

PARKING AGREEMENT

THIS PARKING AGREEMENT is made as of the 3rd day of June, 2015 (the "Agreement"), is by and between:

CITY OF ROCHESTER, a municipal corporation of the State of New York with offices at City Hall, 30 Church Street, Rochester, New York 14614 (hereinafter "the City");

ELM STREET VENTURES, LLC, a New York limited liability company, with its principal place of business at 2604 Elmwood Avenue, Suite 352, Rochester, New York 14618 (hereinafter "88 Elm LLC").

RECITALS:

WHEREAS, 88 Elm LLC owns certain property located at 88 – 94 Elm Street, Rochester, NY 14604 (the "Property"); and

WHEREAS, 88 Elm LLC intends to convert the Property to first floor commercial space and thirty six (36) residential apartment units (the "Project"); and

WHEREAS, the City is the owner of the adjacent Midtown Garage, as herein defined; and

WHEREAS, the City has agreed to provide parking accommodations for the residential tenants of the Property on the terms and conditions provided herein;

WHEREAS, the City believes that 88 Elm LLC's use of the Midtown Garage as part of the Project will enhance the economic well-being of the City of Rochester and the health, safety, and welfare of its residents.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and conditions contained herein, the City and 88 Elm LLC agree as follows:

SECTION 1. DEFINITIONS

The following terms, as used in this Agreement, shall have the meanings ascribed to them herein:

- "Midtown Garage:" a parking garage owned by the City located at 270 East Broad Street in Rochester, NY;
- "Midtown Garage Spaces:" the parking spaces in the Midtown Garage;
- "Midtown Garage/88 Elm Passes:" the parking passes for up to fifty (50) parking spaces in the Midtown Garage available for 88 Elm Parkers;
- "88 Elm Parkers:" current residential tenants of 88 Elm Street.

SECTION 2. PARKING SPACES

A. 88 Elm Parking Passes. 88 Elm LLC shall be issued a number of parking passes equal to the number of 88 Elm Parkers up to a maximum of fifty (50) parking passes. The passes will not be

for specific parking spaces in designated areas but will be useable for any parking space in the Midtown Garage open to the general public. Any spaces needed above the 50 may be issued to individual parkers on general City terms and conditions on as "as available" basis.

The parking passes issued pursuant this Agreement are electronic parking tags. 88 Elm shall use a mutually agreeable form provided by the City to register each of the 88 Elm Parkers.

B. Minimum Parking Passes. Commencing the date of the City's Certificate of Occupancy for the Project ("Commencement"), 88 Elm LLC shall have the right to purchase up to fifty (50) parking passes for each month of the Term at the rate set forth in Section 4 hereof. If 88 Elm LLC desires to reduce the number of parking passes purchased pursuant to this Agreement, it may do so by providing the City with at least thirty (30) days prior written notice of its desire to reduce the number of parking spaces required under this Agreement.

C. Unused Parking Passes. If after the first twelve (12) months of this Agreement, 88 Elm LLC has failed to use all of the 50 parking passes for a period of over three (3) months, the number of parking passes available to 88 Elm LLC under this Agreement shall be reduced by the number of parking passes not used during that three (3) month period. However, to the extent the City then has monthly parking availability in the Midtown Garage, 88 Elm LLC may thereafter request additional passes (up to 50) upon at least thirty (30) days prior written notice to the City, which shall be subject to the terms of this Agreement, including rate.

D. 88 Elm LLC Liaison. 88 Elm LLC shall designate a parking pass liaison located at the Property to deal with day to day parking issues. Each month the liaison shall submit a list of names of the tenants using the parking passes with the submission of the parking pass payments as detailed in Section 4 below. Every 88 Elm Parker shall be a current residential tenant of 88 Elm Street and no 88 Elm Pass shall be retained by a former tenant.

E. Maintenance/Repair/Security. The City shall be responsible for the maintenance and repair and for security of the Midtown Garage.

F. Utilities. The City shall be responsible for payment of water and electric charges for service to the Midtown Garage.

SECTION 3. PEDESTRIAN ACCESS

88 Elm Parkers shall have unrestricted, non-exclusive, pedestrian access to and from the Midtown Garage in the same manner as the general public using the Midtown Garage.

SECTION 4. PAYMENTS

88 Elm shall pay the current City public parking rate, as it may be established from time to time, for each 88 Elm Pass each month. 88 Elm LLC shall submit a check to the City Parking Bureau in the total amount owed for Midtown Garage/88 Elm Passes required for each month. The payment to the City Parking Director shall be delivered within the first five (5) business days of each month.

