

**AMENDED AND RESTATED RESTRICTIVE DECLARATION
FOR THE WESTERN RAIL YARD**

BY

WRY TENANT LLC

**NEW YORK COUNTY
BLOCK: 676
LOTS: 1 AND 5 (FORMERLY P/O LOT 3)**

**RECORD AND RETURN TO:
KRAMER LEVIN NAFTALIS & FRANKEL LLP
1177 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10036
ATTN: EUGENE C. TRAVERS, ESQ.**

**AMENDED AND RESTATED RESTRICTIVE DECLARATION FOR
THE WESTERN RAIL YARD**

THIS AMENDED AND RESTATED RESTRICTIVE DECLARATION FOR THE WESTERN RAIL YARD (this “Declaration”) ([as modified by the New York City Council as of May 28, 2025](#)) is made this ____ day of _____, 2025 by **WRY TENANT LLC**, having an office c/o The Related Companies, 30 Hudson Yards, Floor 72, New York, NY 10001 (“Declarant”).

WITNESSETH:

WHEREAS:

- A. Declarant is, as of the date hereof, the lessee of certain real property located in the Borough of Manhattan, and the City, County and State of New York, consisting of the Facility Airspace Parcel, as the same is defined and described in that certain Declaration of Easements (Western Rail Yard Section of The John D. Caemmerer West Side Yard), dated as of May 26, 2010 made by Metropolitan Transportation Authority of the State of New York, as declarant, and recorded in the Office of the City Register of the City of New York (the “Register’s Office”) on June 10, 2010 ~~at~~ [CRFN 2010000194077](#) (as the same has been and may be further amended, modified or supplemented from time to time, the “Declaration of Easements”), and designated for real property tax purposes as Lots 1 and 5 (f/k/a p/o Lot 3) in Tax Block 676 on the Tax Map of the City of New York, County of New York, and as more particularly described on Exhibit A to this Declaration (the “Subject Property”); and
- B. The MTA is, as of the date hereof, the fee owner of the Subject Property; and
- C. Declarant previously made applications to the City Planning Commission of the City of New York (the “CPC”) under Application Numbers: (a) ~~under Application Number~~ C 090433 ~~MMMZMM~~ to amend the Zoning Resolution of the City of New York (the “Zoning Resolution” or “ZR”) to establish a C6-4 zoning district for the Subject Property; (b) ~~under Application Number~~ N 090434 ZRM to amend the Zoning Resolution to establish regulations for a new Subdistrict F within the Special Hudson Yards District applicable to the Subject Property; and (c) ~~under Application Numbers~~ C 090435 ZSM and C 090436 ZSM for special permits pursuant to ZR 93-052 as amended and former ZR 13-561 for attended accessory parking garages to be located on the Subject Property (collectively, the “Prior Applications”) in order to facilitate a mixed-use development thereon; and
- D. The CPC adopted resolutions approving the Prior Applications, with modifications, on October 19, 2009, under Calendar Numbers 14, 15, 16 and 17 (the “Prior CPC Actions”); and

- E. The New York City Council adopted resolutions approving the Prior CPC Actions, with further modifications, on December 21, 2009, under Resolution Numbers 2328-, 2329-, 2330- and 2331-2009 (the “Prior Approvals”); and
- F. Section 93-06 of the Zoning Resolution provides that no building permit shall be issued for any development or enlargement within Subdistrict F of the Special Hudson Yards District unless a declaration of restrictions in substantially the form reviewed by the CPC and referenced in and made an exhibit to the CPC findings pursuant to 6 NYCRR Section 617.11(d) with respect to the FEIS (as such declaration may be revised prior to filing and recordation in accordance with the provisions thereof applicable to amendments made subsequent to filing and recordation) shall have been filed and duly recorded in the Register’s Office and indexed against all property in Subdistrict F of the Special Hudson Yards District proposed for development or enlargement pursuant to Article IX Chapter 3 of the Zoning Resolution; and
- G. In compliance with Section 93-06 of the Zoning Resolution, Declarant previously executed and recorded that certain Restrictive Declaration for the Western Rail yard, dated as of April 10, 2014 and recorded in the Register’s Office on May 7, 2014 as CRFN 2014000154631 (the “Original Restrictive Declaration”); and
- H. Declarant has proposed a new site plan for the development of the Subject Property as a mixed-use development and publicly accessible open space (referred to herein as the “Development” and as defined below, and which Development ~~may~~was initially proposed to consist of the Proposed Project or the Alternative Scenario, each as defined below, but will now consist of only the Alternative Scenario); and
- I. The Proposed Project would have included a gaming facility and related uses, which gaming facility would have been subject to a separate State approval process pursuant to an application to be submitted to the New York State Gaming Commission; and
- J. ~~I.~~In furtherance of the Development, Declarant has made applications to the CPC under Application Numbers: (a) N 250098 ZRM to amend ZR Section 93-58 to allow for certain modifications to and waivers of the ~~use~~ground floor level requirements and public open space regulations applicable to Subdistrict F within the Special Hudson Yards District; (b) C 250099 ZSM for a special permit pursuant to ZR Section 93-58 to (i) modify the regulations regarding ~~ground-level~~ground floor level requirements regarding retail space, lobby space, and transparency; (ii) modify the regulations regarding height and setback; ~~and~~ with respect to building location and height and setback rules, such as base height, street wall location, and street wall recess requirements, and tower controls; (iii) waive the regulations regarding public open space applicable in Subdistrict F of the Special Hudson Yards District; (iv) establish a single reference plane for measuring building heights; and (v) modify the width of a curb cut; (c) N 250100 LDM for a modification of the Original Restrictive Declaration, as amended and restated by this Declaration; and (d) N 250024 MMM

for an amendment of the City Map to adjust the grade of West 33rd Street between Eleventh and Twelfth Avenues (collectively, the “Applications”); and

K. ~~J.~~—The CPC adopted resolutions approving the Applications, permitting the Development to consist of the Proposed Project or the Alternative Scenario, with modifications, on April 9, 2025, under Calendar Numbers 10, 11, 12, and 13 (the “CPC Actions”); and

L. ~~K.~~—The New York City Council adopted resolutions approving the CPC Actions, with modifications, on _____, 2025, under Resolution Numbers _____ (the “Approvals”), which Approvals did not include the Proposed Project but approved the Alternative Scenario as modified; and

M. ~~L.~~—In furtherance of the Development, Declarant intends to amend and restate the Original Restrictive Declaration in its entirety with this Declaration; and

~~M. The Proposed Project includes a gaming facility and related uses (collectively, the “Gaming Facility”), which Gaming Facility is subject to a separate State approval process pursuant to an application submitted to the New York State Gaming Commission and, if such application is approved, the Gaming Facility shall (pursuant to Section 32-183 of the Zoning Resolution) be deemed to have satisfied all other applicable regulations of the Zoning Resolution and, notwithstanding anything in this Declaration to the contrary, such Gaming Facility shall not be subject to the Approvals or this Declaration, except to the extent expressly provided for under Article III of this Declaration with respect to certain project components related to the environment and mitigation measures; and~~

N. CPC acted as lead agency and conducted an environmental review of the Applications pursuant to CEQR (as hereinafter defined) and SEQRA (as hereinafter defined); and

O. CPC prepared a Final Environmental Impact Statement for the Development (the “FEIS”) and issued a Notice of Completion of FEIS on March 28, 2025; and

P. The analyses and conclusions set forth in the FEIS were based upon the incorporation into the Development of certain ~~project components related to the environment (the “Project Components Related to the Environment” or “PCREs”), including measures relating to construction on the Subject Property and the design and operation of buildings, open space and other features of development thereon~~ (as hereinafter defined); and

Q. The FEIS identified certain significant adverse impacts and proposed mitigation measures with respect thereto (the “Mitigation Measures”); and

R. CPC issued findings pursuant to 6 NYCRR Section 617.11(d) with respect to the FEIS on April 9, 2025 on the basis that the PCREs and the Mitigation Measures

would be incorporated as conditions to the decision by means of this Declaration, a form of which was referenced in and made an exhibit to such findings; and

- S. Prior to the Approvals, CPC acting as CEQR lead agency assessed the modified Alternative Scenario in a Technical Memorandum dated May __, 2025 (the “Technical Memorandum”) and determined that the modified Alternative Scenario would not change the conclusions of the environmental analysis as provided in the FEIS; and
- T. ~~S.~~ The New York City Department of City Planning (the “DCP”) has determined that this Declaration is in substantially the form reviewed by the CPC and referenced in and made an exhibit to the CPC findings pursuant to 6 NYCRR Section 617.11(d) with respect to the FEIS, and that all revisions have been made in accordance with the provisions thereof applicable to amendments made subsequent to filing and recordation; and
- U. ~~T.~~ Royal Abstract of New York LLC has certified in a certification attached to this Declaration as Exhibit B that, as of ~~March 2~~May 7, 2025, Declarant, MTA, and Wells Fargo Bank, National Association, not in its individual capacity, but solely as trustee, are the sole “~~Parties-in-Interest~~parties-in-interest” (as defined in subdivision (d) of the definition of the term “zoning lot” in Section 12-10 of the Zoning Resolution), in the Subject Property; and
- V. ~~U.~~ Pursuant to Section 4.04 of the Original Restrictive Declaration, and pursuant to the Consent to Execution of Restrictive Declaration and Agreement to Subordinate Future Fee Encumbrances previously executed by MTA as of April 10, 2014 and recorded in the Register’s Office on May 7, 2014 as CRFN 2014000154632, MTA agreed to permit this Declaration to be recorded by Declarant against the Subject Property, with the intention of binding the interest of Declarant and/or a Successor Declarant as lessee under a ground or net lease from MTA of all or any portion of the Subject Property and/or as the subsequent owner in fee of all or any portion of the Subject Property, and upon the provisions of Sections 6.04 and 6.08 with respect to MTA’s interest in the Subject Property; and
- W. ~~V.~~ Wells Fargo Bank, National Association, not in its individual capacity, but solely as trustee, by taking its interest subject to the Original Restrictive Declaration (including Sections 4.04 and 6.09 thereof), previously consented to the execution of this Declaration and subordinated its interest in the Subject Property to this Declaration and all of the documents appended as Exhibits to this Declaration or to be entered into and recorded as prescribed by this Declaration; and
- X. ~~W.~~ Declarant, to ensure that development of the Subject Property is consistent with the analysis in the FEIS, and that the development of the Subject Property incorporates the PCREs and the Mitigation Measures to be undertaken by Declarant at various times, and that the development of the Subject Property incorporates certain other features relevant to the Approvals, has agreed to restrict the

development, operation, use and maintenance of the Subject Property in certain respects, which restrictions are set forth in this Declaration; and

Y. ~~X.~~ Pursuant to Section 4.04(a) of the Original Restrictive Declaration, certain provisions of the Original Restrictive Declaration cannot be modified so as to diminish or alter the obligations of Declarant without the approval of the New York City Council, including 2.01 (Affordable Housing), 2.02(a)-(e) and (h) (Public Access Areas), 2.04 (Arts and Cultural Space), 3.04(a)-(c) (Environmental Mitigation), 4.04(a) (Modification and Amendment), and 6.01 (Construction Consultation Process Committee and Liaison); and

Z. ~~Y.~~ Declarant represents and warrants that, (a) except with respect to mortgages or other instruments specified herein and in the certification attached to this Declaration as Exhibit B, the holders of which have given their consent or waived their right to object hereto, and (b) subject to ~~(i)~~ the provisions of Section 6.04 of this Declaration, ~~and (ii) any State approval with respect to the Gaming Facility~~, no restriction of record on the development or use of the Subject Property, nor any present or any presently existing estate or interest in the Subject Property, nor any lien, obligation, covenant, easement, limitation or encumbrance of any kind precludes, presently or potentially, the imposition of the restrictions, covenants, obligations, easements and agreements of this Declaration or the development of the Subject Property in accordance herewith.

NOW THEREFORE, Declarant does hereby declare that the Original Restrictive Declaration is amended and restated by this Declaration, and, subject to the applicable provisions of Section 4.03(b) hereof, the Subject Property shall be held, sold, conveyed, developed, used, occupied, operated and maintained, subject to the following restrictions, covenants, obligations, easements and agreements, which shall run with the Subject Property and bind Declarant, its successors and assigns as herein set forth.

ARTICLE I ARTICLE DEFINITIONS

1.01 Definitions.

All terms as used in this Declaration shall have the meaning set forth herein and, in addition, the following terms shall mean as follows:

- (a) “2009 FEIS” shall mean the Final Environmental Impact Statement prepared in connection with the Prior Approvals, for which a Notice of Completion was issued on October 9, 2009.
- (b) “ACS” shall mean the New York City Administration for Children Services, or any successor to its jurisdiction.

- (c) “**Alteration Permit**” shall mean a construction permit issued by DOB authorizing major or minor alterations (including, but not limited to, ‘ALT1’, ‘ALT2’, and ‘ALT3’ permits) to an existing building.
- (d) “**Alternative Scenario**” shall mean the development scenario so defined under the Approvals and in the FEIS, containing hotel, residential, commercial and community facility space, and public open space.
- (e) “**Amtrak**” shall mean The National Railroad Passenger Corporation (doing business as Amtrak).
- (f) “**Applications**” shall have the meaning given in the Recitals to this Declaration.
- (g) “**Approvals**” shall have the meaning given in the Recitals to this Declaration.
- (h) “**Approval Date**” shall mean the date that the Applications are approved by the New York City Council.
- (i) “**Building Permit**” shall mean any of an Excavation Permit, Demolition Permit, Foundation Permit, New Building Permit or other building permit authorizing construction on the Subject Property.
- (j) “**Caemmerer Rail Yard**” shall mean the John D. Caemmerer West Side Yard operated by the LIRR and/or any MTA agency on property other than the Subject Property within Subdistrict F of the Special Hudson Yards District.
- (k) “**CEQR**” shall mean New York City Environmental Quality Review, pursuant to Executive Order No. 91 of 1977, as amended, and the regulations promulgated at 62 RCNY Section 5-01 et. seq.

- (l) “**Chair**” shall mean the Chair of the New York City Planning Commission, or any successor to his or her jurisdiction.
- (m) “**City**” shall mean the City of New York.
- (n) “**Construction Commencement**” shall mean the issuance of the first Building Permit by DOB to Declarant for work on the Subject Property.
- (o) “**CPC**” shall mean the New York City Planning Commission, or any successor to its jurisdiction.
- (p) “**CPC Actions**” shall have the meaning given in the Recitals of this Declaration.
- (q) “**DCP**” shall mean the New York City Department of City Planning, or any successor to its jurisdiction.
- (r) “**DEC**” shall mean the New York State Department of Environmental Conservation, or any successor to its jurisdiction.
- (s) “**Declarant**” shall have the meaning given in the Recitals of this Declaration; and shall include any Successor Declarant as defined herein.
- (t) “**Declaration**” shall mean this Declaration, as the same may be amended or modified from time to time in accordance with its provisions.
- (u) “**Demolition Permit**” shall mean a permit issued by DOB 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.
- (v) “**DEP**” shall mean the New York City Department of Environmental Protection, or any successor to its jurisdiction.
- (w) “**Development**” shall mean the development of all or any portion of the Subject Property as a mixed-use development and publicly accessible open space in accordance with the Zoning

Resolution and the Approvals. The Development ~~may~~will consist of the ~~Proposed Project or the~~ Alternative Scenario, ~~each~~ as defined herein.

- (x) “**DOB**” shall mean the New York City Department of Buildings, or any successor to its jurisdiction.
- (y) “**DOB Commissioner**” shall mean the Commissioner of the New York City Department of Buildings, or any successor to his or her jurisdiction.
- (z) “**DOT**” shall mean the New York City Department of Transportation, or any successor to its jurisdiction.
- (aa) “**DPR**” shall mean the New York City Department of Parks and Recreation, or any successor to its jurisdiction.
- (bb) “**EDC**” shall mean the New York City Economic Development Corporation, or any successor to its functions and responsibilities.
- (cc) “**Excavation Permit**” shall mean any permit issued by DOB authorizing excavations, including those made for the purposes of removing earth, sand, gravel, or other material from the Subject Property.
- (dd) “**FEIS**” shall have the meaning given in the Recitals to this Declaration.
- (ee) “**Foundation Permit**” shall mean any permit issued by DOB authorizing foundation work at the Subject Property.
- (ff) “**High Line**” shall have the meaning set forth in Section 93-01 of the Zoning Resolution.
- (gg) “**HPD**” shall mean the New York City Department of Housing Preservation and Development, or any successor to its jurisdiction.
- (hh) “**LEED**” shall mean the Leadership in Energy and Environmental Design certification and rating

system developed by the USGBC, or a successor rating or certification system thereto.

- (ii) “**LEED Certification**” shall mean ‘Certified’ or higher level of certification under the version of the USGBC LEED rating system that is in effect twenty-four (24) months prior to application for a New Building Permit, and (i) for a building developed primarily for hotel use or for residential use, shall refer to the LEED rating system for ‘New Construction’; and (ii) for a building developed primarily for office use, shall refer to the LEED rating system for ‘Core and Shell’.
- (jj) “**LEED Construction Review**” shall mean review of a ‘Construction Application’ submitted pursuant to the LEED ‘Split Design and Construction Review’ path.
- (kk) “**LEED Design Review**” shall mean review of a ‘Design Application’ submitted pursuant to the ‘Split Design and Construction Review’ path.
- (ll) “**LEED Gold Certification**” shall mean ‘Gold’ or higher level of certification under the version of the USGBC LEED rating system that is in effect twenty-four (24) months prior to application for a New Building Permit, and (i) for a building developed primarily for hotel use or for residential building use, shall refer to the LEED rating system for ‘New Construction’; and (ii) for a commercial building developed primarily for office use, shall refer to the LEED rating system for ‘Core and Shell’.
- (mm) “**LIRR**” shall mean the Long Island Rail Road Company and any successor to its jurisdiction.
- (nn) “**LPC**” shall mean the New York City Landmarks Preservation Commission, and any successor to its jurisdiction.
- (oo) “**Mitigation Measures**” shall have the meaning given in the Recitals of this Declaration.

- (pp) ~~(oo)~~—“**MTA**” shall mean the Metropolitan Transportation Authority of the State of New York and its subsidiaries and affiliates (including LIRR), and any successor to its jurisdiction.
- (qq) ~~(pp)~~—“**New Building**” shall mean a new residential, mixed use, or commercial building on the Subject Property.
- (rr) ~~(qq)~~—“**New Building Permit**” shall mean, with respect to any New Building, a work permit issued by DOB under a New Building application authorizing construction of a New Building.
- (ss) ~~(rr)~~—“**NYPD**” shall mean the New York City Police Department, and any successor to its jurisdiction.
- (tt) ~~(ss)~~—“**OER**” shall mean the New York City Mayor’s Office of Environmental Remediation, or any successor to its jurisdiction.
- (uu) ~~(tt)~~—“**Open Space Maintenance and Repair Requirements**” shall have the meaning set forth in Section 2.02(g) hereof.
- (vv) ~~(uu)~~—“**OPRHP**” shall mean the New York State Office of Parks, Recreation and Historic Preservation, and any successor to its jurisdiction.
- (ww) ~~(vv)~~—“**PAA Plans**” shall have the meaning set forth in Exhibit J to this Declaration.
- (xx) ~~(ww)~~—“**Permanent Certificate of Occupancy**” or “**PCO**” shall mean a permanent certificate of occupancy issued by DOB for any New Building under Section 605 of the New York City Charter or any successor provision thereto.
- (yy) ~~(xx)~~—“**Platform**” shall mean the platform, together with the structural elements supporting the platform to be constructed within the Subject Property over the Western Rail Yard portion of the Caemmerer Rail Yard.

(zz) ~~(yy)~~ “**Prior Applications**” shall have the meaning given in the Recitals to this Declaration.

(aaa) ~~(zz)~~ “**Prior Approvals**” shall have the meaning given in the Recitals to this Declaration.

(bbb) ~~(aaa)~~ “**Prior CPC Actions**” shall have the meaning given in the Recitals of this Declaration.

