



Legislation Text

File #: Res 1581-2012, **Version:** *

THE COUNCIL OF THE CITY OF NEW YORK RESOLUTION NO. 1581

Resolution approving with modifications the decision of the City Planning Commission on Application No. N 120142 ZRM, for an amendment of the Zoning Resolution of the City of New York, relating to Article IX, Chapter 8 (Special West Chelsea District) in Community District 4, Borough of Manhattan (L.U. No. 710).

By Council Members Comrie and Weprin

WHEREAS, the City Planning Commission filed with the Council on September 13, 2012 its decision dated September 5, 2012 (the "Decision"), pursuant to Section 201 of the New York City Charter, regarding an application submitted by Jamestown Premier Chelsea Market, LP, for an amendment of the text of the Zoning Resolution of the City of New York relating to Article IX, Chapter 8 (Special West Chelsea District). The zoning text amendment, along with its related action, would facilitate the expansion of the existing Chelsea Market complex, located on a full block bounded by West 15th Street, West 16th Street, Ninth Avenue and Tenth Avenue (Block 713, Lot 1), Community District 4, Borough of Manhattan (Application No. N 120142 ZRM), (the "Application");

WHEREAS, the Application is related to ULURP Application C 120143 ZMM (L.U. 711), an amendment to the Zoning Map to include the subject block in the Special West Chelsea District (WCh);

WHEREAS, the Decision is subject to review and action by the Council pursuant to Section 197-d(b)(1) of the City Charter;

WHEREAS, upon due notice, the Council held a public hearing on the Decision and Application on October 23, 2012;

WHEREAS, the Council has considered the land use implications and other policy issues relating to the Decision and Application; and

WHEREAS, the Council has considered the relevant environmental issues and the negative declaration (CEQR No. 11DCP120M) issued on April 9, 2012 and the Technical Memorandum which was issued on August 31, 2012 which describes and analyzes the modifications to the proposed actions made by the City Planning Commission and finds that the previous Negative Declaration is still valid (the "Negative Declaration");

RESOLVED:

The Council finds that the action described herein will have no significant impact on the environment subject to the terms of the Negative Declaration.

Pursuant to Sections 197-d and 200 of the City Charter and on the basis of the Decision and Application, and based on the environmental determination and consideration described in this report, N 120142 ZRM, incorporated by reference herein, the Council approves the Decision with the following modifications:

The Zoning Resolution of the City of New York, effective as of December 15, 1961, and as subsequently amended, is further amended as follows:

Matter in underline is new, to be added;

Matter in ~~strikeout~~ is old, to be deleted;

Matter in [] is deleted by City Council;

Matter in **bold double underline** is new, added by City Council;

Matter within # # is defined in Section 12-10;

* * * indicate where unchanged text appears in the Zoning Resolution

Article IX - Special Purpose Districts

Chapter 8

Special West Chelsea District

* * *

98-03

District Plans and Maps

The regulations of this Chapter are designed to implement the #Special West Chelsea# Plan.

The District Plan includes the following maps and illustrative diagrams in Appendices A, B and C and the special regulations in Appendices D, ~~and E~~ and F:

* * *

Appendix E - Special Regulations for Zoning Lots Utilizing the High Line Improvement Bonus and Located Partially Within Subareas D, E and G, or within Subarea I

Appendix F - Special Regulations for Zoning Lots Utilizing the High Line Improvement Bonus Within Subarea J

* * *

98-04

Subareas and High Line Transfer Corridor

In order to carry out the provisions of this Chapter, ~~nine~~ ten Subareas (A through I ~~J~~), and a #High Line Transfer Corridor# are established within the #Special West Chelsea District#.

Within each of the Subareas and the #High Line Transfer Corridor#, certain special regulations apply within the remainder of the #Special West Chelsea District#. The locations of the ~~nine~~ ten Subareas are shown in Appendix A of this Chapter.

* * *

98-14

Ground Floor Use and Transparency Requirements on Tenth Avenue

Except in Subarea J, the The special ground floor #use# and glazing regulations of this Section apply to that portion of a #building# or other #structure# fronting on Tenth Avenue in the #Special West Chelsea District#. Ground floor #uses# in Subarea J shall be governed by the underlying #use# regulations as modified by Section 98-13 (Modification of Use Regulations in M1 Districts).

* * *

98-142

High Line Level Wall Requirements Within Subarea J

Any additions to the windows or other glazing located on the wall separating the #High Line# from any #building# located on a #zoning lot# within Subarea J at the #High Line# level shall be designed to provide for a minimum of 30 dBA noise attenuation, and any general illumination fixtures in the adjoining interior portion of the #building# shall not exceed 50 foot-candles of illumination within four feet of such window or glazing and shall not be pointed directly at the #High Line#.

* * *

98-21

Maximum Floor Area Ratio outside of Subareas

For all #zoning lots#, or portions thereof, located outside of Subareas A through I J, the maximum #floor area ratios# of the applicable underlying districts shall apply.

* * *

98-22

Maximum Floor Area Ratio and Lot Coverage in Subareas

For all #zoning lots#, or portions thereof, located in Subareas A through I J, the maximum #floor area ratios#, #open space ratios# and #lot coverages# of the applicable underlying zoning districts shall not apply.

