

NYC COUNCIL MODIFICATIONS AS OF 12/5/16

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ST. JOHN'S TERMINAL RESTRICTIVE DECLARATION

THIS DECLARATION (this "Declaration"), made as of this \_\_\_\_ day of \_\_\_\_\_, ~~2015~~December, 2016, by SJC 33 OWNER 2015 LLC, a \_\_\_\_\_, having an address at \_\_\_\_\_ (the "Declarant").

WITNESSETH:

WHEREAS, the Declarant is the fee owner of certain real property located at 550 Washington Street in the Borough of Manhattan, County of New York, City and State of New York, designated for real property tax purposes as Block 596, Lot 1 and as more particularly described in Exhibit "A" (the "Subject Property");

WHEREAS, Declarant desires to redevelop the Subject Property with a mix of residential and commercial uses, and public access areas, as described in the Land Use Applications (as defined herein) (the "Proposed Development");

WHEREAS, the Subject Property is divided into three sites: the north site, ~~as more particularly described in Exhibit "A 1"~~ (the "North Site"), center site, ~~as more particularly described in Exhibit "A 2"~~ (the "Center Site"), and south site, ~~as more particularly described in Exhibit "A 3"~~ (the "South Site"), and each, a "Site", as shown in the diagram (the "Project Diagram") annexed hereto as Exhibit "B";

WHEREAS, pursuant to the Zoning Text Amendment (defined herein), proposed Section 89-10 of the Zoning Resolution provides that the use and bulk regulations of the underlying zoning districts under the proposed Zoning Map Amendment (defined hereinafter)

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shall not apply to the Subject Property except with respect to a development or enlargement that is the subject of a special permit granted by the Commission pursuant to the Special Hudson River Park District provisions;

WHEREAS, the Hudson River Park Trust, a New York public benefit corporation (the "HRPT"), constituted under Chapter 592 of the Laws of 1998 (as amended, the "Hudson River Park Act" or "HRPA"), is lessee of certain real property designated for real property tax purposes as Block 656, Lot 1 (the "Pier 40 Site") pursuant to a lease with the State of New York, in accordance with the HRPA;

WHEREAS, pursuant to amendments to the HRPA enacted under Chapter 517 of the Laws of 2013, HRPT is permitted to transfer any unused development rights from the Hudson River Park (the "Park") to properties located up to one block east of the Park, if and to the extent designated and permitted under local zoning ordinances;

WHEREAS, pursuant to Application No. N 160308 ZRM, the New York City Department of City Planning (DCP) applied to the New York City Planning Commission (the "Commission") for a Zoning Text Amendment to establish the Special Hudson River Park District under Section 89-00 et. seq. of the Zoning Resolution (the "Zoning Text Amendment");

WHEREAS, pursuant to the Zoning Text Amendment, proposed Section 89-21 of the Zoning Resolution provides that the Commission may permit development rights to be transferred from a "granting site" to a "receiving site";

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WHEREAS, pursuant to the Zoning Text Amendment, proposed Section 89-10 of the Zoning Resolution defines the Pier 40 Site as a "granting site" and the Subject Property as a "receiving site" in the Special Hudson River Park District;

WHEREAS, the Declarant applied to the Commission for (1) a zoning map amendment pursuant to Application No. N 160309 ZMM to (a) map the Special Hudson River Park District comprising Pier 40 and the Subject Property and (b) rezone the Subject Property (i) changing the North Site from an M1-5 District to a C6-4 District, (ii) changing the Center Site from an M2-4 District C6-3 District, and (iii) changing the South Site from an M2-4 District to an M1-5 District (the "Zoning Map Amendment"); (2) a special permit pursuant to the Special Hudson River Park District provisions, pursuant to Application No. N 160310 ZSM, to permit (a) the transfer of 200,000 square feet of unused floor area development rights to be transferred from the Pier 40 Site to the Subject Property and (b) certain bulk waivers on the Subject Property (the "HRP Transfer Special Permit"); (3) three special permits pursuant to Sections 13-45 and 13-451 of the Zoning Resolution, pursuant to Applications Nos. N 160311 ZSM, N 160312 ZSM, and N 160313 ZSM, to allow additional accessory parking on each of the three Sites (the "Parking Special Permits," and together with the HRP Transfer Special Permit, the "Special Permits"); and (4) three authorizations pursuant to Section 13-441 of the Zoning Resolutions, pursuant to Applications Nos. N 160314 ZAM, N 160315 ZAM, and N 160317 ZAM, to allow curb cuts for accessory parking garages on each of the three Sites; (the "Authorizations"); and Declarant applied to the Chairperson of the Commission for (5) a Certification pursuant to the Special Hudson River Park District provisions, pursuant to N 160318 ZCM to facilitate the

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transfer of floor area development rights (collectively, and together with the Zoning Text Amendment, the "Land Use Applications");

WHEREAS, CPC acted as lead agency and conducted an environmental review of the Land Use Applications (as defined herein) pursuant to CEQR and SEQRA;

WHEREAS, in connection with the HRP Transfer Special Permit, Declarant has proposed to purchase development rights from the Pier 40 Site from HRPT, and to transfer such development rights to the Subject Property, and in order to effectuate such transfer, Declarant will record against the Subject Property and HRPT will record against the Pier 40 Site a Transfer of Development Rights and Notice of Restrictions, substantially in the form annexed hereto as Exhibit "F", upon the closing of the purchase and sale of the Development Rights, and the recordation of such Transfer of Development Rights and Notice of Restrictions will give Declarant the right to make the Special Permit Election (as defined herein), in accordance with this Declaration;

WHEREAS, \_\_\_\_\_ Title Insurance Company (the "Title Company") has certified in the certification (the "Certification") attached hereto as Exhibit "C" and made a part hereof, that as of \_\_\_\_\_, 2015, Declarant, \_\_\_\_\_, and \_\_\_\_\_ (the "Parties-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, all parties-in-interest to the Subject Property have either executed this Declaration or waived their right to execute and subordinated their interest in the Subject Property to this Declaration by written instrument annexed hereto as Exhibit "D" (the "Waiver

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and Subordination") and made a part hereof, which instrument is intended to be recorded simultaneously with this Declaration; and

WHEREAS, Declarant desires to restrict the manner in which the Subject Property is developed, redeveloped, maintained and operated in the future, and intends these restrictions to benefit all the land, including land owned by the City, lying within a one-half-mile radius of the Subject Property.

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

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

1.01 "Approvals" shall mean all the approvals of the Land Use Applications by the Commission and City Council with respect to the Proposed Development of the Subject Property.

1.02 "Association" shall have the meaning set forth in Section 8.03 of this Declaration.

1.03 "Attorney General" shall mean the Attorney General of the State of New York.

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- 1.04 "Board" shall have the meaning set forth in Section 8.03 of this Declaration.
- 1.05 "Building" shall mean any one of the buildings that is part of the Proposed Development as shown on the Plans, and shall not mean an Existing Building.
- 1.06 "Building Permit" shall mean, with respect to any Building, any of an Excavation Permit, Demolition Permit, Foundation Permit, or New Building Permit.
- 1.07 "Center Site" shall have the meaning given in the Recitals to this Declaration.
- 1.08 "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.
- 1.09 "City" shall mean the City of New York.
- 1.10 "City Council" shall mean the City Council of the City of New York, or any successor to its jurisdiction.
- 1.11 "Commission" shall mean the City Planning Commission of the City of New York, or any successor to its jurisdiction.
- 1.12 "Construction Commencement" shall mean the issuance of the first Foundation Permit by the Buildings Department to Declarant for work on a Building within the Proposed Development.
- 1.13 "Declarant" shall have the meaning given in the Recitals of this Declaration and shall include any Successor Declarant as defined in Section 6.05 of this Declaration and any entity that becomes a Declarant pursuant to this Declaration.

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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 "Demolition Permit" shall mean a permit issued by the Buildings Department, in connection with the development of a Building, 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.

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

1.17 "Effective Date" shall have the meaning given in Section 6.01 of this Declaration.

1.18 "Existing Building" shall mean the building or buildings existing on the Subject Property at the time of a Special Permit Election, ~~whether developed, enlarged, converted, or otherwise constructed before or after December 15, 2016, including but not limited to a Hybrid Building.~~

1.19 "Excavation Permit" shall mean any permit issued by the Buildings Department, in connection with the development of a Building, authorizing excavations, including those made for the purpose of removing earth, sand, gravel, or other material from the Subject Property.

1.20 "Final Approval" shall mean approval or approval with modifications of the Land Use Applications 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 Applications and

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takes final action pursuant to New York City Charter Section 197-d approving or approving with modifications the Land Use Applications, in which event "Final Approval" shall mean such approval or approval with modifications of the Land Use Applications 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 Applications.

1.21 "Floor Area" shall have the meaning set forth in Section 12-10 of the Zoning Resolution on the Effective Date of this Declaration.

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

1.23 "Force Majeure Event" shall mean an occurrence, or occurrences, beyond the reasonable control of Declarant(s), 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) the inability to obtain labor or materials or reasonable substitutes therefor; (iii) acts of God; (iv) restrictions, regulations, orders, controls or



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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, (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. 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.

1.24 "Former Zoning" shall mean, with respect to the North Site, the M1-5 zoning district, and with respect to the Center Site and South Site, the M2-4 zoning district, and all bulk, use, and other regulations applicable in such zoning districts in accordance with the Zoning Resolution.

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1.25 "Foundation Permit" shall mean any permit issued by the Buildings Department authorizing foundation work for the foundation of a Building.

1.26 "Hybrid Building" shall mean a building located on the Center Site and/or South Site, that is developed or enlarged pursuant to the Former Zoning after December 15, 2016, regardless of whether the building has received a temporary or permanent certificate of occupancy at the time of a Special Permit Election, and that is consistent with CEOR Technical Memorandum 001, CEOR No. 16DCP031M, dated October 14, 2016 and/or CEOR Technical Memorandum 002, CEOR No. 16DCP031M, dated December 12, 2016.

~~1.27~~ "Individual Interest" shall have the meaning given in Section 5.04(a) of this Declaration.

~~1.27~~ "Land Use Applications" shall have the meaning given in the Recitals to this Declaration, as such Land Use Applications may be hereafter modified.

~~1.28~~ "Lot Owner" shall mean only (a) fee owner(s) of the Subject Property or any portion thereof; (b) the holder of the lessee's estate in a ground lease of all or substantially all of the Subject Property or all or substantially all of any Site; (c) the cooperative corporation which holds beneficial ownership of any portion of the Subject Property or any building built on the Subject Property; and (d) the board of managers of any portion of the Subject Property that is subject to a declaration of condominium.

~~1.29~~ "Mortgage" shall mean a mortgage given as security for a loan in respect of all or any portion of the Subject Property.

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~~4.30~~4.31 "Mortgagee" shall mean the holder of a Mortgage.

~~4.31~~4.32 "Named Mortgagee" shall have the meaning given in Section 8.04 of this Declaration.

~~4.32~~4.33 "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.

~~4.33~~4.34 "New Building Permit" shall mean, with respect to any Building, a work permit issued by the Buildings Department under a new building application authorizing the construction of such Building.

~~4.34~~4.35 "Notice" shall have the meaning given in Section 8.04 of this Declaration.

~~4.35~~4.36 "North Site" shall have the meaning given in the Recitals to this Declaration.

~~4.36~~4.37 "Obligations" shall mean any requirement of this Declaration, including, without limitation, the requirements set forth in Article II.

~~4.37~~4.38 "Party-in-Interest" shall have the meaning given in the Recitals to this Declaration.

~~4.38~~4.39 "Plans" shall mean the drawings for the Development prepared by CookFox Architects, as approved pursuant to the Approvals, reduced-size copies of which are attached as Exhibit "E" to this Declaration, as more particularly described in Section 2.01(a), and as may be modified pursuant to Section 6.03 hereof.

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~~4.39~~4.40 "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 and all or substantially all of any Site or portion thereof.

~~4.40~~4.41 "Proposed Development" shall have the meaning given in the Recitals to this Declaration.

~~4.41~~4.42 "PAA" shall have the meaning given in Section 4.01 of this Declaration.

~~4.42~~4.43 "Register" shall have the meaning given in Section 6.01 of this Declaration.

~~4.43~~4.44 "Register's Office" shall have the meaning given in Section 6.01 of this Declaration.

~~4.44~~4.45 "Rezoning" shall have the meaning given in the Recitals to this Declaration.

~~4.45~~4.46 "Site" or "Sites" shall mean any one of the North Site, Center Site or South Site or all of the Sites as the context shall require.

~~4.46~~4.47 "South Site" shall have the meaning given in the Recitals to this Declaration.

~~4.47~~4.48 "Special Permits" shall have the meaning given in the Recitals to this Declaration.

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~~4.48~~4.49 "State" shall mean the State of New York, its agencies and instrumentalities.

~~4.49~~4.50 "Substantial Completion" or "Substantially Complete", shall mean completion of construction substantially in accordance with the Plans, in the reasonable determination of the Chair, notwithstanding that minor or insubstantial details of construction, decoration or mechanical adjustment remain to be performed.

~~4.50~~4.51 "Subject Property" shall have the meaning given in the Recitals to this Declaration.

~~4.51~~4.52 "Successor Declarant" shall have the meaning given in Section 6.05 of this Declaration.

~~4.52~~4.53 "Undeveloped Site" shall mean a Site or portion of a Site on which work has not commenced ~~pursuant to a New Building Permit~~ in accordance with the Plans and which, subsequent to a Special Permit Election on any portion of the Subject Property, will be subject to the "Existing Buildings" provisions of Section 2.01(a)(iii) of this Declaration.

~~4.53~~4.54 "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.

~~4.54~~4.55 "Unit Owner" shall not include the Lot Owner but shall mean (a) the owner of any individual residential or commercial condominium unit, or the owner of the

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beneficial interest of any residential or commercial unit, held in cooperative ownership, or (b) the holder of a mortgage or other lien encumbering any such residential or commercial unit, apartment or building held in condominium ownership or owned by a cooperative corporation.

~~4.55~~1.56 "Zoning Resolution" shall have the meaning set forth in the Recitals to this Declaration.

~~4.56~~1.57 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.

(a) Development of the Subject Property.

(i) Development Prior to a Special Permit Election. Unless and until Declarant has made a Special Permit Election in accordance with Section 6.01, Declarant shall have no Obligations under this Declaration, and shall be entitled to develop the Subject Property with such uses and bulk, and only such uses and bulk, permitted on an as-of-right basis under the Former Zoning.

(ii) Development Pursuant to the Approvals. If Declarant has made a Special Permit Election in accordance with Section 6.01, Declarant covenants that, except as provided in Section 2.01(a)(iii) and Section 2.01(b) hereof, the Subject Property ~~(excluding any Existing Building on an Undeveloped Site)~~ shall be developed in substantial conformity with the

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Plans prepared by CookFox Architects and listed below, approved as part of the Special Permits and annexed hereto in Exhibit "E" and made a part hereof, as such Plans may be modified in accordance with Section 6.02 or 6.03 hereof. The Proposed Development may be developed in accordance with the Approvals on a Site-by-Site basis, and the development rights transferred from the Park pursuant to the HRP Transfer Special Permit may be used on any Site, in accordance with the Plans.

