

**DECLARATION OF LARGE-SCALE GENERAL DEVELOPMENT**

THIS DECLARATION (“Declaration”) is made as of the \_\_\_\_ day of \_\_\_\_\_, 2018, by the CITY OF NEW YORK (the “City”), a municipal corporation of the State of New York, having an address at City Hall, New York, New York 10007 (the “Landlord Declarant”) and [THE PENINSULA JV, LLC] (“TPJVLLC”), a New York limited liability company, having an address at c/o Gilbane Development Company, 7 Jackson Walkway, Providence, RI 02903 (the “Tenant Declarant” and together with the Landlord Declarant the “Declarants”).

**WITNESSETH:**

**WHEREAS**, the Landlord Declarant is the fee owner of certain real properties located in the Borough of the Bronx, County of the Bronx, City and State of New York, designated for real property tax purposes as: (1) Block [ ], Lot [ ], which real property is more particularly described in Exhibit A-1 annexed hereto and made a part hereof (the “Manida Street Property”); and (2) Block [ ], Lot [ ], which real property is more particularly described in Exhibit A-2 annexed hereto and made a part hereof (the “Lease Property,”); (the Manida Street Property and the Lease Property, collectively, the “Subject Property”);

**WHEREAS**, Landlord Declarant and the New York City Land Development Corporation, a local development corporation organized pursuant to Section 1411 of the New York State Not-for-Profit Corporation Law (the “LDC”), have entered into that certain ground lease, dated [date], with respect to the leasing of the Lease Property to LDC (the “Lease”);

**WHEREAS**, LDC has assigned the Lease and its leasehold interest in the Lease Property to Tenant Declarant pursuant to that certain assignment of lease dated [date] (the “Assignment”), pursuant to which Tenant Declarant has assumed the rights and obligations of tenant under the Lease;

**WHEREAS**, pursuant to the Lease, Tenant Declarant desires and intends to develop the Subject Property by constructing five (5) new mixed use buildings on the Lease Property and certain open space improvements on and off the Subject Property (collectively, the “Projected Development”), as reflected in the FEIS (hereinafter defined);

**WHEREAS**, Declarants desire and intend to develop the Projected Development as a “large-scale general development” as defined in Section 12-10 of the Zoning Resolution of the City of New York (“Zoning Resolution” or “ZR”) (such proposed development of the Projected Development as a large-scale general development, the “Large-Scale Development”);

**WHEREAS**, to facilitate the Projected Development, and the development of the Projected Development as the Large-Scale Development, Declarants filed the following applications (collectively, the “Applications”) with the City Planning Commission of the City of New York (“CPC”) for: (i) a zoning map amendment to rezone portions of Blocks 2763 and 2738 from R6 to M1-2/R7-2 (MX-17) Special Mixed Use District (ULURP No. 180121ZMX); (ii) a large scale general development special permit to permit location of buildings without regard for the applicable yard, distance between buildings, and height and setback regulations, pursuant to

ZR §74-743(a)(2), (ULURP No. 180123ZSX); (iii) a large scale general development special permit to permit reduction of loading berth requirements pursuant to ZR §74-745(b) (ULURP No. 180124ZSX) (items ii and iii collectively, the "Large Scale Special Permits"); (iv) a zoning authorization to permit modification of required width of curb cuts pursuant to ZR §25-631(f)(2) (ULURP No. 180125ZAX); (v) a zoning text amendment: (x) to create new Map 2 for Bronx Community District 2 in Appendix F of the Zoning Resolution to designate portions of Blocks 2763 and 2738 as a Mandatory Inclusionary Housing Area, (y) to amend the text of ZR §123-90 to establish a Special Mixed Use District (MX-17) on portions of Blocks 2763 and 2738, and (z) to amend the text of ZR §74-745(b) to enable CPC to issue a special permit to waive loading berth requirements for zoning lots in large-scale general developments in Special Mixed Use Districts located in Bronx Community District 2 (ULURP No. N180122ZRX); (vi) disposition of the City-owned Subject Property by ground leases (ULURP No. N180126PPX); (the approval by CPC of i-vi hereof, collectively the "Approvals," and each individually an "Approval");

**WHEREAS**, to ensure that the development of the Subject Property is consistent with the analysis in the Final Environmental Impact Statement issued for City Environmental Quality Review Application No. 17DME001X (the "FEIS") pursuant to Executive Order No. 91 of 1977, as amended, and the regulations promulgated thereunder at 62 RCNY § 5-01 et seq. ("CEQR") and the State Environmental Quality Review Act, New York State Environmental Conservation Law § 8-0101 et seq. and the regulations promulgated thereunder at 6 NYCRR Part 617 ("SEORA") and incorporates certain (i) requirements for mitigation of significant adverse environmental impacts ("Mitigation Measures") and (ii) certain project components related to the environment which were material to the analysis of environmental impacts in the FEIS ("PCREs"), Declarants have agreed to restrict the development, operation, use and maintenance of the Subject Property in certain respects, which restrictions are set forth in this Declaration;

**WHEREAS**, Section 74-743(b)(10) of the Zoning Resolution requires that a declaration with regard to ownership requirements in paragraph (b) of the large scale general development definition in Section 12-10 be filed with CPC;

**WHEREAS**, [title insurance company] has certified in the certification (the "Certification") attached hereto as Exhibit B and made a part hereof, that as of [ month, day, 2018], the parties listed on such Certification are the only parties-in-interest to the Subject Property (each, a "Party-in Interest", collectively, the "Parties-in-Interest"), as such term is defined in subsection (c) of the definition of "zoning lot" in ZR Section 12-10;

**WHEREAS**, all Parties-in-Interest, to the Subject Property have either executed this Declaration or waived their right to execute and subordinated their interest in the Subject Property to this Declaration by written instrument substantially in the same form as that annexed hereto as Exhibit C and made a part hereof, which instrument is intended to be recorded simultaneously with this Declaration; and

**WHEREAS**, the Declarants desire, on the terms and conditions herein, to restrict the manner in which the Subject Property may be developed, redeveloped, maintained and operated now and in the future, and intends these restrictions to benefit the Subject Property.

**NOW, THEREFORE**, Declarants do hereby declare that the Subject Property shall be held, sold, conveyed, developed, used, occupied, operated and maintained, subject to the following restrictions, covenants, obligations and agreements, which shall run with such real property binding Declarants, as the case may be, and their respective successors and assigns as herein set forth.

**1. CERTAIN DEFINITIONS.**

For purposes of this Declaration, the following terms shall have the following meanings.

(a) “**Building Permit**” shall mean the issuance of any permit by DOB whether in the form of (i) an excavation permit, authorizing excavations, including those made for the purposes of removing earth, sand, gravel, or other material from the Subject Property; (ii) a foundation permit, authorizing foundation work at the Subject Property; (iii) a demolition permit, authorizing the dismantling, razing or removal of a building or structure, including the removal of structural members, floors, interior bearing walls and/or exterior walls or portions thereof; (iv) a “new building permit” or (v) any other permit normally associated with the development of a building.

(b) “**Building**” shall mean, individually and as applicable, either (i) Building 1A; (ii) Building 1B; (iii) Building 2A; (iv) Building 2B; or (v) Building 3. “**Buildings**” shall mean each of the same, collectively.

(c) “**Building 1A,**” “**Building 1B,**” “**Building 2A,**” “**Building 2B,**” and “**Building 3,**” shall refer to the new buildings to be constructed as part of the Projected Development, each of which are identified illustratively on the Overview Plan.

(d) “**Building 1A Publicly Accessible Open Space**” shall mean that publicly accessible open space located within the Subject Property adjacent to, and associated with the development of, Building 1A. The Building 1A Publicly Accessible Open Space is illustratively demonstrated on the Overview Plan and shall contain, at the time of completion pursuant to Section 3(a)(iv)(D) hereof, no less than 1,200 square feet of lot area.

