

AGREEMENT
BETWEEN
THE CITY OF NEW YORK
AND
HUDSON RIVER PARK TRUST

This AGREEMENT is made effective as of the 3rd day of April, 1999 (the "Commencement Date") between The City of New York ("City") and the Hudson River Park Trust ("HRPT"), a public benefit corporation of the State of New York;

WHEREAS, the Hudson River Park Act, Chapter 592 of the Laws of 1998 of the State of New York (the "Act"), designated and dedicated certain of the properties along Route 9A in lower Manhattan from Battery Place north to 59th Street as the "Hudson River Park" (the "Park"). The Park includes both upland and underwater lands, the western boundary of which is the U.S. pierhead line. Section 3(e) of the Act more particularly describes the extent of the park boundaries;

WHEREAS, HRPT has been duly created pursuant to Section 5 of the Act, as a body corporate and politic constituting a public benefit corporation, for the purpose of planning, designing, developing, constructing, operating and maintaining the Park as more specifically described and defined in the Act;

WHEREAS, Section 7.3(b) of the Act directs the City to enter into an agreement that conveys to HRPT a possessory interest in the City lands within the Park and confirms HRPT's right to properly exercise the powers and responsibilities provided to HRPT under the Act;

WHEREAS, this Agreement is intended to fulfill the obligations set forth in Section 7.3(b) of the Act;

WHEREAS, this Agreement is intended to protect and preserve The City of New York's ownership and regulatory control over the City-owned property within the Park, through New York City Department of Parks and Recreation ("Parks"), and to further the City's interest in creating and maintaining a world class park along the Hudson River that will, among other things, encourage,

promote and expand public access to the Hudson River, promote water-based recreation, and enhance the natural, cultural, and historic aspects of the Hudson River; and

WHEREAS, this Agreement is strictly a conveyance to HRPT of a possessory interest of the City-owned lands within the Park in accordance with Section 7.3(b) of the Act and is not intended and nor shall it be construed to be a waiver or modification of any other statutory and regulatory rights or obligations of the parties hereto, including the City's exercise of its police powers. HRPT is and shall continue to be bound by any and all applicable statutory and regulatory requirements of the City, respecting development, operation and/or maintenance of the Park, including giving the City or its designees access to, over and through the Premises as needed in furtherance of the exercise of the City's police powers.

NOW, THEREFORE, the City and HRPT agree as follows:

WITNESSETH

ARTICLE 1

Definitions

SECTION 1.01. For all purposes of this Agreement references to the "General Project Plan," "Hudson River Park," and "Hudson River Park Trust," are intended to have the meaning and be consistent with the definitions of such terms and phrases set forth in Section 3 of the Act. In addition, for all purposes of this Agreement the following terms and phrases shall have the following meanings:

- (a) "Concessionaire" shall mean a person, business, whether for-profit or not-for-profit,

educational or research organization granted permission or license by the HRPT pursuant to a written agreement to develop and/or operate a business, educational or research operation within the Park in accordance with the Act requirements and restrictions.

- (b) "Continuing Use Rights" shall have the meaning set forth in Article II, Section 2.01 below and in Exhibit C hereof.
- (c) "Governmental Requirement" shall mean any present or future law, rule, order, ordinance, regulation, permit, consent, certificate, approval, code and executive order of any federal, state and local governmental agency, body or other authority now existing or hereafter created and of any applicable Fire Rating Bureau or other body exercising similar functions.
- (d) "Improvements" shall mean any buildings, structures (including, without limitation, piers) or betterments at the Premises existing as of the effective date of this Agreement or hereafter erected.
- (e) "Incumbent Use Leases" shall mean all leases, permits or licenses affecting the Premises (or other grant of the right to use or occupy part or all of the Premises) in effect as of the effective date of this Agreement.
- (f) "Involuntary Rate" shall mean the interest rate charged by the City on late payment of real estate taxes.
- (g) "License" or "Permit" shall mean a grant to a person by HRPT of limited permission or authority to conduct a particular activity or to occupy a portion of the Premises for a

specified use without granting any possessory interest or estate in such property.

- (h) "Licensee" or "Permittee" shall mean a person holding a license or permit to conduct a specified activity or undertake a specified use within the Park.
- (i) "Parties" shall mean the parties of this Agreement (i.e., the City and HRPT).
- (j) "Person" shall mean any individual, corporation, partnership, estate, trust, unincorporated association, governmental entity or agency thereof.
- (k) "Premises" shall mean all those City-owned properties including any Improvements now or hereafter erected thereon within the boundaries of the Hudson River Park, as more fully described and defined in Exhibit A, which is attached hereto and made a part hereof.
- (l) "Project" shall mean the development, operation, and maintenance of the Hudson River Park in conformity with the General Project Plan, as may be amended from time to time in accordance with the terms of the Act.
- (m) "Sublease" shall mean any sublease of a portion of the Premises by HRPT as sublessor (including, without limitation, the Incumbent Use Leases which have been assigned to and assumed by the HRPT pursuant to Article XIV hereof).
- (n) "Sublessee" shall mean a sublessee under a sublease for a portion of the Premises.
- (o) "Taxes" shall mean the real property taxes assessed and levied against the Premises or any part thereof (or, if the Premises or any part thereof or the owner or occupant thereof is exempt from such real property taxes then the real property taxes assessed and which would be levied if not for such exemption), pursuant to the provisions of

Chapter 58 of the Charter of New York City and Title 11, Chapter 2 of the Administrative Code of New York City, as the same may now or hereafter be amended, or any statute or ordinance in lieu thereof in whole or in part.

- (p) "Term" shall have the meaning set forth in Article II, Section 2.01 below.

ARTICLE II

Demised Premises and Term

SECTION 2.01. The City, for good and valuable consideration, hereby demises and leases unto HRPT in accordance with Section 7.3 of the Act, and HRPT does take and hire the Premises, to the full extent of the authority provided it under the Act, together with all franchises, easements, appurtenances, encumbrances and other rights and privileges now or hereafter belonging or appertaining to the Premises, subject to: (1) the Act; (2) all existing encumbrances, liens, permits, licenses, easements or other rights, matters, instruments or violations in effect on the date of this Agreement including those listed in Exhibit B annexed hereto; (3) those rights (the "Continuing Use Rights") of the City and certain current and future licensees, permittees, lessees and invitees to use, without interference, those portions of the Premises as and for the purposes described in Exhibit C; (4) an easement giving the City and certain lessees, licensees, permittees or invitees the right to use the Premises in accordance with the terms of an Incumbent Use Lease or a Continuing Use Right as and for the purposes described in Exhibit C hereof; and (5) the reservations, covenants and agreements hereinafter expressed.

HRPT, its successors and assigns, shall have quiet enjoyment of the Premises for the purposes

herein set forth for a term of forty- nine (49) years (the "Term") commencing on the Commencement Date and expiring at 12:00 o'clock noon on the forty-ninth (49th) anniversary of the Commencement Date (the "Expiration Date") both dates inclusive, unless this Agreement shall sooner terminate as hereinafter provided. The term of this Agreement may be extended for two (2) additional periods of twenty-five (25) years each, by mutual agreement of the Parties. Unless notice, as provided for in Article XVIII of this Agreement, is given by one of the Parties within six (6) months of the end of the Term as provided for herein, the term extension shall be automatic.

SECTION 2.02. HRPT acknowledges that it is familiar with and has inspected the Premises, the physical condition thereof (including, without limitation, the fact that the Premises includes substantial portions of waterfront and pier property which may present special difficulties in design, construction and maintenance of the Premises), and the Incumbent Leases. HRPT accepts the Premises as is, in its existing condition and state of repair, and, except as otherwise expressly set forth in this Agreement, HRPT accepts and agrees that: (i) no representations, statements, or warranties, express or implied, have been made by or on behalf of the City in respect of the Premises, the status of title hereof, the physical condition thereof, the zoning or other laws, regulations, rules and orders applicable thereto, taxes, or the use that may be made of the Premises; and (ii) HRPT has not relied on any such representations, statements or warranties.

SECTION 2.03. The terms of this Lease Agreement do not alter the City's or HRPT's respective jurisdiction or authority under the Act. Accordingly, whenever, pursuant to the terms of this Agreement, the City or HRPT is authorized or obligated to act, it may do so only to the extent of its jurisdiction and the authority provided in the Act or as otherwise provided by law.

