

**CITY OF MADISON**  
**PARKING AGREEMENT**

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This Parking Agreement (the “Agreement”) is made as of the \_\_\_\_ day of \_\_\_\_\_, 2023, by and between the City of Madison, Wisconsin, a municipal corporation (the “City” or “Lessor”) and Hovde Building, LLC, a Wisconsin limited liability company (hereinafter, “Lessee”), which may hereby agree as follows:

1. Parking Rights and Use. The City hereby agrees to provide to Lessee, on the terms and conditions provided herein, the right to use no fewer than twenty-five (25) and no more than seventy-five (75) parking stalls in the Overture Center Garage, which is maintained and operated by the City of Madison Parking Division. The parking stalls are to be used by Lessee (or Lessee’s agent or contractor for parking services) and Lessee’s guests for the sole and exclusive purpose of vehicle parking by Lessee’s employees, tenants, tenant employees, and customers of any buildings owned, managed, or otherwise affiliated with Lessee or its related entities.
2. Term. The term of this Agreement shall commence the \_\_\_\_ day of \_\_\_\_\_, 2023, and continue for three (3) years, with the potential for two (2), one (1) year extensions by mutual agreement unless otherwise terminated as provided herein.
3. Stall Location. All of the parking stalls to be provided are located in the Overture Center Garage. No stalls shall be reserved or designated for Lessee.
4. Rent. The rental rate for each stall shall be computed as follows, based on whether it is being provided at the Regular Rate:

$$\text{(Overture Center Garage’s Regular Resident Monthly Rate)} \times 1.05 = \text{Regular Monthly Rental Rate}$$

The Regular resident month-to-month rate for each stall at the Overture Center Garage shall be determined in the same manner as at all other City Garages.

The total monthly rent payable to the City shall be the sum of the Monthly Rental Rates for each of the parking stalls then being provided by the City to Lessee. By way of example, using a monthly resident rate at the Overture Center Garage of \$150.00, the Regular monthly rental rate for twenty-five (25) stalls under this Agreement would be  $(\$150.00 \times 1.05) = \$157.50$  per stall, for a total monthly rent of \$3937.50.

Lessee shall make rent payments monthly, in advance. The rent shall be paid by check or credit card at the City Parking Division Office, located in Suite 109 of the Madison Municipal Building located at 215 Martin Luther King Jr. Blvd., or by check or similar instrument payable to the City Treasurer, and mailed to the City at P.O. Box 2986, Madison, Wisconsin 53701-2986, or hand delivered to the Parking Division Office. The Monthly Rental Rate is a gross rate and includes all state and local taxes.

5. Number of Leased Stalls. From time to time, upon thirty (30) days' written notice to the City, Lessee may request an increase or decrease in the number of parking stalls being provided under this Agreement. The change in number of stalls shall commence at the beginning of the month. The City shall not provide more than seventy-five (75) parking stalls or fewer than twenty-five (25) parking stalls under this Agreement without the prior approval of the Transportation Commission.
6. Rate Increases. The City shall give Lessee thirty (30) days' written notice of any proposed rate increases. Rate increases shall be universally applicable to all monthly passes in the Overture Center Garage.
7. Time of Use. Any vehicles entering or exiting the Parking Garage outside of the agreed upon Permit Hours shall be charged at the regular hourly rate for time parked outside of these hours.
8. Fees. Lessee may charge a reasonable service fee to its tenants which shall be used towards administrative costs incurred while managing the leased parking stalls. Lessee shall not collect any parking fees on behalf of the Lessor. Such tenants shall be responsible for payment directly to the Lessor for any time parked outside the permit hours of 7:00 am to 7:00 pm, Monday through Friday, for stalls provided at the Regular Monthly Rate.
9. Designation of Primary Contact. Lessee shall designate to the City of Madison Parking Division, in writing, a Primary Contact with their organization. The Parking Division shall not take action to modify the number, type, or privileges of any furnished permits without written notification from the Primary Contact. Other members of Lessee's organization may request or furnish information.
10. Access Cards/Mechanisms. The Lessee will be issued access cards or other mechanisms to enter/exit the parking facility. The Lessee shall track all access cards and other mechanisms issued. Lost or stolen access cards or other mechanisms will be specifically identified and reported to the City. Cards and other mechanisms will only be replaced when lost or stolen access cards/mechanisms have been reported. A fee of \$25 (or the current replacement rate) will be charged for each access card and/or other access mechanism that is replaced. The City reserves the right to change the rate of access card or mechanism replacement with thirty (30) days' notice to Lessee.
11. Motor Vehicles Only. The parking stalls shall be used for the parking of motor vehicles only.
12. Assignment and Transfer. Except as permitted herein, Lessee shall not assign or transfer its rights under this Agreement without the prior written consent of the City, which consent the City may withhold in its sole discretion. In addition, Lessee may assign its rights under this Agreement without consent for financing or collateral purposes, provided that Lessee shall provide prior written notice to the City of any proposed assignments or transfers made for financing or collateral purposes.

