

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

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FRIENDS OF THE HUDSON RIVER PARK, CHELSEA
WATERSIDE PARK ASSOCIATION, HELLS KITCHEN
NEIGHBORHOOD ASSOCIATION, WEST STREET
COALITON, PIER 66 MARITIME, INC., JOHN KREVEY,
ROBERT TRENTLYON, MARTIN TREAT, FREDRIC
AND MARILYN SIRASKY, ANDREW BERMAN,
JOHN DELLAPORTAS and DAVID HOLOWKA

Index No.: 116581/07

Plaintiff-Petitioners

- against -

HUDSON RIVER PARK TRUST, AIR PEGASUS
HELIPORT, INC. and LIBERTY HELICOPTERS, INC.

Defendant-Respondents

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SETTLEMENT AGREEMENT AND ORDER

WHEREAS, Plaintiffs have sued Defendants Hudson River Park Trust (the “Trust” or the “HRPT”), Air Pegasus Heliport, Inc. (“Air Pegasus”) and Liberty Helicopters, Inc. (“Liberty”) in the above-captioned lawsuit regarding the heliport located at West 30th Street on the Hudson River (the “Heliport” or the “30th Street Heliport”); and

WHEREAS, the parties have agreed to an amicable resolution of the lawsuit;

NOW, THEREFORE, based on and in consideration of the foregoing, and in consideration of the mutual covenants set forth herein, but subject to the approval of this Court and its continuing jurisdiction over this matter, the parties agree as follows:

1. Representations.

- a. Each party explicitly acknowledges *in personam* jurisdiction and subject matter jurisdiction of the Court to adjudicate the present dispute and to enforce the terms of this Settlement Agreement.
- b. All parties expressly waive any right such party may have to appeal the terms of this Settlement Agreement.

2. Termination of Tourist Flights in Hudson River Park.

Subject to the further terms of this Settlement Agreement, Air Pegasus is

permitted to continue to conduct and to allow its customers, including but not limited to Liberty, to continue to conduct tourism, recreational, sightseeing and other related helicopter operations (collectively referred to as “tourism” operations) at the 30th Street Heliport, subject to and in accordance with the terms and conditions of the Agreement between the Trust, as successor to The New York State Department of Transportation and Air Pegasus dated March 25, 1996 (the “Permit”) but only until March 31, 2010, and only to the following extent:

- a. From June 1, 2008 through May 31, 2009, the total number of tourism operations shall not exceed 25,000.
- b. From June 1, 2009 through March 31, 2010, the total number of tourism operations shall not exceed 12,500.
- c. As of April 1, 2010, no tourism operations will be permitted to operate to or from the 30th Street Heliport. Air Pegasus shall cause any agreements with any operators by which such operators are permitted to conduct tourism operations at the 30th Street Heliport to be terminated, to the extent such agreement(s) permit tourism, by no later than April 1, 2010.
- d. Liberty agrees that it shall abide by the above-stated restrictions including the date to terminate all tourism operations.
- e. For purposes of this Agreement, one operation is defined as a landing and its associated take-off.

3. Continued Operation of the 30th Street Heliport for Non-Tourism Flights.

- a. Subject to the further terms of this Settlement Agreement, Air Pegasus is permitted to continue to conduct and to allow its customers, including but not limited to Liberty, to conduct commercial, governmental, and emergency operations out of the 30th Street Heliport until the earlier of:
 - (i) December 31, 2012; or
 - (ii) Termination of the Permit; or
 - (iii) The opening of a new heliport for commercial, governmental and emergency operations at a location permitted under the Hudson River Park Act [Laws of 1998, Chapter 592] (“Park Act”).
- b. Notwithstanding the foregoing, if a new heliport has not opened by December 31, 2012 as a result of regulatory delays including a delay in obtaining any permits required for such new heliport, the December 31, 2012 date shall be extended by a period equal to the time lost due to the regulatory delays and for an

additional two years after the permits are granted. However, notwithstanding the above, in the event that a new heliport is not operational by December 31, 2014, then Plaintiffs shall have the right to seek the intervention of the Court to cause an immediate discontinuance of the operations at the Heliport and all parties reserve their defenses to any such application or lawsuit.

