

## **BUS SERVICE AGREEMENT**

This Bus Service Agreement ("Agreement") is entered into the \_\_\_\_ day of November, 2014, by and between **SOUTHRIDGE LIMITED PARTNERSHIP** ("Southridge") and, **MILWAUKEE COUNTY TRANSIT SYSTEM** ("MCTS") and Milwaukee Transport Services, Inc. ("MTS").

### R E C I T A L S

WHEREAS, MCTS is operated by Milwaukee County, a municipal body corporate, and Milwaukee Transport Services, Inc. ("MTS"), a Wisconsin non-profit corporation and quasi-governmental entity; and

WHEREAS, MCTS provides public bus service to the local community and manages paratransit service provided to the local community by contractors; and

WHEREAS, Southridge operates that certain real property and improvements, situated on private property, commonly known Southridge Mall (the "Mall") located at 5300 South 76<sup>th</sup> Street, Greendale, Wisconsin 53129, and owns substantial portions of the Mall; and

WHEREAS, MCTS has been providing bus service and, through contractors, paratransit services at the Mall and desires to continue doing so; and

WHEREAS, Southridge and MCTS wish to memorialize the terms under which MCTS will provide bus service at the Mall after the Effective Date as defined in Section 3,

NOW, THEREFORE, in consideration of the Recitals and the mutual promises and covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. Termination of Any Existing Bus Operation License or Agreement. As of the Effective Date of this Agreement, the terms and conditions of this Agreement shall govern MCTS's bus operations at the Mall. Bus operations under any prior authority, permission, or license, whether express, implied or assumed, shall cease.
2. Operation.
  - a. Subject to all the terms and conditions of this Agreement, MCTS may operate its public bus service on the Bus Travel Routes shown in Exhibit A, attached hereto and incorporated herein, using the Bus Stops shown in Exhibit A to pick up and discharge passengers. MCTS shall comply with the Rules Governing Bus Service Set forth on Exhibit C which is attached and incorporated herein by reference.
  - b. Paratransit service available through MCTS may continue to operate at the Mall as in the past, including access to roadways adjacent to Mall structures.
  - c. MCTS represents and warrants that it operates as a transportation system under authority

granted to Milwaukee County by the State of Wisconsin through Wis. Stat. § 59.58(3) and otherwise and that its drivers and vehicles are properly licensed under applicable state and federal laws and regulations.

3. Term. This Agreement commences **January 1, 2015** (“Effective Date”), for an initial period of two (2) years, unless sooner terminated as provided in Section 5. Thereafter this Agreement shall automatically renew for successive additional terms of two (2) years unless either Southridge or MCTS gives the other written notice of non-renewal at least ninety (90) days prior to the expiration of the then-current term.
4. Consideration. In consideration of expenses Southridge will incur to improve and maintain its property in relation to the services provided, MCTS shall provide reimbursement to Southridge as described in Exhibit B which is attached hereto and incorporated herein.
5. Termination Notwithstanding anything herein to the contrary, this Agreement may be terminated before expiration of the then-current term as follows:
  - a. In the case of an emergency jeopardy situation created by MCTS, as determined by Southridge, Southridge may terminate the Agreement on seventy-two (72) hours’ notice to MCTS unless MCTS corrects or eliminates the condition creating the jeopardy to Southridge’s reasonable satisfaction within the seventy-two (72) hour period. During the notice period MCTS shall advise its passengers of the pending termination of service.
  - b. If at any time during the term hereof, MCTS fails to comply with any material provision of this Agreement, and such failure is not cured within thirty (30) days after receipt of written notice thereof from Southridge, Southridge may terminate this Agreement without a further notice period and without affecting its right to demand, sue for, and collect all of its damages arising out of MCTS’s failure to comply.
  - c. If at any time during the term hereof, Southridge fails to comply with any material provision of this Agreement, and such failure is not cured within thirty (30) days after receipt of written notice thereof from MCTS, MCTS may terminate this Agreement without a further notice period without affecting its right to demand, sue for, and collect all of its damages arising out of Southridge’s failure to comply.
  - d. This Agreement will terminate in the event MCTS loses its ability to operate as a transportation system under authority granted to Milwaukee County by the State of Wisconsin through statute and otherwise.
6. Assignment. It is hereby expressly agreed that MCTS shall not have the right to assign its rights under this Agreement. Operation of MCTS public bus service or paratransit service under the statutory jurisdiction of Milwaukee County whether through agreement with MTS, some other entity, or by the County itself, shall not be considered an assignment by MCTS for purposes of this section.
7. Bus Stop Areas and Pedestrian Walkways.
  - a. Southridge will provide improvements to Bus Stop areas as more specifically set out in Attachment B.

