

NONPROFIT FORUM

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THE 11TH COMMANDMENT: HONOR THY OBLIGATIONS

THE REED FOUNDATION, INC. v. FDR FOUR FREEDOMS PARK, LLC

BY

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“Once a charity accepts a gift, it must comply with the obligations it undertook in exchange – not only for its own benefit, but for the sake of the charitable sector in general.” – Gail Aidinoff Scovell, “Naming Rights,” unpublished paper to The Nonprofit Forum, June 20, 2012.

On October 19, 2012, Justice Charles E. Ramos of the Commercial Division of New York County Supreme Court, authored a noteworthy opinion in *The Reed Foundation, Inc. v. FDR Four Freedoms Park, LLC*.¹ The case interprets the parties’ obligations under donation and donor recognition agreements that I drafted in 2010 on behalf of our long-time private foundation client, The Reed Foundation (the “Foundation”). As discussed below, Justice Ramos ordered the FDR Four Freedoms Park, LLC (the “LLC”) – the developers of the recently opened FDR Four Freedoms Park on Roosevelt Island – to abide by the terms to which they agreed in those carefully-negotiated agreements entered into in March 2010. In particular, the donor-recognition agreement obligated the LLC to engrave a specific text at a specific location in the Park in recognition of the significant contributions, in the form of initial capital and otherwise, made by the Foundation to the revival and construction of this long-

¹ Index No. 653482/2012 (N.Y. Sup. N.Y. Ct.) (see Exhibit D).

dormant memorial to President Franklin D. Roosevelt. Justice Ramos has ordered specific performance of this engraving obligation. We believe this to be a case of first impression in New York State.

Justice Ramos's decision highlights the important role of the courts in safeguarding donor intent through the enforcement of donor agreements. Justice Ramos recognized the strong public policy interest in enforcing the contractual obligations made by the recipients of charitable donations. In doing so, Justice Ramos created welcome precedent in New York, which should help provide reassurance to donors that their acceptance of proffered donor recognition is to be honored. The media seized upon the significance of the case, with coverage of Justice Ramos's decision appearing in the *New York Times* and the *New York Law Journal*.

I have summarized below the case's undisputed material facts, the parties' legal arguments, and Justice Ramos's order granting the Foundation's petition and awarding specific performance.

The Facts Underlying the Dispute

The FDR Four Freedoms Park (the "Park") was designed in the 1970s by the architect Louis I. Kahn. On St. Patrick's Day in 1974, Kahn died of a heart attack in a men's restroom in Pennsylvania Station in New York. His body went unidentified for three days.² The documents in his possession at the time of his death were these plans.

² Wikipedia: Louis I. Kahn.

For decades, efforts to develop the park had been unsuccessful. Jane Gregory Rubin, a director and officer of the Foundation, first learned about the Kahn plans in 1991. At that time, Roosevelt Island Operating Corporation (“RIOC”) officials Jean Lerman and Alyce Russo had prepared a master plan for the area on the Island known as “Southpoint Park.” Working as legal counsel for an adjacent art installation, Ms. Rubin was briefed on the plans for what is now called the Four Freedoms Park (“FFP”) and was astonished to learn that such a project had not been realized. When she raised the subject with her acquaintance, Ambassador William vanden Huevel in 1992 after the retrospective at the Museum of Modern Art on Kahn’s work, he stated that he did not think FFP a timely effort.

Others disagreed with the Ambassador’s view. In particular, Ms. Russo in 1993 hosted a workshop about RIOC’s commitment to the site and in 1994 oversaw the clearing of the site. She also had the site graded, sculpted, and compacted to Kahn’s specifications. After that, the site languished for more than a decade.

The actual genesis of the FFP revival was a private luncheon on January 22, 2004, at the Century Association. In addition to Ms. Rubin and Ambassador vanden Huevel, the attendees included Lois Dubin (who had worked with the landscape architect on the Kahn plans) and Harriette Dorsen (a retired lawyer who worked for Plaza Construction Corporation). From that meeting emerged action steps, including Ms. Rubin’s proposal to collect the scattered Kahn records and create a presentation and written record. Ms. Rubin offered funding from the Foundation for an archival effort and an exhibition representing FFP to the general public, especially for a definitive publication which

could be used for fundraising to realize the FFP. Thus, Ms. Rubin and her husband, Reed Rubin, who are officers of the Foundation, caused the Foundation to pay in 2004 the seminal grant to the Cooper Union for the exhibition and catalogue to resurrect the FFP.

The Rubins' interest was informed by their longstanding admiration for the renowned American sculptor Jo Davidson (whose name for the bust of Roosevelt Kahn had scribbled on his sketch) and by their respect for President and Mrs. Roosevelt. Mr. Rubin has stated that his most prized possession is a Jo Davidson bust of Lincoln, which he keeps at his bedside. His parents were friends of Davidson's and his mother worked with Eleanor Roosevelt. In fact, a photograph of Vera Rubin with Eleanor Roosevelt has long hung at the Foundation's office entrance. Given these many personal connections, Mr. and Mrs. Rubin enthusiastically propelled the project forward. Ms. Rubin worked on locating the Kahn drawings in Pennsylvania and helped plan the Cooper Union exhibit. Using the Foundation's grant, the Cooper Union published the catalogue called "Coming to Light: The Louis I. Kahn Monument to Franklin D. Roosevelt for New York City," which detailed the project and reproduced for the first time Kahn's sketches.³

³ A companion case to the Foundation's was filed by the LLC's other seminal donor, the Chicago-based Alphawood Foundation ("Alphawood"). In its complaint, Alphawood's founder cites a January 9, 2005, article about the exhibit in the *New York Times* as having sparked his interest in FFP. At paragraph 15 in the Alphawood complaint filed by Paul Weiss, the plaintiff states: "Efforts to fund construction of the Park were unsuccessful from the late 1970s until 2005. Interest in the FDR Park was renewed in 2005, when Reed and Jane Gregory Rubin (the "Rubins"), who are officers of the Reed Foundation, funded an exhibit of Kahn's work at the Cooper Union for the Advancement of Science and Art in New York City. This exhibit was publicized in a 2005 *New York Times* article and memorialized in an exhibit catalogue entitled 'Coming to Light: The Louis I. Kahn Monument to Franklin D. Roosevelt for New York City.' Upon reading these materials, Eychaner became

The Rubins also initiated a series of fundraising events with Roosevelt admirers, as well as meetings with Ambassador William vanden Heuvel, Chairman of The Franklin and Eleanor Roosevelt Institute (“FERI”).

The Rubins’ enthusiasm and efforts paid off in the form of FERI’s eventually undertaking the project, including through formation of a single-member special-purpose LLC to oversee the construction. Ms. Rubin and officials of the LLC engaged in numerous meetings. Then over a period of years, LLC and Foundation officials added legal counsel to numerous negotiations, meetings, and calls. In March 2010, the Foundation contracted with FERI and the LLC to provide a pivotal, early \$2.5 million Grant, the express purpose of which was to support Phase One construction of the Park.⁴ The Foundation and the LLC entered into detailed contracts carefully documenting the parties’ mutual agreement regarding the Grant. In particular, the agreements meticulously detailed the LLC’s obligation to engrave a specific 51-letter donor recognition text (the “Threshold Recognition Text”) on the side of the granite structure (the “Threshold”) enclosing a bronze bust of Roosevelt.⁵ The agreements also acknowledged that the Foundation would be entitled to the equitable relief of specific performance in the event of the LLC’s breach and that the LLC would not contest

interested and decided to become involved. That same year, the Roosevelt Institute began considering the feasibility of reviving the dormant project.”

⁴ This Grant enabled the LLC to meet a deadline both to quarry the Kahn-specified granite and to trigger release of certain much-desired government funding.

⁵ For a chart of the recognition sites offered by the LLC to donors, please see Exhibit E.

standing. Pursuant to the agreements, the Foundation paid the \$2.5 million Grant on March 26, 2010.

Construction of the Threshold was at last completed in July 2012. At this time, however, the LLC allowed Nick Benson, the artisan responsible for overseeing all engraving on the Threshold, to leave the project site without having engraved the Threshold Recognition Text, despite Benson's unavailability to complete the work until October 1, 2012—a mere two-and-a-half weeks prior to the scheduled dedication of the Park. Over the next two months, the LLC consistently acknowledged its obligation to engrave the Threshold Recognition Text while simultaneously pressuring the Foundation to relinquish its agreed-upon recognition rights.

Finally, on October 2, 2012, the LLC informed the Foundation that it would not perform the engraving because its “architects and consultants” had advised the LLC that including the Threshold Recognition Text on the Threshold was not the “best aesthetic.” As a result, on October 4, 2012, the Foundation commenced a declaratory judgment proceeding against the LLC, seeking an order declaring that the LLC had breached its contractual obligation to the Foundation and awarding the Foundation specific performance by requiring the LLC to complete the agreed-upon engraving.

The Parties' Arguments

The Foundation argued that the LLC breached its agreement by refusing to engrave the Threshold Recognition Text, a bargained-for obligation that the parties had carefully detailed in the agreements. The Foundation also argued that specific performance of the LLC's contractual obligation to engrave the Threshold Recognition

Text – rather than monetary damages (*i.e.*, a return of the Grant) – was the proper remedy for the LLC’s breach given that the engraving is “such a unique and precise honorary recognition” of the Foundation’s role in erecting the Park that it is not subject to monetary valuation. In addition, the Foundation stressed that the parties acknowledged in the governing agreement that the Foundation would be entitled to specific performance in the event of the LLC’s breach. Finally, the Foundation noted the necessity of judicial enforcement of the LLC’s donor recognition obligations in furthering the public policy interest in encouraging philanthropy.

In opposition, the LLC argued that although it had reneged on its agreement, the LLC could not be forced to engrave the Threshold Recognition Text because the engraving would, according to the views of “members of the architectural community,” interfere with the artistic purity of the Park. Furthermore, the LLC contested the Foundation’s view of the case as “one of private contractual concern,” arguing that a lawsuit seeking specific enforcement of donor agreements improperly framed the issue as a “crass commercial transaction.” Rather, the LLC argued that the Foundation’s Grant constituted a mere “conditional gift” that did not impose upon the LLC a binding obligation to engrave the Threshold Recognition Text. Thus, according to the LLC, the Foundation’s only remedy for the LLC’s breach of the agreement was the return of the Grant. Dismissing the Foundation’s contractual right to seek specific performance, the LLC claimed that “[t]hey may seek equitable relief, but they may not necessarily find it.”

The Court Grants the Foundation's Petition

On October 16, 2012, the case came before Justice Ramos in New York Supreme Court, the venue specified in the agreements. After hearing the parties' arguments, Justice Ramos granted the Foundation's petition, directing the LLC to complete the Threshold Recognition Text. In ruling from the bench, Justice Ramos relied heavily on the importance of enforcing obligations to donors, noting that "the public interest [and] public policy favors philanthropy." Justice Ramos cautioned that "any decision contrary to [enforcing] the very carefully articulated agreement between the parties . . . would do great damage to the generosity that the City benefits from." In concluding his remarks, Justice Ramos emphasized the chilling effect that a ruling in favor of the LLC would have on future charitable giving, expressing concern over "what's going to happen to the next charitable organization that wants to raise money" if the court did not hold the LLC to its agreement with the Foundation.⁶

On October 19, 2012, Justice Ramos issued a written opinion detailing his findings. As a threshold matter, Justice Ramos held that the LLC had materially breached the donor agreements by refusing to engrave the Threshold Recognition Text, as it was contractually obligated to do. Justice Ramos noted that it was a matter of law

⁶ As noted above, the other early and, at more than \$10 million in grants, largest donor to the LLC, Alphawood, had also filed suit against the LLC on similar grounds but based on very different agreements. While the two cases were heard together by Justice Ramos, Alphawood settled its dispute with the LLC at the hearing before Justice Ramos issued his ruling.

for the court to interpret and enforce unambiguous contracts, such as the donor agreements.

After finding that the LLC had breached its agreement, Justice Ramos held that the Foundation was entitled to the remedy of specific performance, rather than damages. Justice Ramos ruled that specific performance was the proper remedy because the Foundation was entitled to fulfillment of its “manifested expectation” at the time of the Grant. Here, that expectation was an engraving of the Threshold Recognition Text, a “lasting recognition of the Foundation’s role in erecting the Park” that Justice Ramos noted “has great significance to the Foundation and its principals.” Justice Ramos also rejected the LLC’s argument that it could simply return the donation, noting that this would negate the term in the parties’ agreements granting the Foundation the right to specific performance in the event of the LLC’s breach.

Finally, Justice Ramos was “disturbed” by the LLC’s contention that it could escape its contractual obligation to donors by deferring to the supposed public interest underlying the artistic objections of some persons in the architectural community. Instead, Justice Ramos forcefully reaffirmed the public policy interest in encouraging philanthropy, declaring that “the public’s interest in charitable giving require[s] that philanthropy trump fashion.” Further highlighting the social value of enforcing donor agreements, Justice Ramos proclaimed that “[n]o potential donor in this State should be made to fear that its generosity will be diminished” by the whims of a recipient’s managers. Justice Ramos concluded by emphasizing the role of the judiciary in safeguarding the interests of the philanthropic community, stating that “the only path

the courts can take to insure that New York's generous custom and practice of philanthropy survives is to require the LLC to honor its obligations that were so carefully articulated in the Agreements."

Next Stop: The Appellate Division

On November 14, 2012, an order directing the LLC to engrave the Threshold Recognition Text was entered with the clerk of the court. On November 16, the LLC filed an appeal. On November 27, 2012, the LLC filed a motion seeking expedited treatment of the appeal and previewing their argument on the merits. The parties have agreed to seek an expedited briefing schedule, and the case is likely to come before a panel of the New York Appellate Division, First Department, in February 2013.

Conclusion

This case addresses for the first time before a New York State court a variety of contractual provisions we have relied upon for three decades. For example, Section 6 of the Grant Agreement, "Enforcement," provides "The Foundation reserves the right to enforce the terms of this Grant Agreement. Each of the Institute and the LLC agrees that it will not contest the standing of the Foundation to bring any such arbitration or suit." Section 6, "Default," in the Recognition Agreement states that the LLC agrees that in the event of the LLC's breach or threatened breach the Foundation will be entitled to equitable relief in the form of specific performance. These provisions were understood by the parties when agreed to in 2010 and when reviewed again in 2012. Nonetheless, the LLC elected to refuse to perform – after numerous oral and written statements that it would perform – based on its unilateral and recently-conceived

artistic view. The Foundation and Alphawood Foundation both sued when attempts to work with the LLC were rebuffed by the LLC. The Foundation – alone in having these terms and such detailed Agreements – prevailed.

Among the lessons to be learned from this case are that detailed terms do matter and are worth including, even if such specificity offends some who argue that philanthropy should be free from the “crass commercialism” of written agreements and their enforcement. Another clear lesson is that charities offering donor recognition which accept and spend donors’ funds must expect to be called to account if they fail to consider the 11th Commandment: “Honor thy Obligations” to donors or else those donors will seek enforcement against you.

I attach as Exhibit A the Affirmation of my partner Michael J. Garvey in Support of Petition for Declaratory Relief and Specific Performance; as Exhibit B our Memorandum of Law in Support of Petition; as Exhibit C the transcript of Justice Ramos’ statement from the bench; as Exhibit D Justice Ramos’ Memorandum Decision; and as Exhibit E a chart of the recognition sites offered by the LLC to donors.

Exhibits A-E

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X		
THE REED FOUNDATION, INC.,	:	Index No.:
	:	
Petitioner,	:	
	:	
-against-	:	AFFIRMATION OF MICHAEL J.
	:	GARVEY IN SUPPORT OF
	:	PETITION FOR DECLARATORY
FRANKLIN D. ROOSEVELT FOUR FREEDOMS	:	RELIEF AND SPECIFIC
PARK, LLC,	:	PEFORMANCE
Respondent.	:	
-----X		

MICHAEL J. GARVEY, an attorney duly admitted to practice law before the Courts of the State of New York, herein affirms pursuant to Rule 2106 of the New York Civil Practice Law and Rule ("N.Y. C.P.L.R.") and subject to the penalties of perjury:

1. I am a partner with the law firm of Simpson Thacher & Bartlett LLP, attorneys for Petitioner The Reed Foundation, Inc. (the "Foundation"). I am fully familiar with the facts and circumstances described herein, either from personal knowledge or on the basis of documents in possession of the firm.

2. I submit this Affirmation in support of the Foundation's Petition seeking an order: (1) declaring that Respondent Franklin D. Roosevelt Four Freedoms Park, LLC (the "LLC") breached its contractual obligations to the Foundation based on the LLC's continuing failure to complete an agreed engraving at the FDR Four Freedoms Park ("the Park"); and (2) awarding the Foundation specific performance by requiring the LLC to complete the agreed engraving by no later than the Park's dedication scheduled for October 17, 2012.

Introduction

3. The Foundation, a charitable organization, has played a catalytical role in the development of the Park. In 2010, the Foundation made a pivotal \$2.5 million grant to the

LLC, the developer of the Park, which enabled the LLC to fund construction of the Park. Under the governing grant agreements, the LLC, the developer of the Park, committed to complete by December 31, 2011 an engraving at a very specific location in the Park that recognizes the Foundation. The LLC further acknowledges the Foundation's right to seek specific performance in the event the LLC failed to complete the engraving at the designated location. Over the last three months, the LLC has repeatedly assured the Foundation that it will complete the required engraving "as soon as possible" but refused to provide the Foundation a date certain when performance will be completed. The dedication of the Park is now just two weeks away and, according to the LLC, the agreed engraver is available in New York to complete the engraving. On October 2, the LLC advised the Foundation for the first time that it will not complete the engraving, citing changed "aesthetic" considerations. In light of the LLC's willful failure to cure its breach of the grant agreements, the Foundation is invoking its contractual remedy of specific performance and seeks completion of the agreed engraving before the dedication of the Park on October 17.

Background

4. Petitioner, the Foundation, is a not-for-profit corporation organized under the laws of New York and headquartered in New York, New York. The Foundation was formed for religious, charitable, scientific, literary and educational purposes, and to engage in, advance, support and promote religious, charitable, scientific, literary and educational activities and other projects.

5. Respondent, the LLC, is the developer of the Park, and is also based in New York, New York.

6. The Park is a memorial to President Franklin D. Roosevelt located on the southern end of Roosevelt Island in New York City. Upon information and belief, the Park is scheduled to be dedicated on October 17, 2012 and opened to the public on October 24, 2012.

7. The Park was designed in the 1970s by the late architect Louis I. Kahn. The Park consists of a grand staircase, which ascends to a triangular garden of trees and paving stones bordered by a stone promenade, a forecourt area at the point of the triangle that leads to a large bronze bust of Roosevelt housed in a 12 foot-tall granite structure known as the “Threshold,” and, just beyond the Threshold, a square granite “Room,” which sits at the southernmost tip of Roosevelt Island overlooking the East River. A true and accurate rendering of the Park as well as the Threshold is attached at **Exhibit A**.

8. For over 30 years, efforts to develop the Park were unsuccessful. Then, in 2005, Reed and Jane Gregory Rubin, who are officers of the Foundation, helped resurrect the long-dormant Roosevelt Island project by funding an exhibit on the project at the Cooper Union for the Advancement of Science and Art. The project thereafter gained momentum, with public and private donors displaying interest and ultimately contributing the necessary funds to finance the project.

9. Consistent with the Rubins’ efforts to advance the project, in March 2010, the Foundation contracted to provide the Institute a \$2.5 million Grant, the express purpose of which was “to support Phase One . . . of construction of the [Park]” *See* Grant Agreement, dated March 26, 2010 (the “Grant Agreement”), a true and correct copy of which is attached hereto as **Exhibit B**.

10. The Grant was among the very first grants made in connection with this project, at a time when there was considerable doubt as to whether the project could be

completed. The Grant enabled the LLC to secure essential public funding from New York State and New York City.

The Governing Contracts

11. The Grant is governed by a series of interrelated agreements, including the Grant Agreement between the Foundation, the LLC and the Institute, *see* Ex. B, and the Recognition Agreement between the Foundation and the LLC. *See* Recognition Agreement, dated March 26, 2010 (the “Recognition Agreement”), a true and correct copy of which is attached hereto as **Exhibit C**. The Grant Agreement and the Recognition Agreement are referred to collectively as the “Foundation-FDR Agreements.”

12. Under the Grant Agreement, Phase One of the construction of the Park *“must include the construction of the Threshold no later than December 31, 2011 (or such later date agreed to in writing by the Foundation).”* Ex. B (Grant Agreement) at § 1.1 (emphasis added).

13. The Grant Agreement also provides that the construction of the Threshold *“will include . . . the carving of, and/or other display of, the Threshold Recognition Text and the other text on the Threshold,”* which is an excerpt of a speech by FDR entitled the *Four Freedoms Speech*. *Id.*

14. The Recognition Agreement sets forth the precise location and wording of the “Threshold Recognition Text,” as well as the process for its inscription:

1.1 Threshold Recognition Text. The *LLC, as developer of the FDR Four Freedoms Park, acknowledges and agrees that the Recognition . . . will be constructed in accordance with the terms and specifications* as set forth below:

(a) the following text (the “Threshold Recognition Text”) *will be permanently carved on the West-Facing Side of the Threshold:*

IN HONOR OF
VERA D. RUBIN AND SAMUEL RUBIN
THE REED FOUNDATION

(b) the Threshold Recognition will be: (1) carved in a manner, size, font and placement reasonably acceptable to the Foundation and the LLC; (2) carved and designed by The John Stevens Shop under the supervision of Nick Benson, Creative Director . . . and (4) [sic] will be legible and will be maintained, refinished, restored and otherwise kept in good repair;

(c) other than the Threshold Recognition Text on the West-Facing Side, no other text, signage or similar wording recognizing a donor or other contributor may be placed on the West-Facing Side of the Threshold or the North-Facing Side of the Threshold; and

(d) no other carving, inscription, or other signage may be displayed on the West-Facing Side of the Threshold without the prior written consent of the Foundation.

