

PARKING AGREEMENT

Return To:
City of Madison
Parking Division
P.O. Box 2986
Madison, WI 53701-2986

Tax Parcel No.: 251/0709-134-1017-5

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 Bakers Place Project LLC, a Wisconsin limited liability company (hereinafter, the "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 twenty (20) monthly parking stalls (the "Guaranteed Spaces") for use on weekdays overnight, weekends, and holidays recognized by the City, in the South Livingston Street Garage, which is maintained and operated by the City of Madison Parking Division (the "Garage"). The Guaranteed Spaces are to be used by Lessee (or Lessee's agent or contractor for parking services) for the sole and exclusive purpose of vehicle parking by residential tenants of the Lessee's Project (defined below) located at 10 South Paterson Street/849 East Washington Avenue, Madison, Wisconsin.
2. Additional Parking Spaces. No more frequently than twice per calendar year, the Lessee may request up to twenty (20) additional parking stalls in the Garage, for a total of up to forty (40) stalls, for weekdays overnight, weekend, and City-recognized holiday use by Lessee. The Parking Manager may grant such request at their sole discretion based on the

experienced average occupancy of the Garage for the previous six (6) months. If after granting the additional stalls pursuant to the previous sentence, the parking occupancy of the Garage approaches the available capacity of the Garage, the Parking Manager shall have the option, on not less than forty-five (45) calendar days prior written notice to the Lessee, to reduce the total number of additional stalls Lessee may use (but not below the twenty (20) Guaranteed Spaces). Despite any such reduction by the Parking Manager, Lessee may later request the use of additional stalls as provided herein.

3. Term. The term of this Agreement shall commence on the date Lessee commences operation of the mixed-use development containing 203 units of multifamily rental housing and approximately 13,000 feet of commercial rental space to be located at 10 South Paterson Street/849 East Washington Avenue (the "**Project**"), as evidenced by Lessee opening the Project for occupancy (currently anticipated to be May of 2024) and providing notice of such Project opening to the City, and shall continue for an initial term of twenty (20) years, with the option of two (2) five (5) year-long extensions by mutual agreement of the parties hereto, unless this Agreement is sooner terminated as provided herein. Upon such opening of the Project, Lessee shall notify the City that the term of this Agreement has begun.
4. Stall Location. All of the parking stalls to be provided pursuant to this Agreement are located in the South Livingston Street Garage, 111 S. Livingston St., Madison, Wisconsin. No stalls shall be reserved or designated for Lessee in the Garage.

5. Rent. The rental rate for each stall shall be computed as follows:

- A. For the Overnight/Weekend/Holiday Parking Permits provided to Lessee herein:

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

South Livingston Street 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/Weekend/Holiday "Monthly Rental Rate."

Parking outside of the designated overnight, weekend, and holiday hours will be billed at the hourly rate for the Garage, as such rates are posted at the Garage from time to time.

By way of example, the current resident overnight monthly rate at the South Livingston Street Garage is \$42 per month and the maximum daily weekend rate is \$8 per day. The overnight/weekend/holiday monthly fee for 30 parking stalls would be 30 stalls x (\$42 + (2/3 x 4.2 weeks x 2 days/weekend x \$8/day)) x 1.1 = \$2,871.79.

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

Lessee shall make the Monthly Rental Rate payments due under this Agreement monthly in advance of the first day of each month. The Monthly Rental Rate payment shall be made in one payment: (i) by credit card at the City's Parking Division Office, currently located in the Madison Municipal Building, 215 Martin Luther King Jr Blvd, Suite 109, or (ii) 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 (iii) by hand delivery to the Parking Division Office. The Monthly Rental Rate is a gross rate and includes all state and local taxes.

The Lessee will be separately invoiced for hourly parking charges owed outside of the Overnight/Weekend/Holiday permit hours provided for herein.

6. 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.
7. Time of Use. Stalls provided to Lessee under this Agreement shall be available for use on weekdays from 6:00 p.m. until 6:00 a.m., weekends from 6:00 p.m. Friday to 6 a.m. Monday, and City recognized holidays from 6:00 am until 6:00 pm on the day of such holiday (the "Permit Hours"). The City may, throughout the duration of the Agreement, establish hours for the use of parking stalls of up to 2 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 stated herein.
8. Motor Vehicles Only. The parking stalls shall be used for the parking of motor vehicles only.
8. Access Cards/Mechanisms. The Lessee will be issued access cards or other mechanisms to enter and exit the parking garage. The Lessee 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 then-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.

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

9. 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 Project without the consent of the City, provided that the new owner or lessee operates the residential portion of the Project as rental housing 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 collaterally assign its rights under this Agreement to the lender(s) providing construction and/or permanent financing for the Project, and by this reference the City agrees that Lessee has provided prior written notice of the same.

10. Renewal. This Agreement may be renewed at the end of the initial ten (20) year term, under the same terms and conditions at set forth herein (except for any rate or cost increases specified herein), for two (2) additional five (5) year terms upon mutual agreement of the City and Lessee, unless either party sooner terminates this Agreement as provided herein.
11. 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 prior 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 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 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.

- D. 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 rates set forth herein under Section 5. Notwithstanding anything herein to the contrary, if the City exercises its right to relocate the Lessee's parking stalls, then the Lessee shall have the right to terminate this Agreement in its sole discretion and without penalty.
 - E. This Agreement may terminate at any time upon the written agreement of both parties.
 - F. 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 and/or tenants.
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 of

Madison. Nathan Helbach, or his 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, 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, 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: Bakers Place Project, LLC
44 E. Mifflin St. STE 304
Madison, WI 53703
ATTN: Nathan Helbach

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. 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.
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 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.
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 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.
26. Cessation of Operations. If at any time during the Term, Lessee ceases to operate all or a portion of the Project for housing, Lessee may terminate this Agreement. If at any time during the Term, Lessee ceases to operate all or a portion of the Project for housing for a period of six (6) months or greater with no intent to reopen the housing portion of the Project, 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 the Project for housing during such 30-day period.

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

LESSEE:

BAKERS PLACE PROJECT LLC

By: Bakers Place Sponsor LLC, its manager

By: _____
Nathan Helbach, authorized agent

STATE OF WISCONSIN)
County of Dane) ss.

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by Nathan Helbach who acknowledged that he executed this instrument for the purposes therein contained.

Notary Public, State of Wisconsin

My commission expires: _____

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