

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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MGP 1011 LLC,

Index No.:

Plaintiff,

-against-

**SUMMONS**

*Plaintiff designates New York  
County as the place of trial*

CONDOMINIUM BOARD OF  
THE CITIZEN 360 CONDOMINIUM,

Defendant.

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**TO THE ABOVE-NAMED DEFENDANT:**

You are hereby summoned to answer the annexed complaint in this action and to serve a copy of your answer on the undersigned attorneys for Plaintiff within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Plaintiff designates New York County as the place of trial. The basis of venue is that Plaintiff's principal office is located at 360 East 89<sup>th</sup> Street, #8A, New York, New York 10128.

Dated: New York, New York  
December 14, 2022

**KISHNER MILLER HIMES P.C.**  
*Attorneys for Plaintiff*

By:   
\_\_\_\_\_  
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TO: **THE CONDOMINIUM BOARD OF  
THE CITIZEN 360 CONDOMINIUM**  
360 East 89<sup>th</sup> Street  
New York, New York 10128

**THE CONDOMINIUM BOARD OF  
THE CITIZEN 360 CONDOMINIUM**  
c/o Halstead Management Company  
770 Lexington Avenue, 7<sup>th</sup> Floor  
New York, New York 10065

**THE CONDOMINIUM BOARD OF  
THE CITIZEN 360 CONDOMINIUM**  
c/o Armstrong Teasdale LLP  
Attn: Julie F. Schechter, Esq.  
7 Times Square, 44<sup>th</sup> Floor  
New York, New York 10036

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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MGP 1011 LLC,

Plaintiff,

Index No.:

-against-

CONDOMINIUM BOARD OF  
THE CITIZEN 360 CONDOMINIUM,

**COMPLAINT**

Defendant.

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Plaintiff MGP 1011 LLC, by its attorneys Kishner Miller Himes P.C., for its Complaint against Defendant Condominium Board of the Citizen 360 Condominium alleges as follows:

**NATURE OF THIS ACTION**

1. This case involves a unique quality of life issue prevalent in New York City: where to park one’s car, and the value of being able to do so. A New Yorker’s ability to have a ready place to park one’s vehicle, particularly in Manhattan, without undue time, effort, expense, stress, and vexation, and to do so safely without extensive and costly life disruptions, is unique and valuable. Indeed, it is often a bargained-for contractual right. And if that right is dishonored, it can prove impossible to replace it, and a comparable opportunity to readily park one’s vehicle will be lost.

2. This case presents that scenario. In connection with purchasing a condominium apartment unit on Manhattan’s east side, Plaintiff had the opportunity to acquire a dedicated parking place in the condominium building. Plaintiff availed itself of that opportunity, for the benefit of its principal, as part of the consideration for purchasing the residential unit. In doing so, Plaintiff procured a written license agreement from the apartment seller and Defendant Board of Managers granting the right to park a vehicle in a dedicated parking spot in the condominium

building's parking garage. Nonetheless, the Board has not permitted Plaintiff's principal to access the garage to park her vehicle in Parking Space No. 8 for which Plaintiff hold a license. Plaintiff brings this action to obtain necessary legal redress for the Board's breach of contract.

### **THE PARTIES**

3. Plaintiff MGP 1011 LLC ("Plaintiff") is a limited liability company organized under and pursuant to the laws of the State of Delaware, with a principal place of business located at 360 East 89<sup>th</sup> Street, Apartment 8A, New York, New York 10128. Plaintiff is a single purpose entity created for the acquisition and ownership of condominium interests involved in this action. Plaintiff's sole member and sole manager is Mallory G. Parker ("Parker"). As such, (a) Plaintiff acts through Parker; and (b) Parker holds all beneficial interests in Plaintiff.

4. Defendant Condominium Board of the Citizen 360 Condominium ("Defendant" or the "Board") is the governing body under the declaration (the "Declaration") that established the Citizen 360 Condominium (the "Condominium"). The Condominium is as a mixed-use building located at 360 East 89<sup>th</sup> Street, New York, New York (the "Building"). As set forth below, Plaintiff owns one of the residential units of the Condominium, Unit 8A, together with the right to use and occupy a parking space at the Building associated with Unit 8A. Parker resides in Unit 8A and, as set forth below, has the sole right to use and occupy the associated parking space.

