
MEMORANDUM OF UNDERSTANDING

by and between

HUDSON RIVER PARK TRUST

and

DD WEST 29TH LLC

Dated as of November 24, 2017

THIS MEMORANDUM OF UNDERSTANDING (this “MOU”), is made as of the 24th of November, 2017 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 DD WEST 29TH LLC, a New York limited liability company having an office at c/o Douglaston Development, LLC, 555 5th Avenue, New York, New York 10176 (“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 the southeast corner of West 29th Street and Eleventh Avenue in the Borough of Manhattan, City and State of New York, and having a tax lot designation as Block 675, Lot 12, Lot 29, and Lot 36 (all of the foregoing together with any improvements thereon being hereinafter referred to as the “Receiving Property”), is to be leased by Developer pursuant to a 99-year ground lease with West Side 11th & 29th Street LLC (“Fee Owner”);

WHEREAS, Developer desires to accept the transfer of up to 123,437.5 square feet of “floor area” (the “Transfer”) to the Receiving Property as the “receiving site” from the “zoning lot” (“floor area” and “zoning lot” being defined in section 12-10 of the New York City Zoning

Resolution (the “ZR”) associated with the Granting Property (also known as the “granting site”; “receiving site” and “granting site” both being defined in section 89-10 of the “Zoning Text,” such term being defined below) and to build on the Receiving Property a new development project, as described in the Transferable Development Rights (“TDR”) Application and supporting documentation (the “Project”);

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 the 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 made application to the Department of City Planning (“DCP”) for the grant of a special permit, pursuant to Section 89-21 of the ZR included within the Zoning Text (the “TDR Special Permit” and the Developer’s application to DCP for the TDR Special Permit the “TDR Special Permit Application”), which grant of Special Permit would facilitate the Transfer;

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 for a change to Section 89-02, 89-11, and 89-12 of the ZR to modify the bulk regulations of the underlying C6-4X District (the “Bulk Regulation Application”);

WHEREAS, Developer has also made an application to DCP to modify the Zoning Text to 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 “Definition Application”);

WHEREAS, DCP is prepared to undertake a review of the contemplated TDR and 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”), which process will include the review, by the CPC as lead agency under SEQRA, of a Draft Environmental Impact Statement (“DEIS”) pursuant to the requirements of SEQRA,

as further elaborated by the rules of the New York City Environmental Quality Review (“CEQR”) (the TDR, the Zoning Map Application, the Bulk Regulation Application, and the Definition Application, together, the “ULURP Applications”);

WHEREAS, Developer has, prior hereto, submitted to DCP a DEIS and other submissions of materials in support of the ULURP Applications, which materials identify and describe the proposed improvements to be made to the Park and the Receiving Property, and DCP is undertaking the review of such submissions (the “Submissions”);

WHEREAS, the Transfer 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 (the “PSA”) 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, the Trust and Developer previously executed a letter dated August 25, 2016 (the “Cost Letter”), which provides that the Developer has agreed to fund up to \$150,000 toward the Trust’s out-of-pocket, third-party expenses and other administrative costs in connection with the proposed Transfer; and

WHEREAS, the Trust and Developer desire now to memorialize the undertakings that would embody conditions precedent to the parties’ executing the PSA, including certain actions to be undertaken by the 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 PSA would be executed if approved by the BOD;

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 may be practicable and necessary to progress ULURP through its stages, including providing cooperation to, and information that may be reasonably requested by, DCP, Manhattan Community Board 4, the Manhattan Borough President, CPC, and the Council (collectively, the “ULURP Participants”) or appearances before the ULURP Participants, and the Trust shall reasonably cooperate with such actions. In connection with all matters relating to ULURP, Developer shall keep the Trust timely informed as to the status and progress of ULURP and requests by the ULURP Participants; and it shall further provide to the Trust copies of any materials submitted to the ULURP Participants in connection therewith, upon request by the Trust.

2. **Withdrawal by Developer From and Termination of ULURP and Termination of the Parties' Joint Effort to Effect And Realize the Transfer.** 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 withdraw its ULURP applications and terminate the ULURP process and otherwise terminate the effort to effect the Transfer, by written notice given to the Trust after CPC or the Council either (1) imposes material adverse changes upon or conditions to Developer's intended development of the Receiving Property, as set forth in the ULURP Applications, and Developer withdraws from the ULURP process as a direct result or (2) rejects the ULURP Applications (such withdrawal and termination, a "Permitted Project Termination"). Any notice of a Permitted Project Termination shall be given not later than four (4) business days after the Council votes to (1) impose such material adverse changes or (2) so reject the ULURP Applications.

3. **Trust's Significant Action Process / BOD Approval Process.** Not later than ninety (90) days prior to the anticipated date of ULURP vote by the Council and authorization of the Transfer by approval of the TDR Special Permit (the "ULURP Approval"), which ninety (90) days' prior date shall be determined by the Trust through a good faith estimation, the Trust shall initiate the Significant Action Process and take any 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. Notwithstanding the foregoing, the holding of a consolidated or combined public hearing (as contemplated by section 8-0105 of SEQRA) shall be subject to DCP and/or CPC's approval and consent, and the Trust shall have the right to change the consolidated or combined public hearing to a separate public hearing for the Significant Action Process and schedule such Significant Action Process public hearing for a date, time and place as may be determined by the Trust in its sole discretion. In the event the ULURP Approval is obtained and the Trust has completed the Significant Action Process, the Trust will take all reasonably practicable steps to present the proposed PSA, substantially 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 proposed 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. Subject to the Parties' obtaining the ULURP Approval and an approval by the BOD of the proposed PSA (the "Board Approval"), Developer will execute the PSA, substantially in the form attached hereto as Exhibit A, which PSA will prescribe a purchase price of Thirty Seven Million and 00/100 Dollars (\$37,000,000.00) (the "Purchase Price") in consideration of the Transfer. The parties understand that the Purchase Price may be disclosed as part of ULURP. The Purchase Price, shall be as set forth above, as well as in the PSA, 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 CPC, 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 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. Within two (2) business days of the date hereof, the Developer shall deposit into escrow with Royal Abstract (“Escrow Agent”), pursuant to the escrow agreement attached hereto as Exhibit B (the “Escrow Agreement”), an amount equal to One Million and 00/100 Dollars (\$1,000,000.00) in the form of cash or a letter of credit (the “Initial Good Faith Deposit”). A further deposit in an amount equal to Six Million Four Hundred Thousand and 00/100 Dollars (\$6,400,000.00) in the form of cash or a letter of credit (the “Second Good Faith Deposit”), shall be deposited by Developer with Escrow Agent prior to the ULURP vote by the Council, provided that the Developer has not previously terminated this MOU. The deposit, whether then equal in amount to (x) the Initial Good Faith Deposit, or (y) the sum of the Initial Good Faith Deposit plus the Second Good Faith Deposit, shall, together with interest thereon, be the “Good Faith Deposit”. The Good Faith Deposit shall 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 for any reason other than by effecting a Permitted Project Termination, or (ii) following the ULURP Approval, the Board Approval is obtained but Developer shall fail to execute the PSA within seven (7) days 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 and any and all interest earned on the Good Faith Deposit shall be paid to the Trust.

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 Five Hundred Thousand and 00/100 Dollars (\$500,000.00) of the Initial Good Faith Deposit plus, to the extent delivered in escrow, the Second Good Faith Deposit (and any and all interest earned on such portions of the Initial Good Faith Deposit and the Second Good Faith Deposit shall be paid to the Developer) and the Trust shall be entitled to a disbursement to it of the remaining Five Hundred Thousand and 00/100 Dollars (\$500,000.00) of the Initial Good Faith Deposit (and any and all interest earned on such portion of the Initial Good Faith Deposit shall be paid to the Trust).

D. If, following the ULURP Approval, (i) the Mayor of the City of New York vetoes the ULURP Applications and the Council fails to override such veto within the period allowed for such veto, or (ii) the Trust fails to undertake to obtain Board Approval at the next available meeting of the Board within thirty (30) days of the ULURP Approval (the “Outside Date”), or (iii) notwithstanding such undertaking, the Board Approval is not obtained, or (iv) the Board Approval is obtained by the Outside Date but the Trust shall fail to execute the 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 100% 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 (and any and all interest earned on the Good Faith Deposit shall be paid to the Developer).

E. If Board Approval is obtained, the Good Faith Deposit shall remain in the escrow account, and the Parties' shall immediately after such approval execute the PSA and, upon the Parties' execution of the PSA, the entire amount of the Good Faith Deposit shall be applied to the Down Payment of Seven Million Four Hundred Thousand and 00/100 Dollars (\$7,400,000.00) of the Purchase Price (the "Down Payment") provided for and as prescribed in the PSA; and Developer shall receive credit against the Down Payment in an amount equal to the Good Faith Deposit (and any and all interest earned on the Good Faith Deposit shall also be credited against the Down Payment). The Trust's use of the Down Payment shall thereafter be governed by the 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 Good Faith Deposit provisions of Section 5 and the provisions of Sections 10 and 11, 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 PSA; (b) the date Developer may withdraw from ULURP in accordance with Section 2; or (c) any occurrence set forth in Sections 5.B or 5.C 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 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 Cost Letter, up to a maximum of One Hundred and Fifty Thousand Dollars (\$150,000).

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.

E. Cooperation. Simultaneously with the execution of this MOU, Developer shall enter into an agreement with Fee Owner with respect to Fee Owner's obligations to cooperate and execute documents in connection with ULURP process. Developer represents that it has received a signed authorization letter from Fee Owner authorizing Developer to file the ULURP Applications and a copy thereof is attached hereto as Exhibit C.

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, the Developer shall comply with "Vendex Disclosure Requirements" by having the 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 the 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 the 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 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 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.

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 leases or will lease the Receiving Property, and which will sign the 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 the provisions of Section 5.D hereof, which are incorporated herein by reference, shall apply with respect to the refund of the Good Faith Deposit; provided, further, 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, the creation of any new direct or indirect equity interests in Developer, and/or the assignment to an affiliate of Developer, so long as either Douglaston Development, LLC, or an affiliate thereof, remain as managing member(s) of Developer or its assignee entity, or otherwise remain in similar day-to-day control of the operations of Developer or its assignee entity, 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:

DD West 29th LLC
c/o Douglaston Development, LLC
555 5th Avenue
New York, NY 10176
Attn: Mr. Steven Charno, President

with a copy to:

Kramer Levin Naftalis & Frankel, LLP
1177 Avenue of the Americas
New York, NY 10036
Attn: Michael T. Sillerman, 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 Paragraph 12(h), 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 and the 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 9A(b) hereof, the Trust may terminate this MOU, in which event the Good Faith Deposit shall be refunded to Developer; 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(b) shall survive the expiration or earlier termination of this MOU. The Developer hereby represents and warrants that this Section 13(b) is binding upon and enforceable against the Developer in accordance with its terms.

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

[Signature pages continue on the following page]

DEVELOPER

DD WEST 29TH LLC,
a New York limited liability company

By: 
Name: Steven R. Charno
Title: Authorized Signatory

[End of signature pages]

EXHIBIT A
FORM OF PSA

Attached hereto.

DEVELOPMENT RIGHTS PURCHASE AND SALE AGREEMENT

THIS DEVELOPMENT RIGHTS PURCHASE AND SALE AGREEMENT (“Agreement”) is dated as of [____], 2017, and effective as of the date this Agreement (the “Effective Date”) is executed by and among HUDSON RIVER PARK TRUST, a New York State public benefit corporation organized pursuant to the Hudson River Park Act, Chapter 592 of the Laws of 1998 of the State of New York (as amended, the “Act”) having an office at 353 West Street, 2nd Floor, New York, N.Y. 10014 (“Seller”), DD WEST 29TH LLC, a New York limited liability company having an office at c/o Douglaston Development, LLC, 555 5th Avenue, New York, N.Y. 10176 (“Purchaser”), and ROYAL ABSTRACT OF NEW YORK, LLC, a New York limited liability company (“Escrow Agent”).

