New York Blood Center

Office of the President
310 East 67th Street(3rd Fl)
New York, N. Y. 10065
(212) 570.3338
nybc.org

November 10, 2021

Hon. Corey Johnson, Speaker
New York City Council
City Hall
New York, NY 10007

Re: New York Blood Center Land Use Actions
ULURP/LU Nos. C210351ZMM/LU0864-2021
ULURP/LU Nos. N201352ZRM/LU0865-2021
ULURP/LU Nos. N201353ZSM/LU0866-2021("Applications")

Dear Speaker Johnson:

We are writing to summarize the financial and programmatic commitments to the City and its residents that we have made during the public and environmental review process for the Applications. We hope that this summary will assist the City Council's Land Use Committee and its Zoning and Franchises Subcommittee in their consideration of the Applications.

St. Catherine's Park

We will contribute $3.6 million dollars toward improvements to St. Catherine's Park. The funds may be used, at the discretion of the Department of Parks and Recreation, to pay for all or a portion of (i) a limited reconstruction of the playground in the eastern section of the Park, (ii) the reconstruction of the comfort station, and/or (iii) the renovation of the multi-purpose play area. We understand that this contribution will be paired with $10.65 million from the deBlasio administration to ensure an upgraded Park.

Julia Richmond Educational Complex

In order to mitigate construction noise impacts on the Julia Richmond Educational Complex ("JREC"), as set forth in the Final Environmental Impact Statement ("FEIS"), we will require all contractors and subcontractors working on the construction of Center East to implement source and path controls that include:

- Equipment that meets the sound level standards specified in Subchapter 5 of the New York City Noise Control Code will be utilized from the start of construction.

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- As early in the construction period as logistics allow, diesel- or gas-powered equipment will be replaced with electrical-powered equipment such as welders, water pumps, bench saws, and table saws, to the extent feasible and practicable. Where electrical equipment cannot be used, diesel or gas-powered generators and pumps would be located within buildings to the extent feasible and practicable.

- Where feasible and practicable, the construction site will be configured to minimize back-up alarm noise.

- No trucks will be allowed to idle more than three minutes at the construction site.

- Contractors and subcontractors will be required to properly maintain their equipment and mufflers.

- Where logistics allow, noisy equipment, such as cranes, concrete pumps, concrete trucks, and delivery trucks, will be located away from and shielded from sensitive receptor locations.

- Noise barriers constructed from plywood or other materials consistent with the noise barrier requirements set forth in the New York City Department of Environmental Protection's ("DEP") "Rules for Citywide Construction Noise Mitigation," will be erected to provide shielding.

- Concrete trucks will be required to be located inside site-perimeter noise barriers while pouring or being washed out.

- Path noise control measures (i.e., portable noise barriers, panels, enclosures, and acoustical tents) will be used for certain dominant noise equipment, to the extent feasible and practical based on the results of the construction noise calculations, in accordance with DEP's Rules for Citywide Construction Noise Mitigation.

- Where feasible, practicable, and effective to control construction noise, site-perimeter noise barriers will be used during concrete operations that are at least 12-feet-tall with a cantilever towards the work area, as described in the noise barrier performance requirements set forth in DEP's "Rules for Citywide Construction Noise Mitigation."

- Mitigation measures to control noise at those JREC façade locations predicted to experience impacts will be offered during construction. Prior to the start of construction, but subject to approval by the School Construction Authority, we will make available to and install on impacted facades at JREC at no cost (i) storm windows for façades that do not already have insulated glass windows and/or (ii) one window air conditioner per classroom at school receptors that do not already have alternative means of ventilation.

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Educational Partnerships

We currently conduct the following educational programs for high school and college students, which we commit to continue:

- High School Programs:
    - As part of a Work/Study program, we have since 2018 hosted five Cristo Rey NY High School students one day per week (Sept - June school year) on site for laboratory/life sciences project assistance with programs to serve local hospitals.
    - We have sponsored paid summer internships for students, including using remote assignments during the pandemic.
- College Programs:
    - We have hosted students since 2015 in summer and extended work/study internships from University of New Haven, Rutgers, and other local colleges. Two of these students were outstanding and were subsequently offered full- time positions at NYBC.
    - We have hosted Knowledge House students in paid summer internships, one of which was also extended so that the student could be evaluated for a full time position at NYBC with our IT group.
    - We have been hosting varying cohorts (5-20 per year) of undergraduate science students for over 20 years under the Lindsley F. Kimball Research Institute (LFKRI) Summer Internships program. Many of these students go on to higher education and industry-related positions as a result of the one-on-one mentoring that occurs with assigned LFKRI investigators and their specialized support staffs.

We are also establishing a paid internship program for JREC students and will work with the schools and the Council Members to organize.

Further, we are negotiating an agreement with CUNY to establish, fund, and provide internship and lab placement opportunities and significant new academic programs that will offer a pathway for all New Yorkers into jobs in the life sciences, at Center East and citywide. Proposed programs include:

- New Academic Programs:
    - An Essentials of Transfusion Medicine webinar series
    - New Genetic Counseling Master of Science / Master of Professional Studies Program across at least three CUNY Colleges

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- A new AAS Medical Lab Technician ("MLT") degree program across three boroughs and five CUNY Colleges

- Internships and Lab Placement:
  - Lab placements for students in existing New York Blood Center programs
  - Clinical lab placements for MLT and Medical Lab Science & Technology program participants
  - Internship Positions for MLT Program and Genetic Counseling Master of Science students
  - Access for CUNY Research Scholars Program students to NYBC's "Leaders of Tomorrow" annual workshops

Sickle Cell Initiatives

- We will continue to provide: (i) screening tests for the sickle trait on many area donors; (ii) a mobile apheresis service that offers exchange transfusions to sickle cell patients in their community hospitals; (iii) education and training to area physicians and physician training on important transfusion related aspects for the care of sickle cell patients; and (iv), importantly, its large research program focused on sickle cell disease.

- A contribution of $500,000.00 over three years to targeted local NGOs to be used for:
  - Community sickle cell research projects;
  - PSA's that are co-branded to reach the sickle cell community and that stress the importance of testing and blood donation; and
  - Co-branded advertising on all media platforms

- Education for both patients and professionals
  - Cobranded semiannual sickle cell seminars or events at Center East;
  - In partnership with local NGOs and hospitals, on the importance of disease screening, treatment options, and consequences of SCD and thalassemia; and
  - In partnership with potential donors in the community, on the importance of blood donation in general, and the specific need for donors from the African American, Hispanic, and Caribbean communities.

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- Additional education for physicians and other blood bank professionals will be added to our existing programs to enhance awareness and knowledge in the transfusion care of SCD and thalassemia patients.

    - Blood Collection – Partnership with co-branding to recruit donors from districts of every BLAC member. Drives will be focused in the communities to maximize convenience of donors

- Disease screening – explore ways to enhance disease screening by partnering with local NGOs.

We look forward to continuing to partner with the City Council and to explore other opportunities to work together to tackle this devastating illness.

As-of-Right Development

We will execute and record a Restrictive Declaration that :

- Requires any development or enlargement on the Center East property that does not utilize the ZR 74-48 special permit for a Scientific Research and Development Facility to comply with all of the use and bulk regulations applicable in a C2-7 zoning district, except that the height of any such development or enlargement (exclusive of permitted obstructions as set forth in the Zoning Resolution) shall not exceed 160 feet [max building ht in C2-7X districts]. Permitted obstructions may extend above said 160 foot height limit.

- Is enforceable by the City of New York at the request of any agency thereof, and/or the City Council.

- May be modified or amended only with the approval of the City Council.

The development of the new Center East is an important project that can offer substantial benefits to the City of New York and to all of its residents. We appreciate the chance to collaborate with the City Council in helping us realize its potential.

Very truly yours,

Christopher D. Hillyer, MD
President and CEO, New York Blood Center, and
Professor, Department of Medicine, Weill Cornell Medical College,
New York, New York
Office: 212-570-3100
Email: chillyer@nybc.org

KL3 3362024.1

NEW YORK BLOOD CENTER, INC. RESTRICTIVE DECLARATION

THIS DECLARATION (this "**Declaration**"), made as of this 20th day of September, 2021, by **NEW YORK BLOOD CENTER, INC.**, a New York not-for-profit corporation, having an address at 310 E 67th St New York, NY 10065 (the "**Declarant**").

WITNESSETH:

WHEREAS, NYBC is the fee owner of certain real property located in the Borough of Manhattan, County of New York, City and State of New York, designated for real property tax purposes as Block 1441 Lot 40 and as more particularly described in **Exhibit "A"** (the **"Development Site" or "Subject Property")**);

WHEREAS, Declarant desires to redevelop the Subject Property with an approximately 596,200 gross-square-foot state-of-the-art laboratory building, split between 206,400 gsf of Use Group (UG)-4 community facility uses for the Applicant and 389,800 gsf of UG-9 laboratories and related uses for the Applicant's partners, as described in the Land Use Application (as defined herein) (the "**Proposed Development**");

WHEREAS, in connection with the Proposed Development, Declarant has filed with the City Planning Commission of the City of New York (the "**Commission**") an application (Application Nos. C210351ZMM, N210352ZRM, and C210353ZSM) proposing: (a) a zoning map amendment to rezone the Development Site from an R8B district to a C2-7 district, and to rezone both Second Avenue block frontages between East 66th and East 67th Streets to a depth of 100 feet from a C1-9 district to a C2-8 district; (b) a zoning text amendment to Section 74-48 of the Zoning Resolution to allow, by special permit, an increase in commercial FAR in C2-7 districts for medical laboratories and associated offices, and modifications to the applicable supplementary use, bulk, and signage regulations; (c) a zoning text amendment to amend Appendix F of the

Zoning Resolution to designate the Development Site as an MIH area; and (d) a special permit pursuant to Section 74-48, as amended, to permit modifications of the applicable floor area, supplementary use, rear yard, height and setback, and signage regulations. (collectively, the "**Land Use Application**");

WHEREAS, the Commission acting as lead agency for the City Environmental Quality Review Application No. 21DCP080M, conducted environmental review of the Application 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 ("**SEQRA**"), and issued a Notice of Completion for the Final Environmental Impact Statement (the "**FEIS**") dated September 10, 2021;

WHEREAS, at the time of the Commission's Approval of the Land Use Application, the Commission found, as required pursuant to SEQRA, that the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that the adverse impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions of the decision Project Components Related to the Environment ("PCREs") and those Mitigation Measures that were identified in the FEIS as practicable;

WHEREAS, Fidelity National Title Insurance Company (the "**Title Company**") has certified in the certification (the "**Certification**") attached hereto as **Exhibit "B"** and made a part hereof, that as of ___, 2021, (each, a "**Party-in-Interest**") is the only party-in-interest in the Subject Property as such term is defined in the definition of "zoning lot" in Section 12-10 of the Zoning Resolution;

WHEREAS, Declarant desires to restrict the manner in which the Subject Property is developed, redeveloped, maintained and operated in the future.

NOW THEREFORE: Declarant does hereby declare, covenant and agree that the Subject Property shall be held, sold, transferred, conveyed and occupied subject to the restrictions, covenants, obligations, easements, and agreements of this Declaration, which shall run with the Subject Property and which shall be binding on Declarant, respectively and its successors and assigns as follows:

ARTICLE I

CERTAIN DEFINITIONS

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

1.02 "Approvals" shall mean all the approvals of the Land Use Application by the Commission and City Council with respect to the Subject Property.

1.03 "Buildings Department" shall mean the New York City Department of Buildings, or any successor to the jurisdiction thereof under the New York City Charter.

1.04 "Building Permit" shall mean the issuance of any permit by the Buildings Department 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 (as herein defined) or (v) any other permit normally associated with the development of a building.

1.05 "CEQR" shall have the meaning given in the Recitals to this Declaration.

1.06 "Chair" shall mean the Chair of the City Planning Commission of the City of New York from time to time, or any successor to its jurisdiction.

1.07 "City" shall mean the City of New York.

1.08 "City Council" shall mean the City Council of the City of New York, or any successor to its jurisdiction.

1.09 "Commission" shall mean the City Planning Commission of the City of New York, or any successor to its jurisdiction.

1.10 "Construction Commencement" shall mean the issuance of the first permit from the Buildings Department permitting the demolition, excavation, or construction of foundations for a Development.

1.11 "Construction Monitoring Measures" or "CMMs" shall have the meaning given in Section 3.08 of this Declaration.

1.12 "DCP" shall mean the Department of City Planning.

1.13 "Declarant" shall have the meaning given in the Recitals of this Declaration and shall include any Successor Declarant and any entity that becomes a Declarant pursuant to this Declaration.

1.14 "Declaration" shall mean this Declaration, as same may be amended or modified from time to time in accordance with its provisions.

1.15 "Delay Notice" shall have the meaning set forth in Section **5.04** of this Declaration.

1.16 "Development" shall mean the Proposed Development or any "development" as defined in the Zoning Resolution.

1.17 "FEIS" shall have the meaning set forth in the Recitals to this Declaration.

1.18 "Final Approval" shall mean approval or approval with modifications of the Land Use Application by the Commission pursuant to New York City Charter Section 197-c, unless (a) pursuant to New York City Charter Section 197-d(b), the City Council reviews the decision of the Commission approving or approving with modifications the Land Use Application and takes final action pursuant to New York City Charter Section 197-d approving or approving with

modifications the Land Use Application, in which event "Final Approval" shall mean such approval or approval with modifications of the Land Use Application by the City Council, or (b) the City Council disapproves the decision of the Commission and the Mayor of the City of New York (the "Mayor") files a written disapproval of the City Council's action pursuant to New York City Charter Section 197-d(e), and the City Council does not override the Mayor's disapproval, in which event "Final Approval" shall mean the Mayor's written disapproval pursuant to such New York City Charter Section 197-d(e). Notwithstanding anything to the contrary contained in this Declaration, "Final Approval" shall not be deemed to have occurred for any purpose of this Declaration if the final action taken pursuant to New York City Charter Section 197-d is disapproval of the Land Use Application.

1.19 "Force Majeure" shall mean that a Force Majeure Event has occurred and Declarant has provided the Delay Notice.

1.20 "Force Majeure Event" shall mean an occurrence, or occurrences, beyond the reasonable control of Declarant, which causes delay in the performance of Declarant's obligations hereunder, provided that Declarant has taken all reasonable steps reasonably necessary to control or to minimize such delay, and which occurrences shall include, but not be limited to: (i) a strike, lockout or labor dispute; (ii) shortages or the inability to obtain labor or materials (including, but not limited to fuel, steam, water, electricity, equipment, or supplies) or reasonable substitutes therefor (including but not limited to embargoes and/or tariffs); (iii) acts of God; (iv) restrictions, regulations, orders, controls or judgments of any Governmental Authority; (v) undue material delay in the issuance of approvals or actions by any Governmental Authority, provided that such delay is not caused by any act or omission of Declarant; (vi) enemy or hostile government action, civil commotion, insurrection, terrorism, revolution or sabotage; (vii) fire or other casualty; (viii)

a taking of the whole or any portion of the Subject Property by condemnation or eminent domain; (ix) unusual or reasonably unforeseeable inclement weather substantially delaying construction of any relevant portion of the Subject Property; (x) unforeseen building, demolition, underground, or soil conditions, provided that Declarant did not and could not reasonably have anticipated the existence thereof as of the date hereof; (xi) the denial of access to adjoining real property, notwithstanding the existence of a right of access to such real property in favor of Declarant arising by contract, this Declaration or Legal Requirements, (xii) failure or inability of a public utility to provide adequate power, heat or light or any other utility service; (xiii) 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), (xiv) unusual delays in transportation, or (xv) the pendency of any litigation which results in an injunction or restraining order prohibiting or otherwise delaying the construction of any portion of the Subject Property (xvi) inability to obtain labor, materials or permits due to unscheduled extraordinary government restrictions, and (xvii) national or global financial crisis, (xviii) government delay or inaction. No event shall constitute a Force Majeure Event unless Declarant, the Association, or the holder of a Mortgage on the Subject Property in control of the Subject Property, as applicable, complies with the procedures set forth in Section 7.04.

1.21 "Fugitive Dust Control Plan" shall have the meaning given in Section 3.01(b) of this Declaration.

1.22 "Governmental Authority" shall mean any governmental authority (including any Federal, State, City or County governmental authority or quasi-governmental authority, or any

political subdivision hereof, or any agency, department, commission, board or instrumentality of any thereof) having jurisdiction over the matter in question.

1.23 "Land Use Application" shall have the meaning given in the Recitals to this Declaration, as such Land Use Application may be hereafter modified.

1.24 "Legal Requirements" shall mean all applicable laws, statutes and ordinances, and all orders, rules, regulations, interpretations, directives and requirements, of any Governmental Authority having jurisdiction over the Subject Property.

1.25 "Maintenance of Protection of Traffic Plan" or "MPT" shall have the meaning set forth in Section 3.01(e)(i) of this Declaration.

1.26 "Monitor" shall have the meaning given in Section 3.07 of this Declaration.

1.27 "Monitor Agreement" shall have the meaning given in Section 3.07(b) of this Declaration.

1.28 "Mortgage" shall mean a fee or leasehold mortgage given as security for a loan in respect of all or any portion of the Subject Property.

1.29 "Mortgagee" shall mean the holder of a Mortgage.

1.30 "New Building Permit" shall mean a work permit issued by the Buildings Department under a new building application authorizing the construction on the Subject Property.

1.31 "New Cure Period" shall have the meaning given in Section 3.07(f) of this Declaration.

1.32 "New York City Air Pollution Control Code" shall have the meaning set forth in Section 3.01(b)(i)(4) of this Declaration.

1.33 "New York City Charter" shall mean the Charter of the City of New York, effective as of January 1, 1990, as amended from time to time.

1.34 "New York City Noise Control Code" shall have the meaning set forth in Section 3.01(c)(i)(1) of this Declaration.

1.35 "Noise Reduction Plan" shall have the meaning set forth in Section 3.01(c)(2) of this Declaration.

1.36 "Notice" shall have the meaning given in 6.04 of this Declaration.

1.37 "Party-in-Interest" shall have the meaning given in the Recitals to this Declaration.

1.38 "PCO" shall have the meaning set forth in Section 3.03(a**)** of this Declaration.

1.39 "PCRE" shall mean the Project Components Related to the Environment, as described in Article III hereof.

1.40 "Possessory Interest" shall mean either (1) a fee interest in the Subject Property or any portion thereof or (2) the lessee's estate in a ground lease of all or substantially all the Subject Property or portion thereof.

1.41 "Proposed Cure Period" shall have the meaning given in Section 3.07(f) of this Declaration.

1.42 "Proposed Development" shall have the meaning given in the Recitals to this Declaration.

1.43 "Register" shall have the meaning given in Section 4.01(a) of this Declaration.

1.44 "Register's Office" shall have the meaning given in Section 4.01(a) of this Declaration.

