

## **ATTACHMENT 2**

### **ALTERNATIVE MONTHLY IN-LIEU PARKING FEE AGREEMENT**

**AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND NOTES ON A PLATE, LLC DBA SPAGHETTINI FOR AN ALTERNATIVE MONTHLY IN-LIEU PARKING FEE**

THIS ALTERNATIVE MONTHLY IN-LIEU PARKING FEE AGREEMENT (“Agreement”) is made by and between THE CITY OF BEVERLY HILLS, a California municipal corporation (the “City”), and Notes on a Plate, LLC, a California limited liability corporation (“Spaghetini”). The City and Spaghetini are individually referred to herein as a “Party” and collectively referred to as the “Parties.”

**RECITALS**

This Agreement is made and entered into with regard to the following facts, each of which is acknowledged as true and correct by the Parties to this Agreement.

A. Spaghetini is the lessee of certain real property located at 184 North Canon Drive in the City of Beverly Hills, California (the “Property”), as more particularly described in Exhibit A, attached hereto and incorporated herein by reference.

B. Spaghetini desires to develop the Project (as hereafter defined).

C. Spaghetini has applied to the City for approval of this Agreement, pursuant to the provisions of Section 10-3-3311 of Article 33 of the Beverly Hills Municipal Code (“BHMC”).

**AGREEMENT**

NOW THEREFORE, pursuant to BHMC Section 10-3-3311, and in consideration of the mutual promises and covenants herein contained and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto agree as follows:

1. Definitions. For all purposes of this Agreement, except as otherwise expressly provided herein, or unless the context of this Agreement otherwise requires, the following words and phrases shall be defined as is set forth below:

(a) “Applicable Rules” means the rules, regulations, ordinances, resolutions, codes, guidelines, and officially adopted procedures and official policies of the City governing the use and development of real property, including, but not limited to, the City’s Zoning Regulations and building regulations.

(b) “CEQA” means the California Environmental Quality Act (California Public Resources Code Section 21000 *et seq.*), as it now exists or may hereafter be amended.

(c) “Conditions of Approval” shall mean those conditions of approval imposed by the City upon the Project Approvals.

(d) “Effective Date” shall mean the date the last Party signs this Agreement or the date that Ordinance No. \_\_\_\_\_ becomes effective, whichever is later.

(e) "Project" means the project as described in Section 2(b) of this Agreement, and as more particularly described in the Project Approvals and the final plans submitted to the City, and subject to the Applicable Rules, the Project Approvals and the Conditions of Approval.

(f) "Project Approvals" shall mean an approval of an application for participation in the in-lieu parking district and approval of this alternative monthly in-lieu parking fee agreement.

(g) "Property" means the real property located at 184 North Canon Drive in the City of Beverly Hills and more particularly described in Exhibit "A" attached hereto.

(h) "Public Benefits" means the benefits provided by Spaghetini to the City pursuant to Section 4(c) of this Agreement.

(i) "Zoning Regulations" shall mean the official zoning regulations of the City adopted as of the Effective Date of this Agreement.

2. Recitals of Premises and Project.

(a) Alternative In-Lieu Monthly Parking Program. Subsection B of Section 10-3-3311 of the BHMC provides as follows:

"Pursuant to the requirements, limitations and procedures set forth in this section, and as an alternative to payment of the fees required by section 10-3-3310 of this article, the city council or the planning commission may allow a property owner or tenant to purchase alternative monthly in-lieu parking calculated at a rate of eighty-five percent (85%) of the lowest monthly parking rate offered at the City's parking facilities, whether or not the site area exceeds sixteen thousand (16,000) square feet.

1. Eligible Uses: The city council or planning commission may only take action pursuant to this subsection B with regard to site areas occupied by the following uses:
  - a. Restaurant uses located on North Canon Drive with a total parking deficit of one hundred (100) or fewer parking spaces that provide (a) live evening musical entertainment at least four (4) days per week and (b) public benefits pursuant to an agreement approved by the City Council.
2. Sunset: The alternative monthly in-lieu parking fee authorized by this subsection B is a pilot program. The city council or planning commission may take action pursuant to this subsection B on applications filed on or before October 31, 2013. Unless the City Council extends this subsection B, this subsection shall be repealed as of November 1, 2013. Any application filed before November 1, 2013 may be processed to conclusion."

