

MEMORANDUM OF UNDERSTANDING BETWEEN  
THE MANHATTAN BOROUGH PRESIDENT,  
PENN YARDS ASSOCIATES AND  
THE RIVERSIDE SOUTH PLANNING CORPORATION  
REGARDING THE PROPOSED RIVERSIDE SOUTH PROJECT

WHEREAS, the Manhattan Borough President is vested by the City Charter with the authority to review land use applications before they proceed to the City Planning Commission and ultimately to the New York City Council, and

WHEREAS, Penn Yards Associates (the "Developer") owns a 76 acre parcel of land on the west side of Manhattan between West End Avenue and the Hudson River, from 72nd Street and 59th Street, which is known as Riverside South (or the "Project"), and

WHEREAS, the Developer has applied for various zoning amendments, special permits and City map changes to make Riverside South suitable for certain housing, commercial and recreational structures, and

WHEREAS, The Riverside South Planning Corporation ("RSPC"), which is comprised of civic organizations (Regional Plan Association, Municipal Art Society, Natural Resources Defense Council, The Parks Council, Westpride and the Riverside Park Fund), Richard A. Kahan and Donald J. Trump, is coordinating the development of Riverside South, and

WHEREAS, the Manhattan Borough President and RSPC have undertaken to reach agreement on various aspects of the development project relating to: 1) creating a new park ("the Park"); 2) building affordable housing on the site; 3) providing for

appropriate and environmentally responsible sewage treatment; and 4) reducing excessive and potentially dangerous impacts on the nearby subway station; and 5) other related items, and

WHEREAS, the Manhattan Borough President is submitting on August 26, 1992 a ULURP Report and Recommendation approving the Riverside South project with certain qualifications and subject to certain conditions being satisfied by the Developer and incorporated into any final City approval, the Project's restrictive declaration, special permit and any other such approval documents in a form substantially similar to the terms set forth herein and further subject to performance,

NOW, THEREFORE, BE IT RESOLVED THAT:

1. Successors of Developer

The Developer agrees that the understandings and agreements in this Memorandum of Understanding will be incorporated into a restrictive declaration or other legal undertaking during the ULURP process which will become binding on the Developer and its successors and assigns, including those entities which succeed to partial interests of the Developer.

2. Public Ownership of the Park

As shown on the Project's ULURP drawings, the Developer agrees to convey the land for the park (21.5 acres) and the adjacent lands underwater (18.5 acres), and for the relocated highway (4.3 acres) to the City at no cost for the purpose of creating the Park and relocating the highway (collectively, the "Park Land"). The Park Land shall be conveyed in fee simple absolute, free and clear of

all liens and encumbrances, no later than the completion of the Park construction. The Park Land thus conveyed shall be mapped and dedicated as public park (or public place with respect to the land for the relocated highway) and any and all buildable floor area which would otherwise be attributable to this lot area shall be extinguished and not available for development. The Park Land (other than the portion for the relocated highway) shall become and shall remain permanent public park land.

### 3. Park Design and Construction Entity

The Developer and RSPC will act as the park design and construction entity (the "Park Design and Construction Entity") which will use the Park Contributions (as defined in Paragraph 4 below) to fund and supervise the construction of the Park. The Developer and RSPC will establish an open collaborative process to allow for full public comment on and participation in the final design of the Park. This collaborative process will include consultation with and review by the Borough President and by the parks committees of Community Boards Nos. 4 and 7, and by appropriate civic groups and neighborhood organizations (collectively, the "Public Review Groups"). The Commissioner of the Department of Parks and Recreation (the "Parks Commissioner") will review and approve the final design (construction documents) and the final park budget for conformance with the ULURP approvals. The Developer further agrees to submit any changes to the final

design to such Public Review Groups simultaneously with submission to the Parks Commissioner.

#### 4. Design and Construction of the Park

The Developer will fund the construction of the Park, the arts program, all non-standard streets and other public spaces in the project, based upon a budget approved during ULURP (the "Park Budget"). Contributions to the Park Budget will be apportioned among the buildings in the project, based upon the costs of logical construction segments or a floor area formula or some other reasonable basis (the "Park Contribution"). The preference of the Borough President is to exclude the studio and other non-residential uses on the studio block from any Park Contribution and to consider other methods of allocation that would permit a full buildout of the Park at a less than full buildout of the Project. It is the intention of the parties to discuss these issues concerning the allocation of the Park Contribution during the ULURP review period in an effort to reach an agreement.

