

PARKING AGREEMENT
(250 Rainbow Boulevard –Jefferson Apartment Building)

THIS PARKING AGREEMENT (this "Agreement"), made as of the ____ day of February, 2018 by and between Jefferson on Rainbow, LLC, a limited liability company organized and existing pursuant to the Laws of the State of New York, with offices at 250 Rainbow Boulevard, Niagara Falls, New York 14303 (the "Jefferson") and the City of Niagara Falls, New York, a New York municipal corporation with offices at 745 Main Street PO Box 69, Niagara Falls New York 14302-0069 (the "City").

WHEREAS, the Jefferson owns and operates an apartment building at 250 Rainbow Boulevard, Niagara Falls, NY 14303 which consists of _____ apartments of various sizes; and

WHEREAS, the Jefferson has requested that the City sell to the Jefferson certain parking permits ("Parking Permits") which permit the holder thereof access to park in certain unreserved parking spaces in the lots owned by the City at 225 Second Street and 238 Third Street (the "Third Street Lot") for the tenants, building managers, employees and invitees of the Jefferson (the "Permitted Users"), and

WHEREAS, the City has parking spaces available in the Third Street Lot for the use of the Jefferson's Permitted Users.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the parties hereto agree as follows:

1. Parking Spaces.

- a. The City agrees to sell to the Jefferson and Jefferson agrees to purchase from City fifty-five (55) Parking Permits, each of which shall grant its holder access to the Third Street Lot for the purpose of parking vehicles in the Third Street Lot. The City agrees that the Jefferson may purchase additional Parking Permits from the City provided the Third Street Lot has sufficient capacity. The City, in its sole discretion, will determine whether there is sufficient capacity in the Third Street Lot to sell additional Parking Permits to the Jefferson. The City agrees that the Jefferson may utilize parking spaces available in the southerly portion of the Third Street Lot if parking spaces are available and may have signage produced and paid for by Jefferson and approved and installed by the City as may be considered necessary or appropriate to affect the orderly use of the Third Street Lot by indicating on such signage that the southerly portion of the Third Street lot is available for the Jefferson's Permitted Users. Jefferson's use of the Third Street Lot for such parking shall be subject to the terms and conditions set forth in this Agreement. Notwithstanding the City's designation of the southerly portion of the Third Street Lot available for use by the Jefferson's Permitted Users, the Jefferson acknowledges and agrees that vehicles other than those of the Jefferson's Permitted Users may also park in the designated areas. No particular parking spaces in the Third Street Lot shall be specifically marked or set aside for use by the Jefferson's Permitted Users, nor shall any parking spaces or portions of the Third Street Lot be specifically reserved for the exclusive use of the Jefferson's Permitted Users.
- b. The use of said Parking Permits shall be restricted solely to Jefferson's Permitted Users. The Jefferson's use of the Third Street Lot shall be limited to parking only of standard automobiles, SUVs and pickup trucks in accordance with this Agreement, and no other use

whatsoever shall be made of the Third Street Lot or any portion thereof by the Jefferson's Permitted Users. The parking of buses, tractor trailer trucks, and recreational vehicles of all description is prohibited.

- c. No parking spaces in the Third Street Lot shall be reserved for the Jefferson's use, nor shall any parking spaces be otherwise designated for the exclusive use of the Permitted Users. Rather, all parking spaces in the Third Street Lot, including the fifty-five (55) parking spaces provided for in this Agreement, shall be available on a nonexclusive, unreserved "first-come, first-served" basis. Notwithstanding the foregoing, the City represents and warrants that the capacity of the Third Street Lot is sufficient to provide adequate unreserved parking spaces for the Jefferson's use to the extent of the fifty-five (55) parking spaces provided for in this Agreement and that the City, in operating the Third Street Lot, shall not allocate parking spaces to other users to such an extent that the fifty-five (55) parking spaces provided for in this Agreement become unavailable for the Jefferson's use.
- d. The Jefferson shall, at all times during which this Agreement remains in place, comply with all reasonable rules and regulations related to all Third Street Lot users promulgated by the City or any employee or managing agent retained by the City to manage the Third Street Lot at any time and from time to time, and shall comply with all applicable statutes, laws, ordinances, regulations, and orders of governmental authorities having jurisdiction over the Third Street Lot.

