

MONROE COUNTY CLERK'S OFFICE

ROCHESTER, NY

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Receipt # 1013114

Index DEEDS

Book 11343 Page 591

No. Pages : 20

Instrument AGREEMENT WITH TP584

Date : 12/26/2013

Time : 02:41:00PM

Control # 201312260465

TT # TT0000007795

Ref 1 #

Employee : AlanaM

Return To:
BOX 93

MIDTOWN TOWER LLC
ROCHESTER CITY OF

MIDTOWN TOWER LLC
ROCHESTER CITY OF

COUNTY FEE TP584	\$	5.00
COUNTY FEE NUMBER PAGES	\$	95.00
RECORDING FEE	\$	45.00
STATE FEE TRANSFER TAX	\$	0.00

Total \$ 145.00

State of New York

MONROE COUNTY CLERK'S OFFICE

WARNING - THIS SHEET CONSTITUTES THE CLERKS
ENDORSEMENT, REQUIRED BY SECTION 317-a(5) &
SECTION 319 OF THE REAL PROPERTY LAW OF THE
STATE OF NEW YORK. DO NOT DETACH OR REMOVE.

TRANSFER AMT

TRANSFER AMT

\$1.00

CHERYL DINOLFO

MONROE COUNTY CLERK



FI182-201312260465-20

Record & Return
Box 93
(JPP)

PARKING AGREEMENT

This Parking Agreement (this "Agreement"), dated as of December 20, 2013, is by and between **CITY OF ROCHESTER**, with offices at City Hall, 30 Church Street, Rochester, New York 14614 ("City"), and **Midtown Tower LLC**, a limited liability company having its principal office located at c/o Buckingham Properties, 259 Alexander Street, Rochester, New York 14607 ("MT LLC"). The City and MT LLC are each a "Party," and are collectively referred to as the "Parties."

RECITALS:

WHEREAS, the City is the owner of certain real property in the City of Rochester, New York, (the "Midtown Site") shown by cross-hatching on a plan by LaBella Associates PC titled "Resubdivision of Lots 1, 2, 3 and 4 of the Midtown Redevelopment Subdivision" (the "Existing Resubdivision Map") and attached hereto as **Exhibit A**; and

WHEREAS, 280 East Broad Street, Rochester, New York, known as Lots AR3 on a plan prepared by Labella Associates PC titled "Resubdivision of Lots R3, R4 and R2E of the Resubdivision of Lots 1, 2, 3, and 4 of the Midtown Redevelopment Subdivision filed in the Monroe County Clerk's Office in Liber 346 of Maps, 85 (the "New Resubdivision Map") and more particularly described on **Exhibit B** attached hereto (the "Premises"), is a portion of the City owned Midtown Site and improved with a seventeen (17) story building and tower ("Midtown Tower") containing approximately 357,000 square feet; and

WHEREAS, the City is the owner of an underground parking garage (the "UPG") located on the Midtown Site which is shown in detail on plan prepared by Labella Associates PC titled Level A Functional Plan, Level B Functional Plan, and Level C Functional Plan, all of which are attached hereto as **Exhibit C**, a portion of which is located on a part of the below-grade portions of the Premises (the "Transferred UPG") as shown on the diagram attached hereto as **Exhibit D**; and

WHEREAS, the City is the owner of a parking garage located on South Avenue (the "SAG"); and

WHEREAS, the City is the owner of a parking garage located on Mortimer Street (the "MSG"); and

WHEREAS, the City is the owner of a parking garage located on E. Main Street (the "EEG"); and

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RECORDED

WHEREAS, the MT LLC wishes to purchase the Premises to develop approximately 160 to 182 rental housing units (the "Residential Phase") and to develop the first three (3) to five (5) stories of the seventeen (17) story Midtown Tower as commercial space (the "Commercial Phase"), approximately all as shown on plans prepared by CJS Architects (collectively the "Project") at a cost of approximately \$57,000,000; and

WHEREAS, the MT LLC and the City further wish to utilize the UPG pursuant to the terms and conditions of a Reciprocal Easement Agreement (the "Reciprocal Easement Agreement"), the form and substance of which shall be mutually agreed upon by the MT LLC and the City prior to Closing (as hereinafter defined); and

WHEREAS, the MT LLC requires a parking agreement to secure parking to support the residential and commercial components of the Project; and

WHEREAS, the City is willing to provide parking as set forth below to meet the needs of MT LLC.