(b) The Project. Spaghetini intends to develop and use the Property as a restaurant and live jazz lounge that will provide live evening jazz-genre musical entertainment at least four (4) days per week, as more particularly described in the Project Approvals and the final

plans submitted to the City, and subject to the Applicable Rules, the Project Approvals and the Conditions of Approval. The Project has a total parking deficit of fifty-nine (59) parking spaces.

3. Term of Agreement. The term of this Agreement shall commence on the Effective Date, and shall expire or terminate upon the expiration or termination of Spaghetini's lease of the Property, unless otherwise sooner terminated as provided in this Agreement.

4. Spaghetini's Obligations.

(a) Alternative In-Lieu Monthly Parking Fee. As an alternative to payment of the parking in-lieu fees required by BHMC Section 10-3-3310 for the Project's total deficit of fifty-nine (59) off-street parking spaces, City agrees to accept and Spaghetini shall pay to the City an Alternative In-Lieu Monthly Parking Fee of \$63.75 per month per parking space for fifty-nine (59) spaces. Consistent with Subsection B of Section 10-3-3311 of the BHMC, the Alternative In-Lieu Monthly Parking Fee is calculated at a rate of eighty-five percent (85%) of the Seventy-Five Dollar (\$75) monthly parking rate offered at the City's parking facility located at 450 North Crescent Drive. Payment of the Alternative In-Lieu Monthly Parking Fee is due annually. Spaghetini shall make payment for the first year to the City prior to Spaghetini's occupancy of the Property and make subsequent payments to the City on the annual anniversary of the first payment date. The Alternative In-Lieu Monthly Parking Fee is specific to Spaghetini's use of the Property as a restaurant and live jazz lounge during the year for which payment is made. No payment made by Spaghetini shall entitle any subsequent tenant or any other business to operate at the Property or elsewhere without compliance with the City's parking requirements as set forth in the Zoning Regulations. The Alternative In-Lieu Monthly Parking Fee shall be adjusted annually as of the anniversary date of the first payment date, by the change upward, if any, in the Consumer Price Index published by the U.S. Department of Labor, Bureau of Labor Statistics, for the Los Angeles-Anaheim-Riverside Metropolitan Statistical Area for All Urban Consumers (1982-1984=100) (the "CPI") during the twelve (12) month period that ends between thirty days and sixty days preceding the anniversary date of the first payment date.

(b) Lease of Parking Spaces for Valet Operations. Spaghetini may lease from the City up to seventy (70) monthly parking spaces at the City's 221 North Crescent Drive parking facility for its valet operations and pay to City a fee equal to eighty-five percent (85%) of the monthly parking rate offered at the City's parking facility located at 221 North Crescent Drive. The lease shall reserve to the City the right to relocate Spaghetini parking within a reasonable distance of the 221 North Crescent Drive facility provided that the City does not increase the fee to more than 85% of the monthly parking rate offered at the 221 North Crescent Drive parking facility. The rate of eighty-five percent (85%) of the monthly parking rate offered at the 221 North Crescent Drive parking facility shall terminate on the ten (10) year anniversary of the date of Spaghetini's first payment of the annual alternative in lieu parking fee pursuant to paragraph 4(a) above, at which time Spaghetini shall be subject to payment of the City's standard rates for monthly parking at the applicable City parking facility in which the leased monthly parking spaces are located.

(c) Public Benefits. Consistent with the requirements of Subsection B of Section 10-3-3311 of the BHMC, Spaghetini shall provide the following Public Benefits:

(i) *Centennial Celebration Event.* Spaghetini shall host a charitable event in 2014 in conjunction with the Beverly Hills Centennial Celebration. The event will accommodate at least two hundred (200) guests. Spaghetini shall provide food, beverages and jazz-genre musical entertainment for the event and donate all event ticket sale proceeds to a charitable organization based in Beverly Hills and approved by the City.