2. Availability of Parking.

- a. This Agreement is not intended to, nor shall it in any manner be construed to ensure or otherwise guarantee to the Jefferson that, at any particular time while this Agreement is in effect, there will be parking available in the Third Street Lot. The Jefferson acknowledges that the Third Street Lot is periodically full, especially during summer holidays and special events.
- b. In the event that the City needs access to the Third Street Lot for maintenance, repairs or for any other legitimate public purpose, the City may temporarily close or prohibit access to the Third Street Lot, or portions thereof, in which case, parking by the Jefferson's Permitted Users may be temporarily restricted or precluded. In performing such maintenance and repairs with respect to the Third Street Lot, the City agrees to take such steps as are reasonably necessary to minimize any disruption to Jefferson's Permitted Users use of the Third Street Lot pursuant to this Agreement.
- c. In the event the Jefferson is temporarily precluded from using all or any portions of the Third Street Lot from time to time for the reasons described in paragraph 2(a) and 2(b) above, the Jefferson's Permitted Users shall be allowed to temporarily use the Parking Permits issued pursuant to this Agreement for access to unreserved parking spaces in any of the parking lots or other parking facilities operated by the City (collectively, the "Alternate Facilities"), subject, however, to the terms and conditions of this Agreement and subject to any particular rules, regulations, or restrictions that apply to such Alternate Facilities. The City agrees to use reasonable efforts to offer Jefferson's Permitted Users Alternate Facilities as close to the Third Street Lot as possible as the same may be available from time-to-time while the Third Street Lot is unavailable for Jefferson's Permitted Users. Such alternate facilities may include, but not be limited to, the City Parking Ramp on Rainbow Boulevard

and the City surface lots located at First Street and Rainbow Boulevard and Niagara Street, provided it is not otherwise utilized.

Notwithstanding any period during which the Jefferson is precluded due to maintenance or repair work conducted by the City from using the Third Street Lot or any portions thereof, the obligations of the Jefferson hereunder, including, without limitation, the obligation to pay for the Parking Permits issued pursuant to this Agreement, shall remain unchanged and in full force and effect. However, if the City does not make Alternate Facilities available for the Jefferson's Permitted Users use while such maintenance or repair work is being performed, then Jefferson's payment obligations hereunder shall be temporarily abated, to the extent that it is precluded from using the Third Street Lot.

- d. In the event the City requires access to and utilization of the Third Street Lot for the construction of a new City parking ramp, the City may limit, close or prohibit access to the Third Street Lot, or portions thereof, for the duration of construction, in which case, parking by the Jefferson's Permitted Users during the construction of a new City parking ramp will be restricted or precluded.

During the period of time when Jefferson is precluded from using all or a portion of the Third Street Lot during the construction of a new City Parking ramp, the Jefferson's Permitted Users shall be allowed to temporarily use the Parking Permits issued pursuant to this Agreement for access to unreserved parking spaces in any of the Alternate Facilities, subject, however, to the terms and conditions of this Agreement and subject to any particular rules, regulations or restrictions that apply to such Alternate Facilities. The City agrees to use reasonable efforts to offer Jefferson and it's Permitted Users Alternate Facilities as close to the Third Street Lot as possible as the same may be available from time to time while the Third Street Lot is unavailable for Jefferson's use. Notwithstanding any period during which Jefferson is precluded during construction of a new City parking ramp from using the Third Street Lot or any portions thereof, the obligations of the Jefferson hereunder, including, without limitation, the obligation to pay for the Parking Permits issued pursuant to this Agreement shall remain unchanged and in full force and effect.

However, if the City does not make Alternate Facilities available for the Jefferson's Permitted Users use while such construction is being performed, then Jefferson's payment obligations hereunder shall be temporarily abated, to the extent that it is precluded from using the Third Street Lot. Subsequent to the completion of construction of the new City parking ramp on the Third Street Lot, the Parking Permits issued to Jefferson shall be utilized in the new City parking ramp subject to the terms and conditions contained in this Agreement.