c. Subject to the Permit, the Trust agrees to use reasonable efforts, working with the appropriate City and State entities, to secure the approval of and develop a new heliport for commercial, governmental, and emergency operations at Pier 72 or some other permitted location as soon as reasonably possible. Nothing herein shall be deemed to enlarge or expand upon any obligation in this regard, if any, that the Trust may have under the Park Act or the Permit.

d. Nothing in this Agreement shall be read to limit or condition any right the Trust may otherwise have to present an RFP relative to the operation of the heliport or for a new heliport.

4. Physical Changes at the 30th Street Heliport.

a. On or before July 31, 2008, Air Pegasus agrees to erect or caused to be erected new buffers around the unprotected areas of the 30th Street Heliport with the goal of substantially reducing the ambient noise, fumes, and wind gusts from the Heliport that reach Hudson River Park areas to the east, south and other inboard locations. Air Pegasus will provide the Plaintiffs with the opportunity to review the plans for such new barriers and to make suggestions regarding the same. Any such facility modifications are subject to the Trust's approval in accordance with the terms and conditions of the Permit.

(i) Air Pegasus must submit proposed methods and materials to achieve such reductions to the Trust and to the Friends by June 30, 2008, and its final proposal by July 15, 2008.

(ii) Air Pegasus must propose materials/methods which are reasonably calculated to provide for the substantial diminution of noise, fumes (to the extent possible), and wind.

(iii) In the event of a dispute about the efficacy of the proposed materials, the parties may seek intervention of the Court.

b. Air Pegasus agrees that it will use its best efforts to implement by August 31, 2008, changes to its take-off, landing and parking procedures respecting tourism operations in order to utilize the barge located along the northwest side of the heliport as the primary location for the take-off and landing of tourism flights. In addition, to the extent that landing space is available, Air Pegasus agrees to use its best efforts to move as many helicopter operations of all kinds as far north on the landing areas of the Heliport as possible in order to reduce the impact of noise

and fumes on the section of Hudson River Park immediately south of the Heliport.

- (i) Air Pegasus shall provide the Trust and Friends with its plan for the usage of the barge and the most northerly portions of the landing area by August 15, 2008 and shall not implement the plan until it receives any approvals required by the Trust;
 - (ii) The Trust agrees to consult with the Friends with regard to the issuance of its approval.
 - (iii) In the event of a dispute concerning the nature of Air Pegasus's plans, the parties may seek the intervention of the Court.
- c. Air Pegasus also intends to pursue an interim plan to relocate the Heliport onto barges until such time as a new heliport is operational, thereby returning a significant percentage of the area where the Heliport is located to parkland (the "barge plan"). The FOHRP agrees to support the barge plan subject to the provisions of the Act and the viability of the proposed plan.

5. Revised Flight Patterns.

Within 30 days after the effectiveness of this Settlement Agreement, Air Pegasus will use its best efforts, consistent with FAA Rules and Regulations, to cause all the helicopter operators using the 30th Street Heliport, including Liberty, to fly flight patterns for approaches and departures as follows:

- a. All helicopters approaching the Heliport from the South shall fly up the approximate middle of the Hudson River, then turn right opposite the Heliport and make a straight in approach to landing at all times keeping safety as the primary consideration;
- b. All helicopters approaching the Heliport from the North shall fly down the approximate middle of the Hudson River, then turn left opposite the Heliport and make a straight in approach to landing at all times keeping safety as the primary consideration;
- c. All helicopters departing from the Heliport shall fly directly out from the Heliport at least to the approximate middle of the Hudson River and only then turn north or south or continue west (as the case may be).
- d. All tourism flights made from the Heliport shall follow the flight patterns described above for approaches and departures and, in addition, if flying north and/or south, shall be required to fly along or to the west of the approximate center of the Hudson River. Except during take offs and landings or if necessary for safety reasons, no tourism flight made from the Heliport shall approach any closer to the western edge of the Hudson River Park and Battery Park City than

the middle of the Hudson River.

