

## SITE ACCESS LICENSE AGREEMENT

This Agreement made on the 7<sup>th</sup> day of January, 2020 between the VILLAGE/TOWN OF MOUNT KISCO, a municipal corporation under the laws of the State of New York, having a principal place of business at Village Hall, 104 Main Street, Mount Kisco, NY 10549 (hereinafter "Village") and GOTHAM PROPERTY ACQUISITIONS, LLC, a New York limited liability company ("Gotham") and CHARTER REALTY AND DEVELOPMENT CORP., a Delaware corporation duly licensed to do business in New York ("Charter") (Gotham and Charter hereinafter collectively referred to as "Developer").

### WITNESSETH

**Whereas**, on November 18, 2019 the Village Board of Trustees approved a Letter of Intent (the "LOI") with Gotham and Charter as Designated Developer for the development of the Village-owned North and South Moger Lots located adjacent to the Mount Kisco train station and currently utilized for commuter and retail parking and indicated on the surveys attached hereto (the "Property"), which LOI outlines the criteria for the development and the proposed formal business relationship between the Village and Developer; and

**Whereas**, the LOI provides for a Due Diligence period of one hundred twenty (120) calendar days after the execution of this Agreement for Developer to, among other things, conduct Due Diligence relative to current property conditions at the Property including conducting an Environmental Phase I and, if necessary, Phase II investigation, as well as visual inspections and sub-surface soil geotechnical investigations; and

**Whereas**, the LOI further provides for the parties to enter into a Site Access License Agreement to allow Developer and its consultants to enter onto the Property and conduct its necessary Due Diligence including site investigation work; and

### NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1) The Village hereby grants to Gotham and Charter, their employees, agents, contractors and consultants (collectively "Developer Representatives") a temporary revocable license to perform Due Diligence in accordance with the LOI on the Property. Such Due Diligence (hereinafter referred to as "Work") may include but is not be limited to: Phase I Environmental

Site Assessment and, if necessary, Phase II Environmental Site Assessment investigations; title search; surveying; engineering investigations; geotechnical investigation including subsurface borings, to determine soil conditions and the presence and extent of bedrock; and other environmental and visual inspections on and under the Property, subject to the provisions of this Agreement.

2) The term of this Agreement shall commence on the date it is fully executed and a copy thereof delivered to Developer, and shall expire upon the expiration of the Due Diligence period of one hundred twenty (120) calendar days from the date hereof.

3) The Property shall be used by Developer's Representatives during the term of this Agreement exclusively for the purposes identified in Paragraph 1 of this Agreement in conjunction with the Work.

4) Having inspected the site, Developer agrees that their use of the Property hereunder will not unreasonably interfere with the normal function of said property as a public parking lot and restaurants and will not require any removal of structures to achieve access for testing, borings, probes, drilling, sampling, and similar examinations. Where the Work may interfere with the use of any portion of the parking lot, Developer shall make every attempt to coordinate the Work with the Village for a day and time that will cause the least amount of disruption to the daily parking operations and Developer shall give the Village no less than three (3) business days' notice of any work which may cause any disruption to the daily parking and commercial operations. In no event shall Developer interfere with the use of more than 10 parking spaces at any one time. Developer will make its best efforts to complete all site investigation work requiring the use of parking spaces and disruption of operations within no more than ten (10) business days, however if conditions require additional time Developer may request additional time from the Village, which request will not be unreasonably withheld or delayed.

5) Developer and its consultants and contractors shall use its best efforts to minimize damage to the Property from the Work and shall use commercially reasonable efforts to repair and restore the Property substantially to the condition it was in prior to the commencement of Work.

6) Gotham and Charter each agree to indemnify and hold the Village harmless from and against any and all third party losses, costs, damages, liens, claims, liabilities or expenses including, but not limited to, reasonable attorneys' fees actually incurred by the Village arising from or by reason of Gotham and Charter and/or their representative's access to, or inspection of, the property, or any tests, inspection or other due diligence conducted pursuant to this



Agreement, except as same may relate to the discovery or existence of pre-existing environmental conditions.