3. Repairs. Maintenance. Damage & Destruction.

- a. The City shall, at its expense, perform all required maintenance and repairs and keep the Third Street Lot in good condition and repair for use as a parking facility and in compliance with all applicable laws, regulations, ordinances and codes in effect or which become effective during the term hereof. The City shall not make alterations or construct any improvements to the Third Street Lot, which interfere with vehicle and/or patron access to the Third Street Lot or parking operation without prior written notice to the Jefferson. The City shall, during the initial term and any renewal term of this Agreement, operate the Third Street Lot in a manner consistent with its operation of other City parking ramps and facilities.

- b. If during the initial ten (10) year term hereof and any extensions thereof, the Third Street Lot becomes totally or partially unsound or unusable due to fire, casualty, normal wear and tear, and/or gradual deterioration, the City shall restore the Third Street Lot to substantially the same condition that it was in before such damage or deterioration occurred, subject, however, to such modifications to the Third Street Lot as are required to comply with then applicable laws, codes and regulations. Such damage or deterioration occurring during the initial ten (10) year term hereof or any extensions thereof, shall not terminate this Agreement. If the Third Street Lot or portions thereof become temporarily unavailable to the Jefferson during any such repair and restoration work, the City shall, in accordance with paragraph 2(c) above, allow the Jefferson's Permitted Users to temporarily use the Parking Permits issued pursuant to this Agreement for access to Alternate Facilities, subject, however, to the terms and conditions of this Agreement and subject to any particular rules, regulations, or restrictions that apply to such Alternate Facilities. If the City does not make available for the Jefferson's Permitted Users Alternative Facilities while such repair or restoration work is being performed, then Jefferson's payment obligations hereunder shall be temporarily abated, to the extent that it is precluded from using the Third Street Lot.
- c. Notwithstanding anything to the contrary contained in this Agreement, if, during the initial ten (10) year term hereof and any extensions thereof, the Third Street Lot is damaged or destroyed by earthquake or other casualty, the City shall have the right to terminate this Agreement by written notice to the Jefferson if: (i) the laws and City budget/financial condition then in effect do not permit the restoration, or (ii) the cost of restoring the Third Street Lot would exceed the amount of insurance proceeds available to City by more than \$200,000 (in the aggregate, including any prior restoration costs during the Term), or (iii) the Third Street Lot is destroyed or been damaged to the extent of fifty (50%) or more of the replacement cost thereof. Should the City elect to terminate this Agreement based on one or more of the events described in this subdivision (c), the City shall offer Jefferson's Permitted Users suitable substitute parking in other City owned Alternate Facilities in the vicinity as close to the Third Street Lot as possible.
- d. Notwithstanding anything to the contrary contained in this Agreement, if the Jefferson has elected to extend the term of this Agreement in accordance with paragraph "7" below and the Third Street Lot is totally destroyed by earthquake or other casualty, becomes totally unsound or unusable due to normal wear and tear, and/or gradual deterioration, or is otherwise permanently closed or demolished for any reason during any renewal term hereof, the City shall have the right to terminate this Agreement by written notice to the Jefferson, in which event neither party shall have any further rights or obligations hereunder. Should the City elect to terminate this Agreement based on one or more of the events described in this subdivision 3(d), the City shall endeavor to assist the Jefferson in locating suitable substitute parking in other City owned Alternate Facilities in the vicinity as close to the Third Street Lot as possible.

4. Parking Procedure.

- a. At all times during the term of this Agreement and any extensions thereof, the Jefferson agrees to provide the City with current information regarding the identity of the Jefferson's Permitted Users as well as the make, model and license plate of the vehicle owned and/or operated by the Permitted Users to enter and exit and park in the Third Street Lot (the "Required Information"). Upon receiving the Required Information from the Jefferson, as well as any updates of the Required Information, the City agrees to enter the Required

Information into its parking data base so that the Jefferson's Permitted Users will properly appear in the City's data base and license plate reader system. The Jefferson also agrees to notify the City immediately when any Permitted User is no longer a Permitted User. In addition, the City agrees to provide the Jefferson with a sufficient quantity of rear view mirror "hang tags" for the Jefferson to distribute to each of its Permitted Users. The Jefferson agrees to require each of its Permitted Users to affix a "hang tag" to the rear view mirror of the vehicle owned and/or operated by a Permitted User when entering or exiting or parking in the Third Street lot. The Jefferson further agrees to recover the "hang tag" from each Permitted User each time a Permitted User ceases to be a Permitted User.

