

PARKING AGREEMENT	
	<u>Return To:</u> City of Madison Parking Utility P.O. Box 2986 Madison, WI 53701-2986
	<u>Tax Parcel No.:</u> 0709-134-1004-2

PARKING AGREEMENT

This Parking Agreement (the "Agreement") is made as of the ____ day of ____, 2022, by and between the City of Madison, Wisconsin, a municipal corporation (the "City") and MM East Washington, LLC, a Wisconsin limited liability company (hereinafter, "Lessee"), which 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 sixty (60) and no greater than eighty (80) monthly parking stalls for use on weekdays overnight and weekends in the South Livingston Street Garage ("**Guaranteed Spaces**"), which is maintained and operated by the City of Madison Parking Utility. 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 customers, guests and invitees using the Lessee's facilities and amenities located at 823 East Washington Avenue. The number of Guaranteed Spaces shall be determined in the discretion of the Lessee, upon thirty (30) day's written notice to the Parking Utility.

2. Additional Spaces. From time to time, upon thirty (30) days' written notice to the City, Lessee may request an increase of up to thirty (30) additional monthly overnight/weekend

parking stalls (“**Additional Spaces**”), for a total of, not to exceed, one hundred ten (110) spaces. The City’s Parking Manager (the “**Parking Manager**”) may approve such request if the Parking Manager deems the increase to benefit the City in the Parking Manager’s reasonable business judgment. The Parking Manager shall have the right to unilaterally reduce the number of Additional Spaces (but not the Guaranteed Spaces) issued to Lessee by providing thirty (30) day’s written notice to Lessee, and for any reason, including, but not limited to, entering into agreements with other entities or individuals for monthly parking agreements. The City shall not provide more than one-hundred ten (110) overnight/weekend parking stalls or fewer than sixty (60) overnight/weekend parking stalls under this Agreement without the prior approval of the Transportation Commission and Common Council.

3. The Lessee may request to convert up to twenty (20) overnight/weekend stalls into 24/7 stalls, for use on weekdays and weekends. The Parking Manager will grant such request if the average 4-hour peak does not exceed 85% of the Total Parking Count for the previous 6 month period. The Parking Manager will have the right to suspend the use of these 24/7 stalls if the average 4-hour peak exceeds 85% of the Total Parking Count by providing thirty (30) day’s written notice to Lessee.
4. Term. The term of this Agreement shall commence on or about the date Lessee commences operation of the hotel to be located at 825 East Washington Avenue, as evidenced by Lessee opening the hotel for business accepting transient guests (currently anticipated to be April 2023), and continue for an initial term of twenty (20) years, with the potential for two (2), ten (10) year extensions by mutual agreement, unless otherwise terminated as provided herein. Upon such commencement of operation, Lessee shall notify the City that the term of this Agreement has begun.
5. Stall Location. All of the parking stalls to be provided are located in the South Livingston Street Garage, 111 S. Livingston St., Madison, Wisconsin. No stalls shall be reserved or designated for Lessee.
6. Rent. The rental rate for each stall shall be computed as follows:

A. For the 24/7 Parking Permits:

South Livingston Garage 24/7 rate x 1.10 = Monthly 24/7 Rental Rate

By way of example, the current 24/7 monthly rate at the South Livingston Street Garage is \$140 per month. The 24/7 monthly fee for 20 parking stalls would be $20 \times \$140 \times 1.1 = \$3,080$

B. For the Overnight/Weekend Parking Permits:

The number of Overnight/Weekend Stalls, multiplied by 1.10, multiplied by the sum of the following:

South Livingston Garage's resident overnight monthly rate, plus

2/3 of the weekend maximum daily rate, multiplied by 2, multiplied by an average of 4.2 weeks/month

Equals the Overnight and Weekend Monthly Rental Rate.

Parking outside of the designated overnight and weekend hours will be billed at the hourly rate.

