

AGREEMENT by and between Jerold S. Kayden (“Kayden”), the New York City Department of City Planning (“DCP”) and The Municipal Art Society of New York (“MAS”) (collectively, the “Authors”) with respect to (1) a computerized database created and prepared by the Authors concerning privately owned public space in New York City, including plans of the various spaces or sites (the “Database”); and (2) material prepared by the Authors for a publication tentatively entitled “Privately Owned Public Space” (the “Work”).

WHEREAS, the Authors have created and prepared a Database concerning privately owned public spaces in New York City;

WHEREAS, each Author has contributed ideas, information, materials, labor, money and/or other resources to the Database, intended to serve as a public resource for government officials, community groups, scholars, students, and the citizens of New York City;

WHEREAS, the Authors’ collaboration on the Database has led to the creation and preparation of the Work;

WHEREAS, a commercial publisher, John Wiley & Sons, Inc. (“Wiley”), has expressed interest in publishing the Work and the parties wish jointly to enter into an agreement with Wiley for such publication;

NOW, THEREFORE, the Authors agree as follows:

1. With respect to the Database:

(a) The Database shall reside with and be maintained by DCP in accordance with subparagraphs (d)-(f) hereof, and the Database, the DCP “Public Space Files” and public information contained therein, consistent with past practice, shall be fully accessible to the Authors in an agreed-upon format upon reasonable notice to DCP.

(b) The Database and/or information contained therein shall also be available to members of the general public in the same manner as other databases or information maintained by DCP consistent with its obligations as a municipal agency.

(c) The Database shall include an acknowledgement which states that the Database was created and prepared by DCP, Kayden and MAS, and shall acknowledge the financial support received from grantors and funding sources.

(d) It is desirable that the Database encompass current and comprehensive information on privately owned public space in New York City, and that new versions of the Database be the product of continued collaboration among the Authors.

(e) In order to maintain current, complete and accurate information in the Database, DCP may correct entries and prepare additional entries concerning new or modified public spaces, or incorporate any corrections or new entries submitted by Kayden or MAS. Such corrections and new entries shall be in the same format and consistent with the style of current Database entries, and Kayden and MAS shall receive notice and a copy of all corrections or new entries to the Database. On or around the first of January, DCP shall provide Kayden and MAS with the opportunity to review jointly and finalize, consistent with past practice, with DCP any and all corrected and additional entries concerning new or modified public spaces incorporated into the Database during the preceding 12 months. This obligation shall not apply where no corrected and additional entries were made during the preceding 12 months.

(f) DCP shall provide Kayden and MAS with written notice of plans to prepare any new version of the Database consisting of alterations in the format, or transformations in the content of the current Database. Within 30 days, Kayden and MAS shall inform DCP in writing if Kayden and/or MAS wish to participate in the preparation of such new

version of the Database. Authors who wish to so participate will participate in good faith with respect to preparation of such new version of the Database. If DCP receives no response within 30 days of providing notice of its plans to prepare such new version of the Database, Kayden and/or MAS shall be deemed to approve of DCP's plans without their participation.

(g) Upon the request of Kayden and/or MAS, DCP shall provide to Kayden and/or MAS any materials prepared pursuant to subparagraphs (e) and (f) hereto for Kayden and MAS's personal or reference use.

(h) No Author may license for profit, assign or sell the Database; however, any Author may freely enter into an unlimited number of royalty-free licenses or permissions for non-profit uses of the Database for public, governmental, educational, scholarly, charitable or like uses.

2. With respect to the Work:

(a) Each Author expressly reserves any and all rights in and to any separately copyrightable material created or prepared by such Author apart from the Work as a whole, and such separately copyrightable materials are hereby irrevocably licensed without royalty to the Authors for use in the Work.

(b) Copyright in and to the Work shall be jointly owned by the Authors. No updated, revised or derivative versions of the Work may be prepared by the Authors, their agents or assigns without the express written consent of all Authors. Copyright notices for the Work shall appear in the following form: "© 1999 (or other year of first publication). Jerold S. Kayden, Department of City Planning of the City of New York, The Municipal Art Society of New York. All rights reserved." The Authors agree to appoint Wiley as their agent for purposes of registering copyright in and to the Work, and such agent shall file an application to

register such copyright with the U.S. Register of Copyrights within three months of the Work's initial publication.

3. Each Author represents and warrants: (a) that it is free to enter into this Agreement; (b) that material contributed by it to the Database and to the Work is original or in the public domain; (c) that the Author's contributions do not contain any libelous or other unlawful matter; and (d) that such contributions do not invade the right of privacy or infringe upon the rights of any third party. Each Author agrees to indemnify and to hold the other Authors harmless from and against any and all claims of libel, infringement, or invasion of privacy or other claims arising out of the Author's contributions to the Database and/or Work.