(e) “**Building 1B Publicly Accessible Open Space**” shall mean that publicly accessible open space located within the Subject Property adjacent to, and associated with the development of, Building 1B. The Building 1B Publicly Accessible Open Space is illustratively demonstrated on the Overview Plan and shall contain, at the time of completion pursuant to Section 3(a)(iv)(D) hereof, no less than 7,000 square feet of lot area.

(f) “**Building 2A Publicly Accessible Open Space**” shall mean that publicly accessible open space located within the Subject Property adjacent to, and associated with the development of, Building 2A. The Building 2A Publicly Accessible Open Space is illustratively demonstrated on the Overview Plan and shall contain, at the time of completion pursuant to Section 3(a)(iv)(D) hereof, no less than 18,000 square feet of lot area.

(g) “**Building 2B Publicly Accessible Open Space**” shall mean that publicly accessible open space located within the Subject Property adjacent to, and associated with the development of, Building 2B. The Building 2B Publicly Accessible Open Space is illustratively demonstrated on the Overview Plan and shall contain, at the time of completion pursuant to Section 3(a)(iv)(D) hereof, no less than 13,000 square feet of lot area.

(h) “**Building 3 Publicly Accessible Open Space**” shall mean that publicly accessible open space located within the Subject Property adjacent to, and associated with the development of, Building 3. The Building 3 Publicly Accessible Open Space is illustratively demonstrated on the Overview Plan and shall contain, at the time of completion pursuant to Section 3(a)(iv)(D) hereof, no less than 6,000 square feet of lot area.

(i) “**Chair**” shall mean the Chairperson of CPC from time to time or any successor to the jurisdiction thereof.

(j) “**DCP**” shall mean the New York City Department of City Planning.

(k) “**DOB**” shall mean the Department of Buildings of the City of New York, or any successor to its jurisdiction.

(l) “**DPR**” shall mean the New York City Department of Parks and Recreation.

(m) “**DPR Improvements**” shall mean those certain proposed physical improvements to: (i) the Manida Street Property; and, (ii) land that, as of the date of the Declaration, is located off of, and adjacent to, the Subject Property under the control of DPR. These proposed improvements, required of the Tenant Declarant pursuant to Section 3(a)(vi) hereof, include: (x) grading and finishing a parcel of land identified on the DPR Improvement Plan as presently under DPR jurisdiction with grass lawn, secured by fencing; (y) grading and finishing the Manida Street Property with grass lawn, secured by fencing; and (z) the development of a new retaining wall on land currently under the jurisdiction of DPR and adjacent to the Subject Property, as demonstrated on the DPR Improvement Plan. At the time of completion pursuant to Section 3(a)(vi)(C) hereof, the DPR Improvements shall include improvement of no less than 14,388 square feet of lot area, inclusive of the Manida Street Property, either then under the jurisdiction of DPR or intended to be transferred to DPR jurisdiction following completion of such DPR Improvements.

(n) “**DPR Improvement Plan**” shall mean that plan attached hereto as Exhibit D, illustratively demonstrating the locations of the DPR Improvements.

(o) “**DPR Rules and Regulations**” shall mean the Rules and Regulations of the New York City Department of Parks and Recreation, as the same may be amended from time to time.

(p) “**Final Completion**” or “**Finally Complete**” shall mean, as applicable: (i) the completion of a Publicly Accessible Open Space Portion in accordance with the PDC-approved design for such Publicly Accessible Open Space Portion; or (ii) the completion of the Publicly Accessible Open Space in accordance with the PDC-approved design for the Publicly Accessible Open Space. The standard of review of Final Completion shall be determined in accordance with DOB procedure.

(q) “**Legal Requirements**” shall mean all applicable laws, statutes and ordinances, and all orders, rules, regulations, interpretations, directives and requirements, of any governmental authority (including any Federal, State, City or County governmental authority or quasi-governmental authority, or any political subdivision of any thereof, or any agency, department, commission, board or instrumentality of any thereof) having jurisdiction over the matter in question.

(r) “**Overview Plan**” shall mean that plan attached hereto as **Exhibit E**, illustratively demonstrating the locations of the Publicly Accessible Open Space Portions and Buildings on the Subject Property.

(s) “**PDC**” shall mean the New York City Public Design Commission.

(t) “**Publicly Accessible Open Space**” shall mean the publicly accessible open space containing no less than 54,380 square feet and required to be developed on the Subject Property in accordance with **Section 3(a)** hereof. The Publicly Accessible Open Space includes, collectively: (i) the Building 1A Publicly Accessible Open Space; (ii) the Building 1B Publicly Accessible Open Space; (iii) the Building 2A Publicly Accessible Open Space; (iv) the Building 2B Publicly Accessible Open Space; and (v) the Building 3 Publicly Accessible Open Space.

(u) “**Publicly Accessible Open Space Portion**” or “**Publicly Accessible Open Space Portions**” shall mean, individually or collectively, as applicable: (i) the Building 1A Publicly Accessible Open Space; (ii) the Building 1B Publicly Accessible Open Space; (iii) the Building 2A Publicly Accessible Open Space; (iv) the Building 2B Publicly Accessible Open Space; and/or (v) the Building 3 Publicly Accessible Open Space; the location of each publicly accessible area demonstrated illustratively on the Overview Plan.

(v) “**Publicly Accessible Open Space Work**” shall mean the work necessary to construct each of the Publicly Accessible Open Space Portions in accordance with this Declaration.

(w) “**Substantial Completion**” or “**Substantially Complete**”, shall have the meaning ascribed to it in **Section 3(a)(iv)(D)(1)** hereof.

(x) “**ZR**” or “**Zoning Resolution**” shall mean the Zoning Resolution of the City of New York, as amended from time to time.

**2. LARGE-SCALE GENERAL DEVELOPMENT.**

(a) **Designation of Large-Scale General Development.** The Declarants hereby declare and agree that, following the Effective Date (as defined in Section 7 hereof), the Subject Property, if developed pursuant to the Large Scale Special Permits, shall be treated as a large-scale general development site and shall be developed or enlarged as a single unit.

(b) **Development of Subject Property Pursuant to Large Scale Special Permits.** If the Subject Property is developed in whole or in part in accordance with the Large Scale Special Permits, the Tenant Declarant covenants that the Subject Property shall be developed in substantial conformity with the following plans prepared by BLA+WXY, approved as part of the Large Scale Special Permits and annexed hereto in Exhibit F and made a part hereof (collectively, the “Large Scale Special Permit Plans”):

<b>Drawing No.</b>	<b>Title</b>	<b>Date</b>
Z-002	Zoning Analysis, List of Actions	undated
Z-010	Zoning Lot Site Plan	10.19.2017
Z-030	Waiver Plan	10.19.2017
Z-031	Waiver Diagrams Building 1A, 1B, 2A	10.19.2017
Z-032	Waiver Diagrams Building 2A, 2B	10.19.2017
Z-033	Waiver Diagrams Building 1A, 2B, 3	10.19.2017
Z-034	Waiver Diagrams Building 1B, 2A and 3	10.19.2017

(c) If the Declarants seek to develop the Subject Property other than pursuant to the Large Scale Special Permits, the Large Scale Special Permits shall be deemed surrendered and Declarants may not develop the Subject Property except as permitted by the zoning district regulations and any other applicable restrictions.

**3. ENVIRONMENTAL PROTECTION MEASURES.** Tenant Declarant shall implement the following PCREs and Mitigation Measures in accordance with the FEIS and as further set forth in this Section 3 for any development of the Subject Property pursuant to this Declaration.