ARTICLE III

Construction of Project

SECTION 3.01. HRPT agrees that upon delivery to it of possession of the Premises or any portions thereof, it will on all or such portion commence or cause to be commenced or continue, as appropriate, and complete or cause to be completed, without cost to the City, the planning, design, development and construction of the Park, including the repair and/or replacement of any Improvements, in accordance with the Act and the General Project Plan, as that Plan may be amended from time to time in accordance with the terms of the Act.

SECTION 3.02. HRPT shall provide at least thirty (30) days prior written notice to the City any proposed amendments to the General Project Plan in accordance with Article XVIII below.

SECTION 3.03. Any and all planning, design, construction, lease, concession or other contracts or agreements entered into by HRPT in connection with the development, operation or use of the Premises shall include an express statement that the City is not a party to such contract or agreement and in no way shall be responsible to any party for any claims of any nature whatsoever arising or which may arise from such contract or agreement unless the City expressly takes over such contract or agreement and then only as to claims arising after such contract or agreement is taken over by the City.

ARTICLE IV

Rent and Impositions

SECTION 4.01. HRPT shall pay the City in consideration for this Agreement an annual fee of

one (\$1) dollar, for a total sum of forty-nine (\$49) Dollars over the term of this Agreement, together with other good and valuable consideration, the receipt of which is hereby acknowledged.

SECTION 4.02. Any rents, profits, revenue and/or income from sales, rentals, or any source whatsoever derived by HRPT from the Premises shall be used only for those purposes contemplated by the Act.

SECTION 4.03. (a) HRPT shall pay, in the manner provided herein, all Impositions that, with respect to any period occurring during the Term, are, or would be, if the Premises or any part thereof or the owner thereof were not exempt therefrom, assessed, levied, confirmed, imposed upon, or would be charged to the owner of the Premises with respect to (i) the Premises, or (ii) the sidewalks or streets in front of or adjoining the Premises, or (iii) any vault, passageway or space in, over or under such sidewalk or street, or (iv) any other appurtenances of the Premises, or (v) any personal property or other facility used in the operation thereof, or (vi) rent (or any portion thereof) or any other amount payable by HRPT hereunder, or (vii) any document to which HRPT is a party creating or transferring an interest or estate in all or any part of the Premise, or (viii) the use and occupancy of the Premises, or (ix) this transaction. Notwithstanding the preceding however, nothing in this Section 4.03 or in this Agreement shall require or be deemed to require HRPT to pay any Imposition which HRPT would not be required to pay, if it were the fee owner of the Premises, by reason of any exemption from such Imposition to which HRPT would be legally entitled as owner of the Premises.

(b) "Imposition" or "Impositions" means: (i) real property general and special assessments (including, without limitation, any special assessments for or imposed by any business improvement district or by any special assessment district) other than Taxes, (ii) personal property taxes, (iii)

occupancy and rent taxes, (iv) water, water meter and sewer rents, rates and charges, (v) excises, (vi) levies, (vii) license and permit fees, (viii) except for Taxes, any other governmental levies, fees, rents, assessments or taxes and charges, general and special, ordinary and extraordinary, foreseen and unforeseen, now or hereafter enacted, of any kind whatsoever, and (ix) any fines, penalties and other similar governmental charges applicable to the foregoing, together with any interest or costs with respect to the foregoing.

(c) HRPT shall pay each Imposition or installment thereof not later than the date the same may be paid without interest or penalty. However, if by law, at HRPT's option, any Imposition may be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), HRPT may exercise the option to pay the Imposition in such installments and shall be responsible for the payment of such installments when due with such interest as may be required by law. Impositions shall be payable in the form and to the location provided by the rules and regulations of the City governing such payments.

If HRPT fails to make any payment of an Imposition (or any installment thereof) on or before the date as required in the preceding subsection, HRPT shall, at the City's request, pay all Impositions or installments thereof thereafter payable by HRPT not later than ten (10) days before, the due date thereof. Nothing in this paragraph shall be construed to limit the City's default remedies as set forth elsewhere in this Agreement after failure by HRPT to timely pay any Imposition.

SECTION 4.04. At the request of the City, HRPT shall furnish the City, within thirty (30) days after the date when an Imposition is due and payable, official receipts of the appropriate taxing authority or other proof reasonably satisfactory to the City, evidencing the payment thereof.

SECTION 4.05. Any certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of any Imposition asserting non-payment of such Imposition shall be prima facie evidence that such Imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill, at the time or dated stated therein.

SECTION 4.06. Any Imposition relating to a fiscal period of the taxing authority, a part of which is included within the Term and a part of which is included in a period of time before the Commencement Date or after the Expiration Date, shall be apportioned pro rata between the City and HRPT as of the Commencement Date or the Expiration Date.

SECTION 4.07. The City shall pay, cancel, or otherwise satisfy and discharge of record any and all Taxes on or before the due date thereof (which may be by bookkeeping entry, interdepartmental direction or other manner or procedure selected by the City).

ARTICLE V

Insurance Requirements

SECTION 5.01. Within ten (10) days of its execution of this Agreement, HRPT shall provide the City with Certificates of Insurance evidencing compliance with all insurance requirements contained in this Agreement. Such Certificates shall be of form and substance acceptable to the City. Acceptance and/or approval of a Certificate of Insurance by the City does not and shall not be construed to relieve HRPT of any obligations, responsibilities or liabilities under this Agreement.

SECTION 5.02. All insurance required by this Agreement shall be obtained at the sole cost and expense of HRPT; shall be maintained with insurance carriers licensed to do business in New York

State, and acceptable to the City; shall be primary and non-contributing to any insurance or self-insurance maintained by the City; shall be endorsed to provide that written notice be given to the City, at least (30) days prior to the cancellation, non-renewal, or material alteration of such policies, which notice evidenced by return receipt of United States Certified Mail, shall be sent, together with a cover letter referencing this Agreement, to the City at the addresses set forth in Article XVIII below and shall name the City of New York and the New York City Department of Parks and Recreation, and their respective officers, agents, employees, successors and assigns as additional insureds thereunder. Insurers and policies obtained through New York State Office of General Services shall be considered acceptable to the City.

SECTION 5.03. HRPT shall be solely responsible for the payment of all deductibles and self-insured retentions to which such policies are subject. Deductibles and self-insured retentions must be approved by the City. Such approval shall not be unreasonably withheld.

SECTION 5.04. Each insurance carrier must be rated at least "A-" Class "VII" in the most recently published Best's Insurance Report. If, during the term of a policy, a carrier's rating falls below "A-" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to the City and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.

SECTION 5.05. HRPT shall cause all insurance to be in full force and effect as on the Commencement Date and to remain in full force and effect throughout the term of this Agreement and as further required by this Agreement. HRPT shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are

required to be in effect. Not less than thirty (30) days prior to the expiration date or renewal date of any policy, HRPT shall supply the City with updated replacement Certificates of Insurance, and amendatory endorsements.

