CITY PLANNING COMMISSION

October 17, 2016 / Calendar No. 3 C 160310 ZSM

IN THE MATTER OF an application submitted by SJC 33 Owner 2015 LLC pursuant to Section 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 89-21 of the Zoning Resolution to allow the distribution of 200,000 square feet of floor area from a granting site (A1, Block 656, Lot 1) to a receiving site (A2, Block 596, Lot 1), and to modify the height and setback requirements of Sections 23-60 (Height and Setback Regulations) and Section 43-40 (Height and Setback Regulations), the height factor requirements of 23-151 (Basic regulations for R6 through R9 Districts) and the rear yard requirements of Section 43-20 (Rear Yard Regulations), in connection with a proposed mixed use development, on property located at 550 Washington Street (Block 596, Lot 1), in C6-3, C6-4 and M1-5 Districts, within the Special Hudson River Park District, Borough of Manhattan, Community District 2.

The application for a special permit pursuant to the proposed Zoning Resolution Section 89-21, Transfer of Floor Area from Hudson River Park was filed by SJC 33 Owner 2015 LLC on May 6, 2016. A revised application was filed on October 14, 2016. The application for the proposed special permit, along with related actions, would facilitate the redevelopment of 550 Washington Street with a mix of uses over five buildings and open areas, including a designated public access area, in Manhattan Community District 2. The development would comprise 1,711,000 total square feet with 1,289,000 square feet of residential floor area, of which 328,700 square feet would be permanently affordable, 200,000 square feet of retail and event space, and 222,000 square feet of office or hotel use. The development site would additionally include three separate accessory parking facilities below grade with a total of 772 spaces. The transfer of floor area subject to this special permit would support the repair and rehabilitation of Pier 40 in the Hudson River Park.

RELATED ACTIONS

In addition to the special permit (C 160310 ZSM), 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:

C 160309 ZMM: Amendment of the Zoning Map, Section No. 12a:

1. changing from an M1-5 District to a C6-4 District property bounded by Clarkson Street, Washington Street, West Houston Street, and West Street;

2. changing from an M2-4 District to a C6-3 District property bounded by West Houston Street, Washington Street, a line 596 feet northerly of Spring Street, and West Street;
3. changing from an M2-4 District to an M1-5 District property bounded by a line 596 feet northerly of Spring Street, Washington Street, a line 415 feet northerly of Spring Street, and West Street; and
4. establishing a Special Hudson River Park District (HRP) bounded by:
    a. Clarkson Street, Washington Street, a line 415 feet northerly of Spring Street, and West Street; and
    b. a line 57 feet northerly of the westerly prolongation of the northerly street line of Leroy Street, the U.S. Pierhead Line, a line 1118 feet southerly of the westerly prolongation of the northerly street line of Leroy Street, and the U.S. Bulkhead Line

C 160311 ZSM: Special permit pursuant to Sections 13-45 and 13-451 to allow an attended accessory parking garage with a maximum capacity of 236 spaces on portions of the ground floor and cellar on the North Site of the proposed mixed use development.

C 160312 ZSM: Special permit pursuant to Sections 13-45 and 13-451 to allow an attended accessory parking garage with a maximum capacity of 372 spaces on portions of the ground floor and cellar on the Center Site of the proposed mixed use development.

C 160313 ZSM: Special permit pursuant to Sections 13-45 and 13-451 to allow an attended accessory parking garage with a maximum capacity of 164 spaces on portions of the ground floor and cellar on the South Site of the proposed mixed use development.

N 160314 ZAM: Zoning authorization pursuant to Section 13-441 to allow a curb cut on a wide street on the North Site of the proposed mixed use development.

N 160315 ZAM: Zoning authorization pursuant to Section 13-441 to allow a curb cut on a wide street on the Center Site of the proposed mixed use development.

N 160316 ZAM: Zoning authorization pursuant to Section 13-441 to allow a curb cut on a wide street on the South Site of the proposed mixed use development.

BACKGROUND

The application for the proposed special permit, along with related actions, would facilitate the redevelopment of 550 Washington Street with a mix of uses over five buildings and open areas, including a designated public access area, in Manhattan Community District 2. This application,

with related actions, is sought concurrently with an associated application by the New York City Department of City Planning for an amendment to the zoning resolution (N 160308 ZRM) to establish the Special Hudson River Park District and to include provisions for a special permit to transfer floor area from Pier 40, designated the granting site, to 550 Washington Street, designated the receiving site, in the special district.

Pier 40 and the St. John's Center site are located at the crossroads of three neighborhoods: Hudson Square to the east, the West Village to the north and Tribeca to the south. The blocks that immediately surround the project area are representative of the amalgam of uses, building typologies and infrastructure that have defined the neighborhood over its industrial and maritime history, and more recent revitalization. Significantly, Pier 40 and the St. John's Center sites are also bordered by or are on the Hudson River. Pier 40 itself, and the building that stands on the receiving site, are emblematic of the waterfront industry, shipping and distribution that have, over time, largely left the area. Blocks to the north, concentrated in the West Village, are chiefly residential, with amenities and facilities serving the residential population. Hudson Square, to the east, contains a stock of large, high-lot-coverage loft buildings that were previously a hub for the printing sector and now comprise an established office, and increasingly residential, district. Tribeca, to the south, is separated from the project area by Canal Street, and is characterized by a blend of residential and office uses with a strong retail and restaurant presence.

Residential uses are primarily located in the West Village and Tribeca, and are mainly comprised of converted manufacturing buildings, apartment buildings of varying heights, and row houses. In recent years, there has been a rise in residential development on the blocks that immediately border the project area and Hudson Square. The block to the north of Clarkson Street is currently being improved with a 12-story residential development. As has been noted, commercial uses dominate the large-lot, former manufacturing buildings in Hudson Square. The Hudson Square area also contains several parking facilities and storage businesses. Ground floor retail lines many of the main corridors, including Christopher, Hudson, Greenwich, and Canal streets.

Some manufacturing uses still operate on the blocks adjacent to the project area. The superblock

to the east, across Washington Street, is an active UPS distribution facility. Federal Express also occupies two facilities on blocks north of Clarkson Street. Directly abutting the St. John's Center site to the south is a recently completed Department of Sanitation (DSNY) garage, with a salt shed across Spring Street.

The nearest open space is the 550-acre Hudson River Park, which extends from approximately Chambers Street to West 59th Street. Apart from Pier 40, the section of the Park closest to the project area includes Pier 45 with shade structures, seating areas, wood decking and lawns. Other nearby public recreational space includes Canal Park, at Canal and West Streets, and James J. Walker Park and the Tony Dapolito Recreation Center, both located on the block bounded by Hudson, Leroy, and Clarkson Streets and Seventh Avenue South. The Church of Saint Luke in the Fields, bounded by Barrow, Christopher, Hudson, and Greenwich Streets, includes a chapel, parochial school, denominational housing, and gardens. Other institutional and community facility uses include the Hudson Park Library at 66 Leroy Street, City As School at 16 Clarkson Street, the New York City Fire Museum at 278 Spring Street, and the Metro New York Developmental Disabilities Service Office at 75 Morton Street. Area transit includes the No. 1 line Houston Street subway station, several bus lines and New York Water Taxi service from the Christopher Street pier. The Hudson River Greenway bicycle route extends the length of Manhattan's west side on Route 9A. The entrance to the Holland Tunnel is located near Hudson and Canal Streets.

The zoning districts in the surrounding area are as varied as the neighborhood's uses and building typologies. The receiving and development site, St. John's Center, is in the M1-5 and M2-4 zoning districts. M1-5 extends north to Morton Street and east to Varick Street. M1-5 permits 5.0 FAR of commercial and manufacturing uses, 6.5 FAR for some community facility uses. M2-4 is mapped over the southern segment of the development site and includes the block to the east, to Greenwich Street, and extends south to Spring Street. M2-4 also permits 5.0 FAR, is more restrictive with respect to some uses. For example, hotels are not permitted in M2-4 districts. Bulk is subject to the sky exposure plane above a height of 85 feet from the street line in both districts. M2-3 is mapped over Pier 40 and extends along the Hudson River to the north and south. It allows 2.0 FAR of commercial and manufacturing uses. Buildings in these manufacturing districts, many still

serving a manufacturing use, such as shipping, distribution and vehicle repair, are generally low-rise, not exceeding 60 feet, and constructed to their permitted densities of between 4.0 and 5.0 FAR.

The Special Hudson Square District, adopted in 2013, is mapped over several blocks bounded by Greenwich Street to the east, West Houston Street to the north, Canal Street to the south and Avenue of the Americas to the east. The special district is one block east of the proposed Special Hudson River Park District. The Special Hudson Square District was created to support the growth of a mixed residential, commercial and industrial neighborhood, recognizing that the formerly manufacturing area could harmoniously balance these uses. The underlying zoning district is M1-6, which permits 10 FAR. The special district permits 12 FAR with the provision of inclusionary housing. Bulk regulations are contextual, to match the existing stock of large floorplate, high street-wall former printing buildings. Street walls are required at the street line for between 125 and 150 feet on wide streets, and 60 feet and 125 feet on narrow streets. Generally, maximum building heights are 290 feet on wide streets and 185 feet on narrow streets. In Subdistrict A, at the intersection of the Avenue of the Americas and Canal Street at Duarte Square, the maximum building height is 430 feet. Buildings in the Special Hudson Square District immediately east of the project area that occupy full blocks, particularly along Hudson Street and West Houston Street, are built to densities of between 9 and 16 FAR, with heights between 180 and 260 feet.

To the northeast of the project, there is an MX-6 Special Mixed Use District, comprised of M1-5 and R7X designations, that was mapped in 2008 and covers portions of two blocks bounded by Morton, Leroy, Washington, and Hudson Streets. A mixture of commercial, residential, and light industrial uses can be developed as-of-right to a maximum 5.0 FAR. A C1-6A contextual district is mapped north of Morton Street and west of Washington Street in the West Village. The maximum FAR permitted is 2.0 for commercial uses and 4.0 for residential uses. C6-2A, also a contextual district, is mapped south of Spring Street. It allows a wider range of uses than C1-6A and the maximum FAR is 6.0 for commercial uses and 6.02 for residential uses. Buildings here are generally built to heights between 90 and 140 feet and varying densities.

Pier 40, the granting site, is an approximately 15-acre pier in Hudson River Park at West Houston Street built as a passenger ship terminal for the Holland America Line in 1958. The pier ceased passenger operations in the late 1960s and, in subsequent years, began housing a parking garage and depot operations for Federal Express and the New York Times. Today, the pier includes approximately 5 acres of actively-used playing fields, a public parking garage over three levels with approximately 1,900 spaces, and the administrative offices of the Hudson River Park Trust (the "Trust"), among other uses. The playing fields at Pier 40, which are open-air and located on the roof of the pier building, are used by numerous community athletic programs, including Greenwich Village Little League, Downtown Little League, Gotham Girls Football Club, the Pier, Park, and Playground Association, Downtown Soccer League, and Downtown United Soccer League. The pier serves as a critical active open space resource for the community.

The Hudson River Park Act, approved by the New York State legislature in 1998 and subsequently amended in 2013 (the "Act") stipulates that, to the extent practicable, the costs of operation and maintenance of the Park be paid by revenues generated within the Park. Revenues derived from Pier 40, which is a park/commercial pier as stipulated in the Act, constitute more than 30% of the Trust's operating budget. Pier 40 is significantly deteriorated and its piles require emergency repair. The zoning lot, which includes land under water, is 1,126,410 square feet, as provided for in a survey from the Trust. The footprint of the pier structure (the area that is used for the purpose of determining allowable floor area) is 672,564 square feet. The zoning lot is currently constructed with 761,924 square feet of floor area. The entire zoning lot is in the M2-3 zoning district, which permits 2.0 FAR. The total amount of unused floor area is 583,204 square feet. The associated application for a zoning text amendment (N 160308 ZRM), proposed by the Department of City Planning, would introduce the Special Hudson River Park District to enable the transfer of floor area from Pier 40 to the receiving and development site, the St. John's Center at 550 Washington Street.

The St. John's Center site is immediately east of Pier 40, across West Street. It is a 213,654 square-foot zoning lot over two city blocks, which is bounded by West, Clarkson and Washington streets, and a line approximately 415 feet north of Spring Street. The single tax lot and zoning lot is

bisected by West Houston Street. Deducting the area of the zoning lot occupied by the mapped West Houston Street, the zoning lot is 196,410 square feet in area. The block north of West Houston Street is in an M1-5 zoning district; the remainder of the site to the south is in an M2-4 zoning district. The existing building comprises four stories and bridges over West Houston Street, which has three stories above it. It occupies approximately 4.0 FAR. The northern portion is largely vacant, and the southern portion of the building is occupied by commercial tenants, including back-office and communications uses. It is also used as temporary event space.

Consistent with its original use as a warehouse, the current building has 18 loading docks and 439 feet of curb cuts on West Street, and 20 loading docks and 506 feet of curb cuts on Washington Street. Clarkson and West Houston streets also include loading docks. West Street is a major north/south arterial road, with four to five moving lanes (including turning lanes) in each direction. Washington Street, which runs southbound, is 60 feet wide. Clarkson Street, which runs eastbound, is 65 feet wide. West Houston Street, which runs westbound through the development site, is 65 feet wide.

PROPOSED PROJECT

SJC 33 Owner 2015 LLC proposes to redevelop the St. John's Center site, or 550 Washington Street, to transform an underutilized and outmoded building into a mixed-use development with new retail, offices or a hotel, residences serving a variety of income levels, publicly-accessible open space, and other amenities that will integrate the site into this dynamic neighborhood. The proposal includes the transfer of floor area that will support significant infrastructure repairs to Pier 40. In sum, the proposed development comprises five buildings and 1,711,000 square feet with 1,289,000 square feet of residential floor area, of which 328,700 square feet would be permanently affordable; 200,000 square feet of retail and event space; 222,000 square feet of office or hotel use; and a 20,750-square foot publicly accessible open space. The proposed development would also include three separate accessory parking garages below grade with a total of 772 spaces. The total program includes 200,000 square feet of floor area proposed to be transferred from Pier 40. In all, the proposed development would occupy 8.7 FAR of floor area on the development site.

While the proposed development constitutes a single plan, the applicant has identified three sites, or portions of the development site, to describe the program. The development comprises the North Site north of West Houston Street, the Center Site extending from West Houston Street to a line 406 feet south, and the South Site, which abuts the DSNY facility.

North Site

The North Site occupies a 55,020-square foot portion of the development site north of West Houston Street, bounded also by Clarkson, West and Washington streets. It is proposed to include two buildings, the North-West Building fronting on West, Clarkson and West Houston streets, and the North-East Building, fronting primarily on Washington Street. The North-West Building will include 450,000 square feet of residential floor area and 100,000 square feet of retail space on the building's ground, mezzanine and second floors. The building's main entrance is sited on Clarkson Street and retail is accessed from West Houston Street. The building street walls would rise to between 91 and 127 feet, and then taper to one tower of 430 feet on the West Street side and one tower of 360 feet nearer Washington Street. The building form comprises staggered modules that are asymmetrically arranged to distribute bulk, lighten the building form and draw mass vertically to two tower tops of 50 by 50 feet. The North-East Building, the second building on the North Site, is 110,000 square feet and is proposed to be affordable to senior residents with incomes up to 80% AMI. The building would be 175 feet tall. The affordable floor area constitutes 19.6% of all residential floor area on the North Site and must be provided in conjunction with the other residential floor area on the North Site. Below grade, the applicant proposes a 236-space accessory garage accessed by a 22-foot curb cut on West Street. A 27-foot curb cut on West Street is planned for loading.

The North Site and Center Site are separated by West Houston Street, which is a mapped street. The development site includes the High Line rail structure that was incorporated into the existing building when the warehouse served as the terminus of the rail line beginning in 1934. The rail structure over West Houston Street was proposed to be retained and repurposed into a publicly accessible elevated garden on the second level of the new buildings. As originally proposed, it

was to be accessible from a stair and elevator on the northeast corner of West Houston and West streets, and a stair and elevator from the southwest corner of West Houston and Washington Streets. The elevated garden, designated a Public Access Area, would have measured 20,750 square feet and include planting, seating and walkways over the rail beds, as well as integrated 20-foot-high arcades along the North and Center sites. This aspect of the proposed project has been eliminated, as discussed below.

Center Site

The Center Site occupies an area of 100,730 square feet and is also proposed to include two buildings: the Center-West Building and the Center-East Building. The Center-West Building largely fronts West Street and would include 300,000 square feet of residential floor area and 33,000 square feet of retail. The building is entered from West Houston Street, as well as off the Center Site planted courtyard. The Center-West Building is designed with street walls of between 102 and 114 feet, and rises to 200 feet, with a 320-foot tower portion at the southern end of the building. Loading is accessed from a 27-foot wide curb cut on West Street. The Center-East Building fronts on Washington and West Houston streets, and includes 429,000 square feet of residential floor area with 27,000 square feet of retail space. The building has been designed with street walls between 188 and 209 feet and a maximum height of 240 feet. Primary residential access is on Washington Street at the northernmost corner of the building. The entrance is located to provide convenient access to transit and blocks to the east, and move pedestrian circulation away from the operations of the UPS facility across Washington Street. Retail throughout the Center Site will be located on the cellar, ground, mezzanine and second floors of both buildings, with entrances on West Houston Street.

Of the residential floor area on the Center Site, the applicant proposes 218,700 square feet to be affordable to households with incomes of 60% AMI and 130% AMI. Across the Center Site, 30% of the residential floor area is proposed to be affordable and must be provided in conjunction with the other residential floor area on the Center Site. Separating the two Center Site buildings is a courtyard landscaped with a variety of plantings to provide light and air to the two buildings. The applicant also proposes a cellar-level accessory garage with 372 spaces accessed at the southern

end of the Center-East Building by way of the proposed through-block passage. As discussed below, the proposed project has been modified to include a 10,000 square foot indoor active recreation facility and at-grade public open space on the Center Site.

To introduce street grid elements and break up the development site, the applicant proposes to include a through-block passage separating the Center and South sites, allowing both auto and pedestrian access between West and Washington streets. The driveway is designed at a single elevation with vehicular and pedestrian areas defined by variations in surface texture and planting beds. The passage will be accessed by two curb cuts of 22 feet each, and includes access to lobby entrances to the Center-East and Center-West buildings, the entrance to the Center Site garage from the Center-East Building and a drop-off to the office or hotel building on the South Site.

South Site

The South Site is 40,660 square feet in area and borders the DSNY garage to the south. The building is proposed to include 222,000 square feet of hotel or office space and 40,000 square feet of retail or event space. Residential floor area is not permitted on the South Site. The building is accessed from the driveway that extends between West and Washington streets, which includes a drop-off area in front of the lobby. The maximum envelope proposed for the building has been designed to flexibly accommodate an office or hotel building, or a hybrid of the two uses. While the maximum amount of floor area permitted on the South Site is fixed at 262,000 square feet, it will be massed depending on the commercial use that is constructed. Office buildings require large floor plates and high floor-to-ceiling heights. An office building would likely be low in height, approximately 145 feet, and occupy the full footprint of the building for the majority of its floors. Hotel uses are better suited to slender buildings that permit rooms on double-loaded corridors. A hotel on the site would rise to a maximum height of 240 feet with a low, full-footprint building base. On the ground level, the commercial building is separated from the DSNY garage by a service alley that will be used for loading and valet access to the South Site parking garage. The cellar-level accessory garage with 164 spaces would be accessed from a 22-foot curb cut on West Street.

REQUESTED ACTIONS

Zoning Map Amendment

The applicant seeks a Zoning Map amendment to map Pier 40 and the development site in the Special Hudson River Park District, and to alter the zoning district designations on the development site. The Zoning Map amendment would rezone the portion of the development site north of West Houston Street, the North Site, from an M1-5 manufacturing zoning district to a C6-4 commercial (R10 equivalent) zoning district, which would permit residential use and 10 FAR. The Center Site, beginning at West Houston Street to a line 406 feet south, would be changed from an M2-4 manufacturing zoning district to a C6-3 commercial (R9 equivalent) zoning district, which would also permit residential use and 7.52 FAR. The South Site is proposed to be rezoned from an M2-4 district to an M1-5 district to allow the option of constructing a hotel. M1-5 and M2-4 districts both permit 5.0 FAR.

The proposed zoning districts are configured to locate uses across the site in a manner that responds to the site's context, including adjacent buildings and uses, bounding streets and proximity to the Hudson River. Like the Special Hudson Square District, the selection of commercial and manufacturing zoning districts acknowledges that this is a mixed residential, commercial and industrial neighborhood. The highest density residential district is nearest other residential development to the north and corresponds in permitted density to the Special Hudson Square District regulations. C6-4 permits a variety of retail uses, which will introduce needed amenities for residents and the nearby worker population. The Center Site C6-3 district also allows residential use, but the permitted density transitions toward the lower-density manufacturing district on the South Site, with neighboring UPS and Department of Sanitation facilities. Absent the floor area proposed to be transferred from the Hudson River Park, the aggregate density on the site would be 7.7 FAR under the proposed districts. This density is consistent with the Special Tribeca Mixed-Use District to the south of the development site, which permits up to 7.2 FAR. With the transferred floor area, the site is proposed to include 8.7 FAR, which is less than the 12 FAR permitted in the Special Hudson Square District to the east.

The Special Hudson River Park District, discussed below, stipulates that, absent the election of the special permit and construction pursuant to the special permit approvals, the receiving site is restricted to the manufacturing zoning districts that apply today.

Special Permit pursuant to §89-21, "Transfer of Floor Area from Hudson River Park"

The applicant seeks a special permit pursuant to the proposed § 89-21, "Transfer of Floor Area from Hudson River Park". The special permit would allow the transfer of 200,000 square feet from Pier 40, the granting site in Hudson River Park, to the St. John's Center at 550 Washington Street, the receiving site, both in the proposed Special Hudson River Park District. Pier 40 is zoned in an M2-3 district and allows 1,345,128 square feet of floor area, of which 583,204 square feet are unused, according to a survey from the Trust. 200,000 square feet constitutes 13.2% of the floor area permitted by underlying district regulations on the receiving site. As has been described, the transfer of floor area would enable improvements to Pier 40, in support of which the Trust has provided a letter to the Commission.

Under the special permit, the applicant also seeks modification of bulk requirements as follows:

- Height: In the proposed C6-4, C6-3 and M1-5 districts, all building heights are regulated by the sky exposure plane. On all three sites, the proposed building envelopes penetrate the sky exposure plane as measured from the zoning lot's bounding streets, including West Houston Street. The buildings' highest projections require waiver to allow heights of 430 feet and 360 feet on the North Site, 320 feet and 240 feet on the Center Site and 240 feet on the South Site. The tower portions of buildings are located on bases that correspond in height to adjacent Hudson Square loft buildings. Given the development site's location on a wide street, West Street, and the waterfront, bulk is proposed to be distributed vertically to avoid squat buildings, like the existing St. John's Center building, and locate slender towers to open view corridors.
- Street walls: C6-4, C6-3 and M1-5 districts all permit a maximum base height of 85 feet. As has been described, adjacent Special Hudson Square District allow street walls of up to 150 feet on wide streets and 125 feet on narrow streets. The North Site is proposed to include buildings with street walls of 115 feet, 127 feet and 129 feet. The Center Site

includes street walls designed at heights of 102, 188 and 209 feet. The South Site building has a street wall height of 112 feet on both street frontages. Many of these street walls incorporate lowered recesses to articulate the façade and match the character of nearby lofts. The street walls are also proposed to reflect the height of adjacent structures, like the DSNY garage to the south.

- Height factor: The Center Site is proposed to be zoned in a C6-3 district, which is a height factor district. Height factor regulations are a product of floor area, building height and open space, and they encourage "tower-in-the-park" development, with smaller footprints and tall building heights. The Center Site is proposed to be constructed with 7.7 FAR, plus transferred floor area. Based on this proposed floor area, height factor calculations would permit a maximum lot coverage of 56,357 square feet, whereas the Center Site buildings would have a lot coverage of 67,750. The applicant proposes to modify the height factor requirements to allow a greater lot coverage, while also keeping building heights lower than would be allowed.
- Rear yards: The South Site building, proposed in an M1-5 district, is designed without the 40-foot rear yard that would otherwise be required to be located in the middle of the lot, or as two 20-foot deep areas on each street frontage or on each side lot line. The hotel or office building is sited to include a high-coverage base with an H-shaped configuration of upper floors to allow light to all portions of the building. The South Site, as are all three sites, is part of a larger site plan, and is not located in a typical street context in which a rear yard serves the purpose of separating buildings from adjacent properties. The upper floors of the South Site building are located 120 feet from the Center Site buildings and 60 feet from the DSNY garage.

The applicant also requests that the special permit be granted for a 10-year term. Given the size of the development site, the complexity of the proposed project, existing site conditions that will require substantial work before a first foundation can be constructed, and existing tenancies on the site, the applicant asks that the special permit be granted for a period of 10 years, rather than four years, as is provided for in §11-42(c) for multi-building developments.

Special permits pursuant to §13-45, "Special Permits for Additional Parking Spaces" and §13-451,"Additional parking spaces for residential growth"

The applicant requests three special permits pursuant to §§13-45 and 13-451 for three separate accessory parking facilities of 772 parking spaces in total:

- a 236-space below-grade accessory parking facility on the North Site accessed from a 22-foot wide curb cut on West Street.
- a 372-space below-grade accessory parking facility on the Center Site accessed from the through-block passage separating the Center and South sites. The entrance to the garage would be sited in the southernmost portion of the Center-East Building.
- a 164-space below-grade accessory parking facility on the South Site accessed from a 22-foot wide curb cut on West Street.

Based on the numbers of parking spaces permitted per use and the proposed total program of up to 1,586 residential units, 200,000 square feet of retail and up to 353 hotel rooms across the zoning lot, the development would be permitted 265 parking spaces. However, Section 13-13 limits developments with multiple uses on a single zoning lot to 225 spaces. Pursuant to Section 13-451, the applicant requests three special permits to allow additional accessory spaces for developments that are predominantly residential and where the Commission may find that trends in residential construction and available parking in the surrounding area would support the provision of additional parking, as proposed.

The applicant prepared a residential growth analysis to determine whether the proposed number of spaces is reasonable and not excessive in relation to recent trends within the 1/3-mile area of the development site over the study period of 2005-2015. In summary, 28 new and converted residential buildings were introduced with 853 residential units. Additionally, nine residential projects are planned for the study area with an additional 790 units. Residential growth over the total study period is 1,643 units. Only one licensed, 166-space garage was introduced in the study area within the study period. Ratios that apply to area parking facilities yielded a net decrease of 526 residential spaces in licensed parking facilities within the study area during the study period. Of the qualifying and planned residential projects, ten residential developments added 399

residential spaces to the study area. Therefore, the total residential parking capacity change is a decrease of 127 spaces. Absent the proposed project, the residential unit change is 1,643 units and residential parking capacity change is a decrease of 127 spaces, resulting in a residential growth parking ratio of -7.7 percent. The proposed development would add 1,586 dwelling units and 772 parking spaces, resulting in a net increase of 3,229 residential units and 645 residential spaces in the study area. Therefore, the residential growth parking ratio with the proposed project would be 20 percent.

Authorizations pursuant to §13-441, "Curb cuts"

The applicant seeks three authorizations pursuant to §13-441 to allow curb cuts on West Street, a wide street, which are otherwise prohibited by Manhattan Core parking regulations. The existing building includes 18 loading docks on West Street, which are accessed by 439 feet of curb cuts in the present condition. These curb cuts are proposed to be removed and, in order to support the proposed uses and parking facilities on the development site, three curb cuts of 22 feet each would be installed at the North Site to access the 236-space garage, between the Center and South sites, to allow vehicles into the through-block driveway (and the 372-space Center Site garage off of the driveway) and at the South Site to access the 164-space garage. The location of curb cuts on alternative streets that border the development site would be difficult owing to their width and adjacent uses. Curb cuts on Washington Street would interfere with UPS operations across the street and interrupt sidewalk areas where residential lobbies have been deliberately located. West Houston Street, as the site's main pedestrian corridor, is best suited for pedestrian building access and locating retail space to enliven the street. Clarkson Street, at the northern border, is also a narrow street that could be invigorated with pedestrian uses. West Street is a wide, major arterial street with four or five lanes of traffic and relatively little pedestrian activity.

The applicant also seeks a Chairperson's Certification pursuant to §89-21(d) to ensure that building permits may only be issued by the Department of Buildings once a payment schedule associated with the transfer of floor area has been jointly executed by the owner of the receiving site and the Trust.

ENVIRONMENTAL REVIEW

The subject application (C 160310 ZSM), in conjunction with the applications for the related actions (N 160308 ZRM, C 160309 ZMM, C 160311 ZSM, C 160312 ZSM and C 160313 ZSM), was reviewed pursuant 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 (NYCRR), Section 617.00 et seq. and the New York City Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 16DCP031M. The lead agency 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 October 21, 2015, 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 October 21, 2015. A public scoping meeting was held on November 20, 2015. A Final Scope of Work was issued on May 6, 2016.

A DEIS was prepared and a Notice of Completion for the DEIS was issued on May 6, 2016. On August 24, 2016, 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 October 6, 2016.

Significant adverse impacts related to air quality and noise would be avoided through the placement of an (E) designation (E-384) on the Development Site as specified in the FEIS.

The proposed development as analyzed in the FEIS identified significant adverse impacts with respect to transportation (traffic only), open space (active and total only) and construction noise. Traffic conditions were evaluated at 18 intersections for the weekday AM, midday, PM, and Saturday peak hours. The proposed project would result in significant adverse traffic impacts at seven intersections during the weekday AM peak hour, two intersections during the weekday

midday peak hour, four intersections during the weekday PM peak hour, and four intersections during the Saturday peak hour. With the implementation of the mitigation measures described below, which are subject to approval by New York City Department of Transportation prior to implementation, each of the significant adverse traffic impacts could be fully mitigated:

Proposed Project

Clarkson Street and Washington Street

The significant adverse impacts at the southbound approach of this intersection during the weekday AM and PM peak hour could be fully mitigated by shifting one second of green time from the eastbound phase to the southbound phase.

West Houston Street and Washington Street

The significant adverse impacts at the southbound approach of this intersection during the weekday AM, PM, and Saturday peak hours could be fully mitigated by restriping the southbound approach from one eight-foot parking lane, one 11-foot moving lane, one five-foot bike lane, and one eight-foot parking lane to one 11-foot right-turn lane, one 13-foot shared moving/bike lane, and one eight-foot parking lane; and prohibiting parking (installing "No Standing Anytime" sign) on the west curbside of the southbound approach for approximately 100 feet from the intersection.

Clarkson Street and West Street

The significant adverse impacts at the southbound left-turn lane group of this intersection during the weekday AM and midday peak hours could be fully mitigated by shifting one second of green time from the northbound/southbound phase to the southbound left-turn phase.

The significant adverse impact at the southbound left-turn lane group of this intersection during the weekday PM peak hour could be fully mitigated by shifting three seconds of green time from

the northbound/southbound phase to the southbound left-turn phase.

The significant adverse impact at the southbound left-turn lane group of this intersection during the Saturday peak hour could be fully mitigated by shifting two seconds of green time from the northbound/southbound phase to the southbound left-turn phase.

West Houston Street and West Street

The significant adverse impact at the eastbound left-turn lane group of this intersection during the weekday AM peak hour could be fully mitigated by shifting one second of green time from the from the northbound/southbound phase to the eastbound/westbound phase.

The significant adverse impacts at the westbound right-turn lane group of this intersection during the weekday midday and Saturday peak hours could be fully mitigated by shifting two seconds of green time from the northbound left-turn phase to the eastbound/westbound phase.

The significant adverse impact at the westbound right-turn lane group of this intersection during the weekday PM peak hour could be fully mitigated by shifting three seconds of green time from the northbound/southbound phase to the eastbound/westbound phase.

Canal Street (North) and West Street

The significant adverse impact at the westbound left-turn lane group of this intersection during the weekday AM peak hour could be fully mitigated by shifting one second of green time from the northbound/southbound phase to the westbound phase.

Clarkson Street and Hudson Street

The significant adverse impact at the eastbound approach of this intersection during the weekday AM peak hour could be fully mitigated by shifting three seconds of green time from the northbound

phase to the eastbound phase.

The significant adverse impact at the eastbound approach of this intersection during the Saturday peak hour could be fully mitigated by shifting one second of green time from the northbound phase to the eastbound phase.

Clarkson Street and Varick Street

The significant adverse impact at the eastbound approach of this intersection during the weekday AM peak hour could be fully mitigated by shifting two seconds of green time from the southbound phase to the eastbound/westbound phase.

Proposed Project with South Site Office

Clarkson Street and Washington Street

The significant adverse impacts at the southbound approach of this intersection during the weekday AM and PM peak hours could be fully mitigated by shifting 1 second of green time from the eastbound phase to the southbound phase.

West Houston Street and Washington Street

The significant adverse impacts at the southbound approach of this intersection during the weekday AM, PM, and Saturday peak hours could be fully mitigated by restriping the southbound approach from one eight-foot parking lane, one 11-foot moving lane, one five-foot bike lane, and one eight-foot parking lane to one 11-foot right-turn lane, one 13-foot shared moving/bike lane, and one eight-foot parking lane; and prohibiting parking (installing “No Standing Anytime” sign) on the west curbside of the southbound approach for approximately 100 feet from the intersection.

Clarkson Street and West Street

The significant adverse impacts at the southbound left-turn lane group of this intersection during the weekday AM and Saturday peak hours could be fully mitigated by shifting one second of green time from the northbound/southbound phase to the southbound left-turn phase.

The significant adverse impact at the southbound left-turn lane group of this intersection during the weekday PM peak hour could be fully mitigated by shifting two seconds of green time from the northbound/southbound phase to the southbound left-turn phase.

West Houston Street and West Street

The significant adverse impact at the eastbound left-turn lane group of this intersection during the weekday AM peak hour could be fully mitigated by shifting one second of green time from the northbound/southbound phase to the eastbound/westbound phase.

The significant adverse impacts at the westbound right-turn lane group of this intersection during the weekday midday and Saturday peak hours could be fully mitigated by shifting two seconds of green time from the northbound left-turn phase to the eastbound/westbound phase.

The significant adverse impact at the westbound right-turn lane group of this intersection during the weekday PM peak hour could be fully mitigated by shifting three seconds of green time from the northbound/southbound phase to the eastbound/westbound phase.

Clarkson Street and Hudson Street

The significant adverse impact at the eastbound approach of this intersection during the weekday AM peak hour could be fully mitigated by shifting three seconds of green time from the northbound phase to the eastbound phase.

The significant adverse impact at the eastbound approach of this intersection during the Saturday peak hour could be fully mitigated by shifting one second of green time from the northbound phase to the eastbound phase.

The FEIS also identified mitigation measures to reduce the significant adverse impacts with respect to open space. With the implementation of the following mitigation measures identified in the FEIS, the significant adverse open space impacts could be partially mitigated:

The significant adverse impacts on open space could be partially mitigated by the provision of an on-site active recreational facility. The private applicant has committed to providing a 10,000-square foot on-site active indoor recreation facility.

The significant adverse impact on open space could also be partially mitigated by the development of approximately 11,000 square feet of passive open space at 388 Hudson Street, currently under the jurisdiction of the New York City Department of Environmental Protection (DEP). In connection with this project, DEP and NYC Parks have agreed to the utilization of this area for passive open space purposes.

Shortly before the completion of the FEIS, the private applicant agreed, in a letter submitted to CPC on September 30, 2016, to revise the project to include certain commitments, which were considered in the alternatives chapter of the FEIS under the "Revised Proposed Project Alternative."

These commitments would provide an approximately 10,000 square foot multi-purpose indoor active recreation space on the development site; require that there be four retail establishments on each side of West Houston Street; modify the design of the through-block driveway between the Center and South Sites to make the driveway more pedestrian-friendly; remove the structure and public open space over West Houston Street and instead provide at-grade public open space in the through-block driveway, as well as some combination of open space in the Center Site courtyard

and/or the South Site; redesign the West Houston Street streetscape to be more pedestrian-friendly; and adhere to other design guidelines for the proposed buildings; and exclude bog box retail.

The Revised Proposed Project Alternative would result in the same significant adverse impacts as the Proposed Project except for the open space impacts. Under the Revised Proposed Project Alternative, significant adverse open space impacts would be partially mitigated.

On October 14, 2016, the private applicant filed a revised ULURP application incorporating these project revisions. The project described in the filed application is consistent with the project analyzed in the Revised Proposed Project Alternative in the FEIS.