Ex. C (Recognition Agreement) at § 1.1(a)-(d) (emphases added).

15. The LLC further warrants in the Recognition Agreement that the agreed construction drawings and specifications for the Threshold “will be used to construct the Threshold in accordance with the terms and conditions of this Agreement,” *i.e.*, to include the Threshold Recognition Text, and the LLC will “request that the operator of the [Park] ensure, *at all times*, that the Threshold Recognition Text is legible and will be maintained.” Ex. C (Recognition Agreement) at § 2 (emphasis added).

16. The Recognition Agreement provides that a “Default” occurs if “the Threshold has not been installed in the Sculpture Court by December 31, 2011.” Ex. C (Recognition Agreement) at § 6.

17. Moreover, the LLC agrees and acknowledges in the Recognition Agreement that “*the Foundation’s remedies at law for a failure to perform, breach or threatened breach of any of Sections 1 and 2 of this Recognition Agreement would be*

inadequate and the Foundation would suffer irreparable damages as a result of such failure to perform, breach or threatened breach. In recognition of this fact, the LLC agrees that, in the event of the LLC's failure to perform, breach or threatened breach, in addition to any remedies at law, *the Foundation, without posting any bond, shall be entitled to seek equitable relief in the form of specific performance, temporary restraining order, temporary or permanent injunction or any other equitable remedy which may then be available.*" Ex. C (Recognition Agreement) at § 6 (emphasis added).

18. The Foundation-FDR Agreements are governed by New York law and contain forum selection clauses in which the parties submit to this Court's jurisdiction. *See* Ex. B (Grant Agreement) at § 10; Ex. C (Recognition Agreement) at § 9.

The LLC Breaches The Recognition Agreement

19. Pursuant to the Grant Agreement, on March 26, 2010, the Foundation paid the \$2.5 million Grant to the Institute, which, in turn transferred the funds to the LLC, which then used the funds to construct Phase One of the Park, including parts of the Threshold.

20. Construction of the Threshold, however, was not completed by the contractually-agreed December 31, 2011 deadline. This constituted a Default under the Grant Agreement and the Recognition Agreement. *See* Ex. B (Grant Agreement) at § 1.1; Ex. C (Recognition Agreement) at § 6.

21. By June 2012, the Threshold walls were in place and, on June 21, 2012, the Foundation and the LLC confirmed their agreement regarding placement of the Threshold Recognition Text on the West-Facing Side of the Threshold as reflected in a mock-up of the required engraving. On June 21, 2012, the Foundation also consented to a request by the LLC that the lettering for the Threshold Recognition Text be changed from black to gray. A true and

correct copy photographs of the mock-up are attached hereto as **Exhibit D**. As reflected in Exhibit D, the agreed-to Threshold Recognition Text is tasteful, understated, low to the ground, in small font, on the West-Facing Side of the Threshold.

22. By July 2012, the LLC had completed the inscription of FDR's speech on the south-facing side of the Threshold but LLC still had not commenced engraving of the Threshold Recognition Text.

23. At that time, the designated artisan who was responsible for overseeing all engraving on the Threshold—Nick Benson—was on site. Upon information and belief, representatives of the LLC allowed Mr. Benson to discontinue work on the Threshold before he engraved the Threshold Recognition Text, even though Mr. Benson would be unavailable to complete the work until October 1, 2012, two-and-a-half weeks prior to the scheduled dedication of the Park.

24. The LLC did not apprise the Foundation of its decision not to complete engraving of the Threshold Recognition Text while Mr. Benson was on site.

25. The LLC's reason for not engraving the Threshold Recognition Text became clear when the LLC engaged in a campaign to pressure the Foundation to relinquish its bargained for rights under the Foundation-FDR Agreements and consent to relocate the Foundation's recognition to a staircase at the opposite end of the Park. Specifically, the LLC wanted the Foundation to abdicate its right to the Threshold Recognition Text on the West-Facing Side of the Threshold, and, instead, agree to recognition text on the "grand stair" (where other donors' names would be engraved). On multiple occasions, the Foundation conveyed to the LLC that it would not consent to relocating the Threshold Recognition Text.

26. On August 2, 2012, upon learning that the Threshold Recognition Text had not been completed, the Foundation confirmed that it “expects to have honored the agreed-upon placement of the Threshold Recognition Text.” *See* Email from Victoria Bjorklund to Sally Minard and Gina Gina Pollara, dated August 2, 2012, a true and correct copy of which is attached hereto as **Exhibit O**.

27. On August 9, 2012, the LLC responded that it was “[o]f course, mindful of and will honor our contractual agreement with the Reed Foundation,” but again the LLC suggested that the Foundation consent to relocate the Foundation’s recognition. *See* Email from Sally Minard to Victoria Bjorklund to dated August 9, 2012, a true and correct copy of which is attached hereto as **Exhibit O**.

28. On August 20, 2012, the LLC again suggested that the Foundation consent to relocate the Foundation’s recognition. *See* Letter from Sally Minard to David Latham, dated August 20, 2012, a true and correct copy of which is attached hereto as **Exhibit E**.

29. In response, the Foundation, through counsel, reiterated that the Threshold Recognition Text must be engraved “in accordance with . . . the Recognition Agreement” and, for the avoidance of doubt, attached to its letter a photo of the West-Facing Side of the Threshold with a mylar strip displaying the agreed Threshold Recognition Text at its designated location, which the LLC had arranged for the Foundation’s viewing during a prior site visit. *See* Letter from Victoria Bjorklund to Sally Minard, dated August 22, 2012, (including attachment), a true and correct copy of which is attached hereto as **Exhibit F**.

30. The Foundation’s letter further requested that the LLC confirm the timing for completing the engraving on the Threshold. *See* Ex. F.

31. The LLC failed to respond to the Foundation's request, and, on September 8, 2012, the Foundation again requested confirmation that the required engraving on the Threshold would take place on or before October 10, 2012, ten days after Mr. Benson was scheduled to return to the site and one week in advance of the scheduled dedication of the Park. See Letter from Victoria Bjorklund to Sally Minard, Gina Pollara, and William vanden Heuvel, dated September 8, 2012, a true and correct copy of which is attached hereto as **Exhibit G**.

32. The LLC responded on September 13, 2012 "confirm[ing] that pursuant to your letter of August 20, 2012 . . . , the Park agrees to the placement of the recognition of The Reed Foundation as described in the August Letter." The LLC assured the Foundation that the Threshold Recognition Text would be carved in accordance with the Recognition Agreement "as soon as possible," but failed to provide any assurance that such engraving would be completed prior to the dedication or by any date certain. Letter from William vanden Heuvel to Victoria Bjorklund, dated September 13, 2012, a true and correct copy of which is attached hereto as **Exhibit H**.

33. On September 14, 2012, the Foundation reiterated its request that the LLC provide the Foundation with an assurance that the engraving would be completed on or before October 10, 2012, *i.e.*, while Mr. Benson was on site and one week before the scheduled dedication. In response, the LLC's Chairman stated that "[i]f [the Rubins] want their money back, I will raise it. We will not give them a time certain" The Chairman went on to say that "only the Rubins have chosen to enforce their contract, which everyone acknowledges will defile" the memorial, and that "[t]he staircase will be done first because most of those donors have given amounts that justify their priority." Email from Sally Minard to Victoria Bjorklund, dated September 14, 2012, a true and correct copy of which is attached hereto as **Exhibit I**.

34. On September 26, 2012, the LLC wrote the Foundation, again acknowledging the Foundation's "ability to enforce the details of the March 2010 contract" and that the LLC has "no doubt that [the Foundation] may prevail in a Courtroom." However, the LLC refused to confirm that it would cure its breach and complete the Threshold Recognition Text before the Park's dedication. Instead, the LLC continued its campaign to pressure the Foundation to relinquish its bargained for rights under the Foundation-FDR Agreements and consent to relocate the recognition to a staircase at the opposite end of the Park. Letter from William vanden Heuvel, Chairman of the LLC, to the Foundation, dated September 26, 2012, a true and correct copy of which is attached hereto as **Exhibit J**.

35. Between September 27 and October 2, 2012, the Foundation reiterated its demand for a written assurance that the LLC would complete the Threshold Recognition Text by a date certain. *See* Letter from the Foundation to William vanden Heuvel, Chairman of the LLC, dated September 27, 2012, a true and correct copy of which is attached hereto as **Exhibit K**; Letter from the Michael J. Garvey to William Griffith, a board member of the LLC, dated October 2, 2012, a true and correct copy of which is attached hereto as **Exhibit L**.

36. On October 2, 2012, just over two weeks before the Park's dedication, the LLC reversed course, advised the Foundation that the LLC would not perform because "[o]ur architects and consultants have told us" that including the Threshold Recognition Text on the Threshold is not the "best aesthetic." The LLC offered to either relocate the engraving or repay the Foundation's grant with interest. Letter from William vanden Heuvel, Chairman of the LLC, to the Foundation to dated October 2, 2012, a true and correct copy of which is attached hereto as **Exhibit M**.

37. Other than the completion of the Threshold Recognition Text on the Threshold in accordance with the Foundation-FDR Agreements, all other phases of construction of the Park and the Threshold are essentially complete. Indeed, the *New York Times* has already reviewed the Park, including detailed descriptions of the Threshold and a series of photographs. See Michael Kimmelman, *Decades Later, a Vision Survives*, THE NEW YORK TIMES, September 12, 2012, available at <http://www.nytimes.com/2012/09/13/arts/design/louis-kahns-franklin-d-roosevelt-four-freedoms-park-to-open.html>, a true and correct copy of which is attached hereto as **Exhibit N**.

The Foundation Is Entitled To Specific Performance

38. Given the LLC's continuing breach and failure to cure, the scheduled dedication just over two weeks away, and Mr. Benson's availability to complete the required engraving, the Foundation is invoking its rights to specific performance and injunctive relief under the Recognition Agreement and seeks an order requiring the LLC to complete the Threshold Recognition Text on or before the Park's dedication on October 17, 2012.

39. The Foundation submits that, any argument by LLC at this late date that it is unable to complete performance in advance of the Park's dedication is unavailing, as the situation is one of the LLC's own making. If it cannot complete performance by October 17, LLC should be required to reschedule the dedication until such performance is completed.

40. As set forth in more detail in the accompanying memorandum of law, Respondent has materially breached the Foundation-FDR Agreements by failing to engrave the Threshold Recognition Text by December 31, 2011, as it was contractually-obligated to do, and also failed to cure their breach within a reasonable period of time. See *W.W.W. Assocs. v. Giancontieri*, 77 N.Y.2d 157, 162 (1990) ("A familiar and eminently sensible proposition of law

is that, when parties set down their agreement in a clear, complete document, *their writing should as a rule be enforced according to its terms.*”) (emphasis added); *see also Vermont Teddy Bear Co. v. 538 Madison Realty Co.*, 1 N.Y.3d 470, 475 (2004) (same). Indeed, the work could and should have been completed by no later than July 2012, when all other Threshold engraving work was completed, but instead the LLC elected to discharge the engraver and commence pressuring the Foundation to relinquish its undisputed contractual rights under the Recognition Agreement.

41. All parties, as manifested in the Recognition Agreement, acknowledge that specific performance is the appropriate remedy for the LLC’s failure to engrave the Threshold Recognition Text in accordance with the contract. Under New York law, courts favor granting equitable relief where, as here, sophisticated parties agree to such remedies “in a clear, complete document.” *Bank of Am., N.A. v. PSW NYC LLC*, 29 Misc.3d 1216(A), at *10-11 (Sup. Ct., New York County 2010) (granting equitable relief because the parties “agreed that monetary damages would not serve as an adequate remedy at law” and “their writing should . . . be enforced according to its terms”) (citing *Vermont Teddy Bear Co. v. 538 Madison Realty Co.*, 1 N.Y.3d 470, 475 (2004)).

42. Specific performance is a proper remedy for a breach of contract if money damages would be inadequate to protect the expectation interest of the injured party, *see Sokoloff v. Harriman Estates Dev. Corp.*, 96 N.Y.2d 409, 415 (2001) (citing Restatement (Second) of Contracts § 359 (1981)), and when “the subject matter of the particular contract is unique and has no established market value.” *Sokoloff*, 96 N.Y.2d at 415 (quoting *Van Wagner Adver. Corp. v. S & M Enters.*, 67 N.Y.2d 186, 193 (1986)); *see also Cho v. 401–403 57th St. Realty Corp.*, 300 A.D.2d 174, 175 (1st Dep’t 2002) (“specific performance has been held to be a proper

remedy in actions for breach of contract . . . when the uniqueness of the [subject matter] in question makes calculation of money damages too difficult or too uncertain”). By its very nature, such a unique and precise honorary recognition cannot have a monetary calculation, much less an established market value.

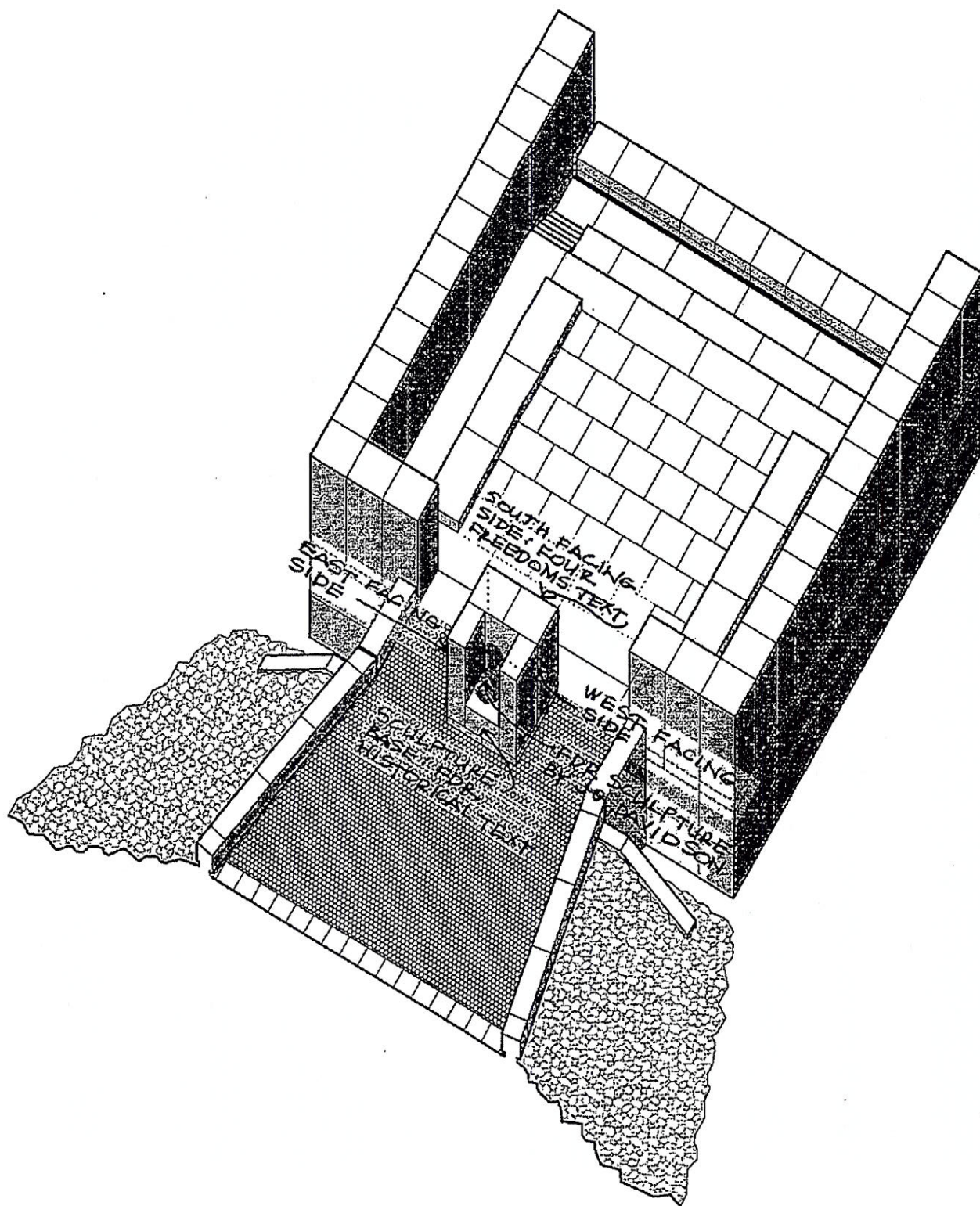
43. No prior application for the relief requested herein has been made to this or any other court.

Dated: New York, New York
October 4, 2012

/s/ Michael J. Garvey
Michael J. Garvey
SIMPSON THACHER & BARTLETT LLP
425 Lexington Avenue
New York, New York 10017-3954
Telephone: (212) 455-2000
Facsimile: (212) 455-2502
mgarvey@stblaw.com

Attorneys for Petitioner The Reed Foundation, Inc.

EXHIBIT A



FRANKLIN D. ROOSEVELT FOUR FREEDOMS PARK
THRESHOLD EXHIBIT

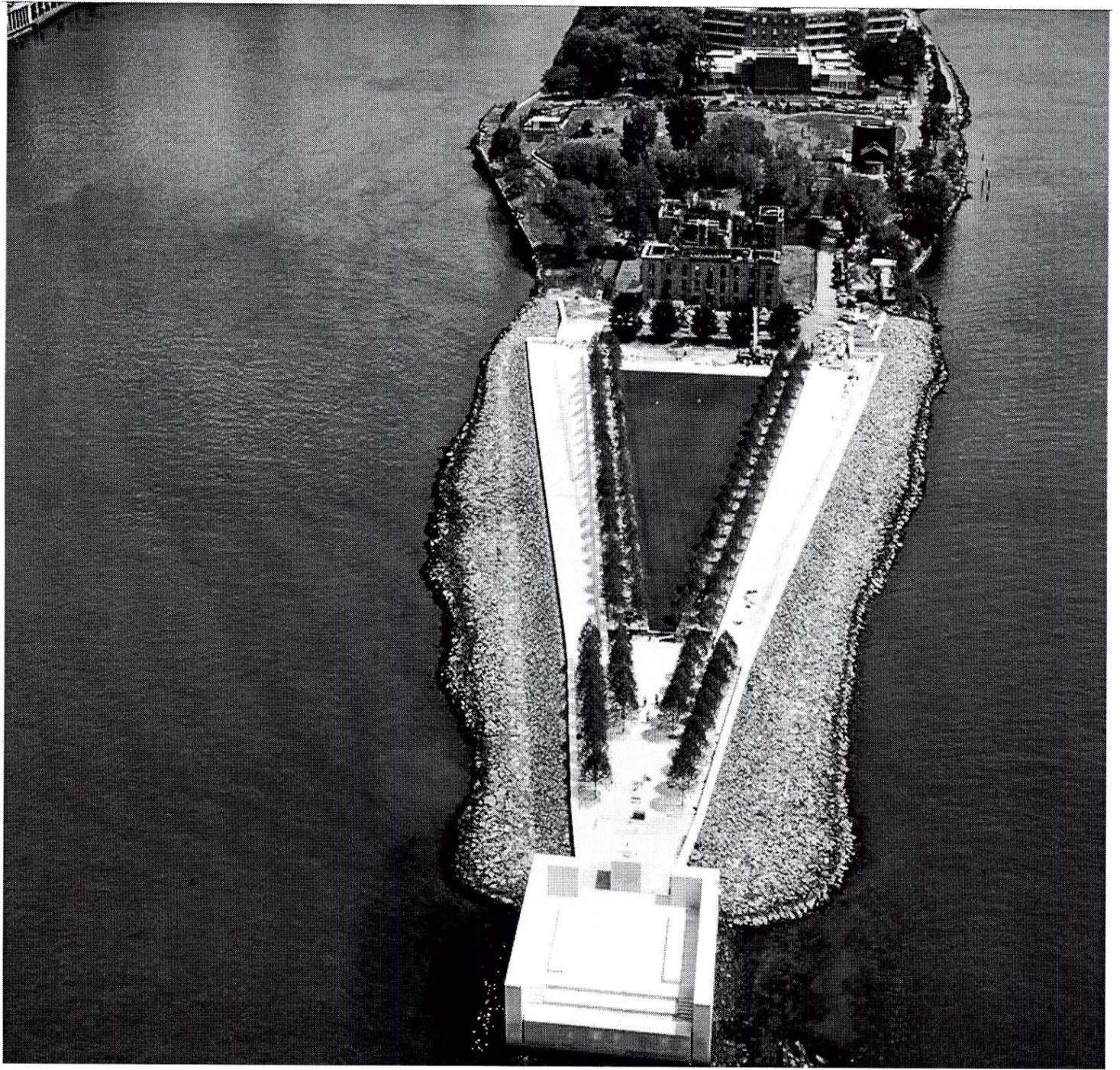


EXHIBIT B

THE REED FOUNDATION, INC.

