



**IN THE MATTER OF** an application submitted by 550 Clinton Partners LLC and 539 Vanderbilt Partners LLC pursuant to Sections 197-c and 201 of the New York City Charter, for the grant of a special permit pursuant to Section 74-711 of the Zoning Resolution to modify:

1. the zoning lot divided by district boundaries regulations of Section 77-02 (Zoning Lots not Existing Prior to Effective Date or Amendment of Resolution) and Section 77-22 (Floor Area Ratio);
2. the lot coverage regulations of Section 23-16 (Special Floor Area and Lot Coverage Provisions for Certain Areas);
3. the rear yard regulations of Section 23-52 (Special Provisions for Shallow Interior Lots), Section 33-26 (Minimum Required Rear Yards), and Section 33-29 (Special Provisions Applying along District Boundaries);
4. the tower-on-a-base regulations of Section 23-651(a) (Tower regulations) and Section 23-651(b) (Building base regulations);
5. the inner court regulations of Section 23-851 (Minimum dimensions of inner courts) and the inner recess regulations of Section 23-852 (Inner court recesses); and
6. the minimum distance between legally required windows and lot line regulations of Section 23-86 (Minimum Distance Between Legally Required Windows and Walls or Lot Lines)

in connection with a proposed mixed-use development on property located at 550 Clinton Avenue a.k.a. 539 Vanderbilt Avenue (Block 2010, Lots 1, 10, 51, 59, 1001-1010, and 1101-1118), in R6A, R7A and R9/C2-5 Districts, Borough of Brooklyn, Community District 2.

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This application for a special permit was filed by 550 Clinton Partners LLC and 539 Vanderbilt Partners LLC on August 27, 2018. The applicants seek to modify the zoning lot divided by district boundaries regulations of Section 77-02 of the Zoning Resolution (ZR) (Zoning Lots not Existing Prior to Effective Date or Amendment of Resolution) and Section 77-22 (Floor Area Ratio); the lot coverage regulations of Section 23-16 (Special Floor Area and Lot Coverage Provisions for Certain Areas); the rear yard regulations of Section 23-52 (Special Provisions for Shallow Interior Lots), Section 33-26 (Minimum Required Rear Yards), and Section 33-29 (Special Provisions Applying along District Boundaries); the tower-on-a-base regulations of Section 23-651(a) (Tower regulations) and Section 23-651(b) (Building base regulations); the inner court regulations of Section 23-851 (Minimum dimensions of inner courts) and the inner recess regulations of Section 23-852 (Inner court recesses); and the minimum distance between legally required windows and lot line regulations of Section 23-86 (Minimum Distance Between Legally Required Windows and Walls or Lot Lines). This special permit, in conjunction with the related actions, would facilitate

a mixed-use development at 809 Atlantic Avenue (a.k.a. 550 Clinton Avenue and 539 Vanderbilt Avenue) in the Fort Greene/Clinton Hill neighborhood of Brooklyn, Community District 2.

## **RELATED ACTIONS**

In addition to the special permit application (C 190072 ZSK) that 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 190071 ZMK**            Zoning map amendment to change R7A/C2-4, R7A and R6A districts to an R9/C2-5 district and to change an R7A/C2-4 district to an R6A district.
- N 190074 ZRK**            Zoning text amendment to designate a Mandatory Inclusionary Housing (MIH) area.
- C 190073 ZSK**            Special permit pursuant to ZR Section 74-533 to modify residential parking requirements.

## **BACKGROUND**

The applicants are requesting a zoning map amendment, zoning text amendment, and two special permits to facilitate a new, approximately 237,000-square-foot mixed-use development with retail, office and residential uses at 809 Atlantic Avenue (Block 2010, Lots 1 and 59) in the Fort Greene/Clinton Hill neighborhood of Brooklyn Community District 2.

The project area comprises 11 tax lots (Block 2010 Lots 1, 10, 1001-1010, 1101-1118, 51, and 59, and portions of Lots 53, 56, 57 and 58) that encompass a majority of the southern portion of a block bounded by 80-foot-wide Fulton Street to the north, 80-foot-wide Clinton Avenue to the east, 120-foot-wide Atlantic Avenue to the south, and 80-foot-wide Vanderbilt Avenue to the west. The development site is 809 Atlantic Avenue (Lots 1 and 59) and will be part of a zoning lot merger with Lots 10, 51, 1001-1010, and 1101-1118 in order to receive up to 70,000 square feet of development rights from the transfer sites.

Lot 10 is a 26,791-square-foot through lot improved with the one-story, Episcopal Church of St. Luke & St. Matthew, a Romanesque Revival-style church designed by John Welch and built in 1888-91. The church is built to a floor area ratio (FAR) of 0.92 and was designated an individual landmark by the Landmarks Preservation Commission (LPC) in 1981 (LP-02014). Lot 51 is a 3,283-square-foot lot fronting on Clinton Avenue and improved with a four-story, four-unit residential building with a built FAR of 2.3. Lots 1001-1010 are approximately 3,750-square-foot lots fronting on Vanderbilt Avenue, each improved with a five-story residential condominium building, with a total of 10 units and a built FAR of 2.9. Lots 1101-1118 consist of a 3,524-square-foot lot fronting on Vanderbilt Avenue improved with a seven-story, 18-unit residential condominium building with a built FAR of 3.4. In addition to the lots being merged for the purpose of transferring development rights, the project area includes rear portions of Lots 53, 56, 57, and 5, which are each improved with a three-story residential building with built FARs ranging from 0.54 to 2.66. The portions of these four lots are located within the proposed rezoning area, but are not part of the zoning lot merger.

The development site is a 21,068-square-foot “L”-shaped site on the northern frontage of Atlantic Avenue, between Vanderbilt and Clinton avenues. Lot 1 is an 8,506-square-foot lot on Atlantic Avenue and Vanderbilt Avenue improved with two one-story car wash and repair buildings. Lot 59 is a 12,561-square-foot lot on Atlantic Avenue and Clinton Avenue improved with a one-story building consisting of auto-related uses and a bar/restaurant.

The project area lies at the nexus of multiple neighborhoods, including Fort Greene and Clinton Hill to the north and Prospect Heights to the south. The surrounding area contains a mix of residential, commercial, community facility, and auto-oriented uses. The areas to the north and south are predominantly residential, consisting of row houses and medium-density apartment buildings. Vanderbilt Avenue, directly south of Atlantic Avenue, and Fulton Street, one block to the north, serve as active local retail corridors. Traversing several neighborhoods across Brooklyn, Atlantic Avenue is a 120-foot-wide major thoroughfare characterized by a variety of auto-oriented uses, and commercial and mixed-use buildings.

To the southwest, diagonally across Atlantic Avenue, is a block within the multi-phased Pacific Park project (f/k/a Atlantic Yards), a 22-acre mixed-use development led by the Empire State Development Corporation that comprises thousands of market-rate and affordable housing units, new open space, community facilities, and commercial uses, including the Barclays Center arena. The development site is located diagonal to a later Pacific Park project phase, where building heights of future developments are projected to rise between 219 to 620 feet. Directly to the west, along Vanderbilt Avenue, is a seven- to 10-story commercial office building conversion, which was part of the 470 Vanderbilt Avenue general large-scale development (C 090443 ZSK, et al) and involved a zoning map change to a C6-3A district, a commercial district with an R9A residential equivalent that allows up to 8.5 FAR for residential use. Further west is Atlantic Terminal, a major transit, office, and retail hub, as well as Downtown Brooklyn, the city's third largest Central Business District. Southeast of the project area is an M1-1 zoning district, where the Department of City Planning and Community Board 8 are engaged in a neighborhood study known as M-Crown.

As part of the 2007 Fort Greene/Clinton Hill Rezoning (C 070430 ZMK, N 070431 ZRY), the project area was changed from M1-1 and R6 districts to R7A/C2-4, R7A, and R6A districts to protect the mid-block character of rowhouses along Clinton Avenue and encourage housing growth along the Vanderbilt Avenue and Atlantic Avenue corridors. Also, an Inclusionary Housing designated area (IHda) was established to encourage affordable housing. The R7A/C2-4 district is mapped to a depth of 100 feet from Atlantic Avenue. Beyond 100 feet, the western side of the block fronting Vanderbilt Avenue is mapped with an R7A district to a depth of 80 feet, while the eastern side fronting Clinton Avenue is mapped with an R6A district to a depth of 120 feet.

The project area is mapped with R7A/C2-4, R7A and R6A districts. R7A is a medium-density contextual residential district that allows up to 4.6 FAR for residential use when mapped concurrently with an IHda. Base heights are generally required to be between 40 and 80 feet with a maximum building height of 90 feet, which may be increased by five feet with a qualifying ground floor (at least 13 feet high). R6A is a medium-density contextual residential district that allows residential uses up to 3.0 FAR, a maximum base height of 40 to 60 feet, and a maximum

building height of 70 feet. C2-4 commercial overlays allow local retail and service-based uses up to 2.0 FAR with low parking requirements.

The area is located within the Transit Zone and well-served by public transit, with access to the Clinton-Washington Avenue C subway station at the north end of the block along Fulton Street, and the B, Q, D, N, R, 2, 3, 4, 5 lines and regional Long Island Rail Road (LIRR) at the Atlantic Avenue/ Barclays Center station six blocks to the west. Several bus routes are accessible nearby, including the B25 and B26 buses along Fulton Street, the B45 bus along Atlantic Avenue, and the B69 bus along Vanderbilt Avenue. In addition, a two-way bicycle path runs north-south along Vanderbilt Avenue.

The proposed actions would facilitate a new 237,146-square-foot mixed-use development containing 286 dwelling units, of which 86 would be designated affordable, and 34,034-square-foot of commercial floor area. Due to the separate ownership structure of the site's tax lots, the development would be constructed as two separate buildings consisting of a four-story building on Lot 59 (Clinton Building) and a 29-story tower on Lot 1 (Vanderbilt Building).

The Clinton Building would comprise 32,975 square feet situated at the corner of Clinton Avenue and Atlantic Avenue. The building would rise to a height of 52 feet and contain 9,553 square feet of ground floor retail, 9,801 square feet of commercial office space and 13,975 square feet of residential use. The residential entrance would be located on Clinton Avenue and commercial entrances would be located on both street frontages.

The Vanderbilt Building would be an 202,841-square-foot tower at the corner of Atlantic Avenue and Vanderbilt Avenue. The building would rise to a height of 312 feet and contain 184,536 square feet of residential floor area, 10,134 square feet of office space, and 8,171 square feet of ground floor retail. The residential entrance would be located on Vanderbilt Avenue and commercial entrances would be located on both street frontages. Neither the Clinton nor Vanderbilt Buildings would provide a loading berth or off-street parking.

The applicants propose that 30 percent of the residential floor area generated from the proposed zoning map amendment would be affordable pursuant to Option 2 of the Mandatory Inclusionary Housing (MIH) program. Since the proposed rezoning generates 135,510 square feet of residential floor area, 40,653 square feet (58 dwelling units) would be subject to MIH. The applicants propose 28 additional affordable units pursuant to the Affordable New York Housing Program, with income bands that have not yet been determined. As proposed, the development would contain 86 affordable units, of which 58 would be subject to MIH and 28 would be voluntarily provided, comprising approximately 30 percent of the 286 total units.

As described above, the proposed development would utilize approximately 70,000 square feet of unused development rights generated from the landmark church and Lots 51, Lots 1101-1118 and Lots 1001-1010, which would be distributed to the development site on Lots 1 and 59. Additionally, as required by ZR Section 74-711 , and facilitated by the purchase of development rights, the project would include the restoration of the church.

To facilitate the proposed development, the applicants seek a zoning map amendment, zoning text amendment, and two special permits.

#### SPECIAL PERMIT (C 190072 ZSK)

The applicants seek a special permit pursuant to ZR Section 74-711, which allows the modification of use and bulk regulations, except floor area, for zoning lots containing a landmark designated by the LPC, in order to further the preservation of such buildings. Upon merging zoning lots with the landmark church, the development site would be eligible for this special permit. On September 10, 2018, the LPC issued a report (LPC-19-30056, MOU-19-30056) stating that a program has been established for continuing maintenance, and that the proposed restorative work required under the program contributes to a preservation purpose. Below is a summary of the requested bulk modifications.

#### *Transfer of Floor Area Across District Boundaries ZR 77-02, 77-22*

Section 77-02 limits the transfer of floor area across zoning lots unless the zoning lot existed prior

to the effective date of the ZR or an applicable amendment. ZR 77-22 limits the maximum permitted FAR on each portion of the zoning lot to the adjusted maximum permitted FAR or the maximum FAR specified for that district, whichever is greater. The applicants are seeking these waivers to facilitate the transfer of up to 70,000 square feet of development rights across district boundaries to the development site.

*Tower Floor Area ZR 23-651(a)(3)*

Section 23-651(a)(3) requires that, for tower-on-a-base buildings with lot coverages between 34.0-34.9 percent, at least 58 percent of the total floor area permitted on the zoning lot must be located in stories either partially or entirely below a height of 150 feet. The proposed development would have 56.88 percent, or 134,880 square feet, of floor area in stories either partially or entirely below a height of 150 feet, less than the 58 percent or 137,546 square feet required, a difference of 1.12 percent or 2,666 square feet. This waiver is being requested to accommodate an LPC request to lower the base height to four stories to maximize visibility of the church's belfry, particularly from Vanderbilt Avenue.

*Minimum Street Wall Height ZR 23-651(b)(2)*

Section 23-651(b)(2) requires a minimum base height of 60 feet for tower-on-a-base buildings, which applies to the entire zoning lot pursuant to ZR 23-65. In response to LPC's request to improve visibility of the church's belfry, the development would maintain a four-story, 52-foot-high base height. The waiver is being requested to lower the base height in a manner that relates more harmoniously to the landmark church.

*Inner Court Regulations ZR 23-851(b)*

Section 23-851(b) requires that in R6-R10 districts, the area of an inner court shall not be less than 1,200-square-feet and the minimum dimension of such inner court shall not be less than 30 feet. Due to the irregular configuration of the development site, a waiver is being requested for the Clinton Building to have an inner court of 1,399-square-feet with a minimum dimension of 17 feet/7 inches on floors 3-4, 12 feet/5 inches less than required.

*Inner Court Regulations (ZR 23-852(b))*

Section 23-852(b) requires that in R6-R10 districts, the width of an inner court recess shall be at least equal to the depth of the inner court recess, except that such width need not exceed 30 feet. Due to the irregular shape of the Clinton Building, a waiver is requested to reduce the dimensions of the inner court recess.

*Commercial Rear Yard (ZR 33-292)*

Section 33-292 requires that in C1-C7 zoning districts, along such portion of a rear lot line that coincides with a rear lot line of a zoning lot in an adjacent residential district, an open area of at least 30 feet is generally provided along such boundary. A waiver is requested to maximize the efficiency of the proposed second floor commercial office space. Providing a 30-foot rear yard would leave the floor plate with a depth of only 50 feet.

*Residential Rear Yard ZR 23-52(b)*

Section 23-52(b) requires that a 30-foot residential rear yard be provided along the development site's rear lot line beginning at the level of the lowest residential story used for dwelling units that face such rear yard. Along the interior lot portion, a rear yard of 25 feet is required, which would leave the floor plate with a depth of only 55 feet, with an additional decrease to 45 feet with the 10-foot tower setback. In order to accommodate a double-loaded corridor, a waiver is requested to reduce the required residential rear yard from 25 to 16 feet.

*Window to Lot Line Distance ZR 23-861*

Section 23-861 requires a minimum of 30 feet between any legally required window and any rear lot line or side lot line, which can be reduced to the distance allowed for a shallow rear yard per ZR 23-52, but cannot be less than 20 feet. To improve floor plate efficiency and accommodate a double-loaded corridor, a waiver is requested to reduce the distance between legally required windows and the rear lot line from 20 to 16 feet on floors 3-4 and 6-29. There are no legally required windows on floor five, which is proposed to serve as a residential amenity space.

*Interior Lot Coverage ZR 23-16(a)*

ZR 23-16(a) sets the maximum lot coverage as 70 percent on an interior lot for buildings in R9 districts developed pursuant to tower-on-a-base provisions. The interior lot portion is 3,255 square feet, which would allow a maximum lot coverage of 2,278 square feet. To enhance building efficiency, a waiver is being requested to allow the Vanderbilt Building's lot coverage to be 71.3 percent, approximately 1.3 percent higher than permitted.

#### ZONING MAP AMENDMENT (C 190071 ZMK)

The applicants seek a zoning map amendment to rezone R7A/C2-4, R7A and R6A districts to an R9 district with a C2-5 commercial overlay. R9/C2-5 permits up to 8 FAR for residential use within an MIH area and up to 2 FAR for commercial use. From Atlantic Avenue, the R9/C2-5 district would extend a distance of 135 feet along Vanderbilt Avenue and 100 feet along Clinton Avenue, along with a depth of 100 feet from Vanderbilt Avenue. R9 is a high-density residential district subject to tower-on-a-base regulations. C2-5 is a commercial district that allows up to two stories of local retail and office uses with no off-street parking requirement for the commercial uses.

Additionally, the zoning map amendment would rezone portions of Lots 57 and 58, which are separate from the development site and merged zoning lot but within the current R7A/C2-4 district, to a R6A district. These lots contain residential uses built below the maximum 3.0 FAR permitted by the R6A district and comply with the R6A district's 70-foot maximum building height.

#### ZONING TEXT AMENDMENT (N 190074 ZRK)

The applicants also seek a zoning text amendment to designate the area covering the development site (Block 1020, Lots 1 and 59) as an MIH area mapped with Option 2. Option 2 requires that 30 percent of the residential floor area be set aside for affordable housing units for residents with incomes averaging 80 percent of the area median income (AMI). No more than three income bands can be used to average out to 80 percent, and no income band can exceed 130 percent of the AMI. The MIH area would be coterminous with the proposed R9/C2-5 portion of the rezoning area, where allowable residential capacity is being increased.

## SPECIAL PERMIT (C 190073 ZSK)

Section 25-23 requires parking spaces for 40 percent of the market-rate units in R9 districts, which would generate a requirement of approximately 91 spaces for the proposed development. To facilitate the provision of affordable housing within the Transit Zone, a special permit is being sought, pursuant to Section 74-533, to waive the parking requirement for market-rate units in the proposed development.

## ENVIRONMENTAL REVIEW

This application (C 190072 ZSK), in conjunction with the applications for the related actions (C 190071 ZMK, N 190074 ZRK, C 190073 ZSK), was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA) and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et seq. and the City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The lead is the City Planning Commission. The designated CEQR number is 18DCP179K.

In order to avoid the potential for significant adverse archaeological impacts as part of the Proposed Project, the Applicant entered into a Restrictive Declaration on September 24, 2018, and recorded on January 25, 2019 agreeing to conduct archaeological identification, investigation, and mitigation in accordance with the CEQR Technical Manual and LPC guidelines for archaeological work in New York City. Consequently, no significant adverse impact to archaeological resources are expected to result from the proposed action.

After a study of the potential environmental impact of the proposed actions, a Negative Declaration was issued on September 24, 2018. The Negative Declaration included an (E) designation (E- 499) to avoid the potential for significant adverse impacts related to hazardous materials, air quality or noise. The requirements of the (E) designation are described in the Environmental Assessment Statement and Negative Declaration.

On February 22, 2019, a Revised Environmental Assessment Statement (EAS) was issued that

incorporates an executed Restrictive Declaration binding the Applicant to conduct any necessary archaeological study and remediation prior to construction on the Development Site. The Revised EAS concludes that the Proposed Actions would not result in any new or different significant adverse impacts not already identified in the original EAS. The Revised Negative Declaration supersedes the Negative Declaration issue on September 24, 2018.

The City Planning Commission has determined that the proposed action will have no significant effect on the quality of the environment.

### **UNIFORM LAND USE REVIEW**

This application (C 190072 ZSK), in conjunction with the applications for the related actions (C 190071 ZMK and C 190073 ZSK), was certified as complete by the Department of City Planning on September 24, 2018, and was duly referred to Community Board 2 and the Brooklyn Borough President in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b), along with the related zoning text amendment (N 190074 ZRK), which was referred in accordance with the procedures for non-ULURP actions.

