

RESTRICTIVE DECLARATION

DATED AS OF JUNE 30, 2009

**NEW YORK COUNTY
BLOCK 1132, LOTS 1, 20 AND 35**

**RECORD AND RETURN TO:
GREENBERG TRAURIG LLP
200 PARK AVENUE
NEW YORK, NEW YORK 10166
ATTN: DEIRDRE A. CARSON, ESQ.**

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RESTRICTIVE DECLARATION

THIS DECLARATION, made as of the 30th day of June, 2009 by FORDHAM UNIVERSITY, a New York educational corporation established by the Legislature of the City of New York, having its principal address at 441 East Fordham Road, Bronx, New York 10458 ("**Declarant**").

WITNESSETH:

WHEREAS:

A. Declarant is the fee owner of certain real property located in the Borough of Manhattan, City, County and State of New York, designated for real property tax purposes as Lots 1, 20 and 35 of Block 1132 on the Tax Map of the City of New York, which real property is more particularly described on **Exhibit A** to this Declaration (the "**Property**");

B. Pursuant to the Zoning Resolution of the City of New York, effective December 15, 1961, as amended through the date hereof and as may hereafter from time to time be amended (the "**Z.R.**" or the "**Zoning Resolution**"), the Property is located within a C4-7 zoning district within the Special Lincoln Square District, in which the maximum permitted floor area ratio for each of commercial, residential and community facility uses is 10; and

C. Declarant wishes to (i) develop certain portions of the Property that have heretofore been undeveloped as academic buildings to service the University's program, (ii) demolish the existing building servicing the University's School of Law, and (iii) raise funds for the University's endowment that will support the construction of new facilities for the University by selling two sites on the Campus to private developers to be developed as market-rate housing; and

D. To that end, Declarant has proposed a Master Plan for the development of the Campus that is intended to be implemented in two phases occurring over the next twenty-five years (the "**Master Plan**") and consisting of up to seven new academic buildings, two residential buildings, two garages and a loading dock; and

E. In order to implement the Master Plan, certain modifications of the requirements of the Zoning Resolution are required and, to obtain them, Declarant has made applications to the City Planning Commission of the City of New York (the "**CPC**"): (a) under Application Number 050260ZSM for a special permit pursuant to Z.R. § 82-33 for modifications of height, setback, minimum distance between buildings on a single zoning lot, inner and outer court and minimum distance between legally required window and wall/lot line regulations (the "**Envelope Special Permit**"); (2) under Application Numbers 0520269ZSM and 050271ZSM and pursuant to Z.R. § 13-561 for special permits to permit the construction of two accessory parking garages, entered, respectively, from West 62nd Street (for 68 spaces) and West 61st Street (for 137 spaces) (the "**Garage Special Permits**"), together with additional time to complete the West 61st Street garage pursuant to Z.R. §11-42(c); (3) under Application Number N09070ZRM, a zoning text amendment to Z.R. §82-50 to clarify the intention of the Zoning Resolution regarding curb cuts on wide streets for off-street loading berths (the "**Zoning Text Amendment**"); (4) under

Application Number N09071ZAM, pursuant to Z.R. §13-553 for authorization of a curb cut for the construction of the parking garage on West 62nd Street (the “**Garage Curb Cut Authorization**”); and (4) under Application Number N090172ZAM, pursuant to Z.R. § 82-50(b), for authorization of a curb cut for access to new permitted loading berths on West 62nd Street (the “**Berth Curb Cut Authorization**”) (the Garage Curb Cut Authorization and the Berth Curb Cut Authorization, collectively, the “**Curb Cut Authorizations**”) (the Envelope Special Permit, the Garage Special Permits, the Zoning Text Amendment, the Garage Curb Cut Authorization and the Berth Curb Cut Authorization, collectively, the “**Actions**” and the applications to CPC for the Actions, collectively, the “**Applications**”); and

F. The Master Plan organizes the Campus buildings around an open area that is the continuation of the existing raised plaza on the Campus, but which is intended to be made more readily accessible for public use according to the Master Plan by the construction of two new grand access stairs at 61st and 62nd Streets and, on an interim basis through an Interim Stair (hereafter defined) to be located between the existing Fordham School of Law and the new building to be constructed on Site 5 (as described in Drawing Z-12, hereafter defined); and

G. The CPC adopted resolutions approving the Actions on April 22, 2009, under Calendar Numbers 18, 19, 20, 22, 23 and 24 (the resolutions adopted by CPC, collectively, the “**Approvals**”); and

H. As a condition to the Approvals, Declarant has executed this Declaration regarding the development, maintenance, operation and use of an Interim Open Space (hereafter defined) to be constructed in the existing open parking area of the Property along Columbus Avenue; the development and conditions of use of the Access Stairs (hereafter defined); and compliance with construction air and noise mitigation measures as set forth in Article III of this Declaration and as hereafter defined; and

I. CPC acted as lead agency and conducted an environmental review of the Applications pursuant to CEQR (as hereinafter defined) and SEQRA (as hereinafter defined); and

J. CPC prepared a Final Environmental Impact Statement for the Fordham Lincoln Center Campus (“**FEIS**”) and issued a Notice of Completion of FEIS on April 10, 2009; and

K. To ensure that the development of the Property is consistent with the analysis in the EIS upon which it is anticipated that the CPC will make findings pursuant to the New York Environmental Quality Review, Executive Order No. 91 of 1977, as amended, and the regulations promulgated thereunder at 62 RCNY §5-01 et. seq. (“**CEQR**”) and the State Environmental Quality Review Act, New York State Environmental Conservation Law §§ 8-0101 et seq. and the regulations promulgated thereunder at 6 NYCRR Part 617 (“**SEQRA**”), and that the construction procedures at the Property incorporate certain mitigation measures identified in the Draft Environmental Impact Statement (“DEIS”), a Notice of Completion for which was issued on November 17, 2008 (“DEIS”), Declarant has agreed to restrict the development, operation, use and maintenance of the Property in certain respects, which restrictions are set forth in this Declaration; and

L. First American Title Insurance Company has certified in a certification attached to this Declaration as **Exhibit B**, that, as of March 30, 2009, Declarant is the sole “party-in-interest” (as defined in subdivision (d) of the definition of the term “zoning lot” in Section 12-10 of the Zoning Resolution), in the Property; and

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

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

ARTICLE I

CERTAIN DEFINITIONS

For purposes of this Declaration:

“**61st Street Access Stair**” shall mean the Access Stair (hereafter defined) and the associated and adjacent sidewalk widening, to be constructed to provide access to the Central Plaza (hereafter defined) on the Property that will be aligned with 61st Street and accessed from Columbus Avenue, and which is identified as Outdoor Landscaped Area I on Drawings Z-7 and Z-12 (hereafter defined).

“**62nd Street Access Stair**” shall mean the Access Stair (hereafter defined) and the associated and adjacent sidewalk widening, to provide access to the Central Plaza, to be constructed 233’2” west of the intersection of Columbus Avenue and West 62nd Street, and which is identified as Outdoor Landscaped Area II on Drawings Z-7 and Z-12.

“**Access Stairs**” shall mean the 61st Street Access Stair and the 62nd Street Access Stair, also identified as Outdoor Landscaped Areas I and II, respectively, as reflected in Drawings Z-7 and Z-12 that provide public access to the Central Plaza, consisting of the 61st Street Access Stair and the 62nd Street Access Stair.

“**Actions**” shall have the meaning given it in Paragraph E of the Recitals to this declaration.

“**Agencies**” shall mean the Departments of City Planning and Environmental Protection, collectively.

“**Applications**” shall have the meaning given in Paragraph E of the Recitals of this Declaration, as the same may be hereafter modified.

“**Approvals**” shall have the meaning given in Paragraph G of the Recitals of this Declaration, as same may be hereafter modified.

“**Building Permit**” shall mean, with respect to any New Building (hereafter defined), a work permit under a new building application to the DOB authorizing the construction of a New Building.

“**Campus**” shall have the same meaning as Property.

“**Central Plaza**” shall mean the raised, landscaped plaza around which certain buildings on the Campus currently exist and new buildings will be developed under the Master Plan.

“**Chair**” shall mean the Chair of the CPC from time to time, or any successor to its jurisdiction.

“**Circumstances Beyond the Control of Declarant**” shall mean: delays from any and all causes beyond Declarant’s reasonable control, including, without limitation, delays resulting from (i) governmental restrictions, limitations, regulations or controls (provided that such are other than ordinary restrictions, limitations, regulations or controls), (ii) orders of any court of competent jurisdiction (including, without limitation, any litigation which results in an injunction or a restraining order prohibiting or otherwise delaying the construction of any portion of the Campus), (iii) labor disputes (including strikes, lockouts not caused by Declarant, slowdowns and similar labor problems), (iv) accident, mechanical breakdown, shortages or inability to obtain labor, fuel, steam, water, electricity, equipment, supplies or materials (for which no substitute is readily available at a comparable price), (v) acts of God (including inordinately severe weather conditions), (vi) removal of hazardous substances that could not have been reasonably foreseen, (vii) war, sabotage, hostilities, invasion, insurrection, riot, acts of terrorism, mob violence, malicious mischief, embargo, quarantines, national, regional or local disasters, calamities or catastrophes, national emergencies, enemy or hostile governmental action, civil disturbance or commotion, earthquake, flood, fire or other casualty of which Declarant has given the CPC notice, (xiii) a taking of the whole or any relevant portion of the Property by condemnation or eminent domain; (ix) unforeseen soil conditions substantially delaying construction of any relevant portion of the Property; (x) denial to Declarant by any party of a right of access to any adjoining real property which right is vested in Declarant, by contract or pursuant to applicable law, if such access is required to accomplish the obligations of Declarant pursuant to this Declaration; (xi) inability of a public utility to provide power, heat or light or any other utility service, despite reasonable efforts by Declarant to procure same from the utility; (xii) unusual delays in transportation. Declarant shall notify the CPC of Circumstances Beyond the Control of Declarant promptly following the occurrence of the same and, in any event not later than thirty (30) days following Declarant’s knowledge of the occurrence thereof.

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

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

“**CMM**” shall mean the Construction Mitigation Measures as defined and described in Article III of this Declaration.

“**CPC**” shall have the meaning given it in Paragraph E of the Recitals to this Declaration.

“**Curb Cut Authorizations**” shall have the meaning given it in Paragraph E of the Recitals to this Declaration;

“**Declarant**” shall have the meaning given in the Recitals of this Declaration and shall include any Successor Declarant as defined in Section 8.7 of this Declaration.

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

“**DEP**” shall mean the Department of Environmental Protection of the City of New York, or any successor to the jurisdiction thereof under the New York City Charter.

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

“**Drawing Z-7**” shall mean the drawing labeled Z-7, dated as of April 22, 2009, which is attached to and forms a part of the Applications, a copy of which is attached as part of **Exhibit C**.

“**Drawing Z-12**” shall mean the drawing labeled Z-12, dated as of April 22, 2009, which is attached to and forms a part of the Applications, a copy of which is attached as part of **Exhibit C**.

“**Drawings**” shall mean Drawing Z-7 and Drawing Z-12, collectively.

“**Envelope Special Permit**” shall have the meaning given it in Paragraph G of the recitals to this Declaration.

“**Effective Date**” shall have the meaning given it in Section 6.1 of this Declaration.

“**Final Approval**” shall mean the date that is fifteen (15) days after expiration of the time period for action on the Applications, other than the Curb Cut Authorizations, by the Council under subdivisions c or d, as applicable, of Section 197-d of the New York City Charter, provided that the Council shall have approved the Applications, and further provided that if the Mayor of the City of New York has filed a written disapproval of the Applications in accordance with the provisions of subsection f of Section 197-d of the New York City Charter, the Council shall have approved an override of such disapproval.

“**Final Completion**” shall mean that all items of work required to be performed under the Open Space Plans (hereafter defined), the Stair Drawings (hereafter defined) or the Stair Plan (hereafter defined) have been completed.

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

“Interested Party” shall mean only (a) fee owner(s) of the Property or any portion thereof; (b) the holder of the lessee's estate in a ground lease of all or substantially all of the Property or all or substantially all of any Parcel or portion thereof; (c) a cooperative corporation which holds beneficial ownership of any portion of the Property or any building built on the Property; (d) the board of managers of any portion of the Property that is subject to a declaration of condominium; (e) the lessee or occupant of any individual residential or commercial unit, or the owner of the beneficial interest of any residential or commercial unit, held in cooperative or condominium ownership; (f) the holder of a mortgage or other lien encumbering any such residential or commercial unit, apartment or building held in condominium ownership or owned by a cooperative corporation; (g) the holder of a mortgage or lien encumbering any other interest in the Property, including, but not limited to a fee estate or a ground lease; or (h) the holder of any other interest in any portion of the Property or any improvements constituting a part of the Master Plan, , including any such residential or commercial unit or apartment or building held in condominium ownership, or owned by a cooperative corporation that qualifies as a Party-in-Interest under applicable law, including the Zoning Resolution.