(a) **Project Component Related to the Environment – Publicly Accessible Open Space.**

i. **Obligation to Construct Publicly Accessible Open Space.** Tenant Declarant agrees to develop, provide, and maintain the Publicly Accessible Open Space as further set forth herein for any development of the Subject Property. The general purpose of the Publicly Accessible Open Space will be to serve as a neighborhood open space,

provide amenities for residents, workers, and the general public, and provide passive and active recreational space, including a variety of seating types and areas, including social seating.

- ii. Required Elements of Publicly Accessible Open Space. The Publicly Accessible Open Space shall include in all substantial respects the following required elements (individually, a “Required Element,” together, the “Required Elements”):
  - A. Size. The Publicly Accessible Open Space shall be no less than 54,380 square feet of the Lease Property’s lot area.
  - B. Components of Publicly Accessible Open Space. The Publicly Accessible Open Space shall include the following components, as identified illustratively on the Overview Plan:
    - (1) East-West Connection. A continuous pedestrian connection shall be provided through the Lease Property from Manida Street to Tiffany Street (the “East-West Connection”). The East-West Connection shall have a minimum width of 20 feet throughout its required length. The East-West Connection shall traverse the Central Open Area and Spofford Driveway (each described below).
    - (2) Central Open Area. An open area shall front upon Spofford Avenue and connect to Tiffany Street and Manida Street by the East-West Connection (the “Central Open Area”). The Central Open Area shall be no less than 22,300 square feet. The area of the East-West Connection traversing the Central Open Area shall be included in the square foot minimum area of the Central Open Area. The Central Open Area shall have no less than 85 feet of linear frontage along Spofford Avenue, and a minimum depth, measured from Spofford Avenue, of no less than 200 linear feet.
    - (3) Spofford Driveway. A driveway and accompanying pedestrian sidewalks shall be provided through the Lease Property allowing for vehicular and pedestrian access from Spofford Avenue to Building 2A (the “Spofford Driveway”).
  - C. Access for Persons with Disabilities: The Publicly Accessible Open Space, and each of the Publicly Accessible Open Space Portions, shall conform with applicable laws pertaining to access for persons with disabilities.
  - D. Signage: The Publicly Accessible Open Space, and each of the Publicly Accessible Open Space Portions, shall comply with all the provisions of ZR Section 37-751 (Public Space Signage Systems) as in effect on the date of this Declaration, as modified herein. All references therein to #public plaza# shall be replaced with the words “Publicly Accessible Open Space.” There shall also be four operating rules signs, one at each street entrance to the Publicly Accessible

Open Space. Such signs shall not exceed one foot square dimension and shall contain no lettering greater than ¾ inch in height.

- E. Permitted Obstructions: The provisions of ZR Sections 37-726 (Permitted Obstructions) and 23-12 (Permitted Obstructions in Open Space), as in effect on the date of this Declaration, shall apply to the Publicly Accessible Open Space and each of the Publicly Accessible Open Space Portions.

iii. Approval of Publicly Accessible Open Space Design; Implementation.

- A. Tenant Declarant agrees and acknowledges that (1) the design of the Publicly Accessible Open Space Portions will be subject to approval by PDC; and (2) the drawings and plans submitted by Tenant Declarant to PDC for its approval of the Publicly Accessible Open Space Portions shall be consistent with the Large Scale Special Permit Plans.
- B. DOB shall not issue a Building Permit for the development of a Building on the Subject Property until PDC has first reviewed and approved a design for the Publicly Accessible Open Space Portion associated with such Building.

iv. Construction of the Publicly Accessible Open Space Portions.

- A. Tenant Declarant shall construct each of the individual Publicly Accessible Open Space Portions substantially in accordance with the provisions of this Section 3(a)(iv), the Overview Plan, and the Required Elements after issuance of a Building Permit for Building 1A, Building 1B, Building 2A, Building 2B, and Building 3, as applicable. In particular:
  - (1) After issuance of a Building Permit for Building 1A, Tenant Declarant shall commence construction of the Building 1A Publicly Accessible Open Space;
  - (2) After issuance of a Building Permit for Building 1B, Tenant Declarant shall commence construction of the Building 1B Publicly Accessible Open Space;
  - (3) After issuance of a Building Permit for Building 2A, Tenant Declarant shall commence construction of the Building 2A Publicly Accessible Open Space;
  - (4) After issuance of a Building Permit for Building 2B, Tenant Declarant shall commence construction of the Building 2B Publicly Accessible Open Space; and
  - (5) After issuance of a Building Permit for Building 3, Tenant Declarant shall commence construction of the Building 3 Publicly Accessible Open Space.



B. Performance of Publicly Accessible Open Space Work. Tenant Declarant agrees that the Publicly Accessible Open Space Work shall be performed in accordance with all Legal Requirements and the provisions of this Declaration, it being expressly acknowledged by the City that the Tenant Declarant intends to construct the Publicly Accessible Open Space Portions substantially in accordance with the Overview Plan and the Required Elements.

C. Manner of Performance of the Construction Work. Tenant Declarant shall, at its sole cost and expense, undertake and complete the performance of the Publicly Accessible Open Space Work so as to construct the Publicly Accessible Open Spaces as required pursuant to the provisions of this Declaration. Tenant Declarant shall perform the Publicly Accessible Open Space Work in a good and workmanlike manner and in accordance with Legal Requirements.

D. Completion of Construction.

(1) Substantial Completion. Tenant Declarant shall not accept and DOB shall not issue a temporary certificate of occupancy (a “TCO”) with respect to any Building on the Subject Property until DOB has confirmed that the Publicly Accessible Open Space Portion associated with such Building is Substantially Complete. A Publicly Accessible Open Space Portion shall be deemed Substantially Complete upon confirmation by DOB that such Publicly Accessible Open Space Portion:

- a. Meets the minimum size limitations provided in Section 1(d) through Section 1(h), as applicable;
- b. Is consistent with the Overview Plan and the Required Elements, as applicable to such Building’s Publicly Accessible Open Space Portion; and
- c. Is safe for occupancy by the residents of the given Building and the general public.

Further, Tenant Declarant shall not accept and DOB shall not issue a TCO for Building 3 until DOB has confirmed that the Publicly Accessible Open Space is Substantially Complete. The Publicly Accessible Open Space shall be deemed Substantially Complete upon confirmation by DOB that the Publicly Accessible Open Space is consistent with the Required Elements and is safe for occupancy by the residents of the Projected Development and the general public.

(2) Final Completion. Tenant Declarant shall not accept and DOB shall not issue a permanent certificate of occupancy (a “PCO”) with respect to any Building on

the Subject Property until DOB has confirmed that the Publicly Accessible Open Space Portion associated with such Building is Finally Complete. Further, Tenant Declarant shall not accept and DOB shall not issue a PCO for Building 3 until DOB has confirmed that the Publicly Accessible Open Space is Finally Complete.

E. Maintenance and Operation. The maintenance and operation provisions of this Section 3(a)(iv)(E) shall apply to the individual "Publicly Accessible Open Space Portions" notwithstanding the references herein to the "Publicly Accessible Open Space." Tenant Declarant shall provide or, in Tenant Declarant's sole discretion, cause to be provided, all services required for the maintenance and repair of the Publicly Accessible Open Space, and any paving, landscaping, equipment or furniture provided therein, as and when reasonably needed to preserve the Publicly Accessible Open Space and the amenities contained therein neat, clean and in good working order and condition as set forth in the following manner:

(1) Cleaning.

- a. Trash shall be collected regularly. Litter and other obstructions shall be removed as needed.
- b. Walkways and paths shall be cleaned and cleared as needed and maintained in good condition.
- c. Appropriate measures shall be taken to control rodents and pigeons.
- d. Graffiti shall be promptly removed or painted over.
- e. Drains, sewers and catch basins shall be cleaned regularly to prevent clogging.
- f. Snow shall be promptly removed to create a clear path for pedestrian walkways, and fallen branches and trees shall be removed promptly.