Drawing No.	Title	Date
<del>Z-000</del>	Cover	10/14/16
Z-001	Granting Site Survey	10/14/16
<del>Z-002</del>	<del>Receiving Site Survey 1 of 2</del>	<del>10/14/16</del>
<del>Z-003</del>	<del>Receiving Site Survey 2 of 2</del>	<del>10/14/16</del>
Z-004	Zoning Calculation Analysis	<del>10/14/16</del> 12/05/16
Z-005	Project Area Site Plan	10/14/16
Z-006	Zoning Lot Site Plan	10/14/16
<del>Z-007</del>	<del>Rear Yard Analysis</del>	<del>10/14/16</del>
Z-101	Ground Floor Plan	<del>10/14/16</del> 12/05/16
Z-110	Waiver Plan	10/14/16
Z-200	Waiver Sections	10/14/16
Z-201	Waiver Sections	10/14/16
Z-202	Waiver Sections	10/14/16
Z-203	Waiver Sections	10/14/16
Z-204	Waiver Sections	10/14/16

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Drawing No.	Title	Date
Z-205	Waiver Sections	10/14/16
Z-206	Waiver Sections	10/14/16
Z-250	Design Control Diagram – Northeast	10/14/16
Z-251	Design Control Diagram – Southwest	10/14/16
Z-252	Design Control Diagram – Northwest	10/14/16
Z-253	Design Control Diagram – Southeast	10/14/16
Z-254	Design Control Notes	<del>10/14/16</del> 12/05/16
<del>Z-300</del>	<del>Neighborhood Character Diagram – Illustrative</del>	<del>10/14/16</del>
<del>Z-301</del>	<del>Neighborhood Character Diagram – Illustrative</del>	<del>10/14/16</del>
<del>Z-302</del>	<del>Neighborhood Character Diagram – Illustrative</del>	<del>10/14/16</del>
<del>Z-310</del>	<del>East Elevation – Illustrative</del>	<del>10/14/16</del>
<del>Z-311</del>	<del>North Elevation – Illustrative</del>	<del>10/14/16</del>
<del>Z-312</del>	<del>West Elevation – Illustrative</del>	<del>10/14/16</del>
<del>Z-313</del>	<del>South Elevation – Illustrative</del>	<del>10/14/16</del>
L-100	Landscape-Public Access Area Site Plan—Option A	<del>10/14/16</del> 12/05/16
L-101	Landscape – Public Access Area Enlargement Plan—Option A	<del>10/14/16</del> 12/05/16
<del>L-102</del>	<del>Landscape – Public Access Area</del>	<del>10/14/16</del>



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Drawing No.	Title	Date
	<del>Site Plan — Option-B</del>	
<del>L-103</del>	<del>Landscape — Public Access Area Enlargement Plan — Option-B</del>	<del>10/14/16</del>
<del>P-000</del>	<del>Parking — Overall Plan</del>	<del>10/14/16</del>
P-001	Parking — North Site Ground Plan	<del>10/14/16</del> <u>12/05/16</u>
P-002	Parking — North Site Cellar Plan	<del>10/14/16</del> <u>12/05/16</u>
P-003	Parking — Center Site Ground Plan	<del>10/14/16</del> <u>12/05/16</u>
P-004	Parking — Center Site Cellar Plan	<del>10/14/16</del> <u>12/05/16</u>
P-005	Parking — South Site Ground Plan	<del>10/14/16</del> <u>12/05/16</u>
P-006	Parking — South Site Cellar Plan	<del>10/14/16</del> <u>12/05/16</u>

(iii) Existing Buildings. ~~If Declarant has made a Special Permit Election has been made as provided in Section 6.01, for any Undeveloped Site,~~ Declarant shall have the right, as follows for any Undeveloped Site:

1. to maintain the Existing Building on the Undeveloped Sites, or complete and maintain a Hybrid Building for which a building permit was issued prior to the date of the Special Permit Election;

2. to use the then-existing square footage in the Existing Building for any uses permitted by the Former Zoning, ~~and~~ in accordance with Section 89-10 of the Zoning Resolution;

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3. to alter and reconstruct the Existing Building using the then-existing square footage of such portion of the Existing Building, including but not limited to replacing windows, replacing façade elements, removing or replacing interior partitions, removing or replacing mechanical systems, removing or replacing portions of floor slabs, and adding new elevator and circulation systems, ~~provided that any such alteration and reconstruction shall not exceed the existing envelope of the Existing Building on such Undeveloped Sites,~~ and provided, further, that the Existing Building may be reconstructed to the extent such reconstruction would be allowed by Section 54-41 of the Zoning Resolution, applicable to a "non-complying building," but only in the event of a damage or destruction due to a fire or other involuntary casualty; or, provided that any such alteration and reconstruction shall not exceed the existing envelope of the Existing Building on such Undeveloped Sites; and

4. to develop any portion of the Undeveloped Site in accordance with the Special Permit, as applicable to the respective Site, provided that such Special Permit has been ~~vested in accordance with Section 2.02(b) or may be vested as a result of such development or will be vested in accordance with the Approvals and any Hybrid Building to remain is consistent with CEOR Technical Memorandum 001, CEOR No. 16DCP031M, dated October 14, 2016, and/or CEOR Technical Memorandum 002, CEOR No. 16DCP031M, dated October 12, 2016,~~

(b) Amendment to Plans. If Declarant has made the Special Permit Election and Declarant seeks to develop any portion of the Subject Property other than with the Proposed Development, Declarant shall not be authorized to develop such portion of the Subject Property

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except (i) as would be permitted pursuant to the provisions of Section 2.01(a)(iii) hereof, or (ii) where an amendment has been reviewed and approved ~~by the Chair~~ in accordance with Section 6.02 or Section 6.03 hereof.

2.02 Single Zoning Lot

(a) Single Zoning Lot. If the Subject Property is developed pursuant to the Special Permits, the Subject Property shall ~~continue to be~~ treated as a single zoning lot for all purposes of the Zoning Resolution, except that (i) the portion of the Subject Property located over West Houston Street shall not generate "floor area," as defined in Section 12-10 of the Zoning Resolution for the purpose of the Proposed Development, (ii) the Proposed Development shall not include any floor area located directly above West Houston Street, and (iii) the height and setback requirements of the applicable zoning district shall apply, except as modified by the Commission, to the Subject Property on each side of the mapped street lines of West Houston Street. Notwithstanding subsection (a)(i) hereof, a Hybrid Building shall be permitted to utilize floor area generated from West Houston Street, in accordance with DOB Determination No. 47526, dated December 1, 2016.

(b) Vesting. The City Planning Commission, in its approval of the Special Permits, granted a 10-year term for such Special Permits, in accordance with Zoning Resolution Section 11-~~43~~42. Zoning Resolution Section 11-42 provides that a special permit granted by the City Planning Commission shall automatically lapse if substantial construction, in accordance with the plans for which such special permit was granted, has not been completed within such 10-year period. Section 11-42 also provides that "substantial construction" shall mean, in the

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case of new buildings, the substantial construction of at least one building. Accordingly, for the purpose of Section 11-42, substantial construction of any one Building within the Proposed Development in substantial conformity with the Plans shall be deemed to prevent a lapse of the Special Permits.

(c) Separate Owners. For the avoidance of doubt, nothing in this Declaration shall be deemed to restrict the ownership and development of the Subject Property by separate entities, provided that each such entity shall have the rights and obligations of Declarant under this Declaration with respect to the portion of the Subject Property owned by such entity.

2.03 Affordable Housing and Floor Area Calculations

(a) The North Site and Center Site portions of the Proposed Development shall include "affordable housing," as such term is used in Section 89-00, et seq. of the Zoning Resolution, in accordance with the Approvals. Such affordable housing shall comply with the requirements of Section 23-90, et seq. of the Zoning Resolution, except as modified herein. ~~Notwithstanding the floor area amounts stated in the schedule below, in~~ the event of an election of the Special Permits, the total amount of affordable housing floor area required in the Proposed Development shall be no less than 25% of the total amount of residential floor area developed in the Proposed Development, and the number of affordable housing units required in the Proposed Development shall be no less than 30% of the total amount of residential units developed in the Proposed Development. The amount, location, affordability level, and bedroom distribution of affordable housing shall be as set forth in the schedule below:

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<u>Site</u>	<u>Total Residential Floor Area Permitted (ZSF)</u>	<u>Affordable Residential Floor Area Required (ZSF)</u>	<u>Building Distribution</u>	<u>Area Median Income ("AMI") Level</u>	<u>Bedroom Mix for Affordable Units</u>
North Site	560,000	110,000	Affordable units located in Building 2 (separate senior housing building)	not more than 80% AMI	1-bedroom: not less than <del>25%</del> 25%; remainder may be studios
Center Site	729,000	218,700	Affordable units may be located entirely in East Building or in both East and West Buildings, <u>Affordable units shall be distributed on 85% of floors in any Building in which they are located.</u>	<del>210%</del> 210% of total residential floor area at not more than 60% AMI; <u>85% of total residential floor area at not more than 80% AMI;</u> <u>5% of total residential floor area at not more than 110% AMI</u> 10% of total residential floor area at not more than 130% AMI	2-bedroom: not less than 50%; 1-bedroom: not less than 25%; remainder may be studios
South Site	0	0	N/A	N/A	N/A

Notwithstanding the foregoing, in the event that, at the time that a Special Permit Election is made, ~~the~~ an Undeveloped Site has been developed ~~or~~, enlarged subsequent to ~~the date of this Declaration~~ December 15, 2016, then the total amount of affordable housing floor area required in the portion of the Proposed Development ~~constructed pursuant to this Restrictive~~

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~~Declaration, whether on the North Site and/or the Center Site, shall be no less than 25% of the residential floor area developed on such Site. In addition to the requirements in the table above, affordable units on the Center Site shall have the same fixtures and finishes as market-rate units located in the same Building.~~

Affordable housing provided in accordance with the requirements of Section 23-90, *et seq.* of the Zoning Resolution, as such requirements have been modified herein, shall be deemed to fulfill the objectives of the City's Inclusionary Housing Program.

(b) North Site Completion Conditions. The Buildings Department shall not issue, and Declarant shall not accept, a temporary certificate of occupancy (a "TCO") or a permanent certificate of occupancy ("PCO"), as applicable, for any market-rate residential floor area in any Building on the North Site, except in compliance with the affordable housing completion conditions in Section 23-90, *et seq.* of the Zoning Resolution, as applicable to the affordable-housing floor area on the North Site, as set forth in (a) hereof.

(c) Center Site Completion Conditions. The Buildings Department shall not issue, and Declarant shall not accept, a TCO or PCO, as applicable, for any market-rate residential floor area in any Building on the Center Site, except in compliance with the affordable housing completion conditions in Section 23-90, *et seq.* of the Zoning Resolution, as applicable to the affordable-housing floor area on the Center Site, as set forth in (a) hereof.

(d) South Site. Issuance of certificates of occupancy for any affordable ~~dwelling units housing floor area in any Building~~ shall not be a condition to the issuance of certificates of occupancy for any portion of the South Site Building.

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2.04 Retail Uses

(a) All street frontage of the Proposed Development on West Houston Street that is not occupied by residential lobbies shall be occupied by retail and service establishments, museums, galleries, or amusement uses. Physical cultural establishments shall also be permitted to occupy such street frontage, subject to obtaining a Board of Standards and Appeals ("BSA") special permit. Declarant shall notify the Chair upon filing such BSA application, and upon approval of such application.

~~(a)(b)~~ The frontage of the Proposed Development on West Houston Street, on each the North Site and Center Site, at the ground floor level shall each include a minimum of four ~~retail establishments, occupied by the uses permitted in Section 2.04(a).~~ The frontage of the Proposed Development on Clarkson Street at the ground floor level shall include a minimum of three ~~retail establishments, by the uses permitted in Section 2.04(a).~~ These limitations shall not apply to any retail establishments located above or below the ground floor.

~~(b)(c)~~ All retail frontage of the Proposed Development on West Houston Street and Clarkson Street shall have a minimum retail depth of 30 feet from the street line.

(d) All residential lobbies on West Houston Street shall be no more than 25 feet in width.

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~~(c)(a) Retail and service establishments in the Proposed Development shall be limited to 10,000 gross square feet per establishment on all levels in the aggregate, except that one establishment of up to 25,000 square feet on all levels in the aggregate may be provided in any location. Both the 10,000-square-foot limit and 25,000-square-foot limit shall not apply to grocery stores, food halls, and fitness / recreation uses (commercial or non-commercial), and also shall not apply to cellar-level space that is not active selling space with no display of merchandise to customers, including storage, back-of-house, and support space. In addition, any retail and service establishments in the Proposed Development~~ all street frontage of the Proposed Development on West Houston Street that is not occupied by residential lobbies shall be occupied by retail and service establishments, museums, galleries, or amusement uses. Physical cultural establishments shall also be permitted to occupy such street frontage, subject to obtaining a Board of Standards and Appeals ("BSA") special permit. Declarant shall notify the Chair upon filing such BSA application, and upon approval of such application.

~~(e) Any retail and service establishments located on the Center Site shall be limited to 15,000 gross square feet of space per establishment below the ground-floor level; provided, however, that this restriction shall not apply to non-retail or non-commercial uses, and shall not apply to grocery stores, food halls; art galleries, whether commercial or non-commercial; amusement uses, including bowling alleys and theaters; event spaces; and gymnasium, fitness centers, and physical culture establishments (subject to obtaining a BSA special permit).~~

~~(d)(f) Unless a grocery store has already been provided on the Center or South Site, Declarant shall hire a retail broker to pursue a grocery store operator for the North Site on~~



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then-current market terms and conditions, including by issuing an REP for a grocery store, and shall use reasonable efforts to provide such a grocery store on the North Site of approximately 20,000 gross square feet, if the project is developed either pursuant to the Special Permits or under the "Hybrid Scenario," as described in Technical Memoranda 001 and/or 002. If Declarant determines that no grocery store is feasible upon such terms, Declarant shall make available to the Chair upon request documentation evidencing the reasonable efforts that were undertaken by Declarant over a three-month period in connection therewith.

2.05 Representation. Declarant hereby represents and warrants that there is no restriction of record on the development, enlargement, or use of the Subject Property, nor any present or presently existing estate or interest in the Subject Property, nor any existing lien, obligation, covenant, easement, limitation or encumbrance of any kind that shall preclude the restrictions and obligations as set forth herein.

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 part of its construction of the Proposed Development as appropriate the following PCRE's related to Construction prior to any commencement of construction of the Subject Property or each Site, as the context may require, pursuant to the Proposed Development: (a) Construction Air Emissions Reduction Measures.

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(i) Prior to Construction Commencement and subject to DCP review pursuant to Section 3.08 of this Declaration, 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) during the development of the Subject Property:

1. To minimize hourly emissions of NO<sub>2</sub> to the maximum extent practicable, non-road diesel-powered vehicles and 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 with diesel particle filter Non-road Diesel Engine Emission Standard (alternatively, such equipment shall meet at least the Tier 4 final emissions standard). All non-road engines in the project rated less than 50 hp shall meet at least the Tier 2 emissions standard.

2. 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 to reduce diesel particulate emissions. Construction contracts shall specify that all diesel non-road engines rated at 50 horsepower or greater shall utilize active or passive diesel particle filters (either original equipment manufacturer or retrofit technology) verified under either the EPA or California Air Resources Board ("CARB") verification programs. Active diesel particle filters or other technologies proven to achieve an equivalent reduction may also be used.

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

4. Idling of all 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. The use of diesel and gasoline engines, including generators, shall be minimized through the maximum practicable use of (1) electric engines operating on grid power, and (2) lighting devices, illuminated traffic control signals and signs operating on grid, battery, or solar power. Construction contracts shall require the use of electric engines where practicable. Subject to 3.01(a) (ii) below, Declarant shall ensure the distribution of power connections throughout the Subject Property as needed. Equipment that shall use grid power rather than diesel engine power shall include, but not be limited to, welders, rebar benders, scissor lifts and hydraulic articulating boom lifts.

6. Large emissions sources, such as concrete trucks and pumping operations shall be located, to the extent practicable, away from operable windows, fresh air intakes, parks, and playgrounds.

(ii) To facilitate the use of electrically powered equipment and minimize the use of diesel and gasoline engines, not fewer than sixty (60) days prior to the anticipated date of commencement of demolition or excavation on the Subject Property (whichever first occurs), Declarant shall apply to Con Edison to establish an electrical

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connection of such Site to grid power. A complete copy of such application shall be forwarded to DCP at the time the application is first sent to Con Edison. Upon connection to grid power, electrically powered equipment will be used to the extent practicable.

(iii) 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 and subject to DCP review pursuant to Section 3.08 of this Declaration, 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 during development of the Subject Property or Site (the "Fugitive Dust Control Plan"), which Fugitive Dust Control Plan shall contain the following measures:

1. Fugitive dust from excavation, demolition, transfer of spoils, and loading and unloading of spoils shall be controlled through water spraying.

2. Large piles of soil, rock or sediment either shall be kept wet, coated with a non-hazardous, biodegradable dust suppressant and/or covered to prevent wind erosion and fugitive dust. Longer term stockpiles shall be covered with a tarp weighted down with sand bags.

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3. Concrete and rock grinding, drilling and saw cutting operations shall be wet blade or misted if significant dust is being generated. Such operations, if occurring in an enclosed space, shall utilize vacuum collection or extraction fans.
4. All trucks hauling loose soil, rock, sediment, or similar material shall be equipped with tight fitting tailgates and covered prior to leaving construction areas.
5. Stabilized areas shall be established for washing dust off of the wheels of all trucks that exit construction areas. All vehicle wheels will be cleaned as necessary prior to leaving the construction sites in order to control tracking.
6. Truck routes and surfaces on which nonroad vehicles are operating within construction areas shall be watered as needed; or, in cases where such routes will remain in the same place for extended periods, the soil on such surfaces and roadways shall be stabilized with a biodegradable dust suppressant solution, covered with gravel, or temporarily paved to avoid the re-suspension of dust.
7. 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.

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(c) Construction Noise Reduction Measures.

(i) Prior to Construction Commencement and subject to DCP review pursuant to Section 3.08 of this Declaration, Declarant shall (x) develop a plan for implementation of, and (y) thereafter implement, the following measures for all construction activities (including demolition and excavation) related to the development of the Subject Property or Site:

1. All construction activities shall comply with Chapter 2 of Title 24 of the New York City Administrative Code (the "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) Noise barriers shall be erected around the perimeter of areas where construction activities are taking place for the purpose of minimizing construction noise consistent with reasonable construction procedures. Prior to Construction Commencement of any Building, a solid fence shall be erected around the perimeter of the areas where construction activities are taking place, which shall be at least 8 feet high.

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(bb) Noisy equipment, such as cranes, concrete pumps, concrete trucks, and delivery trucks, shall be located away from and shielded from sensitive receptor locations to the extent practicable. Where feasible and practicable, once building foundations are completed, delivery trucks shall operate behind a construction fence.

**(B) Source Control Measures**

(aa) The noise emission levels of the construction equipment shall meet the standards specified in Subchapter 5 of the New York City Noise Code, as provided in Table 20-19 of the FEIS which is annexed hereto as Exhibit "H". Contractors shall be required to properly maintain construction equipment, including equipment noise mufflers.

(bb) To the extent practicable, the construction site or sites shall be arranged to minimize the need for the use of backup alarms on construction equipment.

(cc) Upon establishing a connection of the Site to grid power, diesel- or gas-powered equipment shall be replaced with electrical-powered equipment such as pumps, compressors, and hoists (i.e., early electrification) to the extent feasible and practicable.

(ii) If construction work will occur at night or on weekends, Declarant shall prepare an additional noise reduction plan (the "Alternative Noise Reduction Plan") in accordance with the City Noise Control Code prior to commencing such nighttime or weekend work.

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(iii) 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 Pest Management Plan.

