
AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING

by and between

HUDSON RIVER PARK TRUST

and

WEST 30th STREET LLC

Dated as of June 27, 2018

THIS AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING (this "MOU"), is made as of the 27th day of June 2018, by and between HUDSON RIVER PARK TRUST, a New York State public benefit corporation having an office at Pier 40, 2nd Floor, New York, New York 10014 (the "Trust"), and WEST 30TH STREET LLC, a New York limited liability company having an office at 1999 Marcus Avenue, Lake Success, New York 11042 ("Developer"; the Trust and Developer, collectively, the "Parties" and individually, a "Party").

RECITALS:

WHEREAS, pursuant to the Hudson River Park Act, Chapter 592 of the Laws of 1998 of the State of New York, as amended (the "Act"), the Trust is responsible for the planning, design, development, construction, operation and maintenance of the Hudson River Park and the improvements therein (collectively, the "Park"), which is located along West Street in the Borough of Manhattan, City and State of New York;

WHEREAS, Section 3(e) of the Act describes the full extent of the boundaries of the Park;

WHEREAS, pursuant to Section 7.3(b) of the Act, the State of New York, by and through its Office of Parks, Recreation and Historic Preservation and its Department of Environmental Conservation, and the Trust entered into a long term lease agreement, dated as of April 3, 1999 (such lease agreement, as amended and as the same may be further amended, modified or supplemented from time to time, the "State Lease"), conveying to the Trust a possessory interest in the State-owned property within the Park and confirming the Trust's right to properly exercise the powers and responsibilities provided to the Trust under the Act;

WHEREAS, the property known as Chelsea Piers, generally located from West 16th Street to West 22nd Street at 12th Avenue in the Borough of Manhattan, City and State of New York, having a tax lot designation as Block 662, Lots 11, 16 and 19 and consisting of Piers 59, 60 and 61, pier shed buildings, an associated head house and other improvements thereon (all of the foregoing, and all rights and interests of the Trust appurtenant thereto, including, without limitation, riparian rights within and abutting the boundaries of such property, being hereinafter collectively referred to as the "Granting Property"), is a part of the State-owned property within the Park and is thereby included in the State Lease to the Trust;

WHEREAS, the property located at 606 West 30th Street in the Borough of Manhattan, City and State of New York, and having a tax lot designation as Block 675, Lot 39 (all of the foregoing together with any improvements thereon being hereinafter referred to as the "Lot 39 Receiving Property"), is owned in fee by Developer;

WHEREAS, pursuant to subsection 1(j) of Section 7 of the Act, enacted in 2013 by amendment to the Act, the Trust has been legislatively authorized to take such actions as may be necessary to effectuate the Transfer, to the extent permitted under applicable provisions of the ZR and after compliance with all applicable procedures, including the New York State Environmental Quality Review Act, as codified in Article 8 of the New York State Environmental Conservation Law ("SEQRA");

WHEREAS, the purpose of the Trust in entering into the Transfer transaction with Developer is to provide the financial resources, which, together with other financial resources, will be needed to undertake the ongoing planning, design, development, construction, and capital maintenance of improvements to the Park within the boundaries of Manhattan Community Board 4;

WHEREAS, the New York City Council (the "Council") and the New York City Planning Commission (the "CPC") have previously adopted a zoning change to establish the Special Hudson River Park District (the "Zoning Text") in the text of the ZR in Chapter 9 within Article 8;

WHEREAS, Developer has previously made application to the Department of City Planning ("DCP") for the grant of a special permit, pursuant to Section 89-21 of the New York City Zoning Resolution (the "ZR") included within the Zoning Text (the "TDR Special Permit" and Developer's application to DCP for the TDR Special Permit the "Original TDR Special Permit Application"), which grant of Special Permit would have facilitated the transfer of 29,625 square feet of zoning floor area to the Lot 39 Receiving Property and, in connection therewith, allow for modifications to the bulk regulations of the underlying C6-4X District;

WHEREAS, Developer has also made an application to DCP for a change to the zoning map to rezone the Receiving Property to facilitate its redevelopment (the "Zoning Map Application");