By way of example, the current resident overnight monthly rate at the South Livingston Garage is \$42 per month and the maximum daily weekend rate is \$8 per day. The overnight/weekend monthly fee for 80 parking stalls would be $80 \text{ stalls} \times (\$42 + (2/3 \times 4.2 \text{ weeks} \times 2 \text{ days/weekend} \times \$8/\text{day})) \times 1.1 = \$7,638.40$

The Monthly 24/7, Overnight, and Weekend Daily Maximum Rental Rates for each stall shall be subject to change and determined in the same manner as at all other City Garages.

The Monthly Night Rental Rates for each stall at the South Livingston Street Garage shall be subject to change and determined in the same manner as at all other City Garages.

Lessee shall make rent payments monthly, in advance. The rent shall be paid by credit card at the City's Parking Utility Office, currently located in Room 100, Madison Municipal Building, 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 Utility Office. The Monthly Rental Rate is a gross rate and includes all state and local taxes. The Lessee will be individually invoiced for hourly parking outside of the permit hours.

7. Rate Increases. The City shall give Lessee thirty (30) days prior written notice of any proposed rate increases. Any rate increases shall be universally applicable to all monthly passes in the South Livingston Street Garage.
8. Time of Use. Stalls shall be available for use on weekdays from 6:00 p.m. until 6:00 a.m. and weekends from 6:00 p.m. Friday to 6 a.m. Monday (the "Permit Hours"). The City may, throughout the duration of the Agreement establish hours for the use of parking stalls of up to 2.0 hours prior to 6:00 p.m. and/or 2 hours after 6:00 a.m. ("Grace Period(s)"). The City may, at its sole discretion, reduce or eliminate Grace Periods by providing 30 days written notice to Lessee. Any vehicles entering or exiting outside the Permit Hours and Grace Period, if applicable, shall be charged at the regular hourly rate for time parked outside of these hours. A Grace Period, if provided, shall not guarantee availability of stalls during the Grace Period; stalls shall only be guaranteed to be available during the Permit Hours of 6:00 p.m. until 6:00 a.m. daily (for weekdays overnight) and 6:00 p.m. Friday to 6:00 a.m. Monday (for weekends).

9. Motor Vehicles Only. The parking stalls shall be used for the parking of motor vehicles only.

Parking Operators/Valet Services. If the Lessee hires a Parking Operator/Valet Services the following shall apply;

The parking operator/valet service shall be identified by name by the Lessee for the City. In the event the parking operator changes at any time Lessee will provide advanced notice to the City before such service begins using the South Livingston Street Garage. This information can be communicated to the City Parking Manager.

It is incumbent upon the Lessee to share the pertinent sections of this Agreement to the parking operator/valet service that pertain to card access use, replacement of access cards and permitted hours with the parking operator/valet service.

Access Cards/Mechanisms. The Lessee will be issued access cards or other mechanisms to enter and exit the parking garage. The Lessee or parking operator shall track all access cards and or other mechanisms issued. Lost or stolen access cards or other mechanisms will be specifically identified and reported to the City. Cards or other access mechanisms will only be replaced when lost or stolen access cards/mechanisms have been reported. A fee of \$50.00 (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 the Lessee.

Valets will not attempt to enter or exit the parking facility for purposes of parking guest vehicles without using the appropriate access card or access mechanism.

Misuse or abuse of access cards or mechanisms, or damage to City equipment, can result in suspension of access privileges until rectified.

10. 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. Lessee may assign or transfer its rights under this Agreement to a subsequent owner or lessee of the property located at 825 East Washington Avenue without the consent of the City, provided that the new Lessee operates the property as a hotel and Lessee agrees to give written notice of such transfer or assignment to the City. 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. Without limiting the generality of the foregoing, Lessee may assign its rights under this Agreement to [LENDER], the lender providing construction financing for the facilities constructed at 825 East Washington Avenue, and by this reference the City agrees that Lessee has provided prior written notice of the same.