RECITALS

WHEREAS, pursuant to Section 7.3(b) of the Hudson River Park Act, Chapter 592 of the Laws of 1998 of the State of New York, as amended (the “Act”), the State of New York (the “Landlord”), by and through its Office of Parks, Recreation and Historic Preservation and its Department of Environmental Conservation, and Seller entered into a long term lease agreement, dated as of April 3, 1999 (such lease agreement, as amended, extended, including by letter agreement dated as of February 9, 2016, and as the same may be further amended, modified or supplemented from time to time, collectively, the “State Lease”) with Seller, as lessee, for the premises located in the City, County and State of New York known as Chelsea Piers and designated as Block 662, Tax Lots 11, 16 and 19 on the Tax Map of the Borough of Manhattan, City of New York, as such premises are more particularly described in Exhibit A annexed hereto (the “Seller’s Land”; together with the building and improvements thereon or to be constructed thereon, the “Seller’s Improvements”; the Seller’s Land and Seller’s Improvements being herein referred to collectively as the “Seller’s Premises”);

WHEREAS, Purchaser (or an affiliate of Purchaser under the Purchaser’s control) [is/will be] the leasehold owner of the land located in the City, County and State of New York located at the southeast corner of West 29th Street and Eleventh Avenue and identified as Block 675, Tax Lots 12, 29 and 36 on the Tax Map of the Borough of Manhattan, City of New York, as such premises are more particularly described in Exhibit B annexed hereto (the “Purchaser’s Land”; together with the buildings and improvements thereon or to be constructed thereon, the “Purchaser’s Improvements”; the Purchaser’s Land and Purchaser’s Improvements being herein referred to collectively as the “Purchaser’s Premises”);

WHEREAS, Purchaser desires to construct new buildings (the “New Purchaser Buildings”) on Purchaser’s Land in excess of the bulk (as hereinafter defined) presently permitted to be constructed on the Purchaser’s Land under the Zoning Resolution (as hereinafter defined) and in accordance with the ULURP Approvals (as hereinafter defined);

WHEREAS, Purchaser desires to acquire and utilize the Subject Floor Area Development Rights (as hereinafter defined) in the construction of the New Purchaser Buildings;

WHEREAS, pursuant to an amendment to the Act as such amendment was enacted by the New York State Legislature and included in subsection 1(j) of Section 7 of the Act, Seller is

authorized to take such actions as may be necessary to effectuate the transfer to the Purchaser of the Subject Floor Area Development Rights (the "Transfer"), pursuant to the provisions of the Zoning Resolution authorizing such transfer;

WHEREAS, the Seller and Purchaser each signed the MOU manifesting their intention to undertake activities necessary to obtain the ULURP Approvals described below;

WHEREAS, the New York City Planning Commission (the "CPC") has approved, pursuant to resolutions dated [_____] (i) an amendment to the Zoning Resolution, pursuant to Resolution No. N [_____] ZRM, modifying the Special Hudson River Park District Map in Section 89-00, et seq. of the Zoning Resolution (the "Zoning Text Amendment"), which zoning amendment would authorize the Transfer through the provision of a zoning special permit that permits such a transfer; (ii) a rezoning of the Purchaser's Premises, pursuant to Resolution No. C [_____] ZMM (the "Rezoning"); (iii) a zoning special permit pursuant to proposed Section 89-21 of the Zoning Resolution, pursuant to Resolution No. C [_____] ZSM, permitting the Transfer and certain bulk modifications to the New Purchaser Buildings (the "Transfer Special Permit"); and (iv) an amendment to the Zoning Resolution, pursuant to Resolution No. N [_____] ZRM (the "Definition Amendment"), which zoning amendment would define the Seller's Premises as a "granting site" and to define the Purchaser's Premises as a "receiving site"; and the New York City Council (the "Council") has approved the Zoning Text Amendment, Rezoning, Transfer Special Permit, and Definition Amendment pursuant to Resolution Nos. [_____] dated [_____] (such approvals, collectively, the "ULURP Approvals");

WHEREAS, the Restrictive Declaration has been recorded against the Purchaser's Land on [_____] at CRFN [_____] memorializing certain obligations related to the ULURP Approvals;

WHEREAS, the Board of Directors of Seller has approved the Transfer (the "Board Approval"), and therefore the Transfer is fully authorized by applicable law;

WHEREAS, the Seller's Land and the Purchaser's Land are both located in the Special Hudson River Park District (the "District") as defined in and mapped pursuant to Chapter 7 of Article 12 of the Zoning Resolution;

WHEREAS, the Seller's Land is located on a zoning lot within the District as defined in Section 11-122 of the Zoning Resolution, and is a "granting site", as defined in Section 89-02 of the Zoning Resolution, from which floor area may be transferred; and

WHEREAS, the Purchaser's Land is a "receiving site", as defined in Section 89-02 of the Zoning Resolution, to which floor area may be transferred, in accordance with the provisions of the Zoning Resolution.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, it is hereby agreed as follows:

1. Definitions. The following terms used in this Agreement shall have the following meanings:

- (a) Adverse Determination shall have the meaning set forth in Section 5(b)(9) of this Agreement.
- (b) Architect shall mean an architect or surveyor licensed in the State of New York.
- (c) Bulk, floor area, floor area ratio, party in interest, zoning lot, and use shall have the meanings set forth in Section 12-10 of the Zoning Resolution as of the date hereof.
- (d) Business Day means any day other than a Saturday, Sunday or day on which banks are authorized or required by law to be closed in the State of New York.
- (e) Closing shall mean the consummation of the Transfer and the payment of the Purchase Price as contemplated by this Agreement in the manner prescribed below in Sections 3(a) and 3(b) for the purchase of the Subject Floor Area Development Rights.
- (f) Closing Date shall mean the date on which the Closing occurs.
- (g) Code shall mean the Internal Revenue Code of 1986, as amended, and as the same may be amended from time to time.
- (h) CPC shall mean the New York City Planning Commission.
- (i) DCP shall mean the New York City Department of City Planning.
- (j) Deposit shall mean Seven Million Four Hundred Thousand and 00/100 Dollars (\$7,400,000.00) in cash, which amount includes the Deposit Credit.
- (k) Deposit Credit shall mean the “Good Faith Deposit” (as that term is defined in the MOU) made by Purchaser under the MOU (irrespective of whether any portion thereof has been disbursed to Seller pursuant to the provisions of the MOU).
- (l) Development Rights shall mean the rights, as determined in accordance with the Zoning Resolution, which are appurtenant to a zoning lot, to develop such zoning lot by erecting thereon a structure or structures with (i) a total floor area determined by multiplying the area of the zoning lot by the maximum allowable floor area ratio for structures in such zoning district or districts in which such zoning lot is located and (ii) any bulk, density and other development rights permitted under the Zoning Resolution.
- (m) Development Rights Endorsement shall mean a “New York City Development Rights Endorsement,” in the form attached hereto as Exhibit G, to be issued by a Title Company as part of Purchaser’s owner’s policy of title insurance in the amount of the Purchase Price or if that form of endorsement is no longer being issued, an endorsement or title insurance coverage issued by a Title Company providing substantially the same title insurance coverage in all material respects.
- (n) Escrow Agent shall mean Royal Abstract of New York, LLC.

- (o) Escrow Agreement shall have the meaning set forth in Section 3(b) of this Agreement.
- (p) Institutional Lender shall mean any of the following types of Persons or any Person that is directly or indirectly owned and controlled by any of the following types of Persons, whether domestic or foreign, as long as (1) at the time of the making of the applicable loan or financing, any such Person has not been determined by the State or City of New York to be not qualified to enter into contracts with those governmental entities, and (2) any such Person is, or shall agree in writing to be, subject to the jurisdiction under the laws, and courts, of the United States of America and of the State and City of New York and shall appoint an individual or other Person to accept service of process on behalf of any such Institutional Lender in the City of New York: (A) a commercial bank, trust company (whether acting individually or in a fiduciary capacity for another entity that constitutes an Institutional Lender), savings and loan association, savings bank or similar institution; (B) an insurance company; (C) an investment bank; (D) an employees' benefit, profit-sharing, pension or retirement trust, fund or system (whether federal, state, municipal, private, foreign or otherwise); (E) a credit union, or endowment fund; (F) a hedge fund, opportunity fund or similar type of fund that is reputable, operated by experienced management that has not less than ten (10) years prior experience directing similar funds; (G) a Person not referred to in the foregoing provisions that is subject to supervision and regulation by the insurance or banking department of any of the United States, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation or by any successor hereafter exercising similar functions; (H) any Person that is entirely owned and controlled by any combination of one or more of the foregoing Persons; or (I) a Syndicate including any of the foregoing Persons, provided that such Person, in the case of each applicable Person identified in (A)-(H), has net assets (owned or under management) in excess of Five Hundred Million and 00/100 Dollars (\$500,000,000.00), as such amount is Adjusted for Inflation at the time of the making of the applicable loan or financing; provided, however, that in the case of a Syndicate, (x) a Syndicate shall be deemed to be an Institutional Lender for all purposes as long as such Syndicate is comprised of at least one (1) Institutional Lender that shall act as the administrative agent for the Syndicate members and shall participate in the funding of the particular loan in question in an amount approximate to that customarily funded by administrative agents in other syndicated loans with similar principal amounts and similar risk factors to the particular loan in question (such Institutional Lender, the "Lead Institutional Lender") and (y) the members of such Syndicate, other than the Lead Institutional Lender, may include, in addition to any of the types of Persons identified in (A)-(H), any of the following types of Persons or any Person that is directly or indirectly owned and controlled by any of the following types of Persons, whether domestic or foreign, as long as (aa) any such Person has not been determined by the State or City of New York to be not qualified to enter into contracts with those governmental entities and (bb) any such Person is, or shall agree in writing to be, subject to the jurisdiction under the laws, and courts, of the United States of

America and of the State and City of New York and shall appoint an individual or other Person to accept service of process on behalf of any such Institutional Lender in the City of New York: (I) a financing company, (II) an employees' welfare fund or system, (III) a religious, educational or eleemosynary institution or foundation, (IV) a governmental agency or governmental plan, (V) trust fund or (VI) any Person that is entirely owned and controlled by any combination of one or more of the foregoing Persons.

- (q) Litigation Expenses shall have the meaning described in Section 3(c) below.
- (r) MOU shall mean that Memorandum of Understanding between Seller and Buyer dated as of November 24, 2017.
- (s) MOU Period shall mean the period of time preceding the date hereof during which time the Seller and Purchaser had understood that they would undertake certain actions to seek to progress the governmental approval processes to successful completion in order for the Transfer to be legally approved and authorized;
- (t) Owner's Waiver shall mean, collectively, any and all waiver, consent and subordination documents executed by a party-in-interest (as that term is defined in the Zoning Resolution) in the receiving lot to the execution by it of the Transfer Instrument and Notice of Restrictions, which Owner's Waiver(s) shall be in the form annexed hereto as Exhibit F-2.
- (u) Pre-Closing Period shall mean the period of time beginning on the Effective Date hereof and ending on the Closing Date, during which time the Seller and Purchaser will be obligated to undertake certain actions to progress the Transfer transaction to closing, all as prescribed herein.
- (v) Preliminary Planning Work shall have the meaning provided in the MOU.
- (w) Pre-Waiting Period Project Litigation shall mean a judicial action or proceeding commenced prior to the expiration of the Waiting Period, challenging, contesting or reviewing the ULURP Approvals, Board Approval, Transfer pursuant to the Act, Zoning Resolution amendments, or other governmental approvals necessary for the Transfer and the development contemplated by the ULURP Approvals.
- (x) Project Litigation shall mean, collectively the Pre-Waiting Period Project Litigation and the Post-Waiting Period Project Litigation.
- (y) Post-Waiting Period Project Litigation shall mean a judicial action or proceeding commenced after the expiration of the Waiting Period, challenging, contesting or reviewing the ULURP Approvals, Board Approval, Transfer pursuant to the Act, Zoning Resolution amendments, or other governmental approvals necessary for the Transfer and the development contemplated by the ULURP Approvals.
- (z) Purchaser's Title Company shall mean a Title Company selected by Purchaser.

- (aa) Purchaser's Waiver shall mean, collectively, any and all waiver, consent and subordination documents executed by a party-in-interest (as that term is defined in the Zoning Resolution) in the receiving lot to the execution by it of the Transfer Instrument and Notice of Restrictions, which Purchaser's Waiver(s) shall be substantially in the form annexed hereto as Exhibit F-2.
- (bb) Restrictive Declaration shall mean that certain [_____] Restrictive Declaration to be recorded by Purchaser in accordance with the ULURP Approvals, as the same may be amended from time to time.
- (cc) Seller's Certification shall mean a written certification by a duly authorized officer of the Seller that the Preliminary Planning Work, for which the Seller seeks payment or reimbursement by disbursement from the Deposit, has been performed, and the disbursement therefor is being demanded of the Escrow Agent.
- (dd) Seller's Waiver shall mean, collectively, (1) the execution and delivery by the State of New York (as mandated by subsection 1(j) of Section 7 of the Act), as the fee owner of the granting lot, of the waiver and consent of the State of New York (as required by the Zoning Resolution), as party-in-interest (as that term is defined in the Zoning Resolution) to the granting lot, in substantially the form attached as Exhibit F-1 in order to effectuate the Transfer and (2) a waiver, consent and subordination executed by such other parties-in-interest (as that term is defined in the Zoning Resolution) in the granting lot as may be required by Purchaser's Title Company in connection with the issuance of the Development Rights Endorsement, substantially in the form attached hereto as Exhibit F-2.
- (ee) Subject Floor Area Development Rights shall mean 123,437.5 square feet of Development Rights that are available for transfer and that may be transferred from Seller's Premises to Purchaser's Premises utilizing the method set forth in Section 89-21 of the Zoning Resolution.
- (ff) Third-Party Professional shall have the meaning as defined in the MOU.
- (gg) Title Company shall mean any of the following title companies: Royal Abstract of New York, Commonwealth Title Insurance Company, Fidelity National Title Insurance Company, Chicago Title Insurance Company (New York Office), Stewart Title Insurance Company, or First American Title Insurance Company.
- (hh) Transfer shall mean the sale and transfer from Seller to Purchaser of the Subject Floor Area Development Rights, in accordance with Special Permit [_____] approved by the New York City Planning Commission on [_____] pursuant to Resolution No. C [_____] ZSM and the New York City Council on [_____] pursuant to Resolution No. [_____].
- (ii) Transfer Instrument and Notice of Restriction shall mean the instrument effecting the Transfer and the restriction upon further development, enlargement, or conversion of the Seller's Premises, as referred to in Section 89-21(d) of the Zoning Resolution, which Transfer Instrument and Notice of Restriction shall be in the

form annexed hereto as Exhibit C, provided however, that the form may be modified to the extent required to be acceptable to DCP, all as contemplated by Section 89-21(d) of the Zoning Resolution.

- (jj) ULURP Approvals is defined in the Recitals of this Agreement.
- (kk) Utilized Floor Area Development Rights shall mean the Development Rights appurtenant to Seller's Parcel utilized by the building and improvements located thereon as of the Closing Date.
- (ll) Waiting Period shall mean the period of one hundred twenty-five (125) days following the Board Approval.
- (mm) Zoning Resolution shall mean the Zoning Resolution of the City of New York, effective as of December 15, 1961, as amended from time to time.

2. Purchase and Sale of Development Rights.

- (a) On the terms and subject to the conditions herein set forth, Seller will sell and Purchaser will purchase, free from all liabilities, mortgages, security interests, liens, or other encumbrances, the Subject Floor Area Development Rights.
- (b) Purchaser hereby acknowledges and agrees that Seller shall retain all rights in and to the Utilized Floor Area Development Rights unto itself and all other rights (in each case exclusive of the Subject Floor Area Development Rights) unto itself pertaining to the Seller's Premises as the same exists on the date hereof, and reserves the right to use such Utilized Floor Area Development Rights for any and all lawful purposes which may include, without limitation, the development, redevelopment, construction in addition to reconstruction, and renovation of the Seller's Improvements and the transfer by Seller of such Utilized Floor Area Development Rights with any other Development Rights that Seller may now or in the future obtain, subject to the Deed Restriction (hereinafter defined). In the event that any of Seller's Improvements are demolished prior to the Closing, the amount of Utilized Development Rights shall decrease by the amount of Development Rights previously utilized by such demolished improvements. Notwithstanding anything in this Section 2(b), Seller shall not take any action that will diminish, limit, delay, or interfere with the Seller's ability to transfer the Subject Floor Area Development Rights to Purchaser as contemplated hereunder.