(ccc) ~~(bbb)~~ “**Proposed Project**” shall mean the development scenario so defined under the ~~Approvals~~CPC Actions and in the FEIS, ~~containing the Gaming Facility~~which would have contained a gaming facility and residential, commercial and community facility space, and public open space.

(ddd) ~~(eee)~~ “**Project Component Related to the Environment**” or “**PCRE**” shall refer to any one or all of the project components related to the environment for construction, set forth in Section 3.01 hereof; project components related to the environment for design and operation of any New Building, set forth in Section 3.02 hereof; and project components related to the environment related to sustainability, set forth in Section 3.03 hereof.

(eee) ~~(ddd)~~ “**Public Access Areas**” shall mean the Public Open Space, the West 30th Street Corridor the Midblock Connection and the Corner Open Area, as applicable, each as defined in Exhibit J to this Declaration.

(fff) ~~(eee)~~ “**Public Access Area Phase**” shall mean a phase for development of a Public Access Area approved pursuant to Exhibit J to this Declaration.

(ggg) ~~(fff)~~ “**Public School**” shall mean a PS/IS school of approximately 120,000 gross square feet, to be operated by the New York City Department of Education, and having approximately 750 seats (assumed in the FEIS to be 420 elementary and 330 intermediate seats) proposed to be located on

the Subject Property in accordance with Section 3.04(a) hereof.

(hhh) ~~(ggg)~~—“**Rail System**” shall mean the trackage, signal, power, fuel, electrical traction, lighting, mechanical, safety, security, plumbing, communication and ventilation systems, track support, ballast, walls, duct lines, drainage lines, signage, electrical traction power plants, stations, terminals, storage yards, repair and maintenance shops, other yards, roadways, access ways, walkways, rolling stock, rail cars, locomotives, vehicles, surface craft, motors, boilers, engines, wires, ways, conduits and mechanisms, machinery, tools, implements, materials, supplies, instruments and devices, including but not limited to all power houses, and all apparatus and all devices for signaling, communications and ventilation of every nature whatsoever as are used now or in the future by Yards Parcel Operator (as defined in the Declaration of Easements), any Yards Parcel Occupant (as defined in the Declaration of Easements), any of their respective affiliates, Amtrak, the Port Authority, New Jersey Transit and/or NYCTA (as applicable) to provide rail service directly or by contract, lease or other arrangement.

(iii) ~~(hhh)~~—“**SCA**” shall mean the New York City School Construction Authority, or any successor to its jurisdiction.

(jjj) ~~(iii)~~—“**SEQRA**” shall mean the State Environmental Quality Review Act, New York State Environmental Conservation Law Sections 8-0101 et. seq. and the regulations promulgated thereunder at 6 NYCRR Part 617.

(kkk) ~~(jjj)~~—“**Site**” shall mean any or all of Sites A (former Site 5 as defined on Map 6, Subdistrict F Site Plan, of the Special Hudson Yards District), Site B (former Site 6 as defined on Map 6, Subdistrict F Site Plan, of the Special Hudson Yards District), and Site C (former Sites 1 and 2 as defined on Map 6, Subdistrict F Site Plan, of

the Special Hudson Yards District), as delineated in the Approvals.

~~(kkk) “Site C Building” shall mean the New Building to be constructed upon Site C.~~

(lll) “Subject Property” shall have the meaning given in the Recitals to this Declaration.

(mmm) “Successor Declarant” shall mean any third party (other than MTA) to which Declarant that is signatory to this Declaration shall have sold, leased, transferred or conveyed fee title to, or a ground or net lease of, one or more tax lots within the Subject Property, to the extent of such third party’s interest with respect to such lots so sold, leased, transferred or conveyed to it.

(nnn) “Technical Memorandum” shall ~~mean any Technical Memorandum approved pursuant to Section 3.04(a)(ii)(ee)~~ have the meaning given in the Recitals to this Declaration.

(ooo) “Temporary Certificate of Occupancy” or “TCO” shall mean a temporary certificate of occupancy issued by DOB under Section 605 of the New York City Charter.

(ppp) “Temporary Public Access Area Plan” shall have the meaning set forth in Exhibit J to this Declaration.

(qqq) “Tier 1”, “Tier 2” and “Tier 3” shall mean the federal non-road diesel engine emissions certification levels of the same name as defined in 40 CFR §89.112(a) as of the date hereof.

(rrr) “Tier 4” shall mean the federal non-road diesel engine emissions certification levels of the same name as defined in 40 CFR §1039.101 and §1039.102, as of the date hereof.

(sss) “Uncontrollable Circumstances” shall mean occurrences beyond Declarant’s reasonable control, and for which Declarant has taken all steps within Declarant’s control reasonably necessary to control or minimize, which cause delay in the performance of Obligations under this

Declaration, including, without limitation, delays resulting from (i) governmental restrictions, limitations, regulations or controls (provided that such are other than ordinary restrictions, limitations, regulations or controls); (ii) orders of any court of competent jurisdiction (including, without limitation, any litigation which results in an injunction or a restraining order prohibiting or otherwise delaying the construction of any portion of the Subject Property); (iii) labor disputes (including strikes, lockouts not caused by Declarant, slowdowns and similar labor problems); (iv) accident, mechanical breakdown, shortages or inability to obtain labor, fuel, steam, water, electricity, equipment, supplies or materials (for which no substitute is readily available at a comparable price); (v) acts of God (including severe weather conditions); (vi) removal of hazardous substances that could not have been reasonably foreseen; (vii) war, sabotage, hostilities, invasion, insurrection, riot, acts of terrorism, mob violence, malicious mischief, embargo, quarantines, national, regional or local disasters, calamities or catastrophes, national emergencies, enemy or hostile governmental action, civil disturbance or commotion, earthquake, flood, fire or other casualty of which Declarant has given DCP notice; (viii) a taking of the whole or any relevant portion of the Subject Property by condemnation or eminent domain; (ix) soil conditions that could not have been reasonably foreseen that substantially delay construction of any relevant portion of the Subject Property or substantially impair the ability to develop the Subject Property in the manner contemplated by this Declaration; (x) denial to Declarant by any party of a right of access to any adjoining real property or to the Subject Property which right is vested in Declarant, by contract or pursuant to applicable law, if such access is required to accomplish the obligations of Declarant pursuant to this Declaration; (xi) inability of a public utility to provide power, heat or light or any other utility service, despite reasonable efforts by Declarant to procure same from the utility; and (xii) unusual delays in

transportation, as determined by the Chair in accordance with Section 3.08(a) of this Declaration.

(ttt) “**USGBC**” shall mean the U.S. Green Building Council, the Green Building Certification Institute, or any successor organization that administers the LEED certification and ratings system.

~~(uuu) “**Water Credit Category**” shall have the meaning given in Exhibit D to this Declaration.~~

(uuu) ~~(vvv)~~ “**West 30th Street Corridor**” shall have the meaning set forth in Exhibit J to this Declaration.

(vvv) ~~(www)~~ “**West 33rd Street Loop**” shall have the meaning set forth in Section 2.05 of this Declaration.

(www) ~~(xxx)~~ “**Zoning Resolution**” shall have the meaning given in the Recitals to this Declaration.

ARTICLE II DEVELOPMENT OF THE SUBJECT PROPERTY

2.01 Affordable Housing.

(a) Declarant shall include within the Development ~~a minimum of three hundred twenty-four (324)~~ residential rental units that will be affordable to persons or families of low and moderate income who qualify for occupancy pursuant to the requirements of any program for the development of affordable residential rental units selected by the Declarant (~~the~~ “Affordable Housing Units”), ~~such that the total number of~~ in an amount that is the greater of (i) four hundred twenty (420) residential rental units, or (ii) 25% of the total residential rental units in the Development, in each case subject to the availability to Declarant of, at the time of construction of such residential rental units, Section 485-x tax abatements (as such program exists on the date of this Declaration) for rental buildings containing Affordable Housing Units ~~on the Subject Property and the eastern portion of the Caemmerer Rail Yard collectively is not less than four hundred~~

~~thirty-one (431).~~in the City of New York (the “Tax Abatement Program”), and such Affordable Housing Units shall comply with the regulations of the Tax Abatement Program.

(b) Notwithstanding anything in this Declaration to the contrary, Declarant shall include a sufficient number of Affordable Housing Units in the Development such that the total number of Affordable Housing Units in the Development and the eastern portion of the Caemmerer Rail Yard collectively is not less than four hundred thirty-one (431).

(c) ~~(b)~~ In the event that Declarant utilizes the floor area regulations available under Section 93-225 of the Zoning Resolution for the provision of permanent Affordable Housing Units (the “Affordable Housing Bonus”), Declarant covenants and agrees to maintain the affordability of all Affordable Housing Units required to generate the Affordable Housing Bonus for so long as the bonus floor area is included within the Development.

(d) ~~(e)~~ Declarant further covenants and agrees that, notwithstanding whether or not the Affordable Housing Bonus is utilized, and upon the expiration of the benefits of ~~any initial tax abatement program~~ the Tax Abatement Program utilized by Declarant (if applicable), Declarant shall maintain the Affordable Housing Units on the Subject Property as permanent rentals affordable to persons or households ~~having a maximum~~ at an average income of up to 90% of area median income, not to exceed 125% of area median income.

(e) ~~(d)~~ Notwithstanding Declarant’s obligations under this Section 2.01 ~~to provide Affordable Housing Units~~, Declarant agrees that any New Building containing Affordable Housing Units built with “public funding,” as such term is defined in Section 27-111 of the Zoning Resolution, shall not be used as a “UAP Development” for

purposes of Section 27-111 et. seq. of the Zoning Resolution.

- (f) ~~(e)~~ The Affordable Housing Units throughout the rental portion of the New Building in which they are located shall be distributed in a manner consistent with applicable law.

2.02 Public Access Areas.

Subject to Section 2.02(i) below, Declarant shall construct, develop and maintain the Public Access Areas in accordance with the following:

(a) Public Access Areas Construction Phasing and Easement.

(i) Subject to compliance with the provisions of Exhibit J to this Declaration, Declarant may construct the Public Access Areas on the Subject Property in such sequence as Declarant shall determine.

(ii) Subject to clause (v) hereof, Declarant covenants that, immediately upon certification by the Chair pursuant to Exhibit J to this Declaration that a Public Access Area Phase 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 “Public Access Area Easement”) in perpetuity, for the benefit of the general public, encompassing the area of the Public Access Area Phase, unobstructed from the surface thereof to the sky, for the purposes of: (aa) in the case of the Public Open Space (1) passive and active recreational use by the general public, and (2) pedestrian access over and through the area of the Public Open Space to and from other developed portions of the Subject Property and City streets; (bb) in the case of the West 30th Street Corridor, pedestrian access over and through the West 30th Street Corridor to and from other developed portions of the Subject Property and City streets; (cc) in the case of the Midblock Connection ~~under the Alternative Scenario~~, pedestrian access over and through the Midblock Connection to and from the Public Open Space and West 33rd Street; and (dd) in the case of the Corner Open Area ~~under the Alternative Scenario~~, pedestrian access over and through the Corner Open Area to and from other developed portions of the Subject Property and Eleventh Avenue, subject in each case to all provisions of this Declaration applicable to the use of such Public Access Areas.

(iii) 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, at and after the time of vesting of the Public Access Area Easement in the City, subject and subordinate to the rights, claims, entitlements, interests and priorities created by the Public Access Area Easement.

(iv) The Public Access Area Easement shall commence for the benefit of and shall vest in the City commensurate with and on the date of substantial completion of each Public Access Area Phase and shall encompass all of the Public Access Area included in such Public Access Area Phase and all Public Access Areas completed in any earlier Public Access Area Phase, subject to clause (v) hereof. Declarant waives its rights to assert the rule against perpetuities as a defense in any proceeding to compel the conveyance of the Public Access Area Easement.

(v) Notwithstanding anything to the contrary in this Section 2.02(a), Declarant shall be entitled to and hereby reserves and retains the right to close to the public any portion of a Public Access Area Phase that has been built by Declarant to the extent and for the period of time that such closure is reasonably required to allow for the construction of a New Building in a safe, efficient, and reasonable manner, or to replace temporary features under a Temporary Public Access Area Plan certified pursuant to Exhibit J to this Declaration with permanent features under the PAA Plans approved pursuant to Exhibit J to this Declaration, or to build a subsequent Public Access Area Phase, and the easement granted pursuant to clause (ii) of this Section 2.02(a) is limited to such extent. Declarant shall notify the Chair of the need to close any portion of the Public Access Area Phase not less than thirty (30) days prior to such closure, and shall provide the Chair with a description of the need, extent and estimated period of time of closure reasonably required pursuant to this clause.

(b) Hours of Access and Closure.

(i) Subject to Section 2.02(a)(v), Declarant covenants that the Public Access Areas shall remain open and accessible to the public each day between the hours of 6:00 AM and 1:00 AM pursuant to the Public Access Easement, provided that the West 30th Street Corridor shall be open and accessible to the public at all times.

(ii) Notwithstanding clause (i) of this Section 2.02(b), Declarant may close the Public Access Areas or the most limited portions thereof as may be necessary in order: (aa) to accomplish maintenance, repairs or replacements; (bb) to make emergency repairs to mitigate hazardous site conditions; (cc) to address other emergency conditions; and (dd) to allow for public events approved by the Open Space Advisory Board under Section 2.02(e) hereof. In addition, (aa) Declarant shall be entitled to close all or any portion of the Public Access Areas not more than one (1) day of each calendar year in order to preserve Declarant's ownership interest therein, provided that any closure made for such purpose shall not occur on a weekend or public holiday; and (bb) Declarant shall be entitled to close the primary lawn area required under Exhibit J to this Declaration together with an access point thereto, not more than four (4) times in any calendar year (and not more than one (1) such event shall occur within any two (2) month period) for purposes of hosting a private event for the benefit of owners or occupants of any of the New Buildings. Such private events shall not take place on a public holiday and shall be for no more than six (6) hours. Declarant shall notify DCP of any such event not less than thirty (30) ~~says~~days prior to closure. "Emergency conditions" for which the Public Access Areas may be closed pursuant to this clause shall be limited to actual or imminent emergency situations, including but not limited to: security alerts, riots, casualties, disasters, hazardous or dangerous conditions 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 notified the

NYPD or DOB, as appropriate, and having followed NYPD's or DOB'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 shall close or permit to be closed only those portions of the Public Access Areas which must or should reasonably be closed to effect the maintenance, repairs or replacements to be undertaken, and will exercise due diligence in the performance of such repairs or mitigation in order that it is completed expeditiously and the temporarily closed areas (or any portions thereof) are re-opened to the public promptly.

(c) Maintenance and Repair of Public Access Areas.

Declarant shall, at Declarant's sole cost and expense, operate, maintain and repair the Public Access Areas in a sound and good condition in accordance with the requirements set forth in the Maintenance and Repair of Public Access Areas schedule annexed to this Declaration as Exhibit E (the "Public Access Area Maintenance and Repair Requirements"). Notwithstanding the foregoing, at such time and in the event that Declarant establishes a Property Owners' Association in accordance with Section 2.02(f) hereof, the Property Owners' Association shall be responsible for the operation, maintenance, and repair of the Public Access Areas in accordance with the terms of this Declaration.

(d) Operating Rules for Public Access Areas.

The activities, uses and conduct permitted within the Public Access Areas 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 F. Declarant may modify the policies set forth in Exhibit F with the prior written approval of DCP, which shall not be unreasonably withheld, conditioned or delayed.

(e) Public Access Areas Programming Management Advisory Board.

(i) Declarant shall have the right, at Declarant's election, to undertake and implement a program of public activities and events within the Public Access Areas, subject to subclause (iii) hereof. Such public programming shall be limited to (aa) arts, music, theater or other cultural or similar events of a public character; and (bb) celebrations, participatory neighborhood events or similar activities of a public nature, all of which shall be open to the general public (the "Event Programming"). Any Event Programming shall be non-commercial in nature and shall not be conducted for profit, provided that in no event shall this provision be interpreted to prevent any sponsor or host of a public event from identifying such sponsorship or hosting as part of the public Event Programming, including in writing (including, for example, signage).

(ii) In order to develop any Event Programming, Declarant shall establish, at Declarant's sole cost and expense, a not-for-profit entity (the "Open Space Advisory Board" or "Board") to advise Declarant with regard to the possible Event Programming in the Public Access Areas. The Open Space Advisory Board shall be comprised of nine (9) members, five (5) of whom shall be

appointed by the Declarant, and one (1) of whom shall be appointed by each of the Community Board, the local City Councilmember, the Manhattan Borough President, and the Manhattan Borough Commissioner of DPR.

(iii) The Open Space Advisory Board shall meet on a semi-annual basis, and at such additional times as may be requested in writing by a majority of the members of the Board to consider any proposals for Event Programming allowed under clause (i) hereof that may occur from time to time. Any proposed Event Programming (whether considered at a regularly scheduled semi-annual meeting or at a special meeting convened for such purpose) that would result in the use of any portion of the Public Access Areas for a period in excess of four (4) hours in any day, or an aggregate of more than eight (8) hours in any seven (7) day period, shall be subject to the approval of a majority the members of the Open Space Advisory Board. With the exception of the right to approve such Event Programming, the Open Space Advisory Board's role with respect to programming of Events shall be advisory.

(f) Property Owners' Association.

(i) In order to perform the Public Access Area Maintenance and Repair Requirements, Declarant may form a property-owners association under the New York State Not-For-Profit Corporation Law or as an unincorporated association, or a cooperative corporation under the New York State Business Corporation Law (any of the entities in any combination thereof hereinafter referred to separately or collectively as the "Property Owners' Association"). The decision of whether or not to create a Property Owners' Association shall be at the sole option of Declarant, provided that until such time as a Property Owners' Association is formed complying with the terms of this Paragraph (f) and such Association assumes the obligations of the Declarant with respect to the Open Space Maintenance and Repair Requirements as set forth in clause (ii) of this Section, Declarant shall be responsible in all respects for the Public Access Area Maintenance and Repair Requirements.

(ii) If a Property Owners' Association is formed, it shall assume all of the obligations of the Declarant relating to the Public Access Area Maintenance and Repair Requirements with respect to all of the Public Access Areas, commencing at such time as each Public Access Area Phase is determined to be substantially complete in accordance with the requirements of Exhibit J to this Declaration, and shall be organized with all of the powers that may be necessary and proper to allow the Property Owners' Association to carry out the duties, obligations and requirements of this Declaration with respect to the Open Space Maintenance and Repair Requirements. Notwithstanding the foregoing, Declarant at its option may exclude the Public Access Area Maintenance and Repair Requirements as they apply to any portion of the Public Access Areas from the area governed by the Property Owners' Association, in which event the Public Access Area Maintenance and Repair Requirements as they apply to such excluded portion shall be the obligation of: (aa) the tenant under a ground lease with the MTA governing the applicable portion of the Subject Property subject to such exclusion, or (bb) following the expiration or earlier termination of such lease, or following a fee conversion of such portion of the Subject Property, the fee owner of such portion of the Subject Property or any New Building identified

by Declarant (but not, in any event, MTA) or, if such New Building is subjected to a declaration of condominium, the board of managers of such condominium.

(iii) In connection with its obligations under this Section, the Property Owners' Association shall comply with the following requirements:

(aa) Members. The members of the Property Owners' Association (the "Association Members") shall consist of (1) (aa) the tenant under a ground lease with the MTA governing the applicable portion of the Subject Property subject to such exclusion, or (b) following the expiration or earlier termination of such lease, or following a fee conversion of such portion of the Subject Property, the fee owner of such portion of the Subject Property or any New Building identified by Declarant (but not, in any event, MTA), but excluding any fee owner of the High Line and any fee owner of an individual condominium unit within any New Building that is the subject of a declaration of condominium, and (2) the board of managers of any portion of the Subject Property that is subject to a declaration of condominium.