* * *

Maximum Floor Area Ratio by Subarea

Sub-area	Basic #floor area ratio# (max)	Increase in FAR from #High Line Transfer Corridor# (98-30)	Increase in FAR with #High Line# Improvement Bonuses (98-25)	Inclusionary Housing		Permitted #floor area ratio# (max)
				FAR required to be transferred (minimum)	Increase in FAR for Inclusionary Housing Program (26)	

* * *

I ⁴	5.0	NA	2.5	NA	NA	7.5
J ⁶	5.0	NA	2.5	NA	NA	7.5

6- Bonus contribution subject to provisions of 98-25 governing first contribution to Affordable Housing Fund

* * *

98-23

Special Floor Area and Lot Coverage Rules for Zoning Lots Over Which the High Line Passes

* * *

However, at or above the level of the #High Line bed#, #lot coverage# requirements shall apply to the entire #zoning lot#.

Within Subarea J, any easement volumes and improvements located within such volumes dedicated or granted to the City in accordance with the provisions of Appendix F of this Chapter in connection with an increase in the basic maximum #floor area ratio# of a #zoning lot#, pursuant to Section 98-25 (High Line Improvement Bonus), shall not be considered #floor area#.

98-25

High Line Improvement Bonus

For #zoning lots# located between West 16th 15th and West 19th Streets over which the #High Line# passes, the applicable maximum #floor area ratio# of the #zoning lot# may be increased up to the amount specified in Section 98-22 (Maximum Floor Area Ratio and Lot Coverage in Subareas), provided that:

(a) Prior to issuing a building permit for any #development# or #enlargement# on such #zoning lot# that anticipates using #floor area# that would increase the applicable basic maximum #floor area ratio# by up to an amount specified in Section 98-22, or within Subarea J would cause the #floor area ratio# of a #zoning lot# to exceed the #floor area ratio# of such #zoning lot# on [INSERT EFFECTIVE DATE OF THE TEXT AMENDMENT], the Department of Buildings shall be furnished with a certification by the Chairperson of the City Planning Commission that:

- (1) a contribution has been deposited into an escrow account or similar fund established by the City (the High Line Improvement Fund), or such contribution is secured by letter of credit or other cash equivalent instrument in a form acceptable to the City. For subareas other than Subarea J, such contribution shall be used at the direction of the Chairperson solely for improvements to the #High Line# within the #High Line# improvement area applicable to such #zoning lot#, with such contribution being first used for improvements within that portion of the #High Line# improvement area on such #zoning lot#. For #developments# or #enlargements# within Subarea J, such contribution shall be used for any use with respect to the improvement, maintenance and operation of the #High Line# or the #High Line# Support Easement Volumes provided for under Appendix F, at the Chairperson's direction, provided that, in lieu of deposit to the High Line Improvement Fund, the contribution for the first 80,000 square feet of #floor area#, shall be deposited to the Affordable Housing Fund established under Section 98-262, paragraph (c), for use in accordance with the provisions of that section. Such contribution shall be made in accordance with the provisions of Appendix D, ~~or~~ E or F of this Chapter, as applicable;

* * *

- (3) all additional requirements of Appendix D, ~~or~~ E or F, as applicable with respect to issuance of a building permit, have been met.

* * *

- (d) Prior to issuing a certificate of occupancy for any portion of a #development# or #enlargement# on a #zoning lot# located within Subarea J over which the #High Line# passes that incorporates #floor area# that would cause the #floor area ratio# of a #zoning lot# to exceed the #floor area ratio# of such #zoning lot# on [INSERT EFFECTIVE DATE OF THE TEXT AMENDMENT], the Department of Buildings shall be furnished a certification by the Chairperson, that

- (1) #High Line# Support Work has been performed on such #zoning lot#, in accordance with and to the extent required by Appendix F; and

- (2) all other applicable requirements of Appendix F have been met.

For temporary certificates of occupancy, certification with respect to performance of work shall be of substantial completion of the work as determined by the Chairperson. For permanent certificates of occupancy, certification with respect to performance of work shall be final completion of the work, as determined by the Chairperson.

* * *

98-33

Transfer of Development Rights from the High Line Transfer Corridor

In the #Special West Chelsea District#, a “granting site” shall mean a #zoning lot#, or portion thereof, in the #High Line Transfer Corridor#. A “receiving site” shall mean a #zoning lot#, or portion thereof, in any subarea

other than Subareas F, ~~and H,~~ and J. #Floor area# from a granting site may be transferred to a receiving site in accordance with the provisions of this Section.

* * *

98-421

Obstruction over the High Line

Within the #Special West Chelsea District#, the #High Line# shall remain open and unobstructed from the #High Line bed# to the sky, except for improvements constructed on the #High Line# in connection with the use of the #High Line# as a public open space, and except where the #High Line# passes through and is covered by a #building# existing on [INSERT EFFECTIVE DATE OF THE ZONING TEXT AMENDMENT].

* * *

98-423

Street wall location, minimum and maximum base heights and maximum building heights

The provisions set forth in paragraph (a) of this Section shall apply to all #developments# and #enlargements#. Such provisions are modified for certain subareas as set forth in paragraphs (b) through ~~(f)~~ (g) of this Section.

