

## PARKING AGREEMENT

This Parking Agreement (the “Agreement”) is made as of \_\_\_\_\_, 2022 by and between the City of Madison, Wisconsin, a municipal corporation (the “City”) and MDI JUDGE DOYLE SQUARE APARTMENTS, LLC, a Minnesota limited liability company (hereinafter, the “Lessee”), which hereby agree as follows:

1. Parking Rights and Use.

- A. Subject to Section 1.B below, the City hereby agrees to provide to Lessee, on the terms and conditions provided herein, the right to use up to eighty (80) parking stalls for use overnight and on weekends (each an “Overnight/Weekend Parking Permit”) in the Wilson Street Garage, which are each maintained and operated by the City’s Parking Utility. All parking stalls provided under this Agreement are to be used by Lessee (or Lessee’s agent or contractor for parking services) and Lessee’s residents for the sole and exclusive purpose of vehicle parking by residents using the Lessee’s facilities and amenities located at 114 E. Wilson Street (the “Lessee Owned Property”). As of the Commencement Date, Lessee shall have elected to receive eighty (80) Overnight/Weekend Parking Permits.
  
- B. No more frequently than twice per calendar year, the Lessee may request up to forty (40) additional parking stalls, for a total of up to one-hundred twenty (120) stalls for overnight and weekend use. If the Lessee makes the request from January 1st through September 30th, the Parking Manager will grant such request for additional stalls if the 4-hour weekend peak from March through September of the previous calendar year does not exceed 85% of the total parking count in the Wilson Street Garage. If the Lessee makes the request from October 1<sup>st</sup> through December 31<sup>st</sup>, the Parking Manager will grant such request for additional stalls if the 4-hour weekend peak from March through September of the current calendar year did not exceed 85% of the total parking count in the Wilson Street Garage. If after granting Lessee additional stalls pursuant to the previous sentence, the 4-hour weekend peak from March through September of any calendar year exceeds 85% of the total parking count, the Parking Manager shall have the option, on not less than sixty (60) days prior written notice to Lessee, to reduce the total number of additional stalls but not below eighty (80) stalls. From and after the date that Lessee leases any additional parking stalls under this Section 1.B, each of the additional parking permits granted for such stalls hereunder shall be included in the definition of Overnight/Weekend Parking Permit. Upon request by Lessee, within ten (10) business days Lessor shall deliver the average 4-hour weekend peak parking count as a percentage of the total parking count in the Wilson Street Garage for the requested period.

2. Allocation of Parking Stalls.

- A. No more frequently than four times per calendar year, on not less than thirty (30) days prior written notice to the City, Lessee may convert one or more of the Overnight/Weekend Parking Permits to monthly parking permits that can be used on a 24-hour, 7-day basis (each a “24/7 Parking Permit”), provided that the aggregate number of parking stalls leased to Lessee hereunder does not change.
  - B. No more frequently than four times per calendar year, after Lessee has converted any of the Overnight/Weekend Parking Permits to 24/7 Parking Permits pursuant to Section 2.A above and on not less than thirty (30) days prior written notice to City, Lessee may convert one or more of the 24/7 Parking Permits to Overnight/Weekend Parking Permits, provided that the aggregate number of parking stalls leased to Lessee hereunder does not change.
  - C. No more frequently than four times per calendar year, on not less than thirty (30) days prior written notice to the City, Lessee may reduce the then-current total number of 24/7 Parking Permits and Overnight/Weekend Parking Permits. If delivered, Lessee’s reduction notice shall state (i) the number of parking stalls to be reduced, and (ii) the allocation of 24/7 Parking Permits and Overnight/Weekend Permits to be retained by Lessee after such reduction, if any. Thereafter, if Lessee desires to re-lease any of the relinquished parking stalls, the City shall provide such stalls if it determines they are available for Lessee’s use. Any overnight/weekend stall subsequently added pursuant to the previous sentence shall again be included in the definition of Overnight/Weekend Parking Permit and subject to the terms of this Agreement. Any 24/7 stall subsequently added pursuant to this Section 2.C shall again be included in the definition of 24/7 Parking Permit and subject to the terms of this Agreement.
3. Term. The term of this Agreement shall commence on the Commencement Date and continue for an initial term of twenty (20) years, with the potential for two (2), five (5) year extensions by mutual agreement, unless otherwise terminated as provided herein. The “Commencement Date” means the earlier of (i) the last day of the calendar month in which the six (6) month anniversary of the Operations Date (as defined below) occurs, or (ii) the date specified by Lessee in a written notice to the City, which must occur between the Operations Date and the last day of the calendar month in which the six (6) month anniversary of the Operations Date occurs, but no sooner than thirty (30) days after the date of such notice. The term “Operations Date” means the date Lessee commences operation of the apartments to be located at the Lessee Owned Property, as evidenced by the first resident taking occupancy (currently anticipated to be April 1, 2024).
4. Stall Location. All of the parking stalls to be provided are located in the Wilson Street Garage located at 20 E. Wilson Street, Madison, Wisconsin. No stalls shall be reserved or designated for Lessee.
5. Rent. The rental rate for each stall shall be computed as follows:
- A. For the 24/7 Parking Permits:

Wilson Street Garage 24/7 rate x 1.10 = Monthly 24/7 Rental Rate

By way of example, the current 24/7 monthly rate at the Wilson Street Garage is \$230 per month. The 24/7 monthly fee for 80 parking stalls would be  $80 \times \$230 \times 1.1 = \$20,240$

B. For the Overnight/Weekend Parking Permits:

Wilson Street Garage's resident overnight monthly rate plus 2/3 of the weekend maximum daily rate times an average of 4.2 weeks/month x 1.10 = 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 Wilson Street Garage is \$90 per month and the maximum daily weekend rate is \$8 per day. The overnight/weekend monthly fee for 80 parking stalls would be  $80 \text{ stalls} \times (\$90 + (2/3 \times 4.2 \text{ weeks} \times 2 \text{ days/weekend} \times \$8/\text{day})) \times 1.1 = \$11,882$

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 total monthly rent payable to the City shall be the sum of the 24/7 Monthly Rental Rate for each of the 24/7 Parking Permits and Monthly Overnight/Weekend Rental Rate for each of the Parking Permits then being provided by the City to Lessee. The Lessee will be individually invoiced for hourly parking outside of the permit hours.

Coming on the Commencement Date and continuing thereafter for the remainder of the Term, Lessee shall make rent payments monthly, in advance, on or before the first of each month. The rent shall be paid by credit card at the City's Parking Utility Office, currently located at 215 Martin Luther King Jr. Blvd, Suite 109, 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.

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 or permits in the Wilson Street Garage.
7. Time of Use. Stalls for the 24/7 Resident Parking Permits shall be available seven (7) days per week, twenty-four (24) hours per day. Stalls for the Overnight/Weekend Parking Permits shall be available 5:00 p.m. to 8:00 a.m. Monday through Friday and twenty-four (24) hours per day commencing at 5:00 p.m. Friday and continuing until 8:00 a.m. on Monday morning.

Any vehicles entering or exiting outside the applicable permit hours shall be charged at the regular hourly rate for time parked outside of these hours.

8. Motor Vehicles Only. The parking stalls leased hereunder shall be used for the parking of motor vehicles only.
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 of the Lessee Owned Property without the consent of the City, provided that the new Lessee operates the property as residential apartments and Lessee gives written notice of such transfer or assignment to the City. In addition, Lessee may assign its rights under this Agreement without City's consent for financing or collateral purposes or to an affiliate controlling, controlled by or under common control with Lessee, provided that Lessee shall provide prior written notice to the City of any proposed assignments or transfers permitted under this Section 9. In addition, the use of the parking permits allocated to Lessee under this Agreement by residents of the Lessee Owned Property shall not be deemed an assignment or transfer under this Section 9.
10. 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, unless either party terminates this Agreement as provided herein. If Lessee elects to extend the term, Lessee shall deliver written notice of such election to City not later than sixty (60) days prior to the expiration of the then-current term.
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 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 Wilson Street Garage. In such an event, the City shall relocate the stalls to the

next closest City owned parking facility to the Lessee Owned Property with available capacity to provide the applicable number of stalls under this Agreement, as reasonably determined by the City's Parking Manager.

- D. The City shall have the option to temporarily relocate the parking stalls provided hereunder to a location other than the Wilson 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 Wilson Street Garage to parking uses. In such circumstances, the City shall relocate the stalls to the next closest City owned parking facility to Lessee Owned Property with available capacity to provide the applicable number of stalls under this Agreement, as reasonably determined by the City's Parking Manager. 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.
  - 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 Lessee shall, at time of development approval, submit a Transportation Demand Management Plan ("TDMP") in accordance with current ordinances. If at the time of development approval, the TDMP ordinance has not been enacted, the City strongly encourages Lessee to formulate an internal TDMP 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 Wilson 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 Wilson 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 Wilson Street Garage by Lessee under the terms of this Agreement.

15. Authorized Agents. The City's Parking Manager, or their 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. [REDACTED], or their 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 reasonable 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 Wilson Street Garage or improvements located thereon and there under by Lessee, or the Lessee's officials, officers, agents, employees or consultants. 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 Wilson 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 Wilson 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.



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

**LESSEE:**

MDI JUDGE DOYLE SQUARE APARTMENTS,  
LLC, a Minnesota limited liability company

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

STATE OF MINNESOTA    )  
  ) ss.  
County of Hennepin        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_, the \_\_\_\_\_ of MDI Judge Doyle Square Apartments, LLC, a Minnesota limited liability company, who acknowledged that [s/he] executed this instrument for the purposes therein contained.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
My commission expires: \_\_\_\_\_

[Signature Page to Parking Agreement]

**CITY OF MADISON**

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By: Satya Rhodes-Conway, Mayor

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By: Maribeth Witzel-Behl, City Clerk

**APPROVED:**

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David Schmiedicke, Finance Director

**APPROVED AS TO FORM:**

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Michael R. Haas, City Attorney

The execution of this Agreement is authorized by the City's Common Council via Resolution Enactment No. RES-22-\_\_\_\_\_, File ID No. \_\_\_\_\_, adopted on the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