### **Community Board Public Hearing**

Brooklyn Community Board 2 held a public hearing on this application (C 190072 ZSK) on October 17, 2018. On November 14, 2018, by a vote of 31 in favor, seven opposed, and with no abstentions, the Community Board adopted a recommendation to approve the application with the following conditions:

- that the below-market rate apartments be affordable to households earning no more than 60 percent of Area Median Income (AMI) and
- that the developer apply to the Department of Transportation for a loading zone for the planned retail establishments.

### **Borough President Recommendation**

The Brooklyn Borough President held a public hearing on this application (C 190072 ZSK) on

November 27, 2018, and issued a recommendation approving this application on December 28, 2018, subject to the following conditions:

1. That prior to considering such applications, the City Council shall obtain commitments in writing from the developer, 550 Clinton Partners LLC and 539 Vanderbilt Partners LLC, that clarify how it would memorialize the extent that it would:
  - a. In lieu of MIH Option 2 and the Affordable New York Affordability Option B, provide a binding mechanism committing to Mandatory Inclusionary Housing (MIH) Option 1 and Affordability Option A, while maintaining the ratio of affordable units at 30 percent of the total number of dwelling units, and ensuring that all such units would be permanently affordable
  - b. Memorialize a bedroom mix with an increase in the number of family-sized affordable housing units
  - c. Implement outreach efforts to assist seniors households earning up to 40 percent AMI for single-person households, and 50 percent AMI for two-person households, as a means to maximize participation in the affordable housing lottery for the resulting very-low income eligible studio and one-bedroom units
  - d. Utilize any combination of locally-based affordable housing development non-profits to serve as the administering agent, and have one or more such entities play a role in promoting affordable housing lottery readiness
  - e. Revise special permit application drawings Z-011 Illustrative Ground Floor Plan, and, Z-151 and Z-152 Bulk Waiver Sections to notate a commitment to provide not less than 1,600 square feet (sq. ft.) of space as cultural use floor area as part of plans to be filed, inclusive of the Schedule A, with the New York City Department of Buildings (DOB)
2. That the City Council should consider increasing the amount of designated community facility or cultural use floor area as a means to maximize opportunity for locally based arts and dance entities
3. That prior to considering such applications, the City Council shall obtain commitments in writing from the developer, 550 Clinton Partners LLC and 539 Vanderbilt Partners LLC, that clarify how it would memorialize the extent that it would:

- a. Commit to Connecting Residents on Safer Streets (CROSS) Brooklyn coordination with the New York City Department of Transportation (DOT) and the New York City Department of Environmental Protection (DEP) to implement curb extensions as part of a Builders Pavement Plan and/or as treated roadbed sidewalk extensions, with a developer commitment to enter into a standard DOT maintenance agreement for the northern intersections of Clinton and Vanderbilt avenues with Atlantic Avenue, with the understanding that DOT implementation would not proceed prior to consultation with Brooklyn Community Board 2 (CB 2) and local elected officials
- b. Integrate additional resiliency and sustainability measures such as incorporating rain gardens, blue/green/white roof treatment, and/or solar panels
- c. Retain Brooklyn-based contractors and subcontractors, especially those who are designated local business enterprises (LBEs) consistent with Section 6-108.1 of the City's Administrative Code, and minority- and women-owned business enterprises (MWBEs) as a means to meet or exceed standards per Local Law 1 (no less than 20 percent participation), as well as coordinate the oversight of such participation by an appropriate monitoring agency

Be it Further Resolved:

1. That 550 Clinton Partners LLC and 539 Vanderbilt Partners LLC:
  - a. Commit to the following:
    - i. A building service workforce that is recruited from the local population and paid prevailing wages, with appropriate benefits
    - ii. A rat baiting plan implemented prior to and during demolition that includes site excavation and foundation preparation, in consultation with CB 2 and local elected officials
  - b. Coordinate with DOT to evaluate curbside signage and determine to what extent this section of Atlantic Avenue should be delineated as a loading zone during specific hours, including consideration for garbage pickup, in consultation with Community Board 2 (CB 2) and local elected officials

2. Should the City Council determination result in the project proceeding according to MIH Option 1, that the New York City Department of Housing Preservation and Development (HPD) modify its affordable housing lottery community preference standards to include the school zone, thus capturing the population of public school children residing at City-funded or -operated shelters
3. That HPD extend local preference to include residents of both Brooklyn Community Districts 2 and 8 (CDs 2 and 8), in writing, to City Council
4. That the CPC and/or the City Council call for the modification of the Mandatory Inclusionary Housing (MIH) section of the New York City Zoning Resolution (ZR) pertaining to MIH-designated areas to be adopted with a requirement that permits households with rent-burdened status (allow for exceptions to the 30 percent of income threshold for households paying the same or more rent than what the housing lottery offers) to qualify for such affordable housing units pursuant to MIH

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

On January 9, 2019 (Calendar No. 9), the City Planning Commission scheduled January 30, 2019 for a public hearing on this application (C 190072 ZSK) and the applications for the related actions (C 190071 ZMK, N 190074 ZRK, C 190073 ZSK). The hearing was duly held on January 30, 2019 (Calendar No. 31). There were seven speakers at the hearing in favor of the application.

The applicant team consisting of the applicant's land use attorney and project architect, provided an overview of the development proposal, including background on the site's location and context. The land use attorney explained that of the 286 total dwelling units, 58 units would be affordable pursuant to MIH, while 28 units would be affordable under the Affordable New York Housing Program. The attorney further explained that the requested special permit pursuant to Section 74-711 would allow floor area to be transferred across district boundaries. To better accommodate the proposed buildings on an irregularly shaped site, the attorney stated that several bulk modifications are being requested, along with a separate special permit seeking relief from the off-street residential parking requirement, due to the site's location within the Transit Zone.

The project architect described the landmark restoration plan, with pictures of the church and a diagram illustrating the proposed repairs to the façade, roof, and belfry, which were approved by LPC. The architect also described the development's proposed design and massing, noting that the shorter building base along Clinton Avenue was designed to respect the scale of buildings elsewhere on the block and preserve views of the belfry, particularly from Vanderbilt Avenue. The architect further noted that the exterior material and color palette were selected in consultation with LPC to be harmonious with the church. Regarding the restoration plans, the architect stated that the work would begin shortly after the approval of the requested actions, indicating that such restoration work is required to obtain a Certificate of Occupancy for the proposed development.

The attorney also clarified that the transfer sites are individual property owners and part of a zoning lot merger to form contiguity with the church site. Regarding the Borough President's recommendation to reduce the affordable housing income bands, the attorney stated that the applicants are in active discussions with the Council Member to lower the average AMI in a manner that is economically feasible. The attorney further explained that the applicant is willing to provide additional bicycle parking spaces above what is required under zoning and, with respect to the distribution of affordable units, that the buildings would be fully compliant with MIH regulations, with common entrances for all residents and shared access on floors three, four, and five.

A representative from the 32BJ property service workers' union expressed support for the proposed development, stating that the developer had committed to providing prevailing wages for the workers in the proposed buildings.

A pastor representing the St. Luke and St. Matthew Church and serving as a real estate manager for the diocese spoke in support of the proposal and its importance for both the church and the greater diocese network. The pastor stated that the full amount of transferred floor area is vital to financially supporting the scope of repairs, which would otherwise burden the congregation; based on an appraisal of the development rights, the work is estimated to total \$9 million, with half of the amount dedicated to the exterior restoration and the other half dedicated to long-term

maintenance and facility-based improvements to bathrooms, plumbing, and wiring. A senior warden for the church also spoke in favor, stating that completing the repairs would help attract future congregants.

Another representative of the applicant expressed support and explained that the manager of the locally popular restaurant/bar on the development site was given an opportunity to relocate within the proposed development but declined an offer.

There were no other speakers and the hearing was closed.

### **CONSIDERATION**

The Commission believes that this application for a special permit (C 190072 ZSK), in conjunction with the applications for the related actions (C 190071 ZMK, N 190074 ZRK and C 190073 ZSK), is appropriate.

Together these actions would facilitate the 809 Atlantic Avenue project, a 237,000-square-foot mixed-use development with 286 apartments (of which 86 would be affordable), office space, and retail uses, and support the restoration of the Church of St. Luke and St. Matthew, an LPC-designated individual landmark, within the Fort Greene/Clinton Hill neighborhood of Brooklyn. The Commission believes that this proposal will support the renovation and continued maintenance of a landmarked building, facilitate transit-oriented development along the 120-foot-wide Atlantic Avenue, strengthen this important regional corridor with active ground floor uses, second-story office space and an improved pedestrian streetscape.

The project area is situated on Atlantic Avenue between Clinton and Vanderbilt avenues, all of which are wide streets. Atlantic Avenue is a major east-west thoroughfare that stretches across the boroughs of Brooklyn and Queens. Several public transit options are available within a few blocks, including the C train at the Clinton-Washington Avenue subway station and multiple bus lines. A few blocks west is Atlantic Terminal, a regional shopping and transit hub with access to the LIRR, nine subway lines, and the Barclays Center arena. Vanderbilt Avenue is an active pedestrian

corridor and bicycle route, and Fulton Street is less than one block to the north, serving as an important neighborhood shopping and service corridor managed by a Business Improvement District. The project area benefits from strong public transit access, is situated on wide streets, and is proximate to an abundance of services, contributing to the appropriateness of the proposed residential density.

The Commission believes that the proposed bulk modifications will have minimal adverse effects on the structures or open space in the vicinity in terms of scale, location and access to light and air. Atlantic Avenue is an exceptionally wide corridor that is an appropriate location for tall buildings, with sufficient access to light and air, with further relief provided by the 80-foot-wide Vanderbilt and Clinton avenues. The 312-foot height of the proposed development is consistent with proposed buildings in the surrounding area, such as the Pacific Park site, where taller buildings are planned to be constructed. The applicants have also oriented the tower portion towards the corner of Atlantic and Vanderbilt avenues to more closely relate to the Pacific Park site, while maintaining a lower base near the church and the low-rise buildings along Clinton Avenue. Considering the immediate context, thoughtful orientation of the proposed bulk, and the site's location along wide streets, the Commission believes that the scale and height of the proposed development is appropriate and notes that the active ground floor retail use would further enliven the streetscape.

The proposed development was designed in a manner to be respectful of, and harmonious with, the landmarked church. To preserve visibility of the belfry, as recommended by LPC, the requested bulk modifications would allow an eight-foot reduction in the base height, from 60 to 52 feet, as well as lot coverage relief to shift bulk toward the tower portion near Vanderbilt Avenue. To facilitate the transfer of development rights from the preserved church and adjacent Lots 10, 51, 1001-1010, and 1101-1118, a waiver to transfer floor area across zoning district boundary lines is appropriate. With the transfer of its remaining development rights, the church will receive the maximum amount of funds to better address the needed repairs and long-term maintenance related to the façade, belfry, and interior facilities. Separate from the requested waivers, the Commission is pleased that the proposed development's materials and color palette were designed in

consideration of the restoration.

The Commission is also in receipt of a report dated September 10, 2018 (LPC-19-30056, MOU-19-30056) from LPC, stating that it has reviewed the proposal and that a program has been established for continuing maintenance that will result in the preservation of the church, and that the required restoration work under the continuing maintenance program contributes to a preservation purpose. The continuing maintenance program is contained within a restrictive declaration entered into in connection with this application. The Commission believes that the improvement of the church, to be facilitated by this special permit, will prevent further deterioration and restore the building to a sound, first-class condition.

The applicants also request bulk waivers due to the development site's irregular configuration and to improve building efficiency. The proposed modifications to the requirements for residential and commercial rear yards, inner court and inner court recesses, and minimum distance between legally required windows and lot lines, will maximize the efficiency of the tower portion and provide flexibility for a double-loaded corridor. Regarding the rear yard waivers, the Commission notes that the existing two-story residential building on Lot 53 at the rear of development site is currently set back 44 feet from its rear lot line and, when coupled with the proposed 16-foot setback provided along the applicant's rear lot line, would result in an approximately 61-foot rear yard equivalent, consistent with the citywide zoning requirement.

The proposed zoning map amendment (C 190071 ZMK) is appropriate. The rezoning action would increase the allowable residential FAR from 4.6 to 8.0 while eliminating the parking requirement for commercial uses. The Commission believes that the proposed R9 district with a C2-5 commercial overlay is an appropriate zoning district given the project's location along Atlantic Avenue, a 120-foot-wide corridor, and near multiple public transit options, including the regional Atlantic Terminal transit hub. The R9 district also roughly matches the density permitted under the adjacent C6-3A district, which permits up to 8.5 FAR for residential use. Mapping higher density zoning districts along wide streets directs neighborhood growth to locations where taller and denser buildings are appropriate without altering the lower scale, mid-block character of Fort

Greene and Clinton Hill. In particular, the R9 district will also allow bulk to be shifted to the corner of Vanderbilt Avenue and Atlantic Avenue, as it would permit a tower-on-a-base development, unlike the existing R7A contextual district, which would impose a more constrained building envelope. The C2-5 commercial overlay would also allow two stories of commercial uses, including office, services, and retail, helping enliven Atlantic Avenue and push residential units one story higher above the busy corridor.

The applicants also propose to rezone portions of Lots 57 and 58, which are not part of the proposed development site but are within the existing R7A/C2-4 district, to an R6A district. An R6A district is already mapped along a portion of the Clinton Avenue mid-block and would be extended across these two lots. The proposed R6A would better match the existing use, density, and heights of buildings on these lots, as they are rowhouses built to less than 3.0 FAR with maximum building heights of less than 70-feet, consistent with the allowable heights and densities of the R6A zoning district. The C2-4 commercial overlay would be removed completely, and the proposed C2-5 commercial overlay would not be mapped across these lots.

The proposed zoning text amendment (N 190074 ZRK) is appropriate. Establishment of an MIH area through the proposed zoning text amendment is consistent with City's policy of requiring affordable housing in areas being rezoned to allow for a substantial increase in residential capacity. The MIH area would be mapped coterminous with the proposed R9 zoning district, the portion of the project area where residential capacity would be substantially increased. The applicants are proposing to use MIH Option 2, and would therefore be required to dedicate 30 percent of the residential floor area as permanently affordable for households at an average of 80 percent of AMI. The Commission notes that the landmarked church and other lots are not being rezoned for increased residential capacity, and therefore the existing floor area that they generate and transfer to the proposed development site would not be subject to MIH. Nevertheless, the Commission is pleased that in addition to the 58 permanently affordable units subject to MIH, the applicants have expressed a commitment to provide an additional 28 units pursuant to the Affordable New York Housing Program. In response to the Community Board's and Borough President's recommendation to lower the affordable income bands, the applicant stated at the public hearing

that it is exploring additional options and is in active discussions with the Council Member to determine what is economically viable. While pleased that the applicant is exceeding the MIH requirement, the Commission also acknowledges that the intent of the LPC landmark program is to help generate funds from private developments for the restoration and continued maintenance of a landmarked building.

The proposed special permit (C 190073 ZSK) is appropriate. The applicant requests the grant of a special permit pursuant to ZR Section 74-533 to waive the required number of accessory parking spaces. In R9 residential districts, pursuant to ZR Section 25-23, the required number of off-street accessory parking spaces is 40 percent of the total non-income restricted residential units. As the proposed development is located within the Transit Zone, zoning regulations provide relief from this requirement. The Commission believes that the waiver is appropriate to facilitate the development of affordable housing. The proposed development would require 91 spaces for the non-income restricted units, but due to the site's irregular size, meeting the off-street parking requirements would necessitate multiple floors of either below-grade or above-grade parking, which would be expensive to construct and divert funds that could be used to provide affordable housing. The Commission notes that multi-level parking would also limit the size and location of the proposed commercial component, and negatively affect the streetscape. Accordingly, the applicant is seeking to waive all required accessory parking spaces to avoid the expense of constructing a multi-level subsurface parking garage that would be required within the footprint of the proposed building.

The Commission also believes that the waiver would not cause traffic congestion or adversely affect residents, businesses, or community facilities in the surrounding area. Multiple public transit options are available within a half-mile of the project area, and automobile ownership for the non-income restricted residents of the proposed development are projected to be relatively low. In an area with such strong access to public transit, the Commission supports the waiver of off-street residential parking requirement. Further, five off-street parking facilities are also located within a quarter-mile of the project area, along with several Citi Bike stations. Moreover, the Commission is pleased that, to promote greater mobility and encourage bicycling, the applicant has also agreed

to double the number of required bicycle parking spaces within the development.

The Commission also notes that, while not a condition of this approval, in response to the Brooklyn Borough President's recommendation to explore additional resiliency and sustainability measures as well as retain Brooklyn-based contactors and sub-contractors with local business enterprise (LBEs) and minority and women-owned business enterprises (MWBEs), that the applicant, in a letter addressed to the Brooklyn Borough President dated December 13, 2018, stated that it would incorporate various sustainability and resiliency elements into the design of the buildings by pursuing LEED Silver certification and would make commercially reasonable efforts to hire and retain M/WBE and LBE designated contractors. In that letter, the applicant noted that it is in discussion with local nonprofit-based organizations to serve as an administering agent for the affordable housing units, and that a portion of the commercial space would be occupied by the Jack Theater Company, an experimental theater company located in Clinton Hill.

Regarding the Community Board and Borough President recommendations to apply for an on-street loading zone in the absence of a dedicated loading berth for the ground floor commercial uses, the Commission encourages the applicants to coordinate with the Department of Transportation to explore safe and appropriate measures, while recognizing the potential challenges and conflicts of providing on-street loading along Atlantic Avenue.

## **FINDINGS**

The City Planning Commission hereby makes the following findings pursuant to Section 74-711 (Landmark preservation in all districts) of the Zoning Resolution:

- (1) such bulk modifications shall have minimal effects on the structures or open space in the vicinity in terms of scale, location and access to light and air.
- (2) [This finding is not applicable; no use modification is being requested]

## **RESOLUTION**

**RESOLVED**, that the City Planning Commission finds that the action described herein will have no significant impact on the environment; 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 consideration described in this report, the application submitted by submitted by 550 Clinton Partners LLC and 539 Vanderbilt Partners LLC pursuant to Sections 197-c and 201 of the New York City Charter, for the grant of a special permit pursuant to Section 74-711 of the Zoning Resolution to modify the zoning lot divided by district boundaries regulations of Section 77-02 (Zoning Lots not Existing Prior to Effective Date or Amendment of Resolution) and Section 77-22 (Floor Area Ratio); the lot coverage regulations of Section 23-16 (Special Floor Area and Lot Coverage Provisions for Certain Areas); the rear yard regulations of Section 23-52 (Special Provisions for Shallow Interior Lots), Section 33-26 (Minimum Required Rear Yards), and Section 33-29 (Special Provisions Applying along District Boundaries); the tower-on-a-base regulations of Section 23-651(a) (Tower regulations) and Section 23-651(b) (Building base regulations); the inner court regulations of Section 23-851 (Minimum dimensions of inner courts) and the inner recess regulations of Section 23-852 (Inner court recesses); and the minimum distance between legally required windows and lot line regulations of Section 23-86 (Minimum Distance Between Legally Required Windows and Walls or Lot Lines) in connection with a proposed mixed-use development on property located at 550 Clinton Avenue a.k.a. 539 Vanderbilt Avenue (Block 2010, Lots 1, 10, 51, 59, 1001-1010, and 1101-1118), in R6A, R7A and R9/C2-5 Districts, Borough of Brooklyn, Community District 2 as follows:

1. The property that is the subject of this application (C 190072 ZSK) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following plans, prepared by Morris Adjmi Architects, filed with this application and incorporated in this resolution:

<u>Dwg. No.</u>	<u>Title</u>	<u>Last Date Revised</u>
Z-001	Zoning Analysis	08/27/2018
Z-010	Site Plan	09/07/2018
Z-150	Bulk Waiver Plan	09/07/2018

Z-151	Bulk Waiver Sections	09/07/2018
Z-152	Bulk Waiver Sections	09/07/2018
Z-300	Tower Zoning Envelope Diagram	08/27/2018

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. 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 resolution and the restrictive declaration and any subsequent modifications to either document 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.
5. 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, sublessee or occupant.
6. Development pursuant to this resolution shall be allowed only after the restrictive declaration, executed by 550 Clinton Partners LLC and 539 Vanderbilt Partners LLC, the terms of which are hereby incorporated in this resolution, shall have been recorded and filed in the Office of the Register of the City of New York, New York County.