NOW, THEREFORE, the Parties agree as follows:

SECTION 1. INITIAL TERM

The initial term of this parking agreement shall commence as of April 1, 2014 and shall terminate July 31, 2039 ("Initial Term"), subject to the renewal provisions set forth below.

SECTION 2. RENEWAL TERM

Provided MT LLC is not in default of this Agreement beyond any applicable cure period, and further provided that MT LLC has not delivered written notice of its intent not to renew this Agreement to the City 90 days prior to the end of the term, and further provided City Council has approved such extension, the Term of this Agreement may be extended for one (1) additional five (5) year renewal term ("1st Renewal Term"). Provided MT LLC is not in default of this Agreement during the 1st Renewal Term, beyond any applicable cure period, and further provided that MT LLC has not delivered written notice of its intent not to renew this Agreement to the City 90 days prior to the end of the Renewal Term], and further provided City Council has approved such extension, the Term of this Agreement may be extended for one (1) more additional five (5) year renewal term ("2nd Renewal Term").

Each of the renewal terms shall be upon the same terms, conditions, covenants and provisions contained in this Agreement. There shall be no right

to renew this Agreement after the expiration of 2nd Renewal Term (the Initial Term and if applicable, the First Renewal Term and/or the 2nd Renewal Term are collectively, the "Term").

SECTION 3. PARKING SPACE COMMITMENT

A. **Designated Parking Spaces:** The parties agree to establish and designate approximately four hundred twenty-three (423) parking spaces, but in no event less than four hundred (400) parking spaces, located on Level C in the UPG and more particularly shown within the boundaries set forth on **Exhibit E** (collectively, the "Designated Parking Spaces"), for exclusive use by MT LLC. As more fully set forth in this Agreement, MT LLC shall be responsible for the installation and maintenance of signage necessary to appropriately mark the Designated Parking Spaces. If MT LLC does not use any of the Designated Parking Spaces for parkers utilizing, leasing or owning portions of the residential or the commercial components of the Project (collectively "MT LLC Customers") it may not sublet the parking spaces to third parties or the general public for less than the market rates charged to daily parkers by the City.

B. **Additional Parking Passes:** Commencing April, 2014 and subject to the discretion of the City's Director of Parking, MT LLC and/or only its designated customers and tenants will have the right to purchase up to two hundred fifty (250) parking passes at market rate from the City. One hundred twenty-five (125) shall be in the UPG and one hundred twenty-five (125) shall be in the SAG, EEG, and/or MSG. Any such parker will have to provide written proof from MT LLC, that it is an MT LLC customer or tenant and is entitled to one of the Additional Parking Passes. At the end of the fifth year after the date the final certificate of unconditional certificate of occupancy is provided to MT LLC for the Midtown Site, if MT LLC fails to use all of the two hundred fifty (250) Additional Parking Passes for a period of over twelve (12) months, the number of Additional Parking Passes available under this Agreement shall be permanently reduced by the number of parking passes not used any time during the previous twelve (12) month period.

C. **Public Parking:** The City shall designate a portion of Level A in the UPG, consisting of two hundred fifty (250) parking spaces, as non-exclusive public parking ("Public Spaces") as shown within the boundaries set forth on **Exhibit** __ attached hereto and made a part hereof. The City hereby agrees that they shall not, without prior written consent of MT LLC, reduce the amount of Public Spaces in the UPG.

D. Any user of either the commercial and residential component of

the Project not able to utilize any parking space or parking pass set forth in this Agreement shall be entitled to use the UPG, SAG, EEG, and MSG in the same manner as any other member of the general public.

E. The City and/or its garage operator shall provide prior written notice, on a monthly basis, of upcoming events requiring use of the UPG other than the Designated Parking Spaces, as well as any scheduled repairs, etc. ("Garage Events") scheduled to occur within the succeeding twelve (12) months that could reduce or otherwise impact the availability of Public Parking in the UPG (the "Monthly Notice"). The City and/or its garage operator shall use their best efforts to provide prior notice to MT LLC of any Garage Events that are scheduled to occur between Monthly Notices. Notwithstanding anything in this Agreement to the contrary, the Designated Parking Spaces shall not be made available to the City for Garage Events.