* * *

(g) Subarea J

The provisions set forth in paragraph (a) of this Section shall not apply to any #development# or #enlargement# developed pursuant to the provisions of Section 98-25. In lieu thereof, the provisions of this paragraph, (g), shall apply.

(i) Midblock Zone.

The Midblock Zone shall be that portion of Subarea J located more than 150 feet west of the Ninth Avenue #street line# and more than 200 feet east of the Tenth Avenue #street line#. Within the Midblock Zone, a #building# shall have a maximum #street wall# height before setback of 110 feet, and shall have a maximum #building# height of 130 feet.

(ii) Ninth Avenue Zone.

The Ninth Avenue Zone shall be that portion of Subarea J within 150 feet of the Ninth Avenue #street line#. Within the Ninth Avenue Zone, any portion of a #building# shall have a maximum #street wall# height of 130 feet before setback and a maximum #building# height of 135 feet. Any #building# located above a height of 130 feet shall be set back at least five feet from the Ninth Avenue #street wall# and at least 15 feet from the West 15th Street and West 16th Street #street walls#.

(iii) Tenth Avenue Zone.

The Tenth Avenue Zone shall be that portion of a #zoning lot# within 200 feet of the Tenth Avenue #street line#. Within the Tenth Avenue Zone, any portion of a #building# shall have a maximum #street wall# height of 185 feet before setback and a maximum #building# height of 230 feet, provided that any portion of a #building# located above a height of 90 feet shall be set back not less than 15 feet from the Tenth Avenue #street line#. Any portion of a #building# located above a height of 185 feet shall be set back at least 10 feet from the West 15th and West 16th Street #street lines#, and at least 25 feet from the Tenth Avenue #street line#. Any portion of a #building# above a height of 200 feet shall be set back at least 25 feet from the West 15th and West 16th Street #street lines#, and at least 35 feet from the Tenth Avenue #street lines#, and any portion of a building located above a height of 215 feet shall be set back at least 75 feet from the Tenth Avenue #street line#. Permitted obstructions allowed pursuant to Section 33-42 shall be permitted.

MINIMUM AND MAXIMUM BASE HEIGHT AND MAXIMUM BUILDING HEIGHT BY DISTRICT OR SUBAREA

District or Subarea	Minimum Base Height (in feet)	Maximum Base Height (in feet)	Maximum Building Height (in feet)
* * *			
Subarea J Midblock Zone	NA	110 ⁶	130 ⁶
Subarea J Ninth Avenue Zone	NA	130 ⁶	135 ⁶
Subarea J Tenth Avenue Zone	NA	185 ⁶	230 ⁶

* * *

⁶ see Section 98-423, paragraph (g)

* * *

98-55

Requirements for Non-Transparent Surfaces on the East Side of the High Line

Except in Subarea J, any ~~Any~~ portion of such #High Line frontage# that is 40 feet or more in length and contains no transparent element between the level of the High Line bed# and an elevation of 12 feet above the level of the #High Line bed#, shall be planted with vines or other plantings or contain artwork.

* * *

98-61

High Line Access Or Support Easement Volumes Requirement

For all #developments# or #enlargements# within the #Special West Chelsea District#, an easement volume to facilitate public pedestrian access to the #High Line# via stairway and elevator (hereinafter referred to as “primary access”), shall be provided on any #zoning lot# over which the #High Line# passes that, on or after

December 20, 2004, has more than 5,000 square feet of #lot area#. For all #developments# or #enlargements# within Subareas H, I and J that are developed pursuant to Section 98-25, this provision does not apply.

* * *

98-62

High Line Access Easement Regulations

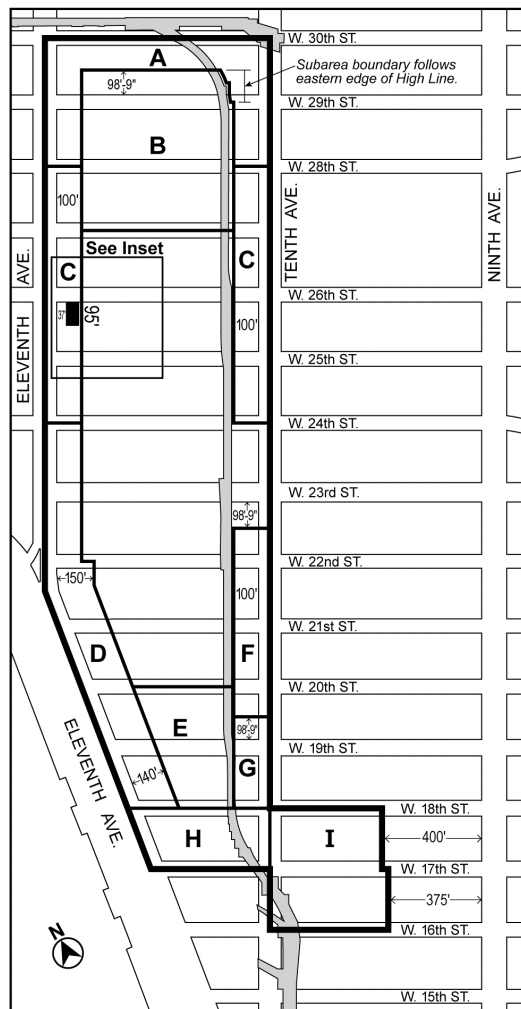
The provisions of this Section shall apply to any #zoning lot# providing an access easement volume other than a #zoning lot# developed pursuant to Section 98-25, as follows:

* * *

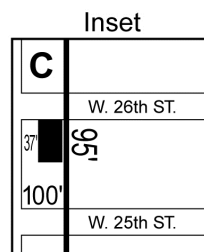
Appendix A

Special West Chelsea District and Subareas

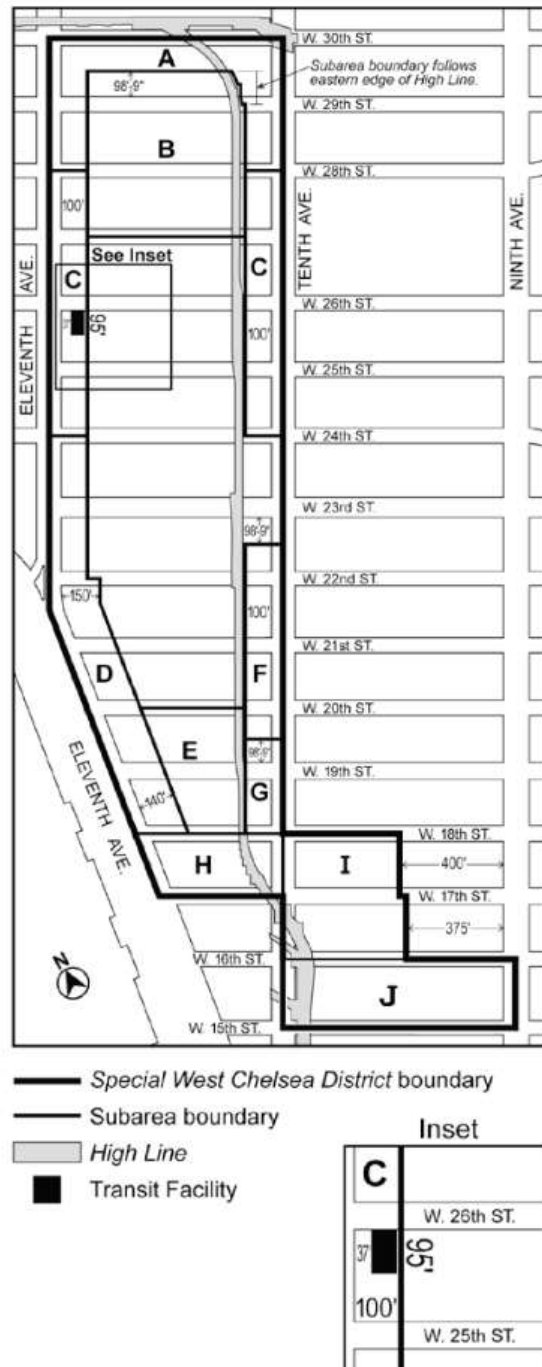
EXISTING
(TO BE DELETED)



- Special West Chelsea District boundary
- Subarea boundary
- High Line
- Transit Facility



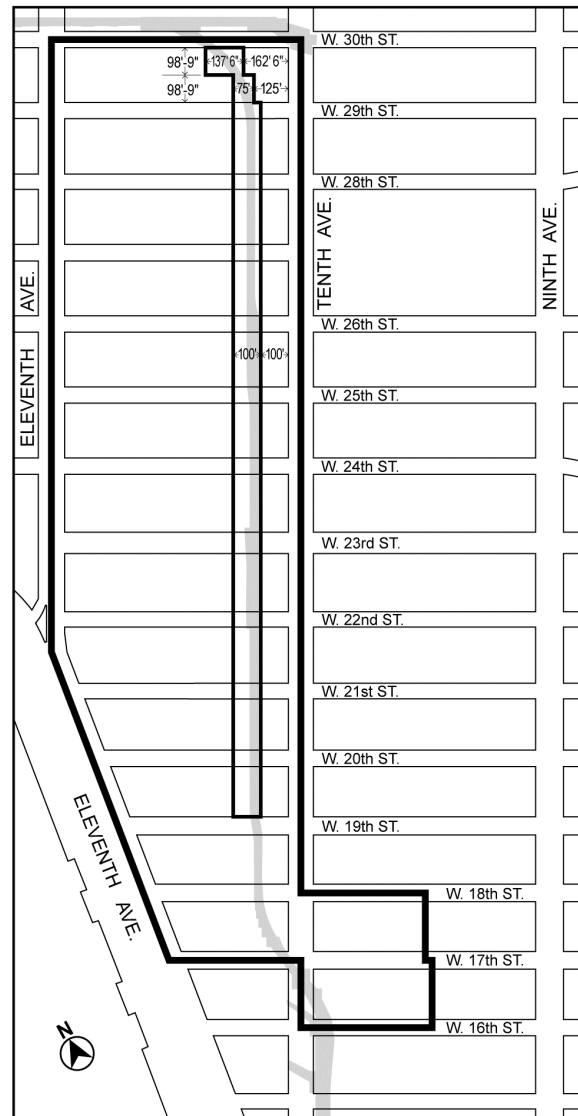
PROPOSED
(TO REPLACE EXISTING)