(bb) Powers. To the extent permitted by law, Declarant shall cause the Property Owners' Association to be established with the power, responsibility, and authority to:

(1) Undertake and be responsible for the Public Access Area Maintenance and Repair Requirements;

(2) Be subject to enforcement by DCP and the City in the event that it fails to comply with the Public Access Area Maintenance and Repair Requirements, including imposing liens therefor for the purposes of funding the Open Space Maintenance and Repair Requirements;

(3) In the event and at such time as Declarant existing as of the date of this Declaration no longer holds any interest in the Subject Property, allow for the Property Owners' Association to undertake the design and construction of the Public Access Areas in accordance with Exhibit J and Section 2.02(a) of this Declaration (the "Open Space Construction Obligation");

(4) Impose fees or assessments against the Association Members through a formula to be determined by Declarant in Declarant's discretion, for the purpose of collecting funds reasonably necessary and sufficient to fund the Public Access Area Maintenance and Repair Requirements, and to the extent that the Property Owners' Association has assumed the Open Space Construction Obligation, the Open Space Construction Obligation;

(5) Collect, receive, administer, protect, invest, and dispose of funds;

(6) Bring and defend actions under this Declaration, and negotiate and settle claims to recover fees or assessments owed to the Property Owners' Association either directly under the formation documents, or indirectly pursuant to any declaration of condominium imposed against any New Building or portion thereof;

(7) To the extent permitted by law, impose liens, fines or assessments against individual lot or unit owners for the purpose of collecting funds reasonably necessary and sufficient to fund the Public Access Area Maintenance and Repair Requirements and, to the extent that the Property Owners' Association has assumed the Open Space Construction Obligation, the Open Space Construction Obligation; and

(8) Exercise any and all such powers as may be necessary or appropriate for purposes of this Declaration and as may be granted to the Property Owners' Association in furtherance of the Property Owners' Association's purposes hereunder.

(cc) By-Laws. The by-laws and charter or certificate of incorporation of the Property Owners' Association shall be consistent in all respects with the terms of this Declaration and shall not allow for amendments or changes that are not consistent with this Declaration.

(iv) For purposes of this Declaration, any Property Owners' Association shall be deemed a successor and assign of Declarant and shall succeed to the obligations of Declarant under Paragraph (c) of this Section with respect to the portions of the Subject Property governed by the Property Owners' Association.

(v) Declarant shall cause the Property Owners' Association to be authorized to act on behalf of each party holding legal title to an affected lot or unit so that it shall not be necessary for each lot- or unit-owner to execute or waive the right to execute an application to modify, amend, cancel this Declaration in accordance with the provisions hereof or to approve the modified, amended or cancelled Declaration.

(g) High Line.

The provisions of this Section 2.02 shall not apply to the High Line, and public access, hours of access and closure, operating rules, programming and other features relating to the operation, maintenance, or repair of the High Line shall be as set forth in other agreements and understandings with respect thereto between the governing entity of the High Line, on the one hand, and Declarant or the Property Owners' Association, as applicable, on the other hand.

(h) High Line Access Points and Maintenance Facility.

(i) Declarant shall cooperate with DCP with regard to the identification and provision of public pedestrian access to the High Line under the PAA Plans reviewed and approved pursuant to Exhibit J of this Declaration.

(ii) Declarant shall consider in good faith (without any obligation with respect thereto) a request by DCP or other relevant city agency to locate space on the Subject Property for support facilities for the operation, maintenance and public enjoyment of the High Line, as determined by DCP and other relevant city agencies during the planning process for the High Line.

~~(i) Public Access Areas on Site C in the Proposed Project.~~

~~Notwithstanding anything in this Declaration to the contrary, to the extent that the Gaming Facility is located on the Subject Property under the Proposed Project pursuant to a license issued by the New York State Gaming Commission pursuant to Section 1306 of the Racing, Pari-Mutuel Wagering and Breeding Law, such Gaming Facility shall not be subject to the provisions of Exhibit J to this Declaration.~~

2.03 Intentionally Omitted.

2.04 Arts and Cultural Space.

- (a) The Development shall include a minimum of sixteen thousand (16,000) gross square feet of space to be made available for local cultural institutions or other local arts not-for-profits approved by Developer, in accordance with the terms of this Section 2.04 (the “Cultural Space Obligation”). At Declarant’s sole option, the Cultural Space Obligation may be fulfilled in not less than two (2) facilities within the Development or in more than two (2) facilities within the Development, provided that each such facility shall have a minimum size of not less than 1,200 gross square feet (each such facility, a “Cultural Space,” and all of such facilities, the “Cultural Spaces”).
- (b) The Cultural Spaces may be located in any New Building, at Developer’s Option, and may be constructed in any phase of the Development as Developer sees fit, provided that any Cultural Space shall be accessible directly from the outside.
- (c) The Cultural Spaces shall be leased to neighborhood theatrical, dance, arts or other

similar local cultural organizations (each, a “Cultural Institution” and each such cultural use, a “Cultural Use”) selected by Declarant in consultation with and based on the recommendation of the Community Board pursuant to a lease acceptable to Declarant and complying with the terms of Section 2.04(e) hereof (a “Cultural Facilities Lease”). Each Cultural Use may be filed with DOB as either a community facility use or a commercial use as necessary to implement the program of the given Cultural Institution. Nothing herein shall be construed to require Declarant to accept a Cultural Institution as tenant if Declarant reasonably determines that such Cultural Institution does not have (or is reasonably likely in the future to not have) the financial wherewithal to fulfill, or is otherwise unable to comply (or is reasonably likely in the future to be unable to comply) with, any of its responsibilities under the Cultural Facilities Lease.

(d) Declarant shall be responsible at Declarant’s sole cost and expense for constructing the core and shell of the Cultural Spaces, including the distribution of reasonable base building systems to the Cultural Spaces. Such distribution shall include:

(i) Heating, Ventilation and Air Conditioning (HVAC) equipment including access from base building condensers, chillers, fresh air intakes and exhaust louvers. Such equipment shall also be of a type that creates minimal noise to permit performances to be conducted; and

(ii) Electrical service shall include at least 1,000 amps to service theatrical lighting needs.

Declarant shall have no obligation to provide for the fit-out of any of the Cultural Spaces, including without limitation no obligation to provide: lighting; fixtures; distribution of utilities and mechanical systems within the Cultural Spaces; furniture; interior partitions; stage areas; or acoustical separation beyond that provided by the core and shell construction, all of which shall be the responsibility of the Cultural Institution, provided that at any Cultural Institution’s request, Declarant agrees that it will enter into good faith discussions with such Cultural Institution to perform the fit-out work on the Cultural Institution’s behalf and at the Cultural Institution’s sole cost and expense.

(e) Each Cultural Facilities Lease shall have a term of not less than ten (10) years or such longer term as

may be agreed to by Declarant in its sole discretion and shall include a rent of one dollar (\$1.00) per year. Each Cultural Facilities Lease shall include terms reflecting the following:

- (i) Providing that each Cultural Facilities Lease shall be triple net to the Cultural Institution, and shall require the Cultural Institution to pay for its proportional share of insurance, maintenance, and other operating costs applicable to the Subject Property;
 - (ii) Providing for review and approval rights by Declarant with respect to the design, construction, and construction logistics of the fit-out of the Cultural Spaces, and require that the Cultural Institution proceed with the fit-out in a timely, expeditious and first class manner without liability or loss to Developer;
 - (iii) Requiring Declarant approval, in consultation with the Community Board, of any assignment or sublease of any portion of the Cultural Spaces or other area covered by the Cultural Facilities Lease;
 - (iv) Requiring that the Cultural Institution maintain appropriate insurance covering the Cultural Space and the operations therein;
 - (v) Providing remedies for breach of the Cultural Facilities Lease by the Cultural Institution, including self-help remedies where appropriate; and
 - (vi) Providing other terms and conditions reasonably typical for a commercial tenant lease to allow for the fit-out, lease, and operation of the Cultural Space within a larger building.
- (f) Notwithstanding anything to the contrary contained herein, in the event that (i) the Community Board has failed to identify an acceptable Cultural Institution within two (2) years from the date that Declarant notifies the Community Board in writing that a Cultural Space is expected to be completed in twelve (12) months' time, (ii) an acceptable Cultural Institution has been identified by the Community Board but has failed to enter into a Cultural Facilities Lease with Declarant within twelve (12) months of the date such Cultural Institution was so identified, or (iii) a Cultural Facilities Lease has expired or otherwise been abandoned or terminated and the Community Board has failed to identify an acceptable alternate Cultural Institution within twelve (12) months of such termination or abandonment, then, in each case, Declarant may, upon written notice to the

Community Board, select a Cultural Institution to lease and occupy the Cultural Spaces without consultation with and solicitation of the recommendation of the Community Board pursuant to Paragraph (c) of this Section. In such event, in the event that Declarant is unable to identify an acceptable Cultural Institution after good faith efforts during an additional six (6) month period, Declarant may use up to 8,000 sf of such Cultural Space for another use at Declarant's option.

2.05 West 33rd Street Loop.

Declarant shall construct, develop, and maintain (in accordance with the applicable provisions set forth on Exhibit E to this Declaration) a turn around and/or loop for pedestrians and vehicles at the western end of West 33rd Street, a portion of which will be located within the Subject Property (such portion, the "West 33rd Street Loop"), as shown in the drawings approved in connection with the Approvals, and in accordance with the following (but subject to Section 6.04 below):

- (a) Subject to the other provisions of this Section 2.05, Declarant covenants that, immediately upon substantial completion of the West 33rd Street Loop (*i.e.*, such that the West 33rd Street Loop is opened and accessible to the public), 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 "Loop Easement") in perpetuity, for the benefit of the general public, encompassing the area of the West 33rd Street Loop, unobstructed from the surface of the West 33rd Street Loop to an elevation of 15 feet above the roadbed, for the purposes of pedestrian and vehicular access over and through the West 33rd Street Loop to and from West 33rd Street and the parking garage to be located on the northern side of the Subject Property, and for general vehicular maneuvering by the public.
- (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, at and after the time of vesting of the Loop Easement in the City, subject and subordinate to the rights, claims, entitlements, interests and priorities created by the Loop Easement.

- (c) The Loop Easement shall commence for the benefit of and shall vest in the City commensurate with and on the date of substantial completion of the West 33rd Street Loop (i.e., the date that the West 33rd Street Loop has been constructed to the extent that all portions of the West 33rd Street Loop may be operated and made available for public use, notwithstanding minor or insubstantial items of construction, decoration or mechanical adjustment remaining to be performed), subject to clause (d) hereof. Declarant waives its rights to assert the rule against perpetuities as a defense in any proceeding to compel the conveyance of the Loop Easement.
- (d) Notwithstanding anything to the contrary in this Section ~~2.042.05~~, Declarant shall be entitled to and hereby reserves and retains the right to close to the public any portion of the West 33rd Street Loop to the extent and for the period of time that such closure is reasonably required to allow for the construction, repair and maintenance of a New Building and/or the Subject Property in a safe, efficient, and reasonable manner, or to make necessary repairs or replacements within the West 33rd Street Loop, and the easement granted pursuant to clause (a) of this Section ~~2.042.05~~ is limited to such extent. Declarant shall notify the Chair of the need to close any portion of the West 33rd Street Loop not less than thirty (30) days prior to such closure, and shall provide the Chair with a description of the need, extent and estimated period of time of closure reasonably required pursuant to this clause.
- (e) No member of the public shall have the right to use the West 33rd Street Loop for any activity or in a manner which (i) injures, endangers or

unreasonably disturbs the comfort, peace, health or safety of any person, (ii) disturbs or causes injury to plant or animal life, (iii) causes damage to the Subject Property or any person, or (iv) impairs the value or operation of the Yards Parcel or the Rail System or any rights of MTA. The West 33rd Street Loop shall not be used for public parking.

2.06 Eleventh Avenue Traffic Signals.

(a) Declarant shall not accept a TCO for ~~the~~ any New Building on Site C ~~Building~~ until:

(i) Declarant has sent written notice to DOT requesting that DOT implement the traffic signals at Eleventh Avenue and 32nd Street and Eleventh Avenue and 31st Street (the “Eleventh Avenue Signals”);

(ii) If DOT determines that one or both of the Eleventh Avenue Signals are warranted, Declarant shall engage a design consultant to prepare, and Declarant shall submit to DOT, signal design and timing plans for such Eleventh Avenue Signals that DOT has determined are warranted, unless DOT and/or the City elects to provide such signal design.

(iii) Declarant has paid DOT/City of New York for the customary costs associated with the design and installation of one or both of Eleventh Avenue Signals, as applicable, proposed geometric modifications, traffic signs, and pavement markings removals/installations.

(b) To the extent DOT deems unnecessary one or both of the Eleventh Avenue Signals, Declarant shall have no further obligation under this Section 2.06.

ARTICLE III PROJECT COMPONENTS RELATED TO THE ENVIRONMENT AND MITIGATION MEASURES

3.01 Project Components Related to the Environment for Construction.

Declarant shall implement and incorporate as part of its construction of New Buildings, as appropriate, the following PCREs:

(a) **Construction Air Emissions Reduction Measures.**

(i) Declarant shall: (a) prior to Construction Commencement and subject to DCP review pursuant to Section 3.09 of this Declaration, develop a plan for implementation of; and (b)

thereafter implement, the following measures for all construction activities (including, but not limited to, demolition and excavation) related to the Development:

(1) To the extent practicable, non-road diesel equipment with 50 horsepower (hp) or greater shall comply, at a minimum, with the United States Environmental Protection Agency (“EPA”) Tier 3 Non-road Diesel Engine Emission Standard, and, once Tier 4-compliant equipment is widely available, with the Tier 4 standard, and in all cases shall comply with the Tier 2 standard. All non-road, diesel-powered construction equipment with engine power output rating 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 matter emissions (currently, diesel particulate filters (DPFs)). Construction contracts shall specify that all diesel non-road engines rated at 50 hp or greater shall utilize DPFs, either installed by the original equipment manufacturer or retrofitted. Retrofitted DPFs must be verified by EPA or the California Air Resources Board. Active DPFs or other technologies proven to achieve an equivalent reduction may also be used.

(2) Idling of all on-site vehicles, including non-road engines, for periods longer than three minutes shall be prohibited on the Subject Property for all equipment and vehicles that are not using their engines to operate a loading, unloading, or processing device (e.g., concrete mixing trucks) or unless otherwise required for the proper operation of the engine.

(ii) Declarant shall include enforceable contractual requirements with contractors and subcontractors to implement the provisions of this Paragraph (a) as applicable with respect to such work.

(b) Intentionally Omitted.

(c) Construction Noise Reduction Measures.

(i) Declarant shall: (a) prior to Construction Commencement and subject to DCP review pursuant to Section 3.09 of this Declaration, develop a plan for implementation of; and (b) thereafter implement, a plan for minimization of construction noise (the “Noise Mitigation Plan”) for all construction activities (including demolition and excavation) related to the Development, which Noise Mitigation Plan shall contain both path control and source control measures, including the following:

(1) Path Control Measures: Concrete operations shall be located inside site-perimeter noise barriers for the Subject Property.

(2) Source Control Measures: Pile installation and foundation elements shall be constructed by drilling rather than impact driving.

(ii) Declarant shall include enforceable contractual requirements with contractors and subcontractors to implement the provisions of this Section 3.01(c) consistent with such Noise Mitigation Plan, as applicable with respect to such work.

(d) Intentionally Omitted.

(e) Intentionally Omitted.

(f) Construction Pest Management Plan.

(i) Declarant shall include enforceable contractual requirements with contractors for a rodent (i.e. mouse and rat) control program and shall carry out such program during construction activities. Prior to Construction Commencement, Declarant shall survey and bait the appropriate areas on the Subject Property and shall provide for proper site sanitation, post signage and coordinate with appropriate governmental agencies.

(g) Hazardous Materials Remediation and Protection Measures.

(i) Prior to Construction Commencement, Declarant shall undertake a pre-demolition survey of any buildings to be demolished for asbestos containing materials (“ACM”), lead-based paint (“LBP”) and equipment suspected to contain polychlorinated biphenyls (“PCBs”). If such materials are identified during the survey, Declarant shall develop and implement procedures for pre-demolition removal of such materials, as part of the Hazardous Materials Management Plan (“HMMP”) for the Subject Property. Based on the findings of the pre-demolition survey, the HMMP shall include the following:

(1) If determined necessary following the pre-demolition survey, the HMMP shall include an ACM management plan, which shall set forth procedures for handling, removal and disposal of ACM in conformance with federal, New York State, and New York City requirements. The ACM management plan shall provide for appropriate engineering controls (e.g., wetting and other dust control measures) to minimize asbestos exposure throughout demolition of existing buildings on the Subject Property.

(2) If the pre-demolition survey finds that LBP-coated surfaces are present in any structures to be demolished on the Subject Property, the HMMP shall include an LBP management plan. This plan shall require that an exposure assessment be performed to determine whether lead exposure may occur during demolition activities. If the exposure assessment indicates the potential to generate airborne dust or fumes with lead levels exceeding health-based standards, a higher personal protection equipment standard shall be required to counteract the exposure. In all

cases, appropriate methods to control dust and air monitoring, as required by the Occupational Health and Safety Administration, shall be required during demolition activities.

(3) The HMMP shall require that suspected PCB-containing equipment that will be disturbed by construction activities on the Subject Property shall be removed and disposed of in accordance with applicable federal, State, and local regulations. Unless labeled “non-PCB”, types of equipment usually suspected to contain PCBs (e.g., transformers, electrical feeder cables, hydraulic equipment, and fluorescent light ballasts) shall be tested or assumed to contain PCBs and disposed of at properly licensed facilities.

(ii) Unless agreed to in writing by Declarant, Declarant shall have no responsibility for the investigation and remediation of any soil excavated or disturbed in connection with any construction associated with the Hudson Tunnel (a/k/a Gateway) project occurring on the Subject Property.

(iii) Declarant shall not accept a Building Permit for the Platform (or any portion thereof), any New Building on the Subject Property, or any other portion of the Subject Property, which permits soil disturbance until Declarant has prepared a remedial work plan, remedial action plan, remedial action work plan, or a soil/materials management plan, as applicable, (collectively a “Hazardous Materials RAP”) and Construction Health and Safety Plan (“CHASP”) and OER has issued to DOB, as applicable, either a Notice of No Objection as set forth in Section 3.01(g)(v)(1) below or a Notice to Proceed as set forth in Section 3.01(g)(v)(2) below for the Platform (or any portion thereof), such New Building or such other portion of the Subject Property, as applicable. Any necessary remediation for the Platform (or any portion thereof), each New Building on the Subject Property or other portion of the Subject Property may proceed independently of each other and therefore it is expected that OER may issue a Notice of No Objection, Notice to Proceed, Notice of Satisfaction as set forth in Section 3.01(g)(v)(3) below and/or Final Notice of Satisfaction as set forth in 3.01(g)(v)(4) below, for each independently so that DOB may issue TCOs or PCOs for the Platform (or any portion thereof, and including any applicable sign-off or approval by DOB if not a TCO or PCO), each New Building, or any other portion of the Subject Property independently, irrespective of the construction sequence on the Subject Property. OER may issue a Notice of No Objection or Notice to Proceed under this Section 3.01(g), thereby allowing DOB to issue a Building Permit with respect to the Platform (or any portion thereof), a New Building on the Subject Property or any other portion of the Subject Property that permits grading, excavation, foundation, alteration, building or soil disturbance prior to the satisfaction of any noise requirements set forth in Section 3.02(a) or air quality requirements set forth in 3.02(b). However, Declarant shall not accept a TCO or PCO for the Platform (or any portion thereof, and including any applicable sign-off or approval by DOB if not a TCO or PCO), any New Building on the Subject Property or any other portion of the Subject Property until OER has issued to DOB, as applicable, a Notice of No Objection set forth in Section 3.01(g)(v)(1) below, a Notice of Satisfaction set forth in Section 3.01(g)(v)(3) below or a Final Notice of Satisfaction set forth in Section 3.01(g)(v)(4) below.

(iv) If OER determines a hazardous materials requirement under this Sections 3.01(g) should not apply or could be modified, OER may eliminate or modify such hazardous materials requirement per ZR Section 11-15 and such modification shall not require a modification to this Declaration.

(v) Notices.

