

Davenport Bldg
Phase II
250 Spaces

LEASE AGREEMENT
for
PARKING SPACES
in the
EAST CAMBRIDGE PARKING FACILITY - PHASE II
between
THE CITY OF CAMBRIDGE
and
CHARLESPORT LIMITED PARTNERSHIP
NOVEMBER 18th, 1985

Agreement made this 18th day of November, 1985 (the "Lease") by and between the City of Cambridge, a body politic and corporate and a political subdivision of the Commonwealth of Massachusetts (hereinafter with successors and assigns referred to as "City") and Charlesport Limited Partnership, a Massachusetts Limited Partnership whose managing general partner is Arnold Marcus having a principal place of business at 135 Oser Avenue, Hauppauge, New York (hereinafter with successors and assigns referred to as "Lessee").

WHEREAS, the City is the owner of a garage facility known as the East Cambridge Parking Facility - Phase I located at the corner of First Street and Thorndike Street; and

WHEREAS, the City will construct an addition to said East Cambridge Parking Facility - Phase I (the "Addition"). The East Cambridge Parking Facility - Phase I and the Addition, combined shall hereinafter be referred to as "the East Cambridge Garage" and;

WHEREAS, Lessee is the owner of the Davenport Building located on First Street in East Cambridge, and the developer of certain private improvements thereon; and

WHEREAS, by a UDAG Agreement of even date ("Development Agreement") the City has agreed to provide Lessee with 250 parking spaces in the East Cambridge Garage Phase II; and

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein, the parties agree as follows:

1. Premises and Purpose. The City hereby leases to Lessee, and the Lessee hereby leases from the City, upon and subject to the terms of this Lease, 250 parking spaces within the East Cambridge Garage which spaces may be assigned or unassigned in the City's discretion, for the parking use of tenants (and their employees, visitors,

invitees and customers) of the Davenport building to be constructed on First Street (the "Development"). To the extent required by law, the City will make available to Lessee a proportionate number of bicycle spaces.

2. Term. The term of this Lease shall commence on the date on which the Addition shall be opened by the City for use by its lessees, and shall continue until the day immediately preceding the ninety-ninth (99th) anniversary of the date of commencement, unless said term shall be earlier terminated or extended as provided herein.

3. Rent. Lessee shall pay to the City a monthly rental for the 250 parking spaces leased hereunder, in advance, on the first day of each calendar month during the term of this Lease, an amount equal to \$113 per space. Said amount shall be increased at the end of each full 12 month period included in the term by the greater of i) the amount of the per space pro rata share of actual increases during such 12 month period in customary and reasonable garage parking related operating expenses, including but not limited to management fees, building maintenance, reserve for replacement, heat, electrical, water and sewer charges; or ii) the amount of the difference between the then average rent paid to the City by other private lessees in the East Cambridge Garage (if higher than the rent hereunder) and the amount of the then rent owed by the Lessee.

4. Termination.

a. Subject to written approval by the City, the Lessee may terminate this Lease upon thirty (30) days written notice to the City in accordance with Paragraph 18 hereof, provided that said written notice is accompanied by the written consent thereto of Lessee's mortgagee(s).

b. City may terminate this Lease in the event of default by Lessee, as set forth in Paragraph 12 hereof.

5. City's Representations and Warranties.

a. City covenants and warrants that in its operation and maintenance of the East Cambridge Garage and in the prosecution and conduct of its business therein, it shall comply with the terms of the Certificate of Occupancy for the use of the East Cambridge Garage, and that it will not use or permit to be used any part of the East Cambridge Garage for any dangerous, noxious or offensive activity, and will not cause or maintain any nuisance in, at or on the East Cambridge Garage. City further covenants and agrees to comply with all permits, and all applicable laws, regulations and rules of fire inspection boards, health officials, building inspectors, and other proper officers of any governmental agency having jurisdiction thereover.

b. City covenants and warrants that the East Cambridge Garage is not subject to or complies with the terms and requirements of the parking freeze in effect in the City.