Appendix B

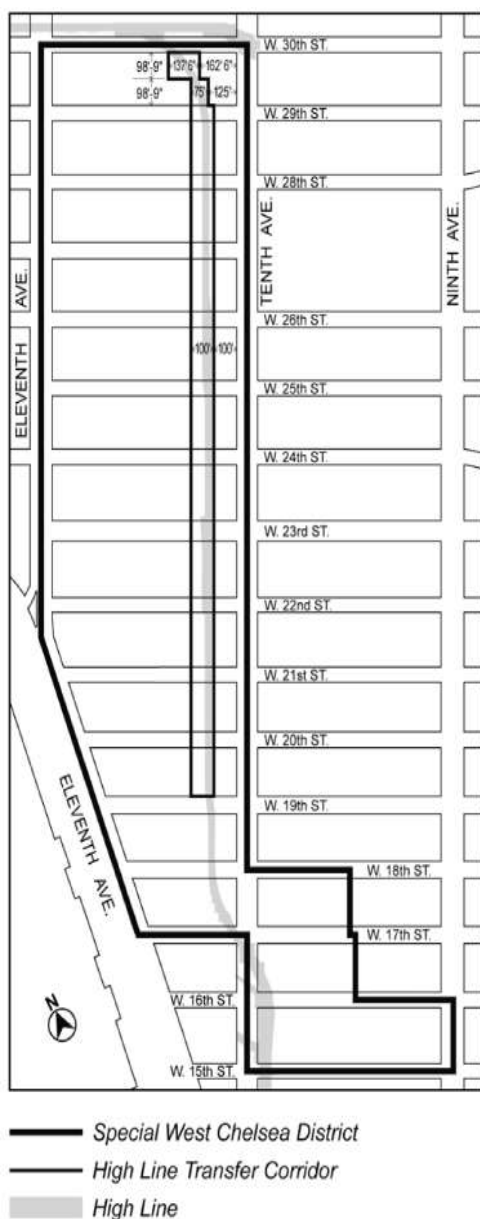
High Line Transfer Corridor Location

EXISTING
(TO BE DELETED)



- Special West Chelsea District
- High Line Transfer Corridor
- High Line

**PROPOSED
(TO REPLACE EXISTING)**



* * *

APPENDIX F

Special Regulations for Zoning Lots Utilizing the High Line Improvement Bonus and Located Within Subarea J

This Appendix sets forth additional requirements governing #zoning lots# located within Subarea J over which the #High Line# passes for any #development# or #enlargement# which involves an increase in the applicable basic maximum #floor area ratio# of the #zoning lot# up to the amount specified in Section 98-22 (Maximum Floor Area Ratio and Lot Coverage in Subareas): The additional requirements are set forth in this Appendix, F, in paragraphs (a), the issuance of a building permit for such #development# or #enlargement# pursuant to

paragraph (a) of Section 98-25 (High Line Improvement Bonus); (b), the performance of improvements as a condition of issuance of temporary or permanent certificates of occupancy pursuant to paragraph (d) of Section 98-25; and paragraph (c), the option of the Owner to offer to the City an additional #High Line# Support Easement Volume. The term “parties in interest” as used herein shall mean “parties-in-interest,” as defined in paragraph (f)(4) of the definition of #zoning lot# in Section 12-10.

(a) Requirements for issuance of building permit pursuant to paragraph (a) of Section 98-25

(1) As a condition of certification:

(i) For each square foot of #floor area# which causes the #floor area ratio# of a #zoning lot# to exceed the #floor area ratio# of such #zoning lot# on [EFFECTIVE DATE OF THE AMENDMENT], up to the amount specified in Section 98-22 (Maximum Floor Area Ratio and Lot Coverage in Subareas), the Owner shall:

- a. for the first 80,000 square feet of such #floor area#, deposit such contribution to the Affordable Housing Fund established under Section 98-262, paragraph (c), for use in accordance with the provisions of that section; and
- b. for all such #floor area# which exceeds 80,000 square feet, subject to a deduction pursuant to other provisions of this Appendix, deposit such contribution to the #High Line# Improvement Fund, or secure such contribution by letter of credit or other cash equivalent instrument in a form acceptable to the City.

Such contribution, in each case, shall be \$59.07 per square foot of #floor area# as of [EFFECTIVE DATE OF THE AMENDMENT], which contribution rate shall be adjusted July 1 of the following year and each year thereafter by the percentage change in the Consumer Price Index for all urban consumers as defined by the U.S. Bureau of Labor Statistics;

(ii) All parties-in-interest shall execute that restrictive declaration, dated [September 5, 2012] **October 25, 2012**, and on file at the Office of the Counsel, Department of City Planning, required in connection with environmental assessment (CEQR #11DCP120M) for the purpose of addressing historic resources and containing other provisions regarding the preservation of certain features of existing buildings and structures and related matters;

(iii) All parties-in-interest shall execute a restrictive declaration in a form acceptable to the city addressing the terms described in this paragraph, (a)(1)(iii):

(a) Hotel Use

No #development# or #enlargement# developed pursuant to Section 98-25 shall include a #transient hotel#;