EXECUTION COPY

March 26, 2010

The Franklin & Eleanor Roosevelt Institute
570 Lexington Avenue
New York, New York 10022
Attention: Andrew Rich, Chief Executive Officer

Franklin D. Roosevelt Four Freedoms Park, LLC
133 East 62nd Street
New York, New York 10065
Attention: Sally Minard

Re: Grant Agreement

Dear Mr. Rich and Ms. Minard:

Subject to the terms and conditions of this letter (the "Grant Agreement"),¹ The Reed Foundation, Inc. (the "Foundation") is pleased to award a grant (the "Grant") in the amount of \$2,500,000 (the "Grant Amount") to The Franklin & Eleanor Roosevelt Institute (the "Institute") to support Phase One (as defined in the Development Agreement) of construction of the FDR Four Freedoms Park designed by Louis I. Kahn on the southernmost end of Roosevelt Island. This Grant Agreement is made by and among the Foundation, the Institute and the Franklin D. Roosevelt Four Freedoms Park, LLC (the "LLC").

SECTION 1. GRANT.

1.1 Purpose. The purpose of the Grant is to support Phase One of construction of the FDR Four Freedoms Park, which phase must include the construction of the Threshold no later than December 31, 2011 (or such other later date agreed to in writing by the Foundation). For the avoidance of doubt, the construction of the Threshold will include: (a) the selection, design, casting and placement of the Roosevelt Bust to be centered on the Sculpture Base in the Sculpture Niche; and (b) the carving of, and/or other display of, the Threshold Recognition Text and the other text on the Threshold. A copy of the budget that outlines all costs and expenses associated with completion Phase One of construction of the FDR Four Freedoms Park is attached as Exhibit B (as modified from time to time, the "Budget"). As of the Effective Date, the budgeted amount for all costs and expenses associated with the completion of construction of Phase One of Construction of the FDR Four Freedoms Park (the "Phase One Amount") is \$15,642,989. If there is a material increase (i.e., greater than 5% of the Phase One Amount as of

¹ Capitalized terms not otherwise defined below have the meanings ascribed: (a) in Exhibit A, which is fully incorporated herein by reference, and (b) in the Recognition Agreement.

THE REED FOUNDATION, INC.

the Effective Date), the LLC will give notice of that increase to the Foundation and discuss with the Foundation how additional funds will be raised to pay for such increase.

1.2 Effective Date. This Grant Agreement will become effective on the date (the "Effective Date") on which the Foundation receives: (1) a countersigned copy of this Grant Agreement from the Institute; and (2) a countersigned copy of this Grant Agreement from the LLC.

1.3 Payment. The Grant Amount will be paid to the Institute on the Effective Date. The Institute will transfer the Grant Amount to the LLC on the Release Date (as defined in the TRF Funds Agreement). The Grant Amount may not be: (1) used prior to the Release Date; and (2) transferred to any other party other than the LLC, which transfer will be subject to all of the terms and conditions of the TRF Funds Agreement. The LLC acknowledges and agrees that under no circumstance does the Foundation, nor will the Foundation be deemed to, have any obligation to pay the Grant Amount to the LLC.

1.4 Certificates.

1.4.1 Funds Certificate. No later than December 31, 2010, the LLC will deliver to the Foundation a certificate of the LLC together with supporting documentation (in form and substance acceptable to the Foundation, the "Funds Certificate"), which certifies that:

- (1) as of the date of the Funds Certificate, the amount set forth in the Budget accurately accounts for the Phase One Amount, which amount is, according to the Budget in effect as of the Effective Date, \$15,642,989;
- (2) the LLC has received legally binding pledges and/or immediately available funds that, together with the Grant Amount and any irrevocable obligations made on the part of the City of New York and the State of New York has made for the sole purposes of constructing the FDR Four Freedoms Park, are equal to, or greater than, the Phase One Amount (collectively, the "Phase One Funds"); and
- (3) the Phase One Funds will be used for construction of Phase One of the FDR Four Freedoms Park.

1.4.2 RIOC Certificate. No later than December 31, 2010, the LLC will deliver to the Foundation a certificate of the LLC together with all supporting documentation (in form and substance acceptable to the Foundation, the "RIOC Certificate"), which certifies that:

- (1) except for Article 3(c) which will be satisfied when the TRF Funds are deposited in the LLC's escrow account under the Escrow Agreement (the "Escrow Account"), all of the conditions and obligations applicable to commence Phase One of construction of the FDR Four Freedoms Park set forth in Articles 3, 4 and 5(a) of the Development Agreement have been satisfied and/or otherwise waived (in writing) by the parties to the Development Agreement;

THE REED FOUNDATION, INC.

(2) the State of New York has delivered a Certificate of Approval of Availability regarding the Phase One Funds to be contributed by the State of New York (attach an executed copy of the Certificate of Approval of Availability to the RIOC Certificate);

(3) the City of New York and RIOC have executed the Funding Agreement (as defined in the Development Agreement) (attach a copy of the executed Funding Agreement to the RIOC Certificate); and

(4) once the TRF Funds are deposited in the Escrow Account, the construction of Phase One of the FDR Four Freedoms Park can and will commence as the term "commence" is described in Article 5(a) of the Development Agreement;

1.4.3 Construction Notification. No later than one business day after construction at the Project Site (as such term is defined in the Development Agreement) has commenced as the term "commence" is described in Article 5(a) of the Development Agreement, the LLC will notify the Foundation in writing of such commencement of construction..

1.5 Donor Recognition. To recognize the Grant, the LLC agrees that the Donor will receive the recognition described in Section 2.1 of the Recognition Agreement (collectively, the "Recognition") in connection with the FDR Four Freedoms Park. The LLC agrees that it will construct the Recognition in accordance with the terms, conditions and specifications set forth in the Recognition Agreement. In the event that: (1) naming rights are offered for the various sections of the FDR Four Freedoms Park (i.e., the Room, the Promenade and Garden, the Sculpture Court, the Forecourt, etc.), the naming right for the Sculpture Court has been granted to, and belongs to, the Foundation; and (2) a Founders' Wall recognizing those who have made contributions at or above the level of the Grant Amount is created during any phase of construction and/or development of the FDR Four Freedoms Park, the Institute agrees that the Foundation's Grant will be recognized as follows :

THE REED FOUNDATION

The LLC will ensure that the Recognition and other recognition opportunities described above will be binding on any developer or successor developer of the FDR Four Freedoms Park. Unless an amount equal to the Grant Amount funds have been returned to the Foundation, this Section 1.5 will be binding on any subsidiary or other successor of the LLC, or any successor developer of the FDR Four Freedoms Park. For the avoidance of doubt, it is understood that, notwithstanding the fact that the naming rights for the entire Sculpture Court have been granted to the Foundation, individual components of the Sculpture Court (other than the Threshold) may contain recognition of other donors who have contributed money for such individual components.

SECTION 2. AGREEMENTS, REPRESENTATIONS AND WARRANTIES.

2.1 The Institute. The Institute acknowledges and agrees that: (1) it is an organization exempt from Federal income taxation pursuant to Section 501(c)(3) and 509(a)(1) of the Internal Revenue Code of 1986, as amended; (2) all Grant Amount funds will only be used in accordance

THE REED FOUNDATION, INC.

with the terms and conditions of this Grant Agreement; (3) it will designate all Grant Amount funds that it transfers to the LLC as TRF Funds that are subject to the terms and conditions of this Grant Agreement, the Recognition Agreement and the TRF Funds Agreement; (4) it is the sole member of the LLC; (5) to the best knowledge of the Institute, no other authorizations or approvals, or filings or registrations with any court, administrative agency or commission or other governmental authority or instrumentality or self-regulatory organization or any other third party are necessary in connection with: (a) the execution and delivery of this Grant Agreement; and (b) the consummation of the transactions to be performed by the Institute under this Grant Agreement; (6) the Institute will exercise control over the Grant Amount funds by granting them to the LLC pursuant to the terms and conditions of the TRF Funds Agreement; (7) the Institute is fully authorized to enter into, execute and perform all of the terms and conditions, which are applicable to the Institute, of this Grant Agreement; (8) no amendments to the TRF Funds Agreement may be made without the prior written consent of the Foundation; and (9) the Institute will comply with all of the other terms and conditions of the TRF Funds Agreement, which are applicable to the Institute.

2.2 The LLC. The LLC represents, warrants, acknowledges and agrees that: (1) it reaffirms all of its representations, warranties and agreements set forth in Section 2 of the Recognition Agreement; (2) to the best knowledge of the LLC, no other authorizations or approvals, or filings or registrations with any court, administrative agency or commission or other governmental authority or instrumentality or self-regulatory organization or any other third party are necessary in connection with: (a) the execution and delivery of this Grant Agreement; and (b) the consummation of the transactions to be performed by the LLC under this Grant Agreement; (3) the LLC is fully authorized to enter into, execute and perform all of the terms and conditions, which are applicable to the Institute, of this Grant Agreement; (4) no amendments to the TRF Funds Agreement may be made without the prior written consent of the Foundation; (5) the LLC will comply with all of the other terms and conditions of the TRF Funds Agreement, which are applicable to the LLC; (6) the LLC expects that the Phase One Funds will include the following amounts from the: (a) City of New York: \$4,738,000 (the "City Commitment"); and (b) State of New York: \$4,000,000 (the "State Commitment"); and (7) if the Termination Date occurs, and the Foundation: (x) does not consent to an alternate use of the TRF Funds; and (y) requests that the LLC repay to the Foundation the full amount of the TRF Funds (which is \$2,500,000), then the LLC will repay the full amount of the TRF Funds within six months of the Foundation's request.

SECTION 3. REPORTING. Until Phase One of construction has been completed, the LLC will provide to the Foundation: (1) no later than sixty (60) calendar days after the end of the Institute's fiscal year, an annual written report (in form and substance acceptable to the Foundation, the "Annual Report"), which will include: (a) an accounting for the use of the Grant Amount funds; and (b) a description of the progress of the Project; and (2) upon reasonable written request by the Foundation, periodic oral and/or written updates regarding the progress of the Project and the use of the Grant Amount funds. The LLC further agrees that the Foundation may monitor use of the TRF Funds (including by making site visits), discuss the Project and its implementation with representatives of the LLC, and review books and records and other material, including financial records, connected with the Project.

THE REED FOUNDATION, INC.

SECTION 4. DISPUTE RESOLUTION. In the unlikely event a dispute arises out of, or relates to, this Grant Agreement, or the breach of this Grant Agreement, the LLC and the Institute agree to endeavor in good faith to resolve the dispute through discussion and negotiation with the Foundation within thirty (30) days (or such other longer period as agreed to in writing by the Foundation) after notice given by either the Institute, the LLC or the Foundation of a request for negotiation. If the dispute or breach is not resolved within such period, the matter may be resolved by binding arbitration conducted in New York City by three arbitrators pursuant to the then-existing arbitration rules of the International Chamber of Commerce, or by filing suit in a court of competent jurisdiction. Any controversy or claims will be kept confidential by the parties and their attorneys and advisors, without publicity, and except as may be required by law, no party, mediator or arbitrator may disclose the existence, content or results of any mediation or arbitration under this Grant Agreement without the written consent of the Foundation, the LLC and the Institute.

SECTION 5. INDEMNIFICATION.

5.1 The Institute. The Institute acknowledges and agrees that it will indemnify, defend, and hold harmless, the Foundation and its members, directors, officers, employees, successors and assigns from, and against, any and all third party claims, liabilities, injuries, damages, costs and expenses, including, without limitation, outside attorneys' fees (provided that the Foundation retains attorneys reasonably acceptable to the Institute) and related costs, of any nature whatsoever, arising out of, incidental to, or in connection with any breach by the Institute of any of its obligations, representations or warranties contained in this Agreement.

5.2 The LLC. The LLC acknowledges and agrees that it will indemnify, defend, and hold harmless, the Foundation and its members, directors, officers, employees, successors and assigns from, and against, any and all third party claims, liabilities, injuries, damages, costs and expenses, including, without limitation, outside attorneys' fees (provided that the Foundation retains attorneys reasonably acceptable to the LLC) and related costs, of any nature whatsoever, arising out of, incidental to, or in connection with any breach by the LLC of any of its obligations, representations or warranties contained in this Agreement.

SECTION 6. ENFORCEMENT. The Foundation reserves the right to enforce the terms of this Grant Agreement. Each of the Institute and the LLC agrees that it will not contest the standing of the Foundation to bring any such arbitration or suit.

SECTION 7. TERMINATION/ SURVIVAL. The parties agree that the Foundation may, in its sole discretion, terminate this Grant Agreement by providing a written notice of Termination to the Institute and the LLC (the date of termination referred to in such notice, the "Termination Date") if any of the following events (each, a "Termination Event") occur :

- (1) the Institute loses its exemption from Federal income taxation;
- (2) any aspect of the Project materially changes or it becomes impracticable to comply with requirements of Sections 1 and 2 of the Recognition Agreement;

THE REED FOUNDATION, INC.

- (3) the Threshold has not been installed in the Sculpture Court by December 31, 2011;
- (4) a Default (as defined in the Recognition Agreement) occurs;
- (5) the Institute ceases to be the sole member of the LLC;
- (6) the LLC ceases to be the developer of the FDR Four Freedoms Park;
- (7) the LLC does not provide the Funds Certificate to the Foundation on or before December 31, 2010;
- (8) the LLC does not provide the RIOC Certificate to the Foundation on or before December 31, 2010;
- (9) at any time up to the point in which the City Commitment has been paid in full for purposes of the construction expenses of Phase One of construction of the FDR Four Freedoms Park: (a) the Foundation reasonably determines that: (x) the Funding Agreement is terminated in accordance with Paragraph 15 of the Funding Agreement; or (y) the City fails to reimburse, in accordance with the City's standard practices, the Phase One construction expenses from the City Commitment for more than 120 days (each, a "City Termination Event"), and (b) the LLC does not obtain, and identify to the Foundation, an alternate source of funds to replace those Phase One Funds within 60 days of the City Termination Event; or
- (10) at any point up to the date that the State Commitment has been expended in full for purposes of the construction expenses of Phase One of construction of the FDR Four Freedoms Park: (a) the Foundation reasonably determines that: (i) State Commitment has been revoked or is not being applied for the purposes of Phase One of construction, or (ii) the State fails to reimburse, in accordance with the State's standard practices, the Phase One construction expenses from the State Commitment for more than 120 days (each, a "State Termination Event"); and (b) the LLC does not obtain, and identify to the Foundation, an alternate source of funds to replace those Phase One Funds within 60 days of the State Termination Event.

The Foundation agrees that if a Termination Event occurs, it will only seek reimbursement of the Grant Amount funds from the LLC in accordance with Section 2.2(3) and (4), as applicable, and it will not seek any reimbursement from the Institute. Notwithstanding the occurrence of the Termination Date: (a) the Institute and the LLC agree that following Sections will survive: 4, 5.1, 5.2, 6, 7, 8, 9 and 10; (b) the LLC further agrees that Section 1.5 will survive; and (c) except for the surviving Sections, there will be no further obligations under this Grant Agreement.

SECTION 8. PUBLICITY. Except for disclosures (i) required by law (e.g., Form 990), (ii) for regulatory purposes, and (iii) for audit purposes, each of the LLC and the Institute agrees to

THE REED FOUNDATION, INC.

obtain the Foundation's approval prior to disclosing, and/or otherwise referring to, the terms and conditions of this Agreement and/or the Grant to any other third party or otherwise in any external communications, documents, materials or other communications.

SECTION 9. COMMUNICATIONS. All communications required by this Grant Agreement to be in writing will be emailed, mailed, faxed or sent by courier to:

THE DONOR	THE INSTITUTE	THE LLC
The Reed Foundation, Inc. 500 Fifth Avenue, Suite 2222 New York, New York 10110 <u>Telephone:</u> 212-768-4996 <u>Facsimile:</u> 212-768-4998 <u>With a copy to:</u> Simpson Thacher & Bartlett LLP 425 Lexington Avenue New York, New York 10017 <u>Attention:</u> Victoria B. Bjorklund, Esq. Karen Ann Alinauskas, Esq. <u>Telephone:</u> 212-455-2000 <u>Facsimile:</u> 212-455-2502 <u>Email:</u> vbjorklund@stblaw.com kalinauskas@stblaw.com	The Franklin & Eleanor Roosevelt Institute 570 Lexington Avenue New York, New York 10022 <u>Attention:</u> Andrew Rich <u>Telephone:</u> 212-444-9134 <u>Email:</u> arich@rooseveltinstitute.org	Franklin D. Roosevelt Four Freedoms Park, LLC 133 East 62 nd Street New York, New York 10065 <u>Attention:</u> Sally Minard <u>Telephone:</u> 212-204-8831 <u>Facsimile:</u> 212-486-1405 <u>Email:</u> sminard@dti.net

SECTION 10. MISCELLANEOUS. Each of the Institute and the LLC acknowledges and agrees that they may not assign or transfer this Grant Agreement or any of their respective rights or obligations under this Grant Agreement without the prior written consent of the Foundation. This Grant Agreement constitutes the entire agreement between the parties with respect to the Grant and supersedes all prior or contemporaneous agreements or understandings, written or oral, concerning the Grant and the rest of the subject matter contained in this Grant Agreement. All amendments, alterations, waivers, modifications or other changes to this Grant Agreement must be made in a writing signed by all of the parties. Any failure by the Foundation to require strict performance by the Institute or the LLC of any provision of this Grant Agreement will not constitute a waiver of the provision and will not affect the Foundation's right to require strict performance on another occasion. If any provision of this Grant Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Grant Agreement will remain in full force and effect and such determination will in no way affect the validity or enforceability of any other provision of this Grant Agreement. This Grant Agreement is binding upon the parties and their respective successors and assigns. The headings of the Sections, paragraphs and subsections of this Grant Agreement are inserted for convenience only and will not affect the construction or interpretation of this Grant Agreement. This Grant Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which will constitute one and the same agreement. Delivery of an executed

THE REED FOUNDATION, INC.

signature page of this Grant Agreement by facsimile or portable document format (PDF) will be effective as delivery of a manually executed signature page of this Grant Agreement. Any legal action or proceeding relating to this Grant Agreement will be subject to the exclusive jurisdiction of the courts of the State of New York located in the county of New York and the United States District Court for the Southern District of New York and their respective appellate courts. Any arbitration will take place in the City of New York. This Grant Agreement will be governed by and construed in accordance with the laws of the State of New York, without regard to the conflict of laws rules.

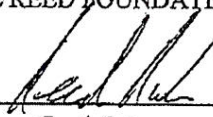
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THE REED FOUNDATION, INC.

If the Institute and the LLC consent to the terms and conditions of this Grant Agreement, please have an authorized officer of the Institute and the LLC sign below and return the executed original of this Grant Agreement to the Foundation.

Sincerely yours,

THE REED FOUNDATION, INC.


By: *Reed Rubin*
Title: *President*

ACCEPTED AND AGREED THIS 26th DAY OF MARCH, 2010

The Franklin & Eleanor Roosevelt Institute

By:
Title:

ACCEPTED AND AGREED THIS 26th DAY OF MARCH, 2010

FRANKLIN D. ROOSEVELT FOUR FREEDOMS PARK, LLC

By:
Title:

If the Institute and the LLC consent to the terms and conditions of this Grant Agreement, please have an authorized officer of the Institute and the LLC sign below and return the executed original of this Grant Agreement to the Foundation.

Sincerely yours,

THE REED FOUNDATION, INC.

By:
Title:

ACCEPTED AND AGREED THIS 26 th DAY OF MARCH, 2010
The Franklin & Eleanor Roosevelt Institute

By: Andrew Rich
Title: President & CEO

ACCEPTED AND AGREED THIS 26 th DAY OF MARCH, 2010
FRANKLIN D. ROOSEVELT FOUR FREEDOMS PARK, LLC
By:
Title:

THE REED FOUNDATION, INC.

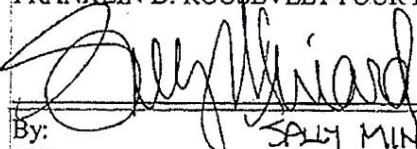
If the Institute and the LLC consent to the terms and conditions of this Grant Agreement, please have an authorized officer of the Institute and the LLC sign below and return the executed original of this Grant Agreement to the Foundation.

Sincerely yours,

THE REED FOUNDATION, INC.

By:
Title:

ACCEPTED AND AGREED THIS 26 th DAY OF MARCH, 2010
The Franklin & Eleanor Roosevelt Institute
By:
Title:

ACCEPTED AND AGREED THIS 26 th DAY OF MARCH, 2010
FRANKLIN D. ROOSEVELT FOUR FREEDOMS PARK, LLC

By: SALLY MINARD
Title: PRESIDENT/CEO

THE REED FOUNDATION, INC.

EXECUTION COPY

EXHIBIT A

ADDITIONAL DEFINED TERMS

"Development Agreement": means the Development Agreement dated March 24, 2010 by and between RIOC and the LLC regarding the development of the FDR Four Freedoms Park, in the form in existence as of March 24, 2010.

"Escrow Agreement": means the Escrow Agreement dated March 24, 2010 by and between RIOC, the LLC and JPMorgan Chase Bank regarding the escrow account held for the benefit of the LLC for the Private Funds (as defined in the Development Agreement).

