EXHIBIT A

RESTRICTIVE DECLARATION

THIS DECLARATION (this "**Declaration**") made as of the ___ day of March, 2014, by Domino A LLC and Domino B LLC, New York limited liability companies having an address 45 Main Street, Suite 602, Brooklyn, New York 11201 (the "**Declarant**")

WITNESSETH:

WHEREAS, Declarant is the fee owner of certain real property located in the Borough of Brooklyn, County of Kings, City of New York and State of New York, designated for real property tax purposes as Lot 1 of Block 2414 (the "**Waterfront Parcel**") and Lot 1 of Block 2428 (the "**Upland Parcel**" and together with the Waterfront Parcel, collectively, the "**Subject Property**") on the Tax Map of the City of New York, which real property is more particularly described on **Exhibit A** annexed hereto;

WHEREAS, the Subject Property is comprised of three (3) Zoning Lots (hereinafter defined): (a) Zoning Lot 1, which comprises the entire Waterfront Parcel, excluding the portion of the Waterfront Parcel upon which the Refinery Complex (hereinafter defined) is located ("**Zoning Lot 1**"), (b) Zoning Lot 2, which comprises the remainder of the Waterfront Parcel upon which the Refinery Complex is located ("**Zoning Lot 2**") and (c) Zoning Lot 3, which comprises the entire Upland Parcel ("**Zoning Lot 3**"), each as more particularly described on the Development Plans (hereinafter defined);

WHEREAS, Declarant has proposed to improve the Subject Property as a "large-scale general development" pursuant to the requirements of a "large-scale general development" provided in Section 12-10 of the Zoning Resolution (as hereinafter defined) in effect on the Effective Date, in accordance with the Development Plans, Development Phasing Plans (hereinafter defined) and Waterfront Public Access Area Plans (hereinafter defined) (such proposed improvement of the Subject Property, the "**Large Scale General Development**" or "**LSGD**");

WHEREAS, Declarant intends to develop the Large-Scale General Development on the Subject Property by (a) constructing three (3) new mixed-use buildings on Zoning Lot 1 on the Waterfront Parcel, (b) redeveloping the Refinery by converting it to commercial and community facility use on Zoning Lot 2 on the Waterfront Parcel and (c) constructing one (1) new predominantly residential building on the Upland Parcel (collectively, the "**Proposed Development**");

WHEREAS, Declarant also intends to develop the Subject Property by constructing the (a) waterfront public access area with the following elements: (i) the Shore Public Walkway (hereinafter defined), (ii) the Supplemental Public Access Areas (hereinafter defined), and (iii) the Upland Connections (hereinafter defined) (the Shore Public Walkway, Supplemental Public Access Areas, and Upland Connections shall be collectively referred to herein as the "**Waterfront Public Access Area**" or "**WPAA**"), (b) by constructing the following public access areas: (i) Domino Square (hereinafter defined), and (ii) Refinery Public Access Area

(hereinafter defined), (the Domino Square and Refinery Public Access Area shall be collectively referred to herein as the **Public Access Area** or "**PAA**"), and (iii) the Private Drives and Sidewalks (hereinafter defined), the WPAA, PAA and Private Drives and Sidewalks collectively shown on the Waterfront Public Access Area Plans;

WHEREAS, the conditions of this Declaration include, inter alia, (a) a requirement that Declarant shall be responsible for the maintenance and capital repair of the Private Drives and Sidewalks, WPAA and PAA and (b) provisions that guarantee public access to the Private Drives and Sidewalks, WPAA and PAA;

WHEREAS, from and after execution and recordation of this Declaration, Declarant may convey portions of the Subject Property to one or more Persons;

WHEREAS, the Waterfront Parcel is located within a waterfront block, as such term is defined in Section 62-11 of the Zoning Resolution (hereinafter defined), and is subject to the regulations of Article VI, Chapter 2 of the Zoning Resolution;

WHEREAS, the Upland Parcel is to be redeveloped as part of the Large Scale General Development which includes the Waterfront Parcel, and is subject to certain regulations of Article VI, Chapter 2 of the Zoning Resolution;

WHEREAS, pursuant to Section 62-811 of the Zoning Resolution, no excavation or building permit may be issued for development of the Waterfront Parcel until the Chair (hereinafter defined) has certified to DOB (hereinafter defined) that a site plan has been submitted showing compliance with the requirements of Article VI, Chapter 2 of the Zoning Resolution and that an acceptable restrictive declaration has been executed and filed pursuant to Section 62-74;

WHEREAS, in connection with the Proposed Development and construction of the Waterfront Public Access Areas, Public Access Areas and Private Drives and Sidewalks, Declarant has filed applications with the Department of City Planning ("**DCP**") for approval by the Commission (hereinafter defined) and the Chair of the City Planning Commission, as applicable, for: (a) special permits pursuant to Sections 74-743(a) (C 140132 ZSK), 74-744(b) (C 140133 ZSK), 74-745(a) (C 140134 ZSK) and 74-745(b) (C 140135 ZSK) of the Zoning Resolution (the aforesaid special permits, collectively, the **Large-Scale Special Permits**), (b) certifications of the Chair pursuant to Sections 62-811 (N 140140 ZCK and N 140141 ZCK) and 62-812 (N 140139 ZCK) of the Zoning Resolution (the aforesaid certifications, collectively, the **Certifications**), (c) authorizations of the Commission pursuant to Sections 62-822(a) (N 140136 ZAK), 62-822(b) (N 140137 ZAK) and 62-822(c) (N 140138 ZAK) of the Zoning Resolution to modify requirements of the waterfront public access areas and visual corridors and for phased development of the waterfront public access area (the aforesaid authorizations, collectively, the **Authorizations**), and (d) certain amendments to the text of Sections 62-352 and 74-745(b) of the Zoning Resolution (N 140131 ZRK) (the aforesaid amendments, the **Zoning Text Amendments**) (all of the foregoing, as the same may be amended, supplemented or otherwise modified, collectively, the **Applications**);

WHEREAS, this Declaration is entered into: (a) pursuant to Section 74-743(b)(10) of the Zoning Resolution, which requires that a declaration, with regard to the ownership requirements, as set forth in paragraph (b) of the definition of "large-scale general development" in Section 12-10 of the Zoning Resolution, be filed with the Commission and sets forth commitments in relation to the Large Scale General Development Special Permits including, inter alia, to (i) develop the Proposed Development on the Subject Property in Development Phases in accordance with the Development Sequence, (ii) construct the Public Access Area and Private Drives and Sidewalks in accordance with the Large-Scale General Development Special Permit and the terms of this Declaration, (iii) to grant to the City and the general public permanent access easements over the Public Access Area and Private Drives and Sidewalks upon Substantial Completion (hereinafter defined) thereof and (iv) to assume responsibility to maintain, operate and repair the Public Access Area and Private Drives and Sidewalks, upon substantial completion thereof ; and (b) pursuant to Section 62-74 of the Zoning Resolution to set forth the commitments of Declarant to (i) construct the Waterfront Public Access Area in accordance with the requirements of the Zoning Resolution, the Authorizations and the terms of this Declaration, (ii) grant to the City and the general public permanent access easements over the Waterfront Public Access Area upon substantial completion thereof and (iii) assume responsibility to maintain, operate and repair the Waterfront Public Access Area, upon substantial completion thereof;

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

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

WHEREAS, pursuant to the certificates annexed hereto as **Exhibit D**; Royal Abstract of New York LLC has certified that, as of _____ __, 2014, Declarant, Manufacturers and Traders Trust Company, as Administrative and Collateral Agent are the sole Parties-in-Interest (hereinafter defined) in the Subject Property;

WHEREAS, all Parties-in-Interest have either executed this Declaration or waived their respective rights to execute this Declaration by written instruments annexed hereto as **Exhibit E,** which instruments are intended to be recorded in the Office of the City Register, Kings County, New York, simultaneously with the recordation of this Declaration; and

WHEREAS, Declarant represents and warrants that, except with respect to mortgages or other instruments specified herein, the holders of which have given their consent or waived their respective rights to object hereto, no (i) restrictions of record on the development or use of the Subject Property, (ii) presently existing estate or interest in the Subject Property or (iii) Title Exceptions (hereinafter defined) of any kind, preclude, 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 with this Declaration; and

NOW, THEREFORE, Declarant hereby declares that the Subject Property shall be held, sold, conveyed, developed, used, occupied, operated and maintained subject to the following restrictions, covenants, obligations and agreements, which shall run with the Subject Property and bind Declarant and its heirs, successors and assigns.

ARTICLE I

CERTAIN DEFINITIONS

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

2010 Declaration shall mean that certain declaration, dated July 27, 2010 and recorded in the Office of the New York City Register, Kings County on November 22, 1010, CRFN: 2010000396103 against the subject Property in connection with Land Use Numbers. C 100185 ZMK, N 100186 ZRK, C 100187 ZSK, C 100188 ZSK, C 100189 ZSK, N 100190 ZAK, N 100191 ZCK, and N 100192 ZCK (the "**2010 Declaration**"); and

Accredited MGS Professional shall have the meaning set forth in Section 3.03(b)(iii)(B) of this Declaration.

"**ACS**" shall have the meaning set forth in Section 3.04(b)(i) of this Declaration.

Additional Base Floor Area shall for the purposes of this Declaration be a quantity of floor area that equals 75.08 percent of the difference between 242,857 square feet and the amount of Floor Area transferred from Zoning Lot 1 to Zoning Lot 3 pursuant to Section 2.01(f)(i)(B) of this Declaration.

Adjusted Child Care Slots shall have the meaning set forth in Section 3.04(b)(i) of this Declaration.

Affordable Housing shall have the meaning set forth in Section 23-911 of the Zoning Resolution.

Affordable Floor Area shall have the meaning set forth in Section 23-911 of the Zoning Resolution.

Affordable Housing Documentation shall for purposes of this Declaration mean a letter from HPD addressed to the Department of Buildings indicating an amount of Affordable Floor Area provided in connection with a Development Phase.

Affordable Housing Threshold shall mean (i) for any New Building on Zoning Lot 3, an amount equal to (a) 7.5% of the Floor Area generated from such Zoning Lot exclusive of ground floor non-residential Floor Area; and (b) 20% of any Floor Area generated from Zoning Lot 1 that is transferred to Zoning Lot 3; and (ii) for any New Building on Zoning Lot 1, an amount equal to 20% of the Floor Area of such New Building, exclusive of ground floor non-residential Floor Area and, where applicable, the Floor Area of the Public School Facility, as defined in this Declaration.

Affordable Housing Unit shall have the meaning set forth in Section 23-911 of the Zoning Resolution.

Alternative FEIS Obligation shall have the meaning set forth in Section 3.07(a) of this Declaration.

Alternative Noise Reduction Plan shall have the meaning set forth in Section 3.01 (c)(ii) of this Declaration.

Applications shall have the meaning set forth in the Recitals to this Declaration.

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

As-of-Right Development shall have the meaning set forth in Section II of this Declaration.

Assessment Property shall have the meaning set forth in Section 15.07 of this Declaration.

Association shall have the meaning set forth in Section 13.09 of this Declaration.

Association Members shall have the meaning set forth on Section 15.04 of this Declaration.

Association Obligation Date shall mean the date on which Declarant establishes an Association in accordance with the terms of this Declaration.

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

Authorizations shall have the meaning set forth in the Recitals to this Declaration.

Brooklyn Datum means the datum level used by the Topographical Bureau, Borough of Brooklyn, which is 2.56 feet above the United States Coast and Geodetic Survey Datum, mean sea level, Sandy Hook, New Jersey.

Building A shall mean that New Building to be constructed on Zoning Lot 1 on the Waterfront Parcel in the area delineated as "Building A" on the Development Plans.

Building B shall mean that New Building to be constructed on Zoning Lot 1 on the Waterfront Parcel in the area delineated as "Building B" on the Development Plans.

Building D shall mean that New Building to be constructed on Zoning Lot 1 on the Waterfront Parcel in the area delineated as "Building D" on the Development Plans.

Building E shall mean that New Building to be constructed on Zoning Lot 3 on the Upland Parcel in the area delineated as "Building E" on the Development Plans.

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

Business Day means any day other than a Saturday, Sunday or other day on which banks in the State of New York are authorized or required by Legal Requirements to be closed.

Certifications shall have the meaning set forth in the Recitals to this Declaration.

"**CEQR**" shall have the meaning set forth in the Recitals to this Declaration.

"**Chair**" shall mean the Chair of the Commission from time to time or any successor to the jurisdiction thereof.

City shall have the meaning set forth in the Recitals to this Declaration.

City Council shall mean the City Council of the City of New York or any successor to the jurisdiction thereof.

City Noise Control Code shall have the meaning set forth in Section 3.01(c)(i)(A) of this Declaration.

"**Claim**" or "**Claims**" shall have the meaning given in Section 3.04(c) of this Declaration.

CMM Default Notice shall have the meaning set forth in Section 3.08(f) of this Declaration.

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

Completion Letter of Credit shall have the meaning set forth in Section 6.03of this Declaration.

Construction Commencement or Commencement of Construction shall mean the issuance of the first Building Permit by DOB for the commencement of work on a Development Phase, except with respect to the demolition activities not subject to the provisions of Section 3.09 hereof. Construction Commencement shall occur at the issuance of the first Building Permit issued by DOB to Declarant for each of: Development Phase 1, Development Phase 2, Development Phase 3, Development Phase 4, and Development Phase 5.

Construction Drawings shall mean construction drawings prepared in accordance with the standards of the American Institute of Architects, or such equivalent professional membership association for architects.

Construction Monitoring Measures or "**CMMs**" shall have the meaning set forth in Section 3.08(a) of this Declaration.

Construction Pest Management Plan shall have the meaning set forth in Section 3.01(f)(i) of this Declaration.

Construction Protection Plan shall have the meaning set forth in Section 3.01(h)(i) of this Declaration.

"**CPP**" shall mean Construction Protection Plan.

"**DCP**" shall mean the New York City Department of City Planning or any successor to the jurisdiction thereof.

Declarant shall have the meaning given in the Preamble to this Declaration, and shall include heirs, successors and assigns of the named Declarant.

Declaration shall have the meaning given in the Preamble to this Declaration.

Delay Notice shall have the meaning set forth in Section 9.01 of this Declaration.

Denial Determination shall have the meaning set forth in Section 3.03(b)(v)(C)(1) of this Declaration.

"**DEP**" shall mean the New York City Department of Environmental Protection, or any successor to its jurisdiction.

Development shall mean the construction or redevelopment, as applicable, of the Proposed Development pursuant to the Development Plans.

Development Plans shall mean the following plans and drawings, prepared by SHoP Architects, P.C., each of which is annexed hereto as **Exhibit B**:

Number	Title	Date
Z00-0	Title Sheet	10.31.2013
Z00-2A	Zoning Lot Calculations	10.31.2013
Z00-2B	Zoning Waivers	10.31.2013
Z00-2C	Zoning Actions and Design Guidelines	03.05.2014
Z00-3	Upland/Seaward Lot Calculations	10.31.2013
Z01-1	Site Plan	10.31.2013
Z03-1	Adjusted Base Plane Calculations	10.31.2013
Z03-2	Shoreline Facing Walls	10.31.2013
Z05-B	Zoning Lot 1 Building A - Site Plan	10.31 .2013
Z05-C1	Zoning Lot 1 Building A - Height and Setback Diagrams	10.31.2013
Z05-C2	Zoning Lot 1 Building A - Height and Setback Diagrams	10.31.2013
Z05-C3	Zoning Lot 1 Building A - Height and Setback Diagrams	10.31.2013
Z06-B	Zoning Lot 1 Building B - Site Plan	03.05.2014
Z06-C1	Zoning Lot 1 Building B - Height and Setback Diagrams	03.05.2014
Z06-C2	Zoning Lot 1 Building B - Height and Setback Diagrams	03.05.2014
Z06-C3	Zoning Lot 1 Building B - Height and Setback Diagrams	03.05.2014

Number	Title	Date
Z06-C4	Zoning Lot 1 Building B - Height and Setback Diagrams	03.05.2014
Z06-C5	Zoning Lot 1 Building B - Height and Setback Diagrams	03.05.2014
Z06-C6	Zoning Lot 1 Building B - Height and Setback Diagrams	03.05.2014
Z07-B	Zoning Lot 2 Refinery Building - Site Plan	10.31 .2013
Z07-C1	Zoning Lot 2 Refinery Building - Height and Setback Diagrams	10.31 .2013
Z07-C2	Zoning Lot 2 Refinery Building - Height and Setback Diagrams	10.31 .2013
Z09-B	Zoning Lot 1 Building D - Site Plan	10.31 .2013
Z09-C1	Zoning Lot 1 Building D - Height and Setback Diagrams	10.31 .2013
Z09-C2	Zoning Lot 1 Building D - Height and Setback Diagrams	10.31 .2013
Z09-C3	Zoning Lot 1 Building D - Height and Setback Diagrams	10.31 .2013
Z10-B	Zoning Lot 3 Building E - Site Plan	03.05.2014
Z10-C1	Zoning Lot 3 Building E - Height and Setback Diagrams	03.05.2014
Z10-C2	Zoning Lot 3 Building E - Height and Setback Diagrams	03.05.2014
Z11-1	Location of Uses	10.31.2013

Number	Title	Date

Development Phases shall mean Development Phase 1, Development Phase 2, Development Phase 3, Development Phase 4, and Development Phase 5.

Development Phase 1 shall mean the development of Building E on Zoning Lot 3 in accordance with the Development Plans.

Development Phase 2 shall mean the development of Building A on Zoning Lot 1 and the Waterfront Zoning Lot Phasing: Phase 1 in accordance with the Development Plans, Waterfront Public Access Area Plans and Waterfront Zoning Lot Phasing Plans.

Development Phase 3 shall mean the development of Building B on Zoning Lot 1 and the Waterfront Zoning Lot Phasing: Phase 2 in accordance with the Development Plans, Waterfront Public Access Area Plans and Waterfront Zoning Lot Phasing Plans.

Development Phase 4 shall mean the development of the Refinery Building on Zoning Lot 2 and the Waterfront Zoning Lot Phasing: Phase 3 in accordance with the Development Plans, Waterfront Public Access Area Plans and Waterfront Zoning Lot Phasing Plans.

Development Phase 5 shall mean the development of Building D on Zoning Lot 1 and the Waterfront Zoning Lot Phasing: Phase 4 in accordance with the Development Plans, Waterfront Public Access Area Plans and Waterfront Zoning Lot Phasing Plans.

Development Sequence shall mean the sequenced development of Development Phase 1, Development Phase 2, Development Phase 3, Development Phase 4, and Development Phase 5 in accordance with the Development Plans, Waterfront Public Access Area Plans and Waterfront Zoning Lot Phasing Plans, as applicable.

Dewatering Plan shall have the meaning set forth in Section 3.01(e)(i) of this Declaration.

"**DOB**" shall mean the Department of Buildings of the City of New York, or any successor to its jurisdiction.

Domino Square shall mean that approximately 29,800 square foot portion of the Public Access Area located on Zoning Lot 1, described as "Domino Square" and delineated as "PAA1" on the Waterfront Public Access Area Plans, required in connection with Development Phase 5 and Waterfront Zoning Lot Phasing: Phase 4.

"**DOT**" shall mean the New York City Department of Transportation, or any successor to its jurisdiction.

"**DPR**" shall mean the New York City Department of Parks and Recreation or any successor to its jurisdiction.

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

Effective Date shall mean the date on which Declarant receives Final Approval of the Applications.

Elimination of FEIS Obligation shall have the meaning set forth in Section 3.07(b) of this Declaration.

"**Entity**" means any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative, or association.

"**EPA**" shall have the meaning set forth in Section 3.01(a)(i)(A) of this Declaration.

Federal/State Public Access Area Approvals shall have the meaning set forth in Section 5.07 of this Declaration.

"**FEIS**" shall mean the Final Environmental Impact Statement issued pursuant to CEQR Number 07DCP094K on May 28, 2010, together with the Technical Memoranda.

FEIS Obligation shall mean any Obligation that is set forth as a Mitigation Measure or Project Component Related to the Environment set forth in Article III of this Declaration.

Final Approval shall mean approval of the Applications by the Commission pursuant to New York City Charter Section 197-c, which shall be effective on the date that the City Council‟s period of review has expired, unless (a) pursuant to New York City Charter Section 197-d(b), the City Council reviews the decision of the Commission approving the Applications and takes final action pursuant to New York City Charter Section 197-d approving the Applications, in which event "Final Approval" shall mean such approval of the Applications by the City Council or (b) the City Council disapproves the decision of the Commission and the Office of the Mayor files a written disapproval of the City Council‟s action pursuant to New York City Charter Section 197-d(e), and the City Council does not override the Office of the Mayor‟s disapproval, in which event "Final Approval" shall mean the Office of the Mayor‟s written disapproval pursuant to such New York City Charter Section 197-d(e). Notwithstanding anything to the contrary contained in this Declaration, "Final Approval" shall not be deemed to have occurred for any purpose of this Declaration if the final action taken pursuant to New York City Charter Section 197-d is disapproval of the Applications.

Final Completion or **Finally Complete** shall mean the completion of all relevant items of work, including any so-called "punch-list" items that remain to be completed upon Substantial Completion.

Floor Area shall have the meaning given in the Zoning Resolution.

Floor Area Ratio or "**FAR**" shall have the meaning given in the Zoning Resolution.

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

Force Majeure Event shall mean an occurrence, or occurrences, beyond the reasonable control of Declarant which causes delay in the performance of Declarant‟s obligations hereunder, provided that Declarant has taken all reasonable steps reasonably necessary to control or to minimize such delay, and which occurrences shall include, but not be limited to: (i) a strike, lockout or labor dispute; (ii) the inability to obtain labor or materials or reasonable substitutes therefor; (iii) acts of God; (iv) restrictions, regulations, orders, controls or judgments of any Governmental Authority; (v) undue material delay in the issuance of approvals by any Governmental Authority, provided that such delay is not caused by any act or omission of Declarant; (vi) enemy or hostile government action, civil commotion, insurrection, terrorism, revolution or sabotage; (vii) fire or other casualty; (viii) a taking of the whole or any portion of the Subject Property by condemnation or eminent domain; (ix) unusual or reasonably unforeseeable inclement weather substantially delaying construction of any relevant portion of the Subject Property; (x) unforeseen underground or soil conditions, provided that Declarant did not and could not reasonably have anticipated the existence thereof as of the date hereof; (xi) the denial of access to adjoining real property, notwithstanding the existence of a right of access to such real property in favor of Declarant arising by contract, this Declaration; or Legal Requirements, (xii) failure or inability of a public utility to provide adequate power, heat or light or any other utility service; or (xiii) orders of any court of competent jurisdiction, including, without limitation, any litigation which results in an injunction or restraining order prohibiting or otherwise delaying the construction of any portion of the Subject Property. No event shall constitute a Force Majeure Event unless Declarant, the Association, or the holder of a Mortgage on the Subject Property in control of the Subject Property, as applicable, complies with the procedures set forth in Article 9.

Force Majeure Event Completion Letter of Credit shall have the meaning set forth in Section 9.01(a) of this Declaration.

Fugitive Dust Control Plan shall have the meaning set forth in Section 3.01(b)(i) of this Declaration.

Funding Obligation shall mean Declarant‟s obligation to furnish the funds sufficient to implement its Maintenance Obligation as set forth in the M&O Agreement between the Declarant and DPR.

GHG Water Credit Requirements shall have the meaning set forth in Section 3.03(b)(iii)(A) of this Declaration.

Governmental Authority shall mean any governmental authority (including any Federal, State, City or County governmental authority or quasi-governmental authority, or any political subdivision of any thereof, or any agency, department, commission, board or instrumentality of any thereof) having jurisdiction over the matter in question.

Historic Resources shall have the meaning set forth in Section 3.01 (h)(i) of this Declaration.

"**HVAC**" shall have the meaning set forth in Section 3.02(a)(i) of this Declaration.

Indemnified Party shall mean (i) Declarant; (ii) the shareholders, members, partners, affiliates and/or subsidiaries of Declarant; (iii) the respective principals, directors, officers & employees of the foregoing Persons identified in the foregoing clauses (i) and (ii); (iv) the respective successors and assigns of the Persons identified in the foregoing clauses (i), (ii) and (iii) (each such person, an "Indemnified Party").

Individual Assessment Interest shall have the meaning set forth in Section 13.03(a) of this Declaration.

Large-Scale General Development shall have the meaning set forth in the Recitals to this Declaration.

LEED Certification shall mean "Certified" or a higher level of certification (if chosen by Declarant) under the USGBC LEED rating system, and (i) for a building developed primarily for residential 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".

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

"**LPC**" shall mean the Landmarks Preservation Commission of the City of New York or any successor to its jurisdiction.