SECTION 5.06. HRPT, throughout the term of this Agreement, or as otherwise required by this Agreement, shall obtain and maintain in full force and effect, the following insurance with limits not less than those described below and as required by terms of this Agreement, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

(a) Commercial General Liability Insurance with a limit of not less than \$50,000,000 per each occurrence. Such liability shall be written on the Insurance Service Office's ("ISO") occurrence form CG 00 01, or a substitute form providing equivalent coverages and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal and advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage. If such insurance contains an aggregate limit, it shall apply separately to the Premises;

(b) Workers Compensation, Employers Liability, and Disability Benefits as required by New York State;

(c) Comprehensive Business Automobile Liability Insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non-owned automobiles;

(d) In the event that HRPT owns, hires, borrows or otherwise employs a vessel for

docking and/or use within the Premises. HRPT shall obtain a Protection and Indemnity insurance policy with a limit of not less than \$5,000,000. Such insurance shall provide coverage at a minimum for loss of life, personal injury and illness of crew, passengers and third-party individuals, damage to cargo on board, damage to piers, docks, buoys and other fixed or floating objects and damage to other vessels and their cargo;

(e) Commercial Property Insurance on the improvements and betterments to the Premises covering at a minimum, the perils insured under the ISO Special Causes of Loss Form (CP 10 30), or a substitute form providing equivalent coverages, including debris removal, demolition and increased cost of construction that are caused by requirements regulating the construction or repair of damaged facilities, including an ordinance and law endorsement, in an amount of not less than the Full Insurable Value of the improvements and betterments to the Premises. Full Insurable Value shall mean actual replacement cost of the Improvements (exclusive of cost of non-insurable portions thereof, such as excavation, foundations and footings);

(f) If any of the Improvements to the Premises contain boilers or other heating or cooling mechanical equipment, then HRPT shall maintain Boiler and Machinery Insurance covering all of the boilers, fired or unfired pressure vessels, heating ventilating and air-conditioning units and any other mechanical equipment which services the Premises and which may malfunction or cause damage to property or injury to persons, in an amount of not less than \$1,000,000. HRPT shall be responsible for ensuring that any such boilers or mechanical equipment are regularly inspected;

(g) If any of the Improvements to the Premises contain plate glass, then HRPT shall maintain Plate Glass Insurance on forms and in amounts acceptable to the City;

(h) If HRPT uses, stores, handles, processes or disposes of Hazardous Materials, then HRPT shall maintain in full force and effect through the Term, Environmental Impairment Liability insurance with limits of not less than \$1,000,000 providing coverage for bodily injury, property damage or damage as a result of actual alleged or threatened emission, discharge, dispersal seepage, release or escape of pollutants, including loss, cost or expenses incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any claim, suit, or proceedings against the City, arising from HRPT's use, storage, handling, processing or disposal of Hazardous Materials;

(i) If HRPT sells, distributes, serves or furnishes alcoholic beverages, then HRPT shall maintain in full force and effect through the Term, Liquor Liability Insurance with limits of not less than \$1,000,000; and

(j) During the performance of any construction work, restoration or alteration, HRPT shall maintain builder's risk completed value form covering the perils insured under the ISO special causes of loss form, including collapse, building materials, water damage, and transit and theft of building materials with deductible reasonably approved by the State, in non-reporting form, covering the total value of work performed and equipment, supplies and materials at the location of the job as well as at any off-site storage location used with respect to the Project. The policy shall cover the cost of demolition and debris removal as may be legally necessary by the operation of any law, ordinance or regulation.

SECTION 5.07. Every five years from the effective date of this Agreement (the "Anniversary date"), HRPT shall, in consultation with the New York State Office of General Services, Bureau of Insurance, or any successor thereto, undertake a review and evaluation of the insurance coverages required under this Agreement to determine whether the extent and types of coverages mandated herein

provide sufficient coverage for the Premises and all operations managed or maintained by HRPT.

Within six months of such Anniversary date, HRPT shall provide a report of its findings and identify any OGS recommended changes in such insurance coverage to the City for its review and approval.

Promptly upon obtaining approval from the City, HRPT shall secure any additional coverages recommended and as approved by the City.

SECTION 5.08. Waiver of Subrogation. HRPT shall cause to be included in each of its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against the City, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if HRPT waives or has waived before the casualty the right of recovery against the City or (ii) other form of permission for the release of the City.

SECTION 5.09. HRPT shall require its Sublessees, Concessionaires, Permittees, Licensees, contractors and subcontractors to carry insurance with the same limits and provisions as provided herein, or with lesser coverages and/or at lower limits as HRPT deems appropriate in consultation with OGS.

ARTICLE VI

Covenants Against Waste and Covenants to Repair

SECTION 6.01. HRPT covenants, at its sole cost and expense to improve and keep, or cause the Sublessees, Concessionaires, Permittees, and/or Licensees, to keep, the Premises, including without limitation, the surfaces, roofs, foundations and appurtenances thereto, all sidewalks, grounds, plazas, vaults, piers and wharves, pier and wharf supports, bulkheads, sidewalk hoists, railings, gutters, and

sidewalks and curbs in front of or immediately adjacent to the Premises and the water, sewer and gas connections, pipes and mains appurtenant thereto, clean and in good condition and free of accumulations of dirt, rubbish, snow and ice, and to make, or cause its Sublessees, Concessionaires, Permittees, and/or Licensees to make, all repairs (including structural repairs) and replacements necessary, including, without limitation, performing routine maintenance and capital repairs, and securing the Premises during the performance of any and all construction in accordance with appropriate and applicable safety standards, to maintain the same in a condition appropriate for improvements of similar construction, use and class by the New York City Department of Parks and Recreation. Unless the Parties otherwise agree in writing, all repairs and maintenance shall be made at no cost or expense to the City and shall be made in accordance with all applicable Governmental Requirements and insurance policies.

ARTICLE VII

Governmental Requirements

SECTION 7.01. HRPT shall comply with any and all applicable Governmental Requirements, without regard to the nature or cost of the work required to be done, affecting the Premises or affecting the construction, maintenance, use, operation or occupancy thereof, whether or not the same involve or require any structural changes or additions in or to the Premises, and without regard to whether or not such changes or additions are required on account of any particular use to which the Premises, or any part thereof, may be put; provided, however, that HRPT shall have the right to contest the validity of any Governmental Requirements or the application upon HRPT thereof in accordance with Section

7.02 below.

SECTION 7.02. With respect to any proceeding challenging the validity or applicability of any Governmental Requirement, HRPT shall take all reasonable steps necessary to promptly commence such action after HRPT receives notice from a governmental authority asserting the applicability of such Governmental Requirement and shall prosecute to final adjudication with reasonable dispatch. Notwithstanding the foregoing, HRPT shall promptly comply with any such Governmental Requirement, and compliance shall not be deferred if such non-compliance shall result in the imminent loss or forfeiture of the Premises, or any part thereof or if the City shall be in danger of being subject to criminal liability or penalty by reason of non-compliance therewith.

ARTICLE VIII

Damage to or Destruction of Improvements

SECTION 8.01. HRPT assumes the risk of, and shall be responsible for, any loss or damage to City property in or on the Premises and under HRPT's direct or indirect control; if caused, either directly or indirectly by the acts, conduct, omissions or lack of good faith of HRPT, its officers, managerial personnel and employees, its tenants, or any person, firm, company, agent or other engaged by HRPT as an expert, consultant, specialist or subcontractor.

SECTION 8.02. HRPT covenants, with respect to insured or uninsured damage to Premises under the control and/or operation of an authorized Sublessee, Concessionaire, Permittee, and/or Licensee, that it will take, at its sole cost and expense, all appropriate steps (including litigation, if necessary) to ensure that such party restores, replaces, repairs or rebuilds such property and any

damaged or destroyed Improvements thereon to the condition, quality and class they were in immediately prior to such damage or destruction, or with such changes or alterations as the Sublessee, Concessionaire, Permittee, and/or Licensee, with the prior consent of HRPT, shall elect to make in conformity with the provisions of Article III hereof. HRPT shall take all appropriate steps to ensure that such Sublessee, Concessionaire, Permittee, and/or Licensee undertakes and executes such restoration, repair, replacement or rebuilding work promptly and with reasonable diligence.

SECTION 8.03. HRPT covenants, with respect to damage or destruction of Premises under HRPT's direct control and operation, that it will take all reasonable measures to restore, replace, repair or rebuild the Improvements or property damaged or destroyed to the condition, quality and class they were in immediately prior to such damage or destruction, or with such changes or alterations as HRPT, with thirty (30) days prior written notice to the City, shall elect to make in conformity with the provisions of Article III hereof. Any insurance proceeds received by HRPT as a result of damage or destruction of any portion of the Premises, in whole or in part, shall be used to undertake any needed restoration, repair, replacement or rebuilding work at such property or, if the work is not undertaken, such proceeds shall be dedicated for maintenance or construction work as may be needed at other State owned properties or Improvements within the Premises.

SECTION 8.04. This Agreement shall not terminate by reason of damage or destruction, total or partial, to any Improvements or property or by reason of the consequent untenability, in whole or in part, of any Improvement, and HRPT waives any and all rights to quit or surrender the Premises or any part thereof as a consequence of such damage or destruction, unless specifically mandated by subsequent legislation, and HRPT expressly agrees that its obligations hereunder, including the payment

of rentals, charges and other monetary obligations shall continue as though there were no damage or destruction.