7. 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 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 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 to disapprove any application for modification, cancellation or amendment of the special permit.
  
8. 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 190072 ZSK), duly adopted by the City Planning Commission on February 25, 2019 (Calendar No. 2), is filed with the Office of the Speaker, City Council, and the Borough President together with a copy of the plans of the development, in accordance with the requirements of Section 197-d of the New York City Charter.

**MARISA LAGO**, *Chair*

**KENNETH J. KNUCKES, Esq.**, *Vice Chairman*

**ALLEN P. CAPPELLI, Esq., ALFRED C. CERULLO III, MICHELLE R. de la UZ, RICHARD W. EADDY, HOPE KNIGHT, ANNA HAYES LEVIN, ORLANDO MARÍN, RAJ RAMPERSHAD**, *Commissioners*



CITY OF NEW YORK  
**Community Board No. 2**

350 JAY STREET - 8TH FL.  
BROOKLYN, N.Y. 11201

(718) 596-5410 FAX (718) 852-1461  
cb2k@nyc.rr.com

ERIC ADAMS  
*Borough President*

SHIRLEY A. M<sup>o</sup>RAE  
*Chairperson*

ROBERT PERRIS  
*District Manager*

November 26, 2018

Marisa Lago, Chair  
City Planning Commission  
120 Broadway, 31st Floor  
New York, New York 10271

*via mail and calendaroffice@planning.nyc.gov*

Dear Chair Lago:

I am writing to inform you that Community Board 2 (CB2) has reviewed and made a determination on the "809 Atlantic Avenue Rezoning," four applications submitted on behalf of 550 Clinton Partners LLC and 539 Vanderbilt Partners LLC for an irregularly shaped development site at the southern end of the block bounded by Fulton Street and Clinton, Atlantic and Vanderbilt avenues, in Brooklyn.

The four applications consist of a zoning map change (C 190071 ZMK); two special permits (C 190072 ZSK and C 190073 ZSK) pursuant respectively to Section 74-711, "Landmark preservation in all districts," and Section 74-533, "Reduction of parking spaces to facilitate affordable housing," of the Zoning Resolution; and a zoning text amendment (N 190074 ZRK) establishing a Mandatory Inclusionary Housing (MIH) Area.

The community board held a public hearing on these applications on October 17, 2018 in the Dibner Building at the NYU Tandon School of Engineering, 5 Metrotech Center, in Brooklyn. Twelve of the 48 members of Community Board 2 on that date, or 25 percent, attended the hearing. (The two vacancies were filled after the hearing but prior to the community board's November general meeting.)

Following the hearing and discussion, the CB2 Land Use Committee voted seven in favor, four opposed, two abstention (7-4-2) to recommend that Community Board 2 support the applications on the conditions that the below-market rate apartments be affordable to households earning no more than 60 percent of Area Median Income (AMI) and that the developer apply to the Department of Transportation for a loading zone for the planned retail establishments.

On November 14, 2018, the community board voted 31 in favor, seven opposed, no abstentions (31-7-0) to ratify the Land Use Committee's conditional recommendation. Although the

Marisa Lago, Chair  
City Planning Commission  
November 26, 2018  
Page 2

community board did not express itself this way, I note that a cap of 60 percent of AMI is consistent with Option 1 as set forth in Section 23-154(d)(3) of the Zoning Resolution, "Inclusionary Housing."

Community Board 2 did not receive digital copies of the Community/Borough Board Recommendation forms for C 190071 ZMK, C 190072 ZSK and C 190073 ZSK. I am submitting herewith the paper forms executed by hand.

Thank you for the opportunity to comment.

Sincerely,



Irene Janner  
Acting Chairperson

Encl.

cc: Hon. Eric L. Adams  
Brooklyn Borough President  
Hon. Laurie Cumbo  
New York City Council  
Winston Von Engel, Brooklyn Borough Director  
Anand Amin, City Planner  
Department of City Planning  
Deirdre A. Carson, Shareholder  
Greenberg Traurig, LLP

IJ:RP



#

*809 Atlantic Avenue Rezoning*

CD 02

C 190071 ZMK

**IN THE MATTER OF** an application submitted by 550 Clinton Partners LLC and 539 Vanderbilt Partners LLC pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 16c:

1. eliminating from within an existing R7A District a C2-4 District bounded by a line 100 feet northerly of Atlantic Avenue, Clinton Avenue, Atlantic Avenue, and Vanderbilt Avenue;
2. changing from an R7A District to an R6A District property bounded by a line 100 feet northerly of Atlantic Avenue, a line perpendicular to the westerly street line of Clinton Avenue distant 100 feet northerly (as measure along the street line) from the point of intersection of northerly street line of Atlantic Avenue and the westerly street line of Clinton Avenue, and a line midway between Vanderbilt Avenue and Clinton Avenue;
3. changing from an R6A District to an R9 District property bounded by:
  - a. a line perpendicular to the easterly street line of Vanderbilt Avenue distant 135 feet northerly (as measured along the street line) from the point of intersection of the northerly street line of Atlantic Avenue and the easterly street line of Vanderbilt Avenue, a line midway between Vanderbilt Avenue and Clinton Avenue, a line 100 feet northerly of Atlantic Avenue, and a line 80 feet easterly of Vanderbilt Avenue; and
  - b. a line perpendicular to the westerly street line of Clinton Avenue distant 100 feet northerly (as measure along the street line) from the point of intersection of the northerly street line of Atlantic Avenue and the westerly street line of Clinton Avenue, Clinton Avenue, and a line 100 feet northerly of Atlantic Avenue;
4. changing from an R7A District to an R9 District property bounded by a line perpendicular to the easterly street line of Vanderbilt Avenue distant 135 feet northerly (as measured along the street line) from the point of intersection of the northerly street line of Atlantic Avenue and the easterly street line of Vanderbilt Avenue, a line 80 feet easterly of Vanderbilt Avenue, a line 100 feet northerly of Atlantic Avenue, a line midway between Vanderbilt Avenue and Clinton Avenue, a line perpendicular to the westerly street line of Clinton Avenue distant 100 feet northerly (as measure along the street line) from the point of intersection of the northerly street line of Atlantic Avenue and the westerly street line of Clinton Avenue, a line 100 feet northerly of Atlantic Avenue, Clinton Avenue, Atlantic Avenue, and Vanderbilt Avenue; and
5. establishing within the proposed R9 District a C2-5 District bounded by a line perpendicular to the easterly street line of Vanderbilt Avenue distant 135 feet northerly (as measured along the street line) from the point of intersection of the northerly street line of Atlantic Avenue and the easterly street line of Vanderbilt Avenue, a line midway between Vanderbilt Avenue and Clinton Avenue, a line perpendicular to the westerly street line of Clinton Avenue distant 100 feet northerly (as measure along the street line) from the point of intersection of the northerly street line of Atlantic Avenue and the westerly street line of Clinton Avenue, Clinton Avenue, Atlantic Avenue, and Vanderbilt Avenue;

Borough of Brooklyn, Community District 2, as shown on a diagram (for illustrative purposes only) dated September 24, 2018, and subject to the conditions of CEQR Declaration E-499.





**Brooklyn Borough President Recommendation**  
CITY PLANNING COMMISSION  
120 Broadway, 31<sup>st</sup> Floor, New York, NY 10271  
CalendarOffice@planning.nyc.gov



**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 representatives as indicated on the Notice of Certification.

**APPLICATION #:** 809 ATLANTIC AVENUE – 190071 ZMK, 190074 ZRK, 190072 ZSK, 190073 ZSK

Applications submitted by 550 Clinton Partners LLC and 539 Vanderbilt Partners LLC pursuant to Sections 197-c and 201 of the New York City Charter for zoning map and text amendments affecting a portion of block bounded by Atlantic, Clinton, and Vanderbilt avenues, and Fulton Street, in Brooklyn Community District 2 (CD 2). The zoning map amendments would rezone the development site and portions of adjacent properties from R6A, R7A, and R7A/C2-4 districts to R9/C2-5 and downzone portions of adjacent properties from R7A/C2-4 to R6A. The zoning text amendment would designate the rezoning area a Mandatory Inclusionary Housing (MIH) area. Additionally, the applicant seeks two special permits. The special permit pursuant to the New York City Zoning Resolution (ZR) Section 74-111 would transfer approximately 70,000 square feet (sq. ft.) of floor area to the development site, of which 60,000 sq. ft. would come from the landmarked Church of St. Luke & St. Matthew, and would allow for modification of height and setback, inner court, lot coverage, window to lot line, and yard regulations. The special permit pursuant to ZR Section 74-533 would waive the residential parking requirements of ZR Section 25-23. The proposed actions would facilitate the two distinct developments on two separate lots: a four-story building and a 29-story tower. The proposed development would contain a total of approximately 237,150 sq. ft. of floor area, with 34,035 sq. ft. of commercial use, and 204,115 sq. ft. of residential floor area, with primary frontage on Atlantic Avenue. The two buildings would contain approximately 286 units, of which 20 percent, or approximately 58 units, would be affordable to households earning an average 80 percent of Area Median Income (AMI), according to MIH Option 2, and an additional 10 percent or approximately 28 units, would be affordable to such households pursuant to the New York State Affordable New York program.

COMMUNITY DISTRICT NO. 2

BOROUGH OF BROOKLYN

**RECOMMENDATION**

APPROVE  
 APPROVE WITH  
MODIFICATIONS/CONDITIONS

DISAPPROVE  
 DISAPPROVE WITH  
MODIFICATIONS/CONDITIONS

SEE ATTACHED

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

December 28, 2018

\_\_\_\_\_  
DATE

**RECOMMENDATION FOR: 809 ATLANTIC AVENUE – 190071 ZMK, 190074 ZRK, 190072 ZSK, 190073 ZSK**

550 Clinton Partners LLC and 539 Vanderbilt Partners LLC submitted applications pursuant to Sections 197-c and 201 of the New York City Charter for zoning map and text amendments affecting a portion of block bounded by Atlantic, Clinton, and, Vanderbilt avenues, and Fulton Street, in Brooklyn Community District 2 (CD 2). The zoning map amendments would rezone the development site and portions of adjacent properties from R6A, R7A, and R7A/C2-4 districts to R9/C2-5 and downzone portions of adjacent properties from R7A/C2-4 to R6A. The zoning text amendment would designate the rezoning area a Mandatory Inclusionary Housing (MIH) area. Additionally, the applicant seeks two special permits. The special permit pursuant to New York City Zoning Resolution (ZR) Section 74-111 would transfer approximately 70,000 square feet (sq. ft.) of floor area to the development site, of which 60,000 sq. ft. would come from the landmarked Church of St. Luke & St. Matthew, and would allow for modification of height and setback, inner court, lot coverage, window to lot line, and yard regulations. The special permit pursuant to ZR Section 74-533 would waive the residential parking requirements of ZR Section 25-23. The proposed actions would facilitate the two distinct developments on two separate lots: a four-story building and a 29-story tower. The proposed development would contain a total of approximately 237,150 sq. ft. of floor area, with 34,035 sq. ft. of commercial use, and 204,115 sq. ft. of residential floor area, with primary frontage on Atlantic Avenue. The two buildings would contain approximately 286 units, of which 20 percent, or approximately 58 units would be affordable to households earning an average 80 percent of Area Median Income (AMI), according to MIH Option 2, and an additional 10 percent, or approximately 28 units, would be affordable to such households pursuant to the New York State Affordable New York program.

On November 27, 2018, Brooklyn Borough President Eric L. Adams held a public hearing on these zoning map and text amendments. There were three speakers on the item in opposition including a representative of 32BJ Service Employees International Union (32BJ), who noted the need for a commitment to well-paying building service jobs, a local homeowner who expressed concern about the potential for displacement and the impact of new development on historic properties, as well as a neighborhood activist who called attention to the limited capacity of local infrastructure and cited the need for deeply affordable housing, local jobs, and opportunities for youth.

In response to Borough President Adams' inquiry regarding the qualifying income range for prospective households based on household size, the anticipated rents based on the number of bedrooms, and the distribution of units by bedroom size, the applicant's representative stated that the 86 affordable units would consist of 28 studios, 30 one-bedroom apartments, 24 two-bedroom apartments, and four three-bedroom apartments. In addition to MIH, the applicant intends to seek benefits through the New York State Affordable New York program, with an option that would make 30 percent of the units affordable to households at an average of 80 percent AMI. If the applicant is successful, the affordable units will be targeted at 60, 80, and 100 percent AMI. In that case, the maximum qualifying income would be \$43,860 for a one-person household at 60 percent AMI, and \$112,700 for a five-person household at 100 percent AMI. At these affordability tiers, a studio unit at 60 percent AMI would rent for \$837 per month, while a three-bedroom unit at 100 percent AMI would rent for \$2,638 per month, according to New York City Department of Housing Preservation and Development (HPD) guidelines.

In response to Borough President Adams' inquiry as to whether one of the community's affordable housing administering agents would be used in the tenant selection process in order to ensure the highest level of participation from CD 2, and whether the applicant's marketing strategy would include a financial literacy campaign to assist local residents in becoming lottery-eligible, the representative stated intent to rely on an administering agent, which has not yet been identified. The

applicant plans to engage organizations such as Breaking Ground, the Fifth Avenue Committee (FAC), and Mutual Housing Association of New York (MHANY), and would seek to undertake a financial literacy campaign as part of the marketing strategy.

In response to Borough President Adams' inquiry regarding the incorporation of sustainable features such as blue, green, or white roof coverings, passive house design, permeable pavers, New York City Department of Environmental (DEP) rain gardens, solar panels, and/or wind turbines, the representative expressed intent to seek Leadership in Environmental Energy and Design (LEED) certification, but clarified that 809 Atlantic Avenue would not be a passive house project. The design would utilize white roof materials and implement stormwater management strategies, including rain gardens. The applicant would propose to deepen the existing tree pits by installing such rain gardens, in consultation with DEP.

In response to Borough President Adams' inquiry regarding the inclusion and participation of locally-owned business enterprises (LBEs) and women-owned business enterprises (MWBEs) in the construction process, the representative stated intent to hire By The Numbers (BTN) consultants to assist with the applicant's MWBE outreach program. The applicant is also in the process of negotiating a contract with 32BJ for the anticipated building service jobs.

Subsequent to the hearing, Borough President Adams received a letter from the applicant's representative, dated December 13, 2018, affirming the developer's intentions regarding maximizing community participation in the affordable housing, dedicated cultural space within the development, incorporation of sustainable design elements, and local hiring for construction jobs.

### **Consideration**

On November 14, 2018, Brooklyn Community Board 2 (CB 2) voted to approve this application, with the following conditions: that the affordable housing units be targeted to households earning an average of 60 percent AMI, and that the developer apply to the New York City Department of Transportation (DOT) to establish a loading zone for the planned retail establishments.

The 809 Atlantic Avenue site and block were rezoned as part of the 2007 Clinton Hill-Fort Greene contextual rezoning, which replaced an extensive R6 district with R6A and R7A contextual districts, designed to control out-of-scale development and preserve the area's historic character. The requested zoning map change would upzone the development site and parts of other lots from R7A to R9/C2-5, increasing the maximum permitted floor area ratio (FAR) from 4.6 to 8.0, with a mandatory affordable housing requirement and the opportunity to provide two floors of local commercial use. In addition to the development site, the rezoning area includes portions of four contiguous lots on Clinton Avenue. The rear portions of these lots adjacent to the development site will be zoned C9/C2-5. However, two of the lots, which fall within the R7A/C2-4 district, would be rezoned to R6A, for consistency with the others. As the site is located in a transit zone, no accessory parking would be required for the affordable housing component.

The requested actions would enable the redevelopment of 809 Atlantic Avenue, a property consisting of two lots presently occupied by automotive and parking uses. In order to realize the project, the applicant seeks to transfer 70,000 sq. ft. of unused development rights from five lots on the development block. The landmarked Church of St. Luke & St. Matthew would provide 60,000 sq. ft. of such development rights, while four lots improved with residential buildings of two to seven stories, (including a recently-constructed condominium) would transfer a combined 10,000 sq. ft. of excess rights. Use of these transferred rights would be according to a special permit that allows such transfers across zoning district boundary lines. If granted, together with the proposed rezoning, this would enable the applicant to accommodate much greater bulk and density than what would be permitted as-of-right.

The development site is situated in the Clinton Hill neighborhood, several blocks east of Atlantic Terminal, and the Special Downtown Brooklyn District (SDBD). North of Atlantic Avenue, the surrounding context is defined by large commercial and community facility uses, and low-rise residential buildings, including the Clinton Hill and Fort Greene historic districts, situated beyond Fulton Street. South of Atlantic Avenue, which forms the boundary between CD 2 and CD 8, the context is more industrial, with a substantial M1-1 zone slated for redevelopment as part of the Pacific Park project.

Borough President Adams generally supports land use actions that provide affordable housing, broaden opportunity for office development, and support the rehabilitation of a faith-based institution. Granting approval of the requested actions would allow the developer to construct a mixed-use commercial and residential tower that would help meet demand for new affordable housing, while activating Atlantic Avenue through ground floor retail space, as well as enable the Church of St. Luke & St. Matthew to preserve its building to a state of good condition.

Borough President Adams supports the development of underutilized land for productive uses that address the City's need for additional affordable housing. The proposed development would be consistent with Mayor Bill de Blasio's goal of achieving 300,000 affordable housing units over the next decade according to "Housing New York: A Five-Borough, Ten-Year Plan," as modified in 2017. It is Borough President Adams' policy to support the development of affordable housing and seek for such housing to remain "affordable forever," wherever feasible.

Brooklyn is one of the fastest-growing communities in the New York metropolitan area, and the ongoing Brooklyn renaissance has ushered in extraordinary changes that were virtually unimaginable even a decade ago. Unfortunately, Brooklyn's success has led to the displacement of longtime residents who can no longer afford to live in their neighborhoods. Borough President Adams is committed to addressing the borough's affordable housing crisis through the creation and preservation of needed affordable housing units for very low- to middle-income Brooklynites. Borough President Adams, therefore, supports developments that provide housing opportunities to a diverse range of household incomes, allowing a wide range of households to qualify for affordable housing through the City's affordable housing lottery.

The affordability options of the MIH program provide a range of opportunities to address the need for housing that serves a broad range of diverse incomes, consistent with Borough President Adams' objectives to provide affordable housing to households through various income band targets. According to MIH Option 2, development rights generated from rezoning the two sites would result in, at minimum, 30 percent of the residential zoning floor area made permanently affordable.

As a result, the development of 809 Atlantic Avenue would target units to households at multiple income tiers through the affordable housing lottery. Development adhering to the MIH program is also consistent with Borough President Adams' policy for affordable housing developments to remain permanently affordable.

The Church of St. Luke & St. Matthew is one of many faith-based organizations in Brooklyn with air rights that could be used to develop affordable housing in combination with a height-based rezoning. Borough President Adams supports the use of such rights to create affordable housing and generate other community benefits. His Faith-Based Development Initiative connects local houses of worship with information and resources to explore opportunities for affordable housing development. As a result of its involvement in the proposed development, the Church of St. Luke & St. Matthew would obtain resources that would legally require improvements to the building's exterior, according to the special permit that allows the transfer of its unused development rights. In addition, the church

would have to secure financial resources to support its mission-driven activities and services while ensuring the upkeep of its facilities in the future.