SECTION 4. PARKING CHARGES

A. The City shall charge MT LLC annual rent of Fifty Thousand and 00/100 Dollars (\$50,000.00) for the Designated Parking Spaces. Such payment shall be due and payable on the first day of July each year of the Term. The payment shall not be prorated if MT LLC commences the Term after July 1st or if it terminates the Term prior to June 30th. These annual payments shall be made to the City's Director of Parking.

B. All other parking passes or spaces set forth in this Agreement shall be at market rate set by the City. Any payment obligations of MT LLC other than for the Designated Parking Spaces, to the City under this Agreement shall be made through the Parking Bureau of the City or if a garage operator is chosen to operate any of the garages, to the garage operator specified in writing by the City.

SECTION 5. OPERATIONS

A. The UPG, SAG, EEG, and MSG shall be accessible for use twenty-four(24) hours a day, seven (7) days a week.

B. The use of the UPG, SAG, EEG, and MSG shall be subject to rules and regulations set forth by the City ("Garage Rules"). Garage Rules shall be provided to MT LLC by the City and/or its garage operator as soon as reasonably possible following adoption thereof.

C. The City shall provide written notice to MT LLC if it chooses a garage operator or if a garage operator is changed during the Term.

D. The City shall be responsible for security at the UPG, SAG, EEG, and MSG but not the Designated Parking Spaces in the UPG . MT LLC must provide security for the Designated Parking Spaces in the UPG at its own cost as long as such security does not interfere with the City's activities or with the activities of the public using any such garage.

E. MT LLC will be responsible for the operation and maintenance of the Designated Parking Spaces (including, but not limited to, striping, lighting, and cleaning costs for the Designated Parking Spaces).

SECTION 6: SIGNAGE

MT LLC, at its sole cost and expense, shall provide, install and maintain signage throughout the Term, indicating that each of the Designated Parking Spaces are reserved for the exclusive use of MT LLC. Notwithstanding MT LLC's responsibility to provide, install and maintain the signage, the City shall have the right to review and approve the signage prior to installation. If the City fails to either approve or disapprove the signage proposed by MT LLC within ten (10) days after delivery of the proposed signage design(s) to the City, the signage shall be deemed approved by the City as submitted. In-kind replacement of existing signage is permitted without City approval.

MT LLC may not provide, install or maintain any other signage in the UPG.

The City shall be responsible for any signage in regards to public parking, including but not limited to the Public Parking set forth above.

SECTION 7. NOTIFICATION

All notices, demands and requests which may be given or are required to be given by either Party to the other must be in writing. All notices, demands and requests by the City or MT LLC shall be personally delivered or forwarded by United States certified mail, return receipt requested, postage prepaid and addressed as follows:

CITY: Department of Neighborhood and Business
Development
City Hall, Room 223B
30 Church Street
Rochester, New York 14614
Attn. Commissioner

With a copy to:

Corporation Counsel
City of Rochester – Department of Law

City Hall, Room 400A
30 Church Street
Rochester, New York 14614

MT LLC: Midtown Tower LLC
259 Alexander Street
Rochester, New York 14609
Attn: Laurence C. Glazer

With a copy to: Woods Oviatt Gilman LLP
700 Crossroads Building
2 State Street
Rochester, New York 14614
Attention: James P. Pronti, Esq.

Notices, demands, and requests given in the aforesaid manner will be deemed served or given for all purposes hereunder at the time such notice, demand, or request is personally delivered or mailed.

SECTION 8. OPTION

The City hereby grants to MT LCC an option (the "Option"), the terms of which are set forth below, for the purchase or obtain the permanent right to the exclusive use of the Designated Parking Spaces:

- A. The term of the Option shall commence on the date of full execution of this Agreement and terminating on last day of the Term ("Option Term");
- B. The purchase price when the Option is exercised shall be the fair market value of the portion of the Designated Parking Spaces that are not owned in fee simple by MT LLC at that time;
- C. MT LLC shall exercise the Option by giving written notice to the City at any time during the Option Term;
- D. MT LLC shall be responsible for any capital improvements to the Designated Parking Spaces subsequent to its purchase of the Designated Parking Spaces;
- E. This Option terminates if MT LCC defaults on any land disposition agreement, Loan or grant transaction, payments in lieu of taxes, deed covenant or condition subsequent between MT LLC and the City in regards to the Project; and

- F. The parties executing any easements, licenses and operating agreements needed to complete the transfer without negatively affecting the City's ability to operate a public garage, obtain bonding for the remainder of the UPG still in City possession, and allow the public access to the UPG.