7) Gotham and Charter agree to maintain, at their sole cost and expense during the entire term of this Agreement, commercial general liability insurance with companies reasonably approved by the Village Attorney. The commercial general liability insurance policy shall name the Village/Town of Mount Kisco as an additional insured and shall be for limits not less than three million dollars (\$3,000,000) aggregate limit and two million dollars (\$2,000,000) per occurrence or each occurrence of bodily injury, personal injury, and property damage. The required limits of liability can be satisfied by a general liability and umbrella/excess liability policies. The policy shall provide contractual liability for all written contracts and the commercial general liability and umbrella/excess liability policies maintained by contractor engaged by Gotham and Charter to conduct inspections and other due diligence shall include coverage for products and completed operations liability, independent contractor's liability, coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage. Such policy or policies shall contain a provision that they may not be terminated or modified without at least ten (10) days prior written notice provided to the Village. Complete copies of the endorsement pages of such insurance policies shall be delivered to the Village prior to the commencement of any Work and kept current.

8) Gotham and Charter and/or their contractors as applicable shall maintain Workers Compensation insurance meeting applicable statutory requirements and employer's liability insurance with minimum limits of one million dollars (\$1,000,000) for each accident. Proof of such insurance shall be provided to the Village prior to the commencement of any Work on the Property.

9) Developer agrees to comply with all applicable present and future orders, regulations and local laws of the Village/Town of Mount Kisco and all other applicable laws relating to its use of the Property.

10) This Agreement shall be revocable by the Village, with or without cause, but if Developer is negotiating the Transaction Documents as defined in the LOI in good faith then only with good cause, upon five (5) days written termination notice to Developer. Nothing herein shall preclude the Building Inspector or other governmental official with proper authority from suspending any site investigation if such official deems there to be a health, safety, or fire risk, provided however that once such risk has been addressed to the satisfaction of the governmental official, work will be allowed to proceed.

11) Any Notice to be given hereunder shall be given in writing by personal delivery or overnight courier, or, if mailed, by certified mail, return receipt requested, postage prepaid, or by facsimile or e-mail with a copy to follow by one of the above methods, addressed as follows:

To Gotham:

Gotham Property Acquisitions  
432 Park Ave South, 2<sup>nd</sup> floor  
New York, NY 10016  
Attn: Bryan Kelly  
Fax:  
Email: [bkelly@gothamorg.com](mailto:bkelly@gothamorg.com)

To Charter:


Charter Realty and Development Corp.  
75 Holly Hill Lane, Suite 205  
Greenwich, CT 06830  
Attn: Karen Johnson  
Fax:  
Email: [karen@chartweb.com](mailto:karen@chartweb.com)

To Village:

Village/Town of Mount Kisco  
104 Main Street  
Mount Kisco, NY 10549  
Attn: Edward Brancati, Village Manager  
Fax: (914) 241-9018  
Email: [ebrancati@mountkisco.ny.gov](mailto:ebrancati@mountkisco.ny.gov)

IN WITNESS WHEREOF the parties have executed this Agreement the date and year set forth above.

Village of Mount Kisco

By:   
Edward W. Brancati

Title: Village Manager

Gotham Property Acquisitions

By: 

Title: President & CEO

Charter Realty and Development Corp.

By: 

Title: President



PREPARED BY: JRU CHECKED BY: NSJ

H. STANLEY JOHNSON AND COMPANY  
LAND SURVEYORS, P.C.  
42 SOUTH AVENUE, P.O. BOX 83  
MT. KISCO, N.Y. 10549  
TEL. 914-241-0438  
FAX. 914-241-0438