(i) Prior to Construction Commencement and subject to DCP review pursuant to Section 3.08 of this Declaration, Declarant shall (x) develop a plan for implementation of, and (y) thereafter implement, an integrated plan to control pests (including unwanted vermin, insects and weeds), in accordance with Buildings Department requirements, throughout the development of the Subject Property or Site (the "Construction Pest Management Plan"), which Construction Pest Management Plan shall contain the following requirements:

1. Vegetation fostering vermin shall be kept trimmed.
2. Construction trailers, dumpsters, and sheds shall be elevated off of the ground to discourage vermin from burrowing or hiding in them.
3. Standing water shall be pumped out before the water becomes septic.
4. Prior to the start of construction and as necessary during the construction period, the Declarant shall cause its contractor to bait appropriate areas of the site, using only USEPA and New York State Department of Environmental Conservation ("DEC")-registered rodenticide.



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

(e) Hazardous Materials Remediation and Protection Measures. The FEIS has identified potential hazardous materials at the Subject Property. A Remedial Action Plan (a "RAP") and associated Construction Health and Safety Plan (a "CHASP") were approved by DEP on July 21, 2016.

(i) All soil disturbance for the development of Building pursuant to the Proposed Development shall be performed in accordance with the NYCDEP-approved RAP and CHASP, referred to in the NYCDEP-approved comment letter dated July 21, 2016 annexed hereto as Exhibit "I". Any necessary remediation for each Building in the Proposed Development may proceed independently of any other Building(s) and therefore it is expected that New York City Mayor's Office of Environmental Remediation ("OER") may issue a Notice of Satisfaction as set forth in Section 3.01(g)(iii)(3) below, and a Final Notice of Satisfaction as set forth in Section 3.01(g)(iii)(4) below, on a Building-by-Building basis, irrespective of the construction sequence of the Buildings in the Proposed Development.

(ii) TCO and PCO. Declarant covenants and agrees that no application for a TCO or PCO that reflects a change in use group respecting the Subject Property for the Proposed Development shall be submitted to or accepted from the Buildings Department by Declarant until OER has issued to the Buildings Department, as applicable, a Notice of Satisfaction as set forth in Section 3.01(e)(iii)(1) below or a Final Notice of Satisfaction as set

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forth in Section 3.01(g)(iii)(2) below. Declarant shall submit a copy of the Notice of Satisfaction or Final Notice of Satisfaction to the Buildings Department at the time of filing of any application set forth in this Section 3.01(c)(ii).

(iii) Notices.

1. Notice of Satisfaction. OER shall issue a Notice of Satisfaction for the Proposed Development or any Building within the Proposed Development, as the case may be, after OER has determined in writing that the NYCDEP-approved RAP has been completed to the satisfaction of OER.

2. Final Notice of Satisfaction. OER shall issue a Final Notice of Satisfaction for the Proposed Development or any Building within the Proposed Development, as the case may be, after OER has set forth in writing that the NYCDEP-approved RAP has been completed to the satisfaction of OER, and all potential hazardous materials have been removed or remediated as and to the extent required by the RAP and no further hazardous remediation is required on the Subject Property as determined by OER.

(f) Energy Efficiency. All Buildings developed pursuant to the Proposed Development shall, at minimum, achieve energy efficiency consistent with the prerequisite requirements for certification under Leadership in Energy and Environmental Design (LEED) New Construction rating system, version 4 and exceed the energy requirements of the New York City Building Code (currently the same as ASHRAE 90.1-2010), resulting in energy expenditure lower than a baseline building designed to meet but not exceed the minimum building code requirements by five percent or more.

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(g) Resiliency Measures.

(ii) Declarant shall incorporate the following resiliency measures into Proposed Development:

1. Each Building shall be designed to accommodate flood levels projected for the year 2100 for all critical infrastructure and residential uses, and for the 2050s or higher for commercial uses (applying the higher 2100 levels where practicable). The Building design shall account for potential future "100-year" levels (flood levels with a one percent probability of occurring in any given year), including 18 feet and 19 feet NAVD88 for critical infrastructure and residential uses in the South and North/Center Sites, respectively, and at least 14.5 and 15.5 feet NAVD88 for commercial spaces in the South and North/Center Sites, respectively.

2. Below-grade commercial space in any Building at elevations below current and future potential flood elevations shall be dry-flood proofed to accommodate flooding up to the above 2050-projected flood levels (14.5 and 15.5 feet NAVD88) such that the subgrade levels would be fully protected from flooding to that level;

3. All critical infrastructure in any Building, including but not limited to electricity connections, generators and fuel, communications, and elevators shall be designed to withstand flooding up to the levels set forth in 3.01(g)(ii) and connections and systems shall be either located above this elevation or sealed; and

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4. Any plantings in at-grade open spaces on the Subject Property shall, to the extent practicable, be water and salt-tolerant species.

(iii) Prior to accepting a TCO or PCO for a Building, Declarant shall certify to DCP that it has implemented the provisions of clause (i)(1) through (i)(3) of this Section 3.01(g), and if same have not been implemented, the reasons for such failure.

(h) Maintenance and Protection of Traffic Plan.

(i) Prior to Construction Commencement of any Building, Declarant shall prepare a plan which provides diagrams of proposed temporary lane and sidewalk alterations, 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 of such Building (the "Maintenance and Protection of Traffic Plan" or "MPT"). Declarant shall submit the MPT to DOT 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.

(i) Subway Stair Improvements

(i) Prior to Construction Commencement of any Building on the North Site, if Declarant has previously developed a Hybrid Building as described in Technical Memorandum 002, CEOR No. 16DCP031M, dated December 12, 2016, Declarant shall

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undertake either a new sidewalk stair and ADA-compliant elevator at the southbound platform entrance of the Spring Street Station on the C-E lines, located on the southwest corner of Spring Street and Avenue of the Americas, or a substantial widening of the existing stairway on the northwest corner of Spring Street and Avenue of the Americas, coupled with an extension of the adjacent sidewalk and an ADA compliant elevator on the southwest corner of the intersection (either option, a "Subway Improvement Option " and the foregoing two project improvement options, the "Subway Improvement Options"), either of which shall be implemented in coordination with New York City Department of Transportation.

(ii) Declarant shall build, at its sole cost and expense, one of the Subway Improvement Options described above with a machine room along with any other facilities required for the operation of such selected Subway Improvement Option (including but not limited to payment for fare array equipment, if necessary) to the southbound platform for the New York City Transit Authority ("Authority") and the City in accordance with the current published Authority design guidelines and station specifications and in accordance with plans and specifications approved by Authority. Declarant agrees that the Authority shall have discretion to select the preferred Subway Improvement Option.

(iii) Declarant shall execute and record in the Office of the City Register, New York County (the "City Register"), a subway entrance agreement in the Authority's standard form for the design, construction, operation and maintenance of the selected Subway Improvement Option (the "Entrance Agreement"), which (a) shall attach as an exhibit conceptual drawings that confirm the feasibility of the construction of the Subway Improvement Option and are at a level of 30% completion based on the test borings in the sidewalk, and (b)

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require at least (i) Declarant to provide a letter of credit or cash collateral as security for the construction of the Subway Improvement Option in an amount of 120% cost of the Subway Improvement Option as reasonably and customarily determined by Authority prior to the start of the construction of the Subway Improvement Option, (ii) Declarant to provide a payment bond in compliance with Section 5 of Article 2 of the New York State Lien Law and (iii) Declarant to buy-out of the Declarant's maintenance obligations for Subway Improvement Options prior to Declarant's application to DOB for a Building Permit for any North Site Building. Prior to the execution of the Entrance Agreement, Declarant agrees to obtain the approval of the NYC Department of Transportation for the location of the Subway Improvement Options in the sidewalk and shall have borings performed in the sidewalk to locate utilities and other impediments to the construction of the Subway Improvement Options.

(iv) Declarant shall substantially complete the Subway Improvement Option to the satisfaction of Authority prior to the Declarant's application to DOB for a temporary certificate of occupancy for a Building on the North Site, as provided in said Entrance Agreement, and

(v) Declarant shall finally complete the Subway Improvement Option to the satisfaction of Authority prior to the Declarant's application to the DOB for a permanent certificate of occupancy for a Building on the North Site, as provided in said Entrance Agreement.

(vi) Declarant agrees that if, as a result of further design development, engineering work or subsurface investigations, the Subway Improvement Options not considered

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by Authority to be feasible, Declarant shall provide comparable improvements at the Spring Street Station or elsewhere that would achieve at a minimum the conditions depicted in Table 32 (2024 With Action Condition - Hybrid Scenario Subway Stairway Analysis Spring Street (C.E) Station) of Technical Memorandum 002 for the southbound Spring Street Station access along the west side of Avenue of the Americas at Spring Street (i.e., currently via only street-level stairway S1) and Declarant shall satisfy the Authority that the comparable improvement achieves such minimum conditions depicted in Table 32 and is implemented to the satisfaction of the Authority in accordance with paragraphs 3 and 4 of this Declaration.

(i) Tree Relocation

(i) Prior to Construction Commencement of any Building on the North Site, if Declarant has previously developed a Hybrid Building as described in Technical Memorandum 002, CEOR No. 16DCP031M, dated December 12, 2016, Declarant shall undertake the relocation of two recently planted trees (and their tree pits) on the north sidewalk of West Houston Street between Varick and Hudson Streets, as identified by DPR, to a different part of this block (closer to Hudson Street), where there is wider sidewalk width for pedestrian circulation. Should conditions change in the future, an alternate location for the tree relocation will be identified in coordination with DPR and the New York City Department of Transportation ("NYCDOT"). Together with developing the Builders Pavement Plans and other construction documents for the Building on the North Site, Declarant will engage a design consultant to submit the necessary plans and applications for the tree relocation described above. Such consultant will, in conjunction with Declarant, work with DPR and NYCDOT on the

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necessary approvals for the tree relocation work. All expenses related to the design and construction of the above will be paid by Declarant.

3.02 Project Components Related to the Environment for Design and Operation of the Building. Declarant shall implement and incorporate as part of its construction of the Proposed Development as appropriate the following PCRE's related to the Design and Operation of the Proposed Development as outlined below.

~~(a) Retail Use. Declarant shall comply with the per establishment limitation on below ground floor retail and commercial uses, as set forth in Section 2.04(d) hereof.~~

(b) Storm Water Management Measures.

(i) As described in Chapter 12 of the FEIS, the Proposed Development requires the rerouting of the wastewater flow that is currently conveyed through two existing sewer lines that run beneath the Development Site from King and Charlton Streets to the east, as illustrated at Exhibit "J". Prior to the issuance of a New Building Permit for any Building in the Proposed Development on the Center or South Sites:

1. Declarant shall conduct an analysis and investigation to consider the effects of the Proposed Development on the capacities of local sewers and combined sewer overflow (CSO) at the downstream regulator at the corresponding street frontage;

2. Declarant shall submit plans to NYCDEP for a proposed rerouting of the existing combined sewers illustrated at Exhibit J, and upon NYCDEP



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approval of such plans, prepare an amended drainage plan reflecting such changes and upgrades to such infrastructure; and

3. NYCDEP shall review and approve the plans for sewer rerouting and infrastructure upgrades, pursuant to normal regulatory procedures.

3.03 Environmental Mitigation. Declarant shall, in accordance with the FEIS for the Proposed Development, the Notice of Completion of which is dated October 7, 2016, undertake the mitigation measures set forth therein (the "Mitigation Work") in connection with the Proposed Development, as follows:-(a) Recreation Center.

(i) Upon the issuance of a New Building Permit for the Center-East Site, Declarant shall construct a multi-purpose indoor active recreation space (the "Recreation Center") ~~to be shared for use by the general public and the residents of the Center-East Building.~~ Declarant shall either operate the Recreation Center in-house or shall engage a third-party ~~partner~~operator to handle the management, scheduling, and programming of the space. ~~Declarant~~The operator shall be permitted to charge fees that do not exceed fees charged by the NYC Department of Parks and Recreation ("DPR") for admission to its recreation centers. In advance of the completion of the design of the facility on the Center-East Site or the selection of a third-party ~~partner~~operator, Declarant shall consult with Manhattan Community Board 2 to identify an active recreational use and program for the space, appropriate design of the space, and appropriate equipment to outfit the space. Concurrently with consultation of the Community Board, Declarant shall consult DPR to confirm that the identified active use is suitable.

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Declarant ~~shall cause the operator~~ shall engage community organizations, DPR, and Hudson River Park Trust to advertise the space for general public use.

(ii) The Recreation Center space shall meet the following criteria (the "Design Criteria"):

1. It shall contain no less than ~~40~~15,000 gross square feet of space, inclusive of all support space, located on the ~~ground floor~~cellar level of the Center-East Building, with a ground-floor entrance, as shown on the Plans;

2. It shall be improved for active recreational uses, and shall be suitable for activities such as ball sports, martial arts, or fitness classes, or as determined pursuant to Section 3.03 (i). It shall also include support space, including bathrooms and storage.

~~3. All of the facilities comprising the Recreation Center that are accessible to building residents shall be accessible to the public.~~

3. It shall include a sports floor for active use of approximately 6,000 square feet, excluding support space.

~~4. It shall be open to the public for no less than 50% of its operating hours, which hours shall be allocated on an equitable basis during morning, midday and evening hours.~~

~~5. It shall operate~~operated no fewer than eighty hours each week, ~~inclusive of hours of access by building residents and the public.~~

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~~6.4~~ ~~That numbers of users or subscribers to the facility not be~~  
~~unreasonably limited~~

~~7.5~~ It shall include clear access and signage to the facility.

~~6. Specific design and operational standards shall be~~  
~~determined by the operator.~~

(iii) Declarant shall neither request nor accept a Building Permit from DOB (other than a permit for demolition, site preparation or excavation) for either the Center-East or Center-West Buildings until the Chair has approved a schematic design for the Recreation Center that substantially complies with the Design Criteria as set forth in clause (ii) of this Section 3.03(a). Declarant shall submit to the Chair a schematic design for the Recreation Center, which schematic design shall be accompanied by a letter from Community Board 2 listing its recommendations for the design and programming of the Recreation Center, and a letter from DPR evidencing DPR's approval of the design and programming of the Recreation Center. Within forty-five (45) days of such submission, the Chair shall either (A) issue the certification, or (B) notify Declarant in writing of any deficiency with the Design Criteria, in which case Declarant shall submit revised plans that address such defects. Within thirty (30) days of such revised submission, the Chair shall either (A) issue the certification, or (B) notify Declarant in writing of any deficiency with the plans, in which case Declarant shall submit revised Recreation Center plans that address such defects. This process shall continue until the Chair has issued the certification. Upon issuance of the certification, the plans shall be the "Approved Recreation Center Plans."

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(iv) Substantial Completion of Recreation Center shall be a condition to the issuance of TCOs for both the Center-East and Center-West Building. The Buildings Department shall not issue, and Declarant shall not accept, a TCO for any dwelling units in either the Center-East and Center-West Building until the Declarant has Substantially Completed the Recreation Center, as described herein, and the Chair has so certified such Substantial Completion to the Buildings Department.

(v) Declarant shall notify the Chair when, in the opinion of Declarant, the Recreation Center has been Substantially Completed. Within fifteen (15) business days of its receipt of Declarant's notice, the Chair shall either (i) issue a certification of Substantial Completion, or (ii) notify Declarant of any work that, according to the Approved Recreation Center Plans, remains to be completed before the Chair will issue a certification of Substantial Completion. If the Chair notifies Declarant that work remains to be completed or corrected in accordance with the Approved Recreation Center Plans, such notice shall contain a detailed statement of the reasons for such non-acceptance by listing the elements of the Approved Recreation Center Plans remaining to be completed. Upon completion of the work specified in the Chair's letter, Declarant shall notify the Chair and, within fifteen (15) business days of receipt of such notice, the Chair shall either (i) issue a certification of Substantial Completion, or (ii) issue a revised letter listing any items from the original letter remaining to be completed. This process shall continue until the Chair has issued a certification of Substantial Completion.

(vi) Permanent Certificates of Occupancy. The Buildings Department shall not issue, and Declarant shall not accept, a PCO for any dwelling units in the Center-East or Center-West Building until the Declarant has Finally Completed the Recreation Center in

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accordance with the Approved Recreation Center Plans, and the Chair has so certified such Final Completion to the Buildings Department.

(vii) Declarant shall notify the Chair when, in the opinion of Declarant, the Recreation Center has been Finally Completed. Within fifteen (15) business days of its receipt of Declarant's notice, the Chair shall either (i) issue a certification of Final Completion, or (ii) notify Declarant of any work that, according to the Approved Recreation Center Plans, remains to be completed before the Chair will issue a certification of Final Completion. If the Chair notifies Declarant that work remains to be completed in accordance with the Approved Recreation Center Plans, such notice shall contain a detailed statement of the reasons for such nonacceptance by listing the elements of the Approved Recreation Center Plans remaining to be completed or corrected. Upon completion of the work specified in the letter, Declarant shall notify the Chair and, within fifteen (15) business days of receipt of such notice, the Chair shall either (i) issue a certification of Final Completion, or (ii) issue a revised letter listing any items remaining to be completed. This process shall continue until the Chair has issued a certification of Final Completion.

(b) Passive Open Space. If the Center Site Building is constructed pursuant to the Proposed Development, Declarant shall provide 19,820 square feet of publically accessible open space, as described in Article IV hereof.

(c) Traffic. Chapter 22 of the FEIS identifies significant adverse traffic impacts in connection with the Proposed Development and mitigation measures in the form of signal timing changes, approach daylighting, lane restriping and signage. The FEIS predicts that

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the proposed mitigation measures would be required at the completion of the Proposed Development's full build out. However, because the Proposed Development could be built all at once or may be phased, and development may take place in any order, an interim impact assessment was conducted to determine the impacts that could occur prior to the full build out. It was determined that the mitigation measures listed below could also be advanced upon completion of the Center Site to mitigate significant adverse impacts that would be anticipated for that time.

As set forth in the FEIS, the Proposed Development could contain either hotel or office uses in the South Site Building. The FEIS, therefore, identifies traffic impacts and mitigation measures for both the office and hotel scenarios.

