



IN THE MATTER OF an application submitted by REEC St Marks LP pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-79 of the Zoning Resolution:

1. to allow transfer of 8,386 square feet of floor area from property located at 4 St. Marks Place (Block 463, Lot 11) that is occupied by a landmark building (Hamilton-Holly House) to property located at 3 St. Marks Place (Block 464, Lots 1, 3, and 59); and
2. to modify the height and setback requirements of Section 33-432 (In other Commercial Districts);

to facilitate the development of a 10-story commercial building on property located at 3 St. Marks Place (Block 464, Lots 1, 3, and 59), in a C6-1 District.

This application for a zoning special permit was filed on October 3, 2019 by REEC St Marks LP. The special permit, pursuant to Zoning Resolution (ZR) Section 74-79, would transfer 8,386 square feet of unused development rights from 4 St. Marks Place (the landmark) to 3 St. Marks Place (the development site) and modify the height and setback regulations of ZR Section 33-432. The proposed project is located on the border of the NoHo and East Village neighborhoods in Manhattan Community District 3.

BACKGROUND

The development site is located within a C6-1 zoning district, which has been mapped since 1961, and there have been no recent land use approvals on the site. C6-1, which has an R7-2 residential equivalent, is a medium-density commercial zoning district that allows for a maximum commercial floor area ratio (FAR) of 6.0 and a maximum residential FAR of 3.44. C6 zoning districts are typically found outside of central business districts and produce higher-bulk commercial uses with no off-street parking requirements due to transit proximity. A provision of the special permit pursuant to ZR Section 74-79 allows both permitted residential and commercial density to increase by up to 20 percent, resulting in a maximum commercial FAR of 7.2 and a maximum residential FAR of 4.13.

The landmark, located at 4 St. Marks Place, is a three and one half-story structure currently occupied with cellar and first floor retail with residential units on the upper floors. It was designated as an individual historic landmark in October 2004 (N 050150 HKM). In March 2017, the New York City Landmarks Preservation Commission (LPC) issued a Certificate of Appropriateness (COA 19-9359) for work on the landmark. This Certificate of Appropriateness was modified in April 2017, June 2017 and April 2018 to reflect changes that would improve the condition of the landmark (LPC-19-09873, LPC-19-12794, LPC-19-18386, and LPC-19-24903). In August 2019, LPC issued a favorable report as part of this proposal to bring the landmark into a sound, first class condition. This condition, which requires more extensive restoration work than is typically required of an individual landmark, is required per ZR Section 74-79 as a condition of transferring development rights from a landmark. The favorable LPC report is appended to this report.

The project area consists of the development site (Block 464, Lots 1, 3, and 59), located on the northeast corner of Third Avenue and St. Marks Place, and the landmark (Block 463, Lot 11), located on the south side of St. Marks Place, just east of Third Avenue. The development site is an approximately 7,000-square-foot lot that is currently vacant. The development site previously contained three low-rise buildings that were demolished in 2019. The landmark is located on a 3,120-square-foot lot occupied by a three-and-one-half-story Federal-style townhouse containing 10,074 square feet of floor area (3.22 FAR). The building was constructed in 1831 by English-born real estate developer Thomas E. Davis, who sold it in 1833 to Col. Alexander Hamilton, the son of the first U.S. Secretary of the Treasury Alexander Hamilton. The building has contained retail uses on the lower floors and three dwelling units above since 1969.

In the area surrounding the project area, Third Avenue acts as the boundary between the higher-density buildings in the NoHo and Astor Place neighborhoods to the west and the lower-density buildings in the East Village neighborhood to the east. Along this corridor, buildings range broadly in height from four to 20 stories.

The buildings to the west of Third Avenue are mixed-use and characterized by various building typologies. Directly west of the project area, Astor Place is characterized by mixed commercial and residential uses, as well as large commercial buildings that are built on large lots, some of which comprise full blocks. These buildings range in height from five to 31 stories.

To the east of the project area is the East Village neighborhood, where tenement-style walkups containing ground floor retail and residential uses on the upper floors are predominant. Further to the east, main thoroughfares such as First and Second avenues contain higher density, taller buildings (between three and 17 stories), while buildings along the midblocks are generally lower in height and less dense (between one and 10 stories). Buildings along St. Marks Place east of Third Avenue are typically three to six stories.

The surrounding area is well served by mass transit, including multiple subway and bus routes. The Astor Place subway station is located one block west of the project area, providing service to the 6 line. Three blocks further west, the 8th Street-NYU subway station is served by the R and W lines. Five blocks to the north, the Third Avenue subway station at East 14th Street is served by the L line. The project area also contains stops for the M1, M2, M3, M8, M15, M101, M102, and M103 bus lines, and is near to the M15 SBS, providing service to the east and west sides of Manhattan and uptown.

The applicant proposes to redevelop the development site with a 10-story, approximately 156-foot tall commercial building with a cellar and sub-cellar. The development would have 100 percent lot coverage and contain 50,314 square feet of floor area, consisting of 4,951 square feet of retail space on the ground floor and 45,363 square feet of office space on the ground floor and above. Accessory uses are proposed in the cellar and sub-cellar.

To facilitate this development, the applicant requests a special permit pursuant to ZR Section 74-79. The special permit would allow the transfer of 8,386 square feet of unused development rights from the landmark to the development site. The action would also allow modifications to the provisions of ZR Section 33-432 to permit the proposed development to penetrate the

maximum front wall height and sky exposure plane within the 20-foot initial setback distance on St. Marks Place.

ZR Section 74-79 permits an individual landmark to transfer unused floor area to an adjacent site, which includes sites across the street or directly adjacent to the landmark. The development site is across the street from the landmark. ZR Section 74-79 would also permit the development site's bulk to increase by up to 20 percent to accommodate the transfer of development rights from the landmark. The proposed building would comprise 50,314 square feet of floor area, which is 20 percent (8,386 square feet) more than the basic allowable maximum commercial floor area on the site of 41,928 square feet. The landmark has 8,646 square feet of unused floor area, which is sufficient to allow a transfer of development rights.

Through this special permit, the applicant also requests modifications of the height and bulk regulations of ZR Section 33-432, which would permit the design to penetrate the front wall height and sky exposure plane. In a C6-1 zoning district, the maximum front wall height is 85 feet, and at this height, buildings are required to set back 15 feet along a wide street and 20 feet along a narrow street. After this initial setback, buildings are required to follow the sky exposure plane of 5:6:1 on a wide street, and 2:7:1 on a narrow street. The front wall height of the proposed development would be built to a height of approximately 63 feet (four stories) on both Third Avenue, which is a wide street, and St. Marks Place, which is a narrow street. Along Third Avenue, the building would be compliant with height and bulk regulations.

On St. Marks Place, the building would penetrate the front wall height and sky exposure plane from 85 feet to approximately 139 feet. This would result in a stepped design of the building along St. Marks Place with a sheer rise to approximately 63 feet at the street wall. The design would then progressively step back at 108 feet and 139 feet. The building would then be compliant with the sky exposure plane, rising to 156 feet, exclusive of mechanical and elevator bulkheads.

The applicant therefore seeks a special permit to transfer floor area from a landmark and to waive height and setback regulations to facilitate the proposed development.

As a condition of the special permit, the exterior of the landmark would be restored to a sound, first-class condition to match its historic, late-19th century appearance. This restoration work is discussed in more detail in the favorable report issued by the LPC attached to this report. In addition, the owner of the landmark would be required to implement a cyclical maintenance plan to ensure the continued maintenance of the landmark and would enter into a restrictive declaration to bind the owner and all heirs, successors, and assigns to the approved plan.

ENVIRONMENTAL REVIEW

This application (C 200077 ZSM) 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 Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The lead is the City Planning Commission. The designated CEQR number is 19DCP094M.

After a study of the potential environmental impacts of the proposed actions, a Negative Declaration was issued on October 28, 2019.

UNIFORM LAND USE REVIEW

In response to the COVID-19 pandemic, the Mayor issued Emergency Executive Order No. 100 on March 16, 2020 that suspended certain time requirements relating to the ULURP and other land use processes as of March 12, 2020. The suspension included portions of sections 195, 197-c and 197-d of the New York City Charter, as well as sections of the Administrative Code and the Rules of the City of New York, pertaining to time limitations. The CPC ceased meeting immediately after issuance of the Executive Order until August 3, 2020, when the regular schedule of meetings was resumed. The ULURP time requirements suspended by Emergency Executive Order No. 100 are expected to begin running by September 14, 2020.