In addition, since the issuance of the FEIS, technical modifications have been made to the proposed zoning text Sections 89-10 and 89-21(d). A Technical Memorandum describing the changes to the application and the proposed zoning text was issued on October 17, 2016. The Technical Memorandum also includes the Hybrid Scenario, wherein a portion of the zoning lot is developed under the zoning regulations in effect prior to the adoption of the Zoning Map Amendment, while the remaining portion of the zoning lot is developed in accordance with the Special Permit. The Technical Memorandum concludes that these revisions would not have any new or different significant adverse impacts than those identified in the FEIS for the Revised Proposed Project Alternative. The Technical Memorandum also concludes that the development analyzed under the Hybrid Scenario would not have any new or different significant adverse impacts than those identified in the FEIS.

UNIFORM LAND USE REVIEW

This application (C 160310 ZSM), in conjunction with the related ULURP applications (C 160309 ZMM, C 160311 ZSM, C 160312 ZSM and C 160313 ZSM), was certified as complete by the Department of City Planning on May 9, 2016, and was duly referred to Manhattan Community Board 2 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 160314 ZAM, N160315 ZAM and N 160316 ZAM), which were referred for information and review on May 9, 2016, in accordance with the procedures for non-ULURP matters.

Community Board Review

Community Board 2 held a public hearing on this application (N 160308 ZRM) and on the separate but associated application by SJC 33 Owner 2015 LLC (C 160309 ZMM, C 160310 ZSM, C 160311 ZSM, C 160312 ZSM, C 160313 ZSM, N 160314 ZAM, N 160315 ZAM, and N 160316 ZAM) on July 21, 2016, and on that date, by a vote of 36 in favor and 1 abstention, adopted a resolution recommending: approval of N 160314 ZAM, N160315 ZAM and N 160316 ZAM; approval with conditions of N 160308 ZRM, C 160309 ZMM, and C 160310 ZRM; and denial with conditions of C 160311 ZSM, C 160312 ZSM and C 160313 ZSM. In its resolution, the Board included the following comments:

- The project plan should be improved so that the area can be reintegrated into the neighborhood fabric, and actions should be taken to protect nearby areas from development pressures.
- CB2 favors a shift of height and density from the North Site to the Center Site and favors a maximum building height of 405 feet, but the site plan issues discussed herein are more significant than building height and distribution.
- For all three sites, CB2 opposes including retail stores in any use group, except the proposed supermarket, with selling floors exceeding 10,000 square feet, including any below-grade areas.
- The maximum size of any eating and drinking establishment, including in below-grade areas, should not exceed 5,000 square feet.
- Community Board 2 opposes the proposed permits for off-street parking modifications. The number of spaces allowed should not exceed the total of 381 spaces, based on 317 residential spaces (20% of 1586 units), 52 spaces for a hotel (or 54 spaces for office use), and 10 spaces for retail.
- The following changes to the site plan would create accessible structures and pleasant streets and would integrate the project with the adjacent community as required to justify the rezoning:
    - Reopening King Street
    - If possible, reopening Charlton Street
    - Opening Houston Street to the sky by removing all structure above except one platform.
    - Widening Washington Street by moving the east street wall of the North and Center Site structures 12 feet to the west and adding an attractive green buffer.
    - Welcoming public use of the open area between east and west buildings in the Center Site.
- CB2 supports the transfer of 200,000 square feet of development rights from Pier 40 for the purpose of repairing the Pier 40 piles if $50 million of City and State funding is committed over a five-year period to complete other urgent repairs at the pier and assure the pier remains open for its current uses. CB2 supports the transfer exclusively to 550

Washington Street and also supports future redevelopment of Pier 40 if the development pressures on nearby neighborhoods are mitigated as follows:

- 1. The final phase of South Village Historic District is implemented concurrently during the ULURP process;
- 2. No additional development rights will be transferred from the Park to any area in CB2, whether from Pier 40 or from any other potential granting site at any time in the future.

To help facilitate an agreement whereby Hudson River Park Trust will agree to permanently restrict development rights transfer to sites in CB2 beyond the 200,000 proposed here, in September, 2016, CB2, Man. will hold a public hearing to consider criteria for redevelopment of Pier 40 based on the a draft framework.

- CB2 cannot support a project that fails to mitigate a significant adverse impact on active open space. Unless suitable outdoor space within the study area is identified and secured, qualified and adequate indoor space within the study area, such as new gyms and swimming pool within the project sites, will be the only sufficient way to mitigate significant adverse impacts of the project on active open space opportunities in the district.
- CB2 opposes the proposal for passive public open space on the old railroad track beds above Houston Street because these should be removed to open Houston Street to the sky. Instead, a much larger public open space should be created with at-grade access in the area between the buildings on the Center Site of the project.
- CB2 recommends that HPD and DCP begin work, concurrently with the 550 Washington Street application, to expand the Hudson Square Special District to include the 388 Hudson Street site.
- CB2 rejects the idea that housing and open space priorities in the district should be selected on the basis of the Council District location and once again requests that HPD work with CB2 to develop a plan for the district that builds as much new affordable housing as possible without undue harm to our neighborhood character and open space.
- CB2 recommends that 20% of the floor area planned for 130% AMI be set at 100% AMI so that units can be marketed in the wider 100% to 165% AMI range.
- Of the 178 units for seniors, CB2 recommends that no more than 70 be studios, and also recommends that up to 50% of the units be offered at 100% AMI.
- For this project to proceed responsibly, NYC DOT needs to complete, concurrently with this ULURP, a comprehensive study providing recommendations for improving baseline conditions prior to the start of work on the proposed project. The City administration needs to commit to improving through traffic and pedestrian safety conditions by drawing upon a full toolkit of improvements including permanent lane separations, neck downs and other curb extensions, medians, turning changes, parking changes, and special signage. Particular attention should focus on Varick Street below Bleecker Street, Houston Street, and Spring Street.
- In general, mass transit needs to be improved so that the proposed project is less car-dependent and more appropriate for the Manhattan Core. Dependency on vehicular access will be detrimental to the project and to the neighborhood.
- Several traffic safety measures for crossings at West Street were recommended

- As yet unfulfilled opportunities for new schools were created by agreements in connection with ULURPs for the Hudson Square Rezoning and the NYU 2031 Plan. 550 Washington Street and Pier 40 are not ideal locations for a new elementary school, but either could provide a good location to relocate one of the two high schools in the area which could then be reconfigured. Unless commitments are made prior to approval of this application, sufficient space at an appropriate location within the project should be allocated for a new school, or funding should be provided to increase capacity at schools in CB2, such as the Bleecker School.

Borough President Recommendation

This application (C 160310 ZSM), in conjunction with the related actions, as well as the separate but associated application by the Department of City Planning (N 160308 ZRM), was considered by the President of the Borough of Manhattan. On August 17, 2016, the Borough President issued a recommendation as follows:

- Approval of ULURP Application No. N 160308 ZRM with the condition that the text is revised to include a provision capping the maximum amount of floor area that can be transferred within Community Board 2 to that which has already been allocated for the St. John Terminal site
- Approval ULURP Application No. N 160311 ZCM for a parking garage at the North Site;
- Approval of Application Nos. N 160314 ZAM, N 160315 ZAM, N 160316 ZAM and N 160317 ZCM for curb cut authorizations for required loading and permitted parking, and the chairperson certification that the money to the Trust has been transferred prior to the issuance of a building permit, respectively;
- Denial of ULURP Application Nos. C 160312 ZSM and C 160313 ZSM for parking garages at the Center and South Sites; and
- Denial of ULURP Application Nos. C 160309 ZMM and C 160310 ZSM, unless the following conditions can be fulfilled:
    1. In regard to transportation, CPC should work with MTA to increase frequency of the M20 bus, and with DOT to include a pull off area adjacent to the senior housing on Washington Street;
    2. To decrease transportation impacts, no stores above 10,000 square feet, except for a supermarket, should be permitted;
    3. To contribute to neighborhood character and an active pedestrian realm, the following retail changes are recommended:
        i. Provide at-grade access to retail on West Houston Street;
        ii. Require a minimum of one retail establishment per 25’ of street frontage along Clarkson Street, West Houston Street, and Washington Street; and
        iii. Require a minimum of 80% active uses along Washington Street;
    4. To decrease open space impacts, the below-grade space currently allocated for parking should be allocated for indoor active recreation use and cultural uses which are complementary to the purposes of the special district and Hudson River Park;
    5. According to the appraisal report, the value of the development rights to be transferred was reduced for the provision of affordable housing. We do not believe this should have been

the case. In addition, as we have stated the density of the project is out of scale with virtually all of the surrounding areas. For these reasons, if the community is to be asked to bear these impacts, more affordable housing should be provided, which is so sorely needed. In regard to affordable housing:

    1. The percentage of affordable housing should be increased to at least 30% of total floor area
    2. The Special Permit should require equal distribution of affordable units in both Center Site buildings
    3. The breakdown of affordable Senior units should be 75% 1-bedroom units and 25% studio units

6. The project improves its public access plan requirements to include approved plans for lighting, planting, seating and signage clearly signaling access to those spaces;
7. Two of three above-grade West Houston areas are removed;
8. All accessible open spaces should be accessible to all residents and amenities provided in an equal and fair manner;
9. Sustainability measures such as green roofs, water retention and cooling are incorporated as a design standard for the proposal; and
10. The concerns of Manhattan Community Board 2 are responded to and addressed.

City Planning Commission Public Hearing

On August 10, 2016 (Calendar No. 4), the City Planning Commission scheduled August 24, 2016, for a public hearing on this application (C 160310 ZSM). The hearing was duly held on August 24, 2016 (Calendar No. 24) in conjunction with the public hearing on the applications for related actions, as well as the separate but associated application by the Department of City Planning (N 160308 ZRM). There were 29 speakers in favor of the application and 31 speakers in opposition.

Land use counsel to the private applicant, SJC 33 Owner 2015 LLC, spoke in favor of the project, describing the development program and actions sought. The private applicant's architect also spoke in favor of the applications and described the site plan, building massing and design rationale for the proposed development.

The attorney and architect cited several reasons for locating the tallest building at the northern portion of the site, including the intention to transition the concentration of residential uses from the northern portion of the development site, nearest to residential streets, to the south, where manufacturing uses predominate. Similarly, it is intended that heights graduate from the tallest buildings at the north to the lowest buildings at the south where the site abuts the DSNY facility.

They also noted that the highest neighboring densities and heights are along the West Houston Street corridor in Hudson Square, and locating the tallest building on West Houston Street would reinforce this pattern.

The private applicant's attorney explained that the affordable housing proposal was developed in consultation with the Department of Housing Preservation and Development and the architect noted that buildings that include affordable units have been designed to have views, both to the river and east to central Manhattan. The senior affordable building on the North Site is entirely separate for operational and programmatic reasons. The affordable units on the Center Site are integrated into a mixed-income building on Washington Street.

The private applicant's representatives described the need for the quantity of retail included in the program and explained that the large site and introduction of 1.7 million square feet of development requires a retail amenity such as a grocery store. Adjacent uses, such as the Hudson River Park, may generate a need for a large sporting goods store. Shops would also be a convenience for senior residents. The architect described the location of retail and its intent to animate the street and elevated open space levels. The types of retailers for commercial units were not yet identified and the plans reflect a configuration that assumes the largest establishments, but the spaces could be subdivided into smaller establishments.

The private applicant's counsel explained that the proposal for 772 parking spaces is driven by the desire to provide a parking space to residential unit ratio of 20% within the study area. The private applicant expects that the availability of parking will improve the marketability of residential units. There is no specific allocation of parking between residential and commercial uses, but the private applicant anticipates that most demand for parking will be derived from residential occupants.

The architect explained loading operations on the development site, including use of the service alley at the South Site and loading docks on West Street at the North and Center sites. The private applicant's traffic engineer also described the recommendation by the New York State Department of Transportation that interior loading docks only be available for smaller trucks, while larger

trucks would be required to pull into an existing curb lane on West Street.

To address concerns about the safety of crossing West Street to Pier 40, the architect explained that the residential lobbies have been located away from the most active pedestrian crossings, particularly on the north side of West Houston. It was also noted that the applicant has made early efforts to engage New York State Department of Transportation to propose a new crossing on West Street that might extend from the through-block passage between the Center and South Sites.

Further comments included that the development is not proposed to be constructed in any particular phasing sequence. The developer has committed to a LEED certification process.

A member of the architectural team explained that the Center Site courtyard was designed as an inaccessible visual amenity because of concerns about noise, privacy and security for residential units facing the space. He also said that the Washington Street sidewalk would be widened into the roadbed, but that the current number of lanes would remain. He described the observation of UPS operations during construction of the DSNY garage and said that staging in a portion of the Washington Street roadbed did not appear to hinder the movement of UPS vehicles.

An environmental consultant described the traffic study and operations of the loading dock on West Street and identified intersections with potential significant adverse impacts. A legal representative of the private applicant clarified the applicant is in the process of selecting a not-for-profit operator for the proposed affordable senior building and that therefore specific senior amenities have not yet been programmed. In response to concerns about the number of parking spaces proposed, and that the mathematical analysis required of special permits pursuant to Section 13-451 allows a parking proposal to provide spaces up to the 20% ratio, the legal representative explained that the maximum number of spaces in a study area is a fluid number determined by new residential development and loss of parking facilities over time.

The President and CEO of the Hudson River Park Trust provided testimony in support of the applications. She explained that Pier 40 is expected, by State legislation, to generate significant

income for the Park, but that the majority of the pier's piles are in need of urgent repair. Revenues from the sale of development rights from the Park must be used first for the repair of the pier's infrastructure. The money made available by the sale will fund pile repair that will allow the pier to remain open for its current uses. While the Trust would prefer to use remaining floor area, subtracting the subject transfer, as part of a future redevelopment of Pier 40, such redevelopment would require amendment of the Hudson River Park Act. The Trust's Chief Financial Officer also testified in favor of the project and clarified the payment agreement between the developer and the Trust. After closing, any unpaid funds will be secured by a letter of credit to ensure that the Trust can proceed with engineering work irrespective of the status of the development on the St. John's Center site. The complexity of pile repairs requires the work to be done over several years and the payment for development rights is commensurate with that schedule. The Trust's Executive Vice President spoke in favor of the applications and clarified the boundaries of the Park, noting that only park/commercial piers can carry commercial development. Pier 40 is a park/commercial pier that generates floor area, and the Trust has documentation from the Army Corps of Engineers and the Department of Environmental Conservation that recognize construction on the Park's piers and water.

The Manhattan Borough President spoke in support of some actions and in opposition to others. She supported approval of the proposed text amendment but asked that no further development rights be transferred from Pier 40 to Community District 2. Underscoring the size of the project, in floor area and height, the Borough President said that it could be improved by eliminating most of the parking, precluding big box stores, creating quality open space and a pedestrian realm plan, and increasing the amount of affordable housing, with more one-bedroom units for seniors and equitable access to all amenities.

Four members of Community Board 2 spoke in support, presenting conditions consistent with the Board's written resolution, including the incorporation of a prolongation of King Street into the site plan, a setback of the building on Washington Street, the removal of the rail structures over West Houston Street, the provision of at-grade open space, location of the tallest building on the Center Site, limitation of retail establishments to 10,000 square feet (except for the grocery store)

and a reduction in the number of parking spaces. Recommendations for open space mitigation included an indoor recreation facility, conversion of nearby City-owned sites to open space, the inclusion of on-site, at-grade open space and further funding to Pier 40. The Board members asked for a comprehensive area transportation study and adjustments to the affordable housing program.

The City Council Member for the 3rd District spoke in favor of the applications but noted that the proposed development could be improved with respect to the layout of buildings, number of parking spaces, location of open space and retail program. The Council Member asked for additional funding for Pier 40, the landmark designation of a portion of the South Village, a transportation study of the development site's surrounding blocks and restrictions on future transfers to Community District 2.

A speaker presented favorable joint testimony on behalf of the Congressman for the 10th Congressional District and the State Senators for the 26th and 27th State Districts. The speaker asked that future transfers to Community District 2 be restricted, that additional funding be made available to Pier 40, that the South Village be landmarked and that residents of market rate and affordable housing units be provided equal amenities.

Speakers from the Association for a Better New York, the Real Estate Board of New York, and Friends of Hudson River Park also spoke in support of the applications. One favorable speaker asked that his property be included in the Special Hudson River Park District. A member of SEIU 32BJ and a member of the New York State Building Construction Trades Council spoke in support of the actions. A representative from the Hudson Square Connection provided favorable testimony, citing the proposed development's residential and retail uses and improved access to the Hudson River Park, and noted the need for streetscape improvements to integrate the proposed project into its surrounding streets. A representative from the Waterfront Alliance also spoke in favor, highlighting the investment in Pier 40 that will be made possible by the project.

A local resident, the president of the Greenwich Village Little League and four members of Downtown United Soccer Club expressed support for the development and, particularly, the

benefit to Pier 40 that will allow the pier to continue to serve as a vital sports and recreational resource. Two members of the Village Community Boathouse expressed support for the project and asked that there be continued free rowing available to the community at Pier 40.

A representative of the Assembly Member for the 66th State Assembly District provided testimony in opposition to the applications and comments concerning the development's height, designation of the South Village as a historic district, the size of proposed retail, and the quantity of affordable housing, open space and proposed parking.

A speaker testified in opposition to development on or over the river and two speakers, who also objected to the project, asserted that there are no development rights on Pier 40. A representative of the Clean Air Campaign spoke against the project, citing concerns that Pier 40 may one day be developed for non-water dependent use at a location that is vulnerable to winds, tides, currents and flooding.

Six representatives from the Greenwich Village Society for Historic Preservation spoke in opposition to the development, stating that its size would place development pressure on the portion of the South Village neighborhood that is not designated a historic district, and requesting the landmark designation of this portion, the prohibition of destination retail in the subject development and exclusion of any future development rights transfers from the Park to Community District 2. Fifteen additional speakers against the proposal expressed similar views concerning landmarking, retail and the potential for additional development rights transfers. One of the speakers who testified in opposition additionally asked that the height of buildings be reduced.

A member of Save Chelsea spoke in opposition, citing concerns that transfers of development rights from the Park will result in overdevelopment of the west side of Manhattan and that alternative means of funding the Park would be preferable, such as a dedicated tax. Another speaker objected to the proposal with concerns of increased traffic congestion. A member of Friends of the Earth and one other speaker testified in opposition with concerns that the applications would destroy habitats in the Hudson River and allow non-water dependent

development on Pier 40. A speaker opposed to the applications suggested the inclusion of a hospital on the development site and that amenities in the project be available to senior residents.

There were no other speakers and the hearing was closed.

WATERFRONT REVITALIZATION PROGRAM CONSISTENCY

This application (C 160310 ZSM), in conjunction with those for the related actions, was reviewed by the City Coastal Commission 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 30, 2013, and by the New York State Department of State on February 3, 2016 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 16-023.

This action was determined to be consistent with the policies of the New York City Waterfront Revitalization Program.

CONSIDERATION

The Commission believes that the special permit (C 160310 ZSM), in conjunction with the related applications for a zoning map amendment (C 160309 ZMM), special permits (C 160311 ZSM, C 160312 ZSM, C 160313 ZSM) and authorizations (N 160314 ZAM, N 160315 ZAM, and N 160316 ZAM), is appropriate.

The application would facilitate the redevelopment of 550 Washington Street with a mix of uses over five buildings and open areas, including a designated public access area, in Manhattan Community District 2. The proposed project would transform this underutilized site into an integral development with residences serving a variety of income levels, publicly accessible open space, retail amenities and a commercial building. The transfer of floor area from Hudson River Park proposed as part of the development would support the much-needed repair and rehabilitation of Pier 40 in the Hudson River Park.

Zoning Map Amendment

The Commission believes that the proposed zoning map amendment is appropriate. M1-5 and M2-4 generally permit 5.0 FAR of commercial or manufacturing uses. The C6-4 and C6-3 districts permit 10 FAR and 7.52 FAR respectively and would allow residential as well as commercial uses. The M1-5 district is proposed to be mapped over a portion of the development site that is currently mapped M2-4 to allow the option of a hotel use.

The proposed zoning districts introduce a mixture of residential and commercial uses where only commercial and manufacturing uses have been permitted. With the adoption of the 2013 Special Hudson Square District to the east, the 2008 MX-6 Special Mixed Use District to the northeast, 2010 amendments to the Special Tribeca Mixed-Use District to the south, and multiple residential developments along the proximate Hudson River waterfront, the mapping of zoning districts that will allow residential use is entirely consistent with the increased diversification of uses in this historically industrial section of Manhattan. The zoning map change to two commercial districts and one manufacturing district is in keeping with the neighboring special mixed-use districts that have retained provisions for manufacturing uses with the introduction of residential use and reinforcement of commercial uses.

The Commission considers the location of the proposed zoning districts across the development site to be appropriate. The zoning districts, with their respective use, floor area and bulk regulations, are proposed to be mapped to correspond to adjacent uses, densities and built forms in order to effectively integrate the development site into surrounding streets. The C6-4 district proposed north of West Houston Street locates the greatest concentration of residential floor area nearest residential development to the north. From the north to the south of the site, the proposed zoning districts transition to lower permitted floor areas with gradually less residential floor area allowed. The southernmost M1-5 district does not permit residential use, retains a manufacturing designation and establishes a separation of residential from adjacent manufacturing-compatible uses. While the applicant's intention is to construct an office or hotel building in the manufacturing district, the Commission notes the value of maintaining a manufacturing zoning district next to active manufacturing uses to relieve pressure on the essential services that they provide to

Manhattan.

The Commission believes that the floor area regulations of each of the districts, individually and in aggregate, are appropriate. The Commission recognizes that the Special Hudson Square District to the east permits a floor area ratio of up to 12.0. The three proposed zoning districts together would permit 7.7 FAR, which is significantly less and closer in density to the Special Tribeca Mixed-Use District where 7.2 FAR is permitted.

The Commission believes it is apposite that the proposed zoning districts are only applicable to the development sought pursuant to Section 89-21 for the Transfer of Floor Area from Hudson River Park. Absent the exercise of the special permit, the existing M1-5 and M2-4 districts apply.

Special Permit for the Transfer of Floor Area from Hudson River Park

The Commission believes that the special permit for the transfer of floor area and waivers of bulk regulations pursuant to Section 89-21 is appropriate and, further, grants the special permit for a period of 10 years.

The Commission notes that the applicant proposes a unified development of five buildings and open spaces over a site of almost five acres that overlooks the Hudson River and is just west of the Hudson Square neighborhood. Presently, the building on the development site is underutilized, outmoded and presents a visual and physical barrier to the river and Hudson River Park. The applicant proposes a development of 1.711 million square feet that will include 1.289 million square feet of residential floor area, 25% of which will be affordable pursuant to the Mandatory Inclusionary Housing program. The development will additionally include 200,000 square feet of commercial use, including retail and event space; 222,000 square feet of office or hotel floor area; and 772 parking spaces. In total, the project will occupy 8.7 FAR across the site. The proposal is facilitated by a transfer of 200,000 square feet of development rights from Pier 40 in Hudson River Park to the development site, as well as several modifications of bulk controls, including permitted height, the height of street walls, lot coverage under height factor regulations and required rear yards. In response to several comments, the Commission notes that there is no redevelopment of

Pier 40 or Hudson River Park proposed as part of this application.

The Commission acknowledges the range of benefits that this project introduces. First, as is consistent with Special Hudson River Park District that is being concurrently proposed through an application for a text amendment by the Department of City Planning, the transfer of floor area enabled by this special permit would inarguably and significantly support Hudson River Park and Pier 40. As has been thoroughly documented, Pier 40 is structurally endangered and a failure to immediately secure funding for the essential repair of its piles would result in the loss of a beloved and intensively used recreation space, as well as a crucial source of income for the Park's operations. The Commission heard from the Trust as well as the many dedicated parents and sports league leaders the importance of Pier 40 to the larger Park and to the children whose daily lives are shaped by the programming available at the pier.

The Commission additionally recognizes that the project will also bring a substantial amount of affordable housing to the area, which will contribute to the diversity of the residential stock in Manhattan Community District 2. The Commission notes that the affordable units will serve a range of incomes and needs and be subject to the permanent restrictions of the recently adopted Mandatory Inclusionary Housing program. The site will be redeveloped with attractive buildings, a thoughtful site plan and public open spaces, and a neglected edge of Manhattan will be enlivened with an integrated assemblage that connects to adjacent neighborhoods and at last provides an inviting entrance into Hudson River Park.

With the Hudson River Park Trust, a State entity, as an involved party, the Commission also notes the significance of this project's undergoing ULURP, where a full and robust public review of the transfer of floor area and proposed private development is essential to informing an outcome that balances a multitude of objectives.

The Commission is in receipt of a letter from the Trust dated May 3, 2016, which describes needed immediate and priority repairs to the piles of Pier 40, and confirms that the transfer of floor area will adequately support the completion of these identified improvements. The Commission is

assured that these structural repairs will allow the pier to operate at its current capacity and continue to serve the west side of Manhattan.

The design and programming of the proposed project are appropriate. The proposed development has been sited to include the highest concentration of floor area at the northern portion of the site, gradually reducing height and density towards the south. While the Commission received comments suggesting that the tallest building should instead be located on the Center Site, the Commission believes that the height and location of the largely residential North-West building are appropriate. Uses have been arranged across the development site to correspond to uses on adjacent blocks. The North Site includes the greatest concentration of residential floor area as it is nearest residential neighborhoods and new residential development. The massing of the North-West building is informed by its location on West Street, a wide street, and adjacency to the Hudson River, both of which afford an opportunity to extend buildings vertically. West Houston Street is also a prominent east-west corridor that includes buildings with the greatest height and greatest densities in the Hudson Square neighborhood. The location of the tallest building on the North Site reinforces this pattern. Further, the North-West building has been massed to establish a strong building base, reminiscent in height and setbacks of Hudson Square lofts to the east, with two tapering towers that are staggered and separated from several views. The Commission heard concern that the tallest building at the north will wall off adjacent low-rise residential neighborhoods. The North-West building has been expressly designed to concentrate floor area at its base of up to 127 feet, and thus establish a separation of a minimum of 60 feet between towers to maintain sight lines south.

The North Site also includes the North-East building, which is proposed to be comprised entirely of affordable housing for senior residents. The Commission received comments that the senior units are isolated as they all occupy a single building located on Washington Street, and that they will not benefit from views afforded to residents facing the river. As a building for senior residents, it is subject to a range of regulations specific to this type of housing, and it carries various programmatic and operational conditions specific to its use. The applicant has stated that an independent operator is being sought for the building. The building will be required to comply

with all Affordable Independent Residences for Seniors requirements, among which is programmed amenity space that must be accessible to all residents. The location of the building on the site is appropriate. The building is located on the corner of Washington Street and West Houston Street, nearest transit, away from UPS operations and with the most convenient access to blocks inland.

The Commission also believes that the location, massing and programming of buildings on the Center and South sites are appropriate. On the Center Site, the West Street-facing Center-West building will include street walls of up to 114 feet and a 320-foot tower at its southern end. The Center-East building on Washington Street, which is proposed to include affordable and market-rate units, is designed with street walls of up to 209 feet and a maximum height of 240 feet. The building forms on the Center Site deliberately include a north-south 60-foot wide break in mass to maintain sight lines from King Street. The two buildings are also separated by a courtyard to ensure adequate light and air. The programming of the Center Site, with retail and residential uses at lower heights and at a lower density than the program on the North Site, is consistent with the intended paradigm that the concentration of residential uses steps down from north to south in order to moderate conflicts with adjacent UPS and DSNY operations. To this purpose, the residential and commercial entrances on the Center Site have been appropriately located. The placement of a commercial building on the South Site establishes a buffer between residential uses in the development and neighboring uses in manufacturing districts.

During public review, the Commission heard many comments, including from the Community Board and the Manhattan Borough President, about the retention of the rail structures over West Houston Street, with concerns that their second floor location would inhibit access and compromise public use of the open space. Further, testimony included concerns that the rails might have a deleterious effect on street-level pedestrian and retail conditions on West Houston Street. More broadly, the Commission received statements asking for improved pedestrian circulation and a publicly accessible open space at-grade on the development site. Suggestions included an introduction of the extension of King Street through the site, public access to the courtyard on the Center Site and an improved design of the through-block passage separating the

Center and South sites.

The Commission supports the applicant's revisions to the application and the open space plan in response to these comments. The applicant elected to remove the second floor rails and associated arcade space as Public Access Area, and West Houston Street is proposed to be entirely open to the sky. The applicant has enhanced the design of the through-block passage between the Center and South sites with elements that will bolster its use as a pedestrian corridor, make it feel safe and inviting to the public, and encourage activity in the space. The applicant has granted the City an access easement that will ensure the passage is open 24 hours each day for regular pedestrian access. The applicant has also designated areas adjacent to the South Building as well as almost half of the Center Site courtyard for passive recreational use by the public. Together with the through-block passage, the Center and South site open space comprises dedicated Public Access Area. The Commission considers the Public Access Area to be a suitable appropriation of at-grade open space on the site plan. In response to comments that the proposed pedestrian circulation fails to connect the site to the adjacent street network and effectively weave the site plan into surrounding neighborhoods, the Commission believes that the location of uses on the site in combination the proposed through-block passage suitably maximizes the site's connectivity to adjacent streets. The applicant proposes retail on Clarkson and West Houston streets, which are significant east-west corridors that merge with other pedestrian-heavy streets to the east, thereby reinforcing these existing roads as connectors to the river. The applicant has also incorporated meaningful improvements in the design of the through-block passage that will draw pedestrian use.

In response to concerns that the proposed project neglected to include active recreational space, the Commission is pleased that the applicant has agreed to provide an indoor active recreational facility of 10,000 square feet on the ground floor of the Center-East building. The space will serve as a building amenity that will be accessible to the public during 50% of its operating hours. This is a welcome addition to the development program and will introduce a use on Washington Street that will activate the block without introducing conflicts with UPS across the street.

The Commission received testimony objecting to the location of large retail establishments on the development site out of concern that large retailers would draw vehicular traffic and detract from the quality of the streetscape with blank storefronts and inactivity. Several comments suggested a maximum establishment size of 10,000 square feet. The Commission understands the desire to see retail corridors that are animated, dynamic and provide a variety of shopping amenity, and believes that this goal serves the public as much as it supports the success of the development. In response to these comments, the applicant proposes to impose a restriction on retail spaces that requires a minimum of four retail establishments on each the north and south sides of West Houston Street, and a minimum of three establishments on Clarkson Street. The Commission accepts that this control does not include a maximum establishment size and recognizes that the applicant's retail program extends over three levels: the ground floor, the mezzanine and the second floor. The Commission believes that a restriction of 10,000 square feet per establishment, which would occupy three levels accessed from only the ground floor, would challenge the configuration and leasing of retail spaces. Therefore, the minimum number of establishments per street frontage, as proposed, is appropriate. The Commission also notes that West Houston Street will be strengthened as a retail attraction with streetscape requirements, including required transparencies and tenant storefront guidelines that the applicant has included in plans. The applicant's proposal also limits below-grade, cellar-level establishments to no more than 15,000 square feet per establishment for most uses.

To achieve the optimal site planning, building design and open space configuration that the Commission has described above, the Commission finds that the modification of bulk regulations, including a penetration of the sky exposure plane, street wall heights that correspond appropriately to loft buildings in the neighboring Hudson Square neighborhoods, lot coverage that maintains adequate light, air and open space among buildings, and the absence of a rear yard on the South Site are all appropriate. The location and quantity of the proposed mix of uses will complement the site plan, and the transferred floor area and bulk waivers will not unduly increase the bulk on the development site or unduly obstruct access of light and air to the detriment of neighboring buildings, streets or public spaces.

In light of the many benefits the proposed project yields, the Commission believes that the transferred floor area and proposed bulk modifications are appropriate in relation to the improvements to Hudson River Park identified by the Trust in its May 3, 2016 letter.

As a condition of the proposed special permit, the residential floor area in the proposed development will be subject to permanent affordable housing requirements of the Mandatory Inclusionary Housing program. The Commission finds that the provision of affordable housing, as proposed, will support the objectives of the program.

Parking special permits

The Commission believes that the grant of the three special permits to allow 547 accessory parking spaces beyond the 225 spaces permitted as-of-right, for a total of 772 accessory parking spaces in three cellar-level parking facilities on the North, Center and South sites, as part of the mixed use development at 550 Washington Street, is appropriate.

The site has been occupied by a single, four-story warehouse building with loading docks on all frontages, including 18 loading docks and 439 feet of curb cuts on West Street and 20 loading docks and 506 feet of curb cuts on Washington Street. The Commission observes that there are adjacent garage operations, including the UPS distribution center with loading bays on Washington and Greenwich streets, and the DSNY garage abutting the development site at its southern boundary with garage access on Washington and West streets. Entrances to each of the three parking facilities have been located to provide the most immediate vehicular access while also avoiding conflicts with pedestrian traffic and lanes designated for particular users. While the garage entrance on the North Site is located on West Street between two pedestrian crosswalks to Pier 40, the applicant has located building and retail entrances on the North Site away from West Street to minimize conflicts.

The Commission also finds that the proposed parking garages will not unduly increase traffic congestion. The applicant documented the change in the number of residential units and off-street parking spaces within one-third of a mile from the development site between 2005 and 2024, the

project's expected build year, to demonstrate that the request for 547 additional accessory parking spaces is reasonable and not excessive in regard to recent trends in residential development and the provision of parking. Using data from the Department of Buildings, the Department of Consumer Affairs, the Department of City Planning and additional research performed by the applicant, the study found that between 2005 and 2024, the ratio of the change in off-street parking spaces to the change in residential units without the proposed development containing a total of 772 accessory parking spaces and 1,586 residential units is -7.7%. With the proposed development, this ratio would increase to 20%.

Much of the discussion concerning the proposed parking facilities focused on the number of proposed spaces and the fact that the applicant is proposing to provide parking up to the 20% ratio of off-street parking spaces to residential units within the study area and study period. 20% is the ratio above which the Manhattan Core study and associated methodology for calculating trends do not support the provision of additional parking. There was concern expressed that the number of parking spaces would preclude other residential developments within the 1/3-mile radius from being able to seek a special permit to exceed the as-of-right number of parking spaces and that the quantity of parking is contrary to policy that encourages a reduction of dependency on vehicular use and alternative modes of transit. The Commission understands that the trends documented by the applicant reflect current construction in the study period and area, and that the numbers of residential units and parking spaces that comprise the ratio will vary over time as parking facilities are redeveloped and new residential buildings are built. Further, a future applicant seeking a special permit pursuant to Section 13-451 in the vicinity of the subject development is likely to be bound by a different study area that captures different garages and residential properties. Therefore, the proposal for parking spaces up to a ratio of 20% does not necessarily disqualify additional parking elsewhere. The Commission also understands that the calculation performed by applicants to inform whether proposed parking is reasonable and not excessive concerns trends of residential development and parking provision in the study area and is not based on the program of the single development that is proposed to include the subject parking facilities. The -7.7% off-street parking to residential unit ratio in this application's study area suggests a decline in parking spaces to residential growth, and the applicant is proposing to supply parking to effect a positive

proportion of parking to residential units in the study area, up to the level that is considered reasonable and not excessive.

RESOLUTION

RESOLVED, that having considered the Final Environmental Impact Statement (FEIS), for which a Notice of Completion was issued on October 6, 2016, with respect to this application (CEQR No. 16DCP031M), and the Technical Memorandum 001, dated October 17, 2016 (the "Technical Memorandum"), 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 Revised Proposed Project Alternative 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 and the placement of (E) designation (E-384) for Air Quality and Noise; and
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 by SJC 33 Owner 2015 LLC or its successor, 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.