(1) Notice of No Objection - OER shall issue a Notice of No Objection, or separate Notices of No Objection, for the Platform (or any portion thereof), any New Building on the Subject Property or any other portion of the Subject Property related to the hazardous materials requirements in this Section 3.01(g), (i) after the Declarant has either completed the work set forth in an OER approved sampling protocol and OER has determined in writing that the results of such sampling demonstrate that no hazardous materials remediation is required for the Platform (or any portion thereof), such New Building or such other portion of the Subject Property, as applicable, or OER has determined that no Hazardous Materials RAP or CHASP is required for the Platform (or any portion thereof), such New Building or such other portion of the Subject Property; (ii) OER has determined that there is no grading, excavation, foundation, alteration, building or other permit with respect to the Platform (or any portion thereof), such New Building or such other portion of the Subject Property, as applicable, that permits soil disturbance, and thus no impacts exist at or near the Platform (or any portion thereof), such New Building, or such other portion of the Subject Property, as applicable, related to such soil disturbance; (iii) OER has determined that the DOB filing requires either minor alteration work or other work with respect to the Platform (or any portion thereof), such New Building or such other portion of the Subject Property, as applicable, which does not require a RAP; (iv) OER has determined that any work pursuant to this Section 3.01(g), including implementation of an OER-approved Hazardous Materials RAP, may proceed for the Platform (or any portion thereof), such New Building on the Subject Property or such other portion of the Subject Property, as applicable, prior to the implementation of a Noise RAP, as set forth in Section 3.02(a), and Air RAP, as set forth in 3.02(b) with respect thereto; or (v) OER has provided any other applicable signoff or approval allowing such work to proceed.

(2) Notice to Proceed - OER shall issue a Notice to Proceed, or separate Notices to Proceed, for the Platform (or any portion thereof), any New Building on the Subject Property or any other portion of the Subject Property related to the hazardous materials requirements in this Section 3.01(g) after it determines that: (i) a Hazardous Materials RAP and CHASP, Air RAP and Noise RAP have been approved by OER for the Platform (or any portion thereof), such New Building or such other portion of the Subject Property, as applicable and (ii) any Building Permit with

respect to the Platform (or any portion thereof), such New Building or such other portion of the Subject Property, as applicable, that permits grading, excavation, foundation, alteration, building or soil disturbance or construction of the superstructure for the Platform (or any portion thereof), such New Building or such other portion of the Subject Property, as applicable, are necessary to further the implementation of the DEP and/or OER approved Hazardous Materials RAP, Air RAP and/or Noise RAP, as applicable.

(3) Notice of Satisfaction - OER shall issue a Notice of Satisfaction, or separate Notices of Satisfaction, for the Platform (or any portion thereof), any New Building on Subject Property, or any other portion of the Subject Property related to the hazardous materials requirements in this Section 3.01(g), after the Hazardous Materials RAP and CHASP, Air RAP and/or Noise RAP, as applicable, have been prepared and accepted by OER and OER has determined in writing that the implementation of such Hazardous Materials RAP and CHASP has been completed to the satisfaction of OER.

(4) Final Notice of Satisfaction - OER shall issue a Final Notice of Satisfaction, or separate Final Notices of Satisfaction for the hazardous materials requirements in this Section 3.01(g), for the Platform (or any portion thereof), any New Building on Subject Property or any other portion of the Subject Property, as applicable, (i) after the Hazardous Materials RAP and CHASP have been prepared and accepted by OER and OER has set forth in writing, that such Hazardous Materials RAP and CHASP have been implemented to the satisfaction of OER and no off-site environmental concerns exist adjacent to the applicable portion of the Subject Property to which the Final Notice of Satisfaction pertains, all hazardous materials have been removed or remediated, no further hazardous materials remediation is required, and no OER engineering controls were required on the applicable portion of the Subject Property to which the Final Notice of Satisfaction pertains as determined by OER or (ii) no Hazardous Materials RAP and CHASP are required for the Platform (or any portion thereof), such New Building or such other portion of the Subject Property, as applicable

(h) Historic Resource Protection Measures.

(i) High Line

(1) Prior to Construction Commencement within ninety (90) feet of the High Line, Declarant shall develop a Construction Protection Plan (“CPP”) in coordination with OPRHP and LPC to avoid any adverse physical, construction-related impacts to the High Line, such as those from

ground-borne vibrations, falling debris, and accidental damage and shall submit same to DCP.

(2) DOB shall not issue, and Declarant shall not accept, a Building Permit allowing work within ninety (90) feet of the High Line until DCP shall have certified to the DOB Commissioner that both OPRHP and LPC have determined that the CPP is acceptable.

(3) All construction activities (including demolition and excavation) within 90 feet of the High Line shall be undertaken in accordance with the CPP.

(4) The CPP shall follow the guidelines set forth in LPC's *Guidelines for Construction Adjacent to a Historic Landmark and Protection Programs for Landmark Buildings* as appropriate, except as may be otherwise approved by LPC and OPRHP. The CPP shall also follow the requirements established in DOB's *Technical Policy and Procedure Notice #10/88*, in addition to the guidelines set forth in Section 522 of the 2021 *CEQR Technical Manual*.

(5) In addition to complying with the CPP approved by both OPRHP and LPC, monitoring will be required to determine the amount of vibration at the High Line during construction, and prohibit vibration exceeding an acceptable threshold of 0.5 in/sec, and in the event that construction results in vibration exceeding such acceptable threshold of 0.5 in/sec, construction means and methods will be required to be amended to prevent such exceedances.

(ii) North River Tunnel

(1) Cassion drilling during the construction of the Platform shall not occur less than 11-feet from the North River Tunnel.

(2) Prior to Construction Commencement, Declarant shall coordinate with Amtrak regarding any measures necessary to protect the North River Tunnel during construction of the Platform which may be set forth, as appropriate, in a Construction Protection Plan and/or Project Construction Drawings and Specifications as determined with Amtrak.

(i) Intentionally Omitted.

(j) Maintenance and Protection of Traffic Plan.

(i) Prior to Construction Commencement, Declarant shall prepare a plan specifying measures to be implemented at the Subject Property to ensure the safety of the construction workers and the public, including, but not limited to, the proposed temporary lane, street and sidewalk closures, safety signs, and safety barriers, which shall be necessary during work

associated with the Development (the “Maintenance and Protection of Traffic Plan” or “MPT”). Declarant shall submit the MPT to DOT’s Office of Construction Mitigation and Coordination (OCMC) for review and approval, provided, however, that completion and submission of the MPT shall not be necessary for preliminary site work (e.g. site preparation work that does not require a Building Permit), unless DOT advises Declarant that an MPT is required.

(ii) Declarant shall include enforceable contractual requirements with all relevant contractors and subcontractors requiring adherence to the MPT. The MPT shall include a provision that at no time shall access by MTA (including LIRR) personnel, contractors, representatives and/or equipment to any Caemmerer Rail Yard facilities be restricted without the consent of MTA.

3.02 Project Components Related to the Environment for Design and Operation of New Buildings.

Declarant shall implement and incorporate the following PCREs relating to the design and operation of the New Buildings:

(a) Operational Air Emissions Controls.

(i) Intentionally Omitted.

(ii) (+) Operational Air Emissions Controls for the ~~Proposed Project~~ Alternative Scenario

(1) Declarant shall not accept a Building Permit for any New Building on the Subject Property in connection with development of the ~~Proposed Project~~ Alternative Scenario that permits construction or alteration of the superstructure of such New Building, until Declarant has submitted a remedial plan to OER (the “Air RAP”) ~~for review,~~ demonstrating compliance with, the air emissions controls set forth in Section 3.02(a)(~~i~~)(ii)(i) through (v) below ~~relating to emissions for the Proposed Project~~ the Alternative Scenario (collectively, the “~~Proposed Project~~ Alternative Scenario Operational Emissions Controls”) and OER has issued to DOB, as applicable, either a Notice of No Objection as set forth in Section 3.02(a)(iii)(1) below or a Notice to Proceed as set forth in Section 3.01(a)(iii)(2) below:

i. *For the ~~New Building on Site A~~ Building:* Any new residential or commercial development shall utilize only electrically powered heating and hot water systems. ~~Any fossil~~ Fossil fuel-fired engines may be installed for backup power and shall not be enrolled in a demand response program.

~~ii. For the New Building on Site B: Any new residential or commercial development shall utilize only electrically powered heating and hot water systems. The maximum enrolled capacity for any diesel-powered demand response engines shall be limited to 3.0 megawatts (MW), and the exhaust stacks shall be located on the~~

~~west façade at a minimum height of 45 feet above grade, and at least 65 feet from the lot line facing West 30th Street.~~

~~iii. For the New Building on Site C: Any new residential or commercial development shall utilize only electrically powered heating and hot water systems. There shall be no operable windows or air intakes for ventilation air for occupied spaces (excluding intakes for mechanical equipment) on the eastern façade of the podium of the Site C Building located between a height of 180 feet and 200 feet above grade and that portion of the podium south façade of the Site C Building within 68 feet of the lot line facing 11th Avenue at a height of 200 feet above grade. There shall be no operable windows or air intakes for ventilation air for occupied spaces (excluding intakes for mechanical equipment) location on that portion of the northern façade of the podium of the Site C Building within 265 feet of the lot line facing Twelfth Avenue between a height of 65 feet and 115 feet above grade and that portion of the west façade podium of the Site C Building within 124 feet of the lot line facing West 33rd Street between a height of 75 feet and 105 feet above grade.~~

~~iv. The maximum enrolled capacity for the diesel powered demand response engines located in the podium of the Site C Building shall be limited to 2.3 megawatt (MW) and the exhaust stacks shall be located on the southern façade of the podium of the Site C Building at a minimum height of 72 feet above grade, and at least 10 feet from the lot line facing Eleventh Avenue.~~

~~v. The maximum enrolled capacity for the diesel powered demand response engines in the tower portion of the Site C Building shall be limited to 2.3 megawatt (MW), and the exhaust stacks shall be located on the northern façade of the tower portion of the Site C Building at a minimum height of 72 feet above grade, at least 571 feet from the lot line facing Eleventh Avenue.~~

~~(2) Declarant shall not accept a TCO or PCO for any New Building on the Subject Property until OER has issued to DOB, as applicable, a Notice of No Objection set forth in Section 3.02(a)(iii)(1) below, a Notice of Satisfaction set forth in Section 3.02(a)(iii)(3) below or a Final Notice of Satisfaction set forth in Section 3.02(a)(iii)(4) below.~~

~~(3) OER's approval of the Proposed Project Operational Emissions Controls for each New Building on the Subject Property, as applicable, may proceed independently of any other New Building(s) and therefore it is expected that OER may issue Notices of No Objection, Notices to Proceed, Notices of Satisfaction or Final Notices of Satisfaction, and DOB~~

~~may issue Building Permits, TCOs and/or PCOs, on a New Building by New Building basis, irrespective of the construction sequence of each New Building on the Subject Property. OER may issue Notices of No Objection, Notices to Proceed, Notices of Satisfaction and/or Final Notices of Satisfaction if OER determines that the DOB filing requires either minor alteration work or other work occurring within the New Building that does not affect any Proposed Project Operational Emissions Controls.~~

~~(ii) Operational Air Emissions Controls for the Alternative Scenario~~

~~(1) Declarant shall not accept a Building Permit for any New Building on the Subject Property in connection with development of the Alternative Scenario that permits construction or alteration of the superstructure of such New Building until Declarant has submitted an Air RAP, demonstrating compliance with, the air emissions controls set forth in Section 3.02(a)(ii)(i) through (v) below the Alternative Scenario (collectively, the “Alternative Scenario Operational Emissions Controls”) and OER has issued to DOB, as applicable, either a Notice of No Objection as set forth in Section 3.02(a)(iii)(1) below or a Notice to Proceed as set forth in Section 3.01(a)(iii)(2) below:~~

- ~~ii.~~ i. ~~For the Site A~~ any New Building on Site B: Any new residential or commercial development shall utilize only electrically powered heating and hot water systems. Fossil fuel-fired engines may be installed for ~~the building~~ backup power and shall not be enrolled in a demand response program.
- ~~ii. For the Site B Building:~~ Any new residential or commercial development shall utilize only electrically powered heating and hot water systems. The maximum enrolled capacity for diesel-powered demand response engines shall be limited to 3.0 MW), and the exhaust stacks shall be located on the west façade at a minimum height of 45 feet above grade, and at least 60 feet from the lot line facing West 30th Street.
- iii. ~~For the~~ any New Building on Site C ~~Building~~: Any new residential or commercial development shall utilize only electrically powered heating and hot water systems. No operable windows or air intakes for ventilation air for occupied spaces (excluding intakes for mechanical equipment) shall be permitted on the eastern façade of the podium of ~~the~~ any New Building on Site C ~~Building~~ between a height of 175 feet and 200 feet above grade, and for the Site C office tower on the southern façade between 205 feet and 245 feet, and eastern façade between 205 feet and 235 feet, and upper floors between 1,045 feet and 1,065 feet. No operable windows or air

intakes for ventilation air for occupied spaces (excluding intakes for mechanical equipment) shall be permitted on that portion of the northern façade of the podium of ~~the any New Building on Site C Building~~ within 260 feet of the lot line facing Twelfth Avenue between a height of 65 feet and 125 feet above grade and that portion of the west façade of the podium of ~~the any New Building on Site C Building~~ within 121 feet of the lot line facing West 33rd Street between a height of 65 feet and 105 feet above grade. Fossil fuel-fired engines may be installed for backup power and shall not be enrolled in a demand response program.

- iv. *Site C Podium Generators:* The maximum enrolled capacity for the diesel-powered demand response engines located in the podium of ~~the any New Building on Site C Building~~ shall be limited to 2.3 MW, and the exhaust stacks shall be located on the southern façade of the podium of ~~the any New Building on Site C Building~~ at a minimum height of 72 feet above grade, and at least 10 feet from the lot line facing Eleventh Avenue.
- v. The maximum enrolled capacity for the diesel-powered demand response engines located in Tower 2-C of ~~the Site C Building~~ shall be limited to 2.3 MW, and the exhaust stacks shall be located on the northern façade of Tower 2-C at a height of 72 feet above grade, and at least 457 feet from the lot line facing Eleventh Avenue.

(2) Declarant shall not accept a TCO or PCO for any New Building on the Subject Property until OER has issued to DOB, as applicable, a Notice of No Objection set forth in Section 3.02(a)(iii)(1) below, a Notice of Satisfaction set forth in Section 3.02(a)(iii)(3) below or a Final Notice of Satisfaction set forth in Section 3.02(a)(iii)(4) below.

(3) OER approval of the Alternative Scenario Operational Emissions Controls for each New Building on the Subject Property, as applicable, may proceed independently of any other New Building(s) and therefore it is expected that OER may issue Notices of No Objection, Notices to Proceed, Notices of Satisfaction or Final Notices of Satisfaction, and DOB may issue Building Permits, or TCOs and/or PCOs, on a New Building by New Building basis, irrespective of the construction sequence of each New Building on the Subject Property. OER may issue Notices of No Objection, Notices to Proceed, Notices of Satisfaction or Final Notices of Satisfaction if OER determines that the DOB filing requires either minor alteration work or other work occurring within the New Building that does not affect any Alternative Scenario Emissions Controls.

(iii) Notices.

(1) Notice of No Objection - OER shall issue a Notice of No Objection related to the ~~Proposed Project Operational Emissions Controls or the~~ Alternative Scenario Operational Emissions Controls, for any New Building on the Subject Property (i) after OER has determined that no Air RAP or Noise RAP (as defined in Section 3.02(b)) is required for such Building Permit or other DOB approval or (ii) OER has determined that the DOB filing requires either minor alteration work or other work occurring on the New Building or Subject Property that does not affect the ~~Proposed Project~~Alternative Scenario Operational Emissions Controls.

(2) Notice to Proceed - OER shall issue a Notice to Proceed for any New Building on the Subject Property related to the ~~Proposed Project Operational Emissions Controls or the~~ Alternative Scenario Operational Emissions Controls after OER determines that: (i) an Air RAP, and any Noise RAP or Hazardous Materials RAP if required for such New Building, has been approved by OER and (ii) any Building Permit with respect to such New Building that permits construction of the superstructure is necessary to further the implementation of the OER approved Air RAP, Noise RAP and/or Hazardous Materials RAP, as applicable.

(3) Notice of Satisfaction - OER shall issue a Notice of Satisfaction the ~~Proposed Project Operational Emissions Controls or the~~ Alternative Scenario Operational Emissions Controls for any New Building on Subject Property after OER has determined in writing that the Air RAP, and any Noise RAP and/or Hazardous Materials RAP if required for such New Building, that has been prepared and accepted by OER has been implemented to the satisfaction of OER.

(4) Final Notice of Satisfaction - OER shall issue a Final Notice of Satisfaction for the ~~Proposed Project Operational Emissions Controls or the~~ Alternative Scenario Operational Emissions Controls for any New Building on Subject Property (i) if such New Building has been built to the maximum FAR allowed under the Zoning Resolution and (ii) the Noise RAP that has been prepared for and accepted by OER provides for the most restrictive Noise Controls for such New Building and OER has set forth in writing, that the Air RAP, and Noise RAP if applicable, have been implemented to the satisfaction of OER.

(iv) In no event shall this Section 3.02(a) be construed as prohibiting or preventing Declarant from undertaking any maintenance, repair or replacement of any portion of the HVAC system or generator for a New Building (including replacement of any element with a more efficient or cleaner system), provided same is consistent with the terms of this 3.02(a)(1). If OER determines any ~~Proposed Project~~Alternative Scenario Operational

Emissions Controls ~~or Alternative Scenario Controls~~ set forth in this Section 3.02(a) should not apply or could be modified, OER may eliminate or modify ~~Proposed Project~~ Alternative Scenario Operational Emissions Controls ~~or Alternative Scenario Controls~~ per ZR Section 11-15 and such modification will not require a modification to this Declaration.

(b) New Building Noise Attenuation.

(i) Declarant shall not accept a Building Permit for any New Building on the Subject Property that permits construction or alteration of the superstructure of such New Building, until Declarant has submitted a noise remedial plan to OER (the “Noise RAP”), demonstrating compliance with the following noise attenuation requirements for New Buildings Set forth in Section 3.02(b)(i)(1) through (3), below (the “Noise Controls”) and OER has issued a Notice of No Objection as set forth in Section 3.02(b)(~~iv~~v)(1) below, or a Notice to Proceed as set forth in Section 3.02(b)(~~iv~~v)(2) below:

(1) All residential, hotel guestroom, and community facility uses shall provide a closed-window condition with a minimum of 39 dBA window/wall attenuation on façades that are both below the level of the High Line and within 50 feet of Twelfth Avenue; and (2) 33 dBA window/wall attenuation on all other façades.

(2) All commercial office uses shall provide a closed-window condition with a minimum of 34 dBA window/wall attenuation on façades that are both below the level of the High Line and within 50 feet of Twelfth Avenue; and (2) 28 dBA window/wall attenuation on all other façades.

(3) For all New Buildings, an alternative means of ventilation shall be provided in residential, hotel guestroom, community facility, and commercial office uses.

(ii) Declarant shall not accept a TCO or PCO for any New Building on the Subject Property until OER has issued to DOB, as applicable, a Notice of No Objection set forth in Section 3.02(b)(v)(1) below, a Notice of Satisfaction set forth in Section 3.02(b)(v)(3) below or a Final Notice of Satisfaction set forth in Section 3.02(b)(v)(4) below.

(iii) OER approval of the Noise Controls for each New Building on the Subject Property may proceed independently of any other New Building(s) and therefore it is expected that OER may issue Notices of No Objection, Notices to Proceed, Notices of Satisfaction and/or Final Notices of Satisfaction, and DOB may issue Building Permits or TCOs and/or PCOs, on a New Building by New Building basis, irrespective of the construction sequence of each New Building on the Subject Property. OER may issue Notices of No Objection, Notices to Proceed, Notices of Satisfaction or Final Notices of Satisfaction if OER determines that the DOB filing requires either minor alteration work or other work occurring within the New Building that does not affect any Noise Controls.

(iv) If OER determines any Noise Controls set forth in this Section 3.02(b) should not apply or should be modified, OER may eliminate or modify such Noise Controls in accordance with Section 11-15 of the Zoning Resolution and any such modification will not require a modification to this Declaration.