1.45 "Section 3.06 Request" shall have the meaning set forth in Section 3.06(c) of this Declaration.

1.46 "State" shall mean the State of New York, its agencies and instrumentalities.

1.47 "Successor Declarant" shall mean any successor entity to the balance and entirety of Declarant's Possessory Interest in the Subject Property so that Declarant no longer holds any Possessory Interest in the Subject Property.

1.48 "TCO" shall have the meaning set forth in Section 3.03(a) of this Declaration.

1.49 "Title Company" shall have the meaning set forth in the Recitals to this Declaration.

1.50 "Unit Interested Party" shall mean any and all of the following: all owners, lessees, and occupants of any individual residential or commercial condominium unit, and all holders of a mortgage or other lien encumbering any such residential or commercial condominium unit.

1.51 "United States Environmental Protection Agency" shall have the meaning given in Section 3.01(d)(i) of this Declaration.

1.52 "Waiver and Subordination" shall have the meaning set forth in the Recitals to this Declaration.

1.53 "Zoning Resolution" or "ZR" shall have the meaning set forth in the Recitals to this Declaration.

Certain additional terms are defined in the Sections in which they first appear or to which they most closely pertain.

ARTICLE II

DEVELOPMENT AND USE OF THE SUBJECT PROPERTY

2.01 **Development of the Subject Property**. If the Subject Property is developed, in whole or in part, with a Development, or portion thereof, Declarant covenants and agrees that the PCREs and mitigation measures set forth in Article III shall be implemented in accordance with the provisions of this Declaration.

ARTICLE III

PROJECT COMPONENTS RELATED TO THE ENVIRONMENT; MITIGATION MEASURES

3.01 **Project Components Related to the Environment for Construction**. Declarant shall implement and incorporate as appropriate the following PCRE's related to construction prior to any Construction Commencement on the Subject Property, as the context may require:

(a) Construction Air Emissions Reduction Measures.

(i) Prior to Construction Commencement Declarant shall (x) develop a plan for implementation of, and (y) thereafter implement, the following measures for all construction activities (including, but not limited to, demolition and excavation) for any Development on the Subject Property:

1. To the extent practicable, all non-road, diesel-powered construction equipment with engine power output rating of 50 horsepower or greater and controlled truck fleets (i.e. truck fleets under long term contract with Declarant, such as concrete mixing and pumping trucks), shall utilize the best available tailpipe technology for reducing diesel particulate emissions (currently, diesel particulate filters). Construction contracts shall specify that diesel engines rated at 50 hp or greater shall utilize diesel particulate filters (either original equipment manufacturer or retrofit technology). Retrofitted diesel particulate filters must be verified under either the EPA or California Air Resources Board ("CARB") verification programs.

Active diesel particulate filters or other technologies proven to achieve an equivalent reduction may also be used.

2. To the extent practicable, all on-road diesel-powered construction equipment with a power rating of 50 horsepower (hp) or greater shall meet or achieve at least the equivalent of the United States Environmental Protection Agency ("EPA") Tier 3 emission standard.

3. All on-site diesel-powered engines shall be operated exclusively with ultra-low sulfur diesel fuel.

4. Idling of all on-site vehicles, including non-road engines, for periods longer than three minutes shall be prohibited on the Subject Property 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 unless otherwise required for the proper operation of the engine.

5. Electrically powered equipment shall be preferred over diesel-powered and gasoline-powered versions of that equipment, to the extent practicable.

(ii) Declarant shall include enforceable contractual requirements with contractors and subcontractors to implement the provisions of this Section 3.01(a), with respect to applicable work at the Subject Property.

(b) Fugitive Dust Control Plan.

(i) Prior to Construction Commencement Declarant shall (x) develop a plan for implementation of, and (y) thereafter implement, a plan for the minimization of the emission of dust from construction-related activities for any Development on the Subject Property

(the "**Fugitive Dust Control Plan**"), which Fugitive Dust Control Plan shall contain the following measures:

1. Water sprays shall be used for all demolition, excavation, and transfer of soils to ensure materials will be dampened as necessary to avoid the suspension of dust into the air.

2. All trucks hauling loose material shall be equipped with tight fitting tailgates and their loads securely covered prior to leaving the Development Site.

3. Stockpiled soils or debris shall be watered, stabilized with a chemical suppressing agent, or covered. All measures required by the New York City Department of Environmental Protection's ("DEP") Construction Dust Rules regulating construction-related dust emissions would be implemented.

4. Declarant shall comply with and implement all measures required by Chapter 1 of Title 24 of the New York City Administrative Code (the "**New York City Air Pollution Control Code**") regulating construction-related dust emissions.

(ii) Declarant shall include enforceable contractual requirements with contractors and subcontractors to implement the provisions of this Section 3.01(b) with respect to applicable work at the Subject Property.

(c) Construction Noise Reduction Measures.

(i) Prior to Construction Commencement, Declarant shall (x) develop a plan for implementation of, and (y) thereafter implement, the following measures for all construction activities (including demolition and excavation) for any Development on the Subject Property:

1. All construction activities shall comply with Chapter 2 of Title 24 of the New York City Administrative Code (the "**New York City Noise Control Code**"), and with the rules on Citywide Construction Noise Mitigation, as set forth in Chapter 28 of Title 15 of the Rules of the City of New York.

2. Declarant shall develop and implement a plan for minimization of construction noise (the "**Noise Reduction Plan**"). The Noise Reduction Plan shall contain both path control and source control measures, including the following:

(A) Path Control Measures

(aa) Where logistics allow, noisy equipment, such as cranes, concrete pumps, concrete trucks, and delivery trucks, would be located away from and shielded from sensitive receptor locations;

(bb) Noise barriers constructed from plywood or other materials, consistent with the noise barrier requirements set forth in the New York City Department of Environmental Protection (DEP)'s "Rules for Citywide Construction Noise Mitigation," shall be utilized to provide shielding (generally, the construction site would have a minimum 8-foot tall barrier around the perimeter);

(cc) Concrete trucks shall be required to be located inside site-perimeter noise barriers while pouring or being washed out.

(dd) Path noise control measures (i.e., portable noise barriers, panels, enclosures, and acoustical tents) to the extent feasible and practical, as necessary to meet the noise emission levels shown in Table 16-9 in Chapter 16, "Construction," which were used in the construction noise calculations.

(B) Source Control Measures

(aa) Equipment that meets the sound level standards specified in Subchapter 5 of the New York City Noise Control Code shall be utilized from the start of construction. Table 16-9 in Chapter 16, "Construction," shows the noise levels for typical construction equipment and the mandated noise levels for the equipment that would be used for construction of a Development;

(bb) As early in the construction period as logistics would 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. Where electrical equipment cannot be used, diesel or gas-powered generators and pumps would be located within buildings to the extent feasible and practicable;

(cc) Where feasible and practicable, the construction site shall be configured to minimize back- up alarm noise;

(dd) Construction vehicles shall not idle more than three minutes in accordance with New York City Administrative Code §24-163, except for equipment and vehicles using their engines to operate a loading, unloading, or processing device (e.g., concrete mixing trucks) or otherwise required for the proper operation of the engine;

(ee) Contractors and subcontractors shall be required to properly maintain their equipment and mufflers.

(ii) Declarant shall include enforceable contractual requirements with contractors and subcontractors to implement the provisions of this Section 3.01(c) with respect to applicable work at the Subject Property.

(d) Construction Rodent Control Plan.

(i) Prior to Construction Commencement Declarant shall (x) develop a plan for implementation of, and (y) thereafter implement, an integrated plan to control rodents (i.e., mouse and rats, etc.), in accordance with requirements of the Buildings Department, throughout the construction of the Development. Prior to Construction Commencement, Declarant shall cause its contractor to bait appropriate areas of the Subject Property, using only United States Environmental Protection Agency ("**USEPA**") and New York State Department of Environmental Conservation ("**DEC**")-registered rodenticide.

(ii) Declarant shall include enforceable contractual requirements in the contracts of all relevant contractors and subcontractors to implement the provisions of this Section 3.01(d) with respect to applicable work at the Subject Property.

(e) Maintenance and Protection of Traffic Plan.

(i) Prior to Construction Commencement, Declarant shall prepare a plan which provides diagrams of proposed temporary lane sidewalk and lane narrowing and/or closures on East 66th and East 67th Streets adjacent to the Development Site, the duration such alterations will be implemented, the width and length of affected segments, and sidewalk protection measures for pedestrians, which shall be necessary during construction (the "**Maintenance and Protection of Traffic Plan**" or "**MPT**"). Declarant shall submit the MPT to the New York City Department of Transportation (DOT)'s Office of Construction Mitigation and

Coordination (OCMC) for review and approval, provided, however, that completion and submission of the MPT shall not be necessary for preliminary site work, unless DOT advises Declarant that a MPT is required.

(ii) Declarant shall include provisions in the contracts of all relevant contractors and subcontractors requiring adherence to the provisions of the MPT plan.

(iii) **Environmental Mitigation**. Declarants shall, in accordance with the FEIS, undertake the mitigation measures set forth in Sections 3.03 through 3.04 below in connection with any Development on the Subject Property:

3.02 **Shadows**.

(a) The Buildings Department shall not issue, and Declarant shall not accept, a temporary certificate of occupancy ("TCO") or a permanent certificate of occupancy ("PCO"), for a Development or alteration greater than 167 feet in height (including bulkhead) until Declarant has caused a payment, as defined below (the "Shadows Payment"), to be transferred to an account designated by the Commissioner of Parks and Recreation (the "Shadows Fund"), to be used by the Commissioner of Parks and Recreation for the purpose of funding improvements to St. Catherine's Park that would enhance user experience and enjoyment of the Park. The Shadows Payment shall be in the amount of $3,600,000.

3.03 **Construction Noise**

(a) Where feasible, practicable, and effective to control construction noise, the site-perimeter noise barriers during concrete operations would be increased to at least 12 feet tall with a cantilever towards the work area;

(b) At building façades where significant adverse construction noise impacts are predicted to occur, as set forth in Table 16-12 of the FEIS, Declarant shall, prior to Construction Commencement, offer to make available at no cost for purchase and installation (1) storm windows for façades that do not already have insulated glass windows and/or (2) one window air conditioner per living room and bedroom at residences or one window air conditioner per classroom at school receptors that do not already have alternative means of ventilation.

3.04 **Inconsistencies with the FEIS**. If this Declaration inadvertently fails to include a PCRE or Mitigation Measure set forth in the FEIS as a PCRE or Mitigation Measure to be implemented by Declarant, such PCRE or Mitigation Measure shall be deemed incorporated in this Declaration by reference. If there is any inconsistency between a PCRE or Mitigation Measure as set forth in the FEIS and as incorporated in this Declaration, the more restrictive provision shall apply. Notwithstanding the foregoing, Declarant shall be entitled to the certificates as provided in 6.05.

3.05 **Innovation and Alternatives: Modifications Based on Further Assessments.**

(a) Innovation and Alternatives. In complying with Sections 3.01 through 3.04 of this Declaration, Declarant may, at its election, implement innovations, technologies or alternatives that are or become available, which Declarant demonstrates to the satisfaction of DCP would result in equal or better methods of achieving the relevant PCRE or Mitigation Measure, than those set forth in this Declaration.

(b) Process for Innovations, Alternatives and Modifications Pursuant to Section 3.06. Following the delivery of a Notice to DCP requesting an Innovation, Alternative or

Modification pursuant to Section 3.06 hereof (the "**Section 3.06 Request**"), Declarant shall meet with DCP to respond to any questions or comments on such request and accompanying materials, and shall provide additional information as may reasonably be requested by DCP in writing in order to allow DCP to determine whether to grant such request, acting in consultation with City agency personnel as necessary in relation to the subject matter of the Section 3.06 Request.

(c) Modifications Based on Further Assessments. In the event that Declarant believes, based on changed conditions, that a PCRE or Mitigation Measure required under Sections 3.01 through 3.04 should not apply or could be modified without diminishment of the environmental standards which would be achieved by implementation of the PCRE or Mitigation Measure, it shall set forth the basis for such belief in an analysis submitted to DCP and other relevant City agencies such as DOT or DEP (the "**Modification Request**"). Following the delivery of the Modification Request, Declarant shall meet with DCP and the relevant City agencies (and at DCP's option, the Monitor) to respond to any questions or comments on such request and accompanying materials and shall provide additional information as may be reasonably requested by DCP or the Monitor. Upon reviewing the Modification Request and any other materials submitted, DCP shall issue a written determination within twenty (20) business days after receipt of the request. In the event that, based upon review of such analysis, DCP determines that the relevant PCRE or Mitigation Measure should not apply or could be modified, Declarant may eliminate or modify the PCRE or Mitigation Measure consistent with the DCP determination, provided that Declarant records a notice of such change, as approved by DCP Counsel's Office, against the Subject Property in the office of the City Register.

3.06 **Appointment and Role of Independent Monitor**.

(a) Declarant shall, with the consent of DCP, retain an independent third party (the "**Monitor**") reasonably acceptable to DCP to oversee, on behalf of DCP, the implementation and performance by Declarant of the construction period PCREs required under Section 3.01 of this Declaration (the "**Construction Monitoring Measures**" or "**CMMs**"). The Monitor shall be a licensed engineer, architect, general contractor or environmental consultant with significant experience in environmental management and construction management (or multiple persons or a firm employing such persons), including familiarity with the means and methods for implementation of the CMMs. DCP shall advise Declarant of its approval or rejection of the Monitor, as proposed, within fifteen (15) business days after Declarant provides DCP with satisfactory (as reasonably determined by DCP) documentation concerning the name and relevant experience of the Monitor.

(b) The "Scope of Services" described in any agreement between Declarant and the Monitor pursuant to which the Monitor is retained (the "**Monitor Agreement**") shall be subject to prior review by and approval of DCP, such approval not to be unreasonably withheld, conditioned or delayed. Such Monitor Agreement shall include provisions in a form acceptable to DCP that, among others, shall: (i) ensure that the Monitor is independent of Declarant in all respects relating to the Monitor's responsibilities under this Declaration (provided that the Monitor shall be responsible to Declarant with regard to practices generally applicable to or expected of consultants and independent contractors of Declarant) and has a duty of loyalty to DCP; (ii) provide for appropriate DCP management and control of the performance of services by the Monitor; (iii) authorize DCP to direct the termination of services by the Monitor for unsatisfactory performance of its responsibilities under the Monitor Agreement, following a fifteen (15)-day notice period by DCP to Declarant and the failure of Monitor to correct or remedy the

unsatisfactory activity; (iv) allow for the retention by the Monitor of sub-consultants with expertise appropriate to assisting the Monitor in its performance of its obligations to the extent reasonably necessary to perform its obligations under this Declaration and the Monitor Agreement; and (v) allow for termination by Declarant for cause, but only with the express written concurrence of DCP, which concurrence shall not be unreasonably withheld or delayed. If DCP shall fail to act upon a proposed Monitor Agreement within twenty (20) days after submission of a draft form of Monitor Agreement, the form of Monitor Agreement so submitted shall be deemed acceptable by DCP and may be executed by Declarant and the Monitor. The Monitor Agreement shall provide for the commencement of services by the Monitor at a point prior to Construction Commencement (the timing of such earlier point to be at the sole discretion of Declarant) and shall continue in effect at all times that construction activities are occurring on the Subject Property until issuance of the first TCO for any portion of the Development, unless the Declarant, with the prior consent of DCP or at the direction of DCP, shall have terminated the Monitor Agreement and substituted therefor another Monitor under a new Monitor Agreement, in accordance with all requirements of this Section 3.07. If the stage of development of the Subject Property identified in the Scope of Services under the Monitor Agreement is completed, Declarant shall not have any obligation to retain the Monitor for subsequent stage(s) of development of the Subject Property, provided that Declarant shall not recommence any construction until it shall have retained a new Monitor in compliance with the provisions of this Section.

(c) The Monitor shall: (i) assist and advise DCP with regard to review of plans and measures proposed by Declarant for purposes of satisfying CMMs in connection with determinations required under this Declaration as a prerequisite to Construction Commencement; (ii) provide reports of Declarant's compliance with the CMMs during any period of construction

on a schedule reasonably acceptable to DCP, but not more frequently than once per month; and (iii) review records or perform field inspections of the portion of the Subject Property then being developed as reasonably necessary to confirm that Declarant is complying with the CMMs. The Monitor may at any time also provide Declarant and DCP with notice of a determination that a CMM has not been implemented, accompanied by supporting documentation establishing the basis for such determination, provided that any such notice shall be delivered to both parties. If the Monitor has provided DCP with such notice of a determination and supporting documentation that a CMM has not been implemented, the Monitor shall: (x) have full access to the portion of the Subject Property then being developed (as referenced in the Monitor Agreement), subject to compliance with all generally applicable site safety requirements imposed by law or the construction manager's safety requirements pursuant to construction contracts or imposed as part of the site safety protocol in effect for the Subject Property; (y) on reasonable notice and during normal business hours, be provided with access to all books and records of Declarant pertaining to both the CMM alleged not to have been implemented and the applicable portion of the Subject Property which it reasonably deems necessary to carry out its duties, including the preparation of periodic reports; and (z) be entitled to conduct any tests on the Subject Property that the Monitor reasonably deems necessary to verify Declarant's implementation and performance of the CMMs, subject to compliance with all generally applicable site safety requirements imposed by law, site operations, or pursuant to construction contracts in effect for the Subject Property and provided further that any such additional testing shall be (q) coordinated with Declarant's construction activities and use of the Subject Property by the occupants of and visitors; and (r) conducted in a manner that will minimize any interference with the Development. The Monitor Agreement shall provide that Declarant shall have the right to require the Monitor to secure insurance customary

for such activity and may hold the Monitor liable for any damage or harm resulting from such testing activities. Nothing in this Declaration, including without limitation the provisions of this Section 3.07, shall be construed to make the Monitor a third-party beneficiary of this Declaration.

(d) Subject to compliance with all generally applicable site safety requirements or the construction manager's safety requirements pursuant to construction contracts or imposed as part of the site safety protocol in effect for the Subject Property, DCP, or any other applicable City agency, may, upon prior written or telephonic notice to Declarant, enter upon the Subject Property during business hours on business days for the purpose of conducting inspections to verify Declarant's implementation and performance of the CMMs; provided, however, that any such inspections shall be (i) coordinated with Declarant's construction activities and use of the Subject Property by the occupants of and visitors to the Subject Property, and (ii) conducted in a manner that will minimize any interference with, delay construction of, or create any safety hazard at, the Development. Declarant shall cooperate with DCP (or such other applicable City agency) and its representatives, and shall not delay or withhold any information or access to the Subject Property reasonably requested by DCP (or such other applicable City agency). Notwithstanding the foregoing, Declarant shall not be obligated to provide DCP or any other City agency with access to tenant occupied spaces or those portions of the Subject Property not owned and controlled by Declarant (such as individual condominium units).