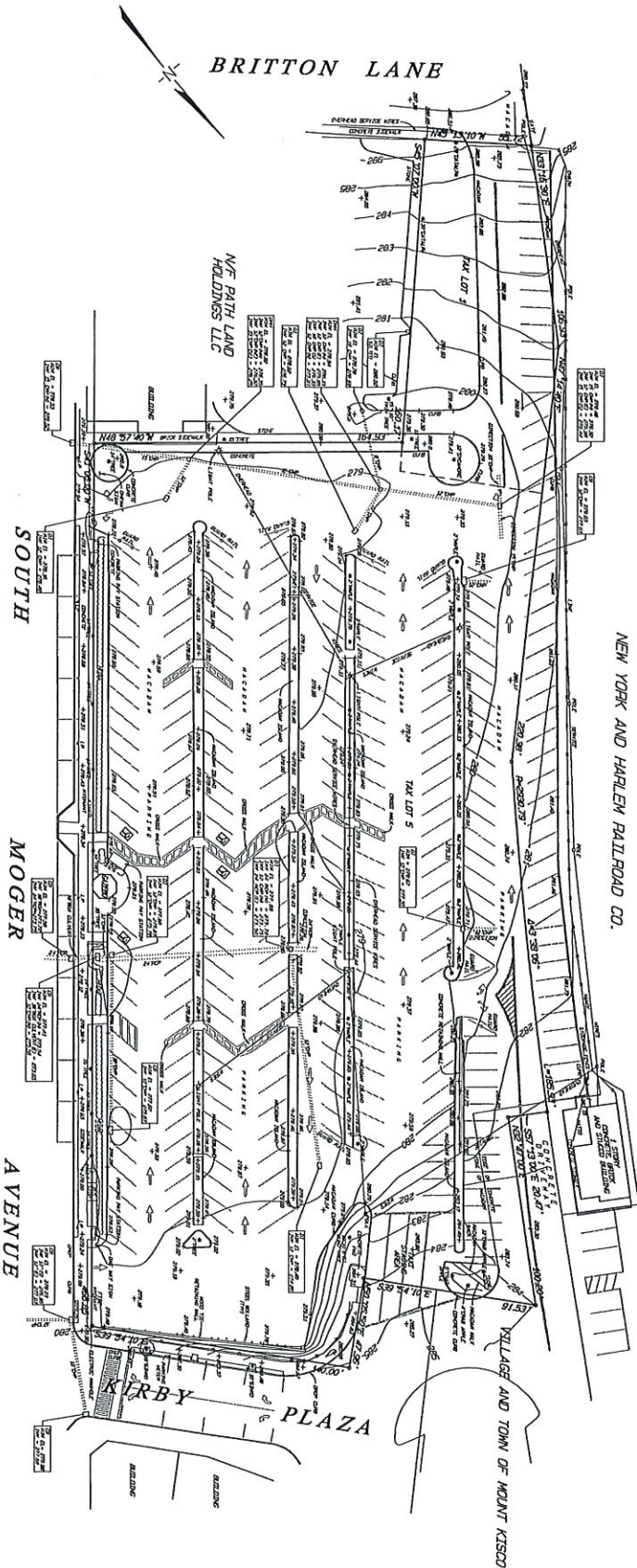
Area = 2.728 Acres.  
The Identification Section 62.80 Block 6 Lot 1 and 5.  
In accordance with the existing Deed of Partition for Land  
of Professional Land Surveyors, Inc.  
Underlying situation of a survey and bearing  
and distance to the center of the  
7000 Subdivision 2 of the New York State Education Law.  
All organizations are valid for this map and center thereof  
surveyed and shown above the town  
of Mount Kisco, New York.  
The location of underground improvements or encroachments  
shown, if any exist, are not certified or shown.

Notes:  
1. Easements shown herein are generally in  
accordance with the Village and Town of Mount  
Kisco Zoning Ordinance.  
2. Indicated underground utilities or  
encroachments shown herein may be encroached.  
3. The situation information shown herein, if any,  
is not to be used as a record or encumbrance  
as it is not shown as of the date of the  
survey.


SURVEYED: OCTOBER 12, 2018  
FOR: ROBERT S. JOHNSON, P.L.L.C.  
NEW YORK STATE LICENSED LAND SURVEYOR NO. 50037

SITUATE IN THE  
VILLAGE AND TOWN OF MOUNT KISCO  
WESTCHESTER COUNTY, NEW YORK  
SCALE: 1" = 30'

SURVEY OF PROPERTY  
PREPARED FOR THE  
VILLAGE AND TOWN OF MOUNT KISCO



H. STANLEY JOHNSON AND COMPANY  
LAND SURVEYORS, P.C.  
42 SMITH AVENUE P.O. BOX 93  
MT. KISCO, N.Y. 10549  
TEL. 914-241-3872  
FAX. 914-241-0438

SURVIVED: NOVEMBER 22, 2016  
 MAP PREPARED: NOVEMBER 29, 2017  
 BY:   
 NEW YORK STATE LICENSED LAND  
 ROBERT S. JOHNSON, P.L.S.

NEW YORK STATE LICENSED LAND SURVEYOR NO. 50023  
ROBERT S. JOHNSON, P.L.S.

[illegible]

**SURVEY OF PROPERTY  
PREPARED FOR THE  
VILLAGE AND TOWN OF MOUNT KISCO**

Being a lot as shown on a certain and entitled "Survey and Plats of the Westchester County, New York, etc.," said and filed in the Westchester County Clerk's Office, and being a lot as shown on a certain and entitled "Survey and Plats of the Westchester County, New York, etc.," said and filed in the Westchester County Clerk's Office Division of Land Records February 7, 1902, as No. 11395.

SCALE: 1"=40'