M&O Agreement shall mean the Maintenance and Operation Agreement, required by the provisions of Section 62-74 of the Zoning Resolution as a condition of development of a waterfront public access area, entered into by the Declarant with The City of New York acting through DPR dated even date with this Declaration and included in **Exhibit G**

Maintenance and Protection of Traffic Plan shall have the meaning set forth in Section 3.01(j)(i) of this Declaration.

Maintenance Obligation shall have the meaning set forth in Section 11.02 of this Declaration.

MGS Certification shall mean Minimum Green Standard Certification.

MGS Checklist shall have the meaning set forth in Section 3.03 (b)(iii)(A) of this Declaration.

MGS Construction Review shall have the meaning set forth in Section 3.03(b)(iii)(A) of this Declaration.

MGS Design Review shall have the meaning set forth in Section 3.03(b)(iv)(A) of this Declaration.

MGS Governing Body shall have the meaning set forth in Section 3.03(b)(ii) of this Declaration.

MGS Points shall have the meaning set forth in Section 3.03(b)(iii)(A) of this Declaration.

Minimum Green Standard Certification shall have the meaning set forth in Section 3.03(b)(i) of this Declaration.

Minimum Energy Savings shall have the meaning set forth in Section 3.03(a)(i) of this Declaration.

Mitigation Measures shall have the meaning set forth in Section 3.04 of this Declaration.

Modified Development shall have the meaning set forth in Section 14.03 of this Declaration.

Modified Waterfront Public Access Area Plans shall have the meaning set forth in Section 5.01 of this Declaration.

Modified Stack Plan shall have the meaning set forth in Section 2.01(d)(iii) of this Declaration.

Mortgage shall mean a mortgage given as security for a loan in respect of all or any portion of the Subject Property, other than a mortgage secured by any individual residential dwelling unit located within the Subject Property.

Mortgagee shall mean the holder of a Mortgage.

"**MPT**" shall mean Maintenance and Protection of Traffic Plan.

"**MTA**" shall mean the Metropolitan Transit Authority, New York City Transit, or any successor to its jurisdiction.

New Building shall mean any building constructed or redeveloped on the Subject Property pursuant to the Proposed Development.

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 any New Building.

New Cure Period shall have the meaning set forth in Section 3.08(f) of this Declaration.

New York City Charter shall mean the Charter of the City of New York, effective as of January 1, 1990, as the same may be amended from time to time.

Noise Reduction Plan shall have the meaning set forth in Section 3.01(c)(i)(B) of this Declaration.

Notice of Final Completion shall have the meaning set forth in Section 8.03 of this Declaration.

Notice of Substantial Completion shall have the meaning set forth in Section 7.02 of this Declaration.

NYPA Facility shall mean the New York Power Authority North 1st Street gas turbine power generating facility.

"**OER**" shall mean the New York City Office of Environmental Remediation, or any successor to its jurisdiction.

"**OPRHP**" shall have the meaning set forth in Section 3.01(h)(i) of this Declaration.

PAA Obligation shall mean the obligation of Declarant to construct the Public Access Area, or portions thereof, set forth in each Waterfront Zoning Lot Phase required in connection with a Development Phase, in accordance with this Declaration.

"**Parcels**" shall mean each of the development parcels within the Subject Property, as further described in the Recitals.

Party-in-Interest shall have the meaning set forth in subdivision (d) of the definition of the term "zoning lot" in Section 12-10 of the Zoning Resolution.

Prior Approvals shall have the meaning set forth in Section 14.06 of this Declaration.

"**PCO**" shall mean a Permanent Certificate of Occupancy issued by DOB.

"**PCRE**" shall have the meaning given in the Recitals of this Declaration.

Permitted Encumbrances shall mean those certain matters set forth on **Exhibit F** annexed hereto, and such other encumbrances as the City shall approve.

"**Person**" shall mean any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person as the context may require.

Possessory Interest shall have the meaning set forth in Section 15.07(d) of this Declaration.

Private Drives and Sidewalks shall mean, individually or collectively, the areas described as "Private Drives and Sidewalks" delineated as "PAA3" on the Waterfront Public Access Area Plans, portions of which are required in connection with Development Phases 2 through 5, pursuant to the Waterfront Zoning Lot Phasing: Phase 1 through 4.

Private Drives and Sidewalks Work shall mean the work necessary to construct the Private Drives and Sidewalks in accordance with this Declaration.

"Private Drives and Sidewalks Obligation shall mean the obligation of Declarant to construct the Private Drives and Sidewalks, or portions thereof, set forth in each Waterfront Zoning Lot Phase required in connection with a Development Phase, in accordance with the terms of this Declaration.

Proposed Cure Period shall have the meaning set forth in Section 3.08(f) of this Declaration.

Proposed Development shall have the meaning set forth in the Recitals to this Declaration.

Public Access Area or PAA shall have the meaning set forth in the Recitals to this Declaration and shall mean, individually and collectively, the areas labeled "Public Access Area", "PAA", "PAA1 ", "PAA2", on the Waterfront Public Access Area Plans, not including the areas labeled "PAA 3", i.e., the "Private Drives and Sidewalks."

Public Access Area Work shall mean the work necessary to construct the Public Access Area or PAA in accordance with this Declaration.

Public Access Easement shall have the meaning set forth in Section 10.01(a) of this Declaration.

Public School Facility shall mean a public school facility to be operated by the New York City Department of Education that can accommodate a minimum capacity of 375 seats, serving a grade configuration to be determined solely by the New York City Department of Education, consisting of approximately 70,000 gross square feet, which public school facility may be increased to accommodate up to 580 seats, consisting of approximately 90,000 gross square feet, where at the time of the Design Notice Declarant submits an updated CEQR analysis, accepted by DCP as lead agency, of the potential school seat impacts created by the Proposed Development, utilizing a methodology consistent with that set forth in the FEIS, and such updated CEQR analysis demonstrates the need for more than 375 seats.

Public School Site shall mean the location approved by SCA proposed to be developed with the Public School Facility as set forth in Section 3.04(a)(i).

Public School Obligations shall have the meaning set forth in Section 3.04(a)(i) of this Declaration.

Punch List shall have the meaning set forth in Section 7.02 of this Declaration.

Refinery Interim Report shall mean a report (i) describing the conditions of the Refinery Building, (ii) describing any necessary Refinery Interim Work and (iii) certifying that the condition of the Refinery Building currently complies, or that it will comply upon completion of the Refinery Interim Work, with all Legal Requirements applicable to landmarked buildings.

Refinery Interim Work shall mean any work identified in a Refinery Interim Report that is necessary to bring the Refinery Building into compliance with all Legal Requirements applicable to landmarked buildings, including Local Law 11, façade maintenance and structural stability work.

Register's Office shall mean the Register"s Office of the City of New York, King"s County.

Refinery Building shall mean those certain buildings shown on the Development Plans as the "Refinery Building" on Zoning Lot 2.

Refinery Public Access Area shall mean that portion of the Public Access Area located on Zoning Lot 2, delineated as "PAA2" on the Waterfront Public Access Area Plans, required in connection with Development Phase 4 and Waterfront Zoning Lot Phasing: Phase 3.

Refinery Site shall mean the area delineated as Zoning Lot 2 on the Development Plans.

Reporter shall have the meaning set forth in Section 3.08(a) of this Declaration.

Reporter Agreement shall have the meaning set forth in Section 3.08(b) of this Declaration.

Restrooms shall mean that certain "Publically Accessible Restrooms" to be constructed in the Refinery Building, as described in the Development Plans on drawing Z02-1.

Rules and Regulations shall have the meaning set forth in Section 11.05 of this Declaration

"**SCA**" shall have the meaning set forth in Section 3.04(a)(i) of this Declaration.

SCA Agreement shall have the meaning set forth in Section 3.04(a)(i) of this Declaration.

SCA Letter of Intent shall have the meaning set forth in Section 3.04(a)(i) of this Declaration.

Shore Public Walkway shall mean the areas labeled "Shore Public Walkway" or "SPW" on the Waterfront Public Access Area Plans.

Shuttle Service shall have the meaning set forth in Section 3.02(c) of this Declaration.

Soil Erosion and Sediment Control Plan shall have the meaning set forth in Section 3.01(d)(i) of this Declaration.

Special Permits shall have the meaning set forth in the Recitals to this Declaration.

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

Stormwater Pollution Prevention Plan or "**SWPPP**" shall have the meaning set forth in Section 3.03(c)(i) of this Declaration.

Subject Property shall have the meaning set forth in the Recitals to this Declaration.

Substantial Completion or **Substantially Complete**, with respect to the PAA and/or Private Drives and Sidewalks included in any Waterfront Zoning Lot Phase shall mean such PAA and/or Private Drives and Sidewalks have been constructed substantially in accordance with the Waterfront Public Access Area Plans and has been completed to such an extent that all portions of the improvement may be operated and made available for public use. An improvement may be deemed Substantially Complete notwithstanding that (a) minor or insubstantial items of construction, decoration or mechanical adjustment remain to be performed or (b) Declarant has not completed any relevant planting or vegetation or tasks that must occur seasonally.

Superintendent Unit means a residential unit which is reserved for the use of a building superintendent.

Supplemental Public Access Areas shall mean the areas labeled "Supplemental Public Access Area" or "SPAA" in the Waterfront Public Access Area Plans.

"**SWPPP**" shall mean Stormwater Pollution Prevention Plan.

"**TCO**" shall mean a Temporary Certificate of Occupancy issued by DOB.

Technical Memoranda shall mean Technical Memoranda TM 001 dated June 4, 2010; TM 002 dated July 10, 2010 and TM 003 dated October 13, 2013 and any Technical Memorandum related to the FEIS that may subsequently be accepted in accordance with the provisions of this Declaration in connection with the Final Environmental Impact Statement for the Domino Sugar Rezoning, dated May 28, 2010, issued for City Environmental Quality Review Application No. 07DCP094K.

Title Exception shall mean any lien, declaration, easement, restrictive covenant or other instrument, charge, encumbrance or agreement affecting title to the Subject Property or any portion thereof.

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

Unit Owner(s) shall have the meaning set forth in Section 15.07(a) of this Declaration.

Upland Connection(s) shall mean, individually and collectively, the areas labeled "Upland Connection" or "UC" on the Waterfront Public Access Area Plans.

"**USGBC**" shall have the meaning set forth in Section 3.03(b)(ii) of this Declaration.

Waterfront Public Access Area or **WPAA**" shall have the meaning set forth in the Recitals to this Declaration.

Waterfront Public Access Area Design Schedule shall have the meaning given in Section 5.08(e) hereof.

Waterfront Public Access Area Design Submission(s) shall have the meaning set forth in Section 5.01 of this Declaration.

Waterfront Public Access Area Plans shall mean, individually or collectively, the drawings approved by the Commission and Chair pursuant to the Approvals, which set forth the design and Phasing Sequence of the Waterfront Public Access Area and Public Access Area, prepared by James Corner Field Operations, reduced-size copies of which are attached as **Exhibit C**, and made a part hereof, as more particularly set forth in Section 4.01(b).

Waterfront Public Access Area Work shall mean the work necessary to construct the Waterfront Public Access Areas or WPAA in accordance with this Declaration.

Waterfront Zoning Lot Phases shall mean, individually or collectively, Waterfront Zoning Lot Phasing: Phase 1, Waterfront Zoning Lot Phasing: Phase 2, Waterfront Zoning Lot Phasing: Phase 3, and Waterfront Zoning Lot Phasing: Phase 4, as delineated on the **Waterfront Public Access Area Plans**, as set forth in Section 4.01(b) of this Declaration.

Waterfront Zoning Lot Phasing: Phase 1 shall mean the Waterfront Public Access Area, Public Access Area and Private Drives and Sidewalks delineated on the Waterfront Zoning Lot Phasing: Phase 1 Plan.

Waterfront Zoning Lot Phasing: Phase 1 Plan shall mean drawing L-601 .00 of the Waterfront Public Access Area Plans.

Waterfront Zoning Lot Phasing: Phase 2 shall mean the Waterfront Public Access Area, Public Access Area and Private Drives and Sidewalks delineated on the Waterfront Zoning Lot Phasing: Phase 2 Plan.

Waterfront Zoning Lot Phasing: Phase 2 Plan shall mean drawing L-602.00 of the Waterfront Public Access Area Plans.

Waterfront Zoning Lot Phasing: Phase 3 shall mean the Waterfront Public Access Area, Public Access Area and Private Drives and Sidewalks delineated on the Waterfront Zoning Lot Phasing: Phase 3 Plan.

Waterfront Zoning Lot Phasing: Phase 3 Plan shall mean drawing L-603.00 of the Waterfront Public Access Area Plans.

Waterfront Zoning Lot Phasing: Phase 4 shall mean the Waterfront Public Access Area, Public Access Area and Private Drives and Sidewalks delineated on the Waterfront Zoning Lot Phasing: Phase 4 Plan.

Waterfront Zoning Lot Phasing: Phase 4 Plan shall mean drawing L-604.00 of the Waterfront Public Access Area Plans.

Waterfront Zoning Lot Phasing Plans shall mean, individually or collectively, Waterfront Zoning Lot Phasing: Phase 1 Plan, Waterfront Zoning Lot Phasing: Phase 2 Plan, Waterfront Zoning Lot Phasing: Phase 3 Plan, and Waterfront Zoning Lot Phasing: Phase 4 Plan.

WPAA Obligation shall mean the obligation of Declarant to construct the Waterfront Public Access Area, or portions thereof, set forth in each Waterfront Zoning Lot Phase required in connection with a Development Phase, in accordance with the terms of this Declaration.

ZL1 Building(s) shall mean any building constructed or redeveloped on Zoning Lot 1 pursuant to the Proposed Development, including Building A, Building B and Building D.

ZL2 Building shall mean any building constructed or redeveloped on Zoning Lot 2 pursuant to the Proposed Development, including the Refinery Building.

ZL3 Building shall mean any building constructed or redeveloped on Zoning Lot 3 pursuant to the Proposed Development, including Building E.

Zoning Lot shall have the meaning given in the Zoning Resolution.

Zoning Lot 1 shall have the meaning set forth in the Recitals to this Declaration.

Zoning Lot 2 shall have the meaning set forth in the Recitals to this Declaration.

Zoning Lot 3 shall have the meaning set forth in the Recitals to this Declaration.

Zoning Resolution shall mean the Zoning Resolution of the City of New York, effective December 15, 1961, as amended from time to time.

Zoning Text Amendments shall have the meaning set forth in the Recitals to this Declaration.

ARTICLE II

DEVELOPMENT AND USE OF THE SUBJECT PROPERTY

2.01 **Development of the Subject Property**

(a) Designation of Large-Scale General Development. Declarant hereby declares and agrees that, following the Effective Date, the Subject Property shall be treated as a "large-scale general development," as such term is defined in the Zoning Resolution in effect on the Effective Date, and shall be developed and enlarged as a unit. Declarant agrees that, except in the event that any Development Phase in the Large-Scale General Development satisfies the Affordable Housing Threshold in accordance with Section 2.01(f), the total FAR and Floor Area of the Development permitted in accordance with the Development Plans and the lot area of all of the Zoning Lots shall not exceed (i) 2.43 FAR and 139,958 square feet of Floor Area on Zoning Lot 3, (ii) 4.88 FAR and 1,762,323 square feet of Floor Area on Zoning Lot 1, and (iii) 6.5 FAR and 442,686 square feet of Floor Area on Zoning Lot 2.

(b) Bulk Transfer. Transfer of Floor Area from Zoning Lot 1 to Zoning Lot 3, authorized pursuant to the Large Scale Special Permit (C 140132 ZSK), is only permitted in accordance with the provisions of Section 2.01(f).

(c) Development Plans. If Declarant develops the Subject Property in whole or in part in accordance with the Approvals, Declarant covenants and agrees that any development of the Subject Property shall occur only if it is in substantial conformity with the Development Plans and in compliance with this Declaration, subject to the modification provisions of Article XIV hereof.

(d) As-of-Right Alternative. In the event that Declarant elects to develop the Subject Property other than in accordance with the Approvals, such development shall be (x) only as would be permitted pursuant to the zoning district regulations applicable to the Subject Property on the Effective Date of this Declaration (*i.e.: R8/C2-4, R6/C-24 and C6-2*), and shall be subject to the following further restrictions: (i) such development shall comply in all respects with and only to the extent permitted under the M3-1 zoning regulations applicable to the Subject Property immediately prior to the rezoning pursuant to C 100185 ZMK (the "**Prior Zoning Development**", or (ii) to the extent such development is not permitted under (i) above, such development has been reviewed and approved by the Commission and drawings with respect thereto, in a form acceptable to DCP, have been incorporated in this Declaration pursuant to the procedures for modification of this Declaration, as set forth in Section 14.03 (the "**As-of-Right Development**", or (y) only as would be permitted pursuant to the terms of the 2010 Declaration, provided that the Prior Approvals (hereinafter defined) have not been surrendered in accordance with Section 14.06 of this Declaration. Development pursuant to this Section 2.01(d)(i) shall not be subject to the provisions of Article III hereof.

(e) Phasing.

(i) In connection with Declarant"s request for an Authorization for phased development of the waterfront public access areas, pursuant to ZR Sections 62-822(c), and in connection with the grant of a Large Scale Special Permit for a phased construction

program of a multi-building complex, Declarant hereby covenants and agrees, subject to the provisions of this Declaration, that: (aa) Declarant shall develop the Proposed Development on the Subject Property in Development Phases in accordance with the Development Sequence, i.e., commencing with Development Phase 1, then commencing with Development Phase 2, then commencing with Development Phase 3, then commencing with Development Phase 4 and then commencing with Development Phase 5; and (bb) that Declarant may not apply for or accept a TCO or PCO for any portion of a New Building in a Development Phase until a TCO has been issued for any portion of a New Building in the preceding Development Phase. Notwithstanding the foregoing, in the event that Declarant Substantially Completes all the Waterfront Zoning Lot Phases in accordance with this Declaration, the Development Sequence may be altered with respect to Development Phases 2 through 5, provided however that Declarant has demonstrated to the satisfaction of the Chair pursuant to the procedures set forth in Section 14 that no new unmitigated environmental impacts would result from such alteration in the Development Sequence.

(f) **Inclusionary Housing**

(i) **Development With Affordable Housing.**

(A) Development Without Floor Area Transfer. In the event that there is no transfer of Floor Area pursuant to subsection (B) below, the FAR and Floor Area for the Proposed Development of the Subject Property shall not exceed (i) 2.75 FAR and 158,389 square feet of Floor Area on Zoning Lot 3, and (ii) 6.5 FAR and 2,347,354 square feet of Floor Area on Zoning Lot 1. The Floor Area for a New Building in a Development Phase that does not provide Affordable Floor Area equal to or greater than the Affordable Housing Threshold for such New Building, as determined pursuant to subdivision f (vi) of this Section, shall not exceed the limitations set forth in Section 2.01 (f)(iii)(B)(1). The Floor Area for a New Building in a Development Phase that provides Affordable Floor Area equal to or greater than the Affordable Housing Threshold for such New Building shall not exceed the limitations set forth in Section 2.01(f)(iii)(B)(2).

(B) Development With Floor Area Transfer. A transfer of Floor Area from Zoning Lot 1 to Zoning Lot 3 is permitted in accordance with the Large Scale Special Permit (C 140132 ZSK) and the FAR and Floor Area for the Proposed Development of the Subject Property shall not exceed (i) 6.967 FAR and 401,246 square feet of Floor Area on Zoning Lot 3, such increase in density on Zoning Lot 3 permitted pursuant to such transfer of up to 242,857 square feet of Floor Area from Zoning Lot 1 pursuant to the Large Scale Special Permit (C 140132 ZSK), and (ii) 6.5 FAR and 2,347,352 square feet of Floor Area on Zoning Lot 1 less any amount of Floor Area transferred to Zoning Lot 3 ,provided further that 20 percent of such transferred Floor Areas shall be Affordable Floor Area that is located in Building E. If 242,857 square feet of Floor Area is transferred from Zoning Lot 1 to Zoning Lot 3, the Floor Area for a New Building in a Development Phase shall not exceed the limitations set forth in Section 2.01(f)(iii)(A). If less than 242,857 square feet of Floor Area is transferred from Zoning Lot 1 to Zoning Lot 3, the Floor Area for a New Building in a Development Phase that does not provide Affordable Floor Area equal to or greater than the Affordable Housing Threshold shall not exceed the limitations set forth in Section 2.01(f)(iii)(B)(1), and the Floor Area for a New

Building in a Development Phase that provides Affordable Floor Area equal to or greater than the Affordable Housing Threshold shall not exceed the limitations set forth in Section 2.01 (f)(iii)(B)(2).

(ii) Development Without Affordable Housing. Notwithstanding the maximum heights and Floor Area otherwise permitted pursuant to the Development Plans for each New Building, if prior to commencing construction of a New Building in a Development Phase, such New Building does not generate and/or provide Affordable Floor Area equal to or greater than the Affordable Housing Threshold, as determined pursuant to subdivision f (vi) of this Section, with respect to such New Building, the maximum Floor Area shall be subject to the limitations set forth in Sections 2.01(f)(iii)(A) or (B), as applicable, and the maximum height of such New Building for a Development Phase shall not exceed the maximum height set forth for such New Building in the Table B provided in Section 2.01(f)(iv).

(iii) Establishment of Base and Bonus Floor Areas.

(A) If the full 242,857 square feet of Floor Area is transferred to Zoning Lot 3 pursuant to Section 2.01(f)(i)(B), then the maximum base floor area for each New Building in a Development Phase without affordable housing shall be as set forth for such New Building in Column A of Table A below, and the maximum floor area for each New Building in a Development Phase that provides Affordable Floor Area equal to or greater than the Affordable Housing Threshold shall be as set forth for such New Building in Column B of Table A.

(B) If less than 242,857 square feet of Floor Area is transferred to Zoning Lot 3 pursuant to Section 2.01(f)(i)(B), or no floor area is transferred to Zoning Lot 3 pursuant to Section 2.01(f)(i)(A), then:

(1) The maximum base Floor Area for each New Building in a Development Phase shall be as set forth for such New Building in Column A of Table A. However, such Floor Area may be increased with an amount of Additional Base Floor Area, provided that the resulting increased Floor Area does not exceed the amount set forth for such New Building in Column C of Table A, and provided that the amount of Additional Base Floor Area available to subsequent Development Phases shall be reduced by the amount of Additional Base Floor Area added within such New Building.

(2) For a New Building in a Development Phase that provides Affordable Floor area equal to or greater than the Affordable Housing Threshold, the Floor Area of such New Building may be increased as set forth in Section 2.01(f)(iii)(B)(1), and may be further increased pursuant to the Inclusionary Housing Program as set forth in Sections 62-352 and 23-90 of the Zoning Resolution, to a maximum Floor Area equal to 1.3320 times the increased base Floor Area established pursuant to Section 2.01(f)(iii)(B)(1), but not exceeding the maximum floor area set forth for such New Building in Column D of Table A.

Table A

	If 242,857 sf of Floor Area is transferred to Zoning Lot 3		If less than 242,857 sf of Floor Area is transferred to Zoning Lot 3	
	Column A	**Column B**	**Column C**	**Column D**
Zoning Lot/Site	**Maximum Floor Area If Affordable Housing Threshold Is Not Met**	**Maximum Floor Area If Affordable Housing Threshold Is Met**	**Maximum Floor Area If Affordable Housing Threshold Is Not Met, Including Additional Base Floor Area***	**Maximum Floor Area If Affordable Housing Threshold Is Met, Including Additional Base Floor Area***
Zoning Lot 1/Building A	292,658	389,81 1	327,500	436,219
Zoning Lot 1/Building B	806,132	1 ,073,741	886,500	1 ,180,789
Zoning Lot 1/Building D (and Buildings C1 and C2)	481,202	640,945	548,319	730,343
Zoning Lot 3/Building E	n/a	401,246	***	**

* Figures shown are maximums, and depend on the amount of Floor Area transferred from Zoning Lot 1 to Zoning Lot 3.

** Floor area for Building E determined based on the amount of Floor Area transferred from Zoning Lot 1 to Zoning Lot 3, pursuant to Section 2.01 (f)(i)(B).

*** In the event that 0 sf of Floor Area is transferred to Zoning Lot 3, the Maximum Floor Area if Affordable Housing Threshold is Not Met is 139,958 square feet.

(iv) Table B

Zoning Lot/Site	Maximum Height Without Inclusionary*	Maximum Floor Area Without Inclusionary
Zoning Lot 1/Building A	355‟	327,500
Zoning Lot 1/Building B	410‟	886,500
Zoning Lot 1/Building D	445‟ and 345‟	548,319
Zoning Lot 3/Building E	90‟	139,958

* Maximum building heights indicated are measured from the Adjusted Base Plane as specified on ULURP Drawing Z03-1.