(2) Landscape and Feature Maintenance.

- a. Appropriate maintenance for planted areas shall be undertaken, including: pruning, trimming, and weeding; removal and replacement of plants, branches and trees that are dead or blighted; wrapping of trees, shrubs, and other plants as necessary to ensure adequate winter protection, and subsequent removal come springtime; replanting, reseeding and fertilizing as needed; moving of grass and watering of plantings as needed.

- b. Adequate lighting levels shall be maintained, and lighting equipment shall be repaired or replaced as necessary.
  - c. Water features within the Publicly Accessible Open Space, if any, shall be maintained in good condition and shall be required to be operational when the temperature outside is no less than 80 degrees, provided it shall be open at least between Memorial Day and Labor Day.
- (3) Repairs and Replacements. Repairs and replacements of features in the Publicly Accessible Open Space shall occur as needed to maintain the Publicly Accessible Open Space in a state of good repair. All repairs and replacements shall occur promptly, and shall include, but are not limited to, the following items:
- a. Seating: All seating shall be repaired and repainted as necessary, including replacement of any moveable seating that has been removed.
  - b. Walls or Other Barriers: Any broken or cracked walls, fences or other barriers shall be repaired or replaced.
  - c. Paving: All paved surfaces shall be maintained in a safe and attractive condition.
  - d. Painting: All painted items shall be repainted and rust or other extraneous matter removed as needed.
  - e. Signage: All signs shall be maintained in good condition and cleaned or replaced if vandalized.
  - f. Construction Defects and Hazardous Conditions: The Publicly Accessible Open Space shall be periodically inspected for construction defects and hazardous conditions, and any portion or feature that exhibits defects or hazardous conditions shall be promptly repaired or replaced.
- v. Public Accessibility. Upon issuance of a TCO for a given Building pursuant to Section 3(a)(iv)(D) hereof, the Publicly Accessible Open Space Portion associated with such Building shall be publicly accessible. The public accessibility provisions of this Section 3(a)(v) shall apply to the individual “Publicly Accessible Open Space Portions” notwithstanding the references herein to the “Publicly Accessible Open Space.”

- A. The Publicly Accessible Open Space shall be open to the public during the hours of operation as set forth in Section 3(a)(v)(B) herein. No portion of the Publicly Accessible Open Space may be completely enclosed by a gate or fence during such hours of operation.
- B. Hours of Operation. The Publicly Accessible Open Space shall be open and accessible to the public from dawn until dusk, 365 days per year, except when required to be closed for no more than one (1) day per calendar year in order to preserve the private ownership of the area and/or for private events. Notwithstanding the foregoing, Tenant Declarant may, at its discretion, open the Publicly Accessible Open Space during nighttime hours for public access or private events.
- C. Rules and Regulations. Tenant Declarant shall have the right, but not the obligation, to establish rules and regulations governing public use of, and behavior in, the Publicly Accessible Open Space, which rules and regulations shall not conflict with DPR Rules and Regulations (56 RCNY §1-01 et seq.). Tenant Declarant shall operate the Publicly Accessible Open Space in conformity with DPR Rules and Regulations unless and until it promulgates rules and regulations of its own for use of the Publicly Accessible Open Space, to ensure that no member of the public shall use the Publicly Accessible Open Space for an activity or in a manner which injures, endangers or unreasonably disturbs the comfort, peace, health or safety of any person, or disturbs or causes injury to plant or animal life, or causes damage to the property or any person.
- D. Public Access. Except as provided in this Section 3(a)(v)(D), the Publicly Accessible Open Space shall be open and accessible to the public in accordance with this Declaration. Tenant Declarant may close the Publicly Accessible Open Space or portions thereof for periods as may be necessary in order to: (1) accomplish maintenance repairs or replacements; (2) make emergency repairs to mitigate hazardous conditions; and (3) address other emergency conditions. Emergency conditions for which the Publicly Accessible Open Space may be closed pursuant to (3) above shall be limited to actual or imminent emergency situations, including but not limited to, security alerts, riots, casualties, disasters, or other events engendering public health, safety or property, provided that no such closure shall continue for more than twenty-four (24) consecutive hours without Tenant Declarant having consulted with the New York City Police Department (the "NYPD") or DOB, as appropriate, and having followed the NYPD's or DOB's direction, if any, with regard to the emergency situation. Tenant Declarant will close or permit to be closed only those portions of the Publicly Accessible Open Space which must or should reasonably be closed to effect the repairs, replacements or mitigation of hazardous site conditions to be undertaken pursuant to (1) through (3) above, and will exercise due diligence in the performance of such repairs, replacements or mitigation such that they are

completed expeditiously and the temporarily closed areas (or any portions thereof) are re-opened to the public promptly. Tenant Declarant shall provide notice to the Chair of any closure of the Publicly Accessible Open Space associated with scheduled repairs or replacements under (1) above, and anticipated closure time frame, and shall post information regarding the same at appropriate locations at entrances to and within the Publicly Accessible Open Space, not less than seven (7) days prior to such closure.

vi. Additional Open Space Commitments.

- A. Design of Additional Open Space Commitments. After the Effective Date hereof, Tenant Declarant shall prepare plans and specifications for the development of the DPR Improvements as demonstrated illustratively on DPR Improvement Plan, and shall proceed with obtaining all necessary approvals and consents from DPR in order to construct the same.
- B. Additional Open Space Commitments of Tenant Declarant. The Tenant Declarant acknowledges and agrees that it shall construct the DPR Improvements in accordance with the plans and specifications approved by DPR in accordance with Section 3(a)(vi)(A) hereof and all Legal Requirements. Upon commencement of construction of the DPR Improvements, Tenant Declarant shall proceed diligently to complete the DPR Improvements.
- C. Completion of the DPR Improvements. Notwithstanding anything to the contrary contained in this Declaration, including Section 3(iv)(D)(1), Tenant Declarant shall have the right to obtain a TCO with respect to Building 3 prior to completion of the DPR Improvements. Tenant Declarant shall not accept and DOB shall not issue a PCO with respect to Building 3 until DPR has confirmed by letter to DOB that the DPR Improvements have been constructed by Tenant Declarant in accordance with the plans and specifications approved by DPR in accordance with Section 3(a)(vi)(A) hereof. Tenant Declarant shall notify DPR at such time as it believes that the DPR Improvements have been constructed in accordance with the plans and specifications approved by DPR in accordance Section 3(a)(vi)(A) hereof, and shall request that DPR issue a letter to DOB certifying completion of construction of such DPR Improvements, which letter shall reference this Declaration and this Section 3(a)(vi)(C). No later than fifteen (15) days after receipt of such request, the DPR shall either issue the letter confirming completion of construction, or deliver to Tenant Declarant a notice specifying in detail the reasons why the DPR Improvements have not been constructed in accordance with the approved plans and specifications (a "Punch List"). If DPR has delivered such a Punch List notice to Tenant Declarant, then Tenant Declarant shall promptly perform the work specified in the Punch List to complete construction of the DPR Improvements, and after which shall notify DPR of such

completion (a "Follow-Up Notice"). No later than ten (10) calendar days after receipt of such Follow-Up Notice, DPR shall either issue a letter to DOB certifying completion of construction of the DPR Improvements as stipulated herein or notify Tenant Declarant that they have not completed the Punch List. This process shall continue until DPR has issued a letter to DOB certifying completion of construction of the DPR Improvements as stipulated herein. If DPR fails to provide a letter to DOB within the time periods set forth in this Section 3(a)(vi)(C), then DPR shall be deemed to have confirmed completion of the DPR Improvements in accordance with the plans and specifications approved by DPR in accordance with Section 3(a)(vi)(A) hereof. Nothing contained herein shall be construed to restrict Tenant Declarant's right to accept, or DOB's right to issue, a TCO with respect to Building 3 prior to DPR confirming completion of construction of the DPR Improvements pursuant to this Section 3(a)(vi)(C).