c. City covenants that the East Cambridge Garage will be maintained and operated on an 18 hours per day, seven days a week basis in an orderly and well-maintained public parking garage. City shall not obstruct or cause obstruction of the sidewalks or other common areas of the East Cambridge Garage, nor shall it produce or cause the production of offensive noise, nor allow soliciting (subject to applicable law) or canvassing in the East Cambridge Garage. Further, the City shall exclude from the East Cambridge Garage disorderly persons, subject at all times to applicable law.

d. The City expressly represents and warrants that it shall obtain at its own cost and expense any and all permits, licenses and approvals required and necessary for the conduct of a commercial parking business in the East Cambridge Garage.

e. The City covenants and warrants that it shall keep and maintain the East Cambridge Garage and every part thereof including without limitation the ways, surfaces of the floor slabs, common areas, sidewalks immediately adjacent to all exits and entrances to the East Cambridge Garage and other appurtenances pertaining thereto, as well as the exterior and interior portions of all elevators, doors, windows, ticketing equipment, cashier's booths and their appurtenant equipment, mechanical and manual barriers, directional markers and signs, striping, painting, lights, electrical systems, sanitary facilities, plumbing, and all other equipment and appurtenances in or upon the East Cambridge Garage in good order, condition and repair, including without limitation, all electricity, plumbing, air conditioning, heating, sewage and other utility facilities exclusively serving and/or within the East Cambridge Garage and utilized by the East Cambridge Garage, and as well as all interior walls, floors, ceilings, interior and exterior and all interior building appliances, elevators and similar equipment, and to keep the interior driving and parking surfaces, the entrance and exit ramps, and the sidewalks adjacent to the entire East Cambridge Garage clear of ice and snow. The City agrees that the East Cambridge Garage including the ways, areas, and other appurtenances pertaining thereto shall at all times be kept in a clean, sanitary and safe condition and in accordance with all applicable laws.

6. Taxes. The City shall be responsible for the payment of all real estates taxes, assessments, taxes or rentals, charges and the

like as may be imposed or become a lien on any portion of the East Cambridge Garage. Nothing contained in this Lease shall be construed so as to require Lessee to pay or be liable for any gift, inheritance, franchise, succession, transfer, income, profits, capital or similar tax, or any similar tax in lieu of any of the foregoing, imposed upon the City and/or its successors and assigns.

7. Utilities. The City shall be solely responsible for, and provide and pay for, all light and power, heat, water, steam, electricity, gas, water and other utilities used in the East Cambridge Garage, and cleaning and refuse disposal for the East Cambridge Garage.

8. Insurance.

a. The City shall, at its own cost and expense, maintain and keep in effect throughout the term of this Lease for the benefit of City, Lessee, and Lessee's mortgage as named insureds:

i) Insurances against claims for personal injury or property damage, under a policy of general liability insurance with limits of one million dollars (\$1,000,000.00) per occurrence, or such higher limits as may in the future be typically carried by owners or operators of comparable garages in the City of Cambridge in respect of personal injury or death and property damage, and such accident and liability insurance shall cover the entire East Cambridge Garage, as well as the sidewalks in front of and adjacent to the East Cambridge Garage.

ii) Fire insurance on all-risks basis, including debris removal and demolition, and coverage for increased costs of construction, if applicable, in the amount at least equal to the replacement cost of the East Cambridge Garage (with a commercially reasonable deductible clause and containing an 80% co-insurance clause) as such replacement

costs may from time to time be determined by agreement or by appraisal by an accredited insurance appraiser which determination may be required by either party whenever three (3) years have elapsed since the last such agreement or appraisal, or when alternations or deductions increasing cost have been made.

b. All insurance provided for under this Lease shall be effected under valid and enforceable policies issued by insurers recognized as responsible by major institutional lenders and licensed to do business in the Commonwealth of Massachusetts. Certificates of said insurance shall be delivered to Lessee and the policies shall provide that not less than ten (10) days prior to their expiration, evidence of renewal or a new certificate together with evidence of payment of premium therefor shall be delivered to Lessee.