(v) Except as required pursuant to Section 2.01(f)(i)(B)(ii)) above, the Affordable Housing to be provided to the Proposed Development may be generated from any eligible generating site in accordance with Section 23-90 of the Zoning Resolution.

(vi) Prior to accepting a New Building Permit for a New Building in a Development Phase, Declarant shall (i) submit Affordable Housing Documentation for such New Building to the DOB and (ii) provide zoning calculations to DOB in conjunction with the New Building application that shall include calculations sufficient for DOB to determine whether the New Building meets the Affordable Housing Threshold such that the New Building may exceed limitations set forth in Sections 2.01f(i) and (ii). In the event any New Building generates Affordable Floor Area in excess of the Affordable Housing Threshold for such New Building, Declarant may utilize such excess Affordable Floor Area to satisfy the Affordable Housing Threshold requirements in a subsequent Development Phase. In the event that DOB determines that satisfaction of the Affordable Housing Threshold requires that additional Affordable Floor Area be included in such New Building, the DOB shall specify the amount of Affordable Floor Area so required and Declarant shall not accept from DOB such New Building Permit for such New Building unless and until such additional Affordable Floor Area is included in a regulatory agreement approved by the HPD and HPD has provided DOB with requisite Affordable Housing Documentation in connection therewith. For the first New Building for which the Declarant seeks a New Building Permit following a development of the Refinery Building that results in Zoning Lot 2 exceeding 4.88 FAR, the Affordable Housing Threshold for such New Building shall be increased by an amount equal to 20 percent of the Floor Area located above the ground floor of the Refinery Building less any Floor Area above the ground floor within the Public School Facility .

(vii) Declarant shall not apply for and shall not accept a TCO or PCO from DOB for any New Building in any Development Phase which includes Affordable Floor Area unless it has fulfilled its obligations relating to the acceptance of TCOs or PCOs as set forth in the regulatory agreement for that New Building or any HPD rules and regulations.

(viii) No Amendment to Plans or Declaration Required.

(A) If Declarant elects not to incorporate "Inclusionary Housing" in the Proposed Development pursuant to Sections 23-90 and 62-352 of the Zoning Resolution, no amendment to the Development Plans or this Declaration shall be required, provided that (1) the development of the Subject Property complies with all conditions to the Approvals and the requirements of this Declaration; (2) the building densities and heights do not exceed the maximums set forth in Section 2.01(f)(i) and (ii) of this Declaration; (3) all other design requirements are met, including, but not limited to, transparency requirements and street wall heights.

(B) If no Public School Facility is provided in the Proposed Development pursuant to Section 3.04 of this Declaration, then the Floor Area which would have been utilized by the Public School Facility may instead be used for any use permitted by the underlying zoning district, provided that Declarant has performed an environmental analysis approved by DCP demonstrating that such proposed use would not result in any new or different significant environmental impact not addressed in the FEIS.

(g) Maintenance and Operating Agreement. Declarant shall develop, maintain and administer the WPAA in accordance with the M & O Agreement.

(h) Representation. Declarant hereby represents and warrants that there is no restriction of record on the development, enlargement, or use of the Subject Property, nor any present or presently existing estate or interest in the Subject Property, nor any existing lien, obligation, covenant, easement, limitation or encumbrance of any kind that shall preclude the restriction to develop the Subject Property as a general large-scale development as set forth herein.

(i) LPC. Except in conjunction with Refinery Interim Work, Declarant shall not apply for a Building Permit for a New Building in Development Phase 4 until DCP shall have certified to Declarant that the plans for such New Building are consistent with the Approvals and the LPC-approved drawings for such enlargement.

ARTICLE III

FEIS OBLIGATIONS

Declarant shall implement the following FEIS Obligations as part of the Proposed Development, in accordance with the FEIS and as further set forth in this Article III for any development of the Subject Property, as such may be modified pursuant to Section 3.07 of this Declaration, unless such development is pursuant to the provisions of 2.01(d)(i) or is pursuant to Section 2.01 (d)(ii) in accordance with a Technical Memorandum reviewed and approved in accordance with Section 14.03 herein.

3.01 **Project Components Related to the Environment Relating to 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) Prior to Construction Commencement on Building E and subject to DCP review pursuant to Section 3.09 of this Declaration, Declarant shall (x) develop a plan for implementation of, and (y) thereafter implement, the following measures for all construction activities (including, but not limited to, demolition and excavation) during the development of the Subject Property:

(A) To minimize hourly emissions of NO_2 to the maximum extent practicable, non-road diesel-powered vehicles and construction equipment meeting or achieving the equivalent of the United States Environmental Protection Agency ("**EPA**") Tier 3 Non-road Diesel Engine Emission Standard would be used in construction, and construction equipment meeting the Tier 4 standard, will be used once Tier 4-compliant equipment is widely available for use in New York City and the use of such equipment is practicable.

(B) Gasoline-powered non-road engines used in construction activities shall meet the latest EPA emissions standards for existing or newly manufactured engines, as the case may be, in effect at the time they are first rented, purchased or otherwise put into use for construction at the Subject Property.

(C) All non-road, diesel-powered construction equipment with an engine power output rating of 50 horsepower or greater (except with respect to a diesel-powered non-road vehicle that is used to satisfy the requirements of a specific construction contract lasting fewer than twenty (20) calendar days) and controlled truck fleets shall utilize the best available tailpipe technology for reducing diesel particulate emissions. Construction contracts shall specify that all diesel non-road engines rated at 50 horsepower or greater and all controlled-fleet trucks shall utilize active or passive diesel particle filters (either original equipment manufacturer or retrofit technology) verified under the EPA verification programs to reduce diesel particulate matter emissions by at least 90 percent (when compared with the uncontrolled exhaust of an equivalent engine).

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

(E) Idling of all vehicles, including non-road engines, for periods longer than three minutes shall be prohibited on the Subject Property, except for vehicles being used to operate a loading, unloading or processing device (e.g., concrete mixing trucks).

(F) The use of diesel and gasoline engines, including generators, shall be minimized through the maximum practical use of (1) electric engines operating on grid power, and (2) lighting devices, illuminated traffic control signals and signs operating on grid power. Construction contracts shall require the use of electric engines where practicable. Declarant shall ensure the distribution of power connections throughout the Subject Property as needed. Equipment that shall use grid power rather than diesel engine power shall include, but not be limited to, cut-off saws, masonry bench saws, material hoists, table saws, welders, and water pumps.

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

(H) All ready-mix concrete delivery trucks and concrete pumping trucks must be either retrofitted with a diesel particle filter as specified in Section 3.01(a)(i)(C) above, or come equipped with an original equipment manufacturer ("**OEM**"), verified to reduce diesel particulate matter emissions by at least 90 percent (when compared with the uncontrolled exhaust or fan equivalent engine).

(ii) To facilitate the use of electrically powered equipment and minimize the use of diesel and gasoline engines, not fewer than sixty (60) days prior to the anticipated date of commencement of demolition or excavation on a Development Phase (whichever first occurs), Declarant shall apply to Con Edison to establish an electrical connection of such Site to grid power. A complete copy of such application shall be forwarded to DCP at the time the application is first sent to Con Edison. Upon connection to grid power, electrically powered equipment will be used to the extent practicable.

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

(b) **Fugitive Dust Control Plan**.

(i) Prior to Construction Commencement on Building E and subject to DCP review pursuant to Section 3.09 of this Declaration, Declarant shall (x) develop a plan for implementation of, and (y) thereafter implement, a plan for the prevention of the emission of dust from construction-related activities during development of the Subject Property (the **Fugitive Dust Control Plan**, which Fugitive Dust Control Plan shall contain the following measures:

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

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

(C) Concrete and rock grinding, drilling and saw cutting operations shall be wet blade or misted if significant dust is being generated. Such operations, if occurring in an enclosed space, shall utilize vacuum collection or extraction fans.

(D) All trucks hauling loose soil, rock, sediment, or similar material shall be equipped with tight fitting tailgates and covered prior to leaving construction areas.

(E) Stabilized areas shall be established for washing dust off of the wheels of all trucks that exit construction areas. All vehicle wheels will be cleaned as necessary prior to leaving the construction sites in order to control tracking.

(F) Truck routes and surfaces on which nonroad vehicles are operating within construction areas shall be watered as needed; or, in cases where such routes will remain in the same place for extended periods, the soil on such surfaces and roadways shall be stabilized with a biodegradable dust suppressant solution, covered with gravel, or temporarily paved to avoid the re-suspension of dust.

(G) In addition to regular cleaning by the City, roads adjacent to construction areas shall also be cleaned by Declarant on a regular basis, using appropriate legal methods, to minimize fugitive dust emissions.

(H) Materials and waste during demolition shall be brought to grade by hoists, cranes or chutes. If chutes are used, the bottom end of drop chutes shall be inserted into covered trucks or bins in a sealed manner so as to ensure that dust is not released from the truck or bin.

(I) A vehicular speed limit of 5 miles per hour shall be observed within construction areas.

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

(c) **Construction Noise Reduction Measures**.

(i) Prior to Construction Commencement on Building E and subject to DCP review pursuant to Section 3.09 of this Declaration, Declarant shall (x) develop a plan for implementation of, and (y) thereafter implement, the following measures for all construction activities (including demolition and excavation) related to the development of the Subject Property:

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

(B) Declarant shall develop and implement a plan for minimization of construction noise (the "**Noise Reduction Plan**"). The Noise Reduction Plan shall contain the following measures:

(1) Noise barriers shall be erected around the perimeter of areas where construction activities are taking place for the purpose of minimizing construction noise consistent with reasonable construction procedures. Prior to Construction Commencement of any New Building, a solid fence will be erected around the perimeter of the areas where construction activities are taking place, and shall be at least sixteen (16) feet high, which can be accomplished with an twelve (12) foot high noise barrier with an additional four (4) foot cant tilting inwards toward the Subject Property.

(2) The noise emission levels of all construction equipment shall not exceed the levels set forth in column C of Table 57 of the FEIS when using the appropriate path control measure. For construction equipment that no noise level has been provided in column C, the noise emission levels shall not exceed those found in column B of Table 57 of the FEIS, as determined by manufacturer"s specifications adjusted to a reference distance of 50 feet.

(3) Declarant shall maintain a website or implement another program to inform the affected public about the construction work schedule.

(4) To the extent practicable, the noise of backup alarms on construction equipment shall be minimized.

(5) For construction activities involving the use of pile drivers, hoe-rams, jackhammers, or blasting, additional noise reduction measures chosen by Declarant from a list of options to be set forth in the Noise Reduction Plan shall be implemented where feasible.

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

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

(d) **Construction Soil Erosion and Sediment Reduction Measures**.

(i) Prior to Construction Commencement on Building E and subject to DCP review pursuant to Section 3.09 of this Declaration, Declarant shall (x) develop a plan for implementation of, and (y) thereafter implement, a plan for soil erosion and sediment control for all construction activities (including demolition and excavation) related to the development of the Subject Property, in conformance with the requirements of the DEC Standards and Specifications for Erosion and Sediment Control (the **Soil Erosion and Sediment Control Plan**"), which Soil Erosion and Sediment Control Plan shall contain the following measures:

(A) The wheels or treads of vehicles and equipment that could track soil from areas under construction shall be washed before leaving such areas. To reduce the use of potable water for this purpose, to the extent practicable, the wheel wash shall be supplied by collecting precipitation or using water collected during dewatering operations.

(B) Rinse water from the wheel wash (described in this Section 3.01(d) shall be reabsorbed into the ground or pumped into tanks holding storm water or dewatering water. The wheel wash shall not be used for concrete trucks.

(C) Concrete trucks shall be rinsed into watertight dedicated bins. The captured washout water shall be left to evaporate, be treated, or be returned to the concrete manufacturer.

(D) Concrete from trucks, chutes, buckets and other equipment shall be removed and collected in dedicated waste bins prior to equipment rinsing. Concrete spillage on the Subject Property shall be collected in dedicated waste bins.

(E) Disturbed areas shall be stabilized for the duration of construction activity or until construction work resumes on the inactive disturbed areas. All disturbed areas of construction, including exposed ground and subgrade surfaces, storage piles of fill, dirt and other bulk materials, which are not being actively utilized for construction purposes for a period of seven (7) calendar days or more, shall be stabilized using: water as a dust suppressant; biodegradable dust stabilizer or suppressant; physical barriers or covers; or vegetative ground cover.

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

(e) **Construction Dewatering Plan.**

(i) Prior to Construction Commencement on Building E and subject to DCP review pursuant to Section 3.09 of this Declaration, Declarant shall (x) develop a plan for implementation of, and (y) thereafter implement, a plan setting forth procedures for handling site runoff and groundwater encountered during construction activities (including excavation) related to the development of the Subject Property (the **Dewatering Plan**, which Dewatering Plan shall:

(A) Provide a description of the methods used to collect, store and dispose of water collected during dewatering activities.

(B) Identify the necessary permits required from DEP and/or DEC to discharge dewatering water into the City's sewers or surface waters.

(C) (1) Require that dewatering water be pumped into sedimentation tanks for removal of sediments prior to reuse on the Subject Property or discharge into the City"s sewer system or surface waters, (2) require the water in such sedimentation tanks to be tested periodically for pH, turbidity and contaminants, and (3) if unacceptable levels of turbidity or contaminants are identified, as determined by applicable DEP or DEC regulations, require treatment prior to discharge off site.

(D) Suitable drainage means shall be provided for the removal of (1) surface runoff from the Subject Property, and (2) sludge which drains from construction activities on the Subject Property.

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

(f) **Construction Pest Management Plan**.

(i) Prior to Construction Commencement of Building E and subject to DCP review pursuant to Section 3.09 of this Declaration, Declarant shall (x) develop a plan for implementation of, and (y) thereafter implement, an integrated plan to control pests (including unwanted vermin, insects and weeds), in accordance with DOB requirements, throughout the development of the Subject Property (the **Construction Pest Management Plan**, which Construction Pest Management Plan shall contain the following requirements:

(A) Vegetation fostering vermin shall be kept trimmed.

(B) Construction trailers, dumpsters, and sheds shall be elevated off of the ground to discourage vermin from burrowing or hiding in them.

(C) Standing water shall be pumped out before the water becomes septic.

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

(g) **Historic Resource Protection Measures**.

(i) Prior to Construction Commencement of any New Building that is located within ninety (90) feet of the Refinery Building, the Williamsburg Bridge or 390 Wythe Avenue (f/k/a the Matchett Candy Factory) (collectively, the **Historic Resources**, and each a **Historic Resource**, or operating a vibratory pile driver within one hundred twenty (120) feet of any such Historic Resources, Declarant shall develop a plan, in coordination with the New York State Office of Parks, Recreation and Historic Preservation ("**OPRHP**") and the Landmarks Preservation Commission of the City of New York ("**LPC**"), to avoid any adverse physical, construction-related impacts to the Historic Resources, such as those from ground-borne vibrations, falling objects, dewatering, flooding, subsidence, collapse, or damage from construction machinery (the **Construction Protection Plan** or "**CPP**") and shall submit same to DCP.

(ii) DOB shall not issue, and Declarant shall not accept, a building permit allowing work within ninety (90) feet or operation of a vibratory pile driver within one

hundred twenty (120) feet of any Historic Resource until LPC shall have certified to the DOB Commissioner that both OPRHP and LPC have determined that the CPP is acceptable.

(iii) All construction activities (including demolition and excavation) within ninety (90) feet and any operation of a vibratory pile driver within one hundred twenty (120) feet of a Historic Resource shall be undertaken in accordance with the CPP.

(iv) Unless other guidelines are approved by LPC, 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. The CPP shall also follow the requirements established in DOB ‟ s Technical Policy and Procedure Notice #10/88, in effect as of the Effective Date, in addition to the guidelines set forth in Section 523 of the CEQR Technical Manual, in effect as of the Effective Date.

(v) The construction procedures included in the CPP to protect the foundations and structures of the Historic Resources shall be developed and monitored by structural and foundation engineers.

(vi) The CPP shall:

(A) Describe in detail the demolition, excavation and construction procedures anticipated to occur.

(B) Provide for the inspection and reporting of existing conditions.

(C) Establish protection procedures, including, without limitation, the types and locations of barriers that will be used to protect the Historic Resources during construction activities.

(D) With respect to the Refinery Building and 390 Wythe Avenue, establish a monitoring program to measure vertical and lateral movement and vibration.

(E) Establish methods and materials to be used for any repairs.

(F) Establish and monitor construction methods to limit vibrations. Specifically, the CPP shall establish vibration protection measures to be implemented should applicable construction activities involve the use of certain equipment within the following specified distances from the Historic Resources:

Clam Shovel Drop	15 feet
Auger Drill Rig	16 feet
Jackhammer	6 feet
Mounted Hoe Ram	70 feet
Vibratory Pile Driver	120 feet
Impact Pile Driver	73 feet

(G) Authorize the structural and foundation engineers to issue “stop work orders” to prevent damage to the Historic Resources and establish procedures for the

recommencement of work following same.

(h) **Construction Materials**. Declarant shall use reasonable efforts to use locally-purchased materials and recycled materials, including concrete made with slag or fly ash, to the extent practicable for construction on the Subject Property. For purposes of this Section 3.01(i), "locally" shall mean within 500 miles of the Subject Property. As an alternative to slag or fly ash, ultra low-carbon cement or cement replacements (such as cement made from recycled materials or using a salt water and carbon dioxide process) may be considered. Following Construction Commencement of Building E, Declarant shall provide DCP with an annual report, due January 31st of each year during which Declarant is performing construction on such New Building, listing the amounts of locally-purchased and recycled materials utilized in construction during the prior year and proposed measures to increase such amounts in future construction, if any. Notwithstanding the foregoing, submission of a MGS Checklist and the affirmation of an Accredited MGS Professional in accordance with Sections 3.03(b)(iii)(A) and (B), demonstrating that Declarant is seeking MGS Points for Regional Materials in an application for LEED Certification, or the applicable MGS Certification, shall be deemed compliance with the annual reporting requirements of this section with respect to such Development Phase.

(i) **Maintenance and Protection of Traffic Plan**.

(i) Prior to Construction Commencement of any New Building, Declarant shall prepare a plan which provides diagrams of proposed temporary lane and sidewalk alterations, the duration such alterations will be implemented, the width and length of affected segments, and sidewalk protection measures for pedestrians, which shall be necessary during construction of such New Building (the **Maintenance and Protection of Traffic Plan** or "**MPT**"). Declarant shall submit the MPT to DOT for review and approval, provided, however, that completion and submission of the MPT shall not be necessary for preliminary site work, unless DOT advises Declarant that a M PT is required.

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

(j) **Open Space**. Upon construction of the third floor of the superstructure of Building A, Declarant shall install netting on the northerly façade of the Building A superstructure to prevent construction materials from falling into Grand Ferry Park. Hoists, cranes and other such equipment shall not be located on the northern side of a Building A, which is adjacent to Grand Ferry Park.

3.02 **Project Components Related to the Environment Relating to Design and Operation of New Buildings**. Declarant shall implement and incorporate the following PCREs relating to design and operation of New Buildings:

(a) **Shuttle Bus**. Declarant shall implement peak hour shuttle bus service for occupants of any New Building, between (1) the Subject Property and the Broadway entrance of the Marcy Avenue subway station and (2) the Subject Property and the northern stair of the Driggs Avenue entrance of the Bedford Avenue subway station (the **Shuttle Service**, upon full occupancy of Building E. For such purpose, Declarant shall provide DCP with no less than thirty (30) days advance notice of the date Declarant anticipates acceptance of a TCO for the final residential unit in Building E, such notification to include a description of the Shuttle

Service plan that will be implemented upon full occupancy of Building E and the anticipated date of full occupancy. No later than five (5) days following full occupancy of Building E, Declarant shall provide DCP with notice of the date that full occupancy was achieved , together with documentation demonstrating that Shuttle Service has been established as of such date in accordance with the Shuttle Service plan previously described to DCP. The Declarant shall monitor demand for shuttle bus service to determine needed capacity for the shuttle bus fleet as well as frequency and hours of operation, as specified in the FEIS.

3.03 **Project Components Related to the Environment Relating to Sustainability**. Declarant shall implement and incorporate as part of its design and operation of New Buildings, the following PCREs relating to sustainability:

(a) **Energy Efficiency**.

(i) Declarant shall incorporate certain energy efficiency measures, with respect to fuel consumption and energy use ("**EEMs**") in each New Building, that are designed to result in at least 10% less energy consumption in building systems and by building tenants (the **Minimum Energy Savings**) than standard set forth in the Energy Conservation Construction Code of New York State, in effect as of the Effective Date. EEMs may include, but shall not be limited to, building design, high-performance glazing, increased insulation, high-efficiency lighting (occupancy sensors), higher efficiency HVAC equipment, variable frequency drives for pumps and fans, premium efficiency motors, improved temperature controls, the use of EnergyStar appliances, and except as set forth herein, operable windows to all residential living spaces and allowance to all residents of full control over their fresh air, heating and cooling.

(ii) Declarant shall cause to be prepared by a qualified building energy consultant (the "**BEC**"), a report identifying the EEMs for a New Building that are designed to result in the Minimum Energy Savings (the **Energy Report**). The Energy Report shall demonstrate how such EEMs, once implemented, will achieve and maintain the Minimum Energy Savings. Nothing herein shall be deemed to preclude Declarant from achieving a greater amount of energy savings.

(iii) No later than ninety (90) days prior to submitting an application for a building permit for a New Building to DOB, Declarant shall cause the BEC to submit copies of a draft Energy Report to DCP, which shall, from the date of receipt, have thirty (30) days to review the draft Energy Report, based on consultation with the Energy Division of EDC, or any successor thereto, and to provide Declarant with written comments detailing any issues regarding the sufficiency of the proposed EEMs to achieve the Minimum Energy Savings. Declarant shall cause the BEC to submit to DCP a final Energy Report, which shall include responses to such comments. The final Energy Report shall be accompanied by a written certification of the BEC stating that, in its opinion, the EEMs described in the final Energy Report are sufficient to achieve and maintain the Minimum Energy Savings. DOB shall not issue, and Declarant shall not accept, any building permit for a New Building until DCP shall have certified in writing to the DOB Commissioner that a final Energy Report has been submitted in accordance with the procedures of this Section 3.03(a)(iii).

(b) **Minimum Green Standard Certification or Equivalent**.

(i) Declarant shall design and construct each New Building in accordance with the standards and criteria required to achieve a minimum of LEED Certification, or if LEED Certification is no longer available at the time of construction then such other equivalent standard then being used in New York City (such applicable minimum certification, the "**Minimum Green Standard Certification**" or the "**MGS Certification**"). However, in the case of a New Building which includes an Affordable Housing component subsidized or assisted by HPD, the Minimum Green Standard Certification may be the Enterprise Green Communities Certification for such New Building.

(ii) Declarant shall use reasonable and good faith efforts to at least obtain the MGS Certification, from the U.S. Green Building Council (the "**USGBC**") or such other equivalent body that governs the applicable MGS Certification (collectively, the "**MGS Governing Body**").

(iii) DOB shall not issue, and Declarant shall not accept, any building permit for a New Building, until the Chair shall have certified to the DOB Commissioner that Declarant has submitted the following to DCP:

(A) A LEED checklist, or its applicable equivalent (in either case, a "**MGS Checklist**") for the New Building demonstrating that the number of "points", or their applicable equivalent (in either case, "**MGS Points**") Declarant intends to pursue during LEED "Construction Review", or its applicable equivalent (in either case, "**MGS Construction Review**"), will make the New Building eligible to obtain the MGS Certification. In the case of LEED Certification, such MGS Checklist shall demonstrate that Declarant is providing a minimum of (1) 15% of possible MGS Points in the GHG Credit Categories, as set forth in **Exhibit H** to this Declaration, and (2) 15% of possible MGS Points in the Water Credit Categories as set forth in **Exhibit H** to this Declaration (collectively, the "**GHG and Water Credit Requirements**"), in the case of the Minimum Green Standard Certification, then the MGS Checklist must demonstrate performance equivalent thereto. New Buildings for which Declarant seeks the MGS Certification, shall demonstrate performance at least equivalent to that which would have been required to meet the GHG and Water Credit Requirements under version 2009 of the USGBC LEED rating system.

(B) A signed affirmation from a LEED-accredited or equivalent-certified professional (in either case, an "**Accredited MGS Professional**") as selected by Declarant, stating that he or she has reviewed the plans and drawings submitted or to be submitted to the DOB for purposes of a building permit for a New Building and that such plans and drawings are consistent with the MGS Checklist, and meet the intent of the criteria for the MGS Certification with respect to the applicable New Building.