88 Elm LLC shall pay a replacement fee of fifteen dollars (\$15) for each replacement parking pass. 88 Elm LLC shall not charge its tenants any premium or mark-up over the monthly parking rate 88 Elm LLC pays to the City.

SECTION 5. TERM

A. The term of this Agreement shall commence on the date that a Certificate of Occupancy is issued by the City for the Project and shall terminate at 11:59 p.m. on the twentieth (20th) anniversary of that date, unless sooner terminated as provided in subsection B. herein. Upon termination of this Agreement, 88 Elm Parkers may apply for City parking passes in the Midtown Garage on terms available to the general public.

B. This Agreement shall sooner terminate upon the occurrence of any of the following:

1. 88 Elm LLC fails to operate the Project at any time during the Term; or
2. In the event that the Midtown Garage becomes unusable for parking (as described subsection 12. herein) or, in the event for any reason and in the sole and absolute discretion of the City, the City elects to discontinue use of the Midtown Garage for public parking purposes; or
3. In the event that 88 Elm LLC defaults in or violates the terms or provisions of this Agreement, and fails to end, cure or remedy such default or violation within thirty (30) days of receipt of a written notice from the City specifying the default or violation.

SECTION 6. LEGAL REQUIREMENTS

88 Elm LLC's use of parking spaces pursuant to the 88 Elm Passes as well as the ingress and egress routes of the Midtown Garage shall comply with all law, orders, regulations, rules, ordinances, and requirements of the Federal, State, County and local Governments, including all environmental laws (collectively the "Legal Requirements"). City shall maintain the Midtown Garage and all ingress and egress routes in compliance with all laws, orders, regulations, rules or requirements as they relate to structural repairs, changes or alterations to or in and about the Midtown Garage or any buildings or improvements thereon or to repairs, changes or alterations incident to or as the result of any use or occupation of the Midtown Garage, or use of the adjacent sidewalks, and whether the same now are in force, or that may, at any time in the future, be enacted or directed; and each party shall pay all direct and actual costs, expenses, claims, fines, penalties and damages that may in any manner arise out of or be imposed because of the failure of either party to comply with the respective Legal Requirements of each as set forth herein.

SECTION 7. LIENS/ASSIGNMENTS/MORTGAGING

This Agreement may not be mortgaged, assigned or otherwise transferred in whole or in part by 88 Elm LLC. This Agreement is assignable by the City (and any subsequent owner) to subsequent owner(s) of the Midtown Garage.

Notwithstanding the above, 88 Elm LLC shall have the right to assign this Parking Agreement to an entity which is the parent of 88 Elm LLC, subsidiary of 88 Elm LLC, affiliate of 88 Elm LLC, or shall directly or indirectly control, be controlled by, or be under common control with 88 Elm LLC if such entity purchases the Property; or in the event of (i) a sale of ownership interest or issuance of new ownership interests, directly or indirectly, in 88 Elm LLC; and (ii) a transaction in which any entity succeeds to all or substantially all of the assets of 88 Elm LLC whether by merger, consolidation, sale or otherwise provided such successor entity assumes in full the obligations of 88 Elm LLC under this Agreement. 88 Elm LLC shall notify the City, in writing, of any such assignment within thirty (30) days after its occurrence and shall provide the City with all such reasonable information and documentation as the City may request regarding the identity and status of such assignee.

SECTION 8. COVENANTS/REPRESENTATIONS AND WARRANTIES

A. By City:

The City covenants, represents and warrants to 88 Elm LLC as follows:

1. The City is a municipal corporation duly established and validly existing under the laws of the State of New York, and has full, right and lawful authority to enter into this Agreement and perform all its duties and obligations hereunder.

2. All necessary and appropriate actions have been taken, including without limitation adoption of all necessary resolutions of the City and any necessary approvals by the Rochester City Council to allow the City to enter into and perform its obligations under this Agreement.

B. By 88 Elm LLC:

88 Elm LLC covenants, represents and warrants to the City as follows:

1. 88 Elm LLC is a limited liability company duly established and validly existing under the laws of the State of New York, and has full right and lawful authority to enter into this Agreement and perform all its duties and obligations hereunder.

2. There are no actions, suits or proceedings at law or in equity, or by or before any court, governmental instrumentality or other agency or regulatory authority, pending against 88 Elm LLC, to the best of 88 Elm LLC's knowledge, threatened in writing against (a) the Property

and/or the Project, (b) 88 Elm LLC, or (c) any other person, entity or property with respect to the Property and/or the Project which would have a material adverse effect on 88 Elm LLC's use and occupancy of the Property or the Project or which questions the validity of this Agreement or the transactions contemplated hereby.