The report of the City Planning Commission, together with the FEIS, constitutes 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 Coastal Commission finds that the action will not substantially hinder the achievement of any WRP policy and hereby determines that this 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 and findings described in this report, the application submitted by SJC 33 Owner 2015 LLC pursuant to Section 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 89-21 of the Zoning Resolution to allow the distribution of 200,000 square feet of floor area from a granting site (A1, Block 656, Lot 1) to a receiving site (A2, Block 596, Lot 1), and to modify the height and setback requirements of Sections 23-60 (Height and Setback Regulations) and Section 43-40 (Height and Setback Regulations), the height factor requirements of 23-151 (Basic regulations for R6 through R9 Districts) and the rear yard requirements of Section 43-20 (Rear Yard Regulations), in connection with a proposed mixed use development, on property located at 550 Washington Street (Block 596, Lot 1), in C6-3, C6-4 and M1-5 Districts, within the Special Hudson River Park District, Borough of Manhattan, Community District 2, is approved, subject to the following terms and conditions:

1. The property that is the subject of this application (C 160310 ZSM) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following approved plans prepared by CookFox Architects, DPC, filed with this application and incorporated in this resolution:

Dwg No.	**Title**	**Last Date Revised**
Z-001	Granting Site Survey Z-101.00 By Michael Zenreich	10/14/2016
Z-004	Zoning Calculations	10/14/2016
Z-005	Project Area Site Plan	10/14/2016
Z-006	Zoning Lot Site Plan	10/14/2016

Z-110	Waiver Plan	10/14/2016
Z-200	Waiver Sections	10/14/2016
Z-201	Waiver Sections	10/14/2016
Z-202	Waiver Sections	10/14/2016
Z-203	Waiver Sections	10/14/2016
Z-204	Waiver Sections	10/14/2016
Z-205	Waiver Sections	10/14/2016
Z-206	Waiver Sections	10/14/2016
Z-250	Design Control Diagram Waiver North-East Axonometric	10/14/2016
Z-251	Design Control Diagram Waiver South-West Axonometric	10/14/2016
Z-252	Design Control Diagram Waiver North-West Axonometric	10/14/2016
Z-253	Design Control Diagram Waiver South-East Axonometric	10/14/2016
Z-254	Design Control Notes	10/14/2016
L-100	Public Access Area Site Plan Option A	10/14/2016
L-101	Public Access Area Enlargement Plan Option A	10/14/2016
L-102	Public Access Area Site Plan – Option B	10/14/2016
L-103	Public Access Area Enlargement Plan Option B	10/14/2016

2. Such development shall conform to all applicable provisions of the Zoning Resolution except for the modifications specifically granted in this resolution and shown on the plans listed above which have been filed with this application. All zoning computations are subject to verification and approval by the New York City Department of Buildings.

3. Such development shall conform to all applicable laws and regulations relating to its construction, operation and maintenance.

4. 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 by SJC 33 Owner 2015 LLC or its successor, 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.

5. The development shall include those mitigation measures listed in the Final Impact Statement (CEQR No. 16DCP031M) issued on October 6, 2016 and identified as practicable.

6. In the event the property that is the subject of the application is developed as, sold as, or converted to condominium units, a homeowners' association, or cooperative ownership, a copy of this report and resolution and any subsequent modifications shall be provided to the Attorney General of the State of New York at the time of application for any such condominium, homeowners' or cooperative offering plan and, if the Attorney General so directs, shall be incorporated in full in any offering documents relating to the property.

7. All leases, subleases, or other agreements for use or occupancy of space at the subject property shall give actual notice of this special permit to the lessee, sub-lessee or occupant.

8. Upon the failure of any party having any right, title or interest in the property that is the subject of this application, or the failure of any heir, successor, assign, or legal representative of such party, to observe any of the covenants, restrictions, agreements, terms or conditions of this resolution whose provisions shall constitute conditions of the special permit hereby granted, the City Planning Commission may, without the consent of any other party, revoke any portion of or all of said special permit. Such power of revocation shall be in addition to and not limited to any other powers of the City Planning

Commission, or of any other agency of government, or any private person or entity. Any such failure as stated above, or any alteration in the development that is the subject of this application that departs from any of the conditions listed above, is grounds for the City Planning Commission or the City Council, as applicable, to disapprove any application for modification, cancellation or amendment of the special permit hereby granted.

9. Neither the City of New York nor its employees or agents shall have any liability for money damages by reason of the city's or such employee's or agent's failure to act in accordance with the provisions of this special permit.

The above resolution (C 160310 ZSM), duly adopted by the City Planning Commission on October 17, 2016 (Calendar No. 3), 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
RAYANN BESSER, ALFRED C. CERULLO, III,
CHERYL COHEN EFFRON, MICHELLE DE LA UZ,
RICHARD W. EADDY, HOPE KNIGHT, ANNA HAYES LEVIN,
ORLANDO MARÍN, LARISA ORTIZ, Commissioners

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.

Docket Description:

N 160308 ZRM – Special Hudson River Park District
C 160309 ZMM, C 160310 ZSM, C 160311 ZSM, C 160312 ZSM, C 160313 ZSM, N 160314 ZAM, N 160315 ZAM, N 160316 ZAM, and N 160317 ZCM – Special Hudson River Park District/550 Washington Street

N 160308 ZRM

IN THE MATTER OF an application submitted by the Department of City Planning pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, relating to Article VIII, Chapter 9 (Special Hudson River Park District) to establish the Special Hudson River Park District within Community District 2, Borough of Manhattan.

C 160309 ZMM

IN THE MATTER OF an application submitted by SJC 33 Owner 2015 LLC pursuant to Section 197-c and 201 of the New York City Charter for the amendment of the Zoning Map, Section No.12a:

1. changing from an M1-5 District to a C6-4 District property bounded by Clarkson Street, Washington Street, West Houston Street, and West Street;
2. changing from an M2-4 District to a C6-3 District property bounded by West Houston Street, Washington Street, a line 596 feet northerly of Spring Street, and West Street;
3. changing from an M2-4 District to an M1-5 District property bounded by a line 596 feet northerly of Spring Street, Washington Street, a line 415 feet northerly of Spring Street, and West Street; and
4. establishing a Special Hudson River Park District bounded by:
    a. Clarkson Street, Washington Street, a line 415 feet northerly of Spring Street, and West Street; and
    b. a line 57 feet northerly of the westerly prolongation of the northerly street line of Leroy Street, the U.S. Pierhead Line, a line 1118 feet southerly of the westerly prolongation of the northerly street line of Leroy Street, and the U.S. Bulkhead Line;

as shown on a diagram (for illustrative purposes only) dated May 9, 2016.

C 160310 ZSM

IN THE MATTER OF an application submitted by SJC 33 Owner 2015 LLC pursuant to Section 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 127-21* of the Zoning Resolution to allow the distribution of 200,000 square feet of floor area from a granting site (A1, Block 656, Lot 1)) to a receiving site (A2, Block 596, Lot 1), and to modify the height and setback requirements of Sections 23-60 (Height and Setback Regulations) and Section 43-40 (Height and Setback Regulations), the height factor requirements of 23-151 (Basic regulations for R6 through R9 Districts) and the rear yard requirements of Section 43-20 (Rear Yard Regulations), in connection with a proposed mixed use development, on property located at 550 Washington Street (Block 596, Lot 1), in C6-3, C6-4 and M1-5 Districts, within the Special Hudson River Park District.

COMMUNITY BOARD NO: 2 BOROUGH: Manhattan

RECOMMENDATION

Please see attached for recommendation.

Gale A. Brewer
BOROUGH PRESIDENT

Aug 17 2016
DATE

C 160312 ZSM

IN THE MATTER OF an application submitted by SJC 33 Owner 2015 LLC pursuant to Section 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Sections 13-45 and 13-451 of the Zoning Resolution to allow an attended accessory parking garage with a maximum capacity of 372 spaces on portions of the ground floor and cellar of a proposed mixed use development (Center Site), on property located at 550 Washington Street (Block 596, Lot 1), in C6-3, C6-4 and M1-5 Districts, within the Special Hudson River Park District.

C 160313 ZSM

IN THE MATTER OF an application submitted by SJC 33 Owner 2015 LLC pursuant to Section 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Sections 13-45 and 13-451 of the Zoning Resolution to allow an attended accessory parking garage with a maximum capacity of 164 spaces on portions of the ground floor and cellar of a proposed mixed use development (South Site), on property located at 550 Washington Street (Block 596, Lot 1), in C6-3, C6-4 and M1-5 Districts, within the Special Hudson River Park District.

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

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Gale A. Brewer, Borough President

August 17, 2016

Carl Weisbrod, Chair
City Planning Commission
120 Broadway, 31st Floor
New York, NY 10271

RE: Recommendation on ULURP Application No. N 160308 ZRM by the Department of City Planning; and Recommendation on ULURP Application Nos. C 160309 ZMM, C 160310 ZSM, C 160311 ZSM, C 160312 ZSM, C 160313 ZSM, N 160314 ZAM, N 160315 ZAM, N 160316 ZAM and N 160317 ZCM By SJC 33 Owner 2015 LLC

Dear Chair Weisbrod:

I write in regard to the project proposal put forth by the Department of City Planning (DCP) and SJC 33 Owner 2015 LLC for 1) the redevelopment of the St. John Terminal Site and 2) payment for development rights to the Hudson River Park Trust for Pier 40. I would like to thank you and your staff for creating a special permit that would go through ULURP. This permit would include the types of neighborhood and design-focused findings Community Boards 1, 2, and 4 and my office and other elected officials discussed in our multiple meetings, going back to spring 2014, and that led to the drafting of the text amendment currently under review. So while I have a suggested edit to that text, elaborated in more detail below, I fully support and recommend approval of the text amendment and the special permit it creates. However, the project that the special permit is currently facilitating, and its directly related actions, I cannot support at this time.

I believe government should find creative ways to fund the operation and maintenance of its own property assets. All too often though, it appears that the default financing mechanism is to cede that responsibility to a private developer. As a result, the developer has a private interest that is paramount to any public interest. Here, in order to fund necessary and urgent repairs to Pier 40 and have a real chance to create affordable apartments in this neighborhood, I am told I must accept this project at this height and density. But I believe looking at the project in this manner sets up a false premise which I cannot accept.

Funding repairs to the pier benefits the neighborhood but also benefits the developer by enhancing the value of the market rate apartments. However, the cost of doing business in this city today includes not only building permit fees paid by the developer but must also include the creation of affordable housing. This raises the larger question of what the neighborhood is receiving in return for the increase in height and density and whether those benefits outweigh

adverse impacts to open space, transportation, and the very real, albeit temporary, impacts during construction. I do not think the amount, location, and design of the proposed affordable housing is adequate, and I believe significant changes to the site plan in regard to parking, open space, retail, and public access are needed to truly stitch this development into its surrounding neighborhood and to ameliorate the impacts cited above.

I look forward to continued conversations with you, DCP, the rest of the City Planning Commission, and my colleagues at City Council to improve this proposal.

Sincerely,

Gale A. Brewer

BOROUGH PRESIDENT RECOMMENDATION

Text Amendment (N 160308 ZRM)
The 2013 amendment to the Hudson River Park Act (the "Act") subjects the transfer of development rights to local zoning. Following its passage, this office hosted a series of meetings with the Department of City Planning, elected officials and the Community Boards bordering the Hudson River Park to discuss the mechanism through which the transfers of development rights should occur. This resulted in the current application for a text amendment by DCP which creates the Special Hudson River Park District and the creation of the special permit which permits development rights to be transferred from the park/commercial pier to a receiving site within the Special District.

In general, the findings for the granting of the special permit include: (1) That the transfer of development rights will result in the repair, maintenance and development of the Park and its Piers including the completion of the identified improvements; (2) that the proposed configuration and design of buildings will result in a superior site plan, relate harmoniously to each other and adjacent buildings and open areas, that the mix of uses will complement the site plan and that the proposed transfer of floor area modifications to bulk regulations will not unduly increase the bulk of any building or unduly obstruct light and air; (3) that the bulk modifications are appropriate in light of the improvements to the park and (4) that any affordable housing will support the objectives of MIH.

The goals of the Special District and the text are consistent with other similar transfer districts in the Zoning Resolution, and by providing a City Planning Commission special permit for such transfer, which must be approved pursuant to the Uniform Land Use Review Procedure (ULURP) and the noticing requirements and public input that entails, the text amendment is

appropriate and beneficial to the communities in which future eligible sites and the Park are situated.

Given the condition of Pier 40, the decision of the State to fund its repair through the sale of development rights, and the responsiveness of DCP to the concerns raised in the community meetings, I support the creation of the Hudson River Park Special District and the special permit it creates for the transfer of development rights. However, I also urge that given the density of this project and the fact that Pier 40 supports over 30 percent of the entire Park, that the text include a provision that no further development rights be transferred from the Pier into Community District 2. That can be accomplished by either limiting the receiving site to the one subject to the current application or establishing an overall cap of 200,000 so for this community board.

St. John Terminal Site/550 Washington Proposal (C 160309 ZMM, C 160310 ZSM, C 160311 ZSM, C 160312 ZSM, C 160313 ZSM, N 160314 ZAM, N 160315 ZAM, N 160316 ZAM and N 160317 ZCM)

The project proposed on the current site of the St. John's Center at 550 Washington Street would be a huge development of five buildings containing approximately 1.7 million square feet of floor area. As Community Board 2 noted in its resolution, it will be by far the largest development in the history of the Community District. We are keenly aware that the driving force behind this project is the urgent need for rehabilitation and restoration of Pier 40, situated directly across West St. from the project. Pier 40 is the largest pier in the Hudson River Park and according to the HRPT is responsible for 30 percent of the Park's revenues. However, the majority of Pier 40's pilings are suffering significant deterioration as are some of the structures on the Pier.

The State Legislature has made the decision that the costs to rehabilitate the Pier will be paid for from the sale of development rights by the Hudson River Park Trust. The 2013 amendment to the Act authorizes the sale of development rights from park/commercial piers to receiving sites up to one block east of Hudson River Park. The amendment requires that proceeds from the sale of development rights on Pier 40 be first used for its repair. Were it not for this, I do not believe we would be having a discussion over whether buildings this large and dense, accompanied by almost 800 parking spaces, are appropriate on this site.

However, given the size of the project which is the recipient of the 200,000 square feet of development rights from Pier 40, I believe the project could have been designed to relate better to the surrounding community, that the location of various uses could be improved upon and that changes could have been made to the affordable housing to better support the objectives of Inclusionary Housing. In addition, the DEIS does not always reflect the practical reality of what this scale of development actually means day to day in terms of open space usability, access, neighborhood character, and neighborhood impact. As an example, no impacts were found under the category of Urban Design, claiming that the buildings were designed to be contextual since their materials would be consistent with the architectural fabric around it. Despite acknowledging that the height and bulk of these buildings were higher than its surroundings, it appears under CEQR it is enough to use stone and brick to pass as contextual in the Village.

The following sections on transportation, open space, affordable housing and retail outline the main areas in which I believe the project fall short.

1) **Transportation and Parking:** The DEIS analysis identifies an adverse impact to this category in regard to parking, but goes on to state that all of the significant adverse impacts identified could be fully mitigated with standard mitigation measures, except for two intersections closest to the project of West Houston and Varick Street; and the intersection of Canal Street and Hudson Street. The analysis also shows that a big box store is a non-starter. Simply eliminating that footprint will drop an adverse impact to a third of the intersections analyzed.

   This of course assumes the DEIS was adequate. The Community Board contends that insufficient amount of intersections were analyzed, and that the impact of the Holland Tunnel was not taken into full consideration. In addition, the DEIS looks backward when it comes to pedestrian impacts under the transportation category, assuming that since there have not been serious accidents in a three year look back that will continue to be the trend. That is a potentially harmful assumption when factoring in the proposed concentration of vehicles the special permits request and that no project design has been instituted to increase visibility or walkability along Washington Street. In addition, with the provision of senior housing and no dedicated drop-off for Access-A-Ride, ambulettes, or any other vehicle catering to or often needed by senior residents, unfortunately it would actually be safer to assume an increase in pedestrian impact.

   The alternatives examined in the DEIS were dismissed for undercutting the goals and objectives of the proposed project, but no alternative was focused on just drastically reducing the amount of parking requested under the special permits. Eliminating all three special permits or reducing the amount requested would surely aid in mitigating the impacts this proposal creates. Yet that is not the only factor for consideration. Recommendations from the Borough President on prior parking special permits have continued to call on the Department of City Planning and the City Planning Commission to consider a more robust set of factors aside from the parking methodology analysis, including the absolute availability of parking, the supply of parking prior to the ten-year look-back and the current capacity and utilization rate of parking facilities in the neighborhood, access to mass transit and distance from arterial roadways; and, finally, to evaluate the garage design and its interface with the pedestrian realm.

   The site is located within comfortable walking distance to the 1 train and the M20 bus line in proximate distance. The M20 Bus runs infrequently however, and the 1 Train stop at Houston Street is non-ADA. West Street is a major north-south thoroughfare as well, and access to the North Site and South Site garage are accessed from this street. However, the Center Site is not, and the driveway that accesses this garage is geared toward vehicles, not people, which does highlight another area of concern for me in regard to open space. There is also a garage at Pier 40, directly across the street; but the Trust has indicated eventually they would like to eliminate or reduce the parking at that site in favor of more programmatically appropriate uses.

Yet, the parking permits are structured in such a way that we must consider current conditions, not those in the future. Given that West Street is a major north-south thoroughfare granting access to a parking garage at the North Site, the density of the residential units proposed, this garage design does not appear to grossly interfere with pedestrian circulation, and given that the methodology for the study have been met, the special permit should be granted for the North Site.

However, I cannot recommend approval for the other two parking garage permits for the Center and South Sites. If at some future time the Trust wishes to divest itself from parking, additional parking permits could be discussed at that point for the project. At this point, however, these additional parking permits would create a collective concentration of parking that would effectively exhaust the permitted parking ratio for the entire neighborhood and would cause significant adverse impacts recognized by the DEIS and common sense. Coupled with a higher need for other uses below grade more compatible to the goals of the Special Hudson River Park District, these additional special permits should not be found appropriate to be granted.

2) **Open Space and Public Access:** The DEIS is clear that this proposal creates an unmitigated adverse impact to open space, in particular active open space, for this neighborhood. The sheer size of the development will increase demand and push the open space ratio for the community even further below the city's threshold. Yet, little is discussed in either the application material or the DEIS about the quality or access of the spaces that remain, primarily Pier 40 and the areas slated for public access within the receiving or development site at the former St. John Terminal site. In fact, for the Open Space category, the DEIS analysis showed that even in the middle of winter, when shadow impacts would at their minimum, the development would still cause the field on Pier 40 to be in shade for at least five hours. In spite of this finding it determined that no adverse impact was determined for this measure.

The DEIS also paid substantial attention to the beneficial streetscape improvements this proposal would bring to a forlorn corner the neighborhood. Yet the application to date does not actually convince me that all measures have been taken or exhausted to truly stitch this project into its greater neighborhood. That is most evidenced by the lack of a cohesive pedestrian realm plan. There is no plan for the streetscape, the back of house operations centered on Washington Street are not wrapped with active frontages, there is a lack of small retail spaces along West Houston and Clarkson Streets, the additional through block connector is design focused on vehicles not people with its dearth of seating, lighting, and planting, and there is no clear or cohesive signage plan to direct the public to the modicum of public access area the developer is providing on the second floor bridges above West Houston Street.

This project can still mitigate these impacts by creating more opportunities for at-grade usable open space and below grade active recreation use. One such opportunity is with the courtyard on the Center Site. The rear yard equivalent that is provided is visually accessible to the residents of the Center Site buildings only, instead of providing active

and passive usable open space to the residents of the zoning lot and to the neighborhood. Physical access is limited because it is located on top of a parking garage; perhaps removing the parking garage would be the better solution. The removal of parking below the Center Site, and the South Site as well, would also allow for the opportunity to provide active, indoor recreation space, thus creatively working to mitigate the adverse impact identified in the DEIS. Removal of the parking below grade for these two areas would also create opportunities for cultural uses as well, such as rehearsal space, small theaters, and galleries. Active indoor recreation space and cultural uses are far more compatible with the nearby park, and are more consistent with the General Purposes of the Special Hudson River Park District than parking can ever hope to be.

In terms of truly creating a superior site plan, the project must look outward as well as inward. While creating an accessible courtyard is a first step, the through-site driveway must be activated with lighting, additional planting, and seating areas to serve pedestrians first, not cars. This area should be redesigned with plantings, shaded areas, varied seating and serve as a pedestrian route to the Pier. This will help offset the open space impact and create an additional pathway to the park.

The above-grade publicly accessible areas over West Houston Street, while beautifully designed, will never have the same utility as at-grade space. In addition, the three spaces in aggregate serve to continue darkening West Houston Street; the two at the farthest edges of the block should be removed, and a lighting plan for the undercarriage of the former rail bed put in place. In addition, retail frontage requirements and active use are critical here for site planning considerations and for providing visual cues that the public is welcome and safe to use these thoroughfares.

Therefore, I believe the proposal has not taken full opportunity to create an integrated site plan with the neighborhood street grid and context, and I am especially concerned with the lack of details and thus assurances for continued public access to the provided above grade spaces. I believe these concerns can be assuaged by more work in these areas and with CPC approval of plans dedicated to frontage requirements, lighting and planting requirements, and signage requirements for access to open space.

Affordable Housing: The new Mandatory Inclusionary Housing Program would apply to the project and would result in the development of 476 units of affordable housing and affordable senior housing or 25% of the total residential floor area of the project. This affordable housing is sorely needed in Community District 2 but the provision of this affordable housing is required by law. The original proposal would have taken advantage of a provision in the MIH program permitting applicants using Hudson River Park development rights to modify certain requirements of the program. It would have provided affordable housing constituting less than 20 percent of the residential floor area and distributed those units over only 50 percent of the building. While we are pleased that DCP has required the applicant to meet the same requirements of MIH other types of special permit projects must by providing the required amount of affordable housing

distributed over 65 percent of the buildings, we believe the affordable housing components of the project could have been better realized as well.
Virtually all of the affordable housing units in the project could be contained in buildings on the east side of the sites – furthest from the Hudson River and the park and closest to the UPS building and manufacturing uses. On the North Site, the senior housing is in the East building with an entrance on Washington Avenue, which will have a narrow sidewalk and on which UPS trucks continuously abut as part of that center's daily activities. While the application leaves open the location of market rate versus affordable units on the two Center Site buildings, on the Center Site the applicant actually plans to put all of the affordable units in the smaller eastern building. This could result in this building being substantially if not predominately affordable, while leaving the western building on the river completely market rate – not too unlike situations we have sought to avoid in the past. As proposed, the locations, views and access to these buildings will not be on the same level as the western buildings.

I am also concerned that the size of the senior units will make them unappealing to seniors, especially to those not living alone. As proposed, seventy-five percent of these units will be studio apartments. Even seniors living alone but downsizing from their previous homes may find living in a studio difficult. But those in couples or who have help in the home may find this living situation extremely difficult and untenable. The ratio should be flipped.

Equally concerning is what will be included as part of the rent for the senior or other affordable units. The proposed design for the building includes acoustically-rated windows and central air conditioning as an alternate means of ventilation. These requirements would be codified in a Noise (E) Designation (E-384) on the project site. It would be unacceptable to pass a required cost of mitigation at this site to the tenants of the affordable units; heating and cooling costs should be part of the operation costs assumed by the owner responsibility and not part of the allowable rent under the HPD regulatory agreement.

Lastly, a significant part of the affordability package should be how all residents access amenities. To be truly equitable, and as a way to help mitigate the open space impacts, all amenities, such as but not limited to a gym, play areas, and rooftop recreation space beyond that which is required under zoning, should be accessed for free. Alternatively, there should be a cap on a fee charged for these amenities, and at no point should that cost exceed 20-30% for the affordable tenants.

3) **Retail:** The Community Board's concerns over large destination retail, with an exception carved out for a supermarket, are valid. Smaller retail is necessary to enliven the streetscape, draw pedestrian traffic from the east, and avoid further increasing vehicular traffic and the isolation of the project. Only the supermarket should exceed the 10,000 square foot maximum the community recommends instituting. In addition, the area of retail is another example of a lost opportunity for improving the pedestrian experience and connectivity to the broader neighborhood. Active retail frontages along Clarkson,

Washington, and West Houston Streets will ensure pedestrian flow around and through the development. In addition, local neighborhood retail needs such as a dry cleaner, shoe repair and the like are not being met farther east, where chain and high-end clothing and clothing accessory stores dominate, and those small businesses that remain are furniture and local manufacturing use. This reinforces the need for this development to serve the influx of new residents who will reside in and around these parcels.

Therefore, the Manhattan Borough President recommends:

a. The **approval** of ULURP Application No. N 160308 ZRM with the condition that the text is revised to include a provision capping the maximum amount of floor area that can be transferred within Community Board 2 to that which has already been allocated for the St. John Terminal site;

b. The **approval** ULURP Application No. N 160311 ZCM for a parking garage at the North Site;

c. The **approval** of Application Nos. N 160314 ZAM, N 160315 ZAM, N 160316 ZAM and N 160317 ZCM for curb cut authorizations for required loading and permitted parking, and the chairperson certification that the money to the Trust has been transferred prior to the issuance of a building permit, respectively;

d. The **denial** of ULURP Application Nos. C 160312 ZSM and C 160313 ZSM for parking garages at the Center and South Sites; and

e. The **denial** of ULURP Application Nos. C 160309 ZMM and C 160310 ZSM, unless the following conditions can be fulfilled:

- In regard to transportation, CPC should work with MTA to increase frequency of the M20 bus, and with DOT to include a pull off area adjacent to the senior housing on Washington Street;
- To decrease transportation impacts, no stores above 10,000 sf, except for a supermarket should be permitted;
- To contribute to neighborhood character and an active pedestrian realm, the following retail changes are recommended:
    - i. Provide at-grade access to retail on West Houston Street;
    - ii. Require a minimum of one retail establishment per 25' of street frontage along Clarkson Street, West Houston Street, and Washington Street; and
    - iii. Require a minimum of 80% active uses along Washington Street;
- To decrease open space impacts, the below-grade space currently allocated for parking should be allocated for indoor active recreation use and cultural uses which are complementary to the purposes of the special district and Hudson River Park;
- According to the Appraisal report, the value of the development rights to be transferred was reduced for the provision of affordable housing. We do not believe this should have been the case. In addition, as we have stated the density of the project is out of scale with virtually all of the surrounding areas. For these reasons if the community is to be asked to bear these impacts, more affordable

housing should be provided, which is so sorely needed. In regard to affordable housing:

i. The percentage of affordable housing should be increased to at least 30% of total floor area
ii. The Special Permit should require equal distribution of affordable units in both Center Site buildings
iii. The breakdown of affordable Senior units should be 75% 1-bedroom units and 25% studio units

- The project improves its public access plan requirements to include approved plans for lighting, planting, seating and signage clearly signaling access to those spaces;
- Two of three above-grade West Houston areas are removed; All accessible open spaces should be accessible to all residents and amenities provided in an equal and fair manner;
- Sustainability measures such as green roofs, water retention and cooling are incorporated as a design standard for the proposal; and
- The concerns of Manhattan Community Board 2 are responded to and addressed.

APPENDIX
PROPOSED ACTIONS

The New York City Department of City Planning ("DCP") seeks approval of a zoning text amendment to establish Article VIII Chapter 9, the Special Hudson River Park District, to enable a mechanism to transfer unused development rights by special permit from Pier 40 ("Granting Site") to St. John's Center ("Receiving Site") at 550 Washington Street (Block 596, Lot 1) and permit bulk modifications at the receiving site.

In a related, concurrent application, SJC 33 Owner 2015 LLC ("The Applicants") are seeking multiple approvals to facilitate the redevelopment of 550 Washington Street with a mix of residential and commercial uses in five buildings and an elevated publicly accessible space. The applicants seek approval of a zoning map amendment to rezone multiple sections of the receiving site from manufacturing districts to high-density commercial districts that permit residential use. In addition, the applicants seek three special permits pursuant to ZR §13-45 and §13-451 for 772 total accessory parking spaces at three separate parking facilities at the receiving site; three authorizations pursuant to ZR §13-441 for parking access curb cuts and a wide street; and lastly, a Chairperson's certification pursuant to ZR §89-21(d) to confirm that building permits for the proposed project may be issued in Community District 2, Manhattan.

In evaluating the text amendment, this office must consider whether the modifications and new special permit are appropriate and beneficial to the community in which the eligible sites and proposed project are situated. Any changes to the zoning map should be evaluated for consistency and accuracy, and given the land use implications, appropriateness for the growth, improvement and development of the neighborhood and borough.

In addition to the actions summarized above and discussed in greater detail below, the proposed project also requires the Hudson River Park Trust ("HRPT") to conduct a "Significant Action" process pursuant to the Act and to rules of SEQRA.

Transfer of Floor Area from Hudson River Park

The City Planning Commission ("Commission" or "CPC") may grant the transfer of floor area from the granting site, Hudson River Park, to the receiving site, 550 Washington Street, and any associated bulk modifications, provided that:

1. such transfer of floor area will facilitate the repair, rehabilitation, maintenance and development of Hudson River Park, including its piers, bulkheads and infrastructure; and
2. the transfer of floor area will support the completion of improvements to Hudson River Park as identified in the statement submitted to the Commission by the Trust as part of this application; and
3. for the receiving site:
    a. the proposed configuration and design of buildings , including any associated structures and open areas, will result in a superior site plan, and such buildings

and open areas will relate harmoniously with one another and with adjacent buildings and open areas;

b. the location and quantity of the proposed mix of uses will complement the site plan;
c. the proposed transfer of floor area and any modification to bulk regulations will not unduly increase the bulk of any building on the receiving site or unduly obstruct access of adequate light and air to the detriment of the occupants of users of building on the block or nearby blocks, or of people using the public streets and other public spaces;
d. such transferred floor are and any proposed modifications to bulk are appropriate in relation to the identified improvements of Hudson River Park; and
e. any affordable housing, as defined in Section 23-90 (Inclusionary Housing), that is provided as part of the project will support the objectives of the Inclusionary Housing Program.

The City Planning Commission shall receive a copy of a transfer instrument legally sufficient in both form and content to affect such a transfer of floor area. Notices of the restriction upon further development, enlargement or conversion of the granting site and the receiving site shall be filed by the owners of the respective zoning lots in the Office of the Register of the City of New York (County of New York). Proof of recordation of the notices shall be submitted to the Chairperson of the City Planning Commission, in a form acceptable to the Chairperson.

Both the transfer instrument and the notices of restriction shall specify the total amount of floor area transferred and shall specify, by lot and block numbers, the granting site and receiving site that are a party to such transfer.

On a receiving site, for any development or an enlargement that is subject of a special permit granted by the CPC pursuant to Section 89-21 (Transfer of Floor Area from Hudson River Park), the Department of Buildings shall not:

1. issue a building permit until the Chairperson of the Commission has certified that the owner of the receiving site and the Hudson River Park Trust have jointly executed documents sufficient to facilitate a payment schedule associated with the transfer of floor area; or
2. issue a temporary certificate of occupancy until the Chairperson of the Commission has certified that the Hudson River Park Trust has submitted a letter to the Chairperson confirming that payment of all required funds has been made by the owner of such receiving site to the Hudson River Park Trust, and that all required funding tools and/or payments are in satisfactory compliance with the executed payment schedule.

The Commission may prescribe additional appropriate conditions and safeguards to improve the quality of the development or enlargement and minimize adverse effects on the character of the surrounding area.

Special Permits for Additional Parking Spaces

The special permit requires that all of the applicable conditions of ZR § 13-20 (SPECIAL RULES FOR MANHATTAN CORE PARKING FACILITIES) be met and that the findings of §13-45 and 13-451 have been met. These findings are generally as follows:

(1) the location of the vehicular entrances and exits to such parking facility will not unduly interrupt the flow of pedestrian traffic associated with uses or public facilities, including access points to mass transit facilities in close proximity thereto, or result in any undue conflict between pedestrian and vehicular movements, due to the entering and leaving movement of vehicles;
(2) the location of the vehicular entrances and exits to such parking facility will not interfere with the efficient functioning of streets, including any lanes designated for specific types of users or vehicles, due to the entering and leaving movement of vehicles;
(3) such use will not create or contribute to serious traffic congestion and will not unduly inhibit surface traffic and pedestrian flow;
(4) for public parking garages, that where any floor space is exempted from the definition of floor area, such additional floor space is needed in order to prevent excessive on-street parking demand and relieve traffic congestion;
(5) such parking facility will not be inconsistent with the character of the existing streetscape; and
(6) the number of off-street parking spaces in such proposed parking facility is reasonable and not excessive in relation to recent trends in close proximity to the proposed facility with regard to:
    (a) the increase in the number of dwelling units; and
    (b) the number of both public and accessory off-street parking spaces, taking into account both the construction, if any, of new off-street parking facilities and the reduction, if any, in the number of such spaces in existing parking facilities; and
(7) the proposed ratio of parking spaces to dwelling units in the proposed development or enlargement does not exceed 20 percent of total number of dwelling units, where such units are located within Community District 1, 2, 3, 4, 5, or 6.

Curb Cuts Authorization

The Commission may authorize, subject to the applicable zoning district regulations, curb cuts located on a wide street, provided the Commission finds that a curb cut at such a location:

a. is not hazardous to traffic safety;
b. will not create or contribute to 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, specially designated streets or public facilities; and
e. will not be inconsistent with the character of the existing streetscape.

The Commission may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.

PROJECT DESCRIPTION

The Department of City Planning proposes a text amendment to create a mechanism to transfer unused development rights by special permit in the proposed Special Hudson River Park District. The Applicants propose a zoning map amendment, special permits to allow bulk waivers, three special permits for parking garages, three authorizations for curb cuts and a chairperson's certification. These actions will facilitate the transfer of development rights from Pier 40 within the Hudson River Park to the former St. John Terminal site, allowing for the construction of a mixed use development including 1,289,000 sf of residential floor area, 222,000 sf of office and hotel floor area, 200,000 sf of retail floor area, proposed open space totaling 20,750 sf, and the payment of $100 million to the Hudson River Park Trust for the reconstruction and repair of Pier 40.

Background of Hudson River Park

Hudson River Park ("Park") spans four miles in and along the Hudson River waterfront just north of Chambers Street to West 59th Street. The Park serves as a regional public space and a neighborhood park serving Tribeca, Greenwich Village, Hudson Square, Chelsea, Hell's Kitchen and Clinton neighborhoods which border the park.

The Park is the result of City and State long-term efforts to transform the formerly industrial Hudson River waterfront into publicly accessible open spaces connected to a pedestrian esplanade and bike path. From that process, the Hudson River Park Act was created in 1998 which identified the park's boundaries, permitted uses of each pier, the Park's operating framework and established the Hudson River Park Trust as a public benefit corporation 501(c)(3) with the mandate to design, construct, operate and maintain the Park. As required by the Act, a Multi-Purpose General Project Plan was adopted which together, set forth the regulations that govern the Park's use and development.

Uses not permitted in the park include residential, manufacturing, hotel, casino, riverboat gambling and office uses (with the exception of Pier 57). Some of the permitted uses include water-dependent transportation, entertainment, retail, restaurant, media studios, commercial recreational uses and amusements, performing arts, and educational facilities. Commercial developed is limited to Piers 40, 57, 59, 60, 61, 81, 83, and 98. Pursuant to the Act, passive and active public open space uses are not subject to zoning and land use laws and regulations of the City.

The State and City own the underlying Park property. Through the Department of Parks and Recreation, the City owns the piers and upland areas from West 35th Street to the northern boundary of West 59th Street. Through the Office of Parks, Recreation and Historic Preservation, the State owns the piers and upland areas south of West 35th Street to the northernmost border of the Battery Park City seawall as extended to Route 9A. The Department of Environmental

Conservation owns the land under water throughout the Park. Within these boundaries are piers that are excluded from the Park: Pier 76 is currently excluded and is operated by the City Police Department as a tow pound; Pier 78 is privately owned; Piers 88, 90, 92 and 94, are owned and operated by the City.

Pier 40

Pier 40 is the park's largest structure at approximately 15-acres and was originally used as a passenger ship terminal for the Holland America Line in 1958 until the late 1960s when it began operating as a parking garage. According to the Act, at least 50 percent of the square footage of the footprint of the pier must be devoted to active and passive recreational space and the remainder of the Pier can be used for commercial uses. The pier's supporting piles and shed structure are severely deteriorated which threaten the pier's operation as a recreational use and major revenue generator for the park. According to a March 2015 engineering study commissioned by the Trust, the pier piles were in poor condition with 35 percent in severe condition and 22 percent needing major repair. These conditions have forced portions of the parking garage to close, eliminating revenue from nearly 500 parking spaces.

In 2013, the State adopted an amendment to the Act allowing the transfer, by sale, of unused development rights generated by the Park to properties one block east of the Park as permitted under local zoning law. The amendment further stipulates that any revenue generated from the sale of unused development rights must first be used to rehabilitate Pier 40's infrastructure, including pier piles and roof. The April 2016 appraisal report valued the transfer of 200,000 square feet of development rights at $114.9 million dollars but discounted the value for the provision of affordable housing and because of the limit of receiving sites ending the appraisal at $74.7 million. The developer of 550 Washington Street agreed to pay the Trust $100 million for the development rights.

Area Context

The granting site, Pier 40, and receiving site, St. John's Center, are located in a historically industrial area intersected by three neighborhoods: West Village to the north, Hudson Square to the east, and Tribeca to the south. The site is bounded by West Street, Clarkson Street, and Washington Street.