WHEREAS, Developer has also made an application to DCP to modify the Zoning Text to, among other things, define the Granting Property as a "granting site" and to define the Receiving Property as a "receiving site" and to modify the Special Hudson River Park District Map to include the Granting Property and the Receiving Property (the "Zoning Text Application");

WHEREAS, a transfer pursuant to the Original TDR Special Permit Application would require a significant action process pursuant to the Act (the "Significant Action Process") and subsequent approval by the Board of Directors of the Trust (the "BOD") of a purchase and sale agreement in connection therewith, prior to which the Trust must comply with SEQRA, which approval will require the BOD, acting for the Trust, to review and adopt, as the involved agency under SEQRA, the SEQRA Findings (the "BOD Process");

WHEREAS, Developer and the Trust have therefore previously entered into a Memorandum of Understanding, dated as of the 24th of November 2017, in order to memorialize certain undertakings that would embody certain conditions precedent to the parties' execution of a purchase and sale agreement with respect to the transfer of development rights to Lot 39 (the

“Lot 39 PSA”), including certain actions to be undertaken by Developer and the Trust in connection with the ULURP process, the Significant Action Process and the BOD Process (the “2017 MOU”);

WHEREAS, subsequent to execution of the 2017 MOU, Lalezarian Properties, LLC, an affiliate of Developer, has become contract vendee of the property located at 604 West 30th Street in the Borough of Manhattan, City and State of New York, and having a tax designation as Block 675, Lot 38 (all the foregoing together with any improvements thereon being hereinafter referred to as the “Lot 38 Receiving Property”, the Lot 39 Receiving Property and the Lot 38 Receiving Property hereinafter collectively referred to as the “Receiving Property”;

WHEREAS, Developer and its affiliate filed a supplemental application to DCP for the grant of a TDR Special Permit (the “Amended TDR Special Permit Application”), which grant of Special Permit would facilitate the Transfer of 29,625 square feet of zoning floor area to the Lot 39 Receiving Property and 4,937.5 square feet of zoning floor area to the Lot 38 Receiving Property;

WHEREAS, the CPC reviewed the Original TDR Special Permit Application and the Amended TDR Special Permit Application, as well as the Zoning Map Application pursuant to the provisions of the New York City Uniform Land Use Review Procedure set forth in sections 197-c and 197-d of the New York City Charter (“ULURP”), and, concurrently therewith, of the Zoning Text Application pursuant to Section 200 of the New York City; and

WHEREAS, by letter dated May 4, 2018, submitted at the request of DCP, Developer withdrew the Original TDR Special Permit Application from consideration by CPC and on May 7, 2018, CPC approved the Amended TDR Special Permit Application, the Zoning Map Application, and the Zoning Text Application pursuant to CPC Report Nos. C 180152(A) ZSM, C180150 ZMM, N 180151(A) ZRM (the “CPC-Approved ULURP Application”); and

WHEREAS, as of the date of this MOU, the CPC-Approved ULURP Application is under review and awaiting decision by the Council;

WHEREAS, the Trust and Developer previously executed a letter dated August 11, 2017 (the “Initial Cost Letter”), which provides that Developer has agreed to fund up to \$100,000.00 toward the Trust’s out-of-pocket, third-party expenses and other administrative costs in connection with the proposed Transfer to the Lot 39 Receiving Property; and

WHEREAS, the Trust and Developer desire now to memorialize the undertakings that would embody conditions precedent to the parties’ executing a Purchase and Sale Agreement with respect to the transfer of development rights to both Lot 38 and Lot 39 (the “Amended PSA”), including certain actions to be undertaken by Developer and the Trust in connection with the ULURP process, the Significant Action Process and the BOD Process between the date hereof and the date that the Amended PSA would be executed if approved by the BOD, and for such purpose wish to amend and restate the 2017 MOU;

NOW, THEREFORE, the Parties understand and acknowledge the terms and conditions more particularly set forth below, which terms and conditions embody a memorandum of understanding only and do not constitute binding and enforceable obligations, except as expressly otherwise hereinafter set forth, it nevertheless being understood by the Parties that neither Party shall be obligated to take any action to effect and enable the contemplated Transfer unless and until the terms and conditions set forth below are fully satisfied.

