter unless terminated in accordance with Section 4.2 or 4.3 below.

**4.2 Termination by Owner.** Owner may terminate this Agreement at any time during the term upon ninety (90) days prior written notice, with or without cause.

**4.3 Termination by Manager.** Manager may terminate this Agreement at any time during the term upon ninety (90) days prior written notice, with or without cause, or if the Property is sold.

**4.4 Obligations after Termination.** Upon the termination of this Agreement as provided above, the Manager shall:

(a) **Removal of Equipment.** The Manager shall, at its cost and expenses, remove all Equipment and use reasonable efforts to replace and restore any damage resulting therefrom. The Equipment shall remain the sole property of Manager at all times, including following the expiration or any early termination of this Agreement, and Manager may enter upon the Parking Project at any time to remove such Equipment.

(b) **Termination of Obligations; Right to Compensation.** Upon any termination pursuant to this Section 4, the obligations of the parties hereto shall cease as of the date specified in the notice of termination, except those obligations that expressly or by their nature survive the termination of this Agreement; and, provided further that Manager and Owner shall be entitled to receive any payments which may be due hereunder at the time of such termination or expiration.

#### **5. NO AGENCY**

Manager shall be responsible for the actions of its employees, for the supervision of all persons performing services in connection with the operation of the Property for parking purposes, and for determining the manner and time of performance of all parking services. Nothing herein contained shall be construed to establish Manager as an employee of the Owner.

## 6. DISPUTE RESOLUTION

The parties agree that, in the event of a dispute arising out of or related to this Agreement, either party may initiate and both parties shall thereafter participate in good faith mediation pursuant to the Commercial Mediation Rules of the American Arbitration Association or such other mediation procedure as to which the parties may agree. In the event that the dispute is not resolved by mediation, the dispute shall, at the option of either party, be subject to arbitration by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association, or such other arbitration procedure as to which the parties may agree in writing, provided however that (i) any arbitration shall involve a single arbitrator, (ii) the arbitrator shall be bound by and follow the substantive law of Maine as if the dispute were tried in a court of law and (iii) all issues that may in any manner relate to the controversy or dispute shall be resolved in the arbitration. The prevailing party shall be entitled to reimbursement of its arbitrator or court costs and reasonable attorneys' fees and any other payments ordered by such arbitrator.

## 7. NOTICES; MISCELLANEOUS

(a) **Notices.** Unless otherwise specifically provided, all notices, demands, statements, and communications required or desired to be given hereunder shall be in writing and shall be sent by U.S. Postal Service first class registered or certified mail, if intended for Owner, addressed to:

Maine Historical Society  
Attention: Kathy Finnell  
489 Congress Street  
Portland, Maine 04101

And if intended for Manager, addressed to:


Unified Parking Partners Maine and New Hampshire LLC  
496 Congress Street, Unit 2B  
Portland, Maine 04101

or to such other address as shall from time to time have been designated by written notice by either party to the other party as herein provided.

(b) **Miscellaneous.** The captions of this Agreement are inserted only for the purposes of convenient reference and do not define, limit, or prescribe the scope or intent of this Agreement or any part hereof. Words used herein shall include both the plural and singular, and the masculine shall include the feminine and neuter genders. This Agreement shall be construed in accordance with the laws of the State of Maine, without application of choice of law principles. Owner and Manager hereby each represent and warrant to the other that the execution and delivery of this Agreement is authorized by all necessary entity action. The person signing below on behalf of Owner and Manager respectively represent that he/she is authorized to execute and deliver this Agreement on behalf of Owner and Manager respectively and to contractually bind Owner and Manager respectively. This Agreement embodies the entire understanding of the parties and there are no further agreements or understanding, written or oral, in effect between the parties relating to the subject matter hereof.

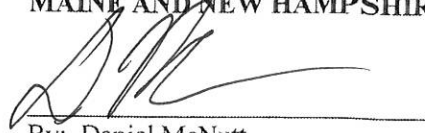
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**OWNER:**  
**MHS, INC.**



By:  
It's duly-authorized:

**MANAGER:**  
**UNIFIED PARKING PARTNERS**  
**MAINE AND NEW HAMPSHIRE LLC**



By: Daniel McNutt  
It's duly-authorized Manager