(ii) *Garden Concerts.* For a period of ten (10) years after the Effective Date, Spaghetini shall annually provide jazz genre musical entertainment for three (3) "Concerts in the Gardens" series at the Beverly Canon Gardens located on Canon Drive near the Property for a total of thirty (30) concerts over ten (10) years. Spaghetini shall be responsible for all physical presence and hard costs related to the entertainment, but shall not be responsible for the costs of lighting and sound vendors, or park rangers. The entertainment proposed by Spaghetini shall be subject to the City's approval.

(iii) *Greystone Mansion Concerts.* For a period of ten (10) years after the Effective Date, Spaghetini shall annually provide jazz-genre musical entertainment and food for three (3) charitable fundraiser concerts at Greystone Mansion located at 905 Loma Vista Drive, Beverly Hills, California 90210 for a total of thirty (30) charitable fundraiser concerts over ten (10) years. The concert ticket sale proceeds shall be donated to the Friends of Greystone, a non-profit organization, for the exclusive benefit of the Greystone Estate. Spaghetini shall be responsible for the food, all costs to promote and advertise the concerts within the jurisdictional limits of the City and all physical presence and hard costs related to the entertainment, including the costs of lighting and sound vendors and the entertainment. The entertainment proposed by Spaghetini shall be subject to the City's approval.

(iv) *Beverly Canon Gardens Holiday Concert.* For a period of ten (10) years after the Effective Date, Spaghetini shall annually provide jazz-genre, holiday-themed, musical entertainment for a winter holiday concert in the Beverly Canon Gardens located on Canon Drive near the Property for a total of ten (10) winter holiday concerts over ten (10) years. Spaghetini shall be responsible for all physical presence and hard costs related to the entertainment, but shall not be responsible for the costs of lighting and sound vendors, or park rangers. The entertainment proposed by Spaghetini shall be subject to the City's approval.

(v) *Beverly Hills Holiday Ice Rink.* For a period of three (3) years after the Effective Date, Spaghetini shall annually provide food and jazz-genre musical entertainment for the opening day of the Beverly Hills Holiday Ice Rink located on Crescent Drive between North and South Santa Monica Boulevards. Spaghetini shall be responsible for all food costs and all physical presence and hard costs related to the entertainment, including the costs of lighting and sound vendors and the entertainment. The entertainment proposed by Spaghetini shall be subject to the City's approval.

(vi) *Beverly Hills Promotion.* To the extent that Spaghetini continues to host a jazz brunch radio show, Spaghetini shall provide to the City of Beverly Hills five segments of promotional airtime during each show, with each segment thirty (30) seconds in length, --for a period of ten (10) years, unless otherwise restricted by CBS radio or its successor. The promotional airtime may be used to promote upcoming events in Beverly Hills.

(vii) *Grammy Awards*. To the extent that Spaghetini continues to host an annual fundraiser for the Grammy Foundation, the fundraiser shall be held at Spaghetini's Beverly Hills location.

5. Default. Failure by City or Spaghetini to perform any term or provision of this Agreement for a period of thirty (30) days from the receipt of written notice thereof from the other shall constitute a default under this Agreement, subject to extensions of time by mutual consent in writing. Said notice shall specify in detail the nature of the alleged default and the manner in which said default may be satisfactorily cured. If the nature of the alleged default is such that it cannot reasonably be cured within such thirty (30) day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period.

Subject to the foregoing, after notice and expiration of the thirty (30) day period without cure, the notifying party, at its option, shall have all rights and remedies provided by law and/or may terminate this Agreement. Upon any such termination, the respective rights, duties and obligations of the Parties hereto shall without further action cease as of the date of such termination (except as to duties and obligations that arose prior to the date of such termination) and Spaghetini shall thereafter be liable for payment of the parking in-lieu fees required by BHMC Section 10-3-3310 for the Project's total deficit of fifty-nine (59) off-street parking spaces. In no event shall monetary damages be available against the City for any alleged default or breach by the City. In no event shall consequential damages be available against Spaghetini for any alleged default or breach of this Agreement.