b. Southridge will provide Pedestrian Walkways on its owned property as identified in Exhibit A. The Walkways will be marked with pavement marking and will be set off on Southridge-owned property with delineator posts (or curbs, barricades, traffic drums or the like, at Southridge's option). Existing curbs will be incorporated into the Pedestrian Walkways where possible.

c. Southridge shall be solely responsible at its sole cost and expense to keep the Bus Stop areas (except for Shelters) and Pedestrian Walkways on its owned property in full compliance with the Americans with Disabilities Act (Accessibility Compliant), including provision of an accessible route on its owned property from the Bus Stops to the Mall as shown on Exhibit A.

d. Southridge will provide snow and ice removal for the Pedestrian Walkways and Bus Stop areas, along with trash barrels and removal on its owned property, consistent with Southridge's practices in other outdoor areas of the Mall.

8. Shelters.

a. Southridge grants permission to MCTS to place a standard MCTS weather shelter for bus patrons at each Bus Stop identified in Exhibit A, and MCTS agrees to do so within thirty (30) days of completion of the Bus Stop area improvements identified in Exhibit B. MCTS shelters will be Accessibility Compliant. MCTS shall not erect any other structures or buildings at the Mall.

b. Within thirty (30) days of the Effective Date, MCTS will remove the shelter in place approximately 200 feet east of the Bus Stop near the northern edge of the Mall property.

c. MCTS will bear all costs of placing and removing the shelters.

d. MCTS will maintain the shelter at each stop in good condition and repair, including periodic power washing, prompt replacement of broken panels, repairs, and upkeep. Southridge may bring shelter maintenance issues to MCTS's attention and MCTS shall respond within five (5) calendar days.

9. Security. MCTS operations covered by this Agreement will include all customary and usual MCTS security measures, including on-bus radio communications and video monitors and access to law enforcement officers. MCTS is solely responsible for protection of buses and shelters.

10. Right to Relocate. Upon consultation with MCTS, whose agreement shall not be unreasonably withheld, Southridge shall have the right from time to time to relocate the Bus Stops and/or the Pedestrian Walkways with forty-five (45) days' prior written notice to MCTS, if necessary to accommodate construction, redevelopment, special events, or other similar reasons that Southridge determines require the relocation for the efficient operation of the Mall. All relocations must be Accessibility Compliant. Permanent relocations shall provide facilities and access reasonably comparable to those they replace.

11. Southridge's Right to Modify Use. MCTS acknowledges and agrees that Southridge's operation of the Mall includes use of a threat level assessment which determines Southridge's security measures and the right to impose temporary modifications or restrictions on access

due to extreme weather or other unusual condition. In the event Southridge in its sole discretion raises the threat level assessment or imposes modifications or restrictions, MCTS agrees its operations and access to the Mall shall be subject to the same Southridge directives or limitations imposed by Southridge on other vehicles or persons using the Mall.

12. Indemnification. To the fullest extent permitted by applicable law, MCTS and MTS shall, at the sole cost and expense or each of them, defend, indemnify, and hold free and harmless Southridge, its officers, directors, shareholders, members, partners, parents, subsidiaries and any other affiliated entities, agents, servants, and independent contractors of these persons or entities (“Southridge Parties”) from and against any and all claims, liabilities, obligations, losses, penalties, actions, causes of action, suits, damages, expenses, disbursements, or costs of any kind and nature whatsoever (“Claims”) which may be asserted against Southridge by reason of any accidents, property damage, personal injury, death, loss or damage in any way relating to or arising in whole or in part, from (i) MCTS’s use, operation, or maintenance of buses or of the Stops and Shelters and the parking and/or standing of vehicles owned, operated and/or carrying passengers to, from and/or on the Mall; or (ii) the negligent acts or omissions of MTS or MCTS, their agents, servants or employees in the course of their employment in connection with the use of the Mall by MTS, MCTS and MCTS’s vehicles. This indemnification shall not indemnify Southridge, its agents, assigns or employees for any liability, claims, losses, damages, actions or judgments arising or resulting from the sole negligence or intentional misconduct of Southridge, its agents, assigns or employees. Any claims for breach of this agreement shall be considered separately from claims addressed in this indemnification section, and MCTS shall not be liable for any consequential damages resulting from breach.