(b) Retail Concourse

As a condition of any #development# or #enlargement# pursuant to Section 98-

25, owner shall provide a pedestrian passageway within any #building# located on the #zoning lot# connecting the Ninth Avenue sidewalk with the Tenth Avenue sidewalk, which passageway shall be open to the public during business hours. Not less than 60 percent of the length of the frontages of such passageway shall be occupied primarily by retail uses, and in addition may be occupied by service, wholesale, production and event space identified in Use Groups 6A, 6C, 7B, 7C, 8A, 9A, 9B, 10B, 11A, 12A, 12B, 16A, 17A and such spaces shall have access to the passageway;

(c) Locations and Dimensions of the #High Line# Support Easement Volumes

The #High Line# Support Easement Volumes shall be sized and located to accommodate the following amenities, all of which shall be located within the #buildings# located within the Tenth Avenue Zone as described in Section 98-423, paragraph (g)(iii):

- (1) Exclusive easements for public restrooms for each gender with an aggregate area of no less than 560 square feet (and which need not be more than 700 square feet) located adjacent to the #High Line# with direct access to the #High Line# for each of the public restrooms;
- (2) Exclusive easements for #High Line# support space with an aggregate area of no less than 2,400 square feet (and which need not be more than 3,000 square feet) of which up to 800 square feet may be located on a mezzanine level, such space to be located adjacent and accessible to the #High Line#;
- (3) Exclusive easements for #High Line# support space located in the cellar level in an aggregate area no less than 800 square feet (but need not be more than 1,000 square feet);
- (4) Exclusive use of a dedicated freight elevator that shall provide access to the cellar level, to a shared loading facility at street level, to the level of the #High Line bed# and to the level of the #High Line# support space described in paragraph (a)(1)(ii)(a)(2) of this Appendix, F; and
- (5) Non-exclusive easements for:
 - (i) access between the dedicated freight elevator and the shared loading facility at grade level and the #High Line# support space located in the cellar level; and
 - (ii) use of the shared loading facility as more particularly set forth in paragraph (a)(1)(ii)(b) of this Appendix, F;

(d) #Use# of the #High Line# Support Easement Volumes

The #High Line# Support Easement Volumes shall not be dedicated for use by the general public but rather for use by the City or its designee for storage, delivery of materials and support of #uses# within the #High Line# (and in connection therewith, the fitting-out, operating, maintaining, repairing, restoring and replacement of the #High Line# Support Easement Volumes), except that:

1. the public may use the public restrooms;
2. up to 650 square feet of space adjacent to the #High Line# may be used exclusively for educational and related programming that is at no cost to the public; and
3. if dedicated to the City in accordance with paragraph (d) of this Appendix F, the optional additional #High Line# Support Easement Volume may be accessible to the public as part of concessions or other uses that relate to the #High Line#. The City or its designee shall at all times use, operate and maintain the #High Line# Support Easement Volumes so as not to interfere with the use and enjoyment of the #buildings# located within Subarea J. The #High Line# support spaces described in paragraphs (a)(1)(ii)(a)(2) and (3) of this Appendix, F, shall be accessible by a dedicated freight elevator that connects to non-exclusive portions of the #building#, including a loading facility at #curb level#, through which the City or its designee shall be provided with a non-exclusive easement to enable reasonable and customary access;

(e) Effective Date of the #High Line# Support Easement Volumes

The City's or its designee's rights to utilize the #High Line# Support Easement Volumes shall commence on the date that the #High Line# Support Work has been completed in accordance with paragraph (b)(1) of this Appendix, F, or in the event of default of the Owner in accordance with paragraph (c) of this Appendix, F, the date that the City has notified the Owner that it intends to perform such #High Line# Support Work in accordance with paragraph (c); and

(f) Notice by the Department of City Planning of its receipt of certified copies of the recorded restrictive declarations required pursuant to paragraph (a) (1) (ii) and (iii) of this Appendix, F, shall be a precondition to issuance by the Commissioner of Buildings of any building permits including any foundation or alteration permit for any #development# or #enlargement# which causes the #floor area ratio# of a #zoning lot# to exceed the #floor area ratio# of such #zoning lot# on [EFFECTIVE DATE OF THE AMENDMENT];

(iv) The Owner shall submit plans for the #High Line# Support Work described in paragraph (b)(1) of this Appendix, F, that demonstrate compliance with the provisions of this Appendix and are consistent with New York City Department of Parks and Recreation standards and best practices governing material life cycle and maintenance, for review and approval by the Chairperson of the City Planning Commission;

(v) Solely in the event the initial certification made pursuant to Section 98-25, paragraph (a), is with respect to additional #floor area# to be added to a #building# or portion of a #building# located outside of the Tenth Avenue Zone as described in Section 98-423, paragraph (g)(iii), then the Owner shall enter into agreements with the City or its designee, in a form reasonably acceptable to the City, to provide interim access, in accordance with such agreements, to the #High Line# through a non-exclusive loading facility and an existing freight elevator. Such agreements shall provide that any space within the existing #building# may be used by the City or its designee at no cost, except that the City or its designee shall be obligated to pay for the proportionate costs of utilities, maintenance and other building expenses associated with the use of such loading facility and elevator, and for any improvements or modifications to such space that may be requested by the City or its designee. Such interim access shall cease upon the date that the City or its designee commences utilization of the #High Line# Support Easement Volumes in accordance with paragraph (a)(1)(ii)(c) of this Appendix, F;