(v) Notices.

(1) Notice of No Objection - OER shall issue a Notice of No Objection related to the Noise Controls, for any New Building on the Subject Property (i) after OER has determined that no Noise RAP and/or Air RAP is required for such Building Permit or other DOB approval or (ii) OER has determined that the DOB filing requires either minor alteration work or other work occurring on the New Building or Subject Property that does not affect the ~~Proposed Project Operational Emissions~~Noise Controls.

(2) Notice to Proceed - OER shall issue a Notice to Proceed related to the Noise Controls for any New Building on the Subject Property after it determines that: (i) the Noise RAP, and any Air RAP or Hazardous Materials RAP if required for such New Building, has been approved by OER and (ii) any Building Permit with respect to such New Building that permits construction of the superstructure is necessary to further the implementation of the OER approved Noise RAP, Air RAP and/or Hazardous Materials RAP, as applicable.

(3) Notice of Satisfaction - OER shall issue a Notice of Satisfaction related to the Noise Controls for any New Building on Subject Property after OER has determined in writing that the Noise RAP, and any Air RAP and/or Hazardous Materials RAP if required for such New Building, that has been prepared and accepted by OER has been implemented to the satisfaction of OER.

(4) Final Notice of Satisfaction - OER shall issue a Final Notice of Satisfaction for the Noise Controls for any New Building on Subject Property (i) if such New Building has been built to the maximum FAR allowed under Zoning and (ii) the Noise RAP that has been prepared for and accepted by OER provides for the most restrictive Noise Controls for such New Building and OER has set forth in writing and the Air RAP, and Noise RAP if applicable, have been implemented to the satisfaction of OER.

(c) Ventilation Fan Plants.

(i) Declarant shall ensure that exterior noise levels from the ventilation system for the Platform shall comply with the City Noise Control Code through implementation of the following measures ("Ventilation Noise Controls"):

(1) Ventilation operations shall comply with all applicable provisions of the City Noise Control Code. Declarant shall meet these requirements by establishing appropriate noise-related specifications for the ventilation system, including ventilation duct work, airflow velocities, louvered openings in the ventilation plant exterior walls, fan type, fan size, pressure drop, and silencer characteristics.

(2) Fan noise shall be controlled using a combination of in-duct splitter attenuators that can achieve between 20 to 30 dBA reductions in noise, sound absorptive plenums (large rooms enclosed by acoustic materials that can achieve between 10 and 15 dBA reductions), and acoustic louvers.

(3) The ventilation plants shall be designed structurally to accommodate HVAC and mechanical equipment within the plants to minimize noise and ground-vibration impacts to adjacent sensitive uses and public areas.

(4) Silencers and/or enclosures and anti-vibration mounts for fans and motors shall be used.

(ii) Following construction of the Platform, Declarant shall not eliminate or modify a Ventilation Noise Control except pursuant to Section 3.06 hereof and with such approval as may required by MTA. In no event shall this clause (ii) be construed as prohibiting or preventing Declarant from undertaking any maintenance, repair or replacement of any portion of the Ventilation Fan Plant (including replacement of any element with a more efficient and quieter system), provided same is consistent with the terms of this Section 3.03(~~dc~~).

(d) Use of LIRR Outfall.

(i) Declarant shall install drainage mechanisms on the Subject Property that shall direct all stormwater runoff from Sites A and B (formerly Sites 5 and 6, respectively) to LIRR's existing 43" by 68" box culvert, which drains the Caemmerer Rail Yard directly into the Hudson River ("LIRR Outfall"). Additional Sites may use the LIRR Outfall based upon a DEP approved drainage plan for the Subject Property.

(ii) Use of the LIRR Outfall, including any use of such outfall by Sites other than Sites A and B, shall also be governed by an agreement between MTA/LIRR and Declarant.

(iii) Any plans and drawings submitted by Declarant to DOB in connection with a New Building Permit application or amendment thereof for construction on any of the Sites shall reflect and be consistent with a DEP approved drainage plan.

(e) Intentionally Omitted.

(f) Public School.

(i) Declarant shall, subject to clause (iii) hereof, perform the following with respect to the Public School: (aa) engage in a collaborative design development process with SCA, which shall include collaboration on schematic design, design development and contract documentation; (bb) perform construction of ‘School Base Building Work’, as defined under the SCA Agreement; (cc) enter into a condominium regime with respect to the Public School and the remainder of the building, or other regime acceptable to SCA and Declarant, as a means of transferring the Public School to SCA; and (dd) transfer the Public School to SCA ((aa) to (dd) collectively, the “Public School Obligations”), the Public School Obligations to be performed pursuant to, in accordance with, and conditioned upon the terms and conditions of a School Design, Construction, Funding and Purchase Agreement with SCA (the “SCA Agreement”) intended to be entered into pursuant to the October 16, 2009, Letter of Intent executed by the SCA and accepted and agreed to by Declarant attached to this Declaration as Exhibit G, as the same may be amended between the SCA and Declarant (the “SCA Letter of Intent”), provided however, the Declarant agrees that the 2009 LOI has expired, due to the lapse of time and modifications to the Western Rail Yard Project, and the SCA and Declarant shall agree upon terms and conditions satisfactory to the SCA for the construction of any Public School at the Subject Property.

(ii) Declarant shall perform the Public School Obligations in accordance with the following milestones:

(aa) Within three (3) months of the date of this Declaration, Declarant shall send written notice to SCA asking whether SCA is prepared to commence negotiations on the SCA Agreement in anticipation of the development of the Public School. If SCA responds in writing that it is prepared to commence negotiations, Declarant shall promptly commence negotiations with SCA on the SCA Agreement and shall diligently and in good faith pursue such negotiations with SCA in order to finalize and execute the SCA Agreement. If SCA responds in writing that it is not prepared to commence negotiations, or fails to respond within fifteen (15) days of the written notice from Declarant, Declarant shall have no obligation to commence discussions, but shall repeat such written notice and request every six (6) months thereafter until such time as SCA advises Declarant that SCA is prepared to commence negotiations on the SCA Agreement, at which time Declarant shall promptly commence negotiations with the SCA and thereafter diligently pursue the completion and execution of the SCA Agreement.

(bb) Not less than eighteen (18) months prior to the date Declarant anticipates filing for a New Building Permit for a New Building on Site B, Declarant shall provide written notice to the SCA (the “School Election Notice”) advising the SCA of the plan to file for such New Building Permit and offering the SCA a location within the base of such New Building for the Public School (the “Proposed School Site”). Declarant shall provide a copy of the School Election Notice to the district manager of Community Board 4 within ten (10) days of delivery thereof to the SCA. Following delivery of the School Election Notice:

(1) If SCA advises Declarant in writing within thirty (30) days of receipt of the School Election Notice that SCA accepts the Proposed School Site as the location for the Public School, intends to proceed with the Public School on the Proposed School Site, and has or anticipates receipt of the capital funding to complete the Public School in the manner set forth in the SCA Agreement, Declarant and the SCA shall promptly commence and thereafter diligently and expeditiously pursue the development of plans to incorporate the Public School into the New Building in accordance with the SCA Agreement. DOB shall not issue, and Declarant shall not file for or accept, a New Building Permit for a New Building including the Proposed School Site unless and until the SCA has approved the construction documents to be filed with the application for the New Building Permit insofar as such documents pertain to the core and shell of the Public School, as more particularly set forth in the SCA Agreement.

(2) In the event that the SCA advises Declarant in writing within thirty (30) days of receipt of the School Election Notice that SCA does not accept the Proposed School Site as the location of the Public School, and in any event if the SCA fails to respond to Declarant's notice within such thirty (30) day period, SCA shall be deemed to have rejected the Proposed School Site, and Declarant shall be permitted to construct the New Building identified in the School Election Notice without including a Public School in the New Building, and Declarant shall have no further obligation under this Section 3.02(f).

(cc) Provided that the SCA has accepted the Proposed School Site and has agreed to proceed with the Public School in the manner set forth in subclause (bb) above and in the SCA Agreement, DOB shall not issue, and Declarant shall not accept, TCOs or PCOs for more than 712 residential units on the Subject Property (the "Unit Threshold") until such time as (I) Declarant has completed the core and shell of the Public School, and (II) has delivered the core and shell to the SCA or otherwise made the Public School core and shell available for fit-out in the manner set forth in the SCA Agreement, provided that in no event shall this subclause (cc) be construed in any manner to preclude DOB from issuing or Declarant from accepting TCOs or PCOs for any residential unit located in a New Building constructed pursuant to a New Building Permit issued prior to the New Building Permit for the New Building containing the Public School. Notwithstanding the foregoing, in the event that Declarant's obligations under this Section 3.02(f) have terminated pursuant to subclause (ii)(bb)(2) hereof, Declarant may apply for and DOB may issue TCOs and PCOs for any and all residential units in the Development without regard to this subclause (ii)(cc).

(dd) The Unit Threshold set forth in this clause (ii) may be modified with the consent of Declarant, SCA, and DCP in the event that, as demonstrated to the satisfaction of DCP in a ~~Technical Memorandum~~technical memorandum, such

modification is warranted in relation to actual school utilization rates or residential growth in the study area identified in the FEIS.

(iii) For purposes of this Section 3.02(f), Uncontrollable Circumstances may include, in addition to the elements set forth in the definition thereof under Article I of this Declaration, a failure or delay by SCA resulting from the following: (aa) a failure or delay in approval of a site selection for the Public School pursuant to the New York State Public Authorities Law; (bb) a failure or delay in approval of the SCA Agreement; (cc) a failure or delay in securing funds for Public School pre-development and construction costs; (dd) a failure or delay in review of design submissions in accordance with time frames established under the SCA Agreement; (ee) a failure or delay in reimbursement of Declarant through progress payments in accordance with the SCA Agreement; and (ff) a failure or delay in change orders initiated or otherwise caused by SCA.

(g) Day Care.

(i) Following the issuance of a TCO or PCO for the first New Building containing residential rental units, Declarant shall notify ACS at its Division of Child Care and Head Start and request a day-care needs assessment to determine if the Development, both existing and anticipated, would have the potential to create a need for additional day care capacity within the study area boundary shown on Figure 5-3 to the 2009 FEIS. In the event ACS determines that the Development would result in a need for additional day care capacity within such study area boundary, the Declarant shall offer ACS approximately 10,000 sf of ground floor space suitable for use as a child care center (including either a facility to be operated under contract with ACS or by a day care provider identified by ACS that accepts ACS vouchers), in a New Building or at another existing location within the study area boundary identified in the 2009 FEIS as the study boundary in Chapter 5 (Community Facilities) thereto, at a rate affordable to ACS providers (~~currently \$10 psf~~) (the “Day Care Space Offer”). The ACS shall notify Declarant in writing ninety (90) days of receipt of Declarant’s request, whether the Day Care Space Offer is accepted or declined, either for some or all of the 10,000 sf space, subject to all City requirements governing the leasing of property.

(ii) In the event that ACS does not accept Declarant’s Day Care Space Offer pursuant to clause (i) above, Declarant shall contact ACS in the manner provided in clause (i) following the issuance of a TCO or PCO for each successive New Building containing residential rental units (if any) and, in the event ACS determines that development on the Subject Property would result in a need for additional day care capacity within the study area boundary, shall make a Day Care Space Offer in the manner provided in clause (i), provided that Declarant shall have no obligation to make a Day Care Space Offer for New Buildings other than for the New Buildings to be located on Sites A, B , and C.

(iii) DOB shall not issue, and Declarant shall not accept, a TCO or PCO for the next New Building containing residential rental units constructed on the Subject Property subsequent to Declarant making a request under clauses (i) or (ii) above, until DCP notifies DOB that: (aa) DCP has received a determination by ACS that the provisions of this Paragraph (h) have been complied with; (bb) ACS has declined a Day Care Space Offer made pursuant to clauses (i) or (ii) above; or (cc) ACS has failed to respond to Declarant’s request made pursuant to clauses (i)

or (ii) within ninety (90) days of receipt thereof. In the event of any of the foregoing, Declarant shall not be precluded from obtaining a TCO or PCO with respect to such New Building.

(iv) Declarant shall have no further obligation or further responsibilities under clauses (i) and (ii) of this Section 3.02(g) in the event that ACS: (aa) accepts a Day Care Space Offer in a New Building on the Subject Property or at another existing location within the 2009 FEIS study area boundary; (bb) determines in response to each of the requests made by Declarant pursuant to clauses (i) and (ii) that there is no need for additional day care capacity within the study area boundary; (cc) fails to respond to each of Declarant's request made pursuant to clauses (i) or (ii) above; or (dd) following the date hereof, after consultation with the Chair, notifies the Chair and Declarant that it does not intend to expand day care capacity within the study area boundary in conjunction with development on the Subject Property.

(v) As an alternative to the foregoing provisions with respect to Day Care Offers, ACS may request Declarant to implement other measures within the study area boundary, or other proximate locations within Community District 4, Manhattan, which would result in program or physical improvements at existing child care centers to support additional capacity. Declarant shall consider any such request in good faith, but shall have no obligation under this Declaration to implement alternative measures. In the event that Declarant agrees to implement such other measures as may be requested by ACS, Declarant's obligations under this Section 3.02(g) shall be deemed complete upon the performance of such other measures by or on behalf of Declarant.

3.03 Project Components Related to the Environment Relating to Sustainability.

Declarant shall implement and incorporate as part of its design and operation of the Development, the following PCREs relating to sustainability:

(a) Intentionally Omitted.

(b) LEED Gold Certification. Declarant shall design and construct each New Building on the Subject Property in accordance with the standards and criteria required to achieve a minimum of LEED Gold Certification, and shall apply for and use reasonable and good faith efforts to obtain LEED Gold Certification from the USGBC.

(c) Stormwater Management Measures.

(i) Prior to Construction Commencement, Declarant shall prepare and submit to DEP a Stormwater Pollution Prevention Plan ("SWPPP") for construction activities and post-construction stormwater management. The SWPPP shall incorporate feasible measures to decrease the rate and quantity and improve the quality of stormwater discharged by development on the Subject Property and shall provide best management practices—(~~"BMP"~~), which may include: (aa) the use of detention tanks; (bb) roof detention tanks; and (cc) green roofs on

selected buildings. The SWPPP shall be subject to review and approval by DEP, and by DEC, to the extent required under applicable law or regulation.

(ii) DOB shall not issue, and Declarant shall not accept, a Building Permit for work at the Subject Property until DCP shall have certified to the DOB Commissioner that a SWPPP has been approved by DEP in accordance with applicable law and regulation and, to the extent required by applicable law or regulation, by DEC.

(iii) Any plans and drawings submitted by Declarant to DOB in connection with a Building Permit shall reflect and be consistent with the SWPPP.

(iv) Declarant shall have the right to modify and add to the SWPPP as the Development proceeds, as may be approved by DEP, and to the extent required by law or regulation, in order to address additional New Buildings and/or Public Access Area on the Subject Property, provided that such revised SWPPP is consistent with the requirements of this Declaration.

(d) Intentionally Omitted.

(e) Intentionally Omitted.

(f) Intentionally Omitted.

(g) Base Flood Elevation.

(i) Each New Building shall be designed in accordance with Appendix G of the NYC Building Code to provide resilience to the estimated flood elevation through the end of the century.

(ii) Where practicable and feasible, critical mechanical equipment in the buildings to be located on Sites A and B shall be elevated above the design flood elevation of each such building. Any mechanical equipment located below the design flood elevation shall be enclosed within a dry floodproofed area.

(iii) Consistent with Appendix G of the NYC Building Code and the New York City climate resiliency design guidelines (which exceeds the NYC Building Code with regard to sea level rise-adjusted floodplain elevations), ~~each of the Proposed Project and~~ the Alternative Scenario shall be designed to protect commercial, parking, lobby, and other non-critical non-residential spaces up to anticipated design flood elevation of 17 feet NAVD88 for the New Building to be located on Site A and 16 feet NAVD88 for each of the New Buildings to be located on Sites B and C.

(iv) Any sport courts and/or open space at the southwest corner of the Subject Property shall be designed to be at a higher elevation than the sidewalk to be more resilient to flooding.

(v) In accordance with Section 3.09 of this Declaration, Declarant shall submit plans for DCP review demonstrating compliance with clauses (i) through (iv) of this Section 3.03(g), prior to obtaining a New Building Permit for a New Building.

3.04 Environmental Mitigation.

Declarant shall, in accordance with the FEIS, undertake the ~~mitigation measures set forth therein (the “Mitigation Measures”)~~ as follows:

- (a) **Intentionally Omitted.**
- (b) **Intentionally Omitted.**
- (c) **Intentionally Omitted.**
- (d) **Transportation.**

(i) Chapter 22 of the FEIS identified:

(1) ~~for the Proposed Project, (A) traffic mitigation measures which are detailed in Tables 22-3a through 22-3f of the FEIS and annexed hereto at Exhibit H and (B) pedestrian mitigation measures which are detailed in Table 22-14 of the FEIS and annexed hereto at Exhibit I, (collectively, the “Proposed Project Transportation Measures”). The FEIS also identified potential pedestrian wayfinding measures, which are included in the measures listed in Table 22-14 of the FEIS and described in Exhibit I (the “Proposed Project Pedestrian Wayfinding Measures”);~~Intentionally omitted;

(2) for the Alternative Scenario, (A) traffic mitigation measures which are detailed in Tables 22-6a through 22-6f of the FEIS and annexed hereto at Exhibit K and (B) pedestrian mitigation measures (which are detailed in Table 22-17 of the FEIS and annexed hereto at Exhibit L (collectively, the “Alternative Scenario Transportation Measures”). The FEIS also identified potential pedestrian wayfinding measures which are included in the measures listed in Table 22-17 of the FEIS and annexed hereto at Exhibit L (the “Alternative Scenario Pedestrian Wayfinding Measures”); and

(3) for ~~both the Proposed Project and~~ the Alternative Scenario, a potential measure to (A) change the direction of the one-way eastbound leg of West 32nd Street/Hudson Boulevard West (located within the Eastern Rail Yard (ERY)) at the intersection of West 32rd Street and Eleventh Avenue to a new one-way westbound approach and (B) change the direction of the existing one-way northbound approach of West 32nd Street/Hudson Boulevard West at the intersection of West 33rd Street and Hudson

Boulevard West, to a one-way southbound receiving lane (the “West 32nd Street/Hudson Boulevard Reconfiguration”).

(ii) Transportation Monitoring Plan

(1) The Declarant has committed to conducting a transportation monitoring plan (the “TMP”), in accordance with Section 3.04(d)(ii)(3) below, once the ~~Proposed Project or the~~ Alternative Scenario, ~~as applicable~~, is fully constructed and operational in order to evaluate actual project-generated demand and background conditions, confirm the FEIS assumptions related to projected traffic and pedestrian conditions, monitor operation of the ~~Proposed Project or~~ Alternative Scenario, ~~as applicable~~, and assess implementation of and possible adjustments to any of the ~~Proposed Project Transportation Measures or the~~ Alternative Scenario Transportation Measures, ~~as applicable~~ (the “Adjustments”).

(2) No later than six (6) months prior to the issuance of a TCO for the last New Building in connection with the ~~Proposed Project or the~~ Alternative Scenario, ~~as applicable~~, Declarant shall prepare and submit to DOT and DCP for their review and approval, a detailed scope of work for the TMP, pursuant to the guidelines set forth in Section ~~3.04(d)(i)(3)~~ herein. Declarant shall, at its own expense, implement the TMP, the findings of which will be used by DOT as the basis for approving the ~~Proposed Project Transportation Measures or the~~ Alternative Scenario Transportation Measures, ~~as applicable~~, or any subsequent measures determined by the TMP that are consistent with the types of measures identified in the FEIS. The findings of the TMP shall also be used by DOT as the basis for assessing the feasibility of implementing the ~~Proposed Project Pedestrian Wayfinding Measures or~~ Alternative Scenario Pedestrian Wayfinding Measures, ~~as applicable~~, and/or the West 32nd Street/Hudson Boulevard Reconfiguration. Where there are unmitigated pedestrian impacts, they would be further reviewed, and appropriate improvement measures would be explored in consultation with DOT as part of the TMP to enhance pedestrian circulation and safety at the Declarant’s expense.