This application (C 200077 ZSM) was certified as complete by the Department of City Planning on December 2, 2019 and was duly referred to Manhattan Community Board 3 and the Manhattan Borough President in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b).

Community Board Public Hearing

Community Board 3 held a public hearing on this application (C 200077 ZSM) on December 11, 2019. On December 19, 2019, by a vote of 33 in favor, none against and none abstaining, the Community Board adopted a resolution recommending disapproval of the application.

The full recommendation is included with this report.

Borough President Recommendation

This application (C 200077 ZSM) was considered by the Manhattan Borough President, who, on February 27, 2020, issued a recommendation to disapprove the application with the following conditions:

“The Applicant must work with the Community Board as well as other local groups to integrate uses within the Proposed Development that will benefit the community at large.

The Applicant must work with the Community Board as well as other local groups to gain consensus on a building design that is more contextual to the surrounding area.”

The full recommendation is included with this report.

City Planning Commission Public Hearing

On February 19, 2020 (Calendar No. 4), the City Planning Commission scheduled March 4, 2020 for a public hearing on this application (C 200077 ZSM). The hearing was duly held on March 4, 2020 (Calendar No. 17).

There were four speakers in favor of the proposal and 11 in opposition. Speakers in favor included the applicant team and the owner of the landmark. Speakers in opposition included representatives from the Village Preservation (VP), a representative from the Manhattan Borough President, a joint representative speaking on behalf of the State Senator for District 27, the New York Assembly Member for District 66, and the City Council Member for District 2, and residents of the community.

Speaking in favor of the proposed development, representatives for the applicants stated that the design of the proposed building is intended to respond to the landmark, as well as the character of St. Marks Place. The applicant team noted that the proposed building's front wall height of 63 feet is similar to that of the landmark at 64 feet, and other buildings along St. Marks Place. They also demonstrated that an as-of-right building could be built to 85 feet and this would rise higher than most buildings on the block. They also noted that the building walls on St. Marks Place would angle in a slight northeast-to-southwest direction and are intended to strengthen the visual relationship between the proposed development and the surrounding area.

Regarding ground floor retail, representatives for the applicant stated that the retail space is designed so that it could be broken up into smaller retail spaces, and the owner would consider using this flexibility to accommodate future small business tenants.

Regarding the status of improvements to the landmark, representatives for the applicant noted that the LPC-approved restoration plan would bring the landmark into a higher standard of restoration than exists today. They further stated that LPC would have to certify that the restoration work is complete before the proposed building could be occupied. Finally, the applicant team noted that LPC would be able to enforce the maintenance plan should future owners of the landmark fail to adhere to the maintenance plan that would be approved as a condition of the transfer of development rights.

Speaking in favor of the project, the owner of the landmark stated that the building was a blight in the neighborhood when he purchased it. The owner noted that while some restoration has

commenced, further improvements would require additional funding, which would be supported by the sale of development rights.

The prevailing themes of speakers in opposition to the project covered concerns regarding out-of-scale development, concerns that the trade-off between a larger building and improvements to the landmark were incongruous, concerns that the proposed development would increase foot traffic and overwhelm transportation infrastructure, concerns that the benefits of the landmark would accrue to the private owner of the landmark, and requests for more landmark designation in the East Village.

Speaking in opposition, a representative from VP expressed concern that additional office development would contribute to the recent trend of development that is transforming the neighborhood into a commercial corridor. The representative believed that the improvements to the landmark would not justify the increased bulk of the proposed development. He stated that he did not have a preference between a building that could be built as-of-right and the proposed development, but rather stated a belief that no office development was appropriate in this area.

A representative for the New York City Council Member for District 2 spoke in opposition to the project on behalf of the Council Member, the New York State Senator for District 27, and the New York Assembly Member for District 66. The representative noted that the proposed development would be 20 percent larger than what is allowed as-of-right, noting this would be out of context with the neighborhood and the improvements to the landmark would not offset the increased bulk.

Speaking in opposition, a representative for the Manhattan Borough President stated the proposed intensity of use would increase significantly, and unduly overwhelm the character of the neighborhood. The representative noted that the improvements to the landmark would benefit the private owners of the proposed development and noted that the landmark is not open to the public and the benefits of restoration would accrue to the landmark owner, not the public.

Several residents speaking in opposition to the project reiterated previous speakers' sentiments regarding their concern that the proposed development would be out of context in the neighborhood and that the intensity of use would overwhelm the neighborhood.

CONSIDERATION

The Commission believes that this application for a zoning special permit (C 200077 ZSM) is appropriate. The proposed action will facilitate the construction of a 10-story office building and restoration of an individual landmark building.

The Commission heard concerns that the proposed development would be out of scale with the neighborhood context. The Commission notes that the project area is at the junction of two distinct neighborhoods that contain a variety of land uses and building typologies. To the east of Third Avenue, low-rise walk up buildings ranging from three to six stories characterize the midblocks of the East Village neighborhood. Along Third Avenue and to the west, buildings range from low-rise walk ups to mid-rise office buildings to large institutional buildings, some of which exceed heights of 20 stories. As a result of its location at this junction, the design of the proposed development must balance the higher density character of the Third Avenue corridor to the west, with the lower density residential neighborhood to the east. The Commission believes that the proposed building, and the waivers it seeks, achieves this balance.

The Commission believes that the increased bulk of the building that will result from the transfer of development rights from the landmark is appropriate. The Commission heard concerns that increasing the bulk of the building by 20 percent will unduly increase congestion, overwhelm infrastructure, and result in an out-of-context building. The Commission notes that in the context of this proposed development, a 20 percent increase in allowable bulk is approximately 8,400 square feet. The Commission further notes that historically the average size of the transfer of unused development rights through ZR Section 74-79 is more than 180,000 square feet. While precedent alone cannot be used to justify the appropriateness of a transfer of development rights in a given neighborhood, the Commission does not believe that the 8,400 square feet subject to this application will unduly increase the intensity of office use in this area, especially given that a

similar-sized office building containing approximately 42,000 square feet could be built as-of-right under existing zoning. The Commission further believes that 8,400 square feet, which could accommodate a small to mid-size business, will not overwhelm the area's rich transportation network nor contribute to increased pedestrian traffic. Finally, the Commission believes that the design of the proposed building, including the height and setback waivers sought, appropriately accommodates this additional bulk.

The Commission believes that the proposed building's articulation, which is the subject of the height and setback waivers, appropriately transitions the higher density, taller building context on Third Avenue and to the west to the lower density context along St. Marks Place and into the East Village. The Commission believes that lowering the front wall height more than 20 feet below what is permitted by zoning to match the existing character on St. Marks Place and the landmark across the street is appropriate. The Commission also notes that the applicant responded to comments from the LPC, changing the design of the proposed building to be more harmonious with the landmark building. Therefore, the Commission believes that the lowered front wall height, in combination with the building's additional setbacks and waivers to penetrate front wall height and sky exposure plane, balance the need to match the existing character on Third Avenue and St. Marks Place while enabling adequate light and air to reach the street.

The Commission notes that the proposed 156-foot height of the building, which is permitted as-of-right, matches the context of, and in several cases is lower than several existing buildings along Third Avenue. For example, the building at 29 Third Avenue, located directly north of the development site, is a 16-story, 168-foot institutional (dormitory) building built in 1987. The building at 51 Astor Place, located directly across Third Avenue from the development site, is a 14-story, 185-foot office building built in 2012. Similarly, 31 Third Avenue, located one block north of the development site, is a 16-story, 174-foot institutional (dormitory) building built in 1987. Additionally, 30 Third Avenue, located one block northwest of the development site, is a 20-story, 177-foot residential building built in 1965. Two blocks south of the development site is 41 Cooper Square, a nine-story, 121-foot institutional building built in 2008. Rising 10 stories

and 156 feet, the proposed development will be consistent with the surrounding context and character of Third Avenue.

The Commission heard concerns regarding the perceived inappropriateness of office uses within the area. The Commission notes that the project area is located within a C6-1 commercial zoning district that has been in place since the original zoning resolution was adopted in 1961. This zoning district encompasses longstanding mixed-use areas along Third Avenue and Bowery, demonstrating that commercial uses have been permitted and appropriate in the project area for nearly 60 years.

The Commission believes that recent office developments are appropriate and that the proposed development would align with and complement the area's character and use. Astor Place, which is directly across from the proposed development, is a growing employment center with access to a talent pool from various universities as well as to transit, with several subway lines (6, R, W, and L) and nearly a dozen bus routes present in the area. The Commission believes that this location is appropriate for mixed-use growth and that zoning should encourage access to good jobs in a dense and accessible area of the city.

