

11-11-52
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AGREEMENT OF LEASE

THIS AGREEMENT, executed this 9th day of October, 1953, but dated and effective as of September 29, 1952, by and between the City of Pittsburgh, a municipal corporation of the Second Class of the Commonwealth of Pennsylvania, acting through its Mayor and its Director of the Department of Lands and Buildings, herein referred to as "Lessor", and the Public Parking Authority of Pittsburgh, a municipal authority created and existing under the laws of the Commonwealth of Pennsylvania, herein called "Lessee".

WITNESSETH:

WHEREAS, the City of Pittsburgh received a gift of a substantial sum of money for the purpose of acquiring the property bounded by William Penn Place, Oliver Avenue, Smithfield Street and Sixth Avenue, in the Second Ward, City of Pittsburgh, for the purpose of building and maintaining a public park for the use and enjoyment of the residents of the City of Pittsburgh, and for other public purposes not inconsistent with its use as a public park; and

WHEREAS, the City of Pittsburgh has acquired all of the aforesaid property; and

WHEREAS, the Lessee desires to lease the subsurface of the aforesaid property for a public parking garage, and as part of the consideration for said lease has offered to construct or effect the construction of a public park on the surface of said property that will conform with the specifications established by the City of Pittsburgh; and

WHEREAS, the Bureau of Traffic Planning, of the City of Pittsburgh has stated that, in its opinion, the construction and

maintenance of a public parking garage at the aforesaid location will alleviate the present critical traffic problem in the City of Pittsburgh and will, therefore, be highly beneficial to the City and its residents:

NOW THEREFORE, the parties hereto agree as follows:

1. The Lessor hereby leases to the Lessee for the term of forty-one (41) years, and two (2) months, commencing on the 1st day of November, 1952, and ending on the 31st day of December, 1993, for the rental hereinafter stated, the following described premises in the City of Pittsburgh, Allegheny County, Pennsylvania:

The subsurface of the tract of land located in the Second Ward, Pittsburgh, Pennsylvania, designated as Mellon Square, bounded by William Penn Place, Oliver Avenue, Smithfield Street and Sixth Avenue. The term "subsurface" shall mean the area below the top surface of the water-proofing material placed over the concrete slab supporting the park surface as shown on drawing known as "Park Surface Plan", dated June 24, 1953 and filed in the office of the Director of the Department of Parks and Recreation of the City of Pittsburgh. Final elevations of the top of such water-proofing material to be as determined by engineering requirements and as approved by the Director of the Department of Parks and Recreation and the Public Parking Authority of the City of Pittsburgh. Lessee shall have the right for the term of this lease to use so much of the surface as is necessary for entrances and exits to the parking facility, and so much of the area above the top surface of said water-proofing material as is necessary for air intake and exhausts, and stair penthouse and elevator penthouse.

2. Lessor shall deliver possession of the demised premises to Lessee upon written request of Lessee at any time after November 1, 1952. During the period reasonably required for the excavation, construction and completion of the parking facility and the surface park, Lessee, its subtenants and agents shall also have the right to take possession of and to control the surface above the demised premises.

3. In consideration of the aforesaid lease, Lessee shall pay to the Lessor rental as follows:

(a) One Dollar (\$1.00) per year for and during the term of the lease;

(b) As further consideration, the Lessee agrees to construct or effect the construction of a public park on the surface of said area in accordance with the attached plans which have been approved by the Department of Parks and Recreation of the City of Pittsburgh and have been accepted by Lessee. Lessor reserves the right to make changes in the plans, provided the same shall not materially increase the cost of the park; no change in the plans shall be made by Lessee without the written approval of the Director of the Department of Parks and Recreation of the City of Pittsburgh. The following facilities, inter alia, shall be constructed in connection with the park;

1. Heating facilities and pipes under sidewalks and steps for removal of snow and ice in locations to be designated by the Department of Parks and Recreation of the City of Pittsburgh.

2. Drinking fountains and refrigeration facilities to cool the water furnished to such fountains, as approved by the Department of Parks and Recreation of the City of Pittsburgh.

3. A dump chute from the park surface to the parking facility floor below to allow for the ready loading of park debris and refuse into trucks or trailers for hauling and disposing.

4. Provision for a truck entrance to the surface of the proposed park from William Penn Place including, if necessary, a ramp from street level to the park surface.

5. A room in the parking facility below the park surface having an area of not less than one hundred (100) square feet for the storage of gardener's equipment.

6. Pipes and facilities for the automatic sprinkling of grass and plants in the park.

7. Utility lines located beneath the park surface and concealed and flood lighting facilities of the type specified by the Department of Parks and Recreation of the City of Pittsburgh. No utility or light poles shall be erected in the park.

8. Masonry materials and plant used in the park construction must be approved by the Department of Parks and Recreation of the City of Pittsburgh.