"FDR Four Freedoms Park": means the park designed by Louis I. Kahn that is located on the southernmost end of Roosevelt Island.

"Founders' Wall": means any wall or other form of donor recognition signage acknowledging the founders and/or other donors of the Park.

"Four Freedoms Speech": means the address given by President Franklin Delano Roosevelt to Congress on January 6, 1941, in which he proposed four points as fundamental freedoms humans "everywhere in the world" ought to enjoy: (1) freedom of speech and expression; (2) freedom to worship; (3) freedom from want; and (4) freedom from fear.

"Parks Confirmation": means the letter dated January 26, 2010 from Carol Ash, Commissioner of the New York State Office of Parks, Recreation and Historic Preservation to Steven Shane of RIOC, pursuant to which the New York State Office of Parks, Recreation & Historic Preservation confirmed its responsibility for operating and maintaining the FDR Four Freedoms Park.

"Project": means all construction of the FDR Four Freedoms Park that is paid for using the TRF Funds.

"Recognition Agreement": means the Recognition Agreement dated March 26, 2010 by and between the Foundation and the LLC regarding the terms, conditions and specifications for the construction, placement and design of the Recognition and the use of the TRF Funds with respect to the FDR Four Freedoms Park.

"RIOC": means the Roosevelt Island Operating Corporation and any of its successors.

"Sculpture Court": has the meaning ascribed to such term in the Recognition Agreement.

"Threshold": has the meaning ascribed to such term in the Recognition Agreement.

"TRF Funds": means all Grant Amount funds transferred by the Institute to the LLC in accordance with the TRF Funds Agreement. The LLC's use of the TRF Funds is subject to the terms and conditions of this Grant Agreement, the Recognition Agreement and the TRF Funds

THE REED FOUNDATION, INC.

Agreement. If there is any discrepancy among the foregoing agreements, the terms and conditions of the Recognition Agreement will govern.

"TRF Funds Agreement": means the agreement by and between the Institute and the LLC dated March 26, 2010 regarding the use of the TRF Funds that the Institute plans to distribute to the LLC for purposes of the Threshold Construction (as defined in the TRF Funds Agreement).

**FRANKLIN D. ROOSEVELT FOUR
FREEDOMS
PARK**

**Phase I
Budget**

HARD COSTS		
Per Scheme 2/1/2010	Site Mobilization & Maintenance	30,000
	Excavation & Foundation	3,034,000
	Landscaping	0
	Stone - Quarry & Fabrication	2,888,800
	Stone - Installation	1,878,730
	Architectural Metals	25,000
	Glass Safety Barrier	100,000
	Plumbing	0
	Electrical	0
	End of Phase Contingency (Project Enhancement)	200,000
	Total Trade Cost	8,217,530
	Construction Contingency (3%)	246,526
	Subtotal	8,567,856
	General Conditions	1,144,787
	Insurance (1.75%)	158,957
	Overhead & Fee (3%)	296,453
Total Cost of Construction		10,178,233
10% Contingency		1,017,823
Total Hard Costs		11,196,057

SOFT COSTS		
Mitchell/Giurgola	Architect & Subconsultants - Scoping and Design	1,252,405
Mitchell/Giurgola	Architect Construction Administration	219,910
JR Loring & Assoc.	MEP/FP Consultants CA	25,291
Weidinger Associates	Structural Consultants CA	23,860
Langen Engineering	Civil Engineers CA	87,858
Lola Sherr Dublin	Landscape architect CA	0
	Site Surveys	20,000
Scheme	Preconstruction services	100,000
TRC	Soil Testing	118,798
Melbourn Swensen	Stone Consultant	24,020
Stevens/Benson	Stone Carver (Letters)	45,000
	Structural Peer Review	15,000
	Estimator	10,000
	Inspector/Code Consultant	25,000
	Vibration Monitoring	28,833
	Controlled Inspections	34,000
	Signage/Graphic Designer	32,000
	Navigational Hazard Lighting	16,000
PG + consultants	Consultant Fixed Reimbursables	15,000
PG + consultants + misc	Travel and Direct Expenses	50,000
Subtotal Soft Costs		2,151,873
10% Contingency		215,187
Total Soft Costs		2,366,188
Total Hard and Soft Costs		13,562,237

FF&E		
	Outdoor Furniture, Signage, Trash Receptacles	0

OWNER COSTS		
Paribus Group (and Lavin)	Project Management	348,500
multiple firms	Legal (Contracts, RIOC, Development)	200,000
	Insurance Consultant	8,000
	General Liability Insurance	61,800
	Excess Liability Insurance	28,586
	Builder's Risk Insurance	18,750
	Permits	500
	Door Carving, Signage, FDR Bust	325,000
	Video/Photography Documentation	20,000
	Modupe	75,000
	Agency Funding Oversight	80,000
	Site Utilities	45,000
Subtotal Owner Costs		1,272,236
5% Contingency		63,612
Total Owner Costs		1,335,848
Total Base Project Cost		14,898,085
5% Contingency		744,904
TOTAL BASE PROJECT		15,642,989

Paribus

2/2/2010

EXHIBIT C

THE REED FOUNDATION, INC.

March 26, 2010

Franklin D. Roosevelt Four Freedoms Park, LLC
147 West 35th Street, Suite 601
New York, NY 10001
Attention: Sally Minard

Re: Recognition Agreement

Dear Sally:

This letter (the "Recognition Agreement")¹ sets forth the terms, conditions and specifications for the construction, placement and design of the Recognition and the use of the TRF Funds with respect to the FDR Four Freedoms Park. This Recognition Agreement will become effective on the date on which: (1) the Foundation receives a countersigned copy of this Recognition Agreement from the LLC; and (2) the Effective Date has occurred under the Grant Agreement.

SECTION 1. RECOGNITION.

1.1 Threshold Recognition Text. The LLC, as developer of the FDR Four Freedoms Park, acknowledges and agrees that the Recognition (as defined in the Grant Agreement) will be constructed in accordance with the terms and specifications set forth below:

(a) the following text (the "Threshold Recognition Text") will be permanently carved on the West-Facing Side of the Threshold:

IN HONOR OF
VERA D. RUBIN AND SAMUEL RUBIN
THE REED FOUNDATION

(b) the Threshold Recognition Text will be: (1) carved in a manner, size, font and placement reasonably acceptable to the Foundation and the LLC; (2) carved and designed by The John Stevens Shop under the supervision of Nick Benson, Creative Director, or another firm with master carvers equal in reputation and skill working with the relationship between architecture and lettering; and (4) will be legible and will be maintained, refinished, restored and otherwise kept in good repair;

(c) other than the Threshold Recognition Text on the West-Facing Side, no other text, signage or similar wording recognizing a donor or other contributor may be placed on the West-Facing Side of the Threshold or the North-Facing Side of the Threshold; and

¹ Capitalized terms not otherwise defined below have the meanings ascribed to such terms in: (a) Exhibit A, which is fully incorporated herein by reference; and (b) the Grant Agreement dated March 26, 2010 (as amended from time to time, the "Grant Agreement") by and among The Franklin & Eleanor Roosevelt Institute, The Reed Foundation, Inc. and the Franklin D. Roosevelt Four Freedoms Park, LLC (the "LLC").

THE REED FOUNDATION, INC.

(d) no other carving, inscription, or other signage may be displayed on the West-Facing Side of the Threshold without the prior written consent of the Foundation.

1.2 Other Recognition Rights. The LLC acknowledges and agrees that, in the event that: (1) naming rights are offered for the various sections of the FDR Four Freedoms Park (i.e., the Room, the Promenade and Garden, the Sculpture Court, the Forecourt, etc.), the naming right for the Sculpture Court has been granted to, and belongs to, the Foundation; and (2) a Founders' Wall recognizing those who have made contributions at or above the level of the Grant Amount is created during any phase of construction and/or development of the FDR Four Freedoms Park, the Foundation's Grant will be recognized as follows :

THE REED FOUNDATION

This Section 1.2 will be binding on any successor developer of the FDR Four Freedoms Park. For the avoidance of doubt, it is understood that, notwithstanding the fact that the naming rights for the entire Sculpture Court have been granted to the Foundation, individual components of the Sculpture Court (other than the Threshold) may contain recognition of other donors who have contributed money for such individual components.

SECTION 2. AGREEMENTS, REPRESENTATIONS AND WARRANTIES. The LLC represents, warrants, acknowledges and agrees that: (1) it is a New York limited liability company; (2) the sole member of the LLC is the Institute; (3) the LLC is in good standing with the State of New York; (4) any TRF Funds that the LLC receives from the Institute pursuant to the TRF Funds Agreement will only be used as provided in this Recognition Agreement; (5) to the best of its knowledge, no other authorizations or approvals, or filings or registrations, with any court, administrative agency or commission or other governmental authority or instrumentality or self-regulatory organization or any other third party are necessary in connection with: (a) the execution and delivery of this Recognition Agreement; and (b) the consummation of the transactions contemplated by this Recognition Agreement; (6) the construction drawings and specifications attached to this Recognition Agreement (in the form attached hereto as Exhibit B, the "Construction Drawings and Specifications") are based upon the Kahn Design and have been conformed with the following definitions in Exhibit A: (a) North-Facing Side; (b) Room; (c) Roosevelt Bust; (d) Sculpture Base; (e) Sculpture Court; (f) Sculpture Niche; (g) Threshold; (h) Threshold Recognition Text; and (i) West-Facing Side; (7) the Construction Drawings and Specifications will be used to construct the Threshold in accordance with the terms and conditions of this Agreement; (8) the LLC will request that the operator of the FDR Four Freedoms Park ensure, at all times, that the Threshold Recognition Text is legible and will be maintained, refinished, restored and otherwise kept in good repair; (9) the Development Agreement provides that the construction of the FDR Four Freedoms Park is substantially based upon the Kahn Design; and (10) the Foundation has no obligation to pay to the LLC any funds pursuant to the Grant Agreement or this Recognition Agreement.

SECTION 3. REPORTING. Until the date that the TRF Funds have been expended in full, the LLC will provide to the Foundation: (1) no later than sixty (60) calendar days after the end of the LLC's fiscal year, an annual written report (in form and substance acceptable to the Foundation, the "Annual Report"), which will include: (a) an accounting for the use of the TRF Funds; and (b) a description of the progress of the Project; and (2) upon reasonable request by the Foundation, periodic oral and/or written updates regarding the progress of the Project and the use of the TRF Funds. The LLC further agrees that the Foundation may monitor use of the TRF Funds (including by making site visits), discuss the Project and its implementation with representatives of the LLC, and review books and records and other material, including financial records, connected with the Project.

THE REED FOUNDATION, INC.

SECTION 4. DISPUTE RESOLUTION. In the unlikely event a dispute arises out of, or relates to, this Recognition Agreement, or the breach of this Recognition Agreement, the LLC agrees to endeavor in good faith to resolve the dispute through discussion and negotiation with the Foundation within thirty (30) days (or such other longer period as agreed to in writing by the Foundation) after notice given by either the LLC or the Foundation of a request for negotiation. If the dispute or breach is not resolved within such period, the matter may be resolved by binding arbitration conducted in New York City by three arbitrators pursuant to the then-existing arbitration rules of the International Chamber of Commerce, or by filing suit in a court of competent jurisdiction. Any controversy or claims will be kept confidential by the parties and their attorneys and advisors, without publicity, and except as may be required by law, no party, mediator or arbitrator may disclose the existence, content or results of any mediation or arbitration under this Recognition Agreement without the written consent of the Foundation and the LLC.

SECTION 5. INDEMNIFICATION. The LLC acknowledges and agrees that it will indemnify, defend, and hold harmless, the Foundation and its members, directors, officers, employees, successors and assigns from, and against, any and all third party claims, liabilities, injuries, damages, costs and expenses, including, without limitation, outside attorneys' fees and related costs (provided that the Foundation retains attorneys reasonably acceptable to the LLC), of any nature whatsoever, arising out of, incidental to, or in connection with the subject matter of this Recognition Agreement.

SECTION 6. DEFAULT. Each of the following events constitutes a default under this Recognition Agreement (each, a "Default"): (1) the LLC fails to perform, breaches or otherwise defaults upon, and fails to cure, one or more of the requirements set forth in Sections 1-4 of this Recognition Agreement; (2) the LLC is no longer an entity in good standing with the Department of State of the State of New York; (3) any aspect of construction of the FDR Four Freedoms Park materially changes or it becomes impracticable to comply with requirements of Sections 1-4 of this Recognition Agreement; (4) the Threshold has not been installed in the Sculpture Court by December 31, 2011; (5) the Foundation does not receive the Funds Certificate on or before December 31, 2010; (6) the Foundation does not receive the RIOCC Certificate on or before December 31, 2010; (7) an Event of Default (as defined in the TRF Funds Agreement) occurs; (8) an event of default occurs under the Development Agreement; (9) the Termination Date occurs under the Grant Agreement; or (10) construction of Phase One of the FDR Four Freedoms Park is suspended for a period of more than sixty days and such suspension is not due to Uncontrollable Delay. The LLC agrees that the Foundation's remedies at law for a failure to perform, breach or threatened breach of any of Sections 1 and 2 of this Recognition Agreement would be inadequate and the Foundation would suffer irreparable damages as a result of such failure to perform, breach or threatened breach. In recognition of this fact, the LLC agrees that, in the event of the LLC's failure to perform, breach or threatened breach, in addition to any remedies at law, the Foundation, without posting any bond, shall be entitled to seek equitable relief in the form of specific performance, temporary restraining order, temporary or permanent injunction or any other equitable remedy which may then be available. Sections 5, 6, 7, 8 and 9 will survive any termination of this Recognition Agreement.

SECTION 7. PUBLICITY. The LLC agrees to obtain the Foundation's approval prior to disclosing, and/or otherwise referring to, the terms and conditions of this Recognition Agreement and the Grant Agreement to any other third party (other than the Institute) or otherwise in any external communications, documents, materials or other communications.

THE REED FOUNDATION, INC.

SECTION 8. COMMUNICATIONS. All communications required by this Recognition Agreement to be in writing will be emailed, mailed, faxed or sent by courier to:

THE DONOR	THE LLC
The Reed Foundation, Inc. 500 Fifth Avenue, Suite 2222 New York, New York 10110 Telephone: 212-768-4996 Facsimile: 212-768-4998 With a copy to: Simpson Thacher & Bartlett LLP 425 Lexington Avenue New York, New York 10017 Attention: Victoria B. Bjorklund, Esq. Karen Ann Alinauskas, Esq. Telephone: 212-455-2000 Facsimile: 212-455-2502 Email: vbjorklund@stblaw.com kalinauskas@stblaw.com	Franklin D. Roosevelt Four Freedoms Park, LLC 133 East 62nd Street New York, New York 10065 Attention: Sally Minard Telephone: 212-204-8831 Facsimile: 212-486-1405 Email: sminard@dti.net

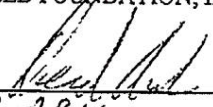
SECTION 9. MISCELLANEOUS. The LLC acknowledges and agrees that it may not assign or transfer this Recognition Agreement or any of its rights or obligations under this Recognition Agreement without the prior written consent of the Foundation. This Recognition Agreement constitutes the entire agreement between the parties with respect to the Recognition and use of the TRF Funds and supersedes all prior or contemporaneous agreements or understandings, written or oral, concerning the Recognition and use of the TRF Funds and the rest of the subject matter contained in this Recognition Agreement. All amendments, alterations, waivers, modifications or other changes to this Recognition Agreement must be made in a writing signed by all of the parties. Any failure by the Foundation to require strict performance by the LLC of any provision of this Recognition Agreement will not constitute a waiver of the provision and will not affect the Foundation's right to require strict performance on another occasion. If any provision of this Recognition Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Recognition Agreement will remain in full force and effect and such determination will in no way affect the validity or enforceability of any other provision of this Recognition Agreement. This Recognition Agreement is binding upon the parties and their respective successors and assigns. The headings of the Sections, paragraphs and subsections of this Recognition Agreement are inserted for convenience only and will not affect the construction or interpretation of this Recognition Agreement. This Recognition Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which will constitute one and the same agreement. Delivery of an executed signature page of this Recognition Agreement by facsimile or portable document format (PDF) will be effective as delivery of a manually executed signature page of this Recognition Agreement. Any legal action or proceeding relating to this Recognition Agreement will be subject to the exclusive jurisdiction of the courts of the State of New York located in the county of New York and the United States District Court for the Southern District of New York and their respective appellate courts. Any arbitration will take place in the City of New York. This Recognition Agreement will be governed by and construed in accordance with the laws of the State of New York, without regard to the conflict of laws rules.

THE REED FOUNDATION, INC.

If the LLC consents to the terms and conditions of this Recognition Agreement, please have an authorized officer of the LLC sign below, and return the executed original of this Recognition Agreement to the Foundation.

Sincerely yours,

THE REED FOUNDATION, INC.


By: *Reed Rubin*
Title: *President*

ACCEPTED AND AGREED THIS ____ DAY OF ____, 2010
Franklin D. Roosevelt Four Freedoms Park, LLC
By: _____
Title: _____

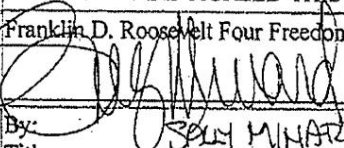
THE REED FOUNDATION, INC.

If the LLC consents to the terms and conditions of this Recognition Agreement, please have an authorized officer of the LLC sign below, and return the executed original of this Recognition Agreement to the Foundation.

Sincerely yours,

THE REED FOUNDATION, INC.

By: _____
Title:

ACCEPTED AND AGREED THIS ____ DAY OF ____, 2010	
Franklin D. Roosevelt Four Freedoms Park, LLC	
	
By:	SETH MINARD
Title:	PRESIDENT/CEO

THE REED FOUNDATION, INC.

EXHIBIT A

ADDITIONAL DEFINED TERMS

"Founders' Wall": means any wall or other form of donor recognition signage acknowledging the founders and/or other donors of the Park.

"Four Freedoms Speech": means the address given by President Franklin Delano Roosevelt to Congress on January 6, 1941, in which he proposed four points as fundamental freedoms humans "everywhere in the world" ought to enjoy: (1) freedom of speech and expression; (2) freedom to worship; (3) freedom from want; and (4) freedom from fear.

"North-Facing Side": means the North-Facing Side is the North-facing side of the Sculpture Base, contained within the Niche Stones of the Threshold that is 6' (w) x 3' (h) and that is suitable for inscription.

"Room": means a 60-foot square plaza (perimeter 72-foot square), open to the sky, and defined on: two sides (East and West) by 6' x 6' x 12' closely spaced granite blocks; one side by granite blocks similar to those on the East and West; two 12' wide entry openings and the Threshold. The open south side of the Room provides a protected overlook where visitors may stand or sit to reflect upon the words of Roosevelt and the spectacular views of the city and river. Except for the South-Facing Side of the Threshold, there will be no excerpts of the text of President Roosevelt's Four Freedoms Speech carved into the granite blocks of the Room.

"Roosevelt Bust": means a bronze colossal head of President Franklin D. Roosevelt cast from a portrait from life in 1933-34 by the American sculptor Jo Davidson (1883-1952). The Roosevelt Bust will be placed in the Sculpture Niche of the Threshold.

"Sculpture Base": The Sculpture Base will be located within the Sculpture Niche. The size and nature of the Sculpture Base is believed to be a simple, solid granite block, of an approximate maximum size of 6' (w) x 3-4' (h) x 6' (d), on a 1' high plinth, inserted in the space between the 3' x 6' x 12' North-facing blocks of the Threshold.

"Sculpture Court": means the section of the Park that marks the entrance to the Room. The Threshold will be placed at the South end of the Sculpture Court, between the two entrances to the Room.

"Sculpture Niche": means the 6' (d) niche space in the North-Facing Side of the Threshold. The Roosevelt Bust will be placed in the Sculpture Niche of the Threshold.

"South-Facing Side": means the side of the Threshold facing the Room and on which the excerpts of the text of the Four Freedoms Speech will be carved.

"The John Stevens Shop": means a company located in Rhode Island that specializes in the carving of stone inscriptions.

"Threshold": The Threshold, which is located at the South end of the Sculpture Court, is a 12' square structure. The Threshold is composed of:

- (A) Two 6' (w) x 6' (d) x 12' (h) granite blocks creating a South-facing side of the Threshold that is 12' x 12';

THE REED FOUNDATION, INC.

- (B) Two 3'(w) x 6'(d) x 12' (h) solid granite blocks ("Niche Stones") creating a "West-Facing Side" of the Threshold and an East-facing side of the Threshold, each of which is 12' x 12';
- (C) The Sculpture Base, which includes the North-Facing Side;
- (D) The Roosevelt Bust, which will be placed on the Sculpture Base; and
- (E) The Threshold Recognition Text to be carved on the West-Facing Side of the Threshold and the excerpts of the text of the Four Freedoms Speech to be carved on the South-Facing Side of the Threshold.

All of the architectural metals on the Threshold (if any) will be bronze unless otherwise agreed to by the Foundation. For purposes of this Recognition Agreement, all references to the Threshold include: (a) the Roosevelt Bust, (b) the Threshold Recognition Text and the excerpts of the text of the Four Freedoms Speech to be carved on the Threshold, (d) the Sculpture Base, and (e) the Sculpture Niche.