The parties agree that the purpose of a hang tag is to assist City personnel in identifying a vehicle operated by a Permitted User in the event that a Permitted User's license plate number may not appear in the City's data base and license plate reader system.

- b. The City reserves the right to adopt, by written notice to the Jefferson, different procedures and requirements at any time and from time to time for allowing access by Permitted Users to the Third Street Lot and for monitoring and charging applicable fees for parking. In this regard, in order to participate in any parking program developed by the City and to comply with any procedures and requirements adopted by the City, Jefferson agrees to pay any cost required for the installation and licensing of any hardware and software required at Jefferson's premises or elsewhere in order for Jefferson's Permitted Users to access the Third Street lot. Jefferson also agrees to pay any cost incurred by the City in order for Jefferson's data and information pertaining to Permitted Users to be stored in the City's system.

5. Payment.

- a. In consideration of the sale by the City to the Jefferson of fifty-five (55) Parking Permits for its Permitted Users pursuant to paragraph 1 of this Agreement, the Jefferson shall pay to the City during the first five (5) years of the term of this Agreement the sum of Forty and 00/100 Dollars (\$40.00) per month per Parking Permit (the "Parking Permit Fees"). Payment for any Parking Permits issued under this Agreement shall be made to the City in equal semi-annual installments, in arrears, on the first day of July and the first day of January each year during the term of this Agreement and any extension terms hereof. Payments made after the fifteenth (15th) day of the month in which payment is due shall bear an additional four percent (4%) per month late payment penalty.
- b. Subject to the City's rights under paragraph 5(d) below to review and adjust the Parking Permit Fees after the fifth (5th) year of the commencement of the term of this Agreement, and every five (5) year anniversary thereafter, the Parking Permit Fees for any Parking Permits issued under this Agreement shall automatically increase by five percent (5%) on the fifth (5th) anniversary of the commencement of the term of this Agreement, and on every five (5) year anniversary thereafter including any extensions of the term hereof.
- c. In the event that the daily number of Permitted Users exceeds the number of Parking Permits held by the Jefferson on such date, then the City shall bill the Jefferson, at the then current daily parking rates applicable to the Third Street Lot for such excess use, and the Jefferson shall pay the additional charges to the City on the date when the next semiannual Parking Permit fees are payable by the Jefferson to the City hereunder.

- d. Notwithstanding anything to the contrary contained in this Agreement, commencing on the fifth (5th) anniversary of the commencement of the term of this Agreement and on every five (5) year anniversary thereafter, including any extensions thereof, the City shall have the right, by written notice to the Jefferson, to increase the monthly per parking space rates then in effect pursuant to this Agreement to the current rates that are then applicable to new customers of the Third Street Lot, or new City parking ramp, as the case may be, as such rates are set by the City Council or by any other person, official or entity having authority to do so. Upon any such increase in the rates payable hereunder, the Jefferson agrees to pay Parking Permit Fees hereunder at such higher rates from the effective date of the increase, as specified in the notice given by the City to the Jefferson; provided, however, that such increased Parking Permit Fees shall also be subject to further automatic increases of five percent (5%) every five years during the term of this Agreement (and any extensions thereof), as provided in paragraph 5(b) of this Agreement.

6. Initial Term.

This Agreement shall commence upon the execution of this Agreement by the City and the Jefferson and is subject to approval of the Niagara Falls City Council. The initial term of this Agreement shall expire ten (10) years from the last day of the calendar month in which the term of this Agreement commenced. In the event the term of this Agreement commences on a day other than the first day of a calendar month, the initial monthly Parking Permit Fees due hereunder shall be prorated and adjusted for such first partial month of the term hereof.

7. Options to Extend.

So long as the Jefferson is not in default of any term, covenant, or provision of this Agreement, and provided this Agreement is then in effect and the Third Street Lot or a new City parking ramp is in operation, the Jefferson shall have four (4) options to extend the term of this Agreement; each for an additional five (5) year term (hereinafter referred to collectively as the "Extension Options". To exercise its Extension Options hereunder, the Jefferson shall give the City written notice of its election to do so at least six (6) months and no more than twelve (12) months prior to the expiration of the initial term or the immediately preceding extension term hereof, as the case may be. All of the terms, conditions, and provisions of this Agreement that apply to the initial term shall also apply to the extension terms.

