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MEMORANDUM

TO: Board of Trustees of the Seaport Museum

FROM: Susan Henshaw Jones, Sarah Henry, Patricia Zedalis, Jerry Gallagher

DATE: March 27, 2013

RE: Agreement with Economic Development Corporation (EDC) and Department of Cultural Affairs (DCA)

The Seaport Museum and the surrounding district were conceived as a showplace for the city's history as a seaport, focusing on the sailing ships that lined the East River and the commercial buildings that served the port of New York throughout the 19th century and well into the 20th century. This mission combines the ships and the buildings; indeed, it was the impetus for the City's acquiring, through condemnation, all the buildings up to the Brooklyn Bridge in the 1970's. EDC has had jurisdiction of these buildings since early 1990's.

Over the past 18 months, the City Museum has endeavored to rescue the Seaport Museum by reactivating the Seaport Museum's mission through exhibitions, school and public programs, collections care, and stewardship and rationalization of the fleet of vessels. Bowne & Co., a separate entity within the Seaport Museum with its collections of type and letter presses, was also a part of this reactivation.

The City Museum had many successes and many of these were the result of the support provided by the Bloomberg Administration.

At the same time, the City Museum worked to identify the factors that led to the Seaport Museum's failure as an independent institution, a failure that had many causes. Key among the causes is a lease agreement dating to 1981 and written for very different facts and conditions.

The lease of 1981 had three signatories: Seaport Museum, the City, and the developer of Pier 17, then Rouse & Co. In this lease, the Seaport Museum's position was as lessee from the City and as sub-lessor to the developer. The sub-lease envisioned flows of income from the developer that would support Seaport Museum activities. However, the developer was never sufficiently successful and no income was ever received. In this context, when Seaport Museum was in effect the developer's landlord, it is understandable that the lease would limit the Seaport Museum's income producing uses. Thus, the lease specifies that the Seaport Museum can only sub-lease for "museum" purposes, and, on Pier 16, for no more than 300 square feet for "Museum-related retail" use.

These strictures were noted in the Statement of Principles, Attachment D, to the agreement that was signed on October 5, 2011. In the Statement of Principles, EDC committed to "partnering with MCNY in exploring potential revenue generating opportunities" and "potential monetization

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through sub-leasing arrangements," and "supportive...in discussions that MCNY may have with Howard Hughes [the successor to Rouse & Co.] regarding the potential monetization of the Ancillary Spaces in which Howard Hughes may have an option." Finally, "to the extent that amendments to the Museum Lease may be required to effectuate such space strategy or monetization efforts, the Parties commit to entering into good faith negotiations with respect to such amendments."

Also, "NYCEDC, DCA, and MCNY commit to establishing an active working committee..." And "NYCEDC commits to working with MCNY to identify ways in which district improvements (and particularly as they relate to Fulton Street) can better incorporate and enhance MCNY programming and provide the best pedestrian experience.....including, but not limited to relocation of street vendors,....and the creation of an operations committee to advance redevelopment efforts in the Seaport District."

And, "NYCEDC agree to work closely with MCNY to determine the long-term uses for the north apron of Pier 15..."

Finally, "NYCEDC and DCA commit to working on making DCA the administrator of the Museum Lease."

In other words, the City Museum agreed to operate the Seaport Museum based on representations that negotiations would ensue aimed at providing cash to the Seaport Museum by allowing it to sublease its own space for its own benefit.

These objectives have not been realized. EDC indicates that it cannot alter the lease. The current developer, Howard Hughes Corporation (HHC), has refused to relinquish its rights, within the 1981 lease, to approve or disapprove any proposal for uses other than "museum" uses.

Mentioned above are the limitations on income-producing uses on Pier 16, but income-producing uses of the Seaport Museum's real estate assets on Fulton, John, and Water Streets are also crucial, at a time when every successful museum receives a very substantial share of income from earned sources.

With the old lease in effect, the Seaport Museum is effectively straightjacketed. In no real order are the following specific issues:

After losing control of Pier 15 in 2007, the Seaport Museum is unable to fully utilize the remaining waterfront asset, Pier 16. Income-producing uses on Pier 16 are restricted to 300 square feet of space. In the Statement of Principles noted above, EDC had committed to "work closely with MCNY to determine possible long-term uses for the north apron of Pier 15"; however, such uses have not been allowed and have been specifically disapproved. Now, large fixed benches are about to be installed along the apron that would even disallow the Seaport Museum from placing a floating dock on its side of the water space between Pier 16 and Pier 15.