The West Village neighborhood immediately north of the development site is zoned M1-5 and is comprised of repurposed industrial and residential uses. Construction has begun for a 12-story residential development on the block immediately north of the site bounded by Clarkson, Washington, Leroy and West Streets. The eastern side of this block is occupied by a 3-story Federal Express ("FedEx") warehouse building. Northeast of the development site is an MX-6 Special Mixed Use District, mapped in 2008, comprised of two blocks on the northern side of Leroy Street and south side of Morton Street between Washington Street and Hudson Street. The zoning districts within this special district are M1-5 and R7X and permitted 5.0 FAR with residential, commercial and light manufacturing uses.

Further northeast of the development site is the Greenwich Village Historic District Extension II which is comprised of 235 row houses, tenements, public and institutional buildings on 11 blocks between West 4th Street, West Houston Street, and Seventh Avenue. This historic district touches the boundaries of the Greenwich Village Historic District, designated in 1969, which is comprised of over 1,000 buildings built before the Civil War, in an effort to preserve the distinct architectural quality and human scale of the neighborhood. The buildings in this neighborhood have predominately low building heights ranging from 2 to 5 stories.

One block east of the development is a superblock bounded by West Houston Street, Greenwich Street, Spring Street and Washington Street. This site is occupied by the United Parcel Service ("UPS") 3-story shipping facility and a 2-story parking facility with a small warehouse and fueling station. One block north of the UPS facility is a 5-story warehouse occupied by FedEx.

The Special Hudson Square District, two blocks east of the development site, was adopted in 2013 and is comprised of 18 blocks bounded by West Houston Street, Canal Street, Greenwich Street and Sixth Avenue as an effort to preserve a former warehouse and manufacturing district and encourage residential and commercial development. The zoning district is M1-6 which permits 10 FAR and permits 12 FAR by special permit with inclusionary housing. The district also has contextual bulk regulations including maximum building heights of 290 feet on wide streets and 185 on narrow streets. Street walls are also required at the street line of 60 to 125 feet on narrow streets and 125 to 150 feet on wide streets. The buildings closest to the development site occupy full blocks with building heights of 180 to 260 feet.

South of the development site is a Department of Sanitation 5-story garage. The UPS and Sanitation facilities are within an M2-4 district and the FedEx block is zoned M1-5. Further south is the Tribeca neighborhood which was recently rezoned and is within the Special Tribeca Mixed-Use District which was an effort to allow residential use in a light manufacturing area.

There a few small restaurants and bars south of the site along Spring Street as well as a number of cafes and restaurants spotted throughout the neighborhood east of the site. The closest retail corridor is northeast of the Development Site in the West Village neighborhood along Bleecker Street, consisting mostly of high end designer boutiques and small specialty food shops. Further east of Avenue of the Americas is a mix of high-end and commercial retail along Prince Street in the SoHo neighborhood.

The most accessible open space to the Development Site is Hudson River Park's Pier 45 with grass lawns, wood decking, seating areas and shaded structures. Additional recreational space is located at Canal Park located south of the site at Canal and West Streets, and James J Walker Park located northeast of the site at Hudson Street between Clarkson Street and Leroy Street.

The area is served by a No. 1 subway station located at three blocks east of the site at West Houston Street and Varick Street, the M21 and X7 bus line stops are located at Washington Street and West Houston and south of the site at Washington Street and Spring Street. Citibike stations are located one block east on Greenwich Street and West Houston Street and at Hudson River Park at West Street. New York Water Taxi service is available at Christopher Street pier

north of the site at West 10th Street. The development site is adjacent to West Street (Route 9A), a major north south highway and a major east-west thoroughfare running through the site at West Houston Street.

Project Area and Project Site

The proposed project area is comprised of two sites, Pier 40 and St. John's Center, proposed for the Special Hudson River Park District. The granting site is a commercial pier and park, situated in the Hudson River at the intersection of West Houston Street. The site is occupied by a 2-story building used for 1,900 public parking spaces, administration offices, commercial vessel docking and 4.8 acres of active play fields used by local athletic leagues and neighbors. The zoning lot is in an M2-3 zoning district which permits an FAR of 2.0 of commercial and manufacturing use. The footprint of the pier structure is 672,328 square feet. The zoning lot is 1,096,075 square feet which includes land under water and is currently constructed with 673,074 square feet of floor area.

The Development Site is comprised of a 4-story, 850 foot warehouse building spanning four city blocks, constructed in 1934, and 213,654 square feet. This building functioned as the southern terminus of the High Line and still has the original rail beds intact on the building's second floor. The southern portion of the building is occupied by commercial tenants and a temporary event space whereas the northern portion of the site is mostly vacant. The portion of the building north of West Houston Street is zoned as an M1-5 zoning district and the southern portion is zoned as an M2-4 zoning district.

Proposed Project

The proposed project would redevelop St. John's Center, The Development Site, by constructing five buildings containing 1,711,000 zoning square feet of floor area of affordable and market-rate housing, senior affordable housing, retail, restaurant, event uses, hotel and office uses, and 772 accessory parking spaces in three separate parking garages. A portion of the existing building over West Houston Street will be removed to create an elevated public open space over rail beds. This project will be facilitated by the transfer of development rights by special permit from Pier 40 to the development site within a newly created Special Hudson River Park District.

North Site
The North Site is located just south of Clarkson Street and north of West Houston Street and would consist of two buildings: the North-West Building bounded by Clarkson and West Street and the North-East Building fronting Washington Street. The existing M1-5 zoning district permits light manufacturing, commercial and community facility space. The maximum permitted FAR for manufacturing uses and commercial uses is 5.0 and 6.5 FAR for community facility uses. The M1-5 zoning district permits Use Groups 4-14, 16, and 17. Buildings are subject to a maximum front wall height of 85 feet or 6 stories; require a rear yard and street setback of 20 feet on narrow streets. The existing zoning district does not permit residential use and retail stores exceeding 10,000 square feet. The proposed C6-4 zoning district, R10 equivalent, permits a maximum FAR of 10.0 for residential, commercial and community facility uses and Use

Groups 1-12. The height and setback regulations of the existing district are applicable under the proposed rezoning.

The North-West Building would contain 450,000 zoning square feet of residential floor area for 415 market-rate units and 100,000 square feet of retail floor area located on the ground, mezzanine and second floors of the building. The application packets states access to the retail spaces would be accessed from West Houston Street, West Street and Clarkson Street but the plans do not indicate ground floor access to the retail spaces. The plans indicate retail space in both North Site buildings. The building is also proposed with 236 accessory parking spaces located in the cellar and accessed from West Street. The building is proposed with two towers 60 feet apart with one tower 430 feet in height and the second 360 feet in height. The building will rise to varying heights in cascading forms from 91 feet, 115 feet, and 127 feet. The street walls will be lower with notched elements varying between 43 feet, 55 feet and 67 feet in height.

The North-East Building would contain 110,000 square feet for 178 affordable senior studio and 1-bedroom apartments. The building would be accessed from Washington Street with a street wall height between 129 feet and 175 feet in height. The building will contain social and welfare facilities consistent with the ZR affordable independent resident for seniors definition, and would provide direct access to the elevated public space over West Houston Street.

A 20,750 square foot publicly accessible, elevated open space is proposed connecting the second floors of the North and Center Site. The public space would be developed on the three existing rail beds which extend over West Houston Street and are within the Existing Building. This space would be accessed by a stair and elevator on the south corner of Washington and West Houston Streets and another site if necessary. The spaces would include paved pathways, trees, seasonal plantings, varied types of seating and connect to second floor retail uses fronting the arcades on both sites.

Center Site

The Center Site consists of two buildings: the Center-East Building fronting on Washington Street and the Center-West Building fronting on West Street. The Center Site would be rezoned from an M2-4 zoning district to a C6-3 zoning district. The existing zoning permits retail, commercial, light manufacturing, and Use Groups 6-14, 16 and 17. The maximum permitted FAR is 5.0 and the maximum front wall height is 85 feet or 6 stories and a 20 foot setback for narrow streets. The proposed C6-3 district, R9 equivalent, permits residential, commercial and community facility space. The maximum permitted FAR is 7.52 for residential use, 6.0 for commercial uses, and 10.0 for community facility use. The permitted Use Groups are 1-12 and buildings are subject to a 20 foot setback on narrow streets. This proposed zoning district is also subject to open space requirements of §23-151 of the ZR.

The proposed buildings are primarily residential, with a total residential floor area of 729,000 square feet and of that, 218,700 square feet allotted to affordable housing. The two buildings would contain 695 market-rate and 298 affordable units at 60% and 130% of Area Median Income (AMI). The application packet states the distribution of the affordable units at the Center Site had not been determined. The residential entrances are proposed on West Houston Street,

the northern end of the site on Washington Street and an entrance into each building just north of the through-block driveway at the southern end of the site.

The Center Site retail uses are proposed on the cellar, ground, mezzanine and second floors of the two buildings with ground floor access located on West Houston Street. The cellar floor is proposed as a 372-space accessory parking garage which would be accessed through Center-East building from the through-block driveway. In absence of the parking garage, the applicants would develop a 100,000 square foot retail use in the cellar. The loading docks for the retail spaces would be located in the Center-West building; if the applicants develop a large retail use, an additional loading dock would be added to the Center-East building and accessed by Washington Street.

The Center-East building is designed in two segments with one portion measuring 346 feet in length along Washington Street and measuring up to 240 feet in height and the second segment measuring just over 155 feet long on West Houston Street. Similarly, the Center-West building includes a tower measuring 200 feet in height at the northern end and a 320 foot tall tower on the southern end of West Street. The building's street wall is between 102 feet to 114 feet in height along West Street and on Washington Street, the street wall height is between 209 feet and 188 feet. The two buildings are separated by a 67 foot wide by 258 foot deep landscaped, interior courtyard.

South of the Center Site is a tree lined through-block driveway, accessed from Washington and West Streets, which will provide vehicular access to the parking garage entrance located in the Center-East building and a vehicular drop-off in front of the South Site building.

South Site
The South site is bounded by a through-block driveway to the north, Washington Street to the east, West Street to west and the Department of Sanitation building to the south. The site would be rezoned from an M2-4 zoning district to an M1-5 district. The existing M2-4 zoning permits retail, commercial, light manufacturing, Use Groups 6-14, 16 and 17. The maximum permitted FAR is 5.0 and the maximum front wall height is 85 feet or 6 stories with a 20 foot setback for narrow streets. The proposed M1-5 zoning district permits light manufacturing, commercial and community facility space. The maximum permitted FAR for manufacturing uses and commercial uses is 5.0 and 6.5 FAR for community facility uses. The M1-5 zoning district permits Use Groups 4-14, 16, and 17. The maximum front wall height is 85 feet, requires a rear yard and street setback of 20 feet. The proposed zoning district does not permit residential use or retail stores exceeding 10,000 square feet.

The applicants propose 222,000 square feet of hotel or office uses with a 40,000 square foot event space and a 164-space accessory parking garage accessed from West Street in the cellar level of the building. The floor plans illustrate ground floor commercial space on the northwest corner of the building and on the entire second floor of the building. The southern end of the building will contain a secured gated service alley accessed by Washington and West streets. The proposed building would rise to a maximum height of 240 feet, with varying heights of 96 feet and 112 feet along West and Washington Streets and down to 60 feet in height on Washington

Street. The dimensions of the upper portion of the building will vary in length and width from 65 feet by 175 feet to 50 feet by 95 feet. The building will be accessed by the through-lot driveway immediately north of the site. The parking garage will be accessed by West Street.

The buildings on the development site will include flood resiliency measures at the ground and cellar-levels. These two levels will be protected with dry flood proofing which will include either removable floor barriers at lobbies, entrances and retail locations or building integrated flood proof walls on the perimeter of the building.

Proposed Actions

The Department of City Planning and SJC 33 Owner 2015 LLC collectively propose a zoning text amendment, a zoning map change, four special permits, three authorizations, and one chairperson certification to facilitate the repair of Pier 40 within the Hudson River Park Trust and the redevelopment of the former St. John Terminal Building.

Zoning Text Amendment (N 160308 ZRM)
DCP proposes to amend the Zoning Resolution to create a new special district in Article VIII, Chapter 9 which would establish Special Hudson River Park District (HRP) within Community District 2 in the Borough of Manhattan. This district would include Pier 40 and St. John's Center at 550 Washington Street and create a new special permit § 89-21 (Transfer of Floor Area from Hudson River Park), which includes a requirement for a Chairperson Certification pursuant to § 89-21 (d) for proof of payment to the Trust associated with the transfer of floor area, prior to the granting of any building permits for the site.

The text establishes general purposes for the repair and rehabilitation of piers and other infrastructure within Hudson River Park, the promotion of an appropriate range of uses complementary to the park, the promotion of desirable use for land and development to protect the city's tax revenues. The text creates a set of conditions for which a special permit to allow the transfer of floor area from the granting site to the receiving site may be permitted and permits bulk modifications within the receiving site. The text also establishes that the bulk rules of commercial districts may not apply unless a special permit has been approved and the transfer of development rights from the Trust be verified by Chairperson Certification.

Zoning Map Change (C 160309 ZMM)
The applicants, SJC 33 Owner 2015 LLC, in order to effectuate the controls and permissions of the Special Hudson River Park District, a zoning map change is proposed to establish the special district on the granting site of Pier 40 and the receiving site of 550 Washington Street.

The applicant also proposes to rezone the northern portion of 550 Washington Street site from manufacturing use to commercial use. This will change an M1-5 zoning district bounded by Clarkson Street, Washington Street, West Houston Street and West Street to a C6-4 District. This is an R10 equivalent and would permit residential and commercial uses at a maximum of 10 FAR. The center site is proposed to be rezoned from a manufacturing district, M2-4, as well, roughly bounded by West Houston Street, Washington Street, a line 596 feet northerly of Spring

Street and West Street, to a C6-3 district with an R9 equivalent which would permit residential use to a maximum of 7.52 FAR and commercial uses to a maximum of 6.0 FAR. The remainder of the site, or the southern parcel, would remain an M1-5 district.

Special Permit for Transfer of Development Rights from Pier 40 (C 160310 ZSM)
The applicants seek a special permit pursuant to §89-21 of the ZR to allow the distribution of 200,000 square feet of floor area from the granting site to the receiving site, to modify the height and setback requirements of §23-60 (height and setback regulations) and §43-40, height factor requirements of 23-151 (Basic regulations for R6 through R9 districts) and the rear yard requirements of §43-20 (rear yard requirements) in connection with a proposed mixed use development at the receiving site.

All three sites require substantial waivers for the required height and setback requirements along of the frontages of the development site. The North Site, Center Site and South Site buildings all exceed the maximum 85 foot height limit for street walls. All three sites require waivers from bulkhead massing rules, and all three sites encroach upon initial setback distances and the sky exposure plane above the maximum base height. The South Site also requires a waiver of the rear yard requirements as no rear yard equivalent is provided for that portion of the zoning lot. In addition, the height factor requirements are requested to be waived in order to accommodate the bulk from development rights transfer.

The applicant also requests that this permit be granted for a ten year term for vesting.

Parking Special Permits (C 160311 ZSM, C 160312 ZSM, C 160313 ZSM)
The applicants, SJC 33 Owner 2015 LLC, are seeking three special permits pursuant to Sections 13-45 and 13-451 of the ZR to allow attended accessory parking garages on three sites: a maximum of 236 spaces on portions of the ground and cellar floors of a proposed mixed use development at the North Site (C 160311 ZSM), a maximum of 372 spaces on portions of the ground floor and cellar of a proposed mixed use development on the Center Site (C 160312 ZSM), and a maximum of 164 spaces on portions of the ground and cellar floors of a proposed mixed use development at the South Site (C 160313 ZSM). These actions together will result in a total aggregate of 772 parking spaces in the three separate garages.

The proposed project as of right would have been permitted 317 parking spaces, limited to 200 spaces for a single facility, as a result of the permitted amount for residential use. The project would have generated an additional 62 spaces as of right for the office and retail uses, resulting in 265 parking spaces permitted as of right for the entire project. However, the total number of accessory spaces on a single zoning lot that serves multiple uses would cap the project to 225 spaces in total.

The North Site garage would be accessed from a curb cut from West Street, which would require a curb cut authorization, which is not subject to ULURP. The Center Site's garage is proposed to be accessed from a thorough-block driveway between the Center and South Sites. The South Site garage will also be accessed from West Street via a 22-foot curb cut.

Non-ULURP Related Actions (N 160314 ZAM, N 160315 ZAM, N 160316 ZAM, N 160318 ZCM)
The authorizations are subject to City Planning Commission approval but not subject to ULURP, nor is the certification action. The authorizations will allow for parking garages and loading berths to be accessed from West Street, a wide street. Curb cuts are not permitted as of right pursuant to §13-441 of the Zoning Resolution. The certification N 160318 ZCM is a requirement of the Special Permit pursuant to §89-21(d)(i) to allow for the issuance of a building permit once receipt of the development rights have been received and funds transferred to the Hudson River Park Trust have been verified.

ANTICIPATED IMPACTS

Pursuant to City Environmental Quality Review (CEQR) and to the rules of the State Environmental Quality Review Act (SEQRA), amongst others, a Draft Environmental Impact Statement (DEIS) was prepared for all of the related actions described above.

On October 21, 2015 a Positive Declaration and Draft Scope of Work (DSOW) were issued. The DSOW identified a number of analysis tasks for the DEIS to consider for further analysis and established an analytical framework for the following analysis categories:

- land use, zoning and public policy,
- socioeconomic conditions,
- community facilities and services,
- open space,
- shadows,
- historic and cultural resources,
- urban design and visual resources,
- natural resources,
- hazardous materials,
- water and sewer infrastructure,
- energy,
- transportation,
- air quality,
- greenhouse gas emissions and climate change,
- noise,
- neighborhood character, and
- construction impacts.

The DSOW was further refined following a public scoping meeting held on November 20,2015, with written comments accepted until November 30, 3015. The Final Scope of Work (FSOW) was issued on May 6, 2016.

The Draft EIS (DEIS) and Notice of Completion, issued on May 6, 2016, found that significant adverse impacts were identified for open space, transportation, and construction. In addition, the DEIS stated that since there is the potential for temporary unmitigated significant air quality and

noise impacts during construction, detailed analyses will be conducted to quantify these issues during construction. Based on those results, a public health assessment may be warranted and will be included in the FEIS.

For Open Space, it was determined that there would be no direct significant adverse impacts to Hudson River Park and Pier 40 in terms of shadows, nor any operational or noise impacts affecting open space resources. However, it was determined that there was the potential for construction-period air quality and noise impacts on the proposed public access areas within the project site if a phased development occurred. Additionally, under indirect effects, it was determined that there would be a reduction in the open space ratio, dropping Community Board 2's ratio further below the City's median community district open space ratio of 1.5 acres per 1,000 residents. The DEIS did note that while the monetary infusion to the Trust from the developer, which would allow for the repair and continuing operation of a substantial amount of open space within Hudson River Park to remain, was important; the proposed project would substantially increase demand and the project would still result in a greater than 5 percent decrease in total and active open space ratios which would result in a significant adverse impact.

An anticipated impact was also found in the transportation category. However, the DEIS states that all of the significant adverse impacts identified could be fully mitigated with standard mitigation measures, except for the intersection of West Houston at Varick Street during the weekday PM peak hour and the intersection of Canal Street and Hudson Street during the weekday PM peak hour. If the project was to include the analyzed big box store footprint, defined as approximately 104,000 square feet in size, those intersections that could not be mitigated included West Houston Street at Varick Street, West Houston Street at West Street, Canal Street at Hudson Street, Spring Street at West Street, and Spring Street at Washington Street [5 of the 18 intersections analyzed]. Standard mitigation measures include signal timing changes, approach day lighting and restriping. No significant adverse impacts were found for transit, pedestrians, or parking.

For the category of construction, it was found that there is the potential for temporary construction-period air quality and noise impacts. Conservatively, assuming all three sections of the site undergo demolition, excavation and foundation work simultaneously, this would result in the worst-case construction-generated effects and an adverse impact on traffic during peak construction. Construction will add 135 more passenger car equivalents (PCEs) during peak construction which exceeds the 50 PCE in the CEQR manual. Coordination with NYCDOT's Office of Construction Mitigation and Coordination (OCMC) would be undertaken to ensure proper implementation of Maintenance and Protection of Traffic (MPT) plans and requirements.

It is also of note that the proposed actions exceeded the threshold for analyses of elementary and intermediate schools, libraries and child care facilities and a detailed analysis was undertaken for each area. The DEIS concluded however that the proposed actions would not result in significant adverse impacts in the category of community facilities and services. The DEIS also noted that Phase 1 Environmental Site Assessment had not identified any areas of concern, the excavation activities could increase pathways for human exposure. However, there would be no significant impacts related to hazardous materials since remedial measures could be included as part of any

Department of Environmental Protection (DEP) approved Remedial Action Plan and an (E) designation placed on the site. In regard to noise, due to existing levels of ambient noise, window/wall attenuation and alternate means of ventilation requirements would be codified in a Noise (E) Designation (E-384) on the project site.

Unmitigated adverse impacts were identified for a number of intersections. The DEIS recommended reducing the parking spaces to 730 from the RWCDS of 800 parking spaces, and under the big box scenario the elimination of 80 percent of the square footage. To eliminate the significant adverse open space impact, the DEIS recommended a reduction of 30 percent to the residential units and the parking spaces reduced to 674. However, the DEIS stated this alternative would modify the project to the point where its goals and objectives would not be realized for affordable housing.

COMMUNITY BOARD RECOMMENDATION

On July 21, 2016 Manhattan Community Board 2 ("CB 2") approved a resolution with 36 in favor and 1 abstention, recommending approval with conditions of the zoning text amendment creating the Hudson River Park special district, the zoning map amendment, and the transfer of the Pier 40 development rights. CB 2 also recommended denial of the applications for the special permits for accessory parking garages. Finally, the Board recommended approval of the curb cut modifications.

With regard to the transfer of the Pier 40 development rights, the board recommended approval with conditions that include: the City and State commit to the necessary funding for emergency repairs to the Pier to ensure that it remains open until all work is completed; no further development rights from the Hudson River Park are transferred to receiving sites in CB 2; and that the final phase of the South Village Historic District is completed.

With regard to the zoning map changes and the project itself, CB 2 recommended approval with conditions that include: a shift of height and density from the North Site to the Center Site; limitations on retail to prevent destination retail and certain retail uses of over a certain size; changes to the site plan to integrate the project into the surrounding community; create more accessible buildings and more pleasant streets; mitigation of the adverse impacts to active open space; substitution of at-grade open space in the area between the buildings on the Center Site for the raised open space on the railroad beds which the Board would like to see removed; widening of the workforce income band to make them affordable to a broader range and create a greater number of larger senior units; development by DOT of a comprehensive traffic plan to address increasing congestion and improved mass transit to prevent the project and area from becoming vehicle-dependent; and improved pedestrian access to the Hudson River Park.

Finally, with regard to the special permits for accessory parking, which would allow for a total of 772 spaces, CB 2 recommended denial unless the total number of spaces is reduced to 381 total spaces.

Community/Borough Board Recommendation

Pursuant to the **U**niform **L**and **U**se **R**eview **P**rocedure

Application #: **C 160310 ZSM**	Project Name: Special Hudson River Park District/550
CEQR Number: 16DCP031M	Borough(s): Manhattan
	Community District Number(s): 2

Please use the above application number on all correspondence concerning this application

SUBMISSION INSTRUCTIONS

1. Complete this form and return to the Department of City Planning by one of the following options:
   - **EMAIL (recommended):** Send email to **CalendarOffice@planning.nyc.gov** and include the following subject line**:** (CB or BP) Recommendation + (6-digit application number), e.g., "CB Recommendation #C100000ZSQ"
   - **MAIL:** Calendar Information Office, City Planning Commission, 120 Broadway, 31st Floor, New York, NY 10271
   - **FAX**: to (212) 720-3488 and note "Attention of the Calendar Office"
2. Send one copy of the completed form with any attachments to the applicant's representative at the address listed below, one copy to the Borough President, and one copy to the Borough Board, when applicable.

Docket Description:

IN THE MATTER OF an application submitted by SJC 33 Owner 2015 LLC pursuant to Section 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 127-21* of the Zoning Resolution to allow the distribution of 200,000 square feet of floor area from a granting site (A1*, Block 656, Lot 1)) to a receiving site (A2*, Block 596, Lot 1), and to modify the height and setback requirements of Sections 23-60 (Height and Setback Regulations) and Section 43-40 (Height and Setback Regulations), the height factor requirements of 23-151 (Basic regulations for R6 through R9 Districts) and the rear yard requirements of Section 43-20 (Rear Yard Regulations), in connection with a proposed mixed use development, on property located at 550 Washington Street (Block 596, Lot 1), in C6-3**, C6-4** and M1-5** Districts, within the Special Hudson River Park District**, Borough of Manhattan, Community District 2.

*Note: Note: A zoning text amendment is proposed to create a Special Hudson River Park District under a concurrent related application (N 160308 ZRM).

**Note: The development site is proposed to be rezoned by changing M1-5 and M2-4 Districts to C6-3, C6-4 and M1-5 Districts, and by establishing a Special Hudson River Park District (HRP), under a concurrent related application C 160309 ZMM.

Plans for this proposal are on file with the City Planning Commission and may be seen at 120 Broadway, 31st Floor, New York, NY, 10271-0001.

Applicant(s):	**Applicant's Representative:**
SJC 33 Owner 2015 LLC c/o Atlas Capital Group 450 Park Avenue New York, NY 10022	Michael T. Sillerman Kramer Levin Naftalis & Frankel, LLP 1177 Avenue of the Americas New York, NY 10036

Recommendation submitted by:

Manhattan Community Board 2

Date of public hearing: July 21, 2016 **Location:** Scholastic Building, 557 Broadway, Auditorium

Was a quorum present? **YES** ☒ **NO** ☐ *A public hearing requires a quorum of 20% of the appointed members of the board, but in no event fewer than seven such members.*

Date of Vote: July 21, 2016 **Location:** Scholastic Building, 557 Broadway, Auditorium

RECOMMENDATION

☐ Approve ☒ Approve With Modifications/Conditions

☐ Disapprove ☐ Disapprove With Modifications/Conditions

Please attach any further explanation of the recommendation on additional sheets, as necessary.

Voting

 # In Favor: 36 **# Against:** **# Abstaining:** 1 **Total members appointed to the board:** **48**

Name of CB/BB officer completing this form	*Title*	*Date*
Robert Gormley	District Manager	7/22/2016

Tobi Bergman, *Chair*
Terri Cude, *First Vice Chair*
Susan Kent, *Second Vice Chair*
Bob Gormley, *District Manager*

Antony Wong, *Treasurer*
Keen Berger, *Secretary*
Daniel Miller, *Assistant Secretary*

COMMUNITY BOARD NO. 2, MANHATTAN

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July 22, 2016

Carl Weisbrod, Chairman
City Planning Commission
22 Reade Street
New York, NY 10007

Dear Mr. Weisbrod:

At its Full Board meeting on July 21, 2016, CB#2, Manhattan (CB2, Man.), adopted the following resolution:

550 Washington Street (Manhattan Block 596, Lot 1) and Pier 40 (Manhattan Block 656, Lot 1) N160309ZMM. 160310ZSM, 160311ZSM, 160312ZSM, 160313ZSM, N160314ZAM, N160315ZAM, N160316ZAM, N160317ZCM

This is a ULURP action including two land use applications to the City Planning Commission as follows:

(1) a zoning map amendment (a) to rezone a property at 550 Washington Street consisting of a single zoning lot from an Ml-5 and M2-4 district to a C6-4, C6-3, and Ml-5 district, and (b) to map the the property and Pier 40, located at West Houston Street in Hudson River Park, as part of the proposed Special Hudson River Park District, which Special District is proposed to be created by an application for a Zoning Text Amendment (N 160308 ZRM) filed separately by the Department of City Planning;

(2) a special permit pursuant to proposed Zoning Resolution Section 89-21 to allow the transfer of floor area from Pier 40 to 550 Washington Street, and to allow certain bulk waivers for the proposed development at 550 Washington Street;

(3) three special permits pursuant to Zoning Resolution Section 13-45 and 13-451 for accessory parking garages;

(4) three authorizations pursuant to Zoning Resolution Section 13-441 for curb cuts on a wide street; and

(5) a Chairperson's certification pursuant to proposed Zoning Resolution Section 89- 21(d).

Resolved that CB2, Man. hereby approves the following report with recommendations regarding the ULURP for 550 Washington Street and Pier 40 described above.

ZONING MAP CHANGES

The aggregate FAR of 8.7 for the proposed project, including zoning changes and development rights transfers, supports over 1.711 million zoning square feet of development plus additional use of exempt

below grade space. This is by far the largest development in the history of the district, although the average density is less than the allowed density in the Hudson Square Special District.

→ If the project plan is improved so that the area can be reintegrated into the neighborhood fabric, and if actions are taken to protect nearby areas from development pressures as stated herein, Community Board 2 does not object to rezoning the North, Center, and South sites as proposed, except as follows:

North Site: The C6-4 zone is acceptable but CB2 does not agree with statements in the application that the north end of the site is appropriate for the tallest buildings. In fact, the built scale and the zoning north of the project area is less dense than the built scale and zoning in Hudson Square Special District to the east. The application also seeks to justify the tall buildings in the North Site with the irrelevant statement that an even taller as-of-right hotel could be built in the North Site under current zoning.

The excessive North Site heights are produced by denser zoning in combination with locating a disproportionate amount of the total transferred development rights there. The result yields a plan that violates the requirement that transfer of development rights yields structures that relate well to the surrounding streets and open areas. Locating the tallest buildings in the North Site creates an abrupt wall with extreme height disparity with the neighborhood north of Clarkson Street. At 430 feet, the tallest building here is the same height as the tallest building allowed in the Hudson Square Special District, but that building was justified by the inclusion of a school and because it will stand free facing three wide streets. While CB2 appreciates the architectural value of varying building sizes, the impact of locating the tallest buildings at the North Site is if anything exacerbated by the gradual height reductions proposed for the Center and South sites.

→ CB2 favors a shift of height and density from the North Site to the Center Site and favors a maximum building height of 405 feet, but the site plan issues discussed herein are more significant than building height and distribution.

North, Center, and South Sites: CB2 opposes location of destination retail, including "Big Box" and other large footprint stores, anywhere within the Hudson River Park Special District. Because of the lack of nearby subways, destination retail stores will be accessed primarily by means of private cars and taxis, leading to increased congestion in an area already burdened by traffic conditions detrimental to public safety and health and to a pleasant residential and business environment. Given the large below grade areas available on all three sites, restrictions on retail sizes need to include all indoor area, not just zoning floor area. In addition, including destination retail on the site will lessen the value of the rezoning to neighboring residential and business areas because smaller stores help knit the fabric of the a new development to surrounding areas.

→ For all three sites, CB2 opposes including retail stores in any use group, except the proposed supermarket, with selling floors exceeding 10,000 square feet, including any below grade areas.

Even with the above restrictions, the major retail presence of the site will have a significant impact, negative and positive, on the surrounding areas. Restaurants and cafes may bring desirable foot traffic to the area, but restricting their size is essential.

→ The maximum size of any eating and drinking establishment, including below grade areas, should not exceed 5,000 square feet.

OFF-STREET PARKING SPECIAL PERMITS

The requested Special Permits for off-street parking on all three sites totals 772 spaces. This will create the potential for underutilized residential parking which will in turn encourage destination retail. Although residential tenants of the project ostensibly have first rights to parking, the residential growth

analysis supporting the special permit applications is not limited to project residents, and building operators would be able adjust pricing of monthly parking to create availability of spaces to attract destination retail.

As stated in the 2013 DCP report on parking in the Manhattan Core, "the development of auto-oriented shopping destinations are generally inappropriate for the Manhattan Core built environment." Even 10,000 square foot stores are likely to focus on destination shopping if off-street parking is available. The 2013 amendment to the Manhattan Core off-street parking regulations reduced the site maximum for the as-of-right retail parking to ten spaces, "in order to discourage auto-oriented retail development in the Manhattan Core." However, the same amendment removed restrictions on the use of residential accessory parking, allowing excess spaces to be available for "public parking", enabling building operators to reserve spaces for retail use.

The 2013 amendment to Manhattan Core parking regulations sought to balance more relaxed use regulations by expanding the range of land use considerations considered for special permits to exceed as-of-right parking ratios. The applications for three special permits offer only cursory findings regarding impacts on traffic congestion and pedestrian flow. The application includes an alternative proposing to replace 372 spaces in the Center Site cellar with 100,000 square feet of large format retail. *This is an admission by the applicant that there can be no finding, as required, that "any exempted floor area used for parking is needed in order to prevent excessive on-street parking demand and relieve traffic congestion".*

In general, the application findings take a narrow approach focused on the immediate access routes to the proposed garage entrances. They fail to adequately consider the impact of encouraging vehicle access to the site on the increasingly untenable traffic baseline conditions related to the Holland Tunnel and lower Manhattan growth. For example, while West Street does have high capacity, many of the cars will also need to use Clarkson, Washington, and Houston Streets, all of which are regularly congested, harming air quality and quality of residential life in the area.

The project as proposed would require approval of three special permits increasing the total allowed parking spaces from 225 to 772, an increase of 343% to a total equaling almost one space for every two residential units. As stated in the application:

"The Proposed Project overall will thus contain 1,586 residential units, which would be permitted 317 parking spaces on an as-of-right basis, based on 20% of the dwelling units, limited to 200 spaces in one parking facility. The South Site building would be permitted 52 spaces as-of-right for a hotel use or 55 spaces as-of-right for an office use. The retail uses would generate 10 additional spaces as-of-right. The program therefore generates 265 parking spaces when considered on an aggregate basis; however, as a single zoning lot with a mix of uses, the total number of spaces permitted is 225. The three parking facilities in the Proposed Project will exceed this as-of-right amount, and so will require special permits."

The request for 772 spaces is excessive and harmful. In combination with the 160,000 square feet of retail space, any excess spaces will encourage inappropriate destination retail, especially at the North Site where it would increase congestion in the Holland Tunnel Impact Area. Also, because of the proximity of the Holland Tunnel, excess spaces are likely to result in an increase of detrimental commuter use. The DEIS and the special permit application fail to consider the impact of the proposed parking garages based on these unintended but likely uses. Finally, the excess parking availability will create competitive pressure reducing income from parking at Pier 40 to the Hudson River Park Trust.

The community has generally favored the relatively low impact parking uses at Pier 40 and loss of income from parking might encourage less compatible commercial uses at the pier.

The 2013 amendment to the Manhattan Core parking regulations were based on a finding that since 1982 commuter use of parking facilities in Manhattan had declined while car ownership among affluent residents had increased. But 25% of the units in this project are specifically intended only for non-

affluent residents, and a similar proportion is likely to apply for residential growth in the nearby Hudson Square Special District. The need for parking for the senior affordable housing will be negligible.

Nevertheless, the project will generate a need for residential parking, and the large mixed use site results in potentially problematic reductions in the number of spaces allowed.

→ Community Board 2 opposes the proposed permits for off-street parking modifications. The number of spaces allowed should not exceed the total of 381 spaces, based on 317 residential spaces (20% of 1586 units), 52 spaces for a hotel (or 54 spaces for office use), and 10 spaces for retail.

There are potential uses of the below grade spaces that would contribute substantially to the value of the project to the community and its integration into the neighborhood such as rehearsal space, indoor recreation, and bicycle parking exceeding required amounts. While indoor recreation developed to mitigate adverse impacts of the project cannot be an income source for the project, there is substantial demand for commercial recreation facilities as well.

SITE PLAN AND PROJECT DESIGN

In the words of the New York City Department of City Planning, "Zoning is the language of the physical city. It aims to promote an orderly pattern of development and to separate incompatible land uses, such as industrial uses and homes, and to ensure a pleasant environment." Rezoning is therefore justified when allowed uses are antiquated and not compatible with uses in the area, but new uses and increased density are not justified unless they contribute to the successful use and development of the surrounding area.

550 Washington Street, a former freight train terminal with a huge footprint, is a challenging site for residential development. Manufacturing in the broader area has been largely replaced by residential and commercial office uses, but the project shares a super block with a municipal sanitation garage to the south with another superblock to the east solely occupied by a United Parcel Service distribution facility. To the west is West Street, functionally more like an arterial highway than a New York City street. *It will be difficult to successfully integrate the site with nearby residential and office uses, but if the challenges cannot be met, the rezoning is not justified.*

The proposed site plan and project design run away from the challenges. Most of the proposed site is isolated and non-contributing with respect to surrounding areas. It remains inaccessible to pedestrians, offering no reason for non-residents to enter or pass through.