6. Prohibition of Assignment and Delegation. Spaghetini may not assign any of its rights or delegate any of its duties or obligations under this Agreement. As used in this provision, "assignment" and "delegation" means any sale, gift, pledge, hypothecation, encumbrance or other transfer of all or any portion of the rights, obligations or liabilities in or arising from this Agreement to any person or entity, whether by operation of law or otherwise, and regardless of the legal form of the transaction in which the attempted transfer occurs.

7. Expiration and Termination.

(a) Expiration or Termination of Spaghetini's Lease of the Property. Upon the expiration of the term or termination of this Agreement due to the expiration or termination of Spaghetini's lease of the Property, this Agreement shall terminate and be of no further force or effect; provided, however, such termination shall not affect Spaghetini's obligation to pay any claim of the City arising out of the provisions of this Agreement prior to the expiration date or effective date of such termination. The obligation to pay any claim arising before the expiration date or effective date of termination shall continue after expiration or termination in perpetuity or until completed.

(b) Default. Upon termination of this Agreement for default pursuant to Section 5 of this Agreement, this Agreement shall terminate and be of no further force or effect; provided, however, such termination shall not affect Spaghetini's obligations to pay the parking in-lieu fees required by BHMC Section 10-3-3310 for the Project's total deficit of fifty-nine (59) off-street parking spaces or to pay any claim of the City arising out of the provisions of this

Agreement prior to the effective date of such termination. The obligation to pay any claim arising before the effective date of termination shall continue after termination in perpetuity or until completed.

## 8. Indemnification.

(a) Spaghetini agrees to and shall indemnify, hold harmless, and defend, the City and its respective officers, officials, members, agents, employees, and representatives, from liability or claims for death or personal injury and claims for property damage which may arise from the acts, errors, and/or omissions of Spaghetini or its contractors, subcontractors, agents, employees or other persons acting on its behalf in relation to the Project and/or in any manner arising from this Agreement. The foregoing indemnity applies to all deaths, injuries, and damages, and claims therefor, suffered or alleged to have been suffered by reason of the acts, errors, and/or omissions referred to in this Section 9, regardless of whether or not the City prepared, supplied, or approved plans or specifications, or both. In the event of litigation, the City agrees, at no cost to the City, to cooperate with Spaghetini. This indemnification, hold harmless and defense requirement shall survive the termination or expiration of this Agreement. The City reserves the right, in cases subject to this indemnity, to reasonably approve the attorney selected by Spaghetini to defend Spaghetini and the City in any such action.

(b) In the event of any court action or proceeding challenging the validity of this Agreement, any of the Project Approvals or the CEQA determination for the Project, Spaghetini shall defend, at its own expense, the action or proceeding. In addition, Spaghetini shall reimburse the City for the City's costs in defending any court action or proceeding challenging the validity of this Agreement, any of the Project Approvals or the CEQA determination for the Project and Spaghetini shall also pay any award of costs, expenses and fees that the court having jurisdiction over such challenge makes in favor of any challenger and against the City. Spaghetini shall cooperate with the City in any such defense as the City may reasonably request and may not resolve such challenge without the agreement of the City. In the event Spaghetini fails or refuses to reimburse the City for its cost to defend any challenge to this Agreement, the Project Approvals or the CEQA determination for the Project, the City shall have the right to terminate this Agreement, subject to the notice and cure requirements of Section 5 above. In all events, the City shall have the right to resolve any challenge in any manner, in its sole discretion, provided, however, Spaghetini's consent shall be required if the resolution of the challenge shall require a payment by Spaghetini or limit Spaghetini's rights under this Agreement.