In order to mitigate the significant adverse traffic impact, the Declarant has agreed that the mitigation measures will be implemented as described below.

(i) Proposed Development with South Site Hotel Use:

1. Declarant shall not apply for or accept a TCO or PCO for either (1) the Center Site Building or (2) the last Building which would, together with all Buildings constructed on the Development Site, represent a full build out of the Proposed Development, until 30 days after Declarant has sent written notice to NYCDOT, requesting that NYCDOT investigate the need for the traffic mitigation measures set forth in Tables 22-3 to 22-6 of the FEIS, which are annexed hereto at Exhibit "K". Declarant shall comply with NYCDOT requirements necessary to implement the traffic mitigation measures described in Exhibit K, and shall either

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implement such measures as directed by NYCDOT, or, if directed by NYCDOT, pay NYCDOT/City of New York for the ordinary and customary costs, if any, of implementing capital improvements upon request of NYCDOT accompanied by appropriate documentation. To the extent that NYCDOT does not approve or deems unnecessary one or more of the traffic measures set forth in Exhibit K, Declarant shall have no further obligation with respect to such measures.

(ii) Proposed Development with South Site Office Use:

1. Declarant shall not apply for or accept a TCO or PCO for either (1) the Center Site Building or (2) the ~~last~~ Building which would, together with all Buildings constructed on the Development Site, represent a full build out of the Proposed Development, until 30 days after Declarant has sent written notice to NYCDOT, requesting that NYCDOT investigate the need for the traffic mitigation measures set forth in Tables 22-23 to 22-26 of the FEIS, which are annexed hereto at Exhibit K. Declarant shall comply with NYCDOT requirements necessary to implement the traffic mitigation measures described in Exhibit K, and shall either implement such measures as directed by NYCDOT, or, if directed by NYCDOT, pay NYCDOT/City of New York for the ordinary and customary costs, if any, of implementing capital improvements upon request of NYCDOT accompanied by appropriate documentation. To the extent that NYCDOT does not approve or deems unnecessary one or more of the traffic measures set forth in Exhibit K, Declarant shall have no further obligation with respect to such measures.

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(d) Construction Noise. Should Declarant construct and occupy the Center Site Building prior to Construction Commencement of the South Site Building, Declarant shall close the publically accessible open space in the courtyard of the Center Site Building, as described in Article IV, during the demolition, excavation and foundation construction stages of the South Site Building to eliminate a significant adverse construction noise impact on such open space.

3.04 ~~NYC~~ 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.

3.05 ~~NYC~~ Innovation and Alternatives: Modifications Based on Further Assessments. Innovation and Alternatives. In complying with Sections 3.01 through 3.03 of this Declaration, Declarant may, at its election, implement innovations, technologies or alternatives that are or become available, including replacing any equipment, technology, material, operating system or other measure previously located on the Subject Property or used within the Proposed Development 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.



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(b) 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. 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 against the Subject Property in the office of the City Register.

(c) Process for Innovations, Alternatives and Modifications Pursuant to Section 3.05. Following the delivery of a Notice to DCP requesting an Innovation, Alternative or Modification pursuant to Section 3.05 hereof (the "Section 3.05 Request"), Declarant shall meet with DCP (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 reasonably be requested by DCP or the Monitor in writing in order to allow DCP to determine, acting in consultation with the Monitor and City agency personnel as necessary in relation to the subject matter of the Section 3.05 Request.

3.06 ~~3.06~~ Appointment and Role of Independent Monitor. Declarant shall, with the consent of DCP, retain a 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 and Mitigation Measures required under Sections 3.01, 3.02, and 3.03 of this Declaration (the "Construction Monitoring Measures" or "CMMs"). The Monitor shall be a licensed

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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. In the event that the Declarant that is a signatory to this Declaration shall have sold, leased transferred or conveyed to a third party fee title to, or a ground or net lease of, one or more Sites within the Subject Property (other than transfers of condominium units), then such third party shall be entitled with respect to such Site so sold, leased, transferred or conveyed to it, and, with the prior written approval of DCP and Declarant, to appoint a separate Monitor for such Site and shall, for the purposes of Article III be considered a Declarant. Accordingly there may exist more than one Monitor with respect to multiple construction activities proceeding simultaneously on the Subject Property, pursuant to separate Monitor Agreements (hereafter defined). DCP hereby consents to the selection of any one of the following entities to serve as 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 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

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Monitor; (iii) authorize DCP to direct the termination of services by the Monitor for unsatisfactory performance of its responsibilities under the Monitor Agreement; (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 forty-five (45) 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 with respect to an identified stage(s) of development on the Subject Property including, with respect to the Buildings, until issuance of TCOs or PCOs therefor, unless the Declarant, with the prior consent of DCP or at the direction of DCP, shall have terminated a Monitor Agreement and substituted therefor another Monitor under a new Monitor Agreement, in accordance with all requirements of this Section 3.06. 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.

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(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 or the issuance or acceptance by Declarant of a Foundation Permit, New Building Permit, TCO or PCO as the case may be; and (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 (iii) prepare a quarterly report summary of activities for distribution to any Committee established under Section 8.01 of this Declaration; and (iv) liaise with any Committee established under Section 8.01. 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. 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, 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 the applicable portion of the Subject Property either on or outside 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

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additional testing shall be (q) coordinated with Declarant's construction activities and use of the Subject Property by the occupants of and visitors to any of the Buildings and PAA then located on the Subject Property; and (r) conducted in a manner that will minimize any interference with the Proposed 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.

(d) Subject to compliance with all generally applicable site safety requirements imposed by Legal 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 any of the Buildings and PAA then located on the Subject Property, and (ii) conducted in a manner that will minimize any interference with the Proposed 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).

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(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 3.06(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 8.04. Notwithstanding any provisions to the contrary contained in Section 7.01 of this Declaration, following receipt of a CMM Default Notice, Declarant shall: (i) effect a cure of the alleged violation within ten (10) 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 ten (10) business days would not be harmful to the environment or that the required cure cannot be accomplished within ten (10) business days (such longer cure period, a "Proposed Cure Period"). If DCP accepts within three (3) 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

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Cure Period within two (2) business days or after receipt of a writing from Declarant with respect thereto, the running of the ten (10) 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. 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 ~~7~~ Force Majeure Event Involving a PCRE or Mitigation Measure.

Notwithstanding any provision of Section 7.05 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 unless and until the Chair, based

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on consultation with the Monitor designated under Section 3.06 of this Declaration, 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 FSEIS.

~~3.087~~ DCP Review. Not less than [ninety (90) days] prior to the sooner to occur of (i) the date Declarant anticipates to be the date of Construction Commencement, and (b) the date Declarant anticipates obtaining any Foundation Permit from the Buildings Department, Declarant shall send written notice to DCP, with a copy to the Monitor if DCP has previously requested in writing that Declarant copy the Monitor, advising of Declarant's intention to undertake Construction Commencement or obtain such Foundation Permit as the case may be (each such notice, a "Permit Notice"). Any Permit Notice shall be accompanied by: (i) a summary of the provisions of this Declaration imposing conditions or criteria that must be satisfied as a condition to or in conjunction with Construction Commencement or issuance of the relevant Foundation Permit or New Building Permit; (ii) materials or documentation demonstrating compliance with such requirements or criteria to the extent Declarant believes that compliance has been achieved by the date of the Permit Notice; and (iii) to the extent that Declarant believes that compliance with any condition or criteria has not been achieved by the date of the Permit Notice, an explanation of why compliance has not yet been achieved to date, the steps that are or will be taken prior to issuance of the Building Permit to achieve compliance and the method proposed by Declarant to assure DCP that the elements will be achieved in the future. Materials or documentation from any Governmental Authority, certifying the



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implementation of a PCRE or Mitigation Measure set forth in this Article III, shall be accepted as compliance with the relevant PCRE or Mitigation Measure.

(b) Following the delivery of a Permit Notice to DCP in accordance with Paragraph (a) hereof, Declarant shall meet with DCP (and at DCP's option, the Monitor) to respond to any questions or comments on the Permit Notice and accompanying materials, and shall provide additional information as may reasonably be requested by DCP or the Monitor in writing in order to allow DCP to determine, acting in consultation with the Monitor and any City agency personnel as necessary in relation to the subject matter of the Permit Notice, that the conditions and criteria for Construction Commencement or issuing the Building Permit have been or will be met in accordance with the requirements of this Declaration. Declarant shall not accept any Building Permit subject to review pursuant to this Section 3.08 until DCP has certified to Declarant and the Buildings Department that the conditions and criteria set forth in this Declaration for issuance of the Building Permit have been met. Notwithstanding the foregoing, in the event that DCP has failed to (x) respond in writing to Declarant within thirty (30) days of receipt of the Permit Notice, (y) meet with Declarant within forty-five (45) days of receipt of the Permit Notice or (z) respond in writing to Declarant within fifteen (15) days of receipt of additional materials provided to DCP under this Paragraph (b), DCP shall be deemed to have accepted the Permit Notice and any subsequent materials related thereto under this Paragraph (b) as demonstrating compliance with the requirements for issuance of the Building Permit and Declarant shall be entitled to Commence Construction or accept the Building Permit and to undertake any and all activities authorized thereunder.

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(c) Not less than thirty (30) days prior to the date that Declarant anticipates obtaining the first TCO or PCO for any Building on the Subject Property, Declarant shall send written notice to DCP, with a copy to the Monitor if DCP has previously requested in writing that Declarant copy the Monitor, advising of Declarant's intention to obtain such TCO or PCO (each such notice, a "CO Notice"). Within twenty (20) days of delivery of any CO Notice, DCP shall have the right to inspect the Building and review construction plans and drawings, as necessary to confirm that the PCRE and/ or Mitigation Measures required to be incorporated into the Building have been installed in accordance with the plans initially submitted as part of the New Building Permit. The Buildings Department shall not issue, and Declarant shall not accept, a TCO or PCO if DCP has provided written notice to Declarant, copied to the Buildings Department, within five (5) days following any such inspection (x) advising that Declarant has failed to include a required PCRE and/or Mitigation Measure within the Building, or has failed to fully satisfy the PCRE and/or Mitigation Measure, and (y) specifying the nature of such omission or failure. In the event that DCP provides such notice, Declarant and DCP shall meet within five (5) business days of such written notice to review the claimed omission or failure, develop any measures required to respond to such claim, and Declarant shall take all steps necessary to remedy such omission or failure. Upon the completion of such steps to the satisfaction of DCP, Declarant shall be entitled to obtain the TCO or PCO as the case may be

(d) In the event of a continued disagreement between DCP or other City agency and Declarant under Paragraph (c) as to whether any PCRE and/or Mitigation Measure has been included or fully satisfied or will be included or fully satisfied by the measures proposed by Declarant, Declarant shall have the right to appeal such matter to the Deputy Mayor

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of Planning and Economic Development, or any successor Deputy Mayor, and to seek resolution within forty-five (45) days of Declarant's appeal thereto.

ARTICLE IV

PUBLIC ACCESS AREA

4.01 CPC Chair Review and Certification of Design

(a) Declarant shall neither request nor accept a Building Permit from DOB (other than a permit for demolition, site preparation or excavation) for a Building on the Center Site or South Site in the Proposed Development until the Chairperson of the New York City Planning Commission (the "Chair") certifies that the design of the outdoor public access area located on the Center Site and South Site in the Proposed Development, as identified on the Plans (the "PAA") substantially complies with the Design Criteria as set forth in Section 4.03 hereof (the "PAA Certification"). In advance of the completion of the design of the PAA, Declarant shall consult with Manhattan Community Board 2 regarding the design of the PAA. The PAA shall consist of three areas, as shown on Plans L-100 ~~through~~ and L-101:

- (i) the "South Portion," which shall consist of the portion the PAA located on the South Site;
- (ii) the "Through-Block Portion," which shall consist of the roadbed and adjacent sidewalks of the through-block passageway providing pedestrian and vehicular access through the Center Site; and

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(iii) the "Center Portion," which shall consist of the portion of the PAA location to the north of the Through-Block Portion, on the Center Site.

~~The Declarant may develop the PAA in substantial conformance with one of the two proposed alternative plans shown on Plans L-100 through L-102.~~

(b) To initiate Chair review, Declarant shall submit drawings of the PAA with sufficient details to enable the Chair to determine whether the PAA substantially complies with the Design Criteria ("PAA Certification Plans"). The drawings shall be accompanied by a letter from Community Board 2 listing its recommendations for the design of the PAA.

(c) Within forty-five (45) days of such submission, the Chair shall either (A) issue the PAA Certification, or (B) notify Declarant in writing of any deficiency from the Design Criteria, in which case Declarant shall submit revised PAA Certification Plans that address such defects. Within thirty (30) days of such revised submission, the Chair shall either (A) issue the PAA Certification, or (B) notify Declarant in writing of any deficiency with the Design Criteria, in which case Declarant shall submit revised PAA Certification Plans that address such defects. This process shall continue until the Chair has issued the PAA Certification. Upon issuance of the PAA Certification, the PAA Certification Plans shall be the "Approved PAA Plans."

4.02 Completion of Public Access Area

(a) Substantial Completion of PAA shall be a condition to the issuance of TCOs for the first Building to be completed on either the South Site or the Center Site, as follows:

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(i) Substantial Completion of the South Portion and Through-Block Portion of the PAA shall be a condition to the issuance of TCOs for the South Site Building; and

(ii) Substantial Completion of the Center Portion and Through-Block Portion of the PAA shall be a condition to the issuance of TCOs for either Center Site Building.

Notwithstanding the foregoing, Substantial Completion of the PAA shall not be a condition to the issuance of TCOs for any portion of such Buildings which contain affordable housing units exclusively, and any accessory space necessary to legally occupy such affordable housing units.

The Buildings Department shall not issue, and Declarant shall not accept, a TCO for any market-rate dwelling units in any Center Site Building until the Declarant has Substantially Completed the Center Portion and Through-Block Portion of the PAA, as described herein, and the Chair has so certified such Substantial Completion to the Buildings Department. The Buildings Department shall not issue, and Declarant shall not accept, a TCO for any floor area in the South Site Building until the Declarant has Substantially Completed the South Portion and Through-Block Portion of the PAA, as described herein, and the Chair has so certified such Substantial Completion to the Buildings Department.

(b) Declarant shall notify the Chair when, in the opinion of Declarant, the applicable portions of the PAA have been Substantially Completed. Within fifteen (15) business days of its receipt of Declarant's notice, the Chair shall either (i) issue a certification of Substantial Completion, or (ii) notify Declarant of any work that, according to the Approved PAA Plans, remains to be completed before the Chair will issue a certification of Substantial Completion for such portion. If the Chair notifies Declarant that work remains to be completed

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or corrected in accordance with the Approved PAA Plans, such notice shall contain a detailed statement of the reasons for such non-acceptance by listing the elements of the Approved PAA Plans remaining to be completed. Upon completion of the work specified in the Chair's letter, Declarant shall notify the Chair and, within fifteen (15) business days of receipt of such notice, the Chair shall either (i) issue a certification of Substantial Completion for such portion, or (ii) issue a revised letter listing any items from the original letter remaining to be completed. This process shall continue until the Chair has issued a certification of Substantial Completion for such portion.

(c) Permanent Certificates of Occupancy. The Buildings Department shall not issue, and Declarant shall not accept, a PCO for units in the first Building to be completed on the Center Site until the Declarant has Finally Completed the Center Portion and Through-Block Portion of the PAA in accordance with the Approved PAA Plans, and the Chair has so certified such Final Completion to the Buildings Department; provided, however, that Final Completion of any portion of the PAA shall not be a condition to the issuance of PCOs for any affordable housing units. The Buildings Department shall not issue, and Declarant shall not accept, a PCO for any floor area in the South Site Building until the Declarant has Finally Completed the South Portion and Through-Block Portion of the PAA in accordance with the Approved PAA Plans, and the Chair has so certified such Final Completion to the Buildings Department.

(d) Declarant shall notify the Chair when, in the opinion of Declarant, the applicable portions of the PAA have been Finally Completed. Within fifteen (15) business days of its receipt of Declarant's notice, the Chair shall either (i) issue a certification of Final Completion, or (ii) notify Declarant of any work that, according to the Approved PAA Plans,

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remains to be completed before the Chair will issue a certification of Final Completion for such portion. If the Chair notifies Declarant that work remains to be completed in accordance with the Approved PAA Plans, such notice shall contain a detailed statement of the reasons for such nonacceptance by listing the elements of the Approved PAA Plans remaining to be completed or corrected. Upon completion of the work specified in the letter, Declarant shall notify the Chair and, within fifteen (15) business days of receipt of such notice, the Chair shall either (i) issue a certification of Final Completion for such portion, or (ii) issue a revised letter listing any items remaining to be completed. This process shall continue until the Chair has issued a certification of Final Completion for such portion.

(c) Future Design Changes. Changes to the PAA after Final Completion may be approved by the Chair as a minor modification, pursuant to Section 6.03 of this Declaration.

4.03 Design Criteria. The PAA shall conform to the minimum design criteria set forth below (collectively, the "Design Criteria").

(a) Adequately sized pedestrian and ADA circulation paths shall be provided throughout the PAA.

(b) Seating:

1. At least three different types of seating shall be provided, which seating types may include: moveable seating, fixed individual seats, fixed benches with and without backs, and design-feature seating such as seat walls, planter ledges, or seating steps. Seating shall have a minimum depth of 18 inches. Generous access and circulation to the seating shall be provided. When seating is provided on a planter ledge, such ledge must have a minimum

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depth of 22 inches. Seating shall have a height not less than 16 inches nor greater than 20 inches above the level of the adjacent walking surface. Some seating with seat backs at least 14" high and reclining between 10 to 15 degrees shall be provided.