### **JURISDICTION AND VENUE**

5. Personal jurisdiction exists over Defendant because it is the governing body for the Condominium, which was created and exists under Article 9-B of the Real Property Law of the State of New York. The Condominium and the Board each maintain, and at all times relevant to this action have maintained, their principal offices at 360 East 89<sup>th</sup> Street, New York, New York.

The Declaration for the Condominium is filed with the New York Department of State and, as set forth below, in the New York County Office of the Register of the City of New York.

6. Venue is proper in New York County, separately, because (a) Plaintiff’s principal office is located in New York County, and (b) Defendant’s principal office, along with the Condominium’s, are located in New York County.

**FACTS**

**A. The Condominium**

7. The Condominium was established on or about September 11, 2017, by its sponsor, 1711 LLC (the “Sponsor”), by filing the Declaration, dated June 12, 2017, in the New York County Office of the Register of the City of New York, pursuant to Article 9-B of the Real Property Law of the State of New York.

8. The Condominium consists of and includes 82 residential units, one non-residential unit, and 61 storage lockers. It also includes 23 parking spaces

9. Interests in the Condominium were marketed and sold under the Sponsor’s September 18, 2015 Offering Plan (the “Offering Plan”).

**B. The Condominium’s Parking Facility, and Its Individualized Parking Spaces**

10. Under the Offering Plan, the Sponsor offered residential unit buyers the opportunity to purchase parking spaces of the Condominium for the “exclusive use of Purchaser.” (Offering Plan at 6). Parking spaces were available, together with the purchase of storage lockers, as “Ancillary Amenities.” (Offering Plan at 6).

11. As described in the Offering Plan (under “Description of Property and Improvements”), the Condominium’s parking spaces are part of “[t]he “Parking Facility . . .

located on the first three floors of the Building [and] serviced by a computer-controlled automated parking system ('Parking System')." (Offering Plan at 37).

12. That automated system was described as follows:

Licenseses of Parking Spaces will park their automobiles in the private loading bay entrance with a car lift tray located off of East 89th Street on the first floor of the Building. The fully automated parking system consists of a robotic device which collects the unoccupied automobile on a car lift tray and transfers it to a vacant Parking Space on either the 1st, 2nd or 3rd floor. Each automobile can be brought back to the loading bay for collection as needed via a kiosk input station located just outside the loading bay or lobby. Each owner of an automobile will have a unique PIN or 'swipe card' to retrieve and store their automobile. (Offering Plan at 38).

13. Schedule A of the Offering Plan set forth the approximate square footage, purchase price, annual common charge, and monthly common charge for each of the 23 parking spaces. (Offering Plan at 52). All of the 23 parking spaces have the same square footage (142.5), the same purchase price (\$150,000.00), and the same projected annual and monthly common charges (\$513.43 and \$42.79).

14. The Declaration specified (in Section 9.4) that "[t]he Parking Spaces may be used only for the parking of automobiles. Parking Spaces will accommodate automobiles with a [1] maximum weight of approximately 6000 lbs. and with [2] maximum length of approximately 17 feet." (Declaration at 7). The Declaration and Offering Plan contained no other specification, restriction, or limitation on the type of automobile that could occupy any of the parking spaces. Nor did any other Condominium marketing, sale, or governance document disclose any other limiting or restricting specification. In particular, no vehicle height specification or restriction for any of the parking spaces was disclosed.

15. The Offering Plan also contained the documentation prescribed for (i) a new residential unit owner's acquisition of an interest in and the use of a parking space; and (ii) a

residential unit owner's transference of that interest and right-of-use in connection with the sale of a unit. Specifically, the Offering Plan included template documentation of:

- A "Rider to Purchase Agreement Re: Parking Space"; this Agreement stated that "Sponsor agrees to sell and Purchaser agrees to purchase an undesignated Parking Space # \_\_\_\_\_ for a Purchase Price of \$ \_\_\_\_\_. At Closing, Purchaser shall enter into a Parking Space License to use the Parking Space, the form of which is set forth in Part II of the Plan." (Offering Plan at 274); thus, by its terms, this form Agreement provided that a unit purchaser who initially bought from the Sponsor could acquire a specific space as numbered;
- An "Ancillary Amenity License Re: Parking Space"; under this Agreement, the Sponsor, as a Licensor, would grant the unit purchaser, as Licensee, a license, subject to specified terms and conditions, "for the use of a Parking Space ('Ancillary Amenity License')." (Offering Plan at 303); and
- An "Assignment and Assumption of Ancillary Amenity License"; by this Agreement, an initial unit purchaser holding a license to use a parking space could, as Assignor, assign to a new unit purchaser, as Assignee, "all of the Assignor's right, title and interest in and to the Ancillary Amenity License." (Offering Plan at 309).

