



## CITY PLANNING COMMISSION

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November 17, 2021 / Calendar No. 8

C 220062 ZMK

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**IN THE MATTER OF** an application submitted by River Street Partners LLC pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 12c:

1. changing from an M3-1 District to a C6-2 District property bounded by North 3rd Street, River Street, North 1st Street, a line 200 feet northwesterly of River Street, a northeasterly boundary line of Grand Ferry Park, and the U.S. Pierhead Line; and
2. changing from an M3-1 District to an M1-4 District property bounded by North 3rd Street, Kent Avenue, North 1st Street, and River Street;

Borough of Brooklyn, Community District 1, as shown on a diagram (for illustrative purposes only) dated August 16, 2021, and subject to the conditions of CEQR Declaration E-636.

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This application for a zoning map amendment was filed by River Street Partners LLC on August 4, 2021. This application, in conjunction with the related actions, would facilitate the construction of an approximately 1.16 million-square-foot mixed-use large-scale general development (LSGD) containing approximately 1,050 residential units, 30,000 square feet of community facility uses, 79,000 square feet of commercial space, and 2.9 acres of open space located at 105 River Street in the Williamsburg neighborhood of Brooklyn, Community District 1.

### **RELATED ACTIONS**

In addition to the proposed zoning map amendment (C 220062 ZMK) that is the subject of this report, implementation of the proposed project also requires action by the City Planning Commission on the following applications, which are being considered concurrently with this application:

N 220063 ZRK	Zoning text amendment to establish the project area as a Mandatory Inclusionary Housing (MIH) area; allow an LSGD that does not meet the ownership requirements of Zoning Resolution (ZR) Section 74-742, and
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allow new piers and in-water structures that are accessible to the public to generate floor area.

- C 220064 ZSK Special permit pursuant to ZR Section 74-74 to establish a LSGD, allow reconstructed piers to retain floor area, and modify bulk regulations.
- C 220070 ZSK Special permit pursuant to ZR Section 74-533 to reduce the parking requirements for accessory group parking facilities in a Transit Zone.
- N 220065 ZAK Authorization pursuant to ZR Section 62-822(a) to modify regulations pertaining to the locations and dimensions of required waterfront public access areas.
- N 220068 ZAK Authorization pursuant to ZR Section 62-822(b) to modify regulations pertaining to design requirements for waterfront public access areas.
- N 220069 ZAK Authorization pursuant to ZR Section 62-822(c) to permit phasing of construction of required waterfront public access areas.
- C 220061 MLK A landfill action to add approximately 6,320 square feet to create open area as part of the waterfront public space.
- C 210425 MMK City Map change to eliminate, discontinue, close, and dispose of a segment of Metropolitan Avenue to the west of River Street and a portion of North First Street west of River Street.

## **BACKGROUND**

The applicant, River Street Partners LLC, seeks a zoning map amendment, zoning text amendment, two special permits, waterfront authorizations, and a landfill action, in conjunction

with a related action for a City Map amendment (C 210425 MMK), to facilitate a new approximately 1.16-million square-foot mixed-use development with 1,050 dwelling units, 263 of which would be permanently affordable units, commercial space, community facility space, and waterfront public access areas in the Williamsburg neighborhood of Brooklyn, Community District 1.

The project area comprises portions of three waterfront blocks, two inland blocks, and demapped portions of North First Street and Metropolitan Avenue with a total lot area of approximately 441,600 square feet (Block 2355, Lots 1 and 20; Block 2356, Lot 1; Block 2361, Lots 1, 20, 21; Block 2362, Lots 1 and 3; Block 2376, Lot 50), bounded by North Third Street to the north, River Street to the east, North First Street to the south, and the East River to the west. The project area includes the development site (Block 2355, Lots 1 and 20; Block 2361, Lots 1, 20, 2; Block 2376, Lot 50), as well as two non-applicant owned lots (Block 2356, Lot 1; Block 2362, Lots 1 and 3).

