Western Rail Yard
INFRASTRUCTURE PROJECT

Appendix O1 2014 Restrictive Declaration

RESTRICTIVE DECLARATION FOR THE WESTERN RAILYARD

DATED AS OF APRIL 10, 2014

PREMISES:

N/A WEST 30TH STREET

TO BE: 646 WEST 30TH STREET AND 656 WEST 33RD STREET

MANHATTAN BLOCK 676, P/O LOT 3, TO BE NEW LOTS 1 AND 5

Return and Record:
Fried, Frank, Harris, Shriver and Jacobson LLP
One New York Plaza
New York, New York 10004
Attn: Stephen Lefkowitz, Esq.

RESTRICTIVE DECLARATION FOR THE WESTERN RAILYARD TO BE RECORDED IN ACCORDANCE WITH SECTION 93-06 OF THE NYC ZONING RESOLUTION

RESTRICTIVE DECLARATION

THIS DECLARATION, made as of the 10th day of April, 2014 by WRY TENANT LLC (f/k/a RG WRY LLC), having an office located do The Related Companies, L.P., 60 Columbus Circle, New York, N.Y. 10023 (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS:

A. Declarant is, as of the date hereof, the lessee of certain real property located in the Borough of Manhattan, and the City, County and State of New York, consisting of the Facility Airspace Parcel, as the same is defined and described in that certain Declaration of Easements (Western Rail Yard Section of The John D. Caemmerer West Side Yard), dated as of May 26, 2010 made by Metropolitan Transportation Authority of the State of New York ("MTA"), as declarant, and recorded at Reel CRFN No. 2010041501079003 (as the same has been amended, modified or supplemented from time to time, the "Declaration of Easements"), and designated for real property tax purposes as p/o Lot 3, to be new Lots 1 and 5 of Tax Block 676, and as more particularly described on Exhibit A to this Declaration (the "Subject Property"); and

B. The MTA is, as of the date hereof, the fee owner of the Subject Property; and

C. Declarant has made applications to the City Planning Commission of the City of New York (the "CPC"): (a) under Application Number C 090433 ZMM to amend the Zoning Resolution of the City of New York (the "Zoning Resolution" or "ZR") to establish a C6¬4 zoning district for the Subject Property; (b) under Application Number N 090434 ZRM to amend the Zoning Resolution to establish regulations for a new Subdistrict F within the Special Hudson Yards District applicable to the Subject Property; and (c) under Application Numbers C 090435 ZSM and C 090436 ZSM for special permits pursuant to ZR 93-052 as amended and 13-561 for attended accessory parking garages to be located on the Subject Property (collectively, the "Applications") in order to facilitate a mixed-use development thereon (the "Western Rail Yard Project"); and

D. The CPC adopted resolutions approving the Applications, with modifications, on October 19, 2009, under Calendar Numbers 14, 15, 16 and 17 (the "CPC Actions"); and

E. The New York City Council adopted resolutions approving the CPC Actions, with further modifications, on December 21, 2009, under Calendar Numbers 2328-2009 (the "Approvals"); and

F. CPC and MTA acted as co-lead agencies and conducted an environmental review of the Applications pursuant to CEQR (as hereinafter defined) and SEQRA (as hereinafter defined); and

G. CPC and MTA prepared a Final Environmental Impact Statement for the Western Rail Yard Project (the "FEIS") and issued a Notice of Completion of FEIS on October 19, 2009; and

H. The analyses and conclusions set forth in the FEIS were based upon the incorporation into the Western Rail Yard Project of certain project components related to the environment (the "Project Components Related to the Environment" or "PCREs"), including measures relating to construction on the Subject Property and the design and operation of buildings, open space and other features of development thereon; and

I. The PETS identified certain significant adverse impacts and proposed mitigation measures with respect thereto (the "Mitigation Measures"); and

J. CPC issued findings pursuant to 6 NYCRR Section 617.11(d) with respect to the FEIS on October 19, 2009 on the basis that the PCREs and the Mitigation Measures would be incorporated as conditions to the decision by means of a declaration of restrictions, and a form of declaration of restrictions containing provisions with respect to the PCREs and the Mitigation Measures was referenced in and made an exhibit to such findings; and

K. MTA issued findings pursuant to 6 NYCRR Section 617.11(d) with respect to the FEIS; and

L. Section 93-06 of the Zoning Resolution provides that no building permit shall be issued for any development or enlargement within Subdistrict F of the Special Hudson Yards District unless a declaration of restrictions in substantially the form reviewed by the CPC and referenced in and made an exhibit to the CPC findings pursuant to 6 NYCRR Section 617.11(d) with respect to the FEIS (as such declaration may be revised prior to filing and recordation in accordance with the provisions thereof applicable to amendments made subsequent to filing and recordation) shall have been filed and duly recorded in the Borough Office of the City Register of the City of New York and indexed against all property in Subdistrict F of the Special Hudson Yards District proposed for development or enlargement pursuant to Article IX Chapter 3 of the Zoning Resolution; and

M. The New York City Department of City Planning (the "DCP") has determined that this Declaration is in substantially the form reviewed by the CPC and referenced in and made an exhibit to the CPC findings pursuant to 6 NYCRR Section 617.11(d) with respect to the FEIS, and that all revisions have been made in accordance with the provisions thereof applicable to amendments made subsequent to filing and recordation; and

N. Royal Abstract of New York has certified in a certification attached to this Declaration as Exhibit B that, as of April 10, 2014, Declarant and MTA are the sole "Parties-in-Interest" (as defined in subdivision (d) of the definition of the term "zoning lot" in Section 12-10 of the Zoning Resolution), in the Subject Property; and

O. The MTA has agreed to permit this Declaration to be recorded by Declarant against the Subject Property in the form of the consent attached as Exhibit C-1 to this Declaration, with the intention of binding the interest of Declarant and/or a Successor Declarant as lessee under a ground or net lease from MTA of all or any portion of the Subject Property and/or as the subsequent owner in fee of all or any portion of the Subject Property, and upon the provisions of Sections 6.04 and 6.08 with respect to MTA's interest in the Subject Property; and

P. All parties not executing have waived their right to execute this Declaration and have subordinated their interest in the Subject Property to this Declaration and all of the documents appended as Exhibits to this Declaration or to be entered into and recorded as prescribed by this Declaration, by execution and delivery of a document in the form of the Waiver attached to this Declaration as Exhibit C-2; and

Q. Declarant, to insure that development of the Subject Property is consistent with the analysis in the FEIS, and that the development of the Subject Property incorporates the PCREs and the Mitigation Measures to be undertaken by Declarant at various times, and that the development of the Subject Property incorporates certain other features relevant to the Approvals, has agreed to restrict the development, operation, use and maintenance of the Subject Property in certain respects, which restrictions are set forth in this Declaration; and

R. Declarant represents and warrants that, except with respect to mortgages or other instruments specified herein, the holders of which have given their consent or waived their right to object hereto, no restriction of record on the development or use of the Subject Property, nor any present or any presently existing estate or interest in the Subject Property, nor any lien, obligation, covenant, easement, limitation or encumbrance of any kind precludes, presently or potentially, the imposition of the restrictions, covenants, obligations, easements and agreements of this Declaration or the development of the Subject Property in accordance herewith.

NOW THEREFORE, Declarant does hereby declare that the Subject Property shall be held, sold, conveyed, developed, used, occupied, operated and maintained, subject to the following restrictions, covenants, obligations, easements and agreements, which shall run with the Subject Property and bind Declarant, its successors and assigns as herein set forth.

ARTICLE I
ARTICLE IIDEFINITIONS

1.01 Definitions.

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

(a) "**AASHTO**" shall mean the American Association of State Highway and Transportation Officials.

(b) "**ACS**" shall mean the New York City Administration for Children Services, or any successor to its jurisdiction.

(c) "**Allee**" shall have the meaning set forth in Section 93-761 of the Zoning Resolution.

(d) "**Alteration Permit**" shall mean a construction permit issued by DOB authorizing major or minor alterations (including, but not limited to, 'ALT1', 'ALT2' and 'ALT3' permits) to an existing building.

(e) "**Applications**" shall have the meaning given in the Recitals to this Declaration.

(f) "**Approval Date**" shall mean the date that the Applications are approved by the New York City Council.

(g) "**Building Permit**" shall mean any of an Excavation Permit, Demolition Permit, Foundation Permit, or New Building Permit.

(h) "**Caemmerer Rail Yard**" shall mean the John D. Caemmerer West Side Yard operated by the LIRR on property other than the Subject Property within Subdistrict F of the Special Hudson Yards District.

(i) "**CEQR**" shall mean New York City Environmental Quality Review, pursuant to Executive Order No. 91 of 1977, as amended, and the regulations promulgated at 62 RCNY Section 5-01 et. seq.

(j) "**Chair**" shall mean the Chair of the New York City Planning Commission, or any successor to his or her jurisdiction.

(k) "**City**" shall mean the City of New York.

(l) "**Connector**" shall have the meaning set forth in Section 93-764 of the Zoning Resolution.

(m) "**Construction Commencement**" shall mean the issuance of the first Building Permit by DOB to Declarant for work on the Subject Property, whether in the form of an Excavation Permit, Foundation Permit, Demolition Permit, or New Building Permit.

(n) "**CPC**" shall mean the New York City Planning Commission, or any successor to its jurisdiction.

(o) "**DCP**" shall mean the New York City Department of City Planning, or any successor to its jurisdiction.

(p) "**DEC**" shall mean the New York State Department of Environmental Conservation, or any successor to its jurisdiction.

(q) "**Declarant**" shall have the meaning given in the Recitals of this Declaration; and shall include any Successor Declarant as defined in Section 3.07(a) of this Declaration.

(r) "**Declaration**" shall mean this Declaration, as the same may be amended or modified from time to time in accordance with its provisions.

(s) "**Demolition Permit**" shall mean a permit issued by DOB authorizing the dismantling, razing or removal of a building or structure, including the removal of structural members, floors, interior bearing walls and/or exterior walls or portions thereof.

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

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

(v) "**DOB Commissioner**" shall mean the Commissioner of the New York City Department of Buildings, or any successor to his or her jurisdiction.

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

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

(y) "**EDC**" shall mean the New York City Economic Development Corporation, or any successor to its functions and responsibilities.

(z) "**Effective Date**" shall mean the date that MTA delivers to Declarant leasehold title to and possession of the entirety of the Subject Property sufficient to allow Declarant to undertake the development of the Subject Property in the manner contemplated by this Declaration.

(aa) "**Excavation Permit**" shall mean any permit issued by DOB authorizing excavations, including those made for the purposes of removing earth, sand, gravel, or other material from the Subject Property.

(bb) "**FEIS**" shall have the meaning given in the Recitals to this Declaration.

(cc) "**Foundation Permit**" shall mean any permit issued by DOB authorizing foundation work at the Subject Property.

(dd) "**Garage**" shall mean the attended accessory parking garages authorized pursuant to ULURP Nos. C 090435 ZSM and C 090436 ZSM.

(ee) "**GHG Credit Category**" shall have the meaning given in Exhibit D.

(ff) "**High Line**" shall have the meaning set forth in Section 93-01 of the Zoning Resolution.

(gg) "**HPD**" shall mean the New York City Department of Housing Preservation and Development, or any successor to its jurisdiction.

(hh) "**LEED**" shall mean the Leadership in Energy and Environmental Design certification and rating system developed by the USGBC, or a successor rating or certification system thereto.

(ii) "**LEED Certification**" shall mean 'Certified' or higher level of certification under the latest version of the USGBC LEED rating system that is in effect eighteen (18) months prior to application for a New Building Permit, and (i) for a building developed primarily for hotel use or for residential use, shall refer to the LEED rating system for 'New Construction'; and (ii) for a building developed primarily for office use, shall refer to the LEED rating system for 'Core and Shell'.

(jj) "**LEED Construction Review**" shall mean review of a 'Construction Application' submitted pursuant to the LEED 'Split Design and Construction Review' path.

(kk) "**LEED Design Review**" shall mean review of a 'Design Application' submitted pursuant to the 'Split Design and Construction Review' path.

(ll) "**LEED Silver Certification**" shall mean 'Silver' or higher level of certification under the latest version of the USGBC LEED rating system that is in effect eighteen (18) months prior to application for a New Building Permit, and (i) for a building developed primarily for hotel use or for residential building use, shall refer to the LEED rating system for 'New Construction'; and (ii) for a commercial building developed primarily for office use, shall refer to the LEED rating system for 'Core and Shell'.

(mm) "**LIRR**" shall mean the Long Island Rail Road Company and any successor to its jurisdiction.

(nn) "**LPC**" shall mean the New York City Landmarks Preservation Commission, and any successor to its jurisdiction.

(oo) "**Midblock Connection**" shall have the meaning set forth in Section 93-755 of the Zoning Resolution.

(pp) "**MTA**" shall mean the Metropolitan Transportation Authority of the State of New York and its subsidiaries and affiliates (including LIRR), and any successor to its jurisdiction.

(qq) "**New Building**" shall mean a new residential, mixed use, or commercial building on the Subject Property

(rr) "**New Building Permit**" shall mean, with respect to any New Building, a work permit issued by DOB under a New Building application authorizing construction of the New Building.

(ss) "**Northeast Plaza**" shall have the meaning set forth in Section 93-754 of the Zoning Resolution.

(tt) "**Northern Garage**" shall mean the Garage described in Application No. C090435 ZSM.

(uu) "**NYPD**" shall mean the New York City Police Department, and any successor to its jurisdiction.

(vv) "**Open Space Maintenance and Repair Requirements**" shall have the meaning set forth in Section 2.02(g) hereof.

(ww) "**OPRHP**" shall mean the New York State Office of Parks, Recreation and Historic Preservation, and any successor to its jurisdiction.

(xx) "**Permanent Certificate of Occupancy**" or "**PCO**" shall mean a permanent certificate of occupancy issued by DOB for any new Building under Section 605 of the New York City Charter or any successor provision thereto.

(yy) "**Platform**" shall mean the platform, together with the structural elements supporting the platform to be constructed within the Subject Property over the Caemmerer Rail Yard.

(zz) "**Project**" shall mean all or any portion of the future development of the Subject Property as a mixed-use development and publicly accessible open space in accordance with the Zoning Resolution

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

(bbb) "**Public Access Areas**" shall have the meaning set forth in Section 93-56 of the Zoning Resolution.

(ccc) "**Public Access Area Phase**" shall mean a phase for development of a Public Access Area approved pursuant to Section 93-78 of the Zoning Resolution.

(ddd) "**Publicly Accessible Open Spaces**" shall have the meaning set forth in Section 93-56 of the Zoning Resolution.

(eee) "**Public School**" shall mean a PS/IS school of approximately 120,000 gross square feet, to be operated by the New York City Department of Education, and having approximately 750 seats (assumed in the FEIS to be 420 elementary and 330 intermediate seats) proposed to be located on the Subject Property in accordance with Section 3.04(a) hereof.

(fff) "**SCA**" shall mean the New York City School Construction Authority, or any successor to its jurisdiction.

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

(hhh) "**Site**" shall mean any or all of Sites 1, 2, 3, 4, 5 and 6 as defined on Map 6, Subdistrict F Site Plan, of the Special Hudson Yards District.

(iii) "**Site and Landscape Plan**" shall have the meaning set forth in 93-78 of the Zoning Resolution.

(jjj) "**Subject Property**" shall have the meaning given in the Recitals to this Declaration.

(kkk) "**Technical Memorandum**" shall mean: (i) the SEQRA/CEQR Technical Memorandum issued by CPC and MTA on October 19, 2009; and (ii) any Technical Memorandum approved pursuant to Section 3.04(a)(ii)(ee).

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

(mmm) "**Temporary Public Access Area Plan**" shall have the meaning set forth in Section 93-781 of the Zoning Resolution.

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

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

(ppp) "**Uncontrollable Circumstances**" shall mean occurrences beyond Declarant's reasonable control, and for which Declarant has taken all steps within Declarant's control reasonably necessary to control or minimize, which cause delay in the performance of Obligations under this Declaration, including, without limitation, delays resulting from (i) governmental restrictions, limitations, regulations or controls (provided that such are other than ordinary restrictions, limitations, regulations or controls); (ii) orders of any court of competent jurisdiction (including, without limitation, any litigation which results in an injunction or a restraining order prohibiting or otherwise delaying the construction of any portion of the Subject Property); (iii) labor disputes (including strikes, lockouts not caused by Declarant, slowdowns and similar labor problems); (iv) accident, mechanical breakdown, shortages or inability to obtain labor, fuel, steam, water, electricity, equipment, supplies or materials (for which no substitute is readily available at a comparable price); (v) acts of God (including severe weather conditions); (vi) removal of hazardous substances that could not have been reasonably foreseen; (vii) war, sabotage, hostilities, invasion, insurrection, riot, acts of terrorism, mob violence, malicious mischief, embargo, quarantines, national, regional or local disasters, calamities or catastrophes, national emergencies, enemy or hostile governmental action, civil disturbance or commotion, earthquake, flood, fire or other casualty of which Declarant has given DCP notice; (viii) a taking of the whole or any relevant portion of the Subject

Property by condemnation or eminent domain; (ix) soil conditions that could not have been reasonably foreseen that substantially delay construction of any relevant portion of the Subject Project or substantially impair the ability to develop the Subject Property in the manner contemplated by this Declaration; (x) denial to Declarant by any party of a right of access to any adjoining real property or to the Subject Property which right is vested in Declarant, by contract or pursuant to applicable law, if such access is required to accomplish the obligations of Declarant pursuant to this Declaration; (xi) inability of a public utility to provide power, heat or light or any other utility service, despite reasonable efforts by Declarant to procure same from the utility; and (xii) unusual delays in transportation, as determined by the Chair in accordance with Section 3.08(a) of this Declaration.

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

(rrr) "**Water Credit Category**" shall have the meaning given in Exhibit D.

(sss) "**West 30th Street Corridor**" shall have the meaning set forth in Section 93-763 of the Zoning Resolution.

(ttt) "**West 31st Street Extension**" shall have the meaning set forth in Section 93-762 of the Zoning Resolution.

(uuu) "**West 32nd Street Extension**" shall have the meaning set forth in Section 93-761 of the Zoning Resolution.

(vvv) "**Zoning Resolution**" shall have the meaning given in the Recitals to this Declaration.

ARTICLE II
DEVELOPMENT OF THE SUBJECT PROPERTY

2.01 Affordable Housing.

(a) Declarant shall include in rental buildings or condominiums within the Project, residential rental units that will be affordable to persons or families of low income who qualify for occupancy pursuant to the requirements of (a) the "80/20" 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 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 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 Units (the "Affordable Housing Bonus"), Declarant covenants and agrees to maintain the affordability of all Affordable Housing Units required to generate the Affordable Housing Bonus for so long as the bonus floor area is included within the Project. Declarant 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 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, shall not be used as a "generating site" for purposes of Section 23-90 et. seq. of the Zoning Resolution.

(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 clok 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, 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 Manhattan Borough Commissioner of DPR.

(iii) The Open Space Advisory Board shall meet on a quarterly basis, and at such additional times as may be requested in writing by a majority of the members of the Board to consider any proposals for Event Programming allowed under clause (i) hereof that may occur from time to time. Any proposed Event Programming (whether considered at a regularly scheduled semi-annual meeting or at a special meeting convened for such purpose) that would result in the use of any 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 thousand (16,000) gross square feet of space to be made available for local cultural institutions or other local arts not-for-profits approved by Developer, in accordance with the terms of this Section 2.04 (the "Cultural Space Obligation"). At Declarant's sole option, the Cultural Space Obligation may be fulfilled in not less than two (2) facilities within the Project or in more than two (2) facilities within the Project, provided that 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 be accessible directly from the outside.

(c) The Cultural Spaces shall be leased to neighborhood theatrical, dance, arts or other similar local cultural organizations (each, a "Cultural Institution" and each such cultural

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

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

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

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

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

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

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

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

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

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

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

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

(f) Notwithstanding anything to the contrary contained herein, in the event that (i) the Community Board has failed to identify an acceptable Cultural Institution within two (2) years from the date that Declarant notifies the Community Board in writing that a Cultural Space is expected to be completed in twelve (12) months time, (ii) an acceptable Cultural Institution has been identified by the Community Board but has failed to enter into a Cultural Facilities Lease with Declarant within twelve (12) months of the date such Cultural Institution was so identified, or (iii) a Cultural Facilities Lease has expired or otherwise been abandoned or terminated and the Community Board has failed to identify an acceptable alternate Cultural Institution within twelve (12) months of such termination or abandonment, then, in each case, Declarant may, upon written notice to the Community Board, select a Cultural Institution to lease and occupy the Cultural Spaces without consultation with and solicitation of the recommendation of the Community Board pursuant to Paragraph (c) of this Section. In such event, in the event that Declarant is unable to identify an acceptable Cultural Institution after good faith efforts during an additional six (6) month period, Declarant may use up to 8,000 sf of such Cultural Space for another use at Declarant's Option.

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.

(iii) 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 IIRR 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
Augur 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 31s' 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 ',EIS (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) (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) (ii) Declarant shall perform the Public School Obligations in accordance with the following milestones:

(aa) Within three (3) months of the date of this Declaration, Declarant shall send written notice to SCA asking whether SCA is prepared to commence negotiations on the SCA Agreement in anticipation of the development of the Public School. If SCA responds in writing that it is prepared to commence negotiations, Declarant shall promptly commence negotiations with SCA on the SCA Agreement and shall diligently and in good faith pursue such negotiations with SCA in order to finalize and execute the SCA Agreement. If SCA responds in writing that it is not

prepared to commence negotiations, or fails to respond within fifteen (15) days of the written notice from Declarant, Declarant shall have no obligation to commence discussions, but shall repeat such written notice and request every six (6) months thereafter until such time as SCA advises Declarant that SCA is prepared to commence negotiations on the SCA Agreement, at which time. Declarant shall promptly commence negotiations with the SCA and thereafter diligently pursue the completion and execution of the SCA Agreement.

(bb) Not less than eighteen (18) months prior to the date Declarant anticipates filing for a New Building Permit for a New Building on Site 6, Declarant shall provide written notice to the SCA (the "School Election Notice") advising the SCA of the plan to file for such New Building Permit and offering the SCA a location within the base of such New Building for the Public School (the "Proposed School Site"). Declarant shall provide a copy of the School Election

Notice to the district manager of Community Board 4 within ten (10) days of delivery thereof to the SCA. Following delivery of the School Election Notice:

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

(2) In the event that the SCA advises Declarant in writing within thirty (30) days of receipt of the School Election Notice that SCA does not accept the Proposed School Site as the location of the Public School, and in any event if the SCA fails to respond to Declarant's notice within such thirty (30) day period, SCA shall be deemed to have rejected the Proposed School Site, and Declarant shall be permitted to construct the New Building identified in the School Election Notice without including a Public School in the New Building, and Declarant shall have no further obligation under this Section 3.04(a).

(3) 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.

(cc) Provided that the SCA has accepted the Proposed School Site and has agreed to proceed with the Public School in the manner set forth in subclause (bb) above and in the SCA Agreement, DOB shall not issue, and Declarant shall not accept, TCOs or PCOs for more than 712 residential units on the Subject Property (the "Unit Threshold") until such time as (I) Declarant has completed the core and shell of the Public School, and (II) has delivered the core and shell to the SCA or otherwise made the Public School core and shell available for fit-out in the manner set forth in the SCA Agreement, provided that in no event shall this subclause (cc) be construed in any manner to preclude DOB from issuing or Declarant from accepting TCOs or PCOs for any residential unit located in a New Building constructed pursuant to a New Building Permit issued prior to the New Building Permit for the New Building containing the Public School. Notwithstanding the foregoing, in the event that Declarant's obligations under this Section 3.04(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) The Unit Threshold set forth in this clause (ii) may be modified with the consent of Declarant, SCA, and DCP in the event that, as demonstrated to the satisfaction of DCP in a Technical Memorandum, 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.

(b) Open Space.

(i) DOB shall not issue, and Declarant shall not accept, a TCO for the last residential unit in the second residential building on the Subject Property, until DCP shall have certified to DOB that Declarant has paid into an account (the "Open Space Fund") an amount that is equal to $1,000,000, 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 the fourth residential 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 $1,000,000, 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 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 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 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 notify 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 the Day Care Space

Offer is accepted or declined, either for some or all of the 10,000 sf space, subject to all City requirements governing the leasing of property.

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

(iv) Declarant shall have no further obligation or further responsibilities under clauses (i) and (ii) of this 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 331-d 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 (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 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.

6.02 Incorporation by Reference.

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

6.03 Binding Effect.

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

6.04 MTA.

Declarant, and any Successor Declarant, for so long as Declarant and/or Successor Declarant is (i) the lessee under a ground or net lease from MTA of all or any portion of the Subject Property and/or (ii) the owner in fee of all or any portion of the Subject Property, shall be solely responsible for satisfying the obligations of Declarant set forth in this Declaration. In no event shall MTA have any responsibility or liability for the obligations of Declarant as set forth in this Declaration, nor shall MTA be deemed a Successor Declarant for purposes of this Declaration, nor shall MTA's interest in the Subject Property or in the Yards Parcel (as defined and described in the Declaration of Easements) be subject to levy, execution or other enforcement procedure for the satisfaction of the remedies of the City or of any other party or person under or with respect to this Declaration. In the event that at any time that MTA shall be the fee owner of all or a portion of the Subject Property and there shall cease to exist a ground or net lease of such portion of the Subject Property, MTA shall not be obligated to perform or otherwise be liable for the obligations of Declarant as set forth in this Declaration, but any disposition by MTA to a party which is not affiliated with MTA ("Subsequent MTA Transferee"), by sale or lease or otherwise, of such portion of the Subject Property shall be subject to the terms of this Declaration, and such a Subsequent MTA Transferee shall be deemed a Successor Declarant with respect to such portion of the Facility Airspace Parcel. Notwithstanding the foregoing, a Subsequent MTA Transferee shall have no liability for, nor shall the rights of a Subsequent MTA Transferee to obtain a building permit, certificate of occupancy, or otherwise to use, develop and occupy its portion of the Subject Property pursuant to this Declaration be impaired by any default under this Declaration by Declarant or a Successor Declarant on any other portion of the Subject Property,

6.05 Laws of the State of New York.

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

6.06 Severability.

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

6.07 Notices.

All notices, demands, requests, consents, approvals, and other communications (each, a "Notice") which may be or are permitted, desirable, or required to be given under this Declaration shall be in writing and shall be sent or delivered as follows:

(a) If to Declarant: to do The Related Companies, L.P., 60 Columbus Circle, New York, N.Y. 10023, New York, New York 10023, Attention: Jay Cross, with a copy to Fried Frank Harris Shriver & Jacobson LLP, One New York Plaza, New York, New York 10004, Attention: Melanie Meyers, Esq.;

(b) If to the City, DCP or the Chair, Attention: Office of the General Counsel, NYC Department of City Planning, 22 Reade Street, New York, New York 10007 (or the then official address); and

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

Declarant, the City, DCP, the Chair and any Mortgagee may, by notice provided in accordance with this Section 6.07, change any name or address for purposes of this Declaration. In order to be deemed effective any Notice shall be sent or delivered in at least one of the following manners: (a) sent by registered or certified mail, postage pre-paid, return receipt requested, in which case the Notice shall he deemed delivered for all purposes hereunder five days after mailing; (b) sent by overnight courier service, in which case the Notice shall be deemed delivered for all purposes hereunder one business day after placed under the control of the delivery service, provided that a receipt for the delivery is obtained, or (c) delivered by hand, in which case the Notice will be deemed delivered for all purposes hereunder on the date the Notice was actually received. In the event that there is more than one Declarant at any time, any Notice from the City or the CPC shall be provided to all Declarants of whom CPC has notice.

6.08 Limitation of Liability.

Notwithstanding anything to the contrary contained in this Declaration, the City will look solely to the estate and interest of Declarant, or its successors and assigns or the subsequent holders of any interest in the Subject Property (but excluding MTA and its interest in the Subject Property), to the extent of their respective interests in the Subject Property, for the collection of any judgment or the enforcement of any remedy based upon any breach by any such party of any of the terms, covenants or conditions of this Declaration. No other property of any such party or its principals, disclosed or undisclosed, or its trustees, partners, shareholders, directors, officers or employees, or said successors, assigns and holders, shall be subject to levy, execution or other enforcement procedure for the satisfaction of the remedies of the City or of any other party or person under or with respect to this Declaration, and no such party shall have any personal

liability under this Declaration. In the event Declarant shall hereafter sell one or more Sites to a third party and the City shall, prior to such sale, obtain a judgment against Declarant, the City shall look only to the estate and interest of the Declarant in the portions of the Subject Property still owned by such Declarant at the time of levy, execution or other enforcement procedure for the satisfaction of the City's remedies and shall not pursue such remedies against the portion of the Subject Property that has been sold. In the event that any building in the Development is subject to a declaration of condominium, every condominium unit shall be subject to levy or execution for the satisfaction of any monetary remedies of the City solely to the extent of each Unit Owner's Individual Assessment Interest. The "Individual Assessment Interest" shall mean the Unit Owner's percentage interest in the common elements of the condominium in which such condominium unit is located applied to the total assessment imposed by the Board of Managers or other governing body of the condominium in which such condominium unit is located. In the event of a default in the obligations of the condominium, the City shall have a lien upon the property owned by each Unit Owner solely to the extent of each such Unit Owners' unpaid Individual Assessment Interest, which lien shall include such Unit Owner's obligation for the costs of collection of such Unit Owners' unpaid Individual Assessment Interest. Such lien shall be subordinate to the lien of any prior recorded mortgage in respect of such property given to a bank or other institutional lender (including but not limited to a governmental agency), the lien of any real property taxes, and the lien of the Board of Managers of any such condominium for unpaid common charges of the condominium. The City agrees that, prior to enforcing its rights against a Unit Owner, the City shall first attempt to enforce its rights under this Declaration against the Declarant, and the Board of Managers of any condominium association. In the event that a condominium shall default in its obligations under this Declaration, the City shall have the right to obtain from the Board of Managers of any condominium association, the names of the Unit Owners who have not paid their Individual Assessment Interests. Notwithstanding the foregoing, nothing herein shall be deemed to preclude, qualify, limit or prevent the City's exercise of any of its governmental rights, powers or remedies, including, without limitation, with respect to the satisfaction of the remedies of the City, under any laws, statutes, codes or ordinances.

6.09 Parties-in-Interest.

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

6.10 Applications.

Declarant shall include or shall cause a copy of this Declaration to be included as part of any application pertinent to the construction, improvement, operation or maintenance of the Subject Property or the development of any of the sites on the Subject Property to which the provisions of this Declaration are applicable, submitted to any governmental agency or department having

jurisdiction over the Subject Property, including, without limitation, DEC, DOB and DEP. If Declarant files any application with the Attorney General of the State of New York to subdivide the Subject Property, or any portion of the Subject Property, Declarant shall include in any written or printed offering materials associated with the offer to sell interests in such condominium or other association (including, without limitation, an offering plan, prospectus or no action letter), a true copy of this Declaration or a complete and accurate summary of the material terms hereof, except as otherwise directed by the Attorney General, and shall otherwise ensure that all terms of the offering are consistent with the terms of this Declaration.

6.11 Right to Convey.

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

6.12 Yards Parcel Not Subject to Declaration.

In no event shall the Subject Property mean or include the Yards Parcel, or any portion thereof, as defined and described in the Declaration of Easements.

[Balance of Page Intentionally Left Blank]

WRY TENANT LLC, a Delaware limited liability company

By: _____
Name: L. Jay Cross
Title: President

STATE OF NEW YORK)

) ss.:

COUNTY OF NEW YORK)

On the 10th day of April in the year 2014, before me, the undersigned, a Notary Public in and for said State, personally appeared L. Jay Cross, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____
Notary Public

ALLISON EGGLESTON
NOTARY PUBLIC-STATE OF NEW YORK
No. 01EG6103706
Qualified in Suffolk County
My Commission Expires January 05, 2016

LIST OF EXHIBITS

EXHIBIT A - METES AND BOUNDS DESCRIPTION OF THE SUBJECT PROPERTY

Facility Airspace Parcel: Airspace Above Lower Limiting Plane

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

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

1. Along said southerly line of West 33rd Street, South 89°56'53" East, a distance of 800.00 feet to a point formed by the intersection of said southerly line of West 33" Street and the westerly line of Eleventh Avenue (100' R.O.W.); thence

2. Along said westerly line of Eleventh Avenue, South 00°03'07" West, a distance of 538.26 feet to a point; thence

3. Leaving Eleventh Avenue, North 89°49'42" West, a distance of 439.40 feet to a point; thence

4. North 69°32'56" West, a distance of 61.90 feet to a point; thence

5. North 89°57'45" West, a distance of 302.58 feet to a point on the said easterly line of Twelfth Avenue; thence

6. Along said easterly line of Twelfth Avenue, North 00°03'07" East, a distance of 515.85 feet to the Point of Beginning.

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

Facility Airspace Parcel: Terra Firma Parcel

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

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

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

2. Leaving Twelfth Avenue, South 89°57'45" East, a distance of 302.58 feet to a point; thence

3. South 69°32'56" East, a distance of 61.90 feet to a point; thence

4. South 89°49'42" East, a distance of 439.40 feet to a point on the westerly line of Eleventh Avenue (100' R.O.W.); thence

5. Along said westerly line of Eleventh Avenue, South 00°03'07" West, a distance of 174.24 feet to a point formed by the intersection of said westerly line of Eleventh Avenue and the aforementioned northerly line of West 30th Street; thence

6. Along said northerly line of west 30th Street, North 89°56'53" West, a distance of 800.00 feet to the Point of Beginning.

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

EXHIBIT B - CERTIFICATION OF PARTIES-IN-INTEREST

N.B. # _____
or
ALT. # _____

EXHIBIT "I"

CERTIFICATION PURSUANT TO ZONING LOT
SUBDIVISION C OF SECTION 12-10
OF THE ZONING RESOLUTION OF DECEMBER 15, 1961
OF THE CITY OF NEW YORK AS AMENDED
EFFECTIVE AUGUST 18, 1977

ROYAL ABSTRACT OF NEW YORK LLC, an abstract company licensed to do business in the State of New York and having its principal office at 500 Fifth Avenue, New York, New York, hereby certifies that as to the land hereafter described being a tract of land, either unsubdivided or consisting of two or more lots of record, contiguous for a minimum of ten linear feet, located within a single block and that the parties of interest constituting a "party of interest" as defined in Section 12-10, subdivision (c) of the Zoning Resolution of the City of New York, effective December 15, 1961, as amended, are the following:

NAME AND ADDRESS	NATURE OF INTEREST
1) **Metropolitan Transportation Authority** **347 Madison Avenue** **New York, New York 10017**	**Fee Owner**
2) **WRY Tenant, LLC** **c /o the Related Companies, L.P.** **60 Columbus Circle** **New York, NY 10023**	**Lessee**

The subject tract of land with respect to which the foregoing parties are the parties in interest as aforesaid, is known as **Block 676 Lot 3** on the Tax Map of the City of New York, New York County, and more particularly described as follows:

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

Airspace Above a Plane Parcel:

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

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

1. Along said West 33rd Street, South 89 degrees 56 minutes 53 seconds East, a distance of 800.00 feet to a point formed by the intersection of said West 33rd Street and the westerly line of Eleventh Avenue (100' R.O.W.); thence

2. Along the westerly line of Eleventh Avenue, South 00 degrees 03 minutes 07 seconds West, a distance of 538.26 feet to a point; thence

3. North 89 degrees 49 minutes 42 seconds West, a distance of 439.40 feet to a point; thence

4. North 69 degrees 32 minutes 56 seconds West, a distance of 61.90 feet to a point; thence

5. North 89 degrees 57 minutes 45 seconds West, a distance of 302.58 feet to a point on the said easterly side of Twelfth Avenue; thence

6. Along said easterly line of Twelfth Avenue, North 00 degrees 03 minutes 07 seconds East, a distance of 515.85 feet to the Point of Beginning.

Terra Firma Parcel:

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

1. Along said easterly line of Twelfth Avenue, North 00 degrees 03 minutes 07 seconds East, a distance of 196.65 feet to a point; thence

2. South 89 degrees 57 minutes 45 seconds East, a distance of 302.58 feet to a point; thence

3. South 69 degrees 32 minutes 56 Seconds East, a distance of 61.90 feet to a point; thence

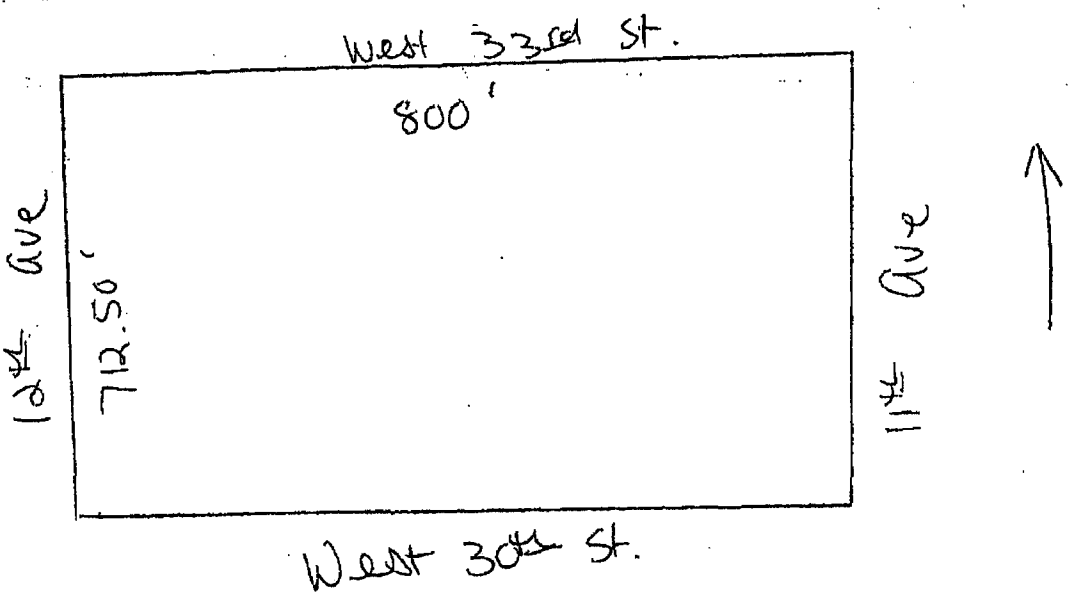
4. South 89 degrees 49 minutes 42 seconds East, a distance of 439.40 feet to a point on the westerly line of Eleventh Avenue (100' R.O.W.); thence

5. Along said westerly line of Eleventh Avenue, South 00 degrees 03 minutes 07 seconds West, a distance of 174.24 feet to a point formed by the intersection of said westerly line of Eleventh Avenue and the aforementioned northerly line of West 30th Street; thence

6. Along said northerly line of West 30th Street, North 89 degrees 56 minutes 53 seconds West, a distance of 800.00 feet to the Point of Beginning.

That the said premises are known as and by the street address 601-659 West 30th Street a/k/a 319-379 Eleventh Avenue a/k/a 600-658 West 33rd Street a/k/a 280-338 Twelfth Avenue, New York, NY as shown by the following:

DIAGRAM



NOTE: A Zoning Lot may or may not coincide with a lot shown of the Official Tax Map of the City of New York, or on any recorded subdivision plot or deed. A Zoning Lot may be subdivided into two or more zoning lots, provided all the resulting Zoning Lots and all the buildings thereon shall comply with the applicable provisions of the Zoning Lot resolution.

THIS CERTIFICATE IS MADE FOR AND ACCEPTED BY THE APPLICANT UPON THE EXPRESS UNDERSTANDING THAT LIABILITY HEREUNDER IS LIMITED TO ONE THOUSAND ($1,000.00) DOLLARS.

Certified: 4/10/14

ROYAL ABSTRACT OF NEW YORK LLC

Mary Gleason-Kane, Executive Vice President

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

On the 10th day of April, 2014, before me, personally appeared Mary Gleason-Kane personally known to me or proved to me on the basis of satisfactory evidence to the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public - State of New York

Nancy P. Quinn
Notary Public, State of New York
NO. 31-5002600
Qualified in New York County
Commission Expires: 10-5-2014

EXHIBIT C-1 - CONSENT TO EXECUTION OF RESTRICTIVE DECLARATION AND AGREEMENT TO SUBORDINATE FUTURE FEE ENCUMBRANCES

CONSENT TO EXECUTION OF RESTRICTIVE DECLARATION AND AGREEMENT TO SUBORDINATE FUTURE FEE ENCUMBRANCES

THIS CONSENT TO EXECUTION OF RESTRICTIVE DECLARATION AND AGREEMENT TO SUBORDINATE FUTURE FEE ENCUMBRANCES (this "Consent") made this 10th day of April, 2014 by METROPOLITAN TRANSPORTATION AUTHORITY, a body corporate and politic constituting a public benefit corporation of the State of New York, having an office at 347 Madison Avenue, New York, New York 10017-3739 (the "MTA").

W I T N E S S E T H:

WHEREAS, MTA is the owner of fee title in and to certain real property located in the Borough of Manhattan, and the City, County and State of New York, consisting of the Facility Airspace Parcel, as the same is defined and described in that certain Declaration of Easements (Western Rail Yard Section of The John D. Caemmerer West Side Yard), dated as of May 26, 2010, made by MTA, as Declarant, and recorded in the Office of the City Register, New York County, at CRFN No. 2010041501079003 (the "Declaration of Easements"), and designated for real property tax purposes as Lot(s) 1 and 5 of Tax Block 676, and as more particularly described on Schedule A to this Consent (the "Subject Property");

WHEREAS, MTA has leased the Subject Property to WRY TENANT LLC (f/k/a RG WRY LLC, a Delaware limited liability company ("Declarant"), pursuant to a lease dated as of the date hereof (the "WRY Lease"), a memorandum of which is intended to be recorded in the Office of the City Register, New York County, immediately prior to the recordation of the Restrictive Declaration (as hereinafter defined);

WHEREAS, Declarant is concurrently herewith executing a Restrictive Declaration encumbering its leasehold interest in the Subject Property, in the form to which this Consent is attached as an exhibit (the "Restrictive Declaration"; all capitalized terms used but not defined in this Consent have the respective meanings set forth in the Restrictive Declaration);

WHEREAS, the Restrictive Declaration, which is intended to be recorded in the Office of the City Register, New York County, simultaneously with the recording hereof, subjects the Subject Property to certain restrictions, covenants, obligations, easements and agreements contained in the Declaration; and

WHEREAS, the City and Declarant have requested that MTA execute and record this Consent with respect to the Restrictive Declaration, and MTA has agreed to do so.

NOW, THEREFORE, MTA hereby consents and agrees as follows:

1. MTA consents to the execution by the Declarant of the Restrictive Declaration and recording of the Restrictive Declaration against the Subject Property.

2. MTA consents to be bound by, and to benefit from, the provisions of Sections 6.04, 6.08 and 6.09 of the Restrictive Declaration, and any other provisions of the Restrictive Declaration which specifically reference MTA and/or LIRR.

3. MTA agrees and acknowledges that any liens or encumbrances imposed on MTA's fee interest in the Subject Property following the Effective Date of the Declaration (a "MTA Future Lien") shall be subject and subordinate to the lien of the Declaration, and no foreclosure of any MTA Future Lien shall extinguish the Declaration.

4. MTA is executing this Consent solely for the purpose of facilitating the development of the Subject Property by Declarant or Successor Declarant in accordance with the provisions of Article IX, Chapter 3 of the Zoning Resolution. If at any time (i) the WRY Lease is no longer in full force or effect, (ii) MTA is the sole party-in-interest (as defined in Section 12¬10 of the Zoning Resolution) with respect to the Subject Property, and (iii) no development or enlargement pursuant to Article IX, Chapter 3 of the Zoning Resolution has been constructed on the Subject Property, and no building permit for any development or enlargement within Subdistrict F of the Special Hudson Yards District is then in full force and effect, MTA shall be entitled at its sole discretion to terminate the Declaration with respect to the Subject Property by executing and recording a termination thereof, and no consent of Declarant, the City or any other person or entity shall be required for such termination.

5. Nothing in this Consent shall be deemed to constitute a waiver of MTA's rights and exemptions under New York law, including without limitation New York Public Authorities Law §1266(8); provided that MTA acknowledges and agrees that the City may enforce the provisions of Article IX, Chapter 3 of the Zoning Resolution and of this Restrictive Declaration against Declarant and any Successor Declarants which are developing the Subject Property pursuant to Article IX, Section 3 of the Zoning Resolution.

6. This Consent shall be binding upon MTA and its legal representatives, successors and assigns.

[Remainder of the Page Left Intentionally Blank]

IN WITNESS WHEREOF, the MTA has duly executed this Consent as of the date and year first above written.

METROPOLITAN TRANSPORTATION AUTHORITY

By: _____
Name:
Title:

ACKNOWLEDGMENT

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

On the ____ day of _____ in the year 2014 before me, the undersigned, a notary public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Schedule A

LEGAL DESCRIPTION OF SUBJECT PROPERTY

Facility Airspace Parcel: Airspace Above Lower Limiting Plane
All of the airspace above a lower limiting plane of 40.55 feet (Manhattan Borough Datum) within the following horizontal boundary:

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

1. Along said southerly line of West 33rd Street, South 89°56'53" East, a distance of 800.00 feet to a point formed by the intersection of said southerly line of West 33" Street and the westerly line of Eleventh Avenue (100' R.O.W.); thence

2. Along said westerly line of Eleventh Avenue, South 00°03'07" West, a distance of 538.26 feet to a point; thence

3. Leaving Eleventh Avenue, North 89°49'42" West, a distance of 439.40 feet to a point; thence

4. North 69°32'56" West, a distance of 61.90 feet to a point; thence

5. North 89°57'45" West, a distance of 302.58 feet to a point on the said easterly line of Twelfth Avenue; thence

6. Along said easterly line of Twelfth Avenue, North 00°03'07" East, a distance of 515.85 feet to the Point of Beginning.

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

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

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

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

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3. South 69°32'56" East, a distance of 61.90 feet to a point; thence

4. South 89°49'42" East, a distance of 439.40 feet to a point on the westerly line of Eleventh Avenue (100' R.O.W.); thence

5. Along said westerly line of Eleventh Avenue, South 00°03'07" West, a distance of 174.24 feet to a point formed by the intersection of said westerly line of Eleventh Avenue and the aforementioned northerly line of West 30th Street; thence

6. Along said northerly line of west 30th Street, North 89°56'53" West, a distance of 800.00 feet to the Point of Beginning.

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

EXHIBIT C-2 - WAIVER AND SUBORDINATION

WAIVER OF EXECUTION OF RESTRICTIVE DECLARATION AND SUBORDINATION OF MORTGAGE

WAIVER OF EXECUTION OF RESTRICTIVE DECLARATION AND SUBORDINATION OF MORTGAGE, made this ____ day of _____, 200_ by _____, a _____ (the "Mortgagee"), having its principal place of business at _____.

WITNESSETH:

WHEREAS, the Mortgagee is the lawful holder of that certain mortgage, dated _____ (the "Mortgage") made by _____, a _____ (the "Mortgagor"), in favor of the Mortgagee, in the original principal amount of $_____, recorded in the Office of the Register/Clerk of the City of New York, County of _____, on _____ in Reel _____, Page _____; and

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

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

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

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

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

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

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

MORTGAGEE:

By: _____
Name:
Title:

ACKNOWLEDGMENT

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

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

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2. Along said westerly line of Eleventh Avenue, South 00°03'07" West, a distance of 538.26 feet to a point; thence

3. Leaving Eleventh Avenue, North 89°49'42" West, a distance of 439.40 feet to a point; thence

4. North 69°32'56" West, a distance of 61.90 feet to a point; thence

5. North 89°57'45" West, a distance of 302.58 feet to a point on the said easterly line of Twelfth Avenue; thence

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

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

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3. South 69°32'56" East, a distance of 61.90 feet to a point; thence

4. South 89°49'42" East, a distance of 439.40 feet to a point on the westerly line of Eleventh Avenue (100' R.O.W.); thence

5. Along said westerly line of Eleventh Avenue, South 00°03'07" West, a distance of 174.24 feet to a point formed by the intersection of said westerly line of Eleventh Avenue and the aforementioned northerly line of West 30th Street; thence

6. Along said northerly line of west 30th Street, North 89°56'53" West, a distance of 800.00 feet to the Point of Beginning.

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

EXHIBIT D - LEED CREDIT CATEGORIES

GHG Credit Categories	
Optimize Energy Performance	EA cr. 1 in LEED NC v. 3.0, EA cr. 1 in LEED CS v. 3.0
Enhanced Commissioning	EA cr. 3 in LEED NC v. 3.0, EA cr. 3 in LEED CS v. 3.0
Measurement & Verification	EA cr. 5 in LEED NC v. 3.0, EA cr. 5.1 & 5.2 in LEED CS v. 3.0
Recycled Content	MR cr. 4 in LEED NC v. 3.0, MR cr. 4 in LEED CS v. 3.0
Regional Materials	MR cr. 5 in LEED NC v. 3.0, MR cr. 5 in LEED CS v. 3.0
Certified Wood	MR cr. 7 in LEED NC v. 3.0, MR cr. 6 in LEED CS v. 3.0
Alternative Transportation — Low Emitting and Fuel Efficient Vehicles	SS cr. 4.3 in LEED NC v. 3.0, SS cr. 4.3 in LEED CS v. 3.0

Water Credit Categories	
Stormwater Design — Quantity Control	SS cr. 6.1 in LEED NC v. 3.0, SS cr. 6.1 in LEED CS v. 3.0
Heat Island Effect — Non-Roof (except only credits achieved through means of a vegetated green roof)	Option 2 of SS cr. 7.1 in LEED NC v. 3.0, Option 2 of SS cr. 7.1 in LEED CS v. 3.0
Heat Island Effect — Roof (except only credits achieved through means of a vegetated roof that covers at least 50% of the roof area)	Option 2 of SS cr. 7.2 in LEED NC v. 3.0, Option 2 of SS cr. 7.2 in LEED CS v. 3.0
Water Efficient Landscaping	WE cr. 1 in LEED NC v. 3.0, WE cr. 1 in LEED CS v. 3.0
Innovative Wastewater Technologies	WE cr. 2 in LEED NC v. 3.0, WE cr. 2 in LEED CS v. 3.0
Water Use Reduction	WE cr. 3 in LEED NC v. 3.0, WE cr. 3 in LEED CS v. 3.0

EXHIBIT E — MAINTENANCE AND REPAIR OF PUBLIC ACCESS AREAS

A. Publicly Accessible Open Space Maintenance and Repair Work

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

1. Cleaning.

(a) Dirt, litter and obstructions shall be removed as needed and trash and leaves collected and removed as needed so as to maintain the Publicly Accessible Open Space in a clean, neat and good condition.

(b) All walkways, sidewalks and all other improvements and facilities installed in the Publicly Accessible Open Space shall be routinely cleaned and maintained so as to keep such improvements and facilities in a clean, neat and good condition.

(c) Graffiti shall be regularly and promptly painted over or removed as appropriate to the nature of the surface.

(d) Drains, sewers and catch basins shall be cleaned regularly to prevent clogging.

(e) Branches and trees damaged or felled by winds, ice, vandalism, or by any other reasons whatsoever, shall be promptly removed.

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

3. Landscape Maintenance. A maintenance program for the planted portions of the Publicly Accessible Open Space shall be implemented consisting of a "Spring Start-up Period" program, a "Season Closing Period" program, and a continuing maintenance program through the "Growing Season".

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

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

(ii) Remove all landscape debris including leaves and dead branches.

(iii) Prune and trim trees as necessary to maintain natural form.

(iv) Remove or destroy any weeds growing between paving blocks, pavement, cobbled and concrete areas.

(v) Apply fertilizer to trees, shrubs, plants and other lawn areas, as appropriate.

(vi) Remove any sand deposited as a result of winter sandings.

(vii) Replace any plant material or trees that are dead, diseased and/or otherwise unhealthy with healthy specimens of substantially equal type and reasonable size.

(viii) Reseed grass areas as needed.

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

(i) Rake and collect leaves.

(ii) Wrap trees, shrubs and other plant material as necessary to ensure adequate winter protection.

(iii) Apply fertilizer to all lawn areas as needed.

(iv) Reseed grass areas as needed.

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

(i) Inspect trees on a regular basis and spray when necessary.

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

(iii) Mow lawn areas on a not less than bi-weekly basis and reseed as needed.

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

4. Repairs and Replacement. Repair and replacement of all facilities within the Publicly Accessible Open Space shall be performed as needed to maintain such facilities in good

order and working condition. Declarant shall exercise due diligence in commencing the repair or replacement of same as promptly as possible and shall complete the same within a reasonably expeditious time after commencement. All repairs and replacements shall be performed so as to be substantially compliant with the Site and Landscape Plan approved for the Publicly Accessible Open Space under Section 93-78 of the Zoning Resolution. Repairs shall include, but not be limited to, the following, as applicable to the facilities in the Publicly Accessible Open Space:

(a) Benches or Other Seating: Undertake all maintenance, including replacement of any broken or missing slats and painting, as necessary.

(b) Walls, Barriers and/or Fencing: Any broken or materially cracked walls, barriers and/or fencing shall be repaired or removed and replaced.

(c) Paving: All paved surfaces shall be maintained so as to be safe and attractive.

(d) Signage: All graphics shall be maintained in a first class condition and all vandalized or damaged signage shall be promptly cleaned or replaced with new signage to match other installed signs.

(e) Painting: All items with painted surfaces shall be painted on an "as needed" basis. Surfaces shall be scraped free of rust or other extraneous matter and painted.

(g) Plant Materials and Trees: Plant materials and trees that are dead, diseased and/or otherwise unhealthy shall be replaced with healthy specimens of substantially equal type and of reasonable size.

(h) Construction Defects & Hazardous Conditions: Declarant shall periodically inspect the Publicly Accessible Open Space for construction defects and hazardous conditions, shall promptly repair or replace any portion or feature of the Publicly Accessible Open Space that exhibits such defects or hazardous conditions, and shall institute appropriate measures to protect the public from harm, including but not limited to the erection of warning signs and temporary barriers, during the period of repair or replacement work.

B. Maintenance and Repair of West 31st Street Extension and West 32nd Street Extensions

1. Declarant shall maintain the street and sidewalk areas of the West 31St Street Extension and West 32nd Street Extension in a good state of repair and cleanliness, including but not limited to the following:

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

(b) Maintaining street and sidewalk lights, if any, in good working order;

(c) Assuring that street and sidewalk lights, if any, operate during hours of darkness;

(d) Replacing street and sidewalk lights, if any, when needed;

(e) Snow plowing at such times as the accumulated snow fall so requires; and

(f) Maintaining any required storm and sanitary drainage systems in a clear, workable and efficient manner.

EXHIBIT F - RULES AND REGULATIONS FOR PUBLIC USE OF PUBLICLY ACCESSIBLE OPEN SPACE ("PAOS")

1. No person shall throw or deposit any litter within a PAOS.

2. No persons shall affix or post any commercial or non-commercial handbill, poster or notice in or upon a PAOS, unless authorized by Declarant in writing.

3. No person shall engage in the commercial or non-commercial distribution of products and/or material in or upon PAOS (other than non-commercial printed or similar expressive material), unless authorized by Declarant in writing.

4. No peddler, solicitor or street vendor shall be permitted to operate within a PAOS unless it receives the written permission of Declarant and is in compliance with all applicable laws, rules and regulations of the City of New York (collectively, "Applicable Laws").

5. No persons shall drive, stop, stand or park a motor vehicle within a PAOS (except to the extent required for persons with disabilities or Declarant employees performing security, maintenance or repair work).

6. No persons shall loiter for illegal purposes in or upon a PAOS, or conduct any activity that would obstruct pedestrian traffic or be detrimental or injurious to public safety.

7. No person shall deface, injure, destroy, displace or carry away any property, structure, ornament or landscaping.

8. No person, corporation, organization or other entity shall hold or sponsor any meeting, exhibition, musical, theatrical or other performance, or other scheduled or unscheduled event in a PAOS, unless authorized in writing by Declarant pursuant to the provisions of Section 2.02 of the Declaration and open to the public.

9. The following shall be prohibited:

   - excessive noise, including from radio and other music playing, noxious odors, objectionable vibrations, or any other use constituting a nuisance;
   - nudity;
   - cooking or alcohol (other than as may be served, in accordance with Applicable Laws, by any restaurant or food facility located in the PAOS or in connection with any scheduled event authorized in accordance with Paragraph 9.);
   - illegal drugs;

- obscenity;
- prostitution or any other conduct for immoral purposes;
- uses in violation of Applicable Laws;
- use or possession of dangerous, flammable, or combustible objects or materials; and
- explosives, firearms and weapons.

EXHIBIT G - SCA Letter of Intent (SEE ATTACHED)

SCA
School Construction Authority

NYC
Department of Education

October 16, 2009

RG WRY LLC
c/o The Related Companies, LP
60 Columbus Circle
New York, New York 10023
Attention Mr. Jay Cross

Re: Proposed Construction of a Public School at the Western Rail Yard in Manhattan

Dear Mr. Cross:

Set forth below are the basic terms upon which RG WRY LLC or an affiliate ("Developer") proposes to enter into a School Design, Construction, Funding and Purchase Agreement (the "School Funding Agreement") with the New York City School Construction Authority ("SCA") for construction of a public school facility serving pre-kindergarten through eighth grade students at the Western Rail Yard in Manhattan:

WESTERN RAILYARD SITE SCHOOL	The site is a portion of the block bounded by 30th Street to the south, Twelfth Avenue to the west, 33rd Street to the north, and 11th Avenue to the east, such portion identified as Site 6 or another Site on the block if accepted by DOE/SCA in accordance with the Restrictive Declaration, as shown in more detail on Exhibit A hereto.
THE DEVELOPMENT	Developer intends to construct on the Western Rail Yard Site, subject to the receipt of the necessary public approvals, a mixed-use development comprised of residential, commercial, and retail uses, and, subject to the School Funding Agreement (as defined below), the Public School facility (as defined below) contemplated by this letter of intent (the "Development").

THE PUBLIC SCHOOL	The school facility will provide approximately 750 seats serving public school students in pre-kindergarten through eighth grade. The facility shall consist of approximately 120,000 gross square feet (the "Public School").The Public School will be constructed as part of the Development pursuant to a school program, including outdoor playground space on the site, to be developed within the reasonable discretion of the DOE/SCA at the appropriate time and provided to Developer. Such Public School will be an independently functioning facility located within the base of the building on Site 6 or another building, if accepted by DOE/SCA in accordance with the terms of the Restrictive Declaration, and the Public School and school program will be constructed and operated without cost or liability to Developer, except as provided below under " Developer Responsibility for Change Order and Delays" .
CONSTRUCTION OF THE PUBLIC SCHOOL BY DEVELOPER	Developer will complete the design of the Public School and perform the construction of the School Base Building Work and, if agreed between the parties, any School Fit-Out Work in accordance with the School Funding Agreement. SCA shall be responsible for the purchase and installation of all furniture, fixtures and equipment and, if determined between the parties, the School Fit-Out Work. The parties hereto agree that the definitions and scope of "School Base Building Work" and "School Fit-Out Work" will be agreed to between the parties during the negotiation of the School Funding Agreement.
THE CONDOMINIUM	Upon completion of the School Base Building Work or, if Developer undertakes the School Fit-Out Work, the School Fit-Out Work, Developer and SCA shall enter into a

	condominium regime with respect to the Public School and the remainder of the Development as a means of conveying the Public School to SCA; however, the parties may also consider alternative means (e.g., a long-term ground lease) for conveying the Public School to SCA in lieu of a condominium regime. The unit to be conveyed for the public school, whether pursuant to the condominium regime or otherwise, is hereinafter referred to as the "Public School Unit".
PURCHASE OF PUBLIC SCHOOL UNIT	Upon completion of the School Base Building Work and the School Fit-Out Work, if applicable, in accordance with the School Funding Agreement, Developer shall transfer the Public School Unit to SCA (or a public entity designated by SCA), for $1.00.
COLLABORATIVE DESIGN DEVELOPMENT PROCESS	Commencing promptly after execution and delivery of a School Funding Agreement and notice of the availability of funds pursuant thereto, Developer and SCA shall engage in a collaborative design development process as shall be set forth in the School Funding Agreement.
COMPETITIVE BIDDING	In the event Developer performs School Fit-Out Work, Developer shall comply with the SCA's procurement and prequalification requirements,.
SCA REIMBURSEMENT OF DEVELOPMENT COSTS	Upon commencement of work pursuant to the School Funding Agreement and continuing through final completion of the School Base Building Work, and, if applicable, the School Fit-Out Work, SCA shall reimburse Developer in accordance with the School Funding Agreement for all costs in connection with the design and construction thereof, including without

	limitation Developer's hard and soft costs of construction, through customary progress payments (i.e., requisitions based on percentage completion, with agreed retainage).
SCA RESPONSIBILITY FOR CHANGE ORDERS AND DELAYS	SCA shall be responsible for all costs of change orders initiated or otherwise caused by SCA that impact the costs of the School Base Building Work and, if applicable, School Fit-Out-Work. SCA shall be responsible for any additional costs incurred by Developer because of delays caused by SCA (including without limitation delays caused by change orders initiated or otherwise caused by SCA).
DEVELOPER RESPONSIBILITY FOR CHANGE ORDER AND DELAYS	Developer shall be responsible for all costs of change orders that impact the Public School if, and to the extent, they are caused by Developer changes to the scope of the School Based Building Work after commencement of construction, design defects that are the responsibility of the Development architect, or defects or material deviations in construction. Developer shall be responsible for any additional costs incurred by SCA directly related to the Public School because of delays caused by Developer after commencement of construction (including without limitation delays caused by change orders initiated by Developer).
TRANSFER TAXES	Developer is proceeding upon the assumption that no transfer taxes will be payable by Developer in connection with the transfer of the Public School Unit.

SCHOOL FUNDING AGREEMENT	Following execution of this letter of intent by the parties, Developer and SCA will commence negotiating in good faith, a School Construction, Design, Funding and Purchase Agreement (the "School Funding Agreement") in form mutually acceptable to the parties thereto, providing, among other things, for completion of the design; development and budgeting process in accordance with an agreed scope; construction of the School Base Building Work and if applicable, School Fit-Out Work, by Developer; reimbursement by SCA of Developer's costs allocable to the Public School; transfer of the Public School Unit to SCA; and such other matters as the parties may agree.
AVAILABILITY OF FUNDS	SCA acknowledges that funds for development and construction of the Public School must be included in SCA's five year capital plan in order for work to begin under the School Funding Agreement. SCA will furnish Developer evidence of available funds, prior to its commencement of work under the School Funding Agreement.
NO BROKER	Developer and SCA each represents and warrants that it has dealt with no broker or finder in connection with this transaction. Each party hereby indemnifies and holds the other harmless against any claims, cost, losses or liabilities (including, without limitation, reasonable attorney's fees) arising from a claim for a commission or other compensation asserted by a broker or finder alleging dealings with the such party in connection with this transaction.
LETTER OF INTENT NOT BINDING	By executing this letter of intent, the parties are merely expressing their interest in negotiating a mutually acceptable School Funding Agreement. Except for the

immediately preceding paragraph concerning brokerage, neither party shall be bound unless and until a School Funding Agreement, with all required consents and approvals, has been obtained by the parties.

If the foregoing is consistent with your understanding, please counter-sign and return the enclosed duplicate copy of this letter of intent.

Very truly yours,

NEW YORK CITY SCHOOL CONSTRUCTION AUTHORITY

By: _____
Name: Ross J. Holden
Title: Vice President & General Counsel

RG WRY, LLC

By: _____
Name: L. JAY CROSS
Title: AUTHORIZED SIGNATORY

EXHIBIT H — DECLARANT: OPERATIONAL TRAFFIC AND PEDESTRIAN MITIGATION MEASURES

3.04(d) Traffic/Pedestrians

Mitigation Measure Description
Traffic and Pedestrian Striping
Removal of Bollards (on Route 9A to allow for crosswalk widening)
Installation of Cross Walk Markings
Traffic Signal
Installation of Traffic Signal at intersection of W 33rd Street and 12th Avenue
Miscellaneous Pedestrian Improvements
Bulb Out Installation (assumed 6 ft x 20 ft dimensions)
Bulb Out Installation with Relocation of Utilities or Catch Basins
Maintenance & Protection of Traffic
Temporary Maintenance & Protection of Traffic Allowance

EXHIBIT I — CITY: OPERATIONAL TRAFFIC AND PEDESTRIAN MITIGATION MEASURES

3.04(d) Traffic/Pedestrians

Mitigation Measure Description
Traffic and Pedestrian Striping
Removal of Exclusive Lane Markings (Arrows)
Removal of Lane Striping
Installation of Lane Striping
Installation of Exclusive Lane Markings (Arrows)
Installation of Cross Walk Markings
Traffic Signage
Removal of Traffic Signs
Installation of Parking Signs
Traffic Signals
Installation of Traffic Signal at intersection of West 47th Street and 12th Avenue
Miscellaneous Pedestrian Improvements
Bulb Out Installation (assumed 6 ft x 20 ft dimensions)
Maintenance & Protection of Traffic
Temporary Maintenance & Protection of Traffic Allowance

Appendix O2 2010 Letter of Resolution

LETTER OF RESOLUTION
AMONG
METROPOLITAN TRANSPORTATION AUTHORITY,
NEW YORK CITY CITY PLANNING COMMISSION,
NEW YORK STATE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION,
AND
WRY TENANT LLC
REGARDING
THE WESTERN RAIL YARD PROJECT
MANHATTAN, NEW YORK COUNTY

WHEREAS, the Metropolitan Transportation Authority (MTA), the Long Island Rail Road Company and WRY Tenant LLC (the Developer) have entered into that certain Agreement to Enter Into Lease dated as of May 26, 2010, pursuant to which the parties thereto contemplate that the Developer will enter into a lease, with option to purchase, certain terra firma and the air space over a roof to be constructed over the Western Rail Yard, which is the western section of the MTA-Long Island Rail Road (LIRR) John D. Caemmerer Yard in the West Midtown section of Manhattan, to carry out a mixed-use development (the Development Project). The Western Rail Yard development site (the Development Site) is bounded by Eleventh and Twelfth Avenues, West 30th and West 33rd Streets. The 6.2-million to 6.4-million gross-square-foot Development Project is expected to include commercial space (retail and office or hotel), residential units, a public school, open space, and accessory parking;

WHEREAS, the MTA and the New York City City Planning Commission (CPC) acted as co-lead agencies in the preparation of an Environmental Impact Statement (EIS) prepared under the State Environmental Quality Review Act (SEQRA) and City Environmental Quality Review (CEQR) for the Development Project;

WHEREAS, the Development Site contains a portion of the northern segment of the High Line, a former freight railroad viaduct, and the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) has found the full length of the High Line between West 34th Street and Gansevoort Street to meet National Register eligibility Criterion A as a significant transportation structure from the 20th-century industrial development of the City;

WHEREAS, the Development Project would integrate the High Line into the overall site plan for the Development Site and adaptively reuse it to provide passive open space with connections to other public open spaces on the Development Site and to the High Line Park south of West 30th Street. The restored and modified High Line will include such amenities as walkways, benches, landscaping, and stair access, in keeping with the design of the High Line Park south of West 30th Street;

WHEREAS, OPRHP has agreed that construction near and around the High Line on the Development Site is appropriate, since historically buildings have been located in this manner;

WHEREAS, the Development Project could affect the High Line in the following ways: 1) by providing at least one access point a minimum of 12 feet in width to the High Line from the corner of West 30th Street and Twelfth Avenue; 2) physically altering the portion of the High Line along Twelfth Avenue to provide direct access between the High Line open space and the adjacent Western Open Space that would be located on the Development Site. Access would be provided along a minimum length of 75 feet and a maximum length of 150 feet of High Line frontage, requiring the removal of a portion of the High Line's eastern railing along Twelfth Avenue; 3) including a building at the southwest corner of the Development Site that could, in accordance with the zoning text amendment, be located adjacent to and above the High Line (provided that no portion of the building is located within five feet of the edge of the High Line and any portion of the building above the High Line be located above a height of 50 feet above the High Line bed); 4) designing the two proposed buildings on the north side of the High Line along West 30th Street

to extend under the High Line with a low-rise extension of the buildings' shared podium (none of the High Line's structural columns would be removed to accommodate such an extension); and 5) creating potential connections between adjacent buildings on the Development Site and the bed of the High Line;

WHEREAS, a final design of the Development Project has not been determined and, in particular, a detailed design of the High Line open space on the Development Site has not been developed;

WHEREAS, consistent with Section 14.09 of the New York State Parks, Recreation and Historic Preservation Law, the co-lead agencies have consulted with OPRHP with regard to how the Development Project could affect the High Line (including the matters referred to in a letter dated April 29, 2009 from OPRHP); and

WHEREAS, the purpose of this Letter of Resolution (LOR) is to ensure the avoidance of adverse impacts on the High Line at the Development Site or to ensure, in the event that unavoidable adverse impacts are identified during final design of the Development Project, that appropriate mitigation measures are undertaken in conjunction with development of the Development Project.

NOW, THEREFORE, in accordance with Section 14.09 of the New York State Parks, Recreation and Historic Preservation Law, MTA, CPC, OPRHP, and the Developer agree that the Development Project will be subject to the Stipulations specified below:

STIPULATIONS

1. During the ongoing design of the Development Project, the Developer will consult with OPRHP regarding those aspects of the Development Project's design that relate to the High Line. In particular, the Developer will submit preliminary and pre-final design plans for the Development Project as it may affect the High Line to OPRHP for review. If OPRHP makes substantive comments during the preliminary and pre-final design review, OPRHP may request the opportunity to comment on the final design plans.
2. To prevent inadvertent construction-related impacts at the Development Site (i.e., from vibration, falling debris, subsidence, or inadvertent damage caused by heavy machinery) on the High Line, the Developer will develop and implement, in consultation with OPRHP and the New York City Landmarks Preservation Commission (LPC), a Construction Environmental Protection Plan (CEPP) to protect the High Line during construction at the Development Site. The CEPP will be implemented in coordination with a licensed professional engineer prior to the commencement of excavation, demolition, or construction in areas at the Development Site adjacent to, under, or over the High Line. The CEPP will meet the guidelines set forth in the New York City Department of Buildings (DOB) *Technical Policy and Procedure Notice #10/88*, the *Protection Programs for Landmarked Buildings* guidance document of the LPC, and the National Park Service's *Preservation Tech Notes, Temporary Protection #3: Protecting a Historic Structure during Adjacent Construction* and will comply with other applicable New York City Building Code regulations. The CEPP will detail the construction procedures of the Development Project related to the protection of the High Line.

Any party to this LOR may propose to MTA that the LOR be amended, whereupon the MTA shall consult with the other parties to this LOR to consider such amendment. Any amendment must be agreed upon in writing by all parties to this agreement.

METROPOLITAN TRANSPORTATION AUTHORITY

BY:_____ DATE: 10/20/2010

TITLE: Jeffrey Rosen, Director Real Estate

NEW YORK CITY CITY PLANNING COMMISSION

BY: _____ DATE: 11/1/10

TITLE: Chair

NEW YORK STATE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION

BY: Ruth A Pierpont DATE: 10/14/10

TITLE: Director DHP

WRY TENANT LLC

BY: _____ DATE: 11/10/10

TITLE: L. Jay Cross, President