“Interim Open Space” shall mean the interim open space to be constructed along the Columbus Avenue frontage of the Campus in the area located between the eastern wall of the Campus buildings existing on the date hereof and the street line of the Property on Columbus Avenue, from the street line of West 60th Street, for a distance of 205 feet north of the intersection of West 60th Street and Columbus Avenue, as shown on the Open Space Plans.

“Interim Stair” shall mean the access stairs to the Central Plaza to be constructed and maintained between the location of the existing School of Law at 140 West 62nd Street at the date hereof and the New Building to be constructed on Site 5, as shown in the Drawings, until the development of Site 6 occurs.

“Law School Design” shall mean the design for the construction of the New Building to house the Fordham School of Law on the Campus designed by Pei Cobb Freed & Partners and reflected in the drawings attached to this Declaration as **“Exhibit D.”**

“Lot Owner” shall mean only (a) fee owner(s) of the Property or any portion thereof; (b) the holder of the lessee's estate in a ground lease of all or substantially all of the Property or all or substantially all of any Parcel or portion thereof; (c) the cooperative corporation which holds beneficial ownership of any portion of the Property or any building built on the Property; (d) the board of managers of any portion of the Property that is subject to a declaration of condominium; and (e) the lessee or occupant of any individual residential, commercial or community facility unit or the owner of the beneficial interest of any residential or commercial unit held in cooperative or condominium ownership.

“Master Plan” shall mean the arrangement of buildings, open spaces and uses, with their corresponding approved maximum envelopes, to be constructed on the Campus as set forth in the Applications and reflected in the Drawings.

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

“**Mortgagee**” shall mean the holder of a Mortgage.

“**New Building**” shall mean any of the new buildings to be constructed on any of the Sites (hereafter defined) in the Master Plan, as reflected on the Drawings.

“**Notice**” shall have the meaning given in Section 8.5 of this Declaration.

“**Obligations**” shall mean any requirement of this Declaration, including, without limitation, the mitigation requirements set forth in Article III, and the Open Space requirements set forth in Article IV.

“**Open Space Plans**” shall mean the plans for the development of the Interim Open Space annexed hereto as **Exhibit E**.

“**Parcels**” shall mean any tax lot hereafter created as the result of a new subdivision of the Property first occurring after the date of this Declaration.

“**Parking Special Permits**” shall have the meaning given it in Paragraph E of the Recitals to this Declaration.

“**Party-in-Interest**” shall have the meaning given it in Paragraph L of the Recitals to this Declaration.

“**Plans**” shall mean the Open Space Plans, the Revised Access Stair Drawings and the Stair Plan, collectively.

“**Possessory Interest**” shall mean either (1) a fee interest in the Property or any portion thereof or (2) the lessee's estate in a ground lease of all or substantially all the Property or all or substantially all of any Parcel or portion thereof.

“**Property**” shall have the meaning given in Paragraph A of the Recitals to this Declaration.

“**Register**” shall have the meaning given in Section 6.2 of this Declaration.

“**Register's Office**” shall have the meaning given in Section 6.2 of this Declaration.

“**Site**” shall mean any of the nine (9) sites identified on Drawing Z-7 for future development on the Campus pursuant to the Master Plan and “**Sites**” shall mean any combination of two or more of the foregoing.

“**Stair**” shall mean any of the two Access Stairs or the Interim Stair. “**Stairs**” shall mean any combination of two or more of the foregoing.

“**Stair Plan**” shall mean the plan for the development of the Interim Stair annexed hereto as **Exhibit F**.

“**State**” shall mean the State of New York, its agencies and instrumentalities.

“**Substantial Completion**” or “**Substantially Complete**” shall mean that construction and furnishing of the Interim Open Space or Stairs (as the case may be) have been completed to such an extent that such amenity is available to and open for use by the public and no further material work is required to be performed by Declarant with respect to such amenity to make the Interim Open Space or Stairs safe, suitable for public access and open to the public, construction has been completed substantially in accordance with the Plans, including all of the design elements contained therein as to seating, pavement, plantings and landscaping (including trees and shrubs), lighting, signage and provision and location of facilities (including, without limitation, access ramps, kiosk, drinking fountain, refuse disposal containers and bike rack), in the reasonable determination of the Chair, notwithstanding that minor or insubstantial details of construction, decoration or mechanical adjustment remain to be performed and notwithstanding that some landscaping, planting of vegetation or other tasks which must occur seasonally has not been completed, provided that Declarant supplies assurances in a manner reasonably acceptable to the Chair that such task will be completed in the appropriate season.

“**Unit Owner**” shall mean (a) the lessee or occupant of any individual residential or commercial unit, or the owner of the beneficial interest of any residential or commercial unit, held in condominium ownership, or (b) the holder of a mortgage or other lien encumbering any such residential or commercial unit, apartment or building held in condominium ownership.

“**Use Group**” shall have the meaning set forth in Section 12-10 of the Zoning Resolution on the effective date of this Declaration.

“**Zoning Resolution**” shall have the meaning set forth in Paragraph B of the Recitals to this Declaration.

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

ARTICLE II

DEVELOPMENT OF THE PROPERTY AND NEW BUILDING DESIGN

2.1 **Development of the Property.** Declarant shall develop the Property in substantial conformity with the following plans and drawings and in compliance with this Declaration:

<u>Drawing No.</u>	<u>Drawing Title</u>	<u>Drawing Date</u>
Z-7	Site Plan - Proposed (CRP)*	6/16/09
Z-11	Zoning Analysis (CRP)	4/22/09
Z-12	Site Plan: Diagrammatic Building Envelopes (CRP)	6/16/09
Z-13	Block Elevations: Diagrammatic Building and Illustrative Massing (CRP)	6/16/09

Z-13.1	Block Elevations: Diagrammatic Building and Illustrative Massing (CRP)	6/16/09
Z-13.2	Block Sections: Diagrammatic Building Envelopes and Illustrative Massing (CRP)	6/16/09
Z-14	Encroachment Diagrams (CRP)	6/16/09
Z-14.1	Encroachment Diagrams (CRP)	6/16/09
Z-14.2	Encroachment Diagrams (CRP)	4/22/09
Z-15	Encroachment Diagrams (CRP)	4/22/09
Z-15.1	Encroachment Diagrams (CRP)	6/16/09
Z-18	Parking and Loading - Garage A (CRP)	4/22/09
Z-18.2	Parking and Loading - Garage C (CRP)	4/22/09
	Interim Stair Plan & Section (PCF)**	4/22/09
ZL-0.0	Illustrative Plan (LWLA)***	4/22/09
ZL-0	Survey (LWLA)	4/22/09
ZL-0.1	Site Demolition & Protection Plan (LWLA)	4/22/09
ZL-1	Materials Plan (LWLA)	4/22/09
ZL-2	Dimensions, Elevations & Drainage Plan (LWLA)	4/22/09
ZL-3	Planting Plan (LWLA)	4/22/09
ZL-4	Lighting Plan (LWLA)	4/22/09
ZL-5	Illustrative Sections (LWLA)	4/22/09
ZL-6	Illustrative Sections & Entry Sign Detail (LWLA)	4/22/09
ZL-7	Site Details (LWLA)	4/22/09
ZL-8	Bench Details & Site Furnishings (LWLA)	4/22/09

* Cooper, Robertson and Partners (CRP)

** Pei Cobb Freed Partners (PCF)

*** Lee Weintraub Landscape Architects, LLC (LWLA)

2.2 **Design Review and Consultation Process.** In order to provide the community in which the Campus is located with an opportunity to comment upon elements of the design of each New Building, Declarant shall participate in the design review and consultation process (“**DRCP**”) described below, if the Borough President for the Borough of Manhattan (the “**Borough President**”) shall hereafter elect to conduct such process.

(a) If a DRCP Committee (the “**Committee**”) is hereafter established by the BP, it shall consist of five (5) members, of whom three (3) members shall be appointed by the Borough President and two (2) members shall be appointed by the Councilmember for the district in which the Campus is located (the “**Councilmember**”).

(b) Within sixty (60) days after the award by Declarant of a design contract to an architect for the design of a New Building (the “**Design Architect**”), Declarant shall give notice of the design award to the Committee, specifying the name of the architect and providing such architect’s address for purposes of giving notices hereunder. Upon receiving the notice, the Committee may convene a meeting (the “**Initial Design Meeting**”) to be held within thirty (30) days after receipt of the notice, at which Declarant and the Design Architect shall present the general concept for the design of the New Building, using such presentation materials as they, in their sole discretion, deem appropriate and necessary. The issues to be considered at the Initial Design Meeting shall be the overall configuration of the New Building (height, setbacks, street wall treatments, street level program and appearance and façade materials (the “**Design Elements**”). If the Committee shall fail to convene an Initial Design Meeting within the time herein provided, then the Committee shall be deemed to have waived the right to participate in the DRCP established by this Section 2.2.

(c) Within fifteen (15) days after the Initial Design Meeting, the Committee may provide written comments to Declarant and the Design Architect, setting forth its specific concerns about the Design Elements of the Building.

(d) Upon completion of the conceptual design of the New Building, Declarant, through its Design Architect, shall give notice of completion to the Committee and, within thirty (30) days of its receipt of the notice, the Committee may convene a meeting with Declarant to consider and review the Design Elements as set forth in the conceptual design (the “**Conceptual Design Meeting**”). In order to facilitate the Committee’s consideration and review of the Design Elements, Declarant, through its Design Architect, shall provide to the Committee the following materials: at least one section of the New Building and elevations; a plan showing the layout of the ground floor; a roof plan; one rendering of the New Building in the context of the block of which it forms a part; and zoning calculations. If the Committee shall fail to convene a Conceptual Design Meeting within the time herein provided, then the Committee shall be deemed to have waived the right to such a meeting and to participate in further proceedings under this DRCP.

(e) Within fifteen (15) days after the Conceptual Design Meeting, the Committee may provide written comments to Declarant and the Design Architect, setting forth its concerns about the Design Elements of the New Building as set forth in the conceptual design.

(f) Upon Declarant’s completion of schematic drawings for the New Building, but in no event fewer than sixty (60) days after the Conceptual Design Meeting, and, in any event, prior to filing an application with the DOB for approval of plans for the construction of the New Building, Declarant through its Design Architect shall provide the Committee with copies of its schematic drawings, noting any changes that have been made to any Design Elements that were shown to the Committee during the Conceptual Design Meeting. If there have been changes in any such Design Elements, then, the Committee may convene a meeting with Declarant and its Design Architect within thirty (30) days after its receipt of the schematic drawings (a “**Schematic Design Meeting**”) to consider and review the modified Design Elements shown in the schematic drawings. If the Committee shall request such a meeting, then Declarant shall not file plans with the DOB until after the meeting has occurred. If the

Committee shall fail to convene a Schematic Design Meeting, then it shall be deemed to have waived the right to conduct such a meeting or to participate in any further proceedings under the DRCP.

(g) Within fifteen (15) days after the Schematic Design Meeting, the Committee may submit written comments to Declarant and the Design Architect concerning the modifications shown in the schematic designs. Declarant shall not file any application with the DOB for approval of plans for the New Building for a period of not fewer than thirty (30) days after the date on which such comments are given.

(h) Declarant shall not accept a Building Permit for the construction of a New Building unless it has completed each of the procedures described in Sections 2.2(b) through 2.2(g) of this Section 2.2 (or at such time as the Committee has waived or is deemed to have waived any further participation in the DRCP).

(i) If Declarant through its Design Architect shall make any material modifications in the Design Elements subsequent to the presentation of its schematic drawings, then it shall repeat the process set forth in Sections 2.2(f) and 2.2(g) of this section.

(j) All notices required or permitted to be given under this Section 2.2 shall be given to Declarant as provided in Section 8.5 of this Declaration, to the Design Architect at the address specified pursuant to the procedure set forth in Section 2.2(b) of this Section and to the Committee, c/o the Office of the Borough President, 1 Centre Street, 19th Floor, New York, New York 10007, Att: Director of Land Use. The Borough President may change addresses for the giving of notices to it in the same manner as is provided for the change of addresses for the giving of notices in Section 8.5 of this Declaration and notices shall be given in the same manner and be effective at the same time as provided in such section.

(k) All Design Elements shall be consistent with the Approvals. Under no circumstances shall Declarant or its Design Architect be required to respond to any comments that would require the modification of any Design Element in a manner that would require a modification of the Approvals.

(l) The design for the New Building proposed to be constructed on Sites 5 and 5a shall be exempt from this design review process, provided that such New Building is designed substantially in accordance with the Law School Design. With the consent of the Borough President, the Councilmember and the Community Board, designs for additional buildings in the Master Plan may be exempted from the DRCP.