Borough President Adams believes the proposed height and density at this site is appropriate as the proposed zoning is essentially an extension of the density permitted by the existing C6-3A district across Clinton Street, is proximate to the high-rise Pacific Park development, and allows the transfer of rights from the Church of St. Luke & St. Matthew. The development site has sufficient access to public transit as it is served by the Eighth Avenue Local C train and multiple bus lines. The Clinton-Washington subway stop is located on the Fulton Street side of the development block. The B69 bus runs along Vanderbilt Avenue and stops on Atlantic Avenue, across from the project site. The B45 bus travels along Atlantic Avenue and stops half a block away. 809 Atlantic Avenue is also accessible via the B25 and B26 buses, which operate along Fulton Street. Finally, there are two large Citi Bike docking stations on Fulton Street, at Clermont and Waverly avenues.

Borough President Adams is generally supportive of the proposed development at 809 Atlantic Avenue. However, he believes that the requested zoning floor area increase should be achieved through the realization of additional public benefits pertaining to the provision of additional affordable housing that would target lower AMIs, present a more family-oriented bedroom mix, and achieve deeper affordability to accommodate seniors. In addition, the intended development should promote a range of his policies such as maximizing community participation to obtain the affordable housing units, providing affordable commercial space for local arts and cultural groups, advancing Vision Zero policies to improve pedestrian safety, incorporating resilient and sustainable energy and stormwater practices, and promoting local hiring for the project's construction. He also calls on the applicant to provide quality building service jobs, implement a rat baiting plan prior to demolition, and work with DOT to clarify loading issues on Atlantic Avenue. With regard to the affordable housing lottery, Borough President Adams believes that HPD should modify its community preference standards to include the local homeless student population, and, for this project, extend local preference for affordable housing units to residents of CD 2 and CD 8. Additionally, he calls on the City Planning Commission (CPC) and City Council to modify MIH regulations so as to qualify rent-burdened households for affordable housing developed pursuant to MIH.

### **Appropriate Provision of Affordable Housing**

Borough President Adams believes that market-rate residential development without affordable housing is not in the best interest of the Clinton Hill community. The site's existing R7A zoning is designated as a Voluntary Inclusionary Housing (VIH) district that provides a floor area bonus based on 80 percent of such floor area being dedicated for permanent affordable housing for households with incomes not exceeding 80 percent of AMI. However, such designation does not assure affordable housing would be constructed.

If the site were not rezoned and if it were developed pursuant to R7A VIH, it is reasonable to assume that it would yield 35 affordable housing units (1.15 FAR) along with 82 market-rate units (2.686 FAR) with the same 16,291 sq. ft. (0.764 FAR) of ground floor and 10,186 sq. ft. of cellar retail as proposed, if the 41 otherwise required parking spaces were waived according to a CPC special permit for new developments associated with landmark preservation. The remaining R7A (based on the remainder of 3.45 FAR) 17,857 sq. ft. transferred would result in 26 market-rate dwelling units, though per R7A VIH, there would be 14,331.5 sq. ft., representing 20 affordable housing units and 3,583 sq. ft., representing five market-rate housing units. If the R6A 41,691 sq. ft. of rights were transferred, the result would be 60 dwelling units, though 30 parking spaces would have been required unless otherwise part of the waiver.

Therefore, according to the existing zoning combined with the landmark special permit, there would be 35 to 55 permanently affordable housing units (50 to 52 would be required to qualify for the

Affordable New York program Affordability Option B) with 168 to 173 market rate units. Affordability Option B stipulates that at least 30 percent of the units must be affordable with a minimum of 10 percent set at up to 70 percent AMI, and 20 percent set at up to 130 percent AMI. It should be noted that the program does not require that rents remain affordable after the benefit expires.

The developer is seeking to modify a portion of the R7A VIH that would increase the 3.45 as-of-right FAR, with the option of 4.6 FAR based on 20 percent of the floor area being mandated as permanently affordable housing, to 8.0 FAR pursuant to R9 MIH. The resulting development proposes 58 permanently affordable housing units, according to MIH Option 2, from the segment of the zoning lot within the proposed R9 zoning district. This assumption precludes the availability of additional permitted floor area because the proposal is not assuming participation in the VIH program for the transferred R7A development rights. Nevertheless, as represented, participation through Affordable New York Affordability Option B would result in 86 initially affordable units, with the remaining 200 of the proposed 286 units being market rate. Therefore, through the adoption of the proposed rezoning and requested special permit, there might be a net increase of three to 23 permanently affordable housing units, 55 to 60 additional market-rate units (through which 27-32 of these units would comply with Affordable New York's program), with 18,940 sq. ft. of commercial office space.

Borough President Adams believes that targeting the affordable apartments at 809 Atlantic Avenue to such AMI levels would not realize appropriate benefit for residents of CD 2 in need of stable affordable housing. He believes that households with incomes below the proposed AMI tiers would not be able to utilize the housing lottery for 809 Atlantic Avenue to reduce their risk of displacement and/or rent-burdened status, or to remain in the neighborhood.

The Affordable New York housing program, formerly known as 421-a, provides developers with several affordability options, ranging from 25 to 30 percent of the units within a development that utilizes the program. If the affordable housing at 809 Atlantic Avenue developed pursuant to the Affordable New York program were restricted to Affordability Option A, rather than Affordability Option B, the AMI distribution would lead to 10 percent of the total number of units being offered at up to 40 percent AMI, 10 percent at up to 60 percent AMI, and five percent at up to 130 percent AMI, with the remainder being market rate.

The ZR specifies four options for new construction subject to MIH regulations. Only two of the options require making units available to very low-income households, which are more likely to be rent-burdened than households with greater earnings. MIH Option 2 requires that 30 percent of the MIH floor area be marketed at rents affordable to households earning an average of 80 percent AMI, whereas MIH Option 1 sets aside 40 percent of the units for households at up to 40 percent AMI, while mandating 25 percent of the total floor area as affordable housing.

While the median household income in CD 2 has increased in response to the significant number of new housing starts for the higher end of the marketplace, demographic trends suggest a great need for apartments affordable to low-income households. According to a recent study, the Fort Greene and Clinton Hill sections of CD 2 saw one of the largest rent increases in New York City between 2010 and 2018. Such increases are indicative of ongoing displacement pressure, including aggressive tactics by landlords, which include taking lawful advantage of preferential rent when there is a significant gap between charged rent and the legally-permitted regulatory rent at the time of lease renewal. Given these trends, Borough President Adams believes that the applications before him do not adequately benefit area residents who are at the greatest risk of displacement.

As Affordable New York Affordability Option A and MIH Option 1 provide affordable units at lower AMIs, Borough President Adams believes that it would be appropriate to designate these options in

place of what has been proposed by the applicant, in order to extend deeper affordability to lower-income households and provide more permanent affordable housing opportunities.

Mandating Affordable New York Option A in tandem with MIH Option 1 would better address the community's affordable housing needs and redirect the resulting public benefits to residents most in need of such affordable housing. Targeting some apartments to very low-income households also allows seniors, especially those in one-person households, to qualify for such studio and some one-bedroom units as part of affordable housing lotteries. Borough President Adams believes that providing affordable housing opportunities inclusive of very low-income households serves an important public purpose toward achieving a just and righteous city.

It should be acknowledged that MIH Option 1, based on the represented average apartment size, would reduce the number of permanently affordable housing units to 48 apartments, while Affordability Option A would reduce the total number of affordable apartments to 72 units. Based on the extent of public benefit achieved through MIH in itself, the amount of affordable housing that would be realized is not sufficient to support an increase in market-rate floor area from the current 3.45/4.6 FAR, according to R7A VIH zoning, to 8.0 FAR under R8 MIH.

Borough President Adams believes that significant upzonings should yield more affordable housing and, where appropriate, deeper levels of affordability, than upzonings that do not provide a comparable increase in density. As this inequity cannot be rectified directly through MIH, Borough President Adams believes that maximizing the number of affordable units while lowering the levels of household affordability could be achieved by blending what is required, according to the proposed MIH Option, with the establishment of a voluntary special bulk permit. However, in the absence of such a special permit within the ZR, he believes that applicants could achieve such policy through a legally binding mechanism.

Borough President Adams believes that such mechanism is justified by the extent of private benefits derived from the nearly 75 percent increase in floor area for the portion of the assembled site that would be rezoned to R9 in comparison to the R7A inclusionary zoning rights and the reduction in costs achieved by waiving the standard requirement to provide structured parking, as well as the fact that 55 permanently affordable units could be achieved without a rezoning (under VIH), compared to the 58 proposed MIH units. He therefore believes it would be appropriate to request a commitment that would require the provision of the represented 86 affordable housing units pursuant to Affordable New York Affordability Option A and MIH Option 1 and specify that all such units be permanently affordable.

While this would reduce rent collection for the affordable housing units from an average of 80 percent AMI to an average of 60 percent AMI, the financial benefit from the additional zoning rights and the removal of the otherwise required parking appears to justify the increased public benefit represented by the proposed affordable housing.

Therefore, in lieu of MIH Option 2 and Affordable New York Affordability Option B, Borough President Adams believes that, prior to considering the application, the City Council obtain commitments in writing from the developer, 550 Clinton Partners LLC and 539 Vanderbilt Partners LLC, that provide a legally binding mechanism, committing to a substantial increase in affordable housing floor area and reduction of the average rent for such units according to MIH Option 1 and Affordability Option A, while maintaining the ratio of affordable units to 30 percent of the total number of dwelling units, and that all such units would be permanently affordable.

### **Bedroom Mix**

A recent report has identified that rent-burdened households, which typically represent those applying to the City's affordable housing lotteries, are more likely to require family-sized units. Therefore, Borough President Adams seeks for new developments to achieve an affordable unit mix that would adequately reflect the needs of low- to middle-income rent-burdened families.

Borough President Adams believes that right-sizing the bedroom distribution of affordable housing units should be a higher priority than merely the number of affordable housing units itself. Borough President Adams believes that discretionary land use actions are appropriate opportunities to advance policies that constrain what would otherwise be permitted as-of-right.

As presented by the applicant, the proposed bedroom mix at 809 Atlantic Avenue is heavily weighted toward studio and one-bedroom apartments. Floor area developed pursuant to MIH would result in 19 studios, 20 one-bedroom units, 16 two-bedroom units, and three three-bedroom units. The Affordable New York program would yield an additional nine studios, 10 one-bedroom units, eight two-bedroom units, and one three-bedroom unit.

The requested land use actions present an opportunity to ensure that such representation of accommodations for family-sized apartments would be more consistent with Borough President Adams' policy of advocating for at least 50 percent two- or three-bedroom affordable housing units and at least 75 percent one- or more bedroom affordable housing units, consistent with the zoning text for MIH floor area, pursuant to ZR Section 23-96(c)(1)(ii).

In order to ensure that there be an increase of the number of family-sized units provided in the development, Borough President Adams believes that, prior to considering the application, the City Council obtain commitments in writing from the developer, 550 Clinton Partners LLC and 539 Vanderbilt Partners LLC, that clarify how it would memorialize a bedroom mix having more family-sized affordable housing units.

### **Achieving Deeper Affordability for Smaller Units to Improve Affordability for Senior Households**

In addition to addressing the need for family-sized units, there is a pressing need for affordable apartments for the aging population, many of whom have limited financial means. Older New Yorkers are a rapidly growing segment of the city's population, with more than 300,000 seniors residing in Brooklyn alone. As noted in DCP's "Zoning for Quality and Affordability" (ZQA) study, New York's senior population is expected to grow 40 percent by 2040. According to the study, there were 60 applicants for every apartment in lotteries conducted by HPD for senior housing developments. A recent study by LiveOn NY found that there are 200,000 New Yorkers aged 62 and older on the City's affordable housing waiting lists, with an average wait of seven years.

As a significant number of elderly households have negligible income, providing opportunities for area seniors to secure quality affordable housing and remain in their communities is a priority for Borough President Adams. In an era in which the federal government has moved away from funding affordable housing for seniors, too few affordable apartments for seniors are being produced, leaving tremendous demand for age-based affordable housing in Brooklyn. As a result, many elderly households are experiencing increased rent burden to remain in their homes, exhausting their life savings just to keep up with day-to-day living until they are unable to remain in the area where they have lived for many years.

While Borough President Adams typically seeks a 50/50 blend of studios, one-bedrooms, two-bedrooms, and three-bedrooms, he believes that when studio and one-bedroom apartments are rented at 40 percent AMI or below, such apartments might be more affordable to senior households.

Therefore, it is acceptable to set aside a portion of the units equal to or greater than 50 percent for studio and one-bedroom units.

Moreover, development pursuant to Affordable New York Affordability Option A would ensure that a percentage of units at 809 Atlantic Avenue are available to senior households, including those that are formerly homeless. Additionally, Borough President Adams believes that there are appropriate means to assist senior citizen households in becoming eligible for the affordable housing lottery. With such efforts, it is reasonable to expect that a greater share of such apartments would be awarded to senior households.

Therefore, prior to considering the application, the City Council should obtain commitments, in writing, from 550 Clinton Partners LLC and 539 Vanderbilt Partners LLC, that would incorporate language clarifying the extent that they would conduct outreach to provide opportunities for senior households, including those that are formerly homeless, with regard to studio and one-bedroom apartments affordable to one- or two-person households with rents at 40 percent AMI.

### **Maximizing Community Participation of the Affordable Housing**

The ZR requires inclusionary housing affordable housing units to be overseen by a non-profit administering agent, unaffiliated with the for-profit developing entity, except when otherwise approved by HPD. Such administering non-profit becomes responsible for ensuring that the affordable housing remains in accordance with its regulatory agreement, which governs the development's affordable housing plan. These tasks include verifying a prospective tenant household's qualifying income, and approving the rents of such affordable housing units. The administering non-profit is responsible for submitting an affidavit to HPD attesting that the initial lease-up of the affordable housing units is consistent with the income requirements, as well as following up with annual affidavits to ensure compliance.

Various non-profits in Brooklyn have proven track records of successfully marketing affordable housing units, as well as promoting affordable housing lottery readiness through educational initiatives. It is Borough President Adams' policy to advocate for affordable housing non-profits to play a contributing role in maximizing community participation in neighborhood affordable housing opportunities, including serving as non-profit administering agents for new developments involving affordable housing. Borough President Adams recognizes that CD 2 is served by several non-profit housing advocates, such as FAC, IMPACCT Brooklyn, and MHANY, with proven track records of marketing affordable housing units and promoting affordable housing lottery readiness through educational initiatives.

In the December 13, 2018 letter to Borough President Adams, the applicant's representative reiterated the developer's intent to work with an affordable housing administering agent and engage the community in a financial literacy campaign, in order to meet and/or exceed 50 percent local preference for the affordable housing units. The letter also confirmed that 550 Clinton Partners LLC and 539 Vanderbilt Partners LLC has initiated discussions with FAC and IMPACCT Brooklyn.

Borough President Adams believes that prior to considering the application, the City Council should obtain commitments, in writing, from the applicant, 550 Clinton Partners LLC and 539 Vanderbilt Partners LLC, clarifying how it would memorialize utilizing one or more locally-based affordable housing development non-profits to serve as the administering agent, and/or have such entities play a role in promoting affordable housing lottery readiness.

### **Set Aside Portion of Commercial Space for Local Cultural Entities**

It is one of Borough President Adams' policies to assist community-based non-profit organizations with securing affordable space. These organizations play an important role in the neighborhoods they

serve, though it is too often a challenge to secure sufficient affordable space to grow and maintain their operations. Many cultural organizations have contacted Borough President Adams seeking assistance in securing space to expand and sustain their programming. In response to those concerns, Borough President Adams' policy is to review discretionary land use actions for their appropriateness to promote cultural activities.

In June 2016, Borough President Adams released "All the Right Moves: Advancing Dance and the Arts in Brooklyn," a report examining the challenges facing artists in the borough, along with accompanying recommendations. The report highlighted the benefits of arts and dance, including maintaining physical fitness and enjoying creative self-expression, as well as contributions to the vibrant culture of Brooklyn. Borough President Adams finds many challenges facing the local arts community, such as an absence of diversity — fewer than half of the individuals working in dance in Brooklyn are people of color based on 2000 United States Census data. Additionally, funding for the arts has decreased dramatically in New York City in recent years, including by 37 percent from the New York State Council of the Arts (NYSCA), 15 percent from the National Endowment for the Arts (NEA), and 16 percent from the New York City Department of Cultural Affairs (DCLA).

Data show that such cultural activities create a variety of positive contributions, including combating the borough's high rate of obesity — as of 2016, 61 percent of adults are overweight or obese, according to the New York State Department of Health (NYSDOH) — and helping children succeed in school, a finding supported by research released by the Citizens' Committee for Children of New York, Inc. Demand for cultural programs continues to grow across Brooklyn. A 2015 report from the Center for an Urban Future found a 20 percent increase in attendance at events organized by local cultural institutions since 2006.

Many cultural and dance organizations have contacted Borough President Adams seeking assistance with securing space to grow and sustain their programming. In response to those concerns, Borough President Adams' policy is to review discretionary land use actions for their appropriateness to promote cultural and dance activities.

Given the site's proximity to the Brooklyn Cultural District, and its accessibility via public transit, Borough President Adams believes that 809 Atlantic Avenue is well-suited for inclusion of arts and cultural activities as well as other community uses. At Borough President Adams' public hearing, the applicant's representative stated that the developer intends to provide space to accommodate the Jack Theater Company, an experimental arts group based in Clinton Hill. It was subsequently clarified that somewhere between 1,600 and 2,000 sq. ft. would be provided for this use in the building's cellar. Borough President Adams believes that such commitment should be memorialized prior to the approval of the requested land use actions. One possible means might be to include appropriate references in the drawings that are part of the requested special permit actions. In addition, it should be noted that the requested rezoning would enable the developer to provide 18,940 sq. ft. of second floor office space while the requested special permit to remove the parking requirement enables the cellar floor to accommodate 10,018 sq. ft. of retail floor area, including the 1,600 to 2,000 sq. ft. intended to house a locally-based cultural entity. Borough President Adams believes that in addition to the stated intent to house the Jack Theater Company, based on the nearly 29,000 sf. ft. of developer benefit that would result from the requested land use actions, 809 Atlantic Avenue should provide an increased public benefit by making a portion of one or more floors, including of the cellar currently intended for commercial use, available to other local arts and cultural groups, and/or locally-based community organizations, at reduced rents.

In the December 13, 2018 letter to Borough President Adams, the applicant's representative affirmed the developer's commitment to provide space for the Jack Theater Company within 809 Atlantic Avenue.

Borough President Adams believes that prior to considering the application, the City Council should obtain commitments, from the applicant, 550 Clinton Partners LLC and 539 Vanderbilt Partners LLC, such as through modifications of the special permit application drawings being revised where appropriate, to notate a commitment to provide not less than 1,600 sq. ft. for space as cultural use floor area as part of the plans filed, inclusive of Schedule A, with the New York City Department of Buildings (DOB). In addition, the City Council should consider increasing the amount of designated community facility or cultural use floor area provided at below-market rents to accommodate such additional arts and/or cultural organizations.

### **Advancing Vision Zero Policies**

Borough President Adams is a supporter of Vision Zero, including such practices that extend sidewalks into the roadway as a means of shortening the path where pedestrians cross in front of traffic lanes. These sidewalk extensions, also known as bulbouts or neckdowns, make drivers more aware of pedestrian crossings and encourage them to slow down.

In 2015, Borough President Adams also launched his own initiative, Connecting Residents on Safer Streets (CROSS) Brooklyn. This program supports the creation of bulbouts or curb extensions at dangerous intersections in Brooklyn. During the program's first year, \$1 million was allocated to fund five dangerous intersections in Brooklyn. By installing more curb extensions, seniors will benefit because more of their commutes will be spent on sidewalks, especially near dangerous intersections. At the same time, all users of the roadways will benefit from safer streets.

In the vicinity of 809 Atlantic Avenue, Atlantic Avenue is a designated New York City through truck route with multiple intersections lacking traffic controls such as stop signs or traffic lights. Given the mixed commercial, manufacturing, and residential character of Atlantic Avenue, as well as the foot traffic stemming from the Atlantic Terminal, the residents expected to occupy the proposed development, together with potential users of its retail establishments, it is important to advance improvements that promote pedestrian safety at crossings along Atlantic Avenue.