8. Insurance.

During the initial term of this Agreement and any extension term, the Jefferson shall carry comprehensive commercial general liability insurance, insuring the Jefferson and the City against claims for loss of life, bodily injury and property damage occurring in, on or about the Third Street Lot, in accordance with the Insurance Requirements set forth in Exhibit "A" attached hereto and made a part hereof. The City reserves the right to modify and amend the insurance requirements upon reasonable notice to Jefferson.

9. Violation and Termination.

The City may terminate this Agreement in the event that the City, in its sole discretion, determines that the Jefferson is in violation of any material term or material condition contained herein. Prior to exercising such right of termination, the City shall first give written notice to the Jefferson, delivered to the Jefferson at 250 Rainbow Boulevard, Niagara Falls, New York or any other address designated by the Jefferson, of such violation, at least thirty (30) days prior to the

effective date of such termination. The Jefferson shall then have the opportunity to cure such violation, if it may be cured, within such thirty (30) day period (provided, however, in the event that such violation is of a nature that it cannot reasonably be cured within such thirty (30) day period, Jefferson shall be granted a reasonable amount of additional time to cure such violation provided that Jefferson commences such curative action within the first thirty (30) days). Unless the violation is cured to the satisfaction of the City, the Agreement shall terminate and the Jefferson shall have the same rights to parking in the Third Street Lot as the public at large, but shall have no further rights under this Agreement. In the event that the City shall commence legal proceedings to enforce the terms of this Agreement against the Jefferson, to enforce any termination by the City of this Agreement, or to defend any litigation commenced by the Jefferson against the City with respect to this Agreement or issues or claims arising hereunder, then the Jefferson shall pay all costs and expenses (including, without limitation, reasonable attorneys' fees and court costs) which the City incurs in prosecuting or defending any such actions or proceedings.

10. Assignment.

This Agreement may not be assigned by the Jefferson without the prior written consent of the City and provides the City with a copy of the written assignment and written assumption agreement. The City shall have the right to sell or otherwise transfer title to the Third Street Lot at any time, and the City shall have no continuing obligations or liability to the Jefferson hereunder accruing after the date of any such transfer of title to the Third Street Lot, provided the transferee of the Third Street Lot assumes in writing all of the City's obligations hereunder.

11. Miscellaneous.

- a. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, assigns and/or transferees (to the extent assignment or transfer is permitted hereunder).
- b. Any notices required or permitted to be given pursuant to this Agreement shall be in writing and shall be sufficiently given if personally delivered or sent by nationally recognized overnight courier service (such as Federal Express, UPS overnight delivery, etc.), at the respective addresses set forth above in this Agreement for the City or the Jefferson, respectively (or to such other addresses as may be furnished by either party to the other in writing). If personally delivered, such notices shall be deemed to have been given upon delivery; if sent by nationally recognized overnight courier services, such notices shall be deemed to have been delivered one day after the notice was sent.
- c. This Agreement constitutes the entire agreement between the City and the Jefferson relating to the Third Street Lot and the parking rights described in this Agreement, and is intended to supersede any prior agreements between the parties with respect to the same.
- d. This Agreement may not be amended or supplemented except by a writing signed by both the City and the Jefferson.
- e. This Agreement shall be interpreted and construed in accordance with the laws of the state of New York without reference to principles of conflicts of laws.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.

CITY OF NIAGARA FALLS, NEW YORK.

By: _____

PAUL A. DYSTER, Mayor

ATTEST: _____

City Clerk

Exhibit "A"

Insurance Requirements

INSTRUCTIONS FOR CITY OF NIAGARA FALLS STANDARD INSURANCE CERTIFICATE

Standard Insurance Requirements apply to the following classifications:

- Construction and Maintenance
- Purchase of, or lease of, merchandise or equipment
- Professional Services
- Property Leased to Others or Use of Facilities or Grounds
- Concessionaire Services
- Livery Services
- All purpose Public Entity Contracts

The Provider of any of the above classifications shall obtain, at his own costs and expense, the following insurance coverage with insurance companies licensed in the State of New York with a Best Rating of at least B+ and shall provide a Certificate of Insurance as evidence of such coverage to the City of Niagara Falls before commencement of work and/or lease or delivery of merchandise or equipment.

Certificate should be made to the City of Niagara Falls, New York, City Hall, 745 Main Street, P.O. Box 69, Niagara Falls, N.Y. 14302-0069, and should reference the operation.

In the description area of certificate, the name/purpose, dates, and places of event or encroachment must be specified.

Prior to non-renewal, cancellation of insurance policies, or material change, at least 30 days advance written notice shall be given to the Certificate Holder.

All Certificates of Insurance shall be approved by the Law Department prior to the inception of any work.

Minimum coverage with limits and provisions are as follows:

A. Comprehensive General Liability:

With a minimum combined single limit of liability for Bodily Injury and Property Damage of \$1,500,000.00 per occurrence and \$3,000,000.00 annual aggregate. The coverage shall include:

- * Premises and Operations
- * Products and Completed Operations
- * No exclusion for X C U coverages (explosion, collapse and underground)
- * Independent Contractors
- * Broad Form Property Damage
- * Contractual Liability
- * Fire Legal Liability
- * Personal Injury Liability (Coverage A, B, and C)
- * Liquor Liability (if alcoholic beverages are to be dispensed under NYS license.)

If the work to be performed is undertaken pursuant to a home improvement contract and a City right-of-way permit is required only by reason of the installation, repair or replacement of a driveway, apron, or sidewalk within the City right-of-way, then the limits of liability for comprehensive general liability set forth in this section shall be \$1,000,000 per occurrence and \$2,000,000 annual aggregate.

The City of Niagara Falls shall be named as an Additional Insured on the General Liability Policy with the following provisions:

1. The insurance company or companies issuing the policies shall have no recourse against the City of Niagara Falls for payment of any premiums or for assessments under any form of policy.
2. The insurance shall apply separately to each insured (except with respect to the limit of liability.)

INSTRUCTIONS FOR CITY OF NIAGARA FALLS STANDARD INSURANCE CERTIFICATE

- B. Auto Liability: (if licensed vehicles are to be used in the operation)
With a combined single limit for Bodily Injury and Property Damage of \$1,000,000.00 each occurrence, the coverage shall include Owned, Hired and Non-owned autos (Symbol 1 should be designated for Liability Coverage on Business Auto Policy.)
- C. Excess Umbrella Liability:
If General Liability and/or auto limits are lower than required in the above sections, Umbrella Liability or Excess Liability to the required limit is acceptable.
- D. Owners Protective Liability: (on contracts for construction which exceed a cost of \$100,000.00)
With a minimum limit of \$1,500,000.00 each occurrence and \$3,000,000.00 aggregate. Named insured shall be the City of Niagara Falls, New York.
- E. Professional Liability:
If the contract includes professional services (engineers, architects, etc.), contractor will carry professional liability insurance with a minimum limit of one million dollars (\$1,000,000.00).
- F. Property Insurance: (if applicable)
Contractor shall purchase and maintain property insurance upon the work at or off the site to 100% of the contract completed value. This insurance shall include the interest of the Owner, Contractor, and Subcontractors in the work; shall insure against the perils of fire and extended coverage; shall include "all risk" insurance for physical loss and damage including theft, vandalism and malicious mischief, collapse and water damage. All such insurance required by this paragraph shall remain in effect until the Work is completed and accepted by the owner.
- G. Statutory Workers' Compensation and Employers Liability:
All contractors doing business with or vendors entering upon City of Niagara Falls property shall carry the above insurance in compliance with the Worker's Compensation Law of the State New York.
- H. Performance and Payment Bond: (where applicable)
A performance and payment bond shall be issued by a Surety company who is licensed by the Insurance Department of the State of New York in favor of the City of Niagara Falls in the amount of not less than one hundred (100) percentum of the total amount and shall be delivered before commencement of lease or assumption of operations under contract.

Note: If the contract is for Professional Services only (engineers, architects, etc.), Paragraphs D, F, and H will not apply.

Revised May 2006