(m) The provisions of this subsection (m) of Section 2.2 shall apply to the development of the proposed residential buildings to be constructed on Sites 3 and 4 (as shown on Drawings Z-7 and Z-12)(the “**Residential Buildings**”), and the other procedures for design review set forth in this Section 2.2 shall not apply to the development of the design of the Sites 3 and 4 residential buildings:

(i) Within ten (10) days after Declarant closes on a contract for the sale or lease of either of Site 3 or Site 4 with a private developer, Declarant shall notify the Councilmember and the Borough President of its intent to form a Fordham University

Residential Sites Design Review Committee (the “**Residential Sites DRC**”) consisting of at least seven (7) members to review the proposed design of each of the residential buildings to be constructed on either of Site 3 or Site 4 (the “**Site 3 Building**” or the “**Site 4 Building**” as the case may be, or, collectively, the “**Residential Buildings**”), and shall request that the Borough President and Councilmember, acting jointly, designate two members of the Residential Sites DRC.

(ii) Such members shall be persons with design or planning experience having not fewer than ten years of experience and shall have no conflicts of interest (as determined by each such member’s completion of the standard conflict of interest form signed by Fordham trustees) and shall be neither a member of a Community Board nor an employee or member of any governmental agency, commission or other body (the “**Community Members**”).

(iii) Such Community Members shall participate in all meetings of the Residential Sites DRC that concern the design of either the Site 3 Building or the Site 4 Building, shall be entitled to one (1) vote each (equal to the vote of each other committee member) on any design matter that comes before the Residential Sites DRC requiring a vote and shall in all respects be treated as bona fide members of the Residential Sites DRC. The Community Members shall be entitled to the same notice that all members of the Residential Sites DRC receive regarding any meeting the subject of which will touch upon or concern either the Site 3 Building or Site 4 Building including their exterior materials, the shape of their envelopes, (including, without limitation, height, setbacks, location of street walls), façades, curtain walls, windows, applied decoration, color and any other matter affecting the aesthetic character or architectural design of the Residential Buildings.

(iv) As used in this Section 2.2(m), the term “Declarant” means Fordham University and its agents, officers, employees, trustees and representatives only.

(n) In any contract for the sale or lease of either of Sites 3 or 4 (as shown in Drawings Z-7 and Z-12), Declarant shall reserve the right to approve or disapprove the architectural design of the Site 3 Building or the Site 4 Building, as applicable.

(o) The Committee shall have the authority to review and comment on the proposed layout of any retail uses to be located in Sites 3, 3a and 4 along the Amsterdam frontage of the Property, as well as to consider and make recommendations regarding the types of retail uses to be provided in such locations.

2.3 **Parking Limitation.** Notwithstanding anything to the contrary contained in the Applications or Approvals, Declarant shall limit the number of accessory parking spaces to be constructed in each of Garages A and C to the lesser of 35% of the number of dwelling units actually constructed in the private residential buildings on either of Sites 3 (in the case of Garage C) or 4 (in the case of Garage A) or the number of spaces authorized by the Approvals. In the case of Garage C, up to fifty percent (50%) of the spaces may be designated for use by the community facility use on the zoning lot.

2.4 **Movement of Parking Garage Entrance.** Declarant shall, after expiration of the time provided by law for filing an Article 78 proceeding to challenge the Approvals, promptly file with the City Planning Commission an application for a special permit pursuant to Z.R. §13-561 to allow a parking garage in the area allocated to Garage C, as shown on Drawing 18.2, that is accessed by a curb cut located on West 60th Street, west of McMahon Hall, together with an application for an authorization pursuant to Z.R. §13-553 for a new curb cut to permit such access (the “**Garage C Applications**”). If, and at such time as, the Garage C Applications are granted, Declarant shall not exercise the Approval granted under ULURP #N050271ZSM and shall provide a letter to the Department of City Planning, copied to the Speaker of the City Council, irrevocably surrendering such an Approval. Declarant shall diligently and in good faith pursue the relief sought in the Garage C Applications, except that, if the Garage C Applications are not acted upon by the City Planning Commission within six months after the date Declarant formally files and pays an application fee to the DCP, then Declarant shall have no further obligations under this Section 2.4 and may rely upon the Garage C Approval granted under ULURP #N050271ZSM. Declarant shall have no obligations under Section 2.4, if any litigation challenging the Approvals is commenced by any resident or unit owner of the Alfred Condominium or any constituent member of Fordham Neighbors United, any resident of any of the eight buildings represented by Fordham Neighbors United or any member or affiliate of the foregoing.

ARTICLE III

ENVIRONMENTAL MITIGATION MEASURES

3.1 **Construction Impacts.** In order to mitigate certain potentially adverse environmental impacts associated with Construction of each New Building under the Master Plan, Declarant covenants and agrees to implement the measures hereinafter set forth.

(a) **Noise Controls (Source Controls).** At the earliest possible point in construction of each New Building, but in any event prior to commencement of demolition or excavation (whichever first occurs), Declarant will implement the following source controls to control the noise created by construction equipment and procedures:

(i) use of equipment that meets the sound level standards of Subchapter 5 of the New York City Noise Control Code (i.e., Local Law 113), as amended, along with a wide range of equipment, including construction trucks, which produce lower noise levels than typical construction equipment;

(ii) adherence to mandated noise levels for select construction equipment as specified in the table annexed to this Declaration as **Exhibit G**;

(iii) replacement of diesel or gas-powered welders, water pumps, bench saws, table saws and hoist (“**Equipment**”) with electrical-powered Equipment as soon as possible following electrification of a Site;

(iv) site configuration to reduce or eliminate back-up alarm noise and enforcement of statutory limitations on idling;

(v) restriction of number of pieces of equipment on a Site at single time to maintain noise levels in accordance with the table attached as **Exhibit H**;

(vi) enforceable contractual requirements with contractors and sub-contractors requiring maintenance and operation of equipment in accordance with industry standards for best practices and installation of quality mufflers meeting manufacturers' specifications.

(b) **Noise Controls (Path Controls)**. At the earliest possible point in the construction of each New Building, but in any event, prior to commencement of demolition or excavation (whichever first occurs) Declarant will also implement and maintain continuously throughout Construction, the following path controls:

(i) location of cranes, concrete pumps, concrete trucks and delivery trucks as far away as possible from the sensitive receptor locations identified in the table attached as **Exhibit I**;

(ii) erection of a minimum 8-foot noise barrier enclosing the construction sites along West 62nd Street between Amsterdam and Columbus Avenue and 16-foot noise barriers on Amsterdam Avenue between West 60th and 62nd Streets, on Columbus Avenue between West 60th and West 62nd Streets, on West 60th Street between Amsterdam and Columbus Avenues and between Sites 4, 5 and 5a and the Alfred Condominium;

(iii) truck deliveries (A) within the excavated pit, where excavation occurs on a Site, or (B) if the foundation is not excavated, from commencement of construction of the foundation, and, in any event, behind such barriers once foundation construction is completed;

(iv) use of portable noise barriers and acoustical tents during operation of especially noisy equipment such as mortar mixers, concrete pumps, hoists, tower cranes, impact wrenches, hole diggers, jack hammers, pile drivers, masonry saws, ram hoes, tampers and trowelling machines, to achieve the noise levels specified for such equipment with path controls set forth in **Exhibit G**;

(v) restriction of construction trucking operations at Site 2 to Columbus Avenue and at Site 3 to Amsterdam Avenue;

(vi) use of acoustical curtains for internal construction activities at Sites 2, 3 and 3A.

(vii) All barriers, enclosures, tents and other path controls will comply with the DEP's Citywide Construction Noise Mitigation guidelines.

(c) **Air Quality Emissions Control Measures**. To ensure that the construction of each New Building in the Master Plan results in the lowest feasible diesel particulate matter ("DPM") emissions, the Declarant shall require its contractors to construct each New Building on the Property in compliance with the following measures:

(i) minimize the use of diesel engines and use electric engines operating on grid power instead, in the case of welders, water pumps, bench saws, table saws, and material/personnel hoists, as soon as possible after electrification of the Site;

(ii) use ultra-low sulfur diesel fuel in all diesel engines;

(iii) use best available tailpipe emissions reduction technologies consisting of diesel particle filters (either original manufacture or retrofit) for nonroad diesel engines with a power rating of 50 horsepower (hp) or greater and truck fleets under long-term contracts, such as contract mixing and pumping trucks, to achieve emission reductions of diesel particulate matter of at least 90 percent when compared with normal private construction practices;

(iv) use Tier 2 or later construction equipment for nonroad diesel engines greater than 50 hp;

(v) locate large emission sources such as concrete pumps, concrete mixers and cranes, away from residential buildings and playgrounds to the extent practicable;

(vi) establish a fugitive dust control plan, including stabilized truck exit areas for wheel washing of exiting trucks; and

(vii) enforce statutory restrictions on truck idling time.

(d) Bid Specifications. Provisions to implement the measures set forth in subparagraphs (a), (b) and (c) of this Section 3.1 will be included in Declarant's bid specifications as requirements for incorporation in its construction contracts.

(e) Electrification of Site. To facilitate the use of electrically powered equipment and minimize the use of generators, not fewer than sixty (60) days prior to the anticipated date of commencement of demolition or excavation on a Site (whichever first occurs), Declarant will apply to Con Ed to establish an electrical connection of such Site to grid power. A complete copy of such application shall be forwarded to the Department at the time the application is first sent to Con Ed.

(f) Innovation; Alternatives. In complying with Section 3.1(a) through and including Section 3.1(c) of this Declaration, Declarant may, at its election, and with the concurrence of the Monitor (hereafter defined) implement innovations, technologies or alternatives that are or become available, which would result in equal or better methods of achieving the relevant mitigation, in each case subject to the approval of City, which approval shall not be unreasonably withheld, conditioned or delayed.

(g) Appointment and Role of Independent Monitor.

(i) Declarant shall, with the consent of the Agencies, appoint an independent third party (the "**Monitor**") acceptable to the Agencies to oversee, on behalf of the City, the implementation and performance by Declarant of the CMMs under this Declaration with respect to the development of each Site in the Master Plan. The Monitor shall be a person

holding a professional engineering degree and with significant experience in environmental management and construction management, including familiarity with the means and methods for implementation of the CMMs. In the event that the Declarant that is signatory to this Declaration shall have disposed of any of the Sites to a third party that becomes a successor Declarant with respect to such Site, then, with the prior written approval of the Agencies, such approval not to be unreasonably withheld, conditioned or delayed, there may exist more than one Monitor with respect to multiple developments proceeding simultaneously on the Property, pursuant to separate Monitor Agreements (hereafter defined).

(ii) The scope of services described in any agreement between Declarant and the Monitor pursuant to which the Monitor is retained (the “**Monitor Agreement**”) shall be subject to prior review by and approval of the Agencies, such approval not to be unreasonably withheld, conditioned or delayed and such agreement may include provision for the retention by the Monitor (or, if reasonably acceptable to the Agencies, by Declarant) of consultants with expertise appropriate to assisting the Monitor in its performance of its obligations. If the City shall fail to act upon a proposed Monitor Agreement within thirty (30) days after submission of a draft form of Monitor Agreement to the offices of the General Counsel for each of the Agencies, the form of Monitor Agreement so submitted shall be deemed acceptable. The Monitor Agreement shall provide for the commencement of service by the Monitor at the commencement of demolition or excavation on the Site, whichever first occurs, for which the Monitor has been retained and for the termination of the Monitor’s services upon issuance of a temporary certificate of occupancy with respect to such Site.

(iii) The Monitor shall provide reports of Declarant’s compliance with the CMM’s on a schedule reasonably acceptable to the City, but not more frequently than once a month. The Monitor may at any time also provide Declarant and the City with notice of her determination that a CMM has not been implemented, accompanied by supporting documentation establishing the basis for such determination. The Monitor (A) shall have full access to the Site as to which she has been retained, subject to compliance with all generally applicable site safety requirements imposed by law or pursuant to construction contracts in effect for the Site, (B) shall be provided with access to all books and records on the Site which she reasonably deems necessary to carry out her duties, including the preparation of her periodic reports, and (C) shall be entitled to conduct any tests on the Site she reasonably deems necessary to verify Declarant’s implementation and performance of the CMMs.

(iv) Declarant shall be responsible for payment of fees and expenses due the Monitor and any consultants retained by the Declarant or the Monitor. All amounts payable by Declaration under this Section 3.1(g)(iv) shall be payable pursuant to the terms of the Monitor Agreement.