"Threshold Recognition Text": means the text described in Section 1.1(1)(a), which text is subject to the requirements set forth in Section 1.1(1)(a)-(d) of this Recognition Agreement.

"Uncontrollable Delay" means delay in construction of the FDR Four Freedoms Park directly caused by Uncontrollable Events as determined pursuant to good development and construction scheduling practices, provided, however, in order for the LLC to avail itself of an Uncontrollable Delay, the LLC must notify the Foundation promptly after the occurrence of an event that in the reasonable opinion of the LLC constitutes an Uncontrollable Delay and must notify the Foundation of the day on which such Uncontrollable Delay ceased.

"Uncontrollable Event" means any of the following events that has a direct material adverse impact on the construction of the FDR Four Freedoms Park: (i) acts of God (not including any reasonably anticipated weather events that would be scheduled for pursuant to good development and construction scheduling practices), (ii) war, riot and other civil unrest, including acts of terrorism, (iii) governmental restrictions arising after the date of this Agreement (e.g., general building or utility moratorium that makes impractical or impossible continuing the development of the FDR Four Freedoms Park); and (iv) fire or unavoidable physical casualty to the FDR Four Freedoms Park, for which the LLC must have adequate insurance coverage.

"West-Facing Side": see definition of Threshold.

EXHIBIT D

FRANKLIN D. ROOSEVELT
1882 - 1945

IN HONOR OF VERA D. RUBIN AND SAMUEL RUBIN, THE RUBIN FOUNDATION



IN HONOR OF VERA D. RUBIN AND SAMUEL RUBIN - THE REED FOUNDATION

-----Original Message-----

From: Bjorklund, Victoria B
Sent: Thursday, June 21, 2012 11:26 AM
To: Gina Pollara (gpollara@fdrffp.org)
Cc: 'sminard@dti.net'
Subject: FW: Four Freedoms Park

Dear Gina--I write to follow up on our call yesterday to confirm that The Reed Foundation is very happy with and agrees to this placement shown in the attached mock up showing placement of the Threshold Recognition Text on the West-Facing Side, as specified in Section 1.1 of the Recognition Agreement dated March 26, 2010. I also confirm my oral statement to you that The Reed Foundation is willing to have the color of the engraved letters changed from black to grey.

As specified in Section 8 of the Recognition Agreement, I am cc'ng Sally Minard.

We are all so excited with this beautiful Park and look forward to visiting it with visitors and friends after the opening!

With best regards,

Victoria

IRS Circular 230 disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under federal, state or local tax law or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

Victoria B. Bjorklund

Partner

Founder and Head, Exempt Organizations Group Co-Chair, Diversity Committee Simpson Thacher & Bartlett LLP

425 Lexington Avenue

New York, New York 10017

Tel: (212) 455-2875

Cell: (646) 258-9444

Fax: (212) 455-2502

vbjorklund@stblaw.com

-----Original Message-----

From: Reed Rubin [<mailto:reedrubin@gmail.com>]

Sent: Wednesday, June 20, 2012 6:23 AM
To: Bjorklund, Victoria B
Subject: Mock up

As agreed.

EXHIBIT E

FRANKLIN D. ROOSEVELT **FOUR** **FREEDOMS** **PARK** LLC

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George H. W. Bush
William J. Clinton
Mrs. Ronald Reagan

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Mario Cuomo
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Frederick P. Furth
Rudolph Giuliani
Doris Kearns Goodwin
Agnes Gund
Dolores Huerta
Lady Bird Johnson*
Vernon E. Jordan, Jr.
Caroline Kennedy
Henry Kissinger
Edward I. Koch
William E. Leuchtenburg
H. Carl McCall
William J. McDonough
Donald F. McHenry
George J. Mitchell
Robert Morgenthau
Sam Nunn
Peter G. Peterson
Colin L. Powell
Bernard Rapoport
Anna Eleanor Roosevelt
Arthur Ross*
George P. Shultz
Robert S. Strauss
Percy E. Sutton*
John J. Sweeney
John C. Whitehead
Rivington R. Winant*
Joanne Woodward
Andrew Young

* In Memoriam

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Sally Minard, President
Kathy Sloane, Vice Chair
William R. Griffith
James S. Polshek

EXECUTIVE DIRECTOR

Gina Pollara

SALLY MINARD
PRESIDENT

August 20, 2012

Dear David,

As you requested, enclosed are full scale Reed Foundation recognition text on clear film

Text at the sculpture niche

In honor of Vera D. Rubin and Samuel Rubin the Reed Foundation

Grand Stair option text

Reed and Jane Gregory Rubin in honor of Vera D. and Samuel Rubin, The Reed Foundation.

The Grand Stair option is suggested copy, to be worked to your satisfaction should the Rubins choose this location to be recognized.

I will send the Benefactor Wall copy shortly. We are assembling it from the multiple replies confirming how donors wish to be recognized.

Please call with any question.

All the best,



EXHIBIT F

SIMPSON THACHER & BARTLETT LLP

425 LEXINGTON AVENUE
NEW YORK, N.Y. 10017-3954
(212) 455-2000

FACSIMILE (212) 455-2502

DIRECT DIAL NUMBER

212-455-2875

E-MAIL ADDRESS

vbjorklund@stblaw.com

VIA EMAIL & CERTIFIED MAIL

August 22, 2012

Ms. Sally Minard
President
Franklin D. Roosevelt Four Freedoms Park LLC
133 East 62nd Street
New York, NY 10065

Re: FDR Four Freedoms Park

Dear Sally:

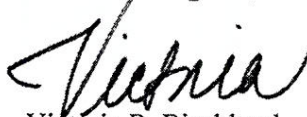
I write on behalf of The Reed Foundation in response to your letter dated August 20, 2012.

The Foundation agrees to and accepts the manner, size, font and placement of the Threshold Recognition Text to be permanently carved on the West-Facing Side of the Threshold as shown on (i) the clear film strip that you sent August 20 marked "Option@Niche" and (ii) the attached photograph, in accordance with Section 1.1(a) and (b) of the Recognition Agreement dated March 26, 2010.

Please let us know when you expect the Bensons to complete the engraving as we are all eager to visit the site to see it in situ.

We look forward to hearing from you about Section 1.2 – Other Recognition Rights, as well.

With warm regards,


Victoria B. Bjorklund

Attachment: Photograph of West-Facing
Side of Threshold

cc: William vanden Heuvel
William Griffith, Esq.

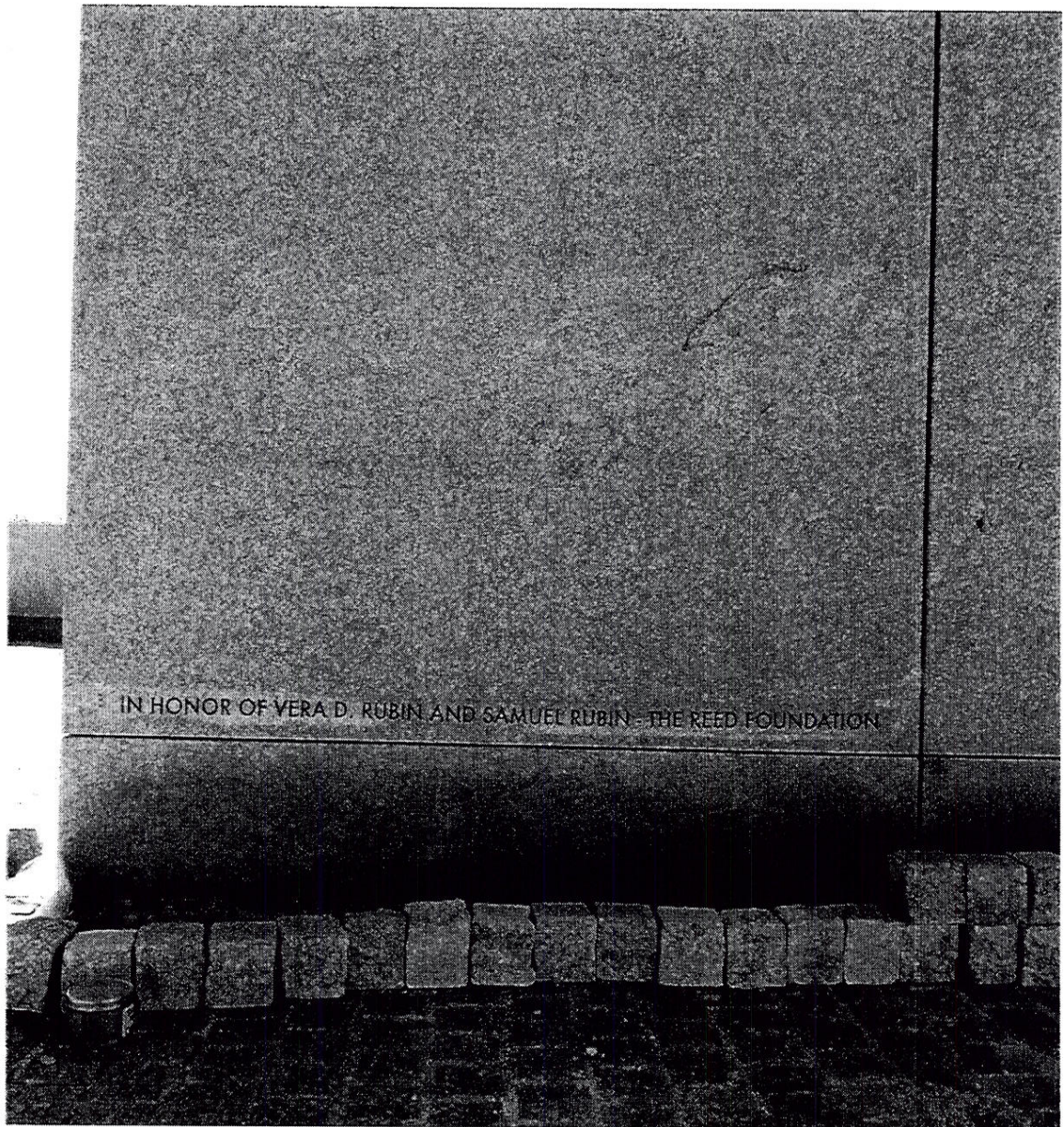


EXHIBIT G

SIMPSON THACHER & BARTLETT LLP

425 LEXINGTON AVENUE
NEW YORK, NY 10017-3954
(212) 455-2000

FACSIMILE (212) 455-2502

DIRECT DIAL NUMBER
(212) 455-2875

E-MAIL ADDRESS
vbjorklund@stblaw.com

VIA EMAIL & CERTIFIED MAIL

September 8, 2012

Ms. Sally Minard
President
Franklin D. Roosevelt Four Freedoms Park LLC
133 East 62nd Street
New York, NY 10065

Ms. Gina Pollara
Franklin D. Roosevelt Four Freedoms Park LLC
133 East 62nd Street
New York, NY 10065

Amb. William vanden Heuvel
Allen & Company LLC
711 Fifth Avenue
New York, NY 10022

Re: FDR Four Freedoms Park

Dear Sally, Gina and Bill:

I write again on behalf of The Reed Foundation to ask that Franklin D. Roosevelt Four Freedoms Park LLC ("LLC") confirm in writing by September 12 that the LLC will cause Nick Benson to engrave the Threshold Recognition Text on the West-Facing Side of the Threshold no later than October 10, 2012.

We make this request again because we are concerned that we still have not received a substantive response to my August 20 letter to Sally and my September 5 follow-up phone call with Bill Griffith. With the Park scheduled to open in mid-October, we must now request your written confirmation of action on the LLC's longstanding contractual obligations. Although other engraving work has been completed at the site, the engraving required under the Foundation's contracts with LLC has not occurred to date. We understand that Mr. Benson will be back on site the first week of October. We expect that Mr. Benson will complete the Threshold Recognition Text engraving promptly upon his return and the Foundation will be given an opportunity to view the work upon its completion, no later than October 10, in advance of the scheduled opening. Please promptly confirm the same.

Ms. Sally Minard
Ms. Gina Pollara
Amb. William vanden Heuvel

- 2 -

September 8, 2012

As you know, since June 2012, LLC and its advisors have on numerous occasions asked the Foundation, its principals and their family members to consider a relocation of the engraving of the Threshold Recognition Text elsewhere, including on the Grand Stair. The Foundation has, each time, declined such proposals and grown increasingly frustrated with these repeated approaches. As LLC has acknowledged, pursuant to Paragraph 1.1 of the Recognition Agreement, the Threshold Recognition Text shall be "permanently carved on the West-Facing Side of the Threshold" in accordance with certain contracted-for specifications. As reflected in multiple communications from the Foundation and me, including my August 2 email and my letter of August 20 to you, the Foundation wishes to proceed in accordance with the contract and therefore the Threshold Recognition Text shall remain on the West-Facing Side of the Threshold. I assure you the Foundation's determination was and is final. Kindly notify Jock Reynolds and Mr. Benson of the same.

The Foundation views the delays associated with completing the Recognition amid LLC's repeated requests to relocate the Threshold Recognition Text as a threatened breach of LLC's obligations under the Recognition Agreement. The Foundation therefore reserves all of its rights under that contract.

We are all so very excited by the long-anticipated opening of FDR Four Freedoms Park and wish to avoid any unnecessary controversy regarding the timing and placement of the Foundation's Recognition prior to the opening. I look forward to receiving your written confirmation by September 12.

Sincerely yours,

/s/ Victoria

Victoria B. Bjorklund

cc: William Griffith, Esq.
Michael Garvey, Esq.

EXHIBIT H

FRANKLIN D. ROOSEVELT **FOUR**
FREEDOMS
PARK LLC

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George H. W. Bush
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Robin Chandler Duke
David Eisenhower
Julie Nixon Eisenhower
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Rudolph Giuliani
Doris Kearns Goodwin
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Vernon E. Jordan, Jr.
Caroline Kennedy
Henry Kissinger
Edward I. Koch
William E. Leuchtenburg
H. Carl McCall
William J. McDonough
Donald F. McHenry
George J. Mitchell
Robert Morgenthau
Sam Nunn
Peter G. Peterson
Colin L. Powell
Bernard Rapoport
Anna Eleanor Roosevelt
Arthur Ross*
George P. Shultz
Robert S. Strauss
Percy E. Sutton*
John J. Sweeney
John C. Whitehead
Rivington R. Winant*
Joanne Woodward
Andrew Young

* In Memoriam

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Gina Pollara

WILLIAM J. VANDEN HEUVEL
CHAIRMAN

September 13, 2012

Ms. Victoria B. Bjorklund
Simpson, Thacher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017-3954

Dear Victoria:

Further to your telephone conversation yesterday with Bill Griffith, as chairman of the Four Freedoms Park LLC (the Park), I confirm that pursuant to your letter of August 20, 2012 to Sally Minard (the August Letter), the Park agrees to the placement of the recognition of The Reed Foundation as described in the August Letter and represented in the photograph attached.

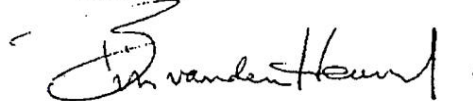
The Park further confirms that the recognition shall be sand-blasted in the same manner as all other major donor's names and that such sand-blasting shall be done under the supervision of Nick Benson. The Park also confirms that no placement of donor names has yet commenced, and that the Park is attempting to schedule a time, as soon as possible, for Nick Benson to undertake such work in connection with the recognition of all major donors and benefactors, including The Reed Foundation.

We hope Reed and Jane understand our appreciation for the extraordinary role they have had in this project. We also hope they understand that leaders of the artistic and architectural communities, as well as the Kahn family, have been vehement in their point of view that naming opportunities in the Park beyond the Grand Staircase will be regarded as defacing Kahn's work. Reed and Jane are fully conversant with the problem, which is made more difficult by the fact that the other major donors – who have at least the same implied contractual right to designated naming opportunities, have agreed to give up those rights and accept the Staircase designation. They may now insist on the original designations we discussed with them. It is not a

Ms. Victoria B. Bjorklund
Simpson, Thacher & Bartlett LLP
September 13, 2012
Page Two

matter of contractual right with Reed and Jane -- it was the hope that they would reconsider the situation and discuss it in a non-legal context.

Sincerely,

A handwritten signature in dark ink, appearing to read "W. J. vanden Heuvel". The signature is fluid and cursive, with a large initial "W" and "J".

William J. vanden Heuvel
Chairman, Franklin D. Roosevelt
Four Freedoms Park, LLC

cc: Sally Minard
Gina Pollara
William R. Griffith

EXHIBIT I

-----Original Message-----

From: Bjorklund, Victoria B.

Sent: Saturday, September 15, 2012 6:10 PM

To: Sally Minard

Cc: William R. Griffith (wgriffith@reedsmith.com)

Subject: Reed Foundation recognition in FDR Four Freedoms Park

Dear Sally: Respectfully, we have not sought to intimidate anyone. The Reed Foundation bestowed a generous gift accepted by the LLC at a critical time in the development of the Park with both agreeing to a binding agreement. In accepting the gift, the LLC covenanted in very specific terms to provide Reed's parents and The Reed Foundation with recognition at a designated location. On behalf of The Reed Foundation, we requested a reasonable assurance that The Reed Foundation's recognition would be completed according to contract on or before October 10, one week before the scheduled opening, knowing that Nick Benson is not available until October 1. The circumstance that the LLC is still bidding the contractor for the engraving work underscores the Foundation's concern regarding timing. I understand that the LLC will not provide the requested assurance and have conveyed the same to Jane and Reed. We remain excited about this project being so close to completion.

Sincerely yours,

Victoria

Victoria B. Bjorklund

Partner

Founder and Head, Exempt Organizations Group Co-Chair, Diversity Committee Simpson Thacher & Bartlett LLP

425 Lexington Avenue

New York, New York 10017

Tel: (212) 455-2875

Cell: (646) 258-9444

Fax: (212) 455-2502

vbjorklund@stblaw.com

-----Original Message-----

From: Sally Minard [mailto:sminard@dti.net]

Sent: Friday, September 14, 2012 1:56 PM

To: Bjorklund, Victoria B.

Cc: 'William Vanden Heuvel' ?; 'Griffith, William R.'

Subject: Reed Foundation recognition in FDR Four Freedoms Park

Dear Victoria,

Bill vanden Heuvel asked that I send this response to you.

Let me make it very clear. We will not accept further intimidation.

If they want their money back, I will raise it. We will not give them a time certain except to say we plan and are working toward all of the carving being done before the opening.

All of the major donors could argue contractual obligations regarding naming; only the Rubins have chosen to enforce their contract, which everyone acknowledges will defile Kahn's great work.

The staircase will be done first because most of those donors have given amounts that justify their priority.

No public effort deserves to be talked to as Reed Rubin has chosen to do through his lawyers; and no public effort of which I am Chairman will tolerate it. That is our message to the Rubins and their lawyer.

Bill

Sally Minard

President

Franklin D. Roosevelt Four Freedoms Park, LLC

133 E 62nd Street, New York, NY 10065

phone: 212-486-0195

fax: 212-486-1405

www.fdrfourfreedomspark.org

EXHIBIT J

FRANKLIN D. ROOSEVELT **FOUR FREEDOMS PARK** LLC

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Robert Morgenthau
Sam Nunn
Peter G. Peterson
Colin L. Powell
Bernard Rapoport
Anna Eleanor Roosevelt
Arthur Ross*
George P. Shultz
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* In Memoriam

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Kathy Sloane, Vice Chair
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EXECUTIVE DIRECTOR

Gina Pollara

September 26, 2012

WILLIAM J. VANDEN HEUVEL
CHAIRMAN

Mr. and Mrs. Reed Rubin
The Reed Foundation
500 Fifth Avenue, Suite 2222
New York, NY 10110

Dear Reed and Jane:

In the light of our Monday conversation, I want to make it clear that you both are forever in the pantheon of heroes which recognizes those who were indispensable to the success of the creation of Four Freedoms Park. It has been my great pleasure to work closely with you both and share the great joy of our success. No one knows better than I that the journey has just begun, that the Park has to be maintained as a public trust, that the education component has to be developed so that the values of Franklin and Eleanor Roosevelt are truly passed on to new generations. But that is probably the work of those who succeed us, and our task is to be sure that the foundation is solid and that the possibilities of success are assured. We are, all of us who have participated in this great venture, trustees of its future. Michael Kimmelman validated our efforts when he wrote that the Four Freedoms Park "gives New York nothing less than a new spiritual heart..." He validated our effort when he said: "It is the long view that Roosevelt had for America." He describes Kahn's work as "a stroke of genius." It is "pristine to a fault" and everyone who visits, everyone who has participated in its construction, everyone who has taken time to walk that cobblestone path knows that something special has been created, something with a spiritual dimension, something that has been built for the ages.