The Commission also heard requests for additional landmark and historic district designations. The Commission notes that such designation is the responsibility of the LPC and that much of the area surrounding the proposed development is already designated with historic status, including more than a dozen individual landmarks and three historic districts.

Finally, the Commission heard concerns that the public benefit that will result from improvements to the landmark would not be commensurate with the increased bulk and any reduction in access to light and air that would result from the transfer of development rights. The Commission also heard that the benefits of the transfer of development rights will accrue to the individual property owners of the landmark and proposed development. The Commission notes that when the ZR Section 74-79 special permit was created in 1968, its intent was threefold: to provide economic benefits to both the landmark owner, by allowing them to sell their unused

development rights, and to the buyer of these rights, allowing them to acquire additional floor area; to provide a benefit to the neighborhood by preserving a landmark's integrity; and to protect the City's tax revenues by enabling the City to tax what was previously untaxable.

Understanding the intent of ZR Section 74-79, the Commission believes that preserving the landmark and bringing it into a higher standard of restoration will benefit the public. It also believes that the 8,400 square foot transfer of development rights, and the height and setback waivers that accommodate this bulk in order to respond to the surrounding built context is commensurate with this benefit. Furthermore, the Commission agrees that the benefits of this transfer would accrue to the landmark and development site owners, but notes that this is the fundamental purpose of ZR Section 74-79. Given these considerations, the Commission believes that the proposed development, and the special permit it seeks, are appropriate.

FINDINGS

The City Planning Commission hereby makes the following findings pursuant to Section 74-792 (e) (Conditions and limitations) of the Zoning Resolution:

- 1) that the permitted transfer of #floor area# or variations in the front height and setback regulations will not unduly increase the #bulk# of any #development# or #enlargement#, density of population or intensity of use in any #block# to the detriment of the occupants of #buildings# on the #block# or nearby #blocks#, and that any disadvantages to the surrounding area caused by reduced access of light and air will be more than offset by the advantages of the landmark's preservation to the local community and the City as a whole;
- 2) that the program for continuing maintenance will result in the preservation of the landmark; and
- 3) that in the case of landmark sites owned by the City, State or Federal Government, transfer of development rights shall be contingent upon provision by the applicant of a major improvement of the public pedestrian circulation or transportation system in the area.

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 201 of the New York City Charter, that based on the environmental determination, and the consideration described in this report, the application (C 200077 ZSM) submitted by REEC St Marks LP for the grant of a special permit pursuant to Section 74-79 of the Zoning Resolution:

1. to allow transfer of 8,386 square feet of floor area from property located at 4 St. Marks Place (Block 463, Lot 11) that is occupied by a landmark building (Hamilton-Holly House) to property located at 3 St. Marks Place (Block 464, Lots 1, 3, and 59); and
2. to modify the height and setback requirements of Section 33-432 (In other Commercial Districts);

to facilitate the development of a 10-story commercial building on property located at 3 St. Marks Place (Block 464, Lots 1, 3, and 59), in a C6-1 District, is approved, subject to the following conditions:

1. The property that is the subject of this application (C 200077 ZSM) 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-001.00 | Landmark/Adjacent (Receiving/Transfer) Site Plan | 09/24/2019 |
| Z-002.00 | Adjacent Lot (Receiving) Site Plan | 09/24/2019 |
| Z-003.00 | Adjacent Lot (Receiving) Zoning Analysis | 09/24/2019 |

| | | |
|----------|-----------------|------------|
| Z-010.00 | Waiver Plan | 09/24/2019 |
| Z-020.00 | Waiver Sections | 09/24/2019 |

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

limited to any other powers of the City Planning Commission, or of any other agency of government, or any private person or entity. Any such failure or breach of any of the conditions as stated above, may constitute grounds for the City Planning Commission or the City Council, as applicable, to disapprove any application for modification, renewal or extension of the special permit hereby granted or of the attached restrictive declaration.

7. 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 200077 ZSM) is duly adopted by the City Planning Commission on August 19, 2020 (Calendar No. 17), 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. KNUCKLES, *Esq.*, *Vice-Chairman*

**DAVID BURNEY, ALLEN P. CAPPELLI, Esq., ALFRED C. CERULLO, III,
MICHELLE DE LA UZ, JOSEPH I. DOUEK, RICHARD W. EADDY, ANNA HAYES
LEVIN, HOPE KNIGHT, ORLANDO MARIN, LARISA ORTIZ, RAJ RAMPERSHAD,**
Commissioners



THE CITY OF NEW YORK
MANHATTAN COMMUNITY BOARD 3

59 East 4th Street - New York, NY 10003
Phone (212) 533-5300
www.cb3manhattan.org – mn03@cb.nyc.gov

Alysha Lewis-Coleman, Board Chair

Susan Stetzer, District Manager

At its December 2019 monthly meeting, Community Board 3 passed the following resolution:

TITLE: ULURP #200077ZSM: 3 St Marks Place - Special Permit to transfer air rights from landmarked 4 St Marks Pl and modify height and setback requirements to facilitate a 10-story commercial building

WHEREAS, REEC St Marks LP is seeking a City Planning Commission Special Permit pursuant to Section 74-79 of the New York City Zoning Resolution (ZR); and

WHEREAS, this special permit would facilitate the construction of a ten-story commercial building located at 3 St. Mark's Place on the corner of St. Marks Place and 3rd Avenue; and

WHEREAS, the ground floor program would contain retail and office uses while the upper floors will exclusively contain office uses; and

WHEREAS, the Special Permit would allow a transfer of 8,386 square feet of development rights from a site across the street at 4 St. Mark's Place, occupied by the landmarked Hamilton-Holly House, to the receiving site at 3 St. Mark's Place; and

WHEREAS, pursuant to ZR Section 74-79, the proposed transfer would increase the basic maximum FAR at the receiving site by the maximum allowable percentage of 20 percent; and

WHEREAS, the Special Permit would also modify the provisions of ZR Section 33-432 to allow the building at the receiving site at 3 St. Mark's Place to penetrate the maximum front wall height and sky exposure plane within the 20-foot initial setback distance on St. Mark's Place; and

WHEREAS, the applicant appeared before the Community Board 3 Landmarks Committee in February 2019, and the Board passed a resolution opposing the transfer of development rights and recommending that LPC not issue an approving report; and

WHEREAS, this resolution identified a lack of a harmonious relationship between the proposed development and the existing character of the neighborhood, and questioned whether the dedicated maintenance funds for an already restored landmark building justified additional height and bulk at the proposed development across the street; and

WHEREAS, the developer and their representatives who presented the project at the December 2019 Community Board 3 meeting provided nothing to justify a conclusion different from CB3 opposition to the transfer of air rights; and

WHEREAS, an increase in the FAR of the proposed building from 6.0 FAR as-of-right to 7.2 FAR is a consequential increase which is not justified by additional enhancements to the landmarked building's previous improvement; and

WHEREAS, all members of the community who spoke at the hearing spoke against the transfer of air rights, arguing that the 10-story building would not be harmonious with the character of the neighborhood and that the funds to be allocated to the already restored landmark do not justify a larger building across the street;

THEREFORE BE IT RESOLVED, Community Board #3 recommends disapproval of the proposed transfer of development rights and modifications to height and setback requirements associated with the requested special permit as outlined in the application for ULURP #200077 ZSM, "3 St Marks Place."

Please contact the Community Board office with any questions.

Sincerely,



Alysha Lewis-Coleman, Chair
Manhattan Community Board 3



Jacky Wong, Chair
Land Use Zoning, Public & Private Housing

cc: Office of Councilmember Carlina Rivera
Office of Manhattan Borough President Gale Brewer
Office of NYS Assemblymember Deborah J. Glick
Office of NYS Senator Brad Hoylman



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

1 Centre Street, 19th floor, New York, NY 10007
(212) 669-8300 p (212) 669-4306 f
431 West 125th Street, New York, NY 10027
(212) 531-1609 p (212) 531-4615 f
www.manhattanbp.nyc.gov

Gale A. Brewer, Borough President

February 27, 2020

**Recommendation on ULURP Application C 200077 ZSM – 3 St. Marks Place
By REEC St. Marks LP**

PROPOSED ACTION

REEC St Marks LP (the "Applicant") seeks a special permit from the City Planning Commission ("CPC") pursuant to Section 74-79 of the New York City Zoning Resolution (the "ZR") to facilitate the construction of a ten-story building (the "Proposed Development") located at 3 St. Mark's Place in Manhattan (Block 464, Lots 1, 3, and 59). The special permit would:

1. Allow a transfer of 8,386 square feet of development rights from the zoning lot located at 4 St. Mark's Place (Block 463, Lot 11) (the "Landmark Site" and, together with the Proposed Development, the "Project Area"), which is occupied by the Hamilton-Holly House (the "Landmark Building"), an individual landmark, and;
2. Modify the provisions of ZR §33-432 to allow the Proposed Development to penetrate the maximum front wall height and sky exposure plane within the 20-foot initial setback distance on St. Mark's Place.