e. Notwithstanding the foregoing, flight patterns and procedures may be varied as required by safety considerations, the FAA and the air traffic controllers having control of the airspace, but if and when varied shall, if possible, be modified so as to have the least possible impact on adjacent and nearby Hudson River Park, including not limited to the Pier 66 Boathouse and Pier 66 Maritime operations at 26th Street, and on Battery Park City.

f. Air Pegasus shall promptly take all reasonable steps necessary to cause the operators using the 30th Street Heliport to fly the flight patterns described above including presenting the proposed flight paths to the Eastern Region Helicopter Council and its members.

g. Air Pegasus agrees that if any regular user of the Heliport repeatedly violates these provisions, it shall immediately refuse that operator the right to utilize the Heliport to the extent it has the right to do so under relevant governmental regulations.

h. If Air Pegasus has not taken reasonable steps to secure the cooperation of the helicopter operators using the heliport of the flight patterns described in clauses a, b and c, above by September 1, 2008, Plaintiffs shall have the right to return to the Court to seek enforcement of this Agreement.

i. Liberty agrees that all its tourism operations will conform to the flight patterns required under paragraphs 5 “a” through “e” above.

6. Other Operating Limitations at the 30th Street Heliport.

Upon the effectiveness of this Settlement Agreement as defined in Paragraph 12 herein, the following limitations shall apply at the 30th Street Heliport:

a. The maximum number of operations at the 30th Street Heliport (tourism and non-tourism combined) shall be (i) 41,250 between June 1, 2008 through May 31, 2009; and (ii) 26,050 between June 1, 2009 through March 31, 2010, and (iii) 16,250 in each subsequent year commencing April 1, 2010. Emergency flights resulting from a declared Federal or State emergency are exempt from the above-stated limits. Air Pegasus agrees that it will not actively market or promote the Heliport in an attempt to increase non-tourism operations.

b. Commencing on June 1, 2009, tourism operations may be conducted only between the hours of 9:00 a.m. and 6:30 p.m. APH and Liberty commit to taking all steps necessary to schedule all operations so that they are concluded by 6:30, however, parties acknowledge that weather conditions, air traffic or safety concerns beyond the control of the operator or pilot may necessitate landings after 6:30pm from time to time.

c. Helicopters using the 30th Street Heliport shall make every effort to keep idling time to a minimum. Any helicopter arriving at the Heliport whose pilot anticipates that it will not take off for at least 30 minutes, will not keep its rotors or engines running for more than five minutes after arrival. All helicopters departing from the Heliport shall not start their engines or rotors more than five minutes (or the time necessary to safely warm up the engines and/or charge the batteries) before they take off.

7. Absolute Commitment to Terminate Tourist Flights.

The Defendants agree that the termination dates and arrangements for tourism operations set forth in Section 1 above are absolute and absolutely binding on them and their successors and assigns. Without limiting the generality of the foregoing, all parties agree that they will not, directly or indirectly, seek, promote or support any amendment of the Hudson River Park Act or take, promote or support any other action, legal or otherwise, to continue tourism operations which originate or land at any location in Hudson River Park after April 2010 or, once such operations are terminated, to reestablish such operations at any later date. For purposes of this paragraph, an act taken by any principal of a Defendant, a family member of any principal of Defendant, or by any entity of which Defendant or a principal of Defendant or a family member of any principal of Defendant individually or collectively owns more than ten percent (10%), shall be deemed an act of that Defendant.

8. Liquidated Damages and Enforcement.

a. The Parties consent to the issuance of an immediate injunction against any tourism operations from the Heliport effective April 1, 2010 and to the issuance of a judgment of possession and a writ of assistance in favor of the Trust as against any tourism operation at the Heliport, the execution of which is stayed through March 31, 2010. Parties agree that they will not seek the posting of a bond in connection with the issuance or enforcement of the injunctive relief provided for herein.

b. If there is a violation of this Settlement Agreement relative to the number of flights and/or cessation of tourism operations provided for in paragraphs 2(a), 2(b), 2(c), 2(d) and 6(a) of this Agreement; then upon three (3) business days notice and an opportunity to cure if the violation is capable of cure, Plaintiffs shall be entitled to the following additional relief from the Court, provided that Defendants shall have the right to contest whether a violation occurred:

- (i) a mandatory injunction as against the violating Defendant(s);
- (ii) a money judgment as to any liquidated damages; and
- (iii) such other remedies as the Court determines is necessary to

effectuate its orders or provide for the relief set forth herein;

c. To the extent that any Defendant(s) has conducted or permitted the conduct of any operations in contravention of paragraphs 2(a), 2(b), 2(c), 2(d) and/or 6(a) of this Agreement, then such Defendant shall be obligated for liquidated damages of \$10,000.00 per day for each day that a violation occurred which shall be payable to the Trust together with all the attorneys' fees and costs incurred by Plaintiffs in seeking enforcement.

d. Any violation of this Settlement Agreement relative to the number of flights and/or cessation of tourism operations provided for in 2(a), 2(b), 2(c), 2(d) and/or 6(a) of this Agreement, shall constitute a material breach by Air Pegasus of the Permit in accordance with Section 18(a)(10) thereof, and the Trust may proceed to terminate the Permit in accordance with its terms.

e. Any violation of this Settlement Agreement relative to the total number of flights which occurs prior to April 1, 2010 shall result in an immediate end to all sightseeing flights as of the date of such violation. Each violation of this Settlement Agreement relative to the total number of flights which occurs on or after April 1, 2010 shall, in addition to any other remedy provided for in this Agreement, result in a permanent reduction of the annual total number of permitted flights (based on a year measured from April 1st of one year through March of the subsequent year) of ten percent 10%, which reduction shall be effective as of the date of the violation.

f. In the event any Defendant violates any other material term of this Agreement (other than paragraphs 2(a), 2(b), 2(c), 2(d) and/or 6(a)) which violation is not cured within twenty (20) days after notice, that Defendant shall be responsible for liquidated damages in the sum of \$5,000.00 per day for each day that a violation occurred which was not cured, which shall be payable to the Trust. In addition, if a violation remains uncured, Plaintiffs shall have the right to seek the intervention of this Court for the fashioning of any remedy which may be appropriate including any compensatory damages that may be proven.

g. If Plaintiffs are included with any of the Defendants in a lawsuit brought by any tourism operator it permits to operate from the 30th Street Heliport arising from the terms of this Agreement, Air Pegasus agrees to defend the validity of this Agreement and to provide legal counsel for Plaintiffs. Plaintiffs agree that if they accept such counsel, they agree that there is no conflict of interest in the lawyers for Air Pegasus representing both Air Pegasus and the Plaintiffs and acknowledge that those lawyers may be the same lawyers who represented Air Pegasus in connection with this Agreement. In addition, Plaintiffs agree that such representation shall not be a basis for disqualification of those lawyers in any future litigation between any of the Plaintiffs and Air Pegasus.

9. Notice to All Heliport Customers of Flight and Operating Restrictions.

a. Within 10 days of the date hereof, Air Pegasus shall provide written notice to all tourism operators currently conducting operations at the Heliport advising such operators of the restrictions and other requirements of this Settlement Agreement and shall take all steps necessary to ensure compliance by all such tourism operators of such annual flight restrictions, approach and take-off requirements, and other operational restrictions and requirements provided for therein.

b. With 10 days of the date hereof, Air Pegasus shall post notices in two or more prominent locations at the Heliport, including but no limited to within the pilot's lounge and the passenger waiting areas, with each notice no less than 11" by 17" in size, clearly advising of the approach and departure requirements, and other operating restrictions and requirements provided for herein.

c. Within 30 days, Air Pegasus shall notify all members of ERHC and take any and all steps to place the request for adherence to such requirements or the agenda at the next scheduled meeting of such Association and take all reasonable efforts to secure the agreement of such association.

