

DEVELOPMENT RIGHTS PURCHASE AND SALE AGREEMENT

THIS DEVELOPMENT RIGHTS PURCHASE AND SALE AGREEMENT (“Agreement”) is dated as of July _____, 2018, and effective as of the date this Agreement (the “Effective Date”) is executed by and among HUDSON RIVER PARK TRUST, a New York State public benefit corporation organized pursuant to the Hudson River Park Act, Chapter 592 of the Laws of 1998 of the State of New York (as amended, the “Act”) having an office at 353 West Street, 2nd Floor, New York, N.Y. 10014 (“Seller”), DD WEST 29TH STREET, LLC, a New York limited liability company having an office at c/o Douglaston Development, LLC, 555 5th Avenue, New York, N.Y. 10176 (“Purchaser”), and ROYAL ABSTRACT, 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 (the “Landlord”), by and through its Office of Parks, Recreation and Historic Preservation and its Department of Environmental Conservation, and Seller entered into a long term lease agreement, dated as of April 3, 1999 (such lease agreement, as amended, extended, including by letter agreement dated as of February 9, 2016, and as the same may be further amended, modified or supplemented from time to time, collectively, the “State Lease”) with Seller, as lessee, for the premises located in the City, County and State of New York known as Chelsea Piers and designated as Block 662, Tax Lots 11, 16 and 19 on the Tax Map of the Borough of Manhattan, City of New York, as such premises are more particularly described in Exhibit A annexed hereto (the “Seller’s Land”; together with the building and improvements thereon or to be constructed thereon, the “Seller’s Improvements”; the Seller’s Land and Seller’s Improvements being herein referred to collectively as the “Seller’s Premises”);

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

WHEREAS, [Fee Owner] is the fee owner of Purchaser’s Land;

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

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

WHEREAS, pursuant to an amendment to the Act as such amendment was enacted by the New York State Legislature and included in subsection 1(j) of Section 7 of the Act, Seller is authorized to take such actions as may be necessary to effectuate the transfer to the Purchaser of the Subject Floor Area Development Rights (the "Transfer"), pursuant to the provisions of the Zoning Resolution authorizing such transfer;

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

WHEREAS, the New York City Planning Commission (the "CPC") has approved, pursuant to resolutions dated May 7, 2018 (i) an amendment to the Zoning Resolution, pursuant to Resolution No. N 180128(A) ZRM, modifying the Special Hudson River Park District Map in Section 89-00, et seq. of the Zoning Resolution and defining the Seller's Premises as a "granting site" and the Purchaser's Premises as a "receiving site" within the Special District (the "Zoning Text Amendment"), which zoning amendment would authorize the Transfer through the provision of a zoning special permit that permits such a transfer; (ii) a rezoning of the Purchaser's Premises, pursuant to Resolution No. C 180127 ZMM (the "Rezoning"); and (iii) a zoning special permit pursuant to proposed Section 89-21 of the Zoning Resolution, pursuant to Resolution No. C 180129(A) ZSM, permitting the Transfer and certain bulk modifications to the New Purchaser Buildings (the "Transfer Special Permit"); and the New York City Council (the "Council") has approved the Zoning Text Amendment, Rezoning, Transfer Special Permit, and Definition Amendment pursuant to Resolution Nos. [] dated June 28, 2018 (such approvals, collectively, the "ULURP Approvals");

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

WHEREAS, in connection with the ULURP Approvals, Purchaser has agreed to make a contribution of Three Million Dollars, separate from the Purchase Price (as hereinafter defined) for the Subject Floor Area Development Rights under this Agreement, to fund improvements to the Hudson River Park within Community Board 4, pursuant to a contribution agreement dated simultaneously with this Agreement and in substantially the form attached hereto as Exhibit J (the "Contribution Agreement");

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 9 of Article VIII of the Zoning Resolution;

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

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

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

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

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

providing substantially the same title insurance coverage in all material respects.

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

(H), any of the following types of Persons or any Person that is directly or indirectly owned and controlled by any of the following types of Persons, whether domestic or foreign, as long as (aa) any such Person has not been determined by the State or City of New York to be not qualified to enter into contracts with those governmental entities and (bb) any such Person is, or shall agree in writing to be, subject to the jurisdiction under the laws, and courts, of the United States of America and of the State and City of New York and shall appoint an individual or other Person to accept service of process on behalf of any such Institutional Lender in the City of New York: (I) a financing company, (II) an employees' welfare fund or system, (III) a religious, educational or eleemosynary institution or foundation, (IV) a governmental agency or governmental plan, (V) trust fund or (VI) any Person that is entirely owned and controlled by any combination of one or more of the foregoing Persons.

- (r) Litigation Expenses shall have the meaning described in Section 3(c) below.
- (s) MOU shall mean that Memorandum of Understanding between Seller and Buyer dated as of [_____].
- (t) 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;
- (u) Pre-Closing Period shall mean the period of time beginning on the Effective Date hereof and ending on the Closing Date, during which time the Seller and Purchaser will be obligated to undertake certain actions to progress the Transfer transaction to closing, all as prescribed herein.
- (v) Preliminary Planning Work shall have the meaning provided in the MOU.
- (w) Pre-Waiting Period Project Litigation shall mean a judicial action or proceeding commenced prior to the expiration of the Waiting Period, challenging, contesting or reviewing the ULURP Approvals, Board Approval, Transfer pursuant to the Act, Zoning Resolution amendments, or other governmental approvals necessary for the Transfer and the development contemplated by the ULURP Approvals.
- (x) Project Litigation shall mean, collectively the Pre-Waiting Period Project Litigation and the Post-Waiting Period Project Litigation.
- (y) Post-Waiting Period Project Litigation shall mean a judicial action or proceeding commenced after the expiration of the Waiting Period, challenging, contesting or reviewing the ULURP Approvals, Board Approval, Transfer pursuant to the Act, Zoning Resolution amendments, or other governmental approvals necessary for the Transfer and the development contemplated by the ULURP Approvals.
- (z) Purchaser's Title Company shall mean a Title Company selected by Purchaser.

- (aa) Purchaser's Waiver shall mean, collectively, any and all waiver, consent and subordination documents executed by a party-in-interest (as that term is defined in the Zoning Resolution) in the receiving lot to the execution by it of the Transfer Instrument and Notice of Restrictions, which Purchaser's Waiver(s) shall be substantially in the form annexed hereto as Exhibit F-2.
- (bb) Seller's Certification shall mean a written certification by a duly authorized officer of the Seller that the Preliminary Planning Work, for which the Seller seeks payment or reimbursement by disbursement from the Deposit, has been performed, and the disbursement therefor is being demanded of the Escrow Agent.
- (cc) Seller's Waiver shall mean, collectively, (1) the execution and delivery by the State of New York (as mandated by subsection 1(j) of Section 7 of the Act), as the fee owner of the granting lot, of the waiver and consent of the State of New York (as required by the Zoning Resolution), as party-in-interest (as that term is defined in the Zoning Resolution) to the granting lot, in substantially the form attached as Exhibit F-1 in order to effectuate the Transfer and (2) a waiver executed by such other parties-in-interest (as that term is defined in the Zoning Resolution) in the granting lot as may be required by the Title Company in connection with the issuance of the Development Rights Endorsement, substantially in the form attached hereto as Exhibit F-2.
- (dd) Subject Floor Area Development Rights shall mean 123,437.5 square feet of Development Rights that are available for transfer and that may be transferred from Seller's Premises to Purchaser's Premises utilizing the method set forth in Section 89-21 of the Zoning Resolution.
- (ee) Third-Party Professional shall have the meaning as defined in the MOU.
- (ff) Title Company shall mean any of the following title companies: Royal Abstract of New York, Commonwealth Title Insurance Company, Fidelity National Title Insurance Company, Chicago Title Insurance Company (New York Office), Stewart Title Insurance Company, or First American Title Insurance Company.
- (gg) Transfer shall mean the sale and transfer from Seller to Purchaser of the Subject Floor Area Development Rights, in accordance with the Transfer Special Permit.
- (hh) 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.
- (ii) ULURP Approvals is defined in the Recitals of this Agreement.
- (jj) 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.

- (kk) Waiting Period shall mean the period of one hundred twenty-five (125) days following the Board Approval.
- (ll) Zoning Resolution shall mean the Zoning Resolution of the City of New York, effective as of December 15, 1961, as amended from time to time.

2. Purchase and Sale of Development Rights.

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

3. Purchase Price/Deposit.

- (a) The Purchase Price. In consideration of the transfer to Purchaser by Seller of the Subject Floor Area Development Rights, Purchaser agrees to pay to Seller the amount of Thirty Seven Million and 00/100 Dollars (\$37,000,000.00) (the "Purchase Price"), payable at Closing by (i) disbursement from Escrow Agent to Seller of the amount of the Deposit (payment of which is provided for in subparagraph (b) below) remaining in the Escrow Account, by wire transfer of immediately available federal funds, to an account(s) designated by Seller on not less than two (2) days' notice and (ii) payment by Purchaser to Seller in cash (or cash equivalent) of an amount equal to the aggregate amount of Litigation Expenses to the extent previously disbursed out of the Deposit, plus all unpaid, documented Litigation Expenses actually incurred by Seller up to the Closing Date not reimbursed by Purchaser or previously disbursed out of the Deposit, except as agreed otherwise herein by Purchaser.