According to ZR §74-792, as a condition of permitting such transfers of development rights, the Commission shall make the following findings:

1. That the permitted transfer of floor area or variations in the front height and setback regulations will not unduly increase the bulk of any development or enlargement, density of population or intensity of use in any block to the detriment of the occupants of buildings on the block or nearby blocks, and that any disadvantages to the surrounding area caused by reduced access of light and air will be more than offset by the advantages of the landmark's preservation to the local community and the City as a whole;
2. That the program for continuing maintenance will result in the preservation of the landmark; and
3. That in the case of landmark sites owned by the City, State or Federal Government, transfer of development rights shall be contingent upon provision by the Applicant of a major improvement of the public pedestrian circulation or transportation system in the area.

BACKGROUND

Project Area

According to the Applicant, the Proposed Development consists of three tax lots located at the northeast corner of St. Mark's Place and Third Avenue, with frontages of 98 feet on St. Mark's Place (a narrow street) and 70 feet on Third Avenue (a wide street) and a total lot area of 6,988 square feet. The Proposed Development was previously occupied by three low-rise mixed-use buildings ranging in height from one- to four-stories that were vacated and demolished in 2019. The Proposed Development is located across St. Mark's Place and opposite from the Landmark Site, making it an "adjacent lot," as defined in ZR §74-79.

The Landmark Site is an interior lot located on the south side of St. Mark's Place, with a street frontage of 26 feet and a total lot area of 3,120 square feet (3.22 FAR). The Landmark Site is occupied by the Landmark Building, a three-and-one-half-story Federal-style townhouse containing 10,074 square feet of floor area. The Landmark Building is currently undergoing restoration but once completed will have retail/commercial use on the ground floor with residential units on the upper floors.

Both the Proposed Development and the Landmark Site are located in a C6-1 zoning district, which allows a basic maximum FAR of 6.0 for commercial uses, 6.5 for community facility uses, and 3.44 for residential uses. The standard height and setback regulations of the C6-1 zoning district allow the front wall of a building to be built to a height of up to 85 feet or 6 stories, whichever is less, before providing a required initial setback of 20 feet from a narrow street or 15 feet from a wide street. Pursuant to ZR § 33-432, above such height and beyond such initial setback distance, a building may not penetrate a sky exposure plane that begins at a height of 85 feet above the street line and extends over the zoning lot with a slope of 2.7 feet (vertical) to 1 foot (horizontal), along a narrow street, or 5.6 feet (vertical) to 1 foot (horizontal), along a wide street.

According to the Applicant, the basic maximum floor area for a commercial building for the Proposed Development, given a lot area of 6,988 square feet, is 41,928 square feet. The basic maximum floor area for non-community facility uses on the Landmark Site, given a lot area of 3,120 square feet, is 18,720 square feet. The Landmark Site therefore has 8,646 square feet of unused floor area (18,720 square feet - 10,074 square feet = 8,646 square feet). The Applicant plans to transfer 8,386 square feet of this unused floor area to the Proposed Development.

As a condition of the proposed special permit, the exterior of the Landmark Building would be restored to a sound, first-class condition to match its historic, late-19th century appearance. The front façade would be restored. The entrance door would be replaced with a new paneled wooden door with sidelights designed to match historic conditions. The existing masonry stoop would be repaired and restored to match the historic appearance.

The front façade windows would be replaced with period-appropriate windows. In addition, the existing asphalt shingle roofing on the Landmark Building would be removed and replaced with a new slate tile roof, the front and rear dormers would be restored, and the wooden roof cornices would be reconstructed, all to match historic conditions. The owner of the Landmark Site would implement a cyclical maintenance plan to ensure the continued maintenance of the Landmark Building. They would enter into a restrictive declaration to bind themselves and all heirs, successors, and assigns to this maintenance plan.

The Landmarks Preservation Commission (“LPC”) issued a Certificate of Appropriateness (LPC 19-6677) on March 2, 2017 for restorative work and a rear yard addition to the Landmark Building. On June 18, 2019, PC voted to approve a request to issue a favorable report to CPC pursuant to ZR § 74-79.

Proposed Development

The Applicant proposes to redevelop the Proposed Development site with a ten-story commercial building with cellar and sub-cellar, containing a Use Group 6 retail use on the ground floor, Use Group 6 offices on the ground floor and above, and accessory uses in the cellar and sub-cellar. The proposed retail and office uses are permitted on an as-of-right basis in the C6-1 zoning district.

The Proposed Development would have lot coverage of approximately 100 percent and total floor area of 50,314 square feet, consisting of 45,363 square feet of floor area in Use Group 6 office use and 4,951 square feet of floor area in Use Group 6 retail use. Pursuant to ZR § 74-792(b)(4), increases in floor area resulting from the transfer of development rights from a landmark to an adjacent zoning lot shall not exceed more than 20 percent of the maximum base floor area allowed on the zoning lot. The proposed 50,314 square feet of floor area is 20 percent more than the basic maximum floor area for a commercial building on the Proposed Development.

According to the Applicant, the base height of the Proposed Development would be approximately 62.91 feet, with three setbacks above the fourth floor (approximately 62.91 feet), seventh floor (approximately 108.17 feet), and ninth floor (approximately 138.66 feet), respectively. These setbacks would be designed as passive recreation space, providing a valuable amenity for the office tenants in the building. The building's first setback, which is more than 20 feet below the maximum front wall height of 85 feet, would be similar to the height of the Landmark Building and of the neighboring row houses and tenement buildings to the east on St. Mark's Place. The setback would also closely align with the base height of the Cooper Union dormitory building on Third Avenue, which abuts the Proposed Development to the immediate north.

Area Context

The Project Area is in the Borough of Manhattan, on the north and south sides of St. Mark's Place (East 8th Street), between Third Avenue and Second Avenue in Community District 3. It is located entirely within a C6-1 zoning district in the East Village neighborhood. The surrounding area is a medium- to high-density neighborhood containing a mix of residential, commercial, and institutional land uses. Existing buildings in the surrounding area vary greatly in height, bulk, and style. To the east of Third Avenue, along the area's east-west side streets, are numerous tenement style row houses containing residential and mixed uses. Along and to the west of Third Avenue are taller buildings with larger footprints, containing commercial, institutional, and residential uses.

The surrounding area also contains several historic districts. The southern and eastern portions of the block that contains the Landmark Building fall within the East Village/Lower East Side Historic District, which extends along Second Avenue to East 2nd Street and includes some midblock areas between Avenue A and Cooper Square, which are lined with examples of three- to five-story Greek Revival-style row houses constructed in the early 19th century. To the north of the Project Area, between Stuyvesant Place and East 11th Street, is the St. Mark's Historic District, which includes the St. Mark's-in-the-Bowery Church and Stuyvesant-Fish House along with several intact rows of elegant residences dating from the turn of the 19th century. Finally, to the east of the Project Area is the NoHo Historic District, which is bounded generally by East 9th Street, Broadway, Houston Street and Bowery.

The area is well served by transit, with the 6 train line at Astor Place approximately 500 feet away from the Proposed Development. The N/R/Q/W Train line at 8th street is 0.2 miles away. The M103 bus runs along 3rd Avenue and stops approximately 0.1 miles from the Proposed Development.

COMMUNITY BOARD RECOMMENDATION

On December 19, 2019, at its monthly meeting, Community Board 3 passed a resolution to disapprove this application with 33 members in favor, 0 against, and 0 abstaining.