Significantly, the site plan exposes the essential UPS facility to pressures created by new uses. The proposal to narrow the street bed of Washington Street will increase the traffic disruptions that occur when trucks are entering and leaving the UPS site. Widening the sidewalks to the east will move them into an unpleasant and unsafe conflict zone with the trucking facility, rendering the trucking use disruptive to the proposed residential uses on the site. While the sidewalk needs to be widened, this can and must be accomplished by moving the street wall of the new buildings west which will also allow the addition of an important planted buffer to create a pleasant and protected pedestrian environment in the context of a preexisting and still essential industrial use.

The project design misses the one-time opportunity to reestablish a human scale street grid that was eliminated by necessity when the terminal building was constructed. It is true that King Street and Charlton Streets cannot be reestablished as true through streets as long as the UPS building stands, but with the mixed use development trend in the area likely to continue, this is a one-time opportunity that must not be missed to create a chance in the future to truly reintegrate the two superblocks into the fabric of the neighborhood. An opening at King Street, in particular, combined with widening Washington Street, to create a pleasant urban retail environment with building transparency at grade, will allow for an inviting and convenient route for pedestrians and vehicles into and through the site.

The project proposal includes 160,000 square feet of retail, but it is located so it fails to contribute to a lively urban streetscape. Houston Street remains largely covered by bridges connecting the North and Center Sites, creating second level open areas. These areas are unlikely to attract public use but they are created at the expense of the possibility of opening the street below to light and air as should be required for compliance with the Hudson River Park Special District.

The result is the sense of a monolithic and forbidding inward facing structure with 800-foot long street walls broken only by the marginally enhanced Houston Street "tunnel" and a private driveway serving as a primary site access that is a 345-foot walk away along a choice of two unwelcoming streets.

A large internal space between the east and west buildings on the Center Site is walled off from the public to provide "silence" for the apartments above, wasting an important opportunity to create public open space and site access at grade level.

→ The following changes to the site plan will create accessible structures and pleasant streets and will integrate the project with the adjacent community as required to justify the rezoning:

1. **Reopening King Street**
2. **If possible, reopening Charlton Street**
3. **Opening Houston Street to the sky by removing all structure above except one platform.**
4. **Widening Washington Street by moving the east street wall of the North and Center Site structures 12 feet to the west and adding an attractive green buffer.**
5. **Welcoming public use of the open area between east and west buildings in the Center Site.**

Note: *The applicant provided a large format 80-page book in response to criticisms of the proposed site plan and project design discussed at public hearings. The presentation is not convincing and confirms the need for major revisions to the proposal.*

First, the presentation seeks to make the case that the plan is consistent with mixed-use, high density, and large scale development in the area. But these were not the characteristics of the plan that are criticized herein. Three buildings are referenced as examples of nearby structures with high street walls and full lot coverage, but all have transparency at grade and face a wide street with short blocks and a strong mix of retail activity and pedestrian destinations in all directions, nothing like the narrow Washington Street where a special effort will be needed to attract foot traffic. The presentation also looks to West Street for "immediate urban context", but backing up to West Street only amplifies the need to transform Washington Street. Finally, the presentation points to the context of long buildings at Pier 40, the Sanitation garage, UPS, and other nearby buildings. But Pier 40 is in a park and not experienced as neighborhood context, and the sizes of the garage and UPS are appropriate to their uses, not for a new residential project in the Manhattan Core. The other buildings noted all have shorter street walls facing attractive wide streets in the center of successful mixed-use areas.

Second, the presentation seeks to reestablish the false first impression that the project design effectively breaks up the superblock. In fact, this is precisely where the design fails. The opportunity to break off the North Site is missed because Houston Street remains substantially covered. The High Line reference makes a pretty picture, but the space above has none of the special charms of the long and narrow High Line, and none of its sincere historic reference and repurposing. Instead, it creates a secondary public area of dubious value at the expense of an opportunity to create a real break in the street wall that invites passage into and through the site on Houston Street. Forgetting there is nothing pleasant about the underside of the High Line, it dominates the Houston Street environment with not one, but three old train track beds. The location chosen for a driveway is 346 feet south of Houston Street, ignoring the pre-super block grid that is the best opportunity to recreate an accessible urban scale. Pedestrians seeking to enter the site at the driveway will have two long and unpleasant choices: the arterial highway environment on West Street or the narrow one-sided route dominated by UPS. Again, the slides create

false impressions. For example, Washington Street is made to look like a normal street showing parked cars blocking the UPS truck bays, a buffer that would not exist, and showing no parked cars in the parking lane on the west side creating a false impression of a second travel lane . The driveway looks quaint and calm with people strolling on impractical Belgian block paving. In fact, it will be the primary entrance to large vehicle-accessed residential and commercial buildings, frequently dominated by cars and taxis. The curb cut style entrances reinforce the unwelcoming private way appearance, a look and feel of being someplace other than New York City.

Finally, numerous slides are presented as "view studies" of alternative alignments for a break in the long street wall. The King Street alignment is clearly the best, providing the most pedestrian-friendly approach to the project structures. The challenges do not go away, but they become manageable, even if a second break at Charlton Street turns out to be impossible. The map provided to illustrate the pedestrian experience of the project as proposed again demonstrates the failure of the plan. Clarkson Street, with no subway access, becomes the prominent east-west corridor, taking people as far from the site as possible, with no pleasant north-south corridors provided. Even on paper, and even with no cars in sight, Houston Street still looks dark and forbidding. The color diagrams of the ground floor plan offer a friendly feel, but only by making the Houston Street coverage invisible, and showing the "landscaped roof/courtyard as though it would be experienced that way by the public

The table of contents of the presentation references "several urban design challenges" of opening King Street, but these are not addressed in any of the 80 slides. The challenges are in fact made simpler by the recognition in the site plan as proposed of the desirability of opening a King Street view corridor. A real discussion of ideas presented in criticisms of the plan would be welcomed, but the presentation is unpersuasive and non-responsive. It ignores ideas about how to open the site to respond to the needs of the surrounding neighborhood, needs that must be supported to justify proposed zoning changes.

HUDSON RIVER PARK SPECIAL DISTRICT

The Hudson River Park Act was amended in 2013 to generate income for the park by allowing the transfer of development rights from the Hudson River Park to receiving sites within one block east of West Street. The amendment provides an opportunity for the park to benefit from development rights without burdening the park with development that is harmful to the adjacent community and incompatible with park uses.

The proposed Hudson River Park Special District would amend the Zoning Resolution and map and regulate transfers of 200,000 square feet of rights from Pier 40 to the 550 Washington Street site. The related $100 million income to Hudson River Park would fund the restoration of the deteriorating piles and thereby sustain the viability of Pier 40 as a local and regional recreation resource and as an essential source of income for the entire park.

However, based on prior reports from Hudson River Park Trust, there is reason for concern that to remain open until a redevelopment plan is in place, Pier 40 may urgently require substantial additional repair work. Because the emergency conditions at Pier 40 were the impetus for legislation allowing transfer of development rights, assurance of funding to the short term needs of the pier to keep it open for current uses is essential as part of any agreement to transfer air rights. There is no justification for the transfer unless the future of Pier 40 is secured.

Neighbors, and representatives of the Greenwich Village Society for Historic Preservation, spoke at CB2 public hearings and submitted written testimony to express credible concern about increasing development pressures in the South Village and the potential harmful impacts of future transfers of development rights from Hudson River Park sites to receiving sites between Houston Street and 14th Street. The community expressed concerns about a wide variety of negative impacts from the development of the St. John's site: The mammoth scale of the proposal in relation to the neighborhood, the enormous value of the development rights that the developer is receiving, the degradation of per capita

active space available in the community with the addition of so many new residents, the potential loss of affordable parking on Pier 40, the long distance of the project from the nearest subway, and the fear that the development will produce pressure to curtail access to free boating from Pier 40. Moreover, the need to provide ongoing, predictable financial support for Pier 40 is clear. Community members commented on their desire to have the park supported by taxpayer funds. The Central Park Conservancy receives a sizeable percentage of its funds from the city according to the terms of an agreement which covers a 10-year term. Moving towards a similar agreement for the Hudson River Park would address this community concern and would provide predictable funding for the park and reduce the need for incompatible commercial development within the park.

CB2, Man. urges the City and the applicant to work with our Board to consider ways to apply planning principles such as those suggested to us by Terreform Center for Advanced Urban Research to improve the compatibility of the new uses with the adjacent neighborhoods.

At the same time, CB2, Man. recognizes that the viability of Hudson River Park, as provided for in the Hudson River Park Act, depends on income generated within the park, and specifically within CB2 from commercial development at Pier 40. CB2 strongly opposed past proposals for developments at Pier 40 that would have harmed the Park and the adjacent neighborhoods.

There is an opportunity in connection with the current ULURP to assure the availability of some of the remaining development rights to assure essential long term income for the park while also protecting the park and the community from undesirable development at Pier 40 and at nearby sites within CB2.

→ CB2, Man. supports the transfer of 200,000 square feet of development rights from Pier 40 for the purpose of repairing the Pier 40 piles if $50 million of City and State funding is committed over a five-year period to complete other urgent repairs at the pier and assure the pier remains open for its current uses. CB2 supports the transfer exclusively to 550 Washington Street and also supports future redevelopment of Pier 40 if the development pressures on nearby neighborhoods are mitigated as follows:

1. **The final phase of South Village Historic District is implemented concurrently during the ULURP process;**
2. **No additional development rights will be transferred from the Park to any area in CB2, whether from Pier 40 or from any other potential granting site at any time in the future.**

To help facilitate an agreement whereby Hudson River Park Trust will agree to permanently restrict development rights transfer to sites in CB2 beyond the 200,000 proposed here, in September, 2016, CB2, Man. will hold a public hearing to consider criteria for redevelopment of Pier 40 based on the following draft framework.

DRAFT FRAMEWORK FOR PIER 40 REDEVELOPMENT CRITERIA (FOR FUTURE REVIEW)

1. Future development at the pier may include new structure that includes floor area not exceeding xxx,000 square feet.
2. At grade open space in the park will be considered open space for public recreation only if it is used exclusively for free or nominally free recreational use. Outdoor space used entirely or partially for boarding commercially operated vessels, marinas, cafes, etc will not be considered to be open space for public recreation; and no indoor space will be considered open space.
3. In any redevelopment of Pier 40, there will be no increase in total footprint of the structures on the pier, and if there is a decrease of footprint, at least 50% of new unbuilt area will be public open space for recreation.
4. Uses may include current commercial uses with floor area as currently allocated except as listed below.

5. Uses may include commercial office uses and very low impact small manufacturing uses with combined floor area not exceeding xxx,000 square feet.
6. Uses may include eating and drinking establishments individually not exceeding x,000 sf and in combination not exceeding xx,000 sf.
7. The tonnage of commercially operated boats docking at the pier, including party boats, will not exceed xx% of the current use.
8. At least xx% of commercial development of the pier will be developed and operated based on a model designed to fulfill community needs for such uses as a priority over maximizing revenue to the park, and dedicated to the following park and community enhancing uses: indoor recreation, low cost rehearsal space, art studio and gallery space; performance spaces individually not exceeding xxx seats; and community-based water uses including free access to human-powered boats.
9. The site design for development at the pier will give highest consideration to providing safe access for all to the pier and the park and minimizing conflicts between vehicles and park users, and such access will include pedestrian bridges to the extent needed to assure the safest possible access to and use of the pier and the park. The site design for development at the pier will also give high priority to creating and preserving openness, views, compatibility with park uses, and community access to the water.
10. The development plan will provide for incremental or phased development to assure continuous and substantially undiminished recreational use of the pier during construction.

PUBLIC OPEN SPACE

The residential study area for the DEIS has a total open space ratio of 1.15 acres per 1000 residents. There are only .42 acres of active open space per 1000 residents compared to the goal of 2.0 acres. Because the portions of the community district located in the study area have comparatively more open space than the rest of the district, the condition is much worse for the district as a whole. The DEIS identifies a significant adverse open space impact based on a 5.66% decrease in the total open space ratio including a 6.96% decrease in the active open space ratio. No specific mitigations are proposed as part of the application.

No outdoor space suitable for active recreation will be available on the project site. However, because indoor sports facilities provide year-around opportunities, it is appropriate to provide indoor space to mitigate the adverse impact on open space for active recreation.

→ CB2 cannot support a project that fails to mitigate a significant adverse impact on active open space. Unless suitable outdoor space within the study area is identified and secured, qualified and adequate indoor space within the study area, such as new gyms and swimming pool within the project sites, will be the only sufficient way to mitigate significant adverse impacts of the project on active open space opportunities in the district.

There are other opportunities to create new public open space within the district, but these are not suitable for active recreation so they would not mitigate the significant adverse impact of the proposed project. For example, CB2 supports the creation of a permanent park at Elizabeth Street Garden as its highest open space priority. CB2 also continues to support new open space at two sites where DEP has completed construction of water distribution projects on East 4th Street and at the corner of Grand and Lafayette Streets. At the large DEP site at 388 Hudson Street CB2 supports building affordable housing, but more than 9000 square feet of the site where DEP retains an easement could still be available for passive open space use.

→ CB2 opposes the proposal for passive public open space on the old railroad track beds above Houston Street because these should be removed to open Houston Street to the sky. Instead, a much larger public open space should be created with at grade access in the area between the buildings on the Center Site of the project. Designed as a garden with plantings and seating, the public

use would not conflict with the residential uses, and a broad path from Houston Street would increase pedestrian access through the project.

As part of the ULURP agreement for the St. Vincent's Hospital site, the Greenwich Lane development built the public park across the street and pays for its maintenance in perpetuity through assessments on condominium. This model should be implemented, including charges to all property owners on the site, so this project can provide ongoing support for Hudson River Park.

AFFORDABLE HOUSING

The district has experienced a significant loss of stabilized housing, and remaining stabilized units are at risk. CB2 recognizes the negative impact of loss of diversity on the vitality of the neighborhood, the need to place new affordable housing in high value areas, and the importance of creating "aging in place" opportunities for district seniors. CB2 therefore appreciates and supports the significant number of affordable units that will be provided as part of this project, but requests concurrent development of additional affordable housing in the district.

CB2 is deeply concerned that HPD has failed to respond to our requests to evaluate the nearby opportunity for new affordable housing at the water tunnel shaft construction site at 388 Hudson Street, and instead continues to pursue an unpopular plan at Elizabeth Street Garden, a location that offers minimal housing opportunities at the expense of losing a treasured public open space in the most park-starved part of our district.

→ CB2 recommends that HPD and DCP begin work, concurrently with the 550 Washington Street application, to expand the Hudson Square Special District to include the 388 Hudson Street site.

→ CB2 rejects the idea that housing and open space priorities in the district should be selected on the basis of the council district location and once again requests that HPD work with CB2 to develop a plan for the district that builds as much new affordable housing as possible without undue harm to our neighborhood character and open space.

The mixed income affordable units at 550 Washington Street are proposed as a combination of 60% AMI and 130% AMI. The single AMI band for the "workforce" housing may make them difficult to market with a potential reduction of participation of district residents in the 50% preference program.

→ CB2 recommends that 20% of the floor area planned for 130% AMI be set at 100% AMI so that units can be marketed in the wider 100% to 165% AMI range.

During public hearings, neighbors expressed concern about the small size of the senior affordable housing units. The small size is likely to make the units difficult to market to district seniors, many consisting of healthy couples, and even moving into studios will be very difficult for many seniors. Given the size of the project, increasing the proportion of larger units should be possible without reducing the number of units. There was also concern expressed that the single AMI band of 80% is too narrow, and that a broader range would make the units more marketable, especially to seniors currently living in walk-up units in the district.

→ Of the 178 units for seniors, CB2 recommends that no more than 70 be studios, and also recommends that up to 50% of the units be offered at 100% AMI.

TRAFFIC & TRANSPORTATION

The proposed special zoning changes and transfer of air rights to 550 Washington will bring thousands of new residents and workers to the area and will significantly exacerbate traffic and transportation issues in the community. This development would also follow on the heels of a major zoning change at Hudson Square and precede further development at Pier 40, all aggravating already declining conditions.

Therefore, the development should not proceed unless a comprehensive approach is taken to improve traffic and transportation conditions in the area.

Baseline traffic in the area has been increasingly untenable because of congestion leading to the Holland Tunnel. Long queues on Varick, Canal, West, and Spring Streets contribute to frequent gridlock conditions causing long delays. This disrupts business and creates unsafe conditions for pedestrians and cyclists. It increases response times of emergency vehicles and causes localized air quality problems. As Hudson Square develops as a commercial office and residential area, large numbers of pedestrians sift through blocked crosswalks and crowd into inadequate public transport. With cars and trucks crossing Manhattan to avoid Verrazano tolls, the flow capacity of the tunnel and the "storage" capacity of the traffic lanes fail on a regular basis. 550 Washington will now add a further burden.

Although the DEIS recognizes adverse impacts at 18 intersections, it says all but two can be "fully mitigated with standard mitigation methods" such as restriping, signal timing, and "daylighting". Some of the proposed mitigations consist of changing signal times by as little as one second. By looking exclusively at the incremental changes created by the proposed project versus as-of-right development at the site, the DEIS misses the already unsustainable baseline conditions in the area, and fails to recognize the harm that will be caused if the development proceeds without a commitment to extensive improvement by the city administration.

While NYC DOT recognizes the problems, it has applied piecemeal remedies at individual intersections that don't function together holistically. However, given the severity of the current conditions and the impact on safety, health, and quality of work and residential life, the omission of a coordinated plan to mitigate adverse impacts at all intersections of concern is unacceptable. Recent experience with localized improvements focusing on pedestrian safety at a number of complex intersections shows that meaningful change is possible. The current ULURP represents a unique opportunity to develop a comprehensive response to the area's ever-increasing growth.

→ For this project to proceed responsibly, NYC DOT needs to complete, concurrently with this ULURP, a comprehensive study providing recommendations for improving baseline conditions prior to the start of work on the proposed project. The City administration needs to commit to improving through traffic and pedestrian safety conditions by drawing upon a full toolkit of improvements including permanent lane separations, neck downs and other curb extensions, medians, turning changes, parking changes, and special signage. Particular attention should focus on Varick Street below Bleecker Street, Houston Street, and Spring Street.

Varick Street is the major Holland Tunnel access route through the community district. Designated tunnel access lanes fail during the evening rush hour because vehicles enter these lanes from multiple side streets, often blocking intersections and impeding local and through traffic. Hudson Square Connection has suggested a redesign for Varick Street including a permanent median divider and more restricted access to the tunnel lanes.

Houston Street is an important westbound connector to West Street, north and south. When the intersection at Varick Street is blocked, westbound traffic on Houston Street impacts a wide residential and commercial area. Improving this intersection is a high priority, but cannot be accomplished without looking at the full length of Varick Street. Also, to relieve congestion at West Street and improve safety at the pedestrian crossing there, consideration should be given to moving northbound West Street traffic onto Leroy Street.

Spring Street, at the south end of the two super blocks, is an important pedestrian connector. During water main replacement work, tunnel traffic from downtown was diverted onto Spring Street, harming the character of the street and further slowing tunnel lanes on Varick Street. The water main work is complete and the use of Spring Street for Holland Tunnel traffic should be curtailed.

In all of these efforts, the Hudson Square Connection should be engaged as an important resource.

Bus and Subway Transportation

CB2 welcomes the proposal to provide affordable housing units for seniors, but the current public transit system does not support this use with the nearest wheelchair access to subways more than a half-mile away. Currently, there is no viable connection to the #1 subway, and the trip from Washington Street to the subway on Sixth Avenue takes passengers through the heart of Holland Tunnel traffic on Spring Street. Without improvements to bus routes and service, the location will isolate seniors and other residents from other residential and commercial areas.

The M21 route should be reevaluated to provide better service to the new development area and its frequency increased. The M8 route must continue to operate as well and at frequent intervals to keep providing the important access that its many users depend upon, while serving seniors and other residents. At least one of these routes should be extended to cross West Street and provide safe and convenient access to Pier 40 and increase ridership.

→ In general, mass transit needs to be improved so that the proposed project is less car-dependent and more appropriate for the Manhattan Core. Dependency on vehicular access will be detrimental to the project and to the neighborhood.

Pedestrian Safety and Access to Hudson River Park

The largest contributor to public open space in the community district is Hudson River Park, but access across West Street is dangerous and isolates the park from the community. The crossing at Houston Street, the main area access point for pedestrians and cyclists has become increasingly hazardous as park use grows. Many vehicles turn north onto West Street from Houston Street and from Pier 40, creating a confusing and dangerous 8-lane crossing terminating on the west side at a busy bike lane.

As pedestrian traffic in the area grows, it is essential that safe at-grade passage is provided across West Street. A pedestrian bridge would be the only *completely* safe crossing, and has been considered to connect the second level at the 550 Washington Street site to Pier 40. But it would be costly to build, and the grade crossing would remain the more-used route for most pedestrians and cyclists, especially those without a second level destination at Pier 40. Bridges also may encourage faster traffic on the street and for that reason were discouraged as part of the Route 9A plan. If office uses are developed at Pier 40 in the future, such a bridge might be essential and therefore this project should include a second level connection point for such bridge and a commitment to provide and maintain public access including elevators, as promised by the applicant.

→ The following measures can provide safer access across West Street and thereby substantially improve access to active and passive open space resources:

1. Add a West Street crossing at King Street where there would be no conflict with turning vehicles.
2. Add a West Street crossing at Spring Street serving residents in the southern portion of the district.
3. Use signs at various locations to eroute traffic turning northbound onto West Street from Houston Street to Leroy Street to reduce the number of vehicles turning through the Houston Street crosswalk.
4. Adjust signal time and phasing to maximize pedestrian crossing times and safety at Houston Street, Clarkson Street, and other West Street crossings.
5. Remove ramps where the crosswalks pass through the West Street medians.
6. Widen West Street crosswalks, install stop line signs at curbs where buildings extend past stop lines, and where possible install bulb outs to shorten crossings.
7. Redesign the Pier 40 driveway with an additional entry to distribute vehicle access away from Houston Street.

Bicycle Transportation

Given the access challenges of the site, the failure to welcome bike transportation is a missed opportunity. While mandatory bike parking would be included in the indoor car parking lots, these primarily serve project residents and do not provide the convenience of at-grade free bike stands. The developer has committed to providing more bike parking than required, but should provide NYC DOT CityRacks at several convenient locations and designate a location for CitiBikes centrally in the project.

FLOOD PROTECTION

More planning is needed in the area to protect vulnerable areas as the climate changes. While waterfront development proceeds apace, actual infrastructure to protect west side areas has stalled.

Resiliency

The Greenwich Village Waterfront is highly vulnerable to storm surges as experienced during Superstorm Sandy in 2012. In response, New York City has committed to protecting the built environment with the Big U project. As part of the redevelopment of the St. John's Terminal, CB #2 must receive time certain assurances of the extension of the Big U from Canal Street to West 14th Street. This system will provide long-term protections for existing residences between Washington and West Streets in our community. The Big U is a protective system around Manhattan, driven by the needs and concerns of its communities. Stretching from West 57th street south to The Battery and up to East 42th street, the Big U protects 10 continuous miles of low-lying geography that comprise an incredibly dense, vibrant, and vulnerable urban area. The proposed system not only shields the city against floods and storm water; it provides social and environmental benefits to the community, and an improved public realm.

Sewers and Storm Drains

While the St. John's redevelopment project has considerable on-site retention and detention measures to protect their property during heavy rainstorms, the surrounding community struggles with ongoing sewer back-ups and flooding during such storms. The problems are documented as far east as Hudson Street and along the entire waterfront. CB2 appreciates the commitment made by the project architect to work with neighbors to address longstanding failure of the area sewers. Approval of this application should include a commitment by the City to take urgent action to address these longstanding problems, including rerouting sewer lines, enhancements to tidal gates, local actions required to increase sewer capacities of residential buildings in the area, and a community process for monitoring progress.

SCHOOLS

The project will have a significant adverse impact on public elementary school utilization. Given the current crowding in existing schools and expected residential growth in the area, the residential growth proposed in this project is unsustainable unless other active opportunities for new elementary schools are developed prior to opening of the residential buildings.

Flawed DEIS Analysis

The DEIS analysis is flawed because it includes 100% of the PS 340 capacity, even though most of the PS 340 zone is not in Sub-district 2, the study area for schools analysis. Without this flaw, the projected change in utilization would be greater than 5% and the DEIS analysis would demonstrate an adverse impact on elementary school seats. In the rezoning for Hudson Square, the applicant agreed to fund the

core and shell of a 75,000 square foot elementary school as a result of a 5% change in elementary school utilization. [1]

Furthermore, a very small change in other assumptions also would result in a significant adverse impact to both elementary school and intermediate school seats while the impact on intermediate school seats likely will be greater than the forecast.

Planning for area school utilization in connection with this project is complicated by the following considerations:

Additional Considerations

The formula for calculating the change in utilization is: Students Introduced by the Proposed Project / Capacity in the Study Area = Change in Utilization.[2]

As the population in the study area expands and more school capacity is built, the threshold for any residential project to impact utilization increases. Meanwhile, the cost to build new school seats continues to rise.

Based on the NYC Department of Education's FY 2015-2019 Proposed Five Year Capital Plan, new school construction in District 2 for schools fully funded by the DOE ranges from $120,000 to $174,000 per seat.[3] As a result, it will cost NYC taxpayers $20 to $29 million to build new school capacity for the 169 elementary school students that the Project will generate, based on a CEQR multiplier of 0.12. In Greenwich Village, the historical CEQR multiplier is 0.16[4] and as a result, CB 2 projects that the Project will produce 225 additional elementary school students for a cost to taxpayers of $27 - $39 million.

As yet unfulfilled opportunities for new schools were created by agreements in connection with ULURPs for Hudson Square Rezoning and the NYU 2031 Plan. 550 Washington Street and Pier 40 are not ideal locations for a new elementary school, but either could provide a good location to relocate one of the two high schools in the area which could then be reconfigured. Unless commitments are made prior to approval of this application, sufficient space at an appropriate location within the project should be allocated for a new school or funding should be provided to increase capacity at schools in CB2, such as the Bleecker School.

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[1] Hudson Square Final Environmental Impact Statement, Chapter 4, Community Facilities and Services, Table 4-6, page 4-11, http://www1.nyc.gov/assets/planning/download/pdf/applicants/env-review/hudson_square/04_feis.pdf.

[2] Formula Simplified

Utilization with Action – Utilization No Action = % Change in Utilization
[(Future + Project) / Capacity] – [(Future/Capacity)] = % Change in Utilization
[(Future + Project – Future)] / Capacity = % Change in Utilization
Project / Capacity = % Change in Utilization

Variables
Future = Total Future Enrollment in 2024
Project = Students Introduced by the Proposed Project
Capacity = Public School Capacity in the Study Area

[3] FY 2015-2019 Proposed Five Year Capital Plan, Amendment, NYC Department of Education, January 2016, p. C-7,http://www.nycsca.org/Community/CapitalPlanManagementReportsData/CapPlan/01212016_15_19_CapitalPlan.pdf.

[4] In 2014, CB 2 published reports on population projections and demographic analysis for the Bleecker School in Greenwich Village and the actual CEQR multiplier was 0.16 from 2002 through 2013, based on actual change in enrollment divided by the actual change in residential units. The change in enrollment was from the *DOE Utilization Profiles: Enrollment, Capacity and Utilization* and the change in residential units from PLUTO. For the Bleecker School analysis, the study area was the elementary school zones for PS 3, PS 41, PS 11, PS 130 and PS 340. Visit http://www.nyc.gov/html/mancb2/html/newpublicschools/bleeckerschool.shtml.

550 WASHINGTON STREET PROJECT: DEIS vs. CB 2 ANALYSIS OF IMPACT ON PUBLIC SCHOOL SEATS

Flawed Assumptions Create Significant Adverse Impact on Elementary School Seats

ELEMENTARY SCHOOL ANALYSIS

DEIS ANALYSIS *(1)*				CB 2 ANALYSIS		
SCHOOLS IN STUDY AREA	2014-15 ENROLL-MENT	DEIS CAPACITY	UTILIZATION	% AGE 5-10 POP IN SUB-DISTRT. 2 *(2)*	REVISED CAPACITY	REVISED UTILIZATION
PS 3 *(2)*	809	712	113.6%	91%	648	113.6%
PS 41 *(2)*	757	645	117.4%	91%	587	117.4%
PS 89	442	340	130.0%	100%	340	130.0%
PS 234	581	490	118.6%	100%	490	118.6%
PS 234	148	87	170.1%	100%	87	170.1%
BPC	612	526	116.3%	100%	526	116.3%
PS 150	184	124	148.4%	100%	124	148.4%
PS 340 *(2)*	81	551	14.7%	30%	165	14.7%
Total '14-15	3,614	3,475	104.0%		2,967	115.1%

CHANGE IN ELEMENTARY SCHOOL UTILIZATION	NO ACTION	ACTION	REVISED
Capacity	3,475	3,475	2,967
Students from Project with CEQR of 0.12		169	169
Change in Utilization		4.86%	5.69%
Students from Project with CEQR of 0.16		225	225
Change in Utilization		6.48%	7.59%

BREAKEVEN ANALYSIS FOR 5% CHANGE IN ELEM. SCHOOL UTILIZATION		
Additional CEQR Multiplier	0.0034	*(3)*
Additional Students	4.79	*(4)*
Additional Units	39.92	*(5)*
% of PS 340 Students in Sub-District	83%	*(6)*
Decline in Elementary School Capacity	95.80	*(7)*

ASSUMPTIONS

HOUSING		DEIS ANALYSIS (1)	CB 2 ANALYSIS
Total Residential Units		1,586	
Less: Senior Units		178	
Units for School Analysis		1,408	
ELEMENTARY SCHOOL SEATS		**DEIS ANALYSIS (1)**	**CB 2 ANALYSIS**
Elem. School CEQR Multiplier		0.12	0.16
Elementary School Seats		169	225
Cost Per Seat *(8)*	$120,000	$20.28 mm	$27.03 mm
	$174,000	$29.40 mm	$39.20 mm
% of PS 340 Zone in Sub-district 2 *(2)*			30%
% of PS 3/41 Zone in Sub-district 2 *(2)*			91%
INTERMEDIATE SCHOOL SEATS		**DEIS ANALYSIS (1)**	**CB 2 ANALYSIS**
Inter. School CEQR Multiplier		0.04	n/a
Inter. School Seats		56	n/a
Cost Per Seat *(8)*	$120,000	$6.76 mm	n/a
	$174,000	$9.80 mm	n/a
PROJECTED ENROLLMENT CHANGES '14-'24 ARE HIGHER FOR ELEMENTARY			
Elementary School		6.83%	n/a
MIddle School		(16.28%)	n/a

Notes

(1) DOE Utilization Profiles: Enrollment/Capacity/Utiliation, 2014-2015 and 2010 Census Data by block and age.

(2) PS 340 is located in Sub-District 3, but serves some students in Sub-District 2. Using 2014-15 elementary school zones and 2010 census block data for the population age 5 to 10, only 30% of the PS 340 population resides in the Sub-district 2. However, the DEIS analysis uses 100% of the the PS 340 capacity. Similarly, 91% of the PS 3 /41 zone is inside Sub-district 2.

*(3) Change in CEQR = [(5% * DEIS Capacity) / (Total Residential Units for School Analysis)] - (Elem. CEQR)*

*(4) Change in Stuents =[5% * (DEIS Capacity)] - [(Elem. CEQR) * (Total Residential Units for School Analysis)]*

*(5) Change in Resid. Units =[(5% * DEIS Capacity) / (Elem CEQR)] - (Total Residential Units for School Analysis)*

*(6) % of PS 340 Sutdnets in Sub-Disrict = [(Elem CEQR) * (Total Residential Units for School Analysis) - (DEIS Capacity Excluding PS 340)] / (PS 340 Capacity)*

*(7) Decline in Elementary School Capacity = (DEIS Capacity) - [(Elem CEQR) * (Total Residential Units for School Analysis) / 5%]*

(8) Cost per school seat for new District 2 schools fully funded by DOE, FY 2015-2019 Proposed Five Year Capital Plan, Amendment, NYC Department of Education, January 2016, p. C-7, http://www.nycsca.org/Community/CapitalPlanManagementReportsData/CapPlan/01212016_15_19_CapitalPlan.pdf.

SUMMARY

1. **CB2, Man. recommends approval of the zoning map amendment, the text amendment and the transfer of Pier 40 development rights with the conditions listed herein pertaining to site plan, project design, the South Village historic district, restrictions on future development rights transfers, retail store size, full mitigation of adverse open space impacts, traffic improvements in the Holland Tunnel impact area, pedestrian safety, provision of needed school seats, and flooding and resiliency.**
2. **CB2, Man. recommends denial of the applications for special permits for accessory parking garages unless the total number of parking spaces is no more than 387.**
3. **CB2, Man. recommends approval of the curb cut modifications.**

Vote: Passed, with 36 Board members in favor, and 1 abstention (D. Diether).

Please advise us of any decision or action taken in response to this resolution.

Sincerely,

Tobi Bergman, Chair
Community Board #2, Manhattan

Anita Brandt, Chair
Land Use & Business Development Committee
Community Board #2, Manhattan

TB/fa

c: Hon. Jerrold L. Nadler, Congressman
Hon. Brad Hoylman, NY State Senator
Hon. Daniel L. Squadron, NY State Senator
Hon. Deborah J. Glick, Assembly Member
Hon. Alice Cancel, Assembly Member
Hon. Gale A, Brewer, Man. Borough President
Hon. Corey Johnson, Council Member
Hon. Margaret Chin, Council Member
Hon. Rosie Mendez, Council Member

APPENDIX A

ST. JOHN'S TERMINAL RESTRICTIVE DECLARATION

THIS DECLARATION (this "Declaration"), made as of this ____ day of _____, 2015, by **SJC 33 OWNER 2015 LLC**, a _____, having an address at _____ (the "Declarant").

WITNESSETH:

WHEREAS, the Declarant is the fee owner of certain real property located at 550 Washington Street in the Borough of Manhattan, County of New York, City and State of New York, designated for real property tax purposes as Block 596, Lot 1 and as more particularly described in **Exhibit "A"** (the "Subject Property");

WHEREAS, Declarant desires to redevelop the Subject Property with a mix of residential and commercial uses, and public access areas, as described in the Land Use Applications (as defined herein) (the "Proposed Development");

WHEREAS, the Subject Property is divided into three sites: the north site, as more particularly described in **Exhibit "A-1"** (the "North Site"), center site, as more particularly described in **Exhibit "A-2"** (the "Center Site"), and south site, as more particularly described in **Exhibit "A-3"** (the "South Site", and each, a "Site"), as shown in the diagram (the "Project Diagram") annexed hereto as **Exhibit "B"**;

WHEREAS, pursuant to the Zoning Text Amendment (defined herein), proposed Section 89-10 of the Zoning Resolution provides that the use and bulk regulations of the underlying zoning districts under the proposed Zoning Map Amendment (defined hereinafter) shall not apply to the Subject Property except with respect to a development or enlargement that

is the subject of a special permit granted by the Commission pursuant to the Special Hudson River Park District provisions;

WHEREAS, the Hudson River Park Trust, a New York public benefit corporation (the "HRPT"), constituted under Chapter 592 of the Laws of 1998 (as amended, the "Hudson River Park Act" or "HRPA"), is lessee of certain real property designated for real property tax purposes as Block 656, Lot 1 (the "Pier 40 Site") pursuant to a lease with the State of New York, in accordance with the HRPA;

WHEREAS, pursuant to amendments to the HRPA enacted under Chapter 517 of the Laws of 2013, HRPT is permitted to transfer any unused development rights from the Hudson River Park (the "Park") to properties located up to one block east of the Park, if and to the extent designated and permitted under local zoning ordinances;

WHEREAS, pursuant to Application No. N 160308 ZRM, the New York City Department of City Planning (DCP) applied to the New York City Planning Commission (the "Commission") for a Zoning Text Amendment to establish the Special Hudson River Park District under Section 89-00 et. seq. of the Zoning Resolution (the "Zoning Text Amendment");

WHEREAS, pursuant to the Zoning Text Amendment, proposed Section 89-21 of the Zoning Resolution provides that the Commission may permit development rights to be transferred from a "granting site" to a "receiving site";

WHEREAS, pursuant to the Zoning Text Amendment, proposed Section 89-10 of the Zoning Resolution defines the Pier 40 Site as a "granting site" and the Subject Property as a "receiving site" in the Special Hudson River Park District;

WHEREAS, the Declarant applied to the Commission for (1) a zoning map amendment pursuant to Application No. N 160309 ZMM to (a) map the Special Hudson River Park District comprising Pier 40 and the Subject Property and (b) rezone the Subject Property (i) changing the North Site from an M1-5 District to a C6-4 District, (ii) changing the Center Site from an M2-4 District C6-3 District, and (iii) changing the South Site from an M2-4 District to an M1-5 District (the "Zoning Map Amendment"); (2) a special permit pursuant to the Special Hudson River Park District provisions, pursuant to Application No. N 160310 ZSM, to permit (a) the transfer of 200,000 square feet of unused floor area development rights to be transferred from the Pier 40 Site to the Subject Property and (b) certain bulk waivers on the Subject Property (the "HRP Transfer Special Permit"); (3) three special permits pursuant to Sections 13-45 and 13-451 of the Zoning Resolution, pursuant to Applications Nos. N 160311 ZSM, N 160312 ZSM, and N 160313 ZSM, to allow additional accessory parking on each of the three Sites (the "Parking Special Permits," and together with the HRP Transfer Special Permit, the "Special Permits"); and (4) three authorizations pursuant to Section 13-441 of the Zoning Resolutions, pursuant to Applications Nos. N 160314 ZAM, N 160315 ZAM, and N 160317 ZAM, to allow curb cuts for accessory parking garages on each of the three Sites; (the "Authorizations"); and Declarant applied to the Chairperson of the Commission for (5) a Certification pursuant to the Special Hudson River Park District provisions, pursuant to N 160318 ZCM to facilitate the transfer of floor area development rights (collectively, and together with the Zoning Text Amendment, the "Land Use Applications");

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

WHEREAS, in connection with the HRP Transfer Special Permit, Declarant has proposed to purchase development rights from the Pier 40 Site from HRPT, and to transfer such development rights to the Subject Property, and in order to effectuate such transfer, Declarant will record against the Subject Property and HRPT will record against the Pier 40 Site a Transfer of Development Rights and Notice of Restrictions, substantially in the form annexed hereto as **Exhibit "F"**, upon the closing of the purchase and sale of the Development Rights, and the recordation of such Transfer of Development Rights and Notice of Restrictions will give Declarant the right to make the Special Permit Election (as defined herein), in accordance with this Declaration;

WHEREAS, _____ Title Insurance Company (the "Title Company") has certified in the certification (the "Certification") attached hereto as **Exhibit "C"** and made a part hereof, that as of _____ ___, 2015, Declarant, _____, and _____ (the "Parties-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, all parties-in-interest to the Subject Property have either executed this Declaration or waived their right to execute and subordinated their interest in the Subject Property to this Declaration by written instrument annexed hereto as **Exhibit "D"** (the "Waiver and Subordination") and made a part hereof, which instrument is intended to be recorded simultaneously with this Declaration; and

WHEREAS, Declarant desires to restrict the manner in which the Subject Property is developed, redeveloped, maintained and operated in the future, and intends these restrictions to

benefit all the land, including land owned by the City, lying within a one-half-mile radius of the Subject Property.