ARTICLE IX

Condemnation

SECTION 9.01. If all or substantially all of the Premises is taken by any lawful power or authority by the exercise of the right of condemnation or eminent domain, then this Agreement and the Term shall terminate and expire on the date of such taking as if such were the scheduled expiration date, and any and all rights of the parties under this Agreement shall terminate (except as any such rights may have previously accrued). Any and all award, awards or damages in respect of such exercise of the right condemnation or eminent domain shall be payable in full to the City, and HRPT shall have no right whatsoever to any portion of such award, awards or damages.

SECTION 9.02. If any part of the Premises, but less than all of the Premises, is taken by any lawful power or authority by the exercise of the right of condemnation or eminent domain, then the demised premises under this Agreement shall be deemed to be immediately amended (without further action or agreement required by the parties hereto) to exclude all such part of the Premises. Any and all award, awards or damages in respect of such exercise of the right of condemnation or eminent domain shall be payable in full to the City, and HRPT shall have no right whatsoever to any portion of such award, awards or damages.

SECTION 9.03. If any part of the Premises is taken on a temporary basis by any lawful power or authority by the exercise of the right of condemnation or eminent domain, then the demised

premises under this Agreement shall be deemed to be immediately amended (without further action or agreement required by the parties hereto) to exclude all such part of the Premises (or all of the Premises, as the case may be) for the term of such temporary taking. Any and all award, awards or damages in respect of such exercise of the right of condemnation or eminent domain shall be payable in full to the City, and HRPT shall have no right whatsoever to any portion of such award, awards or damages. If such temporary taking shall terminate prior to the termination of this Agreement, then this Agreement shall, upon the termination of such temporary taking, be immediately deemed to again include the property which had been temporarily taken.

ARTICLE X

Mechanics' Liens

SECTION 10.01. In case any mechanic's lien shall at any time be filed against the Premises or the Improvements or any part thereof, or if any public improvement lien created or permitted to be created by HRPT shall be filed against any asset of or fund appropriated to the City, HRPT shall take all appropriate measures to cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If HRPT shall fail to cause such lien to be discharged within ninety days then, in addition to any other right or remedy, the City may, but shall not be obligated to, discharge such lien either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, or in any event the City shall be entitled, if the City so elects, to compel foreclosure of such mechanic's or public improvement lien by the lien holder and to pay the amount of any judgment in favor of the lien holder, with interest, costs and

allowances. All such sums paid by the City and all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by the City in connection with a discharge pursuant to Section 10.01, together with interest thereon at the then-applicable statutory rate from the respective dates of the City's making of each such payment or incurring each such sum, cost or expense, until the date of actual repayment to the City shall be paid by HRPT to the City subject to appropriation, within ten (10) days after the City shall have submitted to HRPT a statement, in reasonable detail, substantiating the amount demanded by the City.

SECTION 10.02. Nothing in this Agreement shall be deemed or construed in any way as constituting the consent or request of the City, express or implied, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration or repair with respect to the Premises or the Improvements, or any part thereof. Nothing in this Agreement shall be deemed or construed in any way as giving HRPT any right, power or authority to contract or permit the rendering of any services or the furnishing of any materials that would give rise to filing of any lien against the Premises or the Improvements or any part thereof or any asset of or fund appropriated to the City or HRPT. Notice is hereby given that the City shall not be liable for any work performed or to be performed or any materials or services furnished or to be furnished for HRPT or any Subtenant, Concessionaire, Permittee and/or Licensee upon credit, with respect to the Premises or the Improvements, and that no mechanic's lien for such work or materials shall attach to the fee interests of the City in and to the Premises or any asset of or fund appropriate to the City.

ARTICLE XI

Lawful Use of Premises and Surrender Upon Expiration or Earlier Termination of the Agreement

SECTION 11.01. HRPT shall not use or occupy, nor permit or suffer the Premises or any part thereof to be used or occupied for any unlawful, illegal or extra hazardous business, use or purpose, or in such manner as to constitute a nuisance of any kind (public or private) or that the City, in its reasonable judgment, deems offensive by reason of odors, fumes, dust, smoke, noise or other pollution, or for any purpose or in any way in violation of any governmental laws, ordinances, requirements, orders, directions, rules or regulations, or which may make void or voidable any insurance then in force on the Premises. HRPT shall take, immediately upon the discovery of any such unpermitted, unlawful, illegal or extra hazardous use, all necessary actions, legal and equitable, to compel the discontinuance of such use. If for any reason HRPT shall fail to take such actions, and such failure shall continue for thirty (30) days after HRPT's receipt of notice from the City specifying such failure, the City is hereby irrevocably authorized (but not obligated) to take all such actions in HRPT's name and on HRPT's behalf, HRPT hereby appointing the City as HRPT's attorney-in-fact coupled with an interest for all such purposes. All reasonable costs and expenses incurred by the City acting pursuant to the immediately preceding sentence (including, but not limited to, reasonable attorneys' fees and disbursements), together with interest thereon at the then-applicable Involuntary Rate from the respective dates of the City's making of each such payment or incurring of each such cost, expense until the date of receipt of repayment by the City, shall be paid by HRPT to the City within ten (10) days after demand and shall constitute rent under this Agreement in addition to and not in lieu of any other

rent due hereunder.

SECTION 11.02. HRPT shall not knowingly suffer or permit the Premises or any portion thereof to be used by the public in such manner as might reasonably tend to impair title to the Premises or any portion thereof, or in such manner as might reasonably make possible a claim or claims of adverse usage or adverse possession, or of implied dedication of the Premises or any portion thereof.

SECTION 11.03. HRPT shall on the last day of the Term or upon any earlier termination of this Agreement (unless this Agreement has been renewed or HRPT has otherwise been given an extension of its right to possess or occupy the Premises), surrender and deliver up the Premises unto the possession and use of the City in accordance with their respective statutory authority over such properties, in good order, condition and repair, reasonable wear and tear excepted, free and clear of all leases and occupancies unless otherwise agreed in to writing by the City, and free and clear of all liens and encumbrances other than those, if any, existing at the date hereof, or any created by the City. There shall be no payment or allowance whatsoever by the City on account of or for any Improvements at the time of the surrender, or for the contents thereof, equipment therein or appurtenances thereto, whether or not the same or any part thereof shall have been constructed by, paid for, purchased or otherwise acquired by HRPT.

SECTION 11.04. On the last day of the Term or upon any earlier termination of this Agreement HRPT shall deliver to the City HRPT's executed counterparts of all Subleases, Permits, Licenses and other concession or use agreements, and any service and maintenance contracts then affecting the Premises, true and complete maintenance records for the Premises, any permanent or temporary certificates of occupancy then in effect for any Improvements; all warranties and guarantees

then in effect which HRPT has received in connection with any work or services performed at the Premises, together with a duly executed assignment thereof to the City, all financial reports, books and records and any and all other documents of every kind and nature whatsoever relating to the Premises.

SECTION 11.05. Six (6) months prior to the end of the Term or within thirty (30) days of any earlier termination of this Agreement, HRPT shall provide written notice to all Subtenants, Concessionaires, Permittees, Licensees, and any other legal occupants of the Premises, with a copy to the City, of the termination of this Agreement. Such notice shall expressly advise such Subtenants, Concessionaires, Permittees, Licensees, and any other legal occupants of the Premises of the assignment to the City of the operative Sublease or Concessionaire Agreement. If applicable, such notice shall expressly advise such Subtenant's, Concessionaire's, Permittee's, Licensee's, and any other legal occupant's obligation to vacate the Premises and to promptly remove all personal property, unless their operative sublease, concessionaire or occupancy agreement provides otherwise and the City has consented thereto.

SECTION 11.06. Except as provided in Section 11.07 below, any personal property of HRPT or any Concessionaire, Sublessee, Permittee, Licensee or other occupant remaining on the Premises after the termination of this Agreement and after the removal of HRPT or such Concessionaire, Sublessee, Permittee, Licensee or other occupant from the Premises, may, at the option of the City be deemed to have been abandoned by HRPT or such Concessionaire, Sublessee, Permittee, Licensee or other occupant and either may be retained by the City as its property or be disposed of, without accountability in such manner as the City may see fit. The City shall not be responsible for any loss or damage occurring to any such property owned by HRPT or any

Concessionaire, Sublessee, Permittee, Licensee or other occupant.