Borough President Adams believes there is an opportunity to implement the provision of a curb extension, either as a raised extension of the sidewalk or as a protected area as defined by the installation of temporary perimeter bollards bordering a section of roadbed where gravel and/or paint is applied, per his CROSS Brooklyn initiative, where Clinton and Vanderbilt avenues intersect Atlantic Avenue. This is particularly important as the proposed development will have retail entrances on all three streets.

Borough President Adams recognizes that the costs associated with the construction of sidewalk extensions can be exacerbated by the need to modify infrastructure and/or utilities. Therefore, where such consideration might compromise feasibility, Borough President Adams urges DOT to explore the implementation of either protected painted sidewalk extensions defined by a roadbed surface treatment or sidewalk extensions as part of the Builders Pavement Plan. If the implementation meets DOT's criteria, the agency should enable 550 Clinton Partners LLC and 539 Vanderbilt Partners LLC to undertake such improvements after consultation with CB 2, as well as local elected officials, as part of its Builders Pavement Plan. Where that is not feasible, as the implementation of a sidewalk extension through roadbed treatment requires a maintenance agreement that indemnifies the City from liability, contains a requirement for insurance, and details the responsibilities of the maintenance partner, Borough President Adams would expect 550 Clinton Partners LLC and 539 Vanderbilt Partners LLC to commit to such maintenance as an ongoing obligation.

Therefore, prior to considering any rezoning, the City Council should seek a demonstration from 550 Clinton Partners LLC and 539 Vanderbilt Partners LLC of their implementation of CROSS Brooklyn in

coordination with DEP and DOT to install curb extensions either as part of a Builders Pavement Plan or as treated roadbed sidewalk extensions. The City Council should further seek demonstration of the developer's commitment to enter into a standard DOT maintenance agreement for the intersections of Clinton and Vanderbilt avenues with Atlantic Avenue. Furthermore, DOT should confirm that implementation would not proceed prior to consultation with CB 2 and local elected officials.

### **Advancing Resilient and Sustainable Energy and Stormwater Management Policies**

It is Borough President Adams' sustainable energy policy to promote opportunities that utilize blue/green/white roofs, solar panels, and/or wind turbines, as well as passive house construction. He encourages developers to coordinate with the New York City Mayor's Office of Sustainability, the New York State Energy Research and Development Authority (NYSERDA), and/or the New York Power Authority (NYPA) at each project site. Such modifications tend to increase energy efficiency and reduce a development's carbon footprint. The proposed development offers opportunities to explore resiliency and sustainability measures such as incorporating blue/green/white roof finishes, passive house construction principles, solar panels, and wind turbines in the development.

Furthermore, as part of his flood resiliency policy, Borough President Adams also encourages developers to introduce best practices to manage stormwater runoff such as incorporating permeable pavers and/or establishing rain gardens that advance DEP's green infrastructure strategy. Borough President Adams believes that sidewalks with nominal landscaping and/or adjacent roadway surfaces are potential resources that could be transformed through the incorporation of rain gardens, which provide tangible environmental benefits through rainwater collection, improved air quality, and streetscape beautification. Tree plantings can be consolidated with rain gardens as part of a more comprehensive green infrastructure strategy. In addition, blue/green roofs, permeable pavers, and rain gardens would divert stormwater from the City's water pollution control plants.

Borough President Adams believes it is appropriate for the developer to engage government agencies, such as the Mayor's Office of Sustainability, NYSERDA, and/or NYPA, to give consideration to government grants and programs that might offset costs associated with enhancing the resiliency and sustainability of this development site. One such program is the City's Green Roof Tax Abatement (GRTA), which provides a reduction of City property taxes by \$4.50 per square foot of green roof, up to \$100,000. The DEP Office of Green Infrastructure advises property owners and their design professionals through the GRTA application process. Borough President Adams encourages the developer to reach out to his office for any help in opening dialogue with the aforementioned agencies and further coordination on this matter.

The proposed developments offer opportunities to explore resiliency and sustainability measures such as incorporating blue/green/white roof finishes, passive house construction principles, solar panels, and wind turbines in the development. The required Builders Pavement Plan provides an opportunity to incorporate DEP rain gardens along the site's Atlantic, Clinton, and Vanderbilt avenue frontages. Planting street trees on Atlantic and Vanderbilt avenues would provide shade on days of excessive heat, as well as other aesthetic, air quality, and enhanced stormwater retention benefits, whereas existing tree pits on Clinton Avenue could be integrated with new rain gardens. It should be noted that a rain garden would require a maintenance commitment and attention from the landlord. Maintenance includes cleaning out debris and litter that can clog the inlet/outlet and prevent proper water collection, regular inspection to prevent soil erosion, watering during dry and hot periods, and weeding to keep the plants healthy and uncongested for proper water absorption. However, the implementation of rain gardens could help advance DEP green water/stormwater strategies, enhancing the operation of the Red Hook Wastewater Treatment Plant during wet weather. Such rain gardens have the added benefit of serving as a streetscape improvement.

In the December 13, 2018 letter to Borough President Adams, the applicant's representative stated intent to explore integration of the following sustainability features at 809 Atlantic Avenue: "Zone Green," deeper tree pits to support the long-term growth of street trees; "blue roofs" to capture and slowly release rainwater to mitigate runoff impact; vegetative "green roofs" to absorb rainwater and provide insulation, which will be planted with native plantings and irrigated with a high-efficiency irrigation controller to reduce baseline water consumption; a high-efficiency HVAC system; high-efficiency water fixtures; utility sub-metering; regionally-sourced construction materials; implementation of a construction waste management program; use of materials designed to reduce carbon emissions; utilization of energy modelling software to create an overall more efficient building; full building commissioning to ensure all equipment and controls are operating as designed and as efficiently as possible, and pursuit of LEED Silver certification.

Borough President Adams believes that 550 Clinton Partners LLC and 539 Vanderbilt Partners LLC should consult with DEP, DOT, and the New York City Department of Parks and Recreation (NYC Parks) for consideration regarding the inclusion of a rain garden with integration of street trees as part of a Builders Pavement Plan. Where the agencies have interest in implementing an enhancement, consultation should be initiated with CB 2 and local elected officials prior to agreeing to take action.

Therefore, prior to considering the application, the City Council should obtain in writing from the applicant, 550 Clinton Partners LLC and 539 Vanderbilt Partners LLC, commitments that clarify how it would memorialize integrating resiliency and sustainability features. The City Council should further seek demonstration of 550 Clinton Partners LLC and 539 Vanderbilt Partners LLC's commitment to coordinate with DEP, DOT, and NYC Parks regarding the installation of DEP rain gardens and tree plantings, and/or the provision of sidewalk extensions, as part of a Builders Pavement Plan, for development site intersections in consultation with CB 2 and local elected officials.

### **Jobs**

Borough President Adams is concerned that too many Brooklyn residents are currently unemployed or underemployed. It is his policy to promote economic development that creates more employment opportunities. According to the Furman Center's "State of New York City's Housing and Neighborhoods in 2017," double-digit unemployment remains a pervasive reality for several of Brooklyn's neighborhoods, with more than half of the borough's community districts experiencing poverty rates of nearly 20 percent or greater. Prioritizing local hiring would assist in addressing this employment crisis. Additionally, promoting Brooklyn-based businesses, including those that qualify as LBEs and MWBEs, is central to Borough President Adams' economic development agenda. This site provides opportunities for the developer to retain a Brooklyn-based contractor and subcontractor, especially those who are designated LBEs consistent with Section 6-108.1 of the City's Administrative Code, and MWBEs who meet or exceed standards per Local Law 1 (no less than 20 percent participation).

At Borough President Adams' public hearing, the applicant's representative stated intent to work with a compliance firm, BTN Consulting, to ensure that 809 Atlantic Avenue meets the City's MWBE hiring goals.

In the December 13, 2018 letter to Borough President Adams, the applicant's representative noted that the developer has met with New York City Department of Small Business Services (SBS)'s representatives to ensure LBE and MWBE participation in the construction of 809 Atlantic Avenue. The applicant will also make reasonable efforts to prioritize and pursue retention of LBE subcontractors, especially those who are designated as MWBE, to meet or exceed City hiring goals.

Borough President Adams believes that prior to considering the application, the City Council should obtain commitments in writing from the applicant, 550 Clinton Partners LLC and 539 Vanderbilt Partners LLC, to memorialize retention of Brooklyn-based contractors and subcontractors, especially those who are designated LBEs consistent with Section 6-108.1 of the City's Administrative Code and MWBE as a means to meet or exceed standards per Local Law 1 (no less than 20 percent participation), as well as coordinate the oversight of such participation by an appropriate monitoring agency.

### **Prevailing Wages and Local Hiring for Building Service Workers**

Jobs within the building service and industrial sector have long served as a pathway to middle-class living for lower-income individuals, including immigrants and people of color. Like industrial jobs, building service jobs have low barriers to entry and real career prospects. When compensated at prevailing wage standards, such jobs provide average wages twice those of the retail sector. Additionally, building service opportunities are often filled through local hiring.

Borough President Adams believes that it is appropriate to advocate for economic opportunities that allow families to remain in their neighborhoods, by securing sufficient income to alleviate their rent burdens. He further believes that building service positions often result in locally-based employment. Therefore, Borough President Adams strongly encourages 550 Clinton Partners LLC and 539 Vanderbilt Partners LLC to commit to hiring locally for building service jobs and paying prevailing wages to this workforce.

### **Implementing a Rat Mitigation Plan in and Around the Development Site to Address Known Infestation Issues in Clinton Hill**

In Clinton Hill and nearby neighborhoods, recent construction has disturbed rat colonies and dens, creating a public health and quality-of-life issue for local residents. Recently, Borough President Adams met with those living in the vicinity of the Pacific Park development to observe the problem firsthand. He has since engaged with City Council representatives on proposed legislation that would enforce rat abatement standards during construction phases when rat colonies and their dens are most likely to be disturbed. These include site preparation activities such as borings and drilling followed by excavation, underpinning, and preparation for pouring concrete foundations and footings. Borough President Adams hopes that City Council involvement will lead to certification of rat abatement mitigation procedures at multiple stages of development projects.

However, as such standards are not in place today, Borough President Adams believes that it is appropriate to utilize his advisory role in the ULURP process to secure rat abatement mitigation procedures in order minimize quality-of-life issues for the development's Clinton Hill neighbors. Without adequate abatement and mitigation measures, demolition and excavation at 809 Atlantic Avenue may create ground disturbances that exacerbate the existing rodent problem in Clinton Hill. Therefore, Borough President Adams urges the developers to create a rat mitigation strategy including, but not limited to, a robust baiting plan, rat-related enforcement measures, and other pest control measures in and around the proposed development site.

Therefore, Borough President Adams believes that 550 Clinton Partners LLC and 539 Vanderbilt Partners LLC should commit to a rat mitigation plan implemented prior to and during demolition that includes site excavation and foundation preparation, in consultation with CB 2 and local elected officials.

### **Facilitating Loading on Atlantic Avenue**

Borough President Adams acknowledges the concern held by several members of CB 2 deliveries to the 809 Atlantic Avenue's commercial tenants via street loading, given the extent of the ground-floor retail frontage on Atlantic Avenue. As the proposed development is not expected to provide a loading

berth, commercial and residential deliveries would be made via street loading. As depicted, the building's retail entrances would be located along three street frontages, though the extensive Atlantic Avenue frontage and its truck route status might likely result in more deliveries along this street. Given the extensive volume of traffic using this route, loading activities could result in unfavorable consequences.

Borough President Adams concurs with members of CB 2 that it is important to clarify how deliveries and refuse removal for the building's occupants would be conducted on these streets. He believes that the applicant, 550 Clinton Partners LLC and 539 Vanderbilt Partners LLC, should at minimum coordinate with DOT to evaluate curbside signage and determine to what extent this section of Atlantic Avenue and/or Clinton and Vanderbilt avenues should be delineated as a loading zone during specific hours, including consideration for garbage pickup, in consultation with CB 2 and local elected officials.

### **Community Preference: Inclusion of Homeless Shelter Student Population by School Zone**

New York City's community preference policy for affordable housing lotteries provides a pathway for reaching 50 percent or more of applicants residing in the community district where affordable housing is built. There are additional pathways for priority lottery selection such as United States Armed Forces veteran status, certain disabilities, and other categories. Given the significant increase in the number of homeless families with school-aged children entering the public shelter system, Borough President Adams believes it is appropriate for HPD to extend local lottery preference to include the school zone attended by children of households residing at immediate and neighboring City-funded or -operated homeless shelters.

This is especially important given the number of students living in homeless shelters. The New York City Independent Budget Office (IBO) recently produced a report analyzing homeless rates in schools. School student registration data identifies those residing in public shelters as Students in Temporary Housing (STH). Using data from the 2014-2015 school year, a review of the 50 schools in Brooklyn with the highest percentage of STH enrollment identifies approximately 4,300 students attending such schools with more than 18 percent of the enrollment categorized as STH.

Research indicates that students living in temporary accommodations are most challenged in attaining academic success. These students are more likely to lack access to technology such as computers that would aid with homework and research assignments, as well as access to a quiet space to complete assignments and study for exams. In addition, commuting between a school and shelter requires significantly more time for many students. These commutes often make it difficult to participate in extracurricular school activities, which might otherwise enhance the students' academic and community experiences.

Many parents and students find it important to maintain school continuity despite the circumstances faced by households dependent on the City's homeless shelter system. Borough President Adams believes that it should be the City's responsibility to take action that would eliminate or reduce such hardships. One such action would be to enable economically-challenged households with children in public schools to qualify for community local preference based on where the children attend school.

According to the Institute for Children, Poverty, and Homelessness (ICPH), there are multiple public schools within several blocks of the proposed development, in Community School District (CSD) 13, where the proportion of homeless students is eight to 20 percent. Should the City Council obligate the developer, 550 Clinton Partners LLC and 539 Vanderbilt Partners LLC, to provide units according to MIH Option 1, Borough President Adams believes it would be appropriate for such students and

their families to be considered part of the 50 percent local preference for the 809 Atlantic Avenue housing lottery.

Borough President Adams believes that HPD should modify its affordable housing lottery community preference standards to include the school zone attended by a child of a household residing at a City-funded or -operated homeless shelter.

### **Community Preference: Proximity to Community District Boundary**

City local preference policy is at times unfair to community residents who live just beyond the border of a community district. The proposed development is located just north of the boundary between CDs 2 and 8. Community members living on nearby blocks south of Atlantic Avenue and within CD 8 are also in need of quality affordable housing, and the new development would not only be apparent, but consequential for residents of both districts. Given the site's proximity to the border shared with CD 8, Borough President Adams believes that HPD should extend the local preference to both CDs 2 and 8. This is particularly important given that the residential neighborhoods of Clinton Hill and Prospect Heights both include small buildings that are not subject to rent protection laws. Borough President Adams believes that, in tandem with his recommendations for deeper affordability, 809 Atlantic Avenue could serve as a relocation resource to those at risk for displacement. Therefore, prior to the vote of the City Council, HPD should provide a written commitment advising that local preference be given to community residents of both CDs 2 and 8.

### **Accommodating Rent-Burdened Households in Lieu of Strict Area Median Income Standards**

Borough President Adams supports Mayor de Blasio's goal of achieving 300,000 affordable housing units over the next decade. Brooklyn is one of the fastest-growing communities in the New York City metropolitan area and the ongoing Brooklyn renaissance has ushered in extraordinary changes that were virtually unimaginable even a decade ago. Unfortunately, Brooklyn's success has led to the displacement of longtime residents who can no longer afford to live in their own neighborhoods. Borough President Adams is committed to addressing the borough's affordable housing crisis through the creation and preservation of much-needed affordable housing units for very low- to middle-income Brooklynites. Among numerous approaches and strategies, Borough President Adams is committed to advancing his affordable housing policy through his role in the ULURP process. The development of much-needed affordable housing provides opportunities to existing neighborhood residents at risk for displacement or increased degree of being rent-burdened.

In 2017, 56 percent of New York City's renter households were rent-burdened (defined as paying at least 30 percent of gross household income for rent and monthly utility costs). Such rent burdens can result in unstable tenancy and eviction for non-payment if an unforeseen event, such as a job loss or health issue, occurs in a household.

Data show that more than 80 percent of those making 50 percent of AMI or less are rent-burdened. The crisis is even worse among the lowest income citizens, those making 30 percent of AMI or less, currently \$23,310 for a family of three. Among this population, well over 50 percent pay more than half of their income toward rent. More than one-fifth of New York City households — over two million people — earn less than \$25,000 a year and almost one-third earn less than \$35,000. As the City's housing crisis grows worse, the burden falls most heavily on these low-income households, many of them senior citizens.

There are residents living in unregulated rental units within CD 2 and CD 8 or regulated apartments subjected to a legal regulated rent increase in which landlords have been renting below the legally-permitted regulatory rent (preferential rent) and have been seeking to increase rent at lease renewal according to the legal amount permitted. Between 2008 and 2015, the median gap between monthly

preferential and legal maximum rents increased 55 percent citywide, from \$286 to \$444, according to an analysis conducted by IBO for ProPublica. In 2017, six percent of all apartments in Brooklyn — 64,611 units — had preferential rent leases.

For ZIP code 11238, disclosed data from the New York City Rent Guidelines Board (RGB) dated June 1, 2017 list 1,850 such units, representing 29 percent of all rent-stabilized units. The continued significant increase in rents has resulted in an increased rent burden and/or residential displacement. Therefore, there is a pressing need to provide more affordable housing units in this area.

In this section of CD 2, too many households fall into low- and very low-income categories and are often rent-burdened. Given the risk for displacement, the City should take steps to increase the probability that rent-burdened households qualify for as many affordable housing lotteries as possible.

A strict rent-to-income requirement of not exceeding 30 percent of income for yearly rent payment ends up disqualifying many income-challenged households from the affordable housing lotteries. As a result, these rent-burdened households do not meet the housing lottery's minimum household earnings because too often they are already paying the same rent, or are in excess of the rent stated for the affordable housing unit. Thus, the requirement to pay no more than 30 percent of household income is actually hurting people who are already living in substandard housing and are paying more than 30 percent of their income toward housing.

As first noted in his East New York Community Plan ULURP response, Borough President Adams believes that it is time to break the mold in which families that are already paying too much rent for substandard housing are disqualified. Borough President Adams seeks to qualify rent-burdened households to be eligible for selection through the housing lottery process. Such eligibility would ensure rent-burdened households receive the maximum opportunity to secure regulated affordable housing units, expanding the number of eligible households for government-regulated affordable housing lotteries.

One means to address rent burden should be achieved by amending the ZR to adjust the AMI qualifications so they include such households that would maintain or reduce their rent burden. For such lotteries resulting from MIH housing lottery offerings, the New York City Department of City Planning (DCP) needs to amend the ZR to allow for exceptions to the 30 percent of income threshold so that households that are burdened, though paying the same or more rent than the lottery unit rent, would be eligible to live in affordable, newly-produced, and quality housing accommodations.

Borough President Adams believes that the CPC and/or the City Council should echo his call to seek the modification of the MIH section of the ZR pertaining to MIH-designated areas to be adopted with a requirement that permits households with rent-burdened status to qualify for such affordable housing units pursuant to MIH.