The Park will be built in four segments. The waterfront phase ("Phase I" in the ULURP drawings) of the Park including Pier I will be divided into three segments. The waterfront phase of the Park that physically can be constructed prior to the relocation of the highway will proceed in concert with the development of the Project as Park Contributions are received. The northerly segment of the waterfront park will be constructed first, then the southerly portion of the waterfront park, followed by the middle section.

The remaining construction of the inboard portion of the Park constitutes the fourth park construction segment which will take place in coordination with the construction of the relocated highway.

In order to facilitate the early start and completion of the Park, the Board, with the Borough President's assistance, will work to obtain expeditiously permits necessary for site preparation.

#### 5. Creation of a Temporary Open Space

The Developer and RSPC shall create a temporary open space on the Park Land for public use as soon as possible. The parties agree that due to the on-going reconstruction of the Miller Highway it is neither safe nor feasible to provide for any public use of the space until the Department of Transportation certifies that safe public access can be provided. As soon as possible thereafter the Developer will develop a temporary space for public use on the Park Land and will consult the Borough President and Community Boards Nos. 4 and 7 as to the design and location of the temporary open space and access to it. The Developer will file a report with the Parks Commissioner on the status of the temporary open space every six months commencing on July 1, 1994.

## 6. Provision of Additional Active Open Space

The Borough President has determined that the Park should include recreation space for a variety of active athletics, including a regulation size soccer field. In addition to the two acres proposed, the Developer has agreed to provide approximately 1.5 acres of such active recreation space in order to try to accommodate the maximum number of athletic activities possible. However, although the 1.5 acres is sufficient acreage to accommodate a regulation soccer field, the Developer and RSPC believe, based on a preliminary review of the plans, that the Park Land cannot accommodate a regulation soccer field due to constraints relating to the rectangular shape required for the field. In light of the above, the Developer and RSPC agree to continue to review the Park design in this regard as the project undergoes review by the City Planning Commission and the City Council.

## 7. Improved East-West and Southern Permanent Park Access

The Board is committed to enhancing east-west and southern access to the permanent Park to the maximum extent feasible. Elements, such as separating the southern tot lot from the playground and moving it further south, providing visual and pedestrian connections and exploring connections between the 9-A

esplanade and the 59th Street entrance to the Park will be pursued, in consultation with the Borough President.

8. Public-Private Partnership for Park Operation and Maintenance

The Park will be a public park owned by the City. RSPC concurs with the Borough President that the maintenance and programming of the Park should be determined, subject to Parks Department oversight, by a public-private partnership (the "Park Partnership") composed of appropriate community, civic, business, and public members, as well as the Developer. The Park Partnership will issue an annual operational policy statement in addition to an annual budget, both of which will be subject to the ultimate approval of the Parks Commissioner. Moreover, in the spirit of this collaborative effort, the Developer agrees to contribute annually a minimum of fifty percent (50%) towards the cost of maintaining the Park as deemed reasonable by the Park Partnership.

9. Street Wall Revisions

The Borough President has expressed concern as to the 165 foot maximum permitted height of the street wall in the Project before the first required setback. In response to those concerns, RSPC and the Developer agree to rearrange the bulk within the proposed height and setback regulations and envelope controls in order to reduce the maximum initial height of the street wall in the Project by fifteen feet, so that the initial street wall height does not

exceed 150 feet, in conformance with the maximum street wall height required elsewhere in the Upper West Side.

#### 10. Sewage Treatment

RSPC, the Developer and the Borough President agree that primary responsibility to provide a program for the disposal of sewage flowing from the proposed development rests with the City of New York. At this time, in view of the operational flaws with and the uncertainty regarding the capacity of the North River Water Pollution Control Facility ("NRWPCF"), the Borough President opposes any hook-up by the Project to the NRWPCF. Accordingly, the Developer with the concurrence and support of the Borough President will voluntarily seek to implement either of the alternatives more fully set forth in the DEIS--by (a) participating in a retrofit program created for the North River drainage basin by the Commissioner of the Department of Environmental Protection and financed by the Developer. The program shall be implemented proportionally to the number of units being constructed in order to maintain the "no net increase" standard described in the DEIS and may be discontinued by the Developer in the event a hook-up to the NRWPCF is permitted under the circumstances set forth in the next paragraph or (b) constructing an on-site treatment plant.