SECTION 11.07. Prior to any such disposition of personal property considered abandoned by HRPT or a Concessionaire, Sublessee, Permittee, Licensee or other occupant, the City shall consult with the New York State Office of Parks, Recreation and Historic Preservation and the New York State Department of Environmental Conservation to determine whether the State of New York has rights to any such property.

SECTION 11.08. The provisions of this Article XI shall survive any termination of this Agreement.

ARTICLE XII

Subordination; Attornment

SECTION 12.01. The City's interest in this Agreement, as this Agreement may be modified, amended or supplemented, shall not be subject or subordinate to (a) any mortgage now or hereafter placed upon HRPT's interest in this Agreement or (b) any other lien or encumbrances hereafter affecting HRPT's interest in this Agreement, unless expressly consented to in writing by the City, acting in its sole discretion.

ARTICLE XIII

Extent of Liability and Indemnification

SECTION 13.01. Except as is specifically provided in Exhibit C with respect to its development of a Ferry Terminal at Pier 79, the City shall not be liable in any event whatsoever for any

injury, death or damage to HRPT or to any other Person happening on, in or about the Premises, its Improvements and/or appurtenances, nor for any injury or damage to the Premises or to any property belonging to HRPT or to any Person which may be caused by any fire or breakage, or by the use, misuse or abuse of the Improvements, or any street or sidewalk within the Premises, or which may arise from any other cause whatsoever except to the extent any of the foregoing shall have resulted from the negligent or wrongful act or omission on the part of the City or any of its respective officers, employees, contractors, consultants or assigns.

SECTION 13.02. Except as is specifically provided in Exhibit C with respect to its development of a Ferry Terminal at Pier 79, the City shall not be liable to HRPT or to any other Person for any failure of water supply, gas, steam or electric current, nor for any injury or damage to any property of HRPT or of any other Person or to the Premises caused by or resulting from gasoline, oil, steam, rain, snow or other substance which may leak or flow from the street, sewer, gas mains, or subsurface area or from any part of the Premises, or leakage of gasoline, oil or other substance from pipes, appliances, sewers or plumbing works therein, or from any other place, nor for interference with light or other incorporeal hereditaments by anybody, or caused by any public or quasi-public work, except to the extent any of the foregoing shall have resulted from the negligent or wrongful act or omission on the part of the City or any of its officers, employees, contractors, consultants or assigns.

SECTION 13.03. In addition to the provisions of Sections 13.01 and 13.02 above, except as is specifically provided in Exhibit C with respect to its development of a Ferry Terminal at Pier 79, the City shall not be liable to HRPT or to any other Person for any injury or damage to any property of HRPT or of any other Person or to the Premises, arising out of any sinking, shifting, movement,

subsidence, failure in load-bearing capacity of, or other matter or difficulty related to, soil, landfill, bulkhead, piers or piers supports, or other surface or subsurface materials, structures or supports, at the Premises, except to the extent any of the foregoing shall have resulted from the negligent or wrongful act or omission on the part of the City or any of its officers, employees, contractors, consultants or assigns.

SECTION 13.04. HRPT shall indemnify and hold harmless the City of New York and its officers, employees, agents, successors and assigns to the extent of its liability insurance policies as required herein against and from any and all claims by or on behalf of any person arising from the conduct or management of or from any work done by or on behalf of HRPT in or on the Premises.

SECTION 13.05. HRPT will further indemnify and hold harmless the City and its officers, employees, agents, successors and assigns to the extent of its liability insurance policies as required herein against and from any and all claims arising during the term of this Agreement from any condition therein or arising from any breach or default on the part of HRPT in the performance of any covenant or agreement on the part of HRPT to be performed, pursuant to this Agreement, or arising from any negligence of HRPT, or any sublessee, concessionaire, permittee, licensee or of its or their agents, contractors, subcontractors, servants or employees, or arising from any accident, injury or damage to any person or property during the term of this Agreement in or about Premises and from and against all judgments, costs and expenses and liabilities incurred in as a result of such claim, action or proceeding brought therein.

SECTION 13.06. In the event an action or proceeding is brought against the City or any of its officers, employees, agents or assigns by reason of a claim for which HRPT is obligated to indemnify

the City in accordance with Section 13.04 or 13.05 above, HRPT upon notice from the City, covenants to defend such action or proceedings in the name of the City, at the cost and expense of HRPT, by counsel reasonably satisfactory to the City. If HRPT defends any such action to which the City is made a party, the City shall be entitled to take part in the matter involved, at its election and cost, by counsel of its own choosing, provided that such action by the City shall not relieve HRPT of its obligation to indemnify the parties for any judgment or settlement amount, nor shall it limit or make void any liability of any insurer of HRPT hereunder in respect to the claim or matter in question.

SECTION 13.07. HRPT's obligation to indemnify the City in accordance with Sections 13.04, 13.05 and 13.06 shall not apply to the extent the liability in question arises from the negligent or willful conduct or omission on the part of the City of any of its officers, employees, agents or assigns.

SECTION 13.08. The provisions of this Article XIII shall survive any termination of this Agreement.

ARTICLE XIV

Assignment and Subletting

SECTION 14.01. Neither this Agreement nor any interest of HRPT in this Agreement shall be sold, assigned, or transferred (including a change in ownership or working control of HRPT), mortgaged, pledged or otherwise encumbered without the prior written approval and consent of the City in each instance, such consent to be granted or withheld in the City's sole discretion.

Notwithstanding the approval requirements of this section, concession agreements, subleases, permits, licenses or other use or occupancy agreements entered into by HRPT consistent with rules and

regulations promulgated by HRPT in accordance with the Act and pursuant to an agreement, the form of which has been previously approved by Corporation Counsel, are deemed approved without the need for further authorization by the City.

SECTION 14.02. The City hereby expressly assigns to HRPT, and HRPT hereby accepts from the City, all of its interests, including all rights, privileges, duties and obligations, under the Incumbent Use Leases. Within ten (10) days of the execution of this Agreement, the City will notify existing Concessionaires, Lessees, Permittees and Licensees of HRPT's authority and control over the development, operation and maintenance of the Premises in accordance with this Agreement. HRPT shall require that this Agreement is attached and its terms and conditions incorporated by reference in all subsequent concession agreements, subleases, permits and licenses entered into by HRPT or its Concessionaires, Sublessees, Permittees or Licensees for the Premises.

SECTION 14.03. HRPT is hereby empowered, without the need to obtain any further authorization from the City to execute, upon a request from any of its Sublessees, Concessionaires, Permittees and/or Licensees, any consents for any mortgage, assignment or sublease as may be required under such lease, concession, permit, or license and for which HRPT determines, upon its review and factual confirmation, is warranted and consistent with the purposes of the Hudson River Park Act.

ARTICLE XV

The City's Rights to Perform HRPT Covenants

SECTION 15.01. If HRPT at any time defaults on any duty or obligation hereunder and such

default results in a substantial risk to public health or safety or to the environment, the City, after providing HRPT with notice and a thirty (30) day opportunity to cure, may (but shall be under no obligation to) perform such obligation on HRPT's behalf. If HRPT indicates in writing within twenty (20) days after receiving such written notice that it needs an additional, specified period of time to cure any such default and diligently works to cure such default within such specified period of time, the City may in its discretion accept or deny such request for an extension of time. Performance by the City in any such instance shall not be considered a waiver or release by the City of any obligation of HRPT contained in this Agreement. No notice or opportunity to cure has to be given if the risk is imminent, in which case HRPT shall be informed as soon as practicable of the occurrence and any steps taken to avert or reduce the risk.

SECTION 15.02. All reasonable sums paid by the City and all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by the City in connection with its performance of any obligation pursuant to Section 15.01, together with interest thereon at the then-applicable statutory rate from the respective dates of the City's making of each such payment or incurring each such sum, cost or expense, until the date of actual repayment to the City, shall be paid by HRPT to the City within ten (10) days after the City shall have submitted to HRPT a statement, in reasonable detail, substantiating the amount demanded by the City. Any payment or performance by the City pursuant to Section 15.01 shall not be deemed to be a waiver or release of any breach or default by HRPT with respect thereto or of the right of the City to terminate this Agreement or take such other action as may be permissible hereunder or otherwise provided at law or in equity.