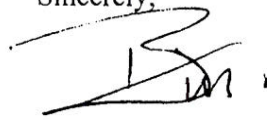
I do not believe that anyone of our small group understood the enormous power of the Four Freedoms Park until it emerged in the last several months as a completed work of art. Clearly, Kahn's work is something far beyond a normal public memorial. It is a work of art, and we should feel obligated to look at its future as trustees of that treasure. Why do the architects, the artists, the cultural leaders, the Kahn family – why are they so determined to keep the integrity and purity of the Kahn design so that they are pressuring us regarding any carving above the Grand Staircase? To ask the question is to say that we should be on the same side, asking the same question, and listening carefully to their concerns, sharing their concerns so that we do everything possible to maintain the purity and integrity of what

Kahn has created. That is not a legal question. That is not a concern that will be resolved in a Court room. It has to be a question that each of us answers for ourselves. It is in that context that we have asked you to reconsider the placement of the naming obligation. I do not think litigation is going to harm the Four Freedoms Park. You may well be right on the ability to enforce the details of the March 2010 contract. But our experience and intelligence tell us that litigation is not the way to resolve this problem. You have an established reputation in the philanthropic community. Your respect for a sculptor's work, a book's binding, the quality of the craftsman's labor, all these are identified with your search for excellence. I wonder if those we respect most would even understand how "a naming opportunity" can intrude on what we are trying to complete. You have had the best of lawyers advise you, and I have no doubt that you may prevail in a Courtroom. But it will be a Pyrrhic victory, dear friends, a scar not a medal on the list of your achievements. Others have had to forsake their "naming" hopes and, once having reviewed the facts and the opinions of our counselors and the vehemence of the viewpoint by the Kahn family, they quickly understood and agreed to a different (but yet powerful) identification of their significant contributions.

We have to, individually and together, answer the question before us not as signatories to a contract but as trustees of a great public enterprise whose beauty and purpose is an extraordinary gift to our City and to our country. You may have very personal reasons, but at the moment I would ask you to reconsider your position as fellow trustees with the responsibility of protecting and enhancing a great work of art. In that context, I believe an informal meeting with friendly experts for a frank discussion is worthwhile and may help in so many ways to resolve this present dilemma.

Kahn's work is not going to go away. If ultimately it is decided wherever and by whomever that the naming opportunity defined in the 2010 contract has to go forward – the Park will be there. I think, therefore, organizing a meeting in the next several weeks to reflect all together on what is at stake here could help greatly in bringing this problem to an acceptable conclusion. In any event, I will report to the Directors of the Conservancy at a special meeting scheduled for Friday for their consideration and decision.

Sincerely,

A handwritten signature in dark ink, appearing to be 'WJH', written over a horizontal line.

William J. vanden Heuvel

EXHIBIT K

THE REED FOUNDATION, INC.

September 27, 2012

Re: Franklin D. Roosevelt Four Freedoms Park

Amb. William J. vanden Heuvel
Chairman
Franklin D. Roosevelt Four Freedoms Park LLC
133 East 62nd Street
New York, New York 10065

Dear Bill:

Many thanks for your kind words and your continued leadership in connection with this tremendous effort.

If you feel it would be constructive, the Foundation is prepared to accept your invitation to an informal meeting. My counsel will also attend. We will participate with an open mind and consider any views that you or your advisors wish to convey about the placement of our recognition. I fear those views will be the same views that have already been conveyed to us multiple times since July. However, at your request, we will attend and listen and confer in good faith.

Before any such meeting takes place, I would like a written assurance from you, as the LLC's Chairman, that, in the event the Foundation is not persuaded to relinquish its rights and move the Foundation's recognition elsewhere, the LLC will promptly complete the engraving according to contract upon Nick Benson's return to the site and no later than November 1, 2012. This is not a lot to ask, as a deal is a deal and I do not wish there to be any confusion (or need for litigation) if the Foundation ultimately decides that the placement of the Foundation's recognition should remain as agreed in 2010 and as reconfirmed in August 2012. With this assurance, I can be comfortable that all sides are proceeding in good faith and welcome the opportunity to meet in the coming weeks and bring this matter to closure.

As I conveyed to you on Monday, the Foundation gave careful consideration to the placement of the Foundation's recognition at the time of our grant, so much so that we documented our recognition rights in a binding contract with the LLC that affords us very specific remedies. Our continuing view is that the Foundation's recognition, as agreed, is elegant and understated. Attached is a mock-up of the engraving on the Threshold, as prepared by Nick Benson. As you can see, the engraving is subtle, low to the ground, in small font, on the west-facing wall of the Threshold, which is a solid granite wall leading to the Room. We have been reasonable and constructive regarding this entire process. We consented to site visits on short notice, we promptly agreed when asked to accept grey lettering, rather than black. We patiently awaited performance over

THE REED FOUNDATION, INC.

the past several months, after the contract date passed last December and after Mr. Benson left the site in July. Now, if necessary, we are even prepared to wait until after the Park's opening on October 17. As I am sure you know, engraved recognitions like ours are common and exist in public spaces, on landmarked buildings, and throughout comparable works of architecture worldwide. I recognize that reasonable people can have different or evolving views as to whether the Foundation's recognition would look better on the Grand Stairs, which are as much a part of Kahn's work as the Threshold. Those views, however, do not reconcile with ours or the LLC's. I also recognize that, as Chairman, you are managing the expectations and "hopes" of other donors. Respectfully, however, the Foundation and LLC elected to memorialize our mutual agreement regarding the Foundation's recognition rights in a contract at the time of the Foundation's grant to avoid becoming hostage to such late-starter considerations.

I believe we share a mutual desire to resolve this matter, get on with the opening of this wonderful park and avoid public litigation. I therefore look forward to receipt of your written assurance and our next meeting.

Sincerely,



Reed Rubin
President

Enclosure

EXHIBIT L

SIMPSON THACHER & BARTLETT LLP

425 LEXINGTON AVENUE
NEW YORK, NY 10017-3954
(212) 455-2000

FACSIMILE (212) 455-2502

DIRECT DIAL NUMBER
(212) 455-7358

E-MAIL ADDRESS
mgarvey@stblaw.com

October 2, 2012

VIA E-MAIL

Re: Franklin D. Roosevelt Four Freedoms Park

William R. Griffith, Esq.
Reed Smith LLP
599 Lexington Avenue
22nd Floor
New York, NY 10022

Dear Bill:

As you know, we represent The Reed Foundation, Inc. (the "Foundation") in connection with its ongoing effort to secure performance by the Franklin D. Roosevelt Four Freedoms Park, LLC (the "LLC") of the LLC's undisputed obligations under the parties' contracts, including the Recognition Agreement.

The LLC was required to complete construction of the Threshold, including engraving the Threshold Recognition Text, by December 31, 2011. It failed to do so in breach of the Recognition Agreement. The LLC has repeatedly acknowledged that it is under a contractual obligation to complete the Threshold, including the Threshold Recognition Text, yet still has failed to cure its breach. Despite numerous requests over the last six weeks, the LLC has also refused to provide the Foundation any form of assurance as to when the LLC will honor the contract.

The Park is now scheduled to open in just over two weeks and Mr. Benson is apparently available and on site. The Foundation has accommodated the LLC's request regarding the color of the engraving. The Foundation patiently waited after the LLC allowed Mr. Benson to leave the site in July 2012 without completing the engraving on the Threshold. In the spirit of compromise, *see, e.g.*, N. Y. C.P.L.R. § 4547, the Foundation has offered to afford the LLC until November 1, two weeks *after* the scheduled dedication of the Park and one week *after* the Park's opening, to cure its breach and complete the engraving provided that the LLC provides the Foundation written assurance regarding the timing of performance. Yet the LLC has still failed to provide that simple assurance. The LLC's "failure to perform, breach or threatened breach" of the Recognition Agreement entitles the

William R. Griffith, Esq.

-2-

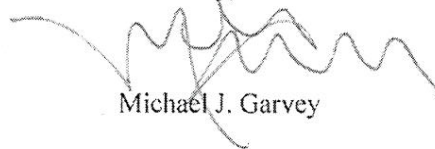
October 2, 2012

Foundation to, among other things, specific performance and a temporary or permanent injunction.

The Foundation's September 27, 2012 letter made a final request for a written assurance that the LLC will cure its breach and perform the engraving by a date certain. In response, the LLC has now orally advised the Foundation that it will not provide a response until Wednesday, October 3. For the avoidance of doubt, the Foundation requires an unambiguous written undertaking by the LLC that the LLC will direct Mr. Benson and his team to complete the engraving of the Threshold Recognition Text on the west-facing side of the Threshold as agreed in the Recognition Agreement and reconfirmed by letter dated August 22, 2012 (including its attachment) by no later than November 1, 2012. Please be advised that, absent receipt of such an undertaking **on or before noon on Wednesday, October 3**, the Foundation will invoke its contractual rights to specific performance and injunctive relief under the operative agreements and seek to compel immediate performance in advance of the Park's scheduled opening.

We understand that the LLC has separate counsel in connection with this matter. Please forward this to the LLC's counsel at your earliest convenience.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael J. Garvey", with a stylized, wavy flourish extending from the end of the signature.

Michael J. Garvey

cc: Victoria Bjorklund, Esq.

EXHIBIT M

FRANKLIN D. ROOSEVELT **FOUR
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PARK** LLC

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* In Memoriam

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October 2, 2012

WILLIAM J. VANDEN HEUVEL
CHAIRMAN

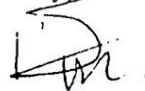
Mr. Reed Rubin
The Reed Foundation
500 Fifth Avenue, Suite 2222
New York, NY 10110

Dear Reed:

I appreciate your willingness to advance our discussions by an informal meeting with a small group of selected individuals who can express their views and hear yours. If you would give me two times when such a meeting can be organized I will work immediately to bring it about – and as soon as possible. To give the meeting an opportunity of being constructive, I think it better that we proceed without written assurances and guarantees. Our desire is to work something out that is satisfactory to you and compatible with what we see as our fiduciary responsibility to the project. If that is possible, and we will do everything to make it so, I think these discussions will be useful in accomplishing our purpose.

We would be willing to return the funds with interest to The Reed Foundation, although for both of us it would be a very disappointing conclusion. Nevertheless, we are prepared to undertake that in our determined hope that the FDR Sculpture Niche be pristine and free any other carvings of names or anything else whatsoever. The simplicity of the present structure and its exclusive recognition of the President is beautiful beyond words. Our architects and consultants have told us that this is the best aesthetic for the sculpture niche. Whatever mistakes we have made, our fiduciary obligation requires us to preserve the purity and integrity of what Kahn designed and what FDR represents.

Sincerely,



William J. vanden Heuvel

WJvH/jm

EXHIBIT N

The New York Times

September 12, 2012

Decades Later, a Vision Survives

By MICHAEL KIMMELMAN

The park — a memorial to Franklin Delano Roosevelt — was conceived four decades ago. The visionary architect who designed it died in 1974. The site, a landfill along one of the more dramatic stretches of waterfront in New York City, remained a rubble heap while the project was left for dead.

But in a city proud of its own impatience, perseverance sometimes pays off. Next month, on that triangular plot on the southern end of Roosevelt Island, the four-acre Franklin D. Roosevelt Four Freedoms Park will open, a belated and monumental triumph for New York and for everyone who cares about architecture and public space.

Louis Kahn is the architect. He completed drawings for the park just before he died suddenly, in Pennsylvania Station, at 73. That Kahn's plan survived periodic calls to privatize the government-owned property and build a hotel and fancy town houses, among other commercial proposals, proves the benefit of resisting short-term financial imperatives. In the end the value of the project goes far beyond dollars and cents.

It gives New York nothing less than a new spiritual heart. That's to say it creates an exalted, austere public space, at once like the prow of a ship and a retreat for meditation. It's a memorial, perhaps naïvely optimistic but uplifting and confident, unlike the one at ground zero. It is as solemn as the Roosevelt wartime speech it honors, a call to safeguard the freedoms of speech and worship and the freedoms from want and fear. From inside the great, open granite enclosure that Kahn called the "room" at the tip of the island, a long fly ball away from the United Nations, a visitor looks out over the city and the churning waters of the East River in the direction of the Statue of Liberty, the ocean and Europe. It is the long view that Roosevelt had for America.

In this respect the park is probably the closest Kahn came to pure abstract art, a virtual walk-in sculpture that does more than honor the 32nd president and bring to life a neglected but symbolic stretch of prime shorefront on an island soon to be transformed by a Cornell University campus. A tapered lawn and flanking allées of littleleaf linden trees converge

from atop a 100-foot-wide ceremonial staircase, pointing toward the tip of the island as if stretching toward infinity.

Maybe Kahn was thinking about Philip Johnson's memorial to John F. Kennedy in Dallas, another roofless room, which was dedicated in 1970. (Kahn didn't see eye to eye with Johnson, but that doesn't mean he always ignored him.) The symmetrical layout and extended vista also calls to mind the plaza at Kahn's Salk Institute for Biological Studies in San Diego and various pioneering examples of landscape sculpture in the American West by contemporaneous artists like Walter De Maria, Donald Judd and Michael Heizer.

Kahn once described "the endlessly changing qualities of natural light, in which a room is a different room every second of the day." In the park's room he chose to leave inch-wide gaps between the 36-ton granite blocks, polishing only the sides of the stones inside the gaps to create shiny, reflective slits that amplify narrow views through them.

It's a stroke of genius. The blocks seem to flatten when you're peering through the gaps, a perhaps accidental Alice-in-Wonderland effect that nonetheless derives from the heightened awareness a visitor feels, as one does at some of those land-art sites, of the endlessly shifting relationship between nature and artifice.

This becomes Kahn's only work in New York City. Mitchell/Giurgola Architects, the New York firm, and the F. J. Sciamie Construction Company, with Weidlinger Associates and Langan Engineering, executed the project, with some tweaks. Lighting was added to the widened tree-lined paths, the layout of trees slightly altered, a bust of Roosevelt by Jo Davidson inserted in a free-standing wall where Kahn had squiggled only some indefinite shape in his drawings. And the whole site has been raised 15 inches to accommodate climate change. (The Army Corps of Engineers says the East River has risen nearly five inches since the early 1970s.)

Questions about the integrity of posthumous construction — whether this is still Kahn's design and not a pastiche — are understandable and stem partly from a history of lamentable buildings after plans by other visionary architects, like Frank Lloyd Wright and Le Corbusier.

But here the outcome speaks for itself. Kahn prescribed the size, placement, polish and crisp cut of the enormous granite blocks and parapets (from a quarry in North Carolina), which, like the ancient Egyptian stones at Giza, lend to the site a military dignity and rhythm. He chose copper beech trees for the entrance. He devised the sloping paths that hug the water and meet the plaza at the foot of the lawn. In the important ways this is Kahn's park.

It opens on Oct. 24. Much of the credit belongs to William J. vanden Heuvel, a former United States ambassador. His mother ran a boardinghouse and his father was a factory worker, both of them Roosevelt-loving immigrants who settled in Rochester. He galvanized support and helped raise \$53 million for the project; donations included \$10 million from Alphawood, a foundation controlled by the Chicago businessman and leading Democratic donor Fred Eychaner. A conservancy will maintain what is expected to become a state park.

Mayor John V. Lindsay and Edward J. Logue, who was Governor Nelson A. Rockefeller's urban development czar, had originally envisioned the park, honoring Roosevelt and his speech, in tandem with a new town and the renaming of what was still called Welfare Island. The town rose, the name changed. But the city's financial meltdown in the 1970s and the departure of Rockefeller for Washington as vice president delayed the park.

Opening now, all these years later in a remade city, the place requires an effort to visit because the island isn't extensively served by mass transit, but the pilgrimage goes along with the site's gravity. The uncanny calm it inspires amid the city din is as touching as the care and devotion its construction workers clearly brought to a project that included lugging, like Gothic church builders in the Middle Ages, the giant stones from barges.

Preserving the site will be a challenge. The park is pristine to a fault. Policing graffiti artists and skateboarders must be weighed against the park's freedom theme.

The sober ruin of an adjacent 19th-century smallpox hospital, designed by James Renwick Jr., architect of St. Patrick's Cathedral, is to become the park's entry pavilion, where visitors can be sensitized to the fragility of the stone; and maybe just as useful would be to adopt the green space on the opposite side of the ruin as a playground to give skateboarders an alternative to the memorial. If the rest of the island wants to rise to Kahn's challenge, it will also need a better master plan for the Cornell campus. The suburban-style office park, under review now — soulless, rigid and without thoughtful public space — isn't nearly good enough.

The new Four Freedoms Park is a lot to live up to.

EXHIBIT O

From: Sally Minard [<mailto:sminard@dti.net>]
Sent: Friday, August 10, 2012 12:02 PM
To: Bjorklund, Victoria B.
Cc: 'Griffith, William R.'
Subject: Reed Foundation recognition on site

Dear Victoria,
Thank you for your note. We are, of course mindful of and will honor our contractual agreement with the Reed Foundation, unless we and the Reed Foundation agree in writing to an alternate placement of the recognition. We look forward to celebrating the dedication together.
All the best,
Sally

Sally Minard
President
Franklin D. Roosevelt Four Freedoms Park, LLC
133 E 62nd Street, New York, NY 10065
phone: 212-486-0195
fax: 212-486-1405
www.fdrfourfreedomspark.org

-----Original Message-----

From: Sally Minard [<mailto:sminard@dti.net>]

Sent: Thursday, August 09, 2012 10:33 PM

To: Bjorklund, Victoria B.

Cc: 'Gina Pollara'; 'Griffith, William R.'

Subject: RE: FDR Four Freedoms Park

Dear Victoria,

Thank you for your note. We are, of course, mindful of and will honor our contractual agreement with the Reed Foundation, unless we and the Reed Foundation agree in writing to an alternate placement of the recognition. We look forward to celebrating the dedication together.

All the best,

Sally

Sally Minard
President
Franklin D. Roosevelt Four Freedoms Park, LLC
133 E 62nd Street, New York, NY 10065
phone: 212-486-0195
fax: 212-486-1405
www.fdrfourfreedomspark.org

-----Original Message-----

From: Bjorklund, Victoria B. [<mailto:vbjorklund@stblaw.com>]
Sent: Thursday, August 02, 2012 6:18 PM
To: Sally Minard; 'gpollara@fdrffp.org'
Subject: FDR Four Freedoms Park

Dear Sally and Gina--I write on behalf of The Reed Foundation to confirm that my client expects to have honored the agreed-upon placement of the Threshold Recognition Text on the West-Facing Side, as specified in Section 11 of the Recognition Agreement dated March 26, 2010. This placement was much discussed before being agreed to by all and relied upon, as the Recognition Agreement terms reflect.

We all look forward to the Park's completion.

With best regards,

Victoria

IRS Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under federal, state or local tax law or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

Victoria B. Bjorklund
Partner
Founder and Head, Exempt Organizations Group Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017

Tel: (212) 455-2875
Fax: (212) 455-2502
vbjorklund@stblaw.com

EXHIBIT B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X	:	
THE REED FOUNDATION, INC.,	:	
	:	
Petitioner,	:	Index No.: 653482/2012
	:	
-against-	:	
	:	
FRANKLIN D. ROOSEVELT FOUR FREEDOMS	:	
PARK, LLC,	:	
Respondent.	:	
-----X	:	

**MEMORANDUM OF LAW IN SUPPORT OF PETITION
FOR DECLARATORY RELIEF AND SPECIFIC PERFORMANCE**

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Attorneys for Petitioner The Reed Foundation, Inc.

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Petitioner The Reed Foundation, Inc. (the “Foundation”) respectfully submits this memorandum of law, along with the Affirmation of Michael J. Garvey, Esq., dated October 4, 2012 (“Garvey Aff.”), in support of its Petition seeking an order: (1) declaring that Respondent the Franklin D. Roosevelt Four Freedoms Park LLC (“LLC”) breached its contractual obligations to the Foundation based on the LLC’s continuing failure to complete an agreed engraving at the FDR Four Freedoms Park (“the Park”); and (2) awarding the Foundation specific performance by requiring the LLC to complete the agreed engraving by no later than the Park’s dedication currently scheduled for October 17, 2012.

PRELIMINARY STATEMENT

The LLC undertook to complete a unique and important engraving on behalf of the Foundation at a specific, carefully selected location in the Park. The LLC’s undertaking was crystal clear and not subject to the LLC’s arbitrary future whims. The LLC now refuses to perform. The Foundation thus seeks to enforce its contractually agreed right to specific performance by the LLC.

The Foundation is a charitable organization. The LLC is the developer of the Park. In 2010, the Foundation made a \$2.5 million grant to the LLC, which enabled the LLC to fund the Park’s construction. The terms of the Foundation’s grant are governed by various detailed contracts, negotiated at length by the parties. Under the contracts, as part of “Phase One” construction, the LLC was required to complete construction of a structure called the “Threshold” by “no later than December 31, 2011.” The contracts very specifically mandate that construction of the Threshold “will include” on an exterior west-facing wall engraved text recognizing the Foundation for its contribution to the Park. This recognition is defined under the contracts as the “Threshold Recognition Text.” The contracts also identify the artisan who is to oversee the engraving work on the Threshold. Finally, the contracts unambiguously recognize

the Foundation's right to specific performance in the event the LLC fails to complete the Threshold, including the Threshold Recognition Text, according to contract. A mock-up of the agreed recognition is attached as Exhibit D.

The LLC still has failed to complete the Threshold Recognition Text in accordance with the contract. Since June 2012, the LLC has repeatedly assured the Foundation that it intended to complete the Threshold Recognition Text in accordance with the contract "as soon as possible." But the LLC never performed and refused to provide the Foundation any assurance as to when performance would be complete. The dedication of the Park is now just two weeks away. On October 2, 2012, in a complete about-face, the LLC advised the Foundation that it will *not* honor its obligation to complete the Threshold Recognition Text on the Threshold in light of "aesthetic concerns" recently voiced by the LLC's architects and consultants.