2. All moveable seats must have backs and a maximum seat depth of 20 inches. If moveable tables and seats are included, one table shall generate at least four such moveable seats. Moveable seats shall not be chained, fixed, or otherwise secured while the PAA is open to the public; moveable seats, however, may be removed during the hours when the PAA is not open to the public as set forth in Section 4.04 of this Declaration.

3. Prohibitions: Devices or forms affixed or incorporated into planter ledges, steps, sills, or other horizontal surfaces that would otherwise be suitable for seating that are intended to prevent, inhibit or discourage seating (such as spikes, metal bars, or pointed, excessively rough, or deliberately uncomfortable materials or forms) shall be prohibited.

(c) Access for Persons with Disabilities: The PAA shall conform with applicable laws pertaining to access for persons with disabilities.

(d) Plantings and Trees:

1. Plantings shall include a combination of trees, shrubs, grasses and groundcover that reflect variety in seasons, colors and textures. Trees shall measure at least four inches in caliper at the time of planting, unless alternative multi-stemmed equivalents are specified. Some plantings shall be visible from street level.



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2. Planting beds shall have sufficient volume to support healthy plant growth. Planter walls shall not exceed 18" in height above an adjacent walking surface.

3. All planted areas shall either be automatically irrigated or shall consist of species that do not require regular watering;

4. All planted areas located above subsurface structures such as the former High Line rail tracks or retail spaces shall have drainage systems to prevent collection and pooling of water within planted areas; and

(e) Lighting and Electrical Equipment:

1. The PAA shall be illuminated to provide for safe use and enjoyment of all areas of the PAA. Special attention should be provided in lighting steps and other changes in elevation and areas under tree canopies and permitted canopies within the PAA;

2. The PAA shall be illuminated with a minimum level of illumination of not less than two horizontal foot candles (lumens per foot) throughout all walkable and sitting areas, and a minimum level of illumination of not less than 0.5 horizontal foot candles (lumens per foot) throughout all other areas. Such level of illumination shall be maintained at all times when the applicable portion of the PAA is open to the public at all times. A lighting schedule, including fixtures, wattage and their locations and designs together with a diagram of light level distribution, with light levels indicated at intervals of no more than every 20 square feet.

3. All lighting sources that illuminate the PAA and are mounted on or located within buildings adjacent to the PAA shall be shielded from direct view.

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In addition, all lighting within the PAA area shall be shielded to minimize any adverse effect on surrounding residences.

(f) Litter Receptacles: Adequate number of litter receptacles shall be provided for the PAA. All litter receptacles must have a volume capacity of at least 25 gallons and shall be located in visible and convenient locations. All top or side openings must have a minimum dimension of 12 inches.

(g) Signage:

1. The PAA shall comply generally with the provisions of ZR Section 37-751 (Public space signage systems) and ZR Section 37-752 (Prohibition signs) as in effect on the date of this Declaration, as modified herein, ~~and except as provided in Exhibit G.~~ The operating rules set forth in Exhibit G may be included on the signs installed in the PAA, if the number and dimensions of such signs strictly comply with Section ZR 37-752. All references therein to #public plaza# shall be replaced with the words "Public Access Area".

2. Accessory Signs: Each establishment fronting on the PAA shall be permitted to have one or more signs with an aggregate area not to exceed the product of 12 square feet and the length of the establishment along the PAA, in linear feet, divided by 40 linear feet. In no event shall a sign exceed 16 square feet in area.

(h) Permitted Obstructions. The PAA shall be open to the sky in accordance with ZR Section 37-726.

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4.04 Public Access Easement

(a) Subject to subsection (d) hereof, Declarant covenants that, immediately upon certification by the Chair pursuant to Section 4.02 hereof that the Through-Block Portion of the PAA, as shown on Plans L-100-~~and L-403~~101, is Substantially Complete, the City shall hereby enjoy, wield, and have the right to and the benefit of and be granted, conveyed and transferred a non-exclusive easement (the "Through-Block Access Easement") in perpetuity, for the benefit of the general public, encompassing the area of the Through-Block Portion of the PAA that is unobstructed from the surface thereof to the sky, for the purposes of: (1) pedestrian access and (2) emergency vehicle access, in accordance with the provisions of this Article V. Any such grant of the Through-Block Access Easement shall not cause Through-Block Portion of the PAA or any portion thereof to be considered a "street" as defined in Section 12-10 of the Zoning Resolution for the purpose of zoning, and shall not affect the floor area calculations, height and setback compliance, or any other aspect of compliance with the Zoning Resolution for any development on the Subject Property.

(b) The Declarant covenants that all liens, including but not limited to judgment liens, mortgage liens, mechanics' liens and vendees liens, and all burdens, covenants, encumbrances, leases, licenses, easements, profits, security interests in personal property or fixtures, and all other interests subsequent thereto, excepting governmental tax liens and assessments, and public utilities and related easements, shall be or shall be caused by Declarant to be, at and after the time of vesting of the Through-Block Access Easement in the City, subject and subordinate to the rights, claims, entitlements, interests and priorities created by the

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Through-Block Access Easement and shall demonstrate same by means of appropriate documentation reasonably satisfactory to the City.

(c) Declarant hereby waives its rights to assert the rule against perpetuities as a defense in any proceeding to compel the conveyance of Through-Block Access Easements. Notwithstanding the foregoing, the Through-Block Access Easement shall not encompass any area or volume below the grade of the surface of the Platform.

(d) Notwithstanding anything to the contrary in this Section 4.04 or Section 4.06(a), Declarant shall be entitled upon notification to the Chair pursuant to this Section, to close to the public any portion of the Through-Block Access Easement that has been Substantially Completed to the extent and for the period of time that such closure is reasonably required to allow for the construction of a Building in a safe manner, or to complete a subsequent portion of the Through-Block Access Easement, or portion thereof, or to allow for necessary maintenance and repair and the easement granted pursuant to paragraph (a) of this Section 4.04 is limited to such extent. Declarant shall notify the Chair of the need to close any portion of the Through-Block Access Easement not less than thirty (30) days prior to such closure (except in the case of an emergency), and shall provide the Chair with a description of the need (including, if the closure is related to construction of a Building, an explanation as to how the Site for such Building does not provide sufficient space for such construction in a safe manner, extent and estimated period of time of closure reasonably required pursuant to this clause.

4.05 Hours of Access to the PAA

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(a) Declarant covenants that, upon Substantial Completion of the PAA, subject to Section 4.02(d) hereof, the South Portion and Center Portion of the PAA shall remain open and accessible to the public daily, from 7 am to 10 pm.

(b) Declarant covenants that, upon Substantial Completion of the Through-Block Portion of the PAA, passageway, as shown on the Plans, shall remain open and accessible to the public 24 hours a day.

4.06 Commercial Use

No commercial use shall be allowed in the PAA and any seating provided in the PAA shall be available to the public and not be restricted to patrons of adjacent commercial spaces. Up to 12 public commercial events (such as a farmer's market) may be held in the PAA each year. Each event must last no more than 24 hours, and must be free and open to the general public. Declarant shall notify the Chair of any scheduled events not less than seven days prior to such event.

4.07 Maintenance and Repair of Public Access Area

(a) Declarant shall be responsible for the maintenance and repair of the PAA, including any paving, landscaping, furniture, lighting, and elevator equipment provided in the PAA, in accordance with the standards set forth in this Section 4.06. All such maintenance shall be performed in a good and worker-like manner.

(b) Cleaning and Maintenance.

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- (i) Dirt, litter and obstructions shall be removed as needed and leaves collected and removed as needed to maintain the PAA in clean, neat, and good condition.
- (ii) All walkways, lighting, drinking fountains, irrigation systems and all other improvements and facilities installed in the PAA shall be routinely cleaned and maintained so as to keep such improvements and facilities in a clean, neat, and good condition.
- (iii) Graffiti shall be regularly painted over or removed, as appropriate to the nature of the surface, promptly, with reasonable dispatch.
- (iv) Drains, sewers and catch basins shall be cleaned regularly to prevent clogging.
- (v) Branches and trees damaged or felled by winds, ice, vandalism or by any other reason whatsoever, shall be promptly removed, and trees shall be replaced in accordance with the Landscape Maintenance Plan, as described below.
- (vi) Snow and ice shall be promptly removed from all walkways so as not to interfere with safe passage and from all other paved surfaces no more than 24 hours after each snowfall or accumulation of ice.
- (f) Landscape Maintenance. A maintenance program for the planted portions of the PAA shall be established, consisting of a "Spring Start-up Period" program, a "Season Closing Period" program, and a continuing maintenance program through the "Growing Season."

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(i) **Spring Start-Up Period:** The Spring Start-up Period shall commence on March 1<sup>st</sup> and terminate not later than the end of the second week of April of each calendar year. The following work shall be undertaken and carried out annually during the Spring Start-up Period:

- (aa) Remove any winter protectives from trees, shrubs and other planting materials;
- (bb) Remove all landscaping debris including leaves and dead branches;
- (cc) Prune and trim trees that have overextended, dead or otherwise unsightly branches to maintain natural form;
- (dd) Remove or destroy any weeds growing between paving blocks, pavement, and concrete areas;
- (ee) Apply commercially available nitrogen rich fertilizer to trees, shrubs, planting materials and other lawn areas as appropriate;
- (ff) Remove any sand deposited as a result of winter sandings;
- (gg) Replace any plant material or trees that are dead, diseased and/or otherwise unhealthy with specimens of substantially equal type and reasonable size;

(ii) **Season Closing Period:** The Season Closing Period shall begin on October 1<sup>st</sup> and shall terminate not later than November 1<sup>st</sup> of each calendar year. The following

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work shall be undertaken and carried out during the Season Closing Period: Rake and collect leaves from the PAA;

(aa) Wrap trees, shrubs, and other plant materials as necessary to ensure adequate winter protection;

(bb) Apply commercially available nitrogen rich fertilizer to all lawn areas;

(iii) **Growing Season:** The Growing Season shall commence at the end of the Spring Start-up period and shall terminate at the end of the Season Closing Period. The following work shall be undertaken and carried out during the Growing Season:

(aa) Inspect trees on a regular basis and spray when necessary;

(bb) Water all trees, shrubs, plantings and grass areas as necessary to maintain in a healthy condition. In extended periods of drought (i.e., little precipitation/high temperatures for more than one week) ground cover, trees, shrubs and other plantings shall be thoroughly watered, subject to City or State regulations governing water usage;

(dd) Weed as needed, no less than on a bi-weekly basis.

(g) **Repairs and Replacements.** Repairs and replacements of facilities or utilities within the PAA shall occur as needed to maintain such facilities or utilities in good order and working condition. Declarant shall exercise due diligence in commencing the repair or replacement of same as promptly as possible and subject to the notice requirements of Section 8.04 hereof and completing the same within a reasonably expeditious time after commencement.



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All repairs and replacements shall be performed in substantial compliance with the Approved PAA Plans and replacement materials shall match existing materials to the extent feasible. Repairs shall include, but not be limited to, the following, as applicable to the facilities in the PAA:

- (i) Benches or Other Seating: Maintenance, including replacement of any broken or missing slats and painting, as necessary;
- (ii) Walls or Other Barriers: Any broken or materially cracked walls, or barriers shall be repaired or removed and replaced;
- (iii) Paving: All paved surfaces shall be maintained so as to be safe and attractive;
- (iv) Signage: All signs and graphics shall be maintained in a first class condition and all vandalized or damaged signage shall be promptly cleaned or replaced with new signage or graphics;
- (v) Painting: All items with painted surfaces shall be painted on an "as needed" basis. Surfaces shall be scraped free of rust or other extraneous matter and painted to match the installed color;
- (vi) Plant Materials and Trees: Plant materials and trees that are dead, diseased and/or otherwise unhealthy shall be replaced with healthy specimens of substantially equal type and reasonable size; and

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(vii) **Construction Defects and Hazardous Conditions:** Declarant shall periodically inspect the PAA for construction defects and hazardous conditions and shall promptly repair and remediate any construction defects or hazardous conditions, as well as implement any safety measures required on an interim basis to protect public safety.

(h) **Closure.** Notwithstanding Section 4.02 hereof, Declarant may close the PAA or the most limited portions thereof as may be necessary in order (i) to accomplish the maintenance, repairs or replacements; (ii) to make emergency repairs to mitigate hazardous conditions or emergency conditions; or (iii) to address other emergency conditions and shall notify the Chair of such closing and its expected duration as soon as practicable. In addition, Declarant may close the PAA during the construction of the South Building and either Center Site Building, as provided Section 3.03(c) hereof. Emergency conditions for which the PAA may be closed pursuant to (iii) above shall be limited to actual or imminent emergency situations, including but not limited to, New York City Police Department (the "**NYPD**") security alerts, riots, casualties, disasters, or other events endangering public safety or property, provided that no such emergency closure shall continue for more than twelve (12) consecutive hours without Declarant having consulted with the NYPD or the Buildings Department, as appropriate, and having following the NYPD's or Building Department's direction, if any, with regard to the emergency situation. Declarant shall promptly notify the Chair in writing of any closure which extends more than twelve (12) hours. Declarant will close or permit to be closed only those portions of such areas which must or should reasonably be closed to effect the repairs or mitigation to be undertaken, and may install scaffolding as necessary, and will exercise due diligence in the performance of such repairs etc. or mitigation so that it is completed

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expeditiously and the temporarily closed areas (or any portions thereof) are re-opened to the public promptly. In addition, Declarant may close the PAA or the most limited portions thereof as may be necessary to the public for one day per year, or such other period as shall be required by law to prevent a public dedication of the PAA, other than Saturday, Sunday or public holiday, on the same date in January of each year or as near to such date as is possible, to preserve Declarant's ownership interest in the PAA and to prevent a public dedication.

4.08 Operating Rules for PAA. The activities, uses and conduct permitted within the PAA shall comply with all applicable laws and regulations of the City, in addition to being subject to the policies set forth in the schedule annexed hereto as Exhibit G ~~(which shall be the latest Parks approved rules)~~, Declarant may modify the policies set forth in Exhibit G with the prior written approval of ~~DCP, which~~ the Chairperson of the City Planning Commission <sup>MOVE</sup> ~~(other than by imposing a limit on the number of people who can congregate in the PAA or a permit requirement)~~, which approval shall not be unreasonably withheld, conditioned or delayed.

ARTICLE V

PROPERTY OWNERS' ASSOCIATION

5.01 Organization of St. John's Terminal Property Owners' Association.

(a) Declarant shall cause to be organized a St. John's Terminal Property Owners' Association ("P.O.A.") or comparable entity, if any of the following changes are made in the ownership of the Proposed Development: (i) All or any portion of the Proposed Development is converted to condominium or cooperative ownership held in fee simple and/or leasehold; or (ii) the Proposed Development is owned by more than one fee owners and/or

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ground lessees of all or substantially all of the Subject Property or any portion thereof, unless either (x) the entities owning or leasing the same are under common control or are affiliated entities, or (y) one Declarant has notified the Chair that it has been assigned sole responsibility for assuring compliance with the obligations under this Declaration with regard to the PAA, in which case this Section 5.01 does not apply. The following provisions of this Article V shall be operative only in the event that P.O.A. is required to be formed pursuant to this Section 5.01 of this Declaration.

(b) In the event that P.O.A. is required to be formed pursuant to this Section 5.01 of this Declaration, Declarant shall (i) cause to be filed a Certificate of Incorporation for the P.O.A., or comparable entity, as a property owners' association organized under Section 402 of the New York State Not-for-Profit Corporation Law for the purpose of operating, maintaining and repairing the PAA; and (ii) certify to the Chair that the Certificate of Incorporation for P.O.A. has been filed with the New York Secretary of State. P.O.A. shall be organized in accordance with the terms of this Declaration and in accordance with the New York State Not-For-Profit Corporation law. Declarant, if required, shall (i) file with the Department of Law of the Office of the Attorney General of the State of New York a plan offering interests in P.O.A. pursuant to New York General Business Law Section 352-c (or shall comply with the requirements of any successor statute thereto), (ii) file any governing documents of P.O.A., including any required amendment to the Certificate of Incorporation of P.O.A., with the New York Secretary of State and/or the office of any other official or any other public record required by law in order to empower P.O.A. to carry out its obligations with respect to the Subject Property in full compliance with the requirements of this Declaration.

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(c) If the Declarant fails to comply with the provisions of this Section 5.01, the City may proceed with any available enforcement measures.

5.02 Purposes. Declarant shall cause the P.O.A. to be established for the purpose of operating, maintaining and repairing the PAA in accordance with Sections 4.02, 4.03 and 4.04 hereof, subject to Sections 5.03(a) and (b) hereof, and for the functions described in Section 5.03 hereof.

5.03 Powers. To the extent permitted by law, Declarant shall cause P.O.A. to be established with the power, authority, and responsibility to:

(a) maintain, repair and operate the PAA to the extent required herein, in accordance with Article IV hereof, including, but not limited to, in compliance with the requirements of Article IV as to hours of operation and public accessibility; provided, however, that for so long as Declarant retains an ownership interest in any portion of the Subject Property, then Declarant may elect to retain the authority to maintain, repair, and operate the PAA, subject to an appropriate arrangement with the P.O.A.;

(b) impose fees or assessments against Lot Owners, for the purpose of collecting funds reasonably necessary for the operation, maintenance and repair of the PAA or the maintenance and repair of the Public Access, or for any other obligations of P.O.A. which are properly allocable to Lot Owners pursuant to this Declaration, and collect, receive, administer, protect, invest and dispose of such funds;

(c) exercise any of its duties or obligations pursuant to this Declaration without seeking the separate consent of the Lot Owners;

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(d) bring actions to recover fees or assessments owed to P.O.A.; and

(e) exercise any and all of such powers as may be necessary or appropriate for purposes of this Declaration including without limitation, the powers set forth in Section 6.05 herein, and as may be granted to P.O.A. in furtherance of P.O.A.'s purposes pursuant to the New York State Not-for-Profit Law.