c. Nothing in this Paragraph shall prevent Lessee or City, as the case may be, from taking out insurance of the kind and in the amount hereinabove provided for under a blanket insurance policy or policies which can cover other properties owned or operated by City or Lessee, as the case may be, as well as the Garage, provided however, that any such policy or policies of blanket insurance shall specify therein, or Lessee or City, as the case may be, shall furnish the other with a written statement from the insurers under such policy specifying, the amount of the total insurance allocated to the East Cambridge Garage, which amount shall not be less than the amount required to be carried by this paragraph.

9. Damage to East Cambridge Garage. Should the whole or any part of the East Cambridge Garage be damaged or destroyed during the term of this Lease then, except as otherwise provided in this Lease, the City, at its sole cost and expense, shall repair, restore or rebuild the East Cambridge Garage to substantially the condition it was in

immediately prior to such damage or destruction, and Lessee's rent shall abate on a proportionate basis to the extent that the East Cambridge Garage is rendered unusable during any such period of damage, destruction, repair or restoration. All such repair, restoration or rebuilding shall be performed with due diligence in a good and workmanlike manner with new materials of first-class quality and in accordance with applicable law and plans and specifications for such work reasonably approved by the City and Lessee (except that the City shall not be required to obtain approval of Lessee if the City intends to reconstruct the East Cambridge Garage as it was constituted prior to such damage or destruction).

10. Eminent Domain.

In the event that the City receives notice of the intention of any authority to appropriate, take or condemn the East Cambridge Garage or any portion thereof under any right of eminent domain, condemnation or other law ("Taking"), the City shall promptly notify Lessee thereof. In the event of such Taking or like proceeding, the City shall use its best and good faith efforts to provide Lessee with 250 alternative parking spaces under a long term lease substantially similar in all material respects to this Lease.

In the event that the City's said best and good faith efforts fail to produce alternative parking spaces, then Lessee may prosecute its claim for damages for taking of its leasehold interest independent of the City's claims. If for any reason Lessee is denied the opportunity to so present its claim, the City will present such claim and shall remit immediately to Lessee upon receipt Lessee's portion of the award or settlement as the result of such taking, and all costs thereof shall be paid by the parties in proportion to the amount of the award, settlement or sale proceeds that each received.

11. Assignment and Subletting.

Lessee covenants and agrees not to assign this Lease or to sublease all or any number of the parking spaces leased hereunder to other than a parent, subsidiary or affiliated entity, a lender pursuant to a collateral assignment, or a successor in interest to ownership of the Development, without the written consent of the City, which consent the City covenants not to unreasonably withhold or delay.

12. Default and Remedies.

a. Failure to make timely payment to the City of any payment due hereunder shall be an event of default by Lessee. In the event of such default, the City shall provide Lessee with written notice thereof. Upon receipt of written notice, Lessee shall cure such default within 30 days ("Grace Period").

b. The City agrees that:

i) If any default is not cured by Lessee within the Grace Period, then before giving any notice of election to terminate this Lease or to regain possession of the parking spaces, it shall give additional written notice of the continuing default to Lessee's mortgagee(s) ("Lender") at the addresses set forth in Paragraph 16. The City shall allow Lender an additional Grace Period of 60 days from the date of receipt of said additional notice to cure such default. The City shall not give any such notice of election, or commence any action or proceeding for possession, if Lender shall, within the additional Grace Period, cure such default. In the event said default is not cured pursuant to this paragraph, the City may terminate the Lease.

ii) In the event that this Lease shall terminate by reason of a default by Lessee, Lender may, within 30 days after such termination,

request that the City execute and the City shall execute, a new lease to provide the 250 parking spaces in the East Cambridge Garage upon all the terms, covenants and conditions of this Lease in effect immediately prior to the termination thereof.