The LLC's refusal to complete the Threshold, including the Threshold Recognition Text, is an undisputed breach of contract. The LLC acknowledges in the contract that the Foundation's remedies at law for the LLC's "failure to perform, breach or threatened breach" of its obligations under the contract "would be inadequate and the Foundation would suffer irreparable harm as a result of such failure to perform, breach or threatened breach." The LLC further agrees that the Foundation's remedies for such conduct include "equitable relief in the form of specific performance" as well as a "temporary or permanent injunction." These contractual provisions recognize and uphold the Foundation's right to receive what is an inherently unique and special benefit that is impossible to value.

Accordingly, the Foundation hereby seeks an order declaring that the LLC has failed to perform and breached its contractual obligations; and requiring that the LLC

specifically perform in accordance with the contract by engraving the Threshold Recognition Text on the Threshold by no later than the Park's dedication scheduled for October 17, 2012. The LLC must honor its deal.

BACKGROUND

The Park was designed in the 1970s by the late architect Louis I. Kahn. The Park consists of a grand staircase, which ascends to a triangular garden of trees and paving stones bordered by a stone promenade, a forecourt area at the point of the triangle that leads to a large bronze bust of Roosevelt housed in a 12 foot-tall granite structure known as the "Threshold," and, just beyond the Threshold, a square granite "Room," which sits at the southernmost tip of Roosevelt Island overlooking the East River. Garvey Aff., Ex. A.¹

For over 30 years, efforts to develop the Park were unsuccessful. Then, in 2005, Reed and Jane Gregory Rubin, who are officers of the Foundation, helped resurrect the long-dormant Roosevelt Island project by funding an exhibit on the project at the Cooper Union for the Advancement of Science and Art. The project thereafter gained momentum, with public and private donors displaying interest and ultimately contributing the necessary funds to finance the project.

Consistent with the Rubins' efforts to advance the project, in March 2010, the Foundation contracted to provide the Institute a \$2.5 million Grant, the express purpose of which was "to support Phase One . . . of construction of the [Park] . . ." *See* Garvey Aff., Ex. B (Grant Agreement) at § 1.1. The Grant was among the very first grants made in connection with this project, at a time when there was considerable doubt as to whether the project could be

¹ "Garvey Aff., Ex." herein refers to exhibits attached to the Affirmation of Michael J. Garvey, Esq., dated October 3, 2012, filed concurrently with this Petition.

completed. The Grant enabled the LLC to secure essential public funding from New York State and New York City.

The Governing Contracts

The Grant is governed by a series of interrelated agreements, including the Grant Agreement between the Foundation, the LLC and the Institute, *see* Garvey Aff., Ex. B, and the Recognition Agreement between the Foundation and the LLC. *See* Recognition Agreement, dated March 26, 2010 (the “Recognition Agreement”). *See* Garvey Aff., Ex. C. The Grant Agreement and the Recognition Agreement are referred to collectively as the “Foundation-FDR Agreements.” These are detailed contracts, drafted by experienced lawyers, carefully documenting the parties’ mutual agreement at the time of the Foundation’s grant.

Under the Grant Agreement, Phase One of the construction of the Park “*must include the construction of the Threshold no later than December 31, 2011 (or such later date agreed to in writing by the Foundation).*” Garvey Aff., Ex. B (Grant Agreement) at § 1.1 (emphasis added). The Grant Agreement also provides that the construction of the Threshold “*will include . . . the carving of, and/or other display of, the Threshold Recognition Text and the other text on the Threshold,*” which is an excerpt of a speech by FDR entitled the *Four Freedoms Speech*. *Id* (emphasis added).

The Recognition Agreement sets forth the precise location and wording of the “Threshold Recognition Text,” as well as the process for its inscription:

1.1 Threshold Recognition Text. The *LLC, as developer of the FDR Four Freedoms Park, acknowledges and agrees that the Recognition . . . will be constructed in accordance with the terms and specifications* as set forth below:

(a) the following text (the “Threshold Recognition Text”) *will be permanently carved on the West-Facing Side of the Threshold:*

IN HONOR OF
VERA D. RUBIN AND SAMUEL RUBIN
THE REED FOUNDATION

(b) the Threshold Recognition will be: (1) carved in a manner, size, font and placement reasonably acceptable to the Foundation and the LLC; (2) carved and designed by The John Stevens Shop under the supervision of Nick Benson, Creative Director . . . and (4) [sic] will be legible and will be maintained, refinished, restored and otherwise kept in good repair;

(c) other than the Threshold Recognition Text on the West-Facing Side, no other text, signage or similar wording recognizing a donor or other contributor may be placed on the West-Facing Side of the Threshold or the North-Facing Side of the Threshold; and

(d) no other carving, inscription, or other signage may be displayed on the West-Facing Side of the Threshold without the prior written consent of the Foundation.

Garvey Aff., Ex. C (Recognition Agreement) at § 1.1(a)-(d) (emphases added).

The LLC further warrants in the Recognition Agreement that the agreed construction drawings and specifications for the Threshold “will be used to construct the Threshold in accordance with the terms and conditions of this Agreement,” *i.e.*, to include the Threshold Recognition Text, and the LLC will “request that the operator of the [Park] ensure, *at all times*, that the Threshold Recognition Text is legible and will be maintained.” *Id.* at § 2 (emphasis added).

The Recognition Agreement provides that a “Default” occurs if “the Threshold has not been installed in the Sculpture Court by December 31, 2011.” *Id.* at § 6. Moreover, the LLC agrees and acknowledges in the Recognition Agreement that “*the Foundation’s remedies at law for a failure to perform, breach or threatened breach of any of Sections 1 and 2 of this Recognition Agreement would be inadequate and the Foundation would suffer irreparable damages as a result of such failure to perform, breach or threatened breach.*” In recognition of this fact, the LLC agrees that, in the event of the LLC’s failure to perform, breach or threatened

breach, in addition to any remedies at law, *the Foundation, without posting any bond, shall be entitled to seek equitable relief in the form of specific performance, temporary restraining order, temporary or permanent injunction or any other equitable remedy which may then be available.*” *Id.* at § 6 (emphases added).

The Foundation-FDR Agreements are governed by New York law and contain forum selection clauses in which the parties submit to this Court’s jurisdiction. *See* Garvey Aff., Ex. B (Grant Agreement) at § 10; Ex. C (Recognition Agreement) at § 9.

The LLC Breaches The Recognition Agreement

Pursuant to the Grant Agreement, on March 26, 2010, the Foundation paid the \$2.5 million Grant to the Institute, which, in turn transferred the funds to the LLC, which then used the funds to construct Phase One of the Park, including parts of the Threshold.

Construction of the Threshold, however, was not completed by the contractually-agreed December 31, 2011 deadline. This constituted a Default under the Grant Agreement and the Recognition Agreement. *See* Garvey Aff., Ex. B (Grant Agreement) at § 1.1; Garvey Aff., Ex. C (Recognition Agreement) at § 6.

By June 2012, the Threshold walls were in place and, on June 21, 2012, the Foundation and the LLC confirmed their agreement regarding placement of the Threshold Recognition Text on the West-Facing Side of the Threshold as reflected in a mock-up of the required engraving. On June 21, 2012, the Foundation also consented to a request by the LLC that the lettering for the Threshold Recognition Text be changed from black to gray. *See* Garvey Aff., Ex. D. As reflected in Exhibit D, the agreed-to Threshold Recognition Text is tasteful, understated, low to the ground, in small font, on the West-Facing Side of the Threshold.

By July 2012, the LLC had completed the inscription of FDR's speech on the south-facing side of the Threshold but LLC still had not commenced engraving of the Threshold Recognition Text. At that time, the designated artisan who was responsible for overseeing all engraving on the Threshold—Nick Benson—was on site. Upon information and belief, representatives of the LLC allowed Mr. Benson to discontinue work on the Threshold before he engraved the Threshold Recognition Text, even though Mr. Benson would be unavailable to complete the work until October 1, 2012, two-and-a-half weeks prior to the scheduled dedication of the Park.

The LLC did not apprise the Foundation of its decision not to complete engraving of the Threshold Recognition Text while Mr. Benson was on site. The LLC's reason for not engraving the Threshold Recognition Text became clear when the LLC engaged in a campaign to pressure the Foundation to relinquish its bargained for rights under the Foundation-FDR Agreements and consent to relocate the Foundation's recognition to a staircase at the opposite end of the Park. Specifically, the LLC wanted the Foundation to abdicate its right to the Threshold Recognition Text on the West-Facing Side of the Threshold, and, instead, agree to recognition text on the "grand stair" (where other donors' names would be engraved). The LLC reported complications with other donors and an evolving aesthetic view that the Threshold should not include the Threshold Recognition Text. On multiple occasions, the Foundation conveyed to the LLC that it would not consent to relocating the Threshold Recognition Text.

On August 2, 2012, upon learning that the Threshold Recognition Text had not been completed, the Foundation confirmed to the LLC that it "*expects to have honored the agreed-upon placement of the Threshold Recognition Text.*" Garvey Aff., Ex. O.

On August 9, 2012, the LLC responded that it was “[o]f course, mindful of and will honor our contractual agreement with the Reed Foundation,” but again the LLC requested that the Foundation consider relocating the Foundation’s recognition. *Id.*

On August 20, 2012, the LLC again suggested that the Foundation consent to relocate the Foundation’s recognition. *See* Garvey Aff., Ex. E.

In response, the Foundation, through counsel, reiterated that the Threshold Recognition Text must be engraved “in accordance with . . . the Recognition Agreement” and, for the avoidance of doubt, attached to its letter a photo of the West-Facing Side of the Threshold with a mylar strip displaying the agreed Threshold Recognition Text at its designated location, which the LLC had arranged for the Foundation’s viewing during a prior site visit. *See* Garvey Aff., Ex. F.

The Foundation’s letter further requested that the LLC confirm the timing for completing the engraving on the Threshold. *See id.* The LLC failed to respond to the Foundation’s request, and, on September 8, 2012, the Foundation again requested confirmation that the required engraving on the Threshold would take place on or before October 10, 2012, ten days after Mr. Benson was scheduled to return to the site and one week in advance of the scheduled dedication of the Park. *See* Garvey Aff., Ex. G.

The LLC responded on September 13, 2012 “confirm[ing] that pursuant to your letter of August 20, 2012 . . . , ***the Park agrees to the placement of the recognition of The Reed Foundation as described in the August Letter.***” The LLC assured the Foundation that the Threshold Recognition Text would be carved in accordance with the Recognition Agreement “as soon as possible,” but failed to provide any assurance that such engraving would be completed prior to the dedication or by any date certain. Garvey Aff., Ex. H.

On September 14, 2012, the Foundation reiterated its request that the LLC provide the Foundation with an assurance that the engraving would be completed on or before October 10, 2012, *i.e.*, while Mr. Benson was on site and one week before the scheduled dedication. In response, the LLC's Chairman stated that "[i]f [the Rubins] want their money back, I will raise it. We will not give them a time certain" The Chairman went on to say that "only the Rubins have chosen to enforce their contract, which everyone acknowledges will defile" the memorial, and that "[t]he staircase will be done first because most of those donors have given amounts that justify their priority." Garvey Aff., Ex. I.

On September 26, 2012, the LLC wrote the Foundation, again acknowledging the Foundation's "ability to enforce the details of the March 2010 contract" and that the LLC has "no doubt that [the Foundation] may prevail in a Courtroom." However, the LLC refused to confirm that it would cure its breach and complete the Threshold Recognition Text before the Park's dedication. Instead, the LLC continued its campaign to pressure the Foundation to relinquish its bargained for rights under the Foundation-FDR Agreements and consent to relocate the recognition to a staircase at the opposite end of the Park. Garvey Aff., Ex. J.

Between September 27 and October 3, 2012, the Foundation reiterated its demand for a written assurance that the LLC would complete the Threshold Recognition Text by a date certain. *See* Garvey Aff., Exs. K, L.

On October 2, 2012, just over two weeks before the Park's dedication, the LLC reversed course, advised the Foundation that the LLC will not perform because "[o]ur architects and consultants have told us" that including the Threshold Recognition Text on the Threshold is not the "best aesthetic." The LLC offered to either relocate the engraving or repay the Foundation's grant with interest. Garvey Aff., Ex. M.

Other than the completion of the Threshold Recognition Text on the Threshold in accordance with the Foundation-FDR Agreements, all other phases of construction of the Park and the Threshold are essentially complete. Indeed, the *New York Times* has already reviewed the Park, including detailed descriptions of the Threshold and a series of photographs. *See* Garvey Aff., Ex. N.

The Foundation Is Entitled To Specific Performance

Given the LLC's continuing breach and failure to cure, the scheduled dedication just over two weeks away, and Mr. Benson's availability to complete the required engraving, the Foundation is invoking its rights to specific performance and injunctive relief under the Recognition Agreement and seeks an order requiring the LLC to complete the Threshold Recognition Text on or before the Park's dedication on October 17, 2012.

The Foundation submits that, any argument by LLC at this late date that it is unable to complete performance in advance of the Park's dedication is unavailing, as the situation is one of the LLC's own making. If it cannot complete performance by October 17, LLC should be required to reschedule the dedication until such performance is completed.

ARGUMENT

I. The LLC Has Breached The Foundation-FDR Agreements.

Respondent has materially breached the Foundation-FDR Agreements by refusing to engrave the Threshold Recognition Text by December 31, 2011, as it was contractually-obligated to do.

Under New York law, which governs these agreements, the construction of an unambiguous contract—such as the Grant Agreement and the Recognition Agreement here—is a matter of law for the court and “the intention of the parties may be gathered from the four

corners of the instrument and *should be enforced according to its terms.*” *Beal Sav. Bank v. Sommer*, 8 N.Y.3d 318, 324 (2007) (emphasis added). It is also a “familiar and eminently sensible proposition of law [] that, when parties set down their agreement in a clear, complete document, *their writing should . . . be enforced according to its terms.*” *Vermont Teddy Bear Co. v. 538 Madison Realty Co.*, 1 N.Y.3d 470, 475 (2004) (quoting *W.W.W. Assocs. v. Giancontieri*, 77 N.Y.2d 157, 162 (1990)) (emphasis added).

As described above, the LLC failed to fulfill its contractual obligation to complete construction of the Threshold—including the Threshold Recognition Text—by December 31, 2011. *See supra* at p. 6. Since June 2012, the LLC has assured the Foundation that it would perform in accordance with the Recognition Agreement but never actually performed. *See supra* at pp. 6–8. On October 2, the LLC made clear that it will not perform based on recently surfaced aesthetic considerations. The LLC has “fail[ed] to perform” and “breached” the Recognition Agreement.

II. The Foundation Is Entitled To Specific Performance.

Under the Recognition Agreement, the LLC acknowledged the Foundation’s remedy for breach is specific performance. The LLC agreed that remedies at law were inadequate to redress the LLC’s failure to perform and therefore the Foundation “*shall be entitled to seek equitable relief in the form of specific performance.*” Ex. C (Recognition Agreement) at ¶ 6 (emphasis added). New York courts favor granting equitable relief where, as here, sophisticated parties agree to such remedies “in a clear, complete document.” *Bank of Am., N.A. v. PSW NYC LLC*, 29 Misc. 3d 1216(A), at *10–12 (N.Y. Sup. Ct., New York County 2010) (granting equitable relief because the parties “agreed that monetary damages would not serve as

an adequate remedy at law” and “their writing should . . . be enforced according to its terms”) (citing *Vermont Teddy Bear Co.*, 1 N.Y.3d at 475).

Specific performance is a proper remedy for a breach of contract if money damages would be inadequate to uphold the expectations of the injured party, *see Sokoloff v. Harriman Estates Dev. Corp.*, 96 N.Y.2d 409, 415 (2001) (citing Restatement (Second) of Contracts § 359 (1981)), and when “the subject matter of the particular contract is unique and has no established market value.” *Sokoloff*, 96 N.Y.2d at 415 (quoting *Van Wagner Adver. Corp. v. S & M Enters.*, 67 N.Y.2d 186, 193 (1986)); *see also Cho v. 401–403 57th St. Realty Corp.*, 300 A.D.2d 174, 175 (1st Dep’t 2002) (“[S]pecific performance has been held to be a proper remedy in actions for breach of contract . . . when the uniqueness of the [subject matter] in question makes calculation of money damages too difficult or too uncertain.”).

Here, the Foundation’s manifested expectation at the time of the Grant was an engraving of the Threshold Recognition Text on the Threshold in advance of this Park’s dedication. By its very nature, such a unique and precise honorary recognition is not subject to monetary valuation; this lasting recognition of the Foundation’s role in erecting the Park has tremendous significance to the Foundation and its principals. New York courts have granted specific performance in analogous situations involving unique projects and momentous events, with clear uncertainty in valuation. *See Robins v. Zwirner*, 713 F. Supp. 2d 367, 374–75 (S.D.N.Y. 2010) (seller’s refusal to convey “unique works of art” by an artist constitutes irreparable harm to the purchaser); *Hoffmann v. Springchorn*, No. 95–CV–0579E (Sc), 1997 WL 128352, at *1, 4 (W.D.N.Y. March 13, 1997) (granting specific performance to the purchaser of a rare automobile because “there is no doubt that the [automobile] is unique”); *David Tunick, Inc. v. Kornfeld*, 838 F. Supp. 848, 851 (S.D.N.Y. 1993) (art collector who contracted to buy a

specific Picasso print was not obligated under the UCC to accept a substitute print of the same Picasso painting because, as art prints are “by definition, unique,” an art purchaser is entitled to receive the print that “*he* viewed [] as uniquely beautiful”); *Chabert v. Robert & Co.*, 273 A.D. 237, 238–39 (1st Dep’t 1948) (specific performance appropriate to require promisor to sell a rare oil of “special and unascertainable value to the plaintiff” that could not be calculated for a damage award); *Rafferty v. World Film Corp.*, 180 A.D. 475, 481–83 (1st Dep’t 1917) (specific performance appropriate to compel the return of photographic prints because of their “unique character” and the impossibility of “estimat[ing] the damage that may come to plaintiff”); *see also Destiny USA Holdings, LLC v. Citigroup Global Markets Realty Corp.*, No. 09-4157, 2009 WL 2163483, at *18–19 (N.Y. Sup. Ct., Onondaga County July 17, 2009), *aff’d as modified*, 69 A.D.3d 212 (4th Dep’t 2009) (promisor required to fund pending loan advances under loan agreement in order to effect promisee’s unique expectation interest in a landmark public improvement project); *Barry v. Dandy, LLC*, No. 602282/07, 2007 WL 2917248, at *2 (N.Y. Sup. Ct., New York County Aug. 15, 2007) (ordering event planner to specifically perform obligation to provide promisee a suitable wedding hall).

The deal, as carefully set forth in a binding contract, is that the Threshold Recognition Text will be engraved on the Threshold according to contract well in advance of the Park’s dedication. The Foundation’s right to the agreed recognition was not illusory. It was not subject to the arbitrary whims of the LLC or its consultants. Contract law—and philanthropic custom—require enforcement of an unambiguous undertaking to provide a donor, like the Foundation, the specific recognition it was promised. *Cf. Capital City Cmty. Urban Redevelopment Corp. v. City of Columbus*, No. 08AP-769, 2009 WL 5062063, at *8 (Ohio Ct. App. Dec. 24, 2009) (recognizing seller’s right to select the “size, text, and location” of a bronze

plaque to be installed on the front of a theater despite the City of Columbus' desire to remove the plaque so as not to "eviscerate" the seller's contractual rights by making them "subject to arbitrary rejection" by the city-purchaser).

CONCLUSION

For all the foregoing reasons, this Court should grant the Foundation's Petition.

Dated: October 4, 2012
New York, New York

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EXHIBIT C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM : PART 53

-----X
ALPHAWOOD FOUNDATION,

Plaintiff,

-against-

Index No.
653564/12

FRANKLIN D. ROOSEVELT FOUR FREEDOMS PARK,
LLC,

Defendant.

-----X
THE REED FOUNDATION, INC.,

PLAINTIFF,

-against-

Index No.
653482/12

FRANKLIN D. ROOSEVELT FOUR FREEDOMS PARK,
LLC,

Defendant.

-----X
Transcript of Settlement/Allocution

New York Supreme Court
60 Centre Street
New York, New York 10007
October 16, 2012

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(Appearances continued on next page.)

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A P P E A R A N C E S: (continued)

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* * * * *

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Proceedings

MS. MINARDZ: President of Franklin Roosevelt
Four Freedoms Park, LLC.

THE COURT: Please raise your right hand.

S A L L Y M I N A R D, having been duly sworn testified as
follows:

THE COURT: Have you heard, understood and do you
agree with the stipulation that has been dictated on the
record on behalf of the LLC?

MS. MINARDZ: I do.

THE COURT: Thank you very much.

Thank you all very much. But now we get to the
bad news and that is that we have no agreement apparently
with the Reed Foundation.

MR. GARVEY: That's right, your Honor.

THE COURT: We don't need to discuss this in any
great deal because we have already off the record. I have
read the papers. I have read the documents. I have read
the recognition agreement. I understand them all.