(iv) DOB shall not issue, and Declarant shall not accept, any TCO, until the Chair shall have certified to the DOB Commissioner that Declarant has submitted the following to DCP:

(A) Documentation demonstrating that Declarant has completed LEED "Design Review," or such applicable equivalent review (collectively, "**MGS Design Review**") and showing the number of MGS Points achieved or denied as a result of the MGS Design Review.

(B) A MGS Checklist for the New Building, demonstrating that the number of MGS Points "anticipated" during the MGS Design Review, in combination with the number of MGS Points that Declarant intends to pursue during MGS Construction Review will make the New Building eligible to obtain the MGS Certification. Such MGS Checklist, shall demonstrate that the GHG and Water Credit Requirements will be met.

(v) DOB shall not issue, and Declarant shall not accept, a PCO for a New Building, until the Chair shall have certified to the DOB Commissioner that Declarant has submitted the following to DCP:

(A) If the New Building has received the MGS Certification:

(1) Documentation demonstrating that the New Building has received the MGS Certification.

(2) MGS Checklist for the New Building demonstrating the number of MGS Points that the New Building was awarded. Such MGS Checklist shall demonstrate that the GHG and Water Credit Requirements have been met.

(B) If the application for MGS Construction Review is still pending:

(1) Documentation demonstrating that the complete application for MGS Construction Review was submitted within nine (9) months of receiving the TCO for the applicable New Building and Declarant has thereafter diligently pursued its application for the MGS Certification.

(2) A MGS Checklist for the New Building demonstrating that the number of MGS Points "anticipated" during MGS Design Review, in combination with the number of MGS Points that Declarant has applied for in MGS Construction Review, will make the New Building eligible to obtain the MGS Certification. Such MGS Checklist shall demonstrate that the GHG and Water Credit Requirements are anticipated to be met.

(3) A signed affirmation from an Accredited MGS Professional stating that he or she has reviewed the application submitted to the MGS Governing Body, and that the application is consistent with the MGS Checklist and meets the intent of the criteria for the MGS Certification of the New Building.

(C) In the event that the New Building has failed to receive MGS Certification after Declarant has accepted the final results of the MGS Construction Review, Declarant shall submit to DCP a report including the following:

(1) Documentation describing: (I) the determinations (collectively, the **Denial Determination**) which resulted in an inability to receive the MGS Certification, including a list of standards or criteria for which MGS Points were "denied" during MGS Design Review or MGS Construction Review, the basis for such Denial Determination, and any related technical advice provided to the review team; (II) the steps taken by Declarant in response to the Denial Determination, including appeals thereof; and (III) alternative elements proposed by Declarant in order to receive the MGS Certification.

(2) Documentation demonstrating that Declarant has (I) designed and constructed the New Building according to the MGS Certification standards or criteria then in effect, but without the standards or criteria which were subject to the Denial Determination; and (II) applied for and used good faith and reasonable efforts to obtain the highest level of MGS Certification available in the absence of such standards or criteria. The provisions of Section 3.03(b)(ii) shall continue to apply with respect to the categories equivalent to the GHG Credit Categories and Water Credit Categories, except to the extent that the MGS Governing Body Denial Determination is applicable to such standard or criteria.

(c) **Stormwater Management Measures**.

(i) Prior to commencement of construction of a New Building on Site E, Declarant shall prepare and submit to New York State Department of Environmental Conservation (NYSDEC) a Stormwater Pollution Prevention Plan (the "**SWPPP**") as required per the SPDES General Permit for Construction Activities (GP-0-10-001) with respect to construction activities and post-construction stormwater management, which shall comply with all erosion and sediment control measures and post-construction BM P requirements that shall (A) incorporate feasible measures to reduce runoff rates, (B) implement stormwater management techniques to address water quality concerns associated with the uncontrolled discharge of stormwater runoff into the East River. DEP should be forwarded a copy of the SWPPP for review. In addition to meeting NYSDEC"s post-construction water quality best management practices ("**BMP**") requirements, Declarant will submit a BMP concept plan, consistent with the FEIS, to DEP that shall overlay on the project site plan proposals that may include the following: (1) incorporation of softscapes and other vegetated features into the design of the Subject Property that shall serve to retain stormwater runoff, (2) construction of green roofs and rooftop detention on certain New Buildings selected by Declarant, and (3) the use of pervious paving material for public access walkways, sidewalks, and other paved surfaces within the development; provided, however, that the use of pervious paving materials required under this Section 3.03(c)(i)(3) may be limited to the extent that Legal Requirements (e.g., the New York City Fire Code) require the use of impervious paving materials for emergency response vehicles, including without limitation fire trucks, ambulances and police vehicles.

(ii) DOB shall not issue, and Declarant shall not accept, a building permit for a New Building until Declarant shall have certified to the Commissioner of DOB that a SWPPP has been submitted to NYSDEC and a BMP concept plan has been submitted to DEP.

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

(iv) Declarant shall have the right to modify and add to the SWPPP and BM P concept plan as development of the Subject Property proceeds, provided that such revised SWPPP and BMP concept plan are consistent with the requirements of this Declaration.

(v) Prior to accepting a TCO for a New Building, Declarant shall certify to DOB that provisions of the SWPPP and BMP concept plan required for such New Building have been implemented.

(d) **Water Conservation Measures**.

(i) In all residential units, Declarant shall install appliances, including, without limitation, dishwashers and clothes washers, which at a minimum meet EnergyStar standards for water conservation.

(ii) Declarant shall install water-conserving toilets and faucets in all New Buildings.

(iii) Prior to accepting a TCO for a New Building, Declarant shall certify to DCP that it has implemented the provisions of clauses (i) and (ii) of this Section 3.03(d), and if same have not been implemented, the reasons for such failure.

3.04 **Environmental Mitigation.** Declarant shall, in accordance with the FEIS, undertake the mitigation measures set forth therein (the "**Mitigation Measures**"), as follows:

(a) **Public School.**

(i) The FEIS has identified that the Proposed Development would result in a significant adverse elementary and intermediate school impact. In order to address the significant adverse impact on elementary and intermediate schools Declarant shall dispose of the Public School Site to the SCA for the consideration of One ($1.00) Dollar should the SCA exercise an option to acquire such site for the construction of the Public School Facility, in accordance with the provisions of this Section and pursuant to the terms of a School Funding Agreement (hereinafter defined).

(ii) Exercise of the SCA Option. At least six (6) months prior to Declarant's commencement of preliminary design on Building B, Declarant shall send written notice to the SCA (by certified mail, with delivery confirmation and return receipt requested) advising the SCA of its plans to start preliminary design of Building B (the "**Design Notice**"). Within ninety (90) days of delivery confirmation of the Design Notice, the SCA will have the right to exercise an option to purchase the Public School Site for One ($1.00) Dollar (the "**SCA Option**") by written notice provided to Declarant. Should SCA provide written notice to Declarant, within ninety (90) days of the mailing of the Design Notice, that it intends to exercise the SCA Option, SCA and Declarant shall commence negotiation of the School Funding Agreement and incorporate the Public School Facility into the Public School Site in Building B. If, within ninety (90) days of delivery confirmation of the Design Notice, the SCA responds that it does not intend to exercise the SCA Option, or at the expiration of such period fails to indicate in writing that it intends to exercise the SCA Option, Declarant shall have no obligation to provide the Public School Site or include the Public School Facility in Building B.

(iii) School Funding Agreement. In the event of the exercise of the SCA Option, Declarant and SCA shall work expeditiously and in good faith to enter into a School Design, Construction, Funding and Purchase Agreement (the "**School Funding Agreement**") with the SCA in accordance with the Letter of Intent executed by the Declarant and accepted and agreed to by SCA on October 15, 2013, attached to this Declaration as **Exhibit I** (the "**SCA Letter of Intent**"). In the event that SCA does not enter into the School Funding Agreement, the Declarant shall have no obligation to provide the Public School Site or include the Public School Facility in Building B.

(iv) Collaborative Design Development Process. Promptly following execution of the School Funding Agreement and notice of availability of funds pursuant thereto,

Declarant shall engage with SCA in a collaborative design development process based upon SCA standards and requirements and both parties shall work in good faith to accommodate the General Design and Planning Criteria described in Exhibit C of the SCA Letter of Intent to the extent reasonable and consistent with conventional construction practices.

(v) School Base Building Work. Declarant shall complete the design of and perform the construction of the School Base Building Work in accordance with the School Funding Agreement. Declarant shall not be responsible for the purchase and installation of any furniture, fixtures and equipment and the School Fit-Out Work.

(vi) Public School Unit. Declarant shall enter into a condominium regime with the SCA with respect to the Public School Facility and the remainder of the Development (the Public School Site to be conveyed for the Public School Facility referred to as the "**Public School Unit**") prior to conveyance of the Public School Unit to the SCA.

(b) **Day Care**.

Upon occupancy of the 554th Affordable Housing Unit:

(i) Declarant shall notify the New York City Administration for Children's Services ("**ACS**") at its Division of Child Care and Head Start and request a day-care needs assessment (the "**Assessment Request**") to determine if development of the Subject Property, both existing and anticipated, would have the potential to create a need for additional day care capacity within the study area boundary identified in Section C, Figure 14 of TM 003 (the "**Study Area**"). In the event that ACS determines within ninety (90) days of the Assessment Request that such development would result in a need for additional day care capacity within such study area boundary and that ACS is prepared to expand day care capacity within the study area, Declarant shall offer to expand existing ACS capacity within the Study Area so as to accommodate eighteen (18) additional child care slots, provided that, in the event development of the Subject Property is anticipated to include additional day-care eligible units, the number of additional child care slots shall be increased so as to accommodate up to twenty-six (26) additional child care slots (the "**Adjusted Child Care Slots**"). If such existing ACS facilities (the "**Off-Site ACS Facilities**") cannot accommodate the additional child care slots, then Declarant shall offer ACS up to 10,000 sf (or such larger amount as is required to accommodate the Adjusted Child Care Slots), or such other lesser amount acceptable to ACS, 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, at a rate affordable to ACS providers (currently $10 psf) (the "**Day Care Space Offer**"). ACS shall notify Declarant in writing, within ninety (90) days of receipt of Declarant's offer, whether the Day Care Space Offer is accepted or declined, either for some or all of the ground floor space acceptable to ACS, subject to all City requirements governing the leasing of property.

(ii) DOB shall not issue, and Declarant shall not accept, a TCO or PCO for any New Building, other than the Refinery Building until: (A) Declarant has made an Assessment Request under Section 3.04(b)(i), (B) DCP has notified DOB that the provisions of this Section 3.04(b) have been complied with, and (C) ACS has either: (1) determined that the Off-Site ACS Facilities can accommodate eighteen (18) additional child care slots (or the Adjusted Child Care Slots if applicable), (2) accepted a Day Care Space Offer; (3) determined

that no additional day care capacity is currently needed or that it is not prepared to expand day care capacity within the Study Area; or (4) failed to respond an Assessment Request or Day Care Space Offer made pursuant to Section 3.04(b)(i) within the time periods set forth therein. 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.

(iii) In the event that following notification by Declarant pursuant to Section 3.04(b)(i) above, ACS: (A) determines that no additional day care capacity is needed in the Study Area at that time; (B) is not prepared to expand day care capacity within the Study Area; or (C) fails to respond to or declines the Assessment Request or the Day Care Space Offer in the time periods set forth in Section 3.04(b)(i); then Declarant shall make an additional Assessment Request in the manner provided in Section 3.04(b)(i) within 180 days following the issuance of a TCO or PCO for each New Building, other than the Refinery Building, 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 and that ACS is prepared to expand day care capacity within the Study Area, Declarant shall (x) offer to locate Off-Site ACS Facilities to accommodate eighteen (18) child care slots (or the Adjusted Child Care Slots if applicable), (y) make a Day Care Space Offer, each in the manner provided in Section 3.04(b)(i) or (z) provide funding or make program or physical improvements to support additional capacity. In such event, DOB shall not issue, and Declarant shall not accept a TCO or PCO for a subsequent New Building until the conditions of subclauses (A), (B) and (C) of Section 3.04(b)(ii) above have been met.

(iv) Declarant shall have no further obligation or further responsibilities under this Section 3.04(b) in the event that (A) the Off-Site ACS Facilities can accommodate eighteen (18) additional child care slots, or (B) ACS (1) accepts a Day Care Space Offer; (2) determines in response to each of the Assessment Requests that there is no need for additional day care capacity within the Study Area boundary or that it is not prepared to expand day care capacity within the Study Area; (3) following issuance of a TCO or PCO for Development Phase 5, fails to respond to or declines the final Assessment Request or Day Care Space Offer required under Section 3.04(b)(iii) within the time periods set forth in Section 3.04(b)(i); or (4) 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 provision of space for a day care facility pursuant to a Day Care Offer, ACS may request Declarant to implement other measures within the Study Area boundary, or other proximate locations within Community District 1, Brooklyn, 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 3.04(b) shall be deemed complete upon the performance of such other measures by or on behalf of Declarant.

(c) **Shadows**.

(i) The FEIS identified that the Proposed Development would result in a significant adverse shadow impact on Grand Ferry Park. Prior to Commencement of Construction of Development Phase 2, Declarant shall provide DPR an amount equal to $25,000 each year on an annual basis for ten (10) consecutive years, subject to adjustment annually due to changes in the CPI (collectively, the "**Shadow Impact Payments**"). The Shadow Impact Payments shall be used by DPR for the purpose of the enhanced maintenance and horticulture care of plants that lie within Grand Ferry Park. The Shadow Impact Payments shall not be used for any other purpose, and the City shall not use the Shadow Impact Payments to reduce its level of support, in the form of services and expenditures for the operation and maintenance of Grand Ferry Park, in effect prior to the date on which Declarant begins making the Shadow Impact Payments. The Shadow Impact Payments shall be due no later than thirty (30) days after the start of each City fiscal year. If the Shadow Impact Payment due upon issuance of a building permit for the construction of Building A shall be paid on a date that is not July 1st, such Shadow Impact Payment shall be prorated by multiplying the annual Shadow Impact Payment for such year, as determined pursuant to this Section, by a fraction, the numerator of which is the number of days between the date on which the first payment is due the June 30th which follows such date, and the denominator of which is three hundred sixty (360). Such prorated amount shall constitute the Shadow Impact Payment that is due for the first year of the ten (10) year commitment under this Section. The Shadow Impact Payments shall be paid by check payable to DPR at its principal office or such other office within the City as DPR may from time to time designate, or by wire transfer to an account designated by DPR. In the event that, during the ten-year period in which Declarant is making Shadow Impact Payments, Grand Ferry Park is reduced in any way, then the amount of each Shadow Impact Payment shall be reduced to the extent that the Grand Ferry Park has thereby been reduced. Declarant shall have no liability to the City, DPR, its agents, officers, employees, affiliates, successors or principals for, and the City shall indemnify, defend and hold Declarant harmless from and against any loss, cost, liability, claim, damage, expense, including reasonable attorneys" fees and disbursements (any of the foregoing, a "Claim), incurred in connection with or arising from the operation or maintenance of Grand Ferry Park or the use of the Shadow Impact Payments.

(ii) Declarant shall not apply for or accept any New Building Permit, TCO or PCO for a New Building in Development Phases 2, 3, 4 and 5unless the Commissioner of Parks shall have certified to the Commissioner of DOB that all Shadow Impact Payments have been made for each year in which a Shadow Impact Payment was required. If the Commissioner of Parks does not respond to Declarant"s request for such Certification within 30 days, Declarant may self-certify to DOB, provided however that such self certification shall include documentation demonstrating that the shadow impact payments have been made in accordance with Section 3.04(c)(i) above.

(d) Historic Resources. In conjunction with obtaining a permit from the Army Corps of Engineers for marine work, the Declarant shall enter into a Memorandum of Agreement or Letter of Resolution with the New York State Historic Preservation Office setting forth mitigation measures with respect to Historic Resources, as and to the extent required by SHPO.

(e) Traffic and Parking. The FEIS identified that the Proposed Development would result in significant adverse traffic impacts, and set forth mitigation

measures which include signal timing adjustments, lane re-striping, parking prohibition, changing bicycle lane classifications, and installation of new traffic signals at unsignalized intersections. As part of the traffic mitigation, Declarant has committed to conduct two traffic monitoring programs (each a "**TMP**") (at the Declarant"s expense) to determine the need for and any adjustments to the mitigation measures included in Appendix 5 and Section T of TM 003, provided that any such adjustments shall be the most cost-effective measures available; and provided further that the TMPs are intended to be supplemental to and not in duplication or replacement of the mitigation measures set forth in FEIS as restated in Appendix 5 and Section T of TM 003.

(i) Interim Year Monitoring Plan. Declarant shall not apply for and shall not accept a TCO or PCO for Building A, until (A) Declarant has submitted for DOT"s approval, a scope of work for the interim year TMP, (B) such scope of work has been approved by DOT, and (C) the Chair certifies to DOB that Declarant has provided to DOT a letter of credit or posted a performance bond for an amount reasonably determined by DOT to equal the estimated costs of undertaking the interim year TMP, plus the estimated costs of implementing the capital mitigation measures included in Appendix 5 and Section T of TM 003. At a time specified by DOT following the completion and occupancy of Building A, the Declarant will proceed with the TMP, and Declarant shall provide reasonable notice to DOT after the completion and full occupancy of Building A, before commencement of the TMP. Declarant shall implement at its own expense the entire approved TMP, the findings of which will be used by DOT as the basis for approving mitigation measures.

(ii) Interim Year Mitigation. Unless, following the implementation of the interim year TM P, DOT finds that such measures are not necessary or appropriate, Declarant shall send written notice to DOT, requesting that DOT implement the traffic mitigation measures included in Appendix 5 and Section T of the TM 003 or measures having comparable benefits as specified by DOT based on the results of the interim year TMP. Declarant shall comply with DOT requirements necessary to implement the traffic mitigation measures included in Appendix 5 and Section T of the TM 003 or measures having comparable benefits as specified by DOT based on the results of the interim year TMP, and shall either implement such measures as directed by DOT, or, if directed by DOT, pay DOT/City of New York for the ordinary and customary costs, if any, of implementing such capital improvements (including but not limited to the costs of the design and construction of such capital improvements), upon request of DOT accompanied by appropriate supporting documentation. In addition, Declarant will also be responsible for submitting for review proposed mitigation measures to the appropriate City agencies following the completion of the monitoring program. The Declarant will submit all of the required drawings/designs as per AASHTO and DOT specifications for DOT review and approval. To the extent that DOT does not approve or deems unnecessary one or more of the traffic measures included in Appendix 5 and Section T of the TM 003, Declarant shall have no further obligation with respect to such measures until following the implementation of the completion year monitoring plan as described hereafter.

(iii) Completion Year Monitoring Plan. Declarant shall not apply for and shall not accept a TCO or PCO for Building D, until (A) Declarant has submitted for DOT"s approval, a scope of work for the completion year TMP, (B) such scope of work has been approved by DOT, and (C) the Chair certifies to DOB that Declarant has provided to DOT a

letter of credit or posted a performance bond for an amount reasonably determined by DOT to equal the estimated costs of undertaking the completion year TMP, plus the estimated costs of implementing the capital mitigation measures included in Appendix 5 and Section T of the TM 003. At a time specified by DOT following the completion and occupancy of Building D, the Declarant will proceed with the TMP, and Declarant shall provide reasonable notice to DOT after the completion and full occupancy of Building D, before commencement of the TMP. Declarant shall implement at its own expense the entire approved TMP, the findings of which will be used by DOT as the basis for approving mitigation measures.

(iv) **Completion Year Mitigation**. Unless, following the implementation of the completion year TM P, DOT finds that such measures are not necessary or appropriate, Declarant shall send written notice to DOT, requesting that DOT implement the traffic mitigation measures included in Appendix 5 and Section T of the TM 003 or measures having comparable benefits as specified by DOT based on the results of the interim year TMP, that have not already been implemented as part of interim year mitigation. Declarant shall comply with DOT requirements necessary to implement the traffic mitigation measures included in Appendix 5 and Section T of the TM 003 or measures having comparable benefits as specified by DOT based on the results of the completion year TMP, and shall either implement such measures as directed by DOT, or, if directed by DOT, pay DOT/City of New York for the ordinary and customary costs, if any, of implementing such capital improvements (including but not limited to the costs of the design and construction of such capital improvements), upon request of DOT accompanied by appropriate supporting documentation. In addition, Declarant will also be responsible for submitting for review proposed mitigation measures to the appropriate City agencies following the completion of the monitoring program. The Declarant will submit all of the required drawings/designs as per AASHTO and DOT specifications for DOT review and approval. To the extent that DOT does not approve or deems unnecessary one or more of the traffic measures included in Appendix 5 and Section T of the TM 003, Declarant shall have no further obligation with respect to such measures.

(f) **Transit and Pedestrians**. The FEIS identified that the Proposed Development would result in significant adverse impacts to the Marcy Avenue subway station"s Manhattan bound and Queens-bound control areas for the J/M/Z lines and identified mitigation measures consisting of replacing the existing High Entrance Exit Turnstile at the impacted control areas.

(i) Declarant shall not apply for or accept a Building Permit for Building E, until:

(A) Ninety (90) days after Declarant has sent written notice to MTA requesting that it replace the existing single High Entrance-Exit Turnstile at each of the secondary control areas (the Manhattan and Queens bound control areas in the vicinity of Havemeyer Street) at the Marcy Avenue subway station with two standard turnstiles at each control area, and conduct such other capital improvements as may be necessary to implement this mitigation (i.e., modify the wind screens and upgrade the power supply to the turnstiles); and

(B) The Chair certifies to DOB that it has received a determination by MTA that the measures described in this Section have been implemented or the ordinary and customary capital costs of such measures have been paid for by Declarant as

specified or directed by MTA. (ii) Declarant shall comply with MTA requirements necessary to implement the measures described in this section, and shall either implement such measures as directed by MTA, or, if directed by MTA, pay MTA for the ordinary and customary costs, if any, of implementing capital improvements upon request of MTA accompanied by appropriate supporting documentation. To the extent that MTA disapproves or deems unnecessary the mitigation measures described in section, Declarant shall have no further obligation with respect to such improvements.

(ii) If, 90 days following the notice to MTA pursuant to Section 3.04(f)(i), MTA (A) has not requested that Declarant implement such measures and has not sought payment for them from Declarant, or (B) has declined to respond to such notice; then Declarant may obtain a building permit for Building E.

(g) **Construction Noise**.

(i) Pursuant to a written protocol approved by DCP, Declarant shall offer to provide, at its expense, window treatment (e.g., storm windows or double-glazed windows) and alternative ventilation (e.g., fan systems or air conditioning) to all residences at the following locations, which do not already have double glazed windows and alternative ventilation:

Block	Lots	Floors	Facades
2403	37, 41	all	South
2415	10, 16, 110	all	North
	38, 110	all	South
2441	8, 15, 24, 107	all	West, North
2428	24	all	South
2390	10, 11, 12, 13, 14, 15	2 and above	West, South

(ii) Declarant shall not apply for or accept a Building Permit for any portion of Building E unless and until DCP certifies to DOB, with respect to residences listed above on Blocks 2415 (South facades only) 2441 and 2428, that (i) the requisite time periods for offer and acceptance of window treatment and alternative ventilation in accordance with the DCP-approved protocol have elapsed, and (ii) that Declarant has provided the Chair with documentation demonstrating that such window treatment and alternative ventilation measures were offered to all applicable owners or residents, and have been provided to any owner or resident which has accepted its offer.

(iii) Declarant shall not apply for or accept a Building Permit for any portion of the Refinery Building unless and until DCP certifies to DOB, with respect to residences on Blocks 2403 and 2415 (North facades only), that (a) the requisite time periods for offer and acceptance of window treatment and alternative ventilation in accordance with the DCP-approved protocol have elapsed, and (b) that Declarant has provided the Chair with documentation demonstrating that such window treatment and alternative ventilation measures were offered to all applicable owners or residents, and have been provided to any owner or resident which has accepted its offer.

(iv) Declarant shall not apply for or accept a Building Permit for any portion of Building A unless and until DCP certifies to DOB, with respect to residences on listed above on Block 2390, that (i) the requisite time periods for offer and acceptance of window treatment and alternative ventilation in accordance with the DCP-approved protocol have elapsed, and (ii) that Declarant has provided the Chair with documentation demonstrating that such window treatment and alternative ventilation measures were offered to all applicable owners or residents, and have been provided to any owner or resident which has accepted its offer.