1. **The ULURP Process.** Unless and until a Permitted Project Termination (as hereinafter defined) is effectuated in accordance with the terms hereof, Developer will undertake all commercially reasonable actions as are practicable and necessary to progress ULURP to completion (the "ULURP Progress Actions"), including providing cooperation to, and information that may be reasonably requested by the Council, and the Trust shall reasonably cooperate with such actions. In connection therewith, Developer shall keep the Trust timely informed as to the status and progress of ULURP and requests by the Council; and it shall further provide to the Trust copies of any materials submitted to the Council in connection therewith, upon request by the Trust. For the avoidance of doubt, an action shall not be considered a ULURP Progress Action if it would require a material modification to the ULURP Applications or consent to a material modification to the ULURP Applications or other change proposed or requested by the Council that would be materially adverse to Developer's intended development of the Receiving Property.

2. **Permitted Project Termination.** Notwithstanding the foregoing expectation that Developer will undertake to perform all such actions as shall be practicable and necessary on its part to progress through ULURP, Developer may, in its sole discretion, withdraw the ULURP Application and terminate the ULURP process and otherwise terminate the Parties' joint effort to effect the Transfer if the Land Use Committee of the Council, or the Council either (a) in the case that Land Use Committee of the Council imposes material adverse changes upon or conditions to Developer's intended development of the Receiving Property, as set forth in the ULURP Application (a "Material Change"), (b) in the case the Council rejects the ULURP Application (such withdrawal and termination, a "Permitted Project Termination") by giving written notice to the Trust not later than four (4) business days after such Material Change or rejection.

3. **Trust's Significant Action Process / BOD Approval Process.** Prior to the anticipated date of a ULURP vote by the Council and authorization of the Transfer by approval of the ULURP Application (the "ULURP Approval"), the Trust initiated the Significant Action Process and took other actions required to progress the BOD Process by giving notice of and subsequently holding the Significant Action Process public hearing collectively with, and as part of, the ULURP public hearing at CPC regarding the ULURP Approval. Upon completion of the Significant Action Process, then in the event the ULURP Approval is obtained, the Trust will take all reasonably practicable steps to present the Amended PSA, in the form attached hereto as Exhibit A, to the BOD for a vote at its next scheduled meeting, and Developer shall provide such cooperation as the Trust may reasonably request in connection therewith. Developer acknowledges and agrees that the Trust has made no representations or given any assurances as to the likelihood of the Trust's obtaining BOD approval of the Amended PSA.

4. **Purchase Price.** The parties hereto have agreed on a purchase price for the Transfer, which purchase price shall be subject to review and comment by the public as a part of the Significant Action Process. In the event that Developer obtains the ULURP Approval and an approval by the BOD of the Amended PSA in connection therewith (the “the Board Approval”): (a) Developer will execute the Amended PSA, substantially in the form attached hereto as Exhibit A, which will prescribe a purchase price of Eleven Million One Hundred Sixty Four Thousand Eight Hundred Twelve and 50/100 Dollars (\$11,164,812.50) (the “Purchase Price”) in consideration of the transfer of 34,562.5 square feet of floor area to the Receiving Property, which Purchase Price may be adjusted in accordance with the terms of the Amended PSA under conditions specified therein. The parties understand that the Purchase Price may be disclosed as part of ULURP. The Purchase Price, shall be as set forth above, irrespective of whether there is a change to Developer’s proposed development of the Receiving Property as set forth in the ULURP Applications, whether imposed by the Council or any governmental entity or made at the discretion of Developer. The Purchase Price shall be payable strictly in accordance with the terms of the Amended PSA.