In order to ensure compliance with this Section 8(b), within twenty (20) days after notification by the City of the filing of any claim, action or proceeding to attack, set aside, void or annul this Agreement, any of the Project Approvals or the CEQA determination for the Project, Spaghetini shall deposit with the City cash or other security in the amount of fifty thousand dollars (\$50,000), satisfactory in form to the City Attorney, guaranteeing indemnification or reimbursement to the City of all costs related to any action triggering the obligations of this Section 9(b). If the City is required to draw on that cash or security to indemnify or reimburse itself for such costs, Spaghetini shall restore the deposit to its original amount within fifteen (15) days after notice from the City. Additionally, if at any time the City Attorney determines that an additional deposit or additional security up to an additional fifty thousand dollars (\$50,000.00) is necessary to secure the obligations of this Section 9(b),

Spaghetini shall provide such additional security within fifteen (15) days of notice from the City Attorney. The City shall promptly notify Spaghetini of any claim, action or proceeding within the scope of this Section 9(b) and the City shall cooperate fully in the defense of any such claim or action, but shall have the right to resolve any challenge, in any manner, in its sole discretion, provided, however, Spaghetini's consent shall be required if the resolution of the challenge shall require a payment by Spaghetini or limit Spaghetini's rights under this Agreement.

9. Relationship of the Parties. The Parties acknowledge and agree that Spaghetini is not acting as an agent, joint venturer or partner of the City, but each is, in fact, an independent contractual party and Spaghetini is not in any way under the control or direction of the City except as is expressly provided to the contrary in this Agreement.

10. No Third Party Beneficiaries. The only signatories to this Agreement are the City and Spaghetini. There are no third party beneficiaries and this Agreement is not intended and shall not be construed to benefit or be enforceable by any other person whatsoever.

11. Advice; Neutral Interpretation. Each Party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. This Agreement has been drafted through a joint effort of the Parties and their counsel and therefore shall not be construed against either of the Parties in its capacity as draftsman, but in accordance with its fair meaning.

12. Consideration. The City and Spaghetini acknowledge and agree that there is good, sufficient and valuable consideration flowing to the City and to Spaghetini pursuant to this Agreement as more particularly set forth in this Agreement. The Parties further acknowledge and agree that the exchanged consideration hereunder is fair, just and reasonable.

13. Future Litigation Expenses.

(a) Payment of Prevailing Party. If the City or Spaghetini brings an action or proceeding (including any motion, order to show cause, cross-complaint, counterclaim, third-party claim or arbitration proceeding) by reason of default, breach, tortious act, or act or omission, arising out of this Agreement, the prevailing party in such action or proceeding shall be entitled to its costs and expenses of suit including reasonable attorneys' fees and expert witness fees.

(b) Scope of Fees. Attorneys' fees under this Section 14 shall include attorneys' fees on any appeal and, in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs and expenses incurred in connection with such action. In addition to the foregoing award of attorneys' fees to the prevailing party, the prevailing party in any lawsuit shall be entitled to its attorneys' fees incurred in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

14. Headings. The section headings used in this Agreement are for convenient reference only and shall not be used in construing this Agreement. The words "include," "including" or other words of like import are intended as words of illustration and not limitation and shall be construed to mean "including, without limitation."

15. Amendment. This Agreement may be supplemented, amended or modified from time to time, in whole or in part, by mutual written consent of the Parties.

16. Alterations. No alteration, amendment or modification of this Agreement shall be valid unless evidenced by a written instrument executed by the Parties with the same formality as this Agreement.

17. Waiver. The failure of either Party hereto to insist in any one or more instances upon the strict performance of any of the covenants, agreements, terms, provisions or conditions of this Agreement, or to exercise any election or option herein contained, shall not be construed as a waiver or relinquishment for the future of such covenant, agreement, term, provision, condition, election or option, but the same shall continue and remain in full force and effect. No waiver by any Party hereto of any covenant, agreement, term, provision or condition of this Agreement shall be deemed to have been made unless expressed in writing and signed by an appropriate official or officer on behalf of such Party.