4. Each Author is responsible for obtaining appropriate releases in conformance with the Authors' contractual obligations to Wiley from any and all persons or entities who prepared or assisted in the preparation of any portion of an Author's contribution to the Work and/or the Database. Such releases, however, need not be obtained from any person or entity who is a full-time employee of the Author and who prepared or assisted in preparation of the Author's contribution to the Work and/or Database in the course of such employment.

5. Pursuant to paragraph 17 of the Authors' agreement with Wiley, Kayden is designated to act as liaison on behalf of the Authors jointly with respect to administration of such Agreement. In performing such function, Kayden shall consult with the Authors as reasonably necessary; provided, further, that this designation does not grant Kayden authority to exercise or to waive any rights possessed by DCP or MAS pursuant to the Authors' agreement with Wiley. Without limiting the foregoing, limitations on Kayden's authority as liaison expressly apply to paragraphs 1, 5-7, 9-11, 14-16, 18 and 20 of the Authors' contract with Wiley.

Further, Kayden has no authority to act on behalf of DCP or MAS in connection with any financial terms or arrangements of DCP and MAS under the contract with Wiley.

6. The Authors designate MAS to act as liaison with the graphic designer for the Work.

7. Each Author shall provide a list of persons and entities, including but not limited to grantors and funding sources, from which a list of acknowledgments shall be prepared for inclusion in the Work and/or the Database.

8. This Agreement shall be governed and interpreted under the laws of the State of New York. Each Author agrees to submit to the personal jurisdiction of the courts of New York State, or other court of competent jurisdiction located within New York City, and waives any objection to venue in such court.

9. Each Author agrees that it will not license, assign, or make any other type of disposition of the Work, any rights in the Work, or revisions, updates or derivative works based on the Work, without the express written consent of each Author. Co-signature of agreements for the disposition of any such rights shall constitute written agreement by the Author so signing.

10. All royalties realized from the world-wide sales or disposition of any and all rights in and to the Work shall be divided equally among the Authors as follows: 34% to Kayden, 33% to DCP, and 33% to MAS. All sums of money due to the Authors under this Agreement shall be paid to and in the name of the following agents, and receipt thereof shall be good and valid discharge of all such indebtedness. The agent listed below is irrevocably empowered by the Author to act on its behalf in all matters arising from and pertaining to this Agreement.

For Jerold S. Kayden:

Jerold S. Kayden
Harvard University
Gund Hall
48 Quincy Street
Cambridge, MA 02138
(617) 496-0830

For The Municipal Art Society of New York:

Gloria Troy
Senior Vice President
The Municipal Art Society
457 Madison Avenue, 5th Floor
New York, NY 10022
(212) 935-3960

For the New York City Department of City Planning:

David Karnovsky
General Counsel
Department of City Planning
22 Reade Street, 2nd Floor
New York, NY 10007
(212) 720-3400

11. Each Author shall be responsible for its own expenses incurred in the preparation of its contributions to the Database and/or the Work.

12. Nothing in this Agreement shall be construed to restrict or otherwise limit the Authors' exclusive rights in and to any preexisting or independently prepared work, public documents or any material independent of the Work and/or the Database. Appropriate credit, acknowledgement and/or copyright notices shall appear in the Work for individually owned items which an Author permits to be included within the Work. With respect to all such items which the Author claims to be individually owned, the Author shall prepare and execute appropriate releases in conformance with the Authors' contractual obligations to Wiley, which shall include a schedule of all materials which the Author claims to be independently owned or copyrighted.

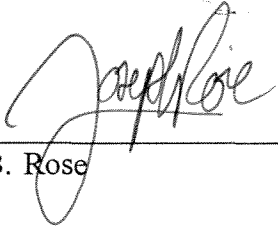
13. This Agreement represents the entire understanding of the parties and may be modified or amended only in a writing signed by each of the Authors.

14. This Agreement has been executed in three copies, each of which is deemed an original.

DEPARTMENT OF CITY PLANNING

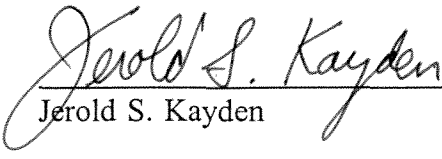
JEROLD S. KAYDEN

By:



Joseph B. Rose
Director

By:



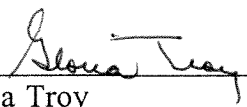
Jerold S. Kayden

Date: March 30, 1999

Date: March 29, 1999

THE MUNICIPAL ART SOCIETY

By:

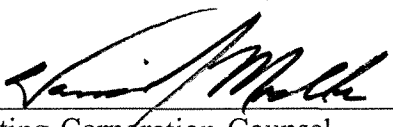


Gloria Troy
Senior Vice President

Date: March 29, 1999

Approved as to Form
Certified as to Legal Authority

By:



Acting Corporation Counsel

Date: March 25, 1999