

## First Amendment to Lease Agreement

This First Amendment to Lease Agreement (the "Lease Amendment") is made effective as of the 21 day of May, 2021 ("Effective Date") between the City of New York (the "City") and the Hudson River Park Trust ("HRPT"), a public benefit corporation of the State of New York. This Lease Amendment amends the Agreement (the "Lease") made effective as of the 3<sup>rd</sup> day of April 1999 between the City and HRPT. Capitalized terms used in this Lease Amendment and not defined shall have the meanings given them in the Lease.

WHEREAS, the Act was amended by Chapter 517 of the Laws of New York, 2013 (the "2013 Amendment to the Act") to, among other matters, extend the term of HRPT's possession of the Park and amend the description of the boundaries of the Park, and the City has acquiesced to the provisions of the 2013 Amendment to the Act; and

WHEREAS, the 2013 Amendment to the Act further mandated that both the Lease and the lease between HRPT and New York State (the "State Lease") be modified so that "insurance, defense and indemnification obligations [run] from the state or city, as the case may be, to [HRPT] in connection with and to the extent of any and all bodily injury or property damage claims alleged to occur on or relate to their respective real property in the park and to eliminate any obligations on the part of [HRPT] in such lease agreements to provide insurance, defense, or indemnification to the state or city as the case may be, in connection with such alleged bodily injury or property damage claims;" and

WHEREAS, pursuant to the insurance provisions of the 2013 Amendment to the Act, the City has been reimbursing HRPT thirty-five percent (35%) of HRPT's costs in procuring Commercial General Liability and Excess/Umbrella insurance coverage for each annual period, which coverage has been procured on behalf of HRPT as Named Insured with the assistance of the New York Office of General Services; and

WHEREAS, HRPT and New York State have executed amendments to the State Lease dated February 6, 2016 and January 22, 2020 to comply with the 2013 Amendment to the Act; and

WHEREAS, the City acquiesced to the conveyance of the Pier 76 parcel that contained the NYPD Tow Pound to New York State as contemplated by an amendment to the Hudson River Park Act adopted in 2020; and

WHEREAS, the Premises subject to this Lease Amendment is generally located on the portion of the Hudson River Park located from between West 37<sup>th</sup> and 38<sup>th</sup> Streets to West 59<sup>th</sup> Street and between the western boundary of the Route 9A bike way and the U.S. Pierhead line; and

WHEREAS, the City and HRPT desire to amend the Lease to conform with the 2013 Amendment to the Act in a manner similar to the amendments to the State Lease.

NOW, THEREFORE, the City and HRPT agree to amend the Lease as follows:

1. The first WHEREAS clause is deleted in its entirety and replaced with the following:

WHEREAS, the Hudson River Park Act, Chapter 592 of the Laws of 1998 of the State of New York, as amended by Chapter 288 of the Laws of New York, 2005, and by Chapter 517 of the Laws of New York, 2013, and by Chapters 154 and 515 of the Laws of New York, 2018, and as may be further amended from time to time, (the "Act") designated and dedicated certain of the properties along Route 9A from north of Battery Park City to 59<sup>th</sup> Street as the Hudson River Park (the "Park"). The Park includes both upland and underwater lands, the western boundary of which is the U.S. pierhead line. Section 3(e) of the Act more particularly describes the extent of the park boundaries.

2. The second paragraph of Section 2.01 is deleted in its entirety and replaced with the following:

HRPT, its successors and assigns, shall have quiet enjoyment of the Premises for the purposes herein for a term (the "Term") commencing on the Commencement Date and expiring at 12:00 noon on March 31, 2112 (the "Expiration Date"), unless this Agreement shall sooner terminate as hereinafter provided.

3. The first sentence of Section 5.02 is amended to add the words "Except as set forth in Article V-A," so that it reads as "Except as set forth in Article V-A, all insurance required by this Agreement shall be obtained...."
4. Subparagraph (a) of Section 5.06 is struck in its entirety and replaced with "Intentionally Omitted".
5. Section 5.09 is deleted in its entirety and replaced with the following:

HRPT shall require its Sublessees, Concessionaires, Permittees, Licensees, contractors and subcontractors, and any other third parties it permits to operate within the Park, to carry liability insurance, including but not limited to Commercial General Liability insurance, with coverage at least as broad as that provided by the most recent version of ISO form CG 00 01, and naming the City of New York, including their respective officials and employees, as additional insured with coverage at least as broad as that provided by form CG 20 26, with policy limits not less than those for the named insured, or with lesser coverages and/or at lower limits as HRPT deems appropriate in consultation with the Office of General Services and the City. Such insurance shall be primary and non-contributory with respect to any program of self-insurance or insurance policy procured pursuant to this Lease or otherwise.

6. A new Article V-A entitled Insurance Requirements of the City is added as follows:

SECTION 5A.01. As set forth in more detail in Section 5A.02 below, if the City determines not to meet the City's insurance obligations under the 2013 Amendment to the Act through self-retention for bodily injury or property damage claims occurring on City-owned land within the park, the City shall comply with the insurance provisions of the 2013 Amendment to the Act by reimbursing HRPT the City's Insurance Contribution as defined in Section 5A.02(b) below for HRPT's costs in procuring and maintaining insurance for bodily injury and property damage claims for the entire Park.

SECTION 5A.02.

- (a) HRPT shall, using the Office of General Services (hereafter "OGS"), and in consultation with the City, procure the Commercial General Liability Insurance covering the entire Park, with coverage limits to be decided by OGS and which coverage may be provided through a combination of primary and umbrella/excess policies (hereafter the "Park-wide CGL Policy").
- (b) The City shall reimburse HRPT thirty-five percent (35%) of the total costs of the (i) premiums, (ii) deductibles, and (iii) if applicable, OGS's cost recovery fee (together, the "City's Insurance Contribution"). The City and HRPT agree that the City shall either (i) reimburse HRPT directly the City's Insurance Contribution within 90 days of receipt of an invoice from HRPT that provides backup information regarding the total costs related to the Park-wide CGL Policy, subject to set-off for any amounts owed by HRPT to the City; or (ii) reimburse HRPT indirectly the City's Insurance Contribution through offsets of payments due and owing from HRPT to Parks for park security services if and only in the event that this option is provided for in a contract then in effect between HRPT and Parks. Policies purchased pursuant to this Section shall name the Hudson River Park Trust and the City of New York and their respective officials and employees as Named Insureds. The process set forth in this Article V-A satisfies the City's obligations to provide insurance as required in the 2013 Amendment to the Act.
- (c) Any Park-wide CGL Policy shall meet the following requirements. Such policies must be maintained by carriers licensed to do business in New York State that are rated at least "A-" Class, Class "VII" in the most recently published Best's Insurance Report. Such liability must be written on the Insurance Service Office ("ISO") occurrence form CG 00 01, or a substitute form providing equivalent coverages and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal and advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability or another assumed in a contract) and

explosion, collapse and underground coverage. If such insurance contains an aggregate limit, it shall apply separately to the Premises.

7. All Sections under ARTICLE XIII are struck in their entirety and replaced as follows:

SECTION 13.01.

- (a) Consistent with the 2013 Amendment to the Act, the City of New York shall indemnify and hold harmless HRPT against and from any and all claims arising on or after the Effective Date of this Lease Amendment for the remaining term of the Lease, as amended, for any and all bodily injury or property damage claims that occur or are alleged to occur on the Premises. Upon receipt of any (a) (i) notice of claim, loss, damage, occurrence, accident or (ii) threat of a claim that requires notification under any policy of insurance ((a)(i) and (a)(ii) together "Notice of Claim"), or (b) claim or lawsuit (hereafter "Claim"), HRPT shall inform OGS within five business days by sending a complete and accurate copy of such Notice of Claim or Claim, together with a statement identifying the date on which and manner by which it was received by HRPT to the contact person provided by OGS so that OGS can notify the carrier. Such notice shall be given even where HRPT may not be covered under such policy.
- (b) HRPT shall simultaneously send copies of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007, and the Department of Parks and Recreation, attention General Counsel.

[signature page follow]

IN WITNESS WHEREOF, the City and HRPT have executed this Lease Amendment as of the day and year first written above.

HUDSON RIVER PARK TRUST

THE CITY OF NEW YORK

By:   
Name: Noreen Doyle  
Title: Acting President & CEO

By:   
Name:  
Title:

Approved as to form:

*Betty C. Woo* (WB)  
Acting Corporation Counsel

STATE OF NEW YORK )  
 ) ss:  
COUNTY OF NEW YORK )

On this 31st day of March, 2021, before me personally came Noreen Doyle, who is to me known as the Acting President of the Hudson River Park Trust, and who being duly sworn, did depose and state that by her signature she executed this document in her official capacity and for the purpose mentioned therein.

  
Notary Public

DENISE M RUGGIERO  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01RU6395715  
Qualified in Albany County  
My Commission Expires 08-12-2023

STATE OF NEW YORK )  
 ) ss:  
COUNTY OF NEW YORK )

On this 21 day of May, 2021, before me personally came \_\_\_\_\_, who is to me known as the Vicki Been of City of NY, and who being duly sworn, did depose and state that by his/her signature he/she executed this document in his/her official capacity and for the purpose mentioned therein.

  
Notary Public

KATHERINE P. COCKLIN  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 02CO6328584  
Qualified in New York County  
My Commission Expires ~~08-02-2023~~