18. Severability. If any article, section, subsection, term or provision of this Agreement, or the application thereof to any party or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of the article, section, subsection, term or provision of this Agreement, or the application of the same to parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining article, section, subsection, term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law, except that if any provision of Section 4 is held invalid or unenforceable, then this entire Agreement shall be void and unenforceable and of no further force and effect.

19. Force Majeure. Performance by any Party of its obligations hereunder (other than for payment of money) shall be excused during any period of "Permitted Delay," which Permitted Delay shall mean and include delay caused by an event beyond the reasonable control of the Party claiming the delay (and despite the good faith efforts of such Party) that prevents the Party from fulfilling the obligations for which it seeks excuse including all of the following to the extent that they prevent the Party claiming delay from fulfilling the obligation from which it seeks to be excused: acts of God; civil commotion; riots; strikes; picketing or other labor disputes; shortages of materials or supplies; damage to work in progress by reason of fire, floods, earthquake or other casualties; failure, delay or inability of the other Party to act; terrorism, and litigation brought by a third party attacking the validity of this Agreement.

20. Notices. All notices, disclosures, demands, acknowledgments, statements, requests, responses and other communications (each, a "Communication") to be given under this Agreement shall be in writing, signed by a signatory hereto (or an officer, agent or attorney of such party) giving such Communication, and shall be deemed effective (i) upon receipt if hand delivered or sent by overnight courier service; or (ii) upon delivery or the date of refusal if sent by the United States mail, postage prepaid, certified mail, return receipt requested, in either case addressed as follows:

To Spaghetini: Notes on a Plate, LLC  
Attn: Cary Hardwick  
3005 Old Ranch Parkway  
Seal Beach, California 90740

To City: City Manager  
City of Beverly Hills  
455 North Rexford Drive  
Fourth Floor  
Beverly Hills, California 90210

With Copy to: City Attorney  
City of Beverly Hills  
455 North Rexford Drive  
Room 230  
Beverly Hills, California 90210

Any signatory hereto may from time to time, by notice given to the other signatories hereto pursuant to the terms of this Section 21 change the address to which communications to such signatory are to be sent or designate one or more additional persons or entities to which communications are to be sent.

21. Applicable Law. This Agreement shall be governed in all respects by the laws of the State of California.

22. Time is of the Essence. Time is of the essence of this Agreement and every term or performance hereunder.

23. Entire Agreement. This Agreement supersedes any prior understanding or written or oral agreements between the Parties hereto respecting the within subject matter and contains the entire understanding between the Parties with respect thereto.

24. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

37. Compliance With Law. Notwithstanding any provision of this Agreement, the Parties agree to comply with all federal, state and local laws and to act in good faith and reasonably in carrying out the terms of this Agreement.

38. Authorization. Each person executing this Agreement represents and warrants that he or she is authorized and has the legal capacity to execute and deliver this Agreement on behalf of the Party for which execution has been made.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the  
\_\_\_\_ day of \_\_\_\_\_, 2013.

CITY OF BEVERLY HILLS,  
A Municipal Corporation

\_\_\_\_\_  
JOHN A. MIRISCH  
Mayor of the City of  
Beverly Hills, California

ATTEST:

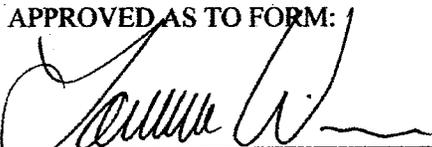
\_\_\_\_\_(SEAL)  
BYRON POPE  
City Clerk

NOTES ON A PLATE, a California Limited  
Liability Company

By:   
Name: CARY HARDWICK  
Title: Managing Member

By:   
Name: LAURIE SISNEROS  
Title: Managing Member

APPROVED AS TO FORM:

  
\_\_\_\_\_  
LAURENCE S. WIENER  
City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
JEFFREY C. KOLIN  
City Manager

EXHIBIT A  
Legal Description