5. **Good Faith Deposit into Escrow.** Notwithstanding that this document is primarily a Memorandum of Understanding and not a binding contract, it is expressly hereby agreed by and between the Parties that this Section 5 shall be binding on, and enforceable against, the Parties as a matter of contract. Developer has previously deposited into escrow with Royal Abstract of New York, LLC (“Escrow Agent”), pursuant to the escrow agreement attached hereto as Exhibit C (the “Escrow Agreement”), an amount equal to Five Hundred Thousand and 00/100 Dollars (\$500,000.00) in the form of cash (the “Initial Good Faith Deposit”). A further deposit in the form of cash or a letter of credit an amount equal to One Million Seven Hundred Thirty Two Thousand Nine Hundred Sixty-Two and 50/100 Dollars (\$1,732,962.50) (the “Second Good Faith Deposit”), shall be deposited by Developer with Escrow Agent one (1) business day prior to the ULURP vote by the Council. Such deposits shall, together with interest thereon, be the “Good Faith Deposit”. The Good Faith Deposit shall be subject to the following refunding and disbursement rights of the Parties:

A. The Good Faith Deposit shall be non-refundable, except as expressly hereinafter set forth in Sections 5.C, 10, 11.D and 13.

B. If (i) Developer shall withdraw from or terminate the ULURP process or the Parties’ joint effort to effect and realize the Transfer for any reason other than by effecting a Permitted Project Termination, or (ii) following the ULURP Approval, the Board Approval is obtained but Developer fails to execute the Amended PSA within seven (7) days of the Trust’s notice to Developer of Board Approval, then, and in any such event, this MOU shall terminate and the Trust shall be entitled to a disbursement to it of the Good Faith Deposit.

C. If Developer shall, at any time, effect a Permitted Project Termination, then this MOU shall terminate, and Developer shall be entitled to a refund of \$375,000.00 of the Initial Good Faith Deposit, and Developer shall be entitled to one hundred percent

(100%) of the Second Good Faith Deposit being held by the Escrow Agent, the Trust's obligation being limited to directing the Escrow Agent to refund such portion of the Good Faith Deposit to Developer, and the Trust shall be entitled to a disbursement to it of the remaining \$125,000.00 of the Initial Good Faith Deposit. Notwithstanding the foregoing, in the event that one or more members of the Council have cited to or relied upon Developer's failure to use commercially reasonable efforts to undertake ULURP Progress Actions as the basis for imposing a Material Change or rejecting the ULURP Applications, the entire Good Faith Deposit being held by the Escrow Agent shall be disbursed to the Trust. For the avoidance of doubt, Developer's unwillingness to agree to any increase in the Purchase Price or to provide other compensation to the Trust for the Transfer, if requested by the Council, shall not constitute a failure to use commercially reasonable efforts to undertake ULURP Progress Actions for purposes of the foregoing.

D. If, following the ULURP Approval, (i) the Trust fails to undertake to obtain Board Approval of the Amended PSA in accordance with the ULURP Approval, at the next available meeting of the Board within thirty (30) days of the ULURP Approval (the "Outside Date"), or (ii) notwithstanding such undertaking Board Approval of the Amended PSA is not obtained by the Outside Date, or (iv) the Board Approval of the Amended PSA is obtained by the Outside Date but the Trust shall fail to execute the Amended PSA within thirty (30) days of Board Approval, then, and in any such event, this MOU shall terminate, and Developer shall be entitled to a refund of the Good Faith Deposit being held by the Escrow Agent, the Trust's obligation being limited to directing the Escrow Agent to refund the Good Faith Deposit to Developer.

E. If Board Approval of the Amended PSA is obtained in accordance with the ULURP Approval, the Good Faith Deposit shall remain in the escrow account, and the Parties' shall within seven (7) days after such approval execute the Amended PSA and upon the Parties' execution thereof, the entire amount of the Good Faith Deposit made by Developer shall be applied to the Down Payment under the Amended PSA and Developer shall receive credit against such Down Payment in an amount equal to the Good Faith Deposit. The Trust's use of the Down Payments shall thereafter be governed by the Amended PSA.

6. **Parties.** Neither the City of New York (the "City") nor the State of New York (the "State") is or shall be deemed a party to this MOU.

7. **Term.** Except for the provisions of this MOU which are expressly stated to survive the expiration hereof, it is understood that the operative term of this MOU (the "MOU Term") shall commence upon the date hereof and shall continue until the sooner to occur of (a) the date of the full execution of the Amended PSA, as applicable, in accordance with the ULURP Approval; (b) any occurrence set forth in Sections 5.B, 5.C, 5.D, or 13 which is deemed to give rise to a termination of the Parties' understandings under this MOU and a refund to Developer and/or disbursement to the Trust of the Good Faith Deposit in accordance with the terms therewith. In no

event shall the MOU Term be extended beyond the date which is thirty (30) days after the Outside Date without the mutual consent of the Parties, each in its sole and absolute discretion.