(e) Declarant shall be responsible for payment of all fees and expenses due to the Monitor (including fees and expenses paid to sub-consultants engaged pursuant to Section 3.07(b)) in accordance with the terms of the Monitoring Agreement.

(f) If DCP determines, based on information provided by the Monitor and others, or through its own inspection of the Subject Property during construction, as applicable,

that there is a basis for concluding that Declarant has failed to implement or to cause its contractors to implement a CMM, DCP may thereupon give Declarant written notice of such alleged violation (each, a "**CMM Default Notice**"), transmitted by hand or via overnight courier service to the address for Notices for Declarant set forth in Section 6.04. Notwithstanding any provisions to the contrary contained in Section 5.01 of this Declaration, following receipt of a CMM Default Notice, Declarant shall: (i) effect a cure of the alleged violation within fifteen (15) business days; (ii) seek to demonstrate to DCP in writing within five (5) business days of receipt of the CMM Default Notice why the alleged violation did not occur and does not then exist; or (iii) seek to demonstrate to DCP in writing within five (5) business days of receipt of the CMM Default Notice that a cure period greater than fifteen (15) business days would not be harmful to the environment or that the required cure cannot be accomplished within fifteen (15) business days (such longer cure period, a "**Proposed Cure Period**"). If DCP accepts within two (2) business days of receipt of a writing from Declarant that the alleged violation did not occur and does not then exist, DCP shall withdraw the CMM Default Notice and Declarant shall have no obligation to cure. If DCP accepts a Proposed Cure Period in writing within two (2) business day of receipt of a writing from Declarant, then this shall become the applicable cure period for the alleged violation (the "**New Cure Period**"), provided that if DCP does not act with respect to a Proposed Cure Period within two (2) business days or after receipt of a writing from Declarant with respect thereto, the running of the fifteen (15) day cure period for the alleged violation shall be tolled until such time as DCP so acts. If Declarant fails to: (i) effect a cure of the alleged violation; (ii) cure the alleged violation within a New Cure Period, if one has been established; or (iii) demonstrate to DCP's satisfaction that a violation has not occurred, then representatives of Declarant shall, promptly at DCP's request, and upon a time and date, and a location acceptable to DCP, convene a meeting (and, at the election of

the parties, additional meetings) with the Monitor and DCP representatives. If, subsequent to such meetings, Declarant is unable reasonably to satisfy the DCP representatives that no violation exists or is continuing or the Declarant, the Monitor and DCP are unable to agree upon a method for curing the violation within a time period acceptable to DCP, DCP shall have the right to exercise any remedy available at law or in equity or by way of administrative enforcement, to obtain or compel Declarant's performance under this Declaration, including seeking an injunction to stop work on the Subject Property, as necessary, to ensure that the violation does not continue, until the Declarant demonstrates either that the violation does not exist or that it has cured the violation, subject to the cure provisions of Section 5.02 hereof (as modified for the cure periods set forth in this Section 3.07(f)) and the limitations of Sections 5.03, 5.04, 6.01, and 6.02 hereof. Nothing herein shall be construed as a waiver of any legal or equitable defense that Declarant may have in any enforcement action or proceeding initiated by DCP in accordance with this provision.

3.07 **Force Majeure Event Involving a PCRE or Mitigation Measure**. Notwithstanding any provision of Section 5.04 to the contrary, where the Obligation as to which a Force Majeure Event applies is a PCRE or Mitigation Measure set forth in this Article III of the Declaration, Declarant may not be excused from performing such PCRE or Mitigation Measure that is affected by the Force Majeure Event (x) unless such PCRE or Mitigation Measure cannot be reasonably implemented during the Force Majeure or (y) unless and until the Chair has made a determination in his or her reasonable discretion that not implementing the PCRE or Mitigation Measure during the period of the Force Majeure Event, or implementing an alternative proposed by Declarant, would not result in any new or different significant adverse environmental impact not addressed in the FEIS.

ARTICLE IV

EFFECTIVE DATE; AMENDMENTS AND MODIFICATIONS TO AND CANCELLATION OF THIS DECLARATION

4.01 **Effective Date; Recordation**.

(a) This Declaration and the provisions and covenants hereof shall become effective only upon Final Approval of the Land Use Applications (the "Effective Date"). However, following such Effective Date, Declarant shall not be subject to or have any obligations under this Declaration unless and until Declarant has elected obtain a permit from the Buildings Department permitting the construction of the foundation of a Development (the "Foundation Permit").

(b) Within ten (10) days of such Final Approval of the Land Use Applications and prior to application for any Building Permit relating to the Subject Property, the Declarant shall record this Declaration and any related waivers executed by Mortgagees or other Parties-in-Interest or other documents executed and delivered in connection with the Land Use Application and required by this Declaration to be recorded in public records, in the Office of the City Register, New York County (the "**Register's Office**"), indexing them against the entire Subject Property, and deliver to the Commission within ten (10) days from any such submission for recording, a copy of such documents as submitted for recording, together with an affidavit of submission for recordation. If the Declarant fails to so record such documents, then the City may record duplicate originals of such documents. However, all fees paid or payable for the purpose of recording such documents, whether undertaken by the Declarant or by the City, shall be borne by Declarant.

(c) Notwithstanding anything to the contrary contained in this Declaration, if the Approvals given in connection with the Land Use Application are declared invalid or otherwise voided by a 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 appeal, then this Declaration shall be cancelled and shall be of no further force or effect and an instrument discharging or terminating it may be recorded. Prior to the recordation of such instrument discharging or terminating this Declaration, the Declarant shall notify the Chair of Declarant's intent to discharge or terminate this Declaration and request the Chair's approval, which approval shall be limited to insuring that such discharge and termination is in proper form and provides that the proper provisions which are not discharged or terminated survive such termination. Upon recordation of such instrument, Declarant or Successor Declarants (as hereinafter defined) shall provide a copy thereof to the Commission so certified by the Register.

4.02 **Amendment**. This Declaration may be amended, modified or cancelled only upon application by the Declarant and (if not then Successor Declarant) and with the express written approval of the Commission or an agency succeeding to the Commission's jurisdiction (except with respect to a cancellation pursuant to Section 4.01 hereof, for which no such approval shall be required). No other approval or consent shall be required from any public body, private person or legal entity of any kind, including, without limitation, any other present Party-in-Interest or future Party-in-Interest who is not a successor of Declarant.

4.03 **Minor Modifications**. Notwithstanding the provisions of Section 4.02 above, any change to this Declaration proposed by the Declarant (if not then Successor Declarant), which the Chair deems to be a minor modification of this Declaration, may by express written consent be approved administratively by the Chair and no other approval or consent shall be required from any public body, private person or legal entity of any kind, including, without limitation, any present or future Party-in-Interest. Such minor modifications shall not be deemed amendments

requiring the approval of the Commission. In the event that a minor modification results in a modification of the Plans, a notice indicating such modification shall be recorded in the City Register's Office, in lieu of a modification of this Declaration.

4.04 **Future Recording**. Any modification, amendment or cancellation of this Declaration shall be executed and recorded in the same manner as this Declaration.

4.05 **Certain Provisions Regarding Modification**. For so long as any Declarant or any Successor Declarant shall hold a Possessory Interest in the Subject Property or any portion thereof, all other Unit Interested Parties, their heirs, successors, assigns and legal representatives, hereby irrevocably (i) consent to any amendment, modification, cancellation, revision or other change in this Declaration, (ii) waive and subordinate any rights they may have to enter into an amended Declaration or other instrument amending, modifying, canceling, revising or otherwise changing this Declaration, and (iii) nominate, constitute and appoint 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 be required in order to amend, modify, cancel, revise or otherwise change this Declaration or to evidence such Unit Interested Parties' consent or waiver as set forth in this Section 4.05.

ARTICLE V

COMPLIANCE; DEFAULTS; REMEDIES

5.01 **Default**.

(a) Declarant acknowledges 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. Declarant acknowledges that the City is an interested party to this Declaration, and

consent to enforcement by the City, administratively or at law or equity, of the restrictions, covenants, easements, obligations and agreements contained herein. If the Declarant fails to perform any of its obligations under this Declaration with respect to its Obligations, the City shall seek to enforce this Declaration and exercise any administrative legal or equitable remedy available to the City, and Declarant hereby consents to same; provided that this Declaration shall not be deemed to diminish Declarant's or any other Party in Interest's right to exercise any and all administrative, legal, or equitable remedies otherwise available to it, and provided further, that the City's rights of enforcement shall be subject to the cure provisions and periods set forth in Section 5.01(c) hereof and the limitations of Sections 5.02, 6.01 and 6.02 hereof. 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, subject to the further provisions of this Section 5.01 and Sections 6.01 and 6.02 hereof, including, but not limited to, a mandatory injunction compelling 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 building located within the Development that does not comply with the provisions of this Declaration; provided, however, that such right of revocation shall not permit or be construed to permit the revocation of any certificate of occupancy for any use or improvement that exists on the Subject Property as of the date of this Declaration;

(b) Notwithstanding any provision of this Declaration, only Declarant, Mortgagees, and Declarant's 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 or any document or instrument executed or delivered in connection with the Land Use Application or Approvals.

(c) Prior to City instituting any proceeding to enforce the terms or conditions of this Declaration due to any alleged violation hereof, City shall give the Declarant, every Mortgagee of all or any portion of the Subject Property, and every Party in Interest, forty-five (45) days written notice of such alleged violation, during which period the Declarant, any Party in Interest, and Mortgagee shall have the opportunity to effect a cure of such alleged violation or to demonstrate to City why the alleged violation has not occurred. If a Mortgagee or Party in Interest performs any obligation or effects any cure the Declarant is required to perform or cure pursuant to this Declaration, such performance or cure shall be deemed performance on behalf of the Declarant and shall be accepted by any person or entity benefited hereunder, including the Commission and the City, as if performed by the Declarant. If the Declarant, any Party in Interest, or Mortgagee commence to effect such cure within such forty-five (45) day period (or if cure is not capable of being commenced within forty-five (45) day period, the Declarant, any Party in Interest or 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 the Declarant, any Party in Interest, or Mortgagee continues to proceed diligently with the effectuation of such cure. In the event that more than one Declarant exists at any time on the Subject Property, notice shall be provided to all Declarants from whom City has received notice in accordance with Section 6.04 hereof, and the right to cure shall apply equally to all Declarants.

(d) If, after due notice and opportunity to cure as set forth in this Declaration, the Declarant, Mortgagee, or a Party in Interest shall fail to cure the alleged violation with respect to the Subject Property, the City may exercise any and all of its rights, including without limitation those delineated in this Section 5.01 and may disapprove any amendment, modification or cancellation of this Declaration on the sole ground that such Declarant is in default of a material Obligation under this Declaration.

(e) The time period for curing any violation of this Declaration by the Declarant shall be subject to extension due to the occurrence of a Force Majeure Event subject to the provisions of Section 5.04 hereof.

5.02 **Rights of Mortgagees**. Except as otherwise provided in Section 5.03 of this Declaration, and notwithstanding Section 5.01, if the Declarant shall fail to observe or perform any of the covenants or provisions contained in this Declaration and such failure continues beyond the cure period set forth in Section 5.01 hereof, the City shall, before taking any action to enforce this Declaration, give notice to any Named Mortgagee setting forth the nature of the alleged default. A Named Mortgagee shall have available to it an additional cure period of the same number of days as the Declarant had in which to cure such alleged default, as extended by Force Majeure Events. If such Named Mortgagee has commenced to effect a cure during such period and is proceeding with reasonable diligence towards effecting such cure, then such cure period shall be extended for so long as such Named Mortgagee is continuing to proceed with reasonable diligence with the effectuation of such cure. With respect to the effectuation of any cure by any Named Mortgagee, such Named Mortgagee shall have all the rights and powers of the Declarant pursuant to this Declaration necessary to cure such default. If a Named Mortgagee performs any obligation or effects any cure the Declarant is required to perform or cure pursuant to this

Declaration, such performance or cure shall be deemed performance on behalf of the Declarant and shall be accepted by any person or entity benefited hereunder, including the Commission and the City, as if performed by Declarant. Notwithstanding anything to the contrary contained herein, the execution of a Waiver and Subordination or the failure by a Named Mortgagee to cure an alleged default shall not defeat, invalidate, or impair the validity of the lien of the Mortgage in favor of a Named Mortgagee.

5.03 **Enforcement of Declaration**. No person or entity other than Declarant, Mortgagees, the City, or a successor, assign or legal representative of any such party, shall be entitled to enforce, or assert any claim arising out of or in connection with, this Declaration. This Declaration shall not create any enforceable interest or right in any person or entity other than the parties named above in this Section, who shall be deemed to be the proper entities to enforce the provisions of this Declaration, and nothing contained herein shall be deemed to allow any other person or entity, public or private, any interest or right of enforcement of any provision of this Declaration or any document or instrument executed or delivered in connection with the Land Use Application. Declarant consents to the enforcement by the City, administratively or at law or equity, or by any legal means necessary, of the covenants, conditions, easements, agreements and restrictions contained in this Declaration.

5.04 **Delay By Reason of Force Majeure Event**. In the event that Declarant is unable to comply with any Obligations of this Declaration (including, without limitation, any violation of this Declaration under Section 5.01 hereof) as a result of a Force Majeure Event, then Declarant may, upon written notice to the Chair (the "**Delay Notice**"), request that the Chair, certify the existence of such Force Majeure Event. Such Delay Notice shall include a description of the Force Majeure Event, and, if known to such Declarant, its cause and probable duration and the impact it

is reasonably anticipated to have on the completion of the item of work, to the extent known and reasonably determined by the Declarant. In the exercise of its reasonable judgment the Chair shall, within thirty (30) days of its receipt of the Delay Notice certify in writing whether a Force Majeure Event has occurred. If the Chair certifies that a Force Majeure Event does not exist, the Chair shall set forth with reasonable specificity, in the certification, the reasons therefor. If the Chair certifies a Force Majeure Event exists, upon such notification, the Chair shall grant Declarant appropriate relief including notifying DOB that a Building Permit, TCO, or a PCO, as applicable, may be issued for the Development. Failure to respond within such thirty (30) day period shall be deemed to be a certification by the City that Force Majeure Events have occurred. Any delay caused as the result of a Force Majeure Event shall be deemed to continue only as long as the Force Majeure Event continues. Upon a certification or deemed certification that Force Majeure Events have occurred, the City may grant such Declarant appropriate relief. Any delay caused as the result of Force Majeure Event shall be deemed to continue only as long as the Force Majeure Event continues. Declarant shall re-commence the Obligation at the end of the probable duration of the Force Majeure Event specified in the Delay Notice, or such lesser period of time as the Chair reasonably determined the Force Majeure Event shall continue; provided, however, that if the Force Majeure Event has a longer duration than as set forth in the Delay Notice, or as reasonably determined by the Chair, the Chair shall grant additional time to re-commence the Obligation.

ARTICLE VI

MISCELLANEOUS

6.01 **Binding Effect**. Except as specifically set forth in this Declaration and, subject to applicable law, Declarant shall have no obligation to act or refrain from acting with respect to the Subject Property. The restrictions, covenants, rights and agreements set forth in this Declaration

shall be binding on Declarant, and any Successor Declarant who acquires a Possessory Interest in the Subject Property, provided that the Declaration shall only be binding upon Declarant, or a Successor Declarant for the period during which such Declarant, or such Successor Declarant is the holder of a Possessory Interest in the Subject Property and only to the extent of such Possessory Interest in the Subject Property. At such time as Declarant, or any Successor Declarant no longer holds a Possessory Interest in the Subject Property, such Declarant's, or Successor Declarant's obligation and liability under this Declaration shall wholly cease and terminate except with respect to any liability during the period when such Declarant held a Possessory Interest in the Subject Property, and the party succeeding such Declarant shall be deemed to have assumed the obligations and liability Declarant pursuant to this Declaration with respect to actions or matters occurring subsequent to the date such party succeeds to a Possessory Interest in the Subject Property to the extent of such party's Possessory Interest in the Subject Property. For purposes of this Declaration, any successor to Declarant shall be deemed a Declarant for such time as such successor holds all or any portion of a Possessory Interest in the Subject Property. The provisions of this Declaration shall run with the land and shall inure to the benefit of and be binding upon Declarant.

6.02 **Limitation of Liability**. Notwithstanding anything to the contrary contained in this Declaration, the City will look solely to the estate and interest Declarant, and any or all of their respective successors and assigns or the subsequent holders of any interest in the Subject Property, on an in rem basis only, for the collection of any judgment or the enforcement of any remedy based upon any breach by any such party of any of the terms, covenants or conditions of this Declaration. No other property of any such party or its principals, disclosed or undisclosed, or its partners, shareholders, directors, officers or employees, or said successors, assigns and holders, shall be subject to levy, execution or other enforcement procedure for the satisfaction of the remedies of

the City or of any other party or person under or with respect to this Declaration, and no such party shall have any personal liability under this Declaration. In the event that the Development is subject to a declaration of condominium, every condominium unit shall be subject to levy or execution for the satisfaction of any monetary remedies of the City solely to the extent of each Unit Interested Party's Individual Assessment Interest. The "**Individual Assessment Interest**" shall mean the Unit Interested Party's percentage interest in the common elements of the condominium in which such condominium unit is located applied to the assessment imposed on the condominium in which such condominium unit is located. In the event of a default in the obligations of the condominium as set forth herein, the City shall have a lien upon the property owned by each Unit Interested Party solely to the extent of each such Unit Interested Party's unpaid Individual Assessment Interest, which lien shall include such Unit Interested Party's obligation for the costs of collection of such Unit Interested Party's unpaid Individual Assessment Interest. Such lien shall be subordinate to the lien of any prior recorded Mortgage in respect of such property given to a bank, insurance company, real estate investment trust, private equity or debt fund, or other institutional lender (including but not limited to a governmental agency), the lien of any real property taxes, and the lien of the board of managers of any such condominium for unpaid common charges of the condominium, and the lien of the condominium pursuant to the provisions of Article V hereof. The City agrees that, prior to enforcing its rights against a Unit Interested Party, the City shall first attempt to enforce its rights under this Declaration against the applicable Declarant, and the boards of managers of any condominium association. In the event that the condominium shall default in its obligations under this Declaration, the City shall have the right to obtain from the boards of managers of any condominium association, the names of the Unit Interested Parties who have not paid their Individual Assessment Interests.

6.03 **Condominium and Cooperative Ownership**.

(a) In the event that the Subject Property or any portion thereof is developed as, sold, or converted to condominium or cooperative ownership requiring the approval of an offering plan by the Attorney General of the State of New York (the "**Attorney General**"), Declarant so doing shall provide a copy of this Declaration and any subsequent modification hereof to the Attorney General with the offering documents at the time of application for approval of any offering plan for such condominium or cooperative. Declarant shall include in the offering plan, if any, for such condominium or cooperative this Declaration or any portions hereof which the Attorney General determines shall be included and, if so included in the offering plan, shall make copies of this Declaration available to condominium purchasers and cooperative shareholders purchasing from such Declarant pursuant to such offering plan. Such condominium or cooperative (or the board of managers of a condominium or board directors of a cooperative having a Possessory Interest therein) shall be deemed to be a Declarant for purposes of this Declaration, and shall succeed to a prior Declarant's obligations under this Declaration in accordance with Section 8.01 hereof.