11. Renewal. This Agreement may be renewed at the end of the initial ten (10) year term, under the same terms and conditions, for two (2) additional five (5) year terms upon mutual agreement of the City and Lessee, unless either party terminates this Agreement as provided herein.
12. 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 a 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 on the City's Parking System Revenue Bonds or general obligation borrowing no longer tax exempt for federal income tax purposes;
 - B. Under any of the circumstances in sub-section 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 to invalidate or nullify any parking passes after providing Lessee with one hundred twenty (120) days written notice under the following conditions: The City determines that it is in its best interest to sell, demolish, repurpose, or reconstruct the South Livingston Street Garage and the Agreement either unreasonably restricts the City's ability to do so, or relocating the stalls to another facility would, as reasonably determined by the Parking Manager, adversely impact the ability to serve public parking by exceeding typical occupancies at other Parking Utility facilities.
 - C. The City shall have the option to temporarily relocate the parking stalls provided hereunder to a location other than the South Livingston Street Garage by providing the 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 South Livingston Street 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.
 - C. This Agreement may terminate at any time upon the written agreement of both parties.

- D. Failure or delay of the City to exercise any right or remedy herein provided shall not be deemed a waiver of any future rights or remedies which the City shall have and shall not be deemed a waiver of any subsequent default of any such terms, conditions and covenants to be performed by Lessee.
12. 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.
13. 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.
14. Subordination.
- A. This Agreement is subordinate to rights and privileges granted by the City to public and private utilities across, over or under the South Livingston Street 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 South Livingston Street Garage, provided that neither such subordination 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 South Livingston Street Garage by Lessee under the terms of this Agreement.
15. Authorized Agents. The City's Parking Manager, or his/her 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. North Central Management, Inc., or its designee, is hereby designated as the official representative of the Lessee for the purposes of this Agreement, with authority on Lessee's behalf.
16. Indemnification. Lessee shall be liable to and hereby agrees to indemnify, defend and hold harmless the City of Madison, its officers, officials, 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, officials, 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 South Livingston Street Garage or improvements located thereon and there under by Lessee, or the Lessee's officials,

officers, agents, employees, consultants, tenants, tenants' employees or sub lessees. The terms of this section shall survive the termination of this Agreement.

17. 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.
18. Compliance. In its use of the South Livingston Street Garage, Lessee shall observe 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 governmental authority having jurisdiction over the South Livingston Street Garage. In addition, Lessee shall abide by, and shall ensure compliance by its employees with all applicable City of Madison Parking Utility rules, including but not limited to, its Card Access System Conditions and Monthly Parking Permit Conditions. Lessee may, 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, defend 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 actions taken by any governmental authority with respect thereto.
19. 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 Manager
P.O. Box 2986
Madison, WI 53701-2986

Lessee: MM East Washington, LLC
c/o North Central Group
1600 Aspen Commons, Suite 200
Middleton, WI 53562

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.

20. Severability. It is mutually agreed that in case any provision of this Agreement is determined by any court of law to be unconstitutional, illegal or unenforceable, it is the intention of the parties that all other provisions of this Agreement remain in full force and effect.

21. 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 State of Wisconsin 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 a dispute according to any law.

22. 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 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) meets 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.

23. Cessation of Hotel Operations. If at any time during the Term, Lessee ceases to operate the hotel, Lessee may terminate this Agreement. If at any time during the Term, Lessee ceases to operate the hotel for a period of six (6) months or greater with no intent to reopen the hotel, City may terminate this Agreement. In such event, City shall give the Lessee written notice of such election, which shall be effective (30) days after given to Lessee unless the Lessee reopens during such 30-day period.

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

SIGNATURES APPEAR ON THE FOLLOWING PAGES

CITY OF MADISON

By: Satya Rhodes-Conway, Mayor

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 _____, 2022.

By: _____
Kevin Ramakrishna
Member of the Wisconsin Bar

APPROVED:

David Schmiedicke, Finance Director

APPROVED AS TO FORM:

Michael Haas, City Attorney