(h) CMM Violations. If the Monitor determines, either in a monthly report or otherwise, that Declarant has failed to implement or to cause its contractors to implement a CMM, the monitor shall notify each of the General Counsels of the Agencies of such alleged violation, and provide documentation establishing the basis for her determination. If the Chair determines that there is a basis for concluding that such a violation has occurred, the Chair may thereupon give Declarant written notice of such alleged violation (each, a “**CMM Default Notice**”), transmitted via overnight courier service to the address for notices for Declarant set

forth in Section 8.5(a). Notwithstanding any provisions to the contrary contained in Sections 7.1 and 7.2 of this Declaration, Declarant shall have twenty-four (24) hours after receipt of a CMM Default Notice to (i) effect a cure of the alleged violation; (ii) demonstrate to the City why the alleged violation did not occur and does not then exist, or (iii) demonstrate that a cure period greater than 24 hours would not be harmful to the environment (such longer cure period, a **“Proposed Cure Period”**). If the City accepts the Proposed Cure Period in writing, then this shall become the applicable cure period for the alleged violation (the **“New Cure Period”**). The City shall act with respect to a Proposed Cure Period within twenty-four (24) hours after receipt of a writing suggesting a Proposed Cure Period from Declarant. If Declarant fails to (A) effect a cure of the alleged violation; (B) cure the alleged violation within a New Cure Period, if one has been established, or (C) demonstrate to the City’s satisfaction that a violation has not occurred, then representatives of Declarant shall, at the City’s request, and upon a time and date acceptable to the City, convene a meeting at the Site with the Monitor and authorized representatives of the City. If Declarant is unable reasonably to satisfy the authorized representatives of the City that no violation exists or is continuing and the Declarant, the Monitor and the City are unable to agree upon a method for curing the violation within a time period acceptable to the City, the City shall have the right to exercise any remedy available at law or in equity or by way of administrative enforcement, to obtain or compel Declarant’s performance under this declaration, including seeking an injunction to stop work on the Site against which the CMM Default Notice has been written, as necessary, to ensure that the violation does not continue, until the Declarant demonstrates that it has cured the violation.

(i) Circumstances. In the event that, as the result of Circumstances Beyond the Control of Declarant, Declarant is unable to implement any required CMM at the time or times required by this Declaration, Declarant shall, within forty-eight (48) hours after the occurrence of such Circumstances Beyond the Control of Declarant become apparent so notify the City in writing. Such notice (the **“Delay Notice”**) shall include a description of the Circumstances Beyond the Control of Declarant, and, if known to Declarant, their cause and probable duration. In the exercise of its reasonable judgment the City shall, within thirty (30) days of its receipt of the Delay Notice, (a) certify in writing that the Circumstances Beyond the Control of Declarant have occurred, or (b) notify Declarant that it does not reasonably believe that the Circumstances Beyond Control of Declarant have occurred. Failure to respond within such thirty (30) day period shall be deemed to be a certification by the City that the Circumstances Beyond the Control of Declarant have occurred. Upon a certification or deemed certification that Circumstances Beyond the Control of Declarant have occurred, the City may grant Declarant a waiver of any of the obligations imposed with respect to CMM’s by this Declaration, either in whole or in part, or for a period of time to be specified by the City, if the City determines in its reasonable discretion that failure to implement the CMM in whole or in part during the period of the Circumstances Beyond the Control of Declarant, or implementing an alternative proposed by Declarant, would not result in any new or different significant adverse environmental impact not addressed in the FEIS. As a condition of the granting of such relief, the City may require that Declarant post a bond, letter of credit or other security in a form reasonably acceptable to the City in order to ensure that the CMM will be implemented or reinstated as soon as feasible in accordance with the provisions of this Declaration. Any delay caused in reimplementation of the CMM as the result of Circumstances Beyond the Control of Declarant shall be deemed to continue only as long as the Circumstances Beyond the Control of Declarant continue. Upon cessation of the Circumstances Beyond the Control of Declarant

causing such delay, the Declarant shall within forty-eight (48) hours implement the CMM or proceed with work without the CMM which is the subject of a Delay Notice under this paragraph, unless and until it is determined that the Circumstances Beyond the Control of Declarant have occurred, or Circumstances Beyond the Control of Declarant are deemed to have occurred, and the City determines in the manner set forth above that failure to implement the CMM in whole or in part would not result in any new or different significant adverse environmental impact not addressed in the FEIS.

3.2 **Shadow Impacts.** In order to mitigate shadow impacts identified in the FEIS:

(a) Commencing on the date Declarant receives a Building Permit the (“Building Permit Date”) for the construction of a New Building on Site 1 (or Site 6, if construction of Site 6 shall commence prior to construction on Site 1), Declarant shall be obligated to pay to the New York City Department of Parks and Recreation (“DPR”) an amount that is equal to \$250,000, with interest compounded annually until the Building Permit Date (the “Funds”) at the following rates: (i) 3% per annum, for the period between the Effective Date and June 30, 2021, (ii) 2% per annum for the period between July 1, 2021 and June 30, 2026, and (iii) 1% per annum for the period between July 1, 2026 and June 30, 2031. There shall be no further interest earned or compounded on the Funds after June 30, 2031. The amount of the Funds shall be fixed and determined at the Building Permit Date and shall be paid to DPR in ten (10) equal annual installments, the first of which shall be paid on the date that is no later than thirty (30) days after the date of issuance of such Building Permit and each succeeding payment (each, a “Payment” and more than one Payment, “Payments”) shall be made on the annual anniversary of the first Payment until the entire amount of the Funds has been paid (unless the obligation to pay is terminated as hereafter provided). By way of example, if the Building Permit were to be issued on June 30, 2022, and the Effective Date were July 1, 2009, then the amount of the Funds would be \$250,000 compounded at 3% from the Effective Date through June 30, 2021 which equals \$367,133.43, plus that amount compounded at 2% through June 30, 2022 which equals \$374,476.10. The Funds shall be used solely for the purpose of maintenance and horticulture care within Damrosch Park and the Grove (collectively, the “Park”), to the extent that DPR has responsibility for maintenance of the Grove. The Funds shall not be used for any other purpose, including capital expenditures other than tree replacement, other ordinary repair and maintenance of the Park or other programs or services within the Park, nor shall the City use the Funds to reduce its level of support, in the form of services and expenditures for the operation and maintenance of the Park, in effect prior to the date the Payments begin. The Funds shall be paid by check payable to DPR at its principal office or such other office within the City as DPR may from time to time designate, or by wire transfer to an account designated by DPR. In the event that, during the term of payment of the Funds, the area of the Park is reduced as the result of (i) construction of a new building (as used in this paragraph only, the term “new building” shall not include kiosks, sheds, temporary installations or similar structures), or (ii) the area of the Park containing trees is reduced, then the amount of each Payment shall be reduced to the extent that the Park area affected by the incremental shadow created by the New Buildings on the Property, as set forth in the FEIS, has thereby been reduced. DPR shall provide a report to Declarant thirty (30) days after the close of each City fiscal year after Payment of the Funds has commenced, detailing the purposes for which the Funds have been expended, including the personnel services associated with the maintenance and replacement work on which such Funds were expended. Declarant shall have no liability to the City, DPR, its agents, officers,

employees, affiliates, successors or principals for, and the City shall indemnify, defend and hold Declarant harmless from and against any loss, cost, liability, claim, damage, expense, including reasonable attorneys' fees and disbursements, incurred in connection with or arising from the operation or maintenance of the Park or the use of the Funds.

(b) Declarant shall not apply for or accept a Building Permit for the construction of a New Building on Site 2 until it has implemented a lighting scheme reasonably acceptable to the Church of St. Paul the Apostle that will illuminate the windows in the clerestory that are identified in the FEIS as being affected by shadow between the hours of 7:00 a.m. and 9:00 p.m. on June 21st.

3.3 For each New Building to be constructed by Declarant on Sites 1, 2, 3a, 6 and 7, Declarant shall design, build and operate each New Building, in accordance with the standards required to achieve a minimum of LEED NC v. 3 Gold Certification and shall apply for and use good faith efforts to obtain LEED NC v. 3 Gold Certification. For each New Building to be constructed by Declarant on Sites 5 and 5a, Declarant shall design, build and operate the School of Law, in accordance with the standards required to achieve a minimum of LEED NC v. 3 Silver Certification and shall apply for and use good faith efforts to obtain LEED NC v. 3 Silver Certification. For each New Building to be constructed on either of Sites 3 or 4, Declarant shall require the designated developer of each site to design, build and operate the New Building on each such site in accordance with the standards required to achieve LEED NC v. 3 Certification and shall require such developers to apply for and use good faith efforts to obtain LEED NC v. 3 Certification. Should any LEED NC v. 3 Gold, Silver or basic Certification criterion, or elements thereof, change materially (including the adoption of any new rating or guideline systems as successor to the foregoing), and Declarant reasonably determines that compliance with the new standards will materially increase the costs of construction of New Buildings not designed as of the date of the change beyond the cost premium associated with implementation of the standards in LEED NC v.3 as it exists today, Declarant may, in its sole discretion, elect to design, build and operate New Buildings not designed or constructed as of the date of the change according to the LEED NC v.3 standard or the modified standard and, in the event it elects to proceed under the standards in effect prior to the change in criterion or element, shall not be required to seek LEED NC v.3 Gold or Silver Certification and shall not require its designated developers to seek LEED NC v. 3 Certification.

ARTICLE IV

OPEN SPACE AND PUBLIC AMENITIES

4.1 Construction of Interim Open Space.

(a) At such time, if any, as Declarant has completed the development of Sites 5 and 5a (Sites as indicated on Drawing Z-7) and obtained a certificate of occupancy authorizing the use and occupancy of a New Building thereon, Declarant shall construct and Substantially Complete the Interim Open Space either (i) within three (3) years after issuance of a certificate of occupancy for Sites 5 and 5a or (b) upon issuance of Building Permit for Site 3 and 3A, whichever of (i) or (ii) shall first occur. The Completion of the Interim Open Space shall be

substantially in accordance with the Open Space Plans, including all of the design elements contained therein as to seating, pavement, plantings and landscaping (including trees and shrubs), lighting, signage and provision and location of facilities (including, without limitation, access ramps, kiosk, drinking fountain, refuse disposal containers and bike rack). The Interim Open Space shall be opened to the public, pursuant to the terms of this Declaration, within sixty (60) days following the receipt of the Chair's certification that the construction of the Interim Open Space according to the Plans is Substantially Complete. The Interim Open Space shall be opened to the public in accordance with the provisions of Section 4.1(d)(i) of this Declaration and shall remain open for public use a minimum of five (5) years from the date the Chair certifies the Interim Open Space is Substantially Complete pursuant to Section 4.1(c)(i).

(b) Certificate of Occupancy/Building Permit.

(i) The DOB shall not issue and Declarant shall not apply for or accept a temporary certificate of occupancy (a "TCO") for any new building on Site 3 and/or 3a until the Chair has certified that the construction of the Interim Open Space according to the Open Space Plans is Substantially Complete, except as provided in subparagraphs (b) and (c) of this Section 4.1.

(ii) Upon application by the Declarant to CPC, and notwithstanding anything to the contrary contained in any other provision of this Declaration, the Chair, in the exercise of the Chair's reasonable judgment, may certify that Substantial Completion of the work required by the Open Plans is delayed due to Circumstances Beyond the Control of Declarant, as provided in subparagraph (iii) of this Section 4.1(b).

(iii) If Declarant reasonably believes that full performance of its obligation to develop the Interim Open Space has been delayed as a result of Circumstances Beyond the Control of Declarant, Declarant shall promptly notify the Chair upon learning of such circumstances. Declarant's notice shall include a description of the condition or event, its cause (if known to Declarant), its probable duration, and in Declarant's reasonable judgment, the impact such circumstances are reasonably anticipated to have on the completion of the Interim Open Space construction. The Chair shall, within twenty (20) business days of its receipt of Declarant's written notice, (i) determine in writing that Circumstances Beyond the Control of Declarant have occurred, including a determination of the expected duration of such delay or (ii) notify Declarant that it does not reasonably believe Circumstances Beyond the Control of Declarant have occurred. The Chair's determinations regarding Circumstances Beyond the Control of Declarant shall be a final administrative determination. If the Chair determines that Circumstances Beyond the Control of Declarant have occurred, the Chair may authorize DOB to issue TCOs for a portion or the entirety of Site 3 and/or 3a, notwithstanding Declarant's failure to complete the Interim Open Space; however, Declarant shall diligently seek to complete and shall complete the Interim Open Space as soon as possible after the Circumstances Beyond the Control of Declarants have ceased. As a condition to granting such relief, the City may require that Declarant post a bond, letter of credit or other security in a form and amount reasonably acceptable to the City in order to ensure that the Interim Open Space will be completed as soon as feasible in accordance with the provisions of this Declaration.

(c) Substantial and Final Completion.

(i) Declarant shall notify the Chair when, in the opinion of Declarant, the Interim Open Space is Substantially Complete. Within fifteen (15) business days of its receipt of Declarant's notice, the Chair shall either (i) issue a certification of Substantial Completion, or (ii) notify Declarant of any work that, according to the Open Space Plans, remains to be completed before the Chair will issue a certification of Substantial Completion. If the Chair notifies Declarant that work remains to be completed in accordance with the Open Space Plans, such notice shall contain a detailed statement of the reasons for such non-acceptance in the form of a so-called "punch list" of items remaining to be completed. Upon completion of the work specified in the punch list, Declarant shall notify the Chair and, within fifteen (15) business days of receipt of such notice, the Chair shall either (i) issue a certification of Substantial Completion, or (ii) issue a revised punch list containing no new items but including any items on the original punch list remaining to be completed. This process shall continue until the Chair has issued a certification of Substantial Completion.