The development site comprises portions of three waterfront blocks located west of River Street between Grand Ferry Park and North Third Street, and portions of North First Street (50 feet wide) and Metropolitan Avenue (80 feet wide) proposed to be demapped.

The upland portion of the development site consists of approximately 137,500 square feet, and the seaward lot consists of approximately 235,780 square feet, including 19,580 square feet of existing in-water structures qualifying as piers or platforms as defined in the ZR. The development site has approximately 464 feet of frontage on River Street, 200 feet of frontage on North First Street, and 283 feet of frontage on North Third Street. The seaward portion includes portions of catwalks and cellular caisson structures formerly used by a variety of industrial occupants. The development site is currently vacant with interim uses including a mini-golf course and an aquaponic farm. There is an existing 60-inch Combined Sewer Overflow (CSO) outfall that discharges at the terminus of Metropolitan Avenue.

The development site is located within the one percent and 0.2-percent annual chance flood zones (Flood Zone AE and X) and must comply with flood-resistant construction standards of the NYC Building Code. The Limit of Moderate Wave Action traverses the site where wave heights between one and three feet could be experienced.

The applicant purchased the development site from Consolidated Edison (Con Ed) in 2019. The development site was formerly used by Con Ed for fuel storage until 1997 and was decommissioned in 2012 and the fuel tanks removed between 2009 and 2013. Certain portions of the development site, including portions of North First Street and Metropolitan Avenue and lands under water, are owned by the City of New York and/or the State of New York. The applicant anticipates that agreements from the City and State may be necessary to facilitate the proposed development.

The non-applicant owned upland blocks (Block 2356, Lot 1 and Block 2362, Lots 1 and 3) are located directly east of the development site between River Street and Kent Avenue. Block 2356, Lot 1 is improved with a recently constructed six-story, mixed commercial building with offices and a supermarket. Block 2362, Lot 1 is currently vacant and has undergone environmental remediation. Block 2362, Lot 3 is a vacant lot owned by Con Ed.

The project area is located along the Williamsburg waterfront, characterized primarily by residential and mixed-use developments of 15 to 45 stories. The upland blocks of the surrounding area consist of elevator and walk-up apartment buildings, converted residential loft buildings, and three- to four-story row houses. A variety of commercial, industrial, entertainment, and distribution uses are interspersed among these residences, with concentrations along Kent and Wythe avenues.

Directly to north of the project area is the Austin Nichols Building (184 Kent Avenue), which was listed on the National Register for Historic Places in 2007. To the south, the project area borders the New York Power Authority (NYPA) peaker plant, a natural gas turbine electricity

generating station, and Grand Ferry Park. The Domino project is located just south of Grand Ferry Park and, to date, has been developed with Domino Park, an upland building (325 Kent Avenue), and the first waterfront tower (One South First). The adaptive reuse of the former Refinery building is currently under construction.

The surrounding area contains a mix of zoning districts; in 2005, nearly 200 blocks located one block north of the project area were rezoned as part of the City-sponsored Greenpoint-Williamsburg rezoning (N 050110(A) ZRK, et al). The rezoning changed most of the East River waterfront industrial districts to residential and mixed-use districts (MX-8) to facilitate development of new housing and new waterfront public open spaces, while permitting light industrial and residential uses to co-exist on upland blocks. The waterfront immediately to the north of the project area is within the Greenpoint-Williamsburg Waterfront Access Plan (WAP BK-1) and has subsequently been developed with several acres of parks and public open space pursuant to WAP-BK-1. The project area was not included within the rezoning due to the active industrial use at that time.