SECTION 15.03. Nothing in this Section XV or elsewhere in this Agreement shall imply any duty upon the part of the City to do any work required to be performed by HRPT hereunder and performance of any such work by the City shall not constitute a waiver of HRPT's default in failing to perform the same. The City, during the progress of any such work, may keep and store at the Premises all necessary materials, tools, supplies and equipment. The City shall not be liable for inconvenience, annoyance, disturbance, loss of business or other damage of HRPT, any Subtenant or other occupant of the Premises by reason of making such repairs or the performance of any such work, or on account of bringing materials, tools, supplies and equipment in to the Premises during the course thereof.

ARTICLE XVI

Default and Early Termination

SECTION 16.01. The City may terminate this Agreement if HRPT fails to observe or perform one or more of the terms, conditions, covenants or agreements contained in this Agreement, provided that the failure to perform or observe such term remains unremedied for thirty (30) days after the City sends written notice of such failure to HRPT. If HRPT indicates in writing within thirty (30) days after receiving written notice that it needs an additional, specified period of time to cure any such default and diligently works to cure such default within such specified period of time, the City may in its discretion accept or deny such request for an extension of time. If an extension of time is granted and HRPT fails to cure such default within such specified period of time, the City may thereafter revoke this Agreement.

SECTION 16.02. Upon the expiration of such thirty (30) days written notice, this Agreement,

the Term, and all rights of HRPT hereunder shall expire and terminate as if the date specified in the notice were the expiration date, and HRPT shall quit and surrender the Premises forthwith. If such termination is stayed by court order, then following the expiration of any such stay, the City, to the extent permitted by law or by leave of the court having jurisdiction over the case, shall have the right, at its election, to terminate this Agreement on twenty (20) day written notice to HRPT. Upon the expiration of such twenty (20) day notice period, this Agreement shall cease and HRPT shall immediately quit and surrender the Premises.

SECTION 16.03. The City shall have the right to terminate this Agreement without notice in the event of dissolution, or any act of bankruptcy or insolvency of, or by HRPT.

ARTICLE XVII

Maintenance and Ownership of Records

SECTION 17.01. HRPT shall keep and maintain at all times full and correct records and books of account of the operations of the Premises in accordance with generally accepted accounting standards and shall accurately record and preserve for a period of six (6) years the record of its operations upon the Premises. Within fifteen (15) days after request by the City, HRPT shall make said records and books of account available from time to time for inspection by the City and the City's designee during reasonable business hours at a location designated by HRPT in New York City. HRPT shall include a provision in each of its construction agreements which obligates each such contractor to make its records and books of account available to the City or its designee upon the notice and during the hours set forth in this Section 17.01.

SECTION 17.02. Upon expiration or any termination of this Agreement and subject to any interest the State of New York may also be entitled to in such documents and materials, all of HRPT's right, title and interest in all plans and drawings prepared by or for HRPT in connection with, any Improvements shall become the property of the City. HRPT shall deliver all such documents and materials to the City and/or State, as appropriate, upon expiration of this Agreement. HRPT's obligation under this Section 17.02 shall survive the expiration or termination of this Agreement.

ARTICLE XVIII

Notices

SECTION 18.01. Any notice, demand, approval or request under the terms of this Agreement or under any statute, that must or may be given or made by the Parties, must be in writing, and must be given or made by either personal delivery or by mail, as follows:

The City:

Deputy Mayor for Economic Development and Finance
City of New York
City Hall
New York, N.Y. 10007

With a copy to:

Office of the Corporation Counsel
100 Church Street
New York, N.Y. 10007
Attn: Chief, Division of Economic Development

HRPT:

Hudson River Park Trust
PMB 267, 295 Greenwich Street
New York, New York 10007
Attn: Counsel's Office

Any notice given hereunder shall be deemed delivered when deposited in a United States general or branch post office, enclosed in a registered or certified prepaid wrapper, addressed as provided above.

ARTICLE XIX

Cumulative Remedies -- No Waiver -- No Oral Change

SECTION 19.01. The specified remedies to which the City may resort under the terms of this Agreement are cumulative and are not intended to be exclusive of any other remedies or means of redress that the City may be lawfully be entitled to in case of any breach or threatened breach by HRPT of any provision of this Agreement. The failure of the City to insist that HRPT strictly comply with any and all of the covenants, terms or conditions of this Agreement shall not be construed as a waiver, modification or relinquishment for the future of such covenant, term or condition or of any of the City's options and/or remedies provided for at law or equity for such HRPT failure. In addition to the other remedies provided for in this Agreement, the City shall be entitled to the restraint by injunction of the violation, or attempted or threatened violation, of any of the covenants, conditions or provisions of this Agreement.

SECTION 19.02. The City reserves the right to waive, in whole or in part, any of the obligations or covenants on the part of HRPT to be performed or to cause to be performed hereunder, other than those obligations that HRPT is otherwise legally obligated to perform, including without limitation, those obligations set forth in the Act. Such waiver shall be in writing.

SECTION 19.03. Nothing in this Article XXI is intended to be, nor shall be construed to be, a

waiver by HRPT of any obligation the City may have under the Act.

ARTICLE XX

Quiet Enjoyment

SECTION 20.01 The City covenants and agrees that HRPT upon paying rent, and upon observing and keeping all of the covenants, agreements and provisions of this Agreement on its part to be observed and kept, including HRPT's obligations set forth in the Act, shall lawfully and quietly hold, occupy and enjoy the Premises during the term of this Agreement without hindrance or molestation by or from anyone, subject to the terms hereof.

ARTICLE XXI

Certificates

SECTION 21.01. The City agrees at any time and from time to time upon not less than thirty (30) days prior written notice by HRPT, to execute, acknowledge and deliver to HRPT a statement in writing certifying that this Agreement is unmodified and in full force and effect (or if there shall have been modification that the Agreement is in full force and effect as modified and identifying such modifications) and stating whether or not to the best knowledge of the signer of such statement HRPT is in default in keeping, observing or performing any term covenant, agreement, provisions, condition or limitation contained in this Agreement and, if HRPT shall be in default, specifying each such default of which the signer may have knowledge, it being intended that any such statement delivered pursuant to this Section may be relied upon by any prospective Sublessee, Concessionaire, Permittee, or Licensee.

However, reliance on such certificate shall not extend to any default as to which the signer had no actual knowledge.

SECTION 21.02. HRPT agrees that it will at any time and from time to time upon not less than thirty (30) days prior written notice by the City, execute, acknowledge and deliver to the City a statement in writing certifying that this Agreement is unmodified and in full force and effect (or if there shall have been modifications that the Agreement is in full force and effect as modified and identifying such modifications) and stating whether or not, to the best knowledge of the signer of such statement, the City is in default in keeping, observing or performing any term, covenant, agreement, provision, condition or limitation contained in this Agreement and, if the City is in default, specifying each such default of which the signer has knowledge.

ARTICLE XXII

Invalidity of Particular Provisions

SECTION 22.01. If this Agreement or any term or provision thereof or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

ARTICLE XXIII

Miscellaneous

SECTION 23.01. There shall be no merger of this Agreement or the leasehold estate created hereby with the fee estate in the Premises or any part thereof by reason of the same entity acquiring or holding, directly or indirectly, this Agreement or the leasehold estate created hereby or any interest in this Agreement or in such leasehold estate as well as the fee estate in the Premises.

SECTION 23.02. Except as specifically set forth herein this Agreement and the terms and conditions hereof shall enure only to the benefit of the Parties and shall be enforceable only by them, their successors and assigns. Unless specifically provided otherwise herein, nothing in this Agreement shall create or give to third parties any claim or right of action against HRPT or the City.

SECTION 23.03. This Agreement, Exhibit A annexed hereto set forth the entire agreement between the City and HRPT with respect to the subject matter hereof. This Agreement may not be amended, modified or otherwise changed except in a writing signed by all Parties.