(b) With respect to any portion of the Subject Property which shall be subject to a condominium, cooperative or similar form of ownership, for the purposes of this Declaration, except as otherwise set forth below, the board of directors or managers of the condominium, cooperative or similar association (such entity, a "**Board**") or a master association (an "**Association**") selected by the Board and authorized by underlying organizational documents to act on behalf of the individual condominium unit owners, cooperative shareholders or similar owners, shall have the sole right as Declarant of such portion of the Subject Property to assess a lien for any costs incurred under this Declaration or to otherwise act as a Declarant with respect to

this Declaration, to the extent such action is required for any purpose under this Declaration, and the consent of any individual condominium unit owner, cooperative shareholder or other similar owner who may be considered a party in interest under the Zoning Resolution shall not be required. For purposes of this Declaration, the Board or the Association, as the case may be, shall be deemed the sole Party in Interest with respect to the property interest subjected to the condominium, cooperative or similar ownership arrangement, and any such condominium unit owner, cooperative shareholder or other similar owner, or holder of any lien encumbering any such individual unit, shall not be deemed a Party in Interest. For purposes of Section 8.04 hereof, notice to the Board or the Association, as the case may be, shall be deemed notice to the Declarant of the applicable portion of the Subject Property.

6.04 **Notices**.

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:

To Declarants:
New York Blood Center, Inc.
310 E 67th Street
New York, NY 10065
Attention: Jordana Schwartz, Esq.
Telephone: (212) 570-3002
E-mail: JSchwartz@nybc.org

With a copy to:
Kramer, Levin, Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, New York 10036
Attention: Paul Selver
Telephone: (212) 715-9199
E-mail: pselver@kramerlevin.com

Declarant, the Commission, any Party in Interest, and any Mortgagee may, by notice provided in accordance with this Section 6.04, change any name or address(es) 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 he 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 the Commission to Declarant shall also be sent to every Mortgagee of whom the Commission has notice ("**Named Mortgagee**"), and no Notice shall be deemed properly given to Declarant without such notice to such Named Mortgagee(s). In the event that there is more than one Declarant at any time, any Notice from the City or the Commission shall be provided to all Declarants of whom the Commission has notice.

6.05 **Certificates**. The City will, at any time and from time to time upon not less than ten days (10) days' prior notice by Declarant, or a Named Mortgagee, execute, acknowledge, and deliver to Declarant, or such Named Mortgagee, as the case may be, a statement in writing certifying (a) that this Declaration is unmodified and in full force and effect (or if there have been modifications or supplements that the same is in full force and effect, as modified or supplemented, and stating the modifications and supplements), (b) whether or not to the best knowledge of the signer of such certificate the Declarant is in default in the performance of any Obligation contained in this Declaration, and, if so, specifying each such default of which the signer may have knowledge, and (c) as to such further matters as Declarant, or such Named Mortgagee may

reasonably request. If the City fails to respond within such ten (10) day period, Declarant, or such Named Mortgagee may send a second written notice to the City requesting such statement (which notice shall state in bold upper case type both at the top of the first page thereof and on the front of the envelope thereof the following: "SECOND NOTICE PURSUANT TO SECTION 8.04 OF THE DECLARATION OF DEVELOPMENT"). If the City fails to respond within ten (10) days after receipt of such second notice, it shall be deemed to have certified (i) that this Declaration is unmodified and in full force and effect (or if there have been modifications or supplements that the same is in full force and effect, as modified or supplemented), (ii) that to the best knowledge of the signer of such certificate Declarant is not in default in the performance of any Obligation contained in this Declaration, and (iii) as to such further matters as Declarant, or such Named Mortgagee had requested, and such deemed certification may be relied on by Declarant, or such Named Mortgagee and their respective successors and assigns.

6.06 **Successors of Declarant**.

(a) References in this Declaration to "Declarant(s)" shall be deemed to include Successor Declarant(s), if any, which are holders of a Possessory Interest in the Subject Property. Notwithstanding anything to the contrary contained in this Declaration, no holder of a mortgage or other lien in the Subject Property shall be deemed to be a successor of Declarant for any purpose, unless and until such holder obtains a Possessory Interest and provided further that, following succession to such Possessory Interest, the holder of any such mortgage or lien shall not be liable for any obligations of Declarant as the "Declarant" hereunder unless such holder commences to develop the Subject Property in accordance with the terms of Section 2.01 hereof or has acquired its interest from a Party who has done so.

6.07 **Parties-in-Interest**. Declarant shall provide the City with an updated Certification of Parties-in-Interest as of the recording date of this Declaration and will cause any individual, business organization or other entity which, between the date hereof and the effective and recording date and time of this Declaration, becomes a Party-in-Interest in the Subject Property or portion thereof to subordinate its interest in the Subject Property to this Declaration. Any and all mortgages or other liens encumbering the Subject Property after the recording date of this Declaration shall be subject and subordinate hereto as provided herein. Notwithstanding anything to the contrary contained in this Declaration, if a portion of the Subject Property is held in condominium ownership, the board of managers of the condominium association shall be deemed to be the sole Party-in-Interest with respect to the premises held in condominium ownership, and the owner of any unit in such condominium, the holder of a lien encumbering any such condominium unit, and the holder of any other occupancy or other interest in such condominium unit shall not be deemed to be a Party-in-Interest.

6.08 **Governing 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.

6.09 **Severability**. In the event that any provision 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 severed and the remainder of this Declaration shall continue to be of full force and effect.

6.10 **Applications**. Declarant shall include a copy of this Declaration as part of any application pertaining to the Subject Property (as to which the provisions of this Declaration are applicable) submitted to the DOB.

6.11 **Incorporation by Reference**. Any and all exhibits, appendices and attachments referred to herein are hereby incorporated fully and made an integral part of this Declaration by reference.

6.12 **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, Declarant has executed and delivered this Declaration as of the day and year first above written.

DECLARANT:

New York Blood Center, Inc.

BY: _____
NAME: _____
TITLE: _____

STATE OF NEW YORK)
)ss.:
COUNTY OF NEW YORK)

On the _____ day of _____ in the year 2021 before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person or entity upon behalf of which the individual(s) acted, executed the instrument.

_____
Notary Public

SCHEDULE OF EXHIBITS

EXHIBIT A Metes and Bounds of the Subject Property
EXHIBIT B Parties in Interest Certification

Exhibit "A"

Metes and Bounds of the Subject Property

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, City, County and State of New York bounded and described as follows:

BEGINNING at a point on the southerly side of East 67th Street distant 100 feet, easterly from corner formed by the intersection of the easterly side of Second Avenue with the southerly side of east 67th Street;

RUNNING THENCE Easterly along the southerly side of East 67th Street 225 feet;

RUNNING THENCE Southerly and parallel with the easterly side of Second Avenue 200 feet 10 inches to the northerly side of East 66th Street;

RUNNING THENCE Westerly along the northerly side of East 66th Street 225 feet;

RUNNING THENCE Northerly and parallel with the easterly side of Second Avenue, 200 feet 10 inches to the southerly side of East 67th Street at the point or place of BEGINNING.

Exhibit "B"

Parties-in-Interest Certification

RESTRICTIVE DECLARATION

THIS DECLARATION (this "**Declaration**"), made as of this ___ day of November, 2021, by **NEW YORK BLOOD CENTER, INC.**, a New York not-for-profit corporation, having an address at 310 E 67th St New York, NY 10065 (the "**Declarant**").

WITNESSETH:

WHEREAS, Declarant is the fee owner of certain real property located in the Borough of Manhattan, County of New York, City and State of New York, designated for real property tax purposes as Block 1441 Lot 40 and as more particularly described in **Exhibit "A"** (the **"Subject Property"**);

WHEREAS, Declarant desires to redevelop the Subject Property with a building, containing Use Group (UG)-4 community facility uses and Scientific Research and Development Facilities, as described in Section 74-48 of the Zoning Resolution, pursuant to the Land Use Approvals (as defined below), as the same may be modified hereafter (the "**Proposed Development**");

WHEREAS, the New York City Planning Commission ("**CPC**") adopted resolutions on September 22, 2021, under Calendar Numbers 23-25, approving certain land use applications by Declarant pursuant to Application Numbers C 210351ZMM, N 210352ZRM, and C 210353ZSM, (the "**Land Use Applications**") for (a) a zoning map amendment to rezone the Development Site from an R8B district to a C2-7 district, and to rezone both Second Avenue block frontages between East 66th and East 67th Streets to a depth of 100 feet from a C1-9 district to a C2-8 district (the **"Rezoning"**); (b) zoning text amendments (i) to Section 74-48 of the Zoning Resolution to allow, by special permit, an increase in commercial FAR in C2-7 districts for Scientific Research and Development Facilities, and modifications to the applicable

use, bulk, and signage regulations; and (ii) to Appendix F of the Zoning Resolution to designate the Development Site as an MIH area (the **"Zoning Text Amendments"**); and (c) a special permit pursuant to Section 74-48, as amended, to permit modifications of the applicable floor area, supplementary use, rear yard, height and setback, and signage regulations (the **"Special Permit"**);

WHEREAS, the New York City Council Land Use Committee approved the Land Use Applications with modifications on November 10, 2021 pursuant to Resolution Numbers LU 864-2021, LU 865-2021 and LU 866-2021, which modifications were determined to be within the scope of the Land Use Applications by the City Planning Commission on November 17, 2021, and the full City Council approved the Land Use Applications on November 23, 2021 (which Land Use Applications shall upon Final Approval (as defined below) become the "**Land Use Approvals**");

WHEREAS, Declarant, recognizing that the Land Use Approvals were granted in order to advance New York City policy to develop a life sciences economy, wishes to provide assurances that the Subject Property, if not used and developed pursuant to the Special Permit (as the same may be duly modified or amended), will be used and developed in a manner consistent with the uses and bulk of buildings existing as of the date hereof on Block 1441;

WHEREAS, Fidelity National Title Insurance Company (the "**Title Company**") has certified in the certification (the "**Certification**") attached hereto as **Exhibit "B"** and made a part hereof, that as of August 29, 2021, Declarant is the only party-in-interest in the Subject Property as such term is defined in the definition of "zoning lot" in Section 12-10 of the Zoning Resolution; and

WHEREAS, Declarant desires to restrict the manner in which the Subject Property is developed, redeveloped, maintained and operated in the future.

NOW THEREFORE: Declarant does hereby declare, covenant and agree that the Subject Property shall be held, sold, transferred, conveyed and occupied subject to the restrictions, covenants, obligations, easements, and agreements of this Declaration, which shall run with the Subject Property and which shall be binding on Declarant and its successors and assigns as follows:

ARTICLE I

CERTAIN DEFINITIONS

As used in this Declaration, the following terms shall have the meanings given in this Article I:

1.01 "DOB" shall mean the New York City Department of Buildings, or any successor to the jurisdiction thereof under the New York City Charter.

1.02 "City" shall mean the City of New York.

1.03 "City Council" or "Council" shall mean the City Council of the City of New York, or any successor to its jurisdiction.

1.04 "DCP" shall mean the Department of City Planning, or any successor to the jurisdiction thereof under the New York City Charter.

1.05 "Declarant" shall have the meaning given in the Recitals of this Declaration and shall include any Successor Declarant and any entity that becomes a Declarant pursuant to this Declaration.

1.06 "Declaration" shall mean this Declaration, as same may be amended or modified from time to time in accordance with its provisions.

1.07 "Final Approval" shall mean approval or approval with modifications of the Land Use Applications by the City Council pursuant to New York City Charter Section 197-d, unless the Mayor of the City of New York (the "Mayor") files a written disapproval of the City Council's action pursuant to New York City Charter Section 197-d(e), and the City Council does not override the Mayor's disapproval so that the Land Use Applications are disapproved. Final Approval shall be deemed not to have occurred for any purpose of this Declaration if the final action of the City Council pursuant to New York City Charter Section 197-d is disapproval of the Land Use Application.

1.08 "Mortgage" shall mean a fee or leasehold mortgage given as security for a loan in respect of all or any portion of the Subject Property.

1.09 "Mortgagee" shall mean the holder of a Mortgage.

1.10 "Notice" shall have the meaning given in 5.04 of this Declaration.

1.11 "Possessory Interest" shall mean either (1) a fee interest in the Subject Property or any portion thereof or (2) the lessee's estate in a ground lease of all or substantially all the Subject Property or portion thereof.

1.12 "Successor Declarant" shall mean any successor entity to the balance and entirety of Declarant's Possessory Interest in the Subject Property so that Declarant no longer holds any Possessory Interest in the Subject Property.

1.13 "Zoning Resolution" or "ZR" means the Zoning Resolution of the City of New York, as amended.

Terms that are not defined herein but are defined in the Zoning Resolution, including without limitation "bulk", "curb level", "development", "enlargement", "floor area", "party-in-interest", and "permitted obstructions", shall have the meanings given in the Zoning Resolution.

ARTICLE II

DEVELOPMENT AND USE OF THE SUBJECT PROPERTY

2.01 **Development of the Subject Property.** Declarant covenants that if the Subject Property is developed or enlarged, it will only either (a) be developed or enlarged with the Proposed Development pursuant to and in accordance with the Special Permit, or (b) if not so developed or enlarged, then be developed or enlarged in conformity and compliance with the provisions of Section 2.02 of this Declaration ("**As-of-Right Development**").

2.02 **As-of-Right Development.** As-of-Right Development of the Subject Property shall conform to and comply with the following:

(a) The uses shall conform to those permitted by the provisions of the Zoning Resolution applicable in C2-7 zoning districts.

(b) The bulk shall comply with the provisions of the Zoning Resolution applicable in C2-7 zoning districts except that: (i) the maximum building height shall be 80 feet above curb level to the top of the roof slab, exclusive of exterior, enclosed or screened mechanical equipment, stair and elevator bulkheads, house tanks, generators, skylights, energy conservation equipment, "green roof" treatments, and similar rooftop features ("Mechanical and Rooftop Features") and (ii) Mechanical and Rooftop Features may extend an additional 35 feet above the maximum building height defined in (i).

ARTICLE III

EFFECTIVE DATE; AMENDMENTS AND MODIFICATIONS TO AND CANCELLATION OF THIS DECLARATION

3.01 **Effective Date; Recordation**.

(a) This Declaration and the provisions and covenants hereof shall become effective only upon Final Approval of the Land Use Applications (the "Effective Date").

(b) Within ten (10) days of such Final Approval of the Land Use Applications and prior to any application to DOB for the enlargement of the existing building or the development of a new building on the Subject Property, the Declarant shall record this Declaration and any waivers of execution thereof or subordinations thereto executed by other parties-in-interest to the Subject Property, if any, in the Office of the City Register, New York County (the "**Register's Office**") and index them against the Subject Property. Within ten (10) days from any such submission for recording, Declarant shall deliver to the Council a copy of such documents as submitted for recording, together with an affidavit of submission for recordation. If the Declarant fails to so record such documents, then the Council may record duplicate originals of such documents. All fees paid or payable for the purpose of recording such documents, whether undertaken by the Declarant or by the City, shall be borne by Declarant.

(c) Notwithstanding anything to the contrary contained in this Declaration: (i) if Final Approval does not occur; (ii) if the Land Use Approvals are declared invalid or otherwise voided by a final judgment of any court of competent jurisdiction from which no appeal can be taken or from which no appeal has been taken within the statutory period provided for such appeal; or (iii) if an amendment to the text of the Zoning Resolution is approved pursuant to

Section 200 of the New York City Charter that provides for controls on the use and development of the Subject Property substantially similar to those provided in Article II of this Declaration, this Declaration shall automatically and without any action by the Declarant or the Council be cancelled and of no further force and effect. Such cancellation shall be deemed to have occurred (x) six months after the date of CPC approval of the Land Use Applications if Final Approval does not occur, (y) upon entry of said judgment or the expiration of the applicable statutory period for such appeal in the case of condition (ii), and on a date that is ten (10) days after the date of adoption of the amendment to the Zoning Resolution in the case of condition (iii). Declarant may at any time thereafter record in the Register's Office and index against the Subject Property an instrument discharging or terminating the Declaration. Upon recordation of such instrument, Declarant shall provide a copy thereof to the Council.

3.02 **Amendment**. This Declaration may be amended, modified or cancelled only pursuant to approval by the Council upon application by the Declarant (except with respect to a cancellation pursuant to Section 3.01(c) hereof, for which no such approval shall be required). No other approval or consent shall be required from any public body, private person or legal entity of any kind, including, without limitation, any other present party-in-interest or future party-in-interest that is not a successor of Declarant.

3.03 **Future Recording**. Any modification, amendment or cancellation of this Declaration shall be executed and recorded in the same manner as this Declaration.

3.04 **Certain Provisions Regarding Modification**. With respect to matters encompassed in this Article III, all parties-in-interest to the Subject Property hereby irrevocably (i) consent to any amendment, modification, cancellation, revision or other change in this Declaration, (ii) waive and subordinate any rights they may have to enter into an amended

Declaration or other instrument amending, modifying, canceling, revising or otherwise changing this Declaration, and (iii) nominate, constitute and appoint 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 be required in order to amend, modify, cancel, revise or otherwise change this Declaration or to evidence such party-in-interest's consent or waiver as set forth in this Section 3.04.

ARTICLE IV

COMPLIANCE; DEFAULTS; REMEDIES

4.01 **Default**.

(a) Declarant acknowledges that (i) the City is an interested party to this Declaration and (ii) the restrictions, covenants, and obligations of this Declaration will protect the value and desirability of the Subject Property, as well as benefit land owned by the City within 1,000 feet of the Subject Property and used for street, education and park purposes. Declarant agrees that, if it does not develop the Subject Property in conformity and compliance with the provisions of Article II of this Declaration, then the City, at the request of the Council, DOB or DCP, may enforce the provisions of said Article II in law or in equity, and Declarant hereby consents to same. Notwithstanding the foregoing, the City's rights of enforcement shall be subject to the cure provisions and periods set forth in Section 4.01(b) of this Declaration. Only a Declarant, a Mortgagee, 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 or any document or instrument executed or delivered in connection with the Land Use Application or Land Use Approvals.

