

AGREEMENT AND DECLARATION OF EASEMENTS

THIS AGREEMENT AND DECLARATION OF EASEMENTS (this "**Declaration**") is made and entered into as of the ____ day of June, 2024 by the **City of New Haven**, a municipal corporation organized and existing under the laws of the State of Connecticut with a mailing address of 165 Church Street, New Haven, Connecticut 06510 (the "**City**"), the **New Haven Parking Authority**, a special purpose municipal authority created by Special Act 51-4731 of the General Assembly of the State of Connecticut, as amended, with a mailing address of 232 George Street, New Haven, Connecticut 06510 (the "**Parking Authority**"), and **The Downtown Evening Soup Kitchen, Inc.**, a non-profit corporation organized and existing under the laws of the State of Connecticut with a mailing address of 266 State Street, New Haven, Connecticut, 06510 ("**DESK**") (collectively the "**Parties**").

WITNESSETH:

WHEREAS, the City is the owner in fee simple of a certain piece or parcel of land, situated in the City of New Haven, County of New Haven and State of Connecticut known as 270 State Street, as more further described on **Exhibit A** attached hereto (the "**State Street Parcel**"); and

WHEREAS, the State Street Parcel is presently improved with a parking garage operated and maintained by the Parking Authority (the "**270 State Street Garage**"); and

WHEREAS, DESK is the owner in fee simple of the parcel of land south of and immediately adjacent to the State Street Parcel, situated in the City of New Haven, County of New Haven and State of Connecticut known as 266 State Street, as more further described on **Exhibit A-1** attached hereto (the "**DESK Parcel**");

WHEREAS, the DESK Parcel abuts the State Street Parcel as more particularly shown on the map attached hereto as **Exhibit B**.

WHEREAS, DESK is commencing renovations and expansion of the improvements currently situated upon the DESK Parcel (the "**DESK Renovations**");

WHEREAS, the DESK renovations require certain new footings and underpinnings to the existing improvements (the "**DESK Building**"), portions of which are required to be situated under the State Street Parcel and the City and the Parking Authority wish to support the DESK Renovations project; and

WHEREAS, the Parties wish to create, declare and establish certain easements, rights, obligations and interests with respect to the DESK Parcel and the State Street Parcel for the benefit of each other;

NOW, THEREFORE, the City, as owner of the State Street Parcel, the Parking Authority, as operator of the 270 State Street Garage on the State Street Parcel, do hereby grant, declare and establish the following easements, rights, obligations, and interests and DESK, as owner of the DESK Parcel, undertakes and agrees as follows:

1. EASEMENTS FROM CITY AND PARKING AUTHORITY TO DESK (COLLECTIVELY THE "EASEMENTS")

1.1 The City hereby grants, with the consent of the Parking Authority, to DESK the following construction easements and rights:

- (a) **Grant of Construction Easement:** The Construction Easement shall be used for purposes of construction, access, and similar construction-related purposes in connection with the DESK Renovations, as more particularly described in **Exhibit C** attached hereto.
- (b) **Term:** The period during which DESK shall be permitted to perform Construction Activities (the "**Construction Period**") on the State Street Parcel shall commence on or about June 4, 2024 and continue until December 31, 2024.
- (c) **Extension:** DESK may request one (1) extension of the Construction Period of not more than 180 days, and which may be granted by mutual consent of the City and the Parking Authority. Consent shall not be unreasonably withheld.

1.2 Grant of Permanent Easement:

- (a) **Permanent Easement:** The City with the consent of the Parking Authority, does hereby give, grant, bargain, sell and confirm unto DESK, and unto its successors and assigns, forever, the right, privilege, and authority to repair, reconstruct, maintain, and inspect, upon, along, across, over the State Street Parcel as more particularly bounded and described on **Exhibit C**.
- (b) **Bind and Inure:** The covenants, agreements, and Easements of this Section 1.2 shall be permanent and perpetual, and shall run with land, be appurtenant to and bind the DESK Parcel and the State Street Parcel and shall be binding upon and inure to the benefit of and be enforceable by the City, the Parking Authority and DESK, as the case may be, and their respective successors and assigns.
- (c) **Termination Upon Demolition of the DESK Building:** The grant of easement in this Section 1.2 shall automatically terminate and be released, in the event that the DESK Building is demolished.