My inclination would be to grant the motion on
the record except that the Reed Foundation agrees they do
not want to delay the opening ceremony, which is scheduled
for tomorrow, so that I will render a written decision
granting the motion enforcing the contract as written.
That will give you an opportunity to take an appeal, if the
LLC wishes to take an appeal. But as I explained before, I

Proceedings

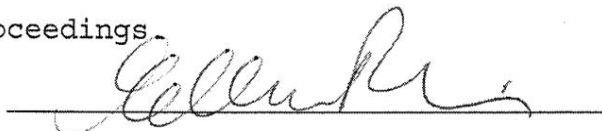
1
2 think that the public interest, public policy favors
3 philanthropy and any decision contrary to the very
4 carefully articulated agreement between the parties, I
5 think, would do great damage to the generosity that the
6 City benefits from over these many years; not just this
7 park, what's going to happen to the next charitable
8 organization that wants to raise money for something
9 perhaps a little bit more useful and not so monumental.

10 But I'm glad this is going forward. I'm glad we
11 don't have to have a road trip this afternoon. We will
12 have the ceremony tomorrow. The weather is going to be
13 good and the pigeons, I'm sure, will enjoy themselves.

14 MS. KAPLAN: Thank you, your Honor.

15 * * * * *

16 Certified to be a true and accurate record of the
17 within proceedings.

18 

19 Ellen Rubin, CSR, RPR
20 Senior Court Reporter
21
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EXHIBIT D

SUPREME COURT OF THE STATE OF NEW YORK

NEW YORK COUNTY

PRESENT: CE Ramos

Justice

PART 33

Index Number : 653482/2012

REED FOUNDATION, INC.

vs.

FRANKLIN D. ROOSEVELT

SEQUENCE NUMBER : 001

OTHER RELIEFS

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). _____

Answering Affidavits — Exhibits _____ No(s). _____

Replying Affidavits _____ No(s). _____

Upon the foregoing papers, it is ordered that this motion is

Motion is decided in accordance with
accompanying Memorandum Decision.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 10/19/12

 _____, J.S.C.
CHARLES E. RAMOS

1. CHECK ONE: ☒ CASE DISPOSED ☐ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: ☐ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ☐ SETTLE ORDER ☐ SUBMIT ORDER
- ☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK:COMMERCIAL DIVISION

-----X
THE REED FOUNDATION, INC.,

Petitioner,

-against

Index No.: 653482/2012

FRANKLIN D. ROOSEVELT FOUR FREEDOMS
PARK, LLC,

Respondent.
-----X

Hon. Charles Edward Ramos, J.S.C.

Petitioner, The Reed Foundation, Inc. (the "Foundation"), seeks an order declaring that Respondent Franklin D. Roosevelt Four Freedoms Park LLC (the "LLC") breached its contractual obligations to the Foundation based on the LLC's continuing failure to complete an agreed engraving at the FDR Four Freedoms Park (the "Park").

Petitioner's Allegations

The LLC agreed to include an engraving on behalf of the Foundation at a specific location in the Park. The Foundation contends that the LLC's undertaking was clear. The LLC has now refused to perform. The Foundation thus seeks to enforce its contractually agreed upon right to specific performance by the LLC.

The Foundation is a charitable organization. The LLC is the developer of the Park. In 2010, the Foundation made a \$2.5 million grant to the LLC (the "Grant"), which enabled the LLC to fund the Park's construction. The terms of the Foundation's grant are governed by various detailed contracts, negotiated at length by the parties (referred to collectively as the "Agreement" or the "Agreements"). Under the Agreements, as part of "Phase One"

construction, the LLC was required to complete construction of a structure called the "Threshold" by "no later than December 31, 2011." The Agreements specifically mandated that construction of the Threshold "will include" on an exterior west-facing wall, engraved text recognizing the Foundation for its contribution to the Park. This recognition is defined under the Agreements as the "Threshold Recognition Text." The Agreements also identify the artisan who is to oversee the engraving work on the Threshold. Finally, the Agreements recognize the Foundation's right to specific performance in the event the LLC fails to complete the Threshold, including the Threshold Recognition Text, according to the Agreement.

It is undisputed that the LLC has failed to complete the Threshold Recognition Text in accordance with the Agreement, notwithstanding the fact that since June 2012, the LLC repeatedly assured the Foundation that it intended to complete the Threshold Recognition Text in accordance with the Agreement "as soon as possible." The LLC never performed and has refused to provide the Foundation any assurance as to when performance would be complete. As of the filing of the Petition, the dedication of the Park was just two weeks away.

Finally, on October 2, 2012, the LLC advised the Foundation that it would not honor its obligation to complete the Threshold Recognition Text on the Threshold in light of "aesthetic concerns" recently voiced by the LLC's architects and consultants.

The Foundation asserts that the LLC's refusal to complete the Threshold, including the Threshold Recognition Text, is a breach of the Agreement. The LLC acknowledged in the Agreement that the Foundation's remedies at law for the LLC's "failure to perform, breach or threatened breach" of its obligations under the Agreement "would be inadequate and the Foundation would suffer irreparable harm as a result of such failure to perform, breach or

threatened breach."

The LLC further agreed that the Foundation's remedies for such conduct include "equitable relief in the form of specific performance" as well as a "temporary or permanent injunction." The Foundation contends that the contractual provisions recognize and uphold the Foundation's right to receive what is an inherently unique and special benefit that is impossible to value.

Respondent's Contentions

The LLC does not dispute the Foundations factual allegations, but contends that the issue in this case addresses the conscience of the Court.¹

The LLC, the builder of the Park asserts that its agreement with the Foundation cannot be honored without defacing a work of art. It accuses the Foundation of framing this dispute as one of private contractual concern -- wholly detached from any concept of the public good and the architectural integrity of the work -- as though this were a crass commercial transaction, failing utterly to address the public's stake in this "great venture" and the "irreparable injury" it would cause to the public if it defaced the centerpiece of the Park over objections of the artistic and architectural community.

The LLC states that there is no evidentiary showing that the Foundation would be harmed in any real sense at all if it received recognition that did not deface this memorial and argues that the equities here weigh heavily in the LLC's favor.

BACKGROUND

What follows are the undisputed facts.

¹ In this assessment, this Court is in complete agreement.

The Park was designed in the 1970s by the late architect Louis I. Kahn. The Park consists of a grand staircase, which ascends to a triangular garden of trees and paving stones bordered by a stone promenade, a forecourt area at the point of the triangle that leads to a large bronze bust of Roosevelt housed in a 12 foot-tall granite structure known as the "Threshold," and, just beyond the Threshold, a square granite "Room," which sits at the southernmost tip of Roosevelt Island overlooking the East River.

For over 30 years, efforts to develop the Park were unsuccessful. Then, in 2005, Reed and Jane Gregory Rubin, officers of the Foundation, helped resurrect the long dormant Roosevelt Island project by funding an exhibit on the project at the Cooper Union for the Advancement of Science and Art. The project thereafter gained momentum, with public and private donors displaying interest and ultimately contributing the necessary funds to finance the project.

Consistent with the Rubins' efforts to advance the project, in March 2010, the Foundation contracted to provide the Grant, the express purpose of which was "to support Phase One . . . of construction of the [Park]" The Grant was among the very first grants made in connection with this project, at a time when there was considerable doubt as to whether the project could be completed. The Grant enabled the LLC to secure public funding from New York State and New York City.

The Agreements

The Grant is governed by a series of interrelated agreements, including the Grant Agreement and the Recognition Agreement. The Grant Agreement and the Recognition Agreement are referred to collectively as the "Foundation-FDR Agreements." These are detailed

contracts, drafted by experienced attorneys representing all parties, which carefully documented the parties' mutual agreement at the time of the Foundation's grant.

Under the Grant Agreement, Phase One of the construction of the Park "must include the construction of the Threshold no later than December 31, 2011 (or such later date agreed to in writing by the Foundation)" and that the construction of the Threshold "will include . . . the carving of, and/or other display of, the Threshold Recognition Text and the other text on the Threshold," which is an excerpt of a speech by FDR entitled the Four Freedoms Speech.

The Recognition Agreement sets forth the precise location and wording of the "Threshold Recognition Text," as well as the process for its inscription. The LLC, as developer of the FDR Four Freedoms Park, agreed that the Recognition would be permanently carved on the West-Facing Side of the Threshold as follows:

IN HONOR OF

VERA D. RUBIN AND SAMUEL RUBIN

THE REED FOUNDATION

The Recognition Agreement went on to specify the manner of carving, size, font and placement reasonably acceptable to the Foundation. It also specified that the Recognition would be designed by The John Stevens Shop under the supervision of Nick Benson, Creative Director, that no other text, signage or similar wording recognizing a donor or other contributor could be placed on the West-Facing Side of the Threshold or the North-Facing Side of the Threshold, and that no other carving, inscription, or other signage may be displayed on the West-Facing Side of the Threshold without the prior written consent of the Foundation.

The Recognition Agreement also provides that a "Default" occurs if "the Threshold

has not been installed in the Sculpture Court by December 31, 2011." In addition, the LLC agreed that "the Foundation's remedies at law for a failure to perform, breach or threatened breach of any of Sections 1 and 2 of this Recognition Agreement would be inadequate and the Foundation would suffer irreparable damages as a result of such failure to perform, breach or threatened breach." In recognition of this fact, the LLC agreed that, in the event of the LLC's failure to perform, breach or threatened breach, in addition to any remedies at law, the Foundation, without posting any bond, would be entitled to seek equitable relief in the form of specific performance, temporary restraining order, temporary or permanent injunction or any other equitable remedy which may then be available." (Recognition Agreement, § 6).

Discussion

The LLC seeks to admonish the Foundation, and presumably all of the other donors to and benefactors of the Park whose names are set forth on the monument², by quoting from Maimonides in its memo of law: "Giving is most blessed and most acceptable When the donor remains completely anonymous."

This litigation would not have occurred if the LLC had articulated such a concern to the Foundation before it accepted and spent the Foundation's money.³

The Foundation-FDR Agreements are governed by New York law and contain forum selection clauses in which the parties submit to this Court's jurisdiction.

Pursuant to the Grant Agreement, the Foundation paid the Grant to be used to construct

² The LLC has also sought to prominently acknowledge its Chairman, Maimonides' rebuke notwithstanding.

³ This litigation would also have been avoided if the LLC's consultants had voiced their artistic objections in a timely manner.

Phase One of the Park, including parts of the Threshold.

On June 21, 2012, the Foundation and the LLC confirmed their agreement regarding placement of the Threshold Recognition Text on the West-Facing Side of the Threshold as reflected in a mock-up of the required engraving. On June 21, 2012, the Foundation also consented to a request by the LLC that the lettering for the Threshold Recognition Text be changed from black to gray. This Court has examined the Text and finds it to be understated, low to the ground, in small font, on the West-Facing Side of the Threshold, not facing the bust of FDR.

By July 2012, the LLC had completed the inscription of FDR's speech on the south-facing side of the Threshold but the LLC still had not commenced engraving of the Threshold Recognition Text. At that time, the designated artisan who was responsible for overseeing all engraving on the Threshold, Nick Benson, was on site. The LLC did not apprise the Foundation of its decision not to complete engraving of the Threshold Recognition Text while Mr. Benson was on site.

The LLC asked the Foundation to abdicate its right to the Threshold Recognition Text on the West-Facing Side of the Threshold, and, instead, agree to recognition text on the "grand stair" (where other donors' names would be engraved). The LLC reported complications with other donors and an evolving aesthetic view that the Threshold should not include the Threshold Recognition Text. The Foundation would not consent to relocating the Threshold Recognition Text.

On August 9, 2012, the LLC responded that it was "[o]f course, mindful of and will honor our contractual agreement with the Reed Foundation," but again the LLC requested

that the Foundation consider relocating the Threshold Recognition Text. On August 20, 2012, the LLC again suggested that the Foundation consent to relocate the Threshold Recognition Text. In response, the Foundation, through counsel, reiterated that the Threshold Recognition Text must be engraved "in accordance with . . . the Recognition Agreement" attached to its letter a photo of the West-Facing Side of the Threshold with a Mylar strip displaying the agreed Threshold Recognition Text at its designated location.

The Foundation's letter further requested that the LLC confirm the timing for completing the engraving on the Threshold. The LLC failed to respond to the Foundation's request, and, on September 8, 2012, the Foundation again requested confirmation that the required engraving on the Threshold would take place on or before October 10, 2012, ten days after Mr. Benson was scheduled to return to the site and one week in advance of the scheduled dedication of the Park.

The LLC responded on September 13, 2012 "confirm[ing] that pursuant to your letter of August 20, 2012 . . . , the Park agrees to the placement of the recognition of The Reed Foundation as described in the August Letter." The LLC assured the Foundation that the Threshold Recognition Text would be carved in accordance with the Recognition Agreement "as soon as possible."

On September 26, 2012, the LLC wrote to the Foundation, again acknowledging the Foundation's "ability to enforce the details of the March 2010 contract⁴" and that the LLC has "no doubt that [the Foundation] may prevail in a Courtroom." However, the LLC refused to confirm that it would cure its breach and complete the Threshold Recognition Text before the

⁴ The Reconition Agreement.

Park's dedication.

On October 2, 2012, just over two weeks before the Park's dedication, the LLC advised the Foundation that the LLC will not perform because "[o]ur architects and consultants have told us" that including the Threshold Recognition Text on the Threshold was not the "best aesthetic." The LLC offered to either relocate the engraving or to agree to repay the Foundation's grant, with interest.

Other than the completion of the Threshold Recognition Text on the Threshold in accordance with the Foundation-FDR Agreements, all other phases of construction of the Park and the Threshold are essentially complete.

Specific Performance

The Foundation sought to invoke its rights to specific performance and injunctive relief under the Recognition Agreement and sought an order requiring the LLC to complete the Threshold Recognition Text on or before the Park's dedication on October 17, 2012.

Initially, the Foundation sought to require the LLC to postpone and reschedule the dedication until such performance under the Agreements was completed. However, the Foundation has consented to a waiver of its right to postpone the dedication.

The LLC has materially breached the Foundation-FDR Agreements by refusing to engrave the Threshold Recognition Text by December 31, 2011, as it is contractually obligated to do.

The construction of an unambiguous contract-such as the Grant Agreement and the Recognition Agreement here-is a matter of law for the court and "the intention of the parties may be gathered from the four corners of the instrument and should be enforced according to its

terms” (*Beal Sav. Bank v Sommer*, 8 NY3d 318, 324 [2007]). It is also a “familiar and eminently sensible proposition of law [] that, when parties set down their agreement in a clear, complete document, their writing should . . . be enforced according to its terms” (*Vermont Teddy Bear Co. v 538 Madison Realty Co.*, 1 NY3d 470, 475 [2004] *quoting W.W.W. Assocs. v Giancontieri*, 77 N.Y.2d 157, 162 [1990]).

Under the Recognition Agreement, the LLC acknowledged the Foundation's remedy for breach is specific performance. The LLC agreed that remedies at law were inadequate to redress the LLC's failure to perform and therefore the Foundation "shall be entitled to seek equitable relief in the form of specific performance" (Recognition Agreement, ¶ 6). The LLC's offer to agree to return the gift would negate that term of the Agreement and is hereby rejected. New York courts favor granting equitable relief where, as here, sophisticated parties agree to such remedies "in a clear, complete document" (*Bank of Am., N.A. v PSW NYC LLC*, 29 Misc 3d 1216(A), 2010 NY Slip Op 51848[U], 10-12 [2010] [granting equitable relief because the parties "agreed that monetary damages would not serve as an adequate remedy at law" and "their writing should . . . be enforced according to its terms" *citing Vermont Teddy Bear Co.* at 475]).

Specific performance is a proper remedy for a breach of contract if money damages would be inadequate to uphold the expectations of the injured party (*see Sokoloff v Harriman Estates Dev Corp.*, 96 NY2d 409, 415 [2001] *citing* Restatement (Second) of Contracts § 359 [1981]), and when "the subject matter of the particular contract is unique and has no established market value" (*id. quoting Van Wagner Adver. Corp. v S & M Enters.*, 67 NY2d 186, 193 [1986];

see also *Cho v 401-403 57th St. Realty Corp.*, 300 AD2d 174, 175 [1st Dept 2002] [“[S]pecific performance has been held to be a proper remedy in actions for breach of contract . . . when the uniqueness of the [subject matter] in question makes calculation of money damages too difficult or too uncertain”).

Here, the Foundation's manifested expectation at the time of the Grant was an engraving of the Threshold Recognition Text on the Threshold in advance of this Park's dedication. By its very nature, such a unique and precise honorary recognition is not subject to monetary valuation. This Court understands that this lasting recognition of the Foundation's role in erecting the Park has significance to the Foundation and its principals. New York courts have granted specific performance in analogous situations involving unique projects and momentous events, with clear uncertainty in valuation (see *Robins v Zwirner*, 713 F Supp 2d 367, 374-75 [SD NY 2010] [seller's refusal to convey “unique works of art” by an artist constitutes irreparable harm to the purchaser]; *Hoffmann v Springchorn*, No. 95-CV-0579E (Sc), 1997 WL 128352 at *1, 4 [WD NY 1997] [granting specific performance to the purchaser of a rare automobile because “there is no doubt that the [automobile] is unique”]; *David Tunick, Inc. v Kornfeld*, 838 F Supp 848, 851 [SD NY 1993] [art collector who contracted to buy a specific Picasso print was not obligated under the UCC to accept a substitute print of the same Picasso painting because, as art prints are “by definition, unique,” an art purchaser is entitled to receive the print that “he viewed [] as uniquely beautiful”]; *Chabert v Robert & Co.*, 273 AD 237, 238-39 [1st Dept 1948] [specific performance appropriate to require promisor to sell a rare oil of “special and unascertainable value to the plaintiff” that could not be calculated for a damage award]; *Raftery v World Film Corp.*, 180 AD 475, 481-83 [1st Dept 1917] [specific performance appropriate to compel the

return of photographic prints because of their “unique character” and the impossibility of “estimat[ing] the damage that may come to plaintiff”]; *see also Destiny USA Holdings, LLC v Citigroup Global Markets Realty Corp.*, No. 09-4157, 2009 WL 2163483, *18-19 [NY Sup Ct, Onondaga County 2009, J. Elfvín], *aff’d as modified* by 69 A.D3d 212 [4th Dept 2009] [promisor required to fund pending loan advances under loan agreement in order to effect promisee’s unique expectation interest in a landmark public improvement project]; *Barry v Dandy, LLC*, No. 602282/07, 2007 WL 2917248, at *2 [NY Sup Ct, New York County 2007, J. Tingling] [ordering event planner to specifically perform obligation to provide promisee a suitable wedding hall]).

The understanding, as carefully set forth in the Agreement, is that the Threshold Recognition Text will be engraved on the Threshold according to contract well in advance of the Park’s dedication. The Foundation’s right to the agreed recognition was not illusory. It was not subject to the arbitrary whims of the LLC or its consultants. Contract law-and philanthropic custom-require enforcement of an unambiguous undertaking to provide a donor, like the Foundation, the specific recognition it was promised. (*Cf. Capital City Cmty. Urban Redevelopment Corp. v City of Columbus*, No. 08AP-769, 2009 WL 5062063, at *8 [Ohio Ct App 2009, J. McGrath] [recognizing seller’s right to select the “size, text, and location” of a bronze plaque to be installed on the front of a theater despite the City of Columbus’ desire to remove the plaque so as not to “eviscerate” the seller’s contractual rights by making them “subject to arbitrary rejection” by the city-purchaser]).

This Court is disturbed by the actions of the LLC. No potential donor in this State should be made to fear that its generosity will be diminished by strategically delayed artistic whims of a

charity's managers. Public policy and the public's interest in charitable giving require that philanthropy trump fashion.

Perhaps instead of insulting their donors by quoting Maimonides, the members of the LLC should have read Shelley instead:

I met a traveller from an antique land,
Who said—"Two vast and trunkless legs of stone
Stand in the desert. . . . Near them, on the sand,
Half sunk a shattered visage lies, whose frown,
And wrinkled lip, and sneer of cold command,
Tell that its sculptor well those passions read
Which yet survive, stamped on these lifeless things,
The hand that mocked them, and the heart that fed;
And on the pedestal, these words appear:
My name is Ozymandias, King of Kings;
Look on my Works, ye Mighty, and despair!
Nothing beside remains. Round the decay
Of that colossal Wreck, boundless and bare
The lone and level sands stretch far away.

This Court expects that the inspiration of the Four Freedoms will far outlive the memory of King Ozymandias but the only path the courts can take to insure that New York's generous custom and practice of philanthropy survives is to require the LLC to honor its obligations that were so carefully articulated in the Agreements. The LLC is directed to complete the Threshold Recognition Text on the Threshold in accordance with the Agreements.

This Court hereby grants the Foundation's Petition.

Settle order on notice.

Dated: October 19, 2012



J.S.C.
CHARLES E. RAMOS

EXHIBIT E

Entry Plaza
\$2,000,000 -RESERVED

Founders Wall
\$1,000,000

Great Lawn
\$5,000,000

West Allee
\$2,500,000

West Promenade
\$3,000,000

Roosevelt Legacy
Chapters
\$50,000 each

West Forecourt Arbor
\$1,000,000

Sculpture Court
\$2,500,000 -RESERVED

Copper Beech Trees
\$2,500,000 -RESERVED

Grand Stair
\$5,000,000

East Allee
\$2,500,000

East Promenade
\$3,000,000

Roosevelt Legacy
Chapters
\$50,000 each

East Forecourt Arbor
\$1,000,000

Forecourt
\$2,500,000

Four Freedoms Room
\$10,000,000 -RESERVED

FRANKLIN D. ROOSEVELT **FOUR
FREEDOMS
PARK**