- (b) The Deposit. Pursuant to the terms of the MOU, Purchaser has previously deposited the Deposit with Escrow Agent in accordance with the Escrow Agreement attached hereto as Exhibit D (the “Escrow Agreement”). The Escrow Agent has, contemporaneously herewith, separately acknowledged its receipt of the Deposit by its signature to this Agreement. The Deposit will be held by the Escrow Agent pursuant to the terms of this Agreement and the Escrow Agreement. The Deposit (excluding any accrued interest) shall be credited to the Purchase Price at the Closing, or refunded to Purchaser if this Agreement is terminated in accordance with the provisions of this Agreement, including, without limitation, pursuant to Sections 5(b) and 9(a) hereof. Provided that no Project Litigation is pending upon the expiration of the Waiting Period, Seller shall be permitted to withdraw from the Deposit, in one or more withdrawals in each of the following periods through and including the Closing or termination of this Agreement prior to the Closing (any such amount, a “Deposit Withdrawal”): (i) an amount up to One Million Dollars (\$1,000,000) from the date of the expiration of the Waiting Period to January 15, 2019, (ii) an amount up to One Million Five Hundred Thousand Dollars (\$1,500,000) from January 16, 2019 to May 1, 2019, and (iii) an amount up to One Million Dollars (\$1,000,000) for each six (6) month period, or portion thereof, thereafter prior to the Closing or termination of this Agreement prior to the Closing. Seller shall make use of each Deposit Withdrawal for the purpose of general design, planning, and construction of capital improvements to the Hudson River Park in Community Board 4 to be funded with the Purchase Price. The mechanics for Seller’s making a Deposit Withdrawal shall be as set forth in Section 3(c) below and in the Escrow Agreement. All Deposit Withdrawals shall be non-refundable to Purchaser, unless Seller shall be in material default of its obligations under this Agreement or fails to satisfy a condition to Closing which pursuant to the express terms hereof is to be satisfied by Seller and, as a result thereof, this Agreement is terminated prior the Closing, in which event Seller shall refund to Purchaser the amount of Deposit Withdrawals previously disbursed to Seller.
- (c) Treatment of Deposit. From the date of the expiration of the Waiting Period through and including the Closing Date, Seller shall be entitled to Deposit Withdrawals in the amounts set forth in Section 3(b) above, to pay for third-party expenses incurred by Seller for general design, planning, and construction of capital improvements to the Hudson River Park in Community Board 4 to be funded with the Purchase Price. With respect to all demands by Seller to the Escrow Agent for Deposit Withdrawals, Seller shall have the right to an immediate disbursement by Escrow Agent from the Deposit upon the Seller’s submission to Escrow Agent of: (a) a certification by a duly authorized officer of the Seller of the expenses incurred by Seller for which the Seller seeks payment or reimbursement, and (b) copies of invoices or receipts evidencing such expenses. Seller shall provide to Purchaser a copy of Seller’s proposed certification and copies of such receipts or invoices not less than five (5) business days prior to the submission thereof to Escrow Agent. Should Purchaser request a correction (which correction shall be limited to that of mathematical error) of any demand for payment by the Seller during such five (5) business day period, the Seller shall in good faith consider such request and either (x) modify or correct its demand for payment, or (y) not modify or correct its demand for payment and instead respond to Purchaser setting forth reasons why it is not willing to modify or correct its demand for payment. The

obligation of Escrow Agent to disburse funds from the Deposit for any expenses, and the protocol and procedure for effecting same, is as set forth in the Escrow Agreement.

- (d) In the event a Project Litigation is commenced, as contemplated in Section 5(b) below, then and in that event the Purchaser shall be obligated to reimburse Seller for such amounts as shall correspond to invoices and retainers for reasonable third-party legal fees and disbursements and court costs incurred by Seller related to such Project Litigation (and solely with respect to Pre-Waiting Period Project Litigation, such amount shall in no event exceed One Million and 00/100 Dollars (\$1,000,000) in the aggregate) (“Litigation Expenses”), except as agreed otherwise herein by Purchaser. Purchaser’s obligation to reimburse Seller for such Litigation Expenses shall be satisfied no later than thirty (30) days after receipt of written notice from Seller to Purchaser that Seller has incurred such expenses, which notice shall be accompanied by the pertinent invoices and retainer receipts from outside counsel. To the extent not reimbursed by Purchaser within such thirty (30) day period after demand, Seller shall have the right to an immediate disbursement by Escrow Agent from the Deposit upon the Seller’s submission to the Escrow Agent of: (i) a certification by a duly authorized officer of the Seller that the Litigation Expenses, for which the Seller seeks payment or reimbursement by disbursement from the Deposit, has been performed and disbursement therefor is being demanded as a result of Purchaser’s failure to pay within such thirty (30) day period, and (ii) invoices or receipts evidencing the Litigation Expenses. Should Purchaser object to, or request correction of, any demand for payment by the Seller during Purchaser’s thirty (30) day review period, the Seller shall in good faith consider such objection or request and either (A) so modify or correct its demand for payment, or (B) not modify or correct its demand for payment and instead respond to Purchaser setting forth reasons why it is not so prepared to modify or correct its demand for payment. The obligation of Escrow Agent to disburse funds from the Deposit to pay for any Litigation Expenses, and the protocol and procedure for effecting same, is as set forth in the Escrow Agreement. Seller shall be entitled to reimbursement for Litigation Expenses incurred during the pendency of any Project Litigation during the 2-Year Period (as defined in Section 5(b)(3)), subject to the limitation on Litigation Expenses for Pre-Waiting Period Litigation, except as agreed otherwise herein by Purchaser. Purchaser shall have no liability for any Litigation Expenses incurred or billed after the date of Closing. Notwithstanding anything to the contrary in this Agreement or the Escrow Agreement, any disbursements due to Seller of amounts requested for payment of Litigation Expenses and not reimbursed by Purchaser shall be made out of the Deposit, and prior to Closing the amount(s) of such disbursements from the Deposit shall be replenished to the Deposit in full by Purchaser.
- (e) The Purchase Price established by the Board of Directors of Seller is informed by an appraised value of that portion of the Subject Floor Area Development Rights being used in connection with the construction of the New Purchaser Building for market-rate and 25% affordable residential rental use on a ground lease (the “Permitted Residential Use”). The Purchaser agrees that it shall only develop that portion of the Subject Floor Area Development Rights for the Permitted Residential Use, as permitted in the Deed Restriction. Subject to the foregoing conditions, Purchaser may propose

to develop or convert the use of the Purchaser's Land to "for sale" market rate residential housing (the "Change In Residential Use").

- i. If Purchaser or owner of the fee interest in the Purchaser's Land (the "Fee Owner") shall elect to pursue a Change in Residential Use prior to the Closing Date, then the following provisions shall apply:
 1. The Purchase Price shall be increased by the greater of (i) one-hundred twenty percent (120%) of the Purchase Price and (ii) the appraised value of the Subject Floor Area Development Rights after reappraisal undertaken by Seller to account for the Change In Residential Use (the "New Appraised Value"), less the Purchase Price prior to the date of such election. Notwithstanding the foregoing, any increased Purchase Price must be approved by the Board of Directors of Seller.
 2. No election of Change of Use shall be permitted later than six (6) months prior to Closing Date. Seller shall, in a written notice given to Purchaser, specify its determination of the New Appraised Value as of the date of such Purchaser election within sixty (90) days after receipt of Purchaser's notice. Seller's determination of the New Appraised Value shall be final and binding on Purchaser.
 3. Purchaser shall pay to Seller: (a) Seller's estimated third party costs and fees in connection with establishing the New Appraised Value, (b) an administrative fee of One Hundred Thousand Dollars (\$100,000), and (c) Seller's estimated legal fees and expenses in connection therewith (such amount in the aggregate, the "Election Fee"). The Election Fee shall be paid by Purchaser to Seller within seven (7) business days of issuance of Seller's notice to Purchaser of the amount of the Election Fee.
 4. Within seven (7) business days of issuance of notice to Purchaser of the New Appraised Value, Purchaser shall notify Seller as to whether it accepts the increased Purchase Price and wishes to close with the Change In Residential Use, or rejects the increased Purchase Price and wishes to close without the Change in Residential Use.
- ii. If Purchaser does not elect to pursue a Change in Residential Use prior to the Closing Date, then Purchaser agrees that at or prior to Closing, it shall cause to be recorded a deed restriction in the form attached hereto as Exhibit H (the "Deed Restriction") duly executed by the leasehold and fee owners of the Purchaser's Premises, which deed restriction shall encumber the fee and leasehold interest in Purchaser's Premises and be superior to any lease, mortgage, lien, claim or other encumbrance on Purchaser's Premises other

than those listed on Exhibit I attached hereto.

4. Conditions to Closing.

- (a) As a condition to Closing for the benefit of (i) Purchaser, Seller shall have obtained the Seller's Waiver and (ii) Seller, Purchaser shall have obtained the Purchaser's Waiver. Each of Purchaser and Seller shall deliver at Closing an updated Parties-in-Interest Certification in the form attached as Exhibit E, dated as of the Closing Date, prepared by 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 a condition of Closing, for the benefit of Purchaser and Seller, (i) no Project Litigation shall have been filed, or if any Project Litigation is filed, all such Project Litigation shall have been dismissed on the merits pursuant to a final, non-appealable judgment or order by a court of competent jurisdiction, and (ii) no Adverse Determination shall have been rendered.
- (c) As conditions precedent to Purchaser's obligations with respect to the Closing:
 - 1) No later than three (3) business days prior to the Closing Date, Seller shall have delivered to Escrow Agent (x) signed execution copies of all of the documents, instruments and other deliverables required to be executed and delivered by Seller pursuant to this Agreement at the Closing and (y) Seller's Waiver;
 - 2) No material representation or warranty made by Seller pursuant to Section 6(a) hereof shall be untrue, as of the Closing Date, in any material respect (it being understood that a representation and warranty shall be deemed untrue in a "material respect" only if the inaccuracy therein prevents Seller from selling the Subject Floor Area Development Rights in the manner contemplated by this Agreement or would expose Purchaser to material post-closing liability or claims);
 - 3) There shall be no material default by Seller in its covenants hereunder that would prevent Seller from selling the Subject Floor Area Development Rights in the manner contemplated by this Agreement;
 - 4) The Development Rights Endorsement is available from one or more Title Companies;
 - 5) Seller shall have otherwise satisfied, on or prior to the Closing, all of its obligations under this Agreement in all material respects;
 - 6) Purchaser and Fee Owner shall have executed and delivered the ground lease for Purchaser's Land; and

7) The Owner documents listed in Section 5(e) hereof have been delivered.