3. Purchase Price/Deposit.

- (a) The Purchase Price. In consideration of the transfer to Purchaser by Seller of the Subject Floor Area Development Rights, Purchaser agrees to pay to Seller the amount of Thirty Seven Million and 00/100 Dollars (\$37,000,000.00) (the "Purchase Price"), payable at Closing by (i) disbursement from Escrow Agent to Seller of the amount of the Deposit (payment of which is provided for in subparagraph (b) below) remaining in the Escrow Account, by wire transfer of immediately available federal funds, to an account(s) designated by Seller on not less than two (2) days' notice (ii) and (iii) payment by Purchaser to Seller in cash (or cash equivalent) of an amount equal to the aggregate amount of Litigation Expenses to the extent previously disbursed out of the Deposit, plus all unpaid, documented Litigation Expenses actually incurred by Seller up to the Closing Date not reimbursed by Purchaser or previously disbursed out of the Deposit, except as agreed otherwise herein by Purchaser.
- (b) The Deposit. Pursuant to the terms of the MOU, Purchaser has previously deposited the Deposit with Escrow Agent in accordance with the Escrow Agreement attached hereto as Exhibit D (the "Escrow Agreement"). The Escrow Agent has, contemporaneously herewith, separately acknowledged its receipt of the Deposit by its signature to this Agreement. The Deposit will be held by the Escrow Agent pursuant to the terms of this Agreement and the Escrow Agreement. The Deposit (excluding any accrued interest) shall be credited to the Purchase Price at the Closing, or refunded to Purchaser if this Agreement is terminated in accordance with the provisions of this Agreement, including, without limitation, pursuant to Sections 5(b) and 9(a) hereof. Provided that no Project Litigation is pending upon the expiration of the Waiting Period, Seller shall be permitted to withdraw from the Deposit, in one or more withdrawals in each of the following periods through and including the Closing or termination of this Agreement prior to the Closing (any such amount, a "Deposit Withdrawal"): (i) an amount up to One Million Dollars (\$1,000,000) from the date of the expiration of the Waiting Period to January 15, 2017, (ii) an amount up to One Million Five Hundred Thousand Dollars (\$1,500,000) from January 16, 2019 to May 1, 2019, and (iii) an amount up to One Million Dollars (\$1,000,000) for each six (6) month period, or portion thereof, thereafter prior to the Closing or termination of this Agreement prior to the Closing. Seller shall make use of each Deposit Withdrawal for the purpose of general design, planning, and construction of capital improvements to the Hudson River Park in Community Board 4 to be funded with the Purchase Price. The mechanics for Seller's making a Deposit Withdrawal shall be as set forth in in Section 3(c) below and in the Escrow Agreement. All Deposit Withdrawals shall be non-refundable to Purchaser, unless Seller shall be in material default of its obligations under this Agreement or fails to satisfy a condition to Closing which pursuant to the express terms hereof is to be satisfied by Seller and, as a result thereof, this Agreement is terminated prior the Closing, in which event Seller shall refund to Purchaser the amount of Deposit Withdrawals previously disbursed to Seller.
- (c) Treatment of Deposit. From the date of the expiration of the Waiting Period through and including the Closing Date, Seller shall be entitled to Deposit Withdrawals in the amounts set forth in Section 3(b) above, to pay for third-party expenses incurred by

Seller for general design, planning, and construction of capital improvements to the Hudson River Park in Community Board 4 to be funded with the Purchase Price. With respect to all demands by Seller to the Escrow Agent for Deposit Withdrawals, Seller shall have the right to an immediate disbursement by Escrow Agent from the Deposit upon the Seller's submission to Escrow Agent of: (a) a certification by a duly authorized officer of the Seller of the expenses incurred by Seller for which the Seller seeks payment or reimbursement, and (b) copies of invoices or receipts evidencing such expenses. Seller shall provide to Purchaser a copy of Seller's proposed certification and copies of such receipts or invoices not less than five (5) business days prior to the submission thereof to Escrow Agent. Should Purchaser request a correction (which correction shall be limited to that of mathematical error) of any demand for payment by the Seller during such five (5) business day period, the Seller shall in good faith consider such request and either (x) modify or correct its demand for payment, or (y) not modify or correct its demand for payment and instead respond to Purchaser setting forth reasons why it is not willing to modify or correct its demand for payment. The obligation of Escrow Agent to disburse funds from the Deposit for any expenses, and the protocol and procedure for effecting same, is as set forth in the Escrow Agreement.

- (d) In the event a Project Litigation is commenced, as contemplated in Section 5(b) below, then and in that event the Purchaser shall be obligated to reimburse Seller for such amounts as shall correspond to invoices and retainers for reasonable third-party legal fees and disbursements and court costs incurred by Seller related to such Project Litigation (and solely with respect to Pre-Waiting Period Project Litigation, such amount shall in no event exceed One Million and 00/100 Dollars (\$1,000,000) in the aggregate) ("Litigation Expenses"), except as agreed otherwise herein by Purchaser. Purchaser's obligation to reimburse Seller for such Litigation Expenses shall be satisfied no later than thirty (30) days after receipt of written notice from Seller to Purchaser that Seller has incurred such expenses, which notice shall be accompanied by the pertinent invoices and retainer receipts from outside counsel. To the extent not reimbursed by Purchaser within such thirty (30) day period after demand, Seller shall have the right to an immediate disbursement by Escrow Agent from the Deposit upon the Seller's submission to the Escrow Agent of: (i) a certification by a duly authorized officer of the Seller that the Litigation Expenses, for which the Seller seeks payment or reimbursement by disbursement from the Deposit, has been performed and disbursement therefor is being demanded as a result of Purchaser's failure to pay within such thirty (30) day period, and (ii) invoices or receipts evidencing the Litigation Expenses. Should Purchaser object to, or request correction of, any demand for payment by the Seller during Purchaser's thirty (30) day review period, the Seller shall in good faith consider such objection or request and either (A) so modify or correct its demand for payment, or (B) not modify or correct its demand for payment and instead respond to Purchaser setting forth reasons why it is not so prepared to modify or correct its demand for payment. The obligation of Escrow Agent to disburse funds from the Deposit to pay for any Litigation Expenses, and the protocol and procedure for effecting same, is as set forth in the Escrow Agreement. Seller shall be entitled to reimbursement for Litigation Expenses incurred during the pendency of any Project Litigation during the 2-Year Period (as defined in Section 5(b)(3)), subject to the

limitation on Litigation Expenses for Pre-Waiting Period Litigation, except as agreed otherwise herein by Purchaser. Purchaser shall have no liability for any Litigation Expenses incurred or billed after the date of Closing. Notwithstanding anything to the contrary in this Agreement or the Escrow Agreement, any disbursements due to Seller of amounts requested for payment of Litigation Expenses and not reimbursed by Purchaser shall be made out of the Deposit, and prior to Closing the amount(s) of such disbursements from the Deposit shall be replenished to the Deposit in full by Purchaser.

- (e) The Purchase Price established by the Board of Directors of Seller is informed by an appraised value of that portion of the Subject Floor Area Development Rights being used in connection with the construction of the New Purchaser Building for market-rate and 25% affordable residential rental use on a ground lease (the “Permitted Residential Use”). The Purchaser agrees that it shall only develop that portion of the Subject Floor Area Development Rights for the Permitted Residential Use, as permitted in the Deed Restriction. Subject to the foregoing conditions, Purchaser may propose to develop or convert the use of the Purchaser’s Land to “for sale” market rate residential housing (the “Change In Residential Use”).
- i. If Purchaser or owner of the fee interest in the Purchaser’s Land (the “Fee Owner”) shall elect to pursue a Change in Residential Use prior to the Closing Date, then the following provisions shall apply:
1. The Purchase Price shall be increased by the greater of (i) one-hundred twenty-five percent (125%) of the Purchase Price and (ii) the appraised value of the Subject Floor Area Development Rights after reappraisal undertaken by Seller to account for the Change In Residential Use (the “New Appraised Value”), less the Purchase Price prior to the date of such election. Notwithstanding the foregoing, any increased Purchase Price must be approved by the Board of Directors of Seller.
 2. No election of Change of Use shall be permitted later than six (6) months prior to Closing Date. Seller shall, in a written notice given to Purchaser, specify its determination of the New Appraised Value as of the date of such Purchaser election within sixty (90) days after receipt of Purchaser’s notice. Seller’s determination of the New Appraised Value shall be final and binding on Purchaser.
 3. Purchaser shall pay to Seller: (a) Seller’s estimated third party costs and fees in connection with establishing the New Appraised Value, (b) an administrative fee of One Hundred Thousand Dollars (\$100,000), and (3) Seller’s estimated legal fees and expenses in connection therewith (such amount in the aggregate, the “Election Fee”). The Election Fee shall be paid by Purchaser to Seller within seven (7) business days of issuance of Seller’s notice to Purchaser of the amount of the Election Fee.

4. Within seven (7) business days of issuance of notice to Purchaser of the New Appraised Value, Purchaser shall notify Seller as to whether it accepts the increased Purchase Price and wishes to close with the Change In Residential Use, or rejects the increased Purchase Price and wishes to close without the Change in Residential Use.
 - ii. If Purchaser does not elect to pursue a Change in Residential Use prior to the Closing Date, then Purchaser agrees that at or prior to Closing, it shall cause to be recorded a deed restriction in the form attached hereto as Exhibit H (the “Deed Restriction”) duly executed by the leasehold and fee owners of the Purchaser’s Premises, which deed restriction shall encumber the fee and leasehold interest in Purchaser’s Premises and be superior to any lease, mortgage, lien, claim or other encumbrance on Purchaser’s Premises other than those listed on Exhibit I attached hereto.

4. Conditions to Closing.

- (a) As a condition to Closing for the benefit of (i) Purchaser, Seller shall have obtained the Seller’s Waiver and (ii) Seller, Purchaser shall have obtained the Purchaser’s Waiver. Each of Purchaser and Seller shall deliver at Closing an updated Parties-in-Interest Certification in the form attached as Exhibit E, dated as of the Closing Date, prepared by Purchaser’s Title Company, certifying as to the identity of any party-in-interest with respect to Seller’s Premises and Purchaser’s Premises, respectively.
- (b) As a condition of Closing, for the benefit of Purchaser and Seller, (i) no Project Litigation shall have been filed, or if any Project Litigation is filed, all such Project Litigation shall have been dismissed on the merits pursuant to a final, non-appealable judgment or order by a court of competent jurisdiction, and (ii) no Adverse Determination shall have been rendered.
- (c) As conditions precedent to Purchaser’s obligations with respect to the Closing:
 - 1) No later than three (3) business days prior to the Closing Date, Seller shall have delivered to Escrow Agent (x) signed execution copies of all of the documents, instruments and other deliverables required to be executed and delivered by Seller pursuant to this Agreement at the Closing and (y) Seller’s Waiver;
 - 2) No material representation or warranty made by Seller pursuant to Section 6(a) hereof shall be untrue, as of the Closing Date, in any material respect (it being understood that a representation and warranty shall be deemed untrue in a “material respect” only if the inaccuracy therein prevents Seller from selling the Subject Floor Area Development Rights in the manner contemplated by this Agreement or would expose Purchaser to material post-closing liability or

claims);

- 3) There shall be no material default by Seller in its covenants hereunder that would prevent Seller from selling the Subject Floor Area Development Rights in the manner contemplated by this Agreement;
- 4) The Development Rights Endorsement is available from one or more Title Companies;
- 5) Seller shall have otherwise satisfied, on or prior to the Closing, all of its obligations under this Agreement in all material respects;
- 6) Purchaser and Fee Owner shall have executed and delivered the ground lease for Purchaser's Land; and
- 7) The Owner documents listed in Section 5(e) hereof have been delivered.

(d) As conditions precedent to Seller's obligations with respect to the Closing:

- 1) No later than three (3) business days prior to the Closing Date, Purchaser shall have delivered to Escrow Agent (x) signed execution copies of all of the documents, instruments and other deliverables required to be executed and/or delivered by Purchaser at the Closing pursuant to this Agreement, and (y) Purchaser's Waiver.
- 2) No material representation or warranty made by Purchaser pursuant to Section 6(b) hereof shall be untrue, as of the Closing Date, in any material respect (it being understood that a representation and warranty shall be deemed untrue in a "material respect" only if the inaccuracy therein prevents Seller from selling the Subject Floor Area Development Rights in the manner contemplated by this Agreement or would expose Seller to material post-closing liability or claims);
- 3) There shall be no material default by Purchaser in its covenants hereunder that would prevent Purchaser from purchasing the Subject Floor Area Development Rights in a manner contemplated by this Agreement;
- 4) Purchaser shall have otherwise satisfied, on or prior to the Closing, all of its obligations under this Agreement in all material respects.
- 5) If applicable, on or prior to the Closing the Deed Restriction shall be duly recorded, encumber both the fee and leasehold interest in the Purchaser's Premises and be superior to to any lease, mortgage, lien, claim or other encumbrance on Purchaser's Premises other than those listed on Exhibit I attached hereto.