3.05 **Force Majeure Involving a PCRE or Mitigation Measure**. Notwithstanding any provision of this Declaration to the contrary, if Declarant is unable to perform a FEIS Obligation set forth in this Article 3 by reason of the occurrence of a Force Majeure Event, as determined by the Chair, pursuant to the procedures set forth in Section 9.01, then Declarant shall not be excused from performing such FEIS Obligation that is affected by Force Majeure Event unless and until the Chair, based on consultations with the Reporter designated under Section 3.08 of this Declaration, has made a determination in his or her reasonable discretion that the failure to implement the FEIS Obligation during the period of the Force Majeure Event, or implementing an alternative proposed by Declarant, would not result in any new or different significant environmental impact not addressed in the FEIS. Unless and until such a determination is made, Declarant shall cease any and all construction and other activities which under the FEIS require implementation of the FEIS Obligation which Declarant is unable to perform by reason of the occurrence of a Force Majeure Event and shall not resume such construction or other activities until such a determination is made or is able to resume implementation of the FEIS Obligation which was subject to a Force Majeure Event.

3.06 **Inconsistencies with the FEIS**. If this Declaration inadvertently fails to include a FEIS Obligation set forth in the FEIS, such FEIS Obligation shall be deemed incorporated in this Declaration by reference. If there is any inconsistency between a FEIS Obligation as set forth in the FEIS and as incorporated in this Declaration, the more restrictive provision shall apply.

3.07 **Innovation; Alternatives; Modifications Based on Further Assessments**.

(a) **Innovation and Alternatives**. In complying with any FEIS Obligation set forth in this Article 3, Declarant may, at its election, implement innovations, technologies or alternatives now or hereafter available, including replacing any equipment, technology, material, operating system or other measure previously located on the Subject Property or used within the Proposed Development, provided that Declarant demonstrates to the satisfaction of DCP that such alternative measures would result in equal or better methods of achieving the relevant FEIS Obligation, than those set forth in this Declaration, (such measures, **Alternative FEIS Obligation**, in each case subject to approval by DCP.

(b) **Modifications Based on Further Assessments**. In the event that Declarant believes, in good faith, based on changed conditions, that a FEIS Obligation required under this Declaration should not apply or could be modified without diminishment of the environmental standards which would be achieved by implementation of the FEIS Obligation, it shall set forth the basis for such belief in an analysis submitted to DCP. In the event that, based upon review of such analysis, DCP determines that the relevant PCRE or Mitigation Measure

should not apply or could be modified without diminishment of the environmental standards which would be achieved by implementation of the FEIS Obligation, Declarant may eliminate or modify the PCRE or Mitigation consistent with the DCP determination ("**Elimination or Modification of FEIS Obligation**").

(c) If Declarant implements any Alternative FEIS Obligation or Elimination or Modification of FEIS Obligation, a notice indicating of such change shall be recorded against the Subject Property in the Register's Office, in lieu of modification to this Declaration..

3.08 **Appointment and Role of Reporter.**

(a) Declarant shall, with the consent of DCP, retain a third party (the "**Reporter**") reasonably acceptable to DCP to oversee and certify to DCP the implementation and performance by Declarant of the construction period FEIS Obligations required under this Declaration (the "**Construction Monitoring Measures**" or "**CMMs**"). The Reporter shall be a licensed engineer, architect, general contractor, or environmental consultant with significant experience in environmental management and construction management (or multiple such persons or a firm employing such persons), including familiarity with the means and methods for implementation of the CMMs. The Reporter may be the same person or firm that prepared for Declarant the various mitigation plans required by the CMMs. In the event that the Declarant that is signatory to this Declaration shall have sold, leased transferred or conveyed to a third party fee title to, or a ground or net lease of, one or more tax lots within the Subject Property (other than transfers of condominium units), then such third party shall be deemed a successor Declarant (a "**Successor Declarant**") with respect to such lots so sold, leased, transferred or conveyed to it, and, with the prior written approval of DCP, there may exist more than one Reporter with respect to multiple developments proceeding simultaneously on the Subject Property, pursuant to separate Reporter Agreements (hereafter defined). Notwithstanding the foregoing, the Reporter retained by Declarant pursuant to the 2010 Declaration shall be deemed retained pursuant to the provisions of this Section 3.08 pursuant to the reporter agreement entered into in connection with the 2010 Declaration and such reporter agreement shall be deemed the Reporter Agreement pursuant to this Declaration for purposes of continuing construction activities until such Agreement is terminated or expires pursuant to its terms, provided that such reporter agreement is updated to reflect the Approvals set forth herein no later than thirty (30) days from the recordation of this Declaration.

(b) The "Scope of Services" described in any agreement between Declarant and the Reporter pursuant to which the Reporter is retained (the "**Reporter 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) provide for appropriate DCP review of the performance of services by the Reporter; (ii) authorize DCP to direct Declarant to terminate the Reporter for dishonesty or unsatisfactory performance of its responsibilities under the Reporter Agreement; (iii) allow for the retention by the Reporter of sub-consultants with expertise appropriate to assisting the Reporter in its performance of its obligations to the extent reasonably necessary to perform its obligations under this Declaration and the Reporter Agreement; and (iv) 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 Reporter Agreement within thirty (30) days after submission of a draft form of Reporter Agreement, the form of Reporter Agreement so submitted shall be deemed acceptable by DCP and may be executed by Declarant and the Reporter. The Reporter Agreement shall provide for the commencement of services by the Reporter at a point prior to the submission of the first Permit Notice (hereinafter defined) to DCP in accordance with Section 3.09(a) (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 a Development Phase, until issuance of TCOs or PCOs therefor, unless Declarant, with the prior consent of DCP or at the direction of DCP, shall have terminated a Reporter Agreement and substituted therefor another Reporter under a new Reporter Agreement, in accordance with all requirements of this Section 3.08. If the relevant Development Phase identified in the "Scope of Services" under the Reporter Agreement is completed, Declarant shall not have any obligation to retain the Reporter for a subsequent Development Phase of the Subject Property, provided that Declarant shall not recommence any construction until it shall have retained a new Reporter in compliance with the provisions of this Section.

(c) The Reporter shall: (i) respond to DCP with regard to review of plans and measures proposed by Declarant for purposes of satisfying CMMs in connection with determinations required under this Declaration as a prerequisite to Construction Commencement or the issuance or acceptance by Declarant of a TCO or PCO as the case may be; and (ii) provide reports of Declarant's compliance with the CMMs during any period of construction on a schedule reasonably acceptable to DCP, but not more frequently than once per month. The Reporter may at any time also provide Declarant and DCP with notice of a determination that a CMM has not been implemented, accompanied by supporting documentation establishing the basis for such determination, provided that any such notice shall be delivered to both parties. The Reporter shall: (x) have full access to the portion of the Subject Property then being developed as part of the applicable Development Phase (as referenced in the Reporter Agreement), subject to compliance with all generally applicable site safety requirements imposed by law, pursuant to construction contracts, or imposed as part of the site safety protocol in effect for the Subject Property; (y) be provided with access to all books and records of Declarant pertaining to the applicable Development Phase, either on or outside the Subject Property, which it reasonably deems necessary to carry out its duties, including the preparation of periodic reports; and (z) be entitled to conduct any tests on the Subject Property that the Reporter reasonably deems necessary to verify Declarant's implementation and performance of the CMMs, subject to compliance with all generally applicable site safety requirements imposed by law, site operations, or pursuant to construction contracts in effect for the Subject Property, and provided further that any such additional testing shall be (q) coordinated with Declarant's construction activities and use of the Subject Property by the occupants of and visitors to any New Building, Private Drives and Sidewalks, Public Access Area or Waterfront Public Access Area then located on the Subject Property, and (r) conducted in a manner that will minimize any interference with the Proposed Development. The Reporter Agreement shall provide that the Reporter shall secure insurance customary for such activity and may hold the Reporter liable for any damage or harm resulting from such testing activities. The Agreement shall also include provisions, acceptable to the City, providing for the City to be named as an additional insured and for Reporter to indemnify the City for any damages, suits, claims, liabilities, costs and

expenses to the extent caused by the Reporter‟s performance of any work or services under the Agreement.

(d) Subject to compliance with all generally applicable site safety requirements imposed by Legal Requirements, pursuant to construction contracts, or imposed as part of the site safety protocol in effect for the Subject Property, DCP, or any other applicable City agency, may, upon prior written or telephonic notice to Declarant, enter upon the Subject Property during business hours on Business Days for the purpose of conducting inspections to verify Declarant‟s implementation and performance of the CMMs; provided, however, that any such inspections shall be (i) coordinated with Declarant‟s construction activities and use of the Subject Property by the occupants of and visitors to any New Building, Public Access Area or Waterfront Public Access Area then located on the Subject Property, and (ii) conducted in a manner that will minimize any interference with the Proposed Development. Declarant shall cooperate with DCP (or such other applicable City agency) and its representatives, and shall not delay or withhold any material information or access to the Subject Property reasonably requested by DCP (or such other applicable City agency).

(e) Declarant shall be responsible for payment of all fees and expenses due to the Reporter in accordance with the terms of the Reporter Agreement and any consultants retained by the Reporter as may be necessary to determine Declarant‟s compliance with the CMMs, in accordance with the terms of the Reporter Agreement.

(f) If DCP determines, based on information provided by the Reporter and others, or through its own inspection of the Subject Property during construction, as applicable, 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 15.01. Notwithstanding any provisions to the contrary contained in Section 12.04 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 Site with the

Reporter and DCP representatives. If Declarant is unable reasonably to satisfy the DCP representatives that no violation exists or is continuing, and Declarant 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 Declarant demonstrates that it has cured the violation.

(g) **Third Party Monitor**.

(i) DCP reserves the right to require the designation of an independent third party (the "**Monitor**") reasonably acceptable to City Planning to be retained at Declarant's expense, to oversee, on behalf of City Planning, the implementation and performance by Declarant of the construction period FEIS Obligations required under this Declaration, if DCP determines, in its reasonable discretion, after consultation with the Declarant, that the Reporter has not acted in an impartial manner in its duty to oversee and certify to DCP the implementation and performance by Declarant of the construction period FEIS Obligations required under this Declaration . 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 applicable construction period FEIS Obligations. Where DCP requires a Monitor all other provisions of Sections 3.08 and 3.09 shall remain in effect except that the word "Monitor" shall be substituted for the word "Reporter" and the Monitor Agreement shall include provisions acceptable to DCP which shall ensure that the Monitor is independent of Declarant in all respects relating to the Monitor's responsibilities under this Declaration and provides its impartial services on behalf of City Planning.

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 of any Development Phase, Declarant shall send written notice to DCP advising of Declarant's intention to undertake Construction Commencement (each such notice, a "**Permit Notice**"). Any Permit Notice shall be accompanied by: (x) 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; (y) 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 (z) to the extent that Declarant believes that compliance with any condition or criteria has not been achieved by the date of the Permit Notice, an explanation of why compliance has not yet been achieved to date, the steps that are or will be taken prior to issuance of the Building Permit to achieve compliance and the method proposed by Declarant to assure DCP that the elements will be achieved in the future. Materials or documentation from any Governmental Authority, certifying the implementation of a FEIS Obligation set forth in this Declaration, shall be accepted as compliance with the relevant FEIS Obligation. Notwithstanding the foregoing, demolition activities which have previously been permitted pursuant to the 2010 Declaration by DCP, such approval having been set forth by letter dated September 19, 2013

from DCP to DOB Brooklyn Borough Commissioner Ira Gluckman, R.A., attached hereto as **Exhibit J**, shall not be subject to the provisions of this Section 3.09.

(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 Reporter) 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 Reporter in writing in order to allow DCP to determine, acting in consultation with the Reporter and any City agency personnel 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 this Section 3.09(b) as demonstrating compliance with the requirements for issuance of the Building Permit and Declarant shall be entitled to 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 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 FEIS Obligations 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 (x) advising that Declarant has failed to include a required FEIS Obligations within the New Building, or has failed to fully satisfy the FEIS Obligations, and (y) 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. Upon the completion of such steps to the satisfaction of DCP, Declarant shall be entitled to obtain the TCO or PCO as the case may be.

(d) In the event of a continued disagreement between DCP or other City agency and Declarant under Paragraph (c) as to whether any FEIS Obligation 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 Housing and Economic Development, or any successor Deputy Mayor, and to seek resolution within forty-five (45) days of Declarant"s appeal thereto.

(e) Notwithstanding anything to the contrary set forth in this Article III, following the Effective Date, Declarant shall be entitled to perform any necessary safety and soundness work, as may be required under Legal Requirements, on the Refinery Complex and with respect to any other existing structure on the Subject Property prior to its demolition.

ARTICLE IV

PUBLIC ACCESS AREAS

4.01 **Construction of the Waterfront Public Access Areas, Public Access Areas and Private Drives and Sidewalks.**

(a) If Declarant develops the Subject Property, the Waterfront Public Access Areas, Public Access Areas and the Private Drives and Sidewalks shall be constructed substantially in accordance with the Waterfront Public Access Area Plans and the Final Waterfront Public Access Area Plans and otherwise in compliance with this Declaration.

(b) The **Waterfront Public Access Area Plans** shall mean the following plans and drawings, by James Corner Field Operations, annexed hereto in **Exhibit C** and made a part hereof:

Number	Title	Date
G-001.00	Title Sheet	10.29.13
G-100.00	Survey	09.14.13
G-110.00	Zoning Lots	10.29.13
L-001.00	WPAA Zoning Calculations	10.29.13
L-002.00	WPAA Zoning Calculations	10.29.13
L-003.00	WPAA Zoning Calculations	10.29.13
L-1 00.00	Waterfront Public Area Access Diagram	10.29.13
L-121.00-A	Layout Plan-Area 1	10.29.13
L-122.00-A	Layout Plan-Area 2	10.29.13
L-131 .00-A	Materials Plan-Area 1	10.29.13
L-132.00-A	Materials Plan-Area 2	10.29.13
L-141 .00-A	Grading Plan-Area 1	10.29.13
L-1 42.00-A	Grading Plan-Area 2	10.29.13
L-151 .00-A	Planting Plan-Area 1	10.29.13
L-152.00-A	Planting Plan-Area 2	10.29.13
L-1 61.00-A	Furnishing Plan-Area 1	10.29.13

Number	Title	Date
L-162.00-A	Furnishing Plan-Area 2	10.29.13
L-171.00-A	Lighting Plan-Area 1	10.29.13
L-172.00-A	Lighting Plan-Area 2	10.29.13
L-181.00-A	Lighting Foot Candle Diagram-Area 1	10.29.13
L-182.00-A	Lighting Foot Candle Diagram-Area 2	10.29.13
L-121.00-B	Layout Plan	10.29.13
L- 131.00-B	Materials Plan	10.29.13
L-141 .00-B	Grading Plan	10.29.13
L-1 51.00-B	Planting Plan	10.29.13
L- 161.00-B	Furnishing Plan	10.29.13
L-1 71.00-B	Lighting Plan	10.29.13
L-181.00-B	Lighting Foot Candle Diagram	10.29.13
L-210.00	Typical Details 1	10.15.13
L-211.00	Typical Details 2	10.15.13
L-220.00	Typical Details 3	10.15.13
L-230.00	Typical Details 4	10.15.13
L-23 1.00	Typical Details 5	10.15.13
L-232.00	Typical Details 6	10.15.13
L-233.00	Typical Details 7	10.15.13
L-234.00	Typical Details 8	10.15.13
L-235.00	Typical Details 9	10.15.13
L-300.00	Site Section 1	10.15.13
L-301.00	Site Section 2	10.29.13
L-302.00	Site Section 2	10.29.13
L-303.00	Site Section 4	10.29.13
L-601.00	Waterfront Zoning Lot Phasing Plan: Phase 1	10.29.13
L-602.00	Waterfront Zoning Lot Phasing Plan:	10.29.13

Number	Title	Date
	Phase 2	
L-603.00	Waterfront Zoning Lot Phasing Plan: Phase 3	10.29.13
L-604.00	Waterfront Zoning Lot Phasing Plan: Phase 4	10.29.13

4.02 **Permits and Other Approvals**. Declarant, at its sole cost and expense, shall diligently apply for and prosecute the applications for all City, State and Federal permits and approvals necessary for the Waterfront Public Access Area Work, the Public Access Area Work, and the Private Drives and Sidewalks Work.

4.03 **Performance of Waterfront Public Access Area Work, Public Access Area Work and the Private Drives and Sidewalks Work**. Declarant agrees that the Waterfront Public Access Area Work, Public Access Area Work and the Private Drives and Sidewalks Work shall be performed in accordance with all Legal Requirements and the provisions of this Declaration and the M&O Agreement, where applicable.

4.04 **Phasing of Public Access Areas, Waterfront Public Access Area and Private Drives and Sidewalks**. The Public Access Area, Waterfront Public Access Area and Private Drives and Sidewalks shall be constructed in four (4) Waterfront Zoning Lot Phases, as described on the Waterfront Public Access Area Plans. Declarant shall not apply for or accept a Building Permit, TCO or PCO for any ZL1 or ZL2 Building, except in compliance with the Waterfront Zoning Lot Phasing Plans and with this Declaration.

ARTICLE V

DESIGN DEVELOPMENT OF THE WATERFRONT PUBLIC ACCESS AREAS, PUBLIC ACCESS AREAS AND PRIVATE DRIVES AND SIDEWALKS

5.01 **Waterfront Public Access Area Plans**. Declarant shall ensure that the design of the Waterfront Public Access Area, Public Access and Private Drives and Sidewalks is substantially in accordance with the Waterfront Public Access Area Plans and in connection therewith agrees that:

(a) it shall not submit the Waterfront Public Access Area Design Submission pursuant Article II of the M&O Agreement to DPR for the portion of any Waterfront Zoning Lot Phase comprised of WPAA (the **Waterfront Public Access Area Design Submission**) which is not in substantial conformity with the Waterfront Public Access Area Plans without first submitting drawings setting forth a modified Waterfront Public Access Area (the **Modified Waterfront Public Access Areas Plans**) and obtaining the written approval of such Modified Waterfront Public Access Area Plans by DPR and DCP (any such consent, a **"Waterfront**

Public Access Area Plans Modification Approval, provided further that for that portion of the Modified Waterfront Public Access Area Plans comprised of WPAA such WPAA shall comply with the requirements of Article VI, Chapter 2 of the Zoning Resolution;

(b) it shall not apply for or accept a Building Permit for any Development Phase subject to a Waterfront Public Access Area Plans Modification Approval until the Chair issues the Chair Certification pursuant to Section 62-811 of the Zoning Resolution in accordance with the provisions of Section 5.05 set forth below;

(c) it shall not apply for accept a Building Permit for the PAA or Private Drives and Sidewalk Work which is not in substantial conformity with the Waterfront Public Access Area Plans unless it obtains prior written approval of the necessary modifications of the Waterfront Public Access Area Plans by the Chair in accordance with the provisions Section 14.02 of this Declaration.

5.02 **Waterfront Public Access Area Plans**. Declarant agrees that the architectural character and design of the Waterfront Public Access Area, the Public Access Area and the Private Drives and Sidewalks shall substantially conform to the design intent reflected in the Waterfront Public Access Areas Plans, as may be further modified in accordance with the provisions of this Article 5.

5.03 **State and Federal Permits**. Declarant has advised the City that construction of portions of the PAA and WPAA will require a permit and approval from the State and Federal governments (together, the **Federal/State Public Access Area Approvals**, and that applications for the Federal/State Public Access Area Approvals have been submitted. Declarant covenants to proceed in good faith and exercise due diligence to obtain the Federal/State Public Access Area Approvals. In connection with its efforts to obtain the Federal/State Public Access Area Approvals, Declarant shall not file or otherwise formally submit to any Federal or State agency any plans, drawings or illustrative representations of the PAA and WPAA that do not conform with the, Waterfront Public Access Area Plans or an approved Public Access Area Design Submission made pursuant to this Declaration and the provisions of the M&O Agreement.

5.04 **Modifications Due to Failure to Obtain Permits**. If Declarant is unable, despite its good faith efforts, to obtain the Federal/State Public Access Area Approvals for the portions of the PAA and WPAA required in connection with a New Building no later than fifteen months after obtaining a New Building permit for such New Building, or if Declarant obtains the Federal/State Public Access Area Approvals and the Federal/State Public Access Area Approvals do not include approval for all portions of the PAA and WPAA required in connection with such New Building for which such approval is needed, or if Declarant otherwise determines that it will not be able to obtain the Federal/State Public Access Area Approvals for all or any portions of the PAA and WPAA required in connection with such New Building no later than fifteen months after obtaining a New Building permit for such New Building, Declarant shall so notify DPR and DCP. Provided that, in the exercise of their reasonable judgment, DPR and DCP concur that (i) Declarant has exercised good faith in seeking to obtain such Federal/State Public

Access Area Approvals and (ii) Declarant is unlikely to obtain such Federal/State Public Access Area Approvals by the date which, pursuant to the construction schedule for the applicable Waterfront Zoning Lot Phase, such Federal/State Public Access Area Approvals are needed to obtain a TCO at the time issuance of a TCO is anticipated, such inability to obtain the Federal/State Public Access Area Approvals shall be deemed to constitute a Force Majeure Event pursuant to the terms of this Declaration and Circumstances Beyond the Control of the Owner pursuant to the provisions of the M&O Agreement with respect to Declarant‟s obligation to Substantially and/or Finally Complete such portion of the PAA and WPAA required in connection with such New Building. In such event, Declarant may obtain a TCO or PCO with respect to a New Building in Waterfront Zoning Lot Phase, (x) provided that Declarant has satisfied all conditions to the issuance of such TCO or PCO with respect to such New Buildings, except for completion of any elements or satisfaction of any conditions required in order to Substantially Complete or Finally Complete the PAA and WPAA required in connection with such New Building that could not be completed or satisfied due to inability to obtain the Federal/State Public Access Area Approvals, and (y) subject to the provisions for Force Majeure set forth in Article IX hereof and subject to the provisions for Circumstances Beyond the Control of the Owner pursuant to the provisions of the M&O Agreement.

5.05 **Waterfront Public Access Area Plans Modification Approval**. A Waterfront Public Access Area Plans Modification Approval, with respect to that portion of the Waterfront Public Access Area Plans comprised of WPAA, shall serve as a determination by the Chair that he or she is prepared to certify the Modified Waterfront Public Access Area Plans pursuant to Section 62-811 of the Zoning Resolution to reflect the Waterfront Public Access Area Plans Modification Approval. Where a Waterfront Public Access Area Plans Modification Approval is obtained, Declarant shall file an application pursuant to Section 62-811 of the Zoning Resolution, with the Modified Waterfront Public Access Area Plans that incorporate all modifications previously approved pursuant to a Waterfront Public Access Area Plans Modification Approval, and provided that the formally filed land use application requesting Chair certification pursuant to Section 62-811of the Zoning Resolution is sufficiently complete and adheres to Department rules and standards for filing a land use application for a Chair Certification pursuant to Section 62-811 of the Zoning Resolution the Chair shall issue the Certification within thirty (30) calendar days of such filing. Upon the filing of an application pursuant to Section 62-811 of the Zoning Resolution requesting that the Chair certify that the Modified Waterfront Public Access Area Plans comply with the requirements of Article VI, Chapter 2 of the Zoning Resolution Declarant may submit the Waterfront Public Access Area Design Submission to DPR in accordance with the provisions of the M&O Agreement.

ARTICLE VI

CONSTRUCTION OF THE WATERFRONT PUBLIC ACCESS AREAS, PUBLIC ACCESS AREAS AND PRIVATE DRIVES AND SIDEWALKS

6.01 **Manner of Performance of the Construction Work; Permits**. Declarant shall, at its sole cost and expense, undertake and complete the performance of the WPAA Work, PAA Work and Private Drives and Sidewalks Work so as to construct the Waterfront Public Access

Areas, Public Access Areas and Private Drives and Sidewalks substantially in accordance with the Waterfront Public Access Area Plans, except as modified in accordance with the provisions of Article 5, this Article 6 and the M&O Agreement. Declarant shall perform the WPAA Work, PAA Work and Private Drives and Sidewalks Work in a good and workerlike manner and in accordance with Legal Requirements, including, without limitation, any applicable Legal Requirements pertaining to hazardous materials.

6.02 **Modifications of Final Waterfront Public Access Area Plans**. Declarant shall have the right to make non-material modifications to the Waterfront Public Access Area Plans to respond to unanticipated field conditions in accordance with the M&O Agreement.

6.03 **Security**.

(a) To secure Declarant"s obligation to Finally Complete the Waterfront Public Access Areas and Private Drives and Sidewalks required in each Waterfront Zoning Lot Phase, Declarant shall, prior to issuance by the Chair of a Notice of Substantial Completion for any portion of the PAA and Private Drives and Sidewalks, deliver to the City one or more irrevocable letters of credit or other security in a form reasonably acceptable to the City, naming the City as beneficiary in an amount that has been certified by Developer"s architect or landscape architect, as applicable, as being 125% of the cost of Finally Completing such PAA and Private Drives and Sidewalks (the "**Completion Letter of Credit**").

6.04 **Failure to Perform**.