(b) Project Component Related to the Environment – Construction. Tenant Declarant acknowledges and agrees that the following PCRE measures will be memorialized in all relevant contracts to be entered into by Tenant Declarant for the construction of the Projected Development. Declarant shall retain a third party monitor (a "Monitor") reasonably acceptable to either the Mayor's Office of Environmental Coordination ("MOEC") or the New York City Economic Development Corporation, to oversee, on behalf of MOEC, the implementation and performance by Declarant of the construction period PCREs and mitigation under Sections 3(b) and Section 3(c), respectively. The Monitor shall be a licensed engineer, architect, general contractor or environmental consultant with experience in environmental management and construction management (or multiple persons or firms employing such persons), including familiarity with the means and methods for implementation of the PCREs and mitigation.

i. Construction Air Emissions Reduction Measures. To minimize pollutant emissions and ensure that the construction of the Projected Development results in the lowest practicable diesel particulate matter (DPM) emissions, Tenant Declarant shall implement the following PCRE measures related to air quality:

A. Clean Fuel. Ultra-low sulfur diesel shall be used exclusively for all diesel engines throughout the Subject Property.

B. Dust Control. To minimize fugitive dust emissions from construction activities, a fugitive dust control plan, including a robust watering program, shall be required as part of contract specifications. All trucks hauling loose material shall be equipped with tight-fitting tailgates and their loads securely covered prior to leaving the Subject Property; and water sprays shall be used for all demolition, excavation, and transfer of soils to ensure that materials would be dampened as necessary to avoid the suspension of dust into the air. Loose materials shall be watered, stabilized with a chemical suppressing agent, or covered. All measures required by the portion of the *New York City Department of Environmental*

*Protection Construction Dust Rules* regulating construction-related dust emissions shall be implemented.

- C. Idling Restrictions. In addition to adhering to the local law restricting unnecessary idling on roadways, on-site vehicle idle time shall be restricted to three minutes for all equipment and vehicles that are not using their engines to operate a loading, unloading, or processing device (e.g., concrete mixing trucks) or are otherwise required for the proper operation of the engine.
  - D. Diesel Equipment Reduction. Electrically powered equipment shall be utilized over diesel-powered and gasoline-powered versions of that equipment to the extent practicable. Equipment that uses the grid power in lieu of diesel engines includes, but may not be limited to, hoists, the tower crane that would be employed during construction, and small equipment such as welders.
  - E. Best Available Tailpipe Reduction Technologies. Non-road diesel engines with a power rating of 50 horsepower (hp) or greater and controlled truck fleets (i.e., truck fleets under long-term contract with the project) including but not limited to concrete mixing and pumping trucks shall utilize the best available technology (BAT) for reducing DPM emissions. Diesel particulate filters (DPFs) have been identified as being the tailpipe technology currently proven to have the highest reduction capability. Construction contracts shall specify that all diesel nonroad engines rated at 50 hp or greater will utilize DPFs to the extent practicable, either installed by the original equipment manufacturer (OEM) or retrofitted. Retrofitted DPFs must be verified by EPA or the California Air Resources Board (CARB). Active DPFs or other technologies proven to achieve an equivalent reduction may also be used.
  - F. Utilization of Newer Equipment. EPA's Tier 1 through 4 standards for nonroad diesel engines regulate the emission of criteria pollutants from new engines, including PM, CO, NOx and hydrocarbons. All diesel-powered nonroad construction equipment with a power rating of 50 hp or greater shall meet at least the Tier 3 emissions standard. All diesel-powered engines in the project rated less than 50 hp shall meet at least the Tier 2 emissions standard.
- ii. Historic and Cultural Resources. Tenant Declarant shall commit to implementing DOB's Technical Policy and Procedure Notice (TPPN) #10/88 to prevent any construction related damage to the Corpus Christi Monastery wall, a State and National Register (S/NR) eligible historic resource, located along the northern edge of the Subject Property.
  - iii. Construction Noise Emissions Reduction Measures. To minimize noise emissions, Tenant Declarant shall implement the following PCRE measures to the extent feasible and practicable.

- A. Equipment that meets the sound level standards specified in Subchapter 5 of the *NYC Noise Control Code* and Table 22-1 of the *2014 CEQR Technical Manual* shall be utilized from the start of construction. Table 18-10 of the FEIS shows the noise levels for typical construction equipment and the mandated noise levels for the equipment that will be used for construction of the Projected Development.
- B. As early in the construction period as logistics will allow, diesel- or gas-powered equipment shall be replaced with electrical-powered equipment such as welders, water pumps, bench saws, and table saws (i.e., early electrification) to the extent feasible and practicable.
- C. Where feasible and practicable, the construction site shall be configured to minimize back-up alarm noise. In addition, where practicable trucks shall be limited to no more than three minutes of engine idling at the construction site based upon Title 24, Chapter 1, Subchapter 7, Section 24-163 of the *NYC Administrative Code*.
- D. Contractors and subcontractors shall be required to properly maintain their equipment and mufflers.
- E. Where logistics allow, noisy equipment, such as cranes, concrete pumps, concrete trucks, and delivery trucks, shall be located away from and shielded from sensitive receptor locations.
- F. Noise barriers constructed from plywood or other materials surrounding the construction site at a height of at least 8 feet shall be utilized to provide shielding. Where logistics allow, truck deliveries will take place behind these barriers.
- G. Path noise control measures (i.e., portable noise barriers, panels, enclosures, and acoustical tents, where feasible) shall be utilized for certain dominant noise equipment to the extent feasible and practical (i.e., generators, jack hammers, pile drivers and pumps). These barriers were assumed based on guidance from DEP's *Rules for Citywide Construction Noise Mitigation* to offer a 10 dBA reduction in noise levels for each piece of equipment to which they are applied, as shown in Table 18-10 of the FEIS. The details to construct portable noise barriers, enclosures, tents, etc. are also shown in DEP's *Rules for Citywide Construction Noise Mitigation*.

(c) Mitigation Measure – Construction Noise. Tenant Declarant shall implement the following mitigation measures related to construction noise:



- i. A 12 foot high perimeter noise wall will be constructed around each construction area. The wall will be lined with quilted fiberglass to improve sound absorption and reduce construction noise levels at surrounding properties
- ii. An on-site acoustical enclosure for concrete mixing trucks will be provided. Concrete mixing trucks will be enclosed on three sides (with the open side facing north into the construction work area) during concrete mixing and pouring as well as wash-down. The enclosure will be constructed either from plywood with quilted fiberglass on the inner faces or from an approved alternate material with comparable acoustical properties (i.e., STC 35 and NRC 0.85).

(d) Mitigation Measures Relating to Transportation – Traffic Signal Installation. Tenant Declarant shall implement the following mitigation measure related to traffic. To the extent required by the DOT, Tenant Declarant shall comply with DOT requirements necessary to implement signal installation measures specified in the FEIS or measures having comparable benefits as specified by DOT, and will either implement such measures as directed by DOT, or, if directed by DOT, pay DOT for the ordinary and customary costs of implementing such improvements (including but not limited to the costs of the design and construction of such improvements).

#### **4. BINDING EFFECT.**

(a) The restrictions, covenants and agreements set forth in this Declaration shall be binding upon Landlord Declarant only for the period during which it holds a fee interest in the Subject Property. At such time as Landlord Declarant ceases to hold fee title to the Subject Property, Landlord Declarant's obligations and liability with respect to this Declaration shall wholly cease and terminate, and Landlord Declarant's successors in interest in the Subject Property shall be deemed to have assumed such party's obligations and liabilities thereafter arising hereunder.