Simultaneously with the execution of such new lease, Lender shall pay to City all sum due City by Lessee under said Lease on the date of termination of said Lease, plus all reasonable costs and expenses (including attorney's fees) incurred by the City in connection with said termination and the preparation of a new lease.

13. Lessee's Partners. No partner of the Lessee shall, other than to the extent of such partner's interest in the assets of the partnership, be personally liable to the City, or any successor in interest or person claiming through or under the City, in the event of any default or breach, or for or on account of any amount which may be or become due, or on any claim, cause or obligation whatsoever under the terms of this Lease.

14. Quiet Enjoyment. City covenants that if, and so long as, Lessee keeps and performs each and every term and condition herein contained on the part of the Lessee to be kept and performed, Lessee shall quietly enjoy the parking spaces leased hereunder without hindrance or molestation by the City or by any other person lawfully claiming the same.

15. Non-Disturbance and Attornment.

a. Lessee shall cause (i) Lender to execute and deliver to the City a non-disturbance and attornment agreement (the "Non-Disturbance Agreement") within (15) days from the date of this Lease and (ii) any party acquiring a mortgage on the Development after the date hereof to execute and deliver to the City and Non-Disturbance Agreement within (15) days of such party's acquiring such mortgage but only if such

party has required this Lease to be subordinated to such mortgage.

b. The City agrees that if Lender or any other mortgagee shall succeed to Lessee's interest in this Lease, the City will recognize said Lender or mortgagee as its Lessee under the provisions of this Lease, provided that said Lender or mortgagee, during the period in which it shall be in possession of the parking spaces after foreclosure, and thereafter its successor in interest, shall assume all of the obligations of Lessee hereunder.

16. Notices. Any notice to be given hereunder shall be delivered or sent by certified mail, return receipt request, to the following addresses and shall be effective ten (10) days from the receipt thereof:

Charlesport Limited
Partnership
The Marcus Organization
135 Oser Avenue
Hauppauge, New York
Attn: Arnold Marcus

With Copy to:
Edward J. Lonergan
375 Mt. Auburn Street
Watertown, MA 02172

and

The City of Cambridge
Office of Community Development
City Hall Annex
57 Inman Street
Cambridge, MA 02139
Attn: Assistant City Manager
for Community Development

With Copy to:
John G. Woffard, Esq.
Csaplar & Bok
One Winthrop Square
Boston, MA 02110

First National Bank of Boston
100 Federal Street
Boston, Massachusetts 02110
Attn: Brian Dunn

With Copy to:
Patrick Damanti, Esq.
Ahern - Damanti
One Penn Plaza
New York, New York 10000

and

Alan Rottenberg, Esq.
Goulsten and Storrs
1 Federal Street
Boston, Massachusetts 02109

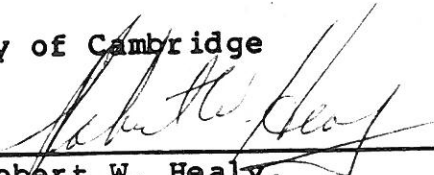
17. Successors and Assigns. The covenants, agreements, terms, provisions and conditions of this Lease shall bind and benefit the respective successors, assigns and legal representatives of the parties hereto with the same effect as if mentioned in each instance where a party hereto is named or referred to.

Executed to take effect as a sealed instrument on the date first hereinabove set forth.

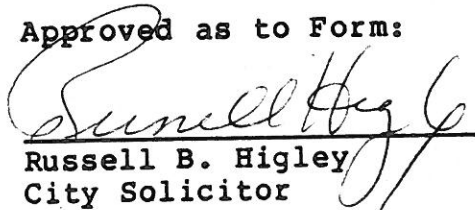
Charlesport Limited Partnership

By 
Arnold Marcus
Managing General Partner

City of Cambridge

By 
Robert W. Healy,
City Manager

Approved as to Form:


Russell B. Higley
City Solicitor