(b) Prior to City instituting any proceeding to enforce the terms or conditions of Article II of this Declaration due to any alleged violation thereof, City shall give each Declarant and each Mortgagee with an interest in any portion of the Subject Property forty-five (45) days written notice of such alleged violation, during which period such Declarant(s) and Mortgagee(s) shall have the opportunity to effect or commence effecting a cure of such alleged violation or to demonstrate to City why the alleged violation has not occurred. If a Declarant or a Mortgagee commences such cure within such forty-five (45) day period and thereafter proceeds diligently toward the effectuation of such cure, the aforesaid forty-five (45) day period shall be extended for so long as such Declarant or such Mortgagee continues to proceed diligently with the effectuation of such cure. If a Mortgagee performs any obligation or effects any cure the Declarant is required to perform or cure pursuant to this Declaration, such performance or cure shall be deemed performance on behalf of the Declarant and shall be accepted by any person or entity benefited hereunder, including the Council, as if performed by the Declarant.

ARTICLE V

MISCELLANEOUS

5.01 **Binding Effect**. The restrictions, covenants, rights and agreements set forth in this Declaration shall be binding on Declarant, and any Successor Declarant who acquires a Possessory Interest in the Subject Property only for the period during which such Declarant, or such Successor Declarant is the holder of a Possessory Interest in the Subject Property and only to the extent of such Possessory Interest in the Subject Property. At such time as Declarant, or any Successor Declarant no longer holds a Possessory Interest in the Subject Property, such Declarant's, or Successor Declarant's obligation and liability under this Declaration shall wholly

cease and terminate except with respect to any liability during the period when such Declarant held a Possessory Interest in the Subject Property, and the party succeeding such Declarant shall be deemed to have assumed the obligations and liability Declarant pursuant to this Declaration with respect to actions or matters occurring subsequent to the date such party succeeds to a Possessory Interest in the Subject Property to the extent of such party's Possessory Interest in the Subject Property. For purposes of this Declaration, any successor to Declarant shall be deemed a Declarant for such time as such successor holds all or any portion of a Possessory Interest in the Subject Property. The provisions of this Declaration shall run with the land and shall inure to the benefit of and be binding upon each Declarant, Successor Declarant and their respective heirs, successors and assigns.

5.02 **Limitation of Liability**. Notwithstanding anything to the contrary contained in this Declaration, the City will look solely to the estate and interest Declarant, and any or all of their respective successors and assigns or the subsequent holders of any interest in the Subject Property, on an in rem basis only, for the collection of any judgment or the enforcement of any remedy based upon any breach by any such party of any of the terms, covenants or conditions of this Declaration. No other property of any such party or its principals, disclosed or undisclosed, or its partners, shareholders, directors, officers or employees, or said successors, assigns and holders, shall be subject to levy, execution or other enforcement procedure for the satisfaction of the remedies of the City or of any other party or person under or with respect to this Declaration, and no such party shall have any personal liability under this Declaration.

5.03 **Condominium and Cooperative Ownership**. With respect to any portion of the Subject Property which shall be subject to a condominium, cooperative or similar form of ownership, for the purposes of this Declaration, except as otherwise set forth below, the board of

directors or managers of the condominium, cooperative or similar association (such entity, a "**Board**") or a master association (an "**Association**") selected by the Board and authorized by underlying organizational documents to act on behalf of the individual condominium unit owners, cooperative shareholders or similar owners: (a) shall have the sole right with respect to such portion of the Subject Property (i) to act as Declarant, (ii) to assess a lien for any costs incurred under this Declaration, or (iii) to otherwise act as a Declarant with respect to this Declaration, to the extent such action is required for any purpose under this Declaration, and the consent of any unit owner, cooperative shareholder, or mortgagee who may be considered a party in interest under the Zoning Resolution shall not be required and (b) shall be deemed the sole Party in Interest with respect to the property interest subjected to the condominium, cooperative or similar ownership arrangement, and any such condominium unit owner, cooperative shareholder or other similar owner, or holder of any lien encumbering any such individual unit, shall not be deemed a Party in Interest. For purposes of Section 5.04 of this Declaration, notice to the Board or the Association, as the case may be, shall be deemed notice to the Declarant of the applicable portion of the Subject Property.

5.04 **Notices**.

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:

To the Council: New York City Council
City Hall
New York, NY 10007
ATT: Speaker
Telephone:
E-mail:

With a Copy to:	New York City Council 250 Broadway New York, NY _____ ATT: Director, Land Use Division Telephone: E-mail:
To Declarants:	New York Blood Center, Inc. 310 E 67th Street New York, NY 10065 Attention: Jordana Schwartz, Esq. Telephone: (212) 570-3002 E-mail: JSchwartz@nybc.org
With a copy to:	Kramer, Levin, Naftalis & Frankel LLP 1177 Avenue of the Americas New York, New York 10036 Attention: Paul Selver Telephone: (212) 715-9199 E-mail: pselver@kramerlevin.com

Declarant, the Council, any Party in Interest, and any Mortgagee may, by notice provided in accordance with this Section 5.04, (i) advise Declarant and/or the Council of its interest in the Subject Property and address for receipt of notices pursuant to this Section 5.04 or (ii) change any name or address(es) 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 the Council to Declarant shall also be sent to every Mortgagee of whom the Council has notice ("**Named Mortgagee**"), and no Notice shall be

deemed properly given to Declarant without such notice to such Named Mortgagee(s). In the event that there is more than one Declarant at any time, any Notice from the Council shall be provided to all Declarants of whom the Council has notice.

5.05 **Certificates**. The Speaker of the Council (**"Speaker"**) will, no more than twice in any calendar year and upon not less than ten days (10) days' prior notice by Declarant, or a Named Mortgagee, execute, acknowledge, and deliver to Declarant, or such Named Mortgagee, as the case may be, a statement in writing certifying (a) that this Declaration is unmodified and in full force and effect (or if there have been modifications or supplements that the same are in full force and effect, as modified or supplemented, and stating the modifications and supplements), (b) whether or not to the best knowledge of the signer of such certificate the Declarant is in default in the performance of any Obligation contained in this Declaration, and, if so, specifying each such default of which the signer may have knowledge, and (c) as to such further matters as Declarant, or such Named Mortgagee may reasonably request. If the Speaker fails to respond within ten (10) days after receipt of such second notice, it shall be deemed to made such certification, and such deemed certification may be relied on by Declarant, or such Named Mortgagee and their respective successors and assigns.

5.06 **Successors of Declarant**. References in this Declaration to "Declarant(s)" shall be deemed to include Successor Declarant(s), if any, which are holders of a Possessory Interest in the Subject Property. Notwithstanding anything to the contrary contained in this Declaration, no holder of a mortgage or other lien in the Subject Property shall be deemed to be a successor of Declarant for any purpose, unless and until such holder obtains a Possessory Interest and provided further that, following succession to such Possessory Interest, the holder of any such mortgage or lien shall not be liable for any obligations of Declarant as the "Declarant" hereunder

unless such holder commences to develop the Subject Property in accordance with the terms of Article II hereof or has acquired its interest from a Party who has done so.

5.07 **Parties-in-Interest**. Declarant shall provide the City with an updated Certification of Parties-in-Interest as of the recording date of this Declaration and will cause any individual, business organization or other entity which, between the date hereof and the effective and recording date and time of this Declaration, becomes a Party-in-Interest in the Subject Property or portion thereof to subordinate its interest in the Subject Property to this Declaration. Any and all mortgages or other liens encumbering the Subject Property after the recording date of this Declaration shall be subject and subordinate hereto as provided herein.

5.08 **Governing 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.

5.09 **Severability**. In the event that any provision 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 severed and the remainder of this Declaration shall continue to be of full force and effect.

5.10 **Applications**. Declarant shall include a copy of this Declaration as part of any application for an enlargement of the existing building or construction of a new building on the Subject Property submitted to the DOB.

5.11 **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, Declarant has executed and delivered this Declaration as of the day and year first above written.

DECLARANT:

New York Blood Center, Inc.

BY: _____
NAME: _____
TITLE: _____

STATE OF NEW YORK)
)ss.:
COUNTY OF NEW YORK)

On the _____ day of _____ in the year 2021 before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person or entity upon behalf of which the individual(s) acted, executed the instrument.

_____
Notary Public

SCHEDULE OF EXHIBITS

EXHIBIT A Metes and Bounds of the Subject Property
EXHIBIT B Parties in Interest Certification

Exhibit "A"

Metes and Bounds of the Subject Property

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, City, County and State of New York bounded and described as follows:

BEGINNING at a point on the southerly side of East 67th Street distant 100 feet, easterly from corner formed by the intersection of the easterly side of Second Avenue with the southerly side of east 67th Street;

RUNNING THENCE Easterly along the southerly side of East 67th Street 225 feet;

RUNNING THENCE Southerly and parallel with the easterly side of Second Avenue 200 feet 10 inches to the northerly side of East 66th Street;

RUNNING THENCE Westerly along the northerly side of East 66th Street 225 feet;

RUNNING THENCE Northerly and parallel with the easterly side of Second Avenue, 200 feet 10 inches to the southerly side of East 67th Street at the point or place of BEGINNING.

Exhibit "B"

Parties-in-Interest Certification

November 18th, 2021
City Council
250 Broadway, New York NY 10007

Dear City Council Members,

At this crucial moment, our city needs projects that support New York's recovery.

That's why we urge you **to vote YES on the New York Blood Center's proposal for an upgraded facility at the City Council Stated meeting next Tuesday, November 23rd.**

This project will not only bolster essential public health resources for our city, but will also create economic opportunities for thousands of New Yorkers and their families by creating good, prevailing wage construction and building service jobs, among other community benefits.

The Blood Center is a crucial healthcare institution for New York City. It provides 90 percent of the city's blood and 100 percent of the supply for our public hospital system. Upgrading its outdated facility will boost the Blood Center's ability to deliver this critical service, as well as allow it to expand its life-saving research on diseases like COVID-19.

The Center East project also stands to deliver many needed economic and community benefits for the area and our City as a whole, including family-sustaining jobs, school and park funding, and needed investment in New York's life sciences sector.

We believe that the Center East project will protect our health, provide high-quality jobs, and help drive New York City's economic recovery. We respectfully ask the City Council to approve it.

Sincerely,

Kyle Bragg
President, 32BJ SEIU

Gary LaBarbera
President, Building & Construction Trades Council

Kramer Levin

Paul D. Selver
Partner
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1177 Avenue of the Americas
New York, NY 10036
T 212.715.9100
F 212.715.8000

November 6, 2021

BY E-MAIL

Land Use Division of the City Council
250 Broadway, 16th Floor
New York, NY 10007

ATT: Raju Mann, Director
Julie Lubin, Esq., Counsel

Re: New York Blood Center, Inc. – 310 East 67th Street, Manhattan
ULURP Nos. C 210351 ZMM, N 210352 ZRM, C 210353 ZSM ("Applications")

Dear Sirs or Madams:

We are special land use counsel to the New York Blood Center, Inc. ("NYBC"). NYBC is the owner of the property located at 310 East 67th Street (Block 1441, Lot 40) in Manhattan ("Property"). It is also seeking, pursuant to the Applications, to redevelop the Property with a life sciences hub serving the neighborhood's medical and academic institutions and building New York City's life sciences industry.

We understand that, on November 4, Councilmember Ben Kallos sent you sketches of alternative building proposals prepared by the community representatives that he claims "meet every one of the Blood Center's goals." Each building would occupy 100% of the Property, have a floor area of 367,162 GSF / 248,523 ZSF (5.5 FAR), have six stories above grade and two below grade, and have a small area for mechanical equipment on the roof. Floor-to-floor heights would be 13 feet. The difference between the two buildings is that one contains only community facility space while the other contains a mix of commercial and community facility space. Councilmember Kallos has further claimed that the land use actions proposed for the alternative proposals are within the scope of the current Uniform Land Use Review Process.

We have reviewed these proposals with Ennead, the architects for Center East, and Lend Lease, NYBC's construction manager. Lend Lease has extensive experience developing life science projects. Lendlease U.S. Life Science has built $5.7 billion (14 million SF) of life science projects, with over 500 projects across the U.S. Their projects in New York City include Columbia University's Jerome L. Greene Science Center and Mount Sinai's Center for Science and Medicine. Our conclusions, which are discussed in greater detail below,

are that neither of the alternative proposals work and that their viability cannot withstand even the most cursory scrutiny. More specifically:

The Zoning Floor Area of Each Proposed Building
Exceeds the Permitted Floor Area of the Zoning District with Which it is Paired

Each building proposed has an FAR of 5.5. Unfortunately, the applicable floor area controls in R7A and C2-6A zoning districts permit only 4 FAR. It would simply be impossible to develop either building proposal in compliance with the Zoning Resolution under the mapping suggested by the community proposal. At best, each would produce a building with only ¾ of the claimed above grade space.

The Zoning Actions Needed to Authorize Each Building
Are Beyond the Scope of This Public Review Process

Councilmember Kallos' claim that "the Council could easily amend the application to R7A or C2-6A without sending [NYBC] back to square one" appears not to reflect a comprehensive review of the issue. In fact, the zoning modifications required for both proposed buildings are out of scope. The R7A building requires a different and more extensive waiver of rear yard equivalent controls and a waiver of lot coverage controls. The C2-6A building requires a different waiver of rear yard equivalent controls. None of these waivers is encompassed in the land use actions currently before the City Council. Moreover, when the heights of the buildings are adjusted, as Ennead explains below they must be to allow the buildings to function as 21st century laboratories, each building will require waivers of its district's height limit – waivers that are also different from those being sought in this ULURP.

Neither of the Proposed Buildings as the Designed Has the Inherent Capacity
To Function as Advanced, 21st Century Laboratory Space

Each of the buildings proposed has been artificially squeezed into an envelope dictated by the community's political position and not by sound architectural and engineering practice. Neither has been designed to satisfy the physical requirements for state-of-the-art laboratory space and thus cannot address NYBC's programmatic needs. Indeed, according to Ennead, each would have to be increased in height by about 17 feet to the top of the mechanical screenwall to be suitable for its proposed use. This is because:

- Thirteen-foot floor-to-floor heights will not work for a modern ground-up research laboratory. NYBC worked with its architects and engineers to address community concerns regarding shadows and was able to lower the height of the building by 50' (to 284') by reducing the floor-to-floor heights to 14.5'. But it heights cannot be reduced further. The currently proposed 14.5' floor-to-floor heights meet best practices and code requirements for laboratory facilities, including those published by the National Institute of Health (NIH), and represent a minimum height based on infrastructure system requirements. Based on equipment selection for the building, Ennead believes that the modified, a 14.5' floor-to-floor height is tight, but achievable; a 13' floor-to-floor will not work for this type of a building.

- The rooftop mechanical area provided by each of the proposals is inadequate to support the type and amount of equipment (air handling units, exhaust fans, cooling towers, emergency generators, etc.) that must be located at the top of a modern laboratory building. This equipment size is dictated by specific code requirements for air changes and exhaust systems in laboratories and incorporates energy efficiency measures and redundancy. The upper mechanical area would need to be a minimum of 30' tall and, because it would cover nearly the entire roof with a combination of interior and exterior (screened) equipment, it would not qualify as a permitted obstruction above a height limit.

The higher floor-to-floor heights and the more extensive mechanical equipment needed, together with the requirement that height for zoning purposes be measured from the average curb level (which is 4.5' below the first floor level), produces a laboratory building containing six above-grade floors and one mechanical floor with a height of 92' (not 80') to the roof level and 122' (not 105') to the top of the roof-top mechanical screenwall. The attached Exhibit shows compares the sections and the roof plans of the alternatives as proposed with those needed for a properly-functioning laboratory building with comparable floor area.

Other critical building features – in particular the need for cellar mechanical rooms and ground floor lobby, loading and support functions – reduce the amount of space that is available for laboratory use by NYBC or a commercial partner. Once the floor area required for these features has been allocated to them, only 2 ½ floors (and not the 3-1/2 floors claimed in the proposed alternatives) are available as leasable partner space in the 122' tall building.

The Proposed Alternatives Would Require NYBC to Self-Fund Substantially All of Center East, Reducing its Research Capacity and Putting the City's Blood Supply at Risk in an Emergency

One of the key considerations in the planning of NYBC's new home was its impact on the organization's capacity to continue to carry out its mission of engaging in research that advances the scientific understanding of blood-based diseases and maintaining a safe, reliable and affordable blood supply for the region. Those activities are today funded and secured by NYBC's endowment.

Prudence demands that, as a not-for-profit organization without a natural constituency of contributors, NYBC husband its endowment to the maximum extent possible. A lower endowment both reduces NYBC's capacity to research for cures that cannot be funded through other mechanisms and, by reducing the organization's financial safety net, puts at risk the stability, integrity and affordability of the blood supply to, among other clients, New York City's public hospitals and to the New York region.

NYBC's certified Center East proposal, even as reduced to 284', addressed this issue by providing enough commercial laboratory space to support private investment in the Property and its development to fund the full, $326 million cost of NYBC's new home. Neither of the proposed alternatives offers anywhere near enough commercial space to achieve this level of support. Moreover, because each is much smaller, NYBC's space would have a higher out-of-pocket cost because it would be required to bear a larger share of the cost of the building's demolition, excavation, foundation and other work

that has largely fixed costs regardless of the building's size. The height reduction's impact is then compounded by the fact that NYBC is drawing supportive funding from a much smaller commercial life science space.

The bottom line is that scaling back the building from 284' to a level comparable to that suggested by the community would produce an extraordinarily large funding shortfall that, in the absence of public funding, could only be filled by use of NYBC's endowment. In addition, and no less importantly, the project would deliver less than a quarter of the commercial life science space that will be invaluable toward the creation of a life sciences economy capable of competing with Boston and San Francisco.

We respectfully suggest that the community's proposals achieve neither NYBC's nor New York City's goals for the Center East project.

Thank you very much for your attention to this matter.