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

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

5. Closing Documents and Closing.

- (a) Subject to the terms of this Agreement, except as expressly provided otherwise in this Agreement, the Closing shall be scheduled, if no Project Litigation has been commenced during a period of one hundred twenty-five (125) days following the Board Approval (the "Waiting Period") at a time and place mutually convenient to Seller and Purchaser on a date that is not later than May 1, 2019 (the "Outside Closing Date"), time being of the essence with respect to the Closing occurring not later than the Outside Closing Date.
- (b) Notwithstanding the provisions set forth in subsection (a) above with respect to the Closing Date, the Seller and Purchaser agree that the Closing shall be postponed (as per the terms provided below) if a third party, unaffiliated with the Purchaser or Fee Owner either directly or indirectly (i.e., does not have any direct or indirect ownership interest in Purchaser), has commenced a Project Litigation during the Waiting Period or prior to the Scheduled Closing Date. In the event such Project Litigation is

commenced, the Seller and Purchaser shall proceed as follows with respect to defending the Project Litigation and scheduling a Closing:

- (1) The Seller and Purchaser shall be obligated to defend against any such Project Litigation to the extent reasonably practicable given the nature of the litigation, and the Seller and Purchaser shall cooperate with each other and with the City of New York (the “City”) to contest any such litigation, jointly and in good faith. The parties recognize that they have no control over any decision of the City of New York with respect to the defense against any such Project Litigation and that the ability of either party to defend may be impracticable without the City of New York’s cooperation and willingness to defend.
- (2) Seller and Purchaser shall defend and cooperate in the defense of the Project Litigation and Seller shall be reimbursed for Litigation Expenses, subject to any limitation expressly set forth in this Agreement, incurred by Seller in defending against any Project Litigation, except as agreed otherwise herein by Purchaser.
- (3) Upon the date that is two (2) years after the commencement of any Project Litigation (the “2 Year Period”), Purchaser shall have the option, after consultation with Seller, to elect to either:
 - (x) terminate this Agreement, in which event Purchaser shall be entitled to receive a refund of the remaining balance of the Deposit being held in Escrow plus interest; or
 - (y) extend the Closing Date and this Agreement for a period of time expressly prescribed, in writing (not to exceed two (2) years), by the Purchaser to the Seller (the “Post-2-Year Extension Period”).
- (4) If Purchaser elects the right to a Post-2-Year Extension Period, then and in that event, Seller and Purchaser shall continue to cooperate to defend, to the extent practicable, and contest the Project Litigation for the stated Post-2-Year Extension Period. At the end of the stated Post-2-Year Extension Period, Purchaser shall have an additional option, after consultation with Seller, to elect to either:
 - (x) terminate this Agreement, in which event the Purchaser shall be entitled to receive a refund of the remaining balance of the Deposit being held in Escrow plus interest; or
 - (y) extend the Closing Date and this Agreement for an additional period of time expressly prescribed, in writing (not to exceed two (2) years), by the Purchaser to the Seller (the “Additional Post-2-Year Extension Period”).

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

- (5) Purchaser shall not be deemed to be in default of its obligations under this Agreement to cooperate in connection with the defense of a Project Litigation in good faith so long as Purchaser has promptly reimbursed Seller for the Litigation Expenses or Seller has obtained reimbursement for the Litigation Expenses, subject to any limitation expressly set forth in this Agreement, from the Deposit and Purchaser has replenished the Deposit in full for the amount(s) of such reimbursements prior to Closing, subject to any limitation expressly set forth in this Agreement. Any refunds of the Deposit to which Purchaser may otherwise be entitled shall not be further reduced by unpaid Litigation Expenses.
- (6) In all events so long as this Agreement remains in full force and effect the Closing shall be postponed until a final non-appealable judgment or order has been entered by a court of competent jurisdiction dismissing the Project Litigation on the merits and with no Adverse Determination having been rendered.
- (7) Upon the entry of a final, non-appealable judgment or order dismissing the Project Litigation on the merits by a court of competent jurisdiction and with no Adverse Determination having been rendered, either Seller or Purchaser shall have the right to schedule the Closing to occur not later than thirty (30) days following the entry of such final non-appealable judgment or order dismissing the Project Litigation (the “Project Litigation 30-Day Period”). Such a Closing Date shall be scheduled by either of the Parties delivering written notice to the other that the Closing shall be scheduled at a time and place mutually convenient to the other within the Project Litigation 30-Day Period. Time shall be of the essence with respect to any such Closing occurring more than twenty (20) days after the entry of such final, non-appealable judgment or order dismissing the Project Litigation with no Adverse Determination having been rendered.
- (8) At the Closing, the Purchase Price shall be paid in the manner provided for in Section 3(a) above.
- (9) Notwithstanding anything to the contrary contained in this Agreement or the Escrow Agreement, in the event of a final, non-appealable

judgment or order entered or filed in any Project Litigation prohibiting the Transfer in whole or in part or materially or adversely changing or nullifying the ULURP Approvals in whole or in part (each, an “Adverse Determination”), then Purchaser may, upon notice to Seller and Escrow Agent within thirty (30) days after receipt of written notice of any such Adverse Determination, terminate this Agreement, whereupon Escrow Agent shall immediately, irrespective of any instruction to the contrary, (i) release and disburse to the Purchaser the amount remaining in the Deposit after any disbursements made or due to Seller on account of all unpaid and documented Litigation Expenses actually incurred by Seller up to the entry of such Adverse Determination, and (ii) release and disburse to Purchaser the entire remainder of the Deposit, including all funds in the Deposit, and thereafter neither Purchaser nor Seller shall have any further liability or obligation to each other under this Agreement.

- (c) At the Closing, Seller shall execute, acknowledge (as appropriate) and deliver, or cause to be delivered the following:
- (i) the Transfer Instrument and Notice of Restrictions executed by Seller in the form attached to this Agreement as Exhibit C.
 - (ii) New York City Real Property Transfer Tax Return ("RPT") and a New York State Real Property Transfer Tax Return ("TP-584") (the RPT and TP-584, collectively, the "Tax Returns") necessary to record the Transfer Instrument and the Notice of Restrictions;
 - (iii) a joint letter of instruction with Purchaser to Escrow Agent (the "Joint Letter of Instruction") authorizing release and payment of the entire Deposit to Seller (such Deposit to be the amount of the Deposit plus interest) and cash or cash equivalent in an amount equal to the aggregate amount of Litigation Expenses to the extent previously disbursed out of the Deposit, plus unpaid, documented Litigation Expenses actually incurred by Seller up to the Closing Date not reimbursed by Purchaser or previously disbursed out of the Deposit;
 - (iv) a non-foreign certification or affidavit containing such information as shall be required by Section 1445 of the Code to confirm that Seller is not a "foreign person" (as defined in the Code and the regulations issued thereunder);
 - (v) the resolutions and/or consents of Seller authorizing the transaction contemplated by this Agreement;
 - (vi) a letter certifying to Purchaser that Seller's representations and warranties made pursuant to Section 6 of this Agreement are true and correct in all material respects as of the Closing Date;
 - (vii) Seller's Waiver;

- (viii) a certificate executed by the Landlord certifying as to the matters set forth in Section 18.01(a) of the State Lease;
 - (ix) if Purchaser does not elect a Change in Use prior to the Closing Date, the Deed Restriction; and
 - (x) any other document or instrument reasonably required by the Title Company to consummate or evidence the transactions contemplated herein, including a Seller affidavit (if applicable).
- (d) At the Closing, Purchaser shall execute, acknowledge (as appropriate) and/or deliver, or cause to be delivered, the following:
- (i) the Transfer Instrument and Notice of Restrictions with respect to the Purchaser's Premises (if applicable);
 - (iii) the Tax Returns necessary to record the Transfer Instrument and the Notice of Restrictions (if applicable);
 - (iv) the Joint Letter of Instruction;
 - (v) a certified copy of the certificate of formation and limited liability company operating agreement of Purchaser, together with resolutions and/or consents of Purchaser authorizing the transactions contemplated by this Agreement;
 - (vi) a certificate of good standing from the Secretary of State of New York and satisfactory evidence of Purchaser's authorization to do business in New York;
 - (vii) a letter certifying to Seller that Purchaser's representations and warranties made pursuant to Section 6 of this Agreement are true and correct in all material respects as of the Closing Date;
 - (viii) Purchaser's Waiver;
 - (ix) if Purchaser does not elect a Change in Use prior to the Closing Date, the Deed Restriction (if applicable) duly executed, delivered and acknowledged by the fee and leasehold owner of the Purchaser's Premises and duly executed, delivered and acknowledged subordinations required by the terms of Section 7 of the Deed Restriction; and
 - (x) any other document or instrument reasonably required by the Title Company to consummate or evidence the transaction contemplated herein.
- (e) At the Closing, Purchaser shall use commercially reasonable efforts to cause Fee Owner to execute, acknowledge (as appropriate) and/or deliver, the following:
- (i) the Transfer Instrument and Notice of Restrictions with respect to the Purchaser's Premises;

- (ii) the Tax Returns necessary to record the Transfer Instrument and the Notice of Restrictions;
 - (iii) a certified copy of the Fee Owner's organization documents, together with resolutions and/or consents of Fee Owner authorizing the transactions contemplated by this Agreement;
 - (iv) a certificate of good standing from the Secretary of State of Delaware and satisfactory evidence of Fee Owner's authorization to do business in New York;
 - (vi) if Purchaser does not elect a Change in Use prior to the Closing Date, the Deed Restriction; and
 - (vii) any other document or instrument reasonably required by the Title Company to consummate or evidence the transaction contemplated herein.
- (f) Escrow Agent shall record or cause the recording of the Transfer Instrument and Notice of Restrictions and the Parties-in-Interest Certification at Purchaser's sole cost and expense.
- (g) In addition, at Closing, Seller and Purchaser shall execute, acknowledge and deliver all such other documents and instruments and perform such further acts that are consistent with this Agreement, the Transfer Instrument and the Notices of Restrictions as reasonably requested by Seller or Purchaser as shall be necessary to transfer the Subject Floor Area Development Rights to Purchaser and to otherwise carry out the intent and purposes of this Agreement, provided that neither party shall be required to undertake any increased responsibility, incur any additional obligations or bear any additional costs or liabilities in connection therewith.
- (h) Closing Costs. Purchaser will pay all New York State and New York City transfer taxes (the "Transfer Taxes") in connection with the transaction described in this Agreement. Purchaser hereby indemnifies Seller and agrees to defend and hold Seller harmless from and against any costs, liability and expense (including reasonable attorneys' fees, including reasonable attorney's fees in the collection thereof) arising from or relating to any Transfer Taxes owing (or that may be found, after the Closing, upon subsequent audit or otherwise to have been owing) in connection with the sale of the Subject Floor Area Development Rights to Purchaser. Purchaser will pay all Purchaser's due diligence, title examination, the Purchaser's Development Rights Endorsement, and any other title insurance coverage requested by Purchaser, architectural, survey, recording costs and expenses and escrow fees. Each party will be responsible for its own legal fees other than Litigation Expenses, if any, which shall be paid in accordance with Section 3(c). The provisions of this Section 5(g) shall survive the Closing.