### **Recommendation**

Be it resolved that the Brooklyn borough president, pursuant to Section 201 of the New York City Charter, recommends that the City Planning Commission (CPC) and City Council approve these applications with the following conditions:

1. That prior to considering such applications, the City Council shall obtain commitments in writing from the developer, 550 Clinton Partners LLC and 539 Vanderbilt Partners LLC, that clarify how it would memorialize the extent that it would:

- a. In lieu of MIH Option 2 and the Affordable New York Affordability Option B, provide a binding mechanism committing to Mandatory Inclusionary Housing (MIH) Option 1 and Affordability Option A, while maintaining the ratio of affordable units at 30 percent of the total number of dwelling units, and ensuring that all such units would be permanently affordable
  - b. Memorialize a bedroom mix with an increase in the number of family-sized affordable housing units
  - c. Implement outreach efforts to assist seniors households earning up to 40 percent AMI for single-person households, and 50 percent AMI for two-person households, as a means to maximize participation in the affordable housing lottery for the resulting very-low income eligible studio and one-bedroom units
  - d. Utilize any combination of locally-based affordable housing development non-profits to serve as the administering agent, and have one or more such entities play a role in promoting affordable housing lottery readiness
  - e. Revise special permit application drawings Z-011 Illustrative Ground Floor Plan, and, Z-151 and Z-152 Bulk Waiver Sections to notate a commitment to provide not less than 1,600 square feet (sq. ft.) of space as cultural use floor area as part of plans to be filed, inclusive of the Schedule A, with the New York City Department of Buildings (DOB)
2. That the City Council should consider increasing the amount of designated community facility or cultural use floor area as a means to maximize opportunity for locally-based arts and dance entities
  3. That prior to considering such applications, the City Council shall obtain commitments in writing from the developer, 550 Clinton Partners LLC and 539 Vanderbilt Partners LLC, that clarify how it would memorialize the extent that it would:
    - a. Commit to Connecting Residents on Safer Streets (CROSS) Brooklyn coordination with the New York City Department of Transportation (DOT) and the New York City Department of Environmental Protection (DEP) to implement curb extensions as part of a Builders Pavement Plan and/or as treated roadbed sidewalk extensions, with a developer commitment to enter into a standard DOT maintenance agreement for the northern intersections of Clinton and Vanderbilt avenues with Atlantic Avenue, with the understanding that DOT implementation would not proceed prior to consultation with Brooklyn Community Board 2 (CB 2) and local elected officials
    - b. Integrate additional resiliency and sustainability measures such as incorporating rain gardens, blue/green/white roof treatment, and/or solar panels
    - c. Retain Brooklyn-based contractors and subcontractors, especially those who are designated local business enterprises (LBEs) consistent with Section 6-108.1 of the City's Administrative Code, and minority- and women-owned business enterprises (MWBEs) as a means to meet or exceed standards per Local Law 1 (no less than 20 percent participation), as well as coordinate the oversight of such participation by an appropriate monitoring agency

Be it Further Resolved:

1. That 550 Clinton Partners LLC and 539 Vanderbilt Partners LLC:
  - a. Commit to the following:
    - i. A building service workforce that is recruited from the local population and paid prevailing wages, with appropriate benefits
    - ii. A rat baiting plan implemented prior to and during demolition that includes site excavation and foundation preparation, in consultation with CB 2 and local elected officials
  - b. Coordinate with DOT to evaluate curbside signage and determine to what extent this section of Atlantic Avenue should be delineated as a loading zone during specific hours, including consideration for garbage pickup, in consultation with Community Board 2 (CB 2) and local elected officials
2. Should the City Council determination result in the project proceeding according to MIH Option 1, that the New York City Department of Housing Preservation and Development (HPD) modify its affordable housing lottery community preference standards to include the school zone, thus capturing the population of public school children residing at City-funded or -operated shelters
3. That HPD extend local preference to include residents of both Brooklyn Community Districts 2 and 8 (CDs 2 and 8), in writing, to City Council
4. That the CPC and/or the City Council call for the modification of the Mandatory Inclusionary Housing (MIH) section of the New York City Zoning Resolution (ZR) pertaining to MIH-designated areas to be adopted with a requirement that permits households with rent-burdened status (allow for exceptions to the 30 percent of income threshold for households paying the same or more rent than what the housing lottery offers) to qualify for such affordable housing units pursuant to MIH

550 CLINTON PARTNERS LLC  
539 VANDERBILT PARTNERS LLC  
475 PARK AVENUE SOUTH 1206  
NEW YORK, NEW YORK 10016

December 13, 2018

Hon. Eric L. Adams, Brooklyn Borough President  
Borough Hall  
209 Joralemon Street  
Brooklyn, NY 11201

Re: 809 Atlantic Avenue (a/k/a 550 Clinton Avenue)  
Brooklyn Block 2010, Lots 1 and 59 (the "Property")  
Rezoning and Sections 74-711 and 74-533 Special Permit Application (the  
"Application")  
Application Nos. 190071 ZMK, 190072 ZSK, 190073 ZSK and N1900742 ZRK  
CEQR No. 18DCP179K

Dear Borough President Adams:

This letter summarizes the information provided by the applicant team during the public hearing on the Application held on November 27, 2018, and amplifies some of that information.

550 Clinton Partners LLC and 539 Vanderbilt Partners LLC (the "Applicant"), the ground lessees of the Property, have filed an application for (i) a zoning map amendment to rezone the Property and portions of adjacent Lots 53, 56, 57 and 58 from an R7A/C2-4 district to an R9/C2-5 district (the "Rezoning Area"), and to rezone portions of Lots 57 and 58 to an R6A district (ii) an amendment to the text of the New York City Zoning Resolution (the "Zoning Resolution" or "ZR") to designate the Rezoning Area as a Mandatory Inclusionary Housing ("MIH") Area (Appendix F), (iii) a special permit pursuant to Section 74-711 of the Zoning Resolution in connection with the restoration of the Church of St. Luke and St. Matthew (the "Church") to modify (a) the zoning lots divided by district boundaries regulations of ZR 77-02 and the floor area ratio regulations of ZR 77-22 to allow floor area to be transferred across district boundary lines from Lots 10 (the Church), 51, Lots 1001-1010 (f/k/a/ Lots 7 and 8) & 1101-1118 (f/k/a Lot 5) to the Property, (b) the commercial rear yard regulations of ZR 33-292, (c) the residential rear yard regulations of ZR 23-52(b)(2), (d) the inner court regulations of ZR 23-851, (e) the window to lot line regulations of ZR 23-861, (f) the lot coverage regulations of ZR 23-16(a), (g) the minimum street wall height regulations of ZR 23-651(b)(2), (h) the tower floor area regulations of ZR 23-651(a)(3), and (i) the inner court recess regulations of ZR 23-852(b), and (iv) a special permit pursuant to ZR 74-533 to waive the residential parking requirements of ZR 25-23.

The Application would facilitate the construction of two new mixed-use buildings on the Property, one having a height of 4 stories and the other reaching 29 stories, which would collectively contain a total of up to 237,148 square feet of floor area, including approximately 58

permanently affordable housing units, subject to MIH, and approximately 33,000 square feet of commercial space (collectively, the “Project”).

### **1. Affordable Housing**

The Project would contain approximately 286 total units, of which approximately 86 or 30% would be subject to the Affordable New York Program. Of these, 58 would be permanently affordable under the MIH Program. The permanently affordable MIH units total 30% of the residential floor area generated by the rezoned development site. The ULURP application proposes that these units be affordable to households with incomes averaging 80% of AMI (“MIH Option 2”), but the income bands have not yet been selected. The chart attached as Exhibit A summarizes the preliminary unit mix and distribution. The affordable housing unit mix would be proportional to the unit mix of the market rate units and would be distributed on 65% of the residential floors. This information is subject to change as apartment layouts are finalized and as the result of the Applicant’s negotiation of a regulatory agreement with HPD.

The Applicant intends to work with its affordable housing administering agent, which has not yet been selected, to make best efforts to lease at least 50% of the affordable housing units to residents of the community, to the extent permitted by HPD guidelines (and the pending federal lawsuit), and to engage the community in a financial literacy campaign regarding the availability of and process of applying for the affordable housing units. We have had discussions with the Fifth Avenue Committee and intend to speak with IMPACCT Brooklyn about serving as the project’s administering agent.

### **2. M/WBE and LBE Participation**

The Applicant has met with representatives of the Department of Small Business Services regarding participation of minority-owned and women-owned business enterprises (“M/WBEs”) and locally-based enterprises (“LBEs”) in the construction of the Project. We will ask our contractor to use commercially reasonable efforts to pursue the hiring of and prioritize retaining LBEs as subcontractors, especially those that are designated as M/WBE, to meet or exceed standards per Local Law 1 of 2013 (not less than twenty percent participation).

### **3. Sustainability**

It is the Applicant’s intention that the Project be developed and operated in an environmentally sustainable manner. Measures being considered include: “Zone Green;” deeper tree pits to support the long-term growth of street trees; “blue roofs” to capture and slowly release rainwater to mitigate runoff impact; vegetative “green roofs” to absorb rainwater and provide insulation, which will be planted with native plantings and irrigated with a high-efficiency irrigation controller reducing the baseline water consumption; high-efficiency HVAC system; high-efficiency water fixtures; utility sub-metering; regionally-sourced construction materials; implementation of a construction waste management program; designing the Project with materials to reduce carbon emissions; utilization of energy modelling software which will allow the design team to make informed design decisions and to create an overall more efficient building; full building commissioning to ensure all equipment and controls are operating as designed and as efficiently as possible; and achieving LEED Silver certification.

**4. Community Use**

The Applicant has committed to including in the Project a home for the Jack Theater Company. Jack states that they “present over 200 theater, music and dance performances a year and hold community forums on racial justice, gentrification, and police/community relations.” Their mission is to “fuel experiments in art and activism, collaborating with adventurous artists and our neighbors to bring about a just and vibrant society.”

[SIGNATURE PAGE FOLLOWS]

Borough President Eric Adams  
December 13, 2018

With this statement of the Applicant's plans regarding the Project, we respectfully request a favorable recommendation of the Applications to the City Planning Commission. Thank you for your attention and consideration.

Sincerely,

550 CLINTON PARTNERS LLC

By:   
Name: Jeffrey Gershon  
Title: Manager

539 VANDERBILT PARTNERS LLC

By:   
Name: Jeffrey Gershon  
Title: Manager

cc: Richard Bearak, Land Use Director (via e-mail)  
Inna Guzenfeld, Land Use Coordinator (via e-mail)  
Deirdre A. Carson, Esq. (via e-mail)

**CHURCH OF ST. LUKE AND ST. MATTHEW**

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**DECLARATION**

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Dated: \_\_\_\_\_, 2019

Location: Block 2010 Lots 1, 10 & 59  
520 Clinton Street, 550 Clinton Street a/k/a 809 Atlantic Avenue & 539 Vanderbilt  
Avenue  
Kings County, New York

Record & Return to:

Deirdre A. Carson, Esq.  
Greenberg Traurig, LLP  
200 Park Avenue  
New York, New York 10166

DECLARATION made as of the \_\_\_\_ day of \_\_\_\_\_, 2019 by **THE CHURCH OF ST. LUKE AND ST. MATTHEW (Church)**, a religious corporation, having an office at 520 Clinton Avenue Brooklyn, New York 11238, **SUPERIOR ASSOCIATES, LLC**, a limited liability company having an address at 29-47 41<sup>st</sup> Avenue, 2<sup>nd</sup> Floor, Long Island City, New York 11101 ("Fee Owner 1"), **550 CLINTON PARTNERS LLC**, a New York limited liability company having an address at 12 West 23<sup>rd</sup> Street, New York, New York 10019 ("Atlantic Ground Lessee"), **LICHTER FAMILY LLC ("Lichter")**, a limited liability company having an address at c/o Kenneth Gliedman, Esq., Lichter Gliedman Offenkrantz PC, 551 Fifth Avenue – 24<sup>th</sup> Floor, New York, New York 10176 and **RHONDA GREIFINGER AND AUDREY SHARP PERLMAN AS TRUSTEES OF THE CLARENCE A. GREIFINGER DECLARATION OF TRUST AGREEMENT** (the "Trust"), c/o Audrey S. Perlman, 24262 Cherry Hill Place, Laguna Niguel, California 92677, Lichter and Trust as Tenants-in-Common ("Fee Owner 2"; Fee Owner 1 and Fee Owner 2, collectively, "Fee Owner") ,and **539 VANDERBILT PARTNERS LLC**, a New York limited liability company, having an address at 12 West 23<sup>rd</sup> Street, New York, New York 10019 ("Vanderbilt Ground Lessee"; Atlantic Ground Lessee and Vanderbilt Ground Lessee, collectively, "Lessee"; Fee Owner and Lessee, collectively, "Developer") (Church and Developer, collectively, the "Declarant"):

WITNESSETH:

WHEREAS, Church is the owner in fee simple of certain real property located in the Borough of Brooklyn, County of Kings, City and State of New York, known as Lot 10 in Block 2010 on the Tax Map of the City of New York, County of Kings (the "Tax Map"), and as and by the street address 520 Clinton Avenue, Brooklyn, New York, and more particularly described in Exhibit A attached hereto (the "Subject

Property”) on which is located a church and associated structures (the “Designated Structure”);

WHEREAS, the Designated Structure is on the same zoning lot (the “Zoning Lot”) as two lots on which it is proposed to construct two new buildings (the “Benefitted Structures”) located on the property at 809 Atlantic Avenue (a/k/a 550 Clinton Avenue) and 539 Vanderbilt Avenue, known as Block 2010, Lots 59 and 1, respectively, on the Tax Map (the “Developer Property”), more particularly described in Exhibit B attached hereto;

WHEREAS, the Benefitted Structures are not designated structures and are owned by Fee Owner 1 and Fee Owner 2, respectively, and leased pursuant to separate ground leases to Atlantic Ground Lessee and Vanderbilt Ground Lessee, respectively, for terms of 99 years each;

WHEREAS, Declarant proposes to renovate the Designated Structure;

WHEREAS, First American Title Insurance Company (the “Title Company”), a title company, has certified as of [July 14, 2017], in the certification attached hereto in Exhibit C, that Declarant is the sole party in interest (“Party in Interest”), as that term is defined in the zoning lot definition in Section 12-10 of the Zoning Resolution (hereinafter defined), to the Zoning Lot, except for those Parties in Interest that have waived the right to execute this Declaration and agreed to subordinate their interests hereto;

WHEREAS, all Parties in Interest to the Subject Property have executed this Declaration or waived their rights to execute and subordinated their interest in the Subject Property by written instrument in the form annexed hereto as Exhibit C-1 and made a part hereof, which instrument is intended to be recorded simultaneously with this Declaration;

WHEREAS, as of the date hereof, the Title Company has determined there has been no change in the certification attached as Exhibit C and Declarant represents and warrants that the Parties in Interest listed in Exhibit C are the only known Parties in Interest in the Zoning Lot as of the date hereof; and

WHEREAS, pursuant to the provisions of Section 3020 of the New York City Charter and Title 25, Chapter 3 of the Administrative Code of the City of New York (the “Landmarks Preservation Law”), the Landmarks Preservation Commission (the “LPC”) has designated the Designated Structure;

WHEREAS, Declarant has submitted an application (the “Application”), designated No. 190072ZSK and dated August 27, 2018 to the City Planning Commission of the City of New York (the “CPC”) for a special permit (the “Special Permit”) under Section 74-711 of the Zoning Resolution to permit the transfer of unused residential floor area appurtenant to the Subject Property and one or more intervening parcels (“Development Rights”) across a zoning district boundary for use on the Developer Property, along with certain bulk modifications, to facilitate the construction of the Benefitted Structures on the Developer Property;

WHEREAS, at a public meeting on March 13, 2018, following the public hearing on the same date, the LPC voted to issue a report (the “Report”) to the CPC as requested for the Application, and a copy of the Report, dated September 10, 2018, is attached hereto as Exhibit D; and

WHEREAS, Section 74-711 requires, inter alia, that a program has been established for continuing maintenance (the “Continuing Maintenance Program”) that will result in preservation of the Designated Structure by Declarant; and

WHEREAS, Declarant has agreed to certain obligations and restrictions contained in this Declaration for the protection, preservation, repair and maintenance of the Designated Structure; and

WHEREAS, Declarant desires to restrict the manner in which the Subject Property may be developed, restored, and operated in order to assure the protection, preservation, repair and maintenance of the Designated Structure; and

WHEREAS, Declarant represents and warrants that there are no restrictions, liens, obligations, covenants, easements, limitations or encumbrances of any kind, the requirements of which have not been waived or subordinated, which would prevent or preclude, presently or potentially, the imposition of the restrictions, covenants, obligations, easements and agreements of this Declaration;

NOW, THEREFORE, Declarant does hereby declare and agree that the Subject Property shall be held, sold, transferred, conveyed and occupied subject to the following restrictions, covenants, obligations, easements, and agreements, all of which are for the purpose of protecting the Subject Property, which shall inure to the benefit of the City of New York, and which shall run with the Subject Property and bind Declarant and its heirs, successors and assigns so long as they have a right, title or interest in the Subject Property or any part thereof.

#### **ARTICLE I: DEFINITIONS**

The following words, when used in this Declaration, shall have the following meanings:

“Application” shall mean the application to the City Planning Commission for the Special Permit.

“Benefitted Structure” shall have the meaning given in the Recitals to this

Agreement.

“Buildings Department” shall mean the New York City Department of Buildings, or any successor to the jurisdiction thereof.

“Chairperson of the CPC” shall mean the Chairperson of the City Planning Commission of the City of New York, or any successor to the jurisdiction thereof.

“Chairperson of the LPC” shall mean the Chairperson of the Landmarks Preservation Commission of the City of New York or any successor to the jurisdiction thereof.

“Certificate of No Effect” shall mean the Certificate of No Effect No. 19-20 663, issued by the LPC on August 31, 2018, a copy of which is attached hereto as Exhibit E.

“City” shall mean the City of New York.

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

“CPC” shall mean the New York City Planning Commission, or any successor to the jurisdiction thereof.

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

“Declarant” shall mean the named Declarant and the heirs, successors and assigns of the named Declarant including, without limitation, any owner of a condominium unit within the Designated Structure, except that Declarant shall not be deemed to include (i) a mortgagee of all or any portion of the Subject Property until it succeeds to the interest or obligation of Declarant by purchase, assignment, foreclosure or otherwise, or (ii) a tenant of the Subject Property, unless such tenant holds a lease to all or substantially all of the Subject Property.

“Designated Structure” shall mean the church building and associated structures located on Tax Block 2010, Lot 10 in Kings County, which is an individually designated landmark site.

“Developer Property” shall have the meaning given in the recitals to this Agreement.

“Force Majeure” shall mean: strike, lockout or labor dispute(s); inability to obtain materials or reasonable substitutes therefor unless due to any act or failure to act by Declarant; acts of God; unforeseen governmental restrictions, regulations, omissions or controls; enemy or hostile government actions; civil commotion, insurrection, revolution or sabotage; fire or other casualty; inclement weather of such a nature as to make performance or completion of the Landmark Work not feasible unless due to any act or failure to act by Declarant; any damage to the Subject Property of such a nature as to make completion of the Landmark Work not feasible; a taking of the Subject Property, or a portion thereof, by condemnation or eminent domain; failure of a public utility to provide power, heat or light; unusual delay in transportation; material delays by the City, State or United States Government, or any agency or instrumentality thereof, in the performance of any work or processing or approval of any applications required in order to permit Declarant to carry out its obligations pursuant to this Declaration unless due to any act or failure to act by Declarant; denial to Declarant by any owner of an enforceable interest in adjoining real property, including any private fee owner or ground lessee of adjoining real property, or any agency of the City or State having an enforceable interest in adjoining real property, including sidewalk or streets, of a right to access to such adjoining real property, if such access is required to accomplish the obligations of the Declarant pursuant to this Declaration; the pendency of a litigation not initiated by Declarant or similar proceeding which suspends or materially and adversely affects the ability of the Declarant to accomplish the obligations of the Declarant pursuant to this Declaration; or other conditions similar in character to the foregoing which are beyond the control of Declarant. No event shall constitute a Force Majeure unless Declarant complies with the procedures set forth in Sections 2.2 and 6.2 hereof.

“Landmark Work” shall refer to the restoration work on the Designated Structure

as described in the Certificate of No Effect/Certificate of Appropriateness that is attached hereto as Exhibit E.

“LPC” shall mean the Landmarks Preservation Commission of New York City or any successor to the jurisdiction thereof.

“Mortgagee” shall mean (a) the institutional first mortgagee of all or substantially all of the Subject Property listed in Exhibit C or (b) the first mortgagee of a condominium unit within the Designated Structure.

“Party(ies) in Interest” shall mean any party-in-interest listed in Exhibit C and any other party-in-interest to the Subject Property who has given written notice of its name and address to the CPC and the LPC.

“Special Permit” shall mean the special permit described on page 3 hereof.