SECTION 9. ASSIGNMENT

Notwithstanding anything contained herein to the contrary, in the event the Premises is sold to a related or unrelated third party (the "Transfer"), the City shall consent to the assignment of this Agreement provided: (i) the proposed new owner fully agrees to assume each and every term and condition contained herein and attorns to and recognizes the City; (ii) MT LLC executes a statement in writing certifying that this Agreement is in full force and effect, that neither party is in default hereunder; and (iii) no default shall then exist hereunder beyond the expiration of any applicable notice and/or grace period specified herein within which to cure such default.

SECTION 10. COMPLIANCE WITH ALL LAWS

MT LLC and all its employees working under its direction shall comply with all local, state, or federal laws, ordinances, rules or regulations ("Applicable Law") controlling or limiting in any way the use of any parking spaces pursuant to this Agreement. Furthermore, each and every provision of law and clause required by Applicable Law to be inserted in this Agreement shall be deemed to be inserted herein, and this Agreement shall be read and enforced as though such Applicable Law were included herein.

Notwithstanding the foregoing, those laws, rules, regulations, ordinances, or other orders promulgated to address the health, safety and welfare of the public adopted by the City ("City Law") required by law to be inserted in this Agreement shall be deemed inserted herein, and this Agreement shall be read and enforced as though such City Law were included herein, only so long as such City Law does not materially interfere solely with MT LLC's access to or use of any of the garages as contemplated in this Agreement.

SECTION 11. DEFAULT; TERMINATION

A. In case of a default by MT LLC in the payment of money, the City will take no action to effect a termination of MT LLC's rights under this Agreement by reason thereof unless such default has continued beyond thirty (30) days after the City shall have served written notice of such failure to pay upon MT LLC. If MT LLC cures any such default within said time period, the City

shall not be permitted to take any action to effect a termination of MT LLC's rights under this Agreement.

B. In the case of any other default by MT LLC, the City will take no action to effect a termination of MT LLC's rights under this Agreement by reason thereof unless such default has continued beyond sixty (60) days after the City shall have served notice of such default upon MT LLC.

C. In the case of a default by the City of any of its obligations hereunder, the City acknowledges that MT LLC shall have the right to seek any available remedy at law or equity, including specific enforcement of the City's obligations hereunder.

SECTION 12. NON-TERMINABLE

A. Neither the bankruptcy nor the insolvency of MT LLC shall operate nor permit the City to terminate this Agreement so long as the parking charges continue to be paid in accordance with the terms hereof.

B. Following the acquisition of MT LLC's interest in this Agreement by any Lender, either as a result of foreclosure, acceptance of a deed in lieu of foreclosure, or otherwise, such Lender or any party acquiring title to MT LLC's rights under this Agreement shall commence the cure of any defaults in MT LLC's obligations under this Agreement which are reasonably capable of being cured by such Lender or other person acquiring MT LLC's rights under this Agreement and thereafter process such cure to completion, whereupon the City's right to effect a termination of this Agreement based upon the default in question shall be deemed waived.

SECTION 13. CASUALTY

In the event that any or all of the UPG, SAG, EEG, MSG should be damaged by fire or other casualty, or shall for any reason be closed to such an extent that MT LLC is unable to use the applicable garage as contemplated under this Agreement, the Company's obligation to pay for monthly parking permits in the applicable garage shall be suspended until the applicable garage reopens. Such a suspension will not extend the Term when the applicable garage reopens. During any such suspension, the City shall use its best efforts to assist MT LLC to locate and obtain alternate parking.

SECTION 14. QUIET ENJOYMENT; GOOD FAITH

The Parties agree to perform their respective obligations under this Agreement in good faith and in furtherance of the intent of this Agreement as set forth herein.

SECTION 15. ENTIRE AGREEMENT

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

SECTION 16. LAW

This Agreement shall be governed by and under the laws of the State of New York. In the event that a dispute arises between the Parties, venue for the resolution of such dispute shall be the County of Monroe, New York.