NOW THEREFORE: Declarant does hereby declare, covenant and agree that the Subject Property shall be held, sold, transferred, conveyed and occupied subject to the restrictions, covenants, obligations, easements, and agreements of this Declaration, which shall run with the Subject Property and which shall be binding on Declarant and its successors and assigns as follows:

ARTICLE I

CERTAIN DEFINITIONS

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

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

1.02 "Association" shall have the meaning set forth in Section 8.03 of this Declaration.

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

1.04 "Board" shall have the meaning set forth in Section 8.03 of this Declaration.

1.05 "Building" shall mean any one of the buildings that is part of the Proposed Development as shown on the Plans, and shall not mean an Existing Building.

1.06 “Building Permit” shall mean, with respect to any Building, any of an Excavation Permit, Demolition Permit, Foundation Permit, or New Building Permit.

1.07 “Center Site” shall have the meaning given in the Recitals to this Declaration.

1.08 “Chair” shall mean the Chair of the City Planning Commission of the City of New York from time to time, or any successor to its jurisdiction.

1.09 “City” shall mean the City of New York.

1.10 “City Council” shall mean the City Council of the City of New York, or any successor to its jurisdiction.

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

1.12 “Construction Commencement” shall mean the issuance of the first Foundation Permit by the Buildings Department to Declarant for work on a Building within the Proposed Development.

1.13 “Declarant” shall have the meaning given in the Recitals of this Declaration and shall include any Successor Declarant as defined in Section 6.05 of this Declaration and any entity that becomes a Declarant pursuant to this Declaration.

1.14 “Declaration” shall mean this Declaration, as same may be amended or modified from time to time in accordance with its provisions.

1.15 “Demolition Permit” shall mean a permit issued by the Buildings Department, in connection with the development of a Building, authorizing the dismantling, razing or removal

of a building or structure, including the removal of structural members, floors, interior bearing walls and/or exterior walls or portions thereof.

1.16 "DOB" shall mean the Department of Buildings of the City of New York, or any successor to the jurisdiction thereof under the New York City Charter.

1.17 "Effective Date" shall have the meaning given in Section 6.01 of this Declaration.

1.18 "Existing Building" shall mean the building or buildings existing on the Subject Property at the time of a Special Permit Election.

1.19 "Excavation Permit" shall mean any permit issued by the Buildings Department, in connection with the development of a Building, authorizing excavations, including those made for the purpose of removing earth, sand, gravel, or other material from the Subject Property.

1.20 "Final Approval" shall mean approval or approval with modifications of the Land Use Applications by the Commission pursuant to New York City Charter Section 197-c, unless (a) pursuant to New York City Charter Section 197-d(b), the City Council reviews the decision of the Commission approving or approving with modifications the Land Use Applications and takes final action pursuant to New York City Charter Section 197-d approving or approving with modifications the Land Use Applications, in which event "Final Approval" shall mean such approval or approval with modifications of the Land Use Applications by the City Council, or (b) the City Council disapproves the decision of the Commission 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, in which event "Final Approval" shall mean the Mayor's written disapproval

pursuant to such New York City Charter Section 197-d(e). Notwithstanding anything to the contrary contained in this Declaration, "Final Approval" shall not be deemed to have occurred for any purpose of this Declaration if the final action taken pursuant to New York City Charter Section 197-d is disapproval of the Land Use Applications.

1.21 "Floor Area" shall have the meaning set forth in Section 12-10 of the Zoning Resolution on the Effective Date of this Declaration.

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

1.23 "Force Majeure Event" shall mean an occurrence, or occurrences, beyond the reasonable control of Declarant(s), which causes delay in the performance of Declarant's obligations hereunder, provided that Declarant has taken all reasonable steps reasonably necessary to control or to minimize such delay, and which occurrences shall include, but not be limited to: (i) a strike, lockout or labor dispute; (ii) the inability to obtain labor or materials or reasonable substitutes therefor; (iii) acts of God; (iv) restrictions, regulations, orders, controls or judgments of any Governmental Authority; (v) undue material delay in the issuance of approvals or actions by any Governmental Authority, provided that such delay is not caused by any act or omission of Declarant; (vi) enemy or hostile government action, civil commotion, insurrection, terrorism, revolution or sabotage; (vii) fire or other casualty; (viii) a taking of the whole or any portion of the Subject Property by condemnation or eminent domain; (ix) unusual or reasonably unforeseeable inclement weather substantially delaying construction of any relevant portion of the Subject Property; (x) unforeseen building, demolition, underground, or soil conditions, provided that Declarant did not and could not reasonably have anticipated the existence thereof

as of the date hereof; (xi) the denial of access to adjoining real property, notwithstanding the existence of a right of access to such real property in favor of Declarant arising by contract, this Declaration or Legal Requirements, (xii) failure or inability of a public utility to provide adequate power, heat or light or any other utility service; (xiii) orders of any court of competent jurisdiction, (xiv) unusual delays in transportation, or (xv) the pendency of any litigation which results in an injunction or restraining order prohibiting or otherwise delaying the construction of any portion of the Subject Property. No event shall constitute a Force Majeure Event unless Declarant, the Association, or the holder of a Mortgage on the Subject Property in control of the Subject Property, as applicable, complies with the procedures set forth in Section 7.04.

1.24 "Former Zoning" shall mean, with respect to the North Site, the M1-5 zoning district, and with respect to the Center Site and South Site, the M2-4 zoning district, and all bulk, use, and other regulations applicable in such zoning districts in accordance with the Zoning Resolution.

1.25 "Foundation Permit" shall mean any permit issued by the Buildings Department authorizing foundation work for the foundation of a Building.

1.26 "Individual Interest" shall have the meaning given in Section 5.04(a) of this Declaration.

1.27 "Land Use Applications" shall have the meaning given in the Recitals to this Declaration, as such Land Use Applications may be hereafter modified.

1.28 "Lot Owner" shall mean only (a) fee owner(s) of the Subject Property or any portion thereof; (b) the holder of the lessee's estate in a ground lease of all or substantially all of

the Subject Property or all or substantially all of any Site; (c) the cooperative corporation which holds beneficial ownership of any portion of the Subject Property or any building built on the Subject Property; and (d) the board of managers of any portion of the Subject Property that is subject to a declaration of condominium.

1.29 "Mortgage" shall mean a mortgage given as security for a loan in respect of all or any portion of the Subject Property.

1.30 "Mortgagee" shall mean the holder of a Mortgage.

1.31 "Named Mortgagee" shall have the meaning given in Section 8.04 of this Declaration.

1.32 "New York City Charter" shall mean the Charter of the City of New York, effective as of January 1, 1990, as amended from time to time.

1.33 "New Building Permit" shall mean, with respect to any Building, a work permit issued by the Buildings Department under a new building application authorizing the construction of such Building.

1.34 "Notice" shall have the meaning given in Section 8.04 of this Declaration.

1.35 "North Site" shall have the meaning given in the Recitals to this Declaration.

1.36 "Obligations" shall mean any requirement of this Declaration, including, without limitation, the requirements set forth in Article II.

1.37 "Party-in-Interest" shall have the meaning given in the Recitals to this Declaration.

1.38 "Plans" shall mean the drawings for the Development prepared by CookFox Architects, as approved pursuant to the Approvals, reduced-size copies of which are attached as Exhibit "E" to this Declaration, as more particularly described in Section 2.01(a), and as may be modified pursuant to Section 6.03 hereof.

1.39 "Possessory Interest" shall mean either (1) a fee interest in the Subject Property or any portion thereof or (2) the lessee's estate in a ground lease of all or substantially all the Subject Property or portion thereof and all or substantially all of any Site or portion thereof.

1.40 "Proposed Development" shall have the meaning given in the Recitals to this Declaration.

1.41 "PAA" shall have the meaning given in Section 4.01 of this Declaration.

1.42 "Register" shall have the meaning given in Section 6.01 of this Declaration.

1.43 "Register's Office" shall have the meaning given in Section 6.01 of this Declaration.

1.44 "Rezoning" shall have the meaning given in the Recitals to this Declaration.

1.45 "Site" or "Sites" shall mean any one of the North Site, Center Site or South Site or all of the Sites as the context shall require.

1.46 "South Site" shall have the meaning given in the Recitals to this Declaration.

1.47 "Special Permits" shall have the meaning given in the Recitals to this Declaration.

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

1.49 “Substantial Completion” or “Substantially Complete”, shall mean completion of construction substantially in accordance with the Plans, in the reasonable determination of the Chair, notwithstanding that minor or insubstantial details of construction, decoration or mechanical adjustment remain to be performed.

1.50 “Subject Property” shall have the meaning given in the Recitals to this Declaration.

1.51 “Successor Declarant” shall have the meaning given in Section 6.05 of this Declaration.

1.52 “Undeveloped Site” shall mean a Site or portion of a Site on which work has not commenced pursuant to a New Building Permit, and which, subsequent to a Special Permit Election on any portion of the Subject Property, will be subject to the “Existing Buildings” provisions of Section 2.01(a)(iii) of this Declaration .

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

1.54 “Unit Owner” shall not include the Lot Owner but shall mean (a) the owner of any individual residential or commercial condominium unit, or the owner of the beneficial interest of any residential or commercial unit, held in cooperative ownership, or (b) the holder of a mortgage or other lien encumbering any such residential or commercial unit, apartment or building held in condominium ownership or owned by a cooperative corporation.

1.55 "Zoning Resolution" shall have the meaning set forth in the Recitals to this Declaration.

1.56 Certain additional terms are defined in the Sections in which they first appear or to which they most closely pertain.

ARTICLE II

DEVELOPMENT AND USE OF THE SUBJECT PROPERTY

2.01 Development of the Subject Property.

(a) Development of the Subject Property.

(i) Development Prior to a Special Permit Election. Unless and until Declarant has made a Special Permit Election in accordance with Section 6.01, Declarant shall have no Obligations under this Declaration, and shall, be entitled to develop the Subject Property with such uses and bulk, and only such uses and bulk, permitted on an as-of-right basis under the Former Zoning.

(ii) Development Pursuant to the Approvals. If Declarant has made a Special Permit Election in accordance with Section 6.01, Declarant covenants that, except as provided in Section 2.01(a)(iii) and Section 2.01(b) hereof, the Subject Property (excluding any Existing Building on an Undeveloped Site) shall be developed in substantial conformity with the Plans prepared by CookFox Architects, approved as part of the Special Permits and annexed hereto in **Exhibit "E"** and made a part hereof, as such Plans may be modified in accordance with Section 6.02 or 6.03 hereof.

Drawing No.	Title	Date
Z-000	Cover	10/14/16
Z-001	Granting Site Survey	10/14/16
Z-002	Receiving Site Survey 1 of 2	10/14/16
Z-003	Receiving Site Survey 2 of 2	10/14/16
Z-004	Zoning Calculation Analysis	10/14/16
Z-005	Project Area Site Plan	10/14/16
Z-006	Zoning Lot Site Plan	10/14/16
Z-007	Rear Yard Analysis	10/14/16
Z-101	Ground Floor Plan	10/14/16
Z-110	Waiver Plan	10/14/16
Z-200	Waiver Sections	10/14/16
Z-201	Waiver Sections	10/14/16
Z-202	Waiver Sections	10/14/16
Z-203	Waiver Sections	10/14/16
Z-204	Waiver Sections	10/14/16
Z-205	Waiver Sections	10/14/16
Z-206	Waiver Sections	10/14/16
Z-250	Design Control Diagram – Northeast	10/14/16
Z-251	Design Control Diagram – Southwest	10/14/16
Z-252	Design Control Diagram – Northwest	10/14/16

Drawing No.	Title	Date
Z-253	Design Control Diagram – Southeast	10/14/16
Z-254	Design Control Notes	10/14/16
Z-300	Neighborhood Character Diagram – Illustrative	10/14/16
Z-301	Neighborhood Character Diagram-Illustrative	10/14/16
Z-302	Neighborhood Character Diagram – Illustrative	10/14/16
Z-310	East Elevation – Illustrative	10/14/16
Z-311	North Elevation – Illustrative	10/14/16
Z-312	West Elevation – Illustrative	10/14/16
Z-313	South Elevation – Illustrative	10/14/16
L-100	Landscape-Public Access Area Site Plan – Option A	10/14/16
L-101	Landscape – Public Access Area Enlargement Plan – Option A	10/14/16
L-102	Landscape – Public Access Area Site Plan – Option B	10/14/16
L-103	Landscape – Public Access Area Enlargement Plan – Option B	10/14/16
P-000	Parking – Overall Plan	10/14/16
P-001	Parking – North Site Ground Plan	10/14/16
P-002	Parking – North Site Cellar Plan	10/14/16
P-003	Parking – Center Site Ground Plan	10/14/16
P-004	Parking – Center Site Cellar Plan	10/14/16

Drawing No.	Title	Date
P-005	Parking – South Site Ground Plan	10/14/16
P-006	Parking – South Site Cellar Plan	10/14/16

(iii) Existing Buildings. If Declarant has made a Special Permit Election as provided in Section 6.01, for any Undeveloped Site, Declarant shall have the right, as follows:

1. to maintain the Existing Building on the Undeveloped Sites;

2. to use the then-existing square footage in the Existing Building for any uses permitted by the Former Zoning; and

3. to alter and reconstruct the Existing Building using the then-existing square footage of such portion of the Existing Building, including but not limited to replacing windows, replacing façade elements, removing or replacing interior partitions, removing or replacing mechanical systems, removing or replacing portions of floor slabs, and adding new elevator and circulation systems, provided that any such alteration and reconstruction shall not exceed the existing envelope of the Existing Building on such Undeveloped Sites, and provided, further, that the Existing Building may be reconstructed to the extent such reconstruction would be allowed by Section 54-41 of the Zoning Resolution, applicable to a "non-complying building," but only in the event of a damage or destruction due to a fire or other involuntary casualty; or

4. to develop the Undeveloped Site in accordance with the Special Permit, as applicable to the respective Site, provided that such Special Permit has been vested in accordance with Section 2.02(b) or may be vested as a resulted of such development.

(b) Amendment to Plans. If Declarant has made the Special Permit Election and Declarant seeks to develop any portion of the Subject Property other than with the Proposed Development, Declarant shall not be authorized to develop such portion of the Subject Property except (i) as would be permitted pursuant to the provisions of Section 2.01(a)(iii) hereof, or (ii) where an amendment has been reviewed and approved by the Chair in accordance with Section 6.02 or Section 6.03 hereof.

2.02 Single Zoning Lot

(a) Single Zoning Lot. If the Subject Property is developed pursuant to the Special Permits, the Subject Property shall continue to be treated as a single zoning lot for all purposes of the Zoning Resolution, except that (i) the portion of the Subject Property located over West Houston Street shall not generate "floor area," as defined in Section 12-10 of the Zoning Resolution, (ii) the Proposed Development shall not include any floor area located directly above West Houston Street, and (iii) the height and setback requirements of the applicable zoning district shall apply, except as modified by the Commission, to the Subject Property on each side of the mapped street lines of West Houston Street.

(b) Vesting. The City Planning Commission, in its approval of the Special Permits, granted a 10-year term for such Special Permits, in accordance with Zoning Resolution Section 11-43. Zoning Resolution Section 11-42 provides that a special permit granted by the

City Planning Commission shall automatically lapse if substantial construction, in accordance with the plans for which such special permit was granted, has not been completed within such 10-year period. Section 11-42 also provides that "substantial construction" shall mean, in the case of new buildings, the substantial construction of at least one building. Accordingly, for the purpose of Section 11-42, substantial construction of any one Building within the Proposed Development in substantial conformity with the Plans shall be deemed to prevent a lapse of the Special Permits.

(c) Separate Owners. For the avoidance of doubt, nothing in this Declaration shall be deemed to restrict the ownership and development of the Subject Property by separate entities, provided that each such entity shall have the rights and obligations of Declarant under this Declaration with respect to the portion of the Subject Property owned by such entity.

2.03 Affordable Housing and Floor Area Calculations

(a) The North Site and Center Site portions of the Proposed Development shall include "affordable housing," as such term is used in Section 89-00, et seq. of the Zoning Resolution, in accordance with the Approvals. Such affordable housing shall comply with the requirements of Section 23-90, *et seq.* of the Zoning Resolution, except as modified herein. Notwithstanding the floor area amounts stated in the schedule below, in the event of an election of the Special Permits, the total amount of affordable housing floor area required in the Proposed Development shall be no less than 25% of the total amount of residential floor area developed in the Proposed Development, and the number of affordable housing units required in the Proposed Development shall be no less than 30% of the total amount of residential units developed in the

Proposed Development. The amount, location, affordability level, and bedroom distribution of affordable housing shall be as set forth in the schedule below:

Site	**Total Residential Floor Area Permitted (ZSF)**	**Affordable Residential Floor Area Required (ZSF)**	**Building Distribution**	**Area Median Income ("AMI") Level**	**Bedroom Mix for Affordable Units**
North Site	560,000	110,000	Affordable units located in Building 2 (separate senior housing building)	not more than 80% AMI	1-bedroom: not less than 25%; remainder may be studios
Center Site	729,000	218,700	Affordable units may be located entirely in East Building or in both East and West Buildings	12% of total residential floor area at not more than 60% AMI; 18% of total residential floor area at not more than 130% AMI	2-bedroom: not less than 50%; 1-bedroom: not less than 25%; remainder may be studios
South Site	0	0	N/A	N/A	N/A

Notwithstanding the foregoing, in the event that, at the time that a Special Permit Election is made, the Undeveloped Site has been developed or enlarged subsequent to the date of this Declaration, then the total amount of affordable housing floor area required in the portion of the Proposed Development constructed pursuant to this Restrictive Declaration, whether on the North Site and Center Site, shall be no less than 25% of the residential floor area developed.

Affordable housing provided in accordance with the requirements of Section 23-90, *et seq.* of the Zoning Resolution, as such requirements have been modified herein, shall be deemed to fulfill the objectives of the City's Inclusionary Housing Program.

(b) North Site Completion Conditions. The Buildings Department shall not issue, and Declarant shall not accept, a temporary certificate of occupancy (a "TCO") or a permanent certificate of occupancy ("PCO"), as applicable, for any market-rate residential floor area in any Building on the North Site, except in compliance with the affordable housing completion conditions in Section 23-90, et seq. of the Zoning Resolution, as applicable to the affordable-housing floor area on the North Site.

(c) Center Site Completion Conditions. The Buildings Department shall not issue, and Declarant shall not accept, a TCO or PCO, as applicable, for any market-rate residential floor area in any Building on the Center Site, except in compliance with the affordable housing completion conditions in Section 23-90, et seq. of the Zoning Resolution, as applicable to the affordable-housing floor area on the Center Site.

(d) South Site. Issuance of certificates of occupancy for any affordable dwelling units shall not be a condition to the issuance of certificates of occupancy for any portion of the South Site Building.

2.04 Retail Uses

(a) The frontage of the Proposed Development on West Houston Street, on each the North Site and Center Site, at the ground floor level shall each include a minimum of four retail establishments. The frontage of the Proposed Development on Clarkson Street at the

ground floor level shall include a minimum of three retail establishments. These limitations shall not apply to any retail establishments located above or below the ground floor.

(b) All retail frontage of the Proposed Development on West Houston Street and Clarkson Street shall have a minimum retail depth of 30 feet from the street line.

(c) All residential lobbies on West Houston Street shall be no more than 25 feet in width. All street frontage of the Proposed Development on West Houston Street that is not occupied by residential lobbies shall be occupied by retail and service establishments, museums, galleries, or amusement uses. Physical cultural establishments shall also be permitted to occupy such street frontage, subject to obtaining a Board of Standards and Appeals ("BSA") special permit. Declarant shall notify the Chair upon filing such BSA application, and upon approval of such application.

(d) Any retail and service establishments located on the Center Site shall be limited to 15,000 gross square feet of space per establishment below the ground-floor level; provided, however, that this restriction shall not apply to non-retail or non-commercial uses, and shall not apply to grocery stores; art galleries, whether commercial or non-commercial; amusement uses, including bowling alleys and theaters; event spaces; and gymnasium, fitness centers, and physical culture establishments (subject to obtaining a BSA special permit).

2.05 Representation. Declarant hereby represents and warrants that there is no restriction of record on the development, enlargement, or use of the Subject Property, nor any present or presently existing estate or interest in the Subject Property, nor any existing lien, obligation, covenant, easement, limitation or encumbrance of any kind that shall preclude the restrictions and obligations as set forth herein.

ARTICLE III

PROJECT COMPONENTS RELATED TO THE ENVIRONMENT; MITIGATION MEASURES

3.01 Project Components Related to the Environment for Construction. Declarant shall implement and incorporate as part of its construction of the Proposed Development as appropriate the following PCRE's related to Construction prior to any commencement of construction of the Subject Property or each Site, as the context may require, pursuant to the Proposed Development:Construction Air Emissions Reduction Measures.

(i) Prior to Construction Commencement and subject to DCP review pursuant to Section 3.08 of this Declaration, Declarant shall (x) develop a plan for implementation of, and (y) thereafter implement, the following measures for all construction activities (including, but not limited to, demolition and excavation) during the development of the Subject Property:

1. To minimize hourly emissions of NO2 to the maximum extent practicable, non-road diesel-powered vehicles and construction equipment with a power rating of 50 horsepower (hp) or greater shall meet or achieve at least the equivalent of the United States Environmental Protection Agency ("EPA") Tier 3 with diesel particle filter Non-road Diesel Engine Emission Standard (alternatively, such equipment shall meet at least the Tier 4 final emissions standard). All non-road engines in the project rated less than 50 hp shall meet at least the Tier 2 emissions standard.

2. All non-road, diesel-powered construction equipment with engine power output rating of 50 horsepower or greater and controlled truck fleets (i.e. truck fleets under long term contract with Declarant, such as concrete mixing and pumping trucks) shall utilize the best available tailpipe technology to reduce diesel particulate emissions. Construction contracts shall specify that all diesel non-road engines rated at 50 horsepower or greater shall utilize active or passive diesel particle filters (either original equipment manufacturer or retrofit technology) verified under either the EPA or California Air Resources Board ("CARB") verification programs. Active diesel particle filters or other technologies proven to achieve an equivalent reduction may also be used.

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

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

5. The use of diesel and gasoline engines, including generators, shall be minimized through the maximum practicable use of (1) electric engines operating on grid power, and (2) lighting devices, illuminated traffic control signals and signs operating on grid, battery, or solar power. Construction contracts shall require the use of electric engines where practicable. Subject to 3.01(a) (ii) below, Declarant shall ensure the distribution of power connections throughout the Subject Property as needed. Equipment that shall use grid

power rather than diesel engine power shall include, but not be limited to, welders, rebar benders, scissor lifts and hydraulic articulating boom lifts.

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

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

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

(b) Fugitive Dust Control Plan.

(i) Prior to Construction Commencement and subject to DCP review pursuant to Section 3.08 of this Declaration, Declarant shall (x) develop a plan for implementation of, and (y) thereafter implement, a plan for the minimization of the emission of dust from construction-related activities during development of the Subject Property or Site (the

"Fugitive Dust Control Plan"), which Fugitive Dust Control Plan shall contain the following measures:

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

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

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

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

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

6. Truck routes and surfaces on which nonroad vehicles are operating within construction areas shall be watered as needed; or, in cases where such routes will remain in the same place for extended periods, the soil on such surfaces and roadways shall

be stabilized with a biodegradable dust suppressant solution, covered with gravel, or temporarily paved to avoid the re-suspension of dust.

7. Declarant shall comply with and implement all measures required by Chapter 1 of Title 24 of the New York City Administrative Code (the "New York City Air Pollution Control Code") regulating construction-related dust emissions.

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

(c) Construction Noise Reduction Measures.

(i) Prior to Construction Commencement and subject to DCP review pursuant to Section 3.08 of this Declaration, Declarant shall (x) develop a plan for implementation of, and (y) thereafter implement, the following measures for all construction activities (including demolition and excavation) related to the development of the Subject Property or Site:

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

2. Declarant shall develop and implement a plan for minimization of construction noise (the "Noise Reduction Plan"). The Noise Reduction Plan shall contain both path control and source control measures, including the following:

(A) Path Control Measures

(aa) Noise barriers shall be erected around the perimeter of areas where construction activities are taking place for the purpose of minimizing construction noise consistent with reasonable construction procedures. Prior to Construction Commencement of any Building, a solid fence shall be erected around the perimeter of the areas where construction activities are taking place, which shall be at least 8 feet high.

(bb) Noisy equipment, such as cranes, concrete pumps, concrete trucks, and delivery trucks, shall be located away from and shielded from sensitive receptor locations to the extent practicable. Where feasible and practicable, once building foundations are completed, delivery trucks shall operate behind a construction fence.

(B) Source Control Measures

(aa) The noise emission levels of the construction equipment shall meet the standards specified in Subchapter 5 of the New York City Noise Code, as provided in Table 20-19 of the FEIS which is annexed hereto as **Exhibit "H"**. Contractors shall be required to properly maintain construction equipment, including equipment noise mufflers.

(bb) To the extent practicable, the construction site or sites shall be arranged to minimize the need for the use of backup alarms on construction equipment.

(cc) Upon establishing a connection of the Site to grid power, diesel- or gas-powered equipment shall be replaced with electrical-powered equipment

such as pumps, compressors, and hoists (i.e., early electrification) to the extent feasible and practicable.

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

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

(d) Construction Pest Management Plan.

(i) Prior to Construction Commencement and subject to DCP review pursuant to Section 3.08 of this Declaration, Declarant shall (x) develop a plan for implementation of, and (y) thereafter implement, an integrated plan to control pests (including unwanted vermin, insects and weeds), in accordance with Buildings Department requirements, throughout the development of the Subject Property or Site (the "Construction Pest Management Plan"), which Construction Pest Management Plan shall contain the following requirements:

1. Vegetation fostering vermin shall be kept trimmed.

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

3. Standing water shall be pumped out before the water becomes septic.

4. Prior to the start of construction and as necessary during the construction period, the Declarant shall cause its contractor to bait appropriate areas of the site, using only USEPA and New York State Department of Environmental Conservation ("DEC")-registered rodenticide.

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

(e) Hazardous Materials Remediation and Protection Measures. The FEIS has identified potential hazardous materials at the Subject Property. A Remedial Action Plan (a "RAP") and associated Construction Health and Safety Plan (a "CHASP") were approved by DEP on July 21, 2016.

(i) All soil disturbance for the development of Building pursuant to the Proposed Development shall be performed in accordance with the NYCDEP-approved RAP and CHASP, referred to in the NYCDEP-approved comment letter dated July 21, 2016 annexed hereto as **Exhibit "I"**. Any necessary remediation for each Building in the Proposed Development may proceed independently of any other Building(s) and therefore it is expected that New York City Mayor's Office of Environmental Remediation ("OER") may issue a Notice of Satisfaction as set forth in Section 3.01(g)(iii)(3) below, and a Final Notice of Satisfaction as set forth in Section 3.01(g)(iii)(4) below, on a Building-by-Building basis, irrespective of the construction sequence of the Buildings in the Proposed Development.

(ii) TCO and PCO. Declarant covenants and agrees that no application for a TCO or PCO that reflects a change in use group respecting the Subject Property for the Proposed Development shall be submitted to or accepted from the Buildings Department by Declarant until OER has issued to the Buildings Department, as applicable, a Notice of Satisfaction as set forth in Section 3.01(e)(iii)(1) below or a Final Notice of Satisfaction as set forth in Section 3.01(g)(iii)(2) below. Declarant shall submit a copy of the Notice of Satisfaction or Final Notice of Satisfaction to the Buildings Department at the time of filing of any application set forth in this Section 3.01(e)(ii).

(iii) Notices.

1. Notice of Satisfaction. OER shall issue a Notice of Satisfaction for the Proposed Development or any Building within the Proposed Development, as the case may be, after OER has determined in writing that the NYCDEP-approved RAP has been completed to the satisfaction of OER.

2. Final Notice of Satisfaction. OER shall issue a Final Notice of Satisfaction for the Proposed Development or any Building within the Proposed Development, as the case may be, after OER has set forth in writing that the NYCDEP-approved RAP has been completed to the satisfaction of OER, and all potential hazardous materials have been removed or remediated as and to the extent required by the RAP and no further hazardous remediation is required on the Subject Property as determined by OER.

(f) Energy Efficiency. All Buildings developed pursuant to the Proposed Development shall, at minimum, achieve energy efficiency consistent with the prerequisite requirements for certification under Leadership in Energy and Environmental Design (LEED)

New Construction rating system, version 4 and exceed the energy requirements of the New York City Building Code (currently the same as ASHRAE 90.1-2010), resulting in energy expenditure lower than a baseline building designed to meet but not exceed the minimum building code requirements by five percent or more.

(g) Resiliency Measures.

(ii) Declarant shall incorporate the following resiliency measures into Proposed Development:

1. Each Building shall be designed to accommodate flood levels projected for the year 2100 for all critical infrastructure and residential uses, and for the 2050s or higher for commercial uses (applying the higher 2100 levels where practicable). The Building design shall account for potential future "100-year" levels (flood levels with a one percent probability of occurring in any given year), including 18 feet and 19 feet NAVD88 for critical infrastructure and residential uses in the South and North/Center Sites, respectively, and at least 14.5 and 15.5 feet NAVD88 for commercial spaces in the South and North/Center Sites, respectively.

2. Below-grade commercial space in any Building at elevations below current and future potential flood elevations shall be dry-flood proofed to accommodate flooding up to the above 2050-projected flood levels (14.5 and 15.5 feet NAVD88) such that the subgrade levels would be fully protected from flooding to that level;

3. All critical infrastructure in any Building, including but not limited to electricity connections, generators and fuel, communications, and elevators shall be designed to withstand flooding up to the levels set forth in 3.01(g)(ii) and connections and systems shall be either located above this elevation or sealed; and

4. Any plantings in at-grade open spaces on the Subject Property shall, to the extent practicable, be water and salt-tolerant species.

(iii) Prior to accepting a TCO or PCO for a Building, Declarant shall certify to DCP that it has implemented the provisions of clause (i)(1) through (i)(3) of this Section 3.01(g), and if same have not been implemented, the reasons for such failure.

(h) Maintenance and Protection of Traffic Plan.

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

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

3.02 Project Components Related to the Environment for Design and Operation of the Building. Declarant shall implement and incorporate as part of its construction of the Proposed Development as appropriate the following PCRE's related to the Design and Operation of the Proposed Development as outlined below.

(a) Retail Uses. Declarant shall comply with the per-establishment limitation on below-ground-floor retail and commercial uses, as set forth in Section 2.04(d) hereof.

(b) Storm Water Management Measures.

(i) As described in Chapter 12 of the FEIS, the Proposed Development requires the rerouting of the wastewater flow that is currently conveyed through two existing sewer lines that run beneath the Development Site from King and Charlton Streets to the east, as illustrated at **Exhibit "J"**. Prior to the issuance of a New Building Permit for any Building in the Proposed Development on the Center or South Sites:

1. Declarant shall conduct an analysis and investigation to consider the effects of the Proposed Development on the capacities of local sewers and combined sewer overflow (CSO) at the downstream regulator at the corresponding street frontage;

2. Declarant shall submit plans to NYCDEP for a proposed rerouting of the existing combined sewers illustrated at Exhibit J, and upon NYCDEP approval of such plans, prepare an amended drainage plan reflecting such changes and upgrades to such infrastructure; and

3. NYCDEP shall review and approve the plans for sewer rerouting and infrastructure upgrades, pursuant to normal regulatory procedures.

3.03 Environmental Mitigation. Declarant shall, in accordance with the FEIS for the Proposed Development, the Notice of Completion of which is dated October 7, 2016, undertake the mitigation measures set forth therein (the "Mitigation Work") in connection with the Proposed Development, as follows: Recreation Center.

(i) Upon the issuance of a New Building Permit for the Center-East Site, Declarant shall construct a multi-purpose indoor active recreation space (the "Recreation Center") to be shared by the public and the residents of the Center-East Building. Declarant shall either operate the Recreation Center in-house or shall engage a third-party partner to handle the management, scheduling, and programming of the space. Declarant shall be permitted to charge fees that do not exceed fees charged by the NYC Department of Parks and Recreation ("DPR") for admission to its recreation centers. In advance of the completion of the design of the facility on the Center-East Site or the selection of a third-party partner, Declarant shall consult with Manhattan Community Board 2 to identify an active recreational use and program for the space, appropriate design of the space, and appropriate equipment to outfit the space. Concurrently with consultation of the Community Board, Declarant shall consult DPR to confirm that the identified active use is suitable. Declarant shall engage community organizations, DPR, and Hudson River Park Trust to advertise the space for general public use.

(ii) The Recreation Center space shall meet the following criteria (the "Design Criteria"):

1. It shall contain no less than 10,000 gross square feet of space, inclusive of all support space located on the ground floor of the Center-East Building;

2. It shall be improved for active recreational uses, and shall be suitable for activities such as ball sports, martial arts, or fitness classes, or as determined pursuant to Section 3.03 (i). It shall also include support space, including bathrooms and storage.

3. All of the facilities comprising the Recreation Center that are accessible to building residents shall be accessible to the public.

4. It shall be open to the public for no less than 50% of its operating hours, which hours shall be allocated on an equitable basis during morning, midday and evening hours.

5. It shall operate no fewer than eighty hours each week, inclusive of hours of access by building residents and the public.

6. That numbers of users or subscribers to the facility not be unreasonably limited.

7. It shall include clear access and signage to the facility.

(iii) Declarant shall neither request nor accept a Building Permit from DOB (other than a permit for demolition, site preparation or excavation) for either the Center-East or Center-West Buildings until the Chair has approved a schematic design for the

Recreation Center that substantially complies with the Design Criteria as set forth in clause (ii) of this Section 3.03(a). Declarant shall submit to the Chair a schematic design for the Recreation Center, which schematic design shall be accompanied by a letter from Community Board 2 listing its recommendations for the design and programming of the Recreation Center, and a letter from DPR evidencing DPR's approval of the design and programming of the Recreation Center. Within forty-five (45) days of such submission, the Chair shall either (A) issue the certification, or (B) notify Declarant in writing of any deficiency with the Design Criteria, in which case Declarant shall submit revised plans that address such defects. Within thirty (30) days of such revised submission, the Chair shall either (A) issue the certification, or (B) notify Declarant in writing of any deficiency with the plans, in which case Declarant shall submit revised Recreation Center plans that address such defects. This process shall continue until the Chair has issued the certification. Upon issuance of the certification, the plans shall be the "Approved Recreation Center Plans."