(2) The location of #floor area# which would cause the #floor area ratio# of a zoning lot to exceed the #floor area ratio# of such #zoning lot# on [EFFECTIVE DATE OF THE AMENDMENT] and be subject to the provisions of Section 98-25, shall be considered to be the topmost portion of the #development# or #enlargement# unless, at the time of certification pursuant to Section 98-25, paragraph (a), the Owner designates on plans submitted to the Chairperson of the City Planning Commission, subject to the concurrence of the Chairperson of the City Planning Commission, an alternate location.

(b) Requirements for issuance of certificates of occupancy pursuant to paragraph (d) of Section 98-25:

(1) #High Line# Support Work Pursuant to Paragraph (d) of Section 98-25

(i) The Owner shall perform #High Line# Support Work subject to the provisions of this paragraph, (b)(1), inclusive. For temporary certificates of occupancy, certification pursuant to Section 98-25, paragraph (d), shall be the substantial completion of the work. For permanent certificates of occupancy, certification shall be of final completion of the work.

(ii) The #High Line# Support Work shall consist of the following:

(a) the construction, fit-out and delivery in an operative condition of public restrooms described in paragraph (a)(1)(ii)(a)(1) of this Appendix, F, furnished with restroom fixtures, including six toilet stalls for women, an aggregate of six toilet stalls and/or urinals for men and three sinks in each restroom, and provided with utility connections.

(b) the construction of the core and shell of the #High Line# support space described in paragraphs (a)(1)(ii)(a)(2) and (3) of this Appendix, F, including the provision of and access to separately metered gas, ventilation, water, sewers, electricity and telecommunications utilities systems commonly available in the #building# sufficient to support the anticipated uses of the support space. Within the portion of the #High Line# support space in the vicinity of the level of the #High Line

bed#, the Owner will install a kitchen exhaust duct from such support space to a suitable point of discharge and will provide access to the #building# sprinkler standpipe and fire alarm system. Such support space shall also include access to a storage mezzanine pursuant to a dedicated lift, and there shall be a clear path at least five feet wide from the lift to the dedicated freight elevator described in paragraph (b)(1)(ii)(c) of this Appendix, F. The Owner will not be responsible for distributing any utility services within the #High Line# support space or for providing any ancillary equipment for the kitchen exhaust duct; and

- (c) the construction of the dedicated freight elevator described in paragraph (a)(1)(ii)(a)(2) of this Appendix, F, with a minimum capacity of 3,000 pounds;
- (iii) Following the completion of the #High Line# Support Work described in paragraph (b)(1)(ii) of this Appendix, F, all subsequent costs of operating, maintaining, repairing, replacing and additional fit-out of the #High Line# support space shall be exclusively the responsibility of the City and not the Owner; provided that the Owner shall be responsible for the repair and replacement of any defective #High Line# Support Work for a period of one year after completion thereof;
- (iv) The cost to the Owner of the #High Line# Support Work pursuant to the plans approved pursuant to paragraph (a)(1)(iv) shall be estimated at the time of such approval by a licensed engineer selected by Owner, such estimate to be in a form reasonably acceptable to the City, at an amount not to exceed \$2,544,000, as adjusted at the time of such approval by changes in the construction cost index published by ENR for New York City commencing as of [FIRST DAY OF FIRST MONTH FOLLOWING EFFECTIVE DATE OF ENACTMENT]. In the event that the City requests the Owner to perform any additional work in conjunction with the #High Line# Support Work and the Owner agrees to perform such additional work, then the cost of such additional work shall be the responsibility of the City and may be deducted in whole or in part from the #High Line# Improvement Fund contribution required pursuant to paragraph (a)(1) of this Appendix, F;
- (v) Except as set forth in paragraph (b)(1)(v) of this Appendix, F, no temporary or permanent certificates of occupancy may be issued pursuant to Section 98-25, paragraph (d), for #floor area# in a #development# or #enlargement# which causes the #floor area ratio# on a #zoning lot# to exceed the #floor area ratio# of such #zoning lot# on [EFFECTIVE DATE OF THE AMENDMENT] until the #High Line# Support Work described in paragraph (b)(1) of this Appendix F shall have been substantially completed or finally completed, as applicable;
- (vi) Notwithstanding anything to the contrary in this paragraph (b)(1), inclusive, if certification is initially made pursuant to Section 98-25, paragraph (a), with respect to additional #floor area# to be added to a #building# or portion of a #building# located outside of the Tenth Avenue Zone as described in Section 98-423, paragraph (g)(iii), then the conditions for certification pursuant to Section 98-25, paragraph (d) for a permanent or temporary certificate of occupancy shall not apply to such #building# or portion of a #building# and the following conditions shall apply:

- (a) The Owner shall deliver a letter of credit or other security reasonably satisfactory to the City in an amount reasonably determined by the City as sufficient for the City to perform the #High Line# Support Work described in paragraph (b)(1) of this Appendix F, which letter of credit or other security may be drawn or exercised by the City in the event of a default by the Owner in accordance with paragraph (c)(ii) of this Appendix F; and
 - (b) The Owner shall enter into an agreement with the City in a form reasonably acceptable to the City requiring the Owner to commence the #High Line# Support Work described in paragraph (b)(1) of this Appendix, F, no later than September 1, 2017, subject to force majeure as determined by the Chairperson, and shall thereafter diligently prosecute the same to completion, pursuant to an agreed-upon schedule, subject to force majeure as determined by the Chairperson.
- (c) In the event the Owner is in default of its obligations pursuant to the agreements required by paragraph (b)(1)(vi) of this Appendix, F:

 - (1) The City shall be entitled to draw the letter of credit or exercise the other security described in paragraph (b)(1)(i)(a) of this Appendix, F, and to take possession of the #High Line# Support Easement Volumes following delivery of notice to the Owner that the City intends to perform the #High Line# Support Work in accordance with provisions to be set forth in the restrictive declaration described in paragraph (a)(1)(ii) of this Appendix, F;
 - (2) The City shall return to the Owner any contribution made to the #High Line# Improvement Fund with respect to additional #floor area# to be added to a #building# or portion of a #building# located within the Tenth Avenue Zone as described in Section 98-423, paragraph (g)(iii);
 - (3) No additional building permit may be issued pursuant to Section 98-25, paragraph (a) with respect to a #development# or #enlargement# to be located within the Tenth Avenue Zone as described in Section 98-423, paragraph (g)(iii), nor may any temporary or permanent certificates of occupancy be issued pursuant to Section 98-25, paragraph (d), for #floor area# in such a #development# or #enlargement# which causes the #floor area ratio# on a #zoning lot# to exceed the #floor area ratio# of such #zoning lot# on [EFFECTIVE DATE OF THE AMENDMENT].
- (d) Option to offer an additional #High Line# Support Easement Volume:

 - (1) The Owner, at its sole option, may elect to offer to the City an easement comprising up to 7,500 square feet of #floor area# within the #building# adjacent to the #High Line# and at the vicinity of the level of the #High Line bed# as an additional #High Line# Support Easement Volume by written notice to the Chairperson of the City Planning Commission, with a copy to the Commissioner of the Department of Parks and Recreation. Such written notice shall be delivered contemporaneously with the Owner's first request for certification by the Chairperson described in paragraph (a) of Section 98-25 that relates to a #building# or portion of a #building# within the Tenth Avenue Zone as described in Section 98-423, paragraph (g)(iii);
 - (2) If the Owner elects to exercise such option, the Owner shall provide an appraisal from an

appraiser reasonably acceptable to the City who is a member of the American Institute of Real Estate Appraisers (or its successor organization) establishing the fair market value of the additional #High Line# Support Easement Volume to be so dedicated. The term “fair market value” shall mean the price at which such additional #High Line# Support Easement Volume would change hands between a willing buyer and a willing seller, both acting rationally, at arm’s length, in an open and unrestricted market. The appraisal shall determine such fair market value of the additional #High Line# Support Easement Volume based on its highest and best as-of-right #uses#, valued in an unimproved core and shell physical condition (including any existing structural elements, such as the wall separating the #High Line# from the additional easement volume) and considered unencumbered by any leases, mortgages or other matters that will be released or otherwise subordinate to the grant of such additional #High Line# Support Easement Volume to the City. The appraisal shall not assume that as-of-right #uses# of the additional #High Line# Support Easement Volume may enjoy any access to and from the #High Line#. Any other appraisal assumptions or instructions not set forth herein shall be subject to approval by the City.

- (3) If such option is exercised by the Owner, the City shall have up to 60 days from the delivery of the written notice described in paragraph (d)(1) of this Appendix, F, to irrevocably accept or decline the exercise of the option by written notice to the Owner. If the City does not so accept or decline the option within said 60 day period, then the option shall be deemed declined and neither the City nor Owner shall have any further rights or obligations under this paragraph, (d), inclusive;
- (4) If such option is exercised by the Owner and accepted by the City, the restrictive declaration described in paragraph (a)(1)(ii) of this Appendix F shall provide or shall be amended to include the additional #High Line# Support Easement Volume within the grant to the City, and the value of the additional #High Line# Support Easement Volume as set forth in the appraisal shall be the responsibility of the City and may be deducted in whole or in part from the #High Line# Improvement Fund contribution required pursuant to paragraph (a)(1) of this Appendix F;
- (5) In the event that the City requests the Owner to perform any work in conjunction with the dedication of the additional #High Line# Support Easement Volume and the Owner agrees to perform such work, then the cost of such additional work shall be the responsibility of the City and may be deducted in whole or in part from the #High Line# Improvement Fund contribution required pursuant to paragraph (a)(1) of this Appendix F. All costs of fitting-out, operating, maintaining, repairing and replacing the additional #High Line# Support Easement Volume shall be exclusively the responsibility of the City and not the Owner.

* * *

Adopted.

Office of the City Clerk, }
The City of New York, } ss.:

I hereby certify that the foregoing is a true copy of a Resolution passed by The Council of The City of New York on November 13, 2012, on file in this office.

.....
City Clerk, Clerk of The Council