# Legislation Details (With Text)

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| **File #:** | Res 2328-2009 | **Version:** | * | **Name:** | LU 1265 - Zoning, RG WRY LLC, Manhattan (C090433ZMM) |
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| **On agenda:** | 12/21/2009 | | | | |
| **Enactment date:** | | | | **Enactment #:** | |
| **Title:** | Resolution approving with modifications the decision of the City Planning Commission on ULURP No. C 090433 ZMM, a Zoning Map amendment (L.U. No. 1265). | | | | |
| **Sponsors:** | Melinda R. Katz | | | | |
| **Indexes:** | | | | | |
| **Attachments:** | 1. Committee Report, 2. Hearing Transcript - Stated Meeting 12/21/09 | | | | |

| Date | Ver. | Action By | Action | Result |
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| 12/14/2009 | * | Committee on Land Use | Approved by Committee with Modifications and Referred to CPC | |
| 12/21/2009 | * | City Council | Approved, by Council | Pass |

THE COUNCIL OF THE CITY OF NEW YORK
RESOLUTION NO. 2328

Resolution approving with modifications the decision of the City Planning Commission on ULURP No. C 090433 ZMM, a Zoning Map amendment (L.U. No. 1265).

By Council Member Avella

WHEREAS, the City Planning Commission filed with the Council on October 23, 2009 its decision dated October 19, 2009 (the "Decision"), on the application submitted by RG WRY LLC, pursuant to Sections 197-c and 201 of the New York City Charter, for an amendment to the Zoning Map to facilitate development of the Western Rail Yard Project in Manhattan's Community District 4 (ULURP No. C 090433 ZMM), Borough of Manhattan (the "Application");

WHEREAS, the Application is related to Applications Numbers C 090408 MMM (L.U. No. 1260), an amendment to the City Map involving a change in grade to West 33rd Street, between Eleventh Avenue and Twelfth Avenue; C 090422 HAM (L.U. No. 1261), an urban development action area project designation, project approval and disposition of City-owned property; C 090423 HAM (L.U. No. 1262), an urban development action area project designation, project approval and disposition of City-owned property; N 090429 ZRM (L.U. No. 1263), a Zoning Text Amendment concerning Article IX, Chapter 6 (Special Clinton District); C 090430 ZMM (L.U. No. 1264), a Zoning Map Amendment establishing a C1-5 district within an existing R8 District; N 090434 ZRM (L.U. No. 1266), a Zoning Text Amendment concerning Article IX, Chapter 3 (Special Hudson Yards District) relating to the addition of Western Rail Yard Subdistrict F and the expansion of the Special Hudson Yards District; C 090435 ZSM (L. U. No. 1267), a special permit pursuant to Sections 93-052 as amended and 13-561 for an attended accessory parking garage; and C 090436 ZSM (L.U. No. 1268), a special permit pursuant to Sections 93-052 as amended and 13-561 for an attended accessory parking garage;

WHEREAS, the Decision is subject to review and action by the Council pursuant to Section 197-d(b)(1) of the City Charter;

WHEREAS, upon due notice, the Council held a public hearing on the Decision and Application on November 23, 2009;

WHEREAS, the Council has considered the land use implications and other policy issues relating to the Decision and Application; and

WHEREAS, the Council has considered the relevant environmental issues and the Final Environmental Impact Statement ("FEIS") for which a Notice of Completion was issued on October 9, 2009 and the Technical Memorandum dated October 19, 2009 (CEQR No. 09DCP007M); and

RESOLVED:

Having considered the FEIS and the Technical Memorandum dated October 19, 2009, with respect to the Application, the Council finds that:

(1) The FEIS meets the requirements of 6 N.Y.C.R.R. Part 617;

(2) Consistent with social, economic and other essential considerations from among the reasonable alternatives available , the action , as modified herein, is one which avoids or minimizes adverse environmental impacts to the maximum extent practicable; and

(2) Adverse environmental impacts identified in the FEIS will be minimized or avoided to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures that were identified as practicable, by means of, inter alia, the filing and recordation of restrictive declarations substantially in the forms set forth in Exhibit B and C of the City Planning Commission's Report (C 090433 ZMM) in accordance with the provisions of Section 93-06 of the Zoning Resolution.

(2) The Decision and the FEIS and the Technical Memorandum dated October 19, 2009 constitute the written statement of facts, and of social, economic and other factors and standards that form the basis of the decision, pursuant to 6 N.Y.C.R.R. §617.11(d).

Pursuant to Sections 197-d and 200 of the City Charter and on the basis of the Decision and Application, the Council approves the Decision the following modifications:

The Zoning Resolution of the City of New York, effective as of December 15, 1961, and as subsequently amended, is further amended by changing the Zoning Map, Section No. 8b, by changing from an M2-3 District to a C6-4 District and establishing a Special Hudson Yards District on property bounded by West 33rd Street, Eleventh Avenue, West 30th Street, and Twelfth Avenue, as shown in a diagram (for illustrative purposes only) dated May 18, 2009, Community District 4, Borough of Manhattan.

**(EXHIBIT B)**

**RESTRICTIVE DECLARATION**

Matter in ~~strikeout~~ is old, to be deleted by The City Council;
Matter in double-underline is new, to be added by The City Council;
*** indicates where text remains unchanged.

## ARTICLE II
## DEVELOPMENT OF THE SUBJECT PROPERTY

**2.01 Affordable Housing.**

(a) ~~No fewer than twenty percent (20%) of all~~Declarant shall include in rental buildings or condominiums within the Project, residential rental units ~~developed on the Subject Property shall be developed to~~that will be affordable to persons or families of low income who qualify for occupancy pursuant to the requirements of (a) the "80/20" ~~or comparable program, subject to: (i) the allocation of sufficient~~ program under Section 142 of the Code or (b) any program for the development of affordable rental units selected by the Declarant, including the Section 421-a "80/20" program as applied to a condominium building with affordable units (the "Affordable Housing Units"), subject to: (i) the provision to Declarant of sufficient tax-exempt bond financing including the allocation of private activity tax-exempt bond volume cap or other equivalent low-cost financing to ~~Declarant for each building with residential rental housing~~fund the full development costs of each rental building or condominium containing Affordable Housing Units ("Affordable Financing Programs") as and when required by the Declarant; and (ii) the availability to Declarant of ~~such other incentives, programs, exemptions, credits or abatements as are then generally available for the development of "80/20" housing in the City of New York.~~ Section 421-a tax abatements or equivalent tax abatements/exemptions/incentives as are available on the date hereof for rental buildings or condominiums containing Affordable Housing Units in the City of New York ("Tax Abatement Programs"), including without limitation a twenty year Section 421-a tax abatement for such rental buildings or condominiums. Subject to the caveats set forth in the preceding sentence, Declarant shall include a minimum of two hundred and sixty-five (265) Affordable Housing Units within the Project, and shall in addition include within the Project an adequate number of Affordable Housing Units on the Project site such that the total number of Affordable Housing Units on the Project site and the eastern portion of the Caemmerer Rail Yard collectively is not less than four hundred thirty-one (431).

(b) In the event that Declarant utilizes the floor area bonus available under Section 93-23 of the Zoning Resolution for the provision of permanent ~~affordable housing~~Affordable Housing Units (the " Affordable Housing Bonus"), Declarant covenants and agrees to maintain ~~all affordable units~~the affordability of all Affordable Housing Units required to generate the Affordable Housing Bonus ~~as affordable units~~ for so long as the bonus floor area is included within the Project. ~~In the event that~~ Declarant ~~does not pursue~~further covenants and agrees that, notwithstanding whether or not the Affordable Housing Bonus is utilized, upon the expiration of the benefits of the initial Tax Abatement Program, Declarant shall ~~have no obligation to maintain any residential units as affordable following the expiration of the term of the 80/20 program except pursuant to a future agreement with the City acceptable in all respects to Declarant. As an alternative to the provision of permanently affordable multi-family rental residential housing pursuant to the provisions of Sections 93-233 and 93-234~~ maintain the Affordable Housing Units as permanent rentals affordable to persons or households having a maximum income not to exceed 125% of area median income, provided that there are incentives, programs, exemptions, credits, or abatements that will reduce the taxes for any of the rental buildings or condominiums containing such Affordable Housing Units to a level consistent with the real estate taxes paid prior to any phase out of the real estate tax abatement under the initial Section 421-a tax benefit or similar real property tax abatement or exemption program for such building or condominium unit.

Notwithstanding Declarant's obligations under this Section 2.01 to provide Affordable Housing Units, Declarant agrees that any New Building containing Affordable Housing Units built with "public funding," as such term is defined in Section 23-91 of the Zoning Resolution, ~~Declarant may qualify residential buildings on the Subject Property as "generating sites" pursuant to the provisions~~shall not be used as a "generating site" for purposes of Section 23-90 *et. seq.* of the Zoning Resolution.

~~(c) Declarant shall seek and apply for the allocation of tax-exempt bond cap or other equivalent low-cost financing and such other incentives, programs, exemptions, credits or abatements as are then generally available for the development of "80/20" or comparable housing in the City of New York for all rental housing that Declarant elects to develop or locate on the Subject Property. If Declarant is unable to obtain financing for the development of "80/20" housing for any residential rental units in any New Building, it shall similarly seek financing for the development of "80/20" housing for each subsequent New Building containing rental housing units. Nothing in this Section 2.01 shall be construed as preventing or precluding Declarant, at its option, from developing any New Building with other than rental housing units.~~

~~(d) In the event that any New Building includes rental residential housing without affordable units pursuant to Paragraph (a), Declarant shall prepare and submit a report to the Chair and to the Commissioner of HPD documenting the reasonable efforts made by Declarant to obtain financing for the development of "80/20" housing and shall set forth the reasons why such financing was not obtained, and DOB shall not issue, and Declarant shall not accept, a New Building Permit for the New Building until sixty (60) days following the date such report has been submitted to the Chair and to the Commissioner of HPD. Declarant shall meet with the Chair and the Commissioner of HPD within such sixty (60) day period at the request of either the Chair or the Commissioner of HPD to discuss the findings of the report.~~

(c) The Affordable Housing Units in 80/20 rental buildings shall be distributed throughout the rental portion of the New Building in a manner consistent with the following (i) no more than fifty percent (50%) of the residential units on any floor shall be Affordable Housing Units, and (ii) at least one Affordable Housing Unit shall be located on eighty percent (80%) of the floors that are part of the rental portion.

(d) For purposes of this Section 2.01 (i) "Code" means the Internal Revenue Code of 1986, as amended, and (ii) "Section 421-a" means Section 421-a of the New York Real Property Tax Law as applicable to the Project and any rules or regulations promulgated thereunder.

**2.02 Public Access Areas.**

Declarant shall construct, develop and maintain the Public Access Areas in accordance with the following:

**(a) Public Access Areas Construction Phasing and Easement.**

(i) Subject to compliance with the provisions of Section 93-78 of the Zoning Resolution, Declarant may construct the Public Access Areas on the Subject Property in such sequence as Declarant shall determine.

(ii) Subject to clause (v) hereof, Declarant covenants that, immediately upon certification by the Chair pursuant to Section 93-78(d) of the Zoning Resolution that a Public Access Area Phase is substantially complete, the City shall hereby enjoy, wield, and have the right to and the benefit of and be granted,

conveyed and transferred a non-exclusive easement (the "Public Access Area Easement") in perpetuity, for the benefit of the general public, encompassing the area of the Public Access Area Phase, unobstructed from the surface thereof to the sky, for the purposes of: (aa) in the case of the Publicly Accessible Open Spaces (1) passive and active recreational use by the general public, and (2) pedestrian access over and through the area of the Public Accessible Open Spaces to and from other developed portions of the Subject Property and City streets; (bb) in the case of the Midblock Connection, the West 30th Street Corridor, and the Connector (1) pedestrian access over and through the Midblock Connection, the West 30th Street Corridor, and the Connector, as the case may be, to and from other developed portions of the Subject Property and City streets, and (2) access for fire, police and other emergency vehicles over the Connector; and (cc) in the case of the West 31st Street Extension and the West 32nd Street Extension, (1) pedestrian access over and through sidewalks with respect to both the West 31st Street Extension and the West 32nd Street Extension and, in the case of the West 32nd Street Extension, the Allee, to and from other developed portions of the Subject Property and City streets, and (2) general vehicular and emergency vehicle ingress and egress through and over the West 32nd Street Extension and the West 31st Street Extension, subject in each case to all provisions of this Declaration applicable to the use of Public Access Areas.

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

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

(v) Notwithstanding anything to the contrary in this Section 2.02(a), Declarant shall be entitled to and hereby reserves and retains the right to close to the public any portion of a Public Access Area Phase that has been built by Declarant to the extent and for the period of time that such closure is reasonably required to allow for the construction of a New Building in a safe, efficient, and reasonable manner, or to replace temporary features under a Temporary Public Access Area Plan certified pursuant to Section 93-782 of the Zoning Resolution with permanent features under the Site and Landscape Plan approved pursuant to Section 93-78 of the Zoning Resolution, or to build a subsequent Public Access Area Phase, and the easement granted pursuant to clause (ii) of this Section 2.02(a) is limited to such extent. Declarant shall notify the Chair of the need to close any portion of the Public Access Area Phase not less than sixty (60) days prior to such closure, and shall provide the Chair with a description of the need, extent and estimated period of time of closure reasonably required pursuant to this clause.

**(b) Hours of Access and Closure.**

(i) Declarant covenants that the Public Access Areas shall remain open and accessible to the public pursuant to the Public Access Easement as follows: (aa) Publicly Accessible Open Spaces shall be open each day between the hours of 6:00AM to 1:00AM, provided that the Northeast Plaza shall be open

each day between the hours of 7:00 AM and 10:00 PM from April 15 to October 31 and from 7:00 AM to 8:00 PM from November 1 to April 14 or as otherwise provided in the Zoning Resolution; and (bb) the West 32nd Street Extension, the West 31st Street Extension and the West 30th Street Corridor shall be open and accessible to the public at all times

(ii) Notwithstanding clause (i) of this Section 2.02(b), Declarant may close the Public Access Areas or the most limited portions thereof as may be necessary in order: (aa) to accomplish maintenance, repairs or replacements; (bb) to make emergency repairs to mitigate hazardous site conditions; (cc) to address other emergency conditions; and (dd) to allow for public events approved by the Open Space Advisory Board under Section 2.02(e) hereof. In addition, (aa) Declarant shall be entitled to close all or any portion of the Public Access Areas not more than one (1) day of each calendar year in order to preserve Declarant's ownership interest therein, provided that any closure made for such purpose shall not occur on a weekend or public holiday; and (bb) Declarant shall be entitled to close the Central Open Space, lawn area required under Section 93-752(c)(1) of the Zoning Resolution together with an access point thereto~~exclusive of the playground thereon~~, not more than four (4) times in any calendar year (and not more than one (1) such event shall occur within in any two (2) month period) for purposes of hosting a private event for the benefit of owners or occupants of any of the New Buildings. Such private events shall not take place on a public holiday and shall be for no more than six (6) hours. Declarant shall notify DCP of any such event not less than thirty (30) says prior to closure. "Emergency conditions" for which the Public Access Areas may be closed pursuant to this clause shall be limited to actual or imminent emergency situations, including but not limited to: security alerts, riots, casualties, disasters, hazardous or dangerous conditions or other events endangering public safety or property, provided that no such emergency closure shall continue for more than twelve (12) consecutive hours without Declarant having notified the NYPD or DOB, as appropriate, and having followed NYPD's or DOB's direction, if any, with regard to the emergency situation. Declarant shall promptly notify the Chair in writing of any closure which extends more than twelve (12) hours. Declarant shall close or permit to be closed only those portions of the Public Access Areas which must or should reasonably be closed to effect the maintenance, repairs or replacements to be undertaken, and will exercise due diligence in the performance of such repairs or mitigation in order that it is completed expeditiously and the temporarily closed areas (or any portions thereof) are re-opened to the public promptly.

**(c) Maintenance and Repair of Public Access Areas.**

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

**(d) Operating Rules for Publicly Accessible Open Spaces.**

The activities, uses and conduct permitted within Publicly Accessible Open Spaces shall comply with all applicable laws and regulations of the City, in addition to being subject to the policies set forth in the schedule annexed hereto as Exhibit F. Declarant may modify the policies set forth in Exhibit F with the prior written approval of DCP, which shall not be unreasonably withheld, conditioned or delayed.

**(e) Publicly Accessible Open Space Programming Management Advisory Board.**

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

(ii) In order to develop any Event Programming, Declarant shall establish, at Declarant's sole cost and expense, a not-for-profit entity (the "Open Space Advisory Board" or "Board") to advise Declarant with regard to the possible programming of events in the Publicly Accessible Open Spaces. The Open Space Advisory Board shall be comprised of nine (9) members, five (5) of whom shall be appointed by the Declarant, and one (1) of whom shall be appointed by each of the Community Board, the local City Councilmember, the Manhattan Borough President, and ~~the President of the Hudson Yards Development Corporation or any successor entity thereto~~the Manhattan Borough Commissioner of DPR .

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

**(f) Property Owners' Association.**

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

(ii) If a Property Owners' Association is formed, it shall assume all of the obligations of the Declarant relating to the Public Access Area Maintenance and Repair Requirements with respect to all of the Public Access Areas, commencing at such time as each Public Access Area is determined to be substantially complete in accordance with the requirements of Section 93-78 of the Zoning Resolution, and shall be organized with all of the powers that may be necessary and proper to allow the Property

Owners' Association to carry out the duties, obligations and requirements of this Declaration with respect to the Open Space Maintenance and Repair Requirements. Notwithstanding the foregoing, Declarant at its option may exclude the Public Access Area Maintenance and Repair Requirements as they apply to the Northeast Plaza from the area governed by the Property Owners' Association, in which event the Public Access Area Maintenance and Repair Requirements as they apply to the Northeast Plaza shall be the obligation of the fee owners of the New Building located on Site 2 or, if such New Building is subjected to a declaration of condominium, the board of managers of such condominium.

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

(aa) Members. The members of the Property Owners' Association (the "Association Members") shall consist of (1) the fee owners of any portion of the Subject Property other than any fee owner of the High Line and other than any fee owner of an individual condominium unit within any New Building that is the subject of a declaration of condominium, and (2) the board of managers of any portion of the Subject Property that is subject to a declaration of condominium.

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

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

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

(3) In the event and at such time as Declarant existing as of the date of this Declaration no longer holds any interest in the Subject Property, allow for the Property Owners' Association to undertake the design and construction of the Public Access Areas in accordance with Section 93-78 of the Zoning Resolution and Section 2.02(a) of this Declaration (the "Open Space Construction Obligation");

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

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

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

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

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

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

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

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

**(g) High Line.**

The provisions of Paragraphs (a), (b), (d) and (e) of this Section shall not apply to the High Line, and public access, hours of access and closure, operating rules, programming and other features relating to the operation of the High Line shall be as set forth in other agreements and understandings with respect thereto. Declarant's obligation to implement the provisions of Paragraph (c) of this Section with respect to the High Line, whether by Declarant or by means of a Property Owners' Association formed pursuant to Paragraph (f) of this Section, shall be only as set forth in such agreements and understandings as may be agreed to with respect maintenance and repair.

**(h) High Line Access Points and Maintenance Facility.**

(i) Declarant shall cooperate with the City with regard to the identification and provision of public pedestrian access to the High Line under a Site and Landscape Plan reviewed and approved pursuant to Section 93-78 of the Zoning Resolution. For that purpose, Declarant shall provide: (aa) a permanent public pedestrian access easement to and from the High Line consistent with Section 93-753 (General requirements for the Southwest Open Space) of the Zoning Resolution; and (bb) a permanent public pedestrian access easement to and from the High Line from the portion of Site 6 located at the corner of 11th Avenue and West 30th Street and/or the portion of the West 30th Street Corridor adjacent to the High Line at the corner of 11th Avenue and West 30th Street, consistent with Section 93-756(c) (Core Elements for the High Line) of the Zoning Resolution, if determined to be necessary by DCP and other relevant city agencies. Such pedestrian access easements shall accommodate one or more of a paved path, stairwell and elevator, as appropriate. The locations and dimensions of such easements shall be identified during preliminary planning for a Site and Landscape Plan for the High Line and easement agreements shall be delivered to the City upon approval thereof pursuant to Section 93-78 of the Zoning

Resolution. Declarant acknowledges that the process of planning for and approval of a Site and Landscape Plan for the High Line pursuant to Section 93-78 may take place prior to Declarant's own design and construction of a New Building on Site 6 or development of a Site and Landscape Plan for the West 30th Street Corridor and that such shall not diminish Declarant's obligations under this clause. In the event that Declarant anticipates construction of a New Building on Site 6 and/or development of a Site and Landscape Plan for the West 30th Street Corridor prior to the City's own development of a Site and Landscape Plan for the High Line, it shall notify DCP at the earliest possible date and shall cooperate in good faith with DCP and other relevant city agencies to determine the location and dimensions of an access easement on Site 6 and/or the portion of the West 30th Street Corridor adjacent to the High Line at the corner of 11th Avenue and West 30th Street, if deemed necessary by DCP and such other agencies. As an alternative to provision of access to and from Site 6 and/or such portion of the West 30th Street Corridor, Declarant may propose to DCP and the other relevant city agencies for their consideration an access point from the Eastern Rail Yard proximate to the corner of 11th Avenue and West 30th Street. If an access easement on Site 6 and/or such portion of the West 30th Street Corridor is identified pursuant to such discussions, Declarant shall design the New Building on Site 6 and/or the West 30th Street Corridor to accommodate such easement and shall deliver the easement agreement to the City prior to accepting a New Building Permit for the New Building on Site 6 and/or commencing work on the West 30th Street Corridor.

(ii) Declarant shall, consistent with Section 93-756 (c) (Core Elements for the High Line) of the Zoning Resolution, consider in good faith (without any obligation with respect thereto) a request by DCP or other relevant city agency to locate space on the Subject Property for support facilities for the operation, maintenance and public enjoyment of the High Line, as determined by DCP and other relevant city agencies during the planning process for the Site and Landscape Plan for the High Line.

**2.03 Garage.**

(a) The Garage may be built by Declarant in one or more phases, at Declarant's sole option, provided that the occupancy of such shall be phased in accordance with this Section 2.03.

(b) DOB shall not issue, and Declarant shall not accept, a TCO or PCO for the Garage or amended TCO or PCO for the Garage or any portion thereof allowing accessory parking spaces on the Subject Property: (i) equal to more than the sum of the following amounts: (aa) accessory parking to residential uses equal to a weighted average percentage, calculated by multiplying the number of market rate residential units located on the Subject Property from time to time by thirty percent (30%) and the number of affordable residential units located on the Subject Property from time to time by eight percent (8%); (bb) accessory parking to commercial office uses equal to the product of 0.16 and the amount of floor area used for commercial office space existing on the Subject Property from time to time divided by 1,000; and (cc) accessory parking to hotel uses equal to the lesser of (1) fifteen percent (15%) of all hotel rooms existing on the Subject Property from time to time, (2) 225, and (3) the product of 0.16 and the amount of floor area used for hotel space on the Subject Property from time to time divided by 1,000; (ii) which exceed in the aggregate 1,600 spaces accessory to residential and commercial uses; and (iii) which exceed 270 spaces for all parking accessory to commercial uses (office space and hotel) combined.

(c) Notwithstanding the provisions of Paragraph (b) of this Section, and subject to the provisions of Paragraph (d) of this Section, at the time of issuance of a TCO for a New Building, Declarant may seek and accept an amended TCO or PCO for the Garage or any portion thereof for a number of parking spaces that is not more than twenty-five (25) parking spaces greater than the number of parking spaces

otherwise allowed under Paragraph (b), subject to the further limitations that, at no time can the number of parking spaces accessory to commercial uses exceed 270, and that at the time of issuance of a TCO for the last New Building which may be constructed on the Subject Property pursuant to the Zoning Resolution, Declarant shall not accept an amended TCO or PCO for the Garage or any portion thereof for a number of parking spaces any greater than is allowed under Paragraph (b).

(d) The number of accessory parking spaces allowed under Paragraph (b) of this Section shall be reduced by the number of Car Sharing Spaces required pursuant to Section 3.03(e) of this Declaration.

(e) All portions of the Garage located above the Platform shall be enclosed and shall either be located (i) behind occupiable commercial, community facility or residential floor area, or (ii) behind walls designed with materials and architectural or landscaping treatment to promote visual interest and be compatible with surrounding buildings. During design development of the Garage, and in any event no later than ninety (90) days prior to filing a Building Permit for the Garage or any portion thereof, Declarant shall provide DCP design drawings and other material demonstrating compliance with the provisions of this Section 2.03(e) and shall consider and respond to DCP comments and recommendations regarding its design approach with respect thereto.

**2.04 Arts and Cultural Space.**

(a) The Project shall include a minimum of sixteen ~~eight~~ thousand (16~~8~~,000) gross square feet of space to be made available for local cultural institutions or other local arts not-for-profits approved by Developer, in accordance with the terms of this Section 2.04 (the "Cultural Space Obligation"). At Declarant's sole option, the Cultural Space Obligation may be fulfilled in ~~a single facility~~not less than two (2) facilities within the Project or in more than two (2) ~~multiple~~ facilities within the Project, provided that ~~if Declarant elects to provide multiple facilities,~~ each such facility shall have a minimum size of 1,200 gross square feet (each such facility, a "Cultural Space," and all of such facilities, the " Cultural Spaces").

(b) The Cultural Spaces may be located in any New Building, at Developer's Option, and may be constructed in any phase of the Project as Developer sees fit, provided that any Cultural Space shall ~~either~~ be accessible ~~from the main lobby of the building or~~ directly from the outside ~~at Developer's option~~.

(c) The Cultural Spaces shall be leased to neighborhood theatrical, dance, arts or other similar local cultural organizations (each, a "Cultural Institution" and each such cultural use, a "Cultural Use") selected by Declarant in consultation with and based on the recommendation of the Community Board pursuant to a lease acceptable to Declarant and complying with the terms of Section 2.04(e) hereof (a "Cultural Facilities Lease"). Nothing herein shall be construed to require Declarant to accept a Cultural Institution as tenant if Declarant reasonably determines that such Cultural Institution does not have (or is reasonably likely in the future to not have) the financial wherewithal to fulfill, or is otherwise unable to comply (or is reasonably likely in the future to be unable to comply) with, any of its responsibilities under the Cultural Facilities Lease.

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

(i) Heating, Ventilation and Air Conditioning (HVAC) equipment including access from base building condensers, chillers, fresh air intakes and exhaust louvers. Such equipment shall also be of a type that creates minimal noise to permit performances to be conducted; and
(ii) Electrical service shall include at least 1,000 amps to service theatrical lighting needs.

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

(e) Each Cultural Facilities Lease shall have a term of not less than ten (10) years or such longer term as may be agreed to by Declarant in its sole discretion and shall include a rent of one dollar ($1.00) per year. Each Cultural Facilities Lease shall include terms reflecting the following:

(i) Providing that each Cultural Facilities Lease shall be triple net to the Cultural Institution, and shall require the Cultural Institution to pay for its proportional share of ~~taxes,~~ insurance, maintenance, and other operating costs applicable to the Subject Property;

(ii) Providing for review and approval rights by Declarant with respect to the design, construction, and construction logistics of the fit-out of the Cultural Spaces, and require that the Cultural Institution proceed with the fit-out in a timely, expeditious and first class manner without liability or loss to Developer;

(iii) Requiring Declarant approval, in consultation with the Community Board, of any ~~Requiring Declarant approval of any~~ assignment or sublease of any portion of the Cultural Spaces or other area covered by the Cultural Facilities Lease;

(iv) Requiring that the Cultural Institution maintain appropriate insurance covering the Cultural Space and the operations therein;

(v) Providing remedies for breach of the Cultural Facilities Lease by the Cultural Institution, including self-help remedies where appropriate; and

(vi) Providing other terms and conditions reasonably typical for a commercial tenant lease to allow for the fit-out, lease, and operation of the Cultural Space within a larger building.

(f) Notwithstanding anything to the contrary contained herein, in the event that (i) the Community Board has failed to identify an acceptable Cultural Institution within two (2) years from the date that ~~Developer~~ Declarant notifies the Community Board in writing that a Cultural Space is expected to be completed in twelve (12) months time, (ii) an acceptable Cultural Institution has been identified by the Community Board but has failed to enter into a Cultural Facilities Lease with ~~Developer~~Declarant within twelve (12) months of the date such Cultural Institution was so identified, or (iii) a Cultural Facilities Lease has expired or otherwise been abandoned or terminated and the Community Board has failed to identify an acceptable alternate Cultural Institution within twelve (12) months of such termination or abandonment, then, in each case, ~~Developer~~ Declarant may, upon written notice to the

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

~~(g) The Cultural Space Obligation is limited to reserving and making available eight thousand (8,000) gross square feet of space for a Cultural Use or Cultural Uses in accordance with Sections 2.04(a) to 2.04(e). Notwithstanding the foregoing, Declarant agrees to in good faith consider requests to provide an additional up to 8,000 gross square feet of space on the Subject Property for Cultural Uses acceptable to Declarant on such terms and conditions as may be agreed to by Declarant and such potential tenant.~~

## ARTICLE III
## PROJECT COMPONENTS RELATED TO THE ENVIRONMENT AND MITIGATION MEASURES

### 3.01 Project Components Related to the Environment for Construction.

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

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

(i) Declarant shall: (a) prior to Construction Commencement and subject to DCP review pursuant to Section 3.09 of this Declaration, develop a plan for implementation of; and (b) thereafter implement, the following measures for all construction activities (including, but not limited to, demolition and excavation) related to the development of the Subject Property:

(aa) Non-road diesel vehicles and all equipment used in construction activities shall comply, at a minimum, with the United States Environmental Protection Agency ("EPA") Tier 3 Non-road Diesel Engine Emission Standard, and, once Tier 4-compliant equipment is widely available, with the Tier 4 standard, and in all cases shall comply with the Tier 2 standard.

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

(cc) All non-road, diesel-powered construction equipment with engine power output rating 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) shall utilize the best available tailpipe technology to reduce diesel particulate emissions. Construction contracts shall specify that all diesel non-road engines rated at 50 horsepower or greater shall utilize active or passive diesel particle filters (either original equipment manufacturer or retrofit technology) verified under either the EPA or California Air Resources Board verification programs.

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

(ee) Idling of all construction vehicles including non-road engines for longer than three minutes shall be prohibited on the Subject Property, and within 10 feet of the perimeter of the Subject Property, except for vehicles being used to operate a loading, unloading or processing device, or as required for engine maintenance and repair.

(ff) The use of diesel and gasoline engines, including generators, shall be minimized through the maximum practical use of electric engines operating on grid power, and lighting devices and illuminated traffic control signals and signs operating on either grid power, on-site renewable, or solar 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, tower cranes, personnel/material hoists, dewatering pumps, welders, saws, and small compressors. All forklifts (not including skylifts) shall be powered either by electricity from the grid or by compressed natural gas or liquid petroleum gas.

(gg) 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.

(hh) All ready-mix concrete delivery trucks and concrete pumping trucks must be either retrofitted with a diesel particle filter as specified in (cc) above, or come equipped with an OEM emissions control package meeting 2007 or newer model year on-highway engine certification levels for particulate matter emissions of 0.01 g/bhp-hr (as per 40 CFR § 86.007-11).

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

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

(i) Declarant shall: (a) prior to Construction Commencement and subject to DCP review pursuant to Section 3.09 of this Declaration, develop; and (b) thereafter implement, a plan for control of fugitive dust during construction ("Fugitive Dust Control Plan") in compliance with applicable rules pertaining to the prevention of the emission of dust from construction related activities, containing the following measures:

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

(bb) Large piles of soil, rock or sediment 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.

(cc) 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.

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

(ee) 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.

(ff) 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.

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

(hh) Materials and waste during demolition shall be brought to grade by hoist. Alternatively, chutes shall be used for material drops during demolition. 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.

(ii) 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 Paragraph (b) consistent with such Fugitive Dust Control Plan as applicable with respect to such work.

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

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

(aa) 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, Chapter 28 of Title 15 of the Rules of the City of New York.

(bb) Declarant shall develop and implement a plan for minimization of construction noise (the " Noise Mitigation Plan"). The Noise Mitigation 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 and LIRR operating and safety requirements**,** provided this subclause shall not be construed as requiring sound barriers around construction work conducted more than twelve (12) feet above the height of the Platform.

(2) The noise emission levels of all construction equipment shall not exceed those found in the Federal Highway Administration Roadway Construction Noise Model (the " FHWA RCNM").

(3) Construction laborers shall be trained in quieter work methods.

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

(5) Quieter-type adjustable backup alarms shall be used on all construction equipment.

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

(ii) If construction work will occur after 6:00 PM or before 7:00 AM, Declarant shall prepare an additional noise mitigation plan (the "Alternative Noise Mitigation 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) consistent with such Noise Mitigation Plan and, if applicable, Alternative Noise Mitigation Plan, as applicable with respect to such work.

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

(i) Declarant shall: (a) prior to Construction Commencement and subject to DCP review pursuant to Section 3.09 of this Declaration, develop a plan for implementation of; and (b) thereafter implement, a plan for 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 New York State Standards and Specifications for Erosion and Sediment Control (the "Soil Erosion and Sediment Control Plan"), containing the following measures:

(aa) 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, the wheel wash shall be supplied by collecting precipitation or using water collected during dewatering operations, where practicable.

(bb) Rinse water from the wheel wash 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.

(cc) 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.

(dd) 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.

(ee) 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; chemical 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 Paragraph (d) consistent with such Soil Erosion and Sediment Control Plan, as applicable with respect to such work.

**(e) Construction Dewatering Plan.**

(i) Declarant shall: (a) prior to Construction Commencement and subject to DCP review pursuant to Section 3.09 of this Declaration, develop a plan for implementation of; and (b) thereafter implement a plan for dewatering during construction ("Dewatering Plan"), which shall set forth procedures for handling site runoff and groundwater encountered during construction activities (including excavation) related to the development of the Subject Property. Such plan shall:

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

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

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

(dd) Suitable drainage means shall be provided for the removal of surface runoff from the site and sludge which drains from the operation.

(ii) Declarant shall include enforceable contractual requirements with contractors and subcontractors to implement the provisions of this Paragraph (e) consistent with such Construction Dewatering Plan, as applicable with respect to such work.

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

(i) Declarant shall: (a) prior to Construction Commencement and subject to DCP review pursuant to Section 3.09 of this Declaration, develop a plan for implementation of; and (b) thereafter implement an integrated plan for construction pest management ("Construction Pest Management Plan") for all construction activities (including demolition and excavation) related to the development of the Subject Property, to control pests (unwanted vermin, insects and weeds) in accordance with DOB requirements. Such plan shall contain the following requirements:

(aa) Food waste shall be segregated from construction waste and deposited in covered bins.

(bb) Vegetation fostering vermin shall be kept trimmed.

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

(dd) 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 Paragraph (f) consistent with such Construction Pest Management Plan, as applicable with respect to such work.

**(g) Hazardous Materials Remediation and Protection Measures.**

(i) Prior to Construction Commencement, Declarant shall undertake a pre-demolition survey of any buildings to be demolished for asbestos containing materials ("ACM"), lead-based paint ("LBP") and equipment suspected to contain polychlorinated biphenyls ("PCBs"). If such materials are identified during the survey, Declarant shall develop and implement procedures for pre-demolition removal of such materials, as part of the Construction Health and Safety Plan ("CHASP") described in clause (ii) below.

(ii) Prior to Construction Commencement, Declarant shall prepare and submit to DEP a site-specific CHASP describing in detail precautionary measures and safety procedures to be followed to minimize pathways of exposure to contaminants. The CHASP shall include the following:

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

(bb) If the pre-demolition survey finds that LBP-coated surfaces are present in any structures to be demolished on the Subject Property, the CHASP shall include an LBP management plan. This plan shall require that an exposure assessment be performed to determine whether lead exposure may occur during demolition activities. If the exposure assessment indicates the potential to generate airborne dust or fumes with lead levels exceeding health-based standards, a higher personal protection equipment standard shall be required to counteract the exposure. In all cases, appropriate methods to control dust and air monitoring, as required by the Occupational Health and Safety Administration**,** shall be required during demolition activities.

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

(dd) The CHASP shall include a Materials Handling Plan identifying specific protocols and procedures for stockpiling, testing, loading, transporting, and properly disposing of all excavated material, in accordance with applicable regulations.

(ee) The CHASP shall designate appropriate personnel to ensure the implementation of its requirements, including a Health and Safety Officer ("HSO") and an on-site Site Safety Officer

("SSO"). The HSO shall oversee the SSO and be responsible for coordinating and reporting all health and safety activities. The HSO must have completed a 40-hour Hazardous Waste Operations training course, supervisory training, and updated annual refresher courses pursuant to requirements codified in 29 CFR Part 1910, Occupational Safety and Health Standards. The SSO shall be a highly competent person who is responsible for the implementation of the CHASP. The SSO shall have the authority to stop work upon determination of an imminent safety hazard, emergency situation, or other potentially dangerous situation. If the HSO is to be absent from the construction area, the HSO shall designate a suitably qualified replacement who is familiar with the CHASP.

(ff) The CHASP shall impose training requirements for all construction personnel entering the Subject Property in the vicinity of areas where intrusive activities are being performed. Before entering the Subject Property at such times and at such locations, all construction personnel shall be required to attend a training meeting, conducted by the HSO, SSO, or other suitably trained individuals to: (1) make workers aware of the potential hazards they may encounter; (2) provide the knowledge and skills necessary for them to perform the work with minimal risk to health and safety; (3) make workers aware of the purpose and limitations of safety equipment; and (4) ensure that they can safely avoid or escape from emergencies. Others who enter the Subject Property during intrusive activities without having attended a training session shall be accompanied by a trained construction worker.

(gg) The CHASP shall provide that all excavation shall be continuously monitored for the presence of buried tanks, drums, or other containers; sludges; or soil that shows evidence of potential contamination, staining, or odors, and shall include contingency response plans to be implemented upon detection of any of these items.

(hh) The CHASP shall include an emergency response plan to be implemented in the event that monitoring data indicate a potential major hazard.

(ii) The CHASP shall define protocols for reporting spills or other concerns to relevant government agencies.

(jj) The CHASP shall set forth dust control measures to be implemented during all soil-disturbing activities, comprised of the measures set forth in Section 3.02(b).

(kk) The CHASP shall identify measures to be taken to address contaminated material that will remain on the Subject Property after construction is completed, including the use of impermeable barriers to achieve isolation from contaminants such as semi-volatile organic compounds.

(ll) DOB shall not issue, and Declarant shall not accept, any Building Permit for work at the Subject Property, until DCP shall have certified to the DOB Commissioner that: (1) a CHASP consistent with the provisions of this Paragraph (g) has been approved by DEP; and (2) Declarant has included enforceable contractual requirements with contractors and subcontractors to implement the provisions of this Paragraph (g) consistent with such CHASP, as applicable with respect to such work.

(iii) Declarant shall undertake investigations, as appropriate, to evaluate the extent of soil, groundwater, and soil vapor contamination present at the Subject Property in accordance with relevant regulatory

protocols for site investigations and remediation.

(iv) Declarant shall have no responsibility for the remediation associated with the known petroleum spill at the Subject Property (DEC Spill No. 04-07411) to be completed in accordance with the existing DEC consent order, which remediation shall be the responsibility of the MTA.

(v) Soil Vapor Mitigation.

(aa) Declarant shall, if required by DEP, install appropriate soil vapor barrier measures to protect New Buildings constructed within the terra firma portion of the Subject Property.

(bb) Declarant shall have the opportunity to propose to DEP soil vapor mitigation measures it deems appropriate based on soil and/or groundwater testing, the proposed building parameters (e.g., building layout, foundation type, operation of HVAC systems, etc.), and environmental influencing factors (e.g., current soil and groundwater conditions, underground conduits, contaminant source location and concentration, etc.).

(cc) DOB shall not issue, and Declarant shall not accept, a New Building Permit for a New Building to be constructed within the terra firma portion of the Subject Property, until DCP shall have certified to the DOB Commissioner that DEP has either (1) approved in writing Declarant's proposal for soil vapor barrier measures for such New Building, or (2) determined that Declarant has demonstrated to DEP's satisfaction that no soil vapor mitigation measures are required for such New Building.

(dd) Any plans and drawings submitted by Declarant to DOB in connection with a New Building Permit application or amendment thereof shall reflect and be consistent with any soil vapor measures approved by DEP and Declarant shall construct the New Building in accordance with such plan.

(ee) Following issuance of a TCO or PCO for a New Building, Declarant shall not eliminate or modify a soil vapor mitigation measure without the approval of DEP.

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

(i) Prior to commencing construction within ninety (90) feet of the High Line, Declarant shall develop a Construction Protection Plan ("CPP") in coordination with OPRHP and LPC to avoid any adverse physical, construction-related impacts to the High Line, such as those from ground-borne vibrations, falling objects, dewatering, flooding, subsidence, collapse, or damage from construction machinery 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 of the High Line until DCP shall have certified to the DOB Commissioner that both OPRHP and LPC have determined that the CPP is acceptable.

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

(iv) The CPP shall follow the guidelines set forth in LPC's *Guidelines for Construction Adjacent to a Historic Landmark* and *Protection Programs for Landmark Buildings* as appropriate, except as may be otherwise approved by LPC and OPRHP. The CPP shall also follow the requirements established in DOB's *Technical Policy and Procedure Notice #10/88*, in addition to the guidelines set forth in Section 523 of the *CEQR Technical Manual*.

(v) Construction procedures included in the CPP to protect the foundations and structures of the High Line shall be developed and monitored by structural and foundation engineers.

(vi) The CPP shall:

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

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

(cc) Establish protection procedures, including the types and locations of barriers that will be used to protect the High Line during construction activities.

(dd) Establish a monitoring program to measure vertical and lateral movement and vibration.

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

(ff) Establish and monitor construction methods to limit vibrations. Specifically, the CPP shall establish vibration mitigation measures to be implemented should construction activities involve the use of certain equipment within specified distances from the High Line, as specified below:

| | |
|---|---|
| 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 |

(gg) Authorize the structural and foundation engineers to issue 'stop work' orders to prevent damage to the High Line and establish procedures for the recommencement of work following same.

**(i) Construction Materials.**

Declarant shall 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 Paragraph (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 Commencement of Construction, Declarant shall provide DCP with an annual report, due January 31st of each year until issuance of a TCO for all of the floor area to be included in the New Buildings on the Subject Property,

describing the amounts of locally purchased and recycled materials utilized in construction during the prior year and any proposed measures to increase such amounts in future construction.

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

(i) Prior to Construction Commencement, Declarant shall prepare a Maintenance and Protection of Traffic ("MPT") plan and submit it to DOT for review and approval, provided that completion of the MPT shall not be necessary for preliminary site work unless DOT determines that an MPT is required. Such plan shall provide diagrams of proposed temporary lane and sidewalk alterations, including the duration such alterations will be implemented, and the width and length of affected segments.

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

(iii) Subject to DOT's approval, the MPT plan shall include the following provisions:

(aa) At no time shall access to existing occupied buildings on the Subject Property be closed, and at no time shall access by LIRR personnel and equipment to any Caemmerer Rail Yard facilities be restricted without consent of the LIRR**.**

(bb) In areas where temporary sidewalk closure is required, either (1) the pedestrian path shall be relocated to the curb lane and a barrier shall be erected to separate motor vehicle traffic from pedestrian traffic; or (2) if access to the adjacent lot is not needed, pedestrians shall be routed to the opposite side of the street at the nearest crosswalk.

(cc) The width of any relocated or modified pedestrian path shall be at least five (5) feet.

(dd) Emergency access to fire hydrants, fire alarm boxes, and critical utility vaults and chambers shall be maintained.

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

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

**(a) Operational Air Emissions Controls.**

(i) Declarant shall: (a) prior to acceptance of a New Building Permit, submit plans for DCP review pursuant to Section 3.09 of this Declaration demonstrating compliance with; and (b) thereafter implement, the following controls relating to emissions from the heating systems of New Buildings (" HVAC Controls"):

(aa) For all New Buildings, the use of fuel oil shall be restricted to the four (4) winter months (December, January, February, and March). During other months, natural gas shall be used to power heating systems.

(bb) Boiler exhaust stacks on all New Buildings shall be a minimum of twenty (20) feet in height, except where a greater minimum height is specified below.

(cc) For New Building WC-1 (Site 2), there shall be one boiler exhaust stack located at the center of the roof. Air intake ducts on the south and west facades of this New Building shall be located at a minimum height of 400 feet. Air intake ducts on the east facade of this New Building shall be located at a minimum height of 650 feet.

(dd) For New Building WR-1 (Site 4), there shall be one boiler exhaust stack, which shall be located: (1) if the 'Maximum Commercial Scenario', as defined in the FEIS, is pursued, at the center of the roof; (2) if the 'Maximum Residential Scenario -- Office Option', as defined in the FEIS, is pursued, at the northern end of the roof; or (3) if the 'Maximum Residential Scenario -- Hotel Option', as defined in the FEIS, is pursued, at the northwest corner of the roof.

(ee) For New Building WR-2 (Site 6), there shall be one boiler exhaust stack, which shall be located at the southern end of the roof.

(ff) For New Building WR-3 (Site 6), there shall be one boiler exhaust stack, which shall be located: (1) if the 'Maximum Commercial Scenario', as defined in the FEIS, is pursued, at the center of the roof; or (2) if either of the 'Maximum Residential Scenarios', as defined in the FEIS, is pursued, at the southwest corner of the roof.

(gg) For New Building WR-4 (Site 5), there shall be one boiler exhaust stack, which shall be located at the center of the roof. If either of the 'Maximum Residential Scenarios', as defined in the FEIS, is pursued, the stack shall be a minimum of 40 feet in height.

(hh) For New Building WR-5 (Site 3), there shall be one boiler exhaust stack, which shall be located: (1) if the 'Maximum Commercial Scenario', as defined in the FEIS, is pursued, at the center of the roof; (2) if the 'Maximum Residential Scenario -- Office Option', as defined in the FEIS, is pursued, at the southwest corner of the roof; or (3) if the 'Maximum Residential Scenario -- Hotel Option', as defined in the FEIS, is pursued, at the southeast corner of the roof. If either of the 'Maximum Residential Scenarios', as defined in the FEIS, is pursued, the stack shall be a minimum of 40 feet in height.

(ii) For New Building WR-6 (Site 1), there shall be one boiler exhaust stack, which shall be located at the center of the roof.

(jj) For New Building WR-7 (Site 1), there shall be two boiler exhaust stacks, which shall be located at the western end of the roof.

(ii) In the event that the building height for a New Building differs from that shown in Table 19-9 of the FEIS, Declarant shall demonstrate to the satisfaction of DCP, that the HVAC Controls for such building set forth in clause (i) remain adequate. Alternatively, Declarant shall propose adjustments to the HVAC Controls which, upon review and approval by DCP, shall become the applicable HVAC Controls for that building. Notwithstanding the foregoing, Declarant shall be allowed to modify the location of stacks and the location of air intake vents if Declarant demonstrates to DCP, based on the technologies employed and the height and location of other New Buildings on the Subject Property, that the Project with such controls will not result in any significant adverse air quality impacts not identified in the FEIS.

(iii) Any plans and drawings submitted by Declarant to DOB in connection with a New Building Permit

application or amendment thereof shall reflect and be consistent with such controls.

(iv) Following issuance of a TCO or PCO for a New Building, Declarant shall not eliminate or modify an HVAC Control unless Declarant shall have obtained the written approval of DCP authorizing such change, and DOB shall not issue, and Declarant shall not accept, a Demolition Permit or Alteration Permit from DOB which would result in elimination or modification of any such HVAC Control. In no event shall this clause (iv) be construed as prohibiting or preventing Declarant from undertaking any maintenance, repair or replacement of any portion of the HVAC system (including replacement of any element with a more efficient or cleaner system), provided same is consistent with the terms of this Section 3.02(a).

**(b) New Building Noise Attenuation.**

(i) Declarant shall: (a) prior to acceptance of a New Building Permit, submit plans for DCP review pursuant to Section 3.09 of this Declaration demonstrating compliance with; and (b) thereafter implement the following noise attenuation requirements for New Buildings:

(aa) New Building WR-1 (Site 4) shall have a closed window condition providing a minimum of (1) 35 dBA of window/wall attenuation on its northern and southern facades; (2) 30 dBA of window/wall attenuation on its western facade; and (3) 40 dBA of window/wall attenuation on its eastern facade.

(bb) New Building WR-2 (Site 6) shall have a closed window condition providing a minimum of (1) 30 dBA of window/wall attenuation on its northern facades and shorter western facade (at the northern end of the building); (2) 35 dBA of window/wall attenuation on its westernmost facade; and (3) 40 dBA of window/wall attenuation on its easternmost and southern facades.

(cc) New Building WR-3 (Site 6) shall have a closed window condition providing a minimum of (1) 30 dBA of window/wall attenuation on its northern and western facades; and (2) 35 dBA of window/wall attenuation on all of its other facades.

(dd) New Building WR-4 (Site 5) shall have a closed window condition providing a minimum of (1) 40 dBA of window/wall attenuation on its northwestern and southwestern facades; and (2) 30 dBA of window/wall attenuation on both of its other facades.

(ee) New Building WR-5 (Site 3) shall have a closed window condition providing a minimum of (1) 35 dBA of window/wall attenuation on its western and southern facades; and (2) 30 dBA of window/wall attenuation on both of its other facades.

(ff) New Building WR-6 (Site 1) shall have a closed window condition providing a minimum of (1) 35 dBA of window/wall attenuation on its western and northern facades; and (2) 30 dBA of window/wall attenuation on both of its other facades.

(gg) New Building WR-7 (Site 1) shall have a closed window condition providing a minimum of (1) 40 dBA of window/wall attenuation on its western facade; and (2) 35 dBA of window/wall attenuation on all of its other facades.

(hh) If either the 'Maximum Commercial Scenario' or the 'Maximum Residential Scenario -- Office Option', as defined in the FEIS, is pursued, New Building WC-1 (Site 2) shall have a closed window condition providing a minimum of (1) 35 dBA of window/wall attenuation on its eastern facade; (2) 25 dBA of window/wall attenuation on its westernmost facade; and (3) 30 dBA of window/wall attenuation on all of its other facades.

(ii) If the 'Maximum Residential Scenario -- Hotel Option', as defined in the FEIS, is pursued, New Building WC-1 (Site 2) shall have a closed window condition providing a minimum of (1) 35 dBA of window/wall attenuation on its eastern facade; (2) 25 dBA of window/wall attenuation on its westernmost facade; and (3) 30 dBA of window/wall attenuation on all of its other facades.

(jj) For all New Buildings, an alternative form of ventilation shall be provided.

(ii) Following issuance of a TCO or PCO for a New Building, Declarant shall not eliminate or modify a noise attenuation measure unless DCP has approved such modification or elimination in accordance with Section 3.06(b) hereof. DOB shall not issue, and Declarant shall not accept, a Demolition Permit or Alteration Permit from DOB which would result in elimination or modification of any such noise attenuation measure. In no event shall this clause (ii) be construed as prohibiting or preventing Declarant from undertaking any maintenance, repair or replacement of any portion of the Noise attenuation system, provided same is consistent with the terms of this Section 3.03(a).

**(c) Pedestrian Wind Conditions.**

(i) During architectural design development for a New Building and, in any event, prior to preparation of a final architectural design, Declarant shall cause a qualified consultant ("Wind Conditions Consultant") to undertake wind tunnel testing to assess the effect of the architectural design on pedestrian-level wind conditions. Where the results of wind tunnel testing indicate that implementation of the architectural design would have the potential to result in pedestrian-level wind conditions exceeding the performance criterion referenced in Appendix K to the FEIS (the "Appendix K Criteria"), Declarant shall incorporate design features into the final architectural design, which: (aa) are determined through further testing to be effective in reducing or eliminating such exceedance; (bb) are compatible with the overall architectural design and location of the New Building and are consistent with the bulk and urban design controls contained in the Zoning Resolution; and (cc) are feasible from a structural, engineering and cost standpoint (the "Wind-Reduction Design Modifications"). Wind tunnel testing pursuant to this Section 3.02(c) shall be conducted in accordance with a methodology and protocol acceptable to DCP.

(ii) No later than ninety (90) days prior to obtaining a New Building Permit from DOB, Declarant shall submit copies of a draft report to DCP describing: (aa) the results of wind tunnel testing and (bb) in the event such testing shows the potential for exceedance of the Appendix K Criteria based on the proposed design, an explanation and description of any Wind-Reduction Design Modifications which have been incorporated into the final architectural design (the "Wind Conditions Report"). In the event that Wind-Reduction Design Modifications have not been incorporated into the final architectural design, or have been incorporated but do not fully eliminate all exceedances of the Appendix K Criteria, then such report shall be accompanied by a written joint certification of the Wind Conditions Consultant and Declarant stating either that: (aa) no Wind-Reduction Design Modifications are required to cause the Project to meet the Appendix K Criteria; (bb) no Wind-Reduction Design Modifications or additional Wind-Reduction Design Modifications are available that would be effective in materially reducing or

eliminating the potential for an exceedance of the Appendix K Criteria; or (cc) potential Wind-Reduction Design Modifications are not compatible with the overall architectural design and location of the New Building, do not comply with the bulk or urban design controls contained in the Zoning Resolution, or are not feasible from a structural, engineering or cost standpoint. DCP shall, from the date of receipt, have thirty (30) days to review the draft Wind Conditions Report and provide Declarant with written comments. Declarant shall thereafter cause the Wind Conditions Consultant to submit a final Wind Conditions Report to DCP, which shall incorporate responses to such comments. DOB shall not issue, and Declarant shall not accept, any New Building Permit for a New Building until DCP shall have certified in writing to DOB that a final Wind Conditions Report has been submitted in compliance with this clause (ii) and that such report reflects a reasonable application of the standards set forth herein. Declarant shall also provide copies of all final Wind Conditions Reports to Community Board 4, Manhattan, the local Councilmember, the Manhattan Borough President, and any Construction Consultation Process Committee established pursuant to Section 6.01 of this Declaration.

(iii) Implementation of any Wind-Reduction Design Modifications identified in a final Wind Conditions Report submitted in accordance with this Section 3.02(c) shall be deemed a requirement of this Declaration and any plans and drawings submitted by Declarant to DOB in connection with a New Building Permit application or amendment thereof shall reflect and be consistent with such Wind-Reduction Design Modifications.

(iv) Following issuance of a TCO or PCO for a New Building, Declarant shall not eliminate or modify a Wind-Reduction Design Modification identified in a final Wind Conditions Report submitted in accordance with this Section 3.02(c) except as set forth in this clause (iv) or pursuant to Section 3.06 hereof. DOB shall not issue, and Declarant shall not accept a Demolition or Alteration Permit which would result in elimination or modification of any such Wind-Reduction Design Modification unless and until the Chair shall have certified to the DOB Commissioner that Declarant has demonstrated to the satisfaction of DCP that such Wind-Reduction Design Modification is no longer required or that an alternate Wind-Reduction Design Modification will be incorporated that will result in equivalent or improved wind conditions on and around the Subject Property. In no event shall this clause (iv) be construed as prohibiting or preventing Declarant from undertaking any maintenance, repair, replacement of or improvement to any portion of a Wind Reduction Design Modification provided that the same is consistent with this Section 3.02(c).

(v) The provisions of clauses (i)-(iv) of this Paragraph (e) shall not apply to a New Building in the event that Declarant demonstrates to the satisfaction of the Chair, based on a report and analysis prepared by a consultant expert and experienced in the field of wind conditions analysis, that the New Building, by virtue of its size, location, massing or other features, does not have the potential to result in an exceedance of the Appendix K Criteria, such that wind tunnel testing of its architectural design as provided in this Section 3.02(c) is not required under the circumstances. In that event, the Chair shall certify to the DOB Commissioner that DOB may issue a New Building Permit. Such certification shall apply to the relevant New Building only and shall have no application to any other New Building on the Subject Property.

**(d) Ventilation Fan Plants.**

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

(aa) Ventilation operations shall not increase the noise levels by 3 dBA or more over the levels identified in the FEIS as the Future No Build Noise Levels, and shall comply with all applicable provisions of the City Noise Control Code. Declarant shall meet these requirements by establishing appropriate noise-related specifications for the ventilation system, including ventilation duct work, airflow velocities, louvered openings in the ventilation plant exterior walls, fan type, fan size, pressure drop, and silencer characteristics.

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

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

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

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

**(e) Use of LIRR Outfall.**

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

(ii) Use of the LIRR Outfall, including any use of such outfall by Sites other than Sites 5 and 6, shall also be governed by an agreement between MTA/LIRR and Declarant.

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

**(f) Tri-Generation Energy Supply System.**

If Declarant chooses to install tri-generation energy supply systems in New Buildings (to generate electricity, heat and cooling), such systems shall use exclusively natural gas for fuel. In supplemental boilers installed in all New Buildings, the use of fuel oil shall be restricted to the four winter months (December, January, February, and March). During other months, natural gas shall be used to power the supplemental boilers. Declarant shall adhere to all HVAC Controls set forth in Section 3.02(a), and shall obtain and comply with all required DEP and DEC permits in connection with the operation of such tri-generation system.

**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 energy efficiency measures with respect to fuel consumption and energy use ("EEMs") in each New Building that will result in at least 14% less energy consumption in building systems and by building tenants than the standard set forth in the American Society of Heating, Refrigerating, and Air-Conditioning Engineers ("ASHRAE") standard 90.1-2007 in effect as of the date hereof (the "Minimum Energy Savings"). EEMs may include, but are not 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, and use of EnergyStar appliances.

(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 will 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 New Building Permit 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, 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 New 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 clause (iii).

(iv) Implementation of the EEMs identified in the final Energy Report submitted in accordance with this Paragraph shall be deemed a requirement of this Declaration, provided that Declarant may modify the EEMs incorporated in any New Building as such New Building is being constructed provided that such alternate EEM is approved by DCP in accordance with Section 3.06 hereof.

**(b) LEED Silver Certification.**

(i) Except as otherwise provided in this Section 3.01(b), Declarant shall design and construct each New Building in accordance with the standards and criteria required to achieve a minimum of LEED Silver Certification, and shall apply for and use reasonable and good faith efforts to obtain LEED Silver Certification from the USGBC.

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

(aa) A LEED checklist for the New Building demonstrating that the number of points Declarant intends to pursue during LEED 'Construction Review' will make the New Building eligible to obtain LEED Silver Certification. Such checklist shall demonstrate that Declarant is providing a minimum of 32% of possible points in the GHG Credit Categories, as set forth in Exhibit D; and 50% of possible points in the Water Credit Categories, as set forth in Exhibit D (collectively, the "GHG and Water Credit Requirements"). New Buildings for which Declarant seeks LEED Silver Certification under future versions of the USGBC LEED rating system 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.

(bb) A signed affirmation from a LEED-accredited professional stating that he or she has reviewed the plans and drawings submitted or to be submitted to the DOB for purposes of a New Building Permit and that such plans and drawings are consistent with the LEED checklist and meet the intent of the criteria for LEED Silver Certification of the New Building.

(iii) 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:

(aa) Documentation demonstrating that Declarant has completed LEED 'Design Review' and showing the number of points 'anticipated' as a result of the LEED 'Design Review'. In the event that USGBC has 'denied' any points applied for by Declarant in the LEED 'Design Review', Declarant shall provide a report describing the following: (1) the basis for the USGBC determinations, as well as any related technical advice provided by the USGBC review team; and (2) the steps taken by Declarant in response to the USGBC determinations, including appeals thereof.

(bb) A LEED checklist for the New Building, demonstrating that the number of points 'anticipated' by the USGBC during LEED 'Design Review', in combination with the number of points that Declarant intends to pursue during LEED 'Construction Review', will make the New Building eligible to obtain LEED Silver Certification. Such checklist shall demonstrate that the GHG and Water Credit Requirements will be met.

(iv) 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:

(aa) If the New Building has received LEED Silver Certification:

(1) Documentation demonstrating that the New Building has received LEED Silver Certification, in the form of a USGBC 'Certificate of Recognition' or equivalent document.

(2) A LEED checklist for the New Building demonstrating the number of LEED points that the New Building was 'awarded' by the USGBC. Such checklist shall demonstrate that the GHG and Water Credit Requirements have been met.

(bb) If the application for LEED 'Construction Review' is still pending:

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

(2) A LEED checklist for the New Building demonstrating that the number of points 'anticipated' by the USGBC during LEED 'Design Review', in combination with the number of points that Declarant has applied for in LEED 'Construction Review', will make the New Building eligible to obtain LEED Silver Certification. Such checklist shall demonstrate that the GHG and Water Credit Requirements are anticipated to be met.

(3) A signed affirmation from a LEED-accredited professional stating that he or she has reviewed the application submitted to USGBC for LEED 'Construction Review', and that the application is consistent with the checklist and meets the intent of the criteria for LEED Silver Certification of the New Building.

(cc) In the event that the New Building has failed to receive LEED Silver Certification after Declarant has accepted the final results of the LEED 'Construction Review', a report including the following:

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

(2) Documentation demonstrating that Declarant has (I) designed and constructed the New Building according to the LEED Silver Certification standards or criteria then in effect, but without the standards or criterion which were subject to the USGBC Denial Determination; and (II) applied for and used reasonable good faith and efforts to obtain LEED Certification from the USGBC for the highest level of LEED Certification available in absence of such standards or criterion. The provisions of Section 3.02(b)(ii)(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 USGBC Denial Determination is applicable to such standard or criterion.

(v) In the event that, subsequent to October 19, 2009, any LEED Silver Certification standards or criterion change materially (including any new rating or guideline system as successor to the foregoing), and Declarant determines both that: (aa) implementation of the new standards or criterion would be impracticable from a design or engineering standpoint or would materially increase the costs of construction or operation of a New Building in and above any costs that are associated with implementation of the LEED Silver Certification standards or criterion in effect as of October 19, 2009 ("LEED 2009"); and (bb) as a result of such material change, it cannot otherwise qualify for LEED Silver Certification through alternative measures (the "LEED Silver Changed Criteria Determination"), it shall so notify DCP during the design development process for a New Building and, in any event,

prior to filing an application for a New Building Permit for the New Building. In the event that, within sixty (60) days following receipt of such notice, DCP provides Declarant with a written determination disputing the LEED Silver Changed Criteria Determination, then such disagreement shall be resolved through a dispute resolution procedure mutually agreeable to the parties. For the purposes of this clause (v), any change in a standard or criteria that would result in an incremental cost (above the cost to construct in accordance with LEED 2009) to Declarant that Declarant has reasonably demonstrated will not be recovered within five (5) years from the first date of occupancy subsequent to receiving a TCO shall be deemed a material increase in the cost of construction or operation of a New Building. If it is found or determined through such dispute resolution procedure that the LEED Silver Changed Criteria Determination has a sound and reasonable basis, such that Declarant cannot otherwise qualify for LEED Silver Certification through alternative measures, then Declarant shall (aa) design and construct the New Building according to the LEED Silver Certification standards or criteria then in effect, but without the standard or criterion which was the subject of the LEED Silver Changed Criteria Determination, and shall document compliance therewith in a manner acceptable to DCP, as a condition for receipt of a PCO for the New Building; and (bb) apply for and use reasonable and good faith efforts to obtain LEED Certification from the USGBC for the highest level of LEED Certification then available in the absence of compliance with such standard or criterion, in accordance with the provisions of this Paragraph. The provisions of Section 3.02 (b)(ii)(bb) 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 LEED Silver Changed Criteria Determination is applicable to such standards or criterion.

(vi) Within three (3) years of either (aa) LEED Silver certification for the New Building, or (bb) substantial occupancy of the New Building (the decision as to which point begins the three (3) year period to be at Declarant's discretion), Declarant shall provide DCP with a report summarizing the results of any measurement and verification and/or corrective action performed pursuant to the LEED 'Measurement and Verification Plan'. In addition, if not available prior to PCO, documentation demonstrating that the New Building has received LEED Silver Certification, in the form of a USGBC 'Certificate of Recognition' or equivalent document within three months of Declarant's receipt thereof.

**(c) Stormwater Management Measures.**

(i) Prior to Construction Commencement, Declarant shall prepare and submit to DEP a Stormwater Pollution Prevention Plan ("SWPPP") for construction activities and post-construction stormwater management. The SWPPP shall incorporate feasible measures to reduce runoff rates below baseline levels and shall implement stormwater management techniques to address water quality concerns associated with the uncontrolled discharge of stormwater runoff into the Hudson River, and shall provide for: (aa) the capture of stormwater from New Building roofs for beneficial reuse as cooling tower makeup and irrigation for site landscaping; (bb) incorporation of softscapes and features into the design of the Subject Property that shall serve to retain stormwater runoff; and (cc) green roofs on other selected buildings. The SWPPP shall be subject to review and approval by DEP, and by DEC to the extent required under applicable law or regulation.

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

(iii) Any plans and drawings submitted by Declarant to DOB in connection with a Building Permit

shall reflect and be consistent with the SWPPP.

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

(v) Prior to accepting a TCO for a New Building, Declarant shall certify to DCP that provisions of the SWPPP required for that New Building have been implemented.

**(d) Water Conservation Measures.**

(i) Dishwashers and clothes washers installed in all residential New Buildings shall be water-conserving models meeting at least EnergyStar standards for water-conservation.

(ii) Water-conserving toilets and faucets shall be installed in all New Buildings.

(iii) Prior to accepting a TCO for a New Building, Declarant shall certify to DCP that provisions of clauses (i) and (ii) of this Paragraph (d) have been implemented for such New Building.

**(e) Car Sharing Spaces.**

(i) Declarant shall, subject to the provisions of clause (iv) hereof, dedicate spaces in the Garage for parking of automobiles owned or operated as part of an automobile rental establishment use as listed in Section 32-17 (UG 8) of the Zoning Resolution in association with use of the Garage for accessory parking which: (aa) makes available to and permits customers to utilize its automobiles for hourly periods, or longer, in exchange for a fee seven days a week and for such hours as the Garage is open to other vehicles; and (bb) allows customers to reserve, pick up and return automobiles at the Subject Property through a self-service method (the "Car Sharing Service"), and shall cause the Car Sharing Service to be operated for so long as the Garage remains in service.

(ii) Declarant shall not accept a TCO or PCO for all or any portion of the Garage that would result in excess of 400 spaces accessory to the residential use on the Subject Property, unless and until Declarant has commenced the Car Sharing Service and has provided a minimum of twenty (20) spaces within the Garage for the exclusive use by the Car Sharing Service. Thereafter, Declarant shall not accept a TCO or PCO for all or any portion of the Garage that would allow for in excess of 800 spaces accessory to the residential use on the Subject Property, unless and until Declarant has provided an additional ten (10) spaces within the Garage for the exclusive use of the Car Sharing Service, and shall not accept a TCO or PCO for all or any portion of the Garage that would allow for in excess of 1,200 spaces accessory to the residential use on the Subject Property, unless and until Declarant has provided an additional ten (10) spaces within the Garage for the exclusive use of the Car Sharing Service (the foregoing spaces, the "Car Sharing Spaces").

(iii) The number of residential accessory parking spaces in the Garage allowed pursuant to Section 2.03 of this Declaration shall be reduced by the number of Car Sharing Spaces required to be provided under this Section 3.03(e).

(iv) Notwithstanding the foregoing, in the event that Declarant demonstrates to the reasonable satisfaction of the Chair that the Car Sharing Service cannot generate lease rates comparable to those

charged to residential occupants for accessory parking spaces, or that the number of Car Sharing Services required under this Declaration exceeds the demand by Car Sharing Service operators for spaces on the Subject Property, then Declarant may use spaces otherwise required under this Section 3.03(e) to be utilized as Car Sharing Spaces as residential accessory parking spaces, subject to the provisions of Section 2.03 of this Declaration.

**(f) Electric Vehicle Battery-Charging Station.**

(i) Declarant shall install one or more battery-charging stations within the Garage for use by residents and occupants of the Subject Property who own, lease or otherwise use electric-powered vehicles. In determining the number of battery-charging stations to be installed in the Garage, Declarant shall evaluate trends at the time of the construction of the Garage and anticipated future trends relating to use of electric-powered vehicles, practices regarding the installation of battery-charging stations in residential and commercial buildings, and any relevant technology, design or engineering considerations.

(ii) Not less than sixty (60) days prior to accepting a TCO or PCO for all or any portion of the Garage allowing for parking spaces for more than 400 accessory residential vehicles, the Declarant shall certify to DCP that provisions of clause (i) have been implemented and in connection therewith shall provide to DCP a written explanation of its determination as to the number of battery-charging stations to be included in the Garage. Installation of battery-charging stations may be phased in relation to increases in the number of parking spaces allowed at any given time pursuant to Section 2.03 of this Declaration.

(iii) Notwithstanding the provision of clauses (i) and (ii), Declarant shall not be required to install battery-charging stations in the Garage if Declarant determines, with the concurrence of the Chair, that battery-charging stations are not likely to be utilized on a frequent basis by residents or occupants of the New Buildings under existing or reasonably foreseeable future market conditions; or that there are technology, design or engineering considerations which make installation of a battery-charging station in the Garage infeasible or cost-prohibitive.

**(g) Base Flood Elevation.**

(i) All New Buildings on Sites 5 and 6 within the terra firma portion of the Subject Property: (aa) shall be consistent with the New York City Building Code requirement that residential buildings have a finished floor elevation at or above the base flood elevation for the 100-year flood; (bb) shall meet the minimum elevation requirements for the lowest floor relative to the design flood elevation as specified in Appendix G, "Flood Resistant Construction," of the New York City Building Code for the applicable building category (see Table 1604.5 of the New York City Building Code or Table 1-1 of Appendix G to the New York City Building Code); and (cc) in the case of a New Building to be located on Site 5, the elevation of the lowest floor shall be no less than one foot above the base flood elevation.

(ii) Declarant shall prior to acceptance of a New Building Permit for a New Building on Site 5, submit plans for DCP review pursuant to Section 3.09 of this Declaration demonstrating compliance with clause (i) of this Section 3.03(g).

**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) Declarant shall, subject to clause (iv) hereof, perform the following with respect to the Public School: (aa) engage in a collaborative design development process with SCA, which shall include collaboration on schematic design, design development and contract documentation; (bb) perform construction of 'School Base Building Work', as defined under the SCA Agreement; (cc) enter into a condominium regime with respect to the Public School and the remainder of the building, or other regime acceptable to SCA and Declarant, as a means of transferring the Public School to SCA; and (dd) transfer the Public School to SCA ((aa) to (dd) collectively, the "Public School Obligations"), the Public School Obligations to be performed pursuant to, in accordance with, and conditioned upon the terms and conditions of a School Design, Construction, Funding and Purchase Agreement with SCA (the " SCA Agreement") intended to be entered into pursuant to the October 16, 2009, Letter of Intent executed by the SCA and accepted and agreed to by Declarant, as amended on December __, 2009, attached to this Declaration as Exhibit G (the "SCA Letter of Intent").

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

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

(bb) Not less than eighteen (18) months prior to the date Declarant anticipates filing for ~~either (I) a New Building Permit which, if granted, would permit in excess of 712 residential units in aggregate to be constructed on the Subject Property (the date of such anticipated filing, the " School Threshold Date"), or (II)~~ a New Building Permit for a New Building on Site 6 ~~regardless of the number of residential units that would be permitted to be constructed on the Subject Property as a result thereof~~, Declarant shall provide written notice to the SCA (the "School Election Notice") advising the SCA of the plan to file for such New Building Permit and offering the SCA a location within the base of such New Building for the Public School (the " Proposed School Site"). Declarant shall provide a copy of the School Election Notice to the district manager of Community Board 4 within ten (10) days of delivery thereof to the SCA. Following delivery of the School Election Notice:

(1) If SCA advises Declarant in writing within thirty (30) days of receipt of the School Election Notice that SCA accepts the Proposed School Site as the location for the Public School, intends to proceed with the Public School on the Proposed School Site, and has or anticipates receipt of the capital funding to complete the Public School in the manner set forth in the SCA Agreement, Declarant and the SCA shall promptly commence and thereafter diligently and expeditiously pursue the development of plans to incorporate the

Public School into the New Building in accordance with the SCA Agreement. DOB shall not issue, and Declarant shall not file for or accept, a New Building Permit for a New Building including the Proposed School Site unless and until the SCA has approved the construction documents to be filed with the application for the New Building Permit insofar as such documents pertain to the core and shell of the Public School, as more particularly set forth in the SCA Agreement.

(2) In the event that the SCA advises Declarant in writing within thirty (30) days of receipt of the School Election Notice that SCA ~~(A)~~ does not accept the Proposed School Site as the location of the Public School, ~~(B) has not yet determined whether it intends proceed with the Public School on the Subject Property, or (C) does not have or does not reasonably anticipate having the capital funding to undertake and complete the Public School at the Proposed School Site,~~ and in any event if the SCA fails to respond to Declarant's notice within such thirty (30) day period, SCA shall be deemed to have rejected the Proposed School Site, and Declarant shall be permitted to construct the New Building identified in the School Election Notice without including a Public School in the New Building, and Declarant shall have no further obligation under this Section 3.04 (a) ~~with regard to such New Building, but shall comply with the requirements of subclause (3) hereof with respect to any subsequent New Building Permit~~.

~~(3) In such event that SCA has rejected a Proposed School Site in accordance with subclause (2) hereof, Declarant shall issue a new School Election Notice prior to issuance of any subsequent New Building Permit for a New Building containing residential units in the same manner as provided for the initial Public School Notice in this subclause (bb), and shall repeat such process until the earlier of (A) SCA accepting a Proposed School Site as the location of the Public School, and (B) receipt of New Building Permits in accordance with the provisions of this Section 3.04 (a) for construction of New Buildings on each of Sites 1, 4, and 6.~~

(3~~4~~) Declarant covenants to seek a New Building Permit for a New Building on Site 6 as one of the first three New Building Permits issued for New Buildings containing residential units~~, provided that if SCA has already accepted a Proposed School Site in a New Building on a Site other than Site 6 and Declarant has obtained a New Building Permit for such other New Building incorporating the Public School, this obligation shall not apply~~.

(cc) Provided that the SCA has accepted ~~a~~ the Proposed School Site and has agreed to proceed with the Public School in the manner set forth in subclause (bb) above and in the SCA Agreement, DOB shall not issue, and Declarant shall not accept, TCOs or PCOs for more than 712 residential units on the Subject Property (the Unit Threshold) until such time as (I) Declarant has completed the core and shell of the Public School, and (II) has delivered the core and shell to the SCA or otherwise made the Public School core and shell available for fit-out in the manner set forth in the SCA Agreement, provided that in no event shall this subclause (cc) be construed in any manner to preclude DOB from issuing or Declarant from accepting TCOs or PCOs for any residential unit located in a New Building constructed pursuant to a New Building Permit issued prior to the New Building Permit for the New Building containing the Public School. Notwithstanding the foregoing, in the event that Declarant's obligations under this Section 3.04(a) have terminated pursuant to subclause (ii)(bb)(2) hereof, Declarant may apply for and DOB may issue TCOs and PCOs for any and all residential units in the Project without

regard to this subclause (ii)(cc).

(dd) Declarant shall have the additional right, at Declarant's sole option and without obligation, to offer SCA a location in a New Building on Site 2 as the Proposed School Site. In the event that SCA accepts Site 2 as the Proposed School Site, (I) DOB shall not issue, and Declarant shall not file for or accept, a New Building Permit for any New Building that would result in more than 712 residential units being located on the Subject Property, unless and until the SCA has approved the construction documents for the core and shell of the Public School and a New Building Permit has been filed for the core and shell of the Public School, and (II) DOB shall not issue, and Declarant shall not accept, TCOs or PCOs for more than 712 residential units on the Subject Property until such time as Declarant has completed the core and shell of the Public School, and has delivered the core and shell to the SCA or otherwise made the Public School core and shell available for fit-out in the manner set forth in the SCA Agreement.

(eedd) The School Threshold DateUnit Threshold set forth in this clause (ii) may be modified with the consent of Declarant, SCA, and DCP in the event that, as demonstrated to the satisfaction of DCP in a Technical Memorandum, such modification is warranted in relation to actual school utilization rates or residential growth in the study area identified in the FEIS.

(iii) For purposes of this Section 3.04(a), Uncontrollable Circumstances may include, in addition to the elements set forth in the definition thereof under Article I of this Declaration, a failure or delay by SCA resulting from the following: (aa) a failure or delay in approval of a site selection for the Public School pursuant to the New York State Public Authorities Law; (bb) a failure or delay in approval of the SCA Agreement; (cc) a failure or delay in securing funds for Public School pre-development and construction costs; (dd) a failure or delay in review of design submissions in accordance with time frames established under the SCA Agreement; (ee) a failure or delay in reimbursement of Declarant through progress payments in accordance with the SCA Agreement; and (ff) a failure or delay in change orders initiated or otherwise caused by SCA.

(iv) Notwithstanding anything to the contrary contained in this Section 3.04(a), in the event that, following the date hereof, the SCA, following consultation with the Chair, notifies the Chair and Declarant that it will not construct the Public School on the Subject Property, Declarant shall no longer be obligated to provide the Public School on the Subject Property or to perform any of the Public School Obligations, and shall have no further responsibilities under this Section 3.04(a).

**(b) Open Space.**

(i) DOB shall not issue, and Declarant shall not accept, a TCO for any the last residential unit in the second residential building on the Subject Property, which together with any residential building for which a TCO has previously been issued, would result in the number of residential units on the Subject Property totaling five hundred (500) or more,until DCP shall have certified to DOB that Declarant has paid into an account (the "Open Space Fund") an amount that is equal to $500,0001,000,000, as increased 3% per annum from the Approval Date to the date of payment. Following such initial contribution to the Open Space Fund, DOB shall not issue, and Declarant shall not accept a TCO for the last residential unit in any of the three successivethe fourth residential buildings building constructed on the Subject Property, until DCP shall have certified to DOB that Declarant has contributed to the Open Space Fund, with respect to each such building, an amount that is equal to $500,0001,000,000, as increased 3% per annum from the Approval Date to the date of payment. Nothing herein shall be construed as limiting the ability of Declarant to deposit funds in the Open Space Fund at earlier dates

than required under this Paragraph. Notwithstanding the foregoing, in the event that the number of residential units in the second residential building, together with the residential units in the first residential building, totals less than five hundred (500), the first contribution to the Open Space Fund provided for herein shall be a prerequisite to issuance of a TCO for the last residential unit in the third residential building on the Subject Property and the second contribution to the Open Space Fund provided for herein shall be a prerequisite to issuance of a TCO for the last residential unit in the fifth residential building on the Subject Property.

(ii) The Open Space Fund shall be solely for purposes of programs or improvements which would improve or increase capacity for active recreation within Community ~~Board~~ District 4, Manhattan, including, but not limited to: (aa) creation of new active open space; (bb) renovation or repairs to existing park facilities; (cc) expansion of hours of operation of existing facilities; and (dd) funding of active recreation programs at park facilities. The Open Space Fund shall not be used for any other purpose and the City shall not use the Open Space Fund to reduce its level of support for open space programs, facilities and activities within Community ~~Board~~ District 4. DPR shall identify its priorities for use of the Open Space Fund to Declarant, Community Board 4, Manhattan and the local Council Member, and shall consult with Community Board 4, Manhattan and the local Council Member with regard thereto, prior to any expenditure from the Open Space Fund.

(iii) Declarant's contribution to the Open Space Fund shall be made 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. Such funding shall be disbursed by Declarant to DPR pursuant to a funding agreement reasonably acceptable to Declarant, which funding agreement shall among other things provide that the Open Space Fund shall be dedicated for use within Community ~~Board~~ District 4 for the purposes set forth in clause (ii) hereof.

**(c) Day Care.**

(i) Following the issuance of a TCO or PCO for the first New Building containing residential rental units, Declarant shall ~~contact~~ notify ~~the~~ ACS at its Division of Child Care and Head Start and request a day-care needs assessment 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 shown on Figure 5-3 to the FEIS. In the event ACS determines that such development would result in a need for additional day care capacity within such study area boundary, the Declarant shall offer ACS approximately 10,000 sf of ground floor space suitable for use as a child care center (including either a facility to be operated under contract with ACS or by a day care provider identified by ACS that accepts ACS vouchers), in a New Building or at another existing location within the study area boundary identified in the FEIS as the study boundary in Chapter 5 (Community Facilities), at a rate affordable to ACS providers (currently $10 psf) (the "Day Care Space Offer"). The ACS shall notify Declarant in writing ninety (90) days of receipt of Declarant's request, whether ~~such offer~~the Day Care Space Offer is accepted or declined, either for some or all of the 10,000 sf space, subject to all City requirements governing the leasing of property. ~~Alternatively, ACS may request Declarant to implement other measures within such study area boundary, or other proximate locations within Community District 4, Manhattan, which would result in program or physical improvements at existing child care centers to support additional capacity. Declarant shall consider any such request in good faith, but shall have no obligation under this Declaration to implement alternative measures.~~

(ii) In the event that ACS does not accept Declarant's Day Care Space Offer pursuant to clause (i) above, Declarant shall contact ACS in the manner provided in clause (i) following the issuance of a

TCO or PCO for each successive New Building containing residential rental units and, in the event ACS determines that development on the Subject Property would result in a need for additional day care capacity within the study area boundary, shall make a Day Care Space Offer in the manner provided in clause (i), provided that Declarant shall have no obligation to make a Day Care Space Offer for New Buildings other than for the New Buildings to be located on Sites 1, 2 , and 4.

(iii) DOB shall not issue, and Declarant shall not accept, a TCO or PCO for the next ~~second~~ New Building [containing residential rental units] constructed on the Subject Property subsequent to Declarant making a request under clauses (i) or (ii) above, until DCP notifies DOB that~~DCP has either~~: (aa) DCP has received a determination by ACS that the provisions of this Paragraph (c) have been complied with~~, or~~; (bb) ACS has declined a Day Care Space Offer made pursuant to clauses (i) or (ii) above; or (cc)~~that~~ ACS has failed to respond to Declarant's request made pursuant to clauses (i) or (ii) within ninety (90) days of receipt thereof ~~(in which case~~. In the event of any of the foregoing, Declarant shall not be precluded from obtaining a TCO or PCO with respect to such ~~second~~ New Building~~)~~.

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

(v) As an alternative to the foregoing provisions with respect to Day Care Offers, ACS may request Declarant to implement other measures within the study area boundary, or other proximate locations within Community District 4, Manhattan, which would result in program or physical improvements at existing child care centers to support additional capacity. Declarant shall consider any such request in good faith, but shall have no obligation under this Declaration to implement alternative measures. In the event that Declarant agrees to implement such other measures as may be requested by ACS, Declarant's obligations under this Section 3.04(c) shall be deemed complete upon the performance of such other measures by or on behalf of Declarant.

**(d) Traffic/Pedestrians.**

(i) Declarant shall not accept a Building Permit for any work on the Subject Property, unless and until:

(aa) Declarant has sent written notice to the DOT (which notice shall include an anticipated construction schedule) no later than sixty (60) days prior to acceptance of such Building Permit, requesting that the DOT implement the construction period traffic and pedestrian mitigation measures set forth in the FEIS, or measures having comparable benefits as specified by DOT based on any determinations as of such date under the Hudson Yard Traffic and Pedestrian Monitoring and Management Program (the "HYTPMMP"), as may be identified by DOT as necessary to be implemented during construction of the stage of development being proposed on the Subject Property pursuant to such Building Permit; and

(bb) Declarant has notified DOT of its willingness to enter into an agreement, acceptable to DOT and consistent with DOT requirements, concerning the operational period traffic and pedestrian measures set forth in Exhibit H or measures having comparable benefits as specified

by DOT based on any determinations as of such date under the HYTPMMP, identified by DOT as necessary to be implemented in connection with operation of the stage of development being proposed on the Subject Property which is facilitated by such Building Permit. To the extent that DOT deems unnecessary one or more of the traffic measures set forth in Exhibit H, and has not identified measures having comparable benefits based on the results of the HYTPMMP, Declarant shall have no further obligation under this subclause (bb).

(ii) Declarant shall not accept a TCO for any New Building on the Subject Property, unless and until:

(aa) Declarant has sent written notice to DOT no later than ninety (90) days prior to acceptance of such TCO, requesting that DOT implement the traffic and pedestrian mitigation measures set forth in Exhibit I, or measures having comparable benefits as specified by DOT based on any determinations as of such date under the HYTPMMP, which DOT may identify as necessary to be implemented in connection with operation of such New Building; and

(bb) Declarant has implemented the traffic and pedestrian measures set forth in the agreement entered into pursuant to subclause (bb) of clause (i) hereof, which DOT has identified as necessary to be implemented in connection with operation of such building, unless, as previously directed by DOT, Declarant has paid DOT/City of New York for the ordinary and customary costs, if any, of implementing such improvements (including but not limited to the reasonable costs of the design and construction of capital improvements). Declarant shall submit all of the required drawings/designs as per DOT specifications for DOT review and approval. To the extent that, prior to acceptance by Declarant of a TCO for such New Building DOT deems no longer necessary one or more of the traffic or pedestrian measures set forth in the agreement entered into pursuant to subclause (bb) of clause (i), Declarant shall have no further obligation under this subclause (bb).

(iii) Declarant shall not accept, a TCO for the Northern Garage, unless and until:

(aa) Declarant has sent written notice to the DOT requesting that the DOT implement a traffic signal at 12th Avenue and 33rd Street, or a measure having comparable benefits as may be specified by DOT based on any determinations as of such date under HYTPMMP.

(bb) Declarant has implemented such measures as directed by DOT, or, if directed by DOT, has paid DOT/City of New York for the ordinary and customary costs, if any, of implementing the traffic signal (including but not limited to the reasonable costs of the design and construction thereof). To the extent DOT deems unnecessary the traffic signal at 12th Avenue and 33rd Street, and has not identified a measure having comparable benefits based on determinations under the HYTPMMP, Declarant shall have no further obligation under this subclause (bb).

**3.05 Inconsistencies with the FEIS.**

If this Declaration inadvertently fails to include a PCRE or Mitigation Measure set forth in the FEIS, such PCRE or Mitigation Measure shall be deemed incorporated in this Declaration by reference. If there is any inconsistency between a PCRE or Mitigation Measure as set forth in the FEIS and as incorporated in this Declaration, the more restrictive provision shall apply.

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

**(a) Innovation and Alternatives.**

In complying with Sections 3.01, 3.02, 3.03 or 3.04 of this Declaration, Declarant may, at its election, implement innovations, technologies or alternatives that are or become available, including replacing any equipment, technology, material, operating system or other measure previously located on the Subject Property or used within the Project which Declarant demonstrates to the satisfaction of DCP would result in equal or better methods of achieving the relevant PCRE or Mitigation Measure, than those set forth in this Declaration.

**(b) Modifications Based on Further Assessments.**

In the event that Declarant believes, based on changed conditions, that a PCRE or Mitigation Measure required under Sections 3.01, 3.02, 3.03, or 3.04 should not apply or could be modified without diminishment of the environmental standards which would be achieved by implementation of the PCRE or Mitigation Measure, it shall set forth the basis for such belief in an analysis submitted to DCP. In the event that, based upon review of such analysis, DCP determines that the relevant PCRE or Mitigation Measure should not apply or could be modified, Declarant may eliminate or modify the PCRE or Mitigation consistent with the DCP determination, provided that Declarant records a notice of such change against the Subject Property in the office of the City Register.

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

(a) Declarant shall, with the consent of DCP, appoint an independent third party (the "Monitor") reasonably acceptable to DCP to oversee, on behalf of DCP, the implementation and performance by Declarant of the construction period PCREs and Mitigation Measures required under Section 3.01 and Section 3.04 (d)(i) of this Declaration (the "Construction Monitoring Measures" or "CMMs"). The Monitor shall be a person holding a professional engineering degree and with significant experience in environmental management and construction management (or a firm including such persons), including familiarity with the means and methods for implementation of the CMMs. In the event that the Declarant that is signatory to this Declaration shall have sold, leased transferred or conveyed to a third party (other than MTA) fee title to, or a ground or net lease of, one or more tax lots within the Subject Property, 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 Monitor with respect to multiple developments proceeding simultaneously on the Subject Property, pursuant to separate Monitor Agreements (hereafter defined).

(b) The scope of services described in any agreement between Declarant and the Monitor pursuant to which the Monitor is retained (the "Monitor Agreement") shall be subject to prior review by and approval of DCP, such approval not to be unreasonably withheld, conditioned or delayed. Such agreement shall include provisions in a form acceptable to DCP that, among others, shall: (i) ensure that the Monitor is independent of Declarant in all respects relating to the Monitor's responsibilities under this Declaration (provided that the Monitor shall be responsible to Declarant with regard to practices generally applicable to or expected of consultants and independent contractors of Declarant) and has a duty of loyalty to DCP; (ii) provide for appropriate DCP management and control of the performance of services by the Monitor; (iii) authorize DCP to direct the termination of services by the Monitor for unsatisfactory performance of its responsibilities under the Monitoring Agreement; (iv) allow for the retention by the Monitor of sub-consultants with expertise appropriate to assisting the Monitor in its performance of its obligations to the extent reasonably necessary to perform its obligations under this Declaration and the Monitor Agreement; and (v) allow for termination by Declarant for cause, but only

with the express written concurrence of DCP, which concurrence will not be unreasonably withheld or delayed. If DCP shall fail to act upon a proposed Monitor Agreement within sixty (60) days after submission of a draft form of Monitor Agreement, the form of Monitor Agreement so submitted shall be deemed acceptable by DCP and may be executed by Declarant and the Monitor. The Monitor Agreement shall provide for the commencement of services by the Monitor at a point prior to Construction Commencement (the timing of such earlier point to be at the sole discretion of Declarant) and shall continue in effect at all times that construction activities are occurring on the Subject Property with respect to an identified stage(s) of development on the Subject Property including, with respect to New Buildings, until issuance of TCOs or PCOs therefor, unless the Declarant, with the prior consent of DCP or at the direction of DCP, shall have terminated a Monitor Agreement and substituted therefor another Monitor under a new Monitor Agreement, in accordance with all requirements of this Section 3.07. If the stage of development of the Subject Property identified in a Scope of Services under the Monitor Agreement is completed, Declarant shall not have any obligation to retain the Monitor for subsequent stage(s) of development of the Subject Property, provided that Declarant shall not recommence any construction until it shall have retained a new Monitor in compliance with the provisions of this Section.

(c) The Monitor shall: (i) assist and advise DCP with regard to review of plans and measures proposed by Declarant for purposes of satisfying CMMs in connection with determinations required under this Declaration as a prerequisite to Construction Commencement or the issuance or acceptance by Declarant of a Building Permit, TCO or PCO as the case may be; (ii) provide reports of Declarant's compliance with the CMMs during any period of construction on a schedule reasonably acceptable to DCP, but not more frequently than once per month; (iii) prepare a quarterly report summary of activities for distribution to any Construction Consultation Committee established under Section 6.01 of this Declaration; and (~~iii~~iv) liaise with any Construction Consultation Committee established under Section 6.01 of this Declaration, as directed by DCP. The Monitor may at any time also provide Declarant and DCP with notice of a determination that a CMM has not been implemented, accompanied by supporting documentation establishing the basis for such determination, provided that any such notice shall be delivered to both parties. The Monitor shall: (i) have full access to the Subject Site, subject to compliance with all generally applicable site safety requirements imposed by law, pursuant to construction contracts, or imposed as part of the site safety protocol in effect for the Subject Property; (ii) be provided with access to all books and records of Declarant either on or outside the Subject Property pertaining to the development of the Project which it reasonably deems necessary to carry out its duties, including the preparation of periodic reports; and (iii) be entitled to conduct any tests on the Subject Property that the Monitor reasonably deems necessary to verify Declarant's implementation and performance of the CMMs, subject to compliance with all generally applicable site safety requirements imposed by law, site operations, or pursuant to construction contracts in effect for the Subject Property and provided further that any such additional testing shall be coordinated with Declarant's construction activities and use of the Subject Property by the occupants of and visitors to any New Buildings and Public Access Areas then located on the Subject Property, and shall be conducted in a manner that will minimize any interference with the Project. The Monitor Agreement shall provide that Declarant shall have the right to require Monitor to secure insurance customary for such activity and may hold the Monitor liable for any damage or harm resulting from such testing activities.

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

(e) If the Monitor determines, either in a monthly report or otherwise, that Declarant has failed to implement or to cause its contractors to implement a CMM, the Monitor shall notify DCP and Declarant of such alleged violation, and provide documentation establishing the basis for its determination. If DCP determines, based on consultation with the Monitor and others, as appropriate, that there is a basis for concluding that such a violation has occurred, DCP may thereupon give Declarant written notice of such alleged violation (each, a **"**CMM Default Notice**"**), transmitted by hand or via overnight courier service to the address for Notices for Declarant set forth in Section 6.07. Notwithstanding any provisions to the contrary contained in Section 5.01 of this Declaration, following receipt of a CMM Default Notice, Declarant shall: (i) effect a cure of the alleged violation within three (3) business days; (ii) seek to demonstrate to DCP in writing within two (2) business days of receipt of the CMM Default Notice why the alleged violation did not occur and does not then exist; or (iii) seek to demonstrate to DCP in writing within two (2) business days of receipt of the CMM Default Notice that a cure period greater than three (3) business days would not be harmful to the environment (such longer cure period, a **"**Proposed Cure Period**"**). If DCP accepts within one (1) business day of receipt of a writing from Declarant that the alleged violation did not occur and does not then exist, DCP shall withdraw the CMM Default Notice and Declarant shall have no obligation to cure. If DCP accepts a Proposed Cure Period in writing within one (1) business day of receipt of a writing from Declarant, then this shall become the applicable cure period for the alleged violation (the **"**New Cure Period**"**), provided that if DCP does not act with respect to a Proposed Cure Period within one (1) business day of after receipt of a writing from Declarant with respect thereto, the three (3) day cure period for the alleged violation shall be deemed to continue unless and until DCP so acts. If Declarant fails to: (i) effect a cure of the alleged violation; (ii) cure the alleged violation within a New Cure Period, if one has been established; or (iii) demonstrate to DCP's satisfaction that a violation has not occurred, then representatives of Declarant shall, promptly at DCP's request, and upon a time and date acceptable to DCP, convene a meeting at the Site with the Monitor and DCP representatives. If Declarant is unable reasonably to satisfy the DCP representatives that no violation exists or is continuing and the Declarant, the Monitor and DCP are unable to agree upon a method for curing the violation within a time period acceptable to DCP, DCP shall have the right to exercise any remedy available at law or in equity or by way of administrative enforcement, to obtain or compel Declarant's performance under this Declaration, including seeking an injunction to stop work on the Subject Property, as necessary, to ensure that the violation does not continue, until the Declarant demonstrates that it has cured the violation.

**3.08 Uncontrollable Circumstances Involving a PCRE or Mitigation Measure.**

(a) Notwithstanding any provision of Section 5.05 to the contrary, where the Obligation as to which an Uncontrollable Circumstance applies is a PCRE or Mitigation Measure set forth in this Article III of the Declaration, Declarant may not be excused from performing such PCRE or Mitigation Measure that is affected by Uncontrollable Circumstances unless and until the Chair, based on consultation with the Monitor designated under Section 3.07 of this Declaration has made a determination in his or her reasonable discretion that not implementing the PCRE or Mitigation Measure during the period of Uncontrollable Circumstances, or implementing an alternative proposed by Declarant, would not result in any new or different significant adverse environmental impact not addressed in the FEIS.

**3.09 DCP Review.**

(a) Not less than ninety (90) days prior to the date Declarant anticipates (i) to be the date of Construction Commencement, and (b) obtaining any Building Permit from DOB, Declarant shall send written notice to DCP, with a copy to the Monitor if DCP has previously requested in writing that Declarant copy the Monitor, advising of Declarant's intention to undertake Construction Commencement or obtain such

Building Permit as the case may be (each such notice, a "Permit Notice"). Any Permit Notice shall be accompanied by: (i) a summary of the provisions of this Declaration imposing conditions or criteria that must be satisfied as a condition to or in conjunction with Construction Commencement or issuance of the relevant Building Permit; (ii) materials or documentation demonstrating compliance with such requirements or criteria to the extent Declarant believes that compliance has been achieved by the date of the Permit Notice; and (iii) to the extent that Declarant believes that compliance with any condition or criteria has not been achieved by the date of the Permit Notice, an explanation of why compliance has not yet been achieved to date, the steps that are or will be taken prior to issuance of the Building Permit to achieve compliance and the method proposed by Declarant to assure DCP that the elements will be achieved in the future.

(b) Following the delivery of a Permit Notice to DCP in accordance with Paragraph (a) hereof, Declarant shall meet with DCP (and at DCP's option, the Monitor) to respond to any questions or comments on the Permit Notice and accompanying materials, and shall provide additional information as may reasonably be requested by DCP or the Monitor in writing in order to allow DCP to determine, acting in consultation with the Monitor and City agency personnel as necessary in relation to the subject matter of the Permit Notice, that the conditions and criteria for Construction Commencement or issuing the Building Permit have been or will be met in accordance with the requirements of this Declaration. Declarant shall not accept any Building Permit subject to review pursuant to this Section 3.09 until DCP has certified to Declarant and DOB that the conditions and criteria set forth in this Declaration for issuance of the Building Permit have been met. Notwithstanding the foregoing, (x) in the event that DCP has failed to respond in writing to Declarant within forty five (45) days of receipt of the Permit Notice, or (y) has failed to respond in writing to Declarant within fifteen (15) days of receipt of additional materials provided to DCP under this Paragraph (b), DCP shall be deemed to have accepted the Permit Notice and any subsequent materials related thereto under clause (iii) of this Paragraph (b) as demonstrating compliance with the requirements for issuance of the Building Permit and Declarant shall be entitled to Commence Construction or accept the Building Permit and to undertake any and all activities authorized thereunder.

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

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

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

## ARTICLE IV
## EFFECTIVE DATE; CANCELLATION; AMENDMENT OR MODIFICATION OF THIS DECLARATION

**4.01 Effectiveness of Declaration**.

This Declaration and the provisions and covenants hereof shall become effective upon the Effective Date.

**4.02 Recording.**

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

**4.03 Cancellation.**

Notwithstanding anything to the contrary contained in this Declaration, if the Approvals are declared invalid or otherwise voided by a final judgment of any court of competent jurisdiction from which no appeal can be taken or for which no appeal has been taken within the applicable statutory period provided for such appeal, then, upon entry of said judgment or the expiration of the applicable statutory period for such appeal, this Declaration shall be cancelled and shall be of no further force or effect and an instrument discharging them may be recorded. Prior to the recordation of such instrument, Declarant shall notify the Chair of Declarant's intent to cancel and terminate this Declaration and request the Chair's approval, which approval shall be limited to insuring that such cancellation and termination is in proper form and that any provisions of this Declaration necessary to protect the environment with respect to any work performed as of the date of cancellation survive such termination. The Chair shall respond to such notice and request within thirty (30) days of receipt by the Chair of such notice, and the failure of the Chair to respond within such thirty (30) day period shall be deemed an approval by the Chair of the cancellation of the Declaration. Upon recordation of such instrument, Declarant shall provide a copy thereof certified by the Register's Office to the CPC. Notwithstanding the foregoing, the MTA may terminate this Declaration in accordance with Paragraph 4 of the consent attached as Exhibit C-1 to this Declaration.

**4.04 Modification and Amendment**.

(a) This Declaration may be amended or modified (other than pursuant to Section 4.04(b) hereof) only upon

application by Declarant, with the express written approval of the CPC or an agency succeeding to the CPC's jurisdiction. No other approval or consent shall be required from any public body, private person or legal entity of any kind, including, without limitation, any other present Party-in-Interest or future Party-in-Interest who is not a Successor Declarant, except that: (i) Sections 6.04 and 6.08 (in the case of Section 6.08, insofar as such Section relates to the MTA) of this Declaration shall not be modified in any respect without the prior written consent of the MTA; and (ii) Sections 2.01, 2.02(a)-(e) and (h), 2.04, 3.04(a)-(c), 4.04(a) , and 6.01 shall not be modified so as to diminish or alter the obligations of Declarant thereunder in any respect without the approval of the City Council. In the event that at any time Declarant or a Successor Declarant does not have an interest in a portion of the Subject Property, this Declaration may be amended with respect to such portion of the Subject Property upon application by MTA, subject to the applicable provisions of this Section 4.04.

(b) Notwithstanding the provisions of Section 4.04(a), any change to this Declaration that the Chair deems to be a minor modification may be approved administratively by the Chair and no other approval or consent shall be required from any public body, private person or legal entity of any kind (other than Declarant), including, without limitation, any present or future Party-in-Interest who is not a Successor Declarant, except that: (a) Sections 6.04 and 6.08 (in the case of Section 6.08, insofar as such Section relates to the MTA) of this Declaration shall not be modified in any respect without the prior written consent of the MTA; and (b) a modification to a PCRE or Mitigation Measure shall not be deemed a minor modification unless DCP determines that such modification may be made without diminishment of the environmental standards which would be achieved by implementation of the PCRE or Mitigation Measure. Minor modifications shall not be deemed amendments requiring the approval of the CPC.

(c) Any modification or amendment of this Declaration shall be executed and recorded in the same manner as this Declaration. Declarant shall record any such modification or amendment immediately after approval or consent has been granted pursuant to Section 4.04(a) or (b) above, as applicable, and provide an executed and certified true copy thereof to CPC and, upon Declarant's failure to so record, permit its recording by CPC at the cost and expense of Declarant.

(d) For so long as Declarant has an interest in the Subject Property or any portion thereof, all Parties-in-Interest (other than Declarant) and their heirs, successors, assigns and legal representatives hereby irrevocably (i) consent to any modification, amendment, cancellation, revision or other change in this Declaration, (ii) waive any rights they may have to enter into an amended Declaration or other instrument modifying, cancelling, revising or otherwise changing this Declaration, and (iii) nominate, constitute and appoint Declarant their true and lawful attorney-in-fact, coupled with an interest, to execute any documents or instruments of any kind that may hereafter be required to modify, amend, cancel, revise or otherwise change this Declaration or to evidence such Party-in-Interest's consent or waiver of rights. Notwithstanding the foregoing, Sections 6.04 and 6.08 of this Declaration (in the case of Section 6.08, insofar as such Section relates to the MTA) shall not be modified in any respect without the prior written consent of the MTA.

## ARTICLE V
## COMPLIANCE; DEFAULTS; REMEDIES

**5.01 Default**.

Except as otherwise provided in Sections 3.07 and 5.02 of this Declaration, if Declarant fails to observe any of

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

**5.02 Denial of Public Access**.

Notwithstanding any provisions of Sections 5.01 of this Declaration to the contrary, in the event of a denial of public access to a Public Access Area of an on-going nature in violation of the Public Access Easement established under Section 2.02(a) of this Declaration, Declarant shall have the opportunity to effect a cure within twenty four (24) hours after receipt of notice thereof from the Chair. If such denial of access continues beyond such period, the City may thereupon exercise any and all of its rights hereunder, including seeking a mandatory injunction. In addition, if the City has reason to believe that the use and enjoyment of a Public Access Area by any member of the public has been denied by Declarant, the City may treat the denial of access as a violation of the Zoning Resolution and seek civil penalties at the Environmental Control Board for the violation relating to privately owned public space.

**5.03 Benefits to Subject Property and City**.

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

**5.04 Indemnification of Certain City Expenses**.

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

**5.05 Uncontrollable Circumstances**.

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

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

## ARTICLE VI
## MISCELLANEOUS

**6.01 Construction Consultation Process Committee and Liaison**.

Declarant shall participate in a construction consultation process (the "CPP"), as described below, if the Borough President of the Borough of Manhattan and/or Community Board 4, Manhattan, shall hereafter elect to conduct such process. If such a CCP Committee (the "Committee") is hereafter established, the Declarant shall designate an individual as a liaison ("Liaison") to the Committee before Construction Commencement. Upon request of the Committee, and ~~during the course of construction at the Subject Property~~beginning at the time of issuance of the first Foundation Permit for a New Building on the Subject Property, the Liaison shall address, on a regular basis, the questions and concerns of the Committee about construction related issues**.** The Liaison and the Declarant shall, in good faith and promptly, work with the Committee and others, if necessary, to address such questions and concerns, as appropriate. Declarant's obligations hereunder shall expire when TCOs have been issued for all New Buildings on the Subject Property. The Committee shall in addition be provided with the quarterly reports prepared by the Independent Monitor appointed pursuant to Section 3.07 of

this Declaration, and such Independent Monitor shall liaise with the Committee as specified therein.

Adopted.

Office of the City Clerk, }
The City of New York, } ss.:

I hereby certify that the foregoing is a true copy of a Resolution passed by The Council of The City of New York on December 21, 2009, on file in this office.

City Clerk, Clerk of The Council