(3) Declarant shall not undertake any TMP, until the scope of work has been approved by DOT and DCP. The scope of work for the TMP would take into consideration the additional traffic and pedestrian intersections studied in the 2009 FEIS, in addition to the analysis locations studied for this EIS. The TMP study is expected to evaluate actual project-generated demand and background conditions after project completion and would consider Adjustments as appropriate and practicable, to address traffic and pedestrian issues at that future point in time. Data collection for the TMP shall include (i) trip generation, mode choice and origin-destination surveys for the various proposed land uses

for representative weekday and weekend days and (ii) preparation of level of service (LOS) analyses for the peak hours analyzed in the FEIS based on traffic and pedestrian counts undertaken after the ~~Proposed Project or the Alternative Scenario~~ is operational, ~~as applicable~~. Adjustments, including signal timing changes and other measures consistent with those mitigation measures recommended in the FEIS that would best address traffic and pedestrian conditions in the study area at that time will be considered for implementation. Declarant shall provide DOT with any requested drawings of proposed improvements/mitigation measures.

(4) At a time specified by DOT following the completion and occupancy of the last New Building to be constructed on the Subject Property in connection with the ~~Proposed Project or the Alternative Scenario, as applicable~~, Declarant shall implement the TMP approved by DOT. Declarant shall provide ten (10) days' notice to DOT before commencement of the TMP. The findings of the TMP shall be used by DOT as the basis for approving or making Adjustments to the ~~Proposed Project Transportation Measures or the Alternative Scenario Transportation Measures, as applicable~~. Declarant shall be responsible for all costs associated with the TMP, including data collection and analysis. The Declarant or developers for the ~~Proposed Project or Alternative Scenario~~ would also be responsible for the costs associated with any proposed improvements and mitigation measures (consistent with the types of measures considered in the FEIS) based on the results of the TMP. The implementation of the approved mitigation measures will be subject to the discretion of the implementing agencies as well as the findings from the future TMP.

(5) Unless and to the extent that, following the implementation of the TMP, DOT finds that some or all of the ~~Proposed Project Transportation Measures or Alternative Scenario Transportation Measures (as applicable depending on the development scenario implemented by Declarant)~~ are not necessary or appropriate or should be adjusted, Declarant shall send written notice to DOT requesting that DOT implement the ~~Proposed Project Transportation Measures or Alternative Scenario Transportation Measures, as applicable~~, for which it is responsible, as adjusted for any reasonable Adjustments consistent with the measures in the FEIS required by DOT as a result of the TMP. Declarant shall comply with the DOT requirement to implement the ~~Proposed Project Transportation Measures or Alternative Scenario Transportation Measures, as applicable~~, for which it is responsible or measures having comparable benefits as specified by DOT based on the results of the TMP, or if directed by DOT, pay DOT/City of New York for the costs, if any, of implementing such capital improvements upon the request of DOT accompanied by appropriate supporting documentation. To the extent that DOT does not approve or deems unnecessary one or more of the ~~Proposed Project Transportation~~

~~Measures or the~~ Alternative Scenario Transportation Measures, ~~as applicable~~, Declarant shall have no further obligation with respect to such measures. Following Declarant's implementation of the TMP and the ~~Proposed Project Transportation Measures or the~~ Alternative Scenario Transportation Measures, ~~as applicable~~, and any Adjustments requested by DOT, Declarant shall have no further obligations under this Section 3.04(d).

(iii) If, based on the TMP, Declarant determines that it would be beneficial to implement any of the ~~Proposed Project Pedestrian Wayfinding Measures or~~ Alternative Scenario Pedestrian Wayfinding Measures, ~~as applicable~~, and/or the West 32nd Street/Hudson Boulevard Reconfiguration, Declarant shall prepare and submit for DOT's review any additional studies necessary for DOT to determine (i) the feasibility of implementing any such ~~Proposed Project Pedestrian Wayfinding Measures or~~ Alternative Scenario Pedestrian Wayfinding Measures, ~~as applicable~~, and/or the West 32nd Street/Hudson Boulevard Reconfiguration and (ii) the operational and safety impacts any such measures may have on City-owned property, including the City streets and rights of way. If Declarant and DOT determine that any of the ~~Proposed Project Pedestrian Wayfinding Measures or the~~ Alternative Scenario Pedestrian Wayfinding Measures, ~~as applicable~~, or the West 32nd Street/Hudson Boulevard Reconfiguration would be feasible and should be implemented Declarant shall implement any such measures at its own expense, including paying the City for any costs that may be incurred to connect such measures to City-owned property, including but not limited to geometric modifications, traffic signs, pavement markings, and additional traffic signal hardware, upon request of DOT accompanied by appropriate supporting documentation.

(e) Transit.

(i) Chapter 22 of the FEIS sets forth recommended mitigation measures to address the significant adverse impacts identified to the P3/P4 and P5/P6 stairways and the ES621-ES622, ES623-ES624, ES626-ES627, ES628-ES629 escalators located at the 34th Street-Hudson Yards subway station in connection with the Development.

~~(1) If Declarant proceeds with the Proposed Project on the Subject Property, DOB shall not issue, and Declarant shall not accept, any certificate of occupancy of any kind (including any TCO, interim certificate of occupancy or PCO) for any New Building, unless and until the following are satisfied: (A) Declarant has sent written notice to NYCTA requesting that NYCTA investigate the need to (i) implement a wayfinding signage program at both ends of the P3/P4 and P5/P6 stairs to direct subway passengers to lesser utilized platform stairs that were projected to have additional capacity (including the P1/P2, P7, P10, P13/P14, P15/P16, and P17/P18 stairs) and (ii) implement the operational escalator changes set forth in Table 22-9 of the FEIS, and described in Exhibit M annexed hereto (collectively, the "Proposed Project Transit Mitigation Measures"); (B) Declarant has implemented the Proposed~~

~~Project Transit Mitigation Measures; and (C) if directed by NYCTA, Declarant has paid to NYCTA the costs, if any, of the investigation referred to in clause (A) above and the design work and capital improvements (including, without limitation, the costs of signage production) related to the Proposed Project Transit Mitigation Measures upon request of NYCTA accompanied by appropriate documentation. Notwithstanding the foregoing, to the extent that NYCTA does not approve or deems unnecessary one or more of the Proposed Project Transit Mitigation Measures, Declarant shall have no further obligation with respect to such measures.~~

(1) Intentionally omitted.

(2) If Declarant proceeds with the Alternative Scenario on the Subject Property incorporating commercial office development of 2,215,000 gross square feet or larger (as set forth in the Technical Memorandum), DOB shall not issue and Declarant shall not accept any certificate of occupancy of any kind (including any TCO, interim certificate of occupancy or PCO) for any New Building, unless and until the following are satisfied: (A) Declarant has sent written notice to NYCTA requesting that NYCTA investigate the need to (I) implement a wayfinding signage program at both ends of the P3/P4 and P5/P6 stairs to direct subway passengers to lesser utilized platform stairs that were projected to have additional capacity (including the P1/P2, P7, P10, P13/P14, P15/P16, and P17/P18 stairs) and (II) implement the operational escalator changes set forth in Table 22-10 of the FEIS and described in Exhibit N annexed hereto (collectively, the “Alternative Scenario Transit Mitigation Measures”); (B) Declarant has implemented the Alternative Scenario Transit Mitigation Measures; and (C) if directed by NYCTA, Declarant has paid to NYCTA the costs, if any, of the investigation referred to in clause (A) above and the design work and capital improvements (including, without limitation, the costs of signage production) related to the Alternative Scenario Transit Mitigation Measures upon request of NYCTA accompanied by appropriate documentation. Notwithstanding the foregoing, to the extent that NYCTA does not approve or deems unnecessary one or more of the Alternative Scenario Transit Mitigation Measures, Declarant shall have no further obligation with respect to such measures.

(ii) As described in Chapter 22 of the FEIS, the proposed West 33rd Street grade change would eliminate the existing turnaround for the M34 SBS bus route. Declarant shall not change the grade of W. 33rd Street or take any action in furtherance thereof until Declarant enters into an agreement with MTA, binding on Declarant and its successors in interest and assigns, to (A) pay the cost of any studies and/or analyses undertaken by MTA or its consultants as may be requested by MTA or the Relevant City Agencies (as hereinafter defined) in connection with the relocation of the M34 SBS bus route as set forth on page 14-91 and Figure 14-12 of the FEIS or such other relocation route selected by MTA in its sole discretion; (B) secure the agreement of

DOT and any other relevant agencies of the City of New York (collectively, the “Relevant City Agencies”) to issue such approvals as may be reasonably required to implement such relocation of the M34 SBS bus route; and (C) pay the costs and expenses associated with implementing the relocation of the M34 SBS bus route. An interim alternate turnaround route for the M34 SBS was identified for consideration in coordination with NYCTA.

(f) Construction Traffic.

(i) Construction Traffic Mitigation Measures.

(1) Chapter 22 of the FEIS identifies ~~(A) significant adverse construction traffic impacts in connection with the Proposed Project and construction traffic mitigation measures, which are set forth in Tables 22-19a and 22-19b of the FEIS and described in Exhibit O annexed hereto (the “Proposed Project Construction Traffic Mitigation Measures”)~~ and ~~(B)~~ significant adverse construction traffic impacts in connection with the Alternative Scenario and construction traffic mitigation measures, which are set forth in Tables 22-22a and 22-22b of the FEIS and described in Exhibit P annexed hereto (the “Alternative Scenario Construction Traffic Mitigation Measures”).

(ii) Construction Traffic Monitoring Plan.

(1) Following Construction Commencement and implementation of the ~~Proposed Project Construction Traffic Mitigation Measures or the~~ Alternative Scenario Construction Traffic Mitigation Measures, ~~as~~ **applicable**, if requested by DOT, Declarant shall, at its sole cost and expense, prepare and submit to DOT and DCP for their review and approval, a Construction Transportation Monitoring Plan (the “Construction TMP”) to evaluate construction scenario traffic conditions during the weekday AM and PM construction peak hours at intersections within the construction traffic study area identified in the FEIS that DOT has determined will be adversely impacted by construction at the Subject Property. Declarant shall submit a scope of work for DOT’s review and approval before undertaking the Construction TMP. The Construction TMP will include pedestrian data collection and analysis as part of its scope of work, to be reviewed and approved by DOT and DCP to determine whether pedestrian related mitigation needs to be implemented during construction. Declarant shall implement the Construction TMP after obtaining DOT’s approval.

(g) Shadows.

(i) DOB shall not issue, and Declarant shall not accept, a TCO or a PCO, for a New Building to be located on Site A until Declarant has caused a payment, in the amount of \$675,600 ~~—(the “Shadows Payment”)~~, to be made to DPR to be used solely for the purpose of

funding relocating and/or replacing vegetation or undertaking additional maintenance to reduce the likelihood of future species loss within the shadow impact area of High Line Park as identified in the FEIS.

3.05 Inconsistencies with the FEIS.

If this Declaration inadvertently fails to include a PCRE or Mitigation Measure set forth in the FEIS, 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.

3.06 Innovation; Alternatives; Modifications Based on Further Assessments.

(a) Innovation and Alternatives.

In complying with Sections 3.01, 3.02, 3.03 or 3.04 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 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.

(b) Process for Innovations, Alternatives and Modifications Pursuant to Section 3.06.

Following the delivery of a Notice to DCP requesting an Innovation, Alternative or Modification pursuant to Section 3.06 hereof (the “Section 3.06 Request”), Declarant shall meet with DCP (and at DCP’s option, the Monitor) to respond to any questions or comments with respect to such request and any accompanying materials submitted with such 3.06 Request, and shall provide additional information as may reasonably be requested by DCP or the Monitor, as defined in Section 3.07(a), in writing in order to allow DCP to determine whether to grant such request, acting in consultation with the Monitor and City agency personnel, as necessary in relation to the subject matter of the Section 3.06 Request.

(c) Modifications Based on Further Assessments.

In the event that Declarant believes, based on changed conditions, that a PCRE or Mitigation Measure required under Sections 3.01, 3.02, 3.03, or 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 (i) DCP and other relevant City agencies such as DOT or DEP and (ii) MTA, if such PCRE or Mitigation Measure relates to or impacts MTA (including LIRR, NYCTA or any other affiliate or subsidiary thereof) (the “Modification Request”). Following the delivery of the Modification Request, Declarant shall meet with DCP, the relevant City agencies (and at DCP’s option, the Monitor) and,

if applicable, MTA, to respond to any questions or comments with respect to such request and any accompanying materials submitted with such Modification Request and shall provide additional information as may be reasonably requested by DCP, the Monitor, if applicable, and/or MTA, if applicable. Upon reviewing the Modification Request and any other materials submitted, DCP shall issue a written determination within twenty (20) business days after receipt of the request (after consultation with MTA, as applicable). 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 consistent with the DCP determination, provided that Declarant records a notice of such change against the Subject Property in the Register's Office and MTA has approved the same (if applicable).

3.07 Appointment and Role of Independent Monitor.

- (a) Declarant shall, with the consent of DCP, appoint an independent third party (the "Monitor") reasonably acceptable to DCP to oversee, on behalf of DCP, the implementation and performance by Declarant of the construction period PCREs ~~and Mitigation Measures~~ required under Section 3.01 ~~and Section 3.04(d)(i)~~ of this Declaration (the "Construction Monitoring Measures" or "CMMs") as they relate to the construction of the Platform. The Monitor shall be a person holding a professional engineering degree and with significant experience in environmental management and construction management (or a firm including such persons), including familiarity with the means and methods for implementation of the CMMs as they relate to the construction of the Platform. DCP shall advise Declarant of its approval or rejection of the Monitor, as proposed, within fifteen (15) business days after Declarant provides DCP with satisfactory (as reasonably determined by DCP) documentation concerning the name and relevant experience of the Monitor.
- (b) The scope of services described in any agreement between Declarant and the Monitor pursuant to which the Monitor is retained (the "Monitor Agreement") shall be subject to prior review by and approval of DCP, such approval not to be unreasonably withheld, conditioned or delayed. Such agreement shall include provisions in a form acceptable to DCP that, among others, shall: (i)

ensure that the Monitor is independent of Declarant in all respects relating to the Monitor's responsibilities under this Declaration (provided that the Monitor shall be responsible to Declarant with regard to practices generally applicable to or expected of consultants and independent contractors of Declarant) and has a duty of loyalty to DCP; (ii) provide for appropriate DCP management and control of the performance of services by the Monitor; (iii) authorize DCP to direct the termination of services by the Monitor for unsatisfactory performance of its responsibilities under the Monitoring 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 will not be unreasonably withheld or delayed. If DCP shall fail to act upon a proposed Monitor Agreement within sixty (60) 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 the commencement of construction of the Platform (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 the Platform, 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 3.07. If the stage of construction of the Platform identified in a Scope of Services under the Monitor Agreement is completed, Declarant shall not have any obligation to retain the Monitor for subsequent stage(s) of construction of the

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Platform, provided that Declarant shall not recommence any construction of the Platform until it shall have retained a new Monitor in compliance with the provisions of this Section. With the prior written approval of DCP, there may exist more than one Monitor with respect to multiple phases of construction of the Platform, pursuant to separate Monitor Agreements.

- (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 as they relate to the construction of the Platform in connection with determinations required under this Declaration as a prerequisite to commencement of construction of the Platform or the issuance or acceptance by Declarant of a Building Permit for the Platform (or any portion thereof), as the case may be; (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 Construction Consultation Committee established under Section 6.01 of this Declaration; and (iv) liaise with any Construction Consultation Committee established under Section 6.01 of this Declaration, as directed by DCP. The Monitor may at any time also provide Declarant and DCP with notice of a determination that a CMM has not been implemented with respect to the construction of the Platform (or any portion thereof), accompanied by supporting documentation establishing the basis for such determination, provided that any such notice shall be delivered to both parties. The Monitor shall: (i) have access to the Subject Property to the extent necessary to undertake the obligations of the Monitor under this Section 3.07, 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; (ii) be provided with access to all books and records of Declarant either on or outside the

Subject Property pertaining to the Development which it reasonably deems necessary to carry out its duties, including the preparation of periodic reports; and (iii) 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 as they relate to the construction of the Platform (or any portion thereof), subject to compliance with all generally applicable site safety requirements imposed by law, site operations, or pursuant to construction contracts in effect for the Subject Property and provided further that any such additional testing shall be coordinated with Declarant's construction activities and use of the Subject Property by the occupants of and visitors to any New Buildings and Public Access Areas then located on the Subject Property, and shall be conducted in a manner that will minimize any interference with the Development. The Monitor Agreement shall provide that Declarant shall have the right to require 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 or the construction manager's safety requirements pursuant to construction contracts or imposed as part of the site safety protocol in effect for the Subject Property, DCP, or any other applicable City agency, may, upon prior written or telephonic notice to Declarant, enter upon the Subject Property during business hours on business days for the purpose of conducting inspections to verify Declarant's implementation and performance of the CMMs as they relate to the construction of the Platform (or any portion thereof); provided, however, that any such inspections shall be (i) coordinated with Declarant's construction activities and use of the Subject Property by the occupants of and visitors to the Subject Property, and (ii) conducted in a manner that will minimize any interference with, delay construction of, or create any safety hazard at, the Subject Property.

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.

- (e) Declarant shall be responsible for payment of all fees and expenses due to the Monitor in accordance with the terms of the Monitoring Agreement and any consultants retained by the Monitor as may be necessary to determine Declarant's compliance with the CMMs as they relate to the construction of the Platform, in accordance with the terms of the Monitor Agreement.
- (f) If the Monitor determines, either in a monthly report or otherwise, that Declarant has failed to implement or to cause its contractors to implement a CMM with respect to the construction of the Platform (or any portion thereof), the Monitor shall notify DCP and Declarant of such alleged violation, and provide documentation establishing the basis for its determination. If DCP determines, based on consultation with the Monitor and others, as appropriate, that there is a basis for concluding that such a violation has occurred, DCP may thereupon give Declarant written notice of such alleged violation (each, a "CMM Default Notice"), transmitted by hand or via overnight courier service to the address for Notices for Declarant set forth in Section 6.07. Notwithstanding any provisions to the contrary contained in Section 5.01 of this Declaration, following receipt of a CMM Default Notice, Declarant shall: (i) effect a cure of the alleged violation within three (3) business days; (ii) seek to demonstrate to DCP in writing within two (2) 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 two (2) business days of receipt of the CMM Default Notice that a cure period greater than three (3) business days would not be harmful to the environment (such longer cure period, a “Proposed Cure Period”). If DCP accepts within one (1) business day 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 one (1) business day of receipt of a writing from Declarant, then this shall become the applicable cure period for the alleged violation (the “New Cure Period”), provided that if DCP does not act with respect to a Proposed Cure Period within one (1) business day of after receipt of a writing from Declarant with respect thereto, the three (3) day cure period for the alleged violation shall be deemed to continue unless and until 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 acceptable to DCP, convene a meeting at the Subject Property 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 that either the violation does not exist or that it has cured the violation, subject to the cure provisions of this Declaration.

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.

3.08 Uncontrollable Circumstances Involving a PCRE or Mitigation Measure.

- (a) Notwithstanding any provision of Section 5.05 to the contrary, where the Obligation (as defined in Section 5.05 below) as to which an Uncontrollable Circumstance 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 Uncontrollable Circumstances unless and until the Chair, based on consultation with the Monitor designated under Section 3.07 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 Uncontrollable Circumstances, or implementing an alternative proposed by Declarant, would not result in any new or different significant adverse environmental impact not addressed in the FEIS.

3.09 DCP Review.

- (a) Not less than ninety (90) days prior to the date Declarant anticipates (i) to be the date of Construction Commencement, and (b*i*) obtaining any Building Permit from DOB, 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 Building 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 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.

- (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 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 3.09 until DCP has certified to Declarant and DOB that the conditions and criteria set forth in this Declaration for issuance of the Building Permit have been met. Notwithstanding the foregoing, (x) in the event that DCP has failed to respond in writing to Declarant within forty five (45) days of receipt of the Permit Notice, or (y) has failed to 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 ~~clause (iii) of~~ this Paragraph (b) as demonstrating compliance with the requirements for issuance of the Building Permit and Declarant shall be entitled to
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~~Commence~~undertake

Construction

Commencement or accept the Building Permit and to undertake any and all activities authorized thereunder.