(ii) Upon receipt of the certificate of Substantial Completion, Declarant may apply for and obtain a TCO for Site 3; however, no permanent certificate of occupancy shall be issued for any building on Site 3 until the Interim Open Space has achieved Final Completion, as certified by the Chair. The procedure for establishing Final Completion shall be the same as the procedure set forth in subparagraph (i) of this Section 4.1(c) for Substantial Completion, except that, in each instance, the term "**Final Completion**" shall be substituted for the term "**Substantial Completion**." In the discretion of the Chair, upon request of Declarant, a single certificate signifying Final Completion may be issued and the procedure set forth above for Substantial Completion may be eliminated.

(d) Public Access and Continuation of Use

(i) Commencing the date the Chair issues a certificate of Substantial Completion, the entire Interim Open Space shall be open to the public seven days a week. The hours during which the Interim Open Space are open shall be conspicuously posted at the entrances to the Interim Open Space as indicated on the Open Space Plans and in locations within the Interim Open Space. The Interim Open Space shall be open from 7:00 a.m. to 8:00 p.m. from November 1 through April 14 and from 7:00 a.m. to 10:00 p.m. from April 15 through October 31, free of charge, subject to Declarant's rights under subparagraph (ii) of this Section 4.1(c). The kiosk shown in the Open Space Plans shall serve beverages and light refreshments at least 225 days a year, including at least April through October 15 of each year and a sign clearly and legibly stating the hours of the kiosk's operation shall be posted at a location within the Interim Open Space where it is clearly visible to persons within the vicinity of the kiosk.

(ii) Declarant may close the Interim Open Space (A) at least once a year to prevent the public's acquisition of any property interest therein by dedication; (B) at any time, to perform necessary maintenance and repairs; (C) to address actual or imminent emergency situations, including but not limited to, security alerts, riots, casualties, disasters or other events endangering public safety or property, provided that no such closure pursuant to this subparagraph (C) shall continue for more than twenty-four (24) consecutive hours without Declarant having consulted with the New York City Police Department or Fire Department, as the case may be, and obtained their concurrence that closure is warranted for a longer period; (D) to perform soil borings or other necessary environmental sampling in anticipation of satisfaction

of Declarant's obligations with respect to the remediation of any hazardous substances that may exist on the Site. Declarant shall promptly notify the Department in writing of any closure which continues for more than twenty-four (24) hours. Declarant agrees that in the performance of construction, maintenance or repairs, it will close or permit to be closed only those portions of the Interim Open Space which reasonably must be closed to perform the work and/or protect the public and will exercise due diligence in the performance of such work so that it is completed expeditiously. All temporarily closed areas will be reopened to the public promptly following completion of the applicable work. In connection with each closure permitted pursuant to this Section 4.1(d)(ii), Declarant shall, except in the case of an emergency requiring immediate action, send a prior notice to the Department not less than five (5) days prior to the closure and post signs throughout the Plaza giving the public prior notice of the closure.

(iii) The activities, uses and conduct permitted within the Interim Open Space shall comply with all applicable laws, statutes, ordinances, rules and regulations of the City (and any other governmental entity having jurisdiction thereover), in addition to being subject to the regulations and policies set forth in the schedule annexed hereto as **Exhibit J**. Declarant may modify the regulations and policies set forth in **Exhibit J** with the prior written approval of the Department, which shall not be unreasonably withheld, conditioned or delayed.

(iv) Declarant shall at all times keep the Interim Open Space in a safe, secure, clean condition and in good repair and shall make such periodic replacements of equipment, finishes and materials as are reasonably necessary to maintain the facilities required to be provided pursuant to the Open Space Plans for the duration of the Interim Open Space's existence.

(v) Declarant shall erect no enclosures around the Interim Open Space or any portion thereof, except as shown in the Open Space Plans, or upon written application to the Chair of the CPC for permission to erect such enclosures and modify this Declaration.

(e) Discontinuation of Use. At such time as Declarant shall have received a building permit for the construction of the entire development to be constructed on Site 2, and provided that the Interim Open Space has then been open to and in use by the public for at least five (5) years, Declarant may close and discontinue the Interim Open Space use. At least thirty (30) (but not more than sixty (60)) days prior to such closure, Declarant shall post notices in and around the periphery of the Interim Open Space advising members of the public of the impending closure. Declarant shall continue to maintain the Interim Open Space as required by Section 4.1(c)(iv) of this Declaration and shall not interfere with or prohibit public use of any portion of the Interim Open Space until the actual posted date of closure.

(f) Alteration of Interim Open Space. If Declarant shall hereafter elect to develop Site 1 prior to the development of Site 2 and, as a consequence, shall be required to develop the 61st Street Access Stair in conjunction with the development of Site 1, Declarant shall be permitted to modify the design of the Interim Open Space, to reduce its area to accommodate such access stair and to close all or a portion of the Interim Open Space during any period of active construction of the 61st Street Access Stair. In such event, in redesigning the Interim Open Space, Declarant shall submit a proposed modified design that retains to the maximum extent feasible the characteristics and amenities included in the Open Space Plans and

complying as nearly as possible with the standards set forth in Section 37-70 of the Zoning Resolution for the modification of the Interim Open Space (the “**Modification Plan**”). The Modification Plan shall be subject to review and certification by the Chair according to the same procedures and same standards as are set forth for approval of the design of the Access Stairs in Section 4.2 of this Declaration.

4.2 Construction of Access Stairs.

(a) No later than the first date on which Declarant has obtained a building permit for the construction of a new building on Sites 1 or 2 (such sites as shown in Drawing Z-12), Declarant shall commence construction of the 61st Street Access Stair according to plans for the design of such stair to be certified pursuant to the procedures set forth in Section 4.2 of this Declaration and shall thereafter complete such construction. Declarant shall include plans for the design and construction of the (i) Interim Stair in its application for a building permit for the construction of a new building on Site 5 as shown on Drawing Z-12, and (ii) the 62nd Street Access Stair in its application for a building permit for the construction of a new building on Site 6 (as shown in Drawing Z-12), provided that, in the case of the Interim Stair, such plan shall substantially conform to the Stair Plan, and in the case of the 62nd Street Access Stair, such plans shall have been certified pursuant to the procedures set forth in subparagraph (b) of this Section 4.2 of this Declaration. Prior to obtaining a final CO for any new building on Site 5, Declarant shall complete construction of the Interim Stair substantially in accordance with the Stair Plan.

(b) Design Approval for Access Stairs

(i) The DOB shall not issue, and Declarant shall not accept a building permit (other than a permit for demolition, site preparation or excavation) for any of Sites 1, 2 or 6 until the Chair certifies, in accordance with subparagraph (ii) of this Section 4.2, that the design for the Access Stairs satisfies all requirements specified for such stairs in Drawing Z-7 and Drawing Z-12, as well as the then-applicable public open space signage, lighting, planting, landscaping and public seating elements for publicly accessible open spaces (the “**Required Elements**”) and that the procedures set forth in paragraph (b) of this Section 4.2 to obtain certification of the Access Stairs designs have been completed.

(ii) Declarant shall prepare a preliminary drawing or drawings for each Access Stair associated with a site for which a building permit is sought, which shall include the Required Elements (each, a “**Preliminary Access Stair Drawing**”). Declarant shall transmit the Preliminary Access Stair Drawing to the Department for review and comment and shall simultaneously provide a copy of such drawing to and shall attend at least one (1), but shall not be required to attend more than three (3), meetings with a duly constituted committee of Manhattan Community Board 7 to present the Preliminary Access Stair Drawing. Declarant shall attend a meeting with the staff of the Department, to be held not later than thirty (30) days after first submission of the Preliminary Stair Drawing to the Department, to receive the Department’s comments on the proposed design, including, without limitation, a determination whether the Preliminary Stair Drawing contains the Required Elements. After such meeting, Declarant shall prepare a revised drawing or drawings (each, a “**Revised Access Stair Drawing**”) in response to such comments, or a written statement explaining why such comments cannot feasibly be incorporated into the revised drawing or drawings, and shall submit the

Revised Access Stair Drawing(s) to the Chair. Within fifteen (15) days of such submission, the Chair shall review the Revised Access Stair Drawing(s) and shall either (i) issue a certificate that the Access Stair Drawing includes all of the Required Elements (each, a “**Stair Certification**”), (ii) notify Declarant in writing of any Required Elements that are not included in the Access Stair Drawing (a “**Required Elements Notice**”), or (iii) issue additional comments, which may address aspects of design other than the Required Elements. If the Chair issues a Required Elements Notice, Declarant shall submit a further revised Access Stair Drawing including the Required Elements specified as missing in the Required Elements Notice and the Chair shall issue a Stair Certification within fifteen (15) days after receipt thereof. If the Chair issues additional comments, Declarant shall submit a further revised Access Stair Drawing, in response to such comments, or a written statement explaining why such comments cannot feasibly be incorporated into the revised Access Drawing, and the Chair shall issue a Stair Certification within fifteen (15) days after receipt thereof.

(iii) Declarant shall use the requirements of Section 37-70 of the Zoning Resolution as a guide in the design and selection of amenities to be provided in the Access Stairs, but the Chair shall not decline to issue a Stair Certification solely because any of the materials, fixtures, plantings or landscaping employed by Declarant in the design of the Access Stairs does not comply with such requirements, if Declarant provides a statement explaining why the element in question cannot feasibly be used and such Statement is accepted by the Chair, in her reasonable discretion.

(c) Certificate of Occupancy for Buildings Associated with Access Stairs

(i) The DOB shall not issue and Declarant shall not apply for or accept, a TCO for any New Building on any of Sites 1, 2 or 6 or a final CO for Site 5 until the Chair has certified that the Stair appurtenant to such site is Substantially Complete, except as provided in subparagraphs (ii) and (iii) of this Section 4.2(c). Once Declarant has constructed the 61st Street Access Stair in connection with construction of a New Building on either Site 1 or Site 2, then Declarant may apply for and DOB may issue a TCO on the other Site (of Sites 1 and 2) without regard to the provisions of this Section 4.2.

(ii) Upon application by the Declarant to CPC, and notwithstanding anything to the contrary contained in any other provision of this Declaration, the Chair, in the exercise of the Chair’s reasonable judgment, may certify that Substantial Completion of a Stair is delayed due to Circumstances Beyond the Control of Declarant, as provided in subparagraph (iii) of this Section 4.2(c).

(iii) If Declarant reasonably believes that full performance of its obligation to develop a Stair has been delayed as a result of Circumstances Beyond the Control of Declarant, Declarant shall promptly notify the Chair upon learning of such circumstances. Declarant’s notice shall include a description of the condition or event, its cause (if known to Declarant), its probable duration, and, in Declarant’s reasonable judgment, the impact such circumstances are reasonably anticipated to have on the completion of construction. The Chair shall, within twenty (20) business days of its receipt of Declarant’s written notice, (i) determine in writing that Circumstances Beyond the Control of Declarant have occurred, including a determination of the expected duration of such delay or (ii) notify Declarant that it does not

reasonably believe Circumstances Beyond the Control of Declarant have occurred. The Chair's determinations regarding Circumstances Beyond the Control of Declarant shall be a final administrative determination. If the Chair determines that Circumstances Beyond the Control of Declarant have occurred, the Chair may authorize DOB to issue TCOs for a portion or the entirety of Site 1, Site 2, Site 5 or Site 6, depending upon the Stair that is the subject of the Chair's determination, notwithstanding its failure to complete such Stair; however, Declarant shall diligently seek to complete and shall complete such Stair as soon as possible after the Circumstances Beyond the Control of Declarant have ceased. As a condition of the granting of such relief, the City may require that Declarant post a bond, letter of credit or other security in a form and amount reasonably acceptable to the City to ensure that such Stair will be completed as soon as feasible in accordance with the provisions of this Declaration.

(d) Substantial and Final Completion of Access Stairs

(i) Declarant shall notify the Chair when, in the opinion of Declarant, each Stair is Substantially Complete. Within fifteen (15) business days of its receipt of Declarant's notice, the Chair shall either (A) issue a certification of Substantial Completion, or (B) notify Declarant of any work that, according to the Access Stair Drawing for the Access Stair in question, or the Stair Plan, in the case of the Interim Stair remains to be completed before the Chair will issue a certification of Substantial Completion. If the Chair notifies Declarant that work remains to be completed in accordance with an Access Stair Drawing or Stair Plan, such notice shall contain a detailed statement of the reasons for such non-acceptance in the form of a so-called "punch list" of items remaining to be completed. Upon completion of the work specified in the punch list, Declarant shall notify the Chair and, within fifteen (15) business days of receipt of such notice, the Chair shall either (Y) issue a certification of Substantial Completion, or (Z) issue a revised punch list containing no new items but including any items on the original punch list remaining to be completed. This process shall continue until the Chair has issued a certification of Substantial Completion.