10. Representations, Record Keeping and Reporting.

a. Defendants each represent that a helicopter "operation" as historically reported to the Trust is comprised of a landing and its associated takeoff. Defendants acknowledge that such representation is a material term of this Agreement and has been relied on by Plaintiffs in entering into this Agreement. Consequently, in the event this representation is later determined to be untrue, Plaintiffs shall have the right to apply to the Court to vacate this Agreement in its entirety.

b. Air Pegasus shall maintain true and accurate records of all operations that take place at the Heliport, as required under the terms of the Permit (and distinguishing between tourism and non-tourism flights). Starting July 15, 2008 for the month of June 2008 and then within fifteen (15) days after the end of each calendar month thereafter, Air Pegasus shall provide written reports by email to the Trust and FOHRP setting forth the number of operations that took place during such month, the number of tourism operations, and the year to date totals for each based on the then applicable 12 month period.

c. Air Pegasus agrees to respond to reasonable requests for information by the Plaintiffs, which are necessary to ensure compliance with the terms of this Agreement, within 15 days, which requests may be made no more than once in any three month period.

11. Trust's Right to Terminate In Accordance with Permit Provisions.

This Settlement Agreement is not intended and shall not be construed to provide Air Pegasus with any greater rights than it is provided under the terms of the Permit. All parties recognize that the Trust is in the midst of developing Hudson River Park and that the Trust is actively working with State Department of Environmental Conservation and other governmental entities to effectuate a closure of the Heliport and development of a new heliport. Nothing herein is intended to preclude the Trust from terminating the Permit or otherwise exercising its rights under the Permit. The Trust and Air Pegasus agree that except as specifically set forth in paragraphs 2, 6 and 11 of this Agreement, nothing contained in this Agreement is intended to modify the Permit or the Settlement Agreement between the Trust and Air Pegasus dated November 22, 2006 (the "APH/HRPT Settlement Agreement") or otherwise limit their rights under the Permit or the APH/HRPT Settlement Agreement, both of which the Trust and Air Pegasus acknowledge remain binding and in full force and effect.

12. Effectiveness of this Agreement.

The effectiveness of this Agreement shall be subject to the approval of the Court and incorporated into a judicial order of the Court, which may be accomplished, if the Court is agreeable, by a "SO ORDERED" provision at the end of this Agreement. The Agreement shall be effective upon approval by the Court.

13. Partial Merger/Other Agreements.

The parties acknowledge that there is no other agreement among all of them that addresses the subject matter of this Agreement. Liberty and Air Pegasus acknowledge that there are other agreements to which they are parties, which shall remain in full force and effect. The Trust and Air Pegasus acknowledge that they are parties to the Permit and to the APH/HRPT Settlement Agreement, which shall both remain in full force and effect except as specifically modified herein. Plaintiffs are not parties to or bound by the APH/HRPT Settlement Agreement and reserve all rights they may have to claim that those terms cannot be deemed to modify or verify the terms of the Act.

14. Severability.

In the event that any provision of this Agreement is declared invalid or unenforceable, the remaining provisions shall remain in full force and effect.

15. Attorneys' Fees.

Any violation of any term of this Agreement shall be a basis for Court intervention and the right of any Plaintiff to seek the damages incurred as a result of such violation or any other remedy available in law or equity. Moreover, in any further court proceeding arising from this Agreement, the prevailing party shall be entitled to its

reasonable attorneys' fees to the extent such party prevailed.

16. Dismissal of Action; Continuing Jurisdiction of the Court.

Upon the effectiveness of this Agreement as defined in Paragraph 12, the injunctive relief, judgment of possession and writ of assistance as provided for in Paragraph 8(a) of this Agreement, shall be issued and the action initiated by Plaintiffs shall otherwise be marked as settled per *so ordered* Stipulation. However, this Court per Hon. Marcy S. Friedman shall retain jurisdiction subject to the terms hereof for the purposes of enforcing this Agreement and for all other appropriate purposes.