The Developer agrees that no building in the Project will utilize the NRWPCF on or before December 31, 1994; thereafter, the Developer agrees not to utilize the NRWPCF unless the following

conditions are satisfied: (i) the Chair of the City Planning Commission certifies in a writing (which is final and not subject to further review), that the NRWPCF has sufficient capacity to meet the Project's demand and the demand of all other affordable housing projects described in the City's Ten-Year Capital Strategy for Fiscal Years 1992-2001 located in the NRWPCF catchment basin, and (ii) that the litigation now pending in New York State Supreme Court known as WHEAC v. Appleton, or any other litigation (the "Litigations") which is commenced within 120 days from the date of the final approval of the Project's pending ULURP application which seeks to enjoin the Project from utilizing the NRWPCF have been resolved. Notwithstanding the foregoing, if no injunctive relief has been granted in any of the Litigation(s) prior to December 31, 1994, which prohibits the Project from utilizing the NRWPCF or if such Litigation(s) have been decided at the trial court level at any time prior to December 31, 1994, and no injunction has been issued by any court prohibiting utilization of the NRWPCF by the Project, the requirements of subdivision (ii) shall be deemed to be satisfied.

#### 11. Sustainable Development

The Developer agrees to make a commitment to incorporate a reasonable program of sustainable development for the project for feasible energy conservation enhancement, based upon a standard of a five year payback for measures which are adopted. The program will be administered by a review board appointed by RSPC. The

board will define the items encompassed within its sustainable development guidelines. These will include, by way of example, major pumps and motors, lighting devices and air conditioning systems. It will report on its administration of the program at regular intervals to the Borough President, the Department of City Planning, the Department of Environmental Protection, the Department of Telecommunications and Energy and Community Board No. 7.

#### 12. Fair Share Facilities

The developer agrees that space within the project will be leased and sold in a manner consistent with the letter and spirit of the City's Criteria for the Location of City Facilities (the "fair share" rules). Specifically, there shall be established a "community services marketing goal," under which the project (and each component thereof) would seek to lease or sell at least 20% of the then-existing total community facility space (including any suitable below grade space) to public or not-for-profit entities engaged in the provision of services defined in the fair share rules as "local/neighborhood facilities," with service areas into the community beyond the boundaries of the project. (The 20% goal shall be calculated separately for above grade and below grade space, respectively, with reference to space other than residential space, retail space, or parking space in residential buildings suitable for community facility use; however, any residential space which is devoted to purposes defined in the fair share rules as

"residential facilities" may count toward meeting such goal.) To meet this goal, the developer in consultation with the Borough President and Community Boards Nos. 4 and 7 will develop an appropriate marketing program to advertise the availability of space to suitable agencies and not-for-profit entities and annual reporting system detailing efforts to meet the 20% goal, e.g., marketing efforts undertaken, current facilities and service programs provided, suitable space vacant and available.

### 13. Affordable Housing

The parties agree that economic integration, through the inclusion of affordable housing, is a goal of the Riverside South project. The Developer and RSPC agree that affordable housing is an unmet need in the city, the inclusion of which can provide an opportunity to strengthen the Project's viability by assuring its economic integration and a significant public investment in its infrastructure. The Developer will apply for a broad range of city, state and federal programs to create a total of at least twenty percent (20%) of the total housing units as affordable housing for persons of low, moderate and middle income. The Borough President is committed to work with the Developer and RSPC to identify and lobby for such projects, including but not limited to those made available through the New York State Dormitory Authority. At a minimum, even if no appropriate government subsidy program is available, the Developer agrees that ten percent (10%) of the total number of housing units created in the Project will be

subsidized internally as affordable housing. The parties further agree that the Developer may commence construction of affordable housing on a "middle-loading" basis. Thus, for example, by the time twenty-five percent (25%) of the market rate housing units have been completed, there must be ten percent (10%) of the affordable housing done; by fifty percent (50%), there must be forty percent (40%) done; by seventy-five percent (75%) completion, eighty-five (85%) of the affordable housing must be completed; and by one hundred percent (100%) completion, all of the affordable housing must be built.

In addition, the Developer agrees to incorporate strict transition provisions to protect tenants in place from displacement. Such provisions may include resale restrictions and protections for the lifetime occupancy of in-place rental tenants and their families after expiration of the program restrictions.