(c) The City shall make available for the cost of the park the balance of the funds available to the City of Pittsburgh under the above-mentioned gift for the acquisition of the property and the construction of the park, but shall bear no further cost of the construction of the park.

4. This Lease may be terminated by the City of Pittsburgh on thirty (30) days' notice to the Lessee for any one of the following reasons:

(a) In the event that the Lessee is unable to start construction of the public park and the public garage within three (3) years from the effective date of this lease for any reason.

(b) In the event that, after the completion of the parking garage, the said garage ceases to be used for public parking purposes.

5. It is agreed by and between the parties hereto that the Lessee may use the property in accordance with the terms and

conditions and subject to the limitations set out in the Act of the Pennsylvania Legislature of June 5, 1947, P. L. 458, as amended, known as the Parking Authority Law.

6. Lessor agrees that if during the term of the Sublease of the demised premises to Mellon Square Garage, Inc., the entire premises or such substantial portion thereof as in the opinion of Mellon Square Garage, Inc. renders impracticable the continued operation of the parking facility described in said Sublease, shall be appropriated by eminent domain or otherwise seized, occupied, and used for a period extending beyond the term of said Sublease, Lessor, Lessee and Mellon Square Garage, Inc. shall each have the right to recover such damages or compensation as is provided by applicable law. If the amounts recovered by the Lessee and Mellon Square Garage, Inc., as damages or compensation shall be less than the unamortized cost of Mellon Square Garage, Inc. of the parking facility as shown on its books on the effective date of such condemnation, seizure or occupation, Lessor shall pay to Lessee, but only out of compensation or payment received by Lessor by reason of such condemnation, seizure, occupancy or use, the difference between the damages or compensation recovered by Lessee and Mellon Square Garage, Inc. and the said unamortized cost of the parking facility.

7. This Lease, upon execution, shall supersede the Lease between the parties hereto dated September 29, 1952.

8. This Lease is entered into on behalf of the City of Pittsburgh pursuant to Ordinance No. 316 approved September 18, 1953.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year above written.

ATTEST:

/s/ David L. Lawrence (SEAL)

/s/ Charles D. McCarthy
/s/ Homer V. Greene (SEAL)
Director, Department of Lands
and Buildings

APPROVED AS TO FORM
/s/ ALBERT A. KAY
City Controller

COUNTERSIGNED
/s/ J. E. PRADWELL
Deputy City Controller

APPROVED AS TO FORM
/s/ J. E. PRADWELL
City Controller

ATTEST:

PUBLIC PARKING AUTHORITY OF PITTSBURGH

/s/ James McClain

By /s/ George G. Main

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF ALLEGHENY : SS:

On the 5th day of October, 1953, before me, the subscriber, a Notary Public, in and for the County and Commonwealth aforesaid, personally appeared James McClain, Assistant Secretary of Public Parking Authority of Pittsburgh, the Lessee in the within Agreement of Lease, who being duly sworn according to law, says that he was personally present at the execution of the within Agreement of Lease and saw the common or corporate seal of the said Authority duly affixed thereto; that the seal so affixed is the common or corporate seal of the said Authority; that the said Agreement of Lease was duly sealed and delivered by George G. Main, Chairman of said Authority, as and for the act and deed of said Authority for the uses and purposes therein mentioned in pursuance of a resolution duly passed by the Board of the Authority and that the names of this deponent, James McClain, as Assistant Secretary, and George G. Main, as Chairman of said Authority, signed thereto in attestation of its due execution and delivery are of their and each of their respective handwritings.

/s/ James McClain
Assistant Secretary

Sworn to and subscribed before me the day and year
aforesaid. Witness my hand and notarial seal the day and year
aforesaid.

Mary E. Vogel, Notary Public
My Commission Expires
May 7, 1955

/s/ Mary E. Vogel
Notary Public

Notarial Seal

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COMPASSION IN ACTION

On this 9th day of October, A. D., 1953, before me, the subscriber, a Notary Public in and for the said County and Commonwealth, personally appeared CHARLES D. MCCARTHY, Executive Secretary to David L. Lawrence, Mayor of the City of Pittsburgh, who, being sworn according to law, says that he was personally present at the execution of the foregoing lease and saw the corporate seal of said City of Pittsburgh duly affixed thereto; that the seal so affixed thereto is the corporate seal of the City of Pittsburgh; that the lease was sealed and delivered by the said David L. Lawrence, Mayor of the City of Pittsburgh as and for the act and deed of the said corporation for the uses and purposes therein mentioned and that the names of David L. Lawrence, Mayor of the City of Pittsburgh and Charles D. McCarthy, as Executive Secretary, subscribed to the foregoing lease in attestation of its due execution and delivery are of their and each of their own respective handwriting.

18/ Charles D. McCarthy

Sworn to and subscribed before me the day and year
aforesaid.

/s/ Catherine B. Becker

**Cathern E. Becker, Notary Public
My Commission Expires:
February 1, 1957**

Notarial Seal