“Special Permit Bulk Modification” shall mean the modifications of the following provisions of the Zoning Resolution for the Benefitted Structure: (a) the floor area ratio regulations of ZR 77-22 to allow floor area to be transferred across district boundary lines, (b) the commercial rear yard regulations of ZR 33-292, (c) the residential rear yard regulations of ZR 23-52(b)(2), (d) the inner court regulations of ZR 23-851, (e) the window to lot line regulations of ZR 23-861, (f) the lot coverage regulations of ZR 23-16(a), (g) the minimum street wall height regulations of ZR 23-651(b)(2), (h) the tower floor area regulations of ZR 23-651(a)(3); and (i) the inner court recess regulations of ZR 23-852(b).

“Zoning Lot” shall mean the zoning lot created by merger of the tax lot constituting the Subject Property with the tax lot occupied by the Benefitted Structures and other intervening lots, in accordance with the procedures prescribed by Section 12-10 of the Zoning Resolution.

“Zoning Resolution” or “ZR” shall mean the Zoning Resolution of the City of New York.

**ARTICLE II: DEVELOPMENT, PRESERVATION, REPAIR AND MAINTENANCE OF  
THE SUBJECT PROPERTY**

2.1 **Special Permit Drawings**

(a) Declarant covenants and agrees to restore the Designated Structure substantially in accordance with the following drawings prepared by Li Saltzman Architects, attached hereto as Exhibit F.

<b>Title</b>	<b>Drawing Number</b>	<b>Last Revised Date</b>
Zoning Information, Plot Plan, Abbreviations, Symbols and Drawing Index	G-000.00	5/24/2018
DOB, LPC, Energy Code, Occupant Safety, General, Demolition & Special Inspection Notes	G-001.00	5/24/2018
Restoration and Repair Schedule, Elevation Key	G-002.00	5/24/2018
Clinton Avenue Façade – Church and Cloister	A-200.00	5/24/2018
Clinton Avenue Façade – Chapel and Belfry	A-201.00	5/24/2018
Miscellaneous Elevations – Church, Cloister and Chapel	A-202.00	5/24/2018
Miscellaneous Elevations – Belfry	A-203.00	5/24/2018
Interior Courtyard Elevations -1	A-204.00	5/24/2018
Interior Courtyard Elevations -1	A-205.00	5/24/2018
Vanderbilt Avenue Elevation	A-206.00	5/24/2018

## 2.2 **Certificate of Occupancy.**

(a) The issuance of the Special Permit is premised on, inter alia, the performance and/or construction of the Landmark Work on the Designated Structure in conformity with the Certificate of No Effect and the requirements thereof as follows:

### Masonry:

- Sound masonry stone units, identify unstable conditions, and provide shoring/bracing as required
- Clean brick, sandstone, brownstone, granite and stucco.
- Rebuild areas of deteriorated brownstone and brick to provide structurally stable condition. Match visual and physical characteristics of original elements, using composite patching, Dutchman repairs, and cast stone depending on extent of deterioration and loss of original material.
- Remove spalling or delaminating layers of ashlar and rusticated stone. Cut back to sound stone.
- Remove non-matching and incompatible patching of ashlar and rusticated stone. Cut back to sound stone.
- Patch brownstone and sandstone, with composite patching material (Jahn restoration mortar or approved equal) matching the historic stones in color, texture, profile and tooling. Stone Dutchman repairs may be required in certain locations.
- At damaged granite columns, provide granite Dutchman repair or composite patch to match original granite.

- Rake and repoint deteriorating, open, and inappropriately pointed mortar joints in stone and brick with new mortar to match original mortar in color, texture, strength, and tooling.
- Test to determine if cement wash on brick can be removed (Vanderbilt Avenue). If so, remove cement wash and apply breathable protective clear coat. If not, paint brick.
- Remove all loose stucco from 1 story courtyard structure wall and install new stucco (Vanderbilt Avenue).
- Repair vertical crack and replace coping stone at top of boiler chimney (Vanderbilt Avenue).

Windows and Doors:

- Repair beaded board wood ceiling of belfry.
- Scrape and repair all deteriorated wood window frames. Repaint wood windows to match historic color as determined by the historic paint analysis. Remove deteriorated caulking and replace with new caulking at all window frames.
- Replace deteriorated protective glazing with new protective glazing at stained glass windows.
- Scrape and repaint galvanized sheet metal frame at wheel window.
- Replace Rectory entry door and frame with historically appropriate wood door and frame.

- Remove infill from 2nd floor window and replace with new wood window and frame(Vanderbilt Avenue).
- Replace hollow metal exit door and frame with new wood doors and frames (Vanderbilt Avenue).

Pavers:

- Remove and salvage mosaic tile at the Cloister and Church entry landings. After stabilizing the substrate, reinstall or replace in-kind mosaic tile pavers.
- Replace courtyard pavers.

Roofing, Flashing, Leaders and Drain Pipes:

Replace roofing at Bell Tower to match historic material (determine if original was slate or terra cotta tile).

- Add infill/flashing at juncture of stone exterior and belfry floor.
- Replace PVC leader pipe and cast iron ground drain with copper leader and new cast iron ground drain pipe respectively.
- Repair cracks and patch roof of damaged roof of 1 story masonry structure in courtyard and install new roof membrane (Vanderbilt Avenue).

(b) Written notice that Developer is seeking a temporary certificate of occupancy (“TCO”) or permanent certificate of occupancy (“PCO”) for the Benefitted Structure shall be provided to the LPC by Developer seven (7) days prior to Developer applying for a TCO or PCO. No TCO or PCO which permits a Special Permit Bulk Modification shall be granted by the Buildings Department or accepted by Developer

until the Chairperson of the LPC shall have given written notice to the Buildings Department that the Landmark Work has been satisfactorily completed by Declarant or the Chairperson of the LPC has certified in writing, as provided in Section 2.2(d) hereof, either that (a) (i) a Force Majeure has occurred and (ii) the Chairperson of the LPC has no objection to the issuance of a TCO or PCO for, as appropriate, all or part of the Benefitted Structure, or (b)(i) Declarant has completed ninety (90%) percent of the Landmark Work, and (ii) the Chairperson of the LPC has no objection to the issuance of a TCO for the Benefitted Structure. The completion of the required percentage of the Landmark Work shall be certified to the LPC by the Declarant's architect for the project. The Chairperson of the LPC shall issue said notice reasonably promptly after Declarant has made written request to the Chairperson of the LPC and has provided documentation to support such request, and the Chairperson of the LPC shall in all events endeavor to issue such written notice to the Buildings Department, or inform Declarant in writing of the reason for not issuing said notice, within twenty-one (21) calendar days after Declarant has requested such written notice. Upon receipt of the written notice from the Chairperson of the LPC that (i) the Landmark Work has been satisfactorily completed, (ii) the Chairperson of the LPC has certified that a Force Majeure has occurred and that the Chairperson of the LPC has no objection to the issuance of a TCO or PCO, or (iii) the Chairperson of the LPC advises the Buildings Department that ninety percent of the Landmark Work has been completed, the Buildings Department may grant, and Developer may accept, a TCO for the Benefitted Structure. In no event shall Declarant apply for or accept a PCO for the Benefitted Structure unless all Landmark Work has

been satisfactorily completed as evidenced by issuance of a Notice of Compliance by the LPC staff.

(c) Church shall permit inspection of the Designated Structure by the Chairperson of the LPC and representatives designated by the Chairperson of the LPC in connection with the notice described in Section 2.2(b) hereof.

(d) (i) Upon application by Declarant, notwithstanding anything contained in any other provision of this Declaration, the Chairperson of the LPC, in the exercise of his or her reasonable judgment, may certify that the performance or completion of the Landmark Work is delayed due to a Force Majeure as provided in paragraph (ii) below.

(ii) In the event that Declarant reasonably believes that full performance of its obligations to complete the Landmark Work has been delayed as a result of a Force Majeure, Declarant shall so notify the Chairperson of the LPC as soon as Declarant learns of such circumstances. Declarant's written notice shall include a description of the condition or event, its cause (if known to Declarant), its probable duration, and in Declarant's reasonable judgment, the impact it is reasonably anticipated to have on the completion of the Landmark Work. The Chairperson of the LPC shall, within twenty-one (21) calendar days of its receipt of Declarant's written notice, (A) certify in writing that a Force Majeure has occurred, including a determination of the expected duration of such delay (the "Delay Notice"), and grant Declarant appropriate relief for such delay, including certifying in writing to the Buildings Department that the Chairperson of the LPC has no objection to the issuance of a TCO or PCO for, as appropriate, all or part of the Benefitted Structure, or (B) notify Declarant that it does not reasonably believe a Force Majeure has occurred. With respect to any claim that a Force

Majeure has delayed the Declarant's performance or completion of the Landmark Work, the LPC may require that Declarant post a bond or other security in a form and amount acceptable to the Chairperson of the LPC in order to ensure that the Landmark Work is completed. Such alternative security could include, without limitation, alternative or additional conditions on the issuance of any PCO or TCO. Any delay caused as the result of a Force Majeure shall be deemed to continue only as long as the Declarant shall be using reasonable efforts to minimize the effects thereof. Upon cessation of the events causing such delay, the Declarant shall promptly recommence the Landmark Work.

(e) Notwithstanding anything else to the contrary contained herein, this Declaration shall not be deemed to prohibit or restrict Developer from (i) applying for or receiving a TCO or a PCO for any floor area in the Benefitted Structure which is not to be used for a Special Permit Bulk Modification; (ii) obtaining permits or building notices from the Building's Department to perform work of any sort, including, without limitation, tenant work, in the Benefitted Structure prior to the completion of the Landmark Work; or (iii) entering into agreements affecting all or any portions of the space in the Benefitted Structure prior to completion of the Landmark Work.

### 2.3 **Preservation, Repair and Maintenance.**

Church hereby covenants and agrees to preserve, repair and maintain the Designated Structure in sound first-class condition, at its own cost and expense, in accordance with this Declaration, the Certificate of No Effect and the Landmarks Preservation Law. It is understood that certain obligations and duties set forth in this Declaration are above and beyond the requirements of the Landmarks Preservation Law

and do not in any way diminish Church's obligation and responsibility to comply with all provisions of the Landmarks Preservation Law.

2.4 **Continuing Maintenance Program.**

Church shall comply with the obligations and restrictions of the continuing maintenance program (the "Continuing Maintenance Program") as set forth below:

(a) Periodic Inspections. Church shall establish and carry out a cyclical inspection and maintenance program for the Designated Structure which shall include, without limitation, the following:

(i) At Church's expense, an inspection (the "Periodic Inspection") shall be made every ten years, on or within two weeks of the anniversary of the issuance by the LPC of the Notice of Compliance pursuant to the C of A, and thereafter, shall be made on or within two weeks of every ten-year anniversary from the date of such initial inspection. In the event that Developer has accepted a TCO or a PCO that permits a Special Permit Bulk Modification without having first received the Notice of Compliance, the first periodic inspection shall be made on or within two weeks of the tenth anniversary date of the issuance of such TCO or PCO and every ten years thereafter. The Periodic Inspection shall be done by a preservation architect, engineer or other qualified person knowledgeable about the preservation of historic structures (the "Preservation Architect") selected by Church from a list prepared by Church and approved by the Chairperson of the LPC as to their credentials, which approval shall not be unreasonably withheld or delayed. Church shall update such listing upon the request of the Chairperson of the LPC. In addition, Church may periodically supplement the list of Preservation Architects, subject to the approval of the Chairperson of the LPC as to

their credentials. The Preservation Architect shall make a thorough inspection of the exterior of the Designated Structure and those portions of the interior, as well as those portions of the mechanical systems that are accessible to and under the control of building management, which, if not properly maintained, could affect the condition of the exterior. The Periodic Inspection shall include (but not be limited to) the following portions of the Designated Structure: masonry, brick, sandstone, brownstone, granite, stucco, windows, belfry, and roof, and mechanical systems including those for plumbing, HVAC and electric.

(ii) The Preservation Architect shall, at the expense of Church, submit a report on each Periodic Inspection (the “Periodic Report”) to Church and the LPC within 45 days after each Periodic Inspection. The Periodic Report shall outline the existing conditions of the Designated Structure and detail the work which should be performed in order to maintain the Designated Structure, including all architectural features and elements, in a sound first-class condition, including but not limited to caulking, painting, cleaning, repair of architectural features and elements, checking for rust and repointing of masonry.

(iii) Submission of Local Law 10 & 11 Facade Inspection Report. If the Designated Structure is subject to the Facade Inspection Report requirements of Title 1 RCNY §32-03 et seq., a copy of any such Facade Inspection Report which is submitted to the New York City Department of Buildings, shall also be provided at the same time to the Landmarks Preservation Commission. In the event that the building is found to be unsafe pursuant to such inspection, the Declarant shall notify

the Landmarks Preservation Commission simultaneously with the owner and the Department of Buildings, pursuant to Title 1 RCNY §32-03(b)(2)(vii).

(iv) Except as set forth below, Church shall perform all work which a Periodic Report, Facade Inspection Report or Emergency Incident Report (as defined below) identifies as necessary to maintain the Designated Structure, including architectural features and elements, in sound first-class condition. No work shall be performed except pursuant to a permit from the LPC if a permit is required under the Landmarks Preservation Law. If the LPC determines that a specific item of work or method of work as set forth in a Periodic Report, Facade Inspection Report or Emergency Incident Report would be inappropriate or inadequate, the determination of the LPC shall control and Church need not and shall not have such specific item performed. Church shall have the right to contest in a hearing before the LPC any work called for in a Periodic Report or Emergency Incident Report. Church's obligation to perform such contested work or to perform it by a method acceptable to the LPC shall be stayed pending a decision in any such proceeding at the LPC. Church shall proceed with all work which is uncontested during the stay pursuant to a permit.

(v) Unless Church has notified the LPC in writing that it contests any work as set forth in the preceding paragraph, Church shall apply for all necessary permits or certificates from the LPC within 45 days of receiving the completed report from the Preservation Architect. Church shall use its best efforts to assure that all repairs, rehabilitation, repointing, repainting, and restoration work detailed in the Periodic Report or Emergency Incident Report shall be completed at the earliest possible date, but no later than within nine months of the date of issue of the certificate or permit from the

LPC, or, if no such certificate or permit is required, within nine months of the date of the Periodic Report or Emergency Incident Report. If for reasons beyond Church's control, as determined by the Chairperson of the LPC, such work cannot be completed within nine months, Church shall apply to the LPC for an extension of time within which to complete such work. Such extensions shall be for a stated additional period of time to be related to the period of delay and shall not be unreasonably withheld.

(vi) Promptly upon conveyance of the Development Rights, the Declarant shall deposit an amount equal to five percent (5%) of the price received by the Declarant for the Development Rights into an escrow account to be used for the on-going maintenance of the Designated Structure as required under this Declaration (the "Maintenance Escrow"). Declarant shall be entitled to draw down on the funds in the Maintenance Escrow as needed upon demonstration to the reasonable satisfaction of the Chairperson of the LPC that the funds are to be used to undertake work identified as needed in the Periodic Report or necessary to maintain the Designated Structure in a sound, first-class condition

(b) Emergency Protection Program. Church shall establish and be prepared to carry out an emergency protection program for the Designated Structure which shall include at the minimum, the following:

(i) If a fire, the elements or any other cause whatsoever damages or destroys the Designated Structure or any part thereof (the "Emergency Incident"), Church shall use all reasonable means to save, protect and preserve the Designated Structure at the time of and following the Emergency Incident, including, but not limited to, acting with an approval from the Chairperson of the LPC or his or her

designated representatives to stabilize and prevent further damage to or deterioration of the structure, and to secure the Subject Property from unauthorized access. Church shall not remove from the Subject Property any debris consisting of exterior features of the Designated Structure without an approval from the Chairperson of the LPC or his or her designated representative. Unless necessitated as a safety precaution as ordered by the Departments of Buildings, Health, Fire or Police, or as an action taken in response to a life-threatening situation, Church shall not remove any other debris or otherwise clear the Subject Property without the approval of the LPC or its Chairperson.

(ii) Church shall give immediate written notice of such Emergency Incident to the LPC. Church shall also give timely notice to the LPC of the time or times when the New York City Departments of Buildings, Health and Fire will inspect the Subject Property following the Emergency Incident, in order that the LPC may have a representative present during such inspections.

(iii) Within sixty days of such Emergency Incident, a Preservation Architect shall, at the expense of Church, make a thorough inspection of the Designated Structure and submit a report (an “Emergency Incident Report”) to Church and to the LPC outlining the condition of the structure, assessing the extent of damage, and recommending (A) work, if any, which must be undertaken immediately, upon receipt of proper permits, in order to stabilize and prevent further damage to the Designated Structure, and (B) work that should be performed to repair and restore the Designated Structure to a sound, first-class condition or, alternatively to (A) and (B), that Church make an application to the LPC for permission to demolish the remaining portions of the Designated Structure.

(iv) With regard to the work to be performed pursuant to subparagraph (iii)(A), Church shall immediately upon receipt of the Emergency Incident Report request and vigorously pursue all necessary permits and upon their issuance, shall undertake all such work with alacrity. If no permits are required, work shall be undertaken as soon as possible after receipt of the Emergency Incident Report.

(v) With regard to the work to be performed pursuant to subparagraph (iii)(B), within ninety days of receiving the report of the Preservation Architect, Declarant shall apply for all necessary permits and certificates from the LPC to repair and restore or to demolish. No work on the exterior of the Designated Structure, and no work on the interior of the Designated Structure which would affect the exterior or which would require the issuance of a permit from the Department of Buildings shall be performed except pursuant to a permit from the LPC. If the LPC determines that a recommendation to demolish or to perform a specific item of work or method of work set forth in the report would be inappropriate, using the criteria set forth in the Landmarks Preservation Law, the determination of the LPC shall control and the Church shall not have such specific work performed or be entitled to have the Designated Structure demolished unless Church is obligated to perform such work or demolish the structure in accordance with an "Unsafe Building Notice" issued by the Department of Buildings. All repair, restoration, rehabilitation, repointing, and other work provided for in a certificate or permit shall be completed within nine months of the date of issue of such certificate or permit by the LPC. If such work cannot be completed within nine months for reasons beyond Church's control, as determined by the Chairperson of the LPC, Church shall apply in writing to the LPC for an extension of time within which to

complete such work. Such extensions shall be for a stated additional period of time which is related to the period of the delay and shall not be unreasonably withheld.

(c) Access to Designated Structure. Church agrees to provide access to the Designated Structure to the LPC and its designated representatives at reasonable times and upon reasonable written notice, except in cases of emergency, in which event the LPC or its representatives shall have access, if feasible, immediately and without notice, in order to ensure that the preservation, repair and maintenance of the Designated Structure is carried out in accordance with this Declaration.

(d) Failure to Perform. In the event that the preservation, repair, or maintenance of the Designated Structure is not performed in accordance with the provisions of this Article, the LPC shall give written notice of such failure to perform to the Church. In the event that Church, its successors or assigns, fails after sixty days from receipt of written notice from the LPC to perform or shall commence to perform but fail diligently to prosecute to completion, any such repair and/or maintenance, or any obligations of Church set forth in this Declaration, the City of New York may perform all of the necessary work at the sole cost and expense of the Church and shall have the right to enter onto the Subject Property and to charge said Church for all the actual cost of such work, together with actual administrative and legal fees incurred in the collection thereof. Such actual costs shall include, but not be limited to, payments by the City of New York to any lawyers, consultants, contractors, painters, engineers, architects and skilled artisans required to be hired to perform or supervise such work. To the extent such actual costs are expended by the City of New York, the LPC shall have a lien on the Subject Property as if a lien had been filed, perfected and enforced for materials and labor under

Article 2 of the Lien Law of the State of New York. Notwithstanding the foregoing, in the event that the Designated Structure is converted to a condominium, Church's right to notice and cure provided in this subsection shall apply only to the condominium board and to any owner of space occupied by retail uses in the Designated Structure; provided that the LPC has received notice by said parties in accordance with Section 6.2.

