
MEMORANDUM OF UNDERSTANDING

by and between

HUDSON RIVER PARK TRUST

and

SJC 33 OWNER 2015, LLC

Dated as of May 9, 2016

THIS MEMORANDUM OF UNDERSTANDING (this "MOU"), is made as of the 9th of May, 2016 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 SJC 33 OWNER 2015, LLC, a Delaware limited liability company having an office at 645 Madison Avenue, 18th Floor, New York, New York 10022 ("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 Pier 40, located at West Street and Houston Street in the Borough of Manhattan, City and State of New York, having a tax lot designation as Block 656, Lot 1 and consisting of a bulkhead, land underwater, head house, three pier sheds, pilings 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 "Pier 40 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 infrastructure improvements on the Pier 40 Property, including the pilings, are in urgent need of repair and rehabilitation, which repair and rehabilitation would require substantial financial resources not presently in the possession of the Trust;

WHEREAS, the property known as The St Johns Terminal, located at 550 Washington Street in the Borough of Manhattan, City and State of New York, directly across West Street from the Pier 40 Property and having a tax lot designation as Block 596, Lot 1 (all of the foregoing together with any improvements thereon being hereinafter referred to as the "SJC Property"), is owned in fee by Developer;

WHEREAS, Developer desires to accept the transfer of 200,000 square feet of “floor area” (the “Transfer”) to the SJC 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 Pier 40 Property (also known as the “granting site”; “receiving site” and “granting site” both being defined in section 127.02 of the “Amendment,” such term being defined below) and to build on the SJC Property a new development project, as described in the 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 New York City Zoning Resolution (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, further pursuant to the aforementioned subsection 1(j) of the Act, all revenues to the Trust from the Transfer must be used, in the first instance, for the repair of Pier 40 infrastructure, it is the intention of the Trust to so apply the Purchase Price (as hereinafter defined);

WHEREAS, the purpose of 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 urgent repair and rehabilitation work to Pier 40;

WHEREAS, the New York City Department of City Planning (“DCP”) has proposed an amendment to the text of the ZR wherein a new Chapter 7 within Article 12 would be adopted by the New York City Planning Commission (the “CPC”) establishing the Special Hudson River Park District (the “Amendment”), which Amendment, by its provisions, would enable the effectuation of the Transfer;

WHEREAS, Developer has made application to DCP for the grant of a special permit, pursuant to a proposed new Section 127-21 of the ZR expected to be included within the Amendment (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 application to DCP for a change to the zoning map to rezone the SJC Property to facilitate its redevelopment (the “Zoning Map Change Application”);

WHEREAS, DCP is prepared to undertake a review of the contemplated TDR and 13-451 Special Permit Application and of the Zoning Map Change 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 and 13-451 Special Permit Application and the Zoning Map Change Application together the “ULURP Applications”);

WHEREAS, Developer has, prior hereto, submitted to DCP a DEIS and other submissions of materials in support of the Amendment and the associated ULURP Applications, which materials identify and describe the proposed improvements to be made to the Park and the SJC Property, which description is intended to demonstrate that the Purchase Price (as defined below), in combination with any other available funding, would be sufficient to complete the identified improvements to the Park, and DCP is undertaking the review of such submissions (the "Submissions");

WHEREAS, DCP has heretofore determined that the Submissions are complete, and it has therefore certified the Developer's ULURP Applications as complete (the "Certification"), thereby commencing ULURP;

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"); and

WHEREAS, the Trust and Developer desire now to memorialize the undertakings that would embody conditions precedent to the parties' executing the PSA, including: (i) certain funding by Developer of preliminary planning activities to be undertaken by the Trust and (ii) 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.** 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 2, the Manhattan Borough President, the New York City Council (the "Council") and DCP/CPC (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.

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 in the

event that CPC or the Council either (a) imposes material adverse changes upon or conditions to Developer's intended development of the SJC Property, as set forth in the ULURP Applications or (b) fails to approve the ULURP Applications or (c) the Trust fails to satisfy any undertakings expected or required of the Trust during the MOU Term (such withdrawal and termination, a "Permitted Project Termination").

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 New York City Council and authorization of the Transfer by approval of the TDR Special Permit (the "ULURP Approval"), which ninety 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/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 One Hundred Million and 00/100 (\$100,000,000) (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 SJC 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 Commonwealth Land Title Association, Inc. ("Escrow Agent"), pursuant to the escrow agreement attached hereto as Exhibit B (the "Escrow Agreement"), an amount equal to Five Million and 00/100 Dollars (\$5,000,000.00) in the form of cash or a letter of credit (the "Good Faith Deposit"). The Good Faith Deposit shall be subject to the following refunding and disbursement rights of the Parties:

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

B. Prior to the execution of the PSA, the Trust shall have the right to demand of the Escrow Agent, and thereupon receive disbursement from the Escrow Agent out of the Good Faith Deposit, disbursements of up to One Million and 00/100 Dollars (\$1,000,000.00) in the aggregate for the payment of third-party costs and expenses incurred by the Trust solely in connection with the following: the performance by any planning, design, environmental, engineering and/or other similar professionals engaged by the Trust (any such third-party professional a "Third-Party Professional") with respect to the preparation by the Third-Party Professional of design drawings, engineering and construction plans and specifications, environmental analyses, and any other work of a similar nature (all such work, collectively, the "Preliminary Planning Work"), in connection with repair and rehabilitation work to be performed at and upon Pier 40, as such Preliminary Planning Work may be identified by the Trust during ULURP. The incurrence of such third-party costs and expenses shall be evidenced by invoices from, or written contracts with, Third-Party Professionals for any Preliminary Planning Work, and any such third-party costs and expenses so incurred are referred to herein as "Incurred Pier 40 Recognized Expenses". The Trust shall promptly provide Developer with copies of any such contracts. Any such right on the part of the Trust to demand and receive disbursement from the Good Faith Deposit to pay for Incurred Pier 40 Recognized Expenses shall be conditioned upon submission by the Trust (i) first to the Developer for its review and, after least five (5) business days from the date of delivery of the submission to the Developer; and (ii) then to the Escrow Agent of: (a) a certification by a duly authorized officer of the Trust that the Preliminary Planning Work, for which the Trust seeks payment or reimbursement by disbursement from the Good Faith Deposit, has been performed and disbursement therefor is being demanded and (b) invoices or receipts evidencing the Incurred Pier 40 Recognized Expenses. Should Developer object to, or request correction of, any demand for payment by the Trust during Developer's five (5) business day review period, the Trust shall in good faith consider such objection or request and either (x) so modify or correct its demand for payment, or (y) not modify or correct its demand for payment and instead respond to Developer setting forth reasons why it is not so prepared to modify or correct its demand for payment. The obligation of Escrow Agent to effect a disbursement to pay for any of said Incurred Pier 40 Recognized Expenses, and the protocol and procedure for effecting same is as set forth in the Escrow Agreement.

C. If Developer shall, at any time, effect a Permitted Project Termination, then Developer shall be entitled to a refund of the Good Faith Deposit, less, however, except as otherwise provided in this MOU, the amount (not to exceed \$1,000,000 in the aggregate) of both any and all (i) Incurred Pier 40 Recognized Expenses previously disbursed to the Trust pursuant to Section 5.B above ("Paid Pier 40 Recognized Expenses") and (ii) Incurred Pier 40 Recognized Expenses for which the Preliminary Planning Work has not yet been performed ("Obligated Pier 40 Recognized Expenses"). The amount set forth in clause (ii) above shall be disbursed to the Trust subject to the following conditions:

(a) the Trust shall have complied with its obligation under Section 5.B above to provide copies of the applicable contracts;

(b) the Trust shall have complied with the provisions of clauses (i) and (ii) of Section 5.B above relating to disbursements from the Good Faith Deposit;

(c) the aggregate amount of disbursements under clauses (i) and (ii) of this Section 5.C do not exceed \$1,000,000; and

(d) in no event shall the amount refunded to Developer be less than \$4,000,000.

D. If (i) Developer shall withdraw from or terminate the ULURP process otherwise 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 thirty (30) days of Board Approval, then, and in either such event, this MOU shall terminate, but the Trust shall be entitled to a disbursement to it of One Million and 00/100 Dollars (\$1,000,000.00) of the remaining balance in the Good Faith Deposit, less, however, any Paid Pier 40 Recognized Expenses and the remaining \$4,000,000 (plus interest) shall be refunded to the Developer. The amount of disbursement to the Trust from said remaining balance shall not be subject to any submission by the Trust of documentation for Obligated Pier 40 Recognized Expenses.

E. Following the ULURP Approval, the Trust shall undertake to obtain Board Approval at the next available meeting of the Board, and in any event within ninety (90) days of the ULURP Approval (the "Outside Date"). If, following the ULURP Approval, (i) the Board Approval is not obtained by the Outside Date, or (ii) 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 either such event, this MOU shall terminate, and Developer, provided that it has performed as per Section 1 above and is otherwise in compliance with this MOU, shall be entitled to a refund of the entire Good Faith Deposit, in the amount of \$5,000,000 (plus interest), it being understood and agreed that Developer shall be entitled to a full refund of \$5,000,000 from (x) the balance of the Good Faith Deposit being held by the Escrow Agent and (y) direct repayment by the Trust to Developer of all Paid Pier 40 Recognized Expenses previously disbursed, the Trust's obligation being limited to payment under the foregoing clause (y) and directing the Escrow Agent to refund the balance of the Good Faith Deposit to Developer.

F. If Board Approval is obtained, the Good Faith Deposit, less all Paid Pier 40 Recognized Expenses, shall remain in the escrow account, and, upon the Parties' execution of the PSA, the entire amount of the Good Faith Deposit (including credit for all Paid Pier 40 Recognized Expenses or any other amounts previously disbursed to the Trust) shall be applied to the Down Payment of Forty Million and 00/100 Dollars (\$40,000,000.00) (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 Five Million and 00/100 Dollars (\$5,000,000.00). The Trust's use of the Down Payment for Recognized Pier 40 Expenses 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.D or 5.E 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.

8. **Costs and Expenses.** Developer is hereby obligated upon the signing of this MOU to pay to the Trust a non-refundable administrative fee of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00), receipt of which administrative fee is hereby acknowledged. Developer understands that it will be responsible to pay for all costs and expenses in connection with its expected performance hereunder. The Trust will similarly be responsible to pay for all costs and expenses in connection with its expected performance hereunder, with the understanding that the administrative fee simultaneously being paid herewith may be used to pay for any such costs and expenses.

9. **Developer's Representations.**

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

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

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

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

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

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

a condition precedent to the Trust's proceeding with the Transfer transaction, 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 (less any then Paid Pier 40 Recognized Expenses or Obligated Pier 40 Recognized Expenses, provided the conditions set forth in clauses (A) through (D) of Section 5.C, which are incorporated herein by reference, have been satisfied in full).

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 and 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 SJC 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 SJC 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 SJC Property, the ULURP, the Significant Action Process or the seeking of ULURP Approval.

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

D. **Assignment by Developer.** Developer may assign its rights and obligations under this MOU to a third party, which owns or will own the SJP Property, and which will sign the PSA, subject to the Trust's approval. If the Trust does not approve, 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 application and 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, and/or the creation of any new

direct or indirect equity interests in Developer, so long as either Atlas Capital Group, LLC and/or Westbrook Partners, or an affiliate thereof, remain as managing member[s] of Developer or otherwise in similar day-to-day control of the operations of Developer, subject to approval rights of members with respect to any material matters; provided, however, that any party acquiring a direct ownership interest of more than ten percent (10%) of Developer or its direct owner(s) shall be subject to Vendex Disclosure Requirements to the same extent as Developer and its original direct owner(s).