8. **Costs and Expenses.** Developer agrees to reimburse the Trust for documented third-party costs and expenses, as provided in the Initial Cost Letter, including consultants, up to a maximum of One Hundred Thousand and 00/100 Dollars (\$100,000). Developer further agrees to reimburse the Trust for additional documented third party costs and expenses, including, but not limited to consultants, for up to a maximum of Thirty-Five Thousand and 00/100 Dollars (\$35,000.00). The Obligations under this Paragraph 8 shall survive the expiration or earlier termination of this MOU.

9. **Developer's Representations.**

To induce the Trust to sign this MOU, Developer represents to the Trust as follows:

A. **No Disqualification.** As of the date of this MOU (a) to the knowledge of Developer: (a) neither Developer nor any of its principals or members (nor any of the individuals or entities having a direct or indirect interest in Developer's principals or members) (1) has ever been disqualified by the Trust, the City or the State, or any agency, authority or public benefit or development corporation of either the City or the State from entering into a contract with any such entity or (2) to the extent required under applicable Vendex Disclosure Requirements, violates any of the City's requirements under Vendex; and (b) Developer is validly formed and duly qualified to transact business in the State of New York.

B. **No Insolvency.** As of the date of this MOU, to the knowledge of Developer, neither Developer nor any of its members (nor any of the individuals or entities having a direct or indirect interest in Developer's members) has filed for protection under the insolvency laws of any jurisdiction or had an involuntary bankruptcy filing made against it.

C. **No Broker.** Developer represents to the Trust that Developer has not dealt with any broker or person acting in a similar capacity in connection with this MOU or the PSA contemplated hereby.

D. **Performance.** As of the date of this MOU, Developer has no reason to believe that, subject to obtaining the necessary governmental approvals and permits, it will not be able to satisfy its obligations set forth in this MOU.

10. **Specific Undertaking: Notice of Change.** Developer shall promptly notify the Trust in writing of any material change in the accuracy or completeness of any of Developer's representations made in Section 9 of this MOU if and when Developer obtains knowledge thereof; provided that, with respect to Section 9.A. above, it is hereby further understood that, as a condition precedent to the Trust's proceeding with the Transfer transaction, Developer shall comply with

“Vendex Disclosure Requirements” by having Developer complete the Vendor Questionnaire. “Vendex” shall mean the provisions of the New York City Administrative Code section 6-116.2, and “Vendex Disclosure Requirements” shall mean the disclosure requirements of Vendex to the extent prescribed by the New York City Mayor’s Office of Contract Services (“MOCS”) or any successor thereto), if applicable. Developer shall submit to the Trust the disclosure form required by Vendex, for Developer for transmittal to MOCS, not later than thirty (30) days after the date hereof. Any failure on the part of Developer to comply with Vendex requirements shall provide the Trust with the right to terminate this MOU, in the manner provided below. If the Vendex investigation conducted in connection with assuring Developer’s compliance with Vendex should disclose that Developer, (i) has been disqualified from entering into a contract with any of the governmental entities identified in Section 9.A, (ii) violates any of the City’s requirements under Vendex or (iii) is not validly formed or qualified to do business in New York State, then in such event, the Parties understand that the Trust may terminate this MOU, in which event one hundred percent (100%) of the Good Faith Deposit shall be refunded to Developer.

11. Miscellaneous.

A. No Other Rights. Except for the provisions set forth in Section 5 with respect to the Good Faith Deposit and the provisions of Sections 10, 11.D, 12 and 13, this MOU does not create or give rise to any legally enforceable rights, obligations or liabilities of any kind on the part of the Trust and Developer, other than for Developer and the Trust to carry out the express understandings set forth herein. Developer affiliate has acknowledged its obligations pursuant to the provisions of Section 5 with respect to the Good Faith Deposit by executing this MOU in this space indicated below.