- (c) Not less than thirty (30) days prior to the date that Declarant anticipates obtaining the first TCO or PCO for any New 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 New Building and review construction plans and drawings, as necessary to confirm that the PCRE and/ or Mitigations Measures required to be incorporated into the New Building have been installed in accordance with the plans initially submitted as part of the New Building Permit. DOB shall not issue, and Declarant shall not accept, a TCO or PCO if DCP has provided written notice to Declarant, copied to DOB, within five (5) days following any such inspection advising that Declarant has failed to include a required PCRE and/or Mitigation Measure within the New Building, or has failed to fully satisfy the PCRE and/or Mitigation Measure, and specifying the nature of such omission or failure. In the event that DCP provides such notice, Declarant and DCP shall meet promptly 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, and upon the completion of such steps to the satisfaction of DCP, 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 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

EFFECTIVE DATE; CANCELLATION; AMENDMENT OR MODIFICATION OF THIS DECLARATION

4.01 Effectiveness of Declaration.

- (a) This Declaration and the provisions and covenants hereof shall become effective upon the Approval Date.
- (b) Subject to Section 4.03(b) below, the Original Restrictive Declaration is hereby amended and restated by this Declaration as of the Approval Date.

4.02 Recording.

Promptly, and no later than ten (10) business days after the Approval Date, Declarant shall file and record this Declaration and any related waivers executed by mortgagees or other Parties-in-Interest, in the Register's Office, indexing them against the Subject Property, and deliver to DCP within ten (10) days of the date of any such submission for recording, a copy of such documents as submitted for recording (the "Recording Documents"), together with an affidavit of submission for recordation, recording and endorsement cover pages for each document submitted for recording and recording payment receipts. Declarant shall deliver to DCP a copy of all Recording Documents, as recorded, certified by the Register's Office, promptly upon receipt of such documents. If Declarant fails to record the Recording Documents, then the City may record duplicate originals of the Recording Documents; however, all fees paid or payable for the purpose of recording the Recording Documents and obtaining certified copies thereof, whether undertaken by Declarant or by the City, shall be borne by Declarant.

4.03 Cancellation.

- (a) Notwithstanding anything to the contrary contained in this Declaration, if the Approvals are declared invalid or otherwise voided by a final judgment of any court of competent jurisdiction from which no appeal can be taken or 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, this Declaration shall be cancelled and shall be of no further force or effect and an instrument discharging this Declaration of record may be recorded by Declarant. Prior to the recordation of such instrument, Declarant shall notify the Chair of Declarant's intent to cancel and terminate this Declaration and request the Chair's approval, which approval shall be limited to ensuring that such cancellation and termination is in proper form and that any provisions of this Declaration necessary to protect the environment with respect to any work performed as of the date of cancellation survive such termination. The Chair shall respond to such notice and request within thirty (30) days of receipt by the Chair of such notice, and the failure of the Chair to respond within such thirty (30) day period shall be deemed an approval by the Chair of the cancellation of the Declaration. Upon recordation of such instrument, Declarant shall provide a copy thereof certified by the Register's Office to the CPC. Notwithstanding the foregoing, the MTA may terminate this Declaration in accordance with Paragraph 4 of the Consent to Execution of Restrictive Declaration and Agreement to Subordinate Future Fee Encumbrances previously executed by the MTA on April 10, 2014 and recorded in the Register's Office as CRFN 2014000154632.

- (b) Notwithstanding anything to the contrary contained in this Declaration, in the event that Declarant does not wish to develop the Subject Property pursuant to the Approvals in its sole discretion, Declarant may proceed with any development on the Subject Property permitted by the Zoning Resolution and the Prior Approvals (and subject to the Original Restrictive Declaration), as if the Approvals had not been granted, and Declarant shall not be subject to any covenants, conditions, restrictions, or agreements of this Declaration. This Declaration shall be rendered null and void upon recordation of an instrument filed by Declarant discharging it of record, the recordation of which instrument shall

constitute a waiver of the right to develop the Subject Property pursuant to the Approvals and a termination of all obligations of Declarant hereunder, in which case the Prior Approvals and the Original Restrictive Declaration shall govern.

4.04 Modification and Amendment.

- (a) This Declaration may be amended or modified (other than pursuant to Section 4.04(b) hereof) only upon application by Declarant, with the express written approval of the CPC or an agency succeeding to the CPC's jurisdiction. No other approval or consent shall be required from any public body, private person or legal entity of any kind, including, without limitation, any other present Party-in-Interest or future Party-in-Interest who is not a Successor Declarant, except as otherwise expressly provided herein and except that: (i) Sections 6.04 and 6.08 (in the case of Section 6.08, insofar as such Section relates to the MTA) of this Declaration, and/or any other sections or provisions of this Declaration that refer to MTA, NYCTA, LIRR or any other MTA agency (including, without limitation, ~~Sections~~[Section](#) 2.05~~—and—2.07~~), shall not be modified in any respect without the prior written consent of the MTA; and (ii) Sections 2.01, 2.02(a)-(e) and (h), 2.04, 3.04(a)—(c), 4.04(a), and 6.01 shall not be modified so as to diminish or alter the obligations of Declarant thereunder in any respect without the approval of the City Council. In the event that at any time Declarant or a Successor Declarant does not have an interest in a portion of the Subject Property, this Declaration may be amended with respect to such portion of the Subject Property upon application by MTA, subject to the applicable provisions of this Section 4.04.
- (b) Notwithstanding the provisions of Section 4.04(a), any change to this Declaration that the Chair deems to be a minor modification may 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 (other than Declarant), including, without limitation, any present or future Party-in-Interest who is not a Successor Declarant, except that: (a) Sections 6.04 and 6.08 (in the case of Section 6.08, insofar as such Section relates to the MTA) of this Declaration shall not be modified in any respect without the prior written consent of the MTA; (b) a modification to a PCRE or Mitigation Measure shall not be deemed a minor modification unless DCP determines that such modification may be made without diminishment of the environmental standards which would be achieved by implementation of the PCRE or Mitigation Measure; and (c) no modification or change to any provision of this Declaration that refers to MTA, NYCTA, LIRR or any other MTA agency shall be made without MTA's consent. Minor modifications shall not be deemed amendments requiring the approval of the CPC.

- (c) Any modification or amendment of this Declaration shall be executed and recorded in the same manner as this Declaration. Declarant shall record any such modification or amendment immediately after approval or consent has been granted pursuant to Section 4.04(a) or (b) above, as applicable, and provide an executed and certified true copy thereof to CPC and, upon Declarant's failure to so record, permit its recording by CPC at the cost and expense of Declarant.
- (d) For so long as Declarant has an interest in the Subject Property or any portion thereof, all Parties-in-Interest (other than Declarant) and their heirs, successors, assigns and legal representatives hereby irrevocably (i) consent to any modification, amendment, cancellation, revision or other change in this Declaration, (ii) waive any rights they may have to enter into an amended Declaration or other instrument modifying, cancelling, revising or otherwise changing this Declaration, and (iii) nominate, constitute and appoint Declarant their true and lawful attorney-in-fact, coupled with an interest, to

execute any documents or instruments of any kind that may hereafter be required to modify, amend, cancel, revise or otherwise change this Declaration or to evidence such Party-in-Interest's consent or waiver of rights. Notwithstanding the foregoing, Sections 6.04 and 6.08 of this Declaration (in the case of Section 6.08, insofar as such Section relates to the MTA) shall not be modified in any respect without the prior written consent of the MTA.

ARTICLE V COMPLIANCE; DEFAULTS; REMEDIES

5.01 Default.

Except as otherwise provided in Sections 3.07 and 5.02 of this Declaration, if Declarant fails to observe any of the terms or conditions of this Declaration, the Chair shall give Declarant and any mortgagees of whom the City has received notice in accordance with Section 6.07 hereof written notice of such alleged violation, and upon receipt of such notice Declarant shall within forty-five (45) days thereof either (i) effect a cure of such alleged violation, or commence a cure if the violation is not capable of cure within such forty-five (45) day period, or (ii) demonstrate to the City why the alleged violation has not occurred. If Declarant and/or Mortgagee commences to effect such cure within such forty-five (45) business day period (or if cure is not capable of being commenced within such forty-five (45) business day period, Declarant and/or Mortgagee commences to effect such cure when such commencement is reasonably possible), and thereafter proceeds diligently toward the effectuation of such cure, the aforesaid forty-five (45) day period (as such may be extended in accordance with the preceding clause) shall be extended for so long as Declarant and/or Mortgagee continues to proceed diligently with the effectuation of such cure. If more than one Declarant and Mortgagee exists at any time on the Subject Property, notice shall be provided to all Declarants and mortgagees from whom the City has received notice in accordance with Section 6.07 hereof, and the right to cure shall apply equally to all Declarants and mortgagees. If, after the notification procedures set forth above, Declarant and/or Mortgagee fails to cure such alleged violation of Declarant's obligations under this Declaration, the City 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 and may decline to approve and may disapprove any amendment, modification or cancellation of this Declaration on the sole ground that Declarant is in default under this Declaration. The time period for curing any violation by Declarant and/or Mortgagee shall be subject to extension for Uncontrollable Circumstances pursuant to Section 5.05 of this Declaration.

5.02 Denial of Public Access.

Notwithstanding any provisions of Sections 5.01 of this Declaration to the contrary, in the event of a denial of public access to a Public Access Area of an ongoing nature in violation of the Public Access Easement established under Section 2.02(a) of this Declaration, Declarant shall

have the opportunity to effect a cure within twenty-four (24) hours after receipt of notice thereof from the Chair. If such denial of access continues beyond such period, the City may thereupon exercise any and all of its rights hereunder, including seeking a mandatory injunction. In addition, if the City has reason to believe that the use and enjoyment of a Public Access Area by any member of the public has been denied by Declarant, the City may treat the denial of access as a violation of the Zoning Resolution and seek civil penalties at the Office of Administrative Trials and Hearings' Environmental Control Board for the violation relating to privately owned public space.

5.03 Benefits to Subject Property and City.

Except to the extent otherwise explicitly provided herein, this Declaration is for the benefit of the City and Declarant only and creates no enforceable interest or rights in any third person or entity, other than the express rights granted herein to MTA. The City, acting through the agencies described in this Declaration, shall be deemed to be the only entity with standing to enforce the provisions of this Declaration against Declarant, and nothing herein contained shall be deemed to confer upon any other person or entity, public or private, any interest or right in enforcement of any provision of this Declaration against Declarant or any document or instrument executed or delivered in connection with the Applications, including any claim by any public or private landowner to be the beneficiary of any privileges of access appurtenant to lands adjoining the Subject Property which could or might be affected by enforcement of the provisions of this Declaration. Declarant acknowledges that the restrictions, covenants and obligations of this Declaration will protect the value and desirability of the Subject Property and benefit the City, and consents to enforcement by the City, administratively, at law or equity, of the covenants, obligations, conditions and restrictions contained herein.

5.04 Indemnification of Certain City Expenses.

If Declarant is found by a court of competent jurisdiction to have been in default and such finding is upheld on final appeal, or the time for further review of such finding on appeal or by other proceeding has lapsed, Declarant shall indemnify and hold harmless the City from and against all of its reasonable legal and administrative expenses arising out of or in connection with the enforcement of such Obligation

5.05 Uncontrollable Circumstances.

- (a) In the event that, as the result of Uncontrollable Circumstances, Declarant is unable to perform or complete any requirement of this Declaration (an "Obligation") (i) at the time or times required by this Declaration; (ii) at the date set forth in this Declaration for such action, if a specific date for such requirement is set forth herein; or (iii) prior to submitting an application for a New Building Permit or other permit or certificate of occupancy (TCO or PCO) which is tied to the completion of

such requirement, where applicable, Declarant shall promptly after the occurrence of Uncontrollable Circumstances becomes apparent so notify the Chair in writing. Such notice (the “Delay Notice”) shall include a description of the Uncontrollable Circumstances, and, if known to Declarant, their cause, probable duration and impact on the work in question. In the exercise of his or her reasonable judgment the Chair shall, within thirty (30) days of its receipt of the Delay Notice (i) certify in writing that the Uncontrollable Circumstances have occurred; or (ii) notify Declarant that it does not reasonably believe that the Uncontrollable Circumstances have occurred. Upon a certification that Uncontrollable Circumstances have occurred, the Chair may grant Declarant appropriate relief and, as a condition thereto, may require that Declarant post a bond, letter of credit or other reasonable security in a form reasonably acceptable to the City in order to ensure that the Obligation will be completed in accordance with the provisions of this Declaration.

- (b) Any delay caused as the result of Uncontrollable Circumstances shall be deemed to continue only as long as the Uncontrollable Circumstances continue. Upon cessation of the Uncontrollable Circumstance causing such delay, Declarant shall promptly recommence the work or implement the measure needed to complete the Obligation, in accordance with any applicable directive of the Chair previously issued in connection with a grant of relief, unless an alternative has been specified and agreed to in accordance with this Section 5.05.

ARTICLE VI MISCELLANEOUS

6.01 Construction Consultation Process Committee and Liaison.

Declarant shall participate in a construction consultation process (the “CPP”), as described below, if the Borough President of the Borough of Manhattan and/or Community Board 4, Manhattan, shall hereafter elect to conduct such process. If such a CCP Committee (the “Committee”) is hereafter established, the Declarant shall designate an individual as a liaison

("Liaison") to the Committee before Construction Commencement. Upon request of the Committee, and beginning at the time of issuance of the first Foundation Permit for a New Building on the Subject Property, the Liaison shall address, on a regular basis, the questions and concerns of the Committee about construction related issues. The Liaison and the Declarant shall, in good faith and promptly, work with the Committee and others, if necessary, to address such questions and concerns, as appropriate. Declarant's obligations hereunder shall expire when TCOs have been issued for all New Buildings on the Subject Property. The Committee shall in addition be provided with the quarterly reports prepared by the Monitor appointed pursuant to Section 3.07 of this Declaration, and such Monitor shall liaise with the Committee as specified therein.

6.02 Incorporation by Reference.

All exhibits, appendices or attachments referenced in this Declaration are incorporated by reference herein and made an integral part of this Declaration.

6.03 Binding Effect.

Subject to the provisions of Section 6.04 below, the provisions of this Declaration shall be considered covenants running with the Subject Property and shall inure to the benefit of and be binding upon Declarant and all heirs, successors, legal representatives, assigns, sublessees and mortgagees of Declarant's interest or any portion thereof in the Subject Property. Subject to Section 6.04 of this Declaration, the obligations contained in this Declaration shall be binding upon Declarant and any other individual or entity, for the period during which Declarant or such other individual or entity is the holder of a fee or other interest in the Subject Property and only to the extent of its interest in the Subject Property and upon the sale, transfer, assignment or conveyance (each, a "Disposition") of the Declarant's interest in the Subject Property or a portion of such interest, Declarant shall be released from and have no further obligations with respect to this Declaration or any covenant, obligation or indemnity undertaken, provided or given hereunder as to the entire Subject Property (upon Disposition of Declarant's interest in the entire Subject Property) or (in the case of a Disposition of a portion of the Property), as to such portion(s).

6.04 MTA.

Declarant, and any Successor Declarant, for so long as Declarant and/or Successor Declarant is (i) the lessee under a ground or net lease from MTA of all or any portion of the Subject Property and/or (ii) the owner in fee of all or any portion of the Subject Property, shall be solely responsible for satisfying the obligations of Declarant set forth in this Declaration. In no event shall MTA have any responsibility or liability for the obligations of Declarant as set forth in this Declaration, nor shall MTA be deemed a Successor Declarant for purposes of this Declaration, nor shall MTA's interest in the Subject Property or in the Yards Parcel (as defined and described in the Declaration of Easements) 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. In the event that at any time that MTA shall be the fee owner of all or a portion of the Subject Property and there shall cease to exist a ground or net lease of such

portion of the Subject Property, MTA shall not be obligated to perform or otherwise be liable for the obligations of Declarant as set forth in this Declaration, but any disposition by MTA to a party which is not affiliated with MTA (“Subsequent MTA Transferee”), by sale or lease or otherwise, of such portion of the Subject Property shall be subject to the terms of this Declaration, and such a Subsequent MTA Transferee shall be deemed a Successor Declarant with respect to such portion of the Facility Airspace Parcel. Notwithstanding the foregoing, a Subsequent MTA Transferee shall have no liability for, nor shall the rights of a Subsequent MTA Transferee to obtain a building permit, certificate of occupancy, or otherwise to use, develop and occupy its portion of the Subject Property pursuant to this Declaration be impaired by any default under this Declaration by Declarant or a Successor Declarant on any other portion of the Subject Property.

6.05 Laws of the State of New York.

This Declaration shall be governed by and construed in accordance with the laws of the State of New York.

6.06 Severability.

In the event that any provision of this Declaration shall be deemed, decreed, adjudged or determined to be invalid or unlawful by a court of competent jurisdiction, such provision shall be severed and the remainder of this Declaration shall continue to be of full force and effect.

6.07 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:

- (a) If to Declarant: c/o The Related Companies, 30 Hudson Yards, Floor 72, New York, NY 10001, Attention: Andrew Rosen, with a copy c/o The Related Companies, 30 Hudson Yards, Floor 72, New York, NY 10001, Attention: General Counsel, with an additional copy to Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, NY 10035 Attention: Elise Wagner, Esq. and Eugene C. Travers, Esq.;
- (b) If to the City, DCP or the Chair, Attention: Office of the General Counsel, NYC Department of City Planning, 22 Reade Street, New York, New York 10007 (or the then official address); and
- (c) If intended for a Mortgagee, by mailing or delivery to such Mortgagee at the address given in its notice to DCP.

Declarant, the City, DCP, the Chair and any Mortgagee may, by notice provided in accordance with this Section 6.07, 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 mailing; (b) sent by overnight courier service, in which case the Notice shall be deemed delivered for all purposes hereunder one business day after placed under the control of the delivery service, provided that a receipt for the delivery is obtained, 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. In the event that there is more than one Declarant at any time, any Notice from the City or the CPC shall be provided to all Declarants of whom CPC has notice.

6.08 Limitation of Liability.

Notwithstanding anything to the contrary contained in this Declaration, the City will look solely to the estate and interest of Declarant, or its successors and assigns or the subsequent holders of any interest in the Subject Property (but excluding MTA and its interest in the Subject Property), to the extent of their respective interests in the Subject Property, for the collection of any judgment or the enforcement of any remedy based upon any breach by any such party of any of the terms, covenants or conditions of this Declaration. No other property of any such party or its principals, disclosed or undisclosed, or its trustees, 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 Declarant shall hereafter sell one or more Sites to a third party and the City shall, prior to such sale, obtain a judgment against Declarant, the City shall look only to the estate and interest of the Declarant in the portions of the Subject Property still owned by such Declarant at the time of levy, execution or other enforcement procedure for the satisfaction of the City's remedies and shall not pursue such remedies against the portion of the Subject Property that has been sold. In the event that any building on the Subject Property 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 Owner's Individual Assessment Interest. The "Individual Assessment Interest" shall mean the Unit Owner's percentage interest in the common elements of the condominium in which such condominium unit is located applied to the total assessment imposed by the Board of Managers or other governing body of the condominium in which such condominium unit is located. In the event of a default in the obligations of the condominium, the City shall have a lien upon the property owned by each Unit Owner solely to the extent of each such Unit Owners' unpaid Individual Assessment Interest, which lien shall include such Unit Owner's obligation for the costs of collection of such Unit Owners' 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 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. The City agrees that, prior to enforcing its rights against a Unit Owner, the City shall first attempt to enforce its rights under this Declaration against the Declarant, and the Board of Managers of any condominium association. In the event that a condominium shall default in its obligations under this Declaration, the City shall have the right to obtain from the Board of Managers of any condominium association, the names of the Unit Owners who have not paid their Individual Assessment Interests. Notwithstanding the foregoing, nothing herein shall be deemed to preclude, qualify, limit or prevent the City's

exercise of any of its governmental rights, powers or remedies, including, without limitation, with respect to the satisfaction of the remedies of the City, under any laws, statutes, codes or ordinances.