In July 2010, the City Council approved various land use actions for the former Domino Sugar Refinery property located between Grand Street and South 5<sup>th</sup> Street, including a zoning map amendment to change an M3-1 zoning district to C6-2, R6, and R8 zoning districts in order to facilitate a LSGD that included approximately 2.75 million square feet of floor area, consisting of office, retail, community facility, and approximately 2,200 dwelling units, with 2.7 acres of public open space (C 100187 ZSK, et al). However, the site was not developed, and subsequently, in March 2014, the City Council approved modifications to the prior actions to facilitate a new LSGD. The LSGD included four new buildings, ranging in height between 170 and 535 feet, and the adaptive reuse of the former Refinery building, totaling approximately 2.9 million square feet consisting of 2,300 dwelling units, including 700 affordable units, community facility space, commercial space, and 4.8 acres of public open space (C 140132 ZSK, et al).

The waterfront north of the project area is zoned with a mix of R8 and R6 zoning districts with

C2-4 overlays, permitting residential and commercial uses with requirements for the development of waterfront public access areas, while upland blocks are mapped with a combination of contextual mid-density residential districts and mixed-use districts. R6 and R8 zoning districts are non-contextual residence districts governed by height factor regulations. The floor area ratio (FAR) in R6 districts ranges from 0.78 to 2.43 (2.75 with participation in the Inclusionary Housing (IH) program). Community facilities have a maximum FAR of 4.8. Parking is required for 70 percent of residential units and 25 percent of income restricted housing units (IRHUs). R8 zoning districts have a maximum FAR ranging from 0.94 to 6.02 (6.5 with participation in the IH program). Community facilities have a maximum FAR of 6.5. Waterfront parcels zoned R8 permit towers to rise to 300 and 400 feet under the IH program. Parking is required for 40 percent of DUs and 12 percent of income restricted units. As part of the 2010 Domino approvals, a C6-2 zoning district was mapped over the Refinery building and the block between Grand Street and South First Street. C6-2 zoning districts have an R8 equivalent, but permit commercial uses up to an FAR of 6.5. C2-4 overlays permit up to an FAR of 2.0 for most retail uses that typically serve local retail needs.

The surrounding upland areas to the north, south, and east of the project area are zoned with mixed-use (MX-8) zoning districts (M1-2/R6, M1-2/R6A, M1-2/R6B, M1-4/R6A), which permit residential, commercial, and light industrial uses, as well as M3-1 zoning districts. East of Wythe Avenue, largely zoned R6, the Southside neighborhood is predominantly comprised of single-, two-family, and multi-family walk-up residential buildings ranging from three to six stories. There are concentrations of neighborhood retail and restaurant uses within the C2-3 and C2-4 commercial overlays on Bedford Avenue.

The project area is mapped with an M3-1 zoning district, a heavy industrial district that has remained unchanged since 1961. M3-1 districts are designated for areas with heavy industries that generate noise, traffic, or pollutants and allows a maximum FAR of 2.0 for all industrial uses and some commercial uses. Typical uses include power plants, solid waste transfer facilities and recycling plants, and fuel supply depots. No new residential or community facility uses are

permitted. Buildings in M3-1 zoning districts can have a maximum front wall height of 60 feet or four stories, whichever is less, before setting back and continuing to rise pursuant to a sky exposure plane. Parking in M3-1 zoning districts varies by use. Waterfront blocks and zoning lots within the M3-1 zoning district are subject to ZR Article VI, Chapter 2, however, waterfront public access is not required for predominantly industrial sites.

The surrounding area is well-served by open space. Grand Ferry Park, an approximately 1.8-acre public park, and Domino Park, a privately owned, publicly accessible waterfront open space, are located to the south of the project area, and a playground at PS 84 is located approximately three blocks to the east. To the north, the Greenpoint-Williamsburg waterfront esplanade begins at North Third Street and runs north to Martha P. Johnson State Park and the future Bushwick Inlet Park, part of which has been completed. When fully built out, Bushwick Inlet Park will span 28 acres between North Ninth Street and Quay Street.