13. Insurance.

a. During the term of this Agreement and any extension or continuation thereof, MTS shall at all times, at its sole cost and expense, obtain and continuously maintain the following policy of insurance, naming Southridge, its managing agent, and Simon Property Group, Inc. as additional insureds thereunder, and providing that no such insurance may be canceled without at least thirty (30) days’ written notice to Licensor by certified mail or national overnight delivery service to Licensor’s notice address specified herein:

- (i) A comprehensive or commercial general liability policy, with completed operations coverage, in the amount of at least \$1,000,000 combined single limit per occurrence for bodily injury, death or property damages and personal injury liability coverage, including a \$2,000,000 policy aggregate limit;

b. In addition Milwaukee County and MCTS are municipal bodies corporate that self-fund for general liability under Wis. Stat. § § 893.80 and 895.46(1), and automobile liability under § 345.05. Milwaukee County and MCTS also permissibly self-insure under Wis. Stat. § 102.28(2)(b) for Workers’ Compensation. The protection is applicable to officers, employees and agents while acting within the scope of their employment or agency. Retentions and other costs of risk, including contractual obligations, are financed under appropriation and fund accounting principles applicable to government operations. Nothing in this Agreement shall be construed as a waiver by MCTS of any rights to immunity, limitation of liability or any other protection that MCTS may have by law.

c. Any insurance purchased by Southridge, its managing agent or Simon Property Group,

Inc. or any subsidiary and/or affiliate of any of these parties shall be non-contributory and excess of the self-funded liability coverage available through MCTS.

d. Southridge shall not be responsible for loss of, damage to, and/or theft of the equipment or personal property of MCTS or its patrons or employees, including, without limitation, any loss or damage related to any acts or omissions of third parties, Acts of God or structural failure of the Mall. All equipment and personal property owned or licensed by MCTS shall be kept at MCTS's sole risk and expense; and MCTS, at MCTS's expense, shall maintain in full force and effect throughout the term of this agreement and any extension or continuation thereof, fire and extended coverage property insurance, insuring MCTS's equipment and personal property located on or within the Mall. MCTS's all-risk property coverage insurance shall contain a waiver of subrogation endorsement in favor of the Southridge Parties.

14. Removal of Property. Upon expiration or termination of this Agreement, MCTS shall cease bus operations on the Bus Travel Routes, but paratransit operations may continue and shall not be affected by termination or expiration of this Agreement. Within thirty (30) days of expiration or termination, MCTS shall quietly and peaceably remove the Shelters, and if MCTS shall fail to do so, Southridge shall have the right to make such removal at MCTS's expense.
15. MCTS Has No Interest or Estate. MCTS agrees that it does not have and shall not claim at any time any interest or estate of any kind whatsoever in the above-described premises or the Mall by virtue of this Agreement or its operations hereunder.
16. Laws, Waste or Nuisance. MCTS shall, at its own cost and expense (a) comply with all governmental laws, ordinances, orders and regulations affecting the Space and affecting the use thereof, which are now in force or which hereafter may be in force; (b) comply with and execute all rules, recommendations, requirements and regulations of the governing fire marshal or other fire prevention authority with jurisdiction, Southridge's and MCTS's insurance companies and any other organization establishing insurance rates in the geographical area where the Mall is located; and (c) not suffer, permit or commit any waste or nuisance.
17. No Joint Venture. Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or joint venture between the parties hereto, nor to create any fiduciary duties on the part of either party, it being understood and agreed that nothing contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than a contractual relationship.
18. Governing Law; Venue. This Agreement shall be interpreted and construed under the laws of Wisconsin, which laws shall prevail in the event of any conflict of law. Any legal action or proceeding related to this Agreement shall be instituted in either the Wisconsin Circuit Court in Milwaukee County or in the U.S. District Court for the Eastern District of Wisconsin in Milwaukee.
19. Severability. If any provision hereof is held to be invalid by a court of competent jurisdiction, such invalidity shall not affect, impair or invalidate any other provision hereof.
20. Limitation of Liability. Neither Southridge, its managing agent, nor Simon Property Group, Inc. nor any of their respective agents subsidiaries, affiliates, directors, partners, members, employees, and assigns shall have any personal liability in connection with respect to any of the terms, covenants, conditions, and provisions of this Agreement, or of any other events,

acts, omissions, or occurrences arising from or related to this Agreement. Such exculpation of personal liability is absolute and without any exception whatsoever. Southridge shall in no event be liable for indirect, incidental, consequential or exemplary damages nor shall Southridge be liable for MCTS's anticipated profits.