13. Renewal. This Agreement shall be automatically renewed upon the same terms and conditions at the end of its initial three (3) year term for two (2) additional one (1) year terms, unless either party terminates this Agreement as provided herein.

14. Termination.

- A. The City shall have the right, at its sole option, to terminate this Agreement and to invalidate or nullify any parking passes after providing Lessee with thirty (30) days written notice under the following conditions:
  - (1) Lessee fails to make rental payment when due; or
  - (2) Lessee commits a material breach of any other term or condition of this Agreement; or
  - (3) The City reasonably determines that the terms, conditions, or existence of this Agreement would, as a matter of law, have the effect of rendering the interest of the City's Parking System Revenue Bonds or general obligation borrowing to no longer tax exempt for federal income tax purposes.
- B. Under any of the circumstances in subsection A, above, the City's written notice to Lessee shall specify the event giving rise to the City's right to terminate. The Termination shall not be effective if, within the thirty (30) day period to cure, Lessee cures the event or matter giving rise to the right to terminate.
- C. The City shall have the right, at its sole option, to terminate this Agreement and invalidate or nullify any parking passes after providing Lessee with one hundred twenty (120) days written notice.
- D. The City shall have the right, at its sole option, to temporarily relocate the parking stalls provided hereunder to a location other than the Overture Center Garage by providing Lessee with six (6) months written notice in advance of the date of relocation specifying that the garage will be undergoing substantial renovation or repair which would limit the use of the facility for parking. The notice requirement shall be waived in the event of unforeseen events outside the City's reasonable control resulting in the closure or substantial closure of the Overture Center Garage to parking uses. In such circumstances, the City will provide equivalent parking at one of the other City owned parking facilities. Monthly rates for the relocated parking will be at the approved monthly rates plus 10 percent for the alternative facility.
- E. This Agreement may terminate at any time upon the written agreement of both parties.

15. Special Conditions. The City encourages Lessee to formulate an internal Transportation Demand Management Plan in order to lower the demand for parking for single occupancy vehicles by its employees.

16. Non-Discrimination in Employment. In the performance of its obligations herein, Lessee agrees not to discriminate against any employee or applicant because of race, religion, marital status, age, color, sex, disability, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, political beliefs, or student status.

17. Subordination.

- A. This Agreement is subordinate to rights and privileges granted by the City to public and private utilities across, over, or under the Overture Center Garage and its adjacent sidewalks.
- B. Lessee shall subordinate its rights in this Agreement, without compensation, at the request of the City to provide easements and rights-of-way for all public and private utilities across, over, or under the Overture Center Garage, provided that neither such subordinate nor such easements shall interfere, except temporarily during construction or temporarily pursuant to rights which accrue to such easements or rights-of-way, with the use of the Overture Center Garage by Lessee under the terms of this Agreement.

18. Authorized Agents. The City's Parking Division Manager, or the manager's designee, is hereby designated as the official representative of the City for the enforcement of all provisions of this Agreement, with authority to administer this Agreement lawfully on behalf of the City. Randall Guenther or their designees, are hereby designated as the official representative of Lessee for the purposes of this Agreement, each with authority to act on Lessee's behalf.

19. Indemnification. Lessee shall be liable to and hereby agrees to indemnify, defend, and hold harmless the City of Madison, its officers, agents, and employees against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its officers, agents, or employees for damages because of bodily injury, including death, at any time resulting therefrom, sustained by any person or persons, or on account of damages to property, including loss of use thereof, arising out of, in connection with, caused by, or resulting from, in whole or in part, the acts or omissions in the use of the Overture Center Garage or improvements located thereon and there under by Lessee, or the Lessee's officials, officers, agents, employees, consultants, tenants, tenants' employees, assigns, or transferees.

20. Insurance. Lessee shall carry commercial general liability insurance covering as insured Lessee and naming the City, its officers, officials, agents, and employees as additional insureds, with a minimum of \$1,000,000 per occurrence. This policy shall also be endorsed for contractual liability in the same amount, apply on a primary and noncontributory basis, and provide the City thirty (30) days advance written notice of cancellation, non-renewal, or material changes to the policy during the term of this Agreement. As evidence of this coverage, Lessee shall furnish the City with a certificate of insurance on a form approved by the City, and, if requested by the City Risk Manager, Lessee shall also provide copies of additional insured endorsements or policy. If the coverage required above expires while this Agreement is in effect, Lessee shall provide a renewal certificate to the City for approval.