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

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

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

If to the Trust:

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

with copies to:

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

and

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

If to Developer:

SJC 33 Owner 2015, LLC
7121 Fairway Drive, Suite 410
Palm Beach Gardens, Florida 33418
Attention: General Counsel

with a copy to:

SJC 33 Owner 2015, LLC
645 Madison Avenue, 18th Floor
New York, New York 10022
Attention: General Counsel

And to:

SJC 33 Owner 2015, LLC
450 Park Avenue, 4th Floor
New York, New York 10022
Attention: Andrew Cohen

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 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 HRPT 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 (less any then Paid Pier 40 Recognized Expenses or Obligated Pier 40 Recognized Expenses, provided the conditions set forth in clauses (A) through (D) of Section 5.C, which are incorporated herein by reference, have been satisfied in full); 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 Wits*
Title: *President*

DEVELOPER

SJC 33 OWNER 2015, LLC
a Delaware limited liability company

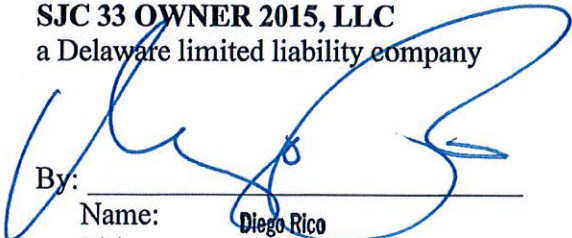
By: 
Name: *Diego Rico*
Title: *Vice President*

EXHIBIT A

[PSA]

DEVELOPMENT RIGHTS PURCHASE AND SALE AGREEMENT

THIS DEVELOPMENT RIGHTS PURCHASE AND SALE AGREEMENT (“Agreement”) is made as of the ___ day of May, 2016 (the “Effective Date”) 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”), SJC 33 Owner 2015, LLC, a Delaware limited liability company having an office at 645 Madison Avenue, 18th Floor New York, New York 10022 (“Purchaser”) and [____] having an office at [____] (“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, 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”) with Seller, as lessee, for the premises located in the City, County and State of New York known as Pier 40 and designated as Block 656, Tax Lot 1 on the Tax Map of the Borough of Manhattan, City of New York, as such premises are more particularly described by metes and bounds 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 the owner of in fee of the land located in the City, County and State of New York known as 550 Washington Street and identified as Block 596, Tax Lot 1 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”) which will be located 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);

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

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 accommodating 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 Council (the "Council") has adopted an amendment to the Zoning Resolution, pursuant to Resolution No. ___ dated _____, 2016, enacting the Special Hudson River Park District in Section 89-00, et seq. of the Zoning Resolution, which zoning amendment accommodates the Transfer through the provision of a zoning special permit (a "Transfer Special Permit"), permitting such a transfer;

WHEREAS, a Transfer Special Permit was approved by the Council pursuant to Resolution No. _____ dated _____, 2016;

WHEREAS, a rezoning of the Purchaser's Premises, pursuant to Resolution No. ___ dated _____, 2016; and three special permits pursuant to Sections 13-45, and 13- 451 of the Zoning Resolution to allow additional accessory parking, pursuant to Resolution No. ___ dated _____, 2016 were also approved by the Council in connection with the Transfer Special Permit (such approvals, together with the Transfer Special Permit, the "ULURP Approvals");

WHEREAS, the New York City Planning Commission (the "CPC") has approved an authorization pursuant to Section 13-441 of the Zoning Resolution to allow curb cuts on a wide street, pursuant to Resolution No. ___ dated _____, 2016;

WHEREAS, the Chair of CPC has approved a certification pursuant to Section 89-21(d) of the Zoning Resolution to allow the issuance of a building permit for the New Purchaser Buildings;

WHEREAS, the Board of Directors of Seller has approved the Transfer on [date] (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) Architect shall mean an architect or surveyor licensed in the State of New York.

- (b) 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.
- (c) 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.
- (d) 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
- (e) Closing Date shall mean the date on which the Closing occurs.
- (f) Code shall mean the Internal Revenue Code of 1986, as amended, and as the same may be amended from time to time.
- (g) CPC shall mean the New York City Planning Commission.
- (h) DCP shall mean the New York City Department of City Planning.
- (i) Deposit shall mean Forty Million Dollars (\$40,000,000.00 which amount includes the Deposit Credit.
- (j) Deposit Credit shall mean Five Million Dollars (\$5,000,000) representing 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).
- (k) 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.
- (i) Incurred Pier 40 Recognized Expenses shall have the meaning as defined in the MOU,
- (m) Escrow Agent shall mean the Commonwealth Land Title Insurance Company.
- (n) Excess Floor Area Development Rights shall mean those Development Rights that are appurtenant to the Seller's Land under the Zoning Resolution in excess of the Utilized Floor Area Development Rights and are available for transfer pursuant to Section 89-21 of the Zoning Resolution.
- (o) Institutional Lender means 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 Dollars (\$500,000,000), 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.

- (p) Litigation Expense shall have the meaning described in Section 3(d) below.
- (q) Litigation Expense Credit shall have the meaning described in Section 3(d) below.
- (r) MOU shall mean that Memorandum of Understanding between Seller and Buyer dated as of May, 2016.
- (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) Paid Pier 40 Recognized Expenses shall have the meaning as defined in the MOU.
- (u) Pre-Closing Period shall mean the period of time beginning on the date hereof, 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 as defined in the MOU.
- (w) Project Litigation shall mean a proceeding seeking judicial review of the ULURP Approvals, Board Approval, or other governmental approvals necessary for the Transfer and the development of the New Purchaser Buildings.
- (x) 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.
- (y) Retained Development Rights shall mean the sum of (i) the Utilized Floor Area Development Rights and (ii) the Excess Floor Area Development Rights attributable to the Seller's Premises, less the Subject Floor Area Development Rights.
- (z) Seller's Certification shall mean a written certification by a duly authorized officer of the Trust that the Preliminary Planning Work, for which the Trust seeks payment or reimbursement by disbursement from the Good Faith Deposit, has been performed, and the disbursement therefor is being demanded of the Escrow Agent.