The surrounding area is well-served by public transportation, with transportation options including multiple subway lines, several bus lines, and the East River Ferry. The L subway line at the Bedford Avenue stop is located one half-mile to the northeast, the G subway line at the Metropolitan Avenue stop is approximately one mile to the southeast, and the J/M/Z subway lines at the Marcy Avenue stop are approximately one mile to the southeast. The project area is directly served by the B32 and Q59 buses extending to Greenpoint, and Long Island City and Maspeth in Queens. The surrounding area is also proximate to Williamsburg Bridge Bus Plaza, which is connected to points in Manhattan, Brooklyn, and Queens by seven different bus lines. The North Williamsburg East River Ferry stop at North Sixth Street (three blocks north of the project area) connects Williamsburg and Greenpoint commuters to East 34th Street, DUMBO, and Wall Street. There is one Citibike station in the surrounding area as well as protected bike lanes along Kent Avenue, part of the Brooklyn Waterfront Greenway that connects Brooklyn waterfront neighborhoods. The project area is located within the Transit Zone.

The applicant proposes to develop two mixed-use towers and nearly 2.9 acres of waterfront open

space. The entire project would include 1,158,800 zoning square feet, with approximately 1,050,000 square feet of residential uses (1,050 apartments, 263 of which would be permanently affordable apartments), 30,000 square feet of community facility uses, 79,000 square feet of commercial space including local retail uses, and 250 accessory off-street parking spaces. The proposed development would have a built FAR of 6.17.

The overall site design would be primarily informed by a combination of flood risk mitigation, the reorganization of existing in-water infrastructure, and a waterfront open space with soft edges and natural habitat reconstruction. The open space proposal would necessitate specific cut and fill and grading strategies, as well as the reconstruction of the existing in-water structures to create new breakwater structures, wetland zones, and cove areas that are intended to mitigate the effects of flooding, increase the amount of intertidal and habitat areas, and provide a variety of design features. The applicant proposes to demap portions of Metropolitan Avenue and North First Street and relocate the CSO outfall from Metropolitan Avenue to facilitate the open space concept. Because a large portion of the site would be removed to expand the shoreline inland, the bulk of the development would be pushed into two mixed-use towers with reduced footprints closer to River Street.

The applicant proposes to reconfigure the existing lot and site conditions to facilitate the proposed site plan. As a result of the proposed actions, the lot area of the proposed development site would consist of approximately 170,100 square feet of upland lot area and 229,680 square feet of seaward lot area, which includes 28,450 square feet of new in-water structures. On Block 2376, a new platform projecting seaward of the U.S. Bulkhead line with an area of 10,000 square feet would be constructed and treated as part of the upland lot. On Block 2355, a 6,320-square-foot area of land would be filled seaward of the existing mean high-water line. In addition, the proposed upland lot area would include an approximately 23,120-square-foot area of Metropolitan Avenue and an approximately 3,375-square-foot area of North First Street that are proposed to be demapped.

Both towers would have triangular footprints, each with three frontages. The northern tower, Building A, would be located on the corner of River and North Third streets. Building A would include 539,600 square feet of floor area, including 498,000 square feet of residential floor area, 30,000 square feet of community facility space, and 11,000 square feet of commercial space. A YMCA is proposed as the community facility use and would be located on the second and third floors. Building A would rise to a height of approximately 560 feet (600 feet including bulkheads), or 49 stories. The southern tower, Building B, would be located on the corner of River and North First streets. Building B would comprise 619,200 square feet of floor area, including 51,200 square feet of residential floor area and 68,000 square feet of commercial space. Office uses are proposed on the second through fourth floors. Building B would rise to a height of approximately 710 feet (750 feet with a bulkhead), or 64 stories. Bulkheads on both towers would be screened.

The ground floors of both towers would include active uses along all frontages. The western building frontages along the waterfront open space would be designed with publicly accessible arcades. The maximum column dimensions in any direction would be between four and five feet, and the arcade opening along the waterfront frontage would have a minimum percentage of openness. Column shapes, orientation, and angles would vary. Larger columns, within the maximum column dimensions, would be needed at key locations to address structural loads from the cantilevered tower portions.