16. These instruments under the Offering Plan provided the contractual framework for Plaintiff to acquire the rights to a dedicated numbered parking spot in the Condominium.

**C. Plaintiff Acquires the Rights to Parking Space No. 8**

**(i) The Sponsor First Sells and Licenses a Parking Space to Unit 8A's Original Buyers**

17. On or about December 19, 2017, Sponsor, in accordance with the terms of the Condominium's Offering Plan and Declaration, closed on the sale of Unit 8A in the Condominium to the initial buyers, Nikolaos Tsoulos and Maria Irene Angelis (together, "Tsoulos/Angelis"). The transaction included the sale to them of the rights pertaining to Parking Space No. 8.

18. As part of that transaction, and notwithstanding the terms of the form "Ancillary Amenity License Re: Parking Space" noted above, the Condominium expressly granted Tsoulos/Angelis a license "for the use of Parking Space No. 8" under an Ancillary Amenity License Re: Parking Space, dated December 19, 2017 (the "Original License"). Under the Original

License, the Board, as Licensor, granted to Tsoulos/Angelis a license, for a monthly fee, this specific parking space. (Original License ¶¶ 1, 2; a copy of the Original License, as executed by the Board, the Sponsor, and Tsoulos/Angelis, is attached as **Exhibit A.**)

19. Consistent with the Offering Plan, the Original License specified that Parking Space No. 8 could only be used for an automobile with a maximum weight of approximately 6,000 lbs. and maximum length of approximately 17 feet. (Ex. A ¶ 3). These were the only vehicle size restrictions or specifications contained in the Original License. Further, the Original License provided that it “may be assigned by [Tsoulos/Angelis] at any time,” so long as the assignment was granted to a residential unit owner who assumed the license obligations, the Board received notice of the assignment, and no prior license fees were unpaid. (Ex. A ¶ 8).

(ii) **In Connection with the Purchase of Unit 8A, Plaintiff Acquires the Right to Use the Unit’s Parking Space**

20. In the summer of 2021, Parker, through Plaintiff, became interested in acquiring Unit 8A in the Condominium from Tsoulos/Angelis. Importantly, that interest included acquiring the associated rights to park a vehicle at the Condominium, so that she would have the ready ability to park a vehicle at her home.

21. Also significantly, Parker anticipated that she would be parking a “Sports Utility Vehicle,” or SUV, type of automobile at the Condominium. At that time (*i.e.*, the summer of 2021), the vehicle Parker expected to use was a 2019 Acura RDX. She therefore planned to use Parking Space No. 8 for that vehicle. Honda’s (the manufacturer of Acura) publicly-issued specifications for this vehicle are (i) length of 186.7 inches (or 15.5 feet) and (ii) curb weight of 3783 lbs. *See* <https://hondanews.com/en-US/releases/release-eac94c3864114aecb21a469c3545aefc-2019-acura-rdx-specifications-and-features>. This vehicle, an SUV, conformed to the maximum length and weight specifications (*i.e.*, 17 feet; 6,000 lbs.) stated in the Offering Plan and the Original License.



22. Nonetheless, prior to entering into a contract to purchase Unit 8A, Parker confirmed with the seller, through their agent, and the Condominium that Parking Space No. 8 would accommodate an Acura RDX without undue difficulty, disruption, or inconvenience.

23. Specifically, Parker explained that she intended to park an SUV at the Building and discussed the ability to do so with (i) Tsoulos/Angelis through their real estate agent; and (ii) the Condominium's superintendent. Each of these individuals advised that Parker would, physically, be able to park a typical SUV sized vehicle, in Parking Space No. 8. Also prior to entering into a contract to purchase Unit 8A, Parker confirmed, as a legal matter, that Tsoulos/Angelis held a valid license for Parking Space No. 8 and had the right to transfer the license to Plaintiff in connection with the purchase and sale of Unit 8A.