- (aa) 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, to the execution of the Transfer Instrument and Notice of Restrictions by the Seller, in substantially the form attached as Exhibit F-1 in order to effectuate the Transfer and (2) any and all waiver, consent and subordination documents executed by such other parties-in-interest (as that term is defined in the Zoning Resolution) in the granting lot to the execution by Seller of the Transfer Instrument and Notice of Restrictions, as may be required by the Zoning Resolution, substantially in the form attached hereto as Exhibit F-2.
- (bb) Subject Floor Area Development Rights shall mean 200,000 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.
- (cc) Third-Party Professional shall have the meaning as defined in the MOU.
- (dd) Title Company shall mean Fidelity National Title Insurance Company, Inc. or such other nationally recognized title company selected by Purchaser.
- (ee) 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 [date] pursuant to [resolution no.] and the New York City Council on [date] pursuant to [resolution no.].
- (ff) 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.
- (gg) 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.
- (hh) 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 and the Retained 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 and Retained 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 and Retained Development Rights with any other Development Rights that Seller may now or in the future obtain. 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 and, accordingly, the amount of Excess Floor Area Development Rights shall increase in the same amount. 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 One Hundred Million and 00/100 Dollars (\$100,000,000) (the "Purchase Price"), payable at Closing as follows:
- (i) by 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, after deduction for any Paid Pier 40 Recognized Expenses, as permitted by the MOU or by this Agreement;
- (ii) the balance by execution and delivery to Seller of a non-interest-bearing promissory note (the ("Promissory Note"), the form of which Promissory Note is attached hereto as Exhibit [X], which Promissory Note shall be in the amount of Sixty Million and 00/100 Dollars (\$60,000,000.00) to be paid in three installments (the "Purchase Price Installments") as follows:
- (x) on the first anniversary of the Closing, \$20,000,000.00,
(y) on the second anniversary of the Closing \$20,000,000.00 and
(z) on the third anniversary of the Closing \$20,000,000.00.

Purchaser shall be entitled to the Litigation Expense Credit (as defined below) against the Purchase Price Installments as follows: one-third of the aggregate Litigation Expense Credit may be applied by Purchaser against

and to reduce each Purchase Price Installment.

- (b) The Deposit. Pursuant to the terms of the MOU, Purchaser has previously deposited the Good Faith Deposit with Escrow Agent. The parties agree that the balance of the Good Faith Deposit, less any Paid Pier 40 Recognized Expenses, is \$_____ as of the date hereof (the “Good Faith Deposit Amount”), but that the entire original Good Faith Deposit amount of \$5,000,000 is hereby credited to the Deposit amount required hereunder. The Escrow Agent has, contemporaneously herewith, separately acknowledged its receipt of said Good Faith Deposit Amount by its signature to this Agreement. The Purchaser has further, contemporaneously herewith, delivered an additional \$35,000,000.00 to the Escrow Agent, thereby fully satisfying the Deposit obligation of \$40,000,000.00 required hereunder. The Deposit will be held by the Escrow Agent pursuant to the terms of this Agreement and the Escrow provisions annexed hereto as Exhibit D. The Deposit 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. Notwithstanding the foregoing, Purchaser shall have the option to substitute one or more letters of credit in the aggregate amount of \$35,000,000 plus the Good Faith Deposit Amount in lieu of the cash Deposit as the Deposit hereunder (any such letter(s) of credit, a “Deposit Letter of Credit”), in which event Purchaser shall be entitled to a return of the cash Good Faith Deposit Amount being held by the Escrow Agent. Any such Deposit Letter of Credit must be an unconditional, irrevocable, clean evergreen letter of credit issued by a financial institution reasonably acceptable to the Seller whose Standard & Poors credit rating is at least BBB+ (the “Rating”). In the event that a Deposit Letter of Credit issuer should experience a material compromise in its credit rating, such material compromise being manifested by the issuer’s Standard & Poor’s credit rating dropping below BBB-, then Seller may demand that the Purchaser arrange with a different financial institution, whose credit rating shall be at least the Rating or otherwise satisfactory to the Seller, to issue a new Deposit Letter of Credit satisfying the same criteria as set forth above and in the amount of the unpaid Purchase Price Installments. If the Seller shall not replace the credit-compromised Deposit Letter of Credit issuer with a new financial institution issuer meeting the criteria set forth in the immediately preceding sentence, then and in that event, within thirty (30) days of demand for such replacement by the Seller, Seller shall be entitled to immediately direct the Escrow Agent to draw down the full amount of the Deposit Letter of Credit without further notice or demand and without the need to submit to the Deposit Letter of Credit issuer any documentation whatsoever. Notwithstanding the foregoing, any Deposit Letter of Credit may include provisions in its associated notice and demand forms that may be institutionally required by the Deposit Letter of Credit issuer as a matter of the issuer’s institutional protocols, provided such provisions do not conflict with the criteria prescribed herein for the letter of credit. The Escrow Agent will be the beneficiary under any such Deposit Letter of Credit. In the event the Escrow Agent makes a draw against the Deposit Letter of Credit pursuant to a demand of the Seller for a disbursement to reimburse Seller for any Paid Pier 40 Recognized Expense. The Escrow Agent shall treat the proceeds of any such draw as the cash Deposit in accordance with the

provisions of this Agreement, and it shall disburse to Seller the amount demanded by Seller pursuant to Seller's written demand therefor, all in accordance with the requirements of this Agreement. The mechanics for Seller's making a demand for a disbursement to it from the Deposit for Paid Pier 40 Recognized Expenses shall be as set forth in the Escrow Agreement, but any such demands by Seller shall be subject to the same demand requirements as are set forth in Section 3(c) below.