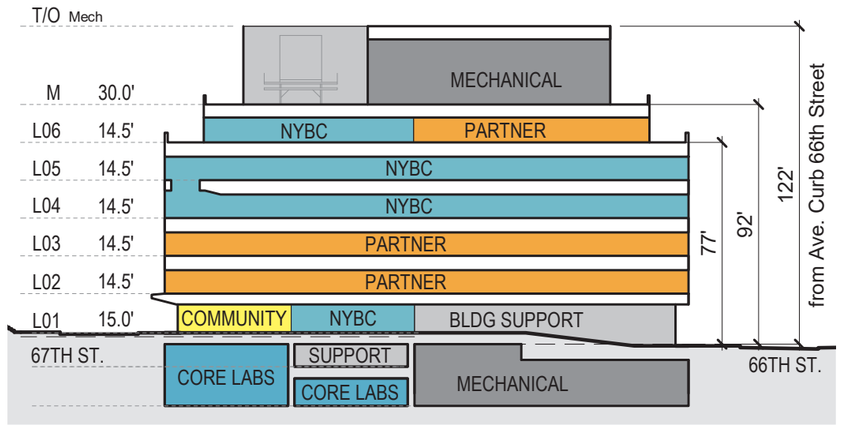
Very truly yours,

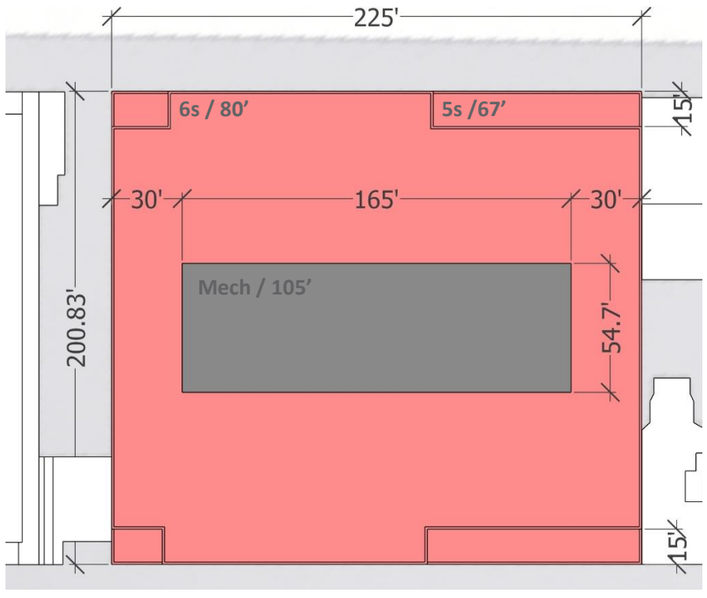
Paul D. Selver
Partner

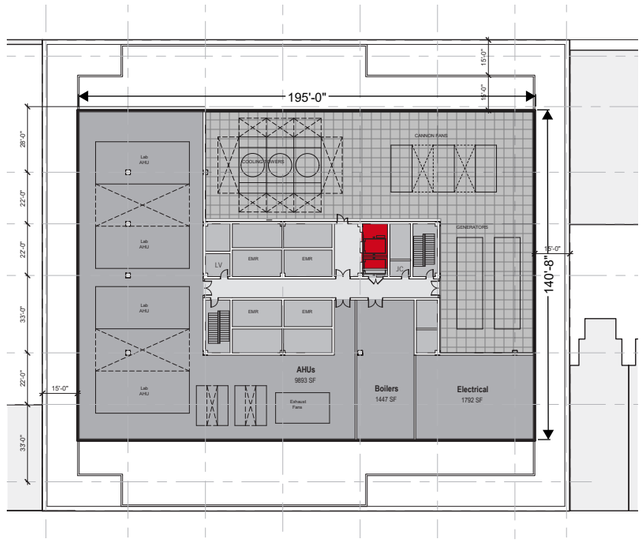
Exhibit

Community Proposal Comparison

Community Proposal Comparision







Story	Height	GFA/FL (sf)	Tot. GFA (sf)	Running Tot. GFA (sf)	USE
Sub-Cellar	-	45,187	45,187	45,187	Community Facility
Cellar	-	45,188	45,188	90,375	Community Facility
GF	15'	45,188	45,188	135,562	Community Facility
2	28'	45,188	45,188	180,750	Community Facility
3	41'	45,188	45,188	225,938	Commercial / CF
4	54'	45,188	45,188	271,126	Commercial
5	67'	45,188	45,188	316,313	Commercial
6	80'	41,812	41,812	358,125	Commercial
Bulkhead	100'	9,037	9,037	367,162	Mechanical

Lot Size	45,186.75
Built FAR	5.5
CF FAR	2.3
Commercial FAR	3.2

Story	Ht	GFA	ZFA	Use
Sub-Celler	15.0	34,655	0	Mechanical / CF
Cellar	13.0	25,060	0	Mechanical / Building Support
Ground Floor	15.0	42,934	38,882	CF / Lobby, Loading
2	14.5	45,108	44,408	Commercial
3	14.5	45,108	44,408	Commercial
5	14.5	45,108	44,408	CF
5	14.5	45,108	44,408	CF
6	14.5	36,458	35,075	Commercial / CF
Mechanical	30.0	19,597	0	Mechanical
	117.5	**339,136**	**251,589**	
L1 to Ave Curb B	4.5			
Ht above Ave Curb B	**122.0**			

Lot Size	45186
Built FAR	5.6
CF FAR	3.0
Comm. FAR	2.6

Comments to Community Proposal

- 13' Fl to Fl is not appropriate for Lab buildings
  - Note that overall height needs to be measured from Average Curb Elevation (which is +/- 4.5' lower than
- Mechanical at the top of the building will be taller than indicated to accommodate equipment (min. 30' vs. 25')
- Mechanical at the top of the building will be significantly larger than indicated (nearly full footprint of upper floor)
- Massing yields less usable SF than indicated
  - Ground floor is primarily lobby, loading dock and building support; a small portion is available for NYBC use, therefore this stacking will yield 2.5 floors for partner use, not 3.5
  - Below-grade SF includes significant space for mechanical equipment, including double-height spaces; therefore there is less space available below grade for NYBC than indicated.

Kramer Levin

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November 1, 2021

BY HAND

Office of the City Clerk
City of New York
141 Worth Street
New York, NY 10013

BY E-MAIL

Land Use Division of the City Council
Att'n Julie M. Lubin, Esq., Counsel
250 Broadway, 16th Floor
New York, NY 10007
(jlubin@council.nyc.gov)

Re: Protests Against Applications by New York Blood Center, Inc.
(Applications Nos. C 210351 ZMM, N 210352 ZRM, C 210353 ZSM)

Dear Sirs or Madams:

This law firm represents New York Blood Center, Inc. ("NYBC"), the owner of the property located at 310 East 67th Street (Block 1441, Lot 40) in Manhattan, and the applicant on the above-referenced applications. These applications are currently pending before the City Council.

We have obtained copies of protests against the City Planning Commission's resolutions approving NYBC's applications. The protests were filed with the Office of the City Clerk, ostensibly pursuant to § 200(a)(3) of the City Charter, by or on behalf of the Board of Managers of The 301 East 66th Street Condominium and various unit owners in that condominium, and by or on behalf of 333 East 66th Street Corp., which claims to be a cooperative apartment corporation.

We submit this letter to object to the protests and to explain why they are ineffective and do not require approval of NYBC's applications by a three-fourths vote of the City Council.

I. A Section 200(a)(3) protest cannot challenge a Zoning Map Amendment or a Zoning Special Permit.

Each of the two building representatives filing protests has filed multiple protests, challenging the zoning map amendment (C 210351 ZMM), the zoning text amendment (N 210352 ZRM), and the special permit (C 210353 ZSM), respectively. The protests against the zoning map amendment and the special permit are nullities that have no legal effect. Charter § 200(a)(3) does not authorize protests against zoning map amendments or special permits. It only authorizes protests against amendments to the text of the Zoning Resolution.

Section 200 provides that it is applicable to:

> "any existing resolution or regulation of the council, the board of estimate or of the city planning commission to regulate and limit the height and bulk of buildings, to regulate and determine the area of yards, courts and other open spaces, to regulate density of population or to regulate and restrict the locations of trades and industries and location of buildings designed for specific uses or creating districts for any such purpose, including any such regulation which provides that the board of standards and appeals may determine and vary the application of such resolutions or regulations in harmony with their general purpose and intent and in accordance with general or specific rules contained in such regulations . . . ." Charter § 200(a).

The "resolution or regulation" referred to in the foregoing language is the Zoning Resolution.

Charter § 200(a)(1) confirms by its text that it applies to "a resolution to amend the text of the zoning resolution." Similarly, § 200(a)(2) states that it is applicable to "[a]ny resolution by the commission approving a change in the text of the zoning resolution . . . ."

Charter § 200(a)(3) authorizes a protest "against *such a resolution* approved by the city planning commission . . . within thirty days from the date of the filing of *such resolution* with the council " [*emphasis added*]. The "such a resolution" referenced in § 200(a)(3) can only be the resolution described in § 200(a)(1) and (a)(2): "a resolution to amend the text of the zoning resolution."

Accordingly, the protests against the zoning map amendment and the special permit are nullities and should be disregarded in their entirety. The balance of this letter solely addresses the protests against the amendment to the text of the Zoning Resolution.

II. The entities filing the protests have not demonstrated that they have the authority to act on behalf of the land owners.

Charter § 200(a)(3) authorizes the filing of a protest "duly signed and acknowledged by the owners of … land." The pending protests were filed in the name of the Board of Managers of the 301 East 67th Street Condominium as owner of the Condominium's land (as well as some self-described unit owners) and by the 333 East 66th Street Corp., respectively. However, no evidence of their authority to act on behalf of the actual owners of the land has been submitted.

The protest filed in the name of the Condominium states that a special meeting of unit owners was held on October 20, 2021, at which a majority of unit owners adopted a resolution authorizing the protest, and that the Board of Managers held a special meeting on the same day and adopted a resolution consenting to the protest. Certified copies of both resolutions should have been included with the protest as proof of the Board's authority, but are missing. Nor has sufficient proof been submitted of the authority to act of the individual (Mark Epstein) who purports to have signed the protest on behalf of unit owners in his capacity as a corporate officer.

Similarly, the protest filed in the name of 333 East 66th Street Corp. states that a special meeting of the corporation's Board of Directors was held on October 14, 2021, and that the Board adopted a resolution authorizing the protest, but no certified copy of this resolution was included with the protest.

Requiring that a legislature act by more than a simple majority on a pressing public policy matter is an action of the utmost seriousness. Those that seek it should be held to the highest standard of proof in any determination as to whether they have met the statutory test for imposing such a requirement. We submit that the protesters have failed to do so here. In the absence of definitive proof conclusively establishing that these protests were filed with the authority of the actual owners of the relevant land, the protests are fundamentally defective and should be rejected on this basis. No title insurance company would issue a policy of title insurance without reviewing the actual underlying resolutions authorizing a board of directors or board of managers to act. The City should require no less. It should not rely solely on the uncorroborated documents that were filed with the City Clerk.

III. <u>The protests are ineffective because they were not filed by the owners of 20% of the adjacent land within 100 feet of the area affected by the zoning text amendment.</u>

Finally, the protests against the amendment to the text of the Zoning Resolution have not been filed on behalf of the owners of 20% of the land adjacent to and within 100 feet of the area affected by the text amendment, in a single protest. Therefore, the protests do not comply with Charter §200(a)(3), are ineffective and should be disregarded.

Charter § 200(a)(3) allows a protest to be filed against resolutions approving amendments to the text of the Zoning Resolution by owners of 20% of the "area of" any of three categories of land:

> "(1) the land included in changes proposed in such proposed resolution, or
>
> "(2) the land immediately adjacent extending one hundred feet therefrom, or
>
> "(3) the land, if any, directly opposite thereto extending one hundred feet from the street frontage of such opposite land."

On their faces, the two protests addressed to the zoning text amendment expressly specify that they have been filed "pursuant to § 200 subd. (a)(3)(2) of the New York City Charter" – *i.e.*, the subparagraph authorizing a protest by the owners of the area of 20% of "the land immediately adjacent [to the land included in changes proposed]

extending one hundred feet therefrom" – and, thus, not pursuant to either of the other two subparagraphs of § 200(a)(3).

The land "included in changes proposed in such proposed resolution" is only the Blood Center site, Block 1441, Lot 40. As approved by the City Planning Commission on September 21, 2021, the proposed text amendment would amend the text of Section 74-48 of the Zoning Resolution as follows:

> 74-48
> Scientific Research and Development Facility
>
> In C2-7 Districts within Community District 8 in the Borough of Manhattan, and in C6 Districts, the City Planning Commission may permit a scientific research and development facility ~~containing~~ as a commercial use, where such facility contains laboratories for medical, biotechnological, chemical or genetic research, including space for production, storage and distribution of scientific products generated through research and ~~may modify height and setback regulations for the facility. Such facility shall conform to the performance standards applicable to M1 Districts and occupy a #zoning lot# that either contains a minimum #lot area# of 40,000 square feet or comprises an entire #block#. No #residential use# is to be located anywhere on a #zoning lot# containing such a facility,~~ in conjunction with such facility, may allow the modifications set forth in paragraph (a) of this Section. For a special permit to be granted, applications shall comply with conditions in paragraph (b) and the findings of paragraph (c) of this Section. Additional requirements are set forth in paragraph (d)." CPC Report N 210352 ZRM.
>
> Matter underlined is new, to be added;
> Matter ~~struck out~~ is to be deleted.

This text amendment is applicable in C2-7 zoning districts located in Community District 8. Furthermore, subsection (b)(2) of Section 74-48 as amended additionally limits its applicability to zoning lots of at least 40,000 square feet or occupying an entire block. The Blood Center's site is the only property that meets all of these criteria for the applicability of the text amendment.

Neither of the protests was filed by an owner of land affected by the proposed text amendment, and so neither can satisfy the criteria of subparagraph 1 of § 200(a)(3). Neither protest was filed by an owner of land "directly opposite" (in other words, across a street from) the Blood Center site, and so neither can satisfy the criteria of subparagraph 3. As the protests themselves acknowledge, only subparagraph 2 can apply. However, the two protests fail to meet the required 20% threshold.

As shown in the attached diagram prepared by AKRF, the area of the land within 100 feet of the Blood Center site is 118,030 square feet. All of the land owned by the 301 East 67th Street Condominium (Block 1441, Lot 7501) is within this area; it comprises 20,083 square feet of land. Only a portion of the land owned by the 333 East 66th Street Owners Corporation (Block 1441, Lot 17) is within 100 feet of the Blood Center site; this portion of the Corporation's land comprises 2,546 square feet. These two parcels together thus comprise a total of 22,629 square feet of the adjacent land within 100 feet from the

Blood Center site, or only 19.2% of the 118,030 square feet of land within 100 feet of the Blood Center site. The protests therefore fail to meet the required 20% threshold and are ineffective.

In addition, Charter § 200(a)(3) authorizes the filing of "*a* protest" – a single protest – by owners of 20% of the relevant land area. Any protest, on its own, would need to satisfy the 20% threshold in order to meet the requirements of the Charter. A single protest could be filed on behalf of multiple land owners in order to meet this threshold, but the Charter, in its plain language, does not contemplate aggregating the land area represented by multiple protests. The protests filed here do not meet the 20% threshold, either individually or collectively.

The foregoing analysis includes the public streets around Block 1441 in the calculation of the amount of adjacent land within 100 feet of the Blood Center site. We submit that this analysis is the correct application of subparagraph (2) of Section 200(a)(3) of the City Charter. It is a fundamental principle of statutory interpretation that clear and unambiguous language must be applied as written. *See*, *e.g.*, *Kuzmich v. 50 Murray St. Acquisition LLC*, 34 N.Y.3d 84, 91 (2019) ("As we have repeatedly explained, 'courts should construe unambiguous language to give effect to its plain meaning'" (quoting *DaimlerChrysler Corp. v. Spitzer*, 7 N.Y.3d 653, 660 (2006))). Here, the plain language of the City Charter defines the relevant property as "the land immediately adjacent extending one hundred feet" from the affected site. It includes no exceptions. In contrast, subparagraph 3 of § 200(a)(3) clearly directs that streets are to be excluded from the measurement of the applicable property by defining the relevant property as land "directly opposite thereto extending one hundred feet *from the street frontage* of such opposite land" [emphasis added]. Clearly, then, the drafters of § 200(a)(3) knew how to refer to streets when they intended to do so. Omitting the public streets from the area of land within 100 feet of the Blood Center site would amount to an impermissible re-writing of the Charter.

There are very few past examples of Charter § 200(a)(3) protests, and we are not aware of any protests filed since adoption of the ULURP amendments to the Charter in 1975. Nevertheless, there are other New York State statutes and local zoning ordinances containing similar protest provisions. *See*, *e.g.*, Town Law § 265; Village Law § 7-708; General City Law § 83. We have researched the case law applying these provisions insofar as relevant to the present case.

In *Hittl v. Buckhout*, 13 Misc.2d 230 (Sup. Ct. Westchester Cty. 1958), *aff'd,* 10 A.D.2d 719 (2d Dept. 1960), the Supreme Court adopted a plain-language reading of similar protest provisions in the Village Law. The court therefore concluded that all immediately adjacent property should be included in calculating the area of adjacent property, including recreational property owned by the Village of Pleasantville and aqueduct-related property owned by the City of New York. According to the court, the statutory language was "clear and unambiguous," and "[t]he Legislature has provided for a certain percentage of *the owners of* adjacent land and has not restricted or limited the class so as to exclude property owned by a municipality" [emphasis in original]. The Appellate Division affirmed without opinion. 10 A.D.2d 719.

This principle was followed in *B.R.M. Realty Corp. v. Flynn*, 39 Misc.2d 1049 (Sup. Ct. Westchester Cty. 1963), *rev'd on other grounds*, 20 A.D.2d 798 (2d Dept. 1964), involving

a protest under the City of Yonkers zoning ordinance. There, the court held that streets should be included in calculating the land area within 100 feet. According to the court, it was "unable to see any distinction between this case and" the *Hittl* case, in that "there seems to be no distinction between a publicly-owned street and a publicly-owned recreation area." On appeal, the Appellate Division reversed and remanded the case to the trial court for an evidentiary hearing on the issue of whether the protests complied with any of the three categories of required land ownership, but nothing in the appellate court's decision indicates disapproval of the trial court's view that public streets should be included in the land to be taken into account. In fact, if the Appellate Division believed that the trial court was wrong to include the public streets in the area within 100 feet of the affected site, there would have been no reason for an evidentiary hearing as to whether this requirement was satisfied.

In *Biedermann v. Town of Orangetown*, 125 A.D.2d 465 (2d Dept. 1986), however, a case decided under Town Law § 265, the Appellate Division held that the land within 100 feet of the area affected by a zoning action should not include public streets. Contrary to basic principles governing the interpretation of a statute that is clear on its face, the court in *Biedermann* imported a limitation into the statutory language that does not appear in the statute itself. Nevertheless, the *Biedermann* decision has no binding precedential effect here, because it interpreted the Town Law, not the New York City Charter. Significantly, moreover, in *Biedermann* the court did not repudiate, criticize or disavow its affirmance in *Hittl* nor its implicit acceptance of the trial court's reasoning in *B.R.M. Realty*.

Determining the appropriate reading of the subparagraph (2) protest provision of the City Charter is not complicated. The fact that the land measurement should include all land within 100 feet of the site affected by the text amendment, regardless of ownership, is dictated by the plain language of the Charter. Moreover, it is more appropriate in the dense urban environment of New York City, where a higher proportion of land in many areas – particularly Manhattan – is dedicated to public streets. Such urban density was not present in the *Biedermann* case, which involved the proposed expansion of a suburban shopping center. The following link to Google Maps shows the shopping center at issue in *Biedermann* and demonstrates the non-urban, non-dense nature of the site at issue there and the immediately surrounding neighborhood:

https://www.google.com/maps/@41.0600391,-74.0110097,3a,75y,283.33h,89.03t/data=!3m6!1e1!3m4!1skS5AX11gz2HOonlZ3j_fxw!2e0!7i16384!8i8192

Failing to include adjacent streets in the relevant land for the purpose of determining a protest's validity would give a small class of neighbors an artificial and outsized influence over land use decisions. It would privilege this small class of owners with close to veto power over local land use, without regard to the careful balancing of interests reflected in the ULURP process. Indeed, in New York City, unlike in other municipalities in New York State, the protest provisions of the City Charter sit alongside the ULURP process, codified in Charter §§ 197-c and 197-d, which affords all interested members of the public an opportunity to participate extensively in the land use review process, and make their opinions and concerns known to the Community Board, Borough President, City Planning Commission, and City Council.