5.04 Lot Owner Obligations.

(a) The P.O.A. shall have as members all Lot Owners of the Subject Property or any portion thereof, whether residential, commercial or community facility. The P.O.A. shall assess all real property within the applicable portion of the Proposed Development for the purposes of maintaining, repairing and operating the PAA, and for any other Obligation of P.O.A. pursuant to this Declaration. Each Lot Owner, by acceptance of a deed or lease for its portion of the Subject Property, shall, whether or not the covenant is expressed in such deed or lease, be deemed to covenant and agree to pay all assessments which may be imposed by P.O.A. on the property owned or leased by such Lot Owner, which shall be assessed on a reasonable prorated basis as determined by Declarant and set forth in the applicable condominium declarations (each such individual assessment, together with such interest, costs and reasonable attorneys' fees as may be assessed in accordance with the provisions of this Declaration, the "Individual Assessment"). Each and every Individual Assessment, together with such interest, costs and reasonable attorneys' fees as may be imposed pursuant to Section 5.04(c) below, shall be a charge on the land or leasehold interest and a continuing lien on the property interest against which such assessment is made (such individual property interest, the "Individual Interest")

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and such charge and lien shall be subordinate only to (i) liens securing the payment of real estate taxes, (ii) the lien of a Mortgage or cooperative loan, and/or (iii) the lien of any condo board for any unpaid common charges of the condominium, encumbering such Individual Interest in the event of a foreclosure. It is expressly understood that Lot Owners who may be assessed for the maintenance, repair and operation of the Subject Property shall not include a Mortgagee or a holder of other lien or encumbrance ("Lien Holder") encumbering (xx) the fee estate in the Subject Property or any portion thereof, or (yy) the lessee's estate in a ground lease of all or substantially all of the Subject Property or all or substantially all of any Site, or (zz) any single Building to be built on the Subject Property, unless and until any such Mortgagee or Lien Holder succeeds to a Possessory Interest by foreclosure of the lien of the mortgage or other lien or acceptance of a deed or other transfer in lieu of foreclosure or exercise of an option to convert an interest as mortgagee into a Possessory Interest in any such fee or ground leasehold estate in the Subject Property and such Possessory Interest would otherwise constitute the interest of a Lot Owner subject to this Section 5.04(a). While it is intended that the Mortgagee or Lien Holder is to be included among the parties set forth in the definition of "Unit Interested Party," it is not intended that any such Mortgagee or Lien Holder shall be deemed to be a Lot Owner or shall be liable for any Individual Assessment imposed by P.O.A. pursuant to this Article V unless and until it succeeds to a Possessory Interest as described in the immediately preceding sentence.

(b) Each periodic Individual Assessment by the P.O.A. shall be the obligation of the Lot Owner against whom the Individual Assessment is charged at the time same falls due and may not be waived by such Lot Owner. The P.O.A. may bring an action to recover any delinquent Individual Assessment, including interest, costs and reasonable attorneys' fees of any

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such action, at law or at equity, against the Lot Owner obligated to pay the same. In the event a Lot Owner has not paid its Individual Assessment to the P.O.A. within ninety (90) days of the date such payment was due, the P.O.A. shall take all reasonable measures as may be required in order to collect such unpaid Individual Assessment.

(c) The periodic assessments charged to a Lot Owner which is the board of managers of a condominium shall be included within the common charges of the condominium. The maintenance charges imposed by a cooperative apartment corporation which is a Lot Owner on the owners of the shares of stock of such corporation allocated to cooperative apartments shall include an amount sufficient for such apartment corporation to pay the amount of any assessments imposed on it pursuant to the provisions hereof. The P.O.A. may bring an action to foreclose the P.O.A.'s lien against such Lot Owner's Individual Interest to recover any such delinquent assessment(s), including interest and costs and reasonable attorneys' fees of any such action. Any Unit Interested Party, by acceptance of a deed or a lease or mortgage to a portion of the Subject Property, thereby agrees to the provisions of this Section 5.04(c). Any Unit Owner may eliminate the P.O.A.'s lien described above on his or her Individual Interest by payment to the P.O.A. of such Unit Owner's prorated share of the periodic assessment by the P.O.A. to the cooperative corporation or condominium in which such unit is located. No Lot Owner or Unit Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the PAA or abandonment of the P.O.A.'s property, or by renunciation of membership in the P.O.A., provided, however, that a Lot Owner's or Unit Owner's liability with respect to future assessments ends upon the valid sale or transfer of such Lot Owner's or Unit Owner's



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Individual Interest in the Subject Property. A Lot Owner or Unit Owner may give to the P.O.A. nevertheless, subject to acceptance thereof by the P.O.A, a deed in lieu of foreclosure.

(d) In the event of a default by a Lot Owner which is the board of managers of a condominium or a cooperative apartment corporation, the City shall, prior to enforcing any rights against any other Lot Owners, first attempt to enforce its rights under this Declaration against such board of managers or cooperative apartment corporation.

(e) Notwithstanding anything to the contrary in this Declaration, the liability of any Lot Owner and any liens of the City shall be limited to such Lot Owner's interest in the Subject Property, on an in rem basis only, for the collection of any judgment recovered against such Lot Owner, and no other property of such Lot Owner shall be subject to levy, execution or other enforcement procedure for satisfaction of such judgment and the Lot Owner shall have no personal liability with respect to such assessment, and where a Lot Owner is the owner of a residential or commercial unit or units in a building subject to a cooperative plan or condominium declaration, the liability of any such Lot Owner for assessments as hereinabove provided shall be limited to an amount equal to that proportion of the total assessment payable for such building as such Lot Owner's proportionate share in such cooperative or condominium bears to such total assessment, as measured by such Lot Owner's percentage interest in his, her or its unit and in the common areas, or common elements or maintenance percentage interests appurtenant thereto in accordance with the applicable condominium declarations. Notwithstanding the foregoing, nothing in this Section 5.04(e) shall be deemed to preclude, qualify, limit or prevent any of the City's governmental rights, powers or remedies, including

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without limitation, with respect to the satisfaction of the remedies of the City, under any laws, statutes, codes or ordinances.

5.05 Deed References. Every deed in respect of all or any portion of the Subject Property, any other lease or occupancy agreement referred to in the definition of Lot Owner, and every declaration of condominium imposed on any portion of the Subject Property shall (i) contain a recital that the grantee or the lessee assumes, subject to the provisions of Section 5.04(c) and (d) herein, the obligations of a Lot Owner as set forth in this Article V, and (ii) confirm that the operation, maintenance and repair of the PAA, and the provisions of this Declaration are conditions to the City actions relating to the development of the Subject Property; provided, however, that the requirements of this Section 5.05 shall be satisfied by a reference to this Declaration and the provisions hereof in such deed, lease, occupancy agreement, or declaration of condominium, and the failure to include the specific provisions of this Article V in such deed, lease, occupancy agreement, or declaration shall not relieve such Lot Owner from any of such Lot Owner's obligations hereunder.

5.06 Non-Existence, Incapacity or Default of P.O.A. If P.O.A. or a comparable entity shall cease to exist, or be unable or unwilling to act, or be in default of its obligations under this Declaration, the City shall have the right, but not the obligation, to take any action necessary or appropriate to cure any default by P.O.A. or to protect and preserve the rights of the City under this Declaration including, but not limited to, any legal actions or proceedings necessary or appropriate against P.O.A. or any of its members for the purpose of protecting the City's rights and interest under this Declaration.

ARTICLE VI

EFFECTIVE DATE; AMENDMENTS

AND MODIFICATIONS TO AND

CANCELLATION OF THIS DECLARATION

**6.01 Effective Date; Lapse; Cancellation.**

(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 to proceed under the Special Permits by (i) obtaining a permit from the Buildings Department permitting the construction of the foundation of at least one Building within the Proposed Development (the "Foundation Permit") pursuant to the Special Permits, and (ii) recording against the Subject Property, and causing HRPT to record against the Pier 40 Site, the Transfer of Development Rights and Notice of Restrictions, in the form annexed hereto as Exhibit "F" (the "Transfer Instrument") (both (i) and (ii), the "Special Permit Election"). Unless and until Declarant has made a Special Permit Election, Declarant shall be entitled to develop the Subject Property with such uses and bulk, and only such uses and bulk, permitted on an as-of-right basis under the Former Zoning. Nothing herein shall be construed to limit the ability of Declarant on or after the date of a Special Permit Election to continue to completion any Hybrid Building, and thereafter to receive a temporary and permanent certificate of occupancy therefor after the date of Special Permit Election. The provisions of Section 2.01(a)(iii) shall apply; provided, however, at the time of making a Special Permit Election, any prior to any such Hybrid Building. In order

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for Declarant to make a Special Permit Election, (a) any Existing Building to remain following such Special Permit Election, which was developed or enlarged following December 15, 2016, shall be a Hybrid Building, and (b) in the event that development or enlargement of a Hybrid Building has occurred, Declarant's application for a Building Permit shall include a certification by the Monitor retained pursuant to ~~the Former Zoning shall be~~ Section 3.06 hereof that the Hybrid Building is consistent with ~~the~~ CEQR Technical Memorandum 001, CEQR No. 16DCP031M, dated October 14, 2016 and/or CEQR Technical Memorandum 002, CEQR No. 16DCP031M, dated December 12, 2016, as applicable, and that Declarant has implemented the project improvements as described in such applicable CEQR Technical Memorandum. A copy of such certification shall also be provided to the Chair

(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 Applications 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. Declarant shall deliver to the Commission a copy of all such documents, as recorded, certified by the City Register (the "Register"), promptly upon receipt of such documents from the Register. 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

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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 Applications 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.

6.02 Amendment. This Declaration may be amended, modified or cancelled only upon application by the 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 6.01 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

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kind, including, without limitation, any other present Party-in-Interest or future Party-in-Interest who is not a successor of Declarant.

6.03 Minor Modifications. Notwithstanding the provisions of Section 6.02 above, any change to this Declaration proposed by the 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 ~~the~~ 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. Notwithstanding the foregoing, modifications to the following provisions of this Declaration shall not be deemed by the Chair to be minor modifications, and shall not be approved administratively:

(a) Section 2.01 (a)(iii);

(b) Section 2.01(b);

(c) Section 2.03;

(d) Section 2.04;

(e) Section 3.03 (a)(i)-(vii);

(f) Section 3.03 (b);

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(c) Section 4.02 (a)-(c);

(b) Section 4.04;

(i) Section 4.05;

(i) Section 4.08;

(k) Section 6.01;

(l) Section 6.02;

(m) Section 6.03; or

(n) A modification to the Plans that changes the approved envelopes of the Buildings within the Proposed Development.

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

6.05 Certain Provisions Regarding Modification. For so long as any Declarant, or any successor entity to the balance and entirety of such Declarant's Possessory Interest in the Subject Property so that Declarant no longer holds any Possessory Interest in the Subject Property (the "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

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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 6.05.

ARTICLE VII

COMPLIANCE; DEFAULTS; REMEDIES

7.01 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 7.01(c) hereof and the limitations of Sections 8.01 and 8.02 hereof. Declarant also acknowledges that the remedies set forth in this Declaration are not exclusive and that the City



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and any agency thereof may pursue other remedies not specifically set forth herein, subject to Sections 8.01 and 8.02 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 Proposed 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 Applications.

(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, ninety (90) 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

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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 ninety (90) day period (or if cure is not capable of being commenced within such ninety (90) 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 ninety (90) 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 8.04 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 7.01 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.

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 7.04 hereof.

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7.02 Rights of Mortgagees. Except as otherwise provided in Section 7.03 of this Declaration, 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 7.01 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.

7.03 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

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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 Applications. 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.

7.04 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 7.01 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,

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TCO, or a PCO, as applicable, may be issued for buildings at the Proposed 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. As a condition of granting such relief, the City may require that such Declarant post a bond, letter of credit or other security in a form reasonably acceptable to the City in order to ensure that the Obligation will be completed in accordance with the provisions of this Declaration. 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 VIII

MISCELLANEOUS

8.01 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

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shall be binding on each Declarant and any Successor Declarant who acquires a Possessory Interest in the Subject Property, provided that the Declaration shall only be binding upon a 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 a Declarant or any Successor Declarant no longer holds a Possessory Interest in the Subject Property, such Declarant's or such 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 of 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 a 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.

8.02 Limitation of Liability. Notwithstanding anything to the contrary contained in this Declaration, the City will look solely to the estate and interest of 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,

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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 any building in the Proposed 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

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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.

8.03 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 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



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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.

8.04 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 SJC Declarant: SJC 33 Owner 2015, LLC  
7121 Fairway Drive, Suite 410

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Palm Beach Gardens, Florida 33418

Attention: General Counsel

Telephone: \_\_\_\_\_

E-mail: \_\_\_\_\_

With a copy to:

SJC 33 Owner 2015, LLC

645 Madison Avenue, 18<sup>th</sup> Floor

New York, New York 10022

Attention: General Counsel

Telephone: \_\_\_\_\_

E-mail: \_\_\_\_\_

And to:

SJC 33 Owner 2015, LLC

450 Park Avenue, 4<sup>th</sup> Floor

New York, New York 10022

Attention: Andrew Cohen

Telephone: (212) 554-2260

E-mail: [acohen@ATLAS-CAP.COM](mailto:acohen@ATLAS-CAP.COM)

And to:

Kramer, Levin, Naftalis & Frankel LLP

1177 Avenue of the Americas

New York, New York 10036

Attention: Michael T. Sillerman

Telephone: (212) 715-7838

E-mail: [msillerman@kramerlevin.com](mailto:msillerman@kramerlevin.com)

~~And to:~~

~~Fried, Frank, Harris, Shriver & Jacobson LLP~~

~~One New York Plaza~~

~~New York, NY 10004~~

~~Attention: David Karnovsky~~

~~Telephone: (212) 859-8927~~

~~E-mail: [david.karnovsky@friedfrank.com](mailto:david.karnovsky@friedfrank.com)~~

Declarant, the Commission, any Party in Interest, and any Mortgagee may, by notice provided in accordance with this Section 8.04, change any name or address for purposes of this Declaration. In order to be deemed effective any Notice shall be sent or delivered in at least one of the following manners: (A) sent by registered or certified mail, postage pre-paid, return receipt requested, in which case the Notice shall be deemed delivered for all purposes hereunder five days after being actually mailed; (B) sent by overnight courier service, in which case the

NYC COUNCIL MODIFICATIONS AS OF 12/5/16

Matter in double underline is new, to be added;

Matter in ~~double underline~~ is old, to be deleted

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.

8.05 Certificates. The City will at any time and from time to time upon not less than fifteen (15) days' prior notice by the Declarant or a Named Mortgagee execute, acknowledge and deliver to such 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 such Declarant or such Named Mortgagee may reasonably request. If the City fails to respond within such fifteen (15) day period, Declarant 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 PROPOSED DEVELOPMENT"). If the City fails to respond within

NYC COUNCIL MODIFICATIONS AS OF 12/5/16

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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 such Declarant or such Named Mortgagee had requested, and such deemed certification may be relied on by such Declarant or such Named Mortgagee and their respective successors and assigns.

8.06 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 Section 2.01 hereof or has acquired its interest from a Party who has done so.

8.07 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

NYC COUNCIL MODIFICATIONS AS OF 12/5/16

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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.

8.08 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.

8.09 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.

8.10 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 or any other interested governmental agency or department having jurisdiction over the Subject Property.

8.11 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.

NYC COUNCIL MODIFICATIONS AS OF 12/5/16

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8.12 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]

NYC COUNCIL MODIFICATIONS AS OF 12/5/16  
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IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the day and year first above written.

DECLARANT:  
SJC 33 OWNER 2015 LLC

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

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

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2015 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

*[Signature Page to Restrictive Declaration]*

**NYC COUNCIL MODIFICATIONS AS OF 12/5/16**

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**SCHEDULE OF EXHIBITS**

- EXHIBIT A Metes and Bounds of Subject Property**
- EXHIBIT B Project Diagram**
- EXHIBIT C Parties in Interest Certification**
- EXHIBIT D Waivers**
- EXHIBIT E Plans**
- EXHIBIT F Form of Transfer of Development Rights and Notice of Restrictions**
- EXHIBIT G Operating Rules for PAA**
- EXHIBIT H FEIS Table 20-19 (Noise)**
- EXHIBIT I NYCDEP Comment Letter**
- EXHIBIT J Sewer Diagram**
- EXHIBIT K FEIS Tables 22-3 to 22-6 and 22-23 to 22-26 (Traffic)**



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Exhibit "A"

Metes and Bounds of 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 the corner formed by the intersection of the easterly side of West Street with the southerly side of Clarkson Street; and

RUNNING THENCE southerly and along the easterly side of West Street a distance of 848.78 feet to a point;

THENCE easterly on a line forming an exterior angle of 85 degrees 49 minutes 31 seconds with the easterly side of West Street, a distance of 220.72 feet to the westerly side of Washington Street;

THENCE northerly, along the westerly side of Washington Street, and forming an exterior angle of 90 degrees 02 minutes 00 seconds with the last described line, a distance of 852.62 feet to the southerly side of Clarkson Street;

THENCE westerly, along the same, a distance of 282.09 feet to the point or place of BEGINNING.

EXCEPTING from the above described parcel the fee title to the bed of West Houston Street and public easements thereover being a tract 65 feet in width and bounded west by the easterly side of West Street, east by the westerly side of Washington Street, north by the northerly side of West Houston Street 267.61 feet and south by the southerly side of West Houston Street 262.91 feet;

TOGETHER with, as an appurtenance to the above described parcel, the rights and easements in and over the aforesaid excepted Parcel as defined and limited in a certain grant made by the City of New York to the New York Central Railroad Company dated July 2, 1929, recorded August 6, 1929 in Liber 3736 page 8 and supplemented by an agreement by the City of New York with The New York Central Railroad Company dated June 10, 1935, recorded September 9, 1935 in Liber 3909 Page 289.