BOROUGH PRESIDENT'S COMMENTS

While this office is a strong supporter of landmark preservation in New York City and applaud partnerships which allow for the maintenance of individual landmarks, we believe this should be done to maximize public benefit and not just enrich private developers. In June 2019, at the LPC hearing for the Applicant's request for approval for the transfer of development rights, this office submitted a letter in opposition. In the opposition letter, we requested the developer to revisit their design and work towards an as-of-right project that is more consistent architecturally and culturally with the character of the area. While they did work with one preservation group to improve the façade and are proposing a base height that is more contextual with the surrounding buildings, they did not consult with the Community Board or other preservation groups in the area, nor did they

work out an as-of-right solution that is more contextual to the surrounding area, particularly the buildings along St. Mark's Place.

One of the findings that must be met to obtain this special permit includes:

That the permitted transfer of floor area or variations in the front height and setback regulations will not unduly increase the bulk of any development or enlargement, density of population or intensity of use in any block to the detriment of the occupants of buildings on the block or nearby blocks, and that any disadvantages to the surrounding area caused by reduced access of light and air will be more than offset by the advantages of the landmark's preservation to the local community and the City as a whole;

We do not think the Proposed Development meets this finding due to its increase in bulk. In comparison to prior uses on the site, the intensity of use will increase significantly, particularly during peak hours of the day due to its planned office use. There have been long-standing community concerns around development pressures resulting in taller, bulkier buildings in this area and this project is yet another example. St. Mark's Place largely consists of 4 and 5 story buildings and has tremendous cultural significance to the area that is being lost due to development and changes of use.

Hamilton-Holly House, while it would be restored to its original historic appearance, is privately owned and is not accessible to the public. The Applicant is developing a very large commercial development on a corner that is considered a gateway to an area known for its rich cultural history in art and music. The building's intended use and design is devoid of any acknowledgement of this fact.

There is an opportunity to provide a greater community benefit given the history of the area. The Applicant, when we met with them in February 2020, made no indication that they had plans to attract local businesses to their retail space or commercial spaces on the upper floors. When we met with the Applicant in 2018, we advised that they consider attracting local businesses or providing some space within their building for community use and they have not made any effort to incorporate this into their Proposed Development. They have not presented a local hiring plan or taken any widespread initiative to work with local stakeholders to think of ways to better incorporate the Proposed Development into the fabric of the community. While they may not be required to make this effort, as an organization presumably making a long-term investment in a neighborhood, it would be of benefit to them and the community at large to develop a project that is contextual and incorporates the community's culture and history both outside the building and within its walls.

BOROUGH PRESIDENT'S RECOMMENDATION

Therefore, the Manhattan Borough President recommends disapproval of ULURP Application Nos. C 180290 ZSM with the following conditions:

The Applicant must work with the Community Board as well as other local groups to integrate uses within the Proposed Development that will benefit the community at large.

The Applicant must work with the Community Board as well as other local groups to gain consensus on a building design that is more contextual to the surrounding area.

A handwritten signature in black ink that reads "Gale A. Brewer". The signature is written in a cursive style with a large, looping initial "G".

Gale A. Brewer
Manhattan Borough President

CRP 4 ST. MARKS PLACE A LLC
CRP 4 ST. MARKS PLACE B LLC
CRP 4 ST. MARKS PLACE C LLC
CRP 4 ST. MARKS PLACE D LLC
(Landmark Declarant)

REEC ST MARKS LP
(Developer Declarant)

DECLARATION

Dated: _____, 201__

Location:
Block 463, Lot 11 (Landmark Premises)
Block 464, Lots 1, 3, and 59 (Developer Premises)
New York County, New York

Record & Return to:

Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, New York 10036
Attn: Valerie G. Campbell, Esq.

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SCHEDULE OF EXHIBITS

DRAFT

DECLARATION made as of the ___ day of _____, 201__ by CRP 4 ST. MARKS PLACE A LLC, CRP 4 ST. MARKS PLACE B LLC, CRP 4 ST. MARKS PLACE C LLC, and CRP 4 ST. MARKS PLACE D LLC, all New York limited liability companies having an address 1841 Broadway, Suite 811, New York, New York 10023 (collectively, “Landmark Declarant”), and by REEC ST. MARKS LP, a Delaware limited partnership having an address c/o Real Estate Equities Corporation, 18 East 48th Street, Penthouse, New York, New York 10017 (“Developer Declarant,” and, together with Landmark Declarant, “Declarants”).

W I T N E S S E T H:

WHEREAS, Landmark Declarant is the owner in fee simple of certain real property located in the Borough of Manhattan, City, County and State of New York, which property is designated as Block 463, Lot 11 on the Tax Map of the City of New York and by the street address 4 St. Marks Place, and is more particularly described on Exhibit A attached hereto (the “Landmark Premises”), and on which is located a three-and-a-half-story building (the “Designated Structure”); 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 “Landmark Preservation Law”), the Landmarks Preservation Commission (the “LPC”) has designated the Designated Structure as a designated landmark because of its special character or historical or aesthetic interest or value; and

WHEREAS, _____ (“Landmark Title Company”) has certified as of _____, 201__, that Landmark Declarant and _____ are the sole parties in interest to the Landmark Premises, a copy of which certification is attached hereto as Exhibit B; and

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WHEREAS, _____ has executed an instrument waiving its right to execute, and subordinating the lien of its interest in the Landmark Premises to, this Declaration, a copy of which instrument is attached as Exhibit C hereto; and

WHEREAS, as of the date hereof, Landmark Title Company has determined there has been no change in the certification attached as Exhibit B, and Landmark Declarant represents and warrants that the parties in interest listed in Exhibit B are the only known parties in interest in the Landmark Premises as of the date hereof; and

WHEREAS Developer Declarant is the fee owner of certain real property located in the Borough of Manhattan, City, County and State of New York, which property is designated as Block 464, Lots 1, 3, and 59 on the Tax Map of the City of New York and by the street address 3 St. Marks Place (the “Developer Premises”), on which Developer Declarant proposes to develop a new 10-story commercial building (the “New Building”); and

WHEREAS, _____ (“Developer Title Company”) has certified as of _____, 201__, that Developer Declarant and _____ are the sole parties in interest to the Developer Premises, a copy of which certification is attached hereto as Exhibit E; and

WHEREAS, _____ has executed an instrument waiving its right to execute, and subordinating the lien of its interest in the Developer Premises to, this Declaration, a copy of which instrument is attached as Exhibit F hereto; and

WHEREAS, as of the date hereof, Developer Title Company has determined there has been no change in the certification attached as Exhibit E, and Developer Declarant represents and warrants that the parties in interest listed in Exhibit E are the only known parties in interest in the Developer Premises as of the date hereof; and

WHEREAS, the Landmark Premises constitute a single zoning lot (the “Landmark Premises Zoning Lot”), and the Developer Premises constitute a single zoning lot (the “Developer Premises Zoning Lot”), and

WHEREAS, the Developer Premises Zoning Lot constitutes an “adjacent lot”, as defined in Section 74-79 of the Zoning Resolution, with respect to the Landmark Premises Zoning Lot in that it is across the street and opposite to the Developer Premises Zoning Lot; and

WHEREAS, Section 74-79 of the Zoning Resolution provides that the City Planning Commission (the “CPC”) may permit development rights to be transferred to adjacent lots from lots occupied by landmark buildings or other structures, may permit the maximum permitted floor area on such adjacent lot to be increased on the basis of such transfer of development rights, and may permit variations in the front height and setback regulations for the purpose of providing a harmonious architectural relationship between the development and the landmark building or other structures; and

WHEREAS, consistent with the requirements of Section 74-79 of the Zoning Resolution, Landmark Declarant has proposed to perform certain restoration work on the Designated Structure, as described in the CNE (as hereinafter defined), and has agreed to establish a program for continuing maintenance that will result in preservation of the Designated Structure; and

WHEREAS, pursuant to Application No. 200077ZSM (the “Application”), Developer Declarant and Landmark Declarant applied to the City Planning Commission of the City of New York (the “CPC”) for a special permit pursuant to Section 74-79 of the Zoning Resolution (the “Special Permit”) to permit approximately 8,386 square feet of unused development rights to be transferred from the Landmark Premises Zoning Lot to the Developer Premises Zoning Lot in connection with the Proposed Development, and to

modify the provisions of Section 33-432 of the Zoning Resolution to allow the New Building to encroach within the initial setback distance above the maximum front wall height of 85 feet on St. Marks Place; and

WHEREAS, at public meetings held on April 9, 2019, and June 18, 2019, Developer Declarant and Landmark Declarant requested that the LPC issue a report to the CPC in connection with the Application; and

WHEREAS, the LPC, at the public meeting held on June 18, 2019, voted to issue the report to the CPC as requested in connection with the Application, and subsequently issued report MOU-20-01663, dated August 26, 2019 (the "LPC Report"); and

WHEREAS, the LPC issued Certificate of No Effect 19-34848, August 26, 2019 (the "CNE"), for the restoration work on the Designated Structure proposed by Landmark Declarant (such restoration work, as described in the CNE, the "Landmark Work"). Copies of the LPC Report and the CNE are annexed hereto as Exhibit G; and

WHEREAS, Section 74-791 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 Landmark Declarant; and

WHEREAS, Landmark Declarant has agreed to place five percent of the proceeds received from the sale to the Developer of approximately 8,386 square feet of unused development rights into a dedicated fund to be used to maintain the Designated Structure as required under this Declaration; and

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

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

WHEREAS, Developer Declarant has agreed to certain restrictions on its application for, and the issuance of, a temporary certificate of occupancy or a permanent certificate of occupancy for the Special Permit Space (as hereinafter defined).