(b) Any party who succeeds to the interest of Landlord Declarant under this Declaration shall be bound by this Declaration only for as long as the Projected Development exists on the Subject Property, and shall be deemed to have ratified all actions of Landlord Declarant taken in accordance with this Declaration.

(c) The restrictions, covenants and agreements set forth in this Declaration shall be binding upon Tenant Declarant only for the period during which it holds a leasehold interest in the Subject Property. At such time as Tenant Declarant ceases to hold a leasehold interest in the Subject Property, Tenant Declarant's obligations and liability with respect to this Declaration shall wholly cease and terminate, and Tenant Declarant's successors in interest in the Subject Property shall be deemed to have assumed such party's obligations and liabilities thereafter arising hereunder.

(d) Any party who succeeds to the interest of Tenant Declarant under this Declaration shall be bound by this Declaration only for as long as the Projected Development exists on the Subject Property, and shall be deemed to have ratified all actions of Tenant Declarant taken in accordance with this Declaration.

(e) Provided the Lease Property has been subdivided into two or more tax lots in accordance with this Declaration and all Legal Requirements, any party who succeeds to the interest of Tenant Declarant under this Declaration in relation to a portion of the Lease Property shall be bound by Section 3(a) of this Declaration only with respect to the Publicly Accessible Open Space Portion associated with the applicable Building that is to be constructed, or has been constructed, on such successor's leasehold estate.

(f) Notwithstanding anything to the contrary contained in this Declaration, the City and any other party or person relying on this Declaration shall look solely to the leasehold estate and interest of Tenant Declarant on an in rem basis only, for the enforcement of any remedy based upon any breach by Tenant Declarant under this Declaration, and no other property of Tenant Declarant or its principals, disclosed or undisclosed, direct or indirect partners, shareholders, directors, officers, members, managers or employees shall be subject to levy, execution or other enforcement procedure for the satisfaction of the remedies of the City under or with respect to this Declaration, and no such party shall have any personal liability under this Declaration. Notwithstanding the foregoing, nothing herein shall be deemed to preclude, qualify, limit or prevent any of the City's governmental rights, powers or remedies, including, without limitation, with respect to the satisfaction of the remedies of the City, under any laws, statutes, codes or ordinances.

5. **NO CONSENT REQUIRED.** Unless required by the New York City Charter, nothing contained herein shall be construed as requiring the consent of CPC, the City, any agency thereof or any other person or entity to any sale, transfer, conveyance, mortgage, pledge, lease or assignment of any interest in or any encumbrance on or affecting all or any portion of the Subject Property.

6. **RECORDATION.** Tenant Declarant shall file and record this Declaration in the Office of the City Register of the City of New York (the "Register's Office"), indexing it against the Subject Property within 30 days after the date of Lease and the Assignment (such date, the "Recording Date"). Tenant Declarant shall promptly provide to the Chair a copy of the Declaration as recorded, so certified by the Register's Office. If Tenant Declarant fails to so record this Declaration by the Recording Date, Landlord Declarant or CPC may record a duplicate original of this Declaration at such time that a Building Permit has been filed with DOB relating to any "new building" associated with the Projected Development, but all costs of recording, whether undertaken by Landlord Declarant or CPC, shall be borne by Tenant Declarant.

7. **EFFECTIVE DATE.** This Declaration and the provisions and covenants hereof shall become effective as of the date of recordation of this Declaration in accordance with Section 6

above (the "Effective Date").

**8. INVALIDITY.**

(a) Notwithstanding anything to the contrary in this Declaration, if the Large Scale Special Permits are at any time declared invalid or are otherwise voided by final judgment of any court of competent jurisdiction from which no appeal can be taken or for which no appeal has been taken within the applicable statutory period provided for such appeal, then, upon entry of said judgment or the expiration of the applicable statutory period for such entry, as the case may be, any reference in this Declaration to the Large Scale Special Permits shall be automatically severed from the remainder of this Declaration and cancelled without further action by Declarants. Such severed and canceled references to the Large Scale Special Permits shall be of no further force or effect and CPC shall, if requested by any Declarant, provide such Declarant with a letter in recordable form stating that the any such reference in this Declaration to the Large Scale Special Permits have been so canceled and are of no further force and effect.

(b) Notwithstanding anything to the contrary in this Declaration, if any of the Approvals are at any time declared invalid or are otherwise voided by final judgment of any court of competent jurisdiction from which no appeal can be taken or for which no appeal has been taken within the applicable statutory period provided for such appeal, then, upon entry of said judgment or the expiration of the applicable statutory period for such entry, as the case may be, this Declaration shall be automatically canceled without further action by Declarants and shall be of no further force or effect and CPC shall, if requested by any Declarant, provide such Declarant with a letter in recordable form stating that the Declaration has been so canceled and is of no further force and effect.

**9. NOTICE.** All notices, demands, requests, consents, approvals, and other communications (each, a "Notice") which may be or are permitted, desirable, or required to be given under this Declaration shall be in writing and shall be sent or delivered as follows:

(a) If to Tenant Declarant:

Peninsula JV, LLC  
c/o The Hudson Companies, Inc.  
826 Broadway, 11 FL  
New York, NY 10003  
Attn: Aaron Koffman

and

Peninsula JV, LLC  
c/o Gilbane Construction Company  
7 Jackson Walkway

Providence, RI 02903  
Attn: Ed Broderick

and

Peninsula JV, LLC  
c/o MHANY Management, Inc.  
1 MetroTech Center North, 11 FL  
Brooklyn, NY 11201  
Attn: Ismene Speliotis

With copies thereof to:

Hirschen Singer & Epstein LP  
902 Broadway, 13<sup>th</sup> FL  
New York, NY 10010  
Attn: Russell Kivler, Esq.

and

Slater & Beckerman, PC  
40 Exchange Place, Suite 1502  
New York, NY 10005  
Attn: Stuart Beckerman, Esq.

(b) If to Landlord Declarant:

The City of New York  
City Hall  
New York, New York 10007  
Attn: Deputy Mayor for Housing and Economic Development

With copies thereof to:

New York City Law Department  
100 Church Street  
New York, New York 10007  
Attn: Chief, Economic Development Division

and

New York City Economic Development Corporation  
110 William Street

New York, New York 10038  
Attn: General Counsel

(c) if to CPC:

New York City Planning Commission  
120 Broadway, 31<sup>st</sup> Floor  
New York, New York 10271  
Attn: Chairperson

With a copy to:

The general counsel of CPC at the same address

(d) if to a Party in Interest other than Declarants:

at the address provided in writing to CPC in accordance with this Section 9

The Declarants, CPC or any Party in Interest may, by notice as provided herein, change any name or address for purposes of this Declaration. In order to be deemed effective any Notice shall be sent or delivered in at least one of the following manners: (A) sent by registered or certified mail, postage pre-paid, return receipt requested, in which case the Notice shall be deemed delivered for all purposes hereunder five days after being actually mailed; (B) sent by overnight courier service, in which case the Notice shall be deemed delivered for all purposes hereunder on the date the Notice was actually received or was refused; or (C) delivered by hand, in which case the Notice will be deemed delivered for all purposes hereunder on the date the Notice was actually received. All Notices from CPC to any of the Declarants shall also be sent to every other Party-in-Interest of whom CPC has notice, and no Notice shall be deemed properly given to any of the Declarants without such notice to such every other Party-in-Interest.