6.09 Parties-in-Interest.

Any and all mortgages or other liens encumbering the Subject Property after the recording date of this Declaration shall be subject and subordinate hereto as provided herein. Notwithstanding anything to the contrary contained in this Declaration, if a portion of the Subject Property is held in condominium ownership, the board of managers of the condominium association shall be deemed to be the sole Party-in-Interest with respect to the premises held in condominium ownership, and the owner of any unit in such condominium, the holder of a lien encumbering any such condominium unit, and the holder of any other occupancy or other interest in such condominium unit shall not be deemed to be a Party-in-Interest.

6.10 Applications.

Declarant shall include or shall cause a copy of this Declaration to be included as part of any application pertinent to the construction, improvement, operation or maintenance of the Subject Property or the development of any of the sites on the Subject Property to which the provisions of this Declaration are applicable, submitted to any governmental agency or department having jurisdiction over the Subject Property, including, without limitation, DEC, DOB and DEP. If Declarant files any application with the Attorney General of the State of New York to subdivide the Subject Property, or any portion of the Subject Property, Declarant shall include in any written or printed offering materials associated with the offer to sell interests in such condominium or other association (including, without limitation, an offering plan, prospectus or no action letter), a true copy of this Declaration or a complete and accurate summary of the material terms hereof, except as otherwise directed by the Attorney General, and shall otherwise ensure that all terms of the offering are consistent with the terms of this Declaration.

6.11 Right to Convey.

Nothing contained herein shall be construed as requiring the consent of the DCP, CPC, the city or any agency thereof, or of any other person or entity, to any sale, transfer, conveyance, mortgage, lease or assignment of any direct or indirect interest of Declarant in the Subject Property.

6.12 Property Not Subject to Declaration.

In no event shall the Subject Property mean or include the Yards Parcel, or any portion thereof, as defined and described in the Declaration of Easements. In addition, in no event shall this Declaration apply to or affect any portion of the Subject Property that is, whether now or in the future, used for transportation purposes, including, without limitation, the portion(s) of the Subject Property that are used for the Hudson Tunnel (a/k/a Gateway) project or the Rail System, and/or over which easements are granted to MTA in connection with the use or operation of the Yards Parcel.

6.13 No Enforcement by Third Parties.

Notwithstanding any provision of this Declaration to the contrary, only Declarant, Declarant's successors and assigns, and the City, acting through the CPC, shall be entitled to enforce or assert any claim arising out of or in connection with this Declaration (provided the foregoing shall not be construed to waive, limit or otherwise detract from MTA's rights or remedies under separate agreements that may be entered into 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 Applications (provided the foregoing shall not be construed to waive, limit or otherwise detract from MTA's rights or remedies under separate agreements that may be entered into in connection with the Applications). In any proceedings brought by the City against Declarant seeking to deny or revoke building permits or certificates of occupancy with respect to the Development on the Subject Property, or to impose a lien, fine or other penalty, or to pursue any other remedy available to the City, if the event or occurrence which is the basis of an allegation of a failure to comply by a Declarant is associated with a particular lot or portion(s) of lots developed as part of the Development on the Subject Property, then the City shall only deny or seek the revocation of building permits or certificates of occupancy for such lot(s) or portion(s) of lots, and only seek to impose a fine, lien or other penalty on such lot(s) or portion(s) of a lot, and any such event or occurrence shall not provide the basis for denial or revocation of any building permits or certificates of occupancy, or the imposition of any fine, lien or other penalty, with respect to other lot(s) or portion(s) of a lot comprising a portion of the Development for which no such failure to comply has occurred. This Declaration shall not create any enforceable interest or right in any person, other than Declarant, MTA (as provided herein) and any mortgagee, any of which shall be deemed to be a proper person to enforce the provisions of this Declaration, and nothing contained herein shall be deemed to allow any other person, any interest or right of enforcement of any provision of this Declaration or any document or instrument executed or delivered in connection with the Applications.

6.14 Approvals.

Wherever in this Declaration the certification, consent or approval of Declarant, the Chair, Commissioner, or any other City agency or public entity is required or permitted to be given, it is understood that and such certification, consent or approval will not be unreasonably withheld, conditioned or delayed. For the avoidance of doubt, this Section 6.14 does not apply to MTA.

6.15 Further Assurances.

Declarant (to the extent it is permitted to do so without the consent of MTA) and the City each agree to execute, acknowledge and deliver such further instruments, and take such other or further actions as may be reasonably required in order to carry out and effectuate the intent and purpose of this Declaration or to confirm or perfect any right to be created or transferred hereunder, all at the sole cost and expense of the party requesting such further assurances.

6.16 Affordable Housing and Common Expenses.

Notwithstanding anything in this Agreement to the contrary, no Affordable Housing Unit constructed on the Subject Property shall have any obligation for the Public Access Area Maintenance and Repair Requirements or other costs attendant to this Declaration, and the calculation of any rents, common charges or other maintenance charges on an Affordable Housing Unit shall not include any pro rata contribution thereto (it being acknowledged and agreed that such obligations or costs that would have otherwise been allocated to an Affordable Housing Unit shall be borne by Declarant or the Property Owner's Association, as applicable).

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WRY TENANT LLC,
a Delaware limited liability company

By: _____
Name: Andrew Rosen
Title: Chief Operating Officer

ACKNOWLEDGMENT

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

On the 7th day of April in the year 2025 before me, the undersigned, a notary public in and for said state, personally appeared ANDREW ROSEN, 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.

LIST OF EXHIBITS

Exhibit A	Metes and Bounds Description of Subject Property
Exhibit B	Certification of Parties-in-Interest
Exhibit C	Intentionally Omitted.
Exhibit D	LEED Credit Categories
Exhibit E	Maintenance and Repair of Public Access Areas and West 33rd Street Loop
Exhibit F	Rules and Regulations for Public Access Areas
Exhibit G	SCA Letter of Intent
Exhibit H	Proposed Project Traffic Mitigation Measures <u>Intentionally Omitted</u>
Exhibit I	Proposed Project Pedestrian Mitigation Measures <u>Intentionally Omitted</u>
Exhibit J	Public Access Area Design Requirements
Exhibit K	Alternative Scenario Traffic Mitigation Measures
Exhibit L	Alternative Scenario Pedestrian Mitigation Measures
Exhibit M	Proposed Project Transit Mitigation Measures <u>Intentionally Omitted</u>
Exhibit N	Alternative Scenario Transit Mitigation Measures
Exhibit O	Proposed Project Construction Traffic Mitigation Measures <u>Intentionally Omitted</u>
Exhibit P	Alternative Scenario Construction Traffic Mitigation Measures

EXHIBIT A

METES AND BOUNDS DESCRIPTION OF THE SUBJECT PROPERTY

Facility Airspace Parcel: Airspace Above Lower Limiting Plane

All of the airspace above a lower limiting plane of 40.55 feet (Manhattan Borough Datum) within the following horizontal boundary:

Beginning at a point formed by the intersection of the southerly line of West 33rd Street (60' R.O.W.) and the easterly line of Twelfth Avenue (R.O.W. varies); running thence

1. Along said southerly line of West 33rd Street, South 89°56'53" East, a distance of 800.00 feet to a point formed by the intersection of said southerly line of West 33rd Street and the westerly line of Eleventh Avenue (100' R.O.W.); thence
2. Along said westerly line of Eleventh Avenue, South 00°03'07" West, a distance of 538.26 feet to a point; thence
3. Leaving Eleventh Avenue, North 89°49'42" West, a distance of 439.40 feet to a point; thence
4. North 69°32'56" West, a distance of 61.90 feet to a point; thence
5. North 89°57'45" West, a distance of 302.58 feet to a point on the said easterly line of Twelfth Avenue; thence
6. Along said easterly line of Twelfth Avenue, North 00°03'07" East, a distance of 515.85 feet to the Point of Beginning.

Encompassing an area of 422,936 S.F./9.709 acres, more or less.

Facility Airspace Parcel: Terra Firma Parcel

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

Beginning at a point formed by the intersection of the northerly line of West 30th Street (60' R.O.W.) and the easterly line of Twelfth Avenue (R.O.W. varies); running thence

1. Along said easterly line of Twelfth Avenue, North 00°03'07" East, a distance of 196.65 feet to a point; thence

2. Leaving Twelfth Avenue, South $89^{\circ}57'45''$ East, a distance of 302.58 feet to a point; thence
3. South $69^{\circ}32'56''$ East, a distance of 61.90 feet to a point; thence
4. South $89^{\circ}49'42''$ East, a distance of 439.40 feet to a point on the westerly line of Eleventh Avenue (100' R.O.W.); thence
5. Along said westerly line of Eleventh Avenue, South $00^{\circ}03'07''$ West, a distance of 174.24 feet to a point formed by the intersection of said westerly line of Eleventh Avenue and the aforementioned northerly line of West 30th Street; thence
6. Along said northerly line of west 30th Street, North $89^{\circ}56'53''$ West, a distance of 800.00 feet to the Point of Beginning.

Encompassing an area of 147,064 S.F./3.376 acres, more or less.

EXHIBIT B

CERTIFICATION OF PARTIES-IN-INTEREST

[See Attached.]

EXHIBIT C

[Intentionally Omitted.]

EXHIBIT D

LEED CREDIT CATEGORIES

LEED CREDIT	DECARBONIZATION	ECOSYSTEM CONSERVATION & RESTORATION
Integrative Design Process	X	X
Green Leases (Core & Shell only)	X	X
Sensitive Land Protection		X
Compact and Connected Development	X	X
Active Travel Facilities	X	
Transportation Demand Management	X	
Electric Vehicles	X	
Protect and Restore Biodiverse Habitat		X
Accessible Open Space		X
Rainwater Management		X
Enhanced Resilient Site Design		X
Heat Island Reduction	X	X
Light Pollution Reduction		X
Enhanced Water Efficiency	X	X
Water Reuse	X	X
Water Metering and Leak Detection	X	X
Electrification	X	
Reduce Peak Thermal Loads	X	
Enhanced Energy Efficiency	X	
Renewable Energy	X	
Energy and Ongoing Commissioning	X	
Grid Interactive	X	
Enhanced Refrigerant Management	X	
Building and Materials Reuse	X	X
Reduce Embodied Carbon	X	
Optimized Building Products		X
Construction and Demolition Waste Management	X	X

EXHIBIT E

MAINTENANCE AND REPAIR OF PUBLIC ACCESS AREAS AND WEST 33RD STREET LOOP

Public Access Areas Maintenance and Repair Work

Declarant shall be responsible for the following maintenance and repair activities.

1. Cleaning.

- (a) Dirt, litter and obstructions shall be removed as needed and trash and leaves collected and removed as needed so as to maintain the Public Access Areas in a clean, neat and good condition.
- (b) All walkways, sidewalks and all other improvements and facilities installed in the Public Access Areas shall be routinely cleaned and maintained so as to keep such improvements and facilities in a clean, neat and good condition.
- (c) Graffiti shall be regularly and promptly painted over or removed as appropriate to the nature of the surface.
- (d) Drains, sewers and catch basins shall be cleaned regularly to prevent clogging.
- (e) Branches and trees damaged or felled by winds, ice, vandalism, or by any other reasons whatsoever, shall be promptly removed.

2. Snow Removal. Snow and ice shall be removed from all walkways so as not to interfere with safe passage in a prompt fashion, and from all other paved surfaces used for pedestrian movement within twenty-four (24) hours after each snowfall or accumulation of ice.

3. Landscape Maintenance. A maintenance program for the planted portions of the Public Access Areas shall be implemented consisting of a “Spring Start-up Period” program, a “Season Closing Period” program, and a continuing maintenance program through the “Growing Season”.

(a) Spring Start-up Period: The Spring Start-up Period shall commence on March 1st and terminate not later than the end of the fourth week of April of each calendar year. Declarant shall complete the following work annually during the Spring Start-up Period:

- (i) Remove any winter protectives from trees, shrubs and other planting materials.

- (ii) Remove all landscape debris including leaves and dead branches.
- (iii) Prune and trim trees as necessary to maintain natural form.
- (iv) Remove or destroy any weeds growing between paving blocks, pavement, cobbled and concrete areas.
- (v) Apply fertilizer to trees, shrubs, plants and other lawn areas, as appropriate.
- (vi) Remove any sand deposited as a result of winter sandings.
- (vii) Replace any plant material or trees that are dead, diseased and/or otherwise unhealthy with healthy specimens of substantially equal type and reasonable size.
- (viii) Reseed grass areas as needed.

(b) Season Closing Period: The Season Closing Period shall begin not later than October 15th and shall terminate not later than November 30th of each calendar year. Declarant shall undertake and complete the following work annually during the Season Closing Period:

- (i) Rake and collect leaves.
- (ii) Wrap trees, shrubs and other plant material as necessary to ensure adequate winter protection.
- (iii) Apply fertilizer to all lawn areas as needed.
- (iv) Reseed grass areas as needed.

(c) Growing Season: The Growing Season shall commence with the commencement of the Spring Start-up Period and shall terminate at the end of the Season Closing Period. Declarant shall undertake and carry out the following work during the Growing Season:

- (i) Inspect trees on a regular basis and spray when necessary.
- (ii) 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 any City or State regulations governing water usage.
- (iii) Mow lawn areas on a not less than bi-weekly basis and reseed as needed.

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

4. Repairs and Replacement. Repair and replacement of all facilities within the Public Access Areas shall be performed as needed to maintain such facilities in good order and working condition. Declarant shall exercise due diligence in commencing the repair or replacement of same as promptly as possible and shall complete the same within a reasonably expeditious time after commencement. All repairs and replacements shall be performed so as to be substantially compliant with the PAA Plans approved pursuant to Exhibit J to this Declaration. Repairs shall include, but not be limited to, the following, as applicable to the facilities in the Public Access Areas:

- (a) Benches or Other Seating: Undertake all maintenance, including replacement of any broken or missing slats and painting, as necessary.
- (b) Walls, Barriers and/or Fencing: Any broken or materially cracked walls, barriers and/or fencing shall be repaired or removed and replaced.
- (c) Paving: All paved surfaces shall be maintained so as to be safe and attractive.
- (d) Signage: All graphics shall be maintained in a first class condition and all vandalized or damaged signage shall be promptly cleaned or replaced with new signage to match other installed signs.
- (e) 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.
- (g) 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 of reasonable size.
- (h) Construction Defects & Hazardous Conditions: Declarant shall periodically inspect the Public Access Areas for construction defects and hazardous conditions, shall promptly repair or replace any portion or feature of the Public Access Areas that exhibit such defects or hazardous conditions, and shall institute appropriate measures to protect the public from harm, including but not limited to the erection of warning signs and temporary barriers, during the period of repair or replacement work.

Maintenance and Repair of the West 33rd Street Loop

1. Declarant shall maintain the street and sidewalk areas of the West 33rd Street Loop in a good state of repair and cleanliness, including but not limited to the following:

- (a) Maintaining the paved surfaces of the street in good repair;

- (b) Maintaining street and sidewalk lights, if any, in good working order;
- (c) Assuring that street and sidewalk lights, if any, operate during hours of darkness;
- (d) Replacing street and sidewalk lights, if any, when needed;
- (e) Snow plowing at such times as the accumulated snow fall so requires; and
- (f) Maintaining any required storm and sanitary drainage systems in a clear, workable and efficient manner.

EXHIBIT F

RULES AND REGULATIONS
FOR PUBLIC USE OF PUBLIC ACCESS AREAS

1. No person shall throw or deposit any litter within a Public Access Area (“PAA”).
2. No persons shall affix or post any commercial or non-commercial handbill, poster or notice in or upon a PAA, unless authorized by Declarant in writing.
3. No person shall engage in the commercial or non-commercial distribution of products and/or material in or upon PAA (other than non-commercial printed or similar expressive material), unless authorized by Declarant in writing.
4. No peddler, solicitor or street vendor shall be permitted to operate within a PAA unless it receives the written permission of Declarant and is in compliance with all applicable laws, rules and regulations of the City of New York (collectively, “Applicable Laws”).
5. No persons shall drive, stop, stand or park a motor vehicle within a PAA (except to the extent required for persons with disabilities or Declarant employees performing security, maintenance or repair work).
6. No persons shall loiter for illegal purposes in or upon a PAA, or conduct any activity that would obstruct pedestrian traffic or be detrimental or injurious to public safety.
7. No person shall deface, injure, destroy, displace or carry away any property, structure, ornament or landscaping.
8. No person, corporation, organization or other entity shall hold or sponsor any meeting, exhibition, musical, theatrical or other performance, or other scheduled or unscheduled event in a PAA, unless authorized in writing by Declarant pursuant to the provisions of Section 2.02 of the Declaration and open to the public.
9. The following shall be prohibited:
 - Disruptive conduct or behavior likely to provoke or infringe on the rights or peace of employees and other patrons including apparel, gestures, obscenities, slurs based on race, ethnicity, religious beliefs, gender, or sexual orientation; the use of sexually explicit language; excessive noise, including from radio and other music playing, noxious odors, objectionable vibrations, or any other use constituting a nuisance;

- Commercial photography or videotaping of the property or the operations by any means (e.g., still cameras, video cameras, smart phones or unmanned aerial vehicles (e.g., drones), without authorization in writing.
- Failing to be fully clothed, including not wearing shirt and shoes;
- Cooking or consumption or possession of alcoholic beverages (other than as may be served, in accordance with Applicable Laws, by any restaurant or food facility located in the PAA or in connection with any scheduled event authorized in accordance with Paragraph 2.02 of the Declaration);
- Smoking, vaping or any other use of illegal drugs or controlled substances;
- Prostitution or any other conduct for immoral purposes;
- Violating any Federal, State, or local law or ordinance;
- Use or possession of dangerous, flammable, or combustible objects or materials;
- Explosives, carrying or making use of firearms (including replicas) or any object that could or may be intended to be used as a weapon;
- Removing items from waste or recycling receptacles;
- Unleashed or unattended animals;
- Unsafe activity, including the use and operation of skateboards, in-line skates, segways/ “hover boards”, wheeled vehicles including bicycles and unicycles (except in designated areas); sitting or leaning on planters, tables, trash receptacles, railings, steps, and escalators or elevators; and
- Unattended baggage or other personal items, which shall be subject to search and seizure.

EXHIBIT G

SCA LETTER OF INTENT

[See Attached.]

EXHIBIT H

~~PROPOSED PROJECT TRAFFIC MITIGATION MEASURES~~

[~~See Attached~~ Intentionally Omitted.]

EXHIBIT I

~~PROPOSED PROJECT PEDESTRIAN MITIGATION MEASURES~~

[~~See Attached~~ Intentionally Omitted.]

EXHIBIT J
PUBLIC ACCESS AREA DESIGN REQUIREMENTS

EXHIBIT K
ALTERNATIVE SCENARIO TRAFFIC MITIGATION MEASURES

[See Attached.]

EXHIBIT L
ALTERNATIVE SCENARIO PEDESTRIAN MITIGATION MEASURES

[See Attached.]

EXHIBIT M

~~PROPOSED PROJECT TRANSIT MITIGATION MEASURES~~

[~~See Attached~~ Intentionally Omitted.]

EXHIBIT N
ALTERNATIVE SCENARIO TRANSIT MITIGATION MEASURES

[See Attached.]

EXHIBIT O

~~PROPOSED PROJECT CONSTRUCTION TRAFFIC MITIGATION MEASURES~~

[~~See Attached~~ Intentionally Omitted.]

EXHIBIT P

ALTERNATIVE SCENARIO CONSTRUCTION TRAFFIC MITIGATION MEASURES

[See Attached.]

Summary report: Litera Compare for Word 11.7.0.54 Document comparison done on 05/28/2025 10:58:37 AM	
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Intelligent Table Comparison: Active	
Original DMS: dm://KL3/3688360/17	
Modified DMS: dm://KL3/3688360/20	
Changes:	
<u>Add</u>	159
Delete	229
Move From	6
<u>Move To</u>	6
<u>Table Insert</u>	0
Table Delete	0
<u>Table moves to</u>	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	400