(ii) Upon receipt of the certificate of Substantial Completion, Declarant may apply for and obtain a TCO for Site 1, Site 2, Site 5 or Site 6, as applicable; however, no permanent certificate of occupancy shall be issued for any building on such sites until the Stair appurtenant to such site has achieved Final Completion, as certified by the Chair. The procedure for establishing Final Completion shall be the same as the procedure set forth in subparagraph (i) of this Section 4.2(d) for Substantial Completion, except that, in each instance, the term "**Final Completion**" shall be substituted for the term "**Substantial Completion**." In the discretion of the Chair, upon request of Declarant, a single certificate signifying Final Completion may be issued for a Stair and the procedure set forth above for Substantial Completion may be eliminated.

(e) Public Access and Continuation of Use for Access Stairs

(i) Commencing upon the date the Chair issues a certificate of Substantial Completion, the Stair for which such certificate has been issued shall be open to the public seven days a week, from 7:00 a.m. to 8:00 p.m. from November 1 through April 14 and from 7:00 a.m. to 10:00 p.m. from April 15 through October 31, or, in the alternative, during all

hours in which the Central Plaza is open for use by the public, whichever results in the longest hours of opening, subject to Declarant's rights under subparagraph (ii) of this Section 4.2(e).

(ii) Declarant may close any Stair, (A) at least once a year to prevent the public's acquisition of any property interest therein by dedication; (B) at any time, to perform necessary maintenance and repairs; (C) to address actual or imminent emergency situations, including but not limited to, security alerts, riots, casualties, disasters or other events endangering public safety or property, provided that no such closure pursuant to this subparagraph (C) shall continue for more than twenty-four (24) consecutive hours without Declarant having consulted with the New York City Police Department or Fire Department and obtained their concurrence that closure is warranted for a longer period. Declarant shall promptly notify the Department in writing of any closure which continues for more than twenty-four (24) hours. Declarant agrees that in the performance of construction, maintenance or repairs, it will close or permit to be closed only those portions of each Stair which reasonably must be closed to perform the work and/or protect the public and will exercise due diligence in the performance of such work so that it is completed expeditiously. All temporarily closed areas will be reopened to the public promptly following completion of the applicable work. In connection with each closure permitted pursuant to this Section 4.2(e)(ii), Declarant shall, except in the case of an emergency requiring immediate action, send a notice to the Department not less than five (5) days prior to the closure and post signs at the top and bottom of each Stair giving the public prior notice of the closure.

(iii) Declarant shall at all times keep each Stair in a safe, secure, clean condition and in good repair and shall make such periodic replacements of equipment, finishes and materials as are reasonably necessary to maintain the facilities required to be provided pursuant to the Access Stair Drawings and the Stair Plan.

(iv) Declarant shall erect no permanent or fixed barriers to entry to any Access Stair, except as shown in the Access Stair Drawings, as approved by the chair pursuant to Section 4.2(b)(ii), or after written application to the Chair of the CPC for permission to erect such barriers and modify the terms of this Declaration, and such application is approved by the Chair.

4.3 **Public Amenities.**

(a) In connection with the construction of a New Building on Site 1, Fordham shall cause the design and construction of (i) a publicly accessible atrium having a minimum area of 3500 square feet and a minimum height of 30 feet in the ground floor of the building at the intersection of Columbus Avenue and West 62nd Street (the "**Atrium**"), and (ii) a publicly accessible enclosed escalator adjacent to the northern side of the 61st Street Access Stair and leading from the level of the street to the level of the Central Plaza (the "**Escalator Area**"), both as shown on Drawings Z-7 and Z-12 (each, an "**Indoor Public Space**" and both, together, the "**Indoor Public Spaces**"). The Atrium shall be capable of supporting retail uses, but shall be open and accessible to the public and contain a facility for non-alcoholic beverage and light refreshment service, as well as seating with tables. The Atrium may contain other programmatic elements related to the Fordham University program, provided that each is open and accessible to the public and is installed without permanent walls that obstruct the visual openness of the

Atrium space. Other obstructions shall be permitted in the Atrium and the Escalator Area in accordance with the provisions of Section 37-726(a) of the Zoning Resolution, adapted for an indoor space. The design of the Indoor Public Spaces, including the signage announcing the availability of the Atrium for public access; the hours of operation; the size, configuration, location within the Atrium; signage and hours of operation of the required non-alcoholic beverage and light refreshment service; and the amount and type of seating and tables, shall be subject to the design review process described in Section 2.2 (but not including the process described in Section 2.2(m)). Fordham University shall be responsible for the maintenance of the Atrium and Escalator Area, including but not limited to litter control, management of rodents, maintenance of lighting and the care and replacement of furnishings and plantings. Fordham University shall have sole discretion over the form and management of security in the Indoor Public Spaces, so long as security measures are not used to deny members of the public free access to such spaces.

(b) If, after each of the Indoor Public Spaces has been open for public use for a period of three (3) years, Fordham determines that either of the Indoor Public Spaces has become a public nuisance, either because it has attracted users who threaten the health, safety or well-being of other members of the public or users of the Campus (as evidenced by incident reports filed with the local police precinct or with campus security) or because it is not regularly used by a significant number of members of the public, Fordham may give notice to the Committee of its intent to alter the use or layout of an Indoor Public Space or the hours of access thereto. The Committee may request a meeting with Fordham to discuss alternative uses or other matters relating to the reprogramming of an Indoor Public Space. The Committee's views shall be advisory only. In making any such reprogramming decision, Fordham will endeavor to maintain public access to and use of the Indoor Public Spaces in a manner consistent with the public's health, safety and well-being and to improve the extent of public use of such spaces.

4.4 **Chair Actions.** In any case under this Article IV in which the Chair is required to act within a stated period of time and fails to act within the period stated, Declarant may give a second notice to the Chair (which notice shall state in bold upper case type both at the top of the first page thereof and on the envelope thereof "SECOND NOTICE PURSUANT TO SECTION 4.3 OF THE FORDHAM LINCOLN CENTER DECLARATION")(each such notice, a "Second Notice"), requesting that the Chair immediately take the action specified in the Second Notice and referencing the provision in this Declaration that required the Chair's action within the time stated. If the Chair shall fail to act within ten business days after receipt of the Second Notice, then the Chair shall be deemed in each such instance to have acted favorably to the Declarant with respect to the action requested by the Second Notice.

ARTICLE V

INDEMNIFICATION AND INSURANCE

5.1 **Indemnification.** Declarant shall indemnify and hold harmless the City, including the CPC and the Department and their respective officers, employees and agents from any and all claims, actions or judgments (including reasonable out-of-pocket attorneys' fees) for loss, damage or injury including death, personal injury or property damage of whatsoever kind or nature, arising out of Declarant's default in the performance of its obligations under this

Declaration or Declarant's performance of such obligations in a negligent, reckless or willfully wrongful manner. Such indemnity shall extend to the negligent, reckless or willfully wrongful acts of Declarant's agents, servants or employees in undertaking such obligations; provided however that should any such claim be made or action brought, Declarant shall have the right to defend such claims or action with an attorney selected by it but reasonably acceptable to the City and no such claim or action shall be settled without the written consent of the City, which shall not be unreasonably withheld, conditioned or delayed.

5.2 **Insurance.** Declarant shall at all times after Substantial Completion of the first to be completed of the Interim Open Space or one or more of the Stairs carry paid-up insurance in an amount not less than Five Million Dollars (\$5,000,000) per occurrence to protect Declarant and the City as an additional insured party, against any and all claims, loss or damage, whether in contract or tort, for injuries to, or death of persons, or damage to property, whether such injuries, death or damages be attributable to the negligence or any other acts of Declarant, its employees or otherwise. Such policy or policies of insurance shall be obtained from a company, or companies, duly licensed to do business in the State of New York and shall name the Department, CPC and the City as parties insured thereunder, and shall provide that, in the event of cancellation, the Department shall be notified at least thirty (30) days in advance thereof. Two (2) duplicate certificates or evidence of insurance ("**Certificates**") shall be delivered to the Department for approval as to form prior to issuance of a TCO for the use of any of the Interim Open Space or the Stairs. Within fifteen (15) days of receipt of such certificates, the Department shall notify Declarant either that such Certificates are acceptable or that such Certificates will be acceptable if specified changes are made.

ARTICLE VI

EFFECTIVE DATE; CANCELLATION, AMENDMENT OR MODIFICATION OF THIS DECLARATION

6.1 **Effective Date.** This Declaration and the provisions and covenants hereof shall become effective only upon Final Approval of the Applications (the "**Effective Date**").

6.2 **Recording.** Promptly, and no later than ten (10) days after such Final Approval of the Applications and prior to application for any Building Permit, Declarant shall file and record this Declaration and any related waivers executed by Mortgagees or other Parties-in-Interest or other documents executed and delivered in connection with the Application and required by this Declaration to be recorded in public records (the "**Recording Documents**"), in the Register's Office, indexing them against the entire Property, and deliver to the CPC within ten (10) days from any such submission for recording, a copy of such documents as submitted for recording, together with an affidavit of submission for recordation, recording and endorsement cover pages for each document submitted for recording and recording payment receipts. Declarant shall deliver to the CPC a copy of all Recording Documents, as recorded, certified by the Register's Office, promptly upon receipt of such documents. If Declarant fails to record the Recording Documents, then the City may record duplicate originals of the Recording Documents; however, all fees paid or payable for the purpose of recording the Recording

Documents and obtaining certified copies thereof, whether undertaken by Declarant or by the City, shall be borne by Declarant.

6.3 **Cancellation.**

(a) Notwithstanding anything to the contrary contained in this Declaration, if the Council does not approve the Applications, or (ii) the Mayor shall have filed a written disapproval of the Applications and the Council shall not have approved an override of such disapproval, then, upon expiration of the times provided in Sections 197-c and 197-d for the Council and Mayor to act in respect of the Approvals, this Declaration shall be null and void and of no further force and effect, whether or not executed prior to the granting of any Approvals by CPC.

(b) Notwithstanding anything to the contrary contained in this Declaration, if the Approvals are declared invalid or otherwise voided, in whole or in part, by a final judgment of any court of competent jurisdiction from which no appeal can be taken or for which no appeal has been taken within the applicable statutory period provided for such appeal, then, upon entry of said judgment or the expiration of the applicable statutory period for such appeal, this Declaration and all other Recording Documents shall be cancelled and shall be of no further force or effect and an instrument discharging them may be recorded. Prior to the recordation of such instrument, Declarant shall notify the Chair of Declarant's intent to discharge this Declaration and request the Chair's approval, which approval shall be limited to insuring that such discharge and termination is in proper form and requires that any provisions herein stated to survive a cancellation in fact survive such termination. Upon recordation of such instrument, Declarant or Successor Declarant (as hereinafter defined) shall provide a copy thereof certified by the Register's Office to the CPC.

(c) Notwithstanding anything to the contrary contained in this Declaration, if Declarant shall elect to develop the Campus without employing the Approvals, or if the Approvals are not implemented or their time extended within the time period provided in Z.R. §74-99, Declarant shall notify the Chair of Declarant's intent to relinquish the Approvals and discharge this Declaration and request the Chair's approval, which approval shall be limited to insuring that such discharge and termination is in proper form and requires that any provisions herein stated to survive a cancellation in fact survive such cancellation. Upon recordation of such instrument, Declarant or Successor Declarant (as hereinafter defined) shall provide a copy thereof certified by the Register's Office to the CPC and the Approvals shall be of no further force and effect.

6.4 **Modification and Amendment.**

(a) This Declaration may be amended or modified (other than pursuant to Sections 6.1 and 6.3 hereof) only upon application by Declarant, with the express written approval of the CPC or an agency succeeding to the CPC's jurisdiction. No other approval or consent shall be required from any public body, private person or legal entity of any kind, including, without limitation, any other present Party-in-Interest or future Party-in-Interest who is not a successor of Declarant.

(b) Notwithstanding the provisions of Section 6.4(a), any change to this Declaration or to the plans annexed as **Exhibits E and F** proposed by Declarant that the Chair deems to be a minor modification may be approved administratively by the Chair and no other approval or consent shall be required from any public body, private person or legal entity of any kind, including, without limitation, any present or future Party-in-Interest, except as expressly required by Article II of this Declaration. Such minor modifications shall not be deemed amendments requiring the approval of the CPC.

(c) Any modification or amendment of this Declaration that is not a minor modification permitted pursuant to Section 6.4(b) of this Declaration shall be executed and recorded in the same manner as this Declaration. Declarant shall record any such modification or amendment immediately after approval or consent has been granted pursuant to Section 6.4(a) above, as applicable, and provide an executed and certified true copy thereof to CPC and, upon Declarant's failure to so record, permit its recording by CPC at the cost and expense of Declarant.