Building A would include community facility space and retail along North Third Street, retail spaces and the residential lobby on River Street, and additional retail space would be accessed through the waterfront-facing arcade. The arcade within Building A would also provide access to public restroom facilities. Building B would include retail and the residential lobby along River Street and additional retail would be accessed through the waterfront arcade. The North First Street frontage would include additional retail, the office lobby, back-of-house areas, and the entrance to the below-grade parking garage that would accommodate approximately 250 attended parking spaces accessed by a 22-foot-wide curb cut. The minimum ground floor

heights of both buildings would be 15 feet.

The building footprints are in a triangular configuration. The ground floors of the buildings would be set back from the street line as necessary to accommodate a minimum 15-foot sidewalk along all street frontages. No distinct base or setback would be provided and the buildings would instead set back gradually in a curving slope away from the street line and some waterfront frontages. The gradual setbacks would also facilitate the transition from the triangular footprints to a rectangular tower. The proposed envelope permits rectangular upper tower floorplates with a width of 79 feet and a slab length of approximately 159 feet for Building A and 152 feet for Building B. Building A's tower would be setback towards the street, and oriented parallel to the waterfront. Building B's tower would be located closer to the shore public walkway and is oriented perpendicular to the waterfront.

Along River Street, Buildings A and B would set back incrementally, starting at the ground floor level. Building A has a minimum setback of approximately four feet and Building B has a minimum setback of approximately three feet. Both buildings would achieve the full setback ranging from 10 to 15 feet in the upper floors at approximately 18 stories. Along North Third Street, Building A would have a minimum setback of approximately three-and-a-half feet starting at the ground floor, and would reach a setback of 11 feet at a height of approximately 22 stories. Along North First Street, Building B would rise sheer after setting back by 2 feet 7 inches at the ground floor level. To accommodate the transition between a triangular footprint to a rectangular tower on the upper floors, the buildings gradually cantilever back out towards the waterfront. The graduated cantilevering would begin at the second story along the waterfront and increases incrementally in a gently sloped manner. The cantilever overhang dimensions reach a maximum of 37 feet 7 inches in Building A at a height of approximately 320 feet, and a maximum of 30 feet 4 inches in Building B at a height of approximately 180 feet. However, no portion of the cantilever would extend over the Shore Public Walkway (SPW), which would remain open to the sky.

The proposed development would include a nearly 2.9-acre public open space, with 85,475 square feet of Waterfront Public Access Area (WPAA) and 40,830 square feet of additional Public Access Area (PAA). The proposal would expand the open space network along the East River waterfront, connecting Newtown Creek to the north and to the Williamsburg Bridge to the south.

Pursuant to the WPAA requirements, the applicant is proposing to establish an approximately 43,400-square-foot, 1,000-foot-long SPW along the existing bulkhead line and mean high water line, with portions elevated above the proposed salt marsh and tide pools, and a total of 8,670 square-feet of Supplemental Public Access Areas (SPAA) located immediately adjacent to the SPW. Approximately 33,390 square feet of in-water structures including breakwaters, piers, and platforms would primarily be part of the WPAA. The remainder of the space would be designated as PAA, with a total of approximately 40,830 square feet.

The applicant is proposing a waterfront plan with a breakwater system, with the goal of protecting the site from future storm events and facilitating in-water activities, such as kayaking. Key components of the waterfront proposal include the accessible pier-like breakwater system, an elevated walkable ring boardwalk that would connect the breakwater system; “outposts” at the end of the piers that would house educational activities such as bird watching; a tidal wetland; a cove that would facilitate in-water activities; a play area; a pebble beach; a lawn area at the prolongation of Metropolitan Avenue; and various other programmatic elements.