24. Based on the foregoing, Plaintiff determined to proceed with the purchase of Unit 8A, with the associated opportunity to obtain the rights to use Parking Space No. 8 as part of that purchase.

25. Thus, on July 27, 2021, Plaintiff entered into a "Contract of Sale – Condominium Unit" with Tsoulos/Angelis to purchase Unit 8A in the Condominium. On October 15, 2021, Plaintiff closed on the purchase of the Condominium Unit 8A. Plaintiff thereupon became the record owner of Unit 8A in the Condominium.

26. As part of the closing, Tsoulos/Angelis, as Assignor, and Plaintiff, as Assignee, entered in an Assignment and Assumption of Ancillary Amenity License, dated as of October 15, 2021 (the "License Assignment," a copy of which is attached as Exhibit A). Under the License Assignment, Tsoulos/Angelis assigned, "[as] included in sale of unit 8A," "all of [their] right, title and interest in and to the [Original License], a copy of which is attached hereto and a part hereof."

(Ex. A ¶ 10). The Original License -- which the License Assignment incorporated fully -- specifically authorized the right to “the use of Parking Space No. 8.”

27. By virtue of the License Assignment, Plaintiff became the licensee for Parking Space No. 8 at the Condominium, and it assumed all of Tsoulos/Angelis’s right, title and interest in and to Parking Space No. 8. Parker thereby became entitled to park a vehicle in Parking Space No. 8.

28. On information and belief, other residents in the Condominium have been granted, and hold, licenses for specific numbered parking spaces in the parking garage.

**D. The Board Violates Plaintiff’s License to Use Parking Space No. 8**

29. As set forth above, the Condominium’s Parking Facility is operated by an automated system. To activate the system, a driver approaches the Parking Facility’s entryway and scans a “fob” -- *i.e.*, a small handheld remote control device coded with a unique PIN -- at an electronic “reader” to gain access into the Parking Facility, and thereby enable the vehicle to be parked in its numbered space by the automated system. Each fob provided to a parking-space licensee is programmed for the specific numbered space in which the licensee is entitled to park.

30. Subsequent to the October 15, 2021 closing, Tsoulos/Angelis turned over to Parker the “fob” that was supposed to enable Parker to access the Parking Facility. Because Plaintiff held a license to use Parking Space No. 8, the “fob” should have activated the system to cause Parker’s vehicle to be parked in that space.

31. However, when Parker first attempted to gain access to the Parking Facility to park her vehicle, the system did not activate upon her scanning the fob. Aside from the Acura vehicle, Parker also endeavored to access the Parking Facility with a 2016 BMW X1, a small-sized SUV; although the size of that vehicle (length of 175.4 inches, or 14.6 ft.; curb weight of 3,660 lbs.; *see*

<https://www.edmunds.com/bmw/x1/2016/features-specs/> [Edmunds.com]) was within the maximum permissible vehicle size for the Parking Facility, Parker could not access the Parking Facility using the fob to park that vehicle either.

32. Upon Parker's investigation, she ascertained that the fob provided to her was not programmed for the space she acquired, Parking Space No. 8, but rather was programmed to authorize entry to park in Parking Space No. 11 in the Parking Facility. Further, she ascertained that another resident possesses the fob programmed to access Parking Space No. 8. As set forth above, Plaintiff, as part of purchasing Unit 8A, acquired the specific right to use, as a licensee, Parking Space No. 8. As a result of this programming, Parker has been unable to access the Parking Facility and has been unable to park any of her vehicles in Parking Space No. 8, or in any other parking space in the Condominium.

33. Furthermore, in determining to purchase Unit 8A and to acquire the accompanying license right to park a vehicle at the Condominium, Parker investigated and was advised by the Condominium's representative (as well as the sellers) that Parking Space No. 8, which was the specific space to be licensed as part of Parker's purchase of Unit 8A, was large enough in all respects to accommodate a typical SUV vehicle. However, Parking Space No. 11, the space incorrectly programmed to the fob Parker received, lacks sufficient height for parking an SUV.

34. By reason of the Original License and License Assignment, Plaintiff has the right to a fob programmed for Parking Space No. 8.

35. Plaintiff, through Parker, has made diligent good faith efforts in communications with the Board, and with the Condominium's managing agent, to obtain access to the Parking Facility and thereby to be able to park her vehicle in Parking Space No. 8. Despite those efforts,

the Board has not taken the necessary steps to afford Plaintiff and Parker access to Parking Space No. 8. To date, Plaintiff has been denied use of Parking Space No. 8.