5. Closing Documents and Closing.

- (a) Subject to the terms of this Agreement, except as expressly provided otherwise in this Agreement, the Closing shall be scheduled, if no Project Litigation has been commenced during a period of one hundred twenty-five (125) days following the Board Approval (the “Waiting Period”) at a time and place mutually convenient to Seller and Purchaser on a date that is not later than May 1, 2019 (the “Outside Closing Date”), time being of the essence with respect to the Closing occurring not later than the Outside Closing Date.
- (b) Notwithstanding the provisions set forth in subsection (a) above with respect to the Closing Date, the Seller and Purchaser agree that the Closing shall be postponed (as per the terms provided below) if a third party, unaffiliated with the Purchaser or Fee Owner either directly or indirectly (i.e., does not have any direct or indirect ownership interest in Purchaser), has commenced a Project Litigation during the Waiting Period or prior to the Scheduled Closing Date. In the event such Project Litigation is commenced, the Seller and Purchaser shall proceed as follows with respect to defending the Project Litigation and scheduling a Closing:
- (1) The Seller and Purchaser shall be obligated to defend against any such Project Litigation to the extent reasonably practicable given the nature of the litigation, and the Seller and Purchaser shall cooperate with each other and with the City of New York (the “City”) to contest any such litigation, jointly and in good faith. The parties recognize that they have no control over any decision of the City of New York with respect to the defense against any such Project Litigation and that the ability of either party to defend may be impracticable without the City of New York’s cooperation and willingness to defend.
 - (2) Seller and Purchaser shall defend and cooperate in the defense of the Project Litigation and Seller shall be reimbursed for Litigation Expenses, subject to any limitation expressly set forth in this Agreement, incurred by Seller in defending against any Project Litigation, except as agreed otherwise herein by Purchaser.
 - (3) Upon the date that is two (2) years after the commencement of any Project Litigation (the “2 Year Period”), Purchaser shall have the option, after consultation with Seller, to elect to either:
 - (x) terminate this Agreement, in which event Purchaser shall be entitled to receive a refund of the remaining balance of the Deposit being held in Escrow plus interest; or
 - (y) extend the Closing Date and this Agreement for a period of time expressly prescribed, in writing (not to exceed two (2) years), by the Purchaser to the Seller (the “Post-2-Year Extension Period”).
 - (4) If Purchaser elects the right to a Post-2-Year Extension Period, then and

in that event, Seller and Purchaser shall continue to cooperate to defend, to the extent practicable, and contest the Project Litigation for the stated Post-2-Year Extension Period. At the end of the stated Post-2-Year Extension Period, Purchaser shall have an additional option, after consultation with Seller, to elect to either:

(x) terminate this Agreement, in which event the Purchaser shall be entitled to receive a refund of the remaining balance of the Deposit being held in Escrow plus interest; or

(y) extend the Closing Date and this Agreement for an additional period of time expressly prescribed, in writing (not to exceed two (2) years), by the Purchaser to the Seller (the "Additional Post-2-Year Extension Period").

The provisions of this subparagraph (4) may be repeated until either Purchaser has terminated this Agreement, or the Project Litigation has been dismissed on the merits in a final, non-appealable order or judgment, by a court of competent jurisdiction, in the manner described in to subparagraph (b)(7) hereof and no Adverse Determination has been rendered. As used herein, "Post-2-Year Extension Period" shall include, collectively, all stated Additional Post-2-Year Extension Period and Post-2-Year Extension Periods elected by the Purchaser pursuant to this subsection (b)(3) and (b)(4).

- (5) Purchaser shall not be deemed to be in default of its obligations under this Agreement to cooperate in connection with the defense of a Project Litigation in good faith so long as Purchaser has promptly reimbursed Seller for the Litigation Expenses or Seller has obtained reimbursement for the Litigation Expenses, subject to any limitation expressly set forth in this Agreement, from the Deposit and Purchase has replenished the Deposit in full for the amount(s) of such reimbursements prior to Closing, subject to any limitation expressly set forth in this Agreement. Any refunds of the Deposit to which Purchaser may otherwise be entitled shall not be further reduced by unpaid Litigation Expenses.
- (6) In all events so long as this Agreement remains in full force and effect the Closing shall be postponed until a final non-appealable judgment or order has been entered by a court of competent jurisdiction dismissing the Project Litigation on the merits and with no Adverse Determination having been rendered.
- (7) Upon the entry of a final, non-appealable judgment or order dismissing the Project Litigation on the merits by a court of competent jurisdiction and with no Adverse Determination having been rendered, either Seller or Purchaser shall have the right to schedule the Closing to occur not later than thirty (30) days following the entry of such final non-

appealable judgment or order dismissing the Project Litigation (the “Project Litigation 30-Day Period”). Such a Closing Date shall be scheduled by either of the Parties delivering written notice to the other that the Closing shall be scheduled at a time and place mutually convenient to the other within the Project Litigation 30-Day Period. Time shall be of the essence with respect to any such Closing occurring more than twenty (20) days after the entry of such final, non-appealable judgment or order dismissing the Project Litigation with no Adverse Determination having been rendered.

- (8) At the Closing, the Purchase Price shall be paid in the manner provided for in Section 3(a) above.
- (9) Notwithstanding anything to the contrary contained in this Agreement or the Escrow Agreement, in the event of a final, non-appealable judgment or order entered or filed in any Project Litigation prohibiting the Transfer in whole or in part or materially or adversely changing or nullifying the ULURP Approvals in whole or in part (each, an “Adverse Determination”), then Purchaser may, upon notice to Seller and Escrow Agent within thirty (30) days after receipt of written notice of any such Adverse Determination, terminate this Agreement, whereupon Escrow Agent shall immediately, irrespective of any instruction to the contrary, (i) release and disburse to the Purchaser the amount remaining in the Deposit after any disbursements made or due to Seller on account of all unpaid and documented Litigation Expenses actually incurred by Seller up to the entry of such Adverse Determination, and (ii) release and disburse to Purchaser the entire remainder of the Deposit, including all funds in the Deposit, and thereafter neither Purchaser nor Seller shall have any further liability or obligation to each other under this Agreement.
- (c) At the Closing, Seller shall execute, acknowledge (as appropriate) and deliver, or cause to be delivered the following:
- (i) the Transfer Instrument and Notice of Restrictions executed by Seller in the form attached to this Agreement as Exhibit C.
 - (ii) New York City Real Property Transfer Tax Return (“RPT”) and a New York State Real Property Transfer Tax Return (“TP-584”) (the RPT and TP-584, collectively, the “Tax Returns”) necessary to record the Transfer Instrument and the Notice of Restrictions;
 - (iii) a joint letter of instruction with Purchaser to Escrow Agent (the “Joint Letter of Instruction”) authorizing release and payment of the entire Deposit to Seller (such Deposit to be the amount of the Deposit plus interest) and cash or cash equivalent in an amount equal to the aggregate amount of Litigation Expenses to the extent previously disbursed out of the Deposit, plus unpaid, documented Litigation Expenses actually incurred by Seller up to the

Closing Date not reimbursed by Purchaser or previously disbursed out of the Deposit;

- (iv) a non-foreign certification or affidavit containing such information as shall be required by Section 1445 of the Code to confirm that Seller is not a "foreign person" (as defined in the Code and the regulations issued thereunder);
 - (v) the resolutions and/or consents of Seller authorizing the transaction contemplated by this Agreement;
 - (vi) a letter certifying to Purchaser that Seller's representations and warranties made pursuant to Section 6 of this Agreement are true and correct in all material respects as of the Closing Date;
 - (vii) Seller's Waiver;
 - (viii) a certificate executed by the Landlord certifying as to the matters set forth in Section 18.01(a) of the State Lease;
 - (ix) if Purchaser does not elect a Change in Use prior to the Closing Date, the Deed Restriction; and
 - (x) any other document or instrument reasonably required by Purchaser's Title Company to consummate or evidence the transactions contemplated herein, including a Seller affidavit (if applicable).
- (d) At the Closing, Purchaser shall execute, acknowledge (as appropriate) and/or deliver, or cause to be delivered, the following:
- (i) the Transfer Instrument and Notice of Restrictions with respect to the Purchaser's Premises (if applicable);
 - (iii) the Tax Returns necessary to record the Transfer Instrument and the Notice of Restrictions (if applicable);
 - (iv) the Joint Letter of Instruction;
 - (v) a certified copy of the certificate of formation and limited liability company operating agreement of Purchaser, together with resolutions and/or consents of Purchaser authorizing the transactions contemplated by this Agreement;
 - (vi) a certificate of good standing from the Secretary of State of Delaware and satisfactory evidence of Purchaser's authorization to do business in New York;
 - (vii) a letter certifying to Seller that Purchaser's representations and warranties made pursuant to Section 6 of this Agreement are true and correct in all material respects as of the Closing Date;
 - (viii) Purchaser's Waiver;

- (ix) if Purchaser does not elect a Change in Use prior to the Closing Date, the Deed Restriction (if applicable) duly executed, delivered and acknowledged by the fee and leasehold owner of the Purchaser's Premises and duly executed, delivered and acknowledged subordinations required by the terms of Section 7 of the Deed Restriction; and
 - (x) any other document or instrument reasonably required by Purchaser's Title Company to consummate or evidence the transaction contemplated herein.
- (e) At the Closing, Purchaser shall use commercially reasonable efforts to cause Owner to execute, acknowledge (as appropriate) and/or deliver, the following:
- (i) the Transfer Instrument and Notice of Restrictions with respect to the Purchaser's Premises;
 - (ii) the Tax Returns necessary to record the Transfer Instrument and the Notice of Restrictions;
 - (iii) a certified copy of the Owner's [organization documents], together with resolutions and/or consents of Owner authorizing the transactions contemplated by this Agreement;
 - (iv) a certificate of good standing from the Secretary of State of Delaware and satisfactory evidence of Owner's authorization to do business in New York;
 - (v) the Owner's Waiver;
 - (vi) if Purchaser does not elect a Change in Use prior to the Closing Date, the Deed Restriction; and
 - (vii) any other document or instrument reasonably required by Purchaser's Title Company to consummate or evidence the transaction contemplated herein.
- (f) Escrow Agent shall record or cause the recording of the Transfer Instrument and Notice of Restrictions and the Parties-in-Interest Certification at Purchaser's sole cost and expense.
- (g) In addition, at Closing, Seller and Purchaser shall execute, acknowledge and deliver all such other documents and instruments and perform such further acts that are consistent with this Agreement, the Transfer Instrument and the Notices of Restrictions as reasonably requested by Seller or Purchaser as shall be necessary to transfer the Subject Floor Area Development Rights to Purchaser and to otherwise carry out the intent and purposes of this Agreement, provided that neither party shall be required to undertake any increased responsibility, incur any additional obligations or bear any additional costs or liabilities in connection therewith.
- (h) Closing Costs. Purchaser will pay all New York State and New York City transfer taxes (the "Transfer Taxes") in connection with the transaction described in this Agreement. Purchaser hereby indemnifies Seller and agrees to defend and hold

Seller harmless from and against any costs, liability and expense (including reasonable attorneys' fees, including reasonable attorney's fees in the collection thereof) arising from or relating to any Transfer Taxes owing (or that may be found, after the Closing, upon subsequent audit or otherwise to have been owing) in connection with the sale of the Subject Floor Area Development Rights to Purchaser. Purchaser will pay all Purchaser's due diligence, title examination, the Purchaser's Development Rights Endorsement, and any other title insurance coverage requested by Purchaser, architectural, survey, recording costs and expenses and escrow fees. Each party will be responsible for its own legal fees other than Litigation Expenses, if any, which shall be paid in accordance with Section 3(c). The provisions of this Section 5(g) shall survive the Closing.

6. Representations of Seller and Purchaser.

- (a) Seller represents and warrants that:
- (i) Seller has a leasehold estate created by the State Lease to Seller's Premises and is the holder of all the Subject Floor Area Development Rights and has not sold, granted an option for the sale of, leased, transferred, used or encumbered the Subject Floor Area Development Rights, and, as evidenced by the State's execution of the Seller's Waiver, has the legal authority, pursuant to the Act, to enter into this Agreement and the Transfer Instrument and Notice of Restrictions without restriction, limitation or subject to any conditions; and has neither entered into, nor is bound by any agreements that would affect Seller's ability to transfer the Subject Floor Area Development Rights pursuant to this Agreement and execute and deliver the Transfer Instrument and Notice of Restrictions.
 - (ii) Seller is not a party to any claim, action, suit, proceeding or arbitration pending before any federal, state, municipal, foreign or other court or governmental or administrative body or agency, or any private arbitration tribunal relating to Seller's Premises and there is no claim, action, suit, proceeding or arbitration pending before any federal, state, municipal foreign or other court or governmental or administrative body or agency, or any private arbitration tribunal relating to Seller's Premises or threatened in writing against Seller which, if adversely determined, may reasonably be expected to have an adverse impact on the transactions contemplated by this Agreement.
 - (iii) The execution and delivery of this Agreement and the performance by Seller of its obligations hereunder do not and will not conflict with or violate any law, rule, judgment, regulation, order, writ, injunction or decree of any court or governmental or quasi-governmental entity with jurisdiction over Seller, the Seller Premises or the Subject Floor Area Development Rights and will not conflict with any instrument to which Seller is a party or by which Seller is bound.

- (iv) Seller has not filed any petition seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief relating to Seller or any of its property under any law relating to bankruptcy or insolvency, nor has any such petition been filed against Seller. No general assignment of Seller's property has been made for the benefit of creditors, and no receiver, master, liquidator or trustee has been appointed for Seller or any material portion of its property. Seller is not insolvent and the consummation of the transactions contemplated by this Agreement shall not render Seller insolvent.
 - (v) Seller has not received notice, and has no knowledge, of any pending or threatened condemnation proceeding or similar proceeding affecting Seller's Premises, the Subject Floor Area Development Rights or any part thereof.
 - (vi) Seller is a public benefit corporation, duly organized and existing under the Act, and is duly authorized to enter into and consummate this Agreement.
 - (vii) Seller is not a "foreign person," as defined in Section 1445 of the Code.
 - (viii) Seller has not received written notice and has no actual knowledge of any pending or threatened Project Litigation and has not received any notice of default from or sent any notice of default to the Landlord under the State Lease.
- (b) Purchaser represents and warrants that:
- (i) At the Closing, Purchaser (or an affiliate thereof) shall be the leasehold owner of Purchaser's Premises, subject to Purchaser's right to assign this Agreement.
 - (ii) Purchaser is not a party to any claim, action, suit, proceeding or arbitration pending before any federal, state, municipal, foreign or other court or governmental or administrative body or agency, or any private arbitration tribunal relating to Purchaser's Premises and there is no claim, action, suit, proceeding or arbitration pending before any federal, state, municipal foreign or other court or governmental or administrative body or agency, or any private arbitration tribunal relating to Purchaser's Premises or threatened in writing against Purchaser which, adversely determined, may reasonably be expected to have an adverse impact on the transactions contemplated by this Agreement.
 - (iii) The execution and delivery of this Agreement and the performance by Purchaser of its obligations hereunder do not and will not conflict with or violate any law, rule, judgment, regulation, order, writ, injunction or decree of any court or governmental or quasi-governmental entity with jurisdiction over Purchaser or the Purchaser Parcel, and will not conflict with any

instrument to which Purchaser is a party or by which Purchaser is bound.