SECTION 17. NON-WAIVER

In the event that the terms and conditions of this Agreement are not strictly enforced by either Party, such non-enforcement shall not be deemed to be a waiver or modification of this Agreement, nor shall such non-enforcement prevent either Party from enforcing each and every term of this Agreement thereafter.

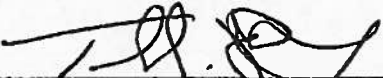
SECTION 18. SEVERABILITY

If any provision of this Agreement is held invalid by a court of law, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the laws of the State of New York.

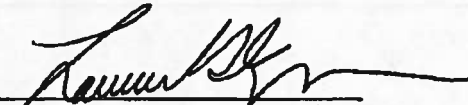
[SIGNATURE PAGE FOLLOWS]

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

CITY OF ROCHESTER

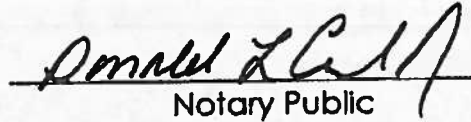
By: 
Name: *Thomas S. Richards*
Title: *Mayor*

Midtown Tower LLC

By: 
Name: *Lawrence C. Glaze*
Title: *Member*

STATE OF NEW YORK)
COUNTY OF MONROE) ss.:

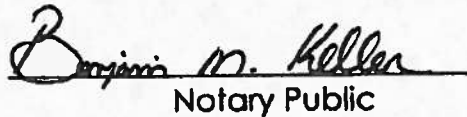
On the 20th day of December, 2013 before me, the undersigned, a Notary Public in and for said State, personally appeared Robert J. Bergin, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.


Notary Public

DONALD L. CRUMB, JR.
Notary Public, State of New York
Reg. No. 4979161
Qualified in Monroe County
My Commission Expires March 25, 192015

STATE OF NEW YORK)
COUNTY OF MONROE) ss.:

On the 20th day of December, 2013 before me, the undersigned, a Notary Public in and for said State, personally appeared Laurence C. Glazer, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.


Notary Public

BENJAMIN M. KELLER
Notary Public, State of New York
No. 02KE8207825
Qualified in Monroe County
Commission Expires June 15, 2017

EXHIBIT "B"

All That Tract or Parcel of Land situate in the City of Rochester, County of Monroe and State of New York, being known and described as Lot AR3 as shown on a map entitled "Resubdivision of Lots R3, R4 and R2E of the Resubdivision of Lots 1, 2, 3 and 4 of the Midtown Redevelopment Subdivision" made by LaBella Associates, P. C., and filed October 21, 2013 in the Monroe County Clerk's Office in Liber 346 of Maps at page 85.

Said Lot AR3 is bounded and described as follows:

Beginning at a point in the north right-of-way line of East Broad Street (80 foot wide right-of-way), said point being 359.73 feet east of the intersection of the west right-of-way line of Chestnut Street (66 foot wide right-of-way as it existed in 2013) and north right-of-way line of East Broad Street, said point also being the southwest corner of said Lot AR3;

thence (1) North 88° 07' 03" East and along the north right-of-way line of East Broad Street a distance of 19.05 feet to a point;

thence (2) North 86° 52' 36" East and continuing along the north right-of-way line of East Broad Street a distance of 22.00 feet to a point;

thence (3) North 03° 03' 45" West a distance of 124.01 feet to a point;

thence (4) North 18° 25' 25" East a distance of 129.70 feet to a point on the south right-of-way line of Elm Street (66 foot wide right-of-way);

thence (5) North 71° 50' 00" West and along the south right-of-way line of Elm Street a distance of 28.32 feet to a point;

thence (6) North 07° 11' 01" West a distance of 2.71 feet to a point;

thence (7) North 64° 00' 03" West a distance of 81.53 feet to a point of curvature;

thence (8) Westerly along a curve to the left having a radius of 117.00 feet an arc length of 90.58 feet to a point (said curve has a chord bearing of North 86° 10' 45" West and a chord distance of 88.33 feet);

thence (9) South 71° 38' 32" West a distance of 179.98 feet to a point;

thence (10) South 18° 14' 46" East a distance of 269.62 feet to a point in the north right-of-way line of East Broad Street, said point marking the point and place of beginning.

Containing 1.948± acres of land.