**CAUSES OF ACTION**

**First Cause of Action**

***(Breach of Contract/Specific Performance)***

36. Plaintiff repeats and realleges each and every allegation contained in paragraphs “1” through “35” above with the same force and effect as if fully set forth herein.

37. As part of the written contract that Plaintiff entered into to purchase Unit 8A in the Condominium, Plaintiff and the Board entered into a valid and subsisting written agreement that granted Plaintiff, and its sole member and sole manager Parker, the right to park a vehicle in Parking Space No. 8 in the Condominium’s Parking Facility. Specifically, as part of the consideration paid for Unit 8A, Plaintiff acquired the right, title and interest to use Parking Space No. 8, as a licensee, for parking a vehicle in accordance with (i) the Original License; and (ii) the License Assignment.

38. As such, Plaintiff has the right to enforce the terms and conditions of the Original License, including the right to the use of Parking Space No. 8, as the purchaser and owner of Unit 8A and as a licensee under the License Assignment. Parker holds a license to use and occupy Space No. 8 specifically.

39. The Board has denied Plaintiff the right to use Parking Space No. 8 to park any of the vehicles used by Plaintiff or by Parker. This denial constitutes a breach of the License Agreement, the License Assignment, and the associated agreements.

40. The parking space for which Plaintiff’s fob is programmed, Parking Space No. 11, is too small to permit an SUV to be parked there.

41. Plaintiff has complied with all of its obligations under the License Agreement and related agreements. In particular, each of the vehicles that Plaintiff, through Parker, sought to park

in Parking Space No. 8 was (i) an automobile; (ii) with a weight less than 6,000 lbs.; and (iii) with a length less than 17 ft. Likewise, Plaintiff has paid all of the monthly fees attributable to, and required to be paid, for Parking Space No. 8.

42. At all times relevant to this action, Plaintiff has owned, and today owns, Unit 8A in the Condominium.

43. As a result of the Board's breach, Plaintiff has been injured.

44. Parking Space No. 8 is unique property appurtenant to Plaintiff's right, interest, and ownership in Unit 8A. The right to use Parking Space No. 8 to park a vehicle is unique, and is particularly irreplaceable and without substitute to Plaintiff and Parker because (i) Parker resides in the Building; and (ii) street parking is very limited and restricted in the Condominium's neighborhood; (iii) very few parking spaces in the area otherwise dedicated to or obtainable by a vehicle owner are available; and (iv) Parker uses, and wishes and is entitled to, park an SUV in the Parking Facility.

45. Plaintiff has no adequate remedy at law for the breach alleged herein.

46. Plaintiff therefore is entitled to specific performance of the Board's obligation to provide Plaintiff and Parker with access to Parking Space No. 8.

**Second Cause of Action**  
***(Breach of Contract/Damages)***

47. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "35" and "37" through "46" above with the same force and effect as if fully set forth herein.

48. In lieu of specific performance, Plaintiff is entitled to recover money damages for the Board's breach of contract. Such damages include, but are not limited to (i) a sum representing the value for loss of the use of Parking Space No. 8; (ii) monthly fee payments made for Parking

Space No. 8 while Plaintiff was denied use of this Space; (iii) the amount of resale value for Parking Space No. 8 in the event the Board deprives Plaintiff of that value in connection with Plaintiff's assignment of the right, title, and interest in Parking Space No. 8 as part of a sale by Plaintiff of Unit 8A; and (iv) the amount of lost income resulting from Plaintiff's inability to rent Parking Space No. 8 if she elects to do so.

**RELIEF REQUESTED**

WHEREFORE, Plaintiff requests judgment against Defendant as follows:

(a) On the First Cause of Action for breach of contract, awarding specific performance in Plaintiff's favor, requiring Defendant to specifically perform its contractual obligations to authorize and provide Plaintiff, including its principal Parker, access to Parking Space No. 8 in the Condominium;

(b) On the Second Cause of Action, awarding Plaintiff money damages in such amount to be proven at trial; and

(c) Awarding Plaintiff its costs, disbursements, attorney's fees, and interest as permitted by law, together with such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
December 14, 2022

**KISHNER MILLER HIMES P.C.**

*Attorneys for Plaintiff*

By: \_\_\_\_\_



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