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While we believed that Pier 16 was fully within our control, EDC has advised us that the water space on the north side of Pier 16 where *Ambrose* sits is within the Howard Hughes Corporation lease. While officials of HHC say now that *Ambrose* can stay there, the language remains equivocal. In a recent letter dated March 19th, addressed to Councilmember Margaret Chin at the culmination of ULURP negotiations, HHC writes that *Ambrose's* berthing is allowed provided that "(a) the Museum does not occupy any more space than is occupied presently, and (b) the Museum's occupancy of this water area does not interfere with HHC and SSSLP's ability to utilize the water area south of Pier 17 for docking vessel, ...". This is an assurance that cannot be taken to the bank. In this same letter, in response to Chin's commitment to providing income for the Seaport Museum, HHC wrote that it would provide \$750,000 to the Seaport Museum over 5 months, provided that the City Museum's agreement is extended for one year. See note below, however, which reduces this to \$600,000.

Regarding the reduction of the fleet, the City Museum was asked to shoulder a heavy burden—the outcome of EDC's taking back of Pier 15—which was the task of reducing the fleet that had once berthed on all sides of two piers. Progress has been made and appropriate new homes for *Helen McAllister* and *Marion M* were found, and *Peking* is still expected to return to Hamburg this spring. The large car float is also gone.

A further reason for the failure of the Seaport Museum is the limited street level space on Fulton Street and its out-of-sight presence on the upper floors of buildings along Schermerhorn Row. Visitors to the area simply do not notice the entrance to the Museum. It was hoped that the long vacant ground floor space at the corner of John and Front Streets might provide more street level visibility, but HHC will not release the space.

Tents and kiosks fill Fulton Street, obstructing the view corridor, spoiling the appearance of the historic district, and blocking the Seaport Museum entrance. HHC refuses to relinquish this space, although our reading of the lease indicates that HHC is violating the lease, which delineated spaces in which such tents and kiosks could be placed. If our reading is correct, EDC has demurred to enforce this provision of the lease.

Conflicts with HHC's vision and uses exist, and HHC is indeed a Goliath; when Pier 17 is built, HHC's area will amount to just under 565,344 square feet in upland and Pier 17 spaces. (Our estimate of HHC's square footage is attached.)

Finally, it is a curiosity of the 1981 lease that its provisions enable the developer, now HHC, to exercise an option on any space left vacant for more than 6 months in a multi-block area. It also applies to all Seaport Museum spaces on Fulton, John and Water Streets —approximately 80,000 square feet of space. Thus, some argue that it is in HHC's best interests to refuse any meaningful concessions. It is noted that on two occasions, HHC requested permission to walk Museum spaces with an architect.

Superstorm Sandy has complicated and exacerbated the challenges at the Seaport Museum, and exposed further flaws in the conditions under which the City Museum is operating the Seaport Museum. Sandy wrought huge damage, taking out all the building systems in the basements of

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Schermerhorn Row and causing enormous damage both here and along Water Street. There have been very serious lapses in communication concerning steps aimed at their repair and replacement and an undue burden has been placed on City Museum and Seaport Museum personnel. These are, after all, City-owned buildings and EDC is responsible for base-building systems repair. On the discouraging side was EDC's early refusal to include the Seaport Museum in its FEMA application. It is estimated that the total costs—if systems were moved to safe locations—could total many millions of dollars.

A provision of the 1981 lease makes the Seaport Museum carry flood insurance, very costly for a struggling non-profit, providing for \$500,000 in coverage. Over the past 5 years, \$101,000 has been paid for flood insurance, enabling the Museum to receive an initial payment of \$200,000 within weeks of Sandy. A letter from Hartford Insurance was received recently, and it noted that EDC had this same coverage and, thus, the letter demanded reimbursement of this initial payment of \$200,000. Our insurance broker advises us to engage legal counsel.

I do note that in the past week, and in the midst of ULURP negotiations, DCA again extended its hand with a commitment that EDC would make available \$2.4 million for the upgrading of 213-215 Water Street as Museum gallery space. A component of the \$2.4 million is \$150,000 earmarked above, which is to be transferred from the HHC pledge.

On an attachment, we list the accomplishments of the City Museum during its management of the Seaport Museum. In fact, we are all very proud of them.

So it is with a heavy heart that we conclude that we cannot recommend an extension of this agreement to the City Museum.

Attachments:

Statement of Principles from Interim Agreement
Accomplishments to-date
HHC Square Footage
March 19th HHC letter to Margaret Chin
Pier 15- Pier 16 Apron Plan

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