21. Entire Agreement, Integration and Merger. This Agreement is an integrated agreement, containing the entire agreement between the parties as to the matters addressed herein, and incorporating all prior discussions and agreements. There are no agreements between the parties which are not contained herein, and MCTS has not received or relied on any representations from Southridge or Southridge's agents. Its terms are intended by the parties as a final expression of their agreement with respect to such terms as are included herein and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. The parties further intend that this agreement constitutes the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial or arbitration proceeding, if any, involving this agreement. No subsequent change, modification, or addition to this Agreement shall be binding unless in writing and signed by the party to be charged. Underlined section headings are for identification and convenience only and are not terms of the Agreement.
22. Waiver. No waiver of any rights hereunder shall be valid unless in writing, signed by the party to be charged, and no waiver, except as specified in writing, shall waive any other rights of the party nor of the party's future right to enforce the provisions waived. Failure or forbearance by either party to terminate this Agreement upon the occurrence of any breach or violation hereof by the other or any other event of default shall not constitute a waiver of such breach, violation or default on that occasion or upon the occurrence of a similar breach or violation upon a future occasion.
23. Notice. Any notice required or permitted to be given hereunder shall be addressed to the party to be notified at the notice address provided below the signature block of that party herein and shall be delivered by hand delivery, postage prepaid certified mail return receipt requested, by confirmed facsimile, or by recognized national courier. Notice shall be deemed given on the day such notice was actually received if by hand delivery or the day such notice was received or first refused by the addressee as evidenced by the return receipt, facsimile date stamp or online confirmation of the courier service, as the case may be.

**[signature pages follow]**

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the first date above written.

**Southridge:**

***SOUTHRIDGE LIMITED PARTNERSHIP, a Delaware limited partnership***

By: SOUTHRIDGE, L.L.C., a Delaware limited liability company, its general partner

By: SIMON-MILLS III, LLC, a Delaware limited liability company, its Manager

By: \_\_\_\_\_

SOUTHRIDGE'S NOTICE ADDRESS:

***SOUTHRIDGE MALL  
225 West Washington Street  
Indianapolis, IN 46204***

***Milwaukee County***

**Milwaukee County Executive**

\_\_\_\_\_  
**Chris Abele**

**Milwaukee County Comptroller**

\_\_\_\_\_  
**Scott Manske**

**Milwaukee County Corporation Counsel**

\_\_\_\_\_  
**Paul Bargren**

**Milwaukee County Risk Manager**

\_\_\_\_\_  
**Amy Pechacek**

***Milwaukee Transit Services, Inc.***

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**Managing Director**

**MCTS Notice Address:**

Milwaukee County Transit System  
c/o Corporation Counsel  
Milwaukee County Courthouse, Room 303  
901 North 9th Street  
Milwaukee, WI 53233



EXHIBIT A

[Insert map]

## EXHIBIT B

### CONTRIBUTIONS by MCTS and SOUTHRIDGE

MCTS shall contribute payments toward construction and improvements of the Bus Stop areas and Pedestrian Walkways identified on Exhibit A and toward a portion of the cost of bringing the Accessible Routes into compliance with the Americans with Disabilities Act. MCTS' contributions shall be paid in response to itemized invoices submitted by Southridge from time to time as work is performed and shall not exceed the total sum of THIRTY THOUSAND DOLLARS (\$30,000).

Southridge shall provide:

–Improvements to the northerly Bus Stop, including a concrete pad adjacent to the Bus Travel Route suitable for passenger loading and unloading, passenger waiting, and as a site for a Shelter to be provided by MCTS, plus a walkway from the concrete pad to the Pedestrian Walkway leading from the Bus Stop to the northern portions of the Mall buildings.