Piers and breakwater structures would include a network of paths providing additional access further westward on the East River. The seaward-most portions of the breakwater structures would be located approximately 300 feet from the SPW. They would include meandering pathways that range in width from six feet to 12 feet and expanded areas that accommodate seating including benches and picnic tables, and plantings. The expanded areas would also facilitate ADA accessibility. The design would include three “outposts” proposed to be programmed with features such as outdoor classrooms, hammock areas, and a bird hide. The

outposts range are approximately 30 feet to 45 feet in diameter.

A beach would be designed on the new cove with a stepped seating area facing the beach with granite block seating. It would be designed to provide secondary-contact recreation access, and per New York State Department of Health regulations, swimming would be prohibited. Signage would be installed to indicate that primary-contact recreation access, including swimming, would not be permitted, and river stones and ecological armoring would be provided in the intertidal areas along the beach to deter wading and direct access. Other active and passive recreation features include a ramped boat launch for non-motorized watercraft (such as kayaks and paddleboards), and a nature play area located between landscaped areas, planting, seating, and other features. The proposed pedestrian paths would change in elevation and cross both land and water areas, allowing for boat crossings beneath the walkways.

The area between the towers would include public lawns and wider pedestrian pathways that range from approximately 20 feet to 24 feet. Additional moveable seating and tables would be provided along the building edges. The lot-line edge along the NYPA plant would also be designed with planting and moveable seating. However, the applicant also proposes an alternative scenario where they would seek to obtain easements to utilize the NYPA-owned land adjacent to the development site to create temporary community kiosks that would be accessible from their site. In the alternative scenario, the planted buffer would be converted into an area for circulation and additional moveable tables and chairs.

The applicant proposes to construct the project in two phases. The applicant proposes to construct Building A, all in-water structures, the SPW, and nearly all the WPAA in the first phase, thereby providing a continuous esplanade connection from Grand Ferry Park to North Third Street. The second phase would build out Building B and the remainder of the open space, which would primarily consist of a PAA lawn area at the terminus of Metropolitan Avenue and the demapped portion of North First street end.

To facilitate the proposed development, the applicant proposes a zoning map amendment, zoning text amendment, two special permits, and waterfront authorizations.

**Zoning Map Amendment (C 220062 ZMK)**

The applicant proposes a zoning map amendment to change the project area from an M3-1 zoning district to C6-2 and M1-4 zoning districts. The development site is proposed to be mapped with a C6-2 district (R8 equivalent), a high-density mixed-use district which allows residential uses up to a maximum FAR of 7.2 when mapped within an MIH area, and commercial and community facility uses up to a maximum FAR of 6.5. C6-2 districts, as modified by waterfront zoning regulations, permit a maximum base height of 70 feet and a maximum building height of between 210 feet and 250 feet inclusive of a penthouse. Parking is required for 40 percent of dwelling units. There are no parking requirements for income restricted units within a Transit Zone and loading requirements vary by use.

The remainder of the project area between River Street and Kent Avenue are non-applicant controlled sites and are proposed to be mapped with an M1-4 zoning district, a light-industrial district that allows commercial and industrial uses with a maximum FAR of 2.0 and select community facility uses with a maximum FAR of 6.5. Bulk regulations are governed by a sky exposure plane, which begins at a height of 60 feet, or four stories, above the street line. Parking is not required in M1-4 districts and loading requirements vary by use.

**Zoning Text Amendments (N 220063 ZRK)**

The applicant is seeking zoning text amendments that would establish the development site as an MIH Area in Appendix F; and amend provisions within the LSGD special permit (ZR Section 74-742) that relate to ownership requirements; and c) amend how in-water structures are considered within a LSGD (ZR Section 74-743 (a) and (b)):

MIH Text Amendment to Appendix F of the Zoning Resolution

The applicant requests a zoning text amendment to Appendix F to designate the development site

as a MIH area mapped with Option 1. Option 1 requires that at least 25 percent of the residential floor area be provided as housing affordable to residents with household incomes averaging 60 percent of the Area Median Income (AMI), including a 10 percent band at 40 percent of the AMI.