2. NO UNREASONABLE INTERFERENCE.

2.1 Notwithstanding anything to the contrary provided for herein, the easements and other rights granted by the City, with the consent of the Parking Authority, to DESK shall not be construed to permit or authorize DESK to unreasonably or adversely interfere with any of the City's or the Parking Authority's operations or the operations of any tenants on the State Street Parcel, or the 270 State Street Garage when exercising the rights under such easements or other rights granted hereunder. In the event that it is necessary for DESK to enter any space in the State Street Parcel or the 270 State Street Garage in order to exercise any of its rights hereunder, DESK shall adhere to all entry protocols, including but not limited to any tenant lease provisions, any security protocols, and any insurance protocols, when exercising DESK's rights

hereunder. The City and/or the Parking Authority shall provide such entry requirements to DESK, as applicable.

2.2 For any work undertaken by DESK in connection with the Easements, DESK shall provide both the City and the Parking Authority at least forty-eight (48) hours prior notice via email of any planned entry into the State Street Parcel or the 270 State Street Garage for the purposes of exercising rights herein.

3. INDEMNIFICATION AND INSURANCE.

3.1 DESK hereby agrees to indemnify and hold the City and the Parking Authority, as applicable, harmless from all claims, liabilities and demands arising from or relating to DESK's exercise of its rights under any of the Easements, which indemnification shall be inclusive of reasonable attorneys' fees and costs except that no indemnification shall apply to the extent that any such claims arise out of the City's or the Parking Authority's or their agents', contractors', subcontractors' or employees' own negligence.

3.2 During the Construction Period, any extension of the Construction Period, or at any time DESK or its agent(s) accesses the State Street Parcel for reconstruction of maintenance purposes, DESK shall maintain and provide the City and the Parking Authority proof insurance as set forth in Exhibit D-1 and D-2 attached hereto. In addition to the insurance policy limits as described in Exhibit D-1 and D-2, DESK shall provide comprehensive general liability insurance policy with at least \$5,000,000. DESK shall provide to the City and the Parking Authority a certificate of insurance evidencing comprehensive general liability insurance policy with at least \$5,000,000 naming the City and the Parking Authority as additional insureds.

4. **BONDING:** To the extent applicable, DESK shall procure and provide any and all necessary bonds (including, but not limited to payment for labor and material, performance, and warranty bonds) to the City and to the Parking Authority, for the work being undertaken by DESK as described herein. On any bonds, DESK shall name the City and the Parking Authority as additional obligees.

5. **INSPECTION AND REPORTS:** DESK shall provide to the City and the Parking Authority any inspection and monitoring information of the work affecting the State Street Parcel and/or 270 State Street Garage and provide all applicable reports and findings, upon DESK's receipt of any such reports. Such reports shall include, but not limited to, special inspector reports, construction inspector reports, and design professional reports.

6. MISCELLANEOUS.

6.1 Notices.

- (a) Except as otherwise provided in this Declaration, any notice or approval required or permitted to be given under this Declaration shall be in writing and shall be given by both email and certified mail return receipt requested or by overnight delivery courier or such other means as may be agreed to by the parties in writing with a copy addressed to the Party for whom it is intended as follows:

IF TO DESK:

The Downtown Evening Soup Kitchen, Inc.
Attn: Steve Werlin
266 State Street
New Haven, CT 06510
Via Email: swerlin@deskct.org

with copies to:

Ann H. Zucker, Esq.
Carmody Torrance Sandak & Hennessey, LLP
1055 Washington Blvd.
Stamford, CT 06901
Via Email: azucker@carmodylaw.com

IF TO THE CITY:

City of New Haven
Attention: Economic Development
Administrator
165 Church Street
New Haven, CT 06510
Via Email: mpiscite@newhavenct.gov

with copies to:

City of New Haven
Attention: Atty. Michael J. Pinto
Assistant Corp. Counsel
165 Church Street
New Haven, CT 06510
Via Email: mpinto@newhavenct.gov

IF TO THE PARKING AUTHORITY:

New Haven Parking Authority
232 George Street
New Haven, CT 06510
Attn: Executive Director
Via Email: dhausladen@nhparking.com

with a copy to:

Joseph L. Rini, Esq.
51 Elm Street, Suite 420
New Haven, CT 06510
Via Email: riniassoc@gmail.com

Clifford A. Merin, Esq.
1115 Broad Street
Bridgeport, CT 06604
Via Email: cmerin@cohenandwolf.com

Each Party shall have the right to change the place or person or persons to which notices, requests, demands, and communications hereunder shall be sent or delivered by delivering a notice to the other Parties in the manner required above.