For the reasons above, we believe that the protests are defective, and should be rejected.

Thank you very much for your attention to this submission.

Very truly yours,

Paul D. Selver
Partner

cc (by e-mail): Stephen Louis, Esq. (slouis@law.nyc.gov)
Hilary Meltzer, Esq. (hmeltzer@law.nyc.gov)
Sheryl Neufeld, Esq. (sneufeld@law.nyc.gov)

Exhibit

Land Area Calculation Within 100 Feet

10.28.21

0000 *Tax Block Number*

0 *Tax Lot*

Land immediately adjacent extending 100 feet from the project site (total area: 118,030 sq ft)

Portions of Block 1441 Lot 7501 (Condo No. 693) and Lot 17 within 100 feet of project site (total combined area: 20,083 sq ft + 2,546 sq ft = 22,629 sq ft)

Lots 7501 and 17 represent 22,629 / 118,030 or approximately 19.2% of the land immediately adjacent extending 100 feet from the project site.

Area totals provided in the legend are approximate, derived using best available publicly-accessible digital data and industry-standard software, and do not represent survey-level accuracy. Tax lot data source (including square footage): NYC Dept. of City Planning MapPLUTO Release 21v3 (Sept. 2021) containing data from NYC Dept. of Finance Property Tax System and Digital Tax Map. Area calculations performed using ArcGIS Pro software and rounded to the nearest square foot.

AKRF

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October 27, 2021

BY HAND

Office of the City Clerk
City of New York
141 Worth Street
New York, NY 10013

BY E-MAIL

Land Use Division of the City Council
Att'n Julie M. Lubin, Esq., Counsel
250 Broadway, 16th Floor
New York, NY 10007
(jlubin@council.nyc.gov)

Re: Protests Against Applications by New York Blood Center, Inc.
(Applications Nos. N 210352 ZRM, C 210351 ZMM, C 210353 ZSM)

Dear Sirs or Madams:

This law firm represents New York Blood Center, Inc. ("NYBC"), which is the applicant on the above-referenced applications. The applications have been approved by the City Planning Commission and now are pending before the City Council.

We have learned that, in the last few days, protests against NYBC's applications have been filed with the Office of the City Clerk, ostensibly pursuant to § 200(a)(3) of the City Charter, by or on behalf of the Board of Managers of The 301 East 66th Street Condominium and various unit owners in that condominium, and by or on behalf of 333 East 66th Street Corp., which claims to be a cooperative apartment corporation.

We believe that these protests are defective and ineffective for multiple reasons, and we intend to submit an analysis supporting that position. Therefore, we request that no determination be made as to the validity of those protests until we have completed and submitted our analysis, which we will endeavor to do promptly.

Because of our uncertainty as to who will take responsibility for determining on behalf of the City the protests' validity, we are copying the Chiefs of the Law Department's Legal Counsel, Environmental and Administrative Law Divisions on this letter.

Thank you very much for your attention to this request.

Very truly yours,

Paul D. Selver
Partner

PDS:jlb

cc (by e-mail): Stephen Louis, Esq. (slouis@law.nyc.gov)
Hilary Meltzer, Esq. (hmeltzer@law.nyc.gov)
Sherrill Kurland, Esq. (skurland@law.nyc.gov)

CARTER LEDYARD MILBURN

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New York, NY 10005
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November 18, 2021

BY EMAIL

Michael McSweeney, City Clerk
Office of the City Clerk
The City of New York
141 Worth Street
New York, NY 10013

Re: New York Blood Center Project, NYC Charter Section 200(a)(3) Protest

Dear Mr. McSweeney:

Our firm represents Friends of the Upper East Side Historic Districts in connection with ULURP review of the New York Blood Center application.

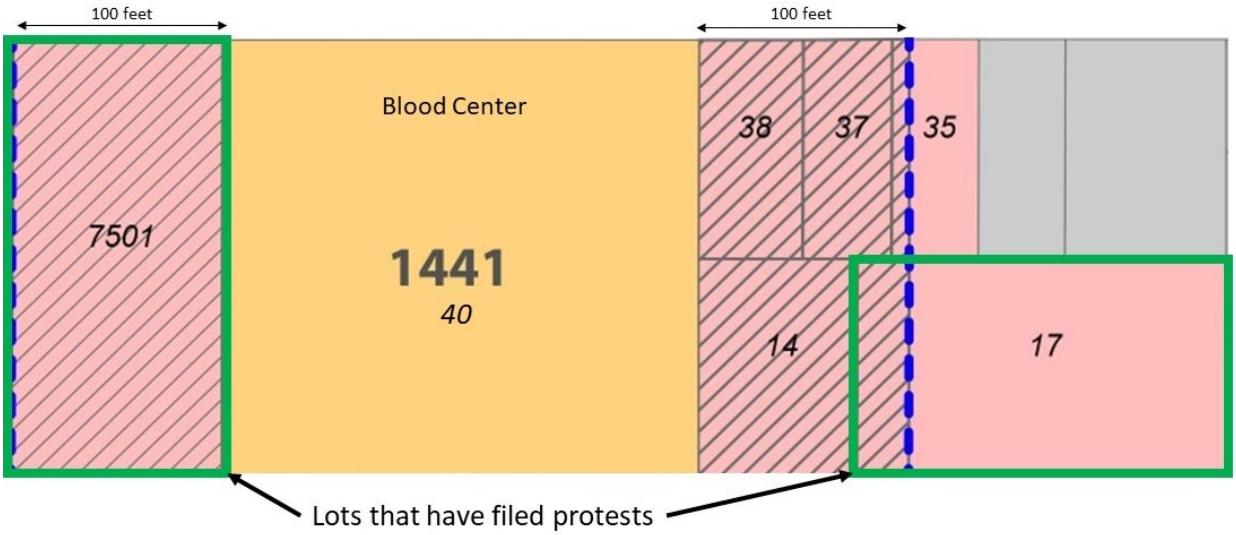
It has come to our attention that there are press reports indicating that "legal advisors" to the Blood Center have claimed that protests filed by nearby property owners pursuant to NYC Charter section 200(a)(3) would fail because "the objecting co-op and condo don't represent 20% of the land area as required."[1] Although we do not represent those protesting owners we have followed the issue closely, and we write to point out that if indeed such a claim has been advanced, it is wrong. The protests submitted against N 210352 ZRM meet the requirements of the NYC Charter for triggering a supermajority vote of the City Council.[2]

As you know, section 200(a)(3) provides that any of three distinct groups may file a protest against a resolution of the City Planning Commission approving certain land use changes, including text amendments:

> the owners of twenty per centum or more of the area of:
>
> (1) the land included in changes proposed in such proposed resolution, or
>
> (2) the land immediately adjacent extending one hundred feet therefrom, or
>
> (3) the land, if any, directly opposite thereto extending one hundred feet from the street frontage of such opposite land

[1] From SoHo to Gowanus to the Upper East Side, de Blasio Developments Hit Council - THE CITY
[2] We do not comment on protests against other resolutions.

The focus of this letter is the protest of CPC resolution N 210352 ZRM, approving a text amendment that would impact the zoning controls on a single tax lot – block 1441 lot 40 in Manhattan ("Impacted Land"). It is our understanding that the protest is brought pursuant to subsection (a)(3)(2) of Charter Section 200. That subsection refers to land within 100 feet of the Impacted Land, without crossing any public streets. *See, e.g., Dole v New York* 182 Misc. 408 (Sup Ct. Bronx County, 1943).[3] The total land area within 100 feet of the Impacted Land without crossing any streets (the hatched area on the diagram below) totals roughly 40,000 square feet. It is our understanding that the owners of the land outlined in green have filed protests. Given that the lot to the west of the Impacted Land is by itself 20,000 square feet, the protesters clearly meet the 20% threshold.



We have also had an opportunity to review the substance of the petitions and supporting materials and find that they recite all the necessary elements required for a valid protest. Nevertheless, we assume based on the aforementioned press reports that attorneys for the City and the Applicant have taken a contrary position and shared that thinking with the Clerk's Office. As a counterpoint, we draw your attention to relevant case law.

New York State courts reviewing protests brought under analogous provisions in New York State Town and Village Law, sections 265 and 7-708, respectively, have resolved any ambiguities in favor of property owners and against municipalities that have applied unduly strict statutory construction in an attempt to avoid a mandated supermajority vote. For example, in *Bismarck v. Bayville*, 244 N.Y.S.2d 529, 531 (Sup. Ct. Nassau County 1963), the Supreme Court rejected an effort by the Village of Bayville to deem invalid a protest brought pursuant to Village Law Section 179 (predecessor to 7-708 and materially identical[4]) by an owner of more than 20% of property proposed to be rezoned, on grounds that the protest was signed by an attorney rather than the property owner. The Court stated

[3] By contrast, subsection (a)(3)(3) refers to land within 100 feet of street frontage directly across the street from impacted land.
[4] *See Id*. at 530.

> [l]egislation and ordinances affecting the rights of property owners are in derogation of common law and must be strictly construed against the municipality . . . the purposes of the statute insofar as it related to the filing of a protest, is to provide a means by which the opposition of an owner or owners of property most immediately effected may be made known to the municipal authorities. Consequently, a technical interpretation which would deprive an owner from having her opposition considered would frustrate rather than promote the aim of the statute.

In a more recent case, the New York Supreme Court in Renssalaer County similarly rejected an attempt by the municipality to invalidate a petition through a strict application of Town Law Section 265:[5]

> The statute is designed to protect affected property owners. Here, each petition identified the amendment by its official title, stated that the signor was a property owner affected by the amendment, and that he or she protested the adoption of the amendment. This Court declines to interpret the statute in a manner which would add additional, undefined obstacles to the exercise of one's right to protest zoning changes. Any other interpretation would 'frustrate, rather than promote the aim of the statute.'

Matter of Hanson v. Town Bd. Of the Town of Nassau, 16 Misc. 3d 1137(A) (Sup. Ct. Rensselaer County 2007) (rejecting Town's efforts to invalidate protest petition, quoting *Bismarck v. Bayville*). Here, the protest clearly meets this standard.

Similarly, where multiple owners own an undivided interest in a parcel of real property, and less than all of those owners have signed the protest, courts have consistently rejected attempts to invalidate the protest on that basis. *See, e.g. Matter of Gosier v. Aubertine*, 71 A.D.3d 76 (App. Div. 4th Dep't 2009) (rejecting attempt to invalidate signatures on grounds that only one of two joint tenants signed for select properties, finding it would be "unfair for one spouse to withhold his or her consent to the signing of the petition and thereby prevent any of the property from being included in the protest petition . . . . If the Legislature deems it appropriate to define 'owners' as all of the record owners of property, it may certainly revise the statute to do so."). Clearly a court would come out the same way in a case where, as here, the signing condominium unit owners own over 80% of an undivided interest in the relevant real property. Pursuant to *Gosier*, that by itself should be enough, but it is our understanding that the protesting condominium owners have also produced bylaws indicating in substance that an affirmative vote of a majority of the unit owners is binding on all unit owners for all purposes, as well as evidence that such a vote authorizing the protest took place.

---

[5] *See Matter of Hanson v. Town Bd. Of the Town of Nassau*, 16 Misc. 3d 1137(A) (Sup. Ct. Rensselaer County 2007) ("Town Law § 265 provides that town zoning changes may be approved by at least three-fourths (a super-majority) of the members of a town board, if

> such amendment is the subject of a written protest presented to the town board and signed by
> a) the owners of twenty percent or more of the area of land included in such proposed change; or
> b) the owners of twenty percent or more of the area of land immediately adjacent to the land included in such proposed change,extending one hundred feet therefrom; or
> c) the owners of twenty percent or more of the area of land directly opposite thereto, extending one hundred feet from the street frontage of such opposite land.)

Respectfully, in light of these precedents and the facts presented to the Office of the City Clerk by the petitioners, there can be no question that the protest was validly brought by "the owners of twenty per centum or more of the area of … the land immediately adjacent extending one hundred feet" from the land impacted by City Planning Commission resolution N 210352 ZRM.

Thank you for your consideration.

Sincerely,

Karen E. Meara

KEM:ewl

c:

Patrick Synmoie, General Counsel
Office of the City Clerk

Jason Otaño, General Counsel
New York City Council

Raju Mann, Director of Land Use
New York City Council

Julie Lubin, General Counsel to Committee on Land Use
New York City Council

Hilary Meltzer, Chief
Environmental Law Division
New York City Law Department

George M. Janes

& Associates

250 E. 87th Street

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Problems with the Blood Center Technical Memo

November 19, 2021

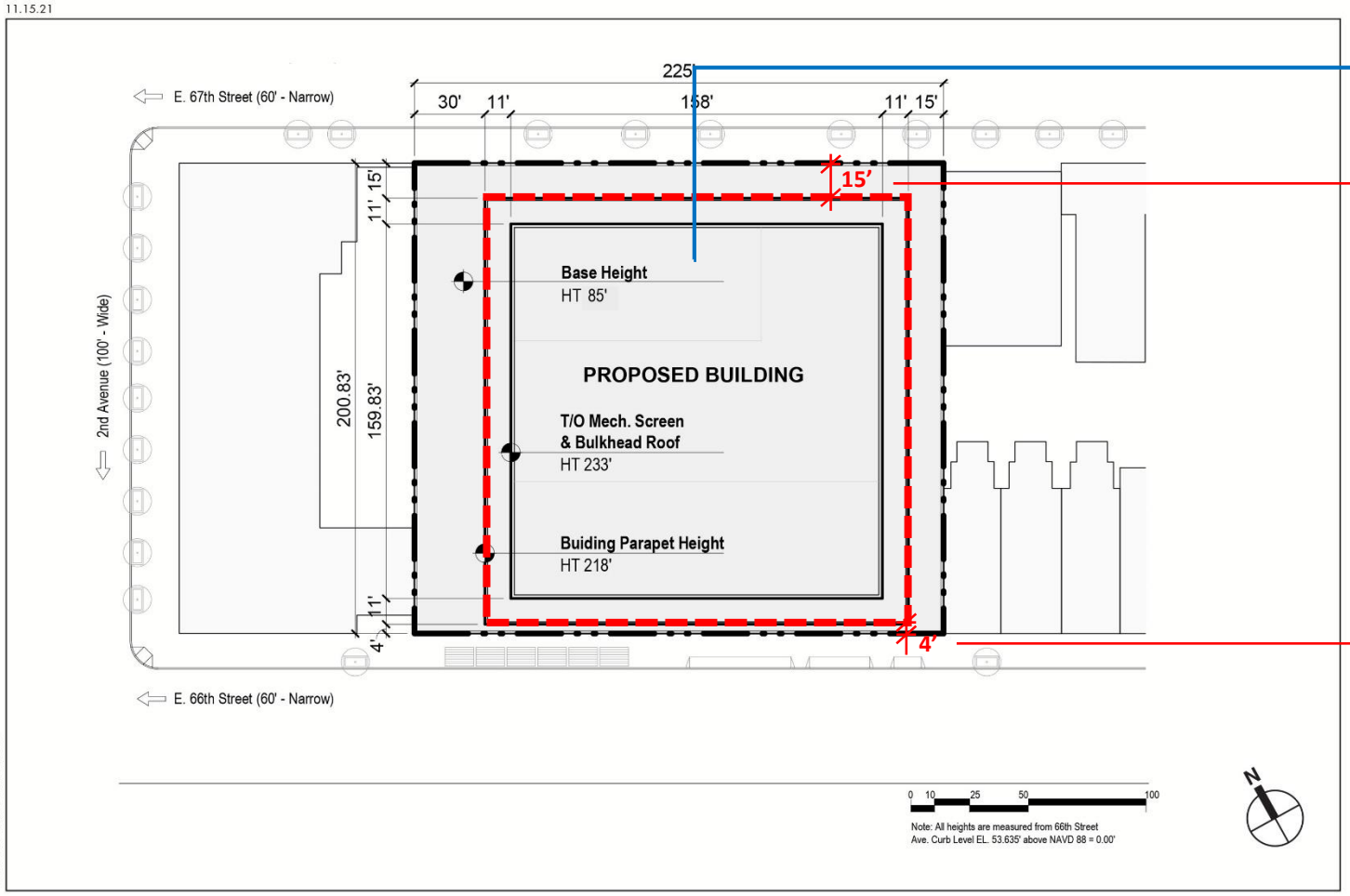
On November 16 DCP released the Technical Memorandum 001 on the Council modification to the Blood Center

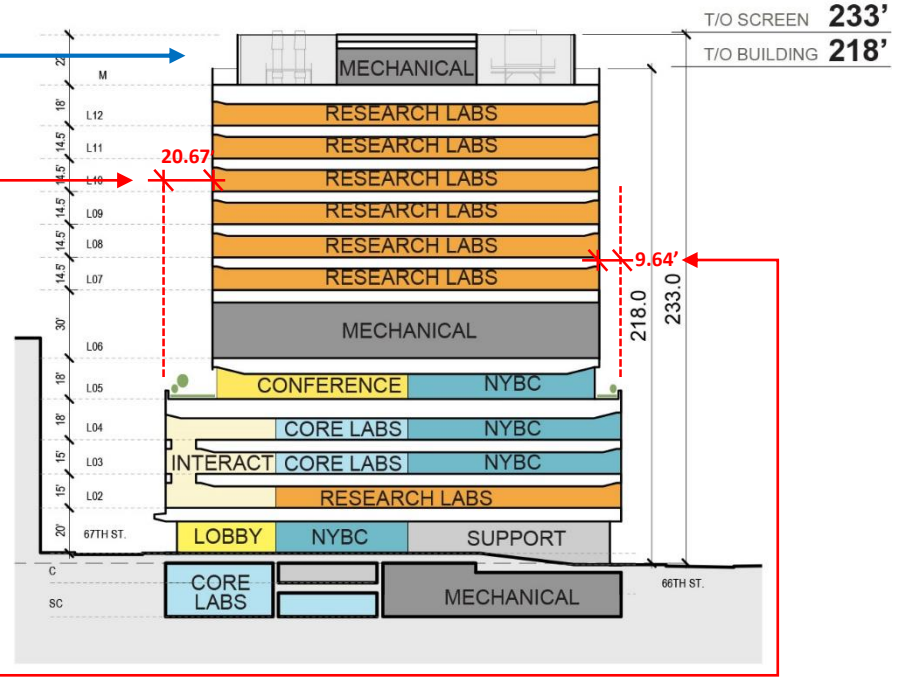
- Figure 1 shows a section of both the FEIS proposal and the proposal after City Council modification
- Figure 2 shows the roof plan after City Council modification
- The section and the plan do not match, and describe different buildings
- The differences are apparent to the naked eye. They have been measured in CAD to show how large the differences are
- The two figures show substantially different setbacks from the street above the base and describe different buildings