6. Representations of Seller and Purchaser.

- (a) Seller represents and warrants that:

- (i) Seller has a leasehold estate created by the State Lease to Seller's Premises and is the holder of all the Subject Floor Area Development Rights and has not sold, granted an option for the sale of, leased, transferred, used or encumbered the Subject Floor Area Development Rights, and, as evidenced by the State's execution of the Seller's Waiver, has the legal authority, pursuant to the Act, to enter into this Agreement and the Transfer Instrument and Notice of Restrictions without restriction, limitation or subject to any conditions; and has neither entered into, nor is bound by any agreements that would affect Seller's ability to transfer the Subject Floor Area Development Rights pursuant to this Agreement and execute and deliver the Transfer Instrument and Notice of Restrictions.
- (ii) Seller is not a party to any claim, action, suit, proceeding or arbitration pending before any federal, state, municipal, foreign or other court or governmental or administrative body or agency, or any private arbitration tribunal relating to Seller's Premises and there is no claim, action, suit, proceeding or arbitration pending before any federal, state, municipal foreign or other court or governmental or administrative body or agency, or any private arbitration tribunal relating to Seller's Premises or threatened in writing against Seller which, if adversely determined, may reasonably be expected to have an adverse impact on the transactions contemplated by this Agreement.
- (iii) The execution and delivery of this Agreement and the performance by Seller of its obligations hereunder do not and will not conflict with or violate any law, rule, judgment, regulation, order, writ, injunction or decree of any court or governmental or quasi-governmental entity with jurisdiction over Seller, the Seller Premises or the Subject Floor Area Development Rights and will not conflict with any instrument to which Seller is a party or by which Seller is bound.
- (iv) Seller has not filed any petition seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief relating to Seller or any of its property under any law relating to bankruptcy or insolvency, nor has any such petition been filed against Seller. No general assignment of Seller's property has been made for the benefit of creditors, and no receiver, master, liquidator or trustee has been appointed for Seller or any material portion of its property. Seller is not insolvent and the consummation of the transactions contemplated by this Agreement shall not render Seller insolvent.
- (v) Seller has not received notice, and has no knowledge, of any pending or threatened condemnation proceeding or similar proceeding affecting Seller's Premises, the Subject Floor Area Development Rights or any part thereof.
- (vi) Seller is a public benefit corporation, duly organized and existing under the

Act, and is duly authorized to enter into and consummate this Agreement.

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

- (c) The representations and warranties contained in this Section 6 shall be true and correct in all material respects as of the date hereof through and including the Closing Date.
7. Approvals; Obligations of Seller and Purchaser. Purchaser shall have the right prior to the Closing Date, to make application to any governmental authority for such licenses, permits, approvals, certificates, rulings or amendments (collectively, the "Approvals") as Purchaser deems necessary or desirable in connection with the development of Purchaser's Premises, as applicable; provided that no such Approval diminishes, limits, delays, or materially interferes with the transfer and use of the Subject Floor Area Development Rights as contemplated by this Agreement or is otherwise in violation of this Agreement. Purchaser and Seller agree, at the sole cost and expense of the Purchaser (including, without limitation, reimbursement by Purchaser to Seller of any reasonable out-of-pocket expenses, fees or disbursements incurred by Seller) that Seller will cooperate in all reasonable respects in connection with Purchaser's application for such Approvals, to give all necessary consents in connection with the filing and prosecution of applications for the Approvals and any other governmental approvals (including, without limitation, other zoning and variance applications) required therefor and to execute such documents and applications and to furnish such information as may be reasonably requested by the Purchaser in its applying for approvals in connection with such applications.
8. Alienation and Use of Subject Floor Area Development Rights.
- (a) Between the Effective Date and the Closing or earlier termination of this Agreement, Seller shall not (i) sell, lease, encumber, pledge, grant an option in or transfer the Subject Floor Area Development Rights, (ii) knowingly take, suffer or permit any act that would prevent Seller from performing its obligations hereunder, (iii) take any voluntary action in respect of the Seller's Premises which would result in another person's or entity's, other than Seller, becoming a party in interest, unless Seller gives prior notice to Purchaser and such new party in interest, at the time such interest is created, executes and delivers to Purchaser a Seller Waiver, or (iv) take any action to oppose issuance of any Approval contemplated by the ULURP Approvals.
- (b) Between the Effective Date and the Closing or earlier termination of this Agreement, Seller shall use all reasonable efforts to obtain such document or consents, or take such other steps with respect to the Seller's Premises as are necessary to enable the Title Company to issue the Development Rights Endorsement. In the event that the Title Company identifies as a party-in-interest a party (i) that Seller reasonably and in good faith believes is not a party-in-interest, and (ii) Seller has been unable to obtain a waiver from such party despite using all reasonable efforts to do so, then, if another Title Company is prepared to issue a Parties-in-Interest Certification without listing such party and to issue a Development Rights Endorsement without requiring a waiver from such party, then, at the written request of Seller, Purchaser shall select such title company as the Title Company for purposes of this Agreement. If, however, despite Seller using all reasonable efforts to obtain Seller's Waiver and taking such steps as are

reasonably necessary to enable the Title Company to issue the Development Rights Endorsement, the Title Company is nonetheless unable to issue the Development Rights Endorsement because Seller has not obtained Seller's Waiver, Purchaser's sole remedy shall be to terminate this Agreement, as set forth in Section 9(a)(i) hereof, in which case the Deposit shall be returned to Purchaser in accordance with the terms thereof.

- (c) Except as set forth herein, this Agreement shall not restrict Seller's ability to use and develop Seller's Premises for any use which would not be prohibited on Seller's Premises by the Zoning Resolution.
- (c) After the Closing, the Seller shall take no action to oppose the issuance of any Approval contemplated by the ULURP Approvals and will cooperate with Purchaser in defending any litigation challenging any Approvals contemplated by the ULURP Approvals or the Transfer, provided that Purchaser reimburses Seller for any actual out-of-pocket legal expenses, fees or disbursements incurred with respect to such cooperation. This Section 8(c) shall survive the Closing.

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

(a) Defaults and Remedies:

(i) In the event Seller shall be in default of its obligations under this Agreement, or in the event of a failure of any condition to Closing listed in Sections 4(c)(1), (2), (3), (4) or (5) hereof, and as a result thereof the Closing does not take place in accordance with the terms of this Agreement, then, upon notice to Seller and Escrow Agent, Purchaser may elect either (i) to seek specific performance to compel the transfer of the Subject Floor Area Development Rights (to the extent not transferred in accordance with this Agreement) and/or the Seller's performance of its obligations set forth in this Agreement, or (ii) to terminate this Agreement and Purchaser, as its sole and exclusive remedy, and be entitled to the return of the Deposit, less all disbursements to Seller on account of Litigation Expenses to the extent previously disbursed from the Deposit, all unpaid, documented Litigation Expenses actually incurred by Seller and not reimbursed by Purchaser or previously disbursed from the Deposit as of the date of such termination by Purchaser, as permitted pursuant to this Agreement and, solely with respect to a failure of a condition to Closing listed in Sections 4(c)(4), all amounts that Seller has withdrawn from the Deposit pursuant to Section 3(c) hereof; provided that in no event shall the Pre-Waiting Period Litigation Expenses exceed One Million and 00/100 Dollars (\$1,000,000.00) in the aggregate, except as agreed otherwise herein by Purchaser. Notwithstanding anything to the contrary contained in this Agreement, in no event whatsoever shall Seller be liable to Purchaser for any damages of any kind whatsoever. This limitation of Seller's liability shall be deemed to survive the expiration or earlier termination of this Agreement. Seller acknowledges that damages is an inadequate remedy under this Agreement and that Purchaser shall be irreparably harmed if the Closing does not occur due to Seller's default and that Purchaser shall be entitled to equitable relief including specific performance and injunctive relief without having to post a bond.

(ii) If all conditions to Closing have been satisfied or waived by the parties or

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

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

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

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

Seller:

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

with copies to:

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

and to:

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

and to:

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

Purchaser:

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

with a copy to:

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

If to Escrow Agent:

Royal Abstract of New York, LLC
[_____]

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

11. Escrow Provisions. Seller and Purchaser hereby appoint and designate Escrow Agent as

escrow agent for the purposes set forth herein, and Escrow Agent hereby accepts such appointment on the terms and conditions set forth herein. Escrow Agent acknowledges receipt of the Deposit and shall hold and disburse the Deposit in accordance with the Escrow Agreement attached hereto as Exhibit D.

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

13. Miscellaneous

- (a) Counterparts; General. This Agreement may be executed in any number of counterparts, each of which shall constitute an original but all of which, taken together, shall constitute but one and the same instrument. This Agreement (including all Exhibits hereto) and all documents to be executed in connection herewith contain the entire agreement between the parties with respect to the subject matter hereof and supersede all prior understandings, if any, with respect thereto. This Agreement may not be amended, supplemented or terminated except by written agreement between the parties hereto, nor shall any obligation hereunder or condition hereof be deemed waived, except by a written instrument to such effect signed by the party to be charged. Any warranties, representations, agreements and undertakings contained herein shall not be deemed to have been made for the benefit of any person or entity, other than the parties hereto and their permitted successors and permitted assigns. This Agreement shall not be effective unless and until it has been executed and delivered by all parties hereto.
- (b) Severability. If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall

be valid and shall be enforced to the fullest extent permitted by law, unless the invalidation of such provision or its application would materially interfere with the intent of the parties hereto. The parties shall use all reasonable efforts to replace the illegal, void or unenforceable provision by a valid and enforceable provision the effect of which is the closest possible to the intended effect of the illegal, void or unenforceable provision.

(c) Assignment and Binding Effect.

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

(ii) Purchaser shall have the right, without Seller's consent, to assign its right, title or interest in this Agreement to: (1) any person or entity; provided, that, (i) Purchaser shall provide prior written notice of such assignment to Seller not later than ten (10) days prior to the Closing, (ii) such person or entity is or is to become either the fee owner, ground lessee or a mortgagee of Purchaser's Premises (or any portion thereof), (iii) such assignee shall assume all of Purchaser's obligations under this Agreement; (iv) Seller reasonably deems such person or entity financially capable, as of the date of such assignment, to satisfy all of Purchaser's obligations hereunder, be they conditions precedent to Closing or affirmative obligations under this Agreement; and (v) such assignee shall have complied with any applicable Vendex Disclosure Requirements to the same extent as Purchaser and is qualified by the City and the State of New York to enter into contracts with those governmental entities; and (2) any Institutional Lender providing financing for all or a portion of Purchaser's Premises that is secured by a mortgage or security interest in Purchaser's Premises or equity in Purchaser as collateral security. Notwithstanding anything to the contrary in this Agreement, a transfer of any existing direct or indirect membership interests in Purchaser, the creation of any new direct or indirect membership interest, and/or an assignment to an affiliate of Purchaser shall not be deemed an "assignment" for the purposes of this Agreement, and shall be permitted without notice to Seller and without Seller's consent, so long as either Douglaston Development, LLC, or an affiliate thereof, remain as managing member(s) of Purchaser or its assignee entity, or otherwise remain in similar day to day control of the operations of Purchaser, subject to any vote by the members with respect to any material matter provided for in the operative governance agreement; provided, however, that any party acquiring a direct ownership interest of more than ten percent (10%) of Purchaser or its direct owner(s) shall be subject to Vendex Disclosure Requirements to the same extent as Purchaser and its original direct owner(s).