SECTION 23.04. Nothing in this document authorizes the HRPT to take any actions inconsistent with the Act.

SECTION 23.05. The City and/or HRPT may record a memorandum of this Agreement or any amendment or modification of this Agreement. The parties hereto shall, upon the request of the other, join in the execution of the memorandum of this Agreement or memorandum of any amendment or modification of this Agreement in proper form for recordation.

SECTION 23.06. This Agreement and disputes arising thereunder shall be governed by the Laws of the State of New York.

SECTION 23.07. Article Headings contained herein are solely for the purpose of aiding in the location of general subject matter and are not intended to be used in the construction of this Agreement.

SECTION 23.08. With the exception of the Commissioner of the City of New York Department of Parks and Recreation, the Commissioner of the City of New York Department of City Planning and the Deputy Mayor of the City of New York, each of whom is currently a HRPT director, no staff member, officer, director or person employed by HRPT shall be considered or deemed to be an agent, employee, or legal representative of the City as a result of this Agreement or shall represent him or herself as an employee of the State for any purpose whatsoever.

SECTION 23.09. None of the Parties shall be liable for a failure to perform under this Agreement when such failure is due to fire, flood, earthquake, hurricane or a comparably severe natural event, war, riot, insurrection, strike or similar labor or industrial disturbance and/or other causes beyond the control of the Parties.


SECTION 23.10. This Agreement is intended solely to meet the mandate of Section 7.3(b) of the Act. Nothing contained in this Agreement shall be deemed or construed as a waiver or modification of any other statutory and regulatory rights or obligations of the Parties. HRPT is and shall continue to be bound by any and all applicable statutory and regulatory requirements respecting its development, operation and/or maintenance of the Park.

SECTION 23.11. This Agreement may be executed in separate counterparts, which together shall constitute the Agreement of the parties, provided that all of the parties to this Agreement have executed their respective copy of this Agreement.

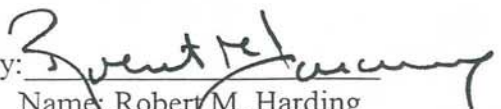
(End of Provisions)

IN WITNESS WHEREOF, the undersigned has caused this Agreement to be executed as of the date set forth above.

HUDSON RIVER PARK TRUST

By: 
Name: Robert Balachandran
Title: President and Chief Executive Officer

THE CITY OF NEW YORK


By: 
Name: Robert M. Harding
Title: Deputy Mayor

ATTEST:

Approved as to Form:

[SEAL]


City Clerk


Corporation Counsel

STATE OF NEW YORK)

) ss.:

COUNTY OF NEW YORK)

On this 5th day of November, 2001, before me personally came Robert Balachandran to me known, who being duly sworn, did depose and say that he is the President of the Hudson River Park Trust, and the said person described in and who executed the foregoing instrument, and he acknowledged that he executed same in his official capacity and for the purpose mentioned therein.

Laurieann Silberfeld
Notary Public

LAURIEANN SILBERFELD
Notary Public, State of New York
No. 02SI4984247
Qualified in Nassau County
Commission Expires July 15, 192003

STATE OF NEW YORK)

) ss.:

COUNTY OF NEW YORK)

On this 3rd day of November, 2001, before me personally came Robert M Harding to me known and known to me to be a Deputy Mayor of the City of New York and the same person who executed the foregoing instrument, and he acknowledged that he executed the forgoing instrument on behalf of the City of New York in his capacity as a Deputy Mayor of the City of New York.

Laurieann Silberfeld
Notary Public

LAURIEANN SILBERFELD
Notary Public, State of New York
No. 02SI4984247
Qualified in Nassau County
Commission Expires July 15, 192003

STATE OF NEW YORK)

) ss.:

COUNTY OF NEW YORK)

On this 29th day of November, 2001, before me personally came Victor L. Hobbes, with whom I am personally acquainted and known to me to be the _____ City Clerk of the City of New York, who being by me duly sworn, did depose and say that he is the _____ City Clerk of the City of New York, the municipality described in and which executed the foregoing instrument; that he knows the seal of said municipality; that the seal affixed to said instrument is such corporate seal; that it was so affixed as provided by law; and that he signed his name thereto pursuant to his authority as _____ City Clerk.

Sileen Flannelly
Notary Public
SILEEN FLANNELLY
Commissioner of Deeds
City of New York No. 4-6030
Certificate Filed in New York County
Commission Expires May 30, 2002

EXHIBIT A

DESCRIPTION OF PREMISES

All that certain plot, piece or parcel of land situate, lying and being in the Borough of Manhattan, City and State of New York and designated as Parcels 1, 2 and 3 below:

PARCEL 1

BEGINNING at a point which is the intersection of the northern boundary of Battery Place with the United States Bulkhead Line approved by the Secretary of War July 31, 1941.

THENCE generally northerly along said Bulkhead Line to a point designated as the point of beginning of Parcel 3-1 in the "New York State Department of Transportation Description and Map for the Acquisition of Property Interstate, Route Connection 518 West Side, Highway from Battery to 52nd Street", certified April 6, 1981 by Parsons, Brinckerhoff, Quade & Douglas, Inc. ("1981 Acquisition Map");

THENCE S84°23'2.1"E 59 feet to a point designated as 61+82.959/180.651' on the 1981 Acquisition Map;

THENCE, N19°17'24.23"E approximately 379 feet to a point designated as the point of beginning of Parcel 4-2 in the 1981 Acquisition Map;

THENCE generally northerly 84.068 feet along a curve to the left at a radius of 462.498 feet to a point designated as 67+22/105'± on Sheet 6 of the 1981 Acquisition Map;

THENCE S81°7'28.50"E approximately 48 feet to a point in the western boundary of West Street;

THENCE generally southerly along the western boundary of West Street to a point of intersection with the northern boundary of Battery Place;

THENCE generally northerly along the northern boundary of Battery Place to the point of BEGINNING.

PARCEL 2

BEGINNING at a point, along the U.S. Bulkhead Line shown on the U.S. Corps of Engineers' Maps (as defined hereafter), which point is designated $130+50\pm/243'\pm$ on Sheet 11 of the 1981 Acquisition Map (as defined hereinafter) and described as "243± feet distant westerly, measured at right angles from baseline station $130+50\pm'$ on Sheet 21 of the 1981 Acquisition Map;

THENCE $S61^{\circ}17'37.77''E$ approximately 120 feet to a point designated as $130+50\pm/123'\pm$ on Sheet 11 of the 1981 Acquisition Map;

THENCE $S28^{\circ}57'10.80''W$ to a point designated as $127+42\pm/125'\pm$ on Sheet 11 of the 1981 Acquisition Map;

THENCE $S61^{\circ}2'49.2''E$ approximately 30 feet to a point in the western boundary of Twelfth Avenue;

THENCE in a generally northerly direction along the western boundary of Twelfth Avenue to a point of intersection with the northern boundary of West 47th Street (or a line which is an extension of the northern boundary of West 47th Street);

THENCE in a generally westerly direction along the northern boundary of West 47th Street and the line which is an extension of such northern boundary of West 47th Street, to a point of intersection with the United States Pierhead Line (the "Pierhead Line");

THENCE in a generally southerly direction along the Pierhead Line to a point designated as $962'\pm/130+50\pm$ on Sheet 4 of the 1981 Acquisition Map.

THENCE $S61^{\circ}17'37.77''E$ approximately 720 feet to the point of BEGINNING;

BUT EXCLUDING Piers 76 and 78 and their associated upland areas.

The "U.S. Corps of Engineers' Maps" referred to above shall mean the U.S. Corps of Engineers' Maps 21A and 22 A entitled "Pierhead and Bulkhead Lines, Hudson River, N.Y. and N.J., approved by the U.S. War Department July 31, 1941, on file with the U.S. Corps of Engineers.

The 1981 Acquisition Map referred to above shall mean the New York State Department of Transportation Description and Map for the Acquisition of Property, Interstate Route Connection 518, West Side Highway from Battery to 52nd Street, certified April 6, 1981 by Parsons, Brinckerhoff, Quade & Douglas, Inc.