B. No Representation by Trust, Etc. The Trust makes no representations or warranties of any kind with regard to the Receiving Property or the feasibility of the development thereto. Developer acknowledges and accepts that it must rely solely upon its own due diligence in investigating the Receiving Property and its ability to receive the Transfer if Board Approval is obtained. Except as expressly set forth herein, under no circumstances shall the Trust be obligated to Developer or any of its principals for any costs incurred in connection with the Receiving Property, the ULURP, the Significant Action Process or the seeking of ULURP Approval.

C. No Partnership. Neither this MOU nor any transaction contemplated hereby or in the furtherance hereof is to be construed as creating a partnership or joint venture between Developer and the Trust, the City or the State.

D. Assignment by Developer. Developer may assign its rights and obligations under this MOU to a third party, which owns or will own the Receiving Property, and which will sign the Amended PSA, subject to the Trust’s approval. If the Trust does not approve the assignment for any reason other than the failure of the proposed assignee to demonstrate to Trust’s reasonable satisfaction the availability of funds to pay the Purchase Price or the proposed assignee being unable to satisfy the Vendex Disclosure Requirements, then Developer may terminate this MOU in which event one hundred percent (100%) of the

Good Faith Deposit shall be refunded to Developer and Lalezarian Properties, LLC, as applicable; provided, however, that, for the purpose of this MOU, an "assignment" shall not be deemed to include a collateral assignment to a lender or a transfer of any existing direct or indirect equity interests in Developer, and West 30th Street LLC, or an affiliate thereof, remain as managing member(s) of Developer or otherwise in similar day-to-day control of the operations of Developer, subject to approval rights of members with respect to any material matters; provided, however, that any party acquiring a direct ownership interest of more than ten percent (10%) of Developer or its direct owner(s) shall be subject to Vendex Disclosure Requirements to the same extent as Developer and its original direct owner(s).

E. Governing Law, Etc. The provisions of this MOU shall be governed by and interpreted in accordance with the laws of the State. To the extent of any expressly contractually enforceable terms and conditions hereof, any and all claims with respect to monetary or injunctive relief shall be heard and determined in the courts of the State located in the New York County. Developer agrees that it, its affiliates, and its and their principals shall be subject to service of process within New York County and shall submit to the jurisdiction of courts of competent jurisdiction within New York County with respect to any such enforceable terms and conditions. This provision shall be deemed to be contractually binding as between the Parties.

F. Amendments. This MOU may be amended or modified only in a writing signed by Developer and the Trust.

G. Notices. All notices, demands, requests or other communications (collectively, "Notices") required to be given or which may be given hereunder shall be in writing and shall be sent by (a) certified or registered mail, return receipt requested, postage prepaid, or (b) national overnight delivery service with written notice of delivery, or (c) personal delivery, accompanied by an affidavit of service, all such notices to be addressed as follows:

If to the Trust:

Hudson River Park Trust 353 West Street, 2nd Floor
New York, New York 10014
Attn: Madelyn Wils, President

with copies to:

Hudson River Park Trust
353 West Street, 2nd Floor
New York, NY 10014
Attn: Daniel Kurtz, EVP/CFO

Hudson River Park Trust
353 West Street, 2nd Floor
New York, NY 10014
Attn: General Counsel or Deputy General Counsel

Kasowitz Benson Torres LLP
1633 Broadway
New York, NY 10019
Attn: Douglas B. Heitner, Esq.

If to Developer:

West 30th Street LLC
1999 Marcus Avenue
Lake Success, New York 11042
Attn: Kevin Lalezarian

with a copy to:

West 30th Street LLC
1999 Marcus Avenue
Lake Success, New York 11042
Attn: Aaron J. Singer, Esq.

with a copy to:

Fried Frank Harris Shriver & Jacobson LLP
One New York Plaza
New York, New York 1000-41980
Attn: David Karnovsky, Esq.

Any Notice so sent by certified or registered mail, national overnight delivery service or personal delivery shall be deemed given on the date when sent as indicated on the return receipt, or the receipt of the national overnight delivery service or affidavit of personal delivery from the person effecting personal delivery. A Notice may be given either by a party or by such party's attorney. The Trust or Developer may designate, by not less than five (5) business days' notice given to the others in accordance with the terms of this Section 11G, additional or substituted parties to whom Notices should be sent hereunder. All Notices delivered after 5:00 p.m. (New York time) shall be deemed delivered on the next business day.