(a) In the event that Declarant fails to Finally Complete the PAA or Private Drives and Sidewalks in a Waterfront Zoning Lot Phase that was the subject of a Notice of Substantial Completion, within such time period provided for in Section 8.02 of this Declaration, the City may, at its option, upon not less than thirty (30) days written notice to Declarant (i) complete the PAA or Private Drives and Sidewalks in such Waterfront Zoning Lot Phase; (ii) cause Declarant to remove all of its equipment and any other items impeding the City"s completion of the PAA or Private Drives and Sidewalks in such Waterfront Zoning Lot Phase; and (iii) draw upon the Completion Letter of Credit issued in connection with a Notice of Substantial Completion in accordance with Section 6.03 of this Declartion for so much of the proceeds as is necessary to pay for the reasonable costs and expenses incurred in Finally Completing the PAA or Private Drives and Sidewalks in such Waterfront Zoning Lot Phase. If the full amount of the Completion Letter of Credit is not utilized, then the City shall return the balance of the proceeds to the Declarant promptly after Final Completion.

(b) Declarant hereby grants to the City and its contractors, agents, employees and sub-contractors a license to enter upon the Subject Property for the purpose of exercising its rights under Section 6.04(a) hereof, including the use of heavy construction equipment such as bulldozers, frontend loaders and the like as may be necessary to perform the PAA Work and Private Drive and Sidewalks Work, provided that the City shall use reasonable efforts to minimize disruption of any construction of any New Building to avoid damage to any portion of the Subject Property or any improvements thereon. The grant of the foregoing license shall be conditioned upon agreement by the City to indemnify, defend and hold each Indemnified Party harmless from and against Claim paid or incurred by Declarant be reason of the City"s exercise of its rights under this Section 6.04, except to the extent such claim is caused by the negligence of the Indemnified Parties.

(c) If the City exercises its rights under Section 6.04 hereof and thereafter substantially completes a Waterfront Zoning Lot Phase, DCP shall issue a Notice of Substantial Completion with respect thereto.

ARTICLE VII

TEMPORARY CERTIFICATES OF OCCUPANCY

7.01 **TCO.**

(a) Declarant shall not apply for or accept a TCO for any New Building in Development Phase 2, 3, 4, and 5 until all of the following conditions have been met, provided that the requirements of this Section shall not be applicable where the Chair has determined that a Force Majeure Event has occurred pursuant to Section 9.01 of this Declaration with respect to a PAA or Private Drives and Sidewalk required in connection with a Waterfront Zoning Lot Phase, or DPR has determined that Circumstances Beyond the Control of the Owner exists pursuant the provisions of the M&O Agreement with respect to Waterfront Public Access Area required in connection with such Waterfront Zoning Lot Phase:

(i) DPR has certified that Declarant has complied with all conditions required in connection with issuance of a TCO for the New Building under the provisions of the M&O Agreement;

(ii) DCP has issued a Notice of Substantial Completion for the PAAs and Private Drives and Sidewalks in the Waterfront Zoning Lot Phase required in connection with the New Building in accordance with Section 7.02 of this Declaration;

(iii) Declarant has provided to the City the Completion Letter of Credit required by Section 6.05 of this Declaration for the PAA and Private Drives and Sidewalks required in connection with the New Building; and

(b) Within ten (10) days after receipt of documentation demonstrating satisfaction of the conditions set forth in Section 7.01(a), the Chair shall certify in writing to DOB that Declarant has met the requirements of this Declaration or Section 62-72 of the Zoning Resolution, as applicable, and that a TCO, may be issued to the Declarant for the New Building.

(c) In the event that pursuant to a Chair certification that a Force Majeure Event exists under the terms of Section 9.01 of this Declaration or pursuant to a DPR determination that Circumstances Beyond Control of the Owner exist under the terms of the M&O Agreement, Declarant has obtained a TCO prior to completion of the conditions set forth in Section 7.01(a) above, upon cessation of the Force Majeure Event or Circumstances Beyond the Control of the Owner, as the case may be, Declarant shall, as promptly as possible, satisfy the conditions of Section 7.01(a) that were prevented from being satisfied due to the existence of the Force Majeure Event or Circumstances Beyond Control of the Owner.

7.02 **Notice of Substantial Completion**. Declarant shall notify DCP at such time as it believes that the PAA and Private Drives and Sidewalks required in connection with a Waterfront Zoning Lot Phase are Substantially Complete and shall request that DCP issue a

certificate, in the form of **Exhibit K** annexed hereto (a "**Notice of Substantial Completion**") to Declarant certifying Substantial Completion of such PAA and Private Drives and Sidewalks in such Waterfront Zoning Lot Phase. The notification to DCP shall be accompanied by documentation prepared by a qualified civil engineer demonstrating Substantial Completion of the PAA or Private Drive and Sidewalk in a form acceptable to DCP. No later than twenty (20) calendar days after receipt of such request, DCP shall either issue the Notice of Substantial Completion or deliver to Declarant a notice setting forth in detail the reasons why the PAA and Private Drives and Sidewalks of such Waterfront Zoning Lot Phase are not Substantially Complete and the items that need to be completed. If DCP notifies Declarant that such PAA and Private Drives and Sidewalks of such Waterfront Zoning Lot Phase have not been Substantially Completed in accordance with the Waterfront Public Access Area Plans, such notice shall contain a detailed statement of the reasons for such non-acceptance in the form of a so-called "punch list" of items remaining to be completed or unsatisfactorily performed (a "**Punch List**"). The Punch List shall not include items which, pursuant to the definition of Substantial Completion, are not required to be completed prior to Substantial Completion. Declarant shall promptly perform the work specified on the Punch List, after which it shall notify DCP of such completion. No later than ten (20) calendar days after receipt of such notice, DCP shall either issue the Notice of Substantial Completion or notify Declarant that it has not completed the Punch List (which notice shall specify which items of the Punch List remain incomplete). If DCP fails to provide a notice to Declarant within the time periods set forth in this Section, then DCP shall be deemed to have issued a Notice of Substantial Completion with respect to such PAA and Private Drives and Sidewalks of such applicable Waterfront Zoning Lot Phase.

ARTICLE VIII

PERMANENT CERTIFICATES OF OCCUPANCY

8.01 **PCO**.

(a) Declarant shall not accept a PCO for any New Building in Development Phase 2, 3, 4, and 5 until all of the following conditions have been met with respect to the Waterfront Zoning Lot Phase required in connection with such Development Phase, provided that the requirements of this Section shall not be applicable where the Chair has determined that a Force Majeure Event has occurred pursuant to Section 9.01 of this Declaration with respect to a PAA or Private Drives and Sidewalk required in connection with such Waterfront Zoning Lot Phase, or DPR has determined that Circumstances Beyond the Control of the Owner exists pursuant the provisions of the M&O Agreement with respect to Waterfront Public Access Area required in connection with such Waterfront Zoning Lot Phase:

(i) DPR has certified that Declarant has complied with all conditions required in connection with issuance of a PCO for the New Building in accordance with the provisions of the M&O Agreement; and

(ii) DCP has issued a Notice of Final Completion for the PAAs and Private Drives and Sidewalks in the Waterfront Zoning Lot Phase required in connection with the New Building in accordance with Section 8.02 of this Declaration.

(b) Within ten (10) days after receipt of documentation demonstrating satisfaction of the conditions set forth in Section 8.01(a), the Chair shall certify in writing to DOB that Declarant has met the requirements of this Declaration or Section 62-72 of the Zoning Resolution, as applicable, and that a PCO, may be issued to the Declarant for the New Building.

(c) In the event that pursuant to a Chair certification that a Force Majeure Event exists under the terms of Section 9.01 of this Declaration or pursuant to a DPR determination that Circumstances Beyond Control of the Owner exist under the terms of the M&O Agreement, Declarant has obtained a PCO prior to completion of the conditions set forth in Section 8.01(a) above, upon cessation of the Force Majeure Event or Circumstances Beyond the Control of the Owner, as the case may be, Declarant shall, as promptly as possible, satisfy the conditions of Section 8.01(a) that were prevented from being satisfied due to the existence of the Force Majeure Event or Circumstances Beyond Control of the Owner.

8.02 **Performance of Work**. Subject to the provisions of Article 9 hereof, Declarant shall, within three (3) months after issuance of a Notice of Substantial Completion for the PAA or Private Drives and Sidewalks in a Waterfront Zoning Lot Phase required in connection with a New Building, Finally Complete the PAA or Private Drives and Sidewalks in such Waterfront Zoning Lot Phase that was the subject of the Notice of Substantial Completion. If Declarant fails to perform the PAA Work or Private Drives and Sidewalks work necessary to Finally Complete the PAA or Private Drives and Sidewalks in such Waterfront Zoning Lot within the applicable period, the City may, exercise its self help options pursuant to the provisions of Section 6.04 of this Declaration.

8.03 **Notice of Final Completion**. Declarant shall notify DCP at such time as it believes that the PAA and Private Drives and Sidewalks required in connection with a Waterfront Zoning Lot Phase are Finally Complete and shall request that DCP issue a certificate, in the form of **Exhibit L** annexed hereto (a **Notice of Final Completion**) to Declarant certifying Final Completion of such PAA and Private Drives and Sidewalks in such Waterfront Zoning Lot Phase. The notification to DCP shall be accompanied by documentation prepared by a qualified civil engineer demonstrating Final Completion of the PAA or Private Drive and Sidewalk in a form acceptable to DCP. No later than twenty (20) days after receipt of such request, DCP shall either issue the Notice of Final Completion or deliver to Declarant a notice specifying in detail the reasons why the PAA and Private Drives and Sidewalks of the applicable Waterfront Zoning Lot Phase is not Finally Complete and the items that need to be completed. If DCP notifies Declarant that such PAA and Private Drives and Sidewalks of such Waterfront Zoning Lot Phase have not been Finally Completed in accordance with the Final Public Access Area Plans, such notice shall include a detailed statement of the reasons for such non-acceptance in the form of a Punch List. Declarant shall promptly perform the work specified on the Punch List, after which it shall notify DCP of such completion. No later than twenty (20) days after receipt of such notice, DCP shall either issue the Notice of Final Completion or notify Declarant that it has not completed the Punch List (which notice shall specify which items of the Punch List remain incomplete). If DCP fails to provide a notice to Declarant within the time periods set forth in this Section, then DCP shall be deemed to have issued a Notice of Final Completion. The issuance of a Notice of Final Completion in accordance with the provisions of this Section 8.03

shall be conclusive evidence with respect to Declarant that the Waterfront Zoning Lot Phase has been constructed in accordance with Waterfront Public Access Area Plans.

ARTICLE IX

DELAY

9.01 **Delay By Reason of Force Majeure Event or Circumstances Beyond the Control of the Owner.**

(a) In the event that Declarant is unable to Complete a PAA Obligation or Private Drives and Sidewalk Obligation, or comply with an FEIS Obligation required pursuant to this Declaration, as a result of a Force Majeure Event, then Declarant may, upon written notice to the Chair (the "**Delay Notice**") request that the Chair, certify the existence of such Force Majeure Event. Any Delay Notice shall include a description of the Force Majeure Event, its cause and probable duration and the impact it is reasonably anticipated to have on the completion of the item of work, to the extent known and reasonably determined by the Declarant. The Chair in the exercise of its reasonable judgment, shall determine whether a Force Majeure Event exists, and upon notice to Declarant, within ten (10) calendar days of its receipt of the Delay Notice certify in writing whether a Force Majeure Event has occurred. If the Chair certifies that a Force Majeure Event does not exist, the Chair shall set forth with reasonably specificity, in the certification, the reasons therefore. If the Chair certifies a Force Maj eure Event exists, upon such notification, the Chair shall grant Declarant appropriate relief including notifying the Buildings Department that a Building Permit, TCO, or a PCO, as applicable, may be issued for the New Building, or, in the Chair"s reasonable discretion, for portions thereof, located within the applicable Development Phase. Any delay caused as the result of a Force Majeure Event shall be deemed to continue only as long as the Force Majeure Event continues. Upon cessation of the events causing such delay, Declarant shall promptly recommence the PAA Obligation, or FEIS Obligation, as applicable. As a condition to granting relief pursuant to a Force Majeure Event with respect to a PAA Obligation or Private Drives and Sidewalk Obligation, the Chair may require that Declarant post a bond, letter of credit or other security in a form reasonably acceptable to the Chair and naming the City as a beneficiary, to secure Declarant"s PAA Obligation and, if applicable, ensure that all requirements of Section 4.01(a) are satisfied, upon the cessation of the Force Majeure Event ("**Force Majeure Event Completion Letter of Credit**"). Declarant shall re-commence construction of the applicable PAA Phase to Substantially Complete (where a TCO has been issued pursuant to a Force Majeure Event), or Finally Complete, (where a PCO has been issued pursuant to a Force Majeure Event), or re-commence implementation of the applicable FEIS Obligation, at the end of the probable duration of the Force Majeure Event specified in the Delay Notice, or such lesser period of time as the Chair reasonably determined the Force Majeure Event shall continue; provided, however, that if the Force Majeure Event has a longer duration than as set forth in the Delay Notice, or as reasonably determined by the Chair, the Chair shall grant additional time for Substantial Completion or Final Completion of the PAA Work or Private Drives and Sidewalks Work, or for the implementation of the FEIS Obligation, as the case may be. If Declarant fails to Substantially Complete, or Finally Complete the PAA Work applicable to the issuance of a Building Permit, TCO or PCO for a New Building, the City may undertake to the PAA Work

necessary to Substantially or Finally Complete the applicable PAA Obligation, and draw upon the aforesaid Force Majeure Event Completion Letter of Credit for reasonable and necessary expenses, to the extent required to complete the PAA Obligation. Upon the City's completion of the applicable PAA Work, the City shall return the aforesaid security (or the undrawn balance thereof) to Declarant. Declarant hereby grants the City and its contractors, agents, employees and sub-contractors a license to enter upon such portions of the Subject Property as shall be required to for the purposes of exercising its rights under this Section 9.01.

(b) In the event that Declarant is unable to complete a WPAA Obligation, pursuant to this Declaration, such delay to perform a WPAA Obligation shall be subject to the provisions of the M&O Agreement relating to Circumstances Beyond the Owners Control.

ARTICLE X

EASEMENTS 10.01 Public Access Easements

(a) Upon issuance of a Notice of Substantial Completion of the WPAA, PAA and Private Drives and Sidewalks set forth in a Waterfront Zoning Lot Phase required as a condition of a issuance of a TCO for a New Building in a Development Phase, Declarant hereby covenants that, subject to the WPAA and PAA programming provisions set forth in Section 10.04, the City and the general public shall have permanent, perpetual and non-exclusive access over such completed portion of PAA, WPAA and Private Drives and Sidewalks as follows: (i) guaranteed access over such PAA and WPAA by the general public for the purpose of active and passive recreational use and pedestrian passage, and for programs and events permitted pursuant to Section 10.04 , and by the City for all purposes related to implementation of the provisions of this Declaration and the M & O Agreement; and (ii) guaranteed access over the Private Drive and Sidewalks: (aa) by the general public, for pedestrian passage and on the pPrivate dDrives for private vehicular passage and parking, subject to applicable parking regulations; and (bb) by the City for vehicular passage and parking, as well as emergency vehicle access, as well as for all purposes relating to the monitoring and enforcement of this Declaration, in each case unobstructed (except for such obstructions, objects, amenities and other items as are shown on the Waterfront Public Access Area Plans or as are otherwise permitted by the City), from the surface of the roadbed or the pavement up to the sky (each, a "Public Access Easement", collectively, the "Public Access Easements", subject to the terms and conditions set forth in this Article 10. The Public Access Easements granted herein shall run with the land and shall be binding on Declarant and all of its successors and assigns.

(i) All programs and events organized by the Declarant in the PAA shall be subject to the provisions of Section 10.04 of this Declaration.

(b) Declarant acknowledges, warrants and represents that the Public Access Easements granted herein shall be superior to all other liens and encumbrances, including but not limited to judgment liens, mortgage liens, mechanics liens and vendees' liens, and further agrees that Declarant shall take any and all action necessary to ensure that all other liens and encumbrances shall be subject and subordinate to the rights, claims, entitlements, interests and priorities created by the Public Access Easements granted herein.

(c) The Public Access Easements for Private Drives and Sidewalks include a grant to the City of the right of use and access to the Private Drives and Sidewalks as determined by the City to be necessary to provide for the management of traffic and parking on the Private Drives and Sidewalks, and the cleaning and plowing of the Private Drives and Sidewalks and collection of household refuse from buildings abutting such Private Drives and Sidewalks. Laws and regulations pertaining to vehicular and pedestrian traffic, parking, snow removal and garbage collection apply to the Private Drives and Sidewalks, and are enforceable by the City therein in the same manner as if the Private Drives and Sidewalks were public streets, in accordance with and to the extent permitted by law.

10.02 **Closing of Public Access Easements**.

(a) **Closure of the PAA or Private Drives and Sidewalks**. Declarant may close the Public Access Easement areas over the Private Drives and Sidewalks or the most limited portions thereof, as may be necessary, in order (a) to, in the event Declarant has completed all the Waterfront Zoning Lot Phases, effectuate construction of a New Building (including construction staging, hoisting or safety buffers which may require a partial street or sidewalk closures) or make repairs to an existing Building; (b) to accomplish the maintenance, repairs or replacements of the WPAA, PAA, Private Drives and Sidewalks, or portions thereof, or for the repair, restoration, rehabilitation, renovation or replacement of pipes, utility lines or conduits or other equipment on or under WPAA, PAA or Private Drives and Sidewalks, provided that Declarant notifies the Chair of such closure no less than seven (7) days in advance with a description in such notice of the area and duration of closure, and no less than three (3) days in advance of closure posts signs at sufficiently appropriate and visible locations in order to provide prior notice to the public of the area and duration of such approved closure; (c) to accomplish work as may be approved by DOB and other Governmental Authorities in connection with maintenance, repairs or improvements, including but not limited to Local Law 11 work, and the scaffolding and sidewalk bridges that accompany such work, on any of the buildings in the Large-Scale General Development, provided such closure is limited in scope to that necessary to accomplish such work and shall notify the Chair of such closing at least thirty (30) days in advance and such notice shall set forth the area and duration to be closed and shall post signs providing prior notice to the public of such area and duration of closure, at appropriate locations and entrances to and within the WPAA, PAA or Private Drives and Sidewalks; and (d) to make emergency repairs to mitigate hazardous site conditions or to address other emergency conditions and shall notify the Chair of such closing and its expected duration as soon as practicable but in no event more than two (2) Business Days after such closure, give notice to the Chair that such portion has been closed, which notice shall describe the nature of the emergency or hazardous condition causing the closure, the portion to be closed and the anticipated duration thereof, provided that conditions for which the WPAA, PAA or Private Drives and Sidewalks may be closed shall be limited to actual or imminent emergency situations, including but not limited to, security alerts, riots, casualties, disasters, or other events endangering public safety or property, and provided further that no such emergency closure shall continue for more than forty-eight (48) consecutive hours without Developer having consulted with the New York City Police Department (the "**NYPD**") or the Buildings Department, as appropriate, and having following the NYPD"s or Building Department"s direction, if any, with regard to the emergency situation. In the event of a closure pursuant to (a), (b), (c) or (d) above Developer shall close or permit to

be closed only those portions of such areas which must or should reasonably be closed to effect the construction, repairs or remediation, will exercise due diligence in the performance of such repairs or remediation so that it is completed expeditiously and the temporarily closed areas are re-opened to the public promptly, and will, wherever reasonably possible, perform such work in such a manner that the public will continue to have access to the WPAA, PAA or Private Drives and Sidewalks. In the event any closure pursuant to (a), (b), (c) or (d) is anticipated to last more than 7 days Developer shall simultaneously therewith submit a construction schedule to the Chair describing the work necessitated and the need for a duration of closure lasting greater than 7 days, the duration of such closure to be subject to Chairs reasonable review and acceptance of such notice, provided that where there is a disagreement as to the necessity of such closure lasting greater than 7 days Developer and the Chair shall convene to confer to reach a mutually agreeable duration of such closure. In addition to the foregoing, Developer shall have the right to close portions of the WPAA, PAA or Private Drives and Sidewalks to the City and the general public one (1) Business Day in each year to preserve its ownership interest in such portions of the WPAA, PAA or Private Drives and Sidewalks. Declarant agrees that the closure of portions of the Private Drives and Sidewalks, or the WPAA or the PAA to the City and the general public in order to preserve its ownership interest therein shall occur on not less than four (4) separate days each year so as to ensure that the majority of the Private Drives and Sidewalks WPAA and PAA are open to the public on any given day, and that no such closure may be made on a weekend or holiday (as defined in 5 U.S. Code Section 6103).

(b) **Closure of the WPAA.** Declarant may close the Public Access Easement located over the WPAA in accordance with the provisions set forth in the M & O Agreement.

10.03 **Restrooms.** Following substantial completion of the Refinery Building, Declarant agrees to grant an easement to permit the City and the general public access to, and use of, the Restrooms for any hours that the Waterfront Public Access Area is open to the public. The Restrooms may be closed for repairs and alterations as necessary. Declarant, in accordance with the M&O Agreement, shall maintain the Restrooms.

10.04 **PAA and WPAA Programming.** Declarant shall develop and implement public programming for the PAA and WPAA, consisting of recreational and leisure activities, arts and cultural activities, and gatherings and events, which programming shall be open to the public and developed consistent with a plan therefore, as set forth in this Section.

(a) **Review Board**. No later than six (6) months prior to the earlier of the date on which the Declarant anticipates opening (i) seeks a Notice of Substantial Completion with respect to the WPAA or PAA, or any portion thereof, or (ii) anticipates any programming of any portion of Domino Square prior to seeking a Notice of Substantial Completion for such space, Declarant shall cause to be formed a committee (the "Review Board") for the purpose of evaluating and making determinations with respect to Declarants proposed public programming for the PAA and WPAA, in accordance with this Section.

(i) The Review Board shall consist of the following: the Declarant, two representatives appointed byseven (7) members, six (6) of whom shall be appointed by Declarant from among nominations made by the local Community Board, and one representative appointed by (a) each City Councilmember representing any district within two city blocks of the Subject Property (currently the 33rd District and 34th District), (b) the Brooklyn Borough

appoint at least one (1) individual nominated by each nominating entity. A representative of Declarant shall serve as an additional member. However, wWhen the Review Board considers the programming of the WPAA, then the Review Board shall include consist of eight (8) members, with the an additional member who is a representative appointed by the Commissioner of DPR (the "DPR Board Member"). Within thirty (30) days following receipt of a request from Declarant, each entity shall identify the individual (and in the case of the local Community Board, the two individuals) each has appointed to the Review Board. Declarant shall be responsible for any costs for the operation of the Review Board under this Section.

(ii) All programming proposed for the WPAA shall be consistent with the Rules and Regulations for the WPAA established pursuant to the M&O and shall be open to the general public free of charge unless otherwise approved by DPR. In addition, any proposed fees and any process for issuance of permits for the use of the active recreation spaces in the WPAA shall be subject to the approval of DPR. All programming proposed for the PAA shall be consistent with the Rules and Regulations of the PAA established pursuant to Section 11.04 herein and shall be open to the general public free of charge unless programs which involve any user fee or cost to the public have been approved by the Review Board.

(iii) Declarant shall offer to meet and confer with the Review Board at least once prior to submission of a proposal pursuant to paragraph (iv) of this subdivision, in order to solicit the preliminary views of the Review Board concerning public programming in the PAA and WPAA.

(iv) No later than three (3) months prior to the earlier of the date on which the Declarant (a) anticipates opening seeking a Notice of Substantial Completion for the WPAA or PAA, or any portion thereof, or (b) anticipates programming any portion of Domino Square in advance of seeking a Notice of Completion for such space, Declarant shall provide the Review Board with a list of the types of organized events and programs proposed to take place in the WPAA and PAA in the remainder of the calendar year following commencement of operation of the WPAA and PAA, or any portion thereof (the "**Initial Programming Plan**"). No later than October 1st For of each year following the year during which the Initial first Programming Plan was in effect, Declarant shall provide the Review Board with a Programming Plan for the following calendar year a list of the types of organized events and programs proposed to take place in the WPAA and PAA in such year no later than October 1st of the year prior thereto (the "**Annual Programming Plan**"). The Initial Programming Plan and Annual Programming Plan shall include, for each type of event or program, the anticipated location(s) and extent, anticipated attendance, hours, whether there may be amplified sound and/or light, possible access control measures, anticipated frequency/duration, whether such events or programming may take place on weekdays, weekends, or holidays, and whether such type of event or program may involve any user fees or costs to the public and the approximate costs thereof. Declarant may, at its discretion, combine the Initial Programming Plan with the first Annual Programming Plan for the subsequent calendar year in a single submission to the Review Board.

(v) Within thirty (30) days following receipt of the a Initial Programming Plan, or an Annual Programming Plan, as the case may be, the Review Board shall meet and provide Declarant with a written approval, disapproval, or approval with modifications or conditions, of such Programming Plan. Upon request, Declarant shall meet and confer with the Review Board during such thirty (30) day period. If the Review Board either approves such Programming Plan plan, or fails to provide a written determination with respect to such Programming Plan within thirty (30) days of receipt, Declarant may proceed with implementation of the Programming Plan in the form submitted. In the event that the Review Board, within such thirty (30) day period, disapproves the Programming Plan or approves the Programming Plan with modifications or conditions (the Initial Determination), the Declarant may proceed to implement the Programming Plan with such modifications or conditions in accordance with the Initial Determination, or may within fifteen (15) days of receipt of such Initial Determination disapproval or approval with modifications or conditions request that the Review Board reconsider revise its Initial dDetermination, in whole or in part, and that the Review Board meet and confer with Declarant to resolve differences consider such revisions to its Initial Determination. In the event that the Review Board does not meet with Declarant within fifteen (15) days of such request, Declarant may implement the Programming Plan in the form originally submitted notwithstanding the Initial Determination. In the event the Review Board does meet with Declarant with respect to its Initial Determinations, Wwithin fifteen (15) days following such meeting, the Review Board shall review and reconsider its iInitial dDetermination to disapprove the Plan or and provide Declarant with any a written determination which may revise the Initial Determination, in whole or part, or may provide an explanation as to why the Review Board has determined to not revise its Initial Determination, in whole or part. revisions to its approval with modifications or conditions, as applicable. If the Review Board submits a new written determination within such fifteen (15) day period Declarant may proceed to implement the Programming Plan in accordance with such further new determination of the Review Board., except where such written determination confirms a prior disapproval of the Plan. If the Review Board fails to provide a written determination within such fifteen (15) day period Declarant may proceed with implementation of the Programming pPlan in the form originally submitted. Notwithstanding the above, all events and programming in (a) the WPAA shall be open to the general public free of charge unless otherwise approved by DPR pursuant to subdivision (a)(ii) of this Section and (b) the PAA shall be open to the general public free of charge unless programs which involve any user fee or cost to the public are approved by the Review Board pursuant to subdivision (a)(ii) of this Section.

(b) If no Programming Plan is approved pursuant to subdivision (a) of this Section by December 31st of the calendar year in which an Annual Programming Plan is submitted for the forthcoming calendar year, Declarant may implement the Initial Programming Plan or Annual Programming Plan approved by the Review Board for the prior calendar year, as applicable.

(b) By March 31st of the year following the commencement of operations of any portion of the WPAA or PAA, and for each year thereafter, Declarant shall provide a written report to the Review Board which identifies the operating costs and information relevant to the maintenance and operation of the WPAA and PAA for the previous calendar year.

(c) The Review Board shall not impose any restrictions or conditions on activities, events and recreation within the PAA and WPAA which are unrelated to: the type of event or program, the anticipated location(s) and extent, anticipated attendance, hours, whether there may be amplified sound and/or light, possible access and control measures, anticipated frequency/duration, whether such events or programming may take place on weekdays, weekends, or holidays, and whether such type of event or program may involve a user fee or cost to the public and the approximate amounts thereof. Provided, further, except as provided in subdivision (a)(iv) of this Section and in no case may the Review Board base its determination or make modifications or conditions based upon matters or criteria unrelated to or beyond the scope of the matters set forth in the Programming Plan pursuant to such subdivision, such, including but not limited to as the identity of a performer or event sponsor , the content or presentation format of any individual event, Declarant"s methods for selection of event and program providers, and Declarant"s financial or business arrangements with event and program providers. Implementation of the Initial Programming Plan and Annual Programming Plans, including the selection and scheduling of events and programs pursuant thereto, shall be made by Declarant and not subject to Review Board review, provided Declarant has obtained any and all approvals of DPR and the Review Board as required by this Section.

(d) The Each Initial Programming Plan and Annual Programming Plans shall represent the Declarant"s proposal and intentions for the WPAA and PAA as of the date of submission. In the event that, during the period when the Initial Programming Plan or an Annual Programming Plan is in effect, Declarant wishes to hold an organized event or program in the WPAA or PAA that does not fall within the types of events and programming covered in the such Initial Programming Plan or Annual Programming Plan, Declarant shall request an amendment to the Initial Programming Plan or the Annual Programming Plan to allow for such type of event. Such request must shall be made in writing to the Review Board at least thirty (30) days in advance of the any such event, and shall include, the type of event, the anticipated location(s) and extent, anticipated attendance, hours, whether there may be amplified sound and/or light, possible access control measures, anticipated frequency/duration, whether such events or programming may take place on weekdays, weekends, or holidays, and whether such type of event or program may involve any user fees or costs to the public and the approximate amounts thereof. Within fifteen (15) days of receipt of such notice, the Review Board shall provide Declarant with a written approval, disapproval, or approval with modifications or conditions of such type of event or program. If the Review Board either approves, with or without conditions, or fails to provide a written determination with respect to such type event or programming within fifteen (15) days of receipt, Declarant may proceed with implementation of such type of event in accordance with the Review Board approval or, in the event of a failure to provide a written determination, in accordance with the amendment as submitted, and the Initial Programming Plan or Annual in such case, the Programming Plan shall be deemed modified provided that in the event that such event or program requires the separate approval of DPR pursuant to subdivision (a)(ii) of this Section it shall not be implemented without such approval.

(e) Five (5) members of the Review Board shall constitute a quorum. Determinations by the Review Board shall only be made by a majority vote of the members present and voting taken in the presence of a quorum of four (4) members, provided in instances where the DPR Board Member is eligible to vote on a determination affecting the WPAA, or a

portion thereof, the Review Board's two representatives of the local Community Board shall only be entitled to only one (1) vote in the aggregate. for votes on the proposed programming of the PAA and a majority vote in the presence of a quorum of five (5) members for votes on the proposed programming of WPAA.

(f) At its first meeting, the Review Board shall establish guidelines bylaws governing the conduct of meetings and other procedures, including meeting locations and other matters.

(g) Programming for the WPAA shall comply in all respects with the M&O Agreement attached hereto and shall be subject to the additional provisions and restrictions set forth therein.

ARTICLE XI

ADMINISTRATION

11.01 **Hours of Operation**. Subject to the terms and conditions set forth in Article 10 of this Declaration, (a) the Public Access Areas shall be open and accessible from at least 6:00 a.m. until 10:00 p.m. between April 15 and October 31 and from at least 7:00a.m. to 8:00 p.m. between November 1 and April 14, provided that in the event the hours of operation of the WPAA are adjusted in accordance with the terms of the M & O Agreement, the hours of operation of the PAA shall be adjusted as necessary to remain consistent with the hours of operation of the WPAA; and (b) the Private Drives and Sidewalks shall remain open 24 hours a day, 7 days a week, 365 days a year **Maintenance of Restrooms, PAA, WPAA and Private Drives and Sidewalks**. Upon Substantial Completion of each WPAA, PAA or Private Drives and Sidewalks, or portions thereof, Declarant shall be solely responsible for the maintenance of and capital repairs to the Restrooms, the PAA, the Waterfront Public Access Areas and the Private Drives and Sidewalks over which the grant of a Public Access Easement to the City has become effective (the **Maintenance Obligation**). The Maintenance Obligation requires that Declarant maintain the PAA, Waterfront Public Access Areas, the Private Drives and Sidewalks and the Restrooms in accordance with the provisions of this Declaration and the M&O Agreement, and shall maintain the Private Drives and Sidewalks in accordance with the provisions of a builders pavement plan approved by DOB for the Private Drives and Sidewalks. In the event of a mapping of the Private Drives and Sidewalks as city streets pursuant to a land use application to designate the Private Drives and Sidewalks on the City Map, and a subsequent conveyance of the newly mapped streets to the City, Declarant shall be relieved of any and all obligations to maintain and repair such Private Drives and Sidewalks. Security for the Maintenance of the WPAA shall be provided in accordance with the provisions of the M&O Agreement.

11.02 **Commercial Access to Waterfront Public Access Areas**. Declarant acknowledges that any direct access to the Waterfront Public Access Areas from commercial establishments in the Proposed Development is subject to DPR review and approval, in the reasonable exercise of its discretion, and that in the event of approval, DPR may impose

reasonable conditions with respect to the configuration and operation of such commercial access to the Waterfront Public Access Areas.

11.03 **Commercial and Non-Public Uses of Waterfront Public Access Areas**. Declarant acknowledges that any commercial use of the Waterfront Public Access Areas is subject to review and approval by DPR, in the reasonable exercise of its discretion, and that in the event of approval, DPR may impose reasonable conditions with respect to the operation of such commercial uses in the Waterfront Public Access Areas.

11.04 **Rules and Regulations**. Subject to the provisions of Section 10.04, Declarant shall establish rules and regulations governing public conduct in the PAA and Private Drives and Sidewalks which shall be consistent with the Rules and Regulations governing public conduct applicable to the WPAA pursuant to the M & O Agreement, except to address features and functions specific to the PAA and Private Drives and Sidewalks.

Illumination. The PAA and Private Drives and Sidewalks shall be illuminated for safe use and enjoyment, with a minimum level of illumination of not less than two horizontal foot candles (lumens per foot) throughout all walkable and sitting areas, including sidewalks directly adjacent to the WPAA or PAA, and a minimum of level of illumination of not less than 0.5 horizontal foot (lumens per foot) throughout all other areas and such level of illumination shall be maintained during the hours of operation set forth in this Declaration, excluding the daylight hours from one-half hour after sunrise to one-half hour before sunset.

11.05 **Signage**. Substantial Completion of the PAA and Private Drives and Sidewalks shall include signage located in the PAA and Private Drives and Sidewalks, as shown on Waterfront Public Access Area Plans, indicating hours open to the public, accessibility to individuals with disability, and the identity of Owner and the phone number and email address of persons responsible for maintenance.

ARTICLE XII

ENFORCEMENT 12.01 Defaults and Remedies

(a) Declarant acknowledges that the restrictions, covenants, and obligations of this Declaration will protect the value and desirability of the Subject Property, as well as benefit the City. Declarant acknowledges that the City is an interested party to this Declaration, and consents to enforcement by the City, administratively or at law or equity, of the restrictions, covenants, easements, obligations and agreements contained herein. If Declarant, or as the case may be Mortgagee, fails to perform any of Declarant"s obligations under this Declaration, the City shall have the right to enforce this Declaration against Declarant and exercise any administrative, legal, or equitable remedy available to the City, and Declarant hereby consents to same; provided that this Declaration shall not be deemed to diminish Declarant"s or any other Party In Interest"s right to exercise any and all administrative, legal, or equitable remedies otherwise available to it.

(b) No Person other than Declarant, any Mortgagee, all holders of mortgages secured by (i) any condominium unit or (ii) other individual residential unit located within the Subject Property and, from and after the Association Obligation Date, the Association, shall have any right to enforce the provisions of this Declaration. This Declaration shall not create any enforceable interest or right in any Person, other than Declarant, any Mortgagee and, from and after the Association Obligation Date, the Association, 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.

12.02 **Notice and Cure**.

(a) Except as provided in Section 12.05, prior to any agency, department, commission or other subdivision of the City instituting any proceeding or proceedings to enforce any of the terms or conditions of this Declaration by reason of the existence of an alleged breach or other violation hereunder, it shall give Declarant and any mortgagees who have provided Notice in accordance with the provisions of Section 14 hereof ninety (90) days written notice of such alleged breach or other violation, during which period Declarant or a mortgagee shall have the opportunity to effect a cure of such alleged breach or other violation or to demonstrate why the alleged breach or other violation has not occurred. If Declarant or a mortgagee commences to effect a cure during such ninety (90) day period and proceeds diligently towards the effectuation of such cure, the aforesaid ninety (90) day period shall be extended for so long as Declarant continues to proceed diligently with the effectuation of such cure.

(b) In the case of a mortgagee, if possession of the property is required to effect such cure, then the mortgagee shall be deemed to have commenced such cure so long as the mortgagee shall have commenced a foreclosure process to obtain control of the property. In the event that title to the Subject Property, or any part thereof, shall become vested in more than one party, the right to notice and cure provided in this subsection shall apply equally to all parties with a fee interest in the Subject Property, or any part thereof, including ground lessees. Notwithstanding the foregoing, in the event that the Subject Property, or any portion thereof, is converted to a condominium, the right to notice and cure provided in this subsection shall apply, in addition to Declarant (if Declarant remains at such time an owner of the Subject Property or of condominium units) and any mortgagees who have provided Notice in accordance with the provisions of Section 14 hereof, to the condominium board.

(c) If after due notice as set forth in this Section, Declarant and the Mortgagee fail to cure such alleged violations, the City may exercise any and all of its rights, including those delineated in this Section and may disapprove any amendment, modification, or cancellation of this Declaration on the sole grounds that Declarant is in default of any material obligation under this Declaration.

12.03 **Additional Remedies**. Declarant acknowledges that the remedies set forth in this Declaration are not exclusive, and that the City and any agency thereof with an interest herein may pursue other remedies not specifically set forth herein, including, without limitation, the seeking of a mandatory injunction compelling Declarant, its heirs, successors or assigns, to

comply with any provision, whether major or minor, of this Declaration and a revocation by the City of any certificate of occupancy, temporary or permanent, for any portion of the Proposed Development on the Subject Property subject to the Large Scale Special Permit, which does not comply with the terms of this Declaration; provide, however, that such right of revocation shall not permit or be construed to permit the revocation of any certificate of occupancy for any use or improvement that exists on the Subject Property as of the date of this Declaration.

[SECTION 12.04 Intentionally Omitted]

12.05 **Denial of Public Access to PAA and Private Drives and Sidewalks.**

(a) Subject to the provisions of Section 10.02, if the City has reason to believe that the use and enjoyment of the PAA or Private Drives and Sidewalks by any member of the public has, without reasonable cause, been denied by Declarant, and the City determines that such denial of access with respect to the right of public access is in violation of the provisions of this Declaration, the City shall serve upon Declarant such statement, together with written notice that the City intends to make a finding of wrongful denial of access, unless within ten (10) business days of Declarant‟s receipt of the notice, Declarant submits to the City additional facts or evidence which indicate that there has been no denial or material impairment of access or such denial was in accordance with provisions of Section 10.02 (the **Denial of Public Access Finding**"). At the expiration of such ten (10) business day period, the City shall evaluate any evidence submitted and make a Denial of Public Access Finding of whether denial has occurred. Upon making a Denial of Public Access Finding, the Commissioner shall notify Declarant. Where the Denial of Public Access Finding sets forth that a denial of public access has occurred the Declarant and Mortgagee shall not have further opportunity to cure under Section 12 above.

(b) Notwithstanding the foregoing provisions of Section 12.02, in the event of a denial of public access, the cure period to which Declarant shall be entitled shall be reduced to twenty-four (24) hours from Declarant‟ s receipt of the Denial of Public Access Finding. If such denial of access or interference continues beyond such period, the City may thereupon exercise any and all of its rights hereunder, including seeking a mandatory injunction, and the provisions of Section 12.02 shall not apply to such denial of public access.

12.06 **Enforcement by City; No Enforcement by Third Parties**.

(a) Declarant acknowledges that the City is an interested party to this Declaration, and consents to enforcement by the City, administratively or at law or equity, of the restrictions, covenants, easements, obligations and agreements contained herein.

(b) No Person other than the City, Declarant, and the holder of a Mortgage who shall have obtained control of the Subject Property pursuant to a Mortgage agreement, shall have any enforceable interest in or right to enforce the provisions of this Declaration.

ARTICLE XIII

MISCELLANEOUS

Effective Date; Recordation; Binding Nature; Liability; Governing Law; Severability; Applications; Offering Plan; Indemnification; Acknowledgements; Representations; Estoppel

13.01 **Effective Date; Recordation**.

(a) **Effective Date**. This Declaration and the provisions and covenants hereof shall become effective only upon the Effective Date.

(b) **Recordation**.

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

(ii) Notwithstanding anything to the contrary contained in this Declaration, if all Approvals given in connection with the Applications are declared invalid or otherwise voided by a final judgment of any court of competent jurisdiction from which no appeal can be taken or for which no appeal has been taken within the applicable statutory period provided for such appeal, then, upon entry of said judgment or the expiration of the applicable statutory period for such appeal, this Declaration shall be cancelled and shall be of no further force or effect and an instrument discharging it may be recorded, and the Prior Approvals shall be retroactively reinstated and in full force and effect. Prior to the recordation of such instrument, Declarant shall notify the Chair of Declarant"s intent to discharge this Declaration and request the Chair"s approval, which approval shall be limited to insuring that such discharge and termination is in proper form. Upon recordation of such instrument, Declarant shall provide a copy thereof to the Commission so certified by the Register"s Office. If some of the Approvals given in connection with the Applications are declared invalid, then this Declaration may be (i) cancelled at the sole discretion of the Declarant and shall be of no further force or effect and an instrument discharging it may be recorded as provided above or (ii) Declarant may apply for modification or amendment of this Declaration in accordance with Section 14 hereof.

13.02 **Binding Nature; Successors**.

(a) The restrictions, covenants, rights and agreements set forth in this Declaration shall be covenants running with the land and shall inure to the benefit of, and bind,

the respective heirs, successors, legal representatives and assigns of Declarant, including Mortgagee (provided that no Mortgagee shall have any performance or payment obligations under this Declaration unless and until such Mortgagee succeeds to a Possessory Interest), and all holders of mortgages secured by any condominium unit or other individual residential unit located within the Subject Property (provided that no such individual unit mortgagee shall have any performance or payment obligations under this Declaration unless and until such mortgagee succeeds to a Possessory Interest), provided that the Declaration shall be binding on any Declarant only for the period during which such Declarant, or any successor, legal representatives or assign thereof, is the holder of an interest in the Subject Property and only to the extent of such Declarant"s interest in the Subject Property, and references to Declarant shall be deemed to include such heirs, successors, legal representatives and assigns as well as the successors to their interests in the Subject Property, subject to the further provisions of this Section 13.02. At such time as a Declarant or any successor to a Declarant no longer holds an interest in any portion of the Subject Property, such Declarant"s or such Declarant"s successor"s obligations and liability under this Declaration shall wholly cease and terminate for such portion and the party succeeding such Declarant or such Declarant"s successor shall assume the obligations and liability of Declarant pursuant to this Declaration to the extent of such party"s interest in such portion of the Subject Property. For purposes of this Declaration, any successor to a Declarant shall be deemed a Declarant for such time as such successor holds all or any portion of any interest in the Subject Property.

(b) Reference in this Declaration to agencies or instrumentalities of the City shall be deemed to include agencies or instrumentalities succeeding to jurisdiction thereof pursuant to the laws of the State of New York and the New York City Charter.

(c) Notwithstanding anything to the contrary contained in this Declaration, (i) neither the Association nor any Unit Interested Party (other than Declarant, if Declarant is a Unit Interested Party) shall have any obligations under this Declaration to construct the Waterfront Public Access Areas, and (ii) no owner of an Affordable Housing Unit shall have any obligation with respect to or be subject to levy or execution for the maintenance of the PAA or WPAA. Notwithstanding the foregoing, in the event that a TCO or PCO has been issued for any portion of the Proposed Development prior to the receipt of a Notice of Substantial or Final Completion due to Force Majeure Event or any other reason, whether or not Declarant is a Unit Interested Party, Declarant shall remain obligated as Declarant until a Notice of Final Completion has been issued for the applicable Waterfront Zoning Lot Phase.

13.03 **Limitation of Liability**.

(a) The City shall look solely to the fee estate and interest of Declarant and any and all of its successors and assigns in the Subject Property, on an *in rem* basis only, for the collection of any money judgment recovered against Declarant or its successors and assigns, and no other property of Declarant or its principals, partners, shareholders, directors, members, officers or employees or successors and assigns shall be subject to levy, execution or other enforcement procedure for the satisfaction of the remedies of the City or any other person or entity with respect to this Declaration, and Declarant shall have no personal liability under this

Declaration. Notwithstanding the foregoing, nothing in this Section 13.03 shall be deemed to preclude, qualify, limit or prevent the exercise of any of the City‟s governmental rights, powers or remedies, including without limitation, with respect to the satisfaction of the remedies of the City, under any laws, statutes, codes or ordinances.

(b) In the event that any building in the Proposed Development is converted to condominium form of ownership, every condominium unit (other than an Affordable Housing Unit) shall, as successor in interest to Declarant, be subject to levy or execution for the satisfaction of any monetary remedies of the City, to the extent of each Unit Interested Party‟s Individual Assessment Interest, and provided that such enforcement procedures shall be taken simultaneously against all the condominium units in the Proposed Development and not against selected individual units only. The **Individual Assessment Interest** shall mean the Unit Interested Party‟s percentage interest in the common elements of the condominium in which such condominium unit is located applied to the assessment imposed by the Association on the condominium in which such condominium unit is located. In the event of a default in the obligations of the Association as set forth herein, the City shall have a lien upon the property owned by each Unit Interested Party solely to the extent of each such Unit Interested Party‟s unpaid Individual Assessment Interest, which lien shall include such Unit Interested Party‟s obligation for the costs of collection of such Unit Interested Party‟s unpaid Individual Assessment Interest. Such lien shall be subordinate to the lien of any Mortgage, the lien of any real property taxes, and the lien of the board of managers of any such condominium for unpaid common charges of the condominium, and the lien of the Association pursuant to the provisions of Article XV. The City agrees that, prior to enforcing its rights against a Unit Interested Party, the City shall first attempt to enforce its rights under this Declaration against Declarant, the Association and the boards of managers of any condominium association. In the event that the Association shall default in its obligations under this Declaration, the City shall have the right to obtain from the Association and/or boards of managers of any condominium association, the names of the Unit Interested Parties who have not paid their Individual Assessment Interests.

(c) The restrictions, covenants and agreements set forth in this Declaration shall bind Declarant and any successor-in-interest only for the period during which Declarant and any such successor-in-interest is the holder of a fee interest in, or is a Party in Interest of, the Subject Property and only to the extent of such fee interest or the interest rendering Declarant a Party in Interest. At such time as the named Declarant has no further fee interest in the Subject Property and is no longer a Party in Interest of the Subject Property, such Declarant‟s obligations and liability with respect to this Declaration shall wholly cease and terminate from and after the conveyance of Declarant‟s interest and Declarant‟ s successors-in-interest in the Subject Property by acceptance of such conveyance automatically shall be deemed to assume Declarant‟s obligations and liabilities here-under to the extent of such successor-in interest‟s interest.

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

13.05 **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 and the judgment of such court shall be upheld on final appeal, or the time for further review of

such judgment on appeal or by other proceeding has lapsed, such provision shall be severable, and the remainder of this Declaration shall continue to be of full force and effect.

13.06 **Applications**. Declarant shall reference this Declaration in any application pertaining to the Subject Property submitted to DOB or any other interested governmental agency or department having jurisdiction over the Subject Property.

13.07 **Indemnification**. If Declarant is found by a court of competent jurisdiction to have been in default in the performance of its obligations under this Declaration 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 Declarant"s obligations under this Declaration, provided, however, that nothing in this Section 13.10 shall impose on the Association any indemnification obligations other than with respect to the obligations set forth in Section 13.07(d) and Section 13.09 and the reasonable legal and administrative expenses incurred by the City arising out of or in connection with the enforcement of such obligations. If any judgment is obtained against Declarant from a court of competent jurisdiction in connection with this Declaration and such judgment is upheld on final appeal or the time for further review of such judgment or appeal 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 said judgment.

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

13.09 **Acknowledgement of Covenants**. Declarant acknowledges that the restrictions, covenants, easements, obligations and agreements in this Declaration will protect the value and desirability of the Subject Property as well as benefit the City of New York and all property owners within a one-half mile radius of the Subject Property.

13.10 **Representations**. Declarant represents and warrants that there are no restrictions of record on the use of the Subject Property, nor any present or presently existing future estates or interest in the Subject Property, nor any liens, obligations, covenants, easements, limitations or encumbrances of any kind, the requirements of which have not been waived or subordinated, which would prevent or preclude, presently or potentially, the imposition of the restrictions, covenants, obligations and agreements of this Declaration.

13.11 **Further Assurances**. Declarant 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.

13.12 **Estoppel Certificates**. Whenever requested by a party, the other party shall within ten (10) days thereafter furnish to the requesting party a written certificate setting forth: (i) that this Declaration is in full force and effect and has not been modified (or, if this Declaration has been modified, that this Agreement is in full force and effect, as modified) and

(ii) whether or not, to the best of its knowledge, the requesting party is in default under any provisions of this Declaration and if such a default exists, the nature of such default.

13.13 **Counterparts**. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which, together, shall constitute one agreement.

ARTICLE XIV

AMENDMENT, MODIFICATION, CANCELLATION & SURRENDER

14.01 This Declaration may be modified, amended or canceled only upon application by Declarant and subject to the approval of the Commission, and no other approval or consent by any other public body shall be required for such modification, amendment or cancellation; Declarant shall not apply to modify this Declaration so as to make any Affordable Housing Unit subject to the Funding Obligation or the Maintenance Obligation or to assessment for either of the foregoing during the term of any "Lower Income Housing Plan Written Agreement," entered into between Declarant and the City, acting through the New York City Department of Housing Preservation and Development.

14.02 Notwithstanding the provisions of Section 14.01 above, any modification to this Declaration proposed by Declarant and submitted to the Chair, which the Chair deems to be a minor modification of this Declaration, may, by express written consent, be approved administratively by the Chair and no other approval or consent shall be required from the Commission, any public body, private person or legal entity of any kind, including, without limitation, any present or future Party-in-Interest, including but not limited to minor modifications to the Waterfront Public Access Plans to reflect modifications to the design of the PAA and Private Drives and Sidewalks.

14.03 No development other than: (a) the Proposed Development permitted by the Approvals as set forth in Section 2.01(a) and allowed subject to the provisions of Section 2.01(f); or (b) the Prior Zoning Development set forth in Section 2.01(d)(i), shall be permitted on the Subject Property (any such other proposed development the **Modified Development**), unless (i) the Commission has reviewed and approved the Modified Development, (ii) Declarant has submitted a Technical Memorandum to City Planning demonstrating that the Modified Development will not result in any greater adverse environmental impacts than have been identified in the FEIS, and (iii) drawings reflecting the Modified Development have been submitted in a form acceptable to the Department and have been incorporated into this Declaration pursuant to Section 14.01 above. In the event that Declarant determines that an FEIS Obligation set forth in this Declaration should not apply with respect to the Modified Development, it shall set forth the basis for such determination in the Technical Memorandum submitted in accordance with this Section 14. Upon the acceptance of a Technical Memorandum demonstrating the same, the requirements of this declaration with respect to the FEIS Obligation analyzed in such Technical Memorandum shall not be required for the Modified Development. Declarant shall not apply for or accept Building Permits for the Modified Development until the Chair certifies to DOB that the Commission has approved the plans for the proposed Modified

Development, a Technical Memorandum has been submitted to City Planning demonstrating that the proposed Modified Development will not result in any greater adverse environmental impacts than have been identified in the FEIS, and a modification of this Declaration has been approved pursuant to this Section 14 to reflect the plans and modified FEIS Obligations, as applicable, for the proposed Modified Development.

14.04 Notwithstanding anything to the contrary contained in this Declaration, for so long as Declarant (including any successor to its interest as fee owner of all or any portion of the Subject Property, other than a Unit Interested Party) shall hold any fee interest in the Subject Property, or any portion thereof: (i) all Unit Interested Parties, (ii) all boards of managers of any condominium association, and (iii) the Association, hereby (x) irrevocably consent to any amendment, modification, cancellation, revision or other change in this Declaration by Declarant; (y) waive and subordinate any rights they may have to enter into an amended Declaration or other instrument amending, modifying, canceling, revising or otherwise changing this Declaration, and (z) nominate, constitute and appoint Declarant, their true and lawful attorney-in-fact, coupled with an interest, to execute any document or instruments that may be required in order to amend, modify, cancel, revise or otherwise change this Declaration.

14.05 From and after the date that no Declarant holds any fee interest in the Subject Property or any portion thereof (other than one or more individual residential or commercial condominium units), and provided the Association shall have been organized as provided in this Declaration, the Association shall be deemed to be the sole Declarant and Party-in-Interest under this Declaration. In such event, the Association shall be the sole party with any right to amend, modify, cancel, revise or otherwise change the Declaration, or make any application therefore, and each and every Unit Interested Party hereby (x) irrevocably consents to any amendment, modification, cancellation, revision or other change in this Declaration by the Association; (y) waives and subordinates any rights it may have to enter into an amended Declaration or other instrument amending, modifying, canceling, revising or otherwise changing this Declaration, and (z) nominates, constitutes and appoints the Association its true and lawful attorney-in-fact, coupled with an interest to execute any documents or instruments that may be required in order to amend, modify, cancel, revise or otherwise change this Declaration.

14.06 Declarant shall be deemed to have surrendered the approvals granted pursuant to Land Use Numbers N 100186 ZRK, C 100187 ZSK, C 100188 ZSK, C 100189 ZSK, N 100190 ZAK, N 100191 ZCK, and N 100192 ZCK (the **Prior Approvals**, upon the later of (A) eleven (11) months following the expiration of the statute of limitations for bringing a judicial proceeding challenging the Approvals, or (B) if a judicial proceeding challenging the Approvals is brought, the date of entry of a final judgment of a court of competent jurisdiction upholding the Approvals from which no appeal can be taken or for which no appeal has been taken within the applicable statutory period provided for such appeal, and upon such date Declarant shall not be entitled to develop the Subject Property pursuant to such Prior Approvals; provided, that nothing herein shall be construed to extend the term of the Prior Approvals beyond such term as authorized pursuant to Sections 11-42 and 11-43 of the Zoning Resolution. Upon the date that the Prior Approvals are deemed surrendered the 2010 Declaration shall be of no further force and effect.

ARTICLE XV

NOTICES

15.01 **Notices**.

(a) All notices, demands, requests, consents, waivers, approvals and other communications which may be or are permitted, desirable or required to be given, served or deemed to have been given or sent hereunder shall be in writing and shall be sent as follows:

If intended for Declarant, to: Domino A LLC and Domino B LLC
45 Main Street, Suite 602
Brooklyn, New York 11201
Attention: Jed Walentas

With a copy to: Slater & Beckerman PC
61 Broadway, Suite 1801
New York, New York 10006
Attention: Raymond Levin, Esq.

If intended for the City, to: Director,
Department of City Planning
22 Reade Street
New York, New York 10007

and

Commissioner,
Department of Parks and Recreation
The Arsenal, Central Park
New York, New York 10021

With a copy to: Office of the General Counsel
New York City Department of Parks & Recreation
The Arsenal, Central Park
830 Fifth Avenue
New York, New York 10021

If intended for DCP, to: Director,
Department of City Planning
22 Reade Street
New York, New York 10007

With a copy to:	Office of the General Counsel New York City Department of City Planning 22 Reade Street New York, New York 10007
If intended for DPR, to:	Commissioner, Department of Parks & Recreation The Arsenal, Central Park 830 Fifth Avenue New York, New York 10021
With a copy to:	Office of the General Counsel Department of Parks & Recreation The Arsenal, Central Park 830 Fifth Avenue New York, New York 10021
If intended for DEP, to:	Deputy Commissioner New York City Department of Environmental Protection 59-17 Junction Blvd Flushing, New York 11373
If intended for OER, to:	Mayor"s Office of Environmental Remediation 100 Gold Street, 2nd Floor New York, NY 10038

(i) If intended for a Mortgagee, by mailing or delivery to such Mortgagee at the address given in its notice to DCP.

(ii) From and after the Association Obligation Date, a copy of all notices to Declarant shall include a copy to the Association, and the Association shall give notice to the City and DPR of its address for notice.

(b) Declarant, DCP or DPR or their respective representatives, by notice given as provided in this paragraph, may change any address for the purposes of this Declaration. Each notice, demand, request, consent, approval or other communication shall be either sent by registered or certified mail, postage prepaid, overnight courier or delivered by hand, and shall be deemed sufficiently given, served or sent for all purposes hereunder five (5) business days after it shall be mailed, or, if delivered by hand, when actually received.

ARTICLE XVI

OFFERING PLAN & PROPERTY OWNERS' ASSOCIATION

16.01 **Offering Plan**. In the event that cooperative or condominium units are offered for sale in any building in the Proposed Development pursuant to an offering plan, a summary of the terms of this Declaration shall be included in any offering plan issued in connection

therewith. Such offering plan shall clearly identify the rights and obligations pursuant to this Declaration of any cooperative or condominium that may be formed.

16.02 **Applicability**. The provisions of this Article XVI shall only apply if Declarant shall form an Association with respect to the Subject Property.

(a) **Property Owners' Association**. Where a New Building is constructed in a Development Phase that includes a Waterfront Zoning Lot Phase Declarant shall, in order to perform Declarant"s obligations with respect to the Maintenance Obligation, to renew and maintain the Waterfront Maintenance Area Maintenance Security, and to provide public access to the Waterfront Public Access Area, Public Access Area and Private Drives and Sidewalks in accordance with the provisions of this Declaration, cause to be organized a property owners" association (the **Association**) within one hundred eighty (180) days of the earliest of the following occurrences: (i) the issuance of a TCO for any portion of the Proposed Development (A) governed by a condominium regime, except a condominium created pursuant to a no action letter, (B) conveyed to a housing corporation to be governed by a cooperative regime, except any cooperative regime created pursuant to a no action letter, or (C) governed by such other legal regime which shall require the organization of a homeowner"s association or similar governing entity comprised of homeowners, or (ii) a fee interest in any portion of the Subject Property (not including conveyance of a fee interest in Lot 3/Site E and a fee interest conveyed pursuant to individual residential condominium or cooperative housing unit sales) is conveyed to any other Person, other than to an entity affiliated with Declarant. If an Association is required to be formed as set forth above, the provisions of Article XVI shall be operative.

(b) The obligations of the Association under this Declaration shall commence upon the date of its organization (the **Association Obligation Date**) whether required to be formed as set forth above or otherwise formed, at which time the provisions of this Article XVI shall be operative.

16.03 **Filing Requirements**. The Association shall be organized in accordance with the terms of this Declaration and in accordance with the New York State Not-for-Profit Corporation Law. Declarant shall certify in writing to the Chair and the Commissioner, or any individual succeeding to their jurisdiction, that the certificate of incorporation of the Association has been filed with the New York Secretary of State and that the certificate of incorporation and all other governing documents of the Association are in full compliance with the requirements of this Declaration and shall provide the Chair with copies of such certificate of incorporation and the other governing documents of the Association. If Declarant fails to comply with the provisions of this Section 16.02, the City may proceed with any available enforcement measures.

16.04 **Obligations**. The Association shall be established to, among other things, assume Declarant"s Maintenance Obligation, Funding Obligation to renew and maintain the Waterfront Maintenance Area Maintenance Security as set forth in this Declaration, and to provide public access to the WPAA, PAA and Private Drives and Sidewalks in accordance with the terms of this Declaration.

16.05 **Members** The members of the Association (the **Association Members**) shall consist of (a) the fee owners of any portion of the Proposed Development other than the City and

any Unit Interested Party, (b) the boards of managers of such portion of the Proposed Development as are subject to a declaration of condominium, and (c) the boards of directors of such portion of the Proposed Development as are subject to a cooperative regime.

16.06 **Powers**. To the extent permitted by law, Declarant shall cause the Association to be established with the power and authority to:

(a) impose fees or assessments against the Association Members, for the purpose of collecting funds reasonably necessary to satisfy the obligations of the Association pursuant to this Declaration;

(b) collect, receive, administer, protect, invest and dispose of funds;

(c) bring and defend actions and negotiate and settle claims to recover fees or assessments owed to the Association pursuant to this Article XVI;

(d) 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 obligations of the Association pursuant to this Declaration; and

(e) exercise any and all of such powers as may be necessary or appropriate for purposes of this Declaration and as may be granted to the Association in furtherance of the Association"s purposes pursuant to the New York Not-for-Profit Corporation Law.

16.07 **Conveyances**. Every deed conveying title to, or a partial interest in Buildings A, B, C and D (other than a deed to an Affordable Housing Unit) , every lease held or granted by a cooperative corporation owning the Subject Property or any portion thereof, every lease of all or substantially all of the Subject Property, or the declaration of condominium imposed on any portion of the Subject Property shall contain a recital or other provision that the Unit Interested Party (other than a Unit Interested Party that owns an Affordable Housing Unit) is liable for its pro rata share of the (a) assessment by the Association to the condominium in which such unit is located for the Association"s obligations under this Declaration, and (b) maintenance of the WPAA, PAA and the Private Drives and Sidewalks and all other obligations of the Association under this Declaration.

16.08 **Assessments**.

(a) The Association shall assess all real property within the Subject Property, other than the portion thereof consisting of the Waterfront Access Area, Public Access Area and Private Drives and Sidewalks and Affordable Housing Units, (the **Assessment Property**) in order to obtain funds for the Maintenance Obligation, the Funding Obligation, and for any other obligations of the Association pursuant to this Declaration. The Assessment Property shall be assessed on a reasonable prorated basis as determined by Declarant, in compliance with all applicable laws. For Association Members who are the boards of managers of a condominium, a reasonable basis for such proration shall be conclusively established if the Attorney General accepts for filing an offering plan for the sale of interests in such condominium, as applicable, which plan describes such proration. The boards of managers of each condominium shall collect such assessments from the owners of individual residential or commercial units ("**Unit**

Owners"), other than the Affordable Housing Unit for delivery to the Association in accordance with the condominium declarations. The liability of any fee owner of any portion of the Assessment Property shall be limited to such owner"s interest in the Assessment Property, on an in rem basis only, for the collection of any money judgment recovered against such owner, and no other property of such owner shall be subject to levy, execution, or other enforcement procedure for satisfaction of such judgment and such owner shall have no personal liability under this Declaration, and the liability of any Unit Owner is limited to such Unit Owner"s obligation to pay his or her prorated share of the periodic assessment to the Association or to the condominium association.

(b) Each periodic assessment by the Association, together with such interest, costs and reasonable attorney"s fees as may be assessed in accordance with the provisions of this Declaration, shall be the obligation of the Association Members against whom the assessment is charged at the time such assessment falls due and may not be waived by such Association Member. The Association may bring an action to recover any delinquent assessment, including interest, costs and reasonable attorney"s fees of any such action, at law or at equity, against the Association Member obligated to pay the same. In the event an Association Member has not paid its assessment to the Association within ninety (90) days of the date such payment was due, the Association shall take all reasonable measures as may be required in order to collect such unpaid assessment.

(c) The periodic assessments shall be a charge on the land and a continuing lien upon the property owned by the Association Member against which each such assessment is made, except that if the Association Member is the board of managers of a condominium, 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 such condominium for unpaid common charges of the condominium. The periodic assessments charged to an Association Member which is the board of managers of a condominium shall be included within the common charges of the condominium. The Association may bring an action to foreclose the Association"s lien against the property owned by such Association Member, or a Unit Interested Party (other than the owner of an Affordable Housing Unit), as the case may be, to recover such delinquent assessment(s), including interest and costs and reasonable attorneys" fees of any such action. Any Unit Interested Party, other than the owner of an Affordable Housing Unit, by acceptance of a deed or a lease to a portion of the Assessment Property, thereby agrees to the provisions of this Section 15.07. Any Unit Owner may eliminate the Association"s lien described above on his or her unit by payment to the Association of such Unit Owner"s prorated share of the periodic assessment by the Association to the condominium in which such Unit is located. No Association Member or Unit Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Public Access Areas or abandonment of the Association"s property, or by renunciation of membership in the Association, provided, however, that a Unit Owner"s liability with respect to future assessments ends upon the valid sale or transfer of such Unit Owner"s interest in the Assessment Property. A Unit Owner may give to the Association nevertheless, subject to acceptance thereof by the Association, a deed in lieu of foreclosure.

(d) Notwithstanding any contrary term set forth in this Declaration, the Association Members who may be assessed for the operation and maintenance of the Public Access Areas shall not include the holder of a mortgage or other lien encumbering (i) the fee estate in the Assessment Property or any portion thereof, or (ii) the lessee"s estate in a ground lease of all or substantially all of the Assessment Property or all or substantially all of any Parcel or portion thereof, or (iii) any single building to be built on the Assessment Property, unless and until any such mortgagee succeeds to either (x) a fee interest in the Assessment Property or any portion thereof or (y) the lessee"s estate in a ground lease of all or substantially all the Assessment Property or all or substantially all of any Parcel or portion thereof (the interests described in sub-clauses (x) or (y) immediately preceding being each referred to as a **Possessory Interest**, by foreclosure of the lien of the mortgage or other lien or acceptance of a deed or other transfer in lieu of foreclosure or exercise of an option to convert an interest as mortgagee into an Possessory Interest in any such fee or ground leasehold estate in the Assessment Property or by other means permitted under Legal Requirements from time to time; and no such mortgagee or lien holder shall be liable for any assessment imposed by the Association pursuant to this Article XV until the mortgagee or lien holder succeeds to such Possessory Interest.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date first above written.

Domino A LLC and Domino B LLC,
New York limited liability companies

By: _____
Name:
Title:

The City hereby joins in the execution of this Declaration solely for the purpose of confirming its obligations hereunder.

THE CITY OF NEW YORK

By: _____
Name:
Title: Deputy Mayor

[Notary page on the following page]

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

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

_____
Notary Public

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

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

_____
Notary Public

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Exhibit A

Legal Description

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Waterfront Public Access Area Plans

Exhibit D

Parties-In-Interest Certification

Exhibit E

Waiver by Party-In-Interest

Exhibit E

WAIVER OF EXECUTION OF RESTRICTIVE DECLARATION AND SUBORDINATION OF MORTGAGE

WAIVER OF EXECUTION OF RESTRICTIVE DECLARATION AND SUBORDINATION OF MORTGAGE, made this_____ day of _____ , 2014 by Manufacturers and Traders Trust Company, as Administrative and Collateral Agent (the "Mortgagee"), having its principal place of business c/o M&T Bank at 350 Park Avenue, New York, NY 10022.

W I T N E S S E T H :

WHEREAS, the Mortgagee is the lawful holder of that certain mortgage, dated_ (the "Mortgage") made by Domino A LLC, and Domino B LLC, each a New York limited liability company (the "Mortgagor"), in favor of the Mortgagee, in the original principal amount of $ _____ , recorded in the Office of the Register/Clerk of the City of New York, County of Kings, on _____ at CFRN_____ ; and

WHEREAS, the Mortgage encumbers all or a portion of the property (the "Premises") known as Block 2414, Lot 1 on the Tax Map of the City of New York, County of Kings, and more particularly described in **Schedule A** attached hereto and made a part hereof, and any improvements thereon (such improvements and the Premises are collectively referred to herein as the "Subject Property"), which Subject Property is the subject of a restrictive declaration dated _____ , (the "Declaration"), made by Mortgagor; and

WHEREAS, Mortgagee represents that the Mortgage represents its sole interest in the Subject Property; and

WHEREAS, the Declaration, which is intended to be recorded in the Office of said Register/Clerk simultaneously with the recording hereof, shall subject the Subject Property and the sale, conveyance, transfer, assignment, lease, occupancy, mortgage and encumbrance thereof to certain restrictions, covenants, obligations, easements and agreements contained in the Declaration; and

WHEREAS, the Mortgagee agrees, at the request of the Mortgagor, to waive its right to execute the Declaration and to subordinate the Mortgage to the Declaration.

NOW, THEREFORE, the Mortgagee (i) hereby waives any rights it has to execute, and consents to the execution by the Mortgagor of, the Declaration and (ii) hereby agrees that the Mortgage, any liens, operations and effects thereof, and any extensions, renewals, modifications and consolidations of the Mortgage, shall in all respects be subject and subordinate to the terms and provisions of the Declaration.

This Waiver of Execution of Restrictive Declaration and Subordination of Mortgage shall be binding upon the Mortgagee and its heirs, legal representatives, successors and assigns.

IN WITNESS WHEREOF, the Mortgagee has duly executed this Waiver of Execution of Restrictive Declaration and Subordination of Mortgage as of the date and year first above written.

MORTGAGEE:

By: _____
Name:
Title:

ACKNOWLEDGMENT

State of New York
County of _____

On the _____ day of _____ in the year 2014 before me, the undersigned, a notary public in and for said state, personally appeared _____ , personally known to me or proved to me on the basis of satisfactory evidence to be the individual(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.

Exhibit E

WAIVER OF EXECUTION OF RESTRICTIVE DECLARATION AND SUBORDINATION OF MORTGAGE

WAIVER OF EXECUTION OF RESTRICTIVE DECLARATION AND SUBORDINATION OF MORTGAGE, made this_____ day of _____ , 2014 by Manufacturers and Traders Trust Company, as Administrative and Collateral Agent (the "Mortgagee"), having its principal place of business c/o M&T Bank at 350 Park Avenue, New York, NY 10022.

W I T N E S S E T H :

WHEREAS, the Mortgagee is the lawful holder of that certain mortgage, dated (the "Mortgage") made by Domino A LLC, and Domino B LLC, each a New York limited liability company (the "Mortgagor"), in favor of the Mortgagee, in the original principal amount of $ _____ , recorded in the Office of the Register/Clerk of the City of New York, County of Kings, on _____ at CFRN_____ ; and

WHEREAS, the Mortgage encumbers all or a portion of the property (the "Premises") known as Block 2428, Lot 1 on the Tax Map of the City of New York, County of Kings, and more particularly described in **Schedule A** attached hereto and made a part hereof, and any improvements thereon (such improvements and the Premises are collectively referred to herein as the "Subject Property"), which Subject Property is the subject of a restrictive declaration dated _____ , (the "Declaration"), made by Mortgagor; and

WHEREAS, Mortgagee represents that the Mortgage represents its sole interest in the Subject Property; and

WHEREAS, the Declaration, which is intended to be recorded in the Office of said Register/Clerk simultaneously with the recording hereof, shall subject the Subject Property and the sale, conveyance, transfer, assignment, lease, occupancy, mortgage and encumbrance thereof to certain restrictions, covenants, obligations, easements and agreements contained in the Declaration; and

WHEREAS, the Mortgagee agrees, at the request of the Mortgagor, to waive its right to execute the Declaration and to subordinate the Mortgage to the Declaration.

NOW, THEREFORE, the Mortgagee (i) hereby waives any rights it has to execute, and consents to the execution by the Mortgagor of, the Declaration and (ii) hereby agrees that the Mortgage, any liens, operations and effects thereof, and any extensions, renewals, modifications and consolidations of the Mortgage, shall in all respects be subject and subordinate to the terms and provisions of the Declaration.

This Waiver of Execution of Restrictive Declaration and Subordination of Mortgage shall be binding upon the Mortgagee and its heirs, legal representatives, successors and assigns.

IN WITNESS WHEREOF, the Mortgagee has duly executed this Waiver of Execution of Restrictive Declaration and Subordination of Mortgage as of the date and year first above written.

MORTGAGEE:

By: _____
Name:
Title:

ACKNOWLEDGMENT

State of New York
County of _____

On the _____ day of _____ in the year 2014 before me, the undersigned, a notary public in and for said state, personally appeared _____ , personally known to me or proved to me on the basis of satisfactory evidence to be the individual(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.

Exhibit J

Permitted Encumbrances

Exhibit J

Maintenance and Operation Agreement

Exhibit J

GHG and Water Credit Requirements

Exhibit J

SCA Letter of Intent

Exhibit J

Demolition Letter

EXHIBIT K

FORM OF NOTICE OF SUBSTANTIAL COMPLETION

(attached)

[Letterhead of the Director of the Department of City Planning]

[Date]

NOTICE OF SUBSTANTIAL COMPLETION

Re: Block 2414, Lot - , Brooklyn, New York, New York Dear

:

This letter constitutes the Notice of Substantial Completion of the _____ pursuant to Section 7.02 of the Restrictive Declaration made by Domino A LLC and Domino B LLC dated as of _____, _____ (the "Declaration").

By this notice, the undersigned, for the Department of City Planning confirms that PAA Phase [__] (as defined in the Declaration) has been Substantially Completed (as defined in the Declaration) in accordance with all requirements of the Declaration.

Yours very truly,

[THIS LETTER SHALL BE MODIFIED AS APPROPRIATE TO THE CERTIFICATION BEING ISSUED]

[Letterhead of the Director of the Department of City Planning]

[Date]

EXHIBIT L

FORM OF NOTICE OF FINAL COMPLETION

(attached)

NOTICE OF FINAL COMPLETION

Re: Block 2414, Lot [__], Brooklyn, New York, New York

Dear :

This letter constitutes the Notice of Final Completion of the _____ pursuant to Section ____ of the Restrictive Declaration made by Domino A LLC and Domino B LLC dated as of _____, _____ (the "Declaration").

By this notice, the undersigned, for the Department of Parks and Recreation, confirms that PAA Phase [__] (as defined in the Declaration) has been Finally Completed (as defined in the Declaration) in accordance with all requirements of the Declaration.

Yours very truly,

[THIS LETTER SHALL BE MODIFIED AS APPROPRIATE TO THE CERTIFICATION BEING ISSUED]