17. Notices.

Any notice required to be given under this Settlement Agreement shall be effective if hand delivered or sent by facsimile with a copy by certified mail:

a. If to Plaintiffs to:

Alterman & Boop, LLP
35 Worth Street, 3rd Flr.
New York NY 10013
Fax: (212) 431-3614

Friends of Hudson River Park
311 West 43rd Street, Suite 300
New York NY 10036
Fax: (212) 757-0985

b. If to Defendant Air Pegasus Heliport, Inc. to:

Lentz & Gengargo
347 Mt. Pleasant Avenue
Suite 203
West Orange, NJ 07052
Fax: (973) 669-8960

Leon Friedman, Esq.
148 East 78th Street
New York, NY 10021
Fax: (212) 396-4152

Abigail S. Trenk, President
Air Pegasus Heliport, Inc.
West 30th Street at 12th Avenue
New York, New York 10001
Fax: (212) 244-6080

c. If to Defendant Liberty Helicopters, Inc. to:

Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, NY 10018
Fax: (212) 728-8111
Attn: Lawrence Kamin, Esq.

Drew Schaefer, CEO
Liberty Helicopters, Inc.
Linden Airport
Routes 1 and 9
POB 338
Linden, New Jersey 07036

d. If to Defendant Hudson River Park Trust to:

Konner Teitelbaum & Gallagher
462 Seventh Avenue, 12th Floor
New York, NY 10018
Fax: (212) 697-4512

Hudson River Trust

Pier 40 @ West Houston St
New York, NY 10014
Fax: (212) 627-2021
Attn: General Counsel's Office

Any Notice shall be effective on the next business day after delivery by hand or on the third business day after service by fax and certified mail.

18. Duplicate Originals.

This Settlement Agreement may be executed in counterparts, with each counterpart being equally effective.

19. Binding Effect: No Third Party Beneficiaries.

This Agreement binds the parties hereto, and their respective successors and assigns. Each party represents that it has not acted in any representative capacity or on behalf of any third party or other entity. Such binding effect is solely with regard to the express agreements set forth herein. Except to the extent specifically stated to the contrary herein, each party hereto reserves its respective rights, claims and defenses, whether asserted to date or not, and no one concedes any of its respective jurisdiction,

statutory or common law claims and/or defenses or admits any fault, wrongdoing or liability in connection with this litigation or otherwise. No third parties shall have any rights under this Agreement. This Agreement was entered into prior to the Court having considered or heard argument on Plaintiffs' application for a preliminary injunction and prior to the Court having considered or heard argument on the Trust's defenses of lack of standing and lack of any private right of action to enforce the Park Act. Accordingly, this Agreement is not intended and shall not be construed as having any precedent effect or impact with regard to any future claim or litigation that may involve one or more of the parties to this Agreement.

20. Facsimile Signatures.

Facsimile signatures shall be as effective as original signatures.

21. Warranty of Authority.

Each of the undersigned signatories for the respective parties hereto by signing this Settlement Agreement warrants that he or she has the power and authority to enter into this Settlement Agreement on behalf of such party and to bind such party to the terms and conditions of this Settlement Agreement.

End of Settlement Agreement Provisions Signatures Follow

IN WITNESS WHEREOF, the parties hereto have executed this Settlement Agreement this ____ day of June, 2008

FRIENDS OF THE HUDSON RIVER PARK, CHELSEA WATERSIDE PARK ASSOCIATION, HELLS KITCHEN NEIGHBORHOOD ASSOCIATION, WEST STREET COALITON, PIER 66 MARITIME, INC., JOHN KREVEY, ROBERT TRENTLYON, MARTIN TREAT, FREDRIC AND MARILYN SIRASKY, ANDREW BERMAN, JOHN DELLAPORTAS and DAVID HOLOWKA

By: _____
Alterman & Boop, LLP

HUDSON RIVER PARK TRUST

By: _____
Konner, Teitelbaum & Gallagher

AIR PEGASUS HELIPORT, INC.

By: _____
Lentz & Gengaro

LIBERTY HELICOPTERS, INC.

By: _____
Willkie Farr & Gallagher, LLP

Alvin S. Trenk, Individually, as to Paragraph 7 only

Abigail S. Trenk, Individually, as to Paragraph 7 only

Drew Schaefer, Individually, as to Paragraph 7 only

SO ORDERED:

Hon. Marcy S. Friedman
Justice of the Supreme Court