–Improvements to the southerly Bus Stop, including a concrete pad adjacent to the Bus Travel Route suitable for passenger loading and unloading, passenger waiting, and as a site for a Shelter to be provided by MCTS.

–Improvements to the Pedestrian Walkways as necessary to achieve the descriptions set out in Section 7 of the Agreement.

The Parties understand improvements provided by Southridge will be limited to property owned by Southridge.

Southridge will use best efforts to complete the improvements as soon as reasonably possible but in no event later than December 31, 2014.

## EXHIBIT C

### RULES GOVERNING BUS SERVICE OPERATION

- A. MCTS will use the Bus Stops for bus passenger pickup and drop off. MCTS will not pick up or drop off bus passengers at any other locations.
- B. MCTS will operate a maximum of four (4) routes on the Mall. A maximum of two (2) routes will operate at the northerly Bus Stop and two routes at the southerly Bus Stop. MCTS will select which routes will operate at which Bus Stops. Total bus traffic will not exceed approximately one-hundred eighty (180) buses per day.
- C. MCTS shall only operate bus vehicles on Mall property that are capable of transporting no more than sixty (60) passengers.
- D. MCTS will not conduct layover operations on Mall property or at Bus Stops. In order to avoid stacking of two buses at one Bus Stop, buses may briefly stop short of a Bus Stop at a location to be agreed upon with Southridge to wait while the first bus completes unloading and loading and moves on.
- E. MCTS bus operations will be limited to the hours of approximately 4:30 a.m. to 12:35 a.m. weekdays and 6 a.m. to 12:10 a.m. on Saturdays and Sundays.
- F. Buses at Bus Stops shall not be left unattended by the bus operators nor exceed the amount of dwell time required for patrons to board or de-board. Repair of buses on any portion of the Mall is strictly prohibited, aside from emergency breakdown repairs needed to remove a disabled bus from the property.
- G. MCTS shall operate no other vehicles at the Mall and shall not at any time permit the parking of any vehicle at the Mall, with the exception of a maintenance vehicle which may become necessary to assist in the removal of a disabled bus or supervisor's automobiles and then only for the time necessary to accomplish the purpose. However, nothing in this Rule shall operation as a limitation on paratransit service at the Mall
- H. The existing Mall parking area shall not be used, advertised or promoted as a park-and-ride area MCTS shall take reasonable action to discourage such use by bus patrons.
- I. MCTS may erect normal transit signage on a Shelter denoting bus routes, schedules, notices, etc., subject to Southridge's approval, which may not be unreasonably withheld. Neither MCTS nor Southridge shall post or display advertisements on a Shelter. Southridge may require MCTS to remove any signage deemed inappropriate for a first-class shopping center in Southridge's sole discretion.
- J. Bus access, ingress, egress and circulation within the site shall be limited to the locations and routes depicted on Exhibit "A" attached hereto. In the event that these routes cannot be adhered to, prior approval shall be obtained from Southridge except in the event of emergency.
- K. MCTS shall indemnify Southridge for any response costs incurred by Southridge and shall respond immediately to spills or release of Hazardous Materials generated or released by MCTS and clean up as prescribed by any local, state or federal environmental regulations.

For purposes of this Agreement, "Hazardous Materials" are defined as any hazardous, toxic, or radioactive substances, materials or wastes, pollutants, or contaminants as defined, listed, or regulated by an federal, state, or local law, regulation, or order, or by common law decision affecting the Mall.

- L. To the extent permitted by law, MCTS shall indemnify, defend and hold Southridge harmless for any claims against Southridge arising from the installation, placement, existence, maintenance, removal or use of a Shelter.
- M. MCTS shall not suffer or permit any mechanic's or materialman's liens to attach to Southridge's property as a result of any work done by or for MCTS on or about a Shelter, and in the event a mechanic's or materialman's lien is filed, MCTS shall within fifteen (15) days after the filing thereof cause such lien to be discharged by payment, bonding, order by a court of competent jurisdiction or otherwise and shall deliver to Southridge a recorded release of such lien.
- N. MCTS shall provide and enforce its customary security measures on all buses serving the Mall Bus Stops and traveling on the Bus Travel Routes. MCTS shall cooperate with all reasonable security related requests of Southridge, and, to the extent any costs are incurred in doing so, those costs shall be taken from MCTS annual or initial contributions.