#### Modification to LSGD Ownership Requirements of ZR Section 74-742

ZR Section 74-742 requires all owners of property within a LSGD be applicants for a LSGD special permit. The City and/or State own under water property interests within the LSGD that is inalienable and cannot be conveyed to the applicant after approval. Therefore, an amendment to ZR Section 74-742 is proposed to allow the applicant to be the sole applicant with respect to the LSGD special permits. The applicant anticipates that they would enter into any agreements and understandings with the State and/or City necessary to facilitate the proposed development.

#### Modification to ZR Section 74-743 (a) and (b)

The applicant is proposing an amendment to ZR Section 74-743 that would allow, through a LSGD, existing piers and platforms to be replaced or reconstructed while still retaining the floor area generated by the existing structures, provided that the new in-water structures do not generate more floor area than is generated today and that they provide significant public access. Existing land projecting beyond the bulkhead line could also be reconstructed and included in the upland lot. The amendment would not require new in-water structures to comply with relevant waterfront regulations, as the Commission would consider the design of the in-water structures as part of a LSGD.

The existing piers and platforms currently located within the seaward lot could generate 19,582 square feet of floor area pursuant to ZR Section 62-31. The applicant proposes to develop 28,454 square feet of new, publicly-accessible in-water structures within the seaward lot; however the total amount of lot area that could be generated per the newly-established ZR Section 74-743(a) would be capped at 19,582 square feet of seaward lot area. The applicant is also proposing to allow new platforms seaward of the bulkhead line to be part of the upland lot area of the

waterfront zoning lot, provided that it is equivalent to the amount of upland lot area seaward of the existing shoreline that would be removed. This provision is intended to allow the applicant to recoup existing available floor area under current conditions that would be reconfigured as a result of the proposed shoreline modification.

### **Zoning Special Permit (C 220064 ZSK)**

The applicant requests a zoning special permit pursuant to ZR Section 74-743 to allow the transfer of floor area, as per the proposed amendment to ZR Section 74-743. The applicant also requests waivers of distribution of floor area, base height and setback, building height, maximum tower floorplates, and maximum length of walls facing the shoreline. The Commission must make findings related to the quality of the site plan and its relationship to the surrounding area and the effect of the plan on local traffic conditions.

The proposed text amendment also includes additional findings related to the new in-water structures to ensure that such structures are an integral part of the proposed LSGD resulting in a superior site plan, have an appropriate relationship with the surrounding waterfront areas and shorelines, and provide significant public access to and within the seaward portion of the LSGD.

Waivers pertaining to floor area computations, distribution of floor area, building height and setbacks, maximum tower floorplates, maximum width of walls facing the shoreline, and waterfront regulations for new piers or platforms are requested.

### Floor Area Computations

Pursuant to proposed ZR Section 74-743(a) and (b), new platforms and in-water structures would be reconstructed. A new, approximately 10,000 square foot platform located seaward of the bulkhead line would be constructed. The lot area of the new platform would be included in the upland lot and would be capped at the existing upland lot area seaward of the bulkhead line (8,267 square feet). The existing in-water structures cover approximately 19,580 square feet of seaward lot area, and could therefore generate 140,990 square feet of floor area pursuant to ZR

Section 62-31. The new in-water structures would cover approximately 28,454 square feet of the seaward lot area, and could generate a maximum of 140,990 square feet of floor area.

#### Distribution of Floor Area

ZR Section 62-341(c)(3) states that for C6-2 zoning districts (R8 equivalent) in waterfront areas, buildings that exceed the maximum base height of 70 feet must have the floor area cover a minimum of 30 percent at a height of 20 feet. The applicant is seeking relief to allow 25 percent of floor area to be located at a height of 20 feet to accommodate the reduced building footprints that aim to maximize public open space.