### **ARTICLE III: CONDOMINIUM BOARD**

#### **3.1 General.**

In the event that either the Designated Structure or the Benefitted Structure is converted to a condominium in accordance with Article 9B of the New York State Real Property Law ("RPL"), the condominium board ("Board") shall have the responsibility to carry out all of Church's and/or Developer's obligations, as the case may be, and the authority to exercise all of Church's and/or Developer's rights under this Declaration and upon such assumption, Church and/or Developer shall be released from its liability hereunder.

The following provisions of this Article 3 shall be operative only in the event that the Board is formed as described in this Section 3.1.

#### **3.2 Board.**

The Board shall require that each owner of a condominium unit (the "Unit Owner") appoint the Board as its Attorney-in-Fact with respect to modification, amendment, or cancellation of the Declaration.

#### **3.3 Condominium Declaration.**

Every deed conveying title to, or a partial interest in either the Subject Property or, and every lease of all or substantially all of the Subject Property, shall contain a recital

that the grantee is bound by the terms of the Condominium Declaration and By-laws which shall incorporate an obligation by the Board to comply with the provisions of Article 3 of this Declaration. In addition, every deed, lease, the offering plan, and by-laws shall include the following language: This building is obligated by a restrictive declaration to be maintained in a sound, first-class condition in perpetuity. This obligation includes a thorough inspection of the building every ten years and the preparation of an existing conditions report that shall be submitted to the Landmarks Preservation Commission. All work identified in the existing conditions report as necessary to maintain this building in a sound, first-class condition must be expeditiously undertaken.

## **ARTICLE IV: EFFECT AND ENFORCEMENT**

### 4.1 **Effective Date.**

(a) This Declaration shall have no force and effect unless and until the occurrence of one of the following, to be referred to as the “Effective Date”: (a) the expiration of 21 days after the Special Permit has been approved if no review is undertaken by the City Council pursuant to Section 197-d of the New York City Charter or (b) final approval of the Special Permit pursuant to Section 197-d of the New York City Charter. The Declaration shall become immediately effective upon the Effective Date. If, before the Effective Date, Declarant requests or causes the application for the Special Permit to be withdrawn or abandoned, or if final action has been taken having the effect of denying the Special Permit, then, upon notice to CPC and LPC, this Declaration shall not become effective, shall be automatically canceled and shall be of no force and effect.

(b) If the Special Permit is at any time declared invalid or is otherwise voided by 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 entry, as the case may be, this Declaration shall be automatically canceled without further action by Declarant and shall be of no further force or effect and the CPC shall, if requested by Declarant, provide Declarant with a letter in recordable form stating that the Declaration has been so canceled and is of no further force and effect. In such event, if Developer has obtained a PCO or TCO allowing the Special Permit Bulk Modification of the Benefitted Structure, Developer

shall promptly, after receipt of such letter, obtain a revised PCO or TCO from the Buildings Department, reflecting the cessation of any such Special Permit Bulk Modification for the Benefitted Structure and the discontinuance of and plan for removal of the portion of the Benefitted Structure that received the benefit of the Special Permit Bulk Modification.

4.2 **Filing and Recording.**

Declarant shall file and record this Declaration at its sole cost and expense in the Register's Office immediately upon the Effective Date and shall index it against the Subject Property. Declarant shall deliver to the CPC and the LPC duplicate executed originals, promptly following the Effective Date and, following recordation, a true copy of this Declaration as recorded, as certified by the Register. If Declarant fails to so record this Declaration, the City may record this Declaration, at the sole cost and expense of Declarant, who shall promptly pay to the City such costs together with fees for purchase of a reasonable number of certified copies of the recorded Declaration.

4.3 **Additional Remedies.**

Declarant acknowledges that the City is an interested party to this Declaration, and consents to enforcement by the City, administratively or at law or equity, of the restrictions, covenants, easements, obligations and agreements contained herein. Declarant also acknowledges that the remedies set forth in this Declaration are not exclusive, and that the City and any agency thereof may pursue other remedies not specifically set forth herein including, but not limited to, the seeking of a mandatory injunction compelling Declarant, its heirs, successors or assigns, to comply with any provision, whether major or minor, of this Declaration.

4.4 **Notice and Cure.**

(a) Before any agency, department, commission or other subdivision of the City of New York institutes any proceeding or proceedings to enforce the terms or conditions of this Declaration because of any violation hereof, it shall give Declarant forty-five (45) days written notice of such alleged violation, during which period Declarant shall have the opportunity to effect a cure of such alleged violation. If Declarant commences to effect a cure during such forty-five (45) day period and proceeds diligently towards the effectuation of such cure, the aforesaid forty-five (45) day period shall be extended for so long as Declarant continues to proceed diligently with the effectuation of such cure. The right to notice and cure provided in this subsection shall apply equally to all parties with a fee interest in the Zoning Lot, or any part thereof, including ground lessees; provided the LPC has received notice by said parties in accordance with Section 6.2. Notwithstanding the foregoing, in the event that the Designated Structure or Benefitted Structure is converted to a condominium, the right to notice and cure provided in this subsection shall apply only to the condominium board; provided that the LPC has received notice by said parties in accordance with Section 6.2.

(b) If Declarant, or either of the constituent entities thereof, fails to observe any of the terms or conditions of this Declaration, and fails to cure such violation within the applicable grace period provided in subparagraph 4.4(a) of this Declaration, then prior to the institution by any agency or department of the City of any action, proceeding, or proceedings against Declarant, or either Church or Developer, in connection with such failure, a Mortgagee who has given written notice of its name and address to the CPC and the LPC shall be given thirty (30) days written notice of such

alleged violation, during which period such Mortgagee shall have the opportunity to effect a cure of such alleged violation. If such Mortgagee commences to effect a cure during such thirty (30) day period and proceeds diligently towards the effectuation of such cure, the aforesaid thirty (30) day period shall be extended for so long as such Mortgagee continues to proceed diligently with the effectuation of such cure.

(c) If after due notice as set forth in this Section 4.4, Declarant, Church or Developer, and the Mortgagee fail to cure such alleged violations, the City may exercise any and all of its rights, including those delineated in this Section and may disapprove any amendment, modification, or cancellation of this Declaration on the sole grounds that Declarant is in default of any material obligation under this Declaration.

4.5 **Acknowledgment of Covenants.**

Each of Church and Developer acknowledges that the restrictions, covenants, easements, obligations and agreements in this Declaration, which are an integral part of the Special Permit, will protect the value and desirability of the Subject Property as well as benefit the City of New York and all property owners within a one-half mile radius of the Subject Property. The restrictions, covenants, easements, obligations and agreements shall be covenants running with the land enforceable by the City, and shall bind each of Church, Developer and their respective successors, legal representatives, and assigns.

4.6 **No Other Enforceable Restrictions.**

Each of Church and Developer represents and warrants that there are no other enforceable restrictions of record on the use of the Subject Property or the Designated Structure, or on the Developer Property or the Benefitted Structure, nor any present or presently existing future estate or interests in the Subject Property, the Designated

Structure, the Developer Property or the Benefitted Structure, nor any lien, obligation, enforceable covenant, limitation or encumbrance of any kind which precludes, directly or indirectly, imposition on the Subject Property, the Designated Structure, the Developer Property or the Benefitted Structure of the restrictions, covenants, easements and obligations of this Declaration.

4.7 **Governance.**

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

4.8 **Severability.**

In the event that any provision of this Declaration shall be deemed, decreed, adjudged or determined to be invalid or unlawful by a court of competent jurisdiction and the judgment of such court shall be upheld on final appeal, or the time for further review of such judgment on appeal or by other proceeding has lapsed, such provision shall be severable, and the remainder of this Declaration shall continue to be of full force and effect, provided that in no event shall this Declaration be deemed effective in the event that the Special Permit is deemed or decreed unlawful.

4.9 **Applicability to Other City Agencies.**

Each of Church and Developer covenants to include a copy of this Declaration as part of any application submitted to the LPC, CPC, Buildings Department, Board of Standards and Appeals (“BSA”), New York State Attorney General (in the event of a proposed conversion of the Designated Structure to condominium ownership) or any agency succeeding to their respective jurisdictions. The restrictions and obligations contained herein are a condition of any permit or Certificate of Occupancy to be issued

by the Buildings Department and each of Church and Developer will take all reasonable steps to ensure that they are so listed. Failure to carry out such obligation beyond any applicable grace period shall constitute sufficient cause for the Commissioner of the Buildings Department to revoke any building permit issued pursuant to the Special Permit or to apply to the BSA or to a court of competent jurisdiction for revocation of the Certificate of Occupancy or any permit issued by the Buildings Department.

4.10 **Limitation of Liability.**

(a) Each of Church and Developer shall be liable in the performance of any term, provision or covenant for which it is responsible under this Declaration, subject to the following sentences and subject to Section 4.12 below. The liability of any Unit Owner under this Declaration shall be limited to the amount of such Unit Owner's prorated share, based on such Unit Owner's interest in the common elements of the Condominium, of the costs of compliance with this Declaration. For the purposes of this Section 4.10, "Declarant" shall mean "Declarant" as defined in Article I hereof, as well as any principals, disclosed or undisclosed, partners, affiliates, officers, employees, shareholders or directors of Declarant.

(b) The restrictions, covenants and agreements set forth in this Declaration shall be binding upon each of Church and Developer and any successor-in-interest only for the period during which Church or Developer or any successor-in-interest is the holder of a fee interest in or is a party-in-interest of the Subject Property or the Benefitted Structure, as the case may be, and only to the extent of such fee interest or the interest rendering Church or Developer a party-in-interest. At such time as the Church or Developer has no further fee interest in a portion of the Zoning Lot and is no

longer a party-in-interest of the Zoning Lot, such entity's obligations and liability with respect to this Declaration shall wholly cease and terminate from and after the conveyance of its interest. The successors-in-interest in the Subject Property, in the case of the Church, or the Developer Property, in the case of Developer, by acceptance of such conveyance automatically shall be deemed to assume Church's or Developer's obligations and liabilities hereunder to the extent of such successor-in-interest's interest.

4.11 **Subordination.**

Each of Church and Developer shall cause every individual, business organization or other entity that between the date hereof and the date of recordation of this Declaration becomes a Party-in-Interest to the Subject Property, to execute this Declaration or to subordinate such interest to the Declaration and waive its right to execution. Any mortgage or other lien encumbering the Subject Property after the recording date of this Declaration shall be subject and subordinate hereto.

4.12 **Right to Convey.**

Nothing contained herein shall be construed as requiring the consent of the CPC, the LPC, the City, any agency thereof or any other person or entity to any sale, transfer, conveyance, mortgage, lease or assignment of any interest in the Subject Property, the Designated Structure, the Developer Property or the Benefitted Structure.

**ARTICLE V: AMENDMENTS, MODIFICATIONS AND CANCELLATIONS**

5.1 **Amendment or Cancellation.**

Except as provided in paragraph 4.1 above, this Declaration may be amended or canceled only upon application by LPC on behalf of Declarant and only with the express written approval of the CPC and of the City Council, but only in the event that the City

Council reviewed the Special Permit pursuant to Section 197-d, and no other approval or consent shall be required from any public body, private person or legal entity of any kind; provided, however, that no such approval shall be required in the case of any cancellation pursuant to paragraph 5.4.

5.2 **Minor Modification.**

Notwithstanding Section 5.1 hereof, the Chairperson of the LPC and the Chairperson of the CPC may, by express written consent, administratively approve modifications to the Declaration that the CPC has determined to be minor. Such minor modifications shall not be deemed amendments requiring the approval of the CPC, the LPC, the City Council or any other agency or department of the City of New York.

5.3 **Recording and Filing.**

Any modification, amendment or cancellation of this Declaration, except pursuant to paragraph 5.5, shall be executed and recorded in the same manner as this Declaration. Following any modification, amendment or cancellation, Declarant shall immediately record it and provide one executed and certified true copy thereof to each of the CPC and the LPC and upon failure to so record, permit its recording by the CPC or the LPC at the cost and expense of Developer.

5.4 **Landmark Work Modification**

In the event that the Landmark Work is modified, pursuant to a future approval by the LPC, with no change to the Special Permit Drawings as described in Section 2.0 hereof, a notice indicating such modification, subject to approval by counsel for the LPC and CPC, may in lieu of a modification of the Declaration, be recorded in the City Register's Office. Such recordation shall be in accordance with section 5.3 of the

Declaration, and proof of recordation shall be provided to CPC and LPC.

5.5 **Surrender or Nullification.**

In the event that Developer does not use the Benefitted Structure for the Special Permit Bulk Modification, or in the event that the Special Permit lapses under Section 11-42 of the Zoning Resolution, Church and Developer may, together, surrender the Special Permit to the CPC and Developer may proceed with any use permitted by the Zoning Resolution and in accordance with the Landmarks Preservation Law as if such Special Permit had not been granted. In either of such events, this Declaration shall be rendered null and void upon recordation of an instrument filed by Declarant discharging it of record, with copies to LPC and CPC, the recordation of which instrument shall constitute a waiver of the right to use the Subject Property pursuant to the Special Permit.

**ARTICLE VI: MISCELLANEOUS**

6.1 **Exhibits.**

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

6.2 **Notices.**

All notices, demands, requests, consents, waivers, approvals and other communications which may be or are permitted, desirable or required to be given, served or deemed to have been given or sent hereunder shall be in writing and shall be sent, if intended for the Church, to 520 Clinton Avenue, Brooklyn, New York 11238, with a copy to Goldstein Hall PLLC, 80 Broad Street, 303, New York, NY 10004, Attn: Jason Labate; if intended for Developer, to 550 Clinton Partners LLC and 539 Vanderbilt Partners LLC, 12 West 23<sup>rd</sup> Street, New York, New York 10019, Attn: Jeffrey Gershon,

with a copy to Greenberg Traurig, LLP, 200 Park Avenue, New York, New York 10166, Att: Deirdre A. Carson; if intended for the CPC, to the CPC at 120 Broadway, New York, New York 10271 (or then-official address), Att: Chairperson; if intended for the LPC, to the LPC at 1 Centre Street, 9th Floor, New York, New York 10007 (or then-official address), Att: Chairperson and (d) if intended for the City Council, to the City Council at the Office of the Speaker, City Council, City Hall, New York, New York 10007. Church or Developer, as the case may be, or their respective representatives, by notice given as provided in this paragraph 6.2, may change any address for the purposes of this Declaration. Each notice, demand, request, consent, approval or other communication shall be either sent by registered or certified mail, postage prepaid, by commercial overnight delivery, or delivered by hand, and shall be deemed sufficiently given, served or sent for all purposes hereunder five (5) business days after it shall be mailed, or the following day if sent by overnight delivery, or, if delivered by hand, when actually received.

6.3 **Indemnification.**

Provided that either Church or Developer is found by a court of competent jurisdiction to have been in default in the performance of its obligations under this Declaration after having received written notice of such default and opportunity to cure as provided above, and such finding is upheld on final appeal, or the time for further review of such finding on appeal or by other proceeding has lapsed, each of Church and Developer shall indemnify and hold harmless the City from and against all of its reasonable legal and administrative expenses arising out of or in connection with the City's enforcement of the obligations of either Church or Developer under this

Declaration.

6.4 **Enforcement.**

Declarant acknowledges that the City of New York is an interested party to this Declaration and consents to enforcement solely by the City of New York, and by no other party, administratively, or at law or equity, of the restrictions, covenants, obligations, easements and agreements contained herein.

[SIGNATURE PAGE FOLLOWS]

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

**CHURCH OF ST. LUKE & ST. MATTHEW**

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

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

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2019 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

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

**SUPERIOR ASSOCIATES, LLC**

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

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

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2019 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

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

**LICHTER FAMILY LLC**

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

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

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2019 before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person or entity upon behalf of which the individual acted, executed the instrument.

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

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

**THE CLARENCE A. GREIFINGER TRUST**

By: \_\_\_\_\_  
Name: Audrey Sharp Perlman  
Title: Trustee

and

By: \_\_\_\_\_  
Name: Rhonda Greifinger  
Title: Trustee

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

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2019 before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person or entity upon behalf of which the individual acted, executed the instrument.

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



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

**550 CLINTON PARTNERS LLC**

By: \_\_\_\_\_  
Name: Jeffrey Gershon  
Title: Managing Member

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

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2019 before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person or entity upon behalf of which the individual acted, executed the instrument.

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

**539 VANDERBILT PARTNERS LLC**

By: \_\_\_\_\_  
Name: Jeffrey Gershon  
Title: Managing Member

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

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2019 before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person or entity upon behalf of which the individual acted, executed the instrument.

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

## SCHEDULE OF EXHIBITS

- Exhibit A - Metes and Bounds of Subject Property
- Exhibit B - Metes and Bounds of Developer Property
- Exhibit C - Certification of Parties in Interest
- Exhibit C-1 - Form of Waiver
- Exhibit D - Report
- Exhibit E - Certificate of No Effect
- Exhibit F - Drawings

**Exhibit A**  
**Metes and Bounds of Subject Property**

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

BEGINNING at a point on the westerly side of Clinton Avenue, distant 268 feet 7 and 1/4 inches northerly from the corner formed by the intersection of the westerly side of Clinton Avenue with the northerly side of Atlantic Avenue;

Running thence westerly 130 feet;

Thence northerly parallel with Clinton Avenue 4 feet;

Thence easterly 5 feet;

Thence northerly 50 feet;

Thence westerly 75 feet to the easterly side of Vanderbilt Avenue;

Thence northerly along the easterly side of Vanderbilt Avenue 100 feet 1 inch;

Thence easterly 200 feet to the westerly side of Clinton Avenue;

Thence southerly along the westerly side of Clinton Avenue 154 feet 3 inches to the point or place of BEGINNING.

**Exhibit B**  
**Metes and Bounds of Developer Property**

**Legal Description – (Lot 59)**

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

Beginning at the corner formed by the intersection of the northerly side of Atlantic Avenue and the westerly side of Clinton Avenue;

Running thence northerly along the westerly side of Clinton Avenue 97 feet 7 inches;

Thence westerly at right angles to Clinton Avenue and part of the distance through a party wall 106 feet;

Thence northerly parallel with Clinton Avenue 44 feet;

Thence westerly 57 feet 10 inches to a point distant 68 feet 8 inches northerly from the northerly side of Atlantic Avenue measured along a line drawn parallel with and distant 36 feet 2 inches east of the easterly side of Atlantic Avenue;

Thence southerly parallel with Vanderbilt Avenue and part of the distance through a party wall 68 feet 8 inches to the northerly side of Atlantic Avenue;

Thence easterly along the northerly side of Atlantic Avenue 179 feet 4 inches to the point or place of BEGINNING.

**Legal Description – (Lot 1)**

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

Beginning at the corner formed by the intersection of the northerly side of Atlantic Avenue and the easterly side of Vanderbilt Avenue; running thence northerly along the easterly side of Vanderbilt Avenue 131 feet 6 inches; thence easterly at right angles to Vanderbilt Avenue 80 feet; thence southerly parallel with Vanderbilt Avenue 77 feet 10-1/2 inches; thence westerly at right angles to Vanderbilt Avenue 43 feet 10 inches; thence southerly parallel with Vanderbilt Avenue and part of the distance through a party wall 69 feet 8-1/2 inches to the northerly side of Atlantic Avenue; thence westerly along the northerly side of Atlantic Avenue 39 feet 7 inches to the corner, the point or place of BEGINNING.

**Exhibit C**  
**Certification of Parties in Interest**  
*(Immediately Follows)*

**Exhibit C-1**  
**Form of Waiver**  
*(Immediately Follows)*

**WAIVER OF EXECUTION OF RESTRICTIVE DECLARATION  
AND SUBORDINATION OF MORTGAGE**

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

**W I T N E S S E T H:**

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

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

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

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

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

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

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

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

MORTGAGEE:

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

**ACKNOWLEDGMENT**

State of New York  
County of \_\_\_\_\_

On the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_ before me, the undersigned, a notary public in and for said state, personally appeared

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

**Exhibit D**  
**Report**  
*(Immediately Follows)*

**Exhibit E**  
**Certificate of No Effect**  
*(Immediately Follows)*

**Exhibit F**  
**Special Permit Drawings**  
*(Immediately Follows)*