(iv) Substantial Completion of Recreation Center shall be a condition to the issuance of TCOs for both the Center-East and Center-West Building. The Buildings Department shall not issue, and Declarant shall not accept, a TCO for any dwelling units in either the Center-East and Center-West Building until the Declarant has Substantially Completed the Recreation Center, as described herein, and the Chair has so certified such Substantial Completion to the Buildings Department.

(v) Declarant shall notify the Chair when, in the opinion of Declarant, the Recreation Center has been Substantially Completed. Within fifteen (15) business days of its receipt of Declarant's notice, the Chair shall either (i) issue a certification of Substantial Completion, or (ii) notify Declarant of any work that, according to the Approved Recreation

Center Plans, remains to be completed before the Chair will issue a certification of Substantial Completion. If the Chair notifies Declarant that work remains to be completed or corrected in accordance with the Approved Recreation Center Plans, such notice shall contain a detailed statement of the reasons for such non-acceptance by listing the elements of the Approved Recreation Center Plans remaining to be completed. Upon completion of the work specified in the Chair's letter, Declarant shall notify the Chair and, within fifteen (15) business days of receipt of such notice, the Chair shall either (i) issue a certification of Substantial Completion, or (ii) issue a revised letter listing any items from the original letter remaining to be completed. This process shall continue until the Chair has issued a certification of Substantial Completion.

(vi) Permanent Certificates of Occupancy. The Buildings Department shall not issue, and Declarant shall not accept, a PCO for units in the Center-East or Center-West Building until the Declarant has Finally Completed the Recreation Center in accordance with the Approved Recreation Center Plans, and the Chair has so certified such Final Completion to the Buildings Department.

(vii) Declarant shall notify the Chair when, in the opinion of Declarant, the Recreation Center has been Finally Completed. Within fifteen (15) business days of its receipt of Declarant's notice, the Chair shall either (i) issue a certification of Final Completion, or (ii) notify Declarant of any work that, according to the Approved Recreation Center Plans, remains to be completed before the Chair will issue a certification of Final Completion. If the Chair notifies Declarant that work remains to be completed in accordance with the Approved Recreation Center Plans, such notice shall contain a detailed statement of the reasons for such nonacceptance by listing the elements of the Approved Recreation Center Plans remaining to be completed or corrected. Upon completion of the work specified in the letter, Declarant shall

notify the Chair and, within fifteen (15) business days of receipt of such notice, the Chair shall either (i) issue a certification of Final Completion, or (ii) issue a revised letter listing any items remaining to be completed. This process shall continue until the Chair has issued a certification of Final Completion.

(b) Passive Open Space. If the Center Site Building is constructed pursuant to the Proposed Development, Declarant shall provide 19,820 square feet of publically accessible open space, as described in Article IV hereof.

(c) Traffic. Chapter 22 of the FEIS identifies significant adverse traffic impacts in connection with the Proposed Development and mitigation measures in the form of signal timing changes, approach daylighting, lane restriping and signage. The FEIS predicts that the proposed mitigation measures would be required at the completion of the Proposed Development's full build out. However, because the Proposed Development could be built all at once or may be phased, and development may take place in any order, an interim impact assessment was conducted to determine the impacts that could occur prior to the full build out. It was determined that the mitigation measures listed below could also be advanced upon completion of the Center Site to mitigate significant adverse impacts that would be anticipated for that time.

As set forth in the FEIS, the Proposed Development could contain either hotel or office uses in the South Site Building. The FEIS, therefore, identifies traffic impacts and mitigation measures for both the office and hotel scenarios.

In order to mitigate the significant adverse traffic impact, the Declarant has agreed that the mitigation measures will be implemented as described below.

(i) Proposed Development with South Site Hotel Use:

1. Declarant shall not apply for or accept a TCO or PCO for either (1) the Center Site Building or (2) the Building which would, together with all Buildings constructed on the Development Site, represent a full build out of the Proposed Development, until 30 days after Declarant has sent written notice to NYCDOT, requesting that NYCDOT investigate the need for the traffic mitigation measures set forth in Tables 22-3 to 22-6 of the FEIS, which are annexed hereto at **Exhibit "K"**. Declarant shall comply with NYCDOT requirements necessary to implement the traffic mitigation measures described in Exhibit K, and shall either implement such measures as directed by NYCDOT, or, if directed by NYCDOT, pay NYCDOT/City of New York for the ordinary and customary costs, if any, of implementing capital improvements upon request of NYCDOT accompanied by appropriate documentation. To the extent that NYCDOT does not approve or deems unnecessary one or more of the traffic measures set forth in Exhibit K, Declarant shall have no further obligation with respect to such measures.

(ii) Proposed Development with South Site Office Use:

1. Declarant shall not apply for or accept a TCO or PCO for either (1) the Center Site Building or (2) the Building which would, together with all Buildings constructed on the Development Site, represent a full build out of the Proposed Development, until 30 days after Declarant has sent written notice to NYCDOT, requesting that NYCDOT investigate the need for the traffic mitigation measures set forth in Tables 22-23 to 22-26 of the FEIS, which are annexed hereto at

Exhibit K. Declarant shall comply with NYCDOT requirements necessary to implement the traffic mitigation measures described in Exhibit K, and shall either implement such measures as directed by NYCDOT, or, if directed by NYCDOT, pay NYCDOT/City of New York for the ordinary and customary costs, if any, of implementing capital improvements upon request of NYCDOT accompanied by appropriate documentation. To the extent that NYCDOT does not approve or deems unnecessary one or more of the traffic measures set forth in Exhibit K, Declarant shall have no further obligation with respect to such measures.

(d) Construction Noise. Should Declarant construct and occupy the Center Site Building prior to Construction Commencement of the South Site Building, Declarant shall close the publically accessible open space in the courtyard of the Center Site Building, as described in Article IV, during the demolition, excavation and foundation construction stages of the South Site Building to eliminate a significant adverse construction noise impact on such open space.

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

3.05 Innovation and Alternatives: Modifications Based on Further Assessments.

(a) Innovation and Alternatives. In complying with Sections 3.01 through

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

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

(c) Process for Innovations, Alternatives and Modifications Pursuant to Section 3.05**.** Following the delivery of a Notice to DCP requesting an Innovation, Alternative or Modification pursuant to Section 3.05 hereof (the "**Section 3.05 Request**"), Declarant shall meet with DCP (and at DCP's option, the Monitor) to respond to any questions or comments on such request and accompanying materials, and shall provide additional information as may reasonably be requested by DCP or the Monitor in writing in order to allow DCP to determine, acting in consultation with the Monitor and City agency personnel as necessary in relation to the subject matter of the Section 3.05 Request.

3.06 Appointment and Role of Independent Monitor. Declarant shall, with the consent of DCP, retain a third party (the "**Monitor**") reasonably acceptable to DCP to oversee, on behalf of DCP, the implementation and performance by Declarant of the construction period PCREs and Mitigation Measures required under Sections 3.01, 3.02, and 3.03 of this Declaration (the "**Construction Monitoring Measures**" or "**CMMs**"). The Monitor shall be a licensed engineer, architect, general contractor or environmental consultant with significant 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 CMMs. In the event that the Declarant that is a signatory to this Declaration shall have sold, leased transferred or conveyed to a third party fee title to, or a ground or net lease of, one or more Sites within the Subject Property (other than transfers of condominium units), then such third party shall be entitled with respect to such Site so sold, leased, transferred or conveyed to it, and, with the prior written approval of DCP and Declarant, to appoint a separate Monitor for such Site and shall, for the purposes of Article III be considered a Declarant. Accordingly there may exist more than one Monitor with respect to multiple construction activities proceeding simultaneously on the Subject Property, pursuant to separate Monitor Agreements (hereafter defined). DCP hereby consents to the selection of any one of the following entities to serve as the Monitor: _____.

(b) The "Scope of Services" described in any agreement between Declarant and the Monitor pursuant to which the Monitor is retained (the "**Monitor Agreement**") shall be subject to prior review by and approval of DCP, such approval not to be unreasonably withheld, conditioned or delayed. Such agreement shall include provisions in a form acceptable to DCP that, among others, shall: (i) ensure that the Monitor is independent of Declarant in all respects

relating to the Monitor's responsibilities under this Declaration (provided that the Monitor shall be responsible to Declarant with regard to practices generally applicable to or expected of consultants and independent contractors of Declarant) and has a duty of loyalty to DCP; (ii) provide for appropriate DCP management and control of the performance of services by the Monitor; (iii) authorize DCP to direct the termination of services by the Monitor for unsatisfactory performance of its responsibilities under the Monitor Agreement; (iv) allow for the retention by the Monitor of sub-consultants with expertise appropriate to assisting the Monitor in its performance of its obligations to the extent reasonably necessary to perform its obligations under this Declaration and the Monitor Agreement; and (v) allow for termination by Declarant for cause, but only with the express written concurrence of DCP, which concurrence shall not be unreasonably withheld or delayed. If DCP shall fail to act upon a proposed Monitor Agreement within forty-five (45) days after submission of a draft form of Monitor Agreement, the form of Monitor Agreement so submitted shall be deemed acceptable by DCP and may be executed by Declarant and the Monitor. The Monitor Agreement shall provide for the commencement of services by the Monitor at a point prior to Construction Commencement (the timing of such earlier point to be at the sole discretion of Declarant) and shall continue in effect at all times that construction activities are occurring on the Subject Property with respect to an identified stage(s) of development on the Subject Property including, with respect to the Buildings, until issuance of TCOs or PCOs therefor, unless the Declarant, with the prior consent of DCP or at the direction of DCP, shall have terminated a Monitor Agreement and substituted therefor another Monitor under a new Monitor Agreement, in accordance with all requirements of this Section 3.06. If the stage of development of the Subject Property identified in the Scope of Services under the Monitor Agreement is completed, Declarant shall not have any obligation

to retain the Monitor for subsequent stage(s) of development of the Subject Property, provided that Declarant shall not recommence any construction until it shall have retained a new Monitor in compliance with the provisions of this Section.

(c) The Monitor shall: (i) assist and advise DCP with regard to review of plans and measures proposed by Declarant for purposes of satisfying CMMs in connection with determinations required under this Declaration as a prerequisite to Construction Commencement or the issuance or acceptance by Declarant of a Foundation Permit, New Building Permit, TCO or PCO as the case may be; and (ii) provide reports of Declarant's compliance with the CMMs during any period of construction on a schedule reasonably acceptable to DCP, but not more frequently than once per month (iii) prepare a quarterly report summary of activities for distribution to any Committee established under Section 8.01 of this Declaration; and (iv) liaise with any Committee established under Section 8.01. The Monitor may at any time also provide Declarant and DCP with notice of a determination that a CMM has not been implemented, accompanied by supporting documentation establishing the basis for such determination, provided that any such notice shall be delivered to both parties. The Monitor shall: (x) 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 law, pursuant to construction contracts, or imposed as part of the site safety protocol in effect for the Subject Property; (y) on reasonable notice and during normal business hours, be provided with access to all books and records of Declarant pertaining to the applicable portion of the Subject Property either on or outside the Subject Property which it reasonably deems necessary to carry out its duties, including the preparation of periodic reports; and (z) be entitled to conduct any tests on the Subject Property that the Monitor reasonably deems necessary to verify

Declarant's implementation and performance of the CMMs, subject to compliance with all generally applicable site safety requirements imposed by law, site operations, or pursuant to construction contracts in effect for the Subject Property and provided further that any such additional testing shall be (q) coordinated with Declarant's construction activities and use of the Subject Property by the occupants of and visitors to any of the Buildings and PAA then located on the Subject Property; and (r) conducted in a manner that will minimize any interference with the Proposed Development. 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 such testing activities.

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

City agency with access to tenant occupied spaces or those portions of the Subject Property not owned and controlled by Declarant (such as individual condominium units).

(e) Declarant shall be responsible for payment of all fees and expenses due to the Monitor (including fees and expenses paid to sub-consultants engaged pursuant to Section 3.06(b)) in accordance with the terms of the Monitoring Agreement.

(f) If DCP determines, based on information provided by the Monitor and 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 a CMM, DCP may thereupon give Declarant written notice of such alleged violation (each, a **"CMM Default Notice"**), transmitted by hand or via overnight courier service to the address for Notices for Declarant set forth in Section 8.04. Notwithstanding any provisions to the contrary contained in Section 7.01 of this Declaration, following receipt of a CMM Default Notice, Declarant shall: (i) effect a cure of the alleged violation within ten (10) business days; (ii) seek to demonstrate to DCP in writing within five (5) business days of receipt of the CMM Default Notice why the alleged violation did not occur and does not then exist; or (iii) seek to demonstrate to DCP in writing within five (5) business days of receipt of the CMM Default Notice that a cure period greater than ten (10) business days would not be harmful to the environment or that the required cure cannot be accomplished within ten (10) business days (such longer cure period, a **"Proposed Cure Period"**). If DCP accepts within three (3) business days of receipt of a writing from Declarant that the alleged violation did not occur and does not then exist, DCP shall withdraw the CMM Default Notice and Declarant shall have no obligation to cure. If DCP accepts a Proposed Cure Period in writing within two (2) business day of receipt of a writing from Declarant, then this shall become the applicable cure period for the alleged

violation (the "**New Cure Period**"), provided that if DCP does not act with respect to a Proposed Cure Period within two (2) business days or after receipt of a writing from Declarant with respect thereto, the running of the ten (10) day cure period for the alleged violation shall be tolled until such time as DCP so acts. If Declarant fails to: (i) effect a cure of the alleged violation; (ii) cure the alleged violation within a New Cure Period, if one has been established; or (iii) demonstrate to DCP's satisfaction that a violation has not occurred, then representatives of Declarant shall, promptly at DCP's request, and upon a time and date, and a location acceptable to DCP, convene a meeting (and, at the election of the parties, additional meetings) with the Monitor and DCP representatives. If, subsequent to such meetings, Declarant is unable reasonably to satisfy the DCP representatives that no violation exists or is continuing or the Declarant, the Monitor and DCP are unable to agree upon a method for curing the violation within a time period acceptable to DCP, DCP shall have the right to exercise any remedy available at law or in equity or by way of administrative enforcement, to obtain or compel Declarant's performance under this Declaration, including seeking an injunction to stop work on the Subject Property, as necessary, to ensure that the violation does not continue, until the Declarant demonstrates either that the violation does not exist or that it has cured 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.

3.07 Force Majeure Event Involving a PCRE or Mitigation Measure**.** Notwithstanding any provision of Section 7.05 to the contrary, where the Obligation as to which a Force Majeure Event applies is a PCRE or Mitigation Measure set forth in this Article III of the Declaration, Declarant may not be excused from performing such PCRE or Mitigation Measure that is affected by the Force Majeure Event unless and until the Chair, based on consultation with the

Monitor designated under Section 3.06 of this Declaration, has made a determination in his or her reasonable discretion that not implementing the PCRE or Mitigation Measure during the period of the Force Majeure Event, or implementing an alternative proposed by Declarant, would not result in any new or different significant adverse environmental impact not addressed in the FSEIS.

3.08 DCP Review. Not less than [ninety (90) days] prior to the sooner to occur of (i) the date Declarant anticipates to be the date of Construction Commencement, and (b) the date Declarant anticipates obtaining any Foundation Permit from the Buildings Department, Declarant shall send written notice to DCP, with a copy to the Monitor if DCP has previously requested in writing that Declarant copy the Monitor, advising of Declarant's intention to undertake Construction Commencement or obtain such Foundation Permit as the case may be (each such notice, a "**Permit Notice**"). Any Permit Notice shall be accompanied by: (i) a summary of the provisions of this Declaration imposing conditions or criteria that must be satisfied as a condition to or in conjunction with Construction Commencement or issuance of the relevant Foundation Permit or New Building Permit; (ii) materials or documentation demonstrating compliance with such requirements or criteria to the extent Declarant believes that compliance has been achieved by the date of the Permit Notice; and (iii) to the extent that Declarant believes that compliance with any condition or criteria has not been achieved by the date of the Permit Notice, an explanation of why compliance has not yet been achieved to date, the steps that are or will be taken prior to issuance of the Building Permit to achieve compliance and the method proposed by Declarant to assure DCP that the elements will be achieved in the future. Materials or documentation from any Governmental Authority, certifying the

implementation of a PCRE or Mitigation Measure set forth in this Article III, shall be accepted as compliance with the relevant PCRE or Mitigation Measure.

(b) Following the delivery of a Permit Notice to DCP in accordance with Paragraph (a) hereof, Declarant shall meet with DCP (and at DCP's option, the Monitor) to respond to any questions or comments on the Permit Notice and accompanying materials, and shall provide additional information as may reasonably be requested by DCP or the Monitor in writing in order to allow DCP to determine, acting in consultation with the Monitor and any City agency personnel as necessary in relation to the subject matter of the Permit Notice, that the conditions and criteria for Construction Commencement or issuing the Building Permit have been or will be met in accordance with the requirements of this Declaration. Declarant shall not accept any Building Permit subject to review pursuant to this Section 3.08 until DCP has certified to Declarant and the Buildings Department that the conditions and criteria set forth in this Declaration for issuance of the Building Permit have been met. Notwithstanding the foregoing, in the event that DCP has failed to (x) respond in writing to Declarant within thirty (30) days of receipt of the Permit Notice, (y) meet with Declarant within forty-five (45) days of receipt of the Permit Notice or (z) respond in writing to Declarant within fifteen (15) days of receipt of additional materials provided to DCP under this Paragraph (b), DCP shall be deemed to have accepted the Permit Notice and any subsequent materials related thereto under this Paragraph (b) as demonstrating compliance with the requirements for issuance of the Building Permit and Declarant shall be entitled to Commence Construction or accept the Building Permit and to undertake any and all activities authorized thereunder.

(c) Not less than thirty (30) days prior to the date that Declarant anticipates obtaining the first TCO or PCO for any Building on the Subject Property, Declarant shall send

written notice to DCP, with a copy to the Monitor if DCP has previously requested in writing that Declarant copy the Monitor, advising of Declarant's intention to obtain such TCO or PCO (each such notice, a "**CO Notice**"). Within twenty (20) days of delivery of any CO Notice, DCP shall have the right to inspect the Building and review construction plans and drawings, as necessary to confirm that the PCRE and/ or Mitigation Measures required to be incorporated into the Building have been installed in accordance with the plans initially submitted as part of the New Building Permit. The Buildings Department shall not issue, and Declarant shall not accept, a TCO or PCO if DCP has provided written notice to Declarant, copied to the Buildings Department, within five (5) days following any such inspection (x) advising that Declarant has failed to include a required PCRE and/or Mitigation Measure within the Building, or has failed to fully satisfy the PCRE and/or Mitigation Measure, and (y) specifying the nature of such omission or failure. In the event that DCP provides such notice, Declarant and DCP shall meet within five (5) business days of such written notice to review the claimed omission or failure, develop any measures required to respond to such claim, and Declarant shall take all steps necessary to remedy such omission or failure. Upon the completion of such steps to the satisfaction of DCP, Declarant shall be entitled to obtain the TCO or PCO as the case may be

(d) In the event of a continued disagreement between DCP or other City agency and Declarant under Paragraph (c) as to whether any PCRE and/or Mitigation Measure has been included or fully satisfied or will be included or fully satisfied by the measures proposed by Declarant, Declarant shall have the right to appeal such matter to the Deputy Mayor of Planning and Economic Development, or any successor Deputy Mayor, and to seek resolution within forty-five (45) days of Declarant's appeal thereto.

ARTICLE IV

PUBLIC ACCESS AREA

4.01 CPC Chair Review and Certification of Design

(a) Declarant shall neither request nor accept a Building Permit from DOB (other than a permit for demolition, site preparation or excavation) for a Building on the Center Site or South Site in the Proposed Development until the Chairperson of the New York City Planning Commission (the "**Chair**") certifies that the design of the outdoor public access area located on the Center Site and South Site in the Proposed Development, as identified on the Plans (the "PAA") substantially complies with the Design Criteria as set forth in Section 4.03 hereof (the "**PAA Certification**"). The PAA shall consist of three areas, as shown on Plans L-100 through L-103:

(i) the "South Portion," which shall consist of the portion the PAA located on the South Site;

(ii) the "Through-Block Portion," which shall consist of the roadbed and adjacent sidewalks of the through-block passageway providing pedestrian and vehicular access through the Center Site; and

(iii) the "Center Portion," which shall consist of the portion of the PAA location to the north of the Through-Block Portion, on the Center Site.

The Declarant may develop the PAA in substantial conformance with one of the two proposed alternative plans shown on Plans L-100 through L-103.

(b) To initiate Chair review, Declarant shall submit drawings of the PAA with sufficient details to enable the Chair to determine whether the PAA substantially complies with the Design Criteria ("**PAA Certification Plans**").

(c) Within forty-five (45) days of such submission, the Chair shall either (A) issue the PAA Certification, or (B) notify Declarant in writing of any deficiency from the Design Criteria, in which case Declarant shall submit revised PAA Certification Plans that address such defects. Within thirty (30) days of such revised submission, the Chair shall either (A) issue the PAA Certification, or (B) notify Declarant in writing of any deficiency with the Design Criteria, in which case Declarant shall submit revised PAA Certification Plans that address such defects. This process shall continue until the Chair has issued the PAA Certification. Upon issuance of the PAA Certification, the PAA Certification Plans shall be the "Approved PAA Plans."

4.02 Completion of Public Access Area

(a) Substantial Completion of PAA shall be a condition to the issuance of TCOs for the first Building to be completed on either the South Site or the Center Site, as follows:

(i) Substantial Completion of the South Portion and Through-Block Portion of the PAA shall be a condition to the issuance of TCOs for the South Site Building; and

(ii) Substantial Completion of the Center Portion and Through-Block Portion of the PAA shall be a condition to the issuance of TCOs for either Center Site Building.

Notwithstanding the foregoing, Substantial Completion of the PAA shall not be a condition to the issuance of TCOs for any affordable housing units. The Buildings Department shall not issue, and Declarant shall not accept, a TCO for any market-rate dwelling units in any Center

Site Building until the Declarant has Substantially Completed the Center Portion and Through-Block Portion of the PAA, as described herein, and the Chair has so certified such Substantial Completion to the Buildings Department. The Buildings Department shall not issue, and Declarant shall not accept, a TCO for any floor area in the South Site Building until the Declarant has Substantially Completed the South Portion and Through-Block Portion of the PAA, as described herein, and the Chair has so certified such Substantial Completion to the Buildings Department.

(b) Declarant shall notify the Chair when, in the opinion of Declarant, the applicable portions of the PAA have been Substantially Completed. Within fifteen (15) business days of its receipt of Declarant's notice, the Chair shall either (i) issue a certification of Substantial Completion, or (ii) notify Declarant of any work that, according to the Approved PAA Plans, remains to be completed before the Chair will issue a certification of Substantial Completion for such portion. If the Chair notifies Declarant that work remains to be completed or corrected in accordance with the Approved PAA Plans, such notice shall contain a detailed statement of the reasons for such non-acceptance by listing the elements of the Approved PAA Plans remaining to be completed. Upon completion of the work specified in the Chair's letter, Declarant shall notify the Chair and, within fifteen (15) business days of receipt of such notice, the Chair shall either (i) issue a certification of Substantial Completion for such portion, or (ii) issue a revised letter listing any items from the original letter remaining to be completed. This process shall continue until the Chair has issued a certification of Substantial Completion for such portion.

(c) Permanent Certificates of Occupancy. The Buildings Department shall not issue, and Declarant shall not accept, a PCO for units in the first Building to be completed on the

Center Site until the Declarant has Finally Completed the Center Portion and Through-Block Portion of the PAA in accordance with the Approved PAA Plans, and the Chair has so certified such Final Completion to the Buildings Department; provided, however, that Final Completion of any portion of the PAA shall not be a condition to the issuance of PCOs for any affordable housing units. The Buildings Department shall not issue, and Declarant shall not accept, a PCO for any floor area in the South Site Building until the Declarant has Finally Completed the South Portion and Through-Block Portion of the PAA in accordance with the Approved PAA Plans, and the Chair has so certified such Final Completion to the Buildings Department.

(d) Declarant shall notify the Chair when, in the opinion of Declarant, the applicable portions of the PAA have been Finally Completed. Within fifteen (15) business days of its receipt of Declarant's notice, the Chair shall either (i) issue a certification of Final Completion, or (ii) notify Declarant of any work that, according to the Approved PAA Plans, remains to be completed before the Chair will issue a certification of Final Completion for such portion. If the Chair notifies Declarant that work remains to be completed in accordance with the Approved PAA Plans, such notice shall contain a detailed statement of the reasons for such nonacceptance by listing the elements of the Approved PAA Plans remaining to be completed or corrected. Upon completion of the work specified in the letter, Declarant shall notify the Chair and, within fifteen (15) business days of receipt of such notice, the Chair shall either (i) issue a certification of Final Completion for such portion, or (ii) issue a revised letter listing any items remaining to be completed. This process shall continue until the Chair has issued a certification of Final Completion for such portion.

(e) Future Design Changes. Changes to the PAA after Final Completion may be approved by the Chair as a minor modification, pursuant to Section 6.03 of this Declaration.

4.03 Design Criteria. The PAA shall conform to the minimum design criteria set forth below (collectively, the "Design Criteria").

(a) Adequately sized pedestrian and ADA circulation paths shall be provided throughout the PAA.

(b) Seating:

1. At least three different types of seating shall be provided, which seating types may include: moveable seating, fixed individual seats, fixed benches with and without backs, and design-feature seating such as seat walls, planter ledges, or seating steps. Seating shall have a minimum depth of 18 inches. Generous access and circulation to the seating shall be provided. When seating is provided on a planter ledge, such ledge must have a minimum depth of 22 inches. Seating shall have a height not less than 16 inches nor greater than 20 inches above the level of the adjacent walking surface. Some seating with seat backs at least 14" high and reclining between 10 to 15 degrees shall be provided.

2. All moveable seats must have backs and a maximum seat depth of 20 inches. If moveable tables and seats are included, one table shall generate at least four such moveable seats. Moveable seats shall not be chained, fixed, or otherwise secured while the PAA is open to the public; moveable seats, however, may be removed during the hours when the PAA is not open to the public as set forth in Section 4.04 of this Declaration.

3. Prohibitions: Devices or forms affixed or incorporated into planter ledges, steps, sills, or other horizontal surfaces that would otherwise be suitable for seating that are intended to prevent, inhibit or discourage seating (such as spikes, metal bars, or pointed, excessively rough, or deliberately uncomfortable materials or forms) shall be prohibited.

(c) Access for Persons with Disabilities: The PAA shall conform with applicable laws pertaining to access for persons with disabilities.

(d) Plantings and Trees:

1. Plantings shall include a combination of trees, shrubs, grasses and groundcover that reflect variety in seasons, colors and textures. Trees shall measure at least four inches in caliper at the time of planting, unless alternative multi-stemmed equivalents are specified. Some plantings shall be visible from street level.

2. Planting beds shall have sufficient volume to support healthy plant growth. Planter walls shall not exceed 18" in height above an adjacent walking surface.

3. All planted areas shall either be automatically irrigated or shall consist of species that do not require regular watering;

4. All planted areas located above subsurface structures such as the former High Line rail tracks or retail spaces shall have drainage systems to prevent collection and pooling of water within planted areas; and

(e) Lighting and Electrical Equipment:

1. The PAA shall be illuminated to provide for safe use and enjoyment of all areas of the PAA. Special attention should be provided in lighting steps and other changes in elevation and areas under tree canopies and permitted canopies within the PAA;

2. The PAA shall be illuminated with a minimum level of illumination of not less than two horizontal foot candles (lumens per foot) throughout all walkable and sitting areas, and a minimum level of illumination of not less than 0.5 horizontal

foot candles (lumens per foot) throughout all other areas. Such level of illumination shall be maintained at all times when the applicable portion of the PAA is open to the public at all times. A lighting schedule, including fixtures, wattage and their locations and designs together with a diagram of light level distribution, with light levels indicated at intervals of no more than every 20 square feet.

3. All lighting sources that illuminate the PAA and are mounted on or located within buildings adjacent to the PAA shall be shielded from direct view. In addition, all lighting within the PAA area shall be shielded to minimize any adverse effect on surrounding residences.

(f) Litter Receptacles: Adequate number of litter receptacles shall be provided for the PAA. All litter receptacles must have a volume capacity of at least 25 gallons and shall be located in visible and convenient locations. All top or side openings must have a minimum dimension of 12 inches.

(g) Signage:

1. The PAA shall comply generally with the provisions of ZR Section 37-751 (Public space signage systems) and ZR Section 37-752 (Prohibition signs) as in effect on the date of this Declaration, as modified herein. All references therein to #public plaza# shall be replaced with the words “Public Access Area”.

2. Accessory Signs: Each establishment fronting on the PAA shall be permitted to have one or more signs with an aggregate area not to exceed the product of 12 square feet and the length of the establishment along the PAA, in linear feet, divided by 40 linear feet. In no event shall a sign exceed 16 square feet in area.

4.04 Public Access Easement

(a) Subject to subsection (d) hereof, Declarant covenants that, immediately upon certification by the Chair pursuant to Section 4.02 hereof that the Through-Block Portion of the PAA, as shown on Plans L-100-L-103, is Substantially Complete, the City shall hereby enjoy, wield, and have the right to and the benefit of and be granted, conveyed and transferred a non-exclusive easement (the "**Through-Block Access Easement**") in perpetuity, for the benefit of the general public, encompassing the area of the Through-Block Portion of the PAA that is unobstructed from the surface thereof to the sky, for the purposes of: (1) pedestrian access and (2) emergency vehicle access, in accordance with the provisions of this Article V. Any such grant of the Through-Block Access Easement shall not cause Through-Block Portion of the PAA or any portion thereof to be considered a "street" as defined in Section 12-10 of the Zoning Resolution for the purpose of zoning, and shall not affect the floor area calculations, height and setback compliance, or any other aspect of compliance with the Zoning Resolution for any development on the Subject Property.

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

Through-Block Access Easement and shall demonstrate same by means of appropriate documentation reasonably satisfactory to the City.

(c) Declarant hereby waives its rights to assert the rule against perpetuities as a defense in any proceeding to compel the conveyance of Through-Block Access Easements. Notwithstanding the foregoing, the Through-Block Access Easement shall not encompass any area or volume below the grade of the surface of the Platform.

(d) Notwithstanding anything to the contrary in this Section 4.04 or Section 4.06(a), Declarant shall be entitled upon notification to the Chair pursuant to this Section, to close to the public any portion of the Through-Block Access Easement that has been Substantially Completed to the extent and for the period of time that such closure is reasonably required to allow for the construction of a Building in a safe manner, or to complete a subsequent portion of the Through-Block Access Easement, or portion thereof, or to allow for necessary maintenance and repair and the easement granted pursuant to paragraph (a) of this Section 4.04 is limited to such extent. Declarant shall notify the Chair of the need to close any portion of the Through-Block Access Easement not less than thirty (30) days prior to such closure (except in the case of an emergency), and shall provide the Chair with a description of the need (including, if the closure is related to construction of a Building, an explanation as to how the Site for such Building does not provide sufficient space for such construction in a safe manner, extent and estimated period of time of closure reasonably required pursuant to this clause.

4.05 Hours of Access to the PAA

(a) Declarant covenants that, upon Substantial Completion of the PAA, subject to Section 4.02(d) hereof, the South Portion and Center Portion of the PAA shall remain open and accessible to the public daily, from 7 am to 10 pm.

(b) Declarant covenants that, upon Substantial Completion of the Through-Block Portion of the PAA, passageway, as shown on the Plans, shall remain open and accessible to the public 24 hours a day.

4.06 Commercial Use

No commercial use shall be allowed in the PAA and any seating provided in the PAA shall be available to the public and not be restricted to patrons of adjacent commercial spaces. Up to 12 public commercial events (such as a farmer's market) may be held in the PAA each year. Each event must last no more than 24 hours, and must be free and open to the general public. Declarant shall notify the Chair of any scheduled events not less than seven days prior to such event.

4.07 Maintenance and Repair of Public Access Area

(a) Declarant shall be responsible for the maintenance and repair of the PAA, including any paving, landscaping, furniture, lighting, and elevator equipment provided in the PAA, in accordance with the standards set forth in this Section 4.06. All such maintenance shall be performed in a good and worker-like manner.

(b) Cleaning and Maintenance.

(i) Dirt, litter and obstructions shall be removed as needed and leaves collected and removed as needed to maintain the PAA in clean, neat, and good condition.

(ii) All walkways, lighting, drinking fountains, irrigation systems and all other improvements and facilities installed in the PAA shall be routinely cleaned and maintained so as to keep such improvements and facilities in a clean, neat, and good condition.

(iii) Graffiti shall be regularly painted over or removed, as appropriate to the nature of the surface, promptly, with reasonable dispatch.

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

(v) Branches and trees damaged or felled by winds, ice, vandalism or by any other reason whatsoever, shall be promptly removed, and trees shall be replaced in accordance with the Landscape Maintenance Plan, as described below.

(vi) Snow and ice shall be promptly removed from all walkways so as not to interfere with safe passage and from all other paved surfaces no more than 24 hours after each snowfall or accumulation of ice.

(f) **Landscape Maintenance**. A maintenance program for the planted portions of the PAA shall be established, consisting of a "**Spring Start-up Period**" program, a "**Season Closing Period**" program, and a continuing maintenance program through the "**Growing Season**."

(i) Spring Start-Up Period: The Spring Start-up Period shall commence on March 1st and terminate not later than the end of the second week of April of each calendar year. The following work shall be undertaken and carried out annually during the Spring Start-up Period:

(aa) Remove any winter protectives from trees, shrubs and other planting materials;

(bb) Remove all landscaping debris including leaves and dead branches;

(cc) Prune and trim trees that have overextended, dead or otherwise unsightly branches to maintain natural form;

(dd) Remove or destroy any weeds growing between paving blocks, pavement, and concrete areas;

(ee) Apply commercially available nitrogen rich fertilizer to trees, shrubs, planting materials and other lawn areas as appropriate;

(ff) Remove any sand deposited as a result of winter sandings;

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

(ii) Season Closing Period: The Season Closing Period shall begin on October 1st and shall terminate not later than November 1st of each calendar year. The following work shall be undertaken and carried out during the Season Closing Period: Rake and collect leaves from the PAA;

(aa) Wrap trees, shrubs, and other plant materials as necessary to ensure adequate winter protection;

(bb) Apply commercially available nitrogen rich fertilizer to all lawn areas;

(iii) Growing Season: The Growing Season shall commence at the end of the Spring Start-up period and shall terminate at the end of the Season Closing Period. The following work shall be undertaken and carried out during the Growing Season:

(aa) Inspect trees on a regular basis and spray when necessary;

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

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

(g) **Repairs and Replacements**. Repairs and replacements of facilities or utilities within the PAA shall occur as needed to maintain such facilities or utilities in good order and working condition. Declarant shall exercise due diligence in commencing the repair or replacement of same as promptly as possible and subject to the notice requirements of Section 8.04 hereof and completing the same within a reasonably expeditious time after commencement. All repairs and replacements shall be performed in substantial compliance with the Approved PAA Plans and replacement materials shall match existing materials to the extent feasible. Repairs shall include, but not be limited to, the following, as applicable to the facilities in the PAA:

(i) Benches or Other Seating: Maintenance, including replacement of any broken or missing slats and painting, as necessary;

(ii) Walls or Other Barriers: Any broken or materially cracked walls, or barriers shall be repaired or removed and replaced;

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

(iv) Signage: All signs and graphics shall be maintained in a first class condition and all vandalized or damaged signage shall be promptly cleaned or replaced with new signage or graphics;

(v) Painting: All items with painted surfaces shall be painted on an "as needed" basis. Surfaces shall be scraped free of rust or other extraneous matter and painted to match the installed color;

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

(vii) Construction Defects and Hazardous Conditions: Declarant shall periodically inspect the PAA for construction defects and hazardous conditions and shall promptly repair and remediate any construction defects or hazardous conditions, as well as implement any safety measures required on an interim basis to protect public safety.