PARCEL 3

COMMENCING at a point which is the intersection of the Pierhead Line and the westerly extension of the northern boundary of West 59th Street;

THENCE continuing along the Pierhead Line in a generally southerly direction to a point which is the intersection of said Pierhead Line with the westerly extension of the southern boundary of West 55th Street;

THENCE continuing in a generally easterly direction along the extension of the southern boundary of West 55th Street to a point of intersection with the boundary of the United States Bulkhead Line;

THENCE continuing along the western boundary of said Bulkhead Line in a generally southerly direction to a point which is twenty feet north of the westernmost edge of the northern face of the headhouse building which is located at the foot of Pier 94;

THENCE generally easterly along a line parallel to and twenty feet north of the northern face of said headhouse to a point which is twenty feet north of the easternmost edge of the northern face of said headhouse;

THENCE generally easterly along an easterly extension of the line described in the preceding paragraph, for twenty feet;

THENCE generally southerly along a line parallel to and twenty feet east of the eastern face of said head house to a point in the westerly extension of the southern boundary of West 54th Street;

THENCE generally easterly along the westerly extension of the southern boundary of West 54th Street to a point in the western boundary of Twelfth Avenue;

THENCE generally northerly along the western boundary of Twelfth Avenue to a point in the westerly extension of the northern boundary of West 59th Street;

THENCE generally westerly along the westerly extension of the northern boundary of West 59th Street to the point of BEGINNING.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS EXHIBIT A, AS ANY PORTION OF STATE HIGHWAY ROUTE 9-A IS COMPLETED (SUCH COMPLETION BEING DEFINED AS CERTIFICATION OF COMPLETION BY THE NEW YORK STATE COMMISSIONER OF TRANSPORTATION) THE EASTERN BOUNDARY OF THE PREMISES ADJACENT TO SUCH PORTION OF STATE HIGHWAY ROUTE 9-A SHALL BE DEEMED AUTOMATICALLY ADJUSTED (WITHOUT ANY FURTHER ACTION BY THE PARTIES BEING REQUIRED) TO COINCIDE WITH THE WESTERN BOUNDARY OF SUCH COMPLETED PORTION OF STATE HIGHWAY ROUTE 9-A, ALL IN ACCORDANCE WITH SECTION 3.(3)(IV) OF THE ACT.

EXHIBIT B

ENCUMBRANCES

(List of Existing Leases, Permit, Licenses and other Use and Occupancy Agreements Currently in Place)

1. Nature of Encumbrance - Short Term Permit
Permittee/Licensee/Lessee - Edison 50th Street Parking Corporation
Date of Agreement- June 22, 1990
Premises- Area from the northside of Battery Place to the southside of Morris Street extending west from the westerly curb of West Street approximately 68 feet towards Battery Park City. This area represents a reduction of the permitted area from that reflected in the June 22, 1990 permit as a result of Route 9A construction work by NYSDOT.

2. Nature of Encumbrance - Short Term Permit
Permittee/Licensee/Lessee - Battery Park City Authority
Date of Agreement- June 1, 1991
Premises- Area A- All of the area of the Marginal Street bounded by the south by the north line of Thames Street, on the west by the westerly line of Marginal Street, on the east by the line dividing the existing curb and south-bound vehicular portion of the roadway, and on the north by the south line of Albany Street.
Area B - All of the Marginal Street bounded on the south by the curblines of Vesey Street, on the north by the prolongation of Jay Street, on the west by the westerly line of the Marginal Street, and on the east by the fence situated in the middle of the Marginal Street extended to Vesey Street.

3. Nature of Encumbrance - Short Term Permit
Permittee/Licensee/Lessee - Battery Park City Authority
Date of Agreement- March 1, 1991
Premises- Approximately 83,160 square feet consisting of that portion of Marginal Street bounded on the south by Albany Street, on the north by Vesey Street, and on the east by West Street.

4. Nature of Encumbrance - Short Term Permit
Permittee/Licensee/Lessee - Pier 79 Corporation
Date of Agreement- May 25, 1990

Premises- Pier 79, North River and Marginal Street between West 38th and West 40th Streets; uplands measuring approximately 516 feet in length and 210 feet in width, excepting the area of lands under water between Piers 79 and 78; together with the structures erected thereon, excluding the two (2) Port Authority of New York and New Jersey vent buildings of the Lincoln Tunnel.

5. Nature of Encumbrance - Lease

Permittee/Licensee/Lessee- Circle Line Sightseeing Yachts, Inc.

Date of Agreement- December 7, 1965, as amended November 30, 1973

Premises- As reflected in the lease, all that certain property and terminal facility situated generally at the foot of West 41st Street known as Pier 81 together with use of certain adjacent water area.

6. Nature of Encumbrance - Lease

Permittee/Licensee/Lessee- Circle Line Sightseeing Yachts, Inc.

Date of Agreement- December 6, 1961

Premises- As reflected in the lease, all that certain property and terminal facility situated generally at the foot of West 43rd Street known as Pier 83 together with use of certain adjacent water area.

7. Nature of Encumbrance - Lease

Permittee/Licensee/Lessee- The Intrepid Museum Foundation

Date of Agreement- January 1, 1982, as most recently amended by Agreement dated July 14, 1999.

Premises- As reflected in the Lease Agreement, Pier 86 together with associated upland and water areas adjacent thereto.

8. Nature of Encumbrance - Lease

Permittee/Licensee/Lessee- Consolidate Edison Company of New York, Inc.

Date of Agreement- January 30, 1959

Premises- As reflected in the lease agreement, Pier 98 together with associated upland and water areas adjacent thereto.

EXHIBIT C

CONTINUING USE RIGHTS AND EASEMENTS

CONTINUING USE RIGHTS

The Premises are demised subject to the Continuing Use Rights, defined as the rights of the City and certain current and future licensees, permittees, lessees and invitees, as identified below, to the use and quiet enjoyment of the following portions of the Premises as and solely for the purposes described below. Subject to terms and conditions of any existing lease agreements and any further limitations specifically identified below, in the event any applicable lease agreement, permit, license or other use and occupancy authorization expires and is not renewed on for the same use or is earlier terminated pursuant to the terms of such authorization or in the event the City's municipal operations at any of the identified piers cease and the City no longer wishes to continue such operations at that location, the Continuing Use Rights for such pier and associated upland areas shall expire and HRPT shall assume and exercise responsibility for redevelopment, maintenance and operation of such pier and associated areas in accordance with the terms and conditions of this Agreement and the Act, as they may be amended from time to time, without the need for any further act or deed or transfer or modification of this Agreement.

1. Use of Pier 99 and the associated upland area for Department of Sanitation marine transfer station and related purposes;
2. Use of Pier 98 and related upland area for fuel delivery and related distribution operations in connection with electrical utility operations;
3. Use of Pier 97 until December 31, 2003 for parking of municipal vehicles in connection with Department of Sanitation operations;
4. Use of Pier 86 and associated upland area for docking of, and access to and support for the USS Intrepid (including museum uses associated therewith) and related purposes;
5. Use of Pier 79 and associated upland area for ferry terminal and related purposes and continuation of the City's status as lessor, licensor, permittor or grantor under leases, licenses, permits or grants with respect to Pier 79 (including the right to collect and retain rent payments or other revenues derived therefrom, but subject to the payment obligations set forth in subsection 10(b) of Section 7 of the Act). HRPT shall have no responsibility or obligations to the City under this Agreement with respect the Pier 79 ferry terminal operations or premises so long as the City continues as lessor, licensor, permittor or grantor with respect to such property.

EASEMENTS

1. The City reserves an easement giving the City (and any lessees, licensees, permittees, transferees or invitees

pursuant to and in accordance with an Incumbent Use Lease or a Continuing Use Right as specifically provided for herein) a right to use the Premises for access (including ingress and egress) to any property of the City abutting or adjacent to the Premises.

2. The City reserves an easement giving the City (and any lessees, licensees, permittees, transferees or invitees pursuant to and in accordance with an Incumbent Use Lease or a Continuing Use Right as specifically provided for herein) a right to use the Premises to operate and maintain ducts, conduits, lines, cables, wires and similar and associated facilities for water, sewer, electricity, gas, telecommunications and/or other similar public services in connection with the provision of such services to the public.
3. A temporary easement is reserved for the New York State Department of Transportation as described in Section 3(e)(iii) of the Act.