WHEREAS, Landmark Declarant and Developer Declarant represent and warrant that, to the best of their knowledge and belief, 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, Landmark Declarant hereby declares and agrees with respect to the Landmark Premises, and Developer Declarant hereby declares and agrees with respect to the Developer Premises, that such premises 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 Landmark Premises, which shall inure to the benefit of the City of New York, and which shall run with the Landmark Premises and Developer Premises, and shall bind Landmark Declarant its heirs, successors and assigns so long as they have a right, title or interest in the Landmark Premises, or any part thereof, and shall bind the Developer Declarant and its heirs, successors and assigns so long as they have a right, title or interest in the Developer Premises, or any part thereof.

ARTICLE I

DEFINITIONS

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

1.1 “Application” is defined in the whereas clauses set forth above.

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

1.3 “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.

1.4 “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.

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

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

1.7 “CPC” is defined in the whereas clauses set forth above.

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

1.9 “Designated Structure” is defined in the whereas clauses set forth above.

1.10 “Effective Date” is defined in Section 4.1(a) hereof.

1.11 “Force Majeure” shall mean: strike, lockout or labor dispute(s); inability to obtain materials or reasonable substitutes therefore unless due to any act or failure to act by Landmark 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; any damage to the Landmark Premises of such a nature as to make completion of the Landmark Work not feasible; a taking of the Landmark Premises, 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 Landmark Declarant to carry out its obligations pursuant to this Declaration; denial to Landmark 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 such adjoining real property, if such access is required to accomplish the obligations of the Landmark Declarant pursuant to this Declaration; the pendency of a litigation or similar proceeding not initiated by Landmark Declarant, which suspends or materially and adversely affects the ability of the Landmark Declarant to accomplish the obligations of the Landmark Declarant pursuant to this Declaration; or other conditions similar in character to the foregoing which are beyond the control of Landmark Declarant. No event shall constitute a Force Majeure unless Landmark Declarant complies with the procedures set forth in Sections 2.3 and 6.2 hereof.

1.12 “Landmark Declarant” shall mean the named Landmark Declarant and the heirs, successors and assigns of the named Landmark Declarant including, without limitation, any owner of a condominium unit within the Designated Structure, except that Landmark

Declarant shall not be deemed to include (i) a mortgagee of all or any portion of the Landmark Premises until it succeeds to the interest or obligation of Landmark Declarant by purchase, assignment, foreclosure or otherwise, or (ii) a tenant of the Landmark Premises, unless such tenant holds a lease to all or substantially all of the Landmark Premises.

1.13 “Landmark Work” is defined in Section 2.2 hereof.

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

1.15 “LPC Report” is defined in the whereas clauses set forth above.

1.16 “Mortgagee” shall mean (a) the institutional first mortgagee of all or substantially all of the Landmark Premises listed in Exhibit B or (b) the first mortgagee of a condominium unit within the Designated Structure.

1.17 “PCO” is defined in Section 2.3 hereof.

1.18 “Special Permit” is defined in the Whereas clauses set forth above.

1.19 “Special Permit Space” shall mean floors 8 through 10 in the Proposed Development. Notwithstanding the foregoing, no space shall be deemed Special Permit Space if it is permitted as of right within the Proposed Development by the terms of the Zoning Resolution then in effect.

1.20 “TCO” is defined in Section 2.3 hereof.

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

ARTICLE II

DEVELOPMENT OF NEW BUILDING; PRESERVATION, REPAIR AND

MAINTENANCE OF THE DESIGNATED STRUCTURE

2.1 Development of the New Building: Developer Declarant covenants and agrees to develop the New Building substantially in accordance with the following plans prepared by Morris Adjmi Architects attached hereto as Exhibit H:

| <u>Drawing No.</u> | <u>Title</u> | <u>Last Date Revised</u> |
|--------------------|---|--------------------------|
| Z-002.00 | ADJACENT LOT (RECEIVING) SITE PLAN | September 24, 2019 |
| Z-003.00 | ADJACENT LOT (RECEIVING) ZONING ANALYSIS | September 24, 2019 |
| Z-010.00 | WAIVER PLAN | September 24, 2019 |
| Z-020.00 | WAIVER SECTIONS | September 24, 2019 |

2.2 Landmark Work. The "Landmark Work" shall consist of the work described in the LPC Report performed as necessary to restore the Designated Structure to a sound, first-class condition. The issuance of the Special Permit is premised on, inter alia, the performance of the Landmark Work in conformity with the CNE, the LPC Report, and the requirements thereof.

2.3 Certificate of Occupancy for New Building. Developer Declarant covenants that written notice that Developer Declarant is seeking a temporary certificate of occupancy ("TCO") or a permanent certificate of occupancy ("PCO") for the Special Permit Space shall be provided to the LPC seven days prior to the Developer applying for a TCO or PCO, as applicable. Subject to Section 2.3(b) hereof, no TCO or PCO for the Special Permit Space 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 Landmark Declarant. The Chairperson of the

LPC shall issue said notice reasonably promptly after Landmark Declarant and/or Developer 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 issue such written notice to the Buildings Department, or inform Landmark Declarant in writing of the reason for not issuing said notice, within fourteen (14) calendar days after Landmark Declarant has requested such written notice. Upon receipt of the written notice from the Chairperson of the LPC that the Landmark Work has been satisfactorily completed, the Buildings Department may grant, and Developer Declarant may accept, a TCO or PCO, as applicable, for all or part of the Special Permit Space. Notwithstanding anything to the contrary contained herein, the Chairperson of the LPC shall declare that the Landmark Work has been satisfactorily completed notwithstanding that minor and insubstantial details of construction or mechanical adjustment remain to be performed.

(a) Landmark Declarant shall permit inspection of the Designated Structure by the Chairperson of the LPC and representatives designated by the Chairperson of the LPC, at reasonable times and upon provision of reasonable notice to Landmark Declarant, in connection with the notice described in Section 2.3 hereof.

(b) (i) Upon application by Landmark Declarant and/or Developer 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 has been delayed due to a Force Majeure as provided in subsection (ii) below.

(ii) In the event that Landmark Declarant and/or Developer Declarant reasonably believes that Landmark Declarant's full performance of its obligations to complete the

Landmark Work has been delayed as a result of a Force Majeure, either/both Declarants shall so notify the Chairperson of the LPC as soon as such Declarant learn of such circumstances. The written notice of such Declarant shall include a description of the condition or event, its cause (if known), its probable duration, and in the reasonable judgment of such Declarant the impact it is reasonably anticipated to have on the completion of the Landmark Work. The Chairperson of the LPC shall, within fourteen (14) calendar days of its receipt of the written notice of such Declarant, (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 Developer 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, as applicable, for all or part of the Special Permit Space, or (B) notify Landmark Declarant and Developer Declarant that it does not reasonably believe a Force Majeure has occurred. With respect to any claim that a Force Majeure has delayed the Landmark Declarant’s performance or completion of the Landmark Work, the LPC may require that Landmark 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 for the Special Permit Space. Any delay caused as the result of a Force Majeure shall be deemed to continue only as long as the Landmark Declarant shall be using reasonable efforts to minimize the effects thereof. Upon cessation of the events causing such delay, the Landmark Declarant shall promptly recommence the Landmark Work.