3. To the best of its knowledge, the execution, delivery, performance or observance by 88 Elm LLC of this Agreement will not violate or contravene any provisions of (a) any Federal, state or local law, (b) any order or decree of any court, governmental authority, bureau or agency, or (c) any mortgage, indenture, security agreement, contract, document undertaking or other agreement or instrument to which 88 Elm LLC is a party or is binding upon it or any of its property or assets.

4. 88 Elm LLC has all requisite power, right and legal authority to execute, deliver and perform its obligations under this Agreement and has taken all action necessary to authorize the execution and delivery of, and the performance and observance of its obligations under this Agreement. This Agreement, when executed and delivered, will constitute a legal, valid and binding obligation of 88 Elm LLC enforceable against 88 Elm LLC in accordance with its terms, without the joinder of any third party.

SECTION 9. CONDEMNATION

In the event that Midtown Garage or any part of thereof shall be taken in condemnation proceeding or by exercise of any right of eminent domain, the City shall be entitled to the full amount of any condemnation award regarding its fee interest in the Midtown Garage. 88 Elm LLC shall not be entitled to any portion of any condemnation award for fee interest because of this Agreement. In no event shall this Agreement be termed, deemed or considered a leasehold interest.

SECTION 10. OPERATING AGREEMENT

The parties acknowledge that it is the normal practice of the City to retain an independent operator to manage and operate the Midtown Garage pursuant to an operating agreement. The terms of any such operating agreement executed subsequent to the execution of this Agreement shall be consistent with the terms of this Agreement.

SECTION 11. INDEMNIFICATION

A. 88 Elm LLC will defend, indemnify and hold the City harmless against any and all claims, suits, damages or causes of action for damages arising during the term of this Agreement, and against any orders or decrees or judgments which may be entered therein, brought for damages or alleged damages resulting from any injury to person and/or property or loss of life sustained in or about the Garages by any person or persons whatever, to the extent such damages or alleged damages directly results from or directly arises out of the activities of 88 Elm LLC, its agents, employees, contractors, invitees, successors and/or assigns, unless the foregoing results from fraud, misconduct, or an intentional or negligent act or omission of the City or its operator pursuant to Section 10 hereof. The foregoing indemnities shall apply irrespective of the

application of any rule of comparative or apportioned liability. These indemnities shall survive the expiration of the term of this Agreement.

B. The City shall not in any event whatsoever be liable for any injury or damage to any property or to any person happening on, in or about the Midtown Garage, or to any property belonging to 88 Elm LLC or any other person which may arise from any other cause whatsoever.

SECTION 12. UNUSABLE FOR PARKING

The City may permanently close all or a substantial portion of the Midtown Garage prior to the termination of this Agreement for safety reasons, if licensed professional engineers certify the safety reasons exist and the City determines that it is economically or practically infeasible to restore the Midtown Garage, or portion thereof, to a safe condition, or if the City of Rochester in its governmental capacity orders such closure. Such closure shall also be deemed a determination that the Midtown Garage is "unusable for parking" as this phrase is used in this Agreement. In the event of closure of Midtown Garage, for any reason, this Agreement shall terminate and the City shall not be responsible to 88 Elm LLC for any compensation or for the provision of any alternate parking.

SECTION 13. DESTRUCTION

A. If, during the term of this Agreement, the Midtown Garage shall be destroyed or damaged in whole or in part by fire or other cause, the City shall give 88 Elm LLC prompt notice thereof. If practically and economically feasible, based on the type and extent of damage, the estimated remaining useful life of the structure, and the availability of insurance proceeds, (this, however, is not a commitment by the City to have insurance or any particular amount of insurance), the City may, but shall not be obligated to, at its own cost and expense, repair, rebuild, and replace the same, at least to the extent of the value and as nearly as possible to the character of the Midtown Garage and the equipment therein existing immediately prior to such occurrence. The City shall give 88 Elm LLC written notice within one hundred twenty (120) days of such occurrence whether or not the damage will be repaired.

B. If the damage set forth in subsection A above is not repaired, it shall be deemed a determination that the Midtown Garage is "unusable for parking" as this phrase is used in this Agreement.