NYC COUNCIL MODIFICATIONS AS OF 12/5/16

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**Exhibit "A-1B"**

~~Meters and Bounds of North Site~~

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**Exhibit "A-1"**

**Motes and Bounds of Center Site**

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**Exhibit "A-2"**

**Meter and Bounds of South Site**

**NYC COUNCIL MODIFICATIONS AS OF 12/5/16**

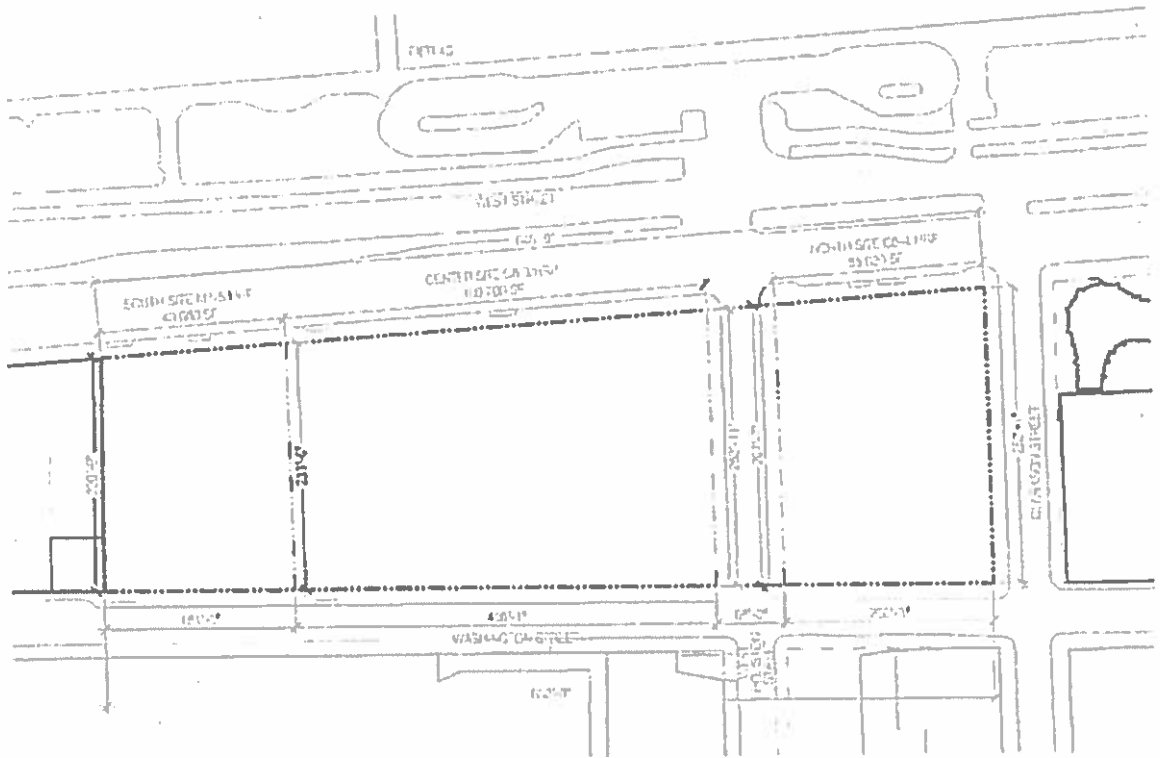
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**Exhibit "B"**

Project Diagram

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**Exhibit "C"**

**Parties-in-Interest Certification**

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Exhibit "D"

Waivers



**NYC COUNCIL MODIFICATIONS AS OF 12/5/16**

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**Exhibit "E"**

**Plans**

NYC COUNCIL MODIFICATIONS AS OF 12/5/16  
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Exhibit "F"

~~Form of~~ Transfer Instrument and Notice of Restrictions  
Pursuant to Section 89-21(d) of the Zoning Resolution of the City of New York

NYC COUNCIL MODIFICATIONS AS OF 12/5/16

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THIS INSTRUMENT OF TRANSFER AND NOTICE OF RESTRICTIONS (this "Transfer Instrument") is made as of the \_\_\_\_\_ day of \_\_\_\_\_ by Hudson River Park Trust, a New York State public benefit corporation, organized pursuant to the Hudson River Park Act, Chapter 592 of the Laws of 1998 of the State of New York (as amended, the "Act") having an address at 353 West Street, 2<sup>nd</sup> Floor, New York, N.Y. 10014 ("Transferor"), and SJC 33 Owner 2015 LLC, a Delaware limited liability company, with an address at \_\_\_\_\_ ("Transferee").

WITNESSETH:

WHEREAS, Transferor is the lessee, pursuant to Section 7.3(b) of the Act, of certain real property, in the City of New York, designated as Block 656, Tax Lot 1 on the Tax Map of the Borough of Manhattan, County of New York, City of New York, and more particularly described in Exhibit A attached hereto and made a part hereof (said real property being hereinafter called the "Granting Lot"), and has the right, pursuant to subsection 1(j) of Section 7 of the Act, to transfer unused excess "floor area" (as such term is defined in the Zoning Resolution, defined below) appurtenant to the Granting Lot;

WHEREAS, Transferee is the owner of certain real Property designated as Block 596, Tax Lot 1, as shown on the Tax Map of the Borough of Manhattan, County of New York, City of New York, and more particularly described in Exhibit B attached hereto and made a part hereof (said property being hereafter called the "Receiving Lot");

WHEREAS, the Granting Lot is a "granting site," as defined in Section 89-02 of the Zoning Resolution of the City of New York (hereinafter, "Zoning Resolution");

WHEREAS, the Receiving Lot is a "receiving site," as defined in Section 89-02 of the Zoning Resolution;

WHEREAS, pursuant to the provisions of Section 89-21 of the Zoning Resolution, the City Planning Commission of New York City (hereinafter, "CPC") approved on the 17th day of October, 2016 (Calendar No. C160310ZSM) the transfer of 200,000 square feet of unused excess floor area and the development rights appurtenant thereto (the "Subject Floor Area Development Rights") from the Granting Lot to the Receiving Lot (the "Special Permit Approval"), and the City Council of the City of New York approved such action taken by CPC or declined to take any action in connection therewith within the time period permitted for same;  
and

WHEREAS, Transferor and Transferee desire to transfer the Subject Floor Area Development Rights to the Receiving Lot.

NOW THEREFORE, in consideration of One Hundred Million and 00/100 Dollars (\$100,000,000.00), lawful money of the United States, and other valuable consideration paid by Transferee;

NYC COUNCIL MODIFICATIONS AS OF 12/5/16

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1. Transferor does hereby grant, distribute and transfer the Subject Floor Area Development Rights from the Granting Lot to the Receiving Lot, solely for the use and benefit in perpetuity of the Receiving Lot.
2. Transferor, in compliance with Section 13 of the Lien Law of the State of New York, if and to the extent Section 13 of the Lien Law of the State of New York applies, covenants that Transferor will receive the consideration for this conveyance, and will hold the right to receive such consideration, as a trust fund for the purpose of paying the cost of the improvements at the Granting Lot required to be made by Transferor and will apply the same first to the payment of the cost of such improvements before using any part of the same for any other purposes.
3. Transferor shall use the Purchase Price to pay for the repair of infrastructure located at the Granting Lot, including piles and roof, prior to being used for any other permitted uses, as required by the Hudson River Park Act.
4. Notice is hereby given that this transfer (a) irrevocably restricts the floor area on the Granting Lot available for "development" (as defined in the Zoning Resolution) by reducing such floor area by 200,000 square feet, and (b) benefits the Receiving Lot by irrevocably increasing the floor area available for development on the Receiving Lot by 200,000 square feet.
5. Transferor covenants that at no time shall any building, buildings or improvements be situated on the Granting Lot which would have a floor area in excess of that permitted on the Granting Lot, as reduced by this transfer.
6. This Transfer Instrument shall be recorded by Transferor against both the Granting Lot and the Receiving Lot in the Office of the Register of City of New York, New York County and a copy provided to the CPC in accordance with the provision of Section 89-21(d) of the Zoning Resolution.
7. This Transfer Instrument may be executed in counterparts, all of which, when taken together, shall constitute one and the same instrument.

[Signature Page Follows]

NYC COUNCIL MODIFICATIONS AS OF 12/5/16

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IN WITNESS WHEREOF, Transferor and Transferee have hereunto set their  
hand as of the \_\_\_\_\_ day of \_\_\_\_\_,

TRANSFEROR:

HUDSON RIVER PARK TRUST

By: \_\_\_\_\_

Name:

Title:

TRANSFEEEE:

SJC 33 OWNER 2015 LLC

By: \_\_\_\_\_

Name:

Title:

NYC COUNCIL MODIFICATIONS AS OF 12/5/16

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State of New York )

) ss.:

County of New York )

On the \_\_\_ day of \_\_\_ in the year [ \_\_\_ ] before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon which the individual acted, executed the instrument.

\_\_\_\_\_  
(Notary Public)

State of New York )

) ss.:

County of New York )

On the \_\_\_ day of \_\_\_ in the year [ \_\_\_ ] before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon which the individual acted, executed the instrument.

\_\_\_\_\_  
(Notary Public)

NYC COUNCIL MODIFICATIONS AS OF 12/5/16

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Exhibit A to Transfer Instrument  
Legal Description of Granting Lot

NYC COUNCIL MODIFICATIONS AS OF 12/5/16

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Exhibit B to Transfer Instrument  
Legal Description of Receiving Lot

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 the corner formed by the intersection of the easterly side of West Street with the southerly side of Clarkson Street; and

RUNNING THENCE southerly and along the easterly side of West Street a distance of 848.78 feet to a point;

THENCE easterly on a line forming an exterior angle of 85 degrees 49 minutes 31 seconds with the easterly side of West Street, a distance of 220.72 feet to the westerly side of Washington Street;

THENCE northerly, along the westerly side of Washington Street, and forming an exterior angle of 90 degrees 02 minutes 00 seconds with the last described line, a distance of 852.62 feet to the southerly side of Clarkson Street;

THENCE westerly, along the same, a distance of 282.09 feet to the point or place of BEGINNING.

EXCEPTING from the above described parcel the fee title to the bed of West Houston Street and public easements thereover being a tract 65 feet in width and bounded west by the easterly side of West Street, east by the westerly side of Washington Street, north by the northerly side of West Houston Street 267.61 feet and south by the southerly side of West Houston Street 262.91 feet;

TOGETHER with, as an appurtenance to the above described parcel, the rights and easements in and over the aforesaid excepted Parcel as defined and limited in a certain grant made by the City of New York to the New York Central Railroad Company dated July 2, 1929, recorded August 6, 1929 in Liber 3736 page 8 and supplemented by an agreement by the City of New York with The New York Central Railroad Company dated June 10, 1935, recorded September 9, 1935 in Liber 3909 Page 289.



NYC COUNCIL MODIFICATIONS AS OF 12/5/16  
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Exhibit C to Transfer Instrument  
NY State Consent

Waiver Pursuant to Section 89-21(d) of the Zoning Resolution of the City of New York

THE STATE OF NEW YORK, acting through the Office of Parks, Recreation and Historic Preservation being the holder of the fee interest in the Granting Site (as defined below) and a "party in interest" as defined in Section 12-10(d) of the Zoning Resolution of the City of New York effective December 15, 1961 as amended, with respect to the land known as Tax Lot 1 in Block 656 on the Tax Map of the City of New York, County of New York, and known as and by the street address Pier 40, New York, New York as more particularly described in Exhibit A annexed hereto (the "Granting Site"), hereby:

- (i) acknowledges the right and authority under the Hudson River Park Act, Chapter 592 of the Laws of 1998 of the State of New York, as amended, of the Hudson River Park Trust to transfer 200,000 square feet of development rights (the "Subject Floor Area Development Rights") from the Granting Site to the land known as Tax Lot 1 in Block 596 on the Tax Map of the City of New York, County of New York, and known as and by the street address 550 Washington Street, New York, New York as more particularly described in Exhibit B annexed hereto (the "Receiving Site"), in accordance with the provisions of Section 89-21 of the Zoning Resolution; and
- (ii) waives any right in perpetuity it might otherwise have to execute the Transfer Instrument and Notice of Restrictions pursuant to Section 89-21 of the Zoning Resolution of the City of New York, substantially in the form annexed hereto as Exhibit C (the "Transfer Instrument"), for the purpose of transferring the Subject Floor Area Development Rights to the Receiving Site.

IN WITNESS WHEREOF, this Waiver has been duly executed as of  
\_\_\_\_\_, 2016.

NEW YORK STATE OFFICE OF PARKS,  
RECREATION AND HISTORIC PRESERVATION

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

NYC COUNCIL MODIFICATIONS AS OF 12/5/16

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State of New York \_\_\_\_\_ )  
 ) ss:  
County of \_\_\_\_\_ )

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, before me, the undersigned notary public, 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 upon behalf of which the individual(s) acted, executed the instrument.

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

NYC COUNCIL MODIFICATIONS AS OF 12/5/16

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Exhibit A

Legal Description of Granting Lot

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Exhibit B

Legal Description of Receiving Lot

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Exhibit C

Form of Transfer Instrument

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Exhibit "G"

Operating Rules for PAA

General Guidelines

- All users should be respectful of others and mindful of how activity and noise affects other users and residents in immediately adjacent buildings.
- All users are to heed directions or requests made by authorized building management and signage.
- Pets must be kept on a leash at all times and are not permitted on the grass or in the planted areas. Owners are expected to clean up after their pets.
- New York City laws and ordinances are in full force and effect at all times.

General Prohibitions

For the safety and enjoyment of everyone, the following types of behavior are prohibited:

- Sleeping, loitering, or disorderly conduct
- Smoking, drinking of alcoholic beverages
- Open flames or barbecuing or cooking
- Noxious odors, vibrations, or other activity considered a nuisance
- Shopping carts, obstructions, or unattended packages
- Loud music including musical instruments, radios, stereos, or use of amplification equipment and loud speaking
- Camping or the erection of tents or other structures; sleeping bags, tarps, or other coverings on the property
- Lying down on the ground, walkways, or benches; storage or placement of personal property in areas that unreasonably interfere with the use of benches and walkways by others
- Posting of signs, posters, notices, etc.
- Illegal activity
- Possession of weapons

NYC COUNCIL MODIFICATIONS AS OF 12/5/16

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- Nudity or obscenity
- Overcrowding – capacity shall be governed by applicable Building Codes
- Movement of property
- Defacement of property
- Littering
- Securing bikes to objects other than bike racks
- Ball playing against building walls, public artwork, or landscape features
- Tree climbing
- Playing active sports/active recreation of any sort
- Skateboarding, biking, rollerblading, or rollerskating
- Commercial or non-commercial distribution of products and/or material (other than non-commercial printed material or similar expressive material), unless authorized by property owner in writing
- Peddling, soliciting, or vending, unless authorized by property owner in writing
- Panhandling or entertaining for the purposes of solicitation and/or publicity, unless authorized by property owner in writing

**NYC COUNCIL MODIFICATIONS AS OF 12/5/16**  
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**EXHIBIT "H"**

**FEIS Table 20-19 (Noise)**

**Table 20-1710**  
**Typical Construction Equipment Noise Emission Levels (dBA)**

Equipment List	NYCDEP Mandated Noise Level at 50 feet <sup>1</sup>
Backhoe/Loader	80
Bobcat	85
Bulldozer	85
Compactor	80
Compressor	80
Concrete Pump	82
Concrete Truck	82
Cranes (Mobile)	84
Cranes (Tower)	85
Delivery Truck	84
Dump Truck	84
Elevator	85
Generator	82
Hydraulic Break Ram	90
Hoist	75
Hydraulic Pile Driver	92
Impact Wrench	85
Jack Hammer	85
Pump	77
Note	<sup>1</sup> Citywide Construction Noise Mapbook, Chapter 23, Department of Environmental Protection of New York City, 2007
Sources	Table 23-1, Noise Emission Reference Levels (A-weighted decibels with RMS "slow" time constant); Chapter 22, 2014 GEQR Technical Manual, Transit Noise and Vibration Impact Assessment, Federal Transportation Administration (FTA), May 2006



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**EXHIBIT "I"**

**NYCDEP Comment Letter**

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Vincent Sapienza P.E.  
Acting Commissioner

Angela Deala  
Deputy Commissioner of  
Sustainability

59-17 Junction Blvd  
Flushing, NY 11375

Tel. (718) 595-4398  
Fax. (718) 595-4422  
alscala@dep.nyc.gov

July 21, 2016

Mr. Robert Dobruskin  
Director, Environmental Assessment and Review Division  
New York City Department of City Planning  
120 Broadway, 31st Floor  
New York, New York 10271

Re: 550 Washington Street  
Block 596, Lot 1  
CEQR # 16DCP031M  
New York, New York, 10014

Dear Mr. Dobruskin,

The New York City Department of Environmental Protection Bureau of Sustainability (DEP) has reviewed the June 2016 Phase II Subsurface Investigation Report (Phase II), the June 2016 Remedial Action Plan (RAP) and the June 2016 Construction Health and Safety Plan (CHASP) prepared by AKRF Inc., on behalf of Atlas Capital Group (applicant) for the above referenced project. It is our understanding that the applicant is seeking a zoning text amendment, a zoning map amendment, two zoning special permits, a Chairperson's certification, as well as an action by Hudson River Park Trust that would facilitate a proposal by SJC 33 Owner 2015 LLC to construct a mixed use development of 1,961,200 gross square feet (gsf) to include up to approximately 1,586 residential units (including up to 476 permanently affordable units) and approximately 160,000 gsf of retail uses, 229,700 gsf of hotel (or office) space, 14,200 square feet of publicly accessible open space, and 886 cellar-level parking spaces at 550 Washington Street (Block 596, Lot 1) (the "development site"). The development site is located between West Houston Street and Spring Street in the Hudson Square neighborhood of Manhattan Community District 2. It should be noted that the project site is developed with a four-story building with an attached single-story annex building.