(c) Notwithstanding anything else to the contrary contained herein, this Declaration shall not be deemed to prohibit or restrict (i) Developer Declarant or the owner of any other portion of the Developer Premises Zoning Lot from applying for or receiving a

"core and shell" TCO or a TCO or PCO for any floor area in the New Building or on the Developer Premises Zoning Lot which is not Special Permit Space or from entering into agreements affecting all or any portions of the Proposed Development, including the Special Permit Space, or the Developer Premises Zoning Lot prior to completion of the Landmark Work, or (ii) Landmark Declarant or the owner of any other portion of the Landmark Premises Zoning Lot from obtaining permits or building notices from the Buildings Department to perform work, including tenant work, in the Designated Structure or on the Landmark Premises Zoning Lot prior to the completion of the Landmark Work, or from entering into agreements affecting all or any portions of the Designated Structure or the Landmark Premises Zoning Lot prior to completion of the Landmark Work.

2.4 Preservation, Repair and Maintenance of the Designated Structure. Landmark Declarant 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 CNE, the LPC Report, 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 Landmark Declarant's obligation and responsibility to comply with all provisions of the Landmarks Preservation Law.

2.5 Continuing Maintenance Program. Landmark Declarant shall comply with the obligations and restrictions of the continuing maintenance program (the "Continuing Maintenance Program") as set forth below. Landmark Declarant has agreed to place five percent of the proceeds received from the sale to the Developer of approximately 8,386 square feet of unused development rights into a dedicated fund. This fund shall be used only

for (i) meeting the continuing maintenance obligations required under this declaration in that the funds shall be used for physical repairs to the exterior of the Designated Structure as required to maintain the landmark in a sound, first-class condition, and (ii) to pay for Periodic Inspections and Periodic Reports, as hereinafter defined. Interest accrued on the monies in the fund shall be placed into the fund.

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

(i) At Landmark Declarant's expense, an inspection (the "Periodic Inspection") shall be made every seven years. The first Periodic Inspection shall be made on or within two months of the seventh anniversary of the issuance by the LPC of the Notice of Compliance (as defined in the LPC Report) pursuant to the LPC Report, and, thereafter, Periodic Inspections shall be made every seven years on or within two months of the anniversary of the date of such initial or subsequent inspection. In the event that Developer has accepted a TCO or PCO for all or part of the Special Permit Space without Landmark Declarant having first received the Notice of Compliance, the first periodic inspection shall be made on or within two months of the seventh anniversary date of the issuance of such TCO or PCO. 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 Landmark Declarant from a list prepared by Landmark Declarant and approved by the Chairperson of the LPC as to their credentials, which approval shall not be unreasonably withheld or delayed. Landmark Declarant shall update such listing upon the request of the Chairperson of the LPC. In addition, Landmark

Declarant may periodically supplement the list of Preservation Architects, subject to the reasonable 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, which, if not properly maintained, could affect the condition of the exterior, including, but not limited to interior systems such as heating, plumbing and air conditioning. The Periodic Inspection shall include (but not be limited to) the following portions of the exterior: front façade, rear façade and roof and dormers.

(ii) The Preservation Architect shall, at the expense of Landmark Declarant, submit a report on each Periodic Inspection (the “Periodic Report”) to Landmark Declarant 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.

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

(iv) Except as set forth below, Landmark Declarant 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 Landmark Declarant need not and shall not have such specific item performed. Landmark Declarant shall have the right to contest in a hearing before the LPC any work called for in a Periodic Report or Emergency Incident Report. Landmark Declarant'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. Landmark Declarant shall proceed with all work that is uncontested during the stay pursuant to a permit.

(v) Unless Landmark Declarant has notified the LPC in writing that it contests any work as set forth in the preceding subsection, Landmark Declarant shall apply for all necessary permits or certificates from the LPC within 45 days of receiving the completed report from the Preservation Architect. Landmark Declarant shall use its best efforts to assure that all repairs, rehabilitation, repointing, 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 Landmark Declarant's control, as determined by the Chairperson of the LPC, in the exercise of his or her reasonable judgment, such work cannot be completed within nine months, Landmark Declarant 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.

(b) Emergency Protection Program. Landmark Declarant 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”), Landmark Declarant 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 Landmark Premises from unauthorized access. Landmark Declarant shall not remove from the Landmark Premises 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, the Landmark Declarant shall not remove any other debris or otherwise clear the Landmark Premises without the approval of the LPC or its Chairperson.

(ii) Landmark Declarant shall give immediate written notice of such Emergency Incident to the LPC. Landmark Declarant 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 Landmark Premises 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 Landmark Declarant, make a thorough inspection of the Designated Structure and submit a report (an “Emergency Incident Report”) to Landmark Declarant 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 Landmark Declarant 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 subsection (iii)(A), Landmark Declarant 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 subsection (iii)(B), within ninety days of receiving the report of the Preservation Architect, Landmark 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 Landmark Declarant shall not have such specific work performed or be entitled to have the Designated Structure demolished unless Landmark Declarant is obligated to perform such work or demolish the structure in accordance with an “Immediate Emergency Declaration” 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 Landmark Declarant’s control, as determined by the Chairperson of the LPC in the exercise of his or her reasonable judgment, Landmark Declarant 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 that is related to the period of the delay and shall not be unreasonably withheld.

(c) Access to Designated Structure. Landmark Declarant 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 insure 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

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of this Article, the LPC shall give written notice of such failure to perform to the Landmark Declarant. Subject to the provisions of Section 4.4 hereof, in the event that Landmark Declarant, 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 Landmark Declarant 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 Landmark Declarant and shall have the right to enter onto the Landmark Premises and to charge said Landmark Declarant for all the actual cost of such work, together with actual administrative and legal fees incurred in the collection thereof. The City's actual costs hereunder 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 Landmark Premises 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, Landmark Declarant'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 commercial 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 the Designated 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 Landmark Declarant’s obligations and the authority to exercise all of Landmark Declarant’s rights under this Declaration and upon such assumption, the Landmark Declarant 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 his 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, the Landmark Premises and every lease of all or substantially all of the Landmark Premises 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.

ARTICLE IV

EFFECT AND ENFORCEMENT

4.1 Effective Date.

(a) This Declaration shall have no force and effect unless and until the date of final approval of the Special Permit by the CPC and, if applicable, the City Council, pursuant to Sections 197-c and 197-d of the New York City Charter (the “Effective Date”). The Declaration shall become immediately effective upon the Effective Date. If, before the Effective Date, Developer 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 Landmark Declarant or Developer Declarant, and shall be of no further force or effect; and the CPC shall, if requested by either Declarant, provide such Declarant with a letter in recordable form stating that the Declaration has been so canceled and is of no further force and effect.

4.2 Filing and Recordation. Developer Declarant shall file and record at its sole cost and expense this Declaration in the Register's Office, indexing it against the Landmark Premises and the Developer Premises, immediately upon the Effective Date. Developer Declarant shall promptly 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 Developer Declarant fails to so record this Declaration, the City may record this Declaration, at the sole cost and expense of Developer 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. Landmark Declarant and Developer Declarant acknowledge 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. No person other than Landmark Declarant, Developer Declarant, the LPC or the City shall have any right to enforce the provisions of this Declaration. Landmark Declarant and Developer Declarant also acknowledge 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 Landmark Declarant and Developer Declarant, their 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 Landmark Declarant and Developer Declarant forty-five (45) days written notice of such alleged violation, during which period Landmark Declarant and Developer Declarant shall have the opportunity to effect a cure of such alleged violation. If Landmark Declarant and/or Developer 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 Landmark Declarant and/or Developer Declarant continues to proceed diligently with the effectuation of such cure. In the event that title to the Landmark Premises, or any part thereof, shall become vested in more than one party, the right to notice and cure provided in this subsection shall apply equally to all parties with a fee interest in the Landmark Premises, 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 is or is converted to a condominium or cooperative, the right to notice and cure provided in this subsection shall apply only to the condominium or cooperative board and to any owner of space occupied by commercial uses in the Designated Structure; provided that the LPC has received notice by said parties in accordance with Section 6.2.

(b) If Landmark Declarant or Developer Declarant fails to observe any of the terms or conditions of this Declaration, and the Landmark Declarant or Developer Declarant fails to cure such violation within the applicable grace period provided in subsection 4.4 of this Declaration, then prior to the institution by any agency or department of the City of any action, proceeding, or proceedings against Landmark Declarant or Developer Declarant 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, Landmark Declarant and the mortgagees, if any, of the Landmark Premises, or Developer Declarant and the mortgagees, if any, of the Developer Premises, as the case may be, 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 Landmark Declarant or Developer Declarant, as the case may be, is in default of any material obligation under this Declaration.