(d) Governing Law. This Agreement shall be governed by, construed, and enforced in accordance with the internal laws of the State of New York.

(e) Survival of Representations, Warranties, etc. Following Closing and/or

Termination. Except as expressly provided or limited to the contrary herein or in any instrument delivered pursuant hereto, the representations, warranties, obligations, covenants, agreements, undertakings and indemnifications of the parties contained herein or in any instrument required to be delivered pursuant hereto shall not survive the Closing or termination of this Agreement (and, accordingly, no claim concerning the same may arise after the Closing or termination of this Agreement, as the case may be).

- (f) Construction. This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared primarily by counsel for one of the parties, it being recognized that both Purchaser and Seller have contributed substantially and materially to the preparation of this Agreement.
- (g) Grammatical Usage. In construing this Agreement, feminine or neuter pronouns shall be substituted for those masculine in form and vice versa, and plural terms shall be substituted for singular and singular for plural in any place in which the context so requires.
- (h) Captions and Exhibits. The captions of this Agreement are for convenience only, are not a part of this Agreement, and do not in any way limit or amplify its terms and provisions. All Exhibits and Schedules to this Agreement are hereby incorporated into this Agreement.
- (i) Waiver of Trial by Jury. Each party hereby waives, irrevocably and unconditionally, trial by jury in any action brought on, under or by virtue of or relating in any way to this Agreement or any of the documents or certificates executed in connection herewith, the properties, or any claims, defenses, rights of set-off or other actions pertaining hereto or to any of the foregoing.
- (j) No Third Party Beneficiary. This Agreement and each of the provisions hereof are solely for the benefit of Purchaser and Seller and their permitted assigns. No provisions of this Agreement, or of any of the documents and instruments executed in connection herewith shall be construed as creating in any person or entity other than Purchaser and Seller and their permitted successors and assigns any rights of any nature whatsoever.
- (k) Further Assurances and Instruments. Seller and Purchaser agree to execute and deliver, or cause to be executed and delivered such confirmatory and supplementary instruments, assignments, assurances, and certificates and documents, and take such further action consistent with this transaction as may reasonably be required to effectuate the purposes of this Agreement, including Seller's cooperation with Purchaser in defending any Project Litigation, including after the Closing, or making any claims against Purchaser's Title Company under the Development Rights Endorsement after the Closing, as long as Purchaser reimburses Seller for any actual out-of-pocket legal expenses, fees or disbursements Seller incurs as a result of such requested cooperation. This Section 13(k) shall survive the Closing.

- (l) No Waiver. This Agreement shall not be altered, amended, changed, waived, terminated or otherwise modified in any respect or particular, and no consent or approval required pursuant to this Agreement shall be effective, unless the same shall be in writing and signed by or on behalf of the party to be charged.
 - (m) Tax Identification Numbers. Seller's federal tax identification number is 06-1546019. Purchaser's federal tax identification number is _____.
 - (n) Non-Recourse. No principals, officers, directors, shareholders, members and partners disclosed, or undisclosed, of either party hereto, shall be subject to levy, execution or other enforcement procedure for the satisfaction of the other party's remedies hereunder.
 - (o) Recording. This Agreement shall not be deemed a recordable instrument and shall not be recorded by Purchaser or Seller or in any way placed on public record, except if required to obtain ULURP Approvals, Board Approval or in connection with the defense of any Project Litigation. The violation of this provision shall be deemed a material violation and breach of the terms and conditions of this Agreement.
 - (p) Merger. This Agreement constitutes the entire understanding and agreement of the parties to this Agreement with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements or understandings, inducements or conditions, express or implied, written or oral, between the parties with respect to this Agreement, including, without limitation, the MOU. Without limiting the foregoing, there are no restrictions, promises, representations, warranties, covenants, or undertakings, other than those expressly set forth or referred to in this Agreement.
 - (q) Costs and Expenses: Purchaser agrees to reimburse the Trust for documented third-party costs and expenses up to a maximum of One Hundred Seven-Five Thousand Dollars (\$175,000) ("Maximum Reimbursement"), which Maximum Reimbursement includes all reimbursements paid to the Trust pursuant to the Memorandum of Understanding and Cost Letters that predate the execution 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:

[Signature Pages Continue on Following Page]

Purchaser:

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

By: _____

Name:

Title:

[Signature Pages Continue on Following Page]

Escrow Agent:

ROYAL ABSTRACT OF NEW YORK,
LLC

By: _____

Name:

Title:

[End of Signature Pages]

EXHIBIT A

Legal Description of Granting Lot

[to be attached]

EXHIBIT B

Legal Description of Receiving Lot

[to be attached]

EXHIBIT C

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

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

WITNESSETH:

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

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

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

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

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

WHEREAS, Transferor and Transferee desire to transfer the Subject Floor Area

Development Rights to the Receiving Lot.

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

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

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

TRANSFEROR:

HUDSON RIVER PARK TRUST

By: _____

Name:

Title:

TRANSFeree:

DD WEST 29TH STREET, LLC

By: _____

Name:

Title:

[OWNER]

By: _____

Name:

Title:

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

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

(Notary Public)

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

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

(Notary Public)

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

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

(Notary Public)

Exhibit A to Transfer Instrument
Legal Description of Granting Lot

[to be attached]

Exhibit B to Transfer Instrument
Legal Description of Receiving Lot

[to be attached]

EXHIBIT D

Terms of Escrow

[Attach Escrow Agreement]

EXHIBIT E

Form of Parties-in-Interest Certification

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

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

NAME AND ADDRESS	NATURE OF INTEREST	DISPOSITION OF INTEREST

[INSERT DESCRIPTION]

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

[INSERT DIAGRAM]

By: _____

EXHIBIT F-1

Form of Granting Site Fee Owner's Waiver

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

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

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

IN WITNESS WHEREOF, this Waiver has been duly executed as of _____
____, 2019.

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

By: _____

Name:

Title:

State of New York)

)ss.:

County of _____)

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

Notary Public

Exhibit A

Legal Description of Granting Lot

[to be attached]

Exhibit B

Legal Description of Receiving Lot

[to be attached]

Exhibit C

The Transfer Instrument

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

WITNESSETH:

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

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

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

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

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

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

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

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

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

TRANSFEROR:

HUDSON RIVER PARK TRUST

By: _____

Name:

Title:

TRANSFeree:

DD WEST 29TH STREET, LLC

By: _____

Name:

Title:

[OWNER]

By: _____

Name:

Title:

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

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

(Notary Public)

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

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

(Notary Public)

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

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

(Notary Public)

Exhibit A to Transfer Instrument
Legal Description of Granting Lot

[to be attached]

Exhibit B to Transfer Instrument
Legal Description of Receiving Lot

[to be attached]

Exhibit F-2
Form of Waiver

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

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

IN WITNESS WHEREOF, the undersigned have executed this instrument this _____
day of _____, 2019

By: _____
Name:
Title:

State of New York)

)ss.:

County of _____)

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

Notary Public

Exhibit A

Legal Description of Granting Lot

[to be attached]

Exhibit B

Legal Description of Receiving Lot

[to be attached]

Exhibit C

The Transfer Instrument

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

WITNESSETH:

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

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

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

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

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

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

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

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

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

TRANSFEROR:

HUDSON RIVER PARK TRUST

By: _____

Name:

Title:

TRANSFeree:

DD WEST 29TH STREET, LLC

By: _____

Name:

Title

[OWNER]

By: _____

Name:

Title:

:

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

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

(Notary Public)

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

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

(Notary Public)

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

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

(Notary Public)

Exhibit A to Transfer Instrument
Legal Description of Granting Lot

[to be attached]

Exhibit B to Transfer Instrument
Legal Description of Receiving Lot

[to be attached]

Exhibit G

The Development Rights Endorsement

Exhibit H

Deed Restriction

RESTRICTIVE DECLARATION

This DECLARATION (this "Declaration") made as of the ___ day of _____, 201__ by **West Side 11th & 29th LLC**, a New York limited liability company ("Owner"), having an address at c/o Marjorie E. Nesbitt, 445 Park Avenue, Suite 1503, New York, NY 10022, and **DD West 29th Street, LLC**, a New York limited liability company ("Ground Tenant" and, together with Owner, jointly and severally, the "Declarants"), having an address at c/o Douglaston Development, 42-09 235th Street, Douglaston, NY 11363 for the benefit of **Hudson River Park Trust** (the "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, having an address at 353 West Street, New York, NY 10011, together with the Trust's successors and assigns.

WITNESSETH:

WHEREAS, Owner is the owner of real property more particularly described in Exhibit A attached hereto and made a part hereof (together with any and all improvements now or hereafter thereon, the "Property") and designated on the Tax Map of the City of New York (the "City") as Block 675, Tax Lots 12, 29 and 36 in the Borough of Manhattan, City of New York and State of New York;

WHEREAS, the Property is subject to that certain Agreement of Lease dated as of [____], between Owner and Ground Tenant (the "Ground Lease").

WHEREAS, Ground Tenant entered into that certain Development Rights Purchase and Sale Agreement with the Trust, dated as of [____] (the "PSA"), to purchase the Subject Floor Area Development Rights (as defined in the PSA) from the Trust.;

WHEREAS, the Purchase Price (as defined in the PSA) of the Subject Floor Area Development Rights was determined based on an appraisal of the Subject Floor Area Development Rights being used in connection with the construction of the Residential Portion (as defined herein); and

WHEREAS, it is a condition to the closing under the PSA that Declarants execute, deliver and record this Declaration and agree to the restrictions contained herein.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Declarants hereby declare as follows:

1. As used in this Declaration, capitalized terms shall have the respective meanings indicated below. All other capitalized terms used but not defined herein shall have the meanings ascribed thereto in the PSA.