H. Business Day. The term "business day" used in this MOU shall mean a day that is not a Saturday, Sunday or legal holiday in the City.

I. Legal Costs. The parties hereto agree that they shall, except as set forth in Section 8 or in the Cost Letter, pay directly any and all legal costs which they have incurred

on their own behalf in the preparation of this MOU, the Escrow Agreement, the Lot 39 PSA, the Amended PSA, and any other agreements or instruments that may pertain to this transaction. In the event of litigation between the parties with respect to this MOU or the Transfer contemplated hereby, the prevailing party (as determined by the court before which such suit or proceeding is commenced), in addition to such other relief as may be awarded, shall be entitled to recover from the non-prevailing party, solely to the extent so awarded by the court, all of the costs of enforcement, defense and litigation, including, but not limited to, its reasonable attorneys' and paralegal fees, witness fees, court reporters' fees and other costs of suit. This subparagraph shall survive any termination of this MOU and shall, accordingly, continue to be legally enforceable following the termination of this MOU.

12. **No Liability.** Neither the directors, officers or members of the Trust, nor any person or entity having a direct or indirect interest in Developer, nor any of them, nor any commissioner, member, officer, employee or agent of any of the Trust, the City or the State, or of Developer, or of any Person having a direct or indirect interest in Developer, shall be charged personally with any liability by Developer or by the Trust, or any member of their respective entities, affiliates, principals and/or agents, in connection with the execution, implementation, expiration or earlier termination of this MOU.


13. **Indemnity and Certain Termination Rights.** In order to induce the Trust to cooperate with respect to the Transfer transaction, and whether the Transfer transaction is consummated or not, Developer agrees (a) in the event of a breach by Developer of Section 9.A(b) hereof, the Trust may terminate this MOU, in which event one hundred percent (100%) of the Good Faith Deposit shall be refunded to Developer (provided Developer has fully and faithfully performed its obligations under Section 1 above); and (b) with respect to any material inaccuracy of the representation by Developer in Section 9.C, it shall indemnify the Trust, the People of the State of New York, the New York State Executive Department, the New York State Office of Parks, Recreation and Historic Preservation, the New York City Region of State Parks, Recreation and Historic Preservation Commission, the Department of Environmental Conservation, the City, New York City Department of Parks and Recreation, and each of their commissioners, officers, agents, employees, successors and assigns and hold them harmless with respect to any claim, demands or causes of action, asserted by any real estate broker claiming to have dealt with Developer in connection with the Transfer for a commission in connection with the Transfer. The obligations under this Section 13 shall survive the expiration or earlier termination of this MOU. Developer hereby represents and warrants that this Section 13 is binding upon and enforceable against Developer in accordance with its terms.

14. **No Third Party Beneficiary.** No person or entity, whether public or private, other than the Trust and Developer, or a successor, assign or legal representative of the Trust or Developer, shall be entitled to enforce, or assert any claim arising out of or in connection with any provision of this MOU.

IN WITNESS WHEREOF, the parties have duly executed this MOU as of the day and year first above written.

TRUST

HUDSON RIVER PARK TRUST,
a New York State public benefit corporation

By: 
Name: Madelyn Wills
Title: President & CEO

DEVELOPER

WEST 30th STREET LLC,
a New York limited liability company

By: West 30th Street Holdings LLC, its
managing member

By: _____
Name: Kevin Lalezarian
Title: Managing Member

IN WITNESS WHEREOF the parties have duly executed this MOU as of the day and year first above written.

TRUST

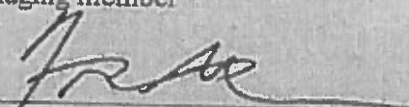
HUDSON RIVER PARK TRUST,
a New York State public benefit corporation

By: _____
Name: Madelyn Wills
Title: President & CEO

DEVELOPER

WEST 30th STREET LLC,
a New York limited liability company

By: West 30th Street Holdings LLC, its
managing member

By: 
Name: Kevin Lalezarian
Title: Managing Member