SECTION 14. NOTICES

Any notice, demand or request required or agreed to be given under this Agreement by either party shall be sufficiently given or served if in writing and signed by the party giving it and either (a) personally delivered (including delivery by an overnight express delivery service if a receipt is obtained) or (b) mailed by certified mail, return receipt requested, addressed to the party to be notified as follows:

CITY: Director of Finance
City of Rochester – Department of Finance
City Hall, Room 108A
30 Church Street
Rochester, NY 14614

WITH A COPY TO: Corporation Counsel
City of Rochester – Department of Law
City Hall, Room 400A
30 Church Street
Rochester, NY 14614

TO 88 ELM: Elm Street Ventures, LLC
2604 Elmwood Avenue, Suite 352
Rochester, New York 14618
Attention: Managing Member

or to such other address as the City and/or 88 Elm LLC may from time to time designate by giving notice thereof in writing. Service shall be complete upon such mailing except in case of a notice to change an address in which case service shall be complete when the notice is received by the addressee.

SECTION 15. WAIVERS

No delay or omission by either of the parties hereto in exercising any right or power accruing upon the non-compliance or failure of performance by the other party under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other party shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

SECTION 16. REMEDIES CUMULATIVE.

All rights, privileges and remedies afforded the parties by this Agreement shall be deemed cumulative and the exercise of one of such remedies shall not be deemed to be a waiver of any other right, remedy or privilege provided for herein.

SECTION 17. MODIFICATIONS.

Any alteration, change or modification hereof, in order to become effective, shall be made by written instrument or endorsed hereon and, in each such instance, executed on behalf of each party.

SECTION 18. PARTIAL INVALIDITY.

If any provisions of this Agreement or the application thereof to any party or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

SECTION 19. SUCCESSORS AND ASSIGNS.

This Agreement shall be binding upon and shall inure to the benefit of the respective successors and assigns of the parties hereto.

SECTION 20. FURTHER ACTS.

Each party covenants and agrees that it will at any time and from time to time do, execute, acknowledge and deliver or will cause to be done, executed, acknowledged and delivered all such further acts, documents and instruments as may reasonably be required by the other party in order to carry out fully and effectuate the transactions herein contemplated.

SECTION 21. SECTION HEADINGS, SCHEDULE OF DEFINITIONS AND EXHIBITS.

The section headings in this Agreement are for convenience and for reference only and in no way define or limit the scope or contents of this Agreement or in any way affect its provisions. Unless otherwise set forth, references in this Agreement to sections and subsections shall mean the sections and subsections of this Agreement. All exhibits attached hereto are hereby made a part of this Agreement.

SECTION 22. COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be deemed an original.

SECTION 23. ENTIRE CONTRACT

This Agreement embodies the entire agreement between the parties hereto and may be amended only by a document in writing signed by the parties hereto and properly acknowledged.

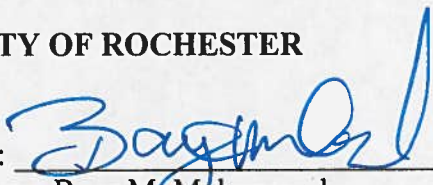
SECTION 24. APPLICABLE LAW

This agreement shall be governed by the laws of the State of New York. Any action or proceeding regarding this agreement shall be brought in the Supreme Court of New York State, in the Seventh Judicial District.

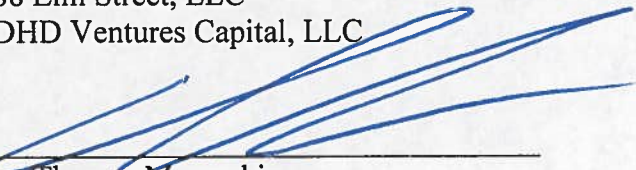
[signature page to follow]

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

CITY OF ROCHESTER

By: 
Name: Baye M. Muhammad
Title: Commissioner, Department of Neighborhood & Business Development

ELM STREET VENTURES, LLC

By: 88 Elm Street, LLC
By: DHD Ventures Capital, LLC
By: 
Name: Thomas Masaschi
Title: Managing Member

STATE OF NEW YORK)

SS:

COUNTY OF MONROE)

On the 5 day of June in the year 2015 before me, the undersigned, a Notary Public in and for said State, personally appeared **Baye M. Muhammad**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Maria Elba Oliver
Notary Public

MARIA ELBA OLIVER
Notary Public - State of New York
No. 01OL6221397
Qualified in Monroe County
My Commission Expires May 3, 2018



STATE OF NEW YORK)

SS:

COUNTY OF MONROE)

On the ~~2~~ day of ^{June} ~~February~~ in the year 2015 before me, the undersigned, a Notary Public in and for said State, personally appeared **Thomas Masaschi**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Ellen A. McGrath
Notary Public

ELLEN A. McGRATH
Notary Public, State of New York
Qualified in Monroe County
My Commission Expires 1/24/18