- A. “Conversion Date” means the date on which the Residential Portion is Converted to For Sale Housing.
- B. “Convert to For Sale Housing” or “Conversion to For Sale Housing” or “Converted to For Sale Housing” means the conversion of the Residential Portion to For Sale Housing, as evidenced by final approval from the New York State Attorney General for either a condominium or cooperating housing offering plan (or such other plan as may be applicable in order to offer residential units for individual ownership sale).
- C. “CPI” means the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor for the New York-Northern New Jersey, Long Island, NY-NJ-CT-PA Area, not seasonally adjusted, all items (1982-1984=100), or any successor index thereto.
- D. “Current Program” means the use of the Residential Portion for residential rental apartments, 25% of which apartments are subject to affordability requirements pursuant to Section 421-a and the Mandatory Inclusionary Housing Program of the City of New York, on a long-term ground lease.
- E. “Final Release Payment” means an amount equal to the excess of the amount of the Final Release Valuation (hereinafter defined) over the Release Fee paid in connection with the applicable Election Notice (hereinafter defined); provided however that if Final Release Payment is not remitted to the Trust within six (6) months after the determination of the Final Release Valuation, then (for purposes of the calculation of the Final Release Payment) the Final Release Valuation shall be increased by the percentage increase (but not decrease) in CPI from the month two (2) months immediately preceding the determination of the Final Release Valuation to the month two (2) months immediately preceding the date on which the Final Release Payment is paid to the Trust in accordance with the terms hereof.
- F. “For Sale Housing” means residential condominium, residential cooperative or other form of ownership under which (in any such case) individual residential apartment units at the Property are to be owned by (or leased under proprietary leases to) separate owners.
- G. “New Building” means a building to be constructed on the Property after the date of this Declaration, as such building may be altered or replaced from time to time.
- H. “Owner Entity” means (a) at any time when the Ground Lease is in full force and effect, Owner and Ground Tenant, collectively, or (b) at any time when the Ground Lease is not in full force and effect, Owner.
- I. “Owner Entity’s Release Valuation,” means the Release Valuation determined by the Qualified Appraiser (hereinafter defined) selected by the Owner Entity.
- J. “Qualified Appraiser” means an independent real estate appraiser with at least ten (10) years’ experience in the fixing of valuation of residential property in the Borough of Manhattan, City and State of New York similar to the Property (hereinafter defined) and a member of the Appraisal Institute (or then-existing successor or similar professional organization).

- K. “Release Fee” means \$100,000 multiplied by one plus the percentage increase in CPI from the month which is two (2) months immediately prior to the date hereof to the month which is two (2) months immediately prior to the date on which an Election Notice is given.
- L. “Release Valuation” means the amount determined by multiplying (a) 123,437.5 by (b) the remainder of (1) the appraised per square foot fair market value of the fee interest of the land allocable to the Residential Portion (which fair market value shall exclude, for avoidance of doubt, any value attributable to or arising from (i) the land allocable to any other portions of the New Building or to any other portions of the Property, (ii) the actual physical improvements on the Property or the condition thereof and (iii) fixtures, equipment and personal property) free and clear of all liens, leases (including, without limitation, the Ground Lease), claims and encumbrances, which appraised value shall be determined to the extent applicable, in the manner substantially similar to that set forth in that certain Appraisal Report prepared by Appraisers and Planners Inc. dated as of _____, (the “Appraised Value”), assuming that the Residential Portion shall be used as For Sale Housing, less (2) the Appraised Value assuming that the Residential Portion shall be used for (and is subject to the benefits and burdens of) the Current Program, such remainder to be not less than zero, by (iii) 0.65. References in the immediately preceding sentence to “per square foot” mean per square foot of Floor Area (as defined in the Zoning Resolution of the City of New York). By way of example only, if (m) the appraised per square foot fair market value allocable to the underlying fee interest of the Residential Portion assuming it was used as For Sale Housing is \$1,000.00, and (n) the appraised per square foot fair market value allocable to the underlying fee interest of the Residential Portion assuming it shall be used for (and is subject to the benefits and burdens of) the Current Program is \$800.00, then the Release Valuation would be (i) 123,437.5, multiplied by (ii) the remainder of \$1,000.00 less \$800.00, or \$200.00, multiplied by (iii) 0.65, or \$16,046,875.00.
- M. “Residential Portion” means the portion of the New Building used or intended to be used for residential purposes.
- N. “Section 421-a” means Section 421-a of the Real Property Tax Law of the State of New York, as in effect on the date hereof.
- O. “Third Qualified Appraiser Release Valuation” means the Release Valuation determined by the Third Qualified Appraiser.
- P. “Trust’s Release Valuation” means the Release Valuation determined by the Qualified Appraiser selected by the Trust.

2. None of the New Building (or any other portion of the Property) shall be used for For Sale Housing unless and until this Declaration has been terminated or released pursuant to Section 3(M) hereof. For the avoidance of doubt, this Declaration does not restrict any change of use of the New Building (or any other portion of the Property) to a use other than For Sale Housing.

3. Provided that no violation of Section 2 then exists and there are no outstanding amounts then due and payable hereunder to the Trust, Owner Entity may elect to initiate the following

process for termination and release of this Declaration, which termination and release shall occur not earlier than the first to occur of (i) the fifth (5th) anniversary of the date on which a temporary or permanent certificate of occupancy for residential use is issued for the Residential Portion and (ii) the *bona fide* termination of the Ground Lease by reason of a default thereunder by the Ground Tenant (provided that, after such termination, none of the Ground Tenant nor any holder of a ten percent (10%) or greater direct or indirect ownership interest in the Ground Tenant shall have any direct or indirect interest in the Owner or in any tenant under a ground or net lease of all or a substantial portion of the Residential Portion).

- A. No later than seven (7) months and no earlier than twenty-four (24) months prior to the then intended Conversion Date, the Owner Entity shall provide the Trust with written notice (the "Election Notice") setting forth: (i) the anticipated Conversion Date and (ii) the identity and qualifications of a Qualified Appraiser selected by the Owner Entity, to perform the Owner Entity's Release Valuation. Prior to, or simultaneously upon the giving of the Election Notice, the Owner Entity shall pay to the Trust the Release Fee. After the giving of the Election Notice, no new or additional Election Notice may be given except as provided in Section 3(N).
- B. Within fifteen (15) days after the Owner Entity's receipt of notice from the Trust of the Trust's reasonably anticipated third party expenses in connection with the Trust's release of this Declaration, including but not limited to appraisal, legal and accounting fees (together, the "Trust Cost"), the Owner Entity shall remit to the Trust an amount equal to 110% of the Trust's anticipated Trust Cost. The Owner Entity shall also be required to pay, should such services become necessary, the full cost of the Third Qualified Appraiser (hereinafter defined) and of AAA (hereinafter defined) services promptly after invoices for such services are rendered.
- C. Provided that the Owner Entity has so remitted 110% of the anticipated Trust Cost to the Trust, within sixty (60) days after the Trust's receipt of the Election Notice, the Trust shall provide the Owner Entity with the identity and qualifications of the appraiser selected by the Trust, who is a Qualified Appraiser selected by the Trust, to perform the Trust's Release Valuation.
- D. Promptly after the Trust provides the Owner Entity with the information set forth in Section 3(C), the Owner Entity and the Trust shall exchange copies of the scopes of services for their respective Qualified Appraisers, and either party may provide comments to the other should the scope of services for the two appraisal assignments be at variance, it being the intent of the parties that the two selected appraisers perform their services using substantially identical scopes of services describing the appraisal assignment. It is acknowledged and agreed that the two appraisers may use methods which approach and emphasis may differ, depending upon the professional judgment of each appraiser, provided however that the appraisal of each is prepared in accordance with the Appraisal Standards (hereinafter defined).
- E. Upon a mutually agreed upon date that is within sixty (60) days after the Trust provides the information set forth in Section 3(C), representatives of the Owner Entity and the Trust shall meet in person to exchange their respective Release Valuations and written reports

substantiating such respective Release Valuations (the “Appraisal Exchange”). The Owner Entity and the Trust may, within fifteen (15) days after the Appraisal Exchange, provide a written statement to the other party setting forth (x) factual corrections in the preparation of other party’s written report, and/or (y) deficiencies in the written report that cause it (or the corresponding Release Valuation) fail to meet the Appraisal Standards or to otherwise be unsatisfactory, and the party receiving such a statement shall in good faith consider and direct its retained appraiser to make and deliver to the other party (within thirty (30) days after the Appraisal Exchange) such revisions in the written report and/or Release Valuation that are reasonably necessary to correct any errors and deficiencies and assure conformity with the Appraisal Standards (the “Necessary Appraisal Revisions”).

- F. If the difference between the Owner Entity’s Release Valuation and the Trust’s Release Valuation (each reflecting any Necessary Appraisal Revisions accepted by the applicable appraiser) is less than ten percent (10%) of the Trust’s Release Valuation, then the average of the Owner Entity’s Release Valuation and the Trust’s Release Valuation (each reflecting any Necessary Appraisal Revisions accepted by the applicable appraiser) shall be the “Final Release Valuation”.
- G. If the difference between the Owner Entity’s Release Valuation and the Trust’s Release Valuation (each reflecting any Necessary Appraisal Revisions accepted by the applicable appraiser) shall not be less than ten percent (10%) of the Trust’s Release Valuation (reflecting any Necessary Appraisal Revisions accepted by the applicable appraiser), then the Qualified Appraiser selected by the Owner Entity and the Qualified Appraiser selected by the Trust shall, within thirty (30) days after the Appraisal Exchange, agree and appoint an additional Qualified Appraiser (the “Third Qualified Appraiser”) who is willing to act in determination of the Final Release Valuation, and written notice of such designation of the Third Qualified Appraiser shall be given both to the Owner Entity and the Trust. The Owner Entity and the Trust shall reasonably cooperate with the Third Qualified Appraiser by providing property data and responding to requests for information with reasonable promptness, and each of the Owner Entity and the Trust shall have the right to provide the Third Qualified Appraiser with its Release Valuation and written report and a written rebuttal of the other’s Release Valuation and written report.
- H. If the two Qualified Appraisers do not, within thirty (30) days after the Appraisal Exchange, agree upon and designate a Third Qualified Appraiser willing so to act, either the Owner Entity or the Trust may themselves agree upon a Third Qualified Appraiser or either of them may request the New York Office of the American Arbitration Association (the “AAA”) to designate a Third Qualified Appraiser willing so to act, and the Third Qualified Appraiser so appointed shall, for all purposes, have the same standing and powers as though the Third Qualified Appraiser had been appointed by the two Qualified Appraisers.
- I. In case of the inability or refusal to serve of any person designated as a Qualified Appraiser, or in case any Qualified Appraiser for any reason ceases to be a Qualified Appraiser, a Qualified Appraiser to fill such vacancy shall be appointed by the Owner Entity, the Trust, or the New York Office of the AAA, as the case may be, whichever (or whichever’s Qualified Appraiser) made the original appointment, and any Qualified Appraiser so

appointed to fill such vacancy shall have the same standing and powers as though appointed originally.