4.5 Acknowledgment of Covenants. Landmark Declarant and Developer Declarant acknowledge 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 Landmark Premises and the Developer Premises, as well as benefit the City of New York and all property owners within a one-half mile radius of the Landmark Premises. Those restrictions, covenants, easements, obligations and agreements shall be covenants running with the land, and shall bind Landmark Declarant and Developer Declarant, and their respective successors, legal representatives, and assigns.

4.6 No Other Enforceable Restrictions. Landmark Declarant represents and warrants that there are no enforceable restrictions of record on the use of the Landmark Premises or the Designated Structure, nor any present or presently existing future estate or interests in the Landmark Premises or the Designated Structure, nor any lien, obligation, enforceable covenant, limitation or encumbrance of any kind, the requirements of which have not been waived or subordinated, which precludes, directly or indirectly, imposition on the Landmark Premises of the restrictions, covenants, easements and obligations of this Declaration. Developer Declarant makes the same representations and warranties with respect to the Developer Premises.

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.

4.9 Applicability to Other City Agencies. Both Declarants covenant 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 for the Special Permit Space, and Developer Declarant 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) Landmark Declarant and Developer Declarant shall be liable in the performance of any term, provision or covenant in this Declaration, subject to the following sentences and subject to Section 4.12 below. Notwithstanding anything to the contrary contained in this Declaration, the City and any other party or person relying on the Declaration will look solely to the fee estate and interest of Landmark Declarant in the Landmark Premises, on an in rem basis only, for the collection of any money judgment

recovered against Landmark Declarant, and no other property of Landmark Declarant shall be subject to levy, execution or other enforcement procedure for the satisfaction of the remedies of the City or any other person or entity with respect to this Declaration, and Landmark Declarant shall have no personal liability under this Declaration. 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.

(b) The restrictions, covenants and agreements set forth in this Declaration shall be binding upon Landmark Declarant and Developer Declarant, and/or any successors-in-interest thereto only for the period during which such party is the holder of a fee interest in or is a party-in-interest of the Landmark Premises and only to the extent of such fee interest or the interest rendering such party a party-in-interest. At such time as Landmark Declarant or any successor-in-interest thereto has no further fee interest in the Landmark Premises and is no longer a party-in-interest of the Landmark Premises, such party's obligations and liability with respect to this Declaration shall wholly cease and terminate from and after the conveyance of such party's interest and such party's successor-in-interest in the Landmark Premises by acceptance of such conveyance automatically shall be deemed to assume such party's obligations and liabilities hereunder to the extent of such successor-in-interest's interest.

(c) Developer Declarant's obligation under this Declaration shall wholly cease and terminate with respect to the Landmark Premises at such time as the LPC certifies that the Landmark Work is complete, in accordance with Section 2.3. At such time,

Developer Declarant shall have no further obligations that are owed by Landmark Declarant, including but not limited to those described in Sections 2.2, 2.4 and elsewhere in 2.3.

4.11 Subordination. Landmark Declarant 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 Landmark Premises, to execute this Declaration or to subordinate such interest to the Declaration and waive its right to execution. Likewise, Developer Declarant 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 Developer Premises, 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 Landmark Premises or the Developer Premises 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 Landmark Premises or the Designated Structure, or the Developer Premises or New Building.

ARTICLE V

AMENDMENTS, MODIFICATIONS AND CANCELLATIONS

5.1 Amendment or Cancellation. Except as provided in Section 4.1 above, this Declaration may be amended or canceled only upon application of Developer Declarant and Landmark 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 Section 5.4.

5.2 Minor Modification. 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 Section 5.4, shall be executed and recorded in the same manner as this Declaration. Following any modification, amendment or cancellation, Developer 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 Declarant.

5.4 Surrender or Nullification. Notwithstanding the provisions of Section 4.1(a) and 4.1(b), in the event that Developer Declarant does not use the Developer Premises pursuant to the Special Permit, Developer Declarant may surrender the Special Permit to the CPC and proceed with any use or development of the Developer Premises permitted by the Zoning Resolution as if such Special Permit had not been granted. This Declaration shall be rendered null and void upon recordation of an instrument filed by Landmark Declarant and Developer 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 Developer Premises 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, (a) if intended for Landmark Declarant, to CRP 4 St. Marks Place A, LLC, 1841 Broadway, Suites 400 and 811, New York, New York 10023, Attn: Paul Salib and Etan Slomovic, with a copy to Bryan Cave LLP, 1290 Avenue of the Americas, New York, New York 10104, Attn: Jordan Most, (b) if intended for Developer Declarant, to REEC St. Marks LP, c/o Real Estate Equities Corporation, 18 East 48th Street, Penthouse, New York, New York 10017, Attn: Brandon Miller, with a copy to Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, New York 10036, Attn: Valerie Campbell, Esq., (c) if intended for the CPC, to the CPC at 22 Reade Street, New York, New York 10007 (or then-official address), Attn: Chairperson, (d) if intended for the LPC, to the LPC at One Centre Street, Municipal Building, New York, New York 10007 (or then-official address), Attn: Chairperson and (e) 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. Landmark Declarant or Developer Declarant, or their representatives, by notice given as provided in this Section 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, 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, if delivered by hand, when actually received.

6.3 Indemnification. Provided that Landmark Declarant or Developer Declarant 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, Landmark Declarant or Developer Declarant, as the case may be, 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 such Declarant's obligations under this Declaration.

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

CRP 4 ST. MARKS PLACE A LLC

By: _____
Name:
Title

CRP 4 ST. MARKS PLACE B LLC

By: _____
Name:
Title

CRP 4 ST. MARKS PLACE C LLC

By: _____
Name:
Title

CRP 4 ST. MARKS PLACE D LLC

By: _____
Name:
Title

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

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

Notary Public

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

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

Notary Public

DRAFT

REEC ST MARKS LP

By: _____

Name:

Title

:

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

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

Notary Public

SCHEDULE OF EXHIBITS

| | |
|------------------|---|
| <u>Exhibit A</u> | Metes and Bounds of Landmark Premises |
| <u>Exhibit B</u> | Certificate as to Parties Interest of Landmark Premises |
| <u>Exhibit C</u> | Waivers as to Landmark Premises |
| <u>Exhibit D</u> | Metes and Bounds of Landmark Premises |
| <u>Exhibit E</u> | Certificate as to Parties Interest of Landmark Premises |
| <u>Exhibit F</u> | Waivers as to Landmark Premises |
| <u>Exhibit G</u> | LPC Report and Certificate of No Effect |
| <u>Exhibit H</u> | Architect's Plans for New Building |

EXHIBIT A

Metes and Bounds of Landmark Premises

The subject tract of land is known as Tax Lot Number(s) 11 in Block(s) 463 as shown on the Tax Map of the City of New York, New York County and more particularly described as follows:

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

BEGINNING at a point on the southerly side of St. Marks Place (formerly Eighth Street), distant in an easterly direction 74 feet from the easterly line of Third Avenue;

RUNNING THENCE southerly on a line parallel with Third Avenue, 120 feet;

THENCE easterly on a line parallel with St. Marks Place, 26 feet;

THENCE northerly on a line parallel with Third Avenue through a party wall, 120 feet to the southerly side of St. Marks Place;

THENCE westerly along the southerly line of St. Marks Place, 26 feet to the point or place of BEGINNING.

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EXHIBIT B

Certificate as to Parties in Interest of Landmark Premises

DRAFT

EXHIBIT C

Waivers as to Landmark Premises

EXHIBIT D

Metes and Bounds of Developer Premises

The subject tract of land is known as Tax Lot Number(s) 1, 2, and 59 in Block(s) 464 as shown on the Tax Map of the City of New York, New York County and more particularly described as follows:

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

BEGINNING at the corner formed by the northerly side of St. Marks Place (formerly Eighth Street) with the easterly side of Third Avenue;

RUNNING THENCE northerly along the easterly side of Third Avenue, 70 feet;

THENCE running easterly, parallel with St. Marks Place and part of the distance through the center of a party wall, 74 feet;

THENCE northerly and parallel with the easterly side of Third Avenue, 5 feet;

THENCE easterly, 23 feet;

THENCE southerly part of the distance through a party wall, 75 feet 4 inches to the northerly side of St. Marks Place;

THENCE westerly along the northerly side of St. Marks Place, 98 feet to the point or place of BEGINNING.

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EXHIBIT E

Certificate as to Parties in Interest of Developer Premises

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EXHIBIT F

Waivers as to Developer Premises

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EXHIBIT G

LPC Report and Certificate of No Effect

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EXHIBIT H

Architect's Plans for New Building