(h) **Closure**. Notwithstanding Section 4.02 hereof, Declarant may close the PAA or the most limited portions thereof as may be necessary in order (i) to accomplish the maintenance, repairs or replacements; (ii) to make emergency repairs to mitigate hazardous conditions or emergency conditions; or (iii) to address other emergency conditions and shall

notify the Chair of such closing and its expected duration as soon as practicable. In addition, Declarant may close the PAA during the construction of the South Building and either Center Site Building, as provided Section 3.03(c) hereof. Emergency conditions for which the PAA may be closed pursuant to (iii) above shall be limited to actual or imminent emergency situations, including but not limited to, New York City Police Department (the "**NYPD**") security alerts, riots, casualties, disasters, or other events endangering public safety or property, provided that no such emergency closure shall continue for more than twelve (12) consecutive hours without Declarant having consulted with the NYPD or the Buildings Department, as appropriate, and having following the NYPD's or Building Department's direction, if any, with regard to the emergency situation. Declarant shall promptly notify the Chair in writing of any closure which extends more than twelve (12) hours. Declarant will close or permit to be closed only those portions of such areas which must or should reasonably be closed to effect the repairs or mitigation to be undertaken, and may install scaffolding as necessary, and will exercise due diligence in the performance of such repairs etc. or mitigation so that it is completed expeditiously and the temporarily closed areas (or any portions thereof) are re-opened to the public promptly. In addition, Declarant may close the PAA or the most limited portions thereof as may be necessary to the public for one day per year, or such other period as shall be required by law to prevent a public dedication of the PAA, other than Saturday, Sunday or public holiday, on the same date in January of each year or as near to such date as is possible, to preserve Declarant's ownership interest in the PAA and to prevent a public dedication.

4.08 Operating Rules for PAA. The activities, uses and conduct permitted within the PAA shall comply with all applicable laws and regulations of the City, in addition to being subject to the policies set forth in the schedule annexed hereto as Exhibit G [which shall be the

latest Parks-approved rules]. Declarant may modify the policies set forth in Exhibit G with the prior written approval of DCP, which shall not be unreasonably withheld, conditioned or delayed.

ARTICLE V

PROPERTY OWNERS' ASSOCIATION

5.01 Organization of St. John's Terminal Property Owners' Association.

(a) Declarant shall cause to be organized a St. John's Terminal Property Owners' Association ("**P.O.A.**") or comparable entity, if any of the following changes are made in the ownership of the Proposed Development: (i) All or any portion of the Proposed Development is converted to condominium or cooperative ownership held in fee simple and/or leasehold; or (ii) the Proposed Development is owned by more than one fee owners and/or ground lessees of all or substantially all of the Subject Property or any portion thereof, unless either (x) the entities owning or leasing the same are under common control or are affiliated entities, or (y) one Declarant has notified the Chair that it has been assigned sole responsibility for assuring compliance with the obligations under this Declaration with regard to the PAA, in which case this Section 5.01 does not apply. The following provisions of this Article V shall be operative only in the event that P.O.A. is required to be formed pursuant to this Section 5.01 of this Declaration.

(b) In the event that P.O.A. is required to be formed pursuant to this Section 5.01 of this Declaration, Declarant shall (i) cause to be filed a Certificate of Incorporation for the P.O.A., or comparable entity, as a property owners' association organized under Section 402 of

the New York State Not-for-Profit Corporation Law for the purpose of operating, maintaining and repairing the PAA; and (ii) certify to the Chair that the Certificate of Incorporation for P.O.A. has been filed with the New York Secretary of State. P.O.A. shall be organized in accordance with the terms of this Declaration and in accordance with the New York State Not-For-Profit Corporation law. Declarant, if required, shall (i) file with the Department of Law of the Office of the Attorney General of the State of New York a plan offering interests in P.O.A. pursuant to New York General Business Law Section 352-e (or shall comply with the requirements of any successor statute thereto), (ii) file any governing documents of P.O.A., including any required amendment to the Certificate of Incorporation of P.O.A., with the New York Secretary of State and/or the office of any other official or any other public record required by law in order to empower P.O.A. to carry out its obligations with respect to the Subject Property in full compliance with the requirements of this Declaration.

(c) If the Declarant fails to comply with the provisions of this Section 5.01, the City may proceed with any available enforcement measures.

5.02 Purposes. Declarant shall cause the P.O.A. to be established for the purpose of operating, maintaining and repairing the PAA in accordance with Sections 4.02, 4.03 and 4.04 hereof, subject to Sections 5.03(a) and (b) hereof, and for the functions described in Section 5.03 hereof.

5.03 Powers. To the extent permitted by law, Declarant shall cause P.O.A. to be established with the power, authority, and responsibility to:

(a) maintain, repair and operate the PAA to the extent required herein, in accordance with Article IV hereof, including, but not limited to, in compliance with the

requirements of Article IV as to hours of operation and public accessibility; provided, however, that for so long as Declarant retains an ownership interest in any portion of the Subject Property, then Declarant may elect to retain the authority to maintain, repair, and operate the PAA, subject to an appropriate arrangement with the P.O.A.;

(b) impose fees or assessments against Lot Owners, for the purpose of collecting funds reasonably necessary for the operation, maintenance and repair of the PAA or the maintenance and repair of the Public Access, or for any other obligations of P.O.A. which are properly allocable to Lot Owners pursuant to this Declaration, and collect, receive, administer, protect, invest and dispose of such funds;

(c) exercise any of its duties or obligations pursuant to this Declaration without seeking the separate consent of the Lot Owners;

(d) bring actions to recover fees or assessments owed to P.O.A; and

(e) exercise any and all of such powers as may be necessary or appropriate for purposes of this Declaration including without limitation, the powers set forth in Section 6.05 herein, and as may be granted to P.O.A. in furtherance of P.O.A.'s purposes pursuant to the New York State Not-for-Profit Law.

5.04 Lot Owner Obligations.

(a) The P.O.A. shall have as members all Lot Owners of the Subject Property or any portion thereof, whether residential, commercial or community facility. The P.O.A. shall assess all real property within the applicable portion of the Proposed Development for the purposes of maintaining, repairing and operating the PAA, and for any other Obligation of

P.O.A. pursuant to this Declaration. Each Lot Owner, by acceptance of a deed or lease for its portion of the Subject Property, shall, whether or not the covenant is expressed in such deed or lease, be deemed to covenant and agree to pay all assessments which may be imposed by P.O.A. on the property owned or leased by such Lot Owner, which shall be assessed on a reasonable prorated basis as determined by Declarant and set forth in the applicable condominium declarations (each such individual assessment, together with such interest, costs and reasonable attorneys' fees as may be assessed in accordance with the provisions of this Declaration, the "**Individual Assessment**"). Each and every Individual Assessment, together with such interest, costs and reasonable attorneys' fees as may be imposed pursuant to Section 5.04(c) below, shall be a charge on the land or leasehold interest and a continuing lien on the property interest against which such assessment is made (such individual property interest, the "**Individual Interest**") and such charge and lien shall be subordinate only to (i) liens securing the payment of real estate taxes, (ii) the lien of a Mortgage or cooperative loan, and/or (iii) the lien of any condo board for any unpaid common charges of the condominium, encumbering such Individual Interest in the event of a foreclosure. It is expressly understood that Lot Owners who may be assessed for the maintenance, repair and operation of the Subject Property shall not include a Mortgagee or a holder of other lien or encumbrance ("**Lien Holder**") encumbering (xx) the fee estate in the Subject Property or any portion thereof, or (yy) the lessee's estate in a ground lease of all or substantially all of the Subject Property or all or substantially all of any Site, or (zz) any single Building to be built on the Subject Property, unless and until any such Mortgagee or Lien Holder succeeds to a Possessory Interest by foreclosure of the lien of the mortgage or other lien or acceptance of a deed or other transfer in lieu of foreclosure or exercise of an option to convert an interest as mortgagee into a Possessory Interest in any such fee or ground leasehold estate in the

Subject Property and such Possessory Interest would otherwise constitute the interest of a Lot Owner subject to this Section 5.04(a). While it is intended that the Mortgagee or Lien Holder is to be included among the parties set forth in the definition of "Unit Interested Party," it is not intended that any such Mortgagee or Lien Holder shall be deemed to be a Lot Owner or shall be liable for any Individual Assessment imposed by P.O.A. pursuant to this Article V unless and until it succeeds to a Possessory Interest as described in the immediately preceding sentence.

(b) Each periodic Individual Assessment by the P.O.A. shall be the obligation of the Lot Owner against whom the Individual Assessment is charged at the time same falls due and may not be waived by such Lot Owner. The P.O.A. may bring an action to recover any delinquent Individual Assessment, including interest, costs and reasonable attorneys' fees of any such action, at law or at equity, against the Lot Owner obligated to pay the same. In the event a Lot Owner has not paid its Individual Assessment to the P.O.A. within ninety (90) days of the date such payment was due, the P.O.A. shall take all reasonable measures as may be required in order to collect such unpaid Individual Assessment.

(c) The periodic assessments charged to a Lot Owner which is the board of managers of a condominium shall be included within the common charges of the condominium. The maintenance charges imposed by a cooperative apartment corporation which is a Lot Owner on the owners of the shares of stock of such corporation allocated to cooperative apartments shall include an amount sufficient for such apartment corporation to pay the amount of any assessments imposed on it pursuant to the provisions hereof. The P.O.A. may bring an action to foreclose the P.O.A.'s lien against such Lot Owner's Individual Interest to recover any such delinquent assessment(s), including interest and costs and reasonable attorneys' fees of any such action. Any Unit Interested Party, by acceptance of a deed or a lease or mortgage to a portion of

the Subject Property, thereby agrees to the provisions of this Section 5.04(c). Any Unit Owner may eliminate the P.O.A.'s lien described above on his or her Individual Interest by payment to the P.O.A. of such Unit Owner's prorated share of the periodic assessment by the P.O.A. to the cooperative corporation or condominium in which such unit is located. No Lot Owner or Unit Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the PAA or abandonment of the P.O.A.'s property, or by renunciation of membership in the P.O.A., provided, however, that a Lot Owner's or Unit Owner's liability with respect to future assessments ends upon the valid sale or transfer of such Lot Owner's or Unit Owner's Individual Interest in the Subject Property. A Lot Owner or Unit Owner may give to the P.O.A. nevertheless, subject to acceptance thereof by the P.O.A, a deed in lieu of foreclosure.

(d) In the event of a default by a Lot Owner which is the board of managers of a condominium or a cooperative apartment corporation, the City shall, prior to enforcing any rights against any other Lot Owners, first attempt to enforce its rights under this Declaration against such board of managers or cooperative apartment corporation.

(e) Notwithstanding anything to the contrary in this Declaration, the liability of any Lot Owner and any liens of the City shall be limited to such Lot Owner's interest in the Subject Property, on an in rem basis only, for the collection of any judgment recovered against such Lot Owner, and no other property of such Lot Owner shall be subject to levy, execution or other enforcement procedure for satisfaction of such judgment and the Lot Owner shall have no personal liability with respect to such assessment, and where a Lot Owner is the owner of a residential or commercial unit or units in a building subject to a cooperative plan or condominium declaration, the liability of any such Lot Owner for assessments as hereinabove provided shall be limited to an amount equal to that proportion of the total assessment payable

for such building as such Lot Owner's proportionate share in such cooperative or condominium bears to such total assessment, as measured by such Lot Owner's percentage interest in his, her or its unit and in the common areas, or common elements or maintenance percentage interests appurtenant thereto in accordance with the applicable condominium declarations. Notwithstanding the foregoing, nothing in this Section 5.04(e) 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.

5.05 Deed References**.** Every deed in respect of all or any portion of the Subject Property, any other lease or occupancy agreement referred to in the definition of Lot Owner, and every declaration of condominium imposed on any portion of the Subject Property shall (i) contain a recital that the grantee or the lessee assumes, subject to the provisions of Section 5.04(c) and (d) herein, the obligations of a Lot Owner as set forth in this Article V, and (ii) confirm that the operation, maintenance and repair of the PAA, and the provisions of this Declaration are conditions to the City actions relating to the development of the Subject Property; provided, however, that the requirements of this Section 5.05 shall be satisfied by a reference to this Declaration and the provisions hereof in such deed, lease, occupancy agreement, or declaration of condominium, and the failure to include the specific provisions of this Article V in such deed, lease, occupancy agreement, or declaration shall not relieve such Lot Owner from any of such Lot Owner's obligations hereunder.

5.06 **Non-Existence, Incapacity or Default of P.O.A.** If P.O.A. or a comparable entity shall cease to exist, or be unable or unwilling to act, or be in default of its obligations under this Declaration, the City shall have the right, but not the obligation, to take any action

necessary or appropriate to cure any default by P.O.A. or to protect and preserve the rights of the City under this Declaration including, but not limited to, any legal actions or proceedings necessary or appropriate against P.O.A. or any of its members for the purpose of protecting the City's rights and interest under this Declaration.

ARTICLE VI

EFFECTIVE DATE; AMENDMENTS AND MODIFICATIONS TO AND CANCELLATION OF THIS DECLARATION

6.01 Effective Date; Lapse; Cancellation.

(a) This Declaration and the provisions and covenants hereof shall become effective only upon Final Approval of the Land Use Applications (the "Effective Date"). However, following such Effective Date, Declarant shall not be subject to or have any obligations under this Declaration unless and until Declarant has elected to proceed under the Special Permits by (i) obtaining a permit from the Buildings Department permitting the construction of the foundation of at least one Building within the Proposed Development (the "Foundation Permit") pursuant to the Special Permits, and (ii) recording against the Subject Property, and causing HRPT to record against the Pier 40 Site, the Transfer of Development Rights and Notice of Restrictions, in the form annexed hereto as **Exhibit "F"** (the "Transfer Instrument") (both (i) and (ii), the "Special Permit Election"). Unless and until Declarant has made a Special Permit Election, Declarant shall be entitled to develop the Subject Property with such uses and bulk, and only such uses and bulk, permitted on an as-of-right basis under the Former Zoning, and thereafter the provisions of Section 2.01(a)(iii) shall apply; provided,

however, at the time of making a Special Permit Election, any prior development pursuant to the Former Zoning shall be consistent with the CEQR Technical Memorandum 001, CEQR No. 16DCP031M, dated October 14, 2016.

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

(c) Notwithstanding anything to the contrary contained in this Declaration, if the Approvals given in connection with the Land Use Applications are declared invalid or otherwise voided by a final judgment of any court of competent jurisdiction from which no appeal can be taken or for which no appeal has been taken within the applicable statutory period provided for such appeal, then, upon entry of said judgment or the expiration of the applicable statutory period for such appeal, then this Declaration shall be cancelled and shall be of no

further force or effect and an instrument discharging or terminating it may be recorded. Prior to the recordation of such instrument discharging or terminating this Declaration, the Declarant shall notify the Chair of Declarant's intent to discharge or terminate this Declaration and request the Chair's approval, which approval shall be limited to insuring that such discharge and termination is in proper form and provides that the proper provisions which are not discharged or terminated survive such termination. Upon recordation of such instrument, Declarant or Successor Declarants (as hereinafter defined) shall provide a copy thereof to the Commission so certified by the Register.

6.02 Amendment. This Declaration may be amended, modified or cancelled only upon application by the Declarant, and with the express written approval of the Commission or an agency succeeding to the Commission's jurisdiction (except with respect to a cancellation pursuant to Section 6.01 hereof, for which no such approval shall be required). No other approval or consent shall be required from any public body, private person or legal entity of any kind, including, without limitation, any other present Party-in-Interest or future Party-in-Interest who is not a successor of Declarant.

6.03 Minor Modifications. Notwithstanding the provisions of Section 6.02 above, any change to this Declaration proposed by the Declarant, which the Chair deems to be a minor modification of this Declaration, may by express written consent be approved administratively by the Chair and no other approval or consent shall be required from any public body, private person or legal entity of any kind, including, without limitation, any present or future Party-in-Interest. Such minor modifications shall not be deemed amendments requiring the approval of the Commission. In the event that the minor modification results in a modification of the Plans,

a notice indicating such modification shall be recorded in the City Register's Office, in lieu of a modification of this Declaration.

6.04 Future Recording. Any modification, amendment or cancellation of this Declaration shall be executed and recorded in the same manner as this Declaration.

6.05 Certain Provisions Regarding Modification. For so long as any Declarant, or any successor entity to the balance and entirety of such Declarant's Possessory Interest in the Subject Property so that Declarant no longer holds any Possessory Interest in the Subject Property (the "Successor Declarant"), shall hold a Possessory Interest in the Subject Property or any portion thereof, all other Unit Interested Parties, their heirs, successors, assigns and legal representatives, hereby irrevocably (i) consent to any amendment, modification, cancellation, revision or other change in this Declaration, (ii) waive and subordinate any rights they may have to enter into an amended Declaration or other instrument amending, modifying, canceling, revising or otherwise changing this Declaration, and (iii) nominate, constitute and appoint Declarant, or any Successor Declarant, their true and lawful attorney-in-fact, coupled with an interest, to execute any documents or instruments of any kind that may be required in order to amend, modify, cancel, revise or otherwise change this Declaration or to evidence such Unit Interested Parties' consent or waiver as set forth in this Section 6.05.

ARTICLE VII

COMPLIANCE; DEFAULTS; REMEDIES

7.01 Default.

(a) Declarant acknowledges that the restrictions, covenants, and Obligations of this Declaration will protect the value and desirability of the Subject Property, as well as benefit the City. Declarant acknowledges that the City is an interested party to this Declaration, and consent to enforcement by the City, administratively or at law or equity, of the restrictions, covenants, easements, obligations and agreements contained herein. If the Declarant fails to perform any of its obligations under this Declaration with respect to its Obligations, the City shall seek to enforce this Declaration and exercise any administrative legal or equitable remedy available to the City, and Declarant hereby consents to same; provided that this Declaration shall not be deemed to diminish Declarant's or any other Party in Interest's right to exercise any and all administrative, legal, or equitable remedies otherwise available to it, and provided further, that the City's rights of enforcement shall be subject to the cure provisions and periods set forth in Section 7.01(c) hereof and the limitations of Sections 8.01 and 8.02 hereof. 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, subject to Sections 8.01 and 8.02 hereof, including, but not limited to, a mandatory injunction compelling Declarant to comply with the terms of this Declaration and a revocation by the City of any certificate of occupancy, temporary or permanent, for any building located within the Proposed Development that does not comply with the provisions of this Declaration; provided, however, that such right of revocation shall not permit or be construed to permit the revocation of any certificate of occupancy for any use or improvement that exists on the Subject Property as of the date of this Declaration;

(b) Notwithstanding any provision of this Declaration, only Declarant, Mortgagees, and Declarant's successors and assigns and the City, shall be entitled to enforce or

assert any claim arising out of or in connection with this Declaration. Nothing contained herein should be construed or deemed to allow any other person or entity to have any interest in or right of enforcement of any provision of this Declaration or any document or instrument executed or delivered in connection with the Land Use Applications.

(c) Prior to City instituting any proceeding to enforce the terms or conditions of this Declaration due to any alleged violation hereof, City shall give the Declarant, every Mortgagee of all or any portion of the Subject Property, and every Party in Interest, ninety (90) days written notice of such alleged violation, during which period the Declarant, any Party in Interest and Mortgagee shall have the opportunity to effect a cure of such alleged violation or to demonstrate to City why the alleged violation has not occurred. If a Mortgagee or Party in Interest performs any obligation or effects any cure the Declarant is required to perform or cure pursuant to this Declaration, such performance or cure shall be deemed performance on behalf of the Declarant and shall be accepted by any person or entity benefited hereunder, including the Commission and the City, as if performed by the Declarant. If the Declarant, any Party in Interest or Mortgagee commence to effect such cure within such ninety (90) day period (or if cure is not capable of being commenced within such ninety (90) day period, the Declarant, any Party in Interest or Mortgagee commences to effect such cure when such commencement is reasonably possible), and thereafter proceeds diligently toward the effectuation of such cure, the aforesaid ninety (90) day period (as such may be extended in accordance with the preceding clause) shall be extended for so long as the Declarant, any Party in Interest or Mortgagee continues to proceed diligently with the effectuation of such cure. In the event that more than one Declarant exists at any time on the Subject Property, notice shall be provided to all

Declarants from whom City has received notice in accordance with Section 8.04 hereof, and the right to cure shall apply equally to all Declarants.

(d) If, after due notice and opportunity to cure as set forth in this Declaration, the Declarant, Mortgagee or a Party in Interest shall fail to cure the alleged violation with respect to the Subject Property, the City may exercise any and all of its rights, including without limitation those delineated in this Section 7.01 and may disapprove any amendment, modification or cancellation of this Declaration on the sole ground that such Declarant is in default of a material Obligation under this Declaration.

The time period for curing any violation of this Declaration by the Declarant shall be subject to extension due to the occurrence of a Force Majeure Event subject to the provisions of Section 7.04 hereof.

7.02 Rights of Mortgagees. Except as otherwise provided in Section 7.03 of this Declaration, if the Declarant shall fail to observe or perform any of the covenants or provisions contained in this Declaration and such failure continues beyond the cure period set forth in Section 7.01 hereof, the City shall, before taking any action to enforce this Declaration, give notice to any Named Mortgagee, setting forth the nature of the alleged default. A Named Mortgagee shall have available to it an additional cure period of the same number of days as the Declarant had in which to cure such alleged default, as extended by Force Majeure Events. If such Named Mortgagee has commenced to effect a cure during such period and is proceeding with reasonable diligence towards effecting such cure, then such cure period shall be extended for so long as such Named Mortgagee is continuing to proceed with reasonable diligence with the effectuation of such cure. With respect to the effectuation of any cure by any Named

Mortgagee, such Named Mortgagee shall have all the rights and powers of the Declarant pursuant to this Declaration necessary to cure such default. If a Named Mortgagee performs any obligation or effects any cure the Declarant is required to perform or cure pursuant to this Declaration, such performance or cure shall be deemed performance on behalf of the Declarant and shall be accepted by any person or entity benefited hereunder, including the Commission and the City, as if performed by Declarant. Notwithstanding anything to the contrary contained herein, the execution of a Waiver and Subordination or the failure by a Named Mortgagee to cure an alleged default shall not defeat, invalidate, or impair the validity of the lien of the Mortgage in favor of a Named Mortgagee.

7.03 Enforcement of Declaration. No person or entity other than Declarant, Mortgagees, the City, or a successor, assign or legal representative of any such party, shall be entitled to enforce, or assert any claim arising out of or in connection with, this Declaration. This Declaration shall not create any enforceable interest or right in any person or entity other than the parties named above in this Section, who shall be deemed to be the proper entities to enforce the provisions of this Declaration, and nothing contained herein shall be deemed to allow any other person or entity, public or private, any interest or right of enforcement of any provision of this Declaration or any document or instrument executed or delivered in connection with the Land Use Applications. Declarant consents to the enforcement by the City, administratively or at law or equity, or by any legal means necessary, of the covenants, conditions, easements, agreements and restrictions contained in this Declaration.

7.04 Delay By Reason of Force Majeure Event. In the event that Declarant is unable to comply with any Obligations of this Declaration (including, without limitation, any violation of this Declaration under Section 7.01 hereof) as a result of a Force Majeure Event, then Declarant

may, upon written notice to the Chair (the "Delay Notice"), request that the Chair, certify the existence of such Force Majeure Event. Such Delay Notice shall include a description of the Force Majeure Event, and, if known to such Declarant, its cause and probable duration and the impact it is reasonably anticipated to have on the completion of the item of work, to the extent known and reasonably determined by the Declarant. In the exercise of its reasonable judgment the Chair shall, within thirty (30) days of its receipt of the Delay Notice certify in writing whether a Force Majeure Event has occurred. If the Chair certifies that a Force Majeure Event does not exist, the Chair shall set forth with reasonable specificity, in the certification, the reasons therefor. If the Chair certifies a Force Majeure Event exists, upon such notification, the Chair shall grant Declarant appropriate relief including notifying DOB that a Building Permit, TCO, or a PCO, as applicable, may be issued for buildings at the Proposed Development. Failure to respond within such thirty (30) day period shall be deemed to be a certification by the City that Force Majeure Events have occurred. Any delay caused as the result of a Force Majeure Event shall be deemed to continue only as long as the Force Majeure Event continues. Upon a certification or deemed certification that Force Majeure Events have occurred, the City may grant such Declarant appropriate relief. As a condition of granting such relief, the City may require that such Declarant post a bond, letter of credit or other security in a form reasonably acceptable to the City in order to ensure that the Obligation will be completed in accordance with the provisions of this Declaration. Any delay caused as the result of Force Majeure Event shall be deemed to continue only as long as the Force Majeure Event continues. Declarant shall re-commence the Obligation at the end of the probable duration of the Force Majeure Event specified in the Delay Notice, or such lesser period of time as the Chair reasonably determined the Force Majeure Event shall continue; provided, however, that if the Force Majeure Event has

a longer duration than as set forth in the Delay Notice, or as reasonably determined by the Chair, the Chair shall grant additional time to re-commence the Obligation.

ARTICLE VIII

MISCELLANEOUS

8.01 Binding Effect**.** Except as specifically set forth in this Declaration and, subject to applicable law, Declarant shall have no obligation to act or refrain from acting with respect to the Subject Property. The restrictions, covenants, rights and agreements set forth in this Declaration shall be binding on each Declarant and any Successor Declarant who acquires a Possessory Interest the Subject Property, provided that the Declaration shall only be binding upon a Declarant or a Successor Declarant for the period during which such Declarant or such Successor Declarant is the holder of a Possessory Interest in the Subject Property and only to the extent of such Possessory Interest in the Subject Property. At such time as a Declarant or any Successor Declarant no longer holds a Possessory Interest in the Subject Property, such Declarant's or such Successor Declarant's obligation and liability under this Declaration shall wholly cease and terminate except with respect to any liability during the period when such Declarant held a Possessory Interest in the Subject Property, and the party succeeding such Declarant shall be deemed to have assumed the obligations and liability of Declarant pursuant to this Declaration with respect to actions or matters occurring subsequent to the date such party succeeds to a Possessory Interest in the Subject Property to the extent of such party's Possessory Interest in the Subject Property. For purposes of this Declaration, any successor to a Declarant shall be deemed a Declarant for such time as such successor holds all or any portion of a Possessory Interest in

the Subject Property. The provisions of this Declaration shall run with the land and shall inure to the benefit of and be binding upon Declarant.

8.02 Limitation of Liability. Notwithstanding anything to the contrary contained in this Declaration, the City will look solely to the estate and interest of Declarant, and any or all of their respective successors and assigns or the subsequent holders of any interest in the Subject Property, on an in rem basis only, for the collection of any judgment or the enforcement of any remedy based upon any breach by any such party of any of the terms, covenants or conditions of this Declaration. No other property of any such party or its principals, disclosed or undisclosed, or its partners, shareholders, directors, officers or employees, or said successors, assigns and holders, shall be subject to levy, execution or other enforcement procedure for the satisfaction of the remedies of the City or of any other party or person under or with respect to this Declaration, and no such party shall have any personal liability under this Declaration. In the event that any building in the Proposed Development is subject to a declaration of condominium, every condominium unit shall be subject to levy or execution for the satisfaction of any monetary remedies of the City solely to the extent of each Unit Interested Party's Individual Assessment Interest. The "Individual Assessment Interest" shall mean the Unit Interested Party's percentage interest in the common elements of the condominium in which such condominium unit is located applied to the assessment imposed on the condominium in which such condominium unit is located. In the event of a default in the obligations of the condominium as set forth herein, the City shall have a lien upon the property owned by each Unit Interested Party solely to the extent of each such Unit Interested Party's unpaid Individual Assessment Interest, which lien shall include such Unit Interested Party's obligation for the costs of collection of such Unit Interested Party's unpaid Individual Assessment Interest. Such lien shall be subordinate to the lien of any

prior recorded Mortgage in respect of such property given to a bank, insurance company, real estate investment trust, private equity or debt fund, or other institutional lender (including but not limited to a governmental agency), the lien of any real property taxes, and the lien of the board of managers of any such condominium for unpaid common charges of the condominium, and the lien of the condominium pursuant to the provisions of Article V hereof. The City agrees that, prior to enforcing its rights against a Unit Interested Party, the City shall first attempt to enforce its rights under this Declaration against the applicable Declarant, and the boards of managers of any condominium association. In the event that the condominium shall default in its obligations under this Declaration, the City shall have the right to obtain from the boards of managers of any condominium association, the names of the Unit Interested Parties who have not paid their Individual Assessment Interests.

8.03 Condominium and Cooperative Ownership

(a) In the event that the Subject Property or any portion thereof is developed as, sold, or converted to condominium or cooperative ownership requiring the approval of the Attorney General of the State of New York (the "Attorney General"), Declarant so doing shall provide a copy of this Declaration and any subsequent modification hereof to the Attorney General with the offering documents at the time of application for approval of any offering plan for such condominium or cooperative. Declarant shall include in the offering plan, if any, for such condominium or cooperative 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 condominium purchasers and cooperative shareholders purchasing from such Declarant pursuant to such offering plan. Such condominium or cooperative (or the board of managers of a condominium or board directors of a cooperative

having a Possessory Interest therein) shall be deemed to be a Declarant for purposes of this Declaration, and shall succeed to a prior Declarant's obligations under this Declaration in accordance with Section 8.01 hereof.

(b) With respect to any portion of the Subject Property which shall be subject to a condominium, cooperative or similar form of ownership, for the purposes of this Declaration, except as otherwise set forth below, the board of directors or managers of the condominium, cooperative 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 condominium unit owners, cooperative shareholders or similar owners, shall have the sole right as Declarant of such portion of the Subject Property to assess a lien for any costs incurred under this Declaration or to otherwise act as a Declarant with respect to this Declaration, to the extent such action is required for any purpose under this Declaration, and the consent of any individual condominium unit owner, cooperative shareholder or other similar owner who may be considered a party in interest under the Zoning Resolution shall not be required. For purposes 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 condominium, cooperative or similar ownership arrangement, and any such condominium unit owner, cooperative shareholder or other similar owner, or holder of any lien encumbering any such individual unit, shall not be deemed a Party in Interest. For purposes of Section 8.04 hereof, notice to the Board or the Association, as the case may be, shall be deemed notice to the Declarant of the applicable portion of the Subject Property.

8.04 Notices.

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

To SJC Declarant:	SJC 33 Owner 2015, LLC 7121 Fairway Drive, Suite 410 Palm Beach Gardens, Florida 33418 Attention: General Counsel Telephone: _____ E-mail: _____
With a copy to:	SJC 33 Owner 2015, LLC 645 Madison Avenue, 18th Floor New York, New York 10022 Attention: General Counsel Telephone: _____ E-mail: _____
And to:	SJC 33 Owner 2015, LLC 450 Park Avenue, 4th Floor New York, New York 10022 Attention: Andrew Cohen Telephone: (212) 554-2260 E-mail: acohen@ATLAS-CAP.COM
And to:	Kramer, Levin, Naftalis & Frankel LLP 1177 Avenue of the Americas New York, New York 10036 Attention: Michael T. Sillerman Telephone: (212) 715-7838 E-mail: msillerman@kramerlevin.com

Declarant, the Commission, any Party in Interest, and any Mortgagee may, by notice provided in accordance with this Section 8.04, change any name or address for purposes of this Declaration. In order to be deemed effective any Notice shall be sent or delivered in at least one of the following manners: (A) sent by registered or certified mail, postage pre-paid, return receipt requested, in which case the Notice shall he deemed delivered for all purposes hereunder five days after being actually mailed; (B) sent by overnight courier service, in which case the

Notice shall be deemed delivered for all purposes hereunder on the date the Notice was actually received or was refused; or (C) delivered by hand, in which case the Notice will be deemed delivered for all purposes hereunder on the date the Notice was actually received. All Notices from the Commission to Declarant shall also be sent to every Mortgagee of whom the Commission has notice ("Named Mortgagee"), and no Notice shall be deemed properly given to Declarant without such notice to such Named Mortgagee(s). In the event that there is more than one Declarant at any time, any Notice from the City or the Commission shall be provided to all Declarants of whom the Commission has notice.

8.05 Certificates. The City will at any time and from time to time upon not less than fifteen (15) days' prior notice by the Declarant or a Named Mortgagee execute, acknowledge and deliver to such Declarant or such Named Mortgagee, 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 or supplements that the same is in full force and effect, as modified or supplemented, and stating the modifications and supplements), (b) whether or not to the best knowledge of the signer of such certificate the 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 or such Named Mortgagee may reasonably request. If the City fails to respond within such fifteen (15) day period, Declarant may send a second written notice to the City requesting such statement (which notice shall state in bold upper case type both at the top of the first page thereof and on the front of the envelope thereof the following: "SECOND NOTICE PURSUANT TO SECTION 8.04 OF THE DECLARATION OF PROPOSED DEVELOPMENT"). If the City fails to respond within ten (10) days after receipt of such second notice, it shall be deemed to have certified (i) that this

Declaration is unmodified and in full force and effect (or if there have been modifications or supplements that the same is in full force and effect, as modified or supplemented), (ii) that to the best knowledge of the signer of such certificate Declarant is not in default in the performance of any Obligation contained in this Declaration, and (iii) as to such further matters as such Declarant or such Named Mortgagee had requested, and such deemed certification may be relied on by such Declarant or such Named Mortgagee and their respective successors and assigns.

8.06 Successors of Declarant**.** References in this Declaration to "Declarant(s)" shall be deemed to include Successor Declarant(s), if any, which are holders of a Possessory Interest in the Subject Property. Notwithstanding anything to the contrary contained in this Declaration, no holder of a mortgage or other lien in the Subject Property shall be deemed to be a successor of Declarant for any purpose, unless and until such holder obtains a Possessory Interest and provided further that, following succession to such Possessory Interest, the holder of any such mortgage or lien shall not be liable for any obligations of Declarant as the "Declarant" hereunder unless such holder commences to develop the Subject Property in accordance with the terms of Section 2.01 hereof or has acquired its interest from a Party who has done so.

8.07 Parties-in-Interest**.** Declarant shall provide the City with an updated Certification of Parties-in-Interest as of the recording date of this Declaration and will cause any individual, business organization or other entity which, between the date hereof and the effective and recording date and time of this Declaration, becomes a Party-in-Interest in the Subject Property or portion thereof to subordinate its interest in the Subject Property to this Declaration. Any and all mortgages or other liens encumbering the Subject Property after the recording date of this Declaration shall be subject and subordinate hereto as provided herein. Notwithstanding anything to the contrary contained in this Declaration, if a portion of the Subject Property is held

in condominium ownership, the board of managers of the condominium association shall be deemed to be the sole Party-in-Interest with respect to the premises held in condominium ownership, and the owner of any unit in such condominium, the holder of a lien encumbering any such condominium unit, and the holder of any other occupancy or other interest in such condominium unit shall not be deemed to be a Party-in-Interest.

8.08 Governing 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.

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

8.10 Applications. Declarant shall include a copy of this Declaration as part of any application pertaining to the Subject Property (as to which the provisions of this Declaration are applicable) submitted to the DOB or any other interested governmental agency or department having jurisdiction over the Subject Property.

8.11 Incorporation by Reference. Any and all exhibits, appendices and attachments referred to herein are hereby incorporated fully and made an integral part of this Declaration by reference.

8.12 Counterparts. This Declaration may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original, but all of which taken together shall be construed as and shall constitute but one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the day and year first above written.

DECLARANT:

SJC 33 OWNER 2015 LLC

BY: _____
NAME: _____
TITLE: _____

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

On the _____ day of _____ in the year 2015 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 or entity upon behalf of which the individual(s) acted, executed the instrument.

_____
Notary Public

[Signature Page to Restrictive Declaration]

SCHEDULE OF EXHIBITS

EXHIBIT A **Metes and Bounds of Subject Property**
EXHIBIT B **Project Diagram**
EXHIBIT C **Parties in Interest Certification**
EXHIBIT D **Waivers**
EXHIBIT E **Plans**
EXHIBIT F **Form of Transfer of Development Rights and Notice of Restrictions**
EXHIBIT G **Operating Rules for PAA**
EXHIBIT H **FEIS Table 20-19 (Noise)**
EXHIBIT I **NYCDEP Comment Letter**
EXHIBIT J **Sewer Diagram**
EXHIBIT K **FEIS Tables 22-3 to 22-6 (Traffic)**

Exhibit "A"

Metes and Bounds of Subject Property

Exhibit "A-1"

Metes and Bounds of North Site

Exhibit "A-2"

Metes and Bounds of Center Site

Exhibit "A-3"

Metes and Bounds of South Site

Exhibit "B"

Project Diagram

Exhibit "C"

Parties-in-Interest Certification

Exhibit "D"

Waivers

Exhibit "E"

Plans

Exhibit "F"

Form of Transfer of Development Rights and Notice of Restrictions

Exhibit “G”

Operating Rules for PAA

EXHIBIT "H"

FEIS Table 20-19 (Noise)

EXHIBIT "I"

NYCDEP Comment Letter

EXHIBIT “J”

Sewer Diagram

EXHIBIT "K"

FEIS Tables 22-3 to 22-6 (Traffic)