- J. Within sixty (60) days after appointment, the Third Qualified Appraiser shall complete the Third Qualified Appraiser Release Valuation under a scope of services substantially identical to that used by the other Qualified Appraisers and submit a copy of same (with a written report) to Owner Entity and the Trust, and promptly thereafter Owner Entity and the Trust shall schedule and conduct a face-to-face meeting with the Third Qualified Appraiser to review the Third Qualified Appraiser Release Valuation (and such written report). At such meeting, each of Owner Entity and the Trust may propose Necessary Appraisal Revisions to the Third Qualified Appraiser. The Third Qualified Appraiser shall make the Necessary Appraisal Revisions accepted by him or her and, within thirty (30) days after such meeting, deliver his or her updated Third Qualified Appraisal Release Valuation to the Trust and Owner Entity. The “Final Release Valuation” shall be calculated to equal to the quotient determined by dividing the total of the Third Qualified Appraiser Release Valuation reflecting any Necessary Appraisal Revisions accepted by the Third Qualified Appraiser and whichever of the Owner Entity’s Release Valuation or the Trust’s Release Valuation (each reflecting any Necessary Appraisal Revisions accepted by the applicable appraiser) is closest to the Third Qualified Appraiser Release Valuation (reflecting any Necessary Appraisal Revisions accepted by the Third Qualified Appraiser) by two (2). Owner Entity and the Trust acknowledge and agree that, in the case where a Third Qualified Appraiser Release Valuation is undertaken, whichever of Owner Entity’s Release Valuation or the Trust’s Release Valuation is not the closest to the Third Qualified Appraiser Release Valuation shall be disregarded for purposes of determining the Final Release Valuation.
- K. The appraisal process set forth herein shall be conducted in accordance with the then-current Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation (or equivalent professional standards issued by any then-existing successor organization or similar professional organization governing the appraisal profession)(the “Appraisal Standards”).
- L. Within seven (7) days after the completion of the Final Release Valuation, the Trust shall prepare and present (in reasonable detail) a written final accounting of the Trust’s Cost (the “Final Trust Cost”). Should the amount previously remitted by the Owner Entity pursuant to Section 3(B) be less than the Final Trust Cost, the Owner Entity shall pay the Trust the amount of such deficiency within fifteen (15) days after presentation of the Final Trust Cost. If the Owner Entity fails to timely pay any amount owed under the immediately preceding sentence of this Section 3(L) or under the second sentence of Section 3(B), which failure continues for a period of thirty (30) days after a separate written notice from the Trust to the Owner Entity describing such failure in reasonable detail (and stating in bold and capitalized letters “FAILURE TO MAKE THE PAYMENT DESCRIBED HEREIN MAY RESULT IN THE LOSS OF THE ABILITY TO TERMINATE OR RELEASE THE DECLARATION DESCRIBED HEREIN”), then in addition to the Trust’s other rights and remedies, no Declarant shall be entitled to any termination or release of this Declaration at any time. Should the amount paid by the Owner Entity pursuant to Section 3(B) be greater

than the Final Trust Cost, the Trust shall pay the Owner Entity the amount of such excess within fifteen (15) days after presentation of the Final Trust Cost.

- M. Subject to Section 3(L) above, provided that not later than twenty-four (24) months after the determination of the Final Release Valuation, (i) the Owner Entity pays to the Trust the Final Release Payment and (ii) the Owner Entity delivers to the Trust evidence that the New York State Attorney General has issued final approval for either a condominium or cooperating housing offering plan (or such other plan as may be applicable in order to offer residential units for individual ownership sale), THIS DECLARATION SHALL AUTOMATICALLY TERMINATE, BE RELEASED AND BE OF NO FURTHER FORCE OR EFFECT (except for the remainder of this Section 3(M), which shall survive such automatic termination and release). The Trust shall thereafter reasonably cooperate to execute and deliver a termination of this Declaration (in form and substance reasonably satisfactory to the Trust and the Owner Entity). Owner Entity shall pay for all of the Trust's third party costs with respect thereto. None of such execution or delivery shall be required for the termination and release of Section 2 of this Declaration. The Owner Entity shall be entitled to submit any such termination and release document for recording provided that all costs and expenses of such recording (including, without limitation, any taxes) shall be borne solely by the Owner Entity.
- N. If this Declaration is not terminated during the applicable twenty-four (24) month period in accordance with Section 3(M), then subject to Section 3(L), Owner Entity shall be entitled to give one or more future Election Notices and thereby reinstate the process of this Section 3 to terminate this Declaration, provided no such Election Notice shall be given prior to the date that is five (5) years after the date on which a previous Final Release Valuation is determined.

4. Each and all covenants, agreements, provisions and conditions of this Declaration stated above (whether affirmative or negative in nature) including the benefits and burdens, are real covenants that run with the land, and are binding upon and inure to the benefit and burden of Declarants and the Trust and anyone claiming by, through or under them (including, but not limited to, the City of New York and the State of New York). The parties agree that (a) there shall be no third party beneficiary to this Declaration other than the Trust and its successor in function pursuant to the Hudson River Park Act, Chapter 592 of the Laws of 1998 of the State of New York, (b) no Declarant may not assign its interest in and to this Declaration other than to its successor as to real property interests in the Property and (c) the Trust may not assign its interest in and to this Declaration other than to (i) its successor in function pursuant to the Hudson River Park Act, Chapter 592 of the Laws of 1998 of the State of New York, (ii) the City of New York (or its instrumentality) or (iii) the State of New York (or its instrumentality). Ground Tenant covenants and agrees that it will promptly cause this Declaration to be recorded in the Office of the Register of the City, New York County (the "Register's Office") and shall pay all costs of doing so.

5. In the event of a violation or threatened violation of Section 2 of this Declaration, the Trust shall be entitled to injunction or other equitable relief (without the need to post a bond or demonstrate irreparable injury) and any and all other rights or remedies available at law. Without limiting the Trust's other rights and remedies hereunder, at law or in equity, Declarants shall pay

on demand all costs and expenses incurred by the Trust in connection with the enforcement hereof by the Trust or any breach or threatened breach hereof including, without limitation, attorneys' fees and expenses reasonably incurred.

6. Each and every person or entity that succeeds to the interest of a Declarant in and to the Property shall be deemed to assume the obligations of the Declarants hereunder. In confirmation of the foregoing, within ten (10) days after such person or entity so succeeding to such interest and again, at any time within ten (10) days after the written demand of Trust, such person or entity shall execute, deliver and cause to be recorded in the New York City Register an instrument confirming such assumption, which instrument shall be in form and substance reasonably satisfactory to the Trust.

7. Ground Tenant represents and warrants, and Owner represents and warrants to its knowledge, to the Trust that as of the date hereof, the Property is free and clear of all liens, claims and encumbrances [except as set forth in Exhibit B.]¹² Simultaneously with the execution and delivery hereof, Declarants have caused each holder of a mortgage set forth in Exhibit B (and any other liens, claims and encumbrances set forth in Exhibit B (except those marked with an asterisk (*))) to execute and deliver a subordination in the form attached hereto as Exhibit C subordinating the same to the terms hereof and each Declarant covenants and agrees that it will immediately cause such subordination to be recorded in the Register's Office and shall pay all costs of doing so. Any existing or future mortgagee or other estate in and to the Property and any lien of any kind arising, claimed or asserted prior to or after the date hereof and to or with respect to the Property shall be subject and subordinate to this Declaration. Accordingly, Declarants for themselves and on behalf of their successors, heirs, assigns, legal representatives, lessees and transferees including, without limitation, any mortgagees, owners and/or users of the Property shall cause any person that at any time after the date hereof asserts any right or claim in and to or with respect to the Property to subordinate any such right or claim to the Property to this Declaration. Each Declarant, for itself and on behalf of its successors, heirs, assigns, legal representatives, lessees and transferees including, without limitation, any mortgagees, owners and/or users of the Property, agrees that it shall not permit the imposition of any restriction on the use of the Property that conflicts with the Current Program in any manner without first obtaining the written consent of the Trust, and that any such restriction imposed on the Property in violation of the foregoing requirement shall be unenforceable for the duration of the term of this Declaration.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK.]

¹ To be attached.

² Subject to HRPT's review and approval of Exhibit B.

IN WITNESS WHEREOF, this Declaration has been duly executed and delivered by the parties hereto as of the day and year first above written.

DD WEST 29TH STREET, LLC

By: _____

Name:

Title:

WEST SIDE 11TH & 29TH 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)

JOINDER

The Trust has joined in this Declaration for the purposes of evidencing its agreement to comply with its obligations under this Declaration.

HUDSON RIVER PARK TRUST

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)

EXHIBIT A

ALL THAT CERTAIN plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the northerly side of West 29th Street and the westerly side of Eleventh Avenue;

RUNNING THENCE westerly along the northerly side of West 29th Street a distance of 525 feet to a point;

THENCE northerly and parallel with the westerly side of Eleventh Avenue a distance of 98 feet 9 inches to a point on the center line of the block between West 29th Street and West 30th Street;

THENCE easterly along the center line of the block between West 29th Street and West 30th Street and parallel with the northerly side of West 29th Street a distance of 425 feet to a point;

THENCE northerly and parallel with the westerly side of Eleventh Avenue a distance of 98 feet 9 inches to a point in the southerly side of West 30th Street;

THENCE easterly along the southerly side of West 30th Street a distance of 100 feet to the corner formed by the intersection of the southerly side of West 30th Street with the westerly side of Eleventh Avenue;

THENCE southerly along the westerly side of Eleventh Avenue a distance of 197 feet 6 inches to the corner formed by the intersection of the northerly side of West 29th Street and the westerly side of Eleventh Avenue, the point or place of BEGINNING

EXHIBIT B

[To be attached]

EXHIBIT C

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:
Kasowitz Benson Torres LLP
1633 Broadway
New York, NY 10019
Attn: Douglas B. Heitner, Esq.

Space Above Line For Recorder's Use

SUBORDINATION TO DECLARATION

The undersigned is the present [mortgagee] under that certain [mortgage] more particularly described in Schedule A (as amended, the ["Mortgage"]).

The undersigned consents to that certain Restrictive Declaration made by West Side 11th & 29th LLC, a New York limited liability company, having an address at c/o Marjorie E. Nesbitt, 445 Park Avenue, Suite 1503, New York, NY 10022, and DD West 29th Street, LLC, a New York limited liability company, having an address at c/o Douglaston Development, 42-09 235th Street, Douglaston, NY 11363, for the benefit of 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, having an address at 353 West Street, New York, NY 10011, together with the Trust's its successors and assigns, dated [____], 2017 and intended to be recorded in the Office of the Register of the City, New York County (as the same may hereafter be modified or amended from time to time, the "Declaration").