During the May 2016 fieldwork, AKRF advanced nine soil borings (SB-1 through SB-9), two groundwater temporary monitoring wells (TW-3 and TW-9) and four soil vapor probes (SV-1, SV-5, SV-6, SV-8) at the project site. Fourteen soil samples and five groundwater samples (one sample from the two temporary well points and one sample from three samplers in basements) were collected and analyzed for Target Compound List (TCL) Volatile Organic Compounds (VOCs) by United States Environmental Protection Agency (EPA) Method 8260, TCL Semi Volatile Organic Compounds (SVOCs) by EPA Method 8270, Target Analyte List (TAL) Metals (filtered and unfiltered for groundwater), Polychlorinated Biphenyls (PCBs) by EPA Method 8082, and Pesticides by EPA Method 8081. Four soil vapor samples were also collected and analyzed for VOCs by EPA Method TO-15.

The soil analytical results revealed VOCs, SVOCs, PCBs and Pesticides were either non-detect (ND) or below their respective NYSDEC 6 NYCRR Part 375 Unrestricted and/or Restricted Residential Use Soil Cleanup Objectives (SCOs). Seven Metals (chromium, copper, lead, mercury, nickel, silver and zinc) were detected above their respective NYSDEC Unrestricted and/or Restricted Residential Use SCOs. The

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groundwater analytical results revealed VOCs, SVOCs, PCBs and Pesticides were either ND or below their respective NYSDEC Division of Water Technical Operational Guidance Series (TOGS) 1.1.1 Ambient Water Quality Standards and Guidance Values and Groundwater Effluent Limitations for Class GA. Thirteen Metals (antimony, arsenic, barium, beryllium, cadmium, chromium, copper, lead, magnesium, selenium, sodium, thallium and zinc) were detected above their respective NYSDEC Division of Water TOGS 1.1.1 Ambient Water Quality Standards and Guidance Values and Groundwater Effluent Limitations for Class GA. The soil vapor analytical results revealed VOCs were either ND or below New York State Department of Health (NYSDOH) indoor Air Guideline Values

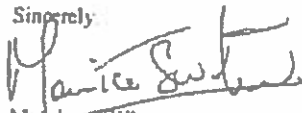
The June 2016 RAP proposes proper handling, transportation, and disposal of excavated material and construction/demolition debris from the site, in accordance with applicable NYSDEC regulations; any contaminated material intended for off-site disposal may be stockpiled temporarily or loaded directly onto trucks for off-site disposal; air monitoring procedures; dust control procedures, removal and/or closure of all known or found underground and/or aboveground storage tanks including dispensers, piping, and fill ports, in accordance with applicable NYSDEC regulations; a groundwater management plan to include dewatering procedures if necessary, as per DCP's Bureau of Wastewater Treatment Wastewater Quality Control Permit; the installation of two feet of certified clean fill across portions of the site in any landscaped/grass covered areas not capped with concrete/asphalt; the installation of a demarcation layer, such as orange snow fence, under the clean soil layer, as well as the installation of a vapor barrier system of minimum thickness of 15 mil, outside of exterior below grade foundation walls and beneath the building slab

Based upon our review of the submitted documentation, we have the following comments and recommendations to DCP:

DEP finds the June 2016 RAP and CHASP, which addresses worker and community health and safety during development acceptable. DCP should instruct the applicant that at the completion of the project, a Professional Engineer (P.E.) certified Remedial Closure Report should be submitted to DEP for review and approval for the proposed project. The P.E. certified Remedial Closure Report should indicate that all remedial requirements have been properly implemented (i.e. proper transportation/disposal manifests and certificates from impacted soils removed and properly disposed of in accordance with all NYSDEC Regulations and proof of installation of engineering control system)

Future correspondence related to this project should include the following CEQR number 16DCP031M. If you have any questions, you may contact Ms. Cassandra Scantlebury at (718) 595-6756.

Sincerely,



Maurice Winter  
Deputy Director, Site Assessment

cc: E. Mahoney, M. Winter, W. Yu, T. Estesen, M. Wimbish, L. Ulker-Kakar (DCP),  
O. Abinader (DCP), File

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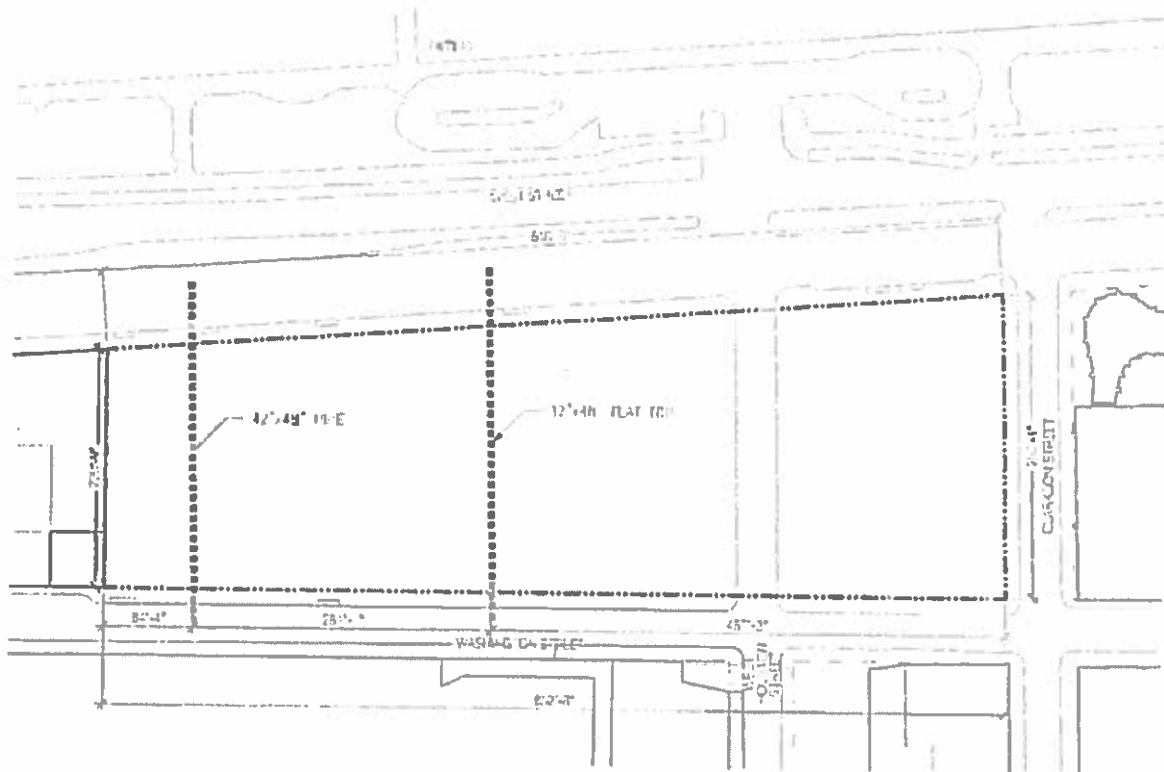
**EXHIBIT "J"**

**Sewer Diagram**

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**EXHIBIT "K"**

**FEIS Tables 22-3 to 22-6 and 22-23 to 22-26 (Traffic)**

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§§0 W Washington Street Special Hudson River Park District

**Table 22-3  
Recommended Mitigation Measures: Proposed Project  
Weekday AM Peak Hour**

Intersection	No Action Signal Timing	Recommended Mitigation Measures	Recommended Signal Timing
Carlson Street and Washington Street	EB Green = 40 s SB Green = 40 s	Snct 1 second of green time from the EB phase to the SB phase	EB Green = 39 s SB Green = 41 s
West Houston Street and Washington Street	WB Green = 40 s CB Green = 43 s	1) Restripe the SB approach from one 8-foot parking lane, one 11-foot moving lane, one 5-foot bike lane, and one 5-foot parking lane to one 11-foot right-turn lane, one 13-foot shared moving bike lane, and one 8-foot parking lane 2) Install "No Stopping Anytime for 100-feet at the SB approach to create an additional right-turn lane	No change from No Action
Carlson Street and West Street	SB-L Green = 34 s NB/SB Green = 104 s	Snct 1 second of green time from the NB/SB phase to the SB left-turn phase	SB-L Green = 35 s NB/SB Green = 103 s
West Houston Street and West Street	EB/WB Green = 33 s NB/SB Green = 90 s NB-L Green = 10 s	Snct 1 second of green time from the NB/SB phase to the EB/WB phase	EB/WB Green = 34 s NB/SB Green = 89 s NB-L Green = 10 s
Carroll Street (North) and West Street	WB Green = 25 s NB/SB Green = 99 s	Snct 1 second of green time from the NB/SB phase to the WB phase	WB Green = 26 s NB/SB Green = 98 s
Carlson Street and Hudson Street	EB Green = 31 s NB Green = 49 s	Snct 1 second of green time from the NB phase to the EB phase	EB Green = 32 s NB Green = 48 s
Carlson Street and Varot Street	EB/WB Green = 40 s SB Green = 43 s	Snct 2 seconds of green time from the SB phase to the EB/WB phase	EB/WB Green = 42 s SB Green = 41 s

Notes: EB = Eastbound, WB = Westbound, NB = Northbound, SB = Southbound; L = Left, T = Through, R = Right

**Table 22-4  
Recommended Mitigation Measures: Proposed Project  
Weekday Midday Peak Hour**

Intersection	No Action Signal Timing	Recommended Mitigation Measures	Recommended Signal Timing
Carlson Street and West Street	SB-L Green = 34 s NB/SB Green = 74 s	Snct 1 second of green time from the NB/SB phase to the SB left-turn phase	SB-L Green = 35 s NB/SB Green = 73 s
West Houston Street and West Street	EB/WB Green = 33 s NB/SB Green = 60 s NB-L Green = 10 s	Snct 2 seconds of green time from the NB left-turn phase to the EB/WB phase	EB/WB Green = 35 s NB/SB Green = 62 s NB-L Green = 8 s

Notes: EB = Eastbound, WB = Westbound, NB = Northbound, SB = Southbound; L = Left, T = Through, R = Right

**Table 22-5**  
**Recommended Mitigation Measures: Proposed Project**  
**Weekday PM Peak Hour**

Intersection	No Action Signal Timing	Recommended Mitigation Measures	Recommended Signal Timing
Clarison Street and Washington Street	EB: Green = 40 s SB: Green = 40 s	Shift 1 second of green time from the EB phase to the SB phase.	EB: Green = 39 s SB: Green = 41 s
West Houston Street and Washington Street	WB: Green = 39 s SB: Green = 41 s	1) Restripe the SB approach from one 8-foot parking lane, one 11-foot moving lane, one 5-foot bike lane, and one 8-foot parking lane to one 11-foot right-turn lane, one 13-foot shared moving/bike lane, and one 8-foot parking lane. 2) Install "No Standing Anytime" for 100-feet at the SB approach to create an additional right-turn lane.	No change from No Action
West Houston Street and Wash Street	EB: L: Green = 26 s WB: Green = 33 s SB: Green = 39 s	Restripe the SB approach moving lanes from four 10-foot shared through/right-turn lanes to one 13-foot right-turn lane and three 12-foot through lanes.	No change from No Action
Clarison Street and West Street	SB-L: Green = 34 s NB/SB: Green = 104 s	Shift 3 seconds of green time from the NB/SB phase to the SB left-turn phase.	SB-L: Green = 37 s NB/SB: Green = 101 s
West Houston Street and West Street	EB/WB: Green = 33 s NB/SB: Green = 80 s NB-L: Green = 10 s	Shift 3 seconds of green time from the NB/SB phase to the EB/WB phase.	EB/WB: Green = 36 s NB/SB: Green = 87 s NB-L: Green = 10 s
Clarison Street and Hudson Street	EB: Green = 31 s WB: Green = 31 s NB: Green = 26 s SB: Green = 26 s	Unchanged	No change from No Action

Notes: EB = Eastbound; WB = Westbound; NB = Northbound; SB = Southbound; L = Left; T = Through; R = Right.

**Table 22-6**  
**Recommended Mitigation Measures: Proposed Project**  
**Saturday Peak Hour**

Intersection	No Action Signal Timing	Recommended Mitigation Measures	Recommended Signal Timing
West Houston Street and Washington Street	WB: Green = 40 s SB: Green = 40 s	1) Restripe the SB approach from one 8-foot parking lane, one 11-foot moving lane, one 5-foot bike lane, and one 8-foot parking lane to one 11-foot right-turn lane, one 13-foot shared moving/bike lane, and one 8-foot parking lane. 2) Install "No Standing Anytime" for 100-feet at the SB approach to create an additional right-turn lane.	No change from No Action
Clarison Street and West Street	SB-L: Green = 34 s NB/SB: Green = 74 s	Shift 2 seconds of green time from the NB/SB phase to the SB left-turn phase.	SB-L: Green = 36 s NB/SB: Green = 72 s
West Houston Street and West Street	EB/WB: Green = 33 s NB/SB: Green = 60 s NB-L: Green = 10 s	Shift 2 seconds of green time from the NB left-turn phase to the EB/WB phase.	EB/WB: Green = 35 s NB/SB: Green = 60 s NB-L: Green = 8 s
Clarison Street and Hudson Street	EB: Green = 31 s WB: Green = 40 s	Shift 1 second of green time from the NB phase to the EB phase.	EB: Green = 32 s WB: Green = 40 s

Notes: EB = Eastbound; WB = Westbound; NB = Northbound; SB = Southbound; L = Left; T = Through; R = Right.



**Table 22-23**  
**Recommended Mitigation Measures: Proposed Project (South Site Office)**  
**Weekday AM Peak Hour**

Intersection	No. Action Signal Timing	Recommended Mitigation Measures	Recommended Signal Timing
Clarkson Street and Washburn Street	EB Green = 40 s EB Green = 40 s	Shift 1 second of green time from the EB phase to the EB phase.	EB Green = 39 s SB Green = 41 s
West Houston Street and Washburn Street	WB Green = 40 s EB Green = 40 s	1) Remove the SB turn-lane from one 8-foot marking lane and one 11-foot marking lane, one 5-foot bike lane, and one 5-foot marking lane to one 11-foot marking lane, one 12-foot shared-use bike lane, and one 8-foot marking lane. 2) Install "No Stopping Anytime" for 100 feet of the SB approach to create an additional right-turn lane.	No change from No Action
Clarkson Street and West Street	SB-L Green = 34 s NB/SB Green = 104 s	Shift 1 second of green time from the NB/SB phase to the SB left-turn phase.	SB-L Green = 35 s NB/SB Green = 103 s
West Houston Street and West Street	EA/WB Green = 31 s NB/SB Green = 80 s NB-L Green = 10 s	Shift 1 second of green time from the NB/SB phase to the EA/WB phase.	EA/WB Green = 32 s NB/SB Green = 80 s NB-L Green = 10 s
Clarkson Street and Houston Street	EB Green = 31 s NB Green = 49 s	Shift 2 seconds of green time from the NB phase to the EB phase.	EB Green = 29 s NB Green = 47 s

Notes: EB = Eastbound; WB = Westbound; NB = Northbound; SB = Southbound; L = Left; T = Through; R = Right.

**Table 22-24**  
**Recommended Mitigation Measures: Proposed Project (South Site Office)**  
**Weekday Midday Peak Hour**

Intersection	No. Action Signal Timing	Recommended Mitigation Measures	Recommended Signal Timing
West Houston Street and West Street	EA/WB Green = 31 s NB/SB Green = 80 s NB-L Green = 10 s	Shift 2 seconds of green time from the NB/SB phase to the EA/WB phase.	EA/WB Green = 33 s NB/SB Green = 80 s NB-L Green = 10 s

Notes: EB = Eastbound; WB = Westbound; NB = Northbound; SB = Southbound; L = Left; T = Through; R = Right.

**Table 22-25**  
**Recommended Mitigation Measures: Proposed Project (South Site Office)**  
**Weekday PM Peak Hour**

Intersection	No. Action Signal Timing	Recommended Mitigation Measures	Recommended Signal Timing
Clarkson Street and Washburn Street	EB Green = 48 s EB Green = 48 s	Shift 1 second of green time from the EB phase to the EB phase.	EB Green = 47 s SB Green = 49 s
West Houston Street and Washburn Street	WB Green = 40 s EB Green = 40 s	1) Remove the SB turn-lane from one 8-foot marking lane, one 11-foot marking lane, one 5-foot bike lane, and one 5-foot marking lane to one 11-foot marking lane, one 12-foot shared-use bike lane, and one 8-foot marking lane. 2) Install "No Stopping Anytime" for 100 feet of the SB approach to create an additional right-turn lane.	No change from No Action
Clarkson Street and West Street	SB-L Green = 34 s NB/SB Green = 104 s	Shift 1 second of green time from the NB/SB phase to the SB left-turn phase.	SB-L Green = 35 s NB/SB Green = 103 s
West Houston Street and West Street	EA/WB Green = 31 s NB/SB Green = 80 s NB-L Green = 10 s	Shift 1 second of green time from the NB/SB phase to the EA/WB phase.	EA/WB Green = 32 s NB/SB Green = 80 s NB-L Green = 10 s

Notes: EB = Eastbound; WB = Westbound; NB = Northbound; SB = Southbound; L = Left; T = Through; R = Right.