- (iv) Purchaser is a limited liability company, duly organized and existing under the laws of Delaware and authorized to do business in New York and is duly authorized to enter into and consummate this Agreement.
 - (v) Purchaser has not filed any petition seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief relating to Purchaser or any of its property under any law relating to bankruptcy or insolvency, nor has any such petition been filed against Purchaser. No general assignment of Purchaser's property has been made for the benefit of creditors, and no receiver, master, liquidator or trustee has been appointed for Purchaser or any material portion of its property. Purchaser is not insolvent and the consummation of the transactions contemplated by this Agreement shall not render Purchaser insolvent.
- (c) The representations and warranties contained in this Section 6 shall be true and correct in all material respects as of the date hereof through and including the Closing Date.
7. Approvals; Obligations of Seller and Purchaser. Purchaser shall have the right prior to the Closing Date, to make application to any governmental authority for such licenses, permits, approvals, certificates, rulings or amendments, including those contemplated or permitted by the Restrictive Declaration (collectively, the "Approvals") as Purchaser deems necessary or desirable in connection with the development of Purchaser's Premises, as applicable; provided that no such Approval diminishes, limits, delays, or materially interferes with the transfer and use of the Subject Floor Area Development Rights as contemplated by this Agreement or is otherwise in violation of this Agreement. Purchaser and Seller agree, at the sole cost and expense of the Purchaser (including, without limitation, reimbursement by Purchaser to Seller of any reasonable out-of-pocket expenses, fees or disbursements incurred by Seller) that Seller will cooperate in all reasonable respects in connection with Purchaser's application for such Approvals, to give all necessary consents in connection with the filing and prosecution of applications for the Approvals and any other governmental approvals (including, without limitation, other zoning and variance applications) required therefor and to execute such documents and applications and to furnish such information as may be reasonably requested by the Purchaser in its applying for approvals in connection with such applications.
8. Alienation and Use of Subject Floor Area Development Rights.
- (a) Between the Effective Date and the Closing or earlier termination of this Agreement, Seller shall not (i) sell, lease, encumber, pledge, grant an option in or transfer the Subject Floor Area Development Rights, (ii) knowingly take, suffer or permit any act that would prevent Seller from performing its obligations hereunder, (iii) take any voluntary action in respect of the Seller's Premises which would result in another person's or entity's, other than Seller, becoming a party in interest, unless Seller gives prior notice to Purchaser and such new party in interest, at the time

such interest is created, executes and delivers to Purchaser a Seller Waiver, or (iv) take any action to oppose issuance of any Approval contemplated by the ULURP Approvals.

- (b) Between the Effective Date and the Closing or earlier termination of this Agreement, Seller shall use all reasonable efforts to obtain such document or consents, or take such other reasonable steps, in all cases, with respect to the Seller's Premises as are necessary to enable Purchaser's Title Company to issue the Development Rights Endorsement. Further to the foregoing, if Purchaser's Title Company identifies as a party-in-interest a party that Seller in good faith believes is not a party-in-interest, then, if another Title Company is prepared to issue a Parties-in-Interest Certification without listing such party and to issue a Development Rights Endorsement without requiring a waiver from such party, then, at the written request of Seller, Purchaser shall select such other Title Company as Purchaser's Title Company, and such other Title Company shall be "Purchaser's Title Company" for purposes of this Agreement. If, however, Purchaser's Title Company is not able to issue the Development Rights Endorsement because Seller has not obtained Seller's Waiver, then provided that Seller has used all reasonable efforts to obtain Seller's Waiver and taken such other reasonable steps in accordance with the foregoing to enable the Title Company to issue the Development Rights Endorsement, Purchaser's sole remedy shall be to terminate this Agreement, as set forth in Section 9(a)(i) hereof, in which case the Deposit shall be returned to Purchaser in accordance with the terms thereof.
- (c) Except as set forth herein, this Agreement shall not restrict Seller's ability to use and develop Seller's Premises for any use which would not be prohibited on Seller's Premises by the Zoning Resolution.
- (c) After the Closing, the Seller shall take no action to oppose the issuance of any Approval contemplated by the ULURP Approvals and will cooperate with Purchaser in defending any litigation challenging any Approvals contemplated by the ULURP Approvals or the Transfer, provided that Purchaser reimburses Seller for any actual out-of-pocket legal expenses, fees or disbursements incurred with respect to such cooperation. This Section 8(c) shall survive the Closing.

9. Default; Return of Deposit and Purchase Price Balance.

(a) Defaults and Remedies:

(i) In the event Seller shall be in default of its obligations under this Agreement, or in the event of a failure of any condition to Closing listed in Sections 4(c)(1), (2), (3), (4) or (5) hereof, and as a result thereof the Closing does not take place in accordance with the terms of this Agreement, then, upon notice to Seller and Escrow Agent, Purchaser may elect either (i) to seek specific performance to compel the transfer of the Subject Floor Area Development Rights (to the extent not transferred in accordance with this Agreement) and/or the Seller's performance of its obligations set forth in this Agreement, or (ii) to terminate this Agreement and Purchaser, as its sole and exclusive remedy, and be entitled to the return of the Deposit, less all disbursements to Seller on account of Litigation

Expenses to the extent previously disbursed from the Deposit, all unpaid, documented Litigation Expenses actually incurred by Seller and not reimbursed by Purchaser or previously disbursed from the Deposit as of the date of such termination by Purchaser, as permitted pursuant to this Agreement and, solely with respect to a failure of a condition to Closing listed in Sections 4(c)(4), all amounts that Seller has withdrawn from the Deposit pursuant to Section 3(c) hereof; provided that in no event shall the Pre-Waiting Period Litigation Expenses exceed One Million and 00/100 Dollars (\$1,000,000.00) in the aggregate, except as agreed otherwise herein by Purchaser. Notwithstanding anything to the contrary contained in this Agreement, in no event whatsoever shall Seller be liable to Purchaser for any damages of any kind whatsoever. This limitation of Seller's liability shall be deemed to survive the expiration or earlier termination of this Agreement. Seller acknowledges that damages is an inadequate remedy under this Agreement and that Purchaser shall be irreparably harmed if the Closing does not occur due to Seller's default and that Purchaser shall be entitled to equitable relief including specific performance and injunctive relief without having to post a bond.

(ii) If all conditions to Closing have been satisfied or waived by the parties or Purchaser defaults in its obligations under this Agreement such that the Closing does not take place by the outside Closing Date permitted under this Agreement, then, as its sole and exclusive remedy, Seller may, upon notice to Purchaser and Escrow Agent, terminate this Agreement, whereupon Escrow Agent shall immediately release and disburse to the Seller, as liquidated damages hereunder, the Deposit; provided, however if the conditions to Closing listed in Section 4(c)(1), (2), (3), (4) or (5) hereof are not satisfied, the Deposit shall be disbursed as provided in Section 9(a)(i) above. Each party agrees that the damages of Seller, while substantial, would be difficult or impossible to determine with mathematical precision, and agree that the provisions of this Section 9(a) represent an agreed measure of liquidated damages, and are not deemed a forfeiture or penalty. Notwithstanding anything to the contrary contained in this Agreement, in no event whatsoever shall Purchaser be liable to Seller for any damages of any kind whatsoever beyond Seller's right to the release and disbursement to it of all or portions of the Deposit, which right shall survive the expiration or earlier termination of this Agreement.

(b) Neither party shall, and each expressly waives any right it may have to, record this Agreement, any memorandum of this Agreement, or a lis pendens or similar encumbrance against the Purchaser's Premises or Seller's Premises.

(c) If this Agreement is terminated pursuant to this Section 9, the parties hereto shall have no obligations to each other except for those expressly stated to survive termination of this Agreement.

10. Notices. All notices of any kind hereunder shall be sent by: (a) registered or certified mail, return receipt requested, (b) national overnight delivery service, or (c) personal delivery, addressed as follows (or to such other addressee or addresses as may be designated by any party hereto by notice addressed to each of the other parties listed below):

Seller:

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, New York 10014
Attention: General Counsel or Deputy General Counsel

and to:

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

and to:

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

Purchaser:

DD West 29th LLC
c/o Douglaston Development, LLC
555 5th Avenue
New York, New York 10176
Attention: Mr. Steven Charno, President

with a copy to:

Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, New York 10036
Attention: Michael T. Sillerman, Esq.

If to Escrow Agent:

Royal Abstract of New York, LLC
125 Park Avenue, Suite 1610
New York, New York 10017
Attn: Michael J. Roberts, Esq.

Any notice may be given by Seller's or Purchaser's counsel, respectively. Any notice sent by certified or registered mail, national overnight courier service or personal delivery shall be deemed given at the following times: (i) upon delivery if personally delivered, (ii) on the first Business Day after delivery to the overnight courier and (iii) on the third Business Day after mailing if mailed by certified or registered mail. Notwithstanding the foregoing, whenever under this Agreement a notice is (a) received on a day which is not a Business Day or is required to be delivered on or before a specific day which is not a Business Day, the day of receipt or required delivery shall automatically be extended to the next Business Day and (b) delivered by hand (or so attempted, but refused), it shall be deemed given on the day of delivery unless delivery is made after 5:00 p.m. or not on a Business Day, in which event delivery shall be deemed given on the next occurring Business Day. The parties may change the addresses of notices, demands, requests or other communications hereunder by giving notice pursuant to this Section 10. Notwithstanding the foregoing, the failure of a person named above to receive a copy because of a mistake by the sender party shall not invalidate a notice if properly delivered to the initial notice party identified above for each party to this Agreement.

11. Escrow Provisions. Seller and Purchaser hereby appoint and designate Escrow Agent as escrow agent for the purposes set forth herein, and Escrow Agent hereby accepts such appointment on the terms and conditions set forth herein. Escrow Agent acknowledges receipt of the Deposit and shall hold and disburse the Deposit in accordance with the Escrow Agreement attached hereto as Exhibit D.
12. Condemnation / Casualty. If, prior to Closing, any governmental agency or other entity having condemnation authority shall institute an eminent domain proceeding or give any notice of intent to institute such proceeding with regard to any portion of the Seller's Premises, or the Seller's Premises are damaged by a casualty, and by reason thereof the Subject Floor Area Development Rights are reduced, impaired, or no longer available, then this Agreement shall remain in full force and effect; provided, however, Purchaser shall have the right, exercisable within thirty (30) days after receipt of notice to or from Seller of such taking or casualty, to terminate this Agreement, in which event the Deposit shall be returned to Purchaser promptly. Upon such termination of this Agreement and return of the Deposit to Purchaser, the parties shall have no further obligation or liabilities to each other (other than those that are expressly stated to survive this Agreement). Notwithstanding the foregoing, in the event that Purchaser does not terminate this Agreement, and such taking by condemnation or eminent domain, or casualty, has resulted in a reduction of the Development Rights appurtenant to the Seller's Premises so that the amount of the Subject Floor Area Development Rights has been thereby reduced, Purchaser shall be entitled to all the remaining Subject Floor Area Development Rights and the Purchase Price shall be reduced on a pro-rata basis. This Section 12 shall be in lieu of the provisions contained in Section 5-1311 of the New York General Obligations Law.
13. Miscellaneous
 - (a) Counterparts; General. This Agreement may be executed in any number of

counterparts, each of which shall constitute an original but all of which, taken together, shall constitute but one and the same instrument. This Agreement (including all Exhibits hereto) and all documents to be executed in connection herewith contain the entire agreement between the parties with respect to the subject matter hereof and supersede all prior understandings, if any, with respect thereto. This Agreement may not be amended, supplemented or terminated except by written agreement between the parties hereto, nor shall any obligation hereunder or condition hereof be deemed waived, except by a written instrument to such effect signed by the party to be charged. Any warranties, representations, agreements and undertakings contained herein shall not be deemed to have been made for the benefit of any person or entity, other than the parties hereto and their permitted successors and permitted assigns. This Agreement shall not be effective unless and until it has been executed and delivered by all parties hereto.

(b) Severability. If any term or provision of this Agreement or the application thereof to any person or circumstances 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 held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law, unless the invalidation of such provision or its application would materially interfere with the intent of the parties hereto. The parties shall use all reasonable efforts to replace the illegal, void or unenforceable provision by a valid and enforceable provision the effect of which is the closest possible to the intended effect of the illegal, void or unenforceable provision.

(c) Assignment and Binding Effect.

(i) Seller shall not have the right to assign this Agreement nor any part of it, nor delegate any obligation imposed by this Agreement, without the prior written consent of Purchaser, except as such an assignment may be to another governmental entity pursuant to, or as may be required by, applicable law.

(ii) Purchaser shall have the right, without Seller's consent, to assign its right, title or interest in this Agreement to: (1) any person or entity; provided, that, (i) Purchaser shall provide prior written notice of such assignment to Seller not later than ten (10) days prior to the Closing, (ii) such person or entity is or is to become either the fee owner, ground lessee or a mortgagee of Purchaser's Premises (or any portion thereof), (iii) such assignee shall assume all of Purchaser's obligations under this Agreement; (iv) Seller reasonably deems such person or entity financially capable, as of the date of such assignment, to satisfy all of Purchaser's obligations hereunder, be they conditions precedent to Closing or affirmative obligations under this Agreement; and (v) such assignee shall have complied with any applicable Vendex Disclosure Requirements to the same extent as Purchaser and is qualified by the City and the State of New York to enter into contracts with those governmental entities; and (2) any Institutional Lender providing financing for all or a portion of Purchaser's Premises that is secured by a mortgage or security

interest in Purchaser's Premises or equity in Purchaser as collateral security. Notwithstanding anything to the contrary in this Agreement, a transfer of any existing direct or indirect membership interests in Purchaser, the creation of any new direct or indirect membership interest, and/or an assignment to an affiliate of Purchaser shall not be deemed an "assignment" for the purposes of this Agreement, and shall be permitted without notice to Seller and without Seller's consent, so long as either Douglaston Development, LLC, or an affiliate thereof, remain as managing member(s) of Purchaser or its assignee entity, or otherwise remain in similar day to day control of the operations of Purchaser, subject to any vote by the members with respect to any material matter provided for in the operative governance agreement; provided, however, that any party acquiring a direct ownership interest of more than ten percent (10%) of Purchaser or its direct owner(s) shall be subject to Vendex Disclosure Requirements to the same extent as Purchaser and its original direct owner(s).

- (d) Governing Law. This Agreement shall be governed by, construed, and enforced in accordance with the internal laws of the State of New York.
- (e) Survival of Representations, Warranties, etc. Following Closing and/or Termination. Except as expressly provided or limited to the contrary herein or in any instrument delivered pursuant hereto, the representations, warranties, obligations, covenants, agreements, undertakings and indemnifications of the parties contained herein or in any instrument required to be delivered pursuant hereto shall not survive the Closing or termination of this Agreement (and, accordingly, no claim concerning the same may arise after the Closing or termination of this Agreement, as the case may be).
- (f) Construction. This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared primarily by counsel for one of the parties, it being recognized that both Purchaser and Seller have contributed substantially and materially to the preparation of this Agreement.
- (g) Grammatical Usage. In construing this Agreement, feminine or neuter pronouns shall be substituted for those masculine in form and vice versa, and plural terms shall be substituted for singular and singular for plural in any place in which the context so requires.
- (h) Captions and Exhibits. The captions of this Agreement are for convenience only, are not a part of this Agreement, and do not in any way limit or amplify its terms and provisions. All Exhibits and Schedules to this Agreement are hereby incorporated into this Agreement.
- (i) Waiver of Trial by Jury. Each party hereby waives, irrevocably and unconditionally, trial by jury in any action brought on, under or by virtue of or relating in any way to this Agreement or any of the documents or certificates executed in connection herewith, the properties, or any claims, defenses, rights of

set-off or other actions pertaining hereto or to any of the foregoing.

- (j) No Third Party Beneficiary. This Agreement and each of the provisions hereof are solely for the benefit of Purchaser and Seller and their permitted assigns. No provisions of this Agreement, or of any of the documents and instruments executed in connection herewith shall be construed as creating in any person or entity other than Purchaser and Seller and their permitted successors and assigns any rights of any nature whatsoever.
- (k) Further Assurances and Instruments. Seller and Purchaser agree to execute and deliver, or cause to be executed and delivered such confirmatory and supplementary instruments, assignments, assurances, and certificates and documents, and take such further action consistent with this transaction as may reasonably be required to effectuate the purposes of this Agreement, including Seller's cooperation with Purchaser in defending any Project Litigation, including after the Closing, or making any claims against Purchaser's Title Company under the Development Rights Endorsement after the Closing, as long as Purchaser reimburses Seller for any actual out-of-pocket legal expenses, fees or disbursements Seller incurs as a result of such requested cooperation. This Section 13(k) shall survive the Closing.
- (l) No Waiver. This Agreement shall not be altered, amended, changed, waived, terminated or otherwise modified in any respect or particular, and no consent or approval required pursuant to this Agreement shall be effective, unless the same shall be in writing and signed by or on behalf of the party to be charged.
- (m) Tax Identification Numbers. Seller's federal tax identification number is 06-1546019. Purchaser's federal tax identification number is _____.
- (n) Non-Recourse. No principals, officers, directors, shareholders, members and partners disclosed, or undisclosed, of either party hereto, shall be subject to levy, execution or other enforcement procedure for the satisfaction of the other party's remedies hereunder.
- (o) Recording. This Agreement shall not be deemed a recordable instrument and shall not be recorded by Purchaser or Seller or in any way placed on public record, except if required to obtain ULURP Approvals, Board Approval or in connection with the defense of any Project Litigation. The violation of this provision shall be deemed a material violation and breach of the terms and conditions of this Agreement.
- (p) Merger. This Agreement constitutes the entire understanding and agreement of the parties to this Agreement with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements or understandings, inducements or conditions, express or implied, written or oral, between the parties with respect to this Agreement, including, without limitation, the MOU. Without limiting the foregoing, there are no restrictions, promises, representations, warranties, covenants, or undertakings, other than those expressly set forth or referred to in this Agreement.

14. Real Estate Brokers Representing the Parties. Each party represents to the other party that it has not dealt with any broker, consultant, finder, financial adviser or similar person in connection with this Agreement and transaction. Each party shall defend, indemnify and hold the other party harmless from and against any and all claims, demands, causes of action, costs, expenses or other liabilities (including attorneys' fees, costs and disbursements) arising from or pertaining to any brokerage commission, finder's fees or other compensation of similar nature which may be due or claimed by any broker, consultant, finder, financial adviser or similar person claiming to have dealt with such party in connection with this Agreement or this transaction. This Section 14 shall survive the Closing or earlier termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first set forth above.

Seller:

HUDSON RIVER PARK TRUST, a New
York public benefit corporation

By: _____

Name:

Title:

[Signature Pages Continue on Following Page]

Purchaser:

DD WEST 29TH LLC, a New York limited liability company

By: _____

Name:

Title:

[Signature Pages Continue on Following Page]

Escrow Agent:

ROYAL ABSTRACT OF NEW YORK,
LLC

By: _____
Name:
Title:

[End of Signature Pages]

EXHIBIT A

Legal Description of Granting Lot

[to be attached]

EXHIBIT B

Legal Description of Receiving Lot

[to be attached]

EXHIBIT C

Transfer Instrument and Notice of Restrictions
Pursuant to Section 89-21(d) of the Zoning Resolution of the City of New York

THIS INSTRUMENT OF TRANSFER AND NOTICE OF RESTRICTIONS (this “Transfer Instrument”) is made as of the ____ day of _____, ____ by Hudson River Park Trust, a New York State public benefit corporation, organized pursuant to the Hudson River Park Act, Chapter 592 of the Laws of 1998 of the State of New York (as amended, the “Act”) having an address at 353 West Street, 2nd Floor, New York, N.Y. 10014 (“Transferor”), and DD West 29th LLC, a New York limited liability company, with an address at c/o Douglaston Development, LLC, 555 5th Avenue, New York, New York 10176] and [Owner] (collectively, “Transferee”).

WITNESSETH:

WHEREAS, Transferor is the lessee, pursuant to Section 7.3(b) of the Act, of certain real property, in the City of New York, designated as Block 662, Lots 11, 16, and 19 on the Tax Map of the Borough of Manhattan, County of New York, City of New York, and more particularly described in **Exhibit A** attached hereto and made a part hereof (said real property being hereinafter called the “Granting Lot”), and has the right, pursuant to subsection 1(j) of Section 7 of the Act, to transfer unused excess “floor area” (as such term is defined in the Zoning Resolution, defined below) appurtenant to the Granting Lot;

WHEREAS, Transferee comprises the lessee and owner of certain real Property designated as Block 675, Lot 12, Lot 29, and Lot 36, as shown on the Tax Map of the Borough of Manhattan, County of New York, City of New York, and more particularly described in **Exhibit B** attached hereto and made a part hereof (said property being hereafter called the “Receiving Lot”);

WHEREAS, the Granting Lot is a "granting site," as defined in Section 89-02 of the Zoning Resolution of the City of New York (hereinafter, "Zoning Resolution");

WHEREAS, the Receiving Lot is a "receiving site," as defined in Section 89-02 of the Zoning Resolution;

WHEREAS, pursuant to the provisions of Section 89-21 of the Zoning Resolution, the City Planning Commission of New York City (hereinafter, “CPC”) approved on the [_____] day of [_____] (Calendar No. [_____] the transfer of up to 123,437.5 square feet of unused excess floor area and the development rights appurtenant thereto (the “Subject Floor Area Development Rights”) from the Granting Lot to the Receiving Lot (the “Special Permit Approval”), and the City Council of the City of New York approved such action taken by CPC or declined to take any action in connection therewith within the time period permitted for same;
and

WHEREAS, Transferor and Transferee desire to transfer the Subject Floor Area Development Rights to the Receiving Lot.

NOW THEREFORE, in consideration of [_____] and 00/100 Dollars (\$[_____]), lawful money of the United States, and other valuable consideration paid by Transferee:

1. Transferor does hereby grant, distribute and transfer the Subject Floor Area Development Rights from the Granting Lot to the Receiving Lot, solely for the use and benefit in perpetuity of the Receiving Lot.
2. Transferor, in compliance with Section 13 of the Lien Law of the State of New York, if and to the extent Section 13 of the Lien Law of the State of New York applies, covenants that Transferor will receive the consideration for this conveyance, and will hold the right to receive such consideration, as a trust fund for the purpose of paying the cost of the improvements at the Granting Lot required to be made by Transferor and will apply the same first to the payment of the cost of such improvements before using any part of the same for any other purposes.
3. Transferor shall use the Purchase Price to pay for [_____] , prior to being used for any other permitted uses, as required by the Hudson River Park Act.
4. Notice is hereby given that this transfer (a) irrevocably restricts the floor area on the Granting Lot available for “development” (as defined in the Zoning Resolution) by reducing such floor area by up to 123,437.5 square feet, and (b) benefits the Receiving Lot by irrevocably increasing the floor area available for development on the Receiving Lot by up to 123,437.5 square feet.
5. Transferor covenants that at no time shall any building, buildings or improvements be situated on the Granting Lot which would have a floor area in excess of that permitted on the Granting Lot, as reduced by this transfer.
6. This Transfer Instrument shall be recorded by Transferor against both the Granting Lot and the Receiving Lot in the Office of the Register of City of New York, New York County and a copy provided to the CPC in accordance with the provision of Section 89-21(d) of the Zoning Resolution.
7. This Transfer Instrument may be executed in counterparts, all of which, when taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, Transferor and Transferee have hereunto set their hand as of the ____ day of _____, ____.

TRANSFEROR:

HUDSON RIVER PARK TRUST

By: _____
Name:
Title:

TRANSFeree:

DD WEST 29TH LLC

By: _____
Name:
Title:

[OWNER]

By: _____
Name:
Title:

State of New York)
) ss.:
County of New York)

On the ____ day of ____ in the year ____ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

(Notary Public)

State of New York)
) ss.:
County of New York)

On the ____ day of ____ in the year ____ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

(Notary Public)

State of New York)
) ss.:
County of New York)

On the ____ day of ____ in the year ____ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

(Notary Public)

Exhibit A to Transfer Instrument
Legal Description of Granting Lot

[to be attached]

Exhibit B to Transfer Instrument
Legal Description of Receiving Lot

[to be attached]

EXHIBIT D

Terms of Escrow

[Attach Escrow Agreement]

EXHIBIT E

Form of Parties-in-Interest Certification

Certification Pursuant to Zoning Lot
Subdivision D of Section 12-10
Of the Zoning Resolution of December 15, 1961
Of the City of New York – As Amended
effective August 18, 1977

[____], a Title Insurance Company licensed to do business in the State of New York and having its principal office at [____] hereby certifies to [____] a New York limited liability company, having an address at [____] and [____] a Delaware limited liability company with an office at [____], [____], that as to the land hereafter described being described, all of the parties in interest constituting a “party in interest” as defined in the Subdivision (c) or (d) of the definition of zoning lot Section 12-10 of the Zoning Resolution of the City of New York, effective as of [____], as amended, are the following:

| NAME AND ADDRESS | NATURE OF INTEREST | DISPOSITION OF INTEREST |
|-------------------------|---------------------------|--------------------------------|
| | | |
| | | |
| | | |
| | | |
| | | |

[INSERT DESCRIPTION]

That the said premises are known as and by street address: [____] shown on the following diagram:

[INSERT DIAGRAM]

By: _____

EXHIBIT F-1

Form of Granting Site Fee Owner's Waiver

Waiver Pursuant to Section 89-21(d) of the Zoning Resolution of the City of New York

THE STATE OF NEW YORK, acting through the Office of Parks, Recreation and Historic Preservation being the holder of the fee interest in the Granting Site (as defined below) and a "party in interest" as defined in Section 12-10(d) of the Zoning Resolution of the City of New York effective December 15, 1961 as amended, with respect to the land known as Tax Lots 11, 16 and 19 in Block 662 on the Tax Map of the City of New York, County of New York, as more particularly described in **Exhibit A** annexed hereto (the "Granting Site"), hereby:

- (i) acknowledges the right and authority under the Hudson River Park Act, Chapter 592 of the Laws of 1998 of the State of New York, as amended, of the Hudson River Park Trust to transfer up to 123,437.5 square feet of development rights (the "Subject Floor Area Development Rights") from the Granting Site to the land known as Tax Lots 12, 29 and 36 in Block 675 on the Tax Map of the City of New York, County of New York, as more particularly described in **Exhibit B** annexed hereto (the "Receiving Site"), in accordance with the provisions of Section 89-21 of the Zoning Resolution; and
- (ii) waives any right in perpetuity it might otherwise have to execute the Transfer Instrument and Notice of Restrictions pursuant to Section 89-21 of the Zoning Resolution of the City of New York, substantially in the form annexed hereto as **Exhibit C** (the "Transfer Instrument"), for the purpose of transferring the Subject Floor Area Development Rights to the Receiving Site.

IN WITNESS WHEREOF, this Waiver has been duly executed as of _____
____, 2017.