The undersigned acknowledges that the Declaration covers portions of the real property or other rights or interest which are subject to the [Mortgage]. Further, the undersigned agrees that the [Mortgage] shall be subject and subordinate to the Declaration, for so long as the Declaration is in full force and effect.

Dated as of _____, 20__

[_____]

By: _____
Name: _____
Title: _____

SCHEDULE A

[To be attached]

Exhibit I

Liens

[To be attached]

Exhibit J

Form of Contribution Agreement

DRAFT

CONTRIBUTION AGREEMENT

THIS CONTRIBUTION AGREEMENT (this "Agreement") is made as of the ____ day of _____, 2018, by and between the Hudson River Park Trust, a New York State public benefit corporation, having an address at Pier 40, 353 West Street, New York, N.Y. 10014 (the "Trust"), and DD West 29th LLC, a limited liability company organized in the State of New York, having an address at c/o Douglaston Development, LLC, 555 Fifth Avenue, New York, N.Y. 10176 ("Contributor"). The Trust and Contributor may each be individually referred to herein as a "Party" and collectively as the "Parties."

Background

The Trust is responsible for development, operation and maintenance of the Hudson River Park (the "Park"). As set forth in the Hudson River Park Trust's enabling legislation, Hudson River Park Act, Chapter 592 of the 1998 Laws of New York, as amended (the "Act"), the Trust's mission is to encourage, promote and expand public access to the Hudson River, to promote water-based recreation, and enhance the natural, cultural, and historical aspects of the Park for residents and visitors to the area.

Contributor is the entity that applied for a Zoning Text Amendment, a Rezoning, and a Transfer Special Permit, as those terms are defined in that certain Development Rights Purchase and Sale Agreement (the "PSA") attached as an exhibit to the Memorandum of Understanding between the Parties dated as of November 24, 2017, in order to construct a new residential building (the "Building") located at 601 West 29th Street in the Borough of Manhattan, NYC Tax Map Block 675, Lot 12 (the "Premises") within the Special Hudson River Park District, which will be constructed with more bulk by using excess and unused development rights from the Chelsea Piers portion of the Park.

Contributor desires to contribute certain funds under certain circumstances to the Trust and Trust desires to accept such funds, pursuant to the terms and conditions set forth in this Agreement. The Parties desire that the funds be used for construction projects and maintenance

activities within the Manhattan Community Board 4 portion of the Park (the “CB 4 Improvements and Maintenance”).

Agreement

NOW, THEREFORE, intending to be legally bound, in consideration of the mutual agreements and covenants contained herein, and for other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, it is mutually agreed by the Parties to the Agreement, as follows:

1. Incorporation. The foregoing defined terms and the "Background" section above are incorporated herein by reference.
2. The Contribution. Contributor hereby pledges the amount of \$3,000,000.00 payable to the Trust in accordance with Paragraph 3 below.
3. Contribution Time Periods. (a) At the time Contributor is issued a Temporary Certificate of Occupancy (“TCO”) that includes the first residential unit in the Building, Contributor shall provide \$1,000,000.00 payable to the Trust in one lump sum (“Contribution One”). (b) On the date that is three (3) years from the date of Contribution One, Contributor shall provide \$2,000,000.00 payable to the Trust in one lump sum (“Contribution Two”).
4. Use of Funds. The Trust commits that the Contribution funds shall be used only for the CB 4 Improvements and Maintenance.
5. Acceptance of Contribution. The Trust hereby agrees to accept the Contribution funds and agrees to the terms of this Agreement.
6. Assignment. This Agreement shall not be assigned by any Party without the written consent of the other Party.
7. Integration: Amendments. This Agreement contains the Parties' entire agreement regarding the Contribution. Any amendment to this Agreement must be in writing and signed by the Parties.
8. Persons Bound and Benefited. This Agreement shall be binding upon and inure only to the benefit of the Parties, and their respective successors and, to the extent assignment is permitted hereunder, their respective assigns. It is intended that the Contribution shall be required of any successor entity to Contributor or Owner that develops the Building on the Premises

pursuant to the Transfer Special Permit; provided, however, that West Side 11th & 29th LLC (“Owner”), as ground lessor of the Premises, shall not be obligated to make the Contribution unless and until Owner is developing the Building, after the expiration or earlier termination of the ground lease for the Property. “Developing the Building” shall mean undertaking any of the following activities: (a) submitting an application for, and accepting, a building or occupancy permit for the Building, (b) undertaking any material physical work (other than excavation or demolition) to construct the Building; or (c) selling or leasing any residential unit in the Building.

9. Severability. If any one or more of the covenants, agreements, provisions or terms of this Agreement shall be held invalid for any reason whatsoever, then such covenants, agreements, provisions or terms of this Agreement shall in no way affect the validity or enforceability of the other provisions of this Agreement.

10. Applicable Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York without regard to principles of conflicts of law.

11. Remedies. Either Party shall have the right to have a court of competent jurisdiction located within New York County determine any controversy or claim arising out of this Agreement. The Contributor's maximum liability for failing to satisfy any specific funding requirement of this Agreement shall be limited to the amount the Contributor is required to fund plus the Trust's attorney fees and litigation costs in bringing an action to enforce this Agreement.

12. Other Actions. In the event any action is taken by any third party (i.e., a party other than a Party hereto) which questions in any way the validity or legality of this Agreement whether or not the litigation arises directly from this Agreement, or seeks equitable relief in connection therewith, the Parties agree to cooperate with each other and use their best efforts to contest such third party action. If an injunction or other order is issued as a result of such third party action, the Parties shall use their best efforts to have such injunction or other order lifted. Notwithstanding the foregoing, no party shall be required to initiate any litigation, make any substantial payment or incur any material economic burden.

13. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument.

14. Memorandum of Agreement. Simultaneously with the Contributor's closing of the ground lease for the Premises, Contributor shall (a) duly execute, acknowledge and deliver a

memorandum of this agreement substantially in the form attached hereto as Exhibit A, (b) cause the Owner to duly execute, acknowledge and deliver such memorandum, and (c) cause such memorandum to be duly recorded in the land records against the Premises.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned have executed this Contribution Agreement as of the date and year first written above.

HUDSON RIVER PARK TRUST

By: _____
Madelyn Wils
Title: President & CEO

DD WEST 29TH LLC

By: _____
Title: _____

Exhibit A to Contribution Agreement

Memorandum of Agreement

MEMORANDUM OF AGREEMENT

NAME AND ADDRESS
OF PARTY 1: DD West 29th LLC
c/o Douglaston Development, LLC
555 Fifth Avenue, New York
New York, NY 10176

NAME AND ADDRESS
OF PARTY 2: Hudson River Park Trust
Pier 40, 353 West Street
New York, NY 10014

NAME AND ADDRESS
OF FEE OWNER West Side 11th & 29th LLC
445 Park Avenue
New York, NY 10022

DATE OF
AGREEMENT: June 28, 2018

DATE HEREOF: _____, 2019

DESCRIPTION OF
PROPERTY: The property by the street address of 601 West 29th Street in the Borough of Manhattan, New York, NY, Tax Map Block 675, Lot 12 (f/k/a Lot 12, 29, and 36) which land is more particularly described in Exhibit A attached hereto (collectively, the "**Property**").

PURPOSE OF AGREEMENT:

That certain Contribution Agreement dated as of June 28, 2018, between DD West 29th, LLC ("**Developer**") and the Hudson River Park Trust ("**Trust**") (the "**Agreement**") provides that Developer will make two payments to the Trust totaling Three Million Dollars (\$3,000,000) (the "**Payments**") in connection with the development of a new building on the Property pursuant to the special permit approved by the New York City Planning Commission on May 7, 2018 pursuant to ULURP Resolution No. C 180129(A) ZSM (the "**Building**").

The Fee Owner is not a party to the Agreement, but has consented to the recordation of this Memorandum against the Property after the execution and delivery of the ground lease therefor; provided, however, the Fee Owner shall not have any obligations under the Agreement to make the Payments unless and until Fee Owner or any successor to Fee Owner is developing the Building after the expiration or earlier termination of such ground lease. "Developing the Building" shall mean undertaking any of the following activities: (a) submitting an application for, and accepting, a building or occupancy permit for the Building, (b) undertaking any material physical work (other than excavation or demolition) to construct the Building; or (c) selling or leasing any residential unit in the Building.

COMMENCEMENT AND EXPIRATION DATE:

The first installment of the Payments in the amount of \$1,000,000 shall be paid on or before the date on which a Temporary Certificate of Occupancy (“TCO”) which includes the first residential unit in the Building is issued. The balance of the Payments shall be due on the date that is three (3) years after the first installment is made. When the Payments have been fully made, the parties hereto shall execute a termination of this Memorandum of Agreement and such termination shall be recorded against the Property.

This instrument is intended to be only a Memorandum of Agreement. This Memorandum of Agreement and the Agreement are intended to be and shall be covenants running with the land and shall be binding (on its terms and conditions) on anyone who succeeds to the interest of Developer or Fee Owner to the Property. Developer and Fee Owner warrant and represent that no foreclosure of any mortgage or other lien shall result in the termination, release or other discharge of this Memorandum of Agreement or the Agreement. Reference should be made to the Agreement for a full statement of all of its terms, conditions and covenants. In the event of any conflict or ambiguity between the terms of this Memorandum of Agreement and the terms of the Agreement, the terms of the Agreement shall prevail.

This Memorandum of Agreement may be executed in counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one instrument, notwithstanding that all the parties shall not have signed the same counterpart.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have duly executed this Memorandum of Agreement on the ____ day of _____, 2019.

DD West 29th Street LLC

By: _____
Name:
Title:

Hudson River Park Trust

By: _____
Name:
Title:

West Side 11th & 29th LLC

By: _____
Name:
Title:

ACKNOWLEDGMENT

STATE OF _____)
):ss.
COUNTY OF _____)

On the ___ day of _____ in the year 2019 before me, the undersigned, a Notary Public in and for said state, personally appeared _____, 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 he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Signature of Notary Public

ACKNOWLEDGMENT

STATE OF _____)
):ss.
COUNTY OF _____)

On the ___ day of _____ in the year 2019 before me, the undersigned, a Notary Public in and for said state, personally appeared _____, 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 he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Signature of Notary Public

ACKNOWLEDGMENT

STATE OF _____)
):ss.
COUNTY OF _____)

On the ___ day of _____ in the year 2019 before me, the undersigned, a Notary Public in and for said state, personally appeared _____, 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 he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Signature of Notary Public

Exhibit "A"
to Memorandum of Agreement

Legal Description

All that certain plot, piece or parcel of land, lying and being in the Borough of Manhattan, County, City and State of New York, bounded and described as follows: