



## CITY PLANNING COMMISSION

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March 17, 2014 / Calendar No. 1

C 130336 ZMM

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**IN THE MATTER OF** an application submitted by 606 W. 57 LLC pursuant to Sections 197-c and 201 of the New York City Charter for the amendment of the Zoning Map, Section No. 8c:

1. changing from an M1-5 District to a C4-7 District property bounded by a line midway between West 57th Street and West 56th Street, a line perpendicular to the northerly street line of West 55th Street distant 300 feet easterly (as measured along the street line) from the point of intersection of the easterly street line of Twelfth Avenue and northerly street line of West 55th Street, West 56th Street, a line 300 feet westerly of Eleventh Avenue, a line 145 feet southerly of West 56th Street, and the southerly prolongation of a line 157 feet easterly of Twelfth Avenue; and
2. changing from an M2-3 to a C4-7 District property bounded by West 57th Street, Eleventh Avenue, West 56th Street, a line perpendicular to the northerly street line of West 55th Street distant 300 feet easterly (as measured along the street line) from the point of intersection of the easterly street line of Twelfth Avenue and northerly street line of West 55th Street, a line midway between West 57th Street and West 56th Street, and a line 157 feet easterly of Twelfth Avenue;

Borough of Manhattan, Community District 4, as shown on a diagram (for illustrative purposes only) dated October 21, 2013, and subject to the conditions of CEQR Declaration E-324.

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The application for an amendment of the Zoning Map to change M1-5 and M2-3 zoning districts to a C4-7 zoning district was filed by 606 W. 57 LLC c/o TF Cornerstone Inc. on May 21, 2013. The application, along with related actions, would facilitate the development of a mixed-use building with up to 1.2 million gross square feet, comprised of a maximum of 1,189 residential units, including affordable housing, approximately 42,000 square feet of commercial or community facility floor area and up to 500 public parking spaces at 606 West 57<sup>th</sup> Street in Manhattan Community District 4.

### **RELATED ACTIONS**

In addition to the zoning map amendment (C 130336 ZMM), which is the subject of this report, implementation of the proposed project also requires action by the City Planning Commission on the following applications, which are being considered concurrently with this application:

- N 130337 ZRM:** Amendment to Zoning Resolution Appendix F to include the project area in Inclusionary Housing designated area; Section 96-34, Special Regulations in Northern Subarea C1, to amend the Inclusionary Housing bonus structure to encourage the inclusion of commercial or community facility floor area, to permit an auto showroom with preparation of automobiles and accessory repair facility, and to establish a special permit for transient hotel uses
- C 130339 ZSM:** Special Permit pursuant to Section 13-454, Additional parking spaces for large scale developments, to provide a maximum of 500 public parking spaces or a maximum of 395 public parking spaces
- N 130340 ZAM:** Authorization pursuant to Section 13-441 to permit a curb cut on a wide street in Manhattan Community District 4

## **BACKGROUND**

The application for the proposed zoning map amendment, in conjunction with the related applications, would facilitate construction of a new mixed-use building on a portion of the block bounded by West 56<sup>th</sup> Street and West 57<sup>th</sup> Street, between Eleventh Avenue and Twelfth Avenue, in the Clinton neighborhood in Manhattan Community District 4.

With a few exceptions, the northern and western portions of Clinton are transitioning from predominantly manufacturing, industrial and commercial uses to heavily residential and commercial areas, with some notable institutional uses. Abutting the west side of the project area is a Department of Sanitation (DSNY) garage, which extends from West 55<sup>th</sup> to West 57<sup>th</sup> streets along Twelfth Avenue and bridges over the West 56<sup>th</sup> Street road bed. The garage is accessed from curb cuts on West 57<sup>th</sup> Street, and the north and south sides of West 56<sup>th</sup> Street. The DSNY facility is in an M1-5 zoning district.

There have been a number of proximate high-rise residential developments in recent years. The block to the north is zoned C4-7 and C6-2, and improved with a 38-story residential building of 597 dwelling units at its eastern end. In 2012, the Commission approved actions to facilitate a

457-foot tall building with 753 residential units to occupy the western portion of the block (C 120397 ZSM et al.). Further north is the Riverside South development, which extends from West 59<sup>th</sup> Street to West 72<sup>nd</sup> Street. Riverside South includes several residential high-rise towers, with five additional buildings planned for the area between West 59<sup>th</sup> and West 61<sup>st</sup> streets that will add a total of three million square feet of residential, commercial, and community facility space, including up to 2,500 residential units (C100296A ZSM, et al). The Riverside South development includes several blocks zoned C4-7 and R10. Older residential buildings exist within R8 and R9 zoning districts between West 54<sup>th</sup> and West 56<sup>th</sup> streets on the east side of Eleventh Avenue. These districts permit FARs of up to 6.02 and 7.52 respectively. The John Jay College of Criminal Justice underwent a recent expansion on the block between West 58<sup>th</sup> and West 59<sup>th</sup> streets, east of Eleventh Avenue, which is zoned C6-2, an R8 equivalent district and two residential towers were recently built on the east side of Eleventh Avenue between West 59<sup>th</sup> and West 60<sup>th</sup> streets.

Zoning districts that reflect western Manhattan's industrial history still remain. Manufacturing uses include automobile repair and utilities, while commercial uses have proliferated, such as office buildings and television studios. Eleventh Avenue is host to a concentration of car dealerships. To the north of the project area, between West 58<sup>th</sup> and West 59<sup>th</sup> streets is the Consolidated Edison steam plant, which occupies a full block in an M3-2 zoning district. Blocks between West 56<sup>th</sup> Street and West 58<sup>th</sup> Street on the east side of Eleventh Avenue are zoned M1-5 and M1-6, which permit 5.0 and 10.0 FAR respectively and require buildings are constructed within the sky exposure plane above a height of 85 feet or six stories, whichever is less. M2-3 is mapped on the south side of West 56<sup>th</sup> Street on a portion of the block that includes music studios, a five-story office building, a car repair and dealership. M2-4 is mapped on the west side of Eleventh Avenue from West 55<sup>th</sup> Street south to West 43<sup>rd</sup> Street. M2-3 permits 2.0 FAR and building within the sky exposure plane above 60 feet or four stories, whichever is less, while M2-4 permits 5.0 FAR and the sky exposure plane begins above 85 feet.

The Special Clinton District, generally mapped between West 41st and West 59th streets west of Eighth Avenue, was adopted in 1974. The special district includes three areas that are further

divided into subareas. The project area is mapped in Other Area, Northern Subarea C1.

Area open spaces include Dewitt Clinton Park, which occupies two city blocks bounded by Twelfth Avenue, Eleventh Avenue, West 52<sup>nd</sup> and West 54<sup>th</sup> streets. Hudson River Park extends from Battery Park to West 59th Street along the Hudson River. Nearby amenities include Clinton Cove, a landscaped area with a boathouse. Pier 97 at West 57<sup>th</sup> Street is undergoing improvements to provide additional recreational facilities.

The area is served by mass transit. Both the M57 and M31 bus lines run along West 57th Street to the corner of Eleventh Avenue and the M11 bus runs along Tenth Avenue. The nearest subway station at 59th Street/Columbus Circle, which is a ½ mile from the project area, is served by the 1, A, C, B and D lines.

The project area covers roughly two-thirds of the block bounded by Twelfth Avenue (Route 9A) to the west, Eleventh Avenue to the east, West 56<sup>th</sup> Street to the south and West 57<sup>th</sup> Street to the north. The application affects property that comprises the development site (Block 1104, Lots 31, 40, 44 and 55), as well as two parcels that are not controlled by the applicant (Block 1104, Lots 25, 29 and 36.) The development site and outparcels together constitute the project area.

The project area has frontage on West 57<sup>th</sup> Street, West 56<sup>th</sup> Street and Eleventh Avenue. The applicant controls four tax lots (the development site) pursuant to a 99-year ground lease. The development site occupies a 1.97-acre portion of the project area with a frontage of 428 feet on West 57<sup>th</sup> Street, 130 feet on Eleventh Avenue and 100 feet on West 56<sup>th</sup> Street. Lots 31 (26,069 square feet of lot area) and 40 (20,075 square feet of lot area) are currently developed with two-story structures and open service areas that are used for auto sales and service, and have an FAR under 1.0. Lot 44 (36,229 square feet of lot area) is occupied by a four-story parking garage with a licensed capacity of 1,000 spaces and a floor area ratio of approximately 3.62. Lot 55 (3,623 square feet of lot area) contains a one-story auto repair shop built in the 1920s with an FAR of less than 1.0. The western portion of the site nearest the block centerline is zoned M1-5 and the remainder is zoned M2-3.

The outparcels consist of lots 25 and 29 (10,692 square feet of lot area), which are improved with a six-story office building and an automotive showroom at the southeast corner of the block, and lot 36 (2,542 square feet of lot area), which is improved with a five-story office building and ground floor restaurant and bar at the northeast corner of the block.

Along West 57th Street, there are six existing curb cuts on the development site, each measuring between approximately 10 feet and 63 feet. The westernmost curb cut is approximately 160 feet from Twelfth Avenue and the easternmost curb cut is approximately 100 feet from Eleventh Avenue. Along West 56th Street, there are two curb cuts on the development site located in the mid-block, measuring approximately 17 feet and 22 feet, respectively.

## **PROPOSED PROJECT**

The applicant proposes a mixed-use building to occupy the entire development site of approximately 999,636 square feet. It would include approximately 956,636 square feet of residential space (up to 1,189 units), of which 20% would be affordable to low-income residents. The building would include approximately 42,000 square feet of retail or community facility uses and up to 500 public parking spaces.

The planned building would be built in full compliance with the proposed C4-7 district bulk regulations. The building will rise to a maximum 450 feet and 42 stories. It would be composed of several stacked volumes, all of which would be connected internally through a central vertical core. The eastern portion of the building would have two towers of up to 28 stories, or up to 300 feet, that will be perpendicular to one another and connected by a 30-foot wide glass bridge on all floors. A 14-story cube would sit atop the two towers with a 20-foot tall parapet to conceal mechanical equipment. The western segment of the building is a 17-story volume that extends parallel to West 57<sup>th</sup> Street next to the DSNY facility and sets back above the sixth floor. This portion would also be connected by a 30-foot glass bridge. The street line would be met by lower-rise volumes with an approximately 75-foot street wall. The building would include roof

decks and terraces for use by building occupants. The building is proposed to include a residential lobby at the midpoint of the development site's frontage on West 57<sup>th</sup> Street, as well as several retail spaces lining West 57<sup>th</sup> Street and Eleventh Avenue. West 56<sup>th</sup> Street will be used for service entrances and loading docks.

## **REQUESTED ACTIONS**

### *Zoning Map Amendment*

In order to construct the proposed building, the applicant seeks a zoning map amendment to rezone the project area from M2-3 and M1-5 manufacturing districts to a C4-7 commercial district. M1-5 is mapped over approximately 15% of the area to be rezoned. M1-5 is a light intensity manufacturing district that permits 5.0 FAR and requires building within the sky exposure plane above a height of 85 feet or six stories, whichever is less. M2-3 is a medium intensity manufacturing district that permits 2.0 FAR and requires building within the sky exposure plane above a height of 60 feet or four stories, whichever is less. Residential use is not permitted within the M1-5 or M2-3 zoning districts. The proposed C4-7 district, which would include the development site and outparcels, would have a base maximum FAR of 9.0 (for mixed use buildings) that could increase to 12.0 with Inclusionary Housing. C4-7 is an R10 equivalent district and can be developed per Quality Housing, Tower-on-a-Base and Tower regulations.

### *Special Permit for Public Parking Garage*

Pursuant to Section 13-45 and 13-454 of the Zoning Resolution, the applicant requests a special permit to allow for the construction of up to 500 spaces of public parking on three below-grade levels. Two points of access are proposed at the westernmost end of the development site on West 57<sup>th</sup> Street and in the midblock on West 56<sup>th</sup> Street. The garage would either include up to 500 spaces on three below-grade levels with entrances on both West 57<sup>th</sup> Street and West 56<sup>th</sup> Street (Alternative 1) or up to 395 spaces with an entrance and exit on West 57<sup>th</sup> Street only and an automotive facility on one of the below-grade levels (Alternative 2). The West 57<sup>th</sup> Street entrance would be accessible via an existing curb cut, which would be extended to 22 feet and

located approximately 160 feet from the intersection with the West Side Highway, and approximately 60 feet from the existing curb cut providing access to the DSNY garage. A new as-of-right curb cut would be added on West 56<sup>th</sup> Street, measuring 22 feet and located 240 feet from the intersection with Eleventh Avenue, and would be used to access either the parking facility (Alternative 1) or the automotive facility (Alternative 2). Existing curb cuts on West 56<sup>th</sup> Street, measuring approximately 17 feet and 22 feet respectively, would be used for loading docks for the residential building. The garage would include up to 50 public bicycle spaces located near the West 57<sup>th</sup> Street garage entrance. The proposed development additionally requires approximately 600 bicycle spaces associated with the residential and commercial floor area, which are to be located in the building.

*Authorization pursuant to Section 13-441*

The applicant seeks an authorization pursuant to Section 13-441 (Curb Cuts) to permit a curb cut on a wide street. There is an existing curb cut on West 57<sup>th</sup> Street that is approximately 160 feet east of Twelfth Avenue. It is proposed to be extended from 14 feet to 22 feet to serve as access to the proposed garage. The remaining curb cuts that currently exist along the development site on West 57<sup>th</sup> Street will be removed.

*Text Amendment to Section 96-34 and Appendix F*

The applicant proposes a zoning text amendment to Appendix F to designate the project area an Inclusionary Housing designated area, which would permit the applicant to receive bonus floor area for providing affordable housing to low-income residents pursuant to the Inclusionary Housing Program. The proposed development includes up to 956,636 square feet of residential floor area, of which up to 20% (roughly 238 units) would be affordable.

In addition, the applicant proposes a zoning text amendment to Section 96-34 (Special Regulations in Northern Subarea C1) applicable to Area C1-1, to modify the base and maximum floor area ratios, not to exceed the maximum floor area ratio permitted, based on the proportionality between affordable floor area and residential floor area in a building containing multiple uses. The text amendment would permit the base residential FAR of 9.0 to be increased

by 0.25 times the non-residential FAR provided on the zoning lot, up to 10.0 FAR, with additional FAR, up to 12.0, only allowed through the provision of affordable housing pursuant to ZR §23-90 (Inclusionary Housing). The adjusted bonus structure accounts for non-residential floor area while maintaining an incentive to provide affordable housing equal to 20 percent of the residential floor area.

Finally, the applicant proposes a text amendment to Section 96-34 (Special Regulations in Northern Subarea C1) applicable to Area C1-1, to permit an auto showroom with preparation of automobiles and an accessory repair facility within a C4-7 zoning district. C4-7 permits automobile showrooms or sales with no repair services or preparation for delivery (UG 9) as a matter of right. The applicant proposes a car dealership with accessory auto repair onsite. The proposed text amendment will permit automobile showrooms or sales with preparation of automobiles for delivery, as well as automobile repairs accessory to the showroom.

## **ENVIRONMENTAL REVIEW**

This application (C 130336 ZMM), in conjunction with the application for the related actions, was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA), and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 *et seq.* and the City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 13DCP080M. The lead is the City Planning Commission.

It was determined that the proposed action may have a significant effect on the environment. A Positive Declaration was issued on March 25, 2013, and distributed, published and filed. Together with the Positive Declaration, a Draft Scope of Work for the Draft Environmental Impact Statement (DEIS) was issued on March 25, 2013. A public scoping meeting was held on April 25, 2013. A Final Scope of Work, reflecting comments made during the scoping meeting, was issued on October 18, 2013.

A DEIS was prepared and a Notice of Completion for the DEIS was issued on October 18, 2013. On January 22, 2014, a public hearing was held on the DEIS pursuant to SEQRA and other relevant statutes. A Final Environmental Impact Statement (FEIS) reflecting the comments made during the public hearing on the DEIS was completed and a Notice of Completion for the FEIS was issued on March 7, 2014.

### **(E) Designations**

Significant adverse impacts related to hazardous materials, air quality and noise would be avoided through the assignment of (E) designation (E-324) on the affected development sites.

The FEIS identified the potential for significant adverse impacts with respect to community facilities (child care) and transportation (traffic, buses and crosswalks) as well as construction transportation impacts (related to vehicular traffic). Measures to minimize or eliminate the anticipated impacts to the fullest extent practicable are discussed as follows.

### **Restrictive Declaration**

In connection with the proposed project, and as described below in this report, a Restrictive Declaration would be recorded to authorize the proposed project's development with certain requirements. The Restrictive Declaration would provide for the implementation of and include, among other components, massing restrictions, design elements, "Project Components Related to the Environment" (i.e., certain project components which were material to the analysis of the environmental impacts in this EIS) and mitigation measures, substantially consistent with the EIS.

### **Community Facilities**

The proposed actions could result in significant adverse impacts to child care centers. The proposed actions would be expected to introduce 27 children under the age of six who would be eligible for publicly funded child care programs within the 1.5 mile study area. With the addition of these children, child care facilities in the study area would operate at a 162 percent utilization rate, which represents an increase in the utilization rate of 7.9 percentage points over conditions in the future without the proposed actions. This increase exceeds the 5 percent threshold in the

CEQR Technical Manual for a significant adverse impact. In order to avoid a significant adverse impact, the number of affordable units introduced by the proposed actions could not exceed 152. 152 affordable units would generate only 17 eligible children. Thus, the difference between the proposed actions and the CEQR Technical Manual threshold for significance is a shortfall of 10 child care slots. Partial mitigation measures to address this significant adverse impact have been identified through consultation with the Administration of Children's Services (ACS) and are included in the Restrictive Declaration. Mitigation would include funding to be provided by the applicant for a specified number of publicly-provided child care slots based on the number of low-income units in the building to be constructed. With this mitigation the significant adverse impacts of the proposed actions to publicly funded child care would be partially mitigated.

### **Transportation**

Traffic conditions were evaluated at 15 intersections for the weekday AM, midday and PM peak hours, and the Saturday peak hour. The proposed actions could result in significant adverse traffic impacts at 7 intersections during the weekday AM peak hour, 10 intersections during the weekday midday peak hour, 13 intersections during the weekday PM peak hour, and 8 intersections during the Saturday peak hour. All of the locations where significant adverse traffic impacts are predicted to occur could be fully mitigated with the implementation of standard mitigation measures (including signal timing changes, approach daylighting, changing parking regulations, channelizing, etc.) during the weekday AM and midday peak hours. However, the significant adverse traffic impacts at the intersection of Eleventh Avenue and West 57th Street would remain unmitigated during the weekday PM and Saturday peak hours.

The analysis also concluded that the proposed actions could result in significant adverse construction impacts with respect to vehicular traffic, which would be mitigated by using the same operational-period mitigation measures described above.

The proposed actions could also result in potential significant adverse bus line haul impacts on the eastbound M57 during the AM peak period and the westbound M31 and westbound M57 during the PM peak hour. NYCT and MTA Bus routinely monitor changes in bus ridership and,

subject to the agencies' fiscal and operational constraints, makes necessary service adjustments where warranted. These impacts would be mitigated if increased service adjustments are made.

In addition, the proposed actions could result in a significant adverse pedestrian impact at one crosswalk location: the south crosswalk of 57th Street and Eleventh Avenue during all analysis time periods. The impacts at this crosswalk could not be fully mitigated with standard crosswalk widening and signal timing changes during four analysis peak hours.

### **Traffic Monitoring Plan**

In order to verify the projected traffic conditions, any significant adverse traffic and pedestrian operational and safety impacts, and the need for traffic mitigation measures identified in the EIS, the applicant will develop and conduct a detailed Traffic Monitoring Plan (TMP) once the proposed project is built and operational. The requirements for a TMP are included in the Restrictive Declaration. The applicant will submit for DCP and NYCDOT's review and approval a detailed scope of work that will include critical locations where significant traffic and pedestrian impacts have been identified in the EIS as well as other locations which could potentially be impacted. Data collection to be conducted for the monitoring plan will include nine days of 24-hour Automatic Traffic Recorder (ATR) machine counts along with one typical day of manual turning movement counts, vehicle classification counts, pedestrian and bicycle counts, intersection geometry, field verified signal timing, and any other relevant information necessary for conducting the traffic and pedestrian analysis following the CEQR Technical Manual guidelines. The TMP will also include field observations of intersection operations and queue lengths. Intersection capacity and level of service analyses will be performed using the Highway Capacity Software (HCS) and/or Synchro to determine whether actual future conditions have, in fact, resulted in significant traffic and pedestrian impacts at the same or new locations, and to verify and/or identify the need for mitigation measures through the TMP. In addition, the TMP will assess vehicular, pedestrian and cyclist safety and recommend safety improvements measures, where warranted.

The applicant will obtain approval from DCP and NYCDOT regarding traffic and pedestrian

analysis locations prior to initiating data collection, and will be responsible for all costs associated with the traffic monitoring plan including data collection and analysis. For any capital improvement measures, resulting as part of the monitoring plan, the applicant will be responsible for all costs associated with its design and implementation, and submit all of the required drawings/design as per American Association of State Highway Transportation Officials (AASHTO) and NYCDOT specifications for NYCDOT's review and approval. NYCDOT will participate in the review process relating to all future modifications to geometric alignment, striping and signage during the preliminary and final design phases.

### **Alternatives**

Several Alternatives were considered in the FEIS, including: a No-Action Alternative, which assumes none of the proposed actions would be adopted; a No Impact Alternative that would reduce the size of the development such that there would be no potential for significant adverse impacts; a Lower Density Alternative that considers a C6-3X zoning designation and related development; and a Lower Density Alternative that considers a C6-2 and C4-7 zoning designation and related development.

As with the proposed actions, it was found that the Lower Density Alternatives analyzed would result in significant adverse impacts related to community facilities and transportation (albeit to a lesser extent), for which reduced partial mitigation measures would be recommended. Similar to the proposed actions, the partial mitigation measures recommended for the Lower Density Alternatives would not be expected to fully mitigate these significant adverse impacts.

The EIS also considered a No Unmitigated Impact Alternative that would reduce the size of development on the project site such that the recommended mitigation measures discussed in the EIS would be able to fully mitigate the significant adverse impacts resulting from the proposed actions.

The applicant has stated that the Alternatives analyzed would not realize the goals and objectives of the proposed project as fully as the proposed project.

## **UNIFORM LAND USE REVIEW**

This application (C 130336 ZMM), in conjunction with the related ULURP application (C 130339 ZSM), was certified as complete by the Department of City Planning on October 21, 2013, and was duly referred to Manhattan Community Board 4 and the Manhattan Borough President, in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b); along with the related non-ULURP actions (N 130337 ZRM and N 130340 ZAM), which were referred for information and review, in accordance with the procedures for non-ULURP matters.

### **Community Board Review**

Community Board 4 held a public hearing on this application (C 130336 ZMM), on December 4, 2013, and by a vote of 28 in favor, 5 opposed, 1 abstention and 4 present but not eligible, recommended approval of the zoning map amendment, the text amendment to include the project area in Appendix F, Inclusionary Housing designated areas, and the authorization to extend the curb cut; recommended approval of the text amendment to allow auto repair and preparation as accessory uses to an auto showroom, with the condition that the amount of affordable housing be based on the total floor area of the building, rather than residential floor area; and recommended denial of the special permit for a public parking garage unless the parking is accessory and limited to a maximum of 400 spaces. The Board additionally requested that the affordable units be distributed through 80% of the building, that the fixtures and finishes be consistent with those of market rate units, that amenities be available to affordable unit residents at a discounted rate, that the applicant work with DOT to install split phase traffic lights on West 57<sup>th</sup> Street, explore jitney service and revisit any environmental impacts to schools.

### **Borough President Recommendation**

This application (C 130336 ZMM) was considered by the President of the Borough of Manhattan. On December 31, 2013, the Borough President issued a recommendation approving the zoning map amendment, the text amendment to include the project area in Appendix F, Inclusionary Housing designated areas, and the special permit for a public parking garage with the condition that the maximum number of spaces permitted in the public parking garage be reduced to 400, that mitigation of potential impacts to parks and schools be explored, that

affordable units are distributed through 80% of the building, that the fixtures and finishes be consistent with those of market rate units, that amenities be available to all residents, and that the applicant follows through on the commitment to add street trees and greenery to the entire block. The Borough President issued a recommendation disapproving the text amendment to modify regulations applicable to Northern Subarea C1, unless the text to adjust the base for calculating Inclusionary Housing floor area is removed, and the City and applicant explore increasing the amount of affordable housing in the project to equal 20 percent of all floor area in the building.

### **City Planning Commission Public Hearing**

On January 8, 2014 (Calendar No. 11), the City Planning Commission scheduled January 22, 2014, for a public hearing on this application (C 130336 ZMM). The hearing was duly held on January 22, 2014 (Calendar No. 11) in conjunction with the public hearing on the applications for related actions. There were four speakers in favor of the application and nine speakers in opposition.

A representative of TF Cornerstone spoke in favor and explained the developer's history, introduced the goals of the project and described the development's location and design. The representative stated that the residential number of units is not finalized and the number of affordable units is contingent on the final amount of housing. The representative stated that the original purpose of the text amendment to adjust the affordable housing base was to accommodate an accessory commercial use to the auto dealership on the second floor, however, the programming of the space had not been determined. The representative stated that residential units are planned to be composed of 60% studios and one-bedrooms, and 40% two- and three-bedrooms. A shuttle bus service is being explored and will be provided based on resident need; the applicant will work with the 625 West 57<sup>th</sup> Street property owner to the north to coordinate shuttle service as necessary. The representative explained that a public garage of up to 500 spaces is sought to partially replace the 1,000-space garage on the development site and serve demand generated by the new development.

Land use counsel to the applicant also spoke in favor, reviewed the proposed actions and further

explained that, in response to concerns raised during public review regarding the appropriateness of excluding non-residential floor area above the ground floor from the base calculations, the purpose of the text amendment was to maintain flexibility to program several of the lower floors with non-residential uses, particularly on West 57<sup>th</sup> Street.

An environmental consultant representing the applicant, who spoke in favor, was asked about significant adverse impacts that have been identified in the environmental analysis, as well as areas of analysis that near significant adverse impact thresholds. The consultant described the methodology for analyzing school impacts, including the populations introduced by the development, school type options and anticipated school openings by the project's build year. The consultant clarified that the provision of a shuttle bus by the subject development was not accounted for in the transportation analysis.

The Council Member for the 6<sup>th</sup> District, who spoke in support, described several issues of concern related to the application, including the amount of affordable housing provided, its location in the building and its level of affordability. The Council Member additionally cited concern around traffic impacts, particularly pedestrian safety, as well as labor relations, environmental impacts, and support of small, local businesses.

Speakers in opposition included two representatives of 32BJ SEIU, a building service worker union, who expressed concerns regarding the applicant's labor practices in other buildings under its ownership. A representative of the Manhattan Borough President, who spoke in opposition, underscored the need to understand the cumulative impacts of the project in the context of neighboring development. The representative reaffirmed the Borough President's opposition to the text amendment to exclude up to 4.0 FAR from the base floor area for calculating affordable housing.

Three local residents spoke in opposition to the proposal, citing concerns about the proposed density, traffic impacts associated with the 500-space garage as well as unidentified impacts to schools, libraries, hospitals and shadows.

A representative of Manhattan Community Board 4 reiterated support of the rezoning, but opposition to the text amendment that would adjust the base FAR and allow the exclusion of non-residential floor area from the Inclusionary Housing calculation. The Community Board opposes the loss of potential affordable units. Further, the Community Board requested that the proposed public garage be reduced from 500 to 400 spaces. The representative, in response to questions raised by the Commission, reiterated the Board's written comments regarding the location of the affordable units in the building, fixtures and finishes, and unit sizes as well as the level of affordability in the new development. The Board member further discussed existing Inclusionary Housing provisions in the Special Clinton District. He also stated that reducing the size of the proposed public garage was warranted.

A representative of the Assembly Member for the 67<sup>th</sup> District spoke in opposition to the proposal, stating that that the Assembly Member does not support the text amendment to exempt 4.0 FAR of non-residential floor area from the Inclusionary Housing base and that such a provision reduces the amount of affordable housing possible on the site. The representative also described concerns regarding increased congestion resulting from the proposed garage, and that impacts to schools, transportation, libraries and open space should also be further analyzed. A representative of the Council Member of the 3<sup>rd</sup> District also spoke in opposition to the project, citing a preference that all residential and non-residential floor area be used as the base for calculating affordable housing floor area, that affordable units be distributed through more of the building, that fixtures and finishes be consistent among all units and that amenities be available to all residents. The representative further described the area as being overburdened with off-street parking, calling for a reduction of spaces in the proposed garage.

There were no other speakers and the hearing was closed.

## **WATERFRONT REVITALIZATION PROGRAM CONSISTENCY**

This application (C 130336 ZMM), in conjunction with those for the related actions, was

reviewed by the Department of City Planning for consistency with the policies of the New York City Waterfront Revitalization Program (WRP), as amended, approved by the New York City Council on October 13, 1999 and by the New York State Department of State on May 22, 2002, pursuant to the New York State Waterfront Revitalization and Coastal Resources Act of 1981 (New York State Executive Law, Section 910 *et seq.*). The designated WRP number is 12-103.

The City Planning Commission, acting as the City Coastal Commission, having reviewed the waterfront aspects of this action, finds that the actions will not substantially hinder the achievement of any WRP policy and hereby determines that this action is consistent with WRP policies.

## **CONSIDERATION**

The Commission believes that the zoning map amendment (C 130336 ZMM), in conjunction with the related applications for a zoning text amendment (N 130337 ZRM), as modified herein, parking special permit (C 130339 ZSM) and authorization (N 130340 ZAM), is appropriate. These actions would facilitate the development of a significant mixed-use project, provide needed permanently affordable housing units, and would integrate the project area into the evolving residential, institutional, and commercial neighborhood that has been rapidly developing in the surrounding area.

### **Zoning Map Amendment**

The Commission believes that the proposed zoning map amendment to change the existing M1-5 and M2-3 zoning districts to a C4-7 district, in order to permit mixed-use commercial and residential development, is appropriate. M1-5 and M2-3 districts permit 5.0 and 2.0 FAR respectively, while C4-7 districts, within the proposed Inclusionary Housing designated area, allow a maximum base FAR of 9.0 for mixed-use buildings, that can be increased to 12.0 FAR through the Inclusionary Housing program. The proposed zoning map change is consistent with several recent rezonings adjacent to the project site and the proposed zoning map change will

reinforce the area's general shift from manufacturing uses to a mix of commercial and residential uses.

The purpose of the rezoning is to allow residential uses on the development site, which would not be permitted in the current M1-5 or M2-3 districts. The Commission believes that given the proximity to similarly rezoned areas, as well as continuing trends in land use reflecting a diminishing demand for manufacturing space, the proposed rezoning is appropriate. The rezoning would allow for uses more consistent with the emerging residential character of the adjacent Clinton and Upper West Side communities. Other C4-7 districts exist in the area surrounding the project block, including the block immediately to the north between West 57<sup>th</sup> Street and West 58<sup>th</sup> Street, portions of blocks that comprise Riverside Center and Riverside South, specifically West 59<sup>th</sup> Street to West 63<sup>rd</sup> Street along West End Avenue, and blocks bounded by West 58<sup>th</sup> Street, West 60<sup>th</sup> Street, Amsterdam and Columbus avenues. The western one-third of the block will remain in an M1-5 district and is constructed with a Department of Sanitation garage. The aggregate density of the project block, with the proposed zoning map amendments, corresponds to the densities of neighboring, recently-rezoned blocks.

While the Commission recognizes that the set of proposed actions does not include a special permit to specify a building envelope on the development site, the applicant has presented a massing that reflects certain height and bulk constraints related to the underlying zoning regulations and its adjacency to the Con Edison steam plant. The pertinent bulk limitations are memorialized in the Restrictive Declaration, attached to this report. Overall, the Commission believes that the rezoning would allow residential and community facility uses within the project area at a scale appropriate to that of the surrounding neighborhood.

### **Parking Special Permit**

The Commission believes that the proposed accessory parking garage special permit is appropriate. There is an existing 1,000-space public parking facility on the development site that will be displaced by the proposed project. The applicant seeks to construct a public garage of up to 500 or up to 395 below-grade spaces to replace some of the lost parking and meet the demand

generated by the new, mixed-use development.

The Commission notes that the parking regulations applicable to the Manhattan Core were revised in a text amendment adopted May 8, 2013, and were the result of an extensive study by the Department's staff (N 130105 ZRM). In its report, the Commission concluded that the new special permits and findings set reasonable standards for determining the number of parking spaces, and account for changes both in the quantity of nearby development and the capacities of existing and new parking facilities. The applicant seeks a special permit pursuant to Sections 13-45, Special Permits for Additional Parking Spaces and 13-454 (Special permit for additional parking spaces for large-scale developments) which applies to any parking facility serving a development of at least 1.5 acres.

The proposed development of 1,189 residential units and 42,000 square feet of ground floor retail uses is permitted 210 parking spaces as-of-right. This includes 200 parking spaces accessory to the residential units and 10 spaces accessory to retail uses. The Commission notes that finding 13-451 (b), to which 13-454 (a) refers, permits the Commission to allow an additional 38 spaces, or 20% of the units in excess of 1,000, maintaining the as-of-right parking ratio applicable in Community District 4, provided that such proposed additional spaces meet the findings of Section 13-45, relating to the absence of pedestrian and traffic impacts and consistency with neighborhood character. The applicant seeks up to 252 additional spaces above the 248 spaces associated with the proposed mixed-use development, pursuant to the provisions of Section 13-454(c), which permit additional parking where relocation opportunities for existing parking users displaced by a development are insufficient to accommodate such users.

The Commission notes that the applicant has provided an analysis of significant developments as well as current and future parking facilities in the one-third-mile radius of the project area. Seventy percent of the existing 1,000-space garage that will be demolished is used by overnight parkers. Overnight users represent nearby, residential parkers, rather than transient commuters. To determine whether the number of spaces sought is reasonable, and that the availability of off-street parking in the vicinity of the development is insufficient to accommodate displaced users,

the analysis demonstrates that 187 spaces are available in existing parking facilities, assuming a 90% occupancy rate. The analysis further reviews future development and provision of parking by 2017, the year of completion of the proposed development. By 2017, an excess of 257 public parking spaces, assuming a 90% occupancy, and a net demand for 210 spaces based on new development, will yield an additional 47 available parking spaces that can absorb some of the parkers displaced by the proposal. The future supply and demand is derived from parking available to developments as-of-right, building permits for projects under construction, and parking special permits granted by the Commission, where the Commission found that the amount of parking approved was appropriate to the development itself. In sum, existing and future parking supply will accommodate approximately 234 of the 700 displaced users, leaving approximately 466 users un-accommodated. In view of this analysis, the Commission believes that the 252 spaces above the 248 spaces associated with the mixed-use building, is reasonable.

The Commission acknowledges that the Manhattan Borough President and Citizens for Responsible, Organized Westside Development with Environmental Deference questioned the use of a 90% occupancy rate for calculating public garage capacity, suggesting instead that 98% or 100% occupancy is more appropriate. During the Manhattan Core Public Parking Study, staff surveyed 156 public parking facilities in the Manhattan Core and gathered occupancy data from attendants and facility managers. Staff determined that pricing in public parking facilities is set to maximize revenue, and this is often achieved at less than full occupancy, even at peak times. Thus an assumption of 90 percent occupancy, on average, is more reasonable than the 98 or 100 percent occupancy suggested in comments. In addition, in the 2010 City Planning Commission report regarding Riverside Center (C 100296 (A), M 920358 (D) ZSM), the Commission acknowledged that an operational capacity of 90% is an appropriate assumption for analyzing public parking special permits and that a higher capacity would be likely to result in users circling local streets in search of parking.

The Commission recognizes that the applicant has identified measures to minimize parking demand. The applicant will provide the required number of bicycle spaces in the public parking garage and the mixed-use building. There are 50 bicycle spaces in the 500-space garage, and

approximately 600 bicycle spaces serving the remainder of the development. The applicant will also reserve up to 10 spaces in the garage for a vehicle sharing service. The Commission observes that the project site is approximately one-half mile from the nearest subway station. The Commission notes that the applicant has committed to conducting an annual survey of residents for the first five years of building occupancy to determine whether there is demand for a shuttle to the 59<sup>th</sup> Street/Columbus Circle subway station. These measures are memorialized in an associated Restrictive Declaration.

The Commission notes that the applicant concurrently seeks a special permit for a public parking garage of up to 395 spaces should a vehicle repair and preparation facility accessory to an automobile showroom be located on the first below-grade level. The Commission acknowledges that this concurrent application proposes 105 fewer spaces and only one entrance and exit on West 57<sup>th</sup> Street.

The Commission notes that the location of the proposed parking garage and its access on West 56<sup>th</sup> Street and West 57<sup>th</sup> Street would not draw vehicles through local residential streets given that the streets surrounding the project site are not residential in nature and the garage would be accessed primarily from Route 9A and West 57<sup>th</sup> Street. There is relatively little foot traffic along West 57<sup>th</sup> and West 56<sup>th</sup> streets as there is no pedestrian crosswalk across Route 9A. West 57<sup>th</sup> Street is a main two-way street and Route 9A is a major arterial road that can accommodate traffic volumes generated by the proposed garage.

### **Text Amendment**

The Commission believes that the application for the text amendment, as modified herein, is appropriate.

The Commission is aware that the text amendment to include the project area in Appendix F, Inclusionary Housing designated areas, will permit the applicant to provide affordable housing to low-income households in an amount up to 20% of residential floor area. The Commission recognizes the paramount value of new, affordable housing and that this text amendment

introduces a significant incentive to provide a large number of units for low-income households on the development site.

The Commission understands that the applicant may lease ground floor commercial space to an automobile showroom. Eleventh Avenue has historically been referred to as “Automobile Row”, with dealerships and mechanics lining the avenue for almost one mile south of West 59<sup>th</sup> Street. The proposed development is replacing two dealerships and a repair facility. The text amendment to allow vehicle repair and preparation in the project area will allow the showroom tenant to include vehicle servicing as part of its sales establishment within a mixed-use, predominantly residential building. The Commission notes that this amendment mirrors prior amendments to allow for the both automobile sales and repairs within mixed-use developments along Eleventh Avenue, such as at Riverside Center and 770 11<sup>th</sup> Avenue (Mercedes House) and believes the co-location of such uses is appropriate.

The Commission acknowledges that the applicant seeks a text amendment to modify the base floor area for calculating Inclusionary Housing in the project area, which would allow up to 4.0 FAR of non-residential floor area without increasing the proportion of affordable housing required to generate the full floor area bonus. Further, the text levels the density of mixed-use developments where commercial buildings may be built to 10 FAR as of right, but a mixed commercial-residential building would be limited to 9 FAR under the Inclusionary Housing Program. The Commission acknowledges comments from the Community Board, Borough President and other elected officials that the text amendment potentially reduces the floor area used to calculate Inclusionary Housing and the overall amount of affordable housing that would otherwise be required to be developed on the site. Similarly, the Commission’s primary concern is the maximization of affordable housing at this site. While the applicant seeks the modification to allow flexibility in an uncertain leasing market, the Commission believes that the applicant has not demonstrated a sufficiently critical commercial or community facility program to warrant the ultimate reduction of floor area for affordable housing. The Commission, therefore, modifies the text to remove this provision.

The Commission further notes that all Inclusionary Housing designated areas in New York City exclude ground floor non-residential floor area from the floor area required to receive a bonus for providing affordable housing. The Commission acknowledges the importance of ground floor commercial, retail and community facility uses in drawing pedestrians to the far western end of West 57<sup>th</sup> Street. In the report concerning 625 West 57<sup>th</sup> Street (C 120397 ZSM), across the street from the project area, the Commission acknowledged that ground floor uses are critical to the activation of West 57<sup>th</sup> Street and the successful integration of the project into the surrounding community.

The Commission notes that the applicant filed a revised text amendment on February 27, 2014 to establish a special permit to allow transient hotels in the project area. The C4-7 district permits transient hotels as a matter of right. This additional text amendment was filed several weeks after the Commission's public hearing and has not been contemplated as part of the originally proposed text amendments. There has been no public discussion of the inclusion or exclusion of hotel uses on the development site. Lacking sufficient time and information to consider this amendment, the Commission believes this amendment is inappropriate to consider as part of this application and modifies the text to remove this provision.

The Commission additionally makes a modification to the text of Section 96-81 (R10 Districts) in the Special Clinton District, Excluded Areas to remove an obsolete cross-reference to Section 23-954. Section 96-81 currently exempts Inclusionary Housing designated areas in R10 districts in Excluded Areas from being subject to the height and setback provisions of Section 23-954. However, Section 23-954 was amended in 2013 to exempt all compensated developments in R10 districts without a letter suffix in Inclusionary Housing designated areas from being subject to the height and setback provisions referenced in this section.

## **RESOLUTION**

**RESOLVED**, that having considered the Final Environmental Impact Statement (FEIS), for which a Notice of Completion was issued on March 7, 2014, with respect to this application

(CEQR No. 13DCP080M), the City Planning Commission finds that the requirements of the New York State Environmental Quality Review Act & regulations, have been met and that:

1. Consistent with social, economic, and other essential considerations, from among the reasonable alternatives thereto, the Proposed Action adopted herein is one which minimizes or avoids adverse environmental impacts to the maximum extent practicable; and
2. The adverse environmental impacts disclosed in the FEIS will be minimized or avoided to the maximum extent practicable by incorporating as conditions to the approval, pursuant to the Restrictive Declaration marked as Exhibit A, those project components related to the environment and mitigation measures that were identified as practicable.
3. No development pursuant to this resolution shall be permitted until the Restrictive Declaration attached as Exhibit A, as same may be modified with any necessary administrative or technical changes, all as acceptable to counsel to the Department of City Planning, is executed, and such Restrictive Declaration shall have been recorded and filed in the Office of the Register of the City of New York, County of New York.

This report of the City Planning Commission, together with the FEIS, constitute the written statement of facts, and of social, economic and other factors and standards, that form the basis of the decision, pursuant to Section 617.11(d) of the SEQRA regulations; and be it further

**RESOLVED**, the City Planning Commission, in its capacity as the City Coastal Commission, has reviewed the waterfront aspects of this application and finds that the proposed action is consistent with WRP policies; and be it further

**RESOLVED**, by the City Planning Commission, pursuant to Sections 197-c and 200 of the New York City Charter, that based on the environmental determination and the consideration

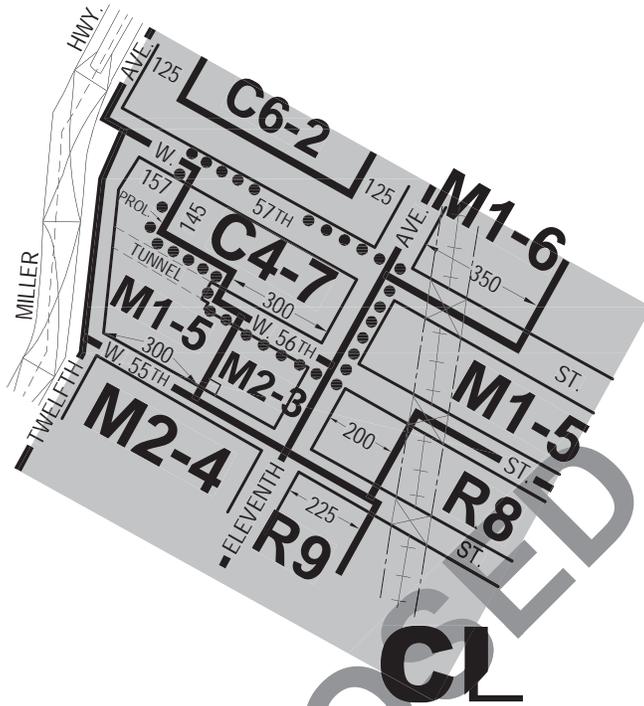
described in this report, the Zoning Resolution of the City of New York, effective as of December 15, 1961, and as subsequently amended, is further amended by changing the Zoning Map, Section No. 8c:

1. changing from an M1-5 District to a C4-7 District property bounded by a line midway between West 57th Street and West 56th Street, a line perpendicular to the northerly street line of West 55th Street distant 300 feet easterly (as measured along the street line) from the point of intersection of the easterly street line of Twelfth Avenue and northerly street line of West 55th Street, West 56th Street, a line 300 feet westerly of Eleventh Avenue, a line 145 feet southerly of West 56th Street, and the southerly prolongation of a line 157 feet easterly of Twelfth Avenue; and
2. changing from an M2-3 to a C4-7 District property bounded by West 57th Street, Eleventh Avenue, West 56th Street, a line perpendicular to the northerly street line of West 55th Street distant 300 feet easterly (as measured along the street line) from the point of intersection of the easterly street line of Twelfth Avenue and northerly street line of West 55th Street, a line midway between West 57th Street and West 56th Street, and a line 157 feet easterly of Twelfth Avenue;

Borough of Manhattan, Community District 4, as shown on a diagram (for illustrative purposes only) dated October 21, 2013, and subject to the conditions of CEQR Declaration E-324.

The above resolution (C 130336 ZMM), duly adopted by the City Planning Commission on March 17, 2014 (Calendar No. 1), is filed with the Office of the Speaker, City Council and the Borough President in accordance with the requirements of Section 197-d of the New York City Charter.

**CARL WEISBROD**, Chairman  
**KENNETH J. KNUCKLES, ESQ.**, Vice Chairman  
**ANGELA M. BATTAGLIA, RAYANN BESSER, IRWIN G. CANTOR, P.E.,**  
**ALFRED C. CERULLO, III, BETTY Y. CHEN, MICHELLE R. DE LA UZ,**  
**RICHARD W. EADDY, ORLANDO MARIN**, Commissioners



CITY PLANNING COMMISSION  
 CITY OF NEW YORK  
 DIAGRAM SHOWING PROPOSED  
**ZONING CHANGE**  
 ON SECTIONAL MAP  
**8c**

BOROUGH OF  
**MANHATTAN**

New York, Certification Date  
 OCTOBER 21, 2013

J. Miraglia, Director  
 Technical Review Division



**NOTE:**

- Indicates Zoning District Boundary.
- The area enclosed by the dotted line is proposed to be rezoned by changing from M1-5 and M2-3 Districts to a C4-7 District.
- Indicates a Special Clinton District.



CITY OF NEW YORK

**MANHATTAN COMMUNITY BOARD FOUR**

330 West 42<sup>nd</sup> Street, 26<sup>th</sup> floor New York, NY 10036  
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**COREY JOHNSON**  
Chair

**ROBERT J. BENFATTO, JR., ESQ.**  
District Manager

December 9, 2013

Amanda M. Burden, Chair  
City Planning Commission  
22 Reade Street  
New York, New York 10007

**re 606 W. 57 LLC c/o TF Cornerstone Inc.**  
*C 130336ZMM (zoning map change)*  
*NI30337ZRM (zoning text amendment) Special Regulation in Northern Subarea C1*  
*NI30338ZRM (zoning text amendment) Inclusionary Housing Designated Areas*  
*C 130339ZSM (Special Permit) Parking Garage*  
*NI30340ZAM (Authorization) Curb Cut*

Dear Chair Burden,

At its full board meeting on December 4, 2013, Manhattan Community Board 4 (MCB4) reviewed an application by 606 W. 57 LLC (the "Applicant") for land use approvals to facilitate the development of a portion of the block bounded by West 56<sup>th</sup> Street, West 57<sup>th</sup> Street, Eleventh Avenue, and Twelfth Avenue in Manhattan with a new, mixed use residential and commercial development which may include community facility, public parking and automotive sales and service uses (the "Project" or the "Proposed Project").

The proposed actions include a rezoning of a portion of the block, an amendment to the Zoning Resolution to designate the Project Area an Inclusionary Housing area, two text amendments to the Zoning Resolution, a special permit for a public parking garage, and an authorization to permit a curb cut.

The Board by a vote of 28 in favor, 5 opposed, 1 abstention and 4 present but not eligible **recommended approval** of the proposed rezoning, the amendment for Inclusionary housing, and authorization for a curb cut, **recommended approval with a condition** on the text amendment to allow an automotive showroom as it relates to the base residential floor area, and **recommended denial** of the special permit for a garage **unless** the parking is accessory with a maximum of 400 spaces.

**The Project**

The Project Area is located along the west side of Manhattan, on the northern edge of the Special Clinton District and covers a portion of Manhattan Block 1104 bounded by Twelfth Avenue

(Route 9A) to the west, Eleventh Avenue to the east, West 56<sup>th</sup> Street to the south, and West 57<sup>th</sup> Street to the north. The portion of the Project Area consisting of Block 1104, Lots 31, 40, 44, and 55 is owned by the Applicant and referred in the Board's letter as the "Development Site."

Immediately to the north of the Project Area is a C4-7 commercial district, the same district proposed in this application. A portion of this block is developed with the Helena, a 38-story residential building with 597 dwelling units, built in 2003. The remainder of the block was recently rezoned from an M1-5 district to a C6-2 district to permit the development of a new high-rise, mixed-use residential and commercial building, a rehabilitated and expanded residential building a small community facility building. This block is expected to be built to its full adjusted maximum FAR of 8.80.

The block directly to the south of the Development Site is zoned M1-5 and M2-3 and contains a five-story mixed office and retail building, a six-story building housing music studios, and several two- to three-story commercial buildings. To the southeast, the portion of the block between West 54<sup>th</sup> and West 55<sup>th</sup> Streets, zoned as an R9 residential district, is developed with a 38-story mixed residential and commercial building.

To the west of the Development Site is a large M2-3 district that extends from Route 9A into the Hudson and includes Hudson River Park and several piers.

The applicant proposes development of the Proposed Project would provide new residential uses, including affordable housing units, in the neighborhood, complement the existing residential uses surrounding the Development Site and revitalize the vacant portions of the Project Area with a mixed-use building.

### **The Building**

The proposed land use actions would facilitate the development of an approximately 450-foot high mixed-use building on the Development Site. The building would occupy the entire Development Site and could include a maximum of approximately 999,636 zoning square feet in total. The applicant expects to construct approximately 956,636 zoning square feet of residential space (up to 1,189 residential units of which 20% or up to 237 units would be affordable), up to approximately 106,900 square feet of public parking and approximately 42,000 zoning square feet of retail or community facility uses.

The Mixed-Use Building is designed to include four distinct elements. It will rise to a maximum of 450 feet (42 stories). On the eastern half of the Development Site would be two towers, each up to 28 stories tall. These two towers would be perpendicular to one another and connected by a 20-foot wide glass bridge on all floors, which would take residents from the core in the north/south tower to the apartments in the east/west tower. The glass bridge would create a visual separation between the towers. A 14-story cube would sit atop the two towers. Atop the cube would be a 20-foot tall parapet enclosing mechanical equipment. A fourth building element on the western portion of the site would be oriented parallel to West 57<sup>th</sup> Street and designed to be 17 stories tall, with a setback at the seventh floor.

## **Proposed Actions and MCB4 Comments**

1. Rezoning of a portion of the block bounded by West 56<sup>th</sup> Street, West 57<sup>th</sup> Street, Eleventh Avenue and Twelfth Avenue in Manhattan from the existing M2-3 and M1-5 districts to a C4-7 commercial district.

*The Board recommends approval.*

The proposal would rezone the majority of the Project Area from an M2-3 manufacturing district to a C4-7 commercial district. A small, southwestern portion of the Project Area (covering approximately 15% of the area to be rezoned) would be rezoned from an M1-5 light manufacturing zone to a C4-7 commercial district.

2. An amendment to the Zoning Resolution of the City of New York ("ZR" or "Zoning Resolution"), section 23-90, Appendix F, to designate the Project Area an Inclusionary Housing designated area.

*The Board recommends approval only in conjunction with the second action (inclusionary housing).*

The Applicant proposes an amendment to Appendix F of the Zoning Resolution to designate the Project Area an Inclusionary Housing Area in order to incorporate the benefits of the Inclusionary Housing Program in the Proposed Project. Through the provision of affordable housing, the Applicant would be permitted to build up to 12.0 FAR, up from a base residential FAR of 9.0 without the bonus.

The Board is pleased that the development will result in at least 237 permanently affordable units. The board asks that the applicant agree in writing to distribute the affordable unit throughout 80% of the building and that the fixtures and finishes will be the same as the finishes for the market-rate units. The Board also asks that all tenants be allowed to use any amenities and that a reduced fee schedule be available to the affordable unit renters.

3(a) A text amendment to allow an automotive showroom with repairs, applicable to the Project Area in the "Other Area" (Northern Subarea C1) in the Special Clinton District;

3(b) a text amendment to allow Zoning Resolution §96-34, applicable to the Project Area in the "Other Area" (Northern Subarea Ca) in the Special Clinton District to provide a base residential floor area ratio of 9.0 with affordable housing equal to 20% of the residential floor area on the Development Site required to achieve the Inclusionary Housing bonus, which facilitates more than one floor of commercial and community facility uses.

*The Board recommends approval of 3a.*

The proposed text amendment to ZR §96-34 would allow for a maximum base residential FAR of 9.0 plus a FAR equal to 0.25 times the non-residential FAR provided on the zoning lot, up to 10.00 FAR, with the potential to reach up to 12.0 FAR only through the provision of affordable housing pursuant to ZR § 23-90 (Inclusionary Housing).

*The Board recommends approval of 3b with a condition.*

The Board supports the auto showroom with repairs but strongly believes that when providing a base FAR for the residential that the inclusionary housing be measured from 20% of the entire floor area (residential and commercial) and not just the residential. Otherwise the community is getting less affordable units for such a large project.

The floor area regulations for the Perimeter Area of the Special Clinton District (SCD) refer to “floor area ratio” and “floor area” increase. These floor area regulations and defined terms have been a part of the Special Clinton District since its inception in 1973. These definitions do not preclude commercial floor area; they simply include the entire floor area of the building. As this new project is located within the Special Clinton District, CB4 believes that these defined terms should apply. CB4 requests that CPC modify the proposed text amendment from “residential floor area ratio” to “floor area ratio” as is common throughout the SCD.

4. A special permit pursuant to ZR §13-45 for a public parking garage which would contain up to 500 spaces or, depending on the ground floor uses, up to 395 spaces.

*The Board recommends denial unless the garage is accessory parking only and the maximum is 400 space with the automotive use and 295 without an automotive use.*

In order to allow the Applicant to build the Proposed Garage with either 395 or 500 public parking spaces as part of the Proposed Project, the Applicant is seeking a special permit pursuant to ZR § 13-45 for both alternatives.

The Proposed Garage would replace the 1,000-space public parking garage being demolished as part of the Proposed Project. The Proposed Garage would include either include 500 spaces on three levels with entrances on both West 57<sup>th</sup> and West 56<sup>th</sup> Street, or 395 spaces with a garage entrance.

CB4 has no objection an increase of 105 spaces over the 237 spaces permitted as of right by the zoning (20% of residences) in Manhattan Core to facilitate economic development in the form of an automotive use. However, since there are or will be in excess of 1,000 public parking spaces within 500 ft of this proposed parking facility, we do not agree that the applicant has further met the findings prescribed in 13-451 (a) (2) that the number of off-street parking spaces in the proposed parking facility is reasonable and not excessive. (On 59<sup>th</sup> Street, 500 feet away, Riverside Center is under construction with 1,500 parking spaces, or 625 in excess of the maximum allowed by manhattans core zoning as of right. On the north side of 57<sup>th</sup> Street, 285 parking spaces were approved, or 122 in excess of the Manhattan core zoning and there is another 399 spaces public parking garage on that block.)

The Board also urges the Applicant to work with DOT to install split phase traffic lights on West 57<sup>th</sup> and Eleventh Avenue. The Applicant states that it will work with the Durst project across 57<sup>th</sup> Street to see if jitney service can accommodate both developments.

5. Authorization pursuant to ZR§ 13-441 to permit a curb cut on a wide street in Manhattan Community District 4.

*The Board recommends approval.*

In order to accommodate ingress and egress from the Proposed Garage, the Applicant is requesting an authorization to permit the extension of an existing curb cut along West 57<sup>th</sup> Street by approximately 8 feet, from 14 feet to 22 feet and to remove all other curb cuts.

In addition, the applicant has agreed to plant more trees around the entire perimeter of the proposed rezoning area as per the plan presented to us at the Clinton/Hell's Kitchen Land Use Committee meeting and to work with Con Ed on the proper placement of Con Ed vaults so to prevent the loss of space on the sidewalk for greening purposes.

Along West 57<sup>th</sup> Street, there are six existing curb cuts on the Development Site, each measuring between approximately ten feet and 63 feet, and one additional curb cut for the DSNY Garage. The westernmost curb cut is approximately 157 feet from Twelfth Avenue and the easternmost curb cut is approximately 100 feet from Eleventh Avenue. Along West 56<sup>th</sup> Street, there are two curb cuts on the Development Site located in the mid-block, measuring approximately 17 feet and 22 feet, respectively.

**Comments**

At the public hearing on this application, a number of speakers expressed great concern that the addition of hundreds of new residents and their families would not be matched by a commensurate increase in school seats, library capacity, or police, fire, and EMS service delivery. For example speakers stated that according to recent data, schools in Hell's Kitchen are already at or over capacity. And that the EAS methodology is flawed because it neither assessed a wide enough area nor measured the cumulative impact of multiple developments in the immediate vicinity. Board 4 would like to work with City Planning to develop a better method to determine the actual impact on a community when large numbers of new residential units are built.

The Board also requests the Applicant come to an agreement with the service workers union, Local 32BJ, regarding the building's future service employees prior to the public hearing at the City Planning Commission.

Sincerely,



Corey Johnson  
Chair



Jean-Daniel Noland, Co-Chair  
Clinton/Hell's Kitchen Land Use Committee

cc: Edith Hsu-Chen, Karolina Hall - DCP  
Gail Benjamin, Danielle DeCerbo – City Council Land Use Division  
Melanie LaRocca - NYC Council Speaker Christine Quinn

Brian Cook, Michael Sandler – Manhattan Borough President Scott Stringer  
NYS Senator Brad Hoylman  
NYS Assemblyman Richard Gottfried  
US Congressman Jerrold Nadler

# Borough President Recommendation

City Planning Commission  
22 Reade Street, New York, NY 10007  
Fax # (212) 720-3356

## INSTRUCTIONS

1. Return this completed form with any attachments to the Calendar Information Office, City Planning Commission, Room 2E at the above address.
2. Send one copy with any attachments to the applicant's representative as indicated on the Notice of Certification.

Application: C 130336 ZMM, N 130338 ZRM, and C 130339 ZSM

### Docket Description:

**C 130336 ZMM - IN THE MATTER OF** an application submitted by 606 W. 57 LLC pursuant to Sections 197-c and 201 of the New York City Charter for the amendment of the Zoning Map, Section 8c:

1. changing from an M1-5 District to a C4-7 District property bounded by a line midway between West 57<sup>th</sup> Street and West 56<sup>th</sup> Street, a line perpendicular to the northerly street line of West 55<sup>th</sup> Street distant 300 feet easterly from the point of intersection of the easterly street line of Twelfth Avenue and a northerly street line of West 55<sup>th</sup> Street, West 56<sup>th</sup> Street, a line 300 feet westerly of Eleventh Avenue, a line 145 feet southerly of West 56<sup>th</sup> Street, and the southerly prolongation of a line 157 feet easterly of Twelfth Avenue; and

2. changing from an M2-3 to a C4-7 District property bounded by West 57<sup>th</sup> Street, Eleventh Avenue, West 56<sup>th</sup> Street, a line perpendicular to the northerly street line of West 55<sup>th</sup> Street distant 300 feet easterly from the point of intersection of the easterly street line of Twelfth Avenue and northerly street line of West 55<sup>th</sup> Street, a line midway between West 57<sup>th</sup> Street and West 56<sup>th</sup> Street, and a line 157 Feet easterly of Twelfth Avenue.

**C 130338 ZSM - IN THE MATTER OF** an application submitted by 616 W. 57 LLC pursuant to Sections 201 of the New York City Charter for the amendment of the for an amendment of the Zoning Resolution of the City of New York, relating to Appendix F (Inclusionary Housing Areas) for the designation of the project area as an Inclusionary Housing Eligible Area to facilitate the development of a mixed use building

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COMMUNITY BOARD NO:

4

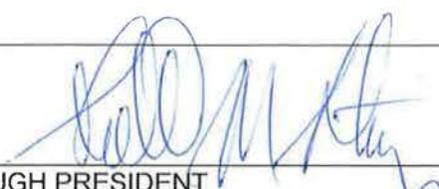
BOROUGH: Manhattan

## RECOMMENDATION

- APPROVE
- APPROVE WITH MODIFICATIONS/CONDITIONS (List below)
- DISAPPROVE
- DISAPPROVE WITH MODIFICATIONS/CONDITONS (Listed below)

EXPLANATION OF RECOMMENDATION – MODIFICATION/CONDITIONS (Attach additional sheets if necessary)

See Attached

  
BOROUGH PRESIDENT

12-31-13  
DATE

**C 130338 ZSM - IN THE MATTER OF** an application submitted by 616 W. 57 LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Sections 13-45, 13-451 and 13-454 of the Zoning Resolution to allow a public parking garage with a maximum capacity of 500 spaces, on portions of the ground floor, P1, P2 and P3 levels of a proposed mixed-use development on property located at 606 West 57<sup>th</sup> Street (Block 1104, Lots 31, 40, 44, and 55), in a C4-7 District, within the Special Clinton District, Borough of Manhattan, Community District 4.

# Borough President Recommendation

**City Planning Commission**  
22 Reade Street, New York, NY 10007  
Fax # (212) 720-3356

## INSTRUCTIONS

1. Return this completed form with any attachments to the Calendar Information Office, City Planning Commission, Room 2E at the above address.
2. Send one copy with any attachments to the applicant's representative as indicated on the Notice of Certification.

Application: N 130137 ZRM and N 130138 ZCM

### Docket Description:

**C 130337 ZSM - IN THE MATTER OF** an application submitted by 616 W. 57 LLC pursuant to Sections 201 of the New York City Charter for the amendment of the for an amendment of the Zoning Resolution of the City of New York, relating to Article IX, Chapter VI (Special Clinton District) for special floor area and use regulations in Northern Subarea C1.

COMMUNITY BOARD NO: 4

BOROUGH: Manhattan

## RECOMMENDATION

- APPROVE
- APPROVE WITH MODIFICATIONS/CONDITIONS (List below)
- DISAPPROVE
- DISAPPROVE WITH MODIFICATIONS/CONDITONS (Listed below)

EXPLANATION OF RECOMMENDATION – MODIFICATION/CONDITIONS (Attach additional sheets if necessary)

See Attached

\_\_\_\_\_  
BOROUGH PRESIDENT

12-31-13  
\_\_\_\_\_  
DATE



THE CITY OF NEW YORK  
**OFFICE OF THE PRESIDENT**  
BOROUGH OF MANHATTAN

SCOTT M. STRINGER  
BOROUGH PRESIDENT

December 31, 2013

**Recommendation on**  
**ULURP Application Nos. C 130336 ZMM, N 130337 ZRM, C 130339 ZSM, and N 130340**  
**ZAM – 606 West 57<sup>th</sup> Street by 606 W. 57 LLC**

**PROPOSED ACTIONS**

606 W. 57 LLC<sup>1</sup> (“the applicant”) seeks a number of land use approvals to facilitate the development of a mixed residential and commercial development on a portion of the block bounded by West 56<sup>th</sup> and West 57<sup>th</sup> streets between Eleventh and Twelfth avenues in the Clinton neighborhood of Manhattan Community District 4. The applicant seeks the following actions:

1. A **zoning map amendment** changing the existing M2-3 and M1-5 districts on the site to a C4-7 commercial district;
2. A **text amendment** to Appendix F of the Zoning Resolution (“ZR”) to designate the project area an Inclusionary Housing designated area;
3. A **text amendment** to ZR § 96-34 to provide a base residential floor area ratio (“FAR”) of 9.0 with affordable housing equal to 20 percent of the residential floor area and to allow an automobile showroom with repairs;
4. A **special permit** pursuant to ZR § 13-45 for a public parking garage which would contain up to 500 spaces; and
5. An **authorization** pursuant to ZR § 13-441 to permit a curb cut on a wide street.

*Zoning Map Amendment*

The proposal will rezone the majority of the project area from an M2-3 manufacturing district to a C4-7 commercial district. A small portion of the project area is currently zoned M1-5 and would also be rezoned C4-7. The rezoning would allow the proposed program of mixed commercial and residential development. The project would remain in the “Other Area (Northern Subarea C1)” of the Special Clinton District.

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<sup>1</sup> 606 W. 57 LLC is a subsidiary of T.F. Cornerstone Inc., a real-estate development firm managed by principals Thomas and Frederick Elghanayan.



### *Zoning Text Amendment*

The applicant seeks two zoning text amendments. The first, adding the project area to Appendix F of the ZR, would allow the applicant to participate in the Inclusionary Housing affordable housing program. Inclusion in the program would allow the applicant to build up to an FAR of 12.0 from a residential base FAR of 9.0.

The second proposed text amendment, to ZR § 96-34, applicable to the “Other Area (Northern Subarea C1) of the Special Clinton District would allow the base residential FAR of 9.0 to increase .25 FAR for every 1 FAR of non-residential floor area, up to a maximum base of 10.0 FAR. The maximum building FAR of 12.0 could only be achieved through the provision of affordable housing equal to 20 percent of the residential floor area. A base FAR increase from 9.0 to 10.0 is dependent on the inclusion of non-residential floor area and would encourage the addition of more than one floor of commercial uses. The text amendment would also allow an automobile showroom with repairs.

### *Special Permit*

Pursuant to ZR § 13-041(d), in C4-7 districts public parking garages require a special permit from the City Planning Commission (“CPC”). The applicant seeks to build either 395 or 500 parking spaces, thus requiring a special permit pursuant to ZR § 13-45. The applicant would be required to comply with all applicable provisions of ZR § 13-20 (Special Rules for Manhattan Core Parking Facilities). In addition the CPC must find that:

1. the locations of entrances and exits to the facility will not interrupt the flow of pedestrian traffic or result in any undue conflict pedestrian and vehicular movements;
2. the location of entrances and exits to the facility will not interfere with the efficient functioning of the streets, including any lanes dedicated to specific types of users or vehicles, such as bus lanes;
3. any floor space exempted from the definition of floor area is needed in order to prevent excessive on-street parking; and
4. the parking facility is consistent with the character of the existing streetscape.

In addition to these general findings, there are applicable findings for any parking facility that will serve the needs of a development that have a lot area of greater than 1.5 acre. In developments where the parking facility would serve a predominantly residential large-scale development, the applicant must show that either (a) the number of proposed parking spaces is reasonable in relation to recent trends in close proximity with regard to the increase in the number of dwelling units in the area and the number of available off-street parking spaces, or (b) the proposed ratio of parking spaces to dwelling units does not exceed 20 percent. The applicant must further show that the relocation of parking users by the elimination of parking spaces by the proposed development will cause the supply of parking in the vicinity to be insufficient. Finally, the applicant must show that reasonable measures have been identified to minimize parking demand and that these measures have been implemented, where possible, prior to application.

### *Authorization*

The applicant seeks an authorization pursuant to ZR § 13-441 to permit a curb cut on a wide street in Manhattan Community District 4. The authorization would permit the extension of an existing curb cut along West 57<sup>th</sup> Street by approximately 8 feet, from 14 to 22 feet. The CPC

may authorize a curb cut on a wide street provided that its location (a) is not hazardous to traffic safety, (b) will not create serious traffic congestion or unduly inhibit vehicular movement, (c) will not adversely affect pedestrian movement, (d) will not interfere with the efficient functioning of bus lanes, and (e) will not be inconsistent with the character of the existing streetscape.

## **PROJECT DESCRIPTION**

The applicant seeks to develop a 450-foot tall mixed residential and commercial building. The proposed development would include up to 956,636 square feet of residential space containing 1,189 units of which 237 would be affordable. The building would also include approximately 42,000 square feet of commercial or community facility space on the ground floor along Eleventh Avenue and West 57<sup>th</sup> Street.

### **Existing Conditions**

The block containing the development site, currently zoned M1-5 and M2-3, contains a variety of commercial and infrastructure uses. Pursuant to a 99-year ground lease, the applicant controls four parcels on the block totaling an area of 1.9 acres. The portion of the area controlled by the developer contains two structures and open service areas used by Lexus and Acura for auto sales and service, a four-story parking garage with a licensed capacity for 1,000 spaces, and a one-story auto repair shop. There are three parcels on the block not controlled by the applicant. To the west of the project site sits a New York City Department of Sanitation garage and storage facility that connects to another portion of the garage on the block to the south through a span over West 56<sup>th</sup> Street. On the southeast corner of the block is a six-story commercial building with an auto showroom on the first floor and the headquarters for the Gristedes grocery store chain. On the northeast corner of the block is a five-story office building with a restaurant and bar occupying the ground floor. The two parcels along Eleventh Avenue would be rezoned with this proposal, but the Sanitation Garage would remain M1-5.

Along West 57<sup>th</sup> Street there are six existing curb cuts on the development site, each measuring between 10 and 63 feet, and one curb cut for the Sanitation Garage. On West 56<sup>th</sup> Street there are two curb cuts on the development site, measuring 17 and 22 feet.

### *Area Land Use and Zoning*

The western section of the Clinton community, bounded by Route 9A and Tenth Avenue, historically contained manufacturing uses. In recent years, however, many parcels have been redeveloped and the area now contains a mix of mid- and high-rise residential buildings, commercial buildings, automobile showrooms, office space, warehouses and film and television studios.

Immediately to the north of the proposed development is a C4-7 commercial district, the same district as proposed for this project. The southeastern portion of the block is developed with The Helena, a 38-story residential building with 597 dwelling units. The remainder of the block was rezoned in 2012 from an M1-5 to a C6-2 district to permit the development of a new high-rise, mixed use residential, a rehabilitated and expanded residential building, and a small community facility building (C 120396 ZMM). The block is expected to be built to its full maximum FAR

of 8.8. Farther north is the existing Consolidated Edison facility and the large scale Riverside Center Development project.

To the northeast of the project area sits a new John Jay College building at West 58<sup>th</sup> Street and 11<sup>th</sup> Avenue on a portion of the block zoned M1-6. M1-6 districts allow an FAR of up to 10.0. There several small M1-5 and R8 districts between Tenth and Eleventh avenues, from West 55<sup>th</sup> to 59<sup>th</sup> streets.

Directly to the south of the proposed development is a block zoned M1-5 and M2-3. In addition to the continuation of the Sanitation Garage this block contains a five-story mixed office and retail building, a six-story building housing music studios, and several two- and three-story commercial buildings. Farther south is manufacturing districts, with a number of automobile showrooms including a large BMW showroom on Eleventh Avenue between West 55<sup>th</sup> and 56<sup>th</sup> streets, as well as Audi/Volkswagen, Cadillac, Toyota, Land Rover and other dealerships.

To the southeast of the development, a portion of the block between West 54<sup>th</sup> and 55<sup>th</sup> streets is zoned R9 and is developed with a 38-story residential and commercial building. There is a 900-unit residential development currently being constructed on the east side of Eleventh Avenue between West 53<sup>rd</sup> and 54<sup>th</sup> streets that was approved by the CPC in 2009 (C 080008 ZMM).

### *Special Clinton District*

The proposed project sits in the Other Area of the Special Clinton District. Established in 1974, the district was created to preserve and strengthen the residential character of a community bordering Midtown, maintain a broad mix of incomes, and ensure that the community is not adversely affected by new development. The district established a “Preservation Area,” from West 43<sup>rd</sup> to 56<sup>th</sup> streets between Eighth and Tenth avenues, with an R7 zoning and a six-story height limit on new buildings. To the east and south of the Preservation Area is a perimeter area designed to provide appropriate transitions between the lower-scale side streets and the Special Hudson Yards District to the south and the Special Midtown District to the east. The Other Area, to the west and north of the Preservation Area, was established to maintain a mix of residential, industrial and waterfront uses. Inclusionary Housing is mapped in parts of the district.

### *Transportation*

The proposed development site is not particularly well served by rail mass transit. The closest subway station is 59<sup>th</sup> Street/Columbus Circle serviced by the 1, A, C, B, and D lines. The M57 and M31 bus lines run along West 57<sup>th</sup> Street to the corner of Eleventh Avenue and the M11 bus runs along Tenth Avenue. Because of the distance between Eleventh Avenue and the nearest subway, many large residential buildings in the area run private shuttle services, or “jitneys,” to Columbus Circle.

### *Open Space*

Three blocks south of the site is DeWitt Clinton Park, a New York City park that occupies two city blocks bounded by Eleventh Avenue, Twelfth Avenue, West 52<sup>nd</sup> Street, and West 54<sup>th</sup>

Street. The park includes a baseball diamond and other sports fields and a large playground. To the west of the development is the Hudson River Park, which extends from Battery Park to West 59<sup>th</sup> Street. Pier 96 in the park, at West 56<sup>th</sup> Street, is operated by the Downtown Boathouse and water sports and other recreational activity. Pier 97, at West 57<sup>th</sup> Street, was formerly used by the Department of Sanitation for truck parking but is now planned as a public park and recreation area. The planned park is currently unfunded, however, and it is unknown when it will be built.

### **Proposed Project**

The proposed mixed-use building would contain four distinct elements. On the eastern half of the development would be two towers, each 28 stories tall, sitting perpendicular to one another and connected by a 30-foot wide glass bridge on all floors. The glass bridge would connect residents from the building's elevator core in the north/south tower to the apartments east, in the east/west oriented tower. Atop these two towers is a 14-story glass cube, the facades of which would not line up with those of the towers below, creating the illusion of a separate building element. On the western portion of the site would sit another element, 17 stories tall and oriented along West 57<sup>th</sup> Street. This portion, too, would connect to the others via a 30-foot wide glass bridge. This building element would be built atop a six-story base, with a large portion cantilevered to the west, leaving a large hole that will allow views from West 57<sup>th</sup> street into the interior of the block. There will be a large open space for residents on the second story in the interior of the block that will be visible through this cut. The tall, blank rear wall of the Sanitation garage rises in this space and the applicant has committed to activating it to create visual interest.

The lobby for the proposed building would be located midway along the building's West 57<sup>th</sup> Street façade. The remainder of the West 57<sup>th</sup> Street and Eleventh Avenue frontages, except for a curb cut at the western end of the development site, would include retail uses. The West 56<sup>th</sup> Street façade only extends for 100 feet and would include loading docks and an entrance to either a public parking garage or an automobile repair facility. Through an agreement with the Department of Sanitation, all garbage for the proposed building will be housed in compactors inside these loading docks. The Department of Sanitation will collect the entire compactor and return it empty, removing the need for street side waste collection.

The proposed development will contain a public garage with either 395 or 500 parking spaces on up to three levels. The proposed garage would replace the 1,000-space garage being demolished as part of the project. If approved, the proposed actions would allow an automobile showroom with repairs. Were the project to include a repair facility, this belowground space would be accessed on West 56<sup>th</sup> Street, and the garage would contain 395 spaces with both entrance and exit on West 57<sup>th</sup> Street. If an automotive tenant were not found the garage would contain 500 spaces with entrances and exits on both West 56<sup>th</sup> and 57<sup>th</sup> streets. The West 57<sup>th</sup> Street entrance would be accessed by an existing curb cut, which would be extended from 8 to 22 feet and sits 60 feet from the existing curb cut for the Sanitation Garage. A new curb cut would be added on West 56<sup>th</sup> Street that would be 22-feet wide and would sit 240 feet west of Eleventh Avenue. In addition to the automobile parking the building will have parking spaces for 600 bikes, including a bike parking area on the ground floor adjacent to the building lobby.

## **Proposed Actions**

In order to facilitate the proposed project the applicant is seeking a rezoning and related actions from the CPC.

### *1. Rezoning*

The proposal would rezone the project area from M2-3 and M1-5 manufacturing districts to a C4-7 commercial district. The rezoned area would continue to be located within the Other Area (Northern Subdistrict C1) of the Special Clinton District. While C4-7 districts normally carry a base FAR of 10.0 which can be increased to 12.0 FAR through Inclusionary Housing, the base residential FAR for this site would be modified by text amendment to be 9.0, which is consistent with the new Inclusionary Housing program.

### *2. Amendment to ZR Appendix F*

The first text amendment would designate the project an Inclusionary Housing Designated Area in order to incorporate the benefits of the Inclusionary Housing program into the project. This proposed action would allow for the creation of 237 units of affordable housing.

### *3. Amendment to Special Clinton District*

The proposed text amendment would create a section § 96-34 within the Special Clinton District for special regulation in Northern Subarea C1. The text amendment would establish a base FAR of 9.0, however, the base FAR may be increased .25 for every 1 FAR of non-residential uses provided on the zoning lot, up to a maximum of 10.0 FAR. This base FAR could be increased to 12.0 FAR through the provision of affordable housing pursuant to ZR § 23-90. This proposed text would set the amount of affordable housing at 20 percent of the residential floor area. Whereas first floor commercial space is typically excluded from floor area calculations for the amount of required affordable housing, this text would encourage the addition of commercial space above the first floor by also excluding this space.

The proposed text amendment would also add special use regulations for Northern Subarea C1 that would allow, below the level of the lowest floor occupied by dwelling units, automobile showrooms with repairs. While auto sales would be permitted as-of-right in a C4-7 district, repairs, which are permitted under the current zoning, are not.

### *4. Special Permit for Parking*

As described above, the applicant seeks to build a public parking garage of either 395 or 500 spaces pursuant to ZR § 13-45. As of right, the applicant is permitted 210 parking spaces based on the residential and commercial components of the project. The proposed project will displace an existing 1,000 space garage. The applicant is proposing an increase in the size of the as-of-right garage based on demand and availability of parking in the neighborhood and the inability of the displaced parkers to be absorbed into the existing parking supply.

### *5. Authorization for a Curb Cut on a Wide Street*

Pursuant to ZR § 13-241(c), curb cuts for accessory off-street parking facilities can not be located on a wide street. The applicant is seeking an authorization pursuant to ZR § 13-441 to locate an entrance and exit to the proposed parking facility on West 57<sup>th</sup> Street. There are currently six curb cuts along West 57<sup>th</sup> Street on the proposed site. The proposed program will remove all of the curb cuts except for the westernmost, which will be expanded from 14 to 22 feet.

### **Anticipated Impacts Under a Reasonable Worst-Case Development Scenario**

The Draft Environmental Impact Statement (“DEIS”) identified a Reasonable Worst-Case Development Scenario for the proposed actions, which assumes a new development on the project site and a potential development on the southeastern out-parcel. The DEIS assumes that residential development would be unlikely on this site, and instead assumes the potential for a small hotel, which based on the size of the lot would contain 181 rooms. Based on this development scenario, the DEIS identifies a number of potential significant adverse impacts.

#### *Community Facilities and Services*

Analysis indicates that elementary schools in the area will operate with a shortage of seats by the 2017 build year, and that this project would increase the size of that shortage by 4.7 percent. This is less than the CEQR standard of five percent for a significant adverse impact, but is nonetheless a real impact. The project will also include 238 low- to moderate-income units, which are predicted to bring in 27 children under the age of six who would be eligible for publicly funded child care programs. With the addition of these children, child care facilities in the study area would operate at a 162 percent utilization rate, which represents an increase in the utilization rate of 7.9 percentage points over the no action scenario.

#### *Transportation*

The project could result in significant adverse traffic impacts at a number of area intersections during the day and at night on weekdays and weekends. These impacts could be mitigated through signal alterations and other traffic calming measures. The project could also lead to significant adverse impacts on bus lines along West 57<sup>th</sup> in both the morning and evening peak hours. This could be mitigated with additional bus service.

### **COMMUNITY BOARD’S RECOMMENDATION**

At its full board meeting on December 4, 2013, Manhattan Community Board 4 (“CB 4”) approved by a vote of 28 in favor, 5 opposed, and 4 present but not eligible to vote for a resolution recommending: **approval** of the proposed rezoning, the amendment for Inclusionary Housing, and the authorization for a curb cut; **conditional approval** of the text amendment to change the base residential floor area and allow automotive use; and **conditional disapproval** of the special permit for a parking garage.

On the text amendment for Inclusionary Housing, the Board voted yes, but asks that the applicant agree to distribute the affordable units throughout 80 percent of the building, rather

than the mandated 65 percent. The Board also asks that the fixtures be the same in the affordable and market rate units and that all building amenities be available to affordable tenants at an affordable price.

CB 4 issued a conditional approval on the text amendment to the Special Clinton District. The Board supports the added use of an auto showroom with repairs, but recommended that the bonus FAR for the Inclusionary Housing be measured as 20 percent of the entire floor area (residential and commercial) and not just the residential. CB 4 believes that projects with large commercial components should provide additional affordable housing.

The Community Board issued a recommendation of conditional disapproval for the special permit for a parking garage. The Board has no objection to an increase over the 210 spaces permitted as of right but believes that the applicant has not met the findings prescribed in ZR § 13-451(a)(2) that the number of off-street parking spaces is reasonable and not excessive. They cite a number of developments less than 500 feet away that have or will have in excess of 1,500 parking spaces. They recommend that the maximum number of parking spaces be reduced to 400 spaces, or 295 spaces with an auto use. Additionally, the board requested that the applicant work with DOT to install split-phase traffic lights on West 57<sup>th</sup> Street and Eleventh Avenue and work with neighboring building owners to explore shared jitney service.

#### **BOROUGH PRESIDENT'S COMMENTS**

Generally, rezoning existing manufacturing and commercial areas for affordable housing is consistent with the long term needs of Manhattan. The proposed rezoning of the project site will facilitate this development and will support the longstanding goals of the Special Clinton District of enabling a mixed use, 24-hour community on the west side. Therefore, the proposed rezoning to C4-7 is appropriate. The text amendment to designate the project area an Inclusionary Housing Eligible Area similarly furthers the goals of the Special Clinton District to maintain a broad mix of incomes.

Further, the proposed project will transform underutilized land on the west side creating construction jobs and over 1,000 units of housing. More importantly, it will create 237 units of permanently affordable housing and will have large retail spaces that can bring jobs to the community.

This project will help to enliven the area and, if properly planned for and altered to minimize adverse impacts, will be a boon to the neighborhood. The Development, though of a similar scale to neighboring projects, is nonetheless significantly dense and has the potential to generate significant impacts on the overall neighborhood. Any project of this scale must be carefully examined and planned to fit within with the existing neighborhood. .

#### *Maximizing Affordable Housing*

The applicant is seeking, through a text amendment, to alter the base floor area calculations for C4-7 districts. While these districts typically carry an FAR of 10.0, the applicant is seeking the set the base residential FAR at 9.0 plus the product of .25 times the amount of non-residential floor area, up to a maximum of 10.0. Under standard inclusion zoning, ground floor retail is

currently exempted from the base when calculating the number of affordable units. This exemption serves the purpose of promoting neighborhood retail and prevents small business owners from shouldering the burden of higher rents to pay for affordable housing. The proposed text, however, also incentivizes commercial uses above the first floor of the building up to 4 FAR. If the applicant utilizes this provision of the text, it would reduce the amount of affordable housing in the building.

The zoning text being sought by the applicant has previously been used in the Hudson Square and M1-6D rezonings as a way to prevent residential conversions from crowding out commercial space in special districts. This is a tool that the Department of City Planning has used to promote mixed use districts with a large commercial component. The applicant in this case, however, has not shown that this type of planning goal is warranted.

While the applicant, who has not yet found commercial tenants for this building, may want the flexibility to rent commercial or retail space above the first floor, they have not shown that this would be a benefit to the community over the potential affordable housing. The project being proposed is primarily a residential project, and it is going in to a neighborhood that is increasingly residential as well. While neighborhood-oriented ground floor retail could be an asset to the community by bringing street activity and services, there is no planning rationale for the City to incentivize additional commercial space in this area.

Furthermore, the Community Board has asked that *all* floor area, including ground floor retail, be counted when calculating the base FAR for Inclusionary Housing. Using the full FAR of the building would result in approximately 10 additional affordable housing units. While the planning rationale for excluding this space is well understood, more research should be undertaken to investigate where this type of inclusion is appropriate. In many parts of Manhattan, ground floor retail floor area rents for much higher prices than other parts of the City. In these areas, it may be appropriate to use a higher base for determining the number of required affordable units.

The Inclusionary Housing program is based off of approvals from the Department of Housing Preservation and Development that includes evaluations of the pro formas of each potential project. As significant new development has occurred within the immediate area, the city should have enough information to evaluate whether or not the full FAR of the building could be included in the Inclusionary housing calculation. As such, the City should perform a detailed analysis to determine the financial viability of including the ground floor retail in the Inclusionary Housing program.

Finally, it is important with the Inclusionary Housing program that residents of the affordable units are treated as full residents of the building. The Community Board has asked that the affordable units be distributed through at least 80 percent of the building and that the fixtures and finishings in the affordable units be the same as in the market rate units. This is an important provision that will ensure that affordable tenants experience the full benefits of the Inclusionary Housing program.

*Accurately Measuring Parking Needs*

The applicant is proposing a parking facility of up to 500 spaces to replace the existing parking facility on the site. The proposed development is adjacent to Route 9A and is far from public transit, so parking is generally a reasonable use in this area. Community District 4, however, because of its adjacency to Midtown on one side and the Lincoln Tunnel on the other, has increasingly become a regional parking hub. Though a citywide need for parking exists, Community Board 4 contends that they are overburdened with parking facilities. Because of this, proposed parking facilities in Community District 4, especially parking facilities considerably larger than those allowed as of right, deserve strict scrutiny.

ZR § 13-454(c) requires that, for projects that are eliminating existing parking and seeking to replace that parking in a new facility, applicants show the availability of off-street parking in the area is insufficient to accommodate the displaced users and any new users generated by the project. Using overnight parking in the current facility as a measure of residential parking demand, the applicant found that 700 residential parkers would be displaced by the proposed project. By looking at the current utilization rate of the 17 parking facilities nearby, the applicant determined that existing parking garages could accommodate 197 of these displaced parkers at a 90 percent utilization rate.

In recent discussions of parking needs, a 90 percent utilization rate has been used because this is the level at which parking garage managers prefer to operate to maximize profits. A 90 percent occupancy rate has not, however, been reasonably established as a legitimate planning goal. Parking capacity is an absolute number, not a percentage of parking available. Prior to the City's new Manhattan parking rules, special permit applications typically used a 100 percent utilization rate to measure existing capacity and there is significant precedent for this measure.

Using the more accurate measure of existing capacity, the applicant's case for additional parking need is not as strong. Using 100 percent capacity, there are an available 441 spaces at existing facilities at weekday midday utilization. Looking to the 2017 build year, the applicant found that projects currently being planned would increase parking demand by an additional 1,366 parkers but that only 991 additional parking spaces will be added (again, at a 90 percent utilization rate). Actual capacity for the expected projects will be 1,101 spaces meaning a projected shortfall of 265, rather than the 375 claimed by the applicant. These 265 parkers can be accommodated in existing garages with 176 spaces to spare. Additionally, the applicant uses questionable logic when estimating the amount of available parking at 40 Riverside Center, which is near the boundary of the 1/3 mile study area. The project will create 535 spaces, and demand generated by the project itself is estimated at 105 cars. Because this project is near the boundary of the study area, the applicant uses CEQR guidelines and assumes that only 20% of the remaining space will be available to parkers in the study area. While Riverside Center is not immediately adjacent to the proposed development, it is immediately adjacent to other projects for which anticipated demand is being factored in, so the full amount of parking at this site should be counted. This adds an additional 344 spaces over what is being claimed by the applicant, leaving 520 spaces<sup>2</sup> available to accommodate the displaced 700 overnight parkers.

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<sup>2</sup> 344 spaces plus the remaining 176 spaces from existing capacity unused by other anticipated projects

Based on finding (b) of ZR § 13-451 as well as ZR §§ 13-12 and 13-12, the applicant is allowed a garage of 248 spaces.<sup>3</sup> The proposal would double that garage size. The scale of the garage being requested is not warranted by the applicant's assessment of existing supply and anticipated demand, but the applicant does show that there is some amount of unmet demand created by the removal of the 1,000 space parking garage. As such, the community board's request that the total permitted parking spaces be reduced by 100 spaces is appropriate.

#### *Additional Projected Impacts*

The proposed project would bring a large number of residential tenants to a block that currently has no residential component. The impact of these new residents on city services must be carefully evaluated to ensure that the new development will not overly burden the neighborhood. The project is expected to bring 143 new elementary school students to the district in the build year of 2017. Elementary schools in Subdistrict 3 of Community School District 2 will operate with a shortage of seats without the proposed actions, but the proposed actions would increase that shortage by 4.7 percent. This is less than the CEQR guideline of five percent for a significant adverse impact, but is close enough that it should be treated as a legitimate impact and should be planned for.

The project is similarly close to creating a significant adverse impact on open space. The area surrounding the project currently does not meet the City Planning guidelines of having 2.5 acres of open space for every 1,000 residents. There are a number of new developments planned in addition to the proposed project, but the applicant's DEIS estimates that open space per 1,000 residents would be reduced by 3.81 percent, and that passive open space would be reduced by 4.23 percent. This open space calculation includes the assumption that Pier 97 of the Hudson River Park will be completed as both passive and active open space. This project is not funded, however, so without action there is no reason to assume that this will be completed by 2017.

Furthermore, the DEIS assumes that the outparcel on the southeast corner of the rezoning could become a small hotel. While there is no reason to believe that this parcel is reasonably expected to be developed in the near future, were it to be developed it could also become a 125-unit residential building, which would have an additional impact on available open space and public schools.

In order to ensure that the development relates harmoniously with the neighborhood, these potential impacts should be explored and where possible mitigation should be provided. The applicant has agreed, in a Community Board 4 Clinton/Hells Kitchen Land Use Committee meeting to plant trees and other greenery around the perimeter of the entire lot. This commitment to improving the public realm should be followed-through on, in addition to any potential mitigation measures.

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<sup>3</sup> ZR §13-11 allows up to 200 accessory spaces in CD4. An additional 10 spaces are generated by the commercial component of the project pursuant to ZR §13-12. ZR §13-451(b) allows additional spaces based on a percentage of the number of units over 1,000, giving them an additional 38 spaces (20 percent of the 189 units over 1,000)

## **BOROUGH PRESIDENT'S RECOMMENDATION**

The proposed project will bring affordable housing and jobs to a block that is currently underused on the west side of Manhattan. The rezoning and some related actions are needed to allow this much-needed project. If the project is altered to follow the underlying floor area rules of the Special Clinton District and efforts are taken to mitigate any adverse impacts the project will fit harmoniously with the existing and soon-to-be developed community.

**Therefore, the Borough President recommends conditional approval of ULURP Application Nos. C 130336 ZMM, N 130338 ZRM and C 130339 ZSM for the zoning map amendment changing the project area to a C4-7, the zoning text amendment designating the project area an Inclusionary Housing Eligible Area, and the special permit for a parking garage provided that:**

- 1. the applicant explore opportunities to mitigate potential building impacts on parks, schools and child care centers;**
- 2. the public parking garage is reduced in size to a maximum of 400 permitted spaces without an auto use or 295 with an auto use;**
- 3. the affordable units are spread through 80 percent of the building, include the same fixtures and finishes as the market rate units, and come with access to all building amenities; and**
- 4. the applicant follow through on the commitment to add street trees and greenery to the entire block.**

**Further, the Borough President recommends conditional disapproval of Application No. N 130337 ZRM for special regulations in Northern Subarea C1 of the Special Clinton District provided that:**

- 1. the proposed zoning text be changed to remove the modified floor area calculations and reflect the underlying regulations of C4-7 districts, the Special Clinton District and the Inclusionary Housing program, which will promote affordable housing rather than significant commercial development; and**
- 2. the City and the applicant explore increasing the amount of affordable housing in the project to be equal to 20 percent of the entire floor area of the building rather than just the residential component.**



Scott M. Stringer  
Manhattan Borough President

Exhibit A

3/17/2014

**RESTRICTIVE DECLARATION**

THIS DECLARATION ("Declaration"), made as of this \_\_\_ of \_\_\_\_\_, 2014 by 606 WEST 57 LLC (formerly known as 602 West 57 LLC), a New York limited liability company, having an address at 387 Park Avenue South, 7<sup>th</sup> Floor, New York, New York 10016 ("Declarant") and by Four Plus Corporation, a New York corporation, having an address at 5251 Hampstead High Street, Suite 300, Montgomery, Alabama 36116, GE 57th Street South Holdings, LLC, a Delaware limited liability company, having an address c/o JPMorgan Chase Bank, N.A., 345 Park Avenue, 16th Floor, New York, New York 10017, Attention: Real Estate Management Services, EE 57th Street South Holdings, LLC, a Delaware limited liability company, having an address c/o JPMorgan Chase Bank, N.A., 345 Park Avenue, 16th Floor, New York, New York 10017, Attention: Real Estate Management Services, Swallow II, LLC, a Delaware limited liability company, having an address at c/o Goulston & Storrs PC, 400 Atlantic Avenue, Boston, Massachusetts 02110, Attention: Nancy Samiljan, Esq., Fadling II, LLC, a Delaware limited liability company, having an address at c/o Goulston & Storrs PC, 400 Atlantic Avenue, Boston, Massachusetts 02110, Attention: Nancy Samiljan, Esq., and Appleby-South Holdings, LLC, a Delaware limited liability company, having an address at c/o Graeme Philip, Wombly Carlyle Sandridge & Rice, LLP, 5 Exchange Street, Charleston, South Carolina 29401 (collectively, "Owner Declarants" and individually, each an "Owner Declarant").

**WITNESSETH:**

WHEREAS, Owner Declarants are the sole fee owners of certain real property located in the Borough of Manhattan, County of New York, City and State of New York, designated

for real property tax purposes as Block 1104, Lots 31, 40, 44 and 55 and known by the street address 606 West 57th Street, and which is more particularly described in Exhibit A annexed hereto and made a part hereof (the “Subject Property”);

WHEREAS, Declarant is the current lessee under a ground lease of the Subject Property, dated May 29, 2012 (as same may be amended from time to time, the “Ground Lease”), between Owner Declarants, as landlord, and Declarant, as tenant;

WHEREAS, the Ground Lease is for a term of ninety-nine years, subject to the provisions of the Ground Lease;

WHEREAS, Declarant has filed applications with the New York City Planning Commission (“CPC”) requesting (i) a rezoning of a portion of Block 1104 consisting of the Subject Property and Lots 25, 29 and 36 (collectively, the “Rezoning Area”) from the existing M2-3 and M1-5 districts to a C4-7 commercial district (Application #130336 ZMM) (the “Rezoning Application”); (ii) a text amendment to the Zoning Resolution of the City of New York effective as of December 15, 1961, as amended (“ZR” or the “Zoning Resolution”) Appendix F to designate the Rezoning Area an Inclusionary Housing designated area (Application #N130337 ZRM); (iii) a text amendment to ZR §96-34, applicable to the Rezoning Area in the “Other Area” (Northern Subarea C1) in the Special Clinton District, (Application #N130337 ZRM); (iv) a special permit pursuant to ZR §13-45 for public parking for up to 500 cars (Application #130339 ZSM) (the “Special Permit Application”); and (v) authorization pursuant to ZR §13-441 to permit a curb cut on a wide street in Manhattan

Community District 4 (Application #N130340ZAM) (items (i) through (v) collectively, the “Land Use Applications”; the Land Use Applications as approved pursuant to the Final Approval (as hereinafter defined), the “Land Use Approvals”);

WHEREAS, Declarant intends to develop and operate at the Subject Property pursuant to the Land Use Approvals, a mixed-use building (such building or any new development or enlargement on the Subject Property in lieu of such building, a “Building”) including approximately 1,189 residential units, twenty percent of which will be Low-Income Units (as hereinafter defined);

WHEREAS, in connection with the Land Use Approvals, Declarant desires to enter into this Restrictive Declaration;

WHEREAS, Old Republic National Title Insurance Company has certified in the certification (the “Certification”) attached hereto as Exhibit B and made a part hereof, that as of February 24, 2014, Declarant and Owner Declarants are the sole parties-in-interest (the “Parties-In-Interest” or individually, a “Party-in-Interest”) in the Subject Property, as such term is defined in the definition of “zoning lot” in Section 12-10 of the Zoning Resolution;

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

WHEREAS, a Final Environmental Impact Statement (the “FEIS”) in connection with

the Land Use Applications was prepared and CPC issued a Notice of Completion of FEIS on March 7, 2014;

WHEREAS, the FEIS was premised upon certain limitations on the massing of the Building, and to ensure that the development of the Subject Property is consistent with the analysis in the FEIS upon which CPC has made findings pursuant to the City Environmental Quality Review, Executive Order No. 91 of 1977, as amended, and the regulations promulgated thereunder at 62 RCNY§5-01 et seq. (“CEQR”) and the State Environmental Quality Review Act, New York State Environmental Conservation Law § 8-0101 et seq. and the regulations promulgated thereunder at 6 NYCRR Part 617 (“SEQRA”), and that the development of the Subject Property includes project components related to the environment as set forth in Sections 1 and 2 herein which were relevant to the analysis of certain environmental impacts in the FEIS (“PCREs”), Declarant 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

WHEREAS, Declarant desires to restrict the manner in which the Subject Property is developed in the future and intends these restrictions to burden the Subject Property;

NOW THEREFORE: the Declarants hereby declare, covenant and agree as follows:

1. Development of Zoning Lot. If the Subject Property is developed, in whole or in part, with the Building, the restrictions set forth in Section 2(a) below (the “Air Quality Restrictions”); Section 2(b) below (the “Transportation Mitigation”); Section 2(c) below (the

“Day Care Measures”, the Air Quality Restrictions, the Transportation Mitigation, and the Day Care Measures collectively the “Project Environmental Measures”); Section 3 below (the “Construction Environmental Measures,” or “CEMS,” collectively with the Project Environmental Measures, the “Environmental Measures”); and Section 5 below (the “Design Requirements”) shall be implemented in accordance with the provisions of this Declaration.

2. Air Quality, Transportation and Day Care.

(a) Air Quality Restrictions. The Subject Property shall be developed and improved as follows:

(i) The maximum height of the Building or any other development on the Subject Property shall be 450 feet above curb level, as the term “curb level” is defined in the Zoning Resolution (as so defined, “Curb Level”), except for obstructions to height and setback regulations permitted by the Zoning Resolution. (The Building or any other development on the Subject Property, exclusive of permitted obstructions, shall be referred to as the “Building Massing”.)

(ii) The maximum height of that portion of the Building Massing located within the area bounded to the east by the property line of the Subject Property located along the west side of Eleventh Avenue (the “Eleventh Avenue Property Line”) and bounded to the west by a line 115 feet to the west of, and parallel with, the Eleventh Avenue Property Line shall be 300 feet above Curb Level.

(b) Transportation Mitigation. The FEIS identifies traffic mitigation measures (the “Transportation Mitigation Measures”) described in Exhibit C annexed hereto

to address certain potential significant traffic impacts identified in the FEIS. In connection with the issuance of the earlier of a temporary certificate of occupancy ("TCO") or a permanent certificate of occupancy ("PCO") for all of the residential floor area in the Building, Declarant shall, at its expense and as described further below, conduct a traffic monitoring plan (a "TMP") in accordance with Section 2(b)(ii) hereof to determine the need for and any adjustments to the traffic mitigation measures described in Chapter 19 (Mitigation) of the FEIS ("Adjustments"); provided that any such Adjustments shall be the most cost-effective measures available; provided, further, that the TMP is intended to be supplemental to and not in duplication or replacement of the FEIS.

(i) Within six (6) months of the date that a TCO is issued for all of the residential floor area in the Building, Declarant shall prepare and submit to New York City Department of Transportation ("DOT") for its review and approval, a detailed scope of work for the TMP pursuant to the guidelines set forth in section 2(b)(ii) herein and, consistent with the criteria set forth in Chapter 19 (Mitigation) of the FEIS. Declarant shall implement at its expense the entire approved TMP, the findings of which will be used by DOT as the basis for approving, adjusting and/or implementing mitigation measures.

(ii) The TMP shall be prepared in order to verify the projected traffic conditions, any significant adverse traffic and pedestrian operational and safety impacts, and the need for traffic mitigation measures identified in the FEIS. The scope of work submitted for the review and approval of the New York City Department of City Planning ("DCP") and DOT shall include critical locations where significant traffic and pedestrian impacts have been identified in the FEIS as well as other locations which could potentially be impacted. Data collection to be

conducted for the TMP will include nine days of 24-hour Automatic Traffic Recorder (ATR) machine counts along with one typical day of manual turning movement counts, vehicle classification counts, pedestrian and bicycle counts, intersection geometry, field verified signal timing, and any other relevant information necessary for conducting the traffic and pedestrian analysis following the CEQR Technical Manual guidelines then in effect. The TMP shall also include field observations of intersection operations and queue lengths. Intersection capacity and level of service analyses shall be performed using the Highway Capacity Software (HCS) and/or Synchro to determine whether actual future Action conditions have, in fact, resulted in significant traffic and pedestrian impacts at the same or new locations, and to verify and/or identify the need for mitigation measures through the TMP. In addition, the TMP will assess vehicular, pedestrian and cyclist safety and recommend safety improvements measures where warranted. Declarant must obtain approval from DCP and DOT regarding traffic and pedestrian analysis locations prior to initiating data collection. The Declarant will be responsible for all costs associated with the TMP including data collection and analysis. For any improvement measures, required by DOT as a result of the TMP, as set forth further in Section 2(b)(iii) below, the Declarant will be responsible for all costs associated with its design and implementation, and submit all of the required drawings/design as per American Association of State Highway and Transportation Officials and DOT specifications for DOT review and approval. DOT will participate in the review process relating to all future modifications to geometric alignment, striping and signage during the preliminary and final design phases.

(iii) Unless, following the implementation of the TMP, DOT finds that some or all of the mitigation measures described in the FEIS are not necessary or appropriate, Declarant shall

send written notice to DOT, requesting that DOT implement the traffic mitigation measures set forth in Chapter 19 (Mitigation) of the FEIS, as adjusted for any Adjustments required by DOT as a result of the TMP. Declarant shall comply with DOT requirements necessary to implement the traffic mitigation measures included in the FEIS or similar types of measures having comparable benefits as specified by DOT based on the results of the TMP, and shall either implement such measures as directed by DOT, or, if directed by DOT, pay DOT/City of New York for the ordinary and customary costs, if any, of implementing such measures (including but not limited to the costs of the design and construction of such measures), upon request of DOT accompanied by appropriate supporting documentation. Declarant shall also be responsible for submitting for review proposed mitigation measures to other appropriate City agencies such as DCP, following the completion of the TMP. Declarant shall submit all of the required drawings/designs per DOT specifications for DOT review and approval. To the extent that DOT does not approve or deems unnecessary one or more of the traffic mitigation measures set forth in Chapter 19 (Mitigation) of the FEIS, Declarant shall have no further obligation with respect to such measures.

(c) Publicly Funded Child Care Facilities.

(i) In the event more than 152 affordable housing units (meaning units designated for residents with incomes at or below 80% of the area median income (the “Low-Income Units”)), are provided in the Building, the Building shall be considered a “Child Care Eligible Building.” Declarant shall provide funding for a specified number of publicly-provided child care slots ( “Funded Child-Care Slots”) based on the number of Low-Income

Units in the Building and the corresponding number of such “Slots in Excess of Impact Threshold” as set forth in Table 1 on Exhibit D-1 attached hereto and made a part hereof.

(ii) Declarant shall give the New York City Administration of Children’s Services (“ACS”) and DCP at least 90 days’ notice before requesting a TCO or a PCO (whichever is earlier) for the residential floor area associated with greater than 152 Low-Income Units in the Building. Such notice shall be in writing, and shall specify (x) the date upon which the Declarant expects to request a TCO or PCO for the residential floor area associated with greater than 152 Low-Income Units in the Building; (y) the number of Low-Income Units to be located in the Child Care Eligible Building, noting the number in excess of 152; and (z) the number of Funded Child-Care Slots required pursuant to (i) above.

(iii) Declarant shall provide funding for the required number of Funded Child-Care Slots at the rate set forth in Table 2 on Exhibit D-2 attached hereto and made a part hereof (the “Child Care Funding Obligation”). The amount of the Child Care Funding Obligation shall be calculated by multiplying the applicable Cumulative Six Year Cost Per Slot set forth on Table 2 for the year of occupancy by the number of Funded Child-Care Slots required; provided that if the year of occupancy is later than 2021, ACS shall propose a Cumulative Six Year Cost Per Slot which shall be reasonably calculated based on the Cumulative Six Year Cost Per Slot numbers set forth on Table 2. Notwithstanding any of the foregoing, Declarant shall not be required to provide more than 10 Funded Child-Care Slots in connection with the Building.

(iv) For a Child Care Eligible Building, Declarant shall provide to ACS a payment, in a form reasonably acceptable to the City, equal to the Child Care Funding Obligation (the “Child Care Payment”). Within ten (10) days of notice of the Child Care Payment for a Child Care Eligible Building, DCP shall certify in writing to the New York City Department of Buildings (“DOB”) that the Child Care Payment has been made for the Building. Declarant shall not apply for or accept a TCO or PCO for the residential floor area associated with greater than 152 Low-Income Units in the Building until DCP has certified to DOB that the Child Care Payment has been made. For avoidance of doubt, the Child Care Funding Obligation shall not be required in the event that 152 or fewer Low-Income Units are provided on the Subject Property.

(v) In the event that, based upon the review of subsequent availability of publicly funded day care slots, utilization and demand, DCP in consultation with ACS determines that the Child-Care Funding Obligations should not apply or could be reduced, the terms herein may be modified to be consistent with such determination, provided that Declarant records a notice of such change against the Subject Property in the Office of the City Register for New York County, in lieu of an amendment to this Declaration. The form of notice is subject to approval of DCP, and a copy of such notice upon its recording shall be provided to DCP.

(d) Stormwater Management.

(i) Prior to Commencement of Construction, Declarant shall prepare and submit to the New York City Department of Environmental Protection (“DEP”) a best

management practices plan (“BMP Concept Plan”) consistent with the FEIS, that may include both structural (e.g., silt fencing, inlet protection, and installation of a stabilized construction entrance) and nonstructural (e.g., routine inspection, dust control, cleaning, and maintenance programs, instruction on the proper management, storage, and handling of potentially hazardous materials) best management practices.

(ii) DOB shall not issue, and Declarant shall not accept, a Building Permit for the Building until Declarant shall have certified to the Commissioner of DOB that a BMP Concept Plan has been submitted to DEP.

(iii) Any plans and drawings submitted by Declarant to DOB in connection with a building permit for the Building shall reflect and be consistent with the BMP Concept Plan.

(iv) Declarant shall have the right to modify and add to the BMP Concept Plan, provided that such revisions are consistent with the requirements of this Declaration.

(v) Prior to accepting a TCO for any portion of the Building, Declarant shall certify to DOB that all provisions of the BMP Concept Plan have been implemented.

3. Construction Environmental Measures. Prior to Commencement of Construction (hereinafter defined) of the Building and subject to review by DCP pursuant to Section 4 of this Declaration, Declarant shall (x) develop a plan for implementation of, and (y) thereafter implement, the measures set forth herein relating to traffic, air quality and noise during the construction of the Building (the “Construction Environmental Measures” or “CEMs”).

(a) Construction Environmental Measures Relating to Air Quality.

Declarant shall (x) develop a plan for implementation of and (y) thereafter implement, an emissions reduction program (the "Emissions Reduction Plan") during construction of the Building to minimize to the extent practicable diesel particulate matter ("DPM") emissions due to such construction. The Emissions Reduction Plan shall include the following:

(i) *Diesel Equipment Reduction.* Where practicable, Declarant will apply for grid power connectivity early so as to facilitate the availability of grid power connections throughout the Subject Property.

(ii) *Clean Fuel.* Ultra-low sulfur diesel fuel shall be used exclusively for construction equipment powered by diesel engines throughout the Subject Property.

(iii) *Best Available Tailpipe Reduction Technologies.* Non-road diesel engines with a power rating of 50 horsepower (hp) or greater and controlled truck fleets (i.e., truck fleets under long-term contract with the project) including but not limited to concrete mixing and pumping trucks, shall utilize the best available tailpipe technology for reducing DPM emissions. Construction contracts for the Building shall specify that all diesel non-road engines rated at 50 hp or greater would utilize diesel particulate filters ("DPF"), either installed on the engine by the original equipment manufacturer or a retrofit DPF verified by the United States Department of Environmental Protection ("EPA") or the California Air Resources Board verification programs, and may include active DPFs, if necessary, or other technology proven to achieve equivalent emissions reduction.

(iv) *Utilization of Newer Equipment.* All non-road construction equipment with a power rating of 50 hp or greater utilized in the construction of the Building

shall meet at least the EPA's Tier 3 emissions standard. All non-road engines used in construction of the Building rated less than 50 hp shall meet at least the EPA's Tier 2 emissions standard.

(v) *Dust Control.* Declarant shall implement or cause to be implemented all necessary measures to comply with the New York City Air Pollution Control Code regulating construction-related dust emissions. Contracts for construction shall specify fugitive dust control plans (including, without limitation, as appropriate, chutes for material drops during demolition, watering of truck routes as needed to avoid the re-suspension of dust, tight-fitting tailgates for all trucks hauling loose materials, and water sprays).

(vi) *Source Location.* To the extent practicable and where logistics allow, large emissions sources and activities such as concrete trucks and pumps shall be located away from sensitive receptor locations.

(vii) *Idle Restriction.* In addition to adhering to the New York City law restricting unnecessary idling on roadways, contracts for construction shall require all on-site vehicle idle time to be restricted to three minutes for all equipment and vehicles that are not using their engines to operate a loading, unloading, or processing device (e.g., concrete mixing trucks) or otherwise required for the proper operation of the engine.

(b) Construction Environmental Measures Relating to Noise Reduction.

Declarant shall (x) develop a plan for implementation of and (y) thereafter implement, a plan for the reduction of construction noise from construction-related activities during the development of the Subject Property, which plan shall include:

(i) The following source controls in accordance with the New York City Noise Control Code:

(A) Use, from the start of construction, of equipment that meets the sound level standards specified in Subchapter 5 of the New York City Noise Control Code and will meet the noise reductions established at 50 feet with path controls as set forth in Table 17-6 of the FEIS and copied in Exhibit F attached hereto;

(B) As early in the construction period as logistics allow, replacement of diesel- or gas-powered equipment with electrical-powered equipment such as welders, water pumps, bench saws, and table saws (i.e., early electrification) to the extent feasible and practicable;

(C) Where feasible and practical, the configuration of construction sites shall minimize back-up alarm noise. In addition, all trucks would be required not to idle more than three minutes at the construction site as required by New York City Local Law;

(D) The requirement in all contractor and subcontractor contracts that their equipment and mufflers be properly maintained.

(ii) The following path controls, to the extent feasible and practical:

(A) Where logistics allow, noisy equipment, such as cranes, concrete pumps, concrete trucks, and delivery trucks, would be located away from and shielded from sensitive receptor locations. Once building foundations are completed, delivery trucks would operate, where possible, behind a construction fence.

(B) Construction of noise barriers to provide shielding (e.g., the construction sites shall have a site perimeter barrier and, where logistics allow, truck deliveries would take place behind these barriers once building foundations are completed); and

(C) Path noise control measures (i.e., portable noise barriers and panels, where feasible) will be used for certain dominant noise equipment to the extent feasible and practical (e.g., excavators with hoe ram), which measures shall comply with New York City Department of Environmental Protection (“DEP”) Rules for Citywide Construction Noise Mitigation found in Chapter 28, Title 15 of the New York City Administrative Code.

(c) Contractual Requirements. Declarant shall include enforceable contractual requirements with its contractors (and require the contractors to include enforceable contractual requirements with their subcontractors) to implement the provisions of this Section 3.

(d) Construction Environmental Measures Relating to Traffic. Declarant shall cooperate with DOT to implement measures to mitigate operational traffic impacts (including, without limitation, signal timing changes and approach daylighting) and Maintenance and Protection of Traffic (“MPT”) plans during construction of the Building. Declarant shall comply with such MPT for curb-lane and sidewalk closures and equipment staging activities as DOT’s Office of Construction Mitigation and Coordination may require.

4. Innovation; Alternatives; Modifications Based on Further Assessments.

(a) Innovation and Alternatives. In complying with the Environmental Measures, 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 which would result in equal or better methods of achieving the relevant Environmental Measures than those set forth in this Declaration (collectively, "Innovations"), and which is accepted by DCP. Declarant shall notify DCP in writing thirty (30) days prior to the implementation of any Innovations (an "Innovation Notice") and shall set forth the basis for such Innovations in such Innovation Notice. DCP shall respond to such Innovation Notice within thirty (30) days after such Innovation Notice. If DCP fails to respond in thirty days, Declarant may send a second notice (the "Second Innovation Notice") stating in all capital letters that if DCP fails to respond to the Second Innovation Notice within ten (10) business days, then DCP shall be deemed to have accepted such Innovation, and if DCP fails to respond in such ten (10) business day period, DCP shall be deemed to have accepted such Innovation.

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

implementation of the Environmental Measure, Declarant may eliminate or modify the Environmental Measure consistent with the DCP determination (“Elimination or Modification of Environmental Measure”). DCP shall respond to such Modification Request within thirty (30) days after such Modification Request. If DCP fails to respond in thirty days, Declarant may send a second request (the “Second Modification Request”) stating in all capital letters that if DCP fails to respond to the Second Modification Request within ten (10) business days, then DCP shall be deemed to have accepted such Elimination or Modification of Environmental Measure, and if DCP fails to respond in such ten (10) business day period, DCP shall be deemed to have accepted such Elimination or Modification of Environmental Measure.

(c) If Declarant implements any Alternative Environmental Measure or Elimination or Modification of Environmental Measure, a notice indicating such change, as approved by DCP Counsel’s Office, shall be recorded against the Subject Property in the Office of City Register for New York County, in lieu of an amendment to this Declaration.

5. Appointment and Role of Independent Monitor.

(a) Declarant shall, with the approval of DCP, retain an independent third party (the “Monitor”) reasonably acceptable to DCP to oversee, on behalf of DCP, the implementation and performance by Declarant of the CEMs required under Section 3 of this Declaration. The Monitor shall be a licensed engineer, licensed architect, or a general contractor or environmental consultant with relevant experience in environmental management and construction management (or multiple persons or a firm employing such

persons), including familiarity with the means and methods for implementation of the CEMs. DCP shall advise Declarant of its approval or rejection of the Monitor, as proposed, within fifteen (15) business days after Declarant provides DCP with satisfactory (as reasonably determined by DCP) documentation concerning the name and relevant experience of the Monitor or Monitors.

(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 Monitor Agreement; (iv) allow for the retention by the Monitor of sub-consultants with expertise appropriate to assist the Monitor in its performance of its obligations to the extent reasonably necessary to perform its obligations under this Declaration and the Monitor Agreement; and (v) allow for termination by Declarant for cause, but only with the express written concurrence of DCP, which concurrence shall not be unreasonably conditioned, withheld or delayed. If DCP shall fail to act upon the Monitor Agreement, as proposed,

within twenty (20) days after submission of a draft form of the Monitor Agreement, the form of the Monitor Agreement so submitted shall be deemed acceptable by DCP and may be entered into by Declarant with the Monitor. The Monitor Agreement shall provide for the commencement of services by the Monitor by the date that an excavation permit is issued by DOB for construction of a new building on the Subject Property and for the termination of the Monitor's services upon issuance of the first TCO for any portion of the Building unless the Declarant, with DCP's written concurrence or at DCP's direction, shall have earlier terminated the Monitor Agreement.

(c) The Monitor shall: (i) assist and advise DCP as set forth herein with regard to review of plans and measures proposed by Declarant for purposes of satisfying the CEMs in connection with determinations required under this Declaration as a prerequisite to Commencement of Construction; (ii) provide reports of Declarant's compliance with the CEMs during any period of construction on a schedule reasonably acceptable to DCP, but not more frequently than once per month; and (iii) review records or perform field inspections of the portion of the Subject Property then being developed as reasonably necessary to confirm that Declarant is complying with the CEMs. The Monitor may at any time also provide Declarant and DCP with notice of a determination that a CEM 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 in accordance with Section 11 hereof. The Monitor shall: (iv) have full access to the portion of the Subject Property then being developed (as referenced in the Monitor Agreement), subject to compliance with all generally applicable site safety requirements imposed by all applicable laws, statutes and

ordinances, and all orders, rules, regulations, interpretations, directives and requirements, of any Government Authority (hereinafter defined) having jurisdiction over the Subject Property, pursuant to construction contracts or insurance requirements or imposed as part of the site safety protocol in effect for the Subject Property (collectively, the “Site Safety Requirements”); (v) on reasonable notice and during normal Business Hours (hereinafter defined), be provided with access to records of Declarant pertaining to construction on the applicable portion of the Subject Property, either on or outside the Subject Property, which is reasonably necessary to carry out the Monitor’s duties, including the preparation of periodic reports; and (vi) be entitled to conduct any tests on the Subject Property to the extent such tests are (x) reasonably necessary to verify Declarant’s implementation and performance of the CEMs, subject to compliance with the Site Safety Requirements and provided further that any such additional testing shall be (y) coordinated with Declarant’s construction activities; and (z) conducted in a manner that will minimize any interference with construction of the Building. The Monitor Agreement shall provide that Declarant shall have the right to require the Monitor to secure insurance customary for such activity and may hold the Monitor liable for any damage or harm resulting from the Monitor’s activities. Nothing in this Declaration, including without limitations the provisions of this Section 5, shall be construed to make the Monitor a third-party beneficiary of this Declaration.

(d) Subject to compliance with the Site Safety Requirements, DCP, or any other applicable City agency, may, upon prior Notice or telephonic notice to Declarant, enter upon the Subject Property during Business Hours on Business Days (hereinafter defined) for the purpose of conducting inspections to verify Declarant’s implementation and performance

of the CEMs; provided, however, that any such inspections shall be (x) coordinated with Declarant's construction activities, and (y) conducted in a manner that will minimize any interference with the construction of the Building. Declarant shall cooperate with DCP (or such other applicable City agency) and its representatives, and shall not delay or withhold any information or access to the Subject Property reasonably requested by DCP (or such other applicable City agency).

(e) Declarant shall be responsible for payment of all fees and expenses due to the Monitor in accordance with the terms of the Monitor Agreement

(f) If DCP determines, based on information provided by the Monitor and/or others, or through its own inspection of the Subject Property during construction, as applicable, that there is a basis for concluding that Declarant has failed to implement or to cause its contractors to implement any of the CEMs, DCP may thereupon give Declarant Notice of such alleged violation (each, a "CEM Default Notice") transmitted by hand or overnight courier service to the address for Declarant set forth in Section 11 hereof. Following the receipt of a CEM Default Notice, Declarant shall: (i) effect a cure of the alleged violation within three (3) Business Days after the effective date of the CEM Default Notice, or if DCP reasonably determines that the nature of the violation poses an immediate threat to public health and safety, within such shorter period as such CEM Default Notice shall direct (such three (3) Business Day period or such shorter period, as applicable, the "Cure Period"); (ii) demonstrate to DCP in writing within two (2) Business Days after the receipt of the CEM Default Notice (or if DCP has reasonably determined that the nature of this violation poses an immediate threat to public health and safety, then within the Cure

Period established therefor) that the alleged violation did not occur and does not then exist; or (iii) demonstrate to DCP in writing within two (2) Business Days after the receipt of the CEM Default Notice that a Cure Period greater than three (3) Business Days would not be harmful to the environment or that the required cure cannot be accomplished within three (3) Business Days (such longer cure period, a "Proposed Cure Period"). If DCP accepts within two (2) Business Days after receipt of a writing from Declarant that the alleged violation did not occur and does not then exist, DCP shall withdraw the CEM Default Notice and Declarant shall have no further obligations with respect thereto. If DCP accepts Declarant's Proposed Cure Period in writing within two (2) Business Days after 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 two (2) Business Days after the effective date of Notice from Declarant with respect thereto, the Proposed Cure Period shall become the New Cure Period. If Declarant fails to: effect a cure of the alleged violation within the Cure Period; cure the alleged violation within the New Cure Period, if one has been established; or demonstrate to DCP's satisfaction that a violation has not occurred, then representatives of Declarant shall, promptly at DCP's request, convene a meeting at the Subject Property with the Monitor and a DCP representative. If, following such meeting, the Monitor, Declarant and DCP are unable to reasonably agree upon a method for curing the violation within a time period reasonably 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 to the extent necessary to cure the

violation. Nothing herein shall be construed as a waiver of any legal or equitable defense that Declarant may have in any enforcement action or proceeding initiated by DCP in accordance with this provision.

(g) Force Majeure Events. Notwithstanding any provision of Section 12 of this Declaration to the contrary, if Declarant is unable due to Force Majeure (as hereinafter defined) to comply with an obligation to implement any Environmental Measures pursuant to this Declaration, Declarant shall be excused from implementing such Environmental Measures if, in consultation with the Monitor, DCP has determined, in its reasonable discretion, that not implementing the applicable Environmental Measures or that implementing an alternative Environmental Measure, as applicable, would not result in any new or different significant adverse environmental impact not addressed in the FEIS.

(h) DCP Review

(i) Not less than twenty (20) days prior to the date that Declarant anticipates obtaining a Building Permit, Declarant shall send Notice to DCP, advising of Declarant's intention to undertake construction pursuant to such Building Permit (a "Permit Notice"). Any Permit Notice shall be accompanied by: 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 pursuant to such Building Permit; materials or documentation demonstrating compliance with such requirements or criteria to the extent Declarant believes that compliance has been achieved by the effective date of the Permit Notice; and to the extent that Declarant believes that compliance with any condition or criteria has not been achieved by the effective date of the Permit Notice, an explanation, where relevant, 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 compliance will be achieved in the future. Materials or documentation from any Governmental Authority (as hereinafter defined), certifying the implementation of a CEM set forth in Section 3, shall be accepted as compliance with the relevant CEM.

(ii) Following the delivery of a Permit Notice to DCP, Declarant shall, at DCP's option, 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 by Notice in order to allow DCP to determine, acting in consultation with the Monitor and any City agency personnel with applicable jurisdiction in relation to the subject matter of the Permit Notice, that the conditions and criteria for Commencement of Construction (hereinafter defined) 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 5(h) until DCP has notified 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, if DCP fails to (x) respond by Notice to Declarant within twenty (20) days after the receipt of the Permit Notice or (y) respond by Notice to Declarant within five (5) Business Days after receipt of additional materials by DCP under this Section 5(h)(ii), DCP shall be deemed to have accepted the Permit Notice and any subsequent materials related thereto under this Section 5(h)(ii) as compliance with the requirements for issuance of the Building Permit. DCP shall provide Notice of such compliance to DOB within five (5) Business Days after the

effective date of a Notice from Declarant requesting such notification to DOB and Declarant shall be entitled to accept the Building Permit and to undertake any and all activities authorized thereunder.

(iii) In the event of a disagreement between DCP or any other City agency and Declarant under this Section 5(h) as to whether any PCRE has been included or fully satisfied or will be included or fully satisfied by the measures proposed by Declarant, Declarant may appeal such matter to the Deputy Mayor of Housing and Economic Development, or any successor Deputy Mayor, and to seek resolution within thirty (30) days of Declarant's appeal thereto.

(i) Certain Definitions.

"Business Days" for purposes of this Declaration shall mean Monday through Friday, but excluding any days on which New York City government offices are generally closed.

"Business Hours" for purposes of the Declaration shall mean 9 a.m. to 5 p.m. on Business Days.

"Commencement of Construction" for purposes of this Declaration shall refer to the commencement of construction of the Building pursuant to a Building Permit.

"Government Authority" for purposes of this Declaration shall refer to any governmental authority (including any Federal, State, City or County governmental authority or quasi-governmental authority, or any political subdivision of any thereof, or any agency, department, commission, board or instrumentality of any thereof) having jurisdiction over the matter in question.

6. Design Requirements. The Subject Property shall be developed and improved in accordance with the following requirements (the “Design Requirements”):

(a) The Building Massing will be visually separated into an “Eastern Portion,” a “Middle Portion,” an “Upper Portion,” and a “Western Portion” as indicated schematically on Exhibit E attached hereto and made a part hereof. The Eastern Portion and the Middle Portion of the Building shall be connected by a translucent glass “bridge” (with bands of opaque material at the top and/or bottom of the bridge and at each floor where heating/cooling or other mechanical areas may be located and at other limited locations to cover structural elements located at the “ends’ of the bridges adjacent to the Eastern and Middle Portion).. The bridge shall be located within the area that is between 200 and 240 feet west of the Eleventh Avenue Property Line, and shall be no higher than 300 feet above Curb Level and no lower than 18 feet above Curb Level. Such bridge shall have a width along its east-west dimension of no less than 30 feet and shall be set back a minimum of 10 feet from each of the north and south facades of the Eastern Portion.

(b) The Middle Portion and the Western Portion of the Building shall also be connected by a translucent glass “bridge” (with bands of opaque material at the top and/or bottom of the bridge and at each floor where heating/cooling or other mechanical areas may be located and at other limited locations to cover structural elements located at the “ends’ of the bridges adjacent to the Middle and Western Portions).. That bridge shall be located within the area that is between 290 and 330 feet west of the Eleventh Avenue Property, and shall be no lower than 70 feet above Curb Level. Such bridge shall have a width along its

east-west dimension of no less than 30 feet and shall be setback a minimum of 10 feet from each of the north and south facades of the Western Portion.

(c) The Building Massing shall be further defined by an “Upper Portion” comprised of the uppermost floors of the Building and which will be located partially over the Middle Portion and partially over the Eastern Portion. The Upper Portion shall cantilever (i) to the west by a minimum of seven feet above the separation between the Middle Portion and the Western Portion and (ii) to the north by a minimum of three feet at the Eastern Portion, as indicated on Exhibit E.

(d) Between a height of sixty (60) feet and eighty-five (85) feet, the volume of the Western Portion shall be set back at least 10 feet from the northern boundary of the Subject Property; above this setback, the distance of the Western Portion from the street line of West 57<sup>th</sup> Street will be different than the distance of the Middle Portion from the street line of West 57<sup>th</sup> Street.

(e) A schematic drawing of the Design Requirements attached hereto as Exhibit E is included for illustrative purposes only; and it shall not be binding on Declarant except as expressly set forth in this Section 6.

7. Transportation Demand Measures. Declarant shall implement the following transportation demand measures (TDMs) to reduce automobile usage in connection with the Subject Property:

(a) *Vehicle Sharing*: The garage in the Building will reserve up to ten (10) spaces for vehicles used in a vehicle-sharing program whereby members of the public may

rent cars for short-term use. Prior to obtaining a TCO for the Building or part of the Building, Declarant shall consult with DCP and at least two vehicle sharing operators regarding the number of spaces to be reserved. If fewer than ten (10) spaces will be provided, the number of spaces to be reserved shall be subject to DCP's approval; provided that in no event shall more than ten (10) spaces shall be required.

(b) *Shuttle Service*: Within ninety (90) days after the date that eighty percent (80%) of the dwelling units in the Building are occupied, Declarant shall survey the residents of the Building to determine the times residents travel to and from the Building, the routes residents use to travel from the Building, the number of residents making such trips, and whether the residents would use a shuttle service. The survey will be conducted annually for at least the first five years of operation to determine usage preferences. Based on residents' responses, Declarant will determine whether it is practicable to (i) operate a shuttle service to Columbus Circle during peak demand hours ("Shuttle Service") or (ii) coordinate with other owners of residential buildings in the area to operate a joint shuttle service ("Joint Shuttle Service"). If a Shuttle Service or Joint Shuttle Service is not operational within sixty (60) days after each of the annual surveys, Declarant shall notify DCP why the Shuttle Service or Joint Shuttle Service has not been established, and DCP shall determine if not providing the Shuttle Service or Joint Shuttle Service is reasonable, in its discretion. If DCP determines that a Shuttle Service or Joint Shuttle Service needs to be established, DCP shall so notify the Declarant, along with DCP's rationale, and Declarant shall begin operating a Shuttle Service or Joint Shuttle Service within ninety (90) days of such notification.

8. Representation. Declarant represents and warrants that it has no knowledge of any restriction of record on the development, enlargement, or use of the Subject Property, nor any present or presently existing estate or interest in the Subject Property, nor any existing lien, obligation, covenant, easement, limitation or encumbrance of any kind that shall preclude the restrictions and obligations to develop and operate the Subject Property as set forth herein.

9. Binding Effect. The restrictions, covenants, rights and agreements set forth in this Declaration shall be binding upon Declarant and Owner Declarants (individually, an "Individual Declarant" and collectively, the "Declarants") and any successor or assign of the Declarants; provided that this Declaration shall be binding on any Individual Declarant only for the period during which such Individual Declarant, or any successor or assign thereof, is the holder of an interest in all or any portion of the Subject Property and only to the extent of such interest in the Subject Property. At such time as an Individual Declarant or any successor to an Individual Declarant no longer holds an interest in the Subject Property, such Individual Declarant's or such Individual Declarant's successor's obligations and liability under this Declaration shall wholly cease and terminate, and the party succeeding such Individual Declarant or such Individual Declarant's successor to an interest in the Subject Property shall automatically be deemed to assume the obligations and liability of such Individual Declarant pursuant to this Declaration with respect to actions or matters occurring subsequent to the date such party acquires an interest in the Subject Property, to the extent of such party's fee or ground leasehold interest in the Subject Property.

10. Effective Date and Recordation.

(a) This Declaration and the provisions and covenants hereof shall become effective on the date of the Final Approval (hereinafter defined) of the Land Use Applications (the “Effective Date”). Within ten (10) Business Days after the Effective Date, Declarant shall deliver to DCP two (2) fully executed originals of this Declaration for review to confirm the executed originals are accurate and complete. If DCP does not object to the recording of the executed Declaration within ten (10) business days after Declarant’s delivery of the originals, Declarant may submit this Declaration for recording in the Office of the City Register, County of New York, indexing it against the Subject Property and, in any event, shall submit for recording this Declaration within three (3) Business Days after such approval. Declarant shall deliver evidence of recording in the form required by DCP.

(b) If Declarant fails to record this Declaration pursuant to this Section 10(a), the City of New York (the “City”) may record a duplicate original of this Declaration, but all costs of recording, whether undertaken by Declarant or by the City, shall be borne by Declarant.

(c) “Final Approval” shall mean approval or approval with modifications of the Land Use Applications by the City Council of the City of New York (the “City Council”), or, if the City Council disapproves the decision of CPC, and the Mayor of the City of New York (the “Mayor”) files a written disapproval of the City Council’s action pursuant to New York City Charter Section 197-d(e), and the City Council does not override the Mayor’s disapproval, “Final Approval” shall mean the Mayor’s written disapproval of the City Council’s action pursuant to such New York City Charter Section 197-d(e). Notwithstanding the above, “Final Approval” shall not be deemed to have occurred for any purpose of this

Declaration if the final action taken pursuant to New York City Charter Section 197-d is disapproval of the Land Use Applications or if Declarant withdraws the Land Use Applications prior to City Council approval of the Land Use Applications.

(d) Notwithstanding the foregoing, if any administrative, judicial, or other action or proceeding is brought challenging Final Approval of any one or more of the Land Use Applications by CPC or the City Council or any action related to the Land Use Applications or any Final Approval, then Declarant, in Declarant's sole discretion may, by notice to CPC in accordance with Section 11 defer the Effective Date to the date of the final resolution of such action or proceeding upholding in all respects the validity of such Final Approval or such related action, including any appeals or requests for leave to appeal.

11. Notice. 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:

if to Declarant:  
to the address at the commencement of this Declaration  
Attention: Chief Executive Officer

with a copy to:  
to the address at the commencement of this Declaration  
Attention: General Counsel

and a copy to:  
Carol E. Rosenthal, Esq.  
Fried, Frank, Harris, Shriver & Jacobson LLP  
1 New York Plaza  
New York, NY 10004

if to CPC:  
New York City Planning Commission

22 Reade Street  
New York, New York 10007  
Attention: Chairperson

with a copy to:  
The general counsel of CPC at the same address

if to any Owner Declarant, to the address for such  
Owner Declarant set forth at the commencement of this  
Declaration

with a copy to:  
Max Friedman, Esq.  
Goulston & Storrs  
885 Third Avenue  
New York, New York 10022

if to a Party-in-Interest other than Declarant or Owner:  
at the address provided in writing to CPC in accordance  
with this Section 11

if to a Mortgagee:  
at the address provided in writing to CPC in accordance with this Section 11

Any Declarant, Owner Declarant CPC, any Party-in-Interest, and any Mortgagee may, by notice provided in accordance with this Section 11, change or add its name or address for purposes of Notices under this Declaration. In order to be deemed effective any Notice shall be sent or received in at least one of the following manners: (A) sent by registered or certified mail, postage pre-paid, return receipt requested, in which case the Notice shall be deemed received for all purposes hereunder five (5) days after being actually mailed; (B) sent by overnight courier service, in which case the Notice shall be deemed received for all purposes hereunder on the date the Notice was actually received or was refused; or (C) received by hand, in which case the Notice will be deemed received for all purposes hereunder on the date the

Notice was actually received. All Notices from CPC to any Declarant shall also be sent to every other Declarant and Party-in-Interest and every Mortgagee of whom CPC has notice, and no Notice shall be deemed properly given to any Declarant without such notice to such other Declarants, Parties-in-Interest and Mortgagee.

12. Force Majeure.

(a) “Force Majeure” for Declarant for purposes of this Declaration shall refer to any and all causes beyond Declarant’s reasonable control, 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 on 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 inordinately 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, or earthquake, flood, fire or other similar casualty of which Declarant has

given CPC or DCP notice, (viii) a taking of the whole or any relevant portion of the Subject Property by condemnation or eminent domain; (ix) unforeseen soil conditions substantially delaying construction of any relevant portion of the Subject Property; (x) denial to Declarant by any party of a right of access to any adjoining real 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.

(b) If, as the result of Force Majeure, Declarant is unable to perform or complete any of its obligations hereunder, then Declarant shall promptly after the occurrence of an event of Force Majeure becomes apparent give Notice to the Chair of the CPC. Such Notice (the “Delay Notice”) shall include a description of the event of Force Majeure, and, if known to Declarant, its or their cause and probable duration. In the exercise of his or her reasonable judgment the Chair shall, within thirty (30) days after receipt of the Delay Notice (i) certify in writing that the event of Force Majeure has occurred; or (ii) give Notice to Declarant that the Chair does not reasonably believe that the event of Force Majeure has occurred. Upon a certification that a Force Majeure event has 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 DCP in order to ensure that the obligation will be completed in accordance with the provisions of this Declaration.

(c) Upon cessation of the event of Force Majeure 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 12.

13. Defaults and Remedies.

(a) Declarant acknowledges that the restrictions, covenants, and obligations of this Declaration will protect the value and desirability of the Subject Property, as well as benefit the City. If Declarant fails to perform any of Declarant's obligations under this Declaration, the City shall have the right, subject to Subsection (b) and (c) of this Section, to enforce this Declaration and exercise any administrative legal or equitable remedy available to the City, and Declarant consents to same; provided that this Declaration shall not be deemed to diminish any Declarant's or any other Party-in-Interest's right to exercise any and all administrative, legal, or equitable remedies or defenses otherwise available to it. Declarant also acknowledges that the remedies set forth in this Declaration are not exclusive and that the City and any agency thereof may pursue other remedies not specifically set forth herein including, but not limited to, a mandatory injunction compelling Declarant to comply with the terms of this Declaration.

(b) Notwithstanding any provision of this Declaration, only the City, acting through CPC, shall be entitled to enforce or assert any claim arising out of or in connection with this Declaration; provided that a Declarant, Mortgagee or Party-In-Interest which is

curing an alleged violation pursuant to Section 13(c) hereof shall have the right to enforce the provisions of Section 13(c) of this Declaration. Nothing contained herein should be construed or deemed to allow any other person or entity to have any interest in or right of enforcement of any provision of this Declaration or any document or instrument executed or delivered in connection with the Land Use Approvals.

(c) Prior to the City instituting any proceeding to enforce the terms or conditions of this Declaration due to any alleged violation hereof, the City shall give Declarant, any Owner Declarant, every mortgagee of all or any portion of the Subject Property or an interest therein ("Mortgagee") and every Party-in-Interest thirty (30) Business Days prior Notice of such alleged violation, during which period Declarant, any Owner Declarant, any Party-in-Interest and any Mortgagee shall have the opportunity to effect a cure of such alleged violation or to demonstrate to the City why the alleged violation has not occurred. If Declarant, any Owner Declarant, any Mortgagee or any Party-in-Interest performs any obligation or effects any cure that Declarant is required to perform or cure pursuant to this Declaration, such performance or cure shall be deemed performance on behalf of the obligated parties and shall be accepted by any person or entity benefited hereunder, including CPC and the City, as performance hereunder. If Declarant, any Owner Declarant, any Party-in-Interest or any Mortgagee commences to effect such cure within such thirty (30) day period (or if cure is not capable of being commenced within such thirty (30) day period, Declarant, any Owner Declarant, any Party-in-Interest or any Mortgagee commences to effect such cure when such commencement is reasonably possible), and thereafter proceeds diligently toward the effectuation of such cure, the aforesaid thirty (30)

day period (as such may be extended in accordance with the preceding clause) shall be extended for so long as Declarant, any Owner Declarant, any Party-in-Interest or any Mortgagee continues to proceed diligently with the effectuation of such cure. In the event that any other people or entities become Parties-In Interest, Notice shall be provided to them to the extent that CPC has received Notice of their interest, and the right to cure shall apply equally to Declarant, any Owner Declarant and all Parties-in-Interest.

(d) The cure period set forth in subsection (c) above shall be subject to further extension for Force Majeure, provided that Declarant (or other party curing pursuant to this Section) shall have taken the steps required by Section 13(b) above.

(e) If, after due Notice and opportunity to cure as set forth in this Declaration, Declarant, Owner Declarant, any Mortgagee or any Party-in-Interest shall fail to cure the alleged violation, the City may exercise any and all of its rights, including without limitation those delineated in this Section 13 and may disapprove any amendment, modification or cancellation of this Declaration on the sole ground that Declarant is in default of a material obligation under this Declaration.

14. Owner Declarants. Notwithstanding anything to the contrary in this Declaration, for so long as the Ground Lease is in effect, then with respect to any portion of the Subject Property subject to the Ground Lease, this Declaration creates no obligations or restrictions on Owner Declarants, and none of the remedies set forth in Section 13 hereof or obligations set forth in this Declaration may be enforced against any Owner Declarant. Declarant shall notify DCP of termination of the Ground Lease.

15. Applications.

(a) Declarant shall include a copy of this Declaration with any application from and after the Effective Date made to DOB for a foundation, new building, alteration, or other permit (a "Permit") for any portion of the Subject Property, provided that any Permit applications made for interior renovations shall not require a copy of this Declaration to be included. Nothing in this Declaration shall be construed to prohibit or preclude Declarant from filing for, or DOB from issuing a Permit, for a portion of the Subject Property.

(b) Nothing in this Declaration shall be construed to prevent Declarant or any of Declarant's successors or assigns from making any application of any sort to any governmental agency or department (each an "Agency") in connection with the development of the Subject Property; provided that Declarant shall include a copy of this Declaration in connection with any application for any discretionary approval, and provided that nothing in this Section 15(b) shall be construed as superseding the requirements, restrictions, or approvals that may be required under agreements with any other Agency or the City.

16. Amendment, Modification and Cancellation.

(a) This Declaration may be amended, cancelled, or modified only with the express written consent of CPC or an agency succeeding to CPC's jurisdiction, and no other approval or consent shall be required from any other public body, private person, or legal entity of any kind.

(b) Notwithstanding anything to the contrary contained herein, the Chair of CPC may, by his or her express written consent, administratively approve modifications or

amendments to any of the Design Requirements set forth in Section 6 hereof and may administratively approve modifications or amendments to such other requirements which, in the sole judgment of the Chair, are determined to be a minor amendment or modification of this Declaration, and none of such changes and minor modifications and amendments shall require the approval of CPC or any other Government Authority, private person or legal entity of any kind.

(c) Notwithstanding any of the foregoing, if the Rezoning Application is not approved or is declared invalid or otherwise voided by a judgment of a court of competent jurisdiction, then, notwithstanding anything else herein to the contrary, Declarant shall have the right to proceed with use and development of the Subject Property pursuant to the Zoning Resolution, and all of the requirements of this Declaration shall be void and of no force and effect.

(d) Certificates. The City, acting through CPC or DCP shall at any time and from time to time upon not less than thirty (30) days' prior Notice by Declarant, any Owner Declarant, any Mortgagee, or any Party-in-Interest execute, acknowledge and deliver to such Declarant, Owner Declarant, Mortgagee or Party-in-Interest, as the case may be, a statement in writing certifying (a) that this Declaration is unmodified and in full force and effect (or if there have been modifications that the same is in full force and effect, as modified, and stating the modifications), (b) whether or not to the best knowledge of the signer of such certificate Declarant is in default in the performance of any obligation contained in this Declaration, and, if so, specifying each such default of which the signer may have knowledge, and (c) as to

such further matters as such Declarant, Owner Declarant, Mortgagee or Party-in-Interest may reasonably request.

17. Liability.

(a) Notwithstanding anything to the contrary contained in this Declaration, the City will look solely to the estate and interest of Declarant in the Property on an *in rem* basis only, for the collection of any money judgment recovered against Declarant, and no other property of Declarant or any Owner Declarant, and no property of any other party, shall be subject to any levy, execution or other enforcement proceedings for the satisfaction of the remedies of the City or any other person or entity with respect to this Declaration; and (ii) neither Declarant nor any Owner Declarant nor any other party shall have personal liability under this Declaration. For purpose of this Paragraph only, “Declarant” and “Owner Declarant” shall be deemed to include Declarant’s and any Owner Declarant’s mortgagees, principals (disclosed and undisclosed), partners, affiliates, agents, officers, and employees and the heirs, successors, and assigns of each of the foregoing. Notwithstanding the foregoing, nothing herein shall be deemed to preclude, qualify, limit or prevent any of the City’s governmental rights, powers or remedies, including, without limitation, with respect to the satisfaction of the remedies of the City under any laws, statutes, codes or ordinances.

(b) If Declarant is found by a court of competent jurisdiction to have been in default of any of its obligations under this Declaration and such finding is upheld on final appeal, or the time for such 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 any of the City's remedies resulting from such default.

18. Severability. If any of the provisions 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 severable and the remainder of this Declaration shall continue to be in full force and effect.

19. Cooperative or Condominium Ownership. (a) With respect to any portion of the Subject Property which shall be subject to a cooperative, condominium or similar form of ownership, for the purposes of this Declaration, the board of directors or managers of the cooperative, condominium, or similar association (such entity, a "Board") or a master association (an "Association") selected by the Board and authorized by underlying organizational documents to act on behalf of the individual cooperative shareholders, condominium or similar owners, shall have the sole right to assess a lien for any costs incurred under this Declaration or to otherwise act with respect to this Declaration, to the extent such action is required for any purpose under this Declaration, and the consent of any individual cooperative unit owner, condominium unit owner, or other similar owner who may be considered a party in interest shall not be required. For purpose of this Declaration, the Board or the Association, as the case may be, shall be deemed the sole Party in Interest with respect to the property interest subjected to the cooperative, condominium, or similar ownership arrangement.

(b) If the Subject Property or any portion thereof is developed as, sold, or converted

to cooperative or condominium ownership requiring the approval of the Attorney General of the State of New York (the "Attorney General"), a copy of this Declaration and any subsequent modification hereof shall be provided to the Attorney General with the offering documents at the time of application for approval of any such cooperative or condominium offering plan. Declarant shall include in the offering plan for such cooperative or condominium this Declaration or any portions hereof which the Attorney General determines shall be included and, if so included in the offering plan, shall make copies of this Declaration available to cooperative shareholders and condominium purchasers.

20. Inconsistencies with the FEIS. If this Declaration inadvertently fails to include a PCRE set forth in the FEIS, such PCRE shall be deemed to be incorporated in this Declaration by reference. If there is any inconsistency between a PCRE as set forth in the FEIS and as incorporated in this Declaration, the measure set forth in the FEIS shall apply.

21. Applicable Law. This Declaration shall be governed and construed by the laws of the State of New York, without regard to principles of conflicts of law.

20. Prior Communications Superseded. This Declaration supersedes any letters, correspondence or other communication between Declarant and DCP relating to the subject matter herein.

21. Counterpart Document. This Declaration may be executed in one or more counterparts, each of which shall be deemed to be an original, and all such counterparts shall together constitute one and the same instrument.

*(Signature pages follow)*

**IN WITNESS WHEREOF**, the undersigned have executed this Declaration this \_\_\_\_  
day of \_\_\_\_\_, 2014.

606 WEST 57 LLC

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

FOUR PLUS CORPORATION

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

GE 57<sup>TH</sup> STREET SOUTH HOLDINGS, LLC

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

EE 57<sup>TH</sup> STREET SOUTH HOLDINGS, LLC

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

SWALLOW II, LLC

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

FADLING II, LLC

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

APPLEBY-SOUTH HOLDINGS, LLC

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

STATE OF NEW YORK )

) ss.:

COUNTY OF NEW YORK )

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

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

STATE OF NEW YORK )

) ss.:

COUNTY OF NEW YORK )

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

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

STATE OF NEW YORK )

) ss.:

COUNTY OF NEW YORK )

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Notary Public

STATE OF NEW YORK )

) ss.:

COUNTY OF NEW YORK )

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

STATE OF NEW YORK )

) ss.:

COUNTY OF NEW YORK )

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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 )

) ss.:

COUNTY OF NEW YORK )

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

STATE OF NEW YORK )

) ss.:

COUNTY OF NEW YORK )

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

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

STATE OF NEW YORK )

) ss.:

COUNTY OF NEW YORK )

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

**Exhibit A**

Subject Property Description

**Tax Lots 31, 40, 44 and 55 Block 1104 as shown on the Tax Map of the City of New York, New York County, and more particularly described as follows:**

**Lot(s) 31**

All that certain Lot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Manhattan, City, County and State of New York: bounded and described as follows:

BEGINNING at a point on the south side of 57th Street distant 100 feet west from the southwest corner of 11th Avenue and 57th Street;

RUNNING THENCE west along the south side of 57th Street, 75 feet;

THENCE south and parallel with 11th Avenue, 144 feet, 11 inches,

THENCE east and parallel with 57th Street, 75 feet;

THENCE further east 100 feet more or less to the west side of 11th Avenue at a point distant 156 feet, 1 inch, south from the south side of 57th Street;

THENCE north along the west side of 11th Avenue 130 feet, 8 inches;

THENCE west on a line parallel with 57th Street, 100 feet; and

THENCE north on a line parallel with 11th Avenue, 25 feet, 5 inches to the point or place of BEGINNING.

**Lot(s) 40**

All that certain Lot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at a point on the southerly side of West 57th Street distant 175 feet west from the southwest corner of West 57th Street and 11th Avenue;

RUNNING THENCE southerly and parallel with 11th Avenue, 144 feet 11 inches;

THENCE westerly and parallel with West 57th Street, 25 feet;

THENCE southerly and parallel with 11th Avenue, 55 feet 11 inches to a point on the northerly side of West 56th Street;

THENCE westerly along the northerly side of West 56th Street, 100 feet;

THENCE northerly and parallel with the westerly side of 11th Avenue, 55 feet 11 inches;

THENCE easterly and parallel with the southerly side of West 57th Street, 25 feet;

THENCE northerly and parallel with 11th Avenue 144 feet 11 inches to the southerly side of West 57th Street; and

THENCE easterly along the southerly side of West 57th Street 100 feet to the point or place of BEGINNING.

**Lot(s) 44**

All that certain Lot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Manhattan, County of New York, City and State of New York, bounded and described as follows:

BEGINNING at a point on the southerly side of 57th Street, distant 275 feet westerly from the southwesterly corner of 57th Street and 11th Avenue;

RUNNING THENCE southerly and parallel with 11th Avenue. 144 feet 11 inches;

THENCE westerly and parallel with 57th Street, 250 feet;

THENCE northerly and parallel with 11th Avenue 144 feet and 11 inches to the southerly side of 57th Street; and

THENCE easterly along the southerly side of 57th Street, 250 feet to the point or place of BEGINNING.

**Lot(s) 55**

All that certain Lot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Manhattan, County of New York, City and State of New York, designated as Lot 55 in Block 1104 on the Assessment Map of the City of New York. which premises are more fully described as follows:

BEGINNING at a point on the south side of West 57th Street, distant 157 feet 1 3/8 inches east from the corner formed by the intersection of 12th Avenue and West 57th Street;

RUNNING THENCE east 25 feet 00 inches;

THENCE south 144 feet 11 inches;

THENCE west 25 feet 00 inches;

THENCE north 144 feet 11 inches to the point or place of BEGINNING.

**Exhibit B**

Certification of Parties in Interest

(see attached)

**Old Republic National Title Insurance Company**

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

Old Republic National Title Insurance Company, a title insurance company licensed to do business in the State of New York and having an office at 400 Post Avenue, Suite 310, Westbury, NY 11590, hereby certifies that as to the land hereinafter described being a tract of land, either un-subdivided or consisting of two or more lots of record, contiguous for a minimum of ten linear feet, located within a single block, that all the parties in interest constituting a "party in interest" as defined in Section 12-10, Subdivision (D) of the Zoning Resolution of the City of New York, effective December 15, 1961, as amended, are the following:

<u>NAME</u>	<u>ADDRESS</u>	<u>NATURE OF INTEREST</u>
606 West 57 LLC	c/o TF Cornerstone Inc. 387 Park Avenue South, 7th Floor New York, NY 10016	Leasehold Owner
Four Plus Corporation	5251 Hampstead High Street Suite 300 Montgomery, AL 36116	Fee Owner
GE 57th Street South Holdings, LLC	c/o JPMorgan Chase Bank, N.A. 270 Park Avenue, 16th Floor New York, NY 10017	Fee Owner
EE 57th Street South Holdings, LLC	c/o JPMorgan Chase Bank, N.A. 270 Park Avenue, 16th Floor New York, NY 10017	Fee Owner
Fadling II, LLC	Creekside Farm, 5505 Fadling Road SW Olympia, WA 98512	Fee Owner
Swallow II, LLC	24 Cook Road Pelham, MA 01002	Fee Owner
Appleby-South Holdings, LLC	Graeme Philp, Wombly Carlyle Sandridge & Rice LLP 5 Exchange Street Charleston, SC 29401	Fee Owner

**The subject tract of land with respect to which the foregoing parties are the parties in interest as aforesaid is known as Tax Nos. 31, 40, 44 and 55 Block 1104 as shown on the Tax Map of the City of New**

**York, New York County, and more particularly described as follows:**

**Lot(s) 31**

All that certain Lot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

**BEGINNING** at a point on the south side of 57th Street distant 100 feet west from the southwest corner of 11th Avenue and 57th Street;

**RUNNING THENCE** west along the south side of 57th Street, 75 feet;

**THENCE** south and parallel with 11th Avenue, 144 feet, 11 inches;

**THENCE** east and parallel with 57th Street, 75 feet;

**THENCE** further east 100 feet more or less to the west side of 11th Avenue at a point distant 156 feet, 1 inch, south from the south side of 57th Street;

**THENCE** north along the west side of 11th Avenue 130 feet, 8 inches;

**THENCE** west on a line parallel with 57th Street, 100 feet; and

**THENCE** north on a line parallel with 11th Avenue, 25 feet, 5 inches to the point or place of **BEGINNING**.

**Lot(s) 40**

All that certain Lot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

**BEGINNING** at a point on the southerly side of West 57th Street distant 175 feet west from the southwest corner of West 57th Street and 11th Avenue;

**RUNNING THENCE** southerly and parallel with 11th Avenue, 144 feet 11 inches;

**THENCE** westerly and parallel with West 57th Street, 25 feet;

**THENCE** southerly and parallel with 11<sup>th</sup> Avenue, 55 feet 11 inches to a point on the northerly side of West 56<sup>th</sup> Street;

**THENCE** westerly along the northerly side of West 56<sup>th</sup> Street, 100 feet;

**THENCE** northerly and parallel with the westerly side of 11th Avenue, 55 feet 11 inches;

**THENCE** easterly and parallel with the southerly side of West 57<sup>th</sup> Street, 25 feet;

**THENCE** northerly and parallel with 11th Avenue 144 feet 11 inches to the southerly side of West 57th Street; and

**THENCE** easterly along the southerly side of West 57th Street 100 feet to the point or place of **BEGINNING**.

**Lot(s) 44**

All that certain Lot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Manhattan, County of New York, City and State of New York, bounded and described as follows:

**BEGINNING** at a point on the southerly side of 57th Street, distant 275 feet westerly from the southwesterly corner of 57th Street and 11th Avenue;

RUNNING THENCE southerly and parallel with 11th Avenue, 144 feet 11 inches;

THENCE westerly and parallel with 57th Street, 250 feet;

THENCE northerly and parallel with 11th Avenue 144 feet and 11 inches to the southerly side of 57th Street; and

THENCE easterly along the southerly side of 57th Street, 250 feet to the point or place of BEGINNING.

Lot(s) 55

All that certain Lot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Manhattan, County of New York, City and State of New York, designated as Lot 55 in Block 1104 on the Assessment Map of the City of New York, which premises are more fully described as follows:

BEGINNING at a point on the south side of West 57th Street, distant 157 feet 1 3/8 inches east from the corner formed by the intersection of 12th Avenue and West 57th Street;

RUNNING THENCE east 25 feet 00 inches;

THENCE south 144 feet 11 inches;

THENCE west 25 feet 00 inches;

THENCE north 144 feet 11 inches to the point or place of BEGINNING.

**That the said premises are known as and by the street addresses of:**

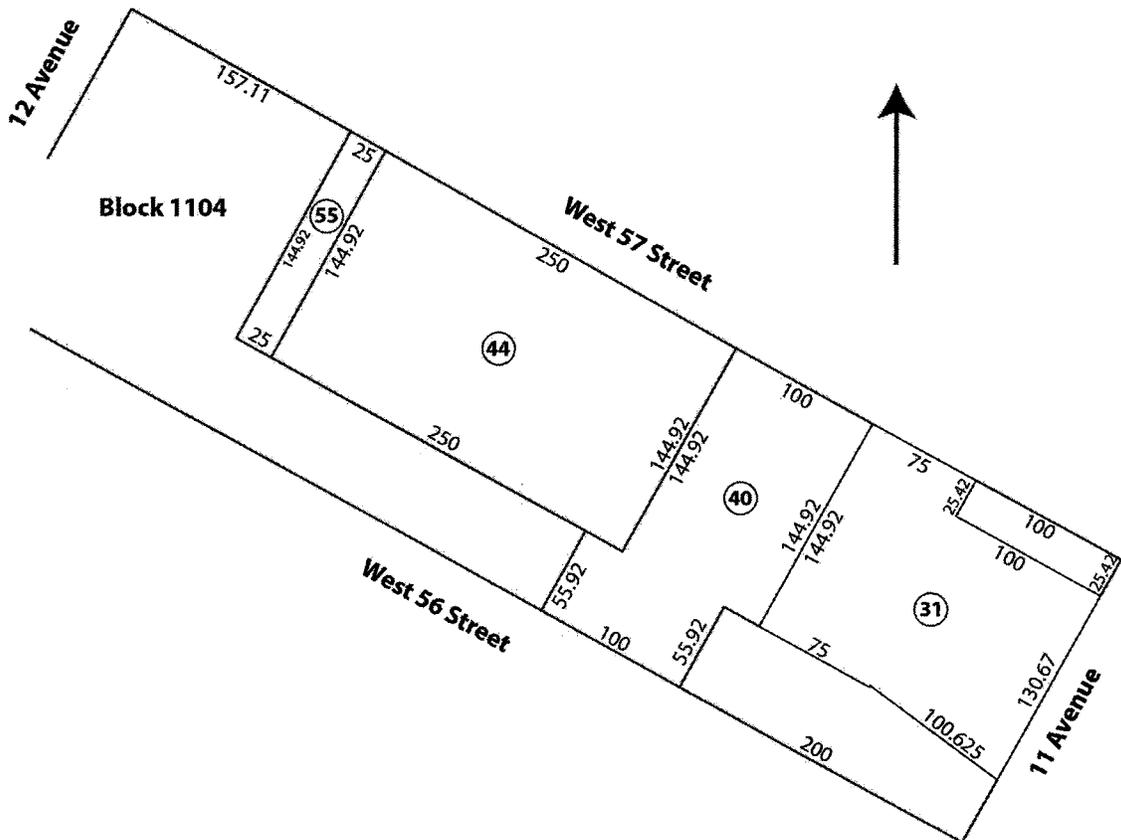
Address: 827 - 835 11th Avenue a/k/a 602 - 606 57th Street, New York, NY (Block 1104, Lot(s) 31), as shown on the following diagram

Address: 617 - 621 West 56th Street a/k/a 608 - 618 West 57th Street, (Block 1104, Lot(s) 40), as shown on the following diagram

Address: 622 West 57th Street, (Block 1104, Lot(s) 44), as shown on the following diagram

Address: 642 West 57th Street, (Block 1104, Lot(s) 55), as shown on the following diagram

1. Show Distance from corner )  
SEE ATTACHED DIAGRAM )
2. Show Block and Lot Numbers )  
and dimensions of each lot )  
The north point of the diagram must agree with the arrow.



**NOTE: A Zoning Lot may or may not coincide with a lot as shown on 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 AND ACCEPTED BY THE APPLICANT UPON THE EXPRESS UNDERSTANDING THAT LIABILITY HEREUNDER IS LIMITED TO ONE THOUSAND (\$1,000.00) DOLLARS.

DATED: February 24, 2014

BY: Old Republic National Title Insurance Company

BY: Eliezer Shaffren  
Eliezer Shaffren, Esq./ Counsel  
True North Abstract, LLC, agent for  
Old Republic National Title Insurance Company

New York  
STATE OF ~~NEW YORK~~ ): SS.:

COUNTY OF Ocean

On Feb. 24 2014, before me, the undersigned, personally appeared Eliezer Shaffren, 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 on behalf of which the individual(s) acted, executed the instrument and that such individual made such appearance before the undersigned in the Ocean County State of ~~New York~~ New Jersey.

Michal Zucker  
\_\_\_\_\_  
Notary Public

Michal Zucker  
Notary Public of New Jersey  
My Commission Expires July 1, 2014

## Exhibit C

### Transportation Mitigation Measures

(For illustrative purposes only – all requirements are set forth in the text.)

#### **Recommended Mitigation Measures - Weekday AM Peak Hour**

Intersection	Mitigation Measures
Twelfth Avenue and West 55th Street	Shift 1 second of green time from the NB/SB phase to the WB phase.
Eleventh Avenue and West 57th Street	1) Shift the centerline on the EB approach 1 foot to the north to provide one (1) 10-foot left-turn lane and two (2) 10-foot moving lanes; 2) Restripe the WB approach to provide one (1) 10-foot left-turn lane and two (2) 11-foot moving lanes; 3) Install No Standing 7-10AM and 4-7PM Monday-Friday sign on the east side of the NB approach for approximately 100 feet from the intersection to provide a NB right-turn lane; 4) Shift 1 second of green time from the NB/SB phase to the EB/WB left-turn phase.
Tenth Avenue and West 57th Street	Shift 2 seconds of green time from the NB phase to the EB/WB phase.
Tenth Avenue and West 56th Street	Shift 1 second of green time from the NB phase to the EB phase.
Ninth Avenue and West 57th Street	Shift 2 seconds of green time from the SB phase to the EB/WB phase.
Ninth Avenue and West 56th Street	Shift 1 second of green time from the SB phase to the EB phase.
Eighth Avenue and West 57th Street	Shift 1 second of green time from the NB phase to the EB/WB phase.

#### **Recommended Mitigation Measures - Weekday Midday Peak Hour**

Intersection	Mitigation Measures
Twelfth Avenue and West 55th Street	Shift 1 second of green time from the NB/SB phase to the WB phase.
Eleventh Avenue and West 57th Street	1) Shift the centerline on the EB approach 1 foot to the north to provide one (1) 10-foot left-turn lane and two (2) 10-foot moving lanes; 2) Restripe the WB approach to provide one (1) 10-foot left-turn lane and two (2) 11-foot moving lanes; 3) Shift 2 seconds of green time from the NB/SB phase to the EB/WB left-turn phase.
Eleventh Avenue and West 55th Street	Shift 1 second of green time from the NB/SB phase to the WB phase.
Tenth Avenue and West 58th Street	Shift 1 second of green time from the NB phase to the EB phase.
Tenth Avenue and West 57th Street	Shift 3 seconds of green time from the NB phase to the EB/WB phase.
Tenth Avenue and West 56th Street	Shift 2 seconds of green time from the NB phase to the EB phase.
Tenth Avenue and West 55th Street	Shift 2 seconds of green time from the NB phase to the WB phase.
Ninth Avenue and West 57th Street	Shift 2 seconds of green time from the SB phase to the EB/WB phase.
Ninth Avenue and West 56th Street	Shift 2 seconds of green time from the SB phase to the EB phase.
Eighth Avenue and West 57th Street	Shift 1 second of green time from the NB phase to the EB/WB phase.

**Recommended Mitigation Measures - Weekday PM Peak Hour**

<b>Intersection</b>	<b>Mitigation Measures</b>
Twelfth Avenue and West 57th Street	Shift 1 second of green time from the NB phase to the WB phase.
Twelfth Avenue and West 56th Street	Shift 1 second of green time from the NB phase to the SB left-turn phase.
Twelfth Avenue and West 55th Street	Shift 2 seconds of green time from the NB/SB phase to the WB phase.
Eleventh Avenue and West 58th Street	Shift 1 second of green time from the EB phase to the NB/SB phase.
Eleventh Avenue and West 57th Street	<ol style="list-style-type: none"> <li>1) Shift the centerline on the EB approach 1 foot to the north to provide one (1) 10-foot left-turn lane and two (2) 10-foot moving lanes;</li> <li>2) Restripe the WB approach to provide one (1) 10-foot left-turn lane and two (2) 11-foot moving lanes.</li> <li>3) Install No Standing 7-10AM and 4-7PM Monday-Friday sign on the east side of the NB approach for approximately 100 feet from the intersection to provide a NB right-turn lane;</li> <li>4) Install No Standing 4-7PM Monday-Friday sign on the west side of the SB approach for approximately 100 feet from the intersection to provide a SB right-turn lane;</li> <li>5) Shift 2 seconds of green time from the NB/SB phase to the EB/WB phase.</li> </ol>
Eleventh Avenue and West 55th Street	Shift 1 second of green time from the NB/SB phase to the WB phase.
Tenth Avenue and West 58th Street	Shift 1 second of green time from the NB phase to the EB phase.
Tenth Avenue and West 57th Street	Shift 3 seconds of green time from the NB phase to the EB/WB phase.
Tenth Avenue and West 56th Street	Shift 2 seconds of green time from the NB phase to the EB phase.
Tenth Avenue and West 55th Street	Shift 1 second of green time from the NB phase to the WB phase.
Ninth Avenue and West 57th Street	Shift 3 seconds of green time from the SB phase to the EB/WB phase.
Ninth Avenue and West 56th Street	Shift 2 seconds of green time from the SB phase to the EB phase.
Eighth Avenue and West 57th Street	Shift 1 second of green time from the NB phase to the EB/WB phase.

**Recommended Mitigation Measures - Saturday Peak Hour**

<b>Intersection</b>	<b>Mitigation Measures</b>
Twelfth Avenue and West 56th Street	Shift 1 second of green time from the NB phase to the SB left-turn phase.
Eleventh Avenue and West 57th Street	<ol style="list-style-type: none"> <li>1) Shift the centerline on the EB approach 1 foot to the north to provide one (1) 10-foot left-turn lane and two (2) 10-foot moving lanes;</li> <li>2) Restripe the WB approach to provide one (1) 10-foot left-turn lane and two (2) 11-foot moving lanes;</li> <li>3) Install No Standing 1-4PM Saturday sign on the west side of the SB approach for approximately 100 feet from the intersection to provide a SB right-turn lane;</li> <li>4) Shift 2 seconds of green time from the NB/SB phase to the EB/WB left-turn phase.</li> </ol>
Tenth Avenue and West 57th Street	Shift 2 seconds of green time from the NB phase to the EB/WB phase.
Tenth Avenue and West 56th Street	Shift 2 seconds of green time from the NB phase to the EB phase.
Tenth Avenue and West 55th Street	Shift 2 seconds of green time from the NB phase to the WB phase.
Ninth Avenue and West 57th Street	Shift 2 seconds of green time from the SB phase to the EB/WB phase.
Ninth Avenue and West 56th Street	Shift 2 seconds of green time from the SB phase to the EB phase.
Eighth Avenue and West 57th Street	Shift 1 second of green time from the NB phase to the EB/WB phase.

**Exhibit D-1**

Day-Care Mitigation

<b>Table 1</b>	
<b>Number of Low-Income Units Provided</b>	<b>Number of Child Care Slots In Excess of Impact Threshold</b>
0 - 152	0
153 - 160	1
161 - 169	2
170 - 178	3
179 - 186	4
187 - 195	5
196 - 204	6
205 - 213	7
214 - 221	8
222 - 230	9
231 - 238	10

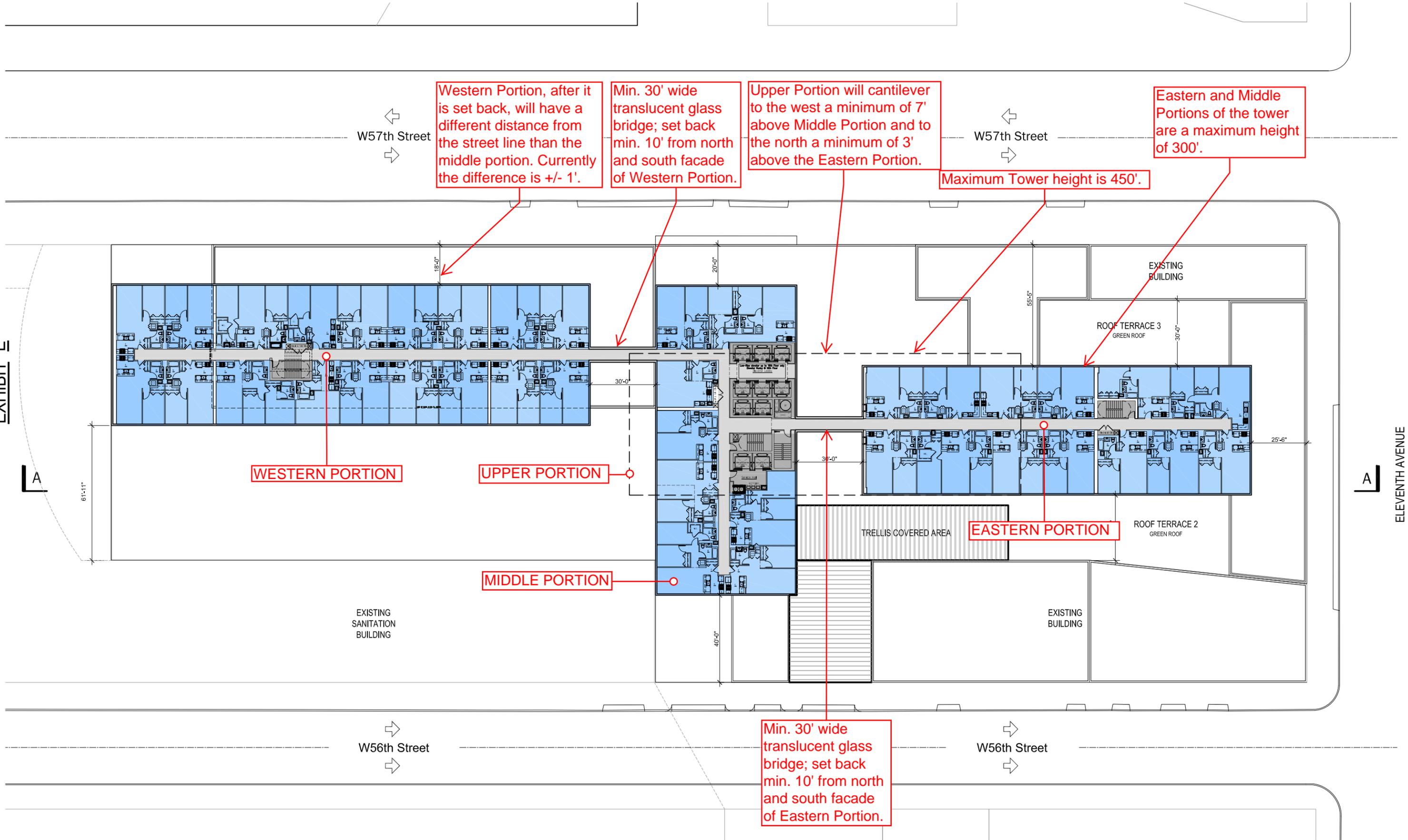
**Exhibit D-2**

<b>Table 2</b>														
NYC Children's Services														
NYC Planning Department Child Care Mitigation Grid														
This scenario uses information at the time of Mitigation funding.														
Variables:														
Mitigation Slots		1												
Infant SMR		\$17,226												
Toddler SMR		\$13,311												
Pre-school SMR		\$12,163												
Inflation Factor		1.69%												
					Completion year									
		2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026
Infant Cost	19%	\$3,273	\$3,328	\$3,384	\$3,442	\$3,500	\$3,559	\$3,619	\$3,680	\$3,742	\$3,806	\$3,870	\$3,935	\$4,002
Toddler Cost	28%	\$3,727	\$3,790	\$3,854	\$3,919	\$3,985	\$4,053	\$4,121	\$4,191	\$4,262	\$4,334	\$4,407	\$4,481	\$4,557
Pre-School Cost	53%	\$6,446	\$6,555	\$6,666	\$6,778	\$6,893	\$7,009	\$7,128	\$7,248	\$7,371	\$7,495	\$7,622	\$7,751	\$7,882
Annual Total Mitigation Funding to ACS	100%	\$13,446	\$13,673	\$13,904	\$14,139	\$14,378	\$14,621	\$14,868	\$15,119	\$15,375	\$15,634	\$15,899	\$16,167	\$16,440
Cumulative					\$14,139	\$28,517	\$43,138	\$58,006	\$73,125	\$88,500	\$104,134	\$120,033	\$136,200	\$152,641
cost/slot					\$ 14,139	\$ 14,378	\$ 14,621	\$ 14,868	\$ 15,119	\$ 15,375	\$ 15,634	\$ 15,899	\$ 16,167	\$ 16,440
Cumulative Six Year Cost per slot					\$ 88,500	\$ 89,995	\$ 91,516	\$ 93,062	\$ 94,635					

## **Exhibit E**

### **Building Envelope**

(For illustrative purposes only – all requirements are set forth in the text.)



Western Portion, after it is set back, will have a different distance from the street line than the middle portion. Currently the difference is +/- 1'.

Min. 30' wide translucent glass bridge; set back min. 10' from north and south facade of Western Portion.

Upper Portion will cantilever to the west a minimum of 7' above Middle Portion and to the north a minimum of 3' above the Eastern Portion.

Maximum Tower height is 450'.

Eastern and Middle Portions of the tower are a maximum height of 300'.

Min. 30' wide translucent glass bridge; set back min. 10' from north and south facade of Eastern Portion.

**Exhibit F**

**Noise Reductions-Table 17-6 of the FEIS**

**Table 17-6**  
**Typical Construction Equipment Noise Emission Levels (dBA)**

Equipment List	NYCDEP & FTA Typical Noise Level at 50 feet <sup>1</sup>	Noise Level with Path Controls at 50 feet <sup>2</sup>
Backhoe/Loader	80	
Compressors	80	
Concrete Pump	82	
Concrete Trowel	85	75
Concrete Vibrator	76	66
Cranes	85	75
Concrete Trucks	85	
Cranes (Tower Cranes)	85	75
Delivery Trucks	84	
Drill Rigs	84	
Dump Trucks	84	
Excavator	85	
Excavator with Ram Hoe	90	
Generators	82	72
Hand Tool	59	
Hoist	75	65
Impact Wrenches	85	75
Pile Driving Rig (Impact)	95	
Pumps	77	
Rebar Bender	80	
Welding Machines	73	

**Notes:**

<sup>1</sup> Sources: Citywide Construction Noise Mitigation, Chapter 28, Department of Environmental Protection of New York City, 2007. Transit Noise and Vibration Impact Assessment, FTA, May 2006.

<sup>2</sup> Path controls include portable noise barriers, enclosures, acoustical panels, and curtains, whichever feasible and practical.

<sup>3</sup> Source: Kessler, Frederick M., "Noise Control for Construction Equipment and Construction Sites," report for Hydro Quebec,