#### Building Height and Setback [ZR Sections 62-341(c) (1) and (2), and 62-341(a)(4)(ii)]

Bulk regulations for C6-2 zoning districts (R8 equivalent) in waterfront areas limit buildings to a maximum base height of 70 feet and a maximum building height of between 210 feet and 250 feet, inclusive of a penthouse. Above a maximum base height of 70 feet, buildings are required to setback 15 feet along narrow streets, 10 feet along wide streets, and 30 feet along the SPW. The applicant proposes buildings that rise to a maximum height of between 560 and 710 feet. The applicant is seeking waivers to allow taller building heights and setbacks that range from a minimum of 3 feet, 10 inches and 10 feet, 7 inches along River Street, 4 feet, 10 inches along North Third Street, and 2 feet, 7 inches along North First Street. A waiver is also requested for the Building B's cantilever within the 30-foot initial setback distance from the SPW.

#### Maximum Tower Floorplates

ZR Section 62-341(c)(4) requires that floorplates above the maximum base height be limited to 8,100 square feet on zoning lots greater than 1.5 acres. Floorplates above the base height are proposed to be between 9,900 square feet and 15,000 square feet to accommodate the reduced building footprint and efficient and regular tower floors.

#### Maximum Width of Walls Facing the Shoreline

ZR Section 62-341(c)(5) requires that the widths of walls facing the shoreline above the base height on waterfront blocks be less than 100 feet. Building A would have walls facing the shoreline of between 28 and 199 feet. Building B would have walls facing the shoreline of between 50 and 158 feet. The applicant has stated that the walls exceeding 100 feet in width would be broken up by the graduated building form and triangular footprint configuration.

#### Waterfront Regulations for New Piers or Platforms

ZR Sections 62-242, 62-54, and 62-63 regulate uses, access, and design of piers and platforms. Pursuant to proposed 74-743(a) and (b), the new piers and platforms would be constructed without regard to these requirements and would instead be considered as part of the LSGD.

#### **Zoning Special Permit (C 220070 ZSK)**

The applicant requests a zoning special permit pursuant to ZR Section 74-533 to waive parking requirements within the Transit Zone to facilitate affordable housing. C6-2 zoning districts require that accessory parking spaces are provided at a rate of 40 percent of the number of market rate dwelling units. The special permit allows a reduction of the parking spaces up to 20 percent of the market rate dwelling units provided that the Commission makes findings related to the facilitation of affordable housing, and to the effect of such distribution on the site plan and local traffic. The applicant proposes to provide approximately 250 spaces (20 percent of the market rate dwelling units) in a below-grade garage beneath the proposed towers.

#### **Zoning Authorization (N 220065 ZAK)**

The applicant requests a zoning authorization pursuant to ZR Section 62-822(a) to modify requirements related to the location, area, and minimum dimensions of WPAA's. Waivers regarding the width of the SPW and depth of the waterfront yard, as well as the configuration of the SPAA's are requested.

#### Width of SPW and Depth of Waterfront Yard

ZR Section 62-53(a)(2) requires that a SPW be 40 feet in width and, per ZR Section 62-332(a), waterfront yards are required to be 40 feet in depth. The applicant requests a waiver to reduce the SPW and coterminous waterfront yard to 29 feet, 10 inches to accommodate a tidal wetland area and 34 feet, 5 inches near the connection to Grand Ferry Park due to the shallowness of the site at the southern end of the site. Additionally, the depth would be less than 40 feet from shoreline to shoreline within the landfill portion.

#### Configuration of Supplemental Public Access Areas

ZR Section 62-571(a)(1) and (2) requires that SPAA's have a width to depth ratio of between 1:1 and 3:1. However, the applicant proposes a SPAA with a width to depth ratio of 4:1. SPAA's are also required to have a minimum depth perpendicular to the SPW of 25 feet. If provided as a widened SPW, a minimum width of 10 feet would be required. The applicant proposes two SPAA's with a depth perpendicular to the SPW between a minimum of 2 feet 3 inches and