**NEW YORK STATE OFFICE OF PARKS,
RECREATION AND HISTORIC PRESERVATION**

By: _____
Name:
Title:

State of New York)

)ss.:

County of _____)

On the _____ day of _____ in the year _____, before me, the undersigned notary public, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

Exhibit A

Legal Description of Granting Lot

[to be attached]

Exhibit B

Legal Description of Receiving Lot

[to be attached]

Exhibit C

The Transfer Instrument

THIS INSTRUMENT OF TRANSFER AND NOTICE OF RESTRICTIONS (this "Transfer Instrument") is made as of the ____ day of _____, ____ by Hudson River Park Trust, a New York State public benefit corporation, organized pursuant to the Hudson River Park Act, Chapter 592 of the Laws of 1998 of the State of New York (as amended, the "Act") having an address at 353 West Street, 2nd Floor, New York, N.Y. 10014 ("Transferor"), and DD West 29th LLC, a New York limited liability company, with an address at c/o Douglaston Development, LLC, 555 5th Avenue, New York, New York 10176 and [Owner] ("Transferee").

WITNESSETH:

WHEREAS, Transferor is the lessee, pursuant to Section 7.3(b) of the Act, of certain real property, in the City of New York, designated as Block 662, Lots 11, 16, and 19 on the Tax Map of the Borough of Manhattan, County of New York, City of New York, and more particularly described in **Exhibit A** attached hereto and made a part hereof (said real property being hereinafter called the "Granting Lot"), and has the right, pursuant to subsection 1(j) of Section 7 of the Act, to transfer unused excess "floor area" (as such term is defined in the Zoning Resolution, defined below) appurtenant to the Granting Lot;

WHEREAS, Transferee comprises the lessee and owner of certain real Property designated as Block 675, Lot 12, Lot 29, and Lot 36, as shown on the Tax Map of the Borough of Manhattan, County of New York, City of New York, and more particularly described in **Exhibit B** attached hereto and made a part hereof (said property being hereafter called the "Receiving Lot");

WHEREAS, the Granting Lot is a "granting site," as defined in Section 89-02 of the Zoning Resolution of the City of New York (hereinafter, "Zoning Resolution");

WHEREAS, the Receiving Lot is a "receiving site," as defined in Section 89-02 of the Zoning Resolution;

WHEREAS, pursuant to the provisions of Section 89-21 of the Zoning Resolution, the City Planning Commission of New York City (hereinafter, "CPC") approved on the [_____] day of [_____] (Calendar No. [_____] the transfer of up to 123,437.5 square feet of unused excess floor area and the development rights appurtenant thereto (the "Subject Floor Area Development Rights") from the Granting Lot to the Receiving Lot (the "Special Permit Approval"), and the City Council of the City of New York approved such action taken by CPC or declined to take any action in connection therewith within the time period permitted for same;
and

WHEREAS, Transferor and Transferee desire to transfer the Subject Floor Area Development Rights to the Receiving Lot.

NOW THEREFORE, in consideration of [_____] and 00/100 Dollars (\$[_____]), lawful money of the United States, and other valuable consideration paid by Transferee:

1. Transferor does hereby grant, distribute and transfer the Subject Floor Area Development Rights from the Granting Lot to the Receiving Lot, solely for the use and benefit in perpetuity of the Receiving Lot.
2. Transferor, in compliance with Section 13 of the Lien Law of the State of New York, if and to the extent Section 13 of the Lien Law of the State of New York applies, covenants that Transferor will receive the consideration for this conveyance, and will hold the right to receive such consideration, as a trust fund for the purpose of paying the cost of the improvements at the Granting Lot required to be made by Transferor and will apply the same first to the payment of the cost of such improvements before using any part of the same for any other purposes.
3. Transferor shall use the Purchase Price to pay for [_____] , prior to being used for any other permitted uses, as required by the Hudson River Park Act.
4. Notice is hereby given that this transfer (a) irrevocably restricts the floor area on the Granting Lot available for “development” (as defined in the Zoning Resolution) by reducing such floor area by up to 123,437.5 square feet, and (b) benefits the Receiving Lot by irrevocably increasing the floor area available for development on the Receiving Lot by up to 123,437.5 square feet.
5. Transferor covenants that at no time shall any building, buildings or improvements be situated on the Granting Lot which would have a floor area in excess of that permitted on the Granting Lot, as reduced by this transfer.
6. This Transfer Instrument shall be recorded by Transferor against both the Granting Lot and the Receiving Lot in the Office of the Register of City of New York, New York County and a copy provided to the CPC in accordance with the provision of Section 89-21(d) of the Zoning Resolution.
7. This Transfer Instrument may be executed in counterparts, all of which, when taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, Transferor and Transferee have hereunto set their hand as of the ____ day of _____, ____.

TRANSFEROR:

HUDSON RIVER PARK TRUST

By: _____
Name:
Title:

TRANSFeree:

DD WEST 29TH LLC

By: _____
Name:
Title:

[OWNER]

By: _____
Name:
Title:

State of New York)
) ss.:
County of New York)

On the ____ day of ____ in the year ____ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

(Notary Public)

State of New York)
) ss.:
County of New York)

On the ____ day of ____ in the year ____ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

(Notary Public)

State of New York)
) ss.:
County of New York)

On the ____ day of ____ in the year ____ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

(Notary Public)

Exhibit A to Transfer Instrument
Legal Description of Granting Lot

[to be attached]

Exhibit B to Transfer Instrument
Legal Description of Receiving Lot

[to be attached]

Exhibit F-2
Form of Waiver

**WAIVER, CONSENT AND SUBORDINATION TO TRANSFER INSTRUMENT
AND NOTICE OF RESTRICTIONS PURSUANT TO SECTION 89-21 OF THE
ZONING RESOLUTION OF THE CITY OF NEW YORK**

_____, a _____, having an address at _____,
_____ being the holder of _____ and a “party in interest” as defined in
Section 12-10(d) of the Zoning Resolution of the City of New York effective [____], as amended,
with respect to the land known as Tax Lot ____ in Block ____ on the Tax Map of the City of New
York, County of New York, and known as and by the street address: [____] as more particularly
described in **Exhibit “A”** annexed hereto (the “Granting Parcel”), hereby (i) acknowledges and
consents to the transfer of [____] square feet of Development Rights (the “Subject Floor Area
Development Rights”) from the Granting Parcel to the land known as [____] on the Tax Map of
the City of New York, County of New York, and known as and by the street address: [____] as
more particularly described in **Exhibit “B”** annexed hereto (the “Receiving Parcel”), in
accordance with the provisions of Section 89-21 of the Zoning Resolution; and (ii) subordinates
its interest in the Granting Parcel to said transfer of the Subject Floor Area Development Rights
and the Transfer Instrument, and any and all modifications, amendments, additions, replacements,
restatements or consolidations of the Transfer Instrument and (iii) waives its right to execute, now
or in the future, the Transfer Instrument.

IN WITNESS WHEREOF, the undersigned have executed this instrument this _____
day of _____, 2017

By: _____
Name:
Title:

State of New York)

)ss.:

County of _____)

On the _____ day of _____ in the year _____, before me, the undersigned notary public, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

Exhibit A

Legal Description of Granting Lot

[to be attached]

Exhibit B

Legal Description of Receiving Lot

[to be attached]

Exhibit C

The Transfer Instrument

THIS INSTRUMENT OF TRANSFER AND NOTICE OF RESTRICTIONS (this "Transfer Instrument") is made as of the ____ day of _____, ____ by Hudson River Park Trust, a New York State public benefit corporation, organized pursuant to the Hudson River Park Act, Chapter 592 of the Laws of 1998 of the State of New York (as amended, the "Act") having an address at 353 West Street, 2nd Floor, New York, N.Y. 10014 ("Transferor"), and DD West 29th LLC, a New York limited liability company, with an address at c/o Douglaston Development, LLC, 555 5th Avenue, New York, New York 10176 and [Owner] (collectively, "Transferee").

WITNESSETH:

WHEREAS, Transferor is the lessee, pursuant to Section 7.3(b) of the Act, of certain real property, in the City of New York, designated as Block 662, Lots 11, 16, and 19 on the Tax Map of the Borough of Manhattan, County of New York, City of New York, and more particularly described in **Exhibit A** attached hereto and made a part hereof (said real property being hereinafter called the "Granting Lot"), and has the right, pursuant to subsection 1(j) of Section 7 of the Act, to transfer unused excess "floor area" (as such term is defined in the Zoning Resolution, defined below) appurtenant to the Granting Lot;

WHEREAS, Transferee comprises the lessee and owner of certain real Property designated as Block 675, Lot 12, Lot 29, and Lot 36, as shown on the Tax Map of the Borough of Manhattan, County of New York, City of New York, and more particularly described in **Exhibit B** attached hereto and made a part hereof (said property being hereafter called the "Receiving Lot");

WHEREAS, the Granting Lot is a "granting site," as defined in Section 89-02 of the Zoning Resolution of the City of New York (hereinafter, "Zoning Resolution");

WHEREAS, the Receiving Lot is a "receiving site," as defined in Section 89-02 of the Zoning Resolution;

WHEREAS, pursuant to the provisions of Section 89-21 of the Zoning Resolution, the City Planning Commission of New York City (hereinafter, "CPC") approved on the [_____] day of [_____] (Calendar No. [_____] the transfer of up to 123,437.5 square feet of unused excess floor area and the development rights appurtenant thereto (the "Subject Floor Area Development Rights") from the Granting Lot to the Receiving Lot (the "Special Permit Approval"), and the City Council of the City of New York approved such action taken by CPC or declined to take any action in connection therewith within the time period permitted for same;
and

WHEREAS, Transferor and Transferee desire to transfer the Subject Floor Area Development Rights to the Receiving Lot.

NOW THEREFORE, in consideration of [_____] and 00/100 Dollars (\$[_____]), lawful money of the United States, and other valuable consideration paid by Transferee:

1. Transferor does hereby grant, distribute and transfer the Subject Floor Area Development Rights from the Granting Lot to the Receiving Lot, solely for the use and benefit in perpetuity of the Receiving Lot.
2. Transferor, in compliance with Section 13 of the Lien Law of the State of New York, if and to the extent Section 13 of the Lien Law of the State of New York applies, covenants that Transferor will receive the consideration for this conveyance, and will hold the right to receive such consideration, as a trust fund for the purpose of paying the cost of the improvements at the Granting Lot required to be made by Transferor and will apply the same first to the payment of the cost of such improvements before using any part of the same for any other purposes.
3. Transferor shall use the Purchase Price to pay for [_____] , prior to being used for any other permitted uses, as required by the Hudson River Park Act.
4. Notice is hereby given that this transfer (a) irrevocably restricts the floor area on the Granting Lot available for “development” (as defined in the Zoning Resolution) by reducing such floor area by up to 123,437.5 square feet, and (b) benefits the Receiving Lot by irrevocably increasing the floor area available for development on the Receiving Lot by up to 123,437.5 square feet.
5. Transferor covenants that at no time shall any building, buildings or improvements be situated on the Granting Lot which would have a floor area in excess of that permitted on the Granting Lot, as reduced by this transfer.
6. This Transfer Instrument shall be recorded by Transferor against both the Granting Lot and the Receiving Lot in the Office of the Register of City of New York, New York County and a copy provided to the CPC in accordance with the provision of Section 89-21(d) of the Zoning Resolution.
7. This Transfer Instrument may be executed in counterparts, all of which, when taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, Transferor and Transferee have hereunto set their hand as of the ____ day of _____, ____.

TRANSFEROR:

HUDSON RIVER PARK TRUST

By: _____
Name:
Title:

TRANSFEEE:

DD WEST 29TH LLC

By: _____
Name:
Title

[OWNER]

By: _____
Name:
Title:

:

State of New York)
) ss.:
County of New York)

On the ____ day of ____ in the year ____ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

(Notary Public)

State of New York)
) ss.:
County of New York)

On the ____ day of ____ in the year ____ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

(Notary Public)

State of New York)
) ss.:
County of New York)

On the ____ day of ____ in the year ____ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

(Notary Public)

Exhibit A to Transfer Instrument
Legal Description of Granting Lot

[to be attached]

Exhibit B to Transfer Instrument
Legal Description of Receiving Lot

[to be attached]

Exhibit G

The Development Rights Endorsement

Exhibit H

Deed Restriction

[To be attached]

Exhibit I

Liens

[To be attached]

EXHIBIT B

ESCROW AGREEMENT

This ESCROW AGREEMENT (this “Agreement”) is entered into as of [____], 2017 and among Hudson River Park Trust, a New York State public benefit corporation (“Trust”), DD West 29th LLC, a New York limited liability company (“Developer”), and Royal Abstract of New York, LLC, a New York limited liability company (“Escrow Agent”).

RECITALS

A. Trust and Developer have executed a certain Memorandum of Understanding, dated as of November 24, 2017 (the “MOU”) pursuant to which, inter alia, Developer desires to accept the transfer of 123,437.5 square feet of zoning floor area (the “Transfer”) from 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 (the “Granting Property”) to the property located at the southeast corner of West 29th Street and Eleventh Avenue in the Borough of Manhattan, City and State of New York, and having a tax lot designation as Block 675, Lot 12, Lot 29, and Lot 36 (the “Receiving Property”), which Receiving Property is to be leased by Developer pursuant to a 99-year ground lease with West Side 11th & 29th LLC.

B. Developer’s 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”) for the approval of a Special Permit to support the Transfer has been certified as complete by the DCP, and, accordingly, pursuant to the MOU, within two (2) business days of the date hereof, Developer shall deposit with Escrow Agent the sum of One Million and 00/100 Dollars (\$1,000,000.00) in the form of cash or a letter of credit (the “Initial Good Faith Deposit”), to be held in escrow and disbursed by the Escrow Agent in accordance with the terms of the MOU and this Agreement. Pursuant to the MOU, Developer shall deposit with Escrow Agent a further sum of Six Million Four Hundred Thousand and 00/100 Dollars (\$6,400,000.00) (the “Second Good Faith Deposit”) prior to the ULURP vote by the New York City Council, provided that the Developer has not previously terminated the MOU. The deposit, whether then equal in amount to (x) the Initial Good Faith Deposit, or (y) the sum of the Initial Good Faith Deposit plus the Second Good Faith Deposit, shall, together with interest thereon, be the “Good Faith Deposit”. Pursuant to the MOU, the Developer and the Trust have agreed as to the respective rights of the Developer and the Trust with respect to disbursements, refunds and other applications of the monies in the Good Faith Deposit.

C. Upon execution by the Developer and the Trust of the Purchase and Sale Agreement for the Transfer (the “PSA”), the respective rights of the Developer and the Trust with respect to disbursements, refunds and other applications of the monies in the Good Faith Deposit shall be governed by the PSA.

D. The parties to this Agreement wish to now establish the terms and conditions pursuant to which the Good Faith Deposit will be deposited, invested, managed, held, and disbursed by Escrow Agent pursuant to demands therefor by the Developer and the Trust, such

right to demands, as between the Developer and the Trust, being governed by Section 5 of the MOU, or by the PSA, if applicable.

NOW THEREFORE, the parties to this Agreement hereby agree as follows:

1. Deposit of Good Faith Deposit; Release from Escrow.

A. The Escrow Agent hereby agrees to assume and perform the duties of escrow agent under and pursuant to the terms of this Agreement. The Good Faith Deposit shall be delivered to Escrow Agent at the address provided in Section 3 below or made by wire transfer to escrow Agent's account in accordance with the wiring instructions annexed hereto as Exhibit A and made a part hereof. The Good Faith Deposit shall be invested in an interest bearing FDIC insured commercial bank account or U.S. treasury certificate (if it is in the form of cash), as determined by Developer. Any accrued interest on the Good Faith Deposit shall be paid by Escrow Agent in accordance with the MOU or, if applicable, the PSA. The party receiving any interest shall deliver a complete executed form W-9 to Escrow Agent.

B. The Escrow Agent shall disburse the Good Faith Deposit, or portions thereof, in accordance with written instructions signed by Developer and Trust together and delivered to Escrow Agent (a "Joint Demand") or in accordance with a written demand therefor signed by either of Developer or Trust and delivered to Escrow Agent (a "Unilateral Demand") but only pursuant to the terms and conditions of the MOU, or if applicable, the PSA, and as set forth below.

C. If Escrow Agent receives a Unilateral Demand from a party, Escrow Agent shall promptly give the other party written notice of such Unilateral Demand (the "Notice of Demand"). If, within five (5) business days after delivery of the Notice of Demand to such other party, Escrow Agent receives a written objection from such other party to the disbursement of such monies as shall be demanded in the Unilateral Demand (any such written objection a "Dispute Notice"), then Escrow Agent shall not disburse the Good Faith Deposit, or any portion thereof, and shall comply with the provisions of Section 1(E) below. If Escrow Agent does not receive a Dispute Notice within such five (5) business day period, then Escrow Agent shall disburse the Good Faith Deposit, or portion thereof, as applicable, pursuant to the Unilateral Demand.

D. If Escrow Agent receives a Joint Demand, Escrow Agent shall disburse the Good Faith Deposit, or portion thereof, as applicable, pursuant to the instructions set forth in the Joint Demand.

E. Escrow Agent is acting as a stakeholder only with respect to the entire Good Faith Deposit. If Escrow Agent receives a Dispute Notice from a party within five (5) business days after Escrow Agent delivers a Notice of Demand to such party, Escrow Agent may (i) hold the Good Faith Deposit, or any portion thereof, until: (A) Escrow Agent receives instructions in writing, signed by both Trust and Developer directing the disposition of the Good Faith Deposit, or any portion thereof (a "Joint Direction"), in which event Escrow Agent shall deliver the Good Faith Deposit, or portion thereof, as applicable, in accordance with such Joint Direction; or (B) Escrow Agent receives a certified copy of a final, non-appealable judgment or order of a court of competent jurisdiction, providing for the disposition of the Good Faith Deposit, or any portion thereof, in which event Escrow Agent shall deliver the Good Faith Deposit or portion thereof, as

applicable, in accordance with such judgment or order, or (ii) deposit the Good Faith Deposit, or any portion thereof, in the registry of a court of competent jurisdiction; provided, however, that notwithstanding the foregoing, Escrow Agent may, but shall not be required to, institute legal proceedings of any kind with respect to the Good Faith Deposit.

F. Notwithstanding any provision herein to the contrary, if Escrow Agent shall receive a Joint Direction, then Escrow Agent shall act in accordance with such Joint Direction.

G. If at any time all or any of the Good Faith Deposit is in the form of a letter of credit which is then scheduled to expire in 60 days or less, upon request by Trust, Escrow Agent shall deliver such letter of credit to Trust, Trust shall be entitled to draw on such letter of credit for the full amount thereof and if Trust so draws on such letter of credit, any proceeds received by Trust from such drawing shall be deposited hereunder as (or as part of) the Good Faith Deposit.

2. Limitation of Escrow Agent's Liability: Indemnification.

A. Escrow Agent shall be entitled to rely upon, and shall not be liable for any liability, loss, cost, damage or expense in acting or omitting to act pursuant to any instruction, order, judgment, certification, affidavit, demand, notice, opinion, instrument or other writing delivered to it hereunder without being required to determine the authenticity of such document, the correctness of any fact stated therein, the propriety of the service thereof or the capacity, identity or authority of any party purporting to sign or deliver such document, except to the extent such liability, loss, cost, damage or expense is the result of Escrow Agent's gross negligence, willful misconduct, bad faith or breach of this Agreement.

B. The duties of Escrow Agent are only as herein specifically provided. Escrow Agent shall neither be responsible for or under, nor chargeable with any knowledge of, the *terms* and conditions of any other agreement, instrument or document in connection herewith, including, without limitation, the MOU and the PSA, and shall be required to act in respect of the Good Faith Deposit only as provided in this Agreement. This Agreement sets forth all the obligations of Escrow Agent with respect to any and all matters pertinent to the escrow contemplated hereunder and no additional obligations of Escrow Agent shall be implied from the terms hereof or any other agreement or instrument. Escrow Agent shall incur no liability in connection with the discharge of its obligations hereunder or otherwise in connection therewith, except to the extent such liability is the result of Escrow Agent's gross negligence, willful misconduct, bad faith or breach of this Agreement.

C. Escrow Agent shall not be bound by any modification, cancellation or rescission of this Agreement unless such modification, cancellation or rescission is made in writing and signed by Trust, Developer and Escrow Agent.

D. Trust and Developer shall indemnify and hold harmless Escrow Agent from and against any and all losses, liabilities, damages and claims (including, without limitation, reasonable attorneys' fees and disbursements) actually suffered or incurred by Escrow Agent in connection with its performance of its duties hereunder, except to the extent such losses, liabilities, damages or claims are the result of Escrow Agent's gross negligence, willful misconduct, bad faith or breach of this Agreement.

3. Notices. Any notice provided for or permitted under this Agreement will be treated as having been given when (a) delivered personally, (b) sent by commercial overnight courier with written verification of receipt or (c) mailed postage prepaid by certified or registered mail, return receipt requested, at the address set forth below, or at such other place of which the other party has been notified in accordance with the provisions of this Section 3.

Trust: Hudson River Park Trust

353 West Street, 2nd Floor
New York, New York 10014
Attention: Madelyn Wils, President
with copies to:

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

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

And to:

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

Developer:

DD West 29th LLC
c/o Douglaston Development, LLC
555 5th Avenue
New York, NY 10176
Attention: Mr. Steven Charno, President

with a copy to:

Kramer Levin Naftalis & Frankel, LLP
1177 Avenue of the Americas
New York, NY 10036
Attention: Michael T. Sillerman, Esq.

Escrow Agent:

Royal Abstract
125 Park Avenue
Suite 1610
New York, NY 10018
Attention: Michael Roberts, Esq.

Such notice shall be deemed to be given when received if delivered personally or by nationally recognized overnight courier service, or two (2) days after the date mailed if sent by certified or registered mail, return receipt requested. Any notice may be given by the attorney for any party hereto.

4. General.

A. It is the intention of the parties hereto that the internal laws of the State of New York (irrespective of its choice of law principles) shall govern the validity of this Agreement, the construction of its terms, and the interpretation and enforcement of the rights and duties of the parties to this Agreement.

B. Any action arising out of this Agreement must be commenced in either the Supreme Court of the State of New York, County of New York, or the United States District Court for the Southern District of New York, and each party hereby irrevocably consents to the jurisdiction of the above courts in any such action and to the laying of venue in the State of New York. Any and all service of process in any such action shall be made in accordance with applicable law to the parties' registered agents at the addresses below, with a copy mailed by registered or certified mail, postage prepaid, to the parties at their respective address described in Section 3 hereof. Developer's registered agent is the Secretary of State of the State of New York. Escrow Agent's registered agent is Michael Roberts with an address of Royal Abstract of New York, LLC, 125 Park Avenue, Suite 1610, New York, New York 10017.

C. Each party to this Agreement hereby expressly and irrevocably waives any right to trial by jury of any claim, demand, action or cause of action (each, an "Action") arising out of this Agreement, including any present or future amendment hereof, or in any way connected with or related or incidental to the dealings of the parties or any of them with respect to this Agreement (as hereafter amended) or any other instrument, document or agreement executed or delivered in connection herewith, or the transactions related hereto or thereto, in each case whether such Action is now existing or hereafter arising, and whether sounding in contract or tort or otherwise and regardless of which party asserts such Action; and each party hereby agrees and consents that any such Action shall be decided by court trial without a jury, and that any party to this Agreement may file an original counterpart or a copy of this Section 4(c) with any court as written evidence of the consent of the parties to the waiver of any right they might otherwise have to trial by jury.

D. If any action is brought by any party to this Agreement to enforce or interpret its terms or provisions, the prevailing party (as determined in a final, non-appealable decision by a court of competent jurisdiction) will be entitled to reasonable attorney fees and costs incurred in connection with such action prior to and at trial and on any appeal therefrom.

E. Each and all of the covenants, terms, provisions and agreements contained in this Agreement shall be binding upon, and inure to the benefit of, the permitted successors, executors, heirs, representatives, administrators and assigns of the parties to this Agreement.

F. This Agreement may be executed in two or more counterparts, each of which, when taken together, shall be deemed to be one (1) instrument. This Agreement may be executed by facsimile transmission or by e-mail as a PDF file, in each case with the same force and effect as an original.

G. This Agreement constitutes the entire understanding and agreement of the parties to this Agreement with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements or understandings, inducements or conditions, express or implied, written or oral, between the parties with respect to this Agreement. Without limiting the foregoing, there are no restrictions, promises, representations, warranties, covenants, or undertakings, other than those expressly set forth or referred to in this Agreement.

H. This Agreement may be amended only with the written consent of each of the parties hereto,

I. No waiver by any party to this Agreement of any condition or of any breach of any provision of this Agreement will be effective unless in writing. No waiver by any party of any such condition or breach, in any one instance, will be deemed a further or continuing waiver of any such condition or breach or a waiver of any other condition or breach of any other provision contained in this Agreement.

J. Neither Developer, the Trust nor Escrow Agent shall record this Agreement.

K. Nothing set forth in this Agreement or otherwise shall be construed to create a joint venture between Trust and Developer or a lender-borrower relationship.

L. Nothing in this Agreement is intended to benefit any third party, or create any third party beneficiary.

M. Whenever the context shall require, the singular shall include the plural, the plural shall include the singular, and words of any gender shall be deemed to include words of any other gender.

N. The terms “herein,” “hereof” or “hereunder” or similar terms used herein refer to the entire Agreement and not to the particular provision in which the term is used unless the context otherwise requires. The use of the term “including” shall mean, in all cases, “including, without limitation,” unless specifically designated otherwise.

O. The captions in this Agreement are for convenience and reference only and in no way define, limit or describe the scope of this Agreement or the intent of any provision hereof,

P. This Agreement shall be interpreted without the aid of any presumption against the party drafting or causing the drafting of the provision in question.

[Signature pages follow immediately]

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

TRUST

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

By: _____

Name:

Title:

[Signature pages continue on the following page]

DEVELOPER

DD WEST 29TH LLC,
a New York limited liability company

By: _____
Name:
Title:

[Signature pages continue on the following page]

ESCROW AGENT

**ROYAL ABSTRACT OF NEW YORK,
LLC,**
a New York limited liability company

By: _____
Name:
Title:

[End of signature pages]

EXHIBIT A

Wiring Instructions

[INTENTIONALLY OMITTED]

EXHIBIT C

Fee Owner Authorization

WEST SIDE 11TH & 29TH LLC

445 PARK AVENUE, SUITE 1503

NEW YORK, NY 10022

212-567-8100 TEL/917-770-0900 CELL

October 17, 2017

Hon. Marisa Lago, Chair
New York City Planning Commission
120 Broadway, 31st Floor
New York, NY 10007

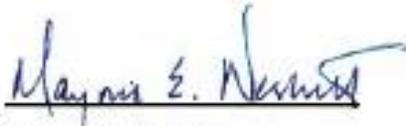
Re: West 29th Street
(Manhattan Block 675, Lots 12, 29, 36; (the "Property"))

Dear Chair Lago:

West Side 11th & 29th Street LLC is the fee owner of Block 675, Lots 12, 29 and 36 and hereby authorizes DD West 29th LLC, which is contract lessee, to file the Land Use Review Application seeking, in connection with the development of a new building on the Property, the following: (i) zoning text amendments to (a) map a new receiving and granting site within the Special Hudson River Park (HRP) District and (b) map a new MIH Area; (ii) rezone the Property from an M2-3 to C6-4X district within the HRP district; and (iii) allow by special permit pursuant to ZR Section 89-21 (a) transfer of floor area from the granting site to the Property and (b) height and setback, tower lot coverage and street wall location waivers.

Very truly yours,

West Side 11th & 29th LLC

By: 

Marjorie E. Nesbitt
Managing Member