(d) Declarant acknowledges and agrees that if Declarant is in default in the performance of any of its obligations under this Declaration and such default shall not have been corrected after notice and opportunity to cure as provided in Sections 3.1(h) and 7.1 of this Declaration, as applicable, such default may be deemed by CPC or the Chair to be sufficient grounds for disapproval or withholding of consent to any proposed amendment or modification of this Declaration.

(e) (i) For so long as Declarant is the owner in fee of the Property or any portion thereof, all Interested Parties (other than Declarant) and their heirs, successors, assigns and legal representatives hereby irrevocably (A) consent to any modification, amendment, cancellation, revision or other change in this Declaration, (B) waive any rights they may have to enter into an amended Declaration or other instrument modifying, cancelling, revising or otherwise changing this Declaration, and (C) nominate, constitute and appoint Declarant their true and lawful attorney-in-fact, coupled with an interest, to execute any documents or instruments of any kind that may hereafter be required to modify, amend, cancel, revise or otherwise change this Declaration or to evidence such Interested Parties' consent or waiver of rights, as set forth in this Section 6.4(e).

(ii) Notwithstanding the foregoing paragraph, if Declarant shall hereafter sell any portion of the Property to a third party, Declarant shall not seek any modification, cancellation, revision or change to this Declaration that would subject such third party to any additional liability or expense or materially impair or impact the proposed or then existing use and operation of the portion of the Property acquired by such third party, without its express written consent.

ARTICLE VII COMPLIANCE; DEFAULTS; REMEDIES

7.1 **Default.** Except as otherwise provided in Section 3.4 of this Declaration, if Declarant fails to observe any of the terms or conditions of this Declaration, the Chair shall give Declarant twenty (20) business days' written notice of such alleged violation, during which

period Declarant shall have the opportunity to effect a cure of such alleged violation or to demonstrate to the City why the alleged violation has not occurred. If Declarant commences to effect such cure within such twenty (20) business day period (or if cure is not capable of being commenced within such twenty (20) business day period, Declarant commences to effect such cure when such commencement is reasonably possible), and thereafter proceeds diligently toward the effectuation of such cure, the aforesaid twenty (20) business day period (as such may be extended in accordance with the preceding clause) shall be extended for so long as Declarant continues to proceed diligently with the effectuation of such cure. If more than one Declarant exists at any time on the Property, notice shall be provided to all Declarants from whom the City has received notice in accordance with Section 8.5 hereof, and the right to cure shall apply equally to all Declarants. Declarant shall have the right to contest the Chair's finding that a violation exists either administratively or judicially, and any action by the City to enforce the claim that a violation has occurred shall be stayed until a final administrative or judicial determination has been made as to the validity of the violation. If, after the notification procedures set forth above or the issuance of a final nonappealable judgment declaring the Declarant's claim regarding the finding of a violation adversely to Declarant, Declarant fails to cure such alleged violation of Declarant's obligations under this Declaration, the City shall have the right to exercise any remedy available at law or in equity or by way of administrative enforcement to obtain or compel Declarant's performance under this Declaration and may decline to approve and may disapprove any amendment, modification or cancellation of this Declaration on the sole ground that Declarant is in default of a material Obligation under this Declaration. The time period for curing any violation by Declarant shall be subject to extension for Circumstances Beyond the Control of Declarant.

7.2 **Rights of Mortgagees.** Except as otherwise provided in Section 7.1 of this Declaration, if Declarant shall fail to observe or perform any of the covenants or provisions contained in this Declaration and such failure continues beyond the cure period set forth in Section 7.1 hereof, the City shall, before taking any action to enforce this Declaration, give notice to any Mortgagee, setting forth the nature of the alleged default. A Mortgagee shall have available to it an additional cure period of the same number of days as Declarant had in which to cure such alleged default, as extended by Circumstances Beyond the Control of Declarant. If such Mortgagee has commenced to effect a cure during such period and is proceeding with reasonable diligence towards effecting such cure, then such cure period shall be extended for so long as such Mortgagee is continuing to proceed with reasonable diligence with the effectuation of such cure. With respect to the effectuation of any cure by any Mortgagee, such Mortgagee shall have all the rights and powers of the Declarant pursuant to this Declaration necessary to cure such default. If a Mortgagee performs any obligation or effects any cure Declarant is required to perform or cure pursuant to this Declaration, such performance or cure shall be deemed performance on behalf of Declarant and shall be accepted by any person or entity benefited hereunder, including the CPC and the City, as if performed by Declarant.

7.3 **Denial of Public Access.** Notwithstanding any provisions of Sections 7.1 and 7.2 of this Declaration to the contrary, in the event of a denial of public access to the Interim Open Space or Stairs of an on-going nature in violation of Sections 4.1(d)(i) and 4.2(e)(i) of this Declaration, Declarant shall have the opportunity to effect a cure within twenty four (24) hours after receipt of Notice thereof. If such denial of access continues beyond such period, the City may thereupon exercise any and all of its rights hereunder, including seeking a mandatory

injunction. In addition, if the City has reason to believe that the use and enjoyment of the Interim Open Space or the Stairs by any member of the public has been denied by Declarant, the City may treat the denial of access as a violation of the Zoning Resolution and seek civil penalties at the Environmental Control Board for the violation relating to privately owned public space.

7.4 **Benefits to Property and City.** Except to the extent otherwise explicitly provided herein, this Declaration is for the benefit of the City and Declarant only and creates no enforceable interest or rights in any third person or entity. The City, acting through the agencies described in this Declaration, shall be deemed to be the only entity with standing to enforce the provisions of this Declaration, and nothing herein contained shall be deemed to confer upon any other person or entity, public or private, any interest or right in enforcement of any provision of this Declaration or any document or instrument executed or delivered in connection with the Applications, including any claim by any public or private landowner to be the beneficiary of any privileges of access appurtenant to lands adjoining the Property which could or might be affected by enforcement of the provisions of this Declaration. Declarant acknowledges that the restrictions, covenants and obligations of this Declaration will protect the value and desirability of the Property and benefit the city. Declarant consents to enforcement by the City, administratively, at law or equity, of the covenants, obligations, conditions and restrictions contained herein, subject to the City's compliance with the procedures regarding default set forth above and provided that once a Building Permit or temporary or permanent certificate for any New Building has been issued, the failure to comply with any Obligation associated with any other New Building shall not cause the revocation of such previously issued Building Permit or temporary or permanent certificates of occupancy.

7.5 **Indemnification of Certain City Expenses.** If Declarant is found by a court of competent jurisdiction to have been in default in the performance of an Obligation and such finding is upheld on final appeal, or the time for further review of such finding on appeal or by other proceeding has lapsed, Declarant shall indemnify and hold harmless the City from and against all of its reasonable legal and administrative expenses arising out of or in connection with the enforcement of such Obligation

ARTICLE VIII MISCELLANEOUS

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

8.2 **Binding Effect.** Except as specifically set forth in this Declaration and, subject to applicable law, Declarant shall have no obligation to act or refrain from acting with respect to the Property. The provisions of this Declaration shall be considered covenants running with the land and shall inure to the benefit of and be binding upon Declarant and all heirs, successors, legal representatives, assigns, sublessees and mortgagees of Declarant's interest or any portion thereof in the Property. The obligations contained in this Declaration shall be binding upon Declarant and any other individual or entity, only for the period during which Declarant or such other individual or entity is the holder of a fee or other interest in the Property and only to the extent of

its interest in the Property and upon the sale, transfer, assignment or conveyance (each, a “Disposition”) of the Declarant’s interest in the Property or a portion of such interest, Declarant shall be released from and have no further obligations with respect to, this Declaration or any covenant, obligation or indemnity undertaken, provided or given hereunder as to the entire Property (upon Disposition of Declarant’s interest in the entire Property) or (in the case of a Disposition of a portion of the Property), as to such portion(s).

8.3 **Laws of the State of New York.** This Declaration shall be governed by and construed in accordance with the laws of the State of New York. References in this Declaration to agencies or instrumentalities of the City shall be deemed to include agencies or instrumentalities succeeding to the jurisdiction thereof pursuant to the laws of the State of New York and the New York City Charter.

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

8.5 **Notices**

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

(a) if to Declarant: to 113 West 60th Street, New York, New York 10023, Attention: Vice President for Lincoln Center, with a copy to Greenberg Traurig, LLP, 200 Park Avenue, New York, New York 10166, Attention: Deirdre A. Carson, Esq.;

(b) if to the Chair or the CPC, at its then-official address, Attention: Chair, with a copy to Department of City Planning, Office of the General Counsel, 22 Reade Street, New York, New York 10007 (or the then official address);

(c) if intended for a Mortgagee or other Party in Interest, by mailing or delivery to such Mortgagee or Party in Interest at the address given in its notice to the Department.

Declarant, CPC, any Party in Interest, and any Mortgagee may, by notice provided in accordance with this Section 8.5, change any name or address for purposes of this Declaration. In order to be deemed effective any Notice shall be sent or delivered in at least one of the following manners: (A) sent by registered or certified mail, postage pre-paid, return receipt requested, in which case the Notice shall be deemed delivered for all purposes hereunder five days after mailing; (B) sent by overnight courier service, in which case the Notice shall be deemed delivered for all purposes hereunder one business day after placed under the control of the delivery service, provided that a receipt for the delivery is obtained, or (C) delivered by hand, in which case the Notice will be deemed delivered for all purposes hereunder on the date the Notice was actually received. All Notices from CPC to Declarant shall also be sent to every Mortgagee of whom CPC has notice (each, a “**Named Mortgagee**”), and no Notice shall be deemed properly given to Declarant without such notice to such Named Mortgagee(s). In the event that there is more than one

Declarant at any time, any Notice from the City or the CPC shall be provided to all Declarants of whom CPC has notice.

8.6 **Limitation of Liability** Notwithstanding anything to the contrary contained in this Declaration, the City will look solely to the estate and interest of Declarant, or its successors and assigns or the subsequent holders of any interest in the Property, for the collection of any judgment or the enforcement of any remedy based upon any breach by any such party of any of the terms, covenants or conditions of this Declaration. No other property of any such party or its principals, disclosed or undisclosed, or its trustees, partners, shareholders, directors, officers or employees, or said successors, assigns and holders, shall be subject to levy, execution or other enforcement procedure for the satisfaction of the remedies of the City or of any other party or person under or with respect to this Declaration, and no such party shall have any personal liability under this Declaration. In the event Declarant shall hereafter sell one or more Sites to a third party and the City shall, prior to such sale, obtain a judgment against Declarant, the City shall look only to the estate and interest of the Declarant in the portions of the Property still owned by such Declarant at the time of levy, execution or other enforcement procedure for the satisfaction of the City's remedies and shall not pursue such remedies against the portion of the Property that has been sold. In the event that any building in the Development is subject to a declaration of condominium, every condominium unit shall be subject to levy or execution for the satisfaction of any monetary remedies of the City solely to the extent of each Unit Owner's Individual Assessment Interest. The "Individual Assessment Interest" shall mean the Unit Owner's percentage interest in the common elements of the condominium in which such condominium unit is located applied to the total assessment imposed by the Board of Managers or other governing body of the condominium in which such condominium unit is located. In the event of a default in the obligations of the condominium, the City shall have a lien upon the property owned by each Unit Owner solely to the extent of each such Unit Owners' unpaid Individual Assessment Interest, which lien shall include such Unit Owner's obligation for the costs of collection of such Unit Owners' unpaid Individual Assessment Interest. Such lien shall be subordinate to the lien of any prior recorded mortgage in respect of such property given to a bank or other institutional lender (including but not limited to a governmental agency), the lien of any real property taxes, and the lien of the Board of Managers of any such condominium for unpaid common charges of the condominium. The City agrees that, prior to enforcing its rights against a Unit Owner, the City shall first attempt to enforce its rights under this Declaration against the Declarant, and the Board of Managers of any condominium association. In the event that a condominium shall default in its obligations under this Declaration, the City shall have the right to obtain from the Board of Managers of any condominium association, the names of the Unit Owners who have not paid their Individual Assessment Interests. Notwithstanding the foregoing, nothing herein shall be deemed to preclude, qualify, limit or prevent the City's exercise of any of its governmental rights, powers or remedies, including, without limitation, with respect to the satisfaction of the remedies of the City, under any laws, statutes, codes or ordinances.

8.7 **Certificates**. The City will at any time and from time to time upon not less than thirty (30) days' prior notice by Declarant or a Named Mortgagee execute, acknowledge and deliver to Declarant or such Named Mortgagee, as the case may be, a statement in writing certifying (a) that this Declaration is unmodified and in full force and effect (or if there have been modifications or supplements that the same is in full force and effect, as modified or

supplemented, and stating the modifications and supplements), (b) whether or not to the best knowledge of the signer of such certificate Declarant is in default in the performance of any obligation contained in this Declaration, and, if so, specifying each such default of which the signer may have knowledge, and (c) as to such further matters as Declarant or such Named Mortgagee may reasonably request. In connection with issuing such statement, the City may request that the Declarant provide an update report regarding compliance with Section 3.1 of this Declaration. If the City fails to respond within such thirty (30) day period, Declarant may send a second written notice to the City requesting such statement (which notice shall state in bold upper case type both at the top of the first page thereof and on the front of the envelope thereof the following: “SECOND NOTICE PURSUANT TO SECTION 8.6 OF THE FORDHAM LINCOLN CENTER DECLARATION”). If the City fails to respond within ten (10) days after receipt of such second notice, it shall be deemed to have certified (i) that this Declaration is unmodified and in full force and effect (or if there have been modifications or supplements that the same is in full force and effect, as modified or supplemented), (ii) that to the best knowledge of the signer of such certificate Declarant is not in default in the performance of any Obligation contained in this Declaration, and (iii) as to such further matters as Declarant or such Named Mortgagee had requested, and such deemed certification may be relied on by Declarant or such Named Mortgagee.

8.8 **Successors of Declarant.** References in this Declaration to “Declarant” shall be deemed to include successors of Declarant, if any, which are holders of a fee interest in the Property, provided that if all or substantially all of the Property or all or substantially all of any Parcel or portion thereof is leased pursuant to a ground lease to another person or entity by Declarant, then the lessee under such lease shall be deemed included as a “Declarant” for all purposes of this Declaration. Notwithstanding anything to the contrary contained in this Declaration, no holder of a mortgage or other lien in the Property shall be deemed to be a successor of Declarant for any purpose, unless and until such holder obtains a Possessory Interest and provided further that, following succession to such Possessory Interest, the holder of any such mortgage or lien shall not be liable for any obligations of Declarant as the “Declarant” hereunder unless such holder commences to develop the Property or has acquired its interest from a Party who has done so.

8.9 **Parties-in-Interest.** Declarant shall provide the City with an updated Certification of parties-in-interest as of the recording date of this Declaration and will cause any individual, business organization or other entity which, between the date hereof and the effective and recording date and time of this Declaration, becomes a Party-in-Interest in the Property or portion thereof to waive execution and subordinate its interest in the Property to this Declaration. Any and all mortgages or other liens encumbering the Property after the recording date of this Declaration shall be subject and subordinate hereto as provided herein. Notwithstanding anything to the contrary contained in this Declaration, if a portion of the Property is held in condominium ownership, the board of managers of the condominium association shall be deemed to be the sole Party-in-Interest with respect to the premises held in condominium ownership, and the owner of any unit in such condominium, the holder of a lien encumbering any such condominium unit, and the holder of any other occupancy or other interest in such condominium unit shall not be deemed to be a Party-in-Interest.

8.10 **Applications**. Declarant shall include or shall cause a copy of this Declaration to be included as part of any application pertinent to the construction, improvement, operation or maintenance of the Property or the development of any of the sites on the Campus to which the provisions of this Declaration are applicable, submitted to any governmental agency or department having jurisdiction over the Property, including, without limitation, the Department, DOB and the New York City Board of Standards and Appeals. If Declarant files any application with the Attorney General of the State of New York to subdivide the Property, or any portion of the Property, for the purposes of creating a condominium or other form of joint property ownership association, Declarant shall include in any written or printed offering materials associated with the offer to sell interests in such condominium or other association (including, without limitation, an offering plan, prospectus or no action letter), a true copy of this Declaration or a complete and accurate summary of the material terms hereof, except as otherwise directed by the Attorney General, and shall otherwise ensure that all terms of the offering are consistent with the terms of this Declaration.

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

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[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has executed this Declaration as of the day and year first hereinabove set forth.

FORDHAM UNIVERSITY

By: _____
Name:
Title:

STATE OF NEW YORK)

COUNTY OF BRONX)

On the _____ day of _____ in the year 200_, before me, the undersigned, a Notary Public in and for the State of New York personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon whose behalf the individual acted, executed the instrument.

NOTARY PUBLIC

SCHEDULE OF EXHIBITS

- Exhibit A - Property Description
- Exhibit B - Parties in Interest Certification
- Exhibit C - Drawings Z-7 and Z-12
- Exhibit D - Law School Design
- Exhibit E - Open Space Plans
- Exhibit F - Interim Stair Plan
- Exhibit G - Noise Levels for Select Construction Equipment
- Exhibit H - No. of Pieces of Equipment On-Site
- Exhibit I - Sensitive Receptor Locations
- Exhibit J - Rules and Regulations for Interim Open Space

Exhibit A

Property Description

The subject tract of land is known as Tax Lot Numbers 1, 20 & 35 in Block 1132 as shown on the Tax Map of the City of New York, New York County and more particularly described as follows:

ALL THOSE CERTAIN TRACTS OF LAND, SITUATED IN THE BOROUGH OF MANHATTAN, COUNTY, CITY AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE CORNER FORMED BY THE INTERSECTION OF THE WESTERLY LINE OF COLUMBUS AVENUE WITH THE NORTHERLY LINE OF WEST 60TH STREET; AND

RUNNING THENCE WESTERLY AND ALONG THE SAID NORTHERLY LINE OF WEST 60TH STREET A DISTANCE OF 800 FEET TO ITS INTERSECTION WITH THE EASTERLY LINE OF AMSTERDAM AVENUE;

THENCE NORTHERLY AND ALONG THE SAID EASTERLY LINE OF AMSTERDAM AVENUE, A DISTANCE OF 200 FEET 10 INCHES TO ITS INTERSECTION WITH THE NORTHERLY LINE OF WEST 61ST STREET;

THENCE EASTERLY A DISTANCE OF 160 FEET;

THENCE ALONG THE ARC OF A CURVE 141 FEET 4½ INCHES TO A POINT;

THENCE NORTHERLY A DISTANCE OF 160 FEET 5 INCHES;

THENCE WESTERLY A DISTANCE OF 250 FEET TO THE EASTERLY LINE OF AMSTERDAM AVENUE;

THENCE NORTHERLY AND ALONG THE SAID EASTERLY LINE OF AMSTERDAM AVENUE A DISTANCE OF 90 FEET 5 INCHES TO ITS INTERSECTION WITH THE SOUTHERLY LINE OF WEST 62ND STREET;

THENCE EASTERLY ALONG SAID SOUTHERLY LINE OF WEST 62ND STREET A DISTANCE OF 800 FEET TO ITS INTERSECTION WITH THE WESTERLY LINE OF COLUMBUS AVENUE;

THENCE SOUTHERLY AND ALONG THE WESTERLY LINE OF COLUMBUS AVENUE A DISTANCE OF 431 FEET 8 INCHES TO THE POINT OR PLACE OF BEGINNING.

Exhibit B

Parties-in-Interest Certification

[Follows Immediately After]

Exhibit C

Drawings Z-7 and Z-12

[Follows immediately after]

Exhibit D

Law School Design

[Follows Immediately After]

Exhibit E

Open Space Plans

[Follows Immediately After]

Exhibit F

Interim Stair Plan

[Follows Immediately After]

Exhibit G

Noise Levels for Select Construction Equipment

Equipment List	DEP & ETA Typical Noise Level at 50 feet ¹	Mandated Noise Level at 50 feet	Noise Level with Path Controls at 50 feet
Asphalt Paver	85	85	75
Asphalt Roller	85	74	
Backhoe/Loader	80	77	
Compressors	80	67	
Concrete Pump	82	79	
Concrete Trucks	85	79	
Cranes	85	77	
Cranes (Tower Cranes)	85	85	75
Delivery Trucks	84	79	
Drill Rigs	84	84	74
Dump Trucks	84	79	
Excavator	85	77	
Excavator with Ram Hoe	90	90	80
Fuel Truck	84	79	
Generators	82	68	
Hoist	85	80	70
Impact Wrenches	85	85	75
Jack Hammer	85	82	72
Mortar Mixer	80	63	
Power Trowel	85	85	75
Powder Actuated Device	85	85	75
Pump (Spray On Fire Proof)	82	76	
Pump (Water)	77	76	
Reber Bender	80	80	
Rivet Buster	85	85	75
Rock Drill	85	85	75
Saw (Chain Saw)	85	75	
Saw (Concrete Saw)	90	85	75
Saw (Masonry Bench)	85	76	
Saw (Circular & Cut off)	76	76	
Saw (Table Saw)	76	76	
Sledge Hammers	85	85	75
Street Cleaner	80	80	
Tractor Trailer	84	79	
Vibratory Plate Compactor	80	80	
Welding Machines	73	73	

Notes:

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

² Mandated noise levels are achieved by using quieter equipment, better engine mufflers, and refinements in fan design and improved hydraulic systems.

³ Path controls include portable noise barriers, enclosures, acoustical panels, and curtains, whichever are feasible and practical.

Exhibit H

Maximum No. of Pieces On-Site

Exhibit I

Sensitive Receptor Locations

Receptor	Location	Associated Land Use
A,A1,A2, A3, A4	Alvin Ailey Place between Columbus and Amsterdam Avenues (The Alfred)	Residential
B,B1,B2,B3	20 Amsterdam Avenue between 60th and 61st Streets (PS 191)	School
BB	Amsterdam Avenue between 60th and 61st Streets	Residential
C,L,M,N,AA	Amsterdam Avenue between 61st and 64th Streets (Amsterdam Houses)	Residential
CC	Columbus Avenue between Lincoln Place and 64th Street (Dante Park)	Open Space
O	62nd Street between Amsterdam and Columbus Avenues (Damrosch Park)	Open Space
E	Columbus Avenue between 61st and 62nd Streets	Residential
F	West 60th Street between Columbus and Amsterdam Avenues	Residential
G, G1	Amsterdam Avenue between 59th and 60th Streets (John Jay College)	Institutional
H, I, II	Amsterdam Avenue between 59th and 60th Streets	Residential
J	Amsterdam Avenue between 58th and 59th Streets	Institutional
K	Amsterdam Avenue between 57th and 58th Streets	Residential
D, P	62nd Street between Amsterdam and Columbus Avenues (Lincoln Center)	Institutional
O	Columbus Avenue between 62nd and 63rd Streets	Residential
R	Columbus Avenue between 60th and 61st Streets	Residential
S	60th Street between Columbus and Amsterdam Avenues (St. Paul the Apostle R.C. Church)	Church
T,U	Columbus Avenue between 58th and 60th Street	Residential
V	59th Street between Columbus and Amsterdam Avenues	Residential
W	57th Street between Columbus Avenue and Broadway	Hotels
X	Broadway between Lincoln Place and 64th Street	Residential
Y	60th Street between Columbus Avenue and Broadway	Residential
Z	62nd Street between Columbus Avenue and Broadway	Residential

Exhibit J

Rules and Regulations for Public Use of Interim Open Space

1. No person shall throw or deposit any litter within the Interim Open Space.
2. No persons shall affix or post any commercial or non-commercial handbill, poster or notice in or upon the Interim Open Space, unless authorized by Declarant in writing.
3. No person shall engage in the commercial or non-commercial distribution of products and/or material in or upon the Interim Open Space (other than non-commercial printed or similar expressive material), unless authorized by Declarant in writing.
4. No peddler, solicitor or street vendor shall be permitted to operate within the Interim Open Space unless it receives the written permission of Declarant and is in compliance with all applicable laws, rules and regulations of the City of New York (collectively, "Applicable Laws").
5. No persons shall drive, stop, stand or park a motor vehicle within the Interim Open Space (except to the extent required for handicapped persons, tenants, visitors and permitted invitees of Declarant or Declarant employees performing security, maintenance or repair work).
6. No ball playing, frisbee playing or other throwing game or ball sport of any kind shall be permitted within the Interim Open Space.
7. No persons shall loiter for illegal purposes in or upon the Interim Open Space, or conduct any activity that would obstruct pedestrian traffic or be detrimental or injurious to public safety.
8. No person shall deface, injure, destroy, displace or carry away any property, structure, ornament or landscaping.
9. No person, corporation, organization or other entity shall hold or sponsor any meeting, exhibition, musical, theatrical or other performance, or other scheduled or unscheduled event in the Interim Open Space, unless authorized in writing by Declarant and open to the public.
10. The following shall be prohibited:
 - excessive noise, radio and other music playing (except through headphones at a volume that is not audible to others), noxious odors, objectionable vibrations, or any other use constituting a nuisance;
 - nudity;

- cooking or alcohol (other than as may be served, in accordance with Applicable Laws, by any restaurant or food facility located in the Interim Open Space or in connection with any special event sponsored by Declarant and open to the public);
- illegal drugs;
- obscenity;
- prostitution or any other conduct for immoral purposes;
- uses in violation of Applicable Laws;
- use or possession of dangerous, flammable, or combustible objects or materials;
and
- explosives, firearms and weapons.