#### **10. DEFAULTS AND REMEDIES.**

(a) Tenant Declarant acknowledge that the restrictions, covenants, and obligations of this Declaration will protect the value and desirability of the Subject Property, as well as benefit the City and general public. If Tenant Declarant fails to perform any of Tenant Declarant's obligations under this Declaration, the City shall have the right to enforce this Declaration solely against Tenant Declarant and exercise any administrative, legal, or equitable remedy available to the City, and Tenant Declarant hereby consents to same; provided: (1) that this Declaration shall not be deemed to diminish Tenant Declarant's or any other Party in Interest's right to exercise any and all administrative, legal, or equitable remedies otherwise available to it; (2) that the City's rights of enforcement under this Declaration shall be subject to the cure provisions as provided herein; and (3) provided the Lease Property has been subdivided into

two or more tax lots in accordance with this Declaration and all Legal Requirements, and a party succeeds to the interest of Tenant Declarant under this Declaration in relation to a portion of the Lease Property, if such successor fails to perform any of Tenant Declarant's obligations under this Declaration in relation to the Building or Publicly Accessible Open Space Portion within such successors leasehold estate, the City shall enforce this Declaration solely against such successor in interest to the Tenant Declarant. Tenant Declarant also acknowledges that the remedies set forth in this Declaration are **not** exclusive and that the City and any agency thereof may pursue other remedies not specifically set forth herein including, but not limited to, a mandatory injunction compelling Tenant Declarant to comply with the terms of this Declaration and a revocation by the City of any certificate of occupancy, temporary or permanent, for any portion of the Projected Development that does not comply with the terms of this Declaration, provided that no certificate of occupancy, temporary or permanent, may be revoked by the City for any Building constituting the Proposed Development that can be shown by Declarants to be in compliance with the terms of this Declaration and the FEIS, which determination of compliance shall be made by the Chair. In furtherance of the foregoing, in any proceedings brought by the City against Tenant Declarant to enforce the obligations of this Declaration, seeking to deny or revoke building permits or certificates of occupancy for the Projected Development, or to impose a lien, fine, or other penalty, if the event or occurrence which is the basis of an allegation of a failure to comply by Tenant Declarant is a failure to perform an obligation associated with a particular Building, then the City shall only deny or seek the revocation of building permits or certificates of occupancy for the affected Building, and only seek to impose a fine, lien, or other penalty on the affected Building, and any such event or occurrence shall not provide the basis for denial or revocation of building permits or certificates of occupancy or the imposition of a fine, lien, or other penalty with respect to Buildings for which no failure to comply has occurred.

(b) Notwithstanding any provision of this Declaration, only Landlord Declarant and its successors and assigns and the City shall be entitled to enforce or assert any claim arising out of or in connection with this Declaration. Nothing contained herein should be construed or deemed to allow any other person or entity to have any interest in or right of enforcement of any provision of this Declaration.

(c) Prior to the City instituting any proceeding to enforce the terms or conditions of this Declaration due to any alleged violation hereof, the City shall give Declarants and any mortgagees of whom the City has received notice in accordance with Section 9 ("Mortgagee") hereof forty five (45) days written notice of such alleged violation, during which period Tenant Declarant and any Mortgagee shall have the opportunity to effect a cure of such alleged violation or to demonstrate to the City why the alleged violation has not occurred. If a Mortgagee performs any obligation or effects any cure Tenant Declarant is required to perform or cure pursuant to this Declaration, such performance or cure shall be deemed performance on behalf of Tenant Declarant and shall be accepted by any person or entity benefited hereunder, including CPC, the City, and Landlord Declarant, as if performed by Tenant Declarant. If Tenant Declarant or any Mortgagee commences to effect such cure within such forty five (45)

day period (or if cure is not capable of being commenced within such forty five (45) day period, Tenant Declarant or any Mortgagee commences to effect such cure when such commencement is reasonably possible), and thereafter proceeds diligently toward the effectuation of such cure, the aforesaid forty five (45) day period (as such may be extended in accordance with the preceding clause) shall be extended for so long as Tenant Declarant or any Mortgagee continues to proceed diligently with the effectuation of such cure. The time period for performing obligations contemplated herein or curing any violation by Tenant Declarant and/or any Mortgagee shall be subject to extension for Uncontrollable Circumstances (as hereinafter defined) pursuant to Section 10(e) of this Declaration.

(d) If, after due notice and opportunity to cure as set forth in this Declaration, Tenant Declarant or a Mortgagee shall fail to cure the alleged violation, the City may exercise any and all of its rights, and may disapprove any amendment, modification or cancellation of this Declaration on the sole ground that Tenant Declarant is in default of a material obligation under this Declaration. Notwithstanding the foregoing, in the event of a denial of public access to the Publicly Accessible Open Space, Tenant Declarant shall have the opportunity to effect a cure of such denial within twenty-four (24) hours of receipt thereof. If such denial of access continues beyond such period, the City may thereupon exercise any and all of its rights, including seeking a mandatory injunction, and the provisions of this Section 10 shall not apply to the denial of public access.

(e) Uncontrollable Circumstances.

- i. In the event that, as the result of Uncontrollable Circumstances (defined herein), Tenant Declarant is unable to perform or complete any obligation under this Declaration (A) at the time or times required by this Declaration; (B) at the date set forth in this Declaration for such action, if a specific date for such requirement is set forth herein; or (C) prior to submitting an application for a building permit for the Projected Development or other permit or certificate of occupancy (TCO or PCO) which is tied to the completion of such requirement, where applicable, Tenant Declarant shall promptly, on or about thirty (30) days, after the occurrence of Uncontrollable Circumstances becomes apparent, so notify the Chair in writing. Such notice (the "Delay Notice") shall include a description of the Uncontrollable Circumstances, their cause and probable duration, and the steps proposed to be taken by Tenant Declarant to mitigate the effects of the Uncontrollable Circumstances. In the exercise of his or her reasonable judgment the Chair shall, within thirty (30) days of its receipt of the Delay Notice (A) certify in writing that the Uncontrollable Circumstances have occurred; or (B) notify Tenant Declarant that it does not reasonably believe that the Uncontrollable Circumstances have occurred. Upon a certification that Uncontrollable Circumstances have occurred, the Chair may grant Tenant Declarant appropriate relief and, as a condition thereto, may require that Tenant Declarant post a bond, letter of credit or other reasonable security in a form reasonably acceptable to the City in order to ensure that the obligation will be

completed in accordance with the provisions of this Declaration.

- ii. Any delay caused as the result of Uncontrollable Circumstances shall be deemed to continue only as long as the Uncontrollable Circumstances continue. Upon cessation of the Uncontrollable Circumstance causing such delay, Tenant Declarant shall promptly recommence the work or implement the measure needed to complete the obligation, in accordance with any applicable directive of the Chair previously issued in connection with a grant of relief, unless an alternative has been specified and agreed to in accordance with this Section 10(e).
- iii. "Uncontrollable Circumstances" shall mean occurrences beyond Tenant Declarant's reasonable control, and for which Tenant Declarant has taken all steps within Tenant Declarant's control reasonably necessary to control or minimize, which cause delay in the performance of obligations under this Declaration, including, without limitation, delays resulting from (A) governmental restrictions, limitations, regulations or controls (provided that such are other than ordinary restrictions, limitations, regulations or controls); (B) orders of any court of competent jurisdiction (including, without limitation, any litigation which results in an injunction or a restraining order prohibiting or otherwise delaying the construction of any portion of the Subject Property); (C) labor disputes (including strikes, lockouts not caused by Tenant Declarant, slowdowns and similar labor problems); (D) acts of God (including severe weather conditions); (E) war, sabotage, hostilities, invasion, insurrection, riot, acts of terrorism, mob violence, malicious mischief, embargo, quarantines, national, regional or local disasters, calamities or catastrophes, national emergencies, enemy or hostile governmental action, civil disturbance or commotion, earthquake, flood, fire or other casualty; (F) a taking of the whole or any relevant portion of the Subject Property by condemnation or eminent domain; (G) soil conditions that could not have been foreseen that substantially delay construction of any relevant portion of the Subject Project or substantially impair the ability to develop the Subject Property in the manner contemplated by this Declaration; (H) denial to Tenant Declarant by any party of a right of access to any adjoining real property or to the Subject Property which right is vested in Tenant Declarant, by contract or pursuant to applicable law, if such access is required to accomplish the obligations of Tenant Declarant pursuant to this Declaration; (I) inability of a public utility to provide power, heat or light or any other utility service, despite reasonable efforts by Tenant Declarant to procure same from the utility; and, (J) any extraordinary material delay by any department or agency of the City, State of New York or United States government in the issuance of approvals required in order to permit Tenant Declarant to carry out its obligations under this Declaration that is not caused by any act or omission of the Tenant Declarant, as determined by the Chair in accordance with this Section 10(e). In no event shall any of the following constitute Uncontrollable Circumstances: (A) failure to obtain or timely obtain financing, (B) removal of hazardous substances or (C) the inability to (1) pay a sum



of money or (2) obtain or timely obtain any approval or cooperation of a mortgagee.