21. Compliance. In its use of the Overture Center Garage, Lessee shall oversee and promptly and effectively comply with all applicable statutes, rules, orders, ordinances, requirements, and regulations of the City, the State of Wisconsin, the federal government, and any other government authority having jurisdiction over the Overture Center Garage. In addition, Lessee shall abide by, and shall ensure compliance by its employees with all applicable City of Madison

Parking Division rules, including but not limited to, its Card Access System Conditions and Monthly Parking Permit Conditions. Lessee may, if in good faith and on reasonable grounds, dispute the validity of any charge, complaint, or action taken pursuant to or under color of any statute, rule, order, ordinance, requirement, or regulation, defendant against the same, and in good faith diligently conduct any necessary proceedings to prevent and avoid any adverse consequence of the same. Lessee agrees that any such contest shall be prosecuted to a final conclusion as soon as possible and that it will hold the City harmless with respect to any sustainable action taken by any governmental authority with respect thereto.

22. Notices. All notices required under this Agreement shall be written, and hand delivered or sent by certified mail, return receipt, requested to:

The City:                      City of Madison  
   Parking Division Manager  
   P.O. Box 2986  
   Madison, WI 53701-2986

Lessee:                              Hovde Building, LLC  
   Attn: Cynthia Evinrude, Director of Commercial Properties  
   122 W. Washington Ave, Ste 101  
   Madison, Wisconsin 53703-2718

The parties may, by written notice to each other, designate any additional address or addresses to which notices shall be sent to them when required by this Agreement.

23. Severability. Except as specifically provided herein, the provisions of this Agreement shall be severable. In the event that any provision of this Agreement is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Agreement shall be valid unless the court finds the valid provisions of this Agreement are so essentially and inseparably connected with and so dependent upon the invalid provisions that it cannot be presumed that the parties to this Agreement would have included the valid provisions without the invalid provisions; or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the Parties.
24. Choice of Law. This Agreement shall be governed by and construed, interpreted, and enforced in accordance with the laws of the State of Wisconsin. The parties agree, for any claim or suit or other dispute relating to this Agreement that cannot be mutually resolved, the venue shall be a court of competent jurisdiction within the Dane County and the parties agree to submit themselves to the jurisdiction of said court, to the exclusion of any other judicial district that may have jurisdiction over such dispute according to any law.
25. Counterparts. This Agreement may be signed in counterparts, each of which shall be taken together as a whole to comprise a single document. Signatures on this Agreement may be exchanged between the parties by facsimile, electronic scanned copy (.pdf) or similar

technology and shall be as valid as the original; and this Agreement may be converted into electronic format and signed or given effect with one or more electronic signature(s) if the electronic signature(s) meet all requirements of Wis. Stat. ch. 137 or other applicable Wisconsin or Federal law. Executed copies or counterparts of this Agreement may be delivered by facsimile or email and upon receipt will be deemed original and binding upon the parties hereto, whether or not a hard copy is also delivered. Copies of this Agreement, fully executed, shall be as valid as an original.

IN WITNESS WHEREOF, the parties hereto have set their hands at Madison, Wisconsin.

SIGNATURES APPEAR ON THE FOLLOWING PAGES

## LESSEE: HOVDE BUILDING, LLC

\_\_\_\_\_  
By: Randall Guenther,

President, Hovde Realty, Inc.

Agent for Hovde Building, LLC

STATE OF WISCONSIN )

) ss.

County of Dane )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2023, by Randall Guenther, President of Hovde Realty, Inc., as agent for Hovde Building, LLC, who acknowledged that they executed this instrument for the purposes therein contained.

\_\_\_\_\_  
Notary Public, State of Wisconsin

My commission expires: \_\_\_\_\_

# CITY OF MADISON

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By: Satya Rhodes-Conway, Mayor

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By: Maribeth Witzel-Behl, City Clerk

## AUTHENTICATION

The signatures of Satya Rhodes-Conway, Mayor, and Maribeth Witzel-Behl, Clerk, of the City of Madison are hereby authenticated on this \_\_\_\_ day of \_\_\_\_\_, 2023.

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

For: Jason Donker

Member of the Wisconsin Bar

**APPROVED:**

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David Schmiedicke, Finance Director

**APPROVED AS TO FORM:**

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Michael Haas, City Attorney