The plan shows 15’ setbacks on 67th Street and 4’ setbacks on 66th Street. The section shows 20.67’ setback on 67th and a 9.64’ setback on 66th

218’
To top of building parapet

233’ to top mechanical screen and mechanical roof





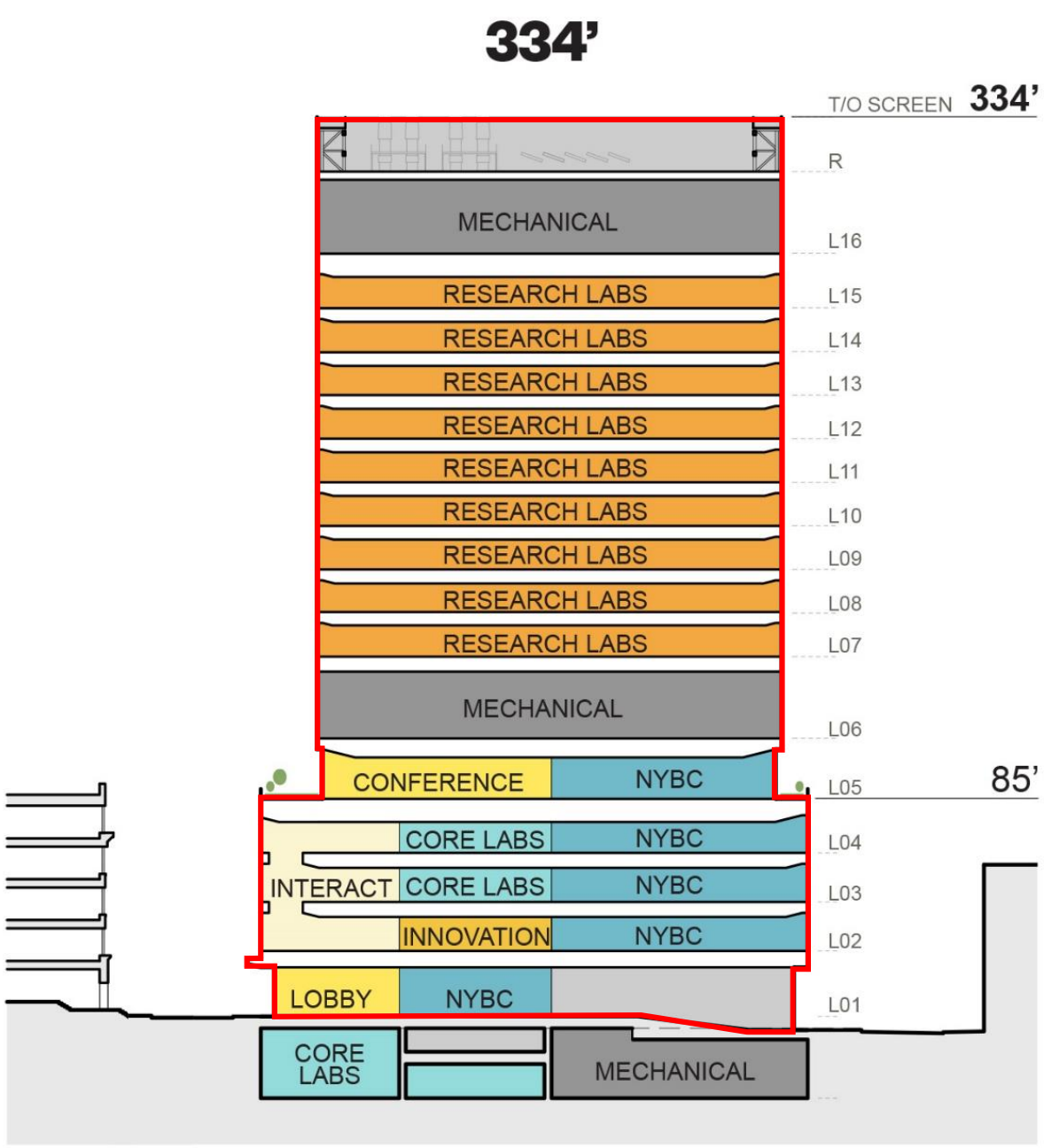
Section setback dimensions are measured from scaled CAD drawing created from tech memo. Plans and section drawing do not match

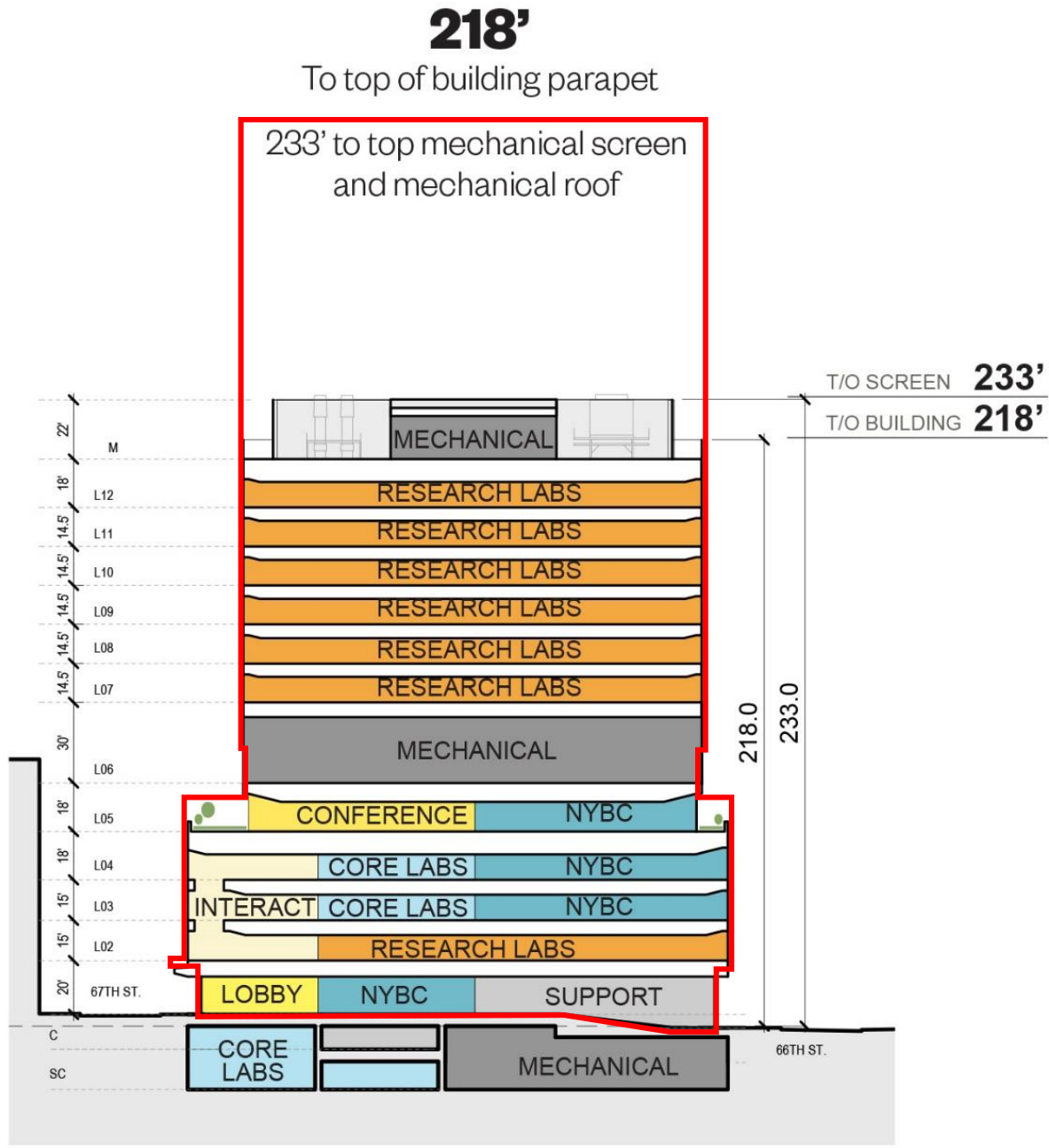
Source: Ennead Architects

Reduced Height Building — Roof Plan

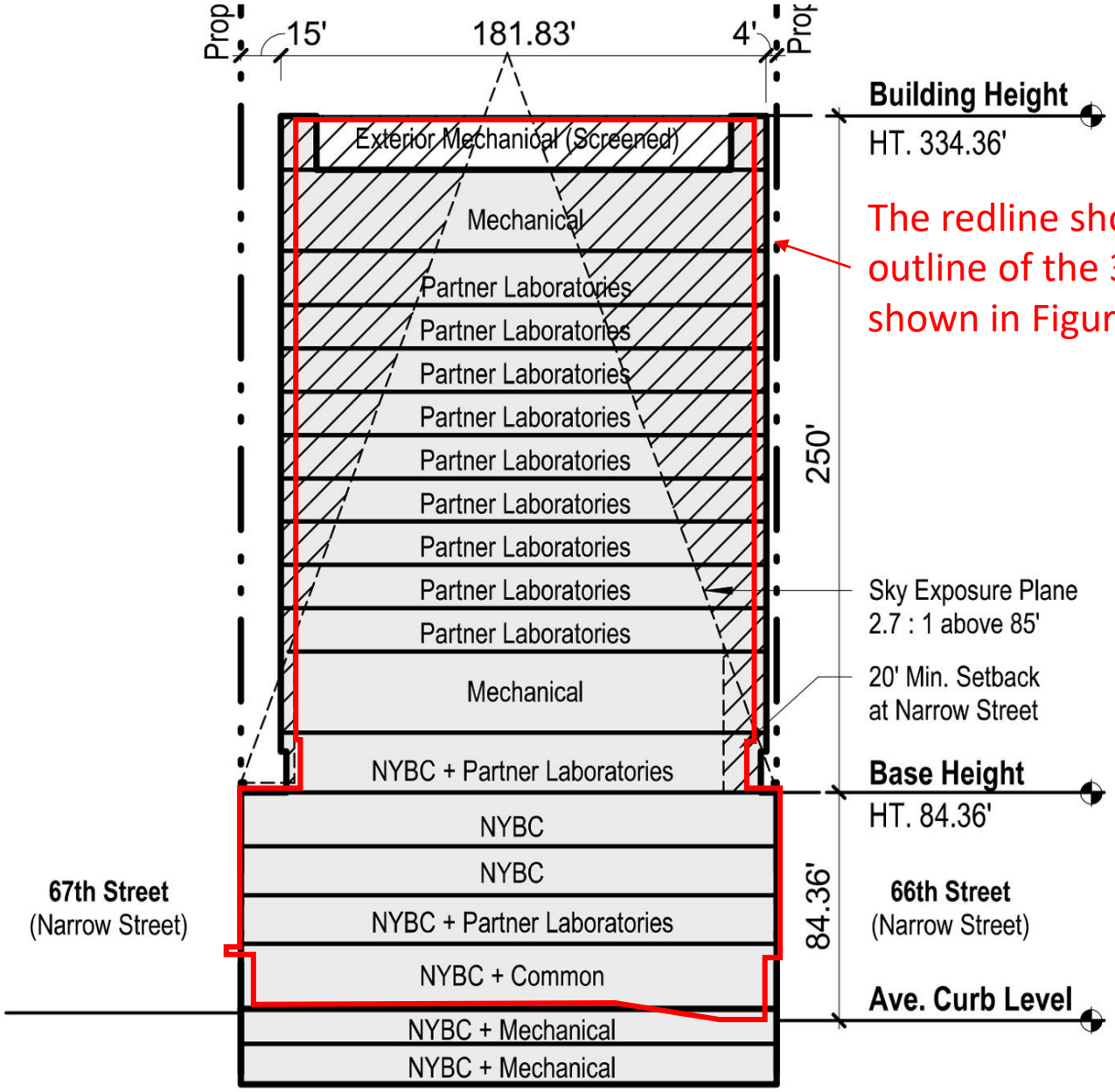
Figure 2

The 334’ and the 233’ buildings from Figure 1 show identical setbacks

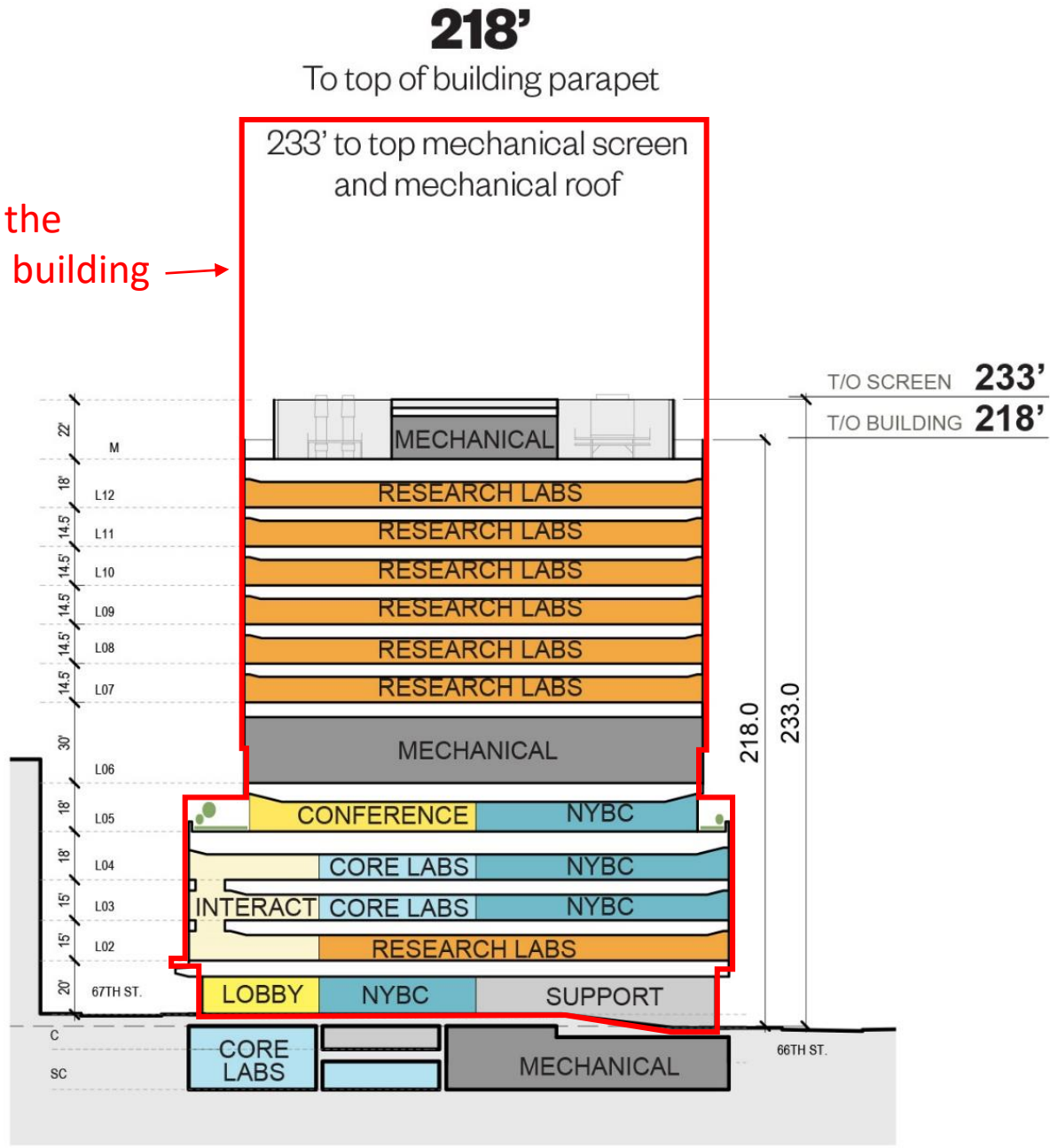




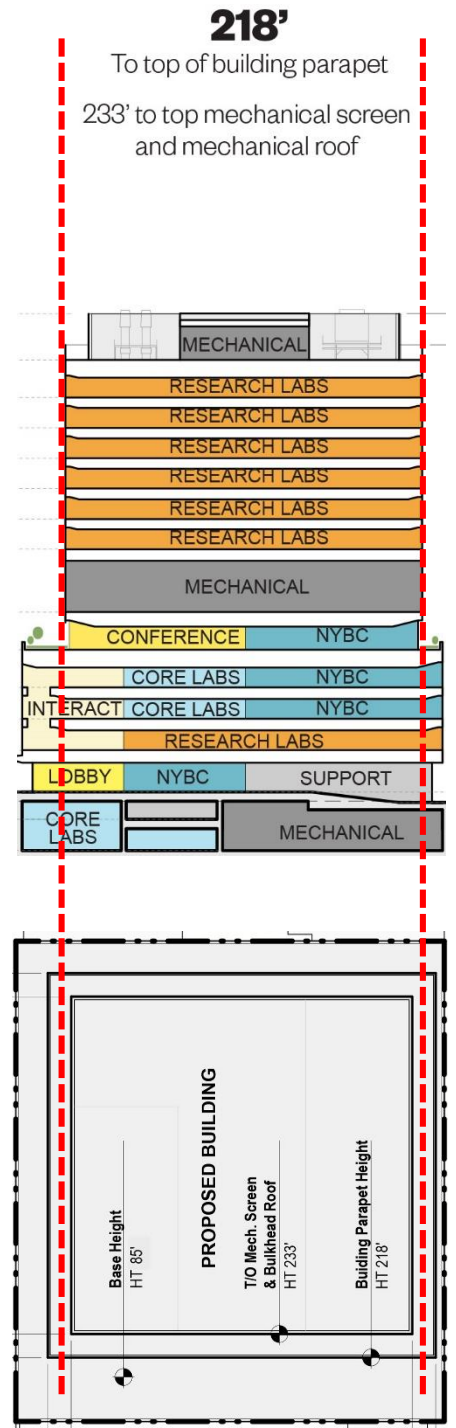
The FEIS section shows 4 & 15 foot setbacks, which do not match either section in Figure 1



The redline shows the outline of the 334' building shown in Figure 1



The difference is apparent without CAD simply by comparing the plan and the sections directly as shown here



This mistake creates ambiguity over what the CPC approved. Was it the building shown on Figure 1 or was it the building shown on figure 2?

- The difference between a 15 and 20.67 foot setback on 67th Street is material, as it reduces the zoning waivers required

- Further, which version of the building did the City Council intend to send to the CPC? Did they require increased setbacks?

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Problems with the Blood Center Technical Memo

November 19, 2021