**11. APPLICATIONS.**

(a) Tenant Declarant shall include a copy of this Declaration with any application made to DOB for a Building Permit for any portion of the Projected Development subject to the Large Scale Special Permits.

(b) Nothing in this Declaration shall be construed to prevent Declarants or any of their respective successors or assigns from making any application of any sort to any governmental agency or department (each an "Agency") in connection with the development of the Subject Property; provided, that Declarants shall include a copy of this Declaration in connection with any application for any such discretionary approval, and provided that nothing in this Section 11(b) shall be construed as superseding the requirements, restrictions, or approvals that may be required under agreements with any other Agency or the City.

**12. AMENDMENT, MODIFICATION AND CANCELLATION.**

(a) This Declaration may be amended, cancelled, or modified only upon application by Tenant Declarant with the consent of Landlord Declarant (which consent shall not be unreasonably withheld) with the express written consent of CPC or an agency succeeding to CPC's jurisdiction and no other approval shall be required from any other public body, private person, or legal entity of any kind.

(b) Notwithstanding anything to the contrary contained in Section 12(a) hereof, the Chair may by its express written consent administratively approve a modification or amendment to this Declaration that, in the sole judgment of the Chair, are determined to be a minor amendment or modification of this Declaration, and such minor modification or amendment shall not require the approval of CPC.

**13. SURRENDER.** In the event that Tenant Declarant does not construct the Projected Development pursuant to the Large Scale Special Permits, Tenant Declarant may surrender the Large Scale Special Permits to CPC, and Tenant Declarant may, subject to the Lease, proceed with any use or development of the Subject Property permitted by the Zoning Resolution and any other applicable restrictions as if such Large Scale Special Permits had not been granted. In the event of such a surrender of the Large Scale Special Permits, any reference in this Declaration to the Large Scale Special Permits shall be automatically severed from the remainder of this Declaration and cancelled without further action by Declarants. Such severed and canceled references to the Large Scale Special Permits shall be of no further force or effect and CPC shall, if requested by any Declarant, provide such Declarant with a letter in recordable form stating that the any such reference in this Declaration to the Large Scale Special Permits have been so canceled and are of no further force and effect.

14. **WAIVER.** For so long as (i) Tenant Declarant or (ii) any successor entity to the balance and entirety of Tenant Declarant's leasehold interest in the Subject Property (the "**Successor Declarant**") shall hold a leasehold interest in the Subject Property or any portion thereof, all other Parties-in-Interest (other than Landlord Declarant), their heirs, successors, assigns and legal representatives hereby irrevocably (i) consent to any modification, amendment, cancellation, revision or other change in this Declaration, (ii) waive any rights they may have to enter into an amended Declaration or other instrument modifying, cancelling, revising or otherwise changing this Declaration, and (iii) nominate, constitute and appoint Tenant Declarant, or any Successor Declarant, their true and lawful attorney-in-fact, coupled with an interest, to execute any documents or instruments of any kind that may hereafter be required to modify, amend, cancel, revise or otherwise change this Declaration or to evidence such Party-In-Interest's consent or waiver of rights as set forth in this **Section 14.**

15. **SEVERABILITY.** In the event that any of the provisions of this Declaration shall be deemed, decreed, adjudged, or determined to be invalid or unlawful by a court of competent jurisdiction, such provision shall be severable and the remainder of this Declaration shall continue to be in full force and effect. To the extent such invalidity or unlawfulness is due to the invalidity of the Large Scale Special Permits, as described in **Section 13** hereof, this Declaration shall be severed as provided in **Section 13.**

16. **APPLICABLE LAW.** This Declaration shall be governed and construed by the laws of the State of New York, without regard to principles of conflicts of law.

17. **INDEMNIFICATION.** Provided that Tenant Declarant is found by a court of competent jurisdiction to have been in default in the performance of its obligations under this Declaration after having received written notice of such default and opportunity to cure as provided above, and such finding is upheld on final appeal, or the time for further review of such finding on appeal or by other proceeding has lapsed, subject to the terms hereof, Tenant Declarant, without limiting the generality of the indemnity by Tenant Declarant provided in the Lease, shall indemnify and hold harmless the City, Landlord Declarant, LDC, New York City Economic Development Corporation, and CPC (each, an "**Indemnified Party,**" collectively, the "**Indemnified Parties**") from and against all of its reasonable legal and administrative expenses arising out of or in connection with the City's enforcement of such obligations under this Declaration.

18. **FAILURE TO COMPLY.** Tenant Declarant acknowledges that failure to comply with the terms of this Declaration and/or the Lease, may constitute the basis for a denial of a certificate of occupancy (permanent or temporary), or revocation thereof, or constitute grounds for CPC to disapprove any application for a modification or amendment of this Declaration.

19. **CONFLICT IN TERMS.** In the event of a conflict between any provisions of the Lease and any provisions of this Declaration, the term that imposes the more stringent requirement on Tenant Declarant shall govern.

**20. CAPACITY OF LANDLORD DECLARANT.** Landlord Declarant's rights, duties and liabilities under this Declaration are limited to its status as the owner of the Subject Property. In the event of a default hereunder by Tenant Declarant, Landlord Declarant shall not be obligated to cure such default or perform any other obligation of Tenant Declarant hereunder. No provision in this Declaration that sets forth the rights, duties and liabilities of Landlord Declarant shall restrict or limit any City agency or other governmental body in the lawful exercise of its executive, judicial, legislative or administrative powers, including, without limitation the City's right to enforce municipal statutes, rules and regulations, local laws, etc., including, without limitation, the ZR and the Administrative Code of the City of New York.

**21. COUNTERPARTS.** This Declaration may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original, but all of which taken together shall be construed as and shall constitute but one and the same instrument.

**[Signature page follows]**

**IN WITNESS WHEREOF**, the undersigned have executed this Declaration as of the day and year first written above.

**THE CITY OF NEW YORK**

By: \_\_\_\_\_  
Name:  
Title:

Approved as to Form:

\_\_\_\_\_  
Acting Corporation Counsel

**[THE PENINSULA JV, LLC]**

By: \_\_\_\_\_  
Name:  
Title:

**ACKNOWLEDGEMENT**

STATE OF )  
 ) SS.:  
COUNTY OF )

On the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

STATE OF )  
 ) SS.:  
COUNTY OF )

On the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**EXHIBIT A-1**

**Manida Street Property**

**EXHIBIT A-2**

Lease Property

**EXHIBIT B**  
Certification



**EXHIBIT C**

Form of Waiver

**EXHIBIT D**

**DPR Improvement Plan**

**EXHIBIT E**

**Overview Plan**

**EXHIBIT F**

**Large Scale Special Permit Plans**