#### 14. Subway Improvements

RSPC, the Developer and the Borough President agree that the Metropolitan Transportation Authority ("MTA") and its subsidiary, the New York City Transit Authority ("NYCTA"), have the primary responsibility to build and maintain the capital plant of the New York City transit system including the station located at West 72nd Street on the IRT 1, 2, 3 and 9 lines. Nevertheless, in recognition of the poor condition of this station, and in recognition of the additional riders the Project will add to this station, the Developer agrees to contribute five (5) million dollars to the MTA in appropriate installments (adjusted for

inflation) after the Project commences, for purposes of implementing a rehabilitation program for such station substantially as set forth in the project's DEIS; provided, however, that no such contribution will be required unless and until the MTA includes the balance of the funds necessary for such station rehabilitation in the MTA Capital Plan and the rehabilitation of the station is ready to commence. This agreement recognizes that the Borough President's support and effort is necessary to put in place an MTA commitment.

15. Construction Liaison Committee

RSPC and the Developer agree that, prior to the start of any site work, a "Construction Liaison Committee" ("CLC") will be established with the cooperation of the Borough President, for the purpose of acting as a liaison between the Development and the affected community. The CLC shall be comprised of: (1) representatives of the Developer and all of the developer(s) involved with the site, the Borough President, area elected officials and Community Board No. 7 and Community Board No. 4; (2) a representative from each of the residential and commercial developments in the immediate area of the project site, including but not limited to Lincoln Towers and Amsterdam Houses; and (3) the relevant city agencies charged with oversight of construction of the project (or aspects thereof), including but not limited to the Department of Buildings, the Department of Transportation, the

Department of Environmental Protection, the Department of Parks and Recreation and the Department of Sanitation. Names, telephone numbers and a description of the method for contacting the CLC shall be posted at several locations on the site. The CLC shall meet regularly in public to discuss the status of construction and any problems, consult with affected members of the public, and shall seek to resolve such problems. Minutes of the meetings shall be made available at the offices of the Community Boards and the Manhattan Borough President. Meeting dates, times and locations shall be posted at several locations on the site.

16. Employment Opportunity

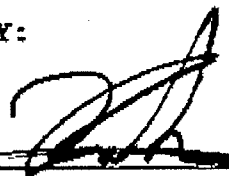
RSPC and the Developer will strive to develop the Project as a model of economic opportunity. The Developer will recruit from local Training and Assistance Program ("TAP") centers and other programs operated by the Department of Employment, where appropriate. In addition, the Developer will endeavor to employ women and persons of color as members of the construction work force and endeavor to require contractors to retain MBE/WBE firms as contractors and vendors in connection with such construction work. Where feasible and appropriate, the Developer will make use of any and all state and City affirmative action and small business enterprise programs in connection with the construction of this Project. This includes but is not limited to the City's Office of Economic and Financial Opportunity, as well as UDC's affirmative action programs. Affirmative efforts will be made to involve

business enterprises, not-for-profit entities, community-based organizations and local residents from the Lincoln Square (Amsterdam Houses), Harlem, West Harlem, Manhattan Valley and Clinton neighborhoods, as contractors, vendors and members of the work force, both in the construction and operation of the development. The Developer, in consultation with the Borough President and appropriate public agencies, will develop an appropriate annual reporting system detailing efforts to achieve these goals.

Based on the foregoing agreements among the Developer, the Riverside South Planning Corporation and the Manhattan Borough President, the Borough President hereby supports the Riverside South project for the reasons and with the qualifications more fully set forth in the report accompanying this Memorandum of Understanding.

Dated: August 26, 1992

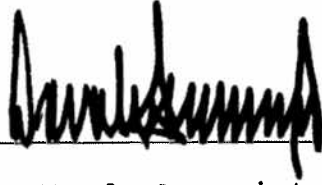
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Ruth W. Messinger, President  
Borough of Manhattan

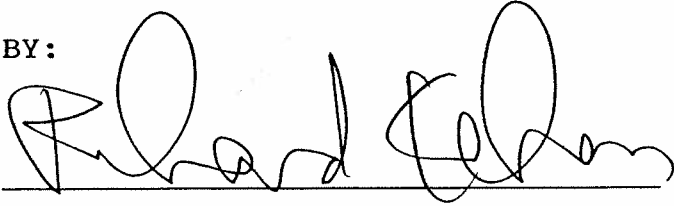
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Penn Yards Associates

Donald J. Trump, President

BY:



Riverside South Planning Corporation

Richard A. Kahan, Chairman of the Board