- (c) Treatment of Deposit in Escrow Account. From the date hereof through and including the Closing Date, Seller shall be entitled to disbursements out of the Deposit to reimburse itself for Paid Pier 40 Recognized Expenses to Third-Party Professionals. The aggregate of disbursements to reimburse Seller for Paid Pier 40 Recognized Expenses to which Seller shall be entitled from the MOU's Good Faith Deposit and the Deposit hereunder, however, both during (i) the MOU Period and (ii) between the date hereof and the Closing Date shall be limited to \$1,500,000.00. With respect to all demands by Seller to the Escrow Agent for disbursements to Seller to reimburse Seller for the payment of Paid Pier 40 Recognized Expenses, Seller shall have the right to an immediate disbursement by Escrow Agent from the Deposit or, if so substituted for the cash Deposit, the Deposit Letter of Credit, upon the Seller's following the identical procedure and protocol for disbursements by the Escrow Agent to Seller prescribed in Section 5.B of the MOU.
- (d) Security for Purchase Price Installment. Payment of the unpaid balance of the Promissory Note shall be secured by one or more unconditional, irrevocable, clean, evergreen letter(s) of credit issued to Seller, as the beneficiary, by a financial institution reasonably acceptable to the Seller (collectively, the "Letter of Credit"), in the aggregate amount Purchase Price Installments due under Promissory Note. Any such Letter of Credit issuer shall be deemed satisfactory to the Seller if its credit rating is the Rating.. Any such Letter of Credit may be adjusted in amount to take into account Purchaser's right to a Litigation Expense Credit for all Litigation Expenses of Seller reimbursed by Purchaser pursuant to Sections 3(b)(3) and (4) below. A Letter of Credit may be drawn upon by Seller against issuer at any time without notice to Purchaser and without the requirement of any instruments or documents to support the draw (other than as required by such Letter of Credit in the event that the Purchaser should fail to satisfy its obligation under the Promissory Note to make timely payment of any Purchase Price Installment due under the Promissory Note. Seller's entitlement, as between Seller and Purchaser, to the proceeds of a Letter of Credit in the amount of the then due and unpaid amount of the Promissory Note and Purchase Price Installment shall become unconditional and absolute immediately upon a default in the payment of the Purchase Price Installment then due and unpaid under the Promissory Note. In the event that a Letter of Credit issuer should experience a material compromise in its credit rating, such material compromise being manifested by the issuer's Standard & Poor's credit rating dropping below BBB-, then Seller may demand that the Purchaser arrange with a different financial institution, whose credit rating shall be the Rating or otherwise satisfactory to the Seller, to issue a new Letter of Credit satisfying the same criteria as set forth above and in the amount of the remaining applicable unpaid Purchase Price

Installment(s). If the Seller shall not replace the credit-compromised Letter of Credit issuer with a new financial institution issuer satisfactory to Seller within thirty (30) days of demand for such replacement by the Seller, then and in that event Seller shall be entitled to immediately draw down the full amount of the Letter of Credit without further notice or demand and without the need to submit to the Letter of Credit issuer any documentation whatsoever. Notwithstanding the foregoing, any Letter of Credit securing the Purchase Price Installments may include provisions in its associated notice and demand forms that may be institutionally required by the Letter of Credit issuer as a matter of the issuer's institutional protocols, provided such provisions do not conflict with the criteria prescribed herein for the letter of credit. All proceeds of a draw by Seller from a Letter of Credit securing the Purchase Price Installments shall be applied to the then due and unpaid amount of any Purchase Price Installment.

- (e) In the event a Project Litigation is commenced seeking to enjoin the Transfer, 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 for reasonable third-party legal fees and disbursements and court costs incurred by Seller related to such Project Litigation ("Litigation Expenses"). Purchaser's obligation to reimburse Seller for such litigation expenses shall be satisfied no later than thirty (30) days after receipt of notice from Seller to Purchaser that Seller has incurred such expenses, which notice shall be accompanied by the pertinent invoices. During the 1-Year Period (as defined in Section 5(b)(2)), Purchaser's reimbursement obligation for Seller's Litigation Expenses shall not exceed \$500,000.00 during that year. Such reimbursement shall be separate and apart from, and in addition to, disbursements to Seller from the Deposit for Recognized Pier 40 Expenses. In the event Purchaser elects to extend the Closing Date by a Post-1-Year Extension (as defined in Section 5(b)(3)), then and in that event, the aforescribed \$500,000.00 limit on reimbursement to Seller for litigation expenses incurred shall be eliminated, and for so long as the Post-1-Year Period shall be in effect, Seller shall be entitled to unlimited reimbursement for Litigation Expenses incurred during the Post-1-Year Period (all amounts reimbursed to Seller by Purchaser for Litigation Expenses both with respect to the 1-Year Period and the Post-1-Year-Extension the "Litigation Expense Credit"). Purchaser shall have no liability for any litigation expenses incurred or billed after the date of Closing .

4. Conditions to Closing.

- (a) Purchaser shall have obtained the Purchaser's Waivers and Seller shall have obtained the Seller's Waivers. Each of Purchaser and Seller shall deliver at Closing an updated Parties-in-Interest Certification, dated as of the Closing Date, prepared by Fidelity National Title Insurance Company, Inc. or such other nationally recognized title company selected by Purchaser (the "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 conditions precedent to Purchaser's obligations with respect to the Closing:

- 1) No later than seven days prior to the Closing Date, Seller shall have delivered to the Purchaser (x) unsigned 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, thereby demonstrating that Seller is prepared to satisfy all of its obligations pursuant to the provisions of this Agreement 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 which would prevent Seller from selling the Subject Floor Area Development Rights in the manner contemplated by this Agreement and
- 4) Seller shall have otherwise satisfied, on or prior to the Closing, all of its obligations under this Agreement.

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

- 1) no later than seven days prior to the Closing Date, Purchaser shall have delivered to Seller (x) unsigned execution copies of all of the documents, instruments and other deliverables required to be executed and 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 which would prevent Purchaser from purchasing the Subject Floor Area Development Rights in a manner contemplated by this Agreement; and
- 4) Purchaser shall have otherwise satisfied, on or prior to the Closing, all of its obligations under this Agreement.

5. Closing Documents and Closing.

- (a) Subject to the terms of this Agreement, the Closing shall occur, if no Project Litigation has been commenced during a period of four (4) months following Board Approval (the “Waiting Period”), on a date that is no more than ninety (90) days after the expiration of the Waiting Period (the “90-Day Period”). The Closing shall be scheduled by the Parties at a time and place mutually convenient to Seller and Purchaser but within the 90-Day Period. If a Closing is scheduled by Seller or Purchaser on a date which is more than sixty (60) days after the 90-Day Period has commenced, then, and in that event, time shall be of the essence with respect to any such Closing.
- (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, unrelated to the Purchaser either directly or indirectly, has commenced a Project Litigation during the Waiting Period. 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, provided that the the Purchaser shall cooperate with the Seller 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) Purchaser shall defend and cooperate in the defense of the Project Litigation and reimburse the Seller for Litigation Expenses incurred by Seller to defend, and contest the relief demanded in, any Project Litigation, any such Litigation Expenses to be limited, however, to a maximum amount of Five Hundred Thousand and 00/100 Dollars (\$500,000.00) incurred by Seller during a one-year period of time following the Board Approval (the “1-Year Period”).
 - (3) At the end of the 1-Year Period, Purchaser shall have the option, after consultation with Seller, to elect to either:
 - (x) terminate this Agreement, in which event the Seller shall be entitled to a disbursement of One Million Five Hundred Thousand and xx/00 Dollars(\$1,500,000.00) from the Deposit less the amount of any Paid Pier 40 Recognized Expenses, , and Purchaser shall be entitled to receive a refund of the remaining balance of the Deposit being held in Escrow; or

(y) extend the Closing Date and this Agreement for a period of time expressly prescribed, in writing, by the Purchaser to the Seller (the “Post-1-Year Extension Period”).

(4) If Purchaser elects the right to a Post-1-Year Extension Period, then and in that event, Purchaser shall continue to defend, to the extent practicable, and cooperate with Seller and the City in contesting the Project Litigation for the stated Post-1-Year Extension Period. At the end of the stated Post-1-Year Extension Period, Purchaser shall have the option, after consultation with Seller, to elect to either:

(x) terminate this Agreement, in which event the Seller shall be entitled to a disbursement of One Million Five Hundred Thousand and xx/00 Dollars(\$1,500,000.00) from the Deposit, less the amount of any Paid Pier 40 Expenses, and Purchaser shall be entitled to receive a refund of the remaining balance of the Deposit being held in Escrow; or

(y) extend the Closing Date and this Agreement for a period of time expressly prescribed, in writing, by the Purchaser to the Seller (the “Second Post-1-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, pursuant to subparagraph (b)(7) hereof. As used herein, “Second Post-1-Year Extension Period” shall include, collectively, all stated Second Post-1-Year Extension Periods elected by the Purchaser pursuant to this subparagraph (b)(4).

(5) In the event of an election by Purchaser to extend the Closing Date beyond the 1-Year Period, Purchaser’s obligation to reimburse Seller for Litigation Expenses shall not be limited to Five Hundred Thousand and 00/100 Dollars (\$500,000.00), as provided in Section 5(b)(2) hereof, but shall be increased to include all litigation expenses thereafter incurred by Seller during any Post 1-Year Extension Period, including all Second Post1-Year Extension Periods. Purchaser shall not be deemed to be in default of its obligation under this Agreement to cooperate in connection with the defense of a Project Litigation in good faith so long as Purchaser has reimbursed Seller for Seller’s Litigation Expenses, as required by Section 3(d). In the event Purchaser shall fail to satisfy its obligation to reimburse Seller for Litigation Expenses, then Seller shall have the right to demand that Escrow Agent shall disburse to Seller from the Deposit all unreimbursed Litigation Expenses upon the presentation to Escrow Agent of invoices therefor. Such reimbursement shall be paid to Seller separate and apart from any disbursements to reimburse Seller for

Preliminary Planning Work, whether incurred or paid., but shall not affect or reduce the Litigation Expense Credit, provided that the Closing occurs. Accordingly, any refunds of the Deposit to which Purchaser may otherwise be entitled shall be further reduced by unpaid Litigation Expenses..

- (6) In all events, so long as this Agreement shall remain in full force and effect, the Closing shall be deemed postponed until a final, non-appealable judgment or order has been issued by of a court of competent jurisdiction dismissing the Project Litigation, provided that this Agreement has not theretofore been terminated in accordance with Section 5(b)(3) or (4) above.
 - (7) Upon the entry of a final, non-appealable judgment or order dismissing the Project Litigation, either Seller or Purchaser shall have the right to schedule a Closing that shall occur not later than (ninety) 90 days following the entry of a final, non-appealable judgment or order dismissing the Project Litigation (the “Project Litigation 90-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. If the Closing Date so scheduled shall be on a date which is more than 60 days after the commencement of the Project Litigation 90-Day Period, then, and in that event, time shall be of the essence with respect to any such Closing., (8) At the Closing, the Purchase Price shall be paid in the manner provided for in Section 3 above.
- (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.
 - (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 remaining after any disbursements to Seller out of the Deposit on account of Recognized Pier 40 Expenses or Litigation Expenses);
 - (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; and
 - (viii) any other document or instrument reasonably required by the Title Company to consummate or evidence the transactions contemplated herein.
- (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;
 - (iii) the Tax Returns necessary to record the Transfer Instrument and the Notice of Restrictions;
 - (iv) the Joint Letter of Instruction;
 - (v) the Promissory Note (as prescribed in Section 3(b) above);
 - (vi) the Letter of Credit (as prescribed in Section 3(b) above);
 - (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; and
 - (viii) Purchaser's Waiver and
 - (ix) any other document or instrument reasonably required by the Title Company to consummate or evidence the transaction contemplated herein.
- (e) Purchaser shall record or cause the recording of the Transfer Instrument and Notice of Restrictions and the Parties-in-Interest Certification at its sole cost and expense
- (f) 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 in connection therewith.

- (g) 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 Purchasers' due diligence, title examination, title insurance, architectural, survey, recording costs and expenses and escrow fees. Each party will be responsible for its own legal fees. 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 is the owner of the leasehold title to Seller's Premises and to 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 has the legal authority, pursuant to the Act, to enter into this Agreement 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.
 - (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.
- (b) Purchaser represents and warrants that:
- (i) At the Closing, Purchaser (or an affiliate thereof) shall be the fee 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 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 (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 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 or (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.

- (b) 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.

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 a condition to Closing to be satisfied by Seller under this Agreement, 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 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, shall be entitled to the return of the Deposit, less all disbursements to Seller on account of Recognized Pier 40 Expenses, as permitted pursuant to this Agreement. 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.

(ii) If Purchaser defaults in its obligations under this Agreement and the Closing does not take place as a result thereof 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. 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 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 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
Attention: President

with copies to:

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

And to:

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

Purchaser:

SJC 33 Owner 2015, LLC
7121 Fairway Drive, Suite 410
Palm Beach Gardens, Florida 33418
Attention: General Counsel

with a copy to:

SJC 33 Owner 2015, LLC
645 Madison Avenue, 18th Floor
New York, New York 10022
Attention: General Counsel

And to:

SJC 33 Owner 2015, LLC
450 Park Avenue, 4th Floor
New York, New York 10022
Attention: Andrew Cohen

If to Escrow Agent:

Commonwealth Land Title Insurance Company
140 East 45th St., 22nd Floor
New York, NY 10017
Attention: Peter G. Doyle
Tel: (212) 973-6209
Fax: (212) 697-0286

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.

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 Exhibit D annexed hereto.
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 Parcel 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 sixty (60) 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 State 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, and/or the creation of any new direct or indirect membership interest, 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 Atlas Capital Group and/or Westbrook Partners, or an affiliate thereof, remain as managing member(s) of Purchaser or otherwise 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 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. 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 _____ . Purchaser's federal tax identifications 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) Entire Agreement. This Agreement embodies the entire understanding of the parties with respect to the matters set forth herein and supersedes all prior agreements.
- (p) 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. The violation of this provision shall be deemed a material violation and breach of the terms and conditions of 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:

Purchaser:

SJC 33 OWNER 2015, LLC
a Delaware limited liability company

By: _____

Its Authorized Signatory

Escrow Agent:

By: _____

Name:

Title:

EXHIBIT A
Legal Description of Granting Lot

EXHIBIT B

Legal Description of Receiving Lot

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 SJC 33 Owner 2015 LLC, a Delaware limited liability company, with an address at _____ ("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 656, Tax Lot 1 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 is the owner of certain real Property designated as Block 596, Tax Lot 1, 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 200,000 square feet of unused excess floor area and the development rights appurtenant thereto (hereinafter collectively, the "Transfer Floor Area") 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 Transfer Floor Area to the Receiving Lot.

NOW THEREFORE, in consideration of One Hundred Million (\$100,000,000.00) dollars, lawful money of the United States, and other valuable consideration paid by Transferee:

1. Transferor does hereby grant, distribute and transfer the Transfer Floor Area from the Granting Lot to the Receiving Lot, solely for the use and benefit in perpetuity of the Receiving Lot.
2. Transferor covenants that, in compliance with Section 13 of the Lien Law, it will receive the consideration paid by Transferee for such rights as a trust fund and will apply the same first to the payment of the cost of the repair, rehabilitation, replacement, reconstruction and restoration of Pier 40 within Hudson River Park before using any part of the total of the same for any other purposes.
3. 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 200,000 square feet, and (b) benefits the Receiving Lot by irrevocably increasing the floor area available for development on the Receiving Lot by 200,000 square feet.
4. 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.
5. 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.
6. 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:

SJC 33 OWNER 2015 LLC

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)

Exhibit A to Transfer Instrument
Legal Description of Granting Lot

Exhibit B to Transfer Instrument
Legal Description of Receiving Lot

EXHIBIT D

Terms of Escrow

[Conform to Escrow Agreement under MOU]

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

[INSERT METES AND BOUNDS 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 and Consent to Transfer and Notice of Restrictions
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 [____], 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 Site"), hereby:

- (i) acknowledges and consents to the transfer of 200,000 square feet of Development Rights (the "Subject Floor Area Development Rights") from the Granting Site 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 Site"), in accordance with the provisions of Section 89-21 of the Zoning Resolution;
- (ii) consents to and approves the execution by the Hudson River Park Trust, as transferor of the Granting Site, of 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 and Consent has been duly executed as of _____, 2016.

**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

Exhibit B

Legal Description of Receiving Lot

Exhibit C

The Transfer Instrument

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; (ii)
consents to and approves the execution by the owner of the Granting Parcel of the Transfer
Instrument and Notice of Restrictions Pursuant to Section 89-21 of the Zoning Resolution of the
City of New York and the Declaration of Zoning Lot Restrictions, substantially in the forms
annexed hereto as **Exhibit “C”** (collectively, the “Declarations”), for the purpose of transferring
the Subject Floor Area Development Rights to the Receiving Parcel and waives its right to
execute, now or in the future, the Declarations; and (iii) subordinates its interest in the Granting
Parcel to said transfer of the Subject Floor Area Development Rights and the Declarations, and
any and all modifications, amendments, additions, replacements, restatements or consolidations
of the Declarations.

IN WITNESS WHEREOF, the undersigned have executed this instrument this _____
day of _____, 20

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

Exhibit B

Legal Description of Receiving Lot

Exhibit C

The Transfer Instrument

EXHIBIT B
[ESCROW AGREEMENT]

ESCROW AGREEMENT

This ESCROW AGREEMENT (this "Agreement") is entered into as of May 9, 2016, by and among Hudson River Park Trust, a New York State public benefit corporation ("Trust"), SJC 33 Owner 2015, LLC, a Delaware limited liability company ("Developer"), and Commonwealth Land Title Insurance Company ("Escrow Agent").

RECITALS

A. Trust and Developer have executed a certain Memorandum of Understanding, dated as of May __, 2016 (the "MOU") pursuant to which, inter alia, Developer desires to accept the transfer of 200,000 square feet of zoning floor area (the "Transfer") from the property known as Pier 40, located at West Street and Houston Street in the Borough of Manhattan, City and State of New York, having a tax lot designation as Block 656, Lot 1 (the "Pier 40 Property") to the property known as The St Johns Terminal, located at 550 Washington Street in the Borough of Manhattan, City and State of New York, having a tax lot designation as Block 596, Lot 1 (the "SJC Property"), which SJC Property is owned in fee by Developer.

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 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 Five Million and 00/100 Dollars (\$5,000,000.00) in the form of cash or a letter of credit (the "Good Faith Deposit"), to be held in escrow and disbursed by the Escrow Agent in accordance with the terms of this Agreement. 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. 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 and not by this Agreement.

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 escrow account in accordance with the

wiring instructions annexed hereto as Exhibit A and made a part hereof. The Good Faith Deposit shall be divided and invested in two separate interest bearing FDIC insured commercial bank accounts or U.S. treasury certificates (if it is in the form of cash), as determined by Developer. The two separate accounts shall be denominated Account A and Account B. One Million and 00/100 Dollars (\$1,000,000.00) shall be deposited in Account A, and Four Million 00/100 Dollars (\$4,000,000.00) shall be deposited in Account B. Any accrued interest on the Good Faith Deposit shall be paid by Escrow Agent to Developer upon termination of this Agreement.

(b) The Escrow Agent shall disburse the Account A funds, or portions thereof, in accordance with written demands from the Trust (each such written demand a "Demand"). Escrow Agent shall have no duty to inform the Developer of the receipt by Escrow Agent of any Demand for disbursements from Trust with respect to Account A. Escrow Agent shall effect disbursements from Account A as set forth in the Demand as soon as Possible. If Escrow Agent receives a Dispute Notice (as defined below) from Developer with respect to Account A funds, it shall take no action with respect to such Dispute Notice but shall act strictly in accordance with the Trust's Demand. Escrow Agent shall have no right to institute legal proceedings of any kind with respect to Account A funds.

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

(d) 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(f) 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.

(e) If Escrow Agent receives a Joint Demand, Escrow Agent shall disburse the Account B funds, or portion thereof, as applicable, pursuant to the instructions set forth in the Joint Demand.

(f) Escrow Agent is acting as a stakeholder only with respect to the entire Good Faith Deposit. If, with respect to Account B, 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 Account B funds, 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 Account B funds, 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 Account B funds.

(g) 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.

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 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: President

with copies to:

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

And to:

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

Developer:

SJC 33 Owner 2015, LLC
7121 Fairway Drive, Suite 410
Palm Beach Gardens, Florida 33418
Attention: General Counsel

with a copy to:

SJC 33 Owner 2015, LLC
645 Madison Avenue, 18th Floor
New York, New York 10022
Attention: General Counsel

And to:

SJC 33 Owner 2015, LLC
450 Park Avenue, 4th Floor
New York, New York 10022
Attention: Andrew Cohen

Escrow Agent: Commonwealth Land Title Insurance Company
140 East 45th St., 22nd Floor
New York, NY 10017
Attention: Peter G. Doyle
Tel: (212) 973-6209
Fax: (212) 697-0286

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 National Registered Agents, Inc., with an address of 160 Greentree Drive, Suite 101, Dover, Delaware 19904. Escrow Agent's registered agent is _____, with an address of _____.

(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") (i) arising out of this Agreement, including any present or future amendment hereof, or (ii) 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: *Madelyn Wils*
Title: *President*

[Signature pages continue on the following page]

DEVELOPER

SJC 33 OWNER 2015, LLC, A
a Delaware limited liability company

By: 

Name:

Title:

Diego Rico
Vice President

[Signature pages continue on the following page]

ESCROW AGENT

**COMMONWEALTH LAND TITLE
INSURANCE COMPANY**

By: Donald C. Endle
Name: DONALD C. ENPLE
Title: SA-VICE-PRESIDENT

Exhibit A

Wiring Instructions

Incoming Wire Instructions

Bank Name: Bank of America, NA
1 Bryant Park
New York, NY 10036

Account Name: Commonwealth Land Title
Insurance
Company

Routing Number: 026009593

Account Number: 1257567421

SWIFT: BOFAUS3N

TITLE NUMBER: NY150532 / St. Johns

Please reference our title number on all wires