Notice shall be deemed to have been given or made upon (i) the next business day after delivery to a regularly scheduled overnight delivery carrier with delivery fees prepaid, if notice is sent by overnight carrier; (ii) receipt if notice is sent by certified mail; or (iii) when agreed to by the Parties in writing.

6.2 **No Waiver.** Waiver of any right hereunder by any Party, shall not discharge or invalidate such covenant or provision or affect the right to enforce the same in the future. No default shall be deemed waived by any Party unless such waiver is in writing and designated as such and signed by such Party, and such waiver shall not be a continuing waiver but shall apply only to the instance of default for which it is granted.

6.3 **Rights Cumulative.** The rights and remedies conferred upon any Party hereby are in addition to any rights or remedies to which any Party may be entitled to at law or in equity, except as otherwise provided in this Declaration.

6.4 **Successors.** This Declaration shall be binding upon and inure to the benefit of the respective successors and assigns of the City, the Parking Authority, and DESK.

6.5 **Severability.** If any term, provision or condition contained in this Declaration shall, to any extent, be invalid or unenforceable, the remainder of this Declaration or the application of such term, provision or condition to persons or circumstances (other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each term, provision and condition of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

6.6 **Governing Law and Jurisdiction.** This Declaration is made in the State of Connecticut and shall be governed by and construed in accordance with the internal laws of the State of Connecticut, without regard to its conflicts of law principles. The Parties consent and agree that the state courts of Connecticut shall have jurisdiction over any dispute arising under this Declaration. The Parties further consent and agree that the federal courts sitting in Connecticut shall also have jurisdiction over any dispute arising under this Declaration.

6.7 **Amendments.** The City, the Parking Authority, and DESK agree that the provisions of this Declaration may be modified or amended, in whole or in part, only by written document executed by the City and DESK.

6.8 **Counterparts.** This Declaration may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed Declaration of Easements as of the date set forth above.

In the presence of:

CITY OF NEW HAVEN

By _____
Hon. Justin Elicker
Its Mayor
Duly Authorized to act herein

Approved as to form and correctness:

Atty. Michael J. Pinto
Deputy Corporation Counsel
City of New Haven

The Downtown Evening Soup Kitchen, Inc.

By _____
Steve Werlin
Its: Executive Director
Duly Authorized to act herein

NEW HAVEN PARKING AUTHORITY

By _____
Name: Norman Forrester
Its: Chairman
Duly Authorized to act herein

STATE OF CONNECTICUT)
)
COUNTY OF NEW HAVEN) ss:

On this _____ day of _____, 2024, before me, the undersigned officer, personally appeared JUSTIN ELICKER, who acknowledged himself to be the Mayor of the City of New Haven, and that as such Mayor, being authorized so to do by the Board of Alders, executed the foregoing instrument for the purposes contained therein, by signing on behalf of the City of New Haven, said act being the free act and deed of the City of New Haven and his free act and deed as such Mayor.

Notary Public
Commission expires:
Commissioner of the Superior Court

STATE OF)
)
COUNTY OF) ss:

On this _____ day of _____, 2024, before me, the undersigned officer, personally appeared STEVE WERLIN, who acknowledged himself to be the Executive Director of The Downtown Evening Soup Kitchen, Inc., a Connecticut non-profit corporation, and that as such Executive Director, being authorized so to do, executed the foregoing instrument for the purposes contained therein, by signing on behalf of The Downtown Evening Soup Kitchen, Inc. as his free act and deed as such Executive Director.

Notary Public
Commission expires:
Commissioner of the Superior Court

STATE OF CONNECTICUT)
)
COUNTY OF NEW HAVEN) ss:

On this _____ day of _____, 2024, before me, the undersigned officer, personally appeared NORMAN FORRESTER, who acknowledged her/himself to be the Chairman of the Board of Commissioners of the NEW HAVEN PARKING AUTHORITY, and that as such Chairman being authorized so to do, executed the foregoing instrument for the purposes contained therein, by signing on behalf of the New Haven Parking Authority, said act being the free act and deed of the NEW HAVEN PARKING AUTHORITY and her/his free act and deed as such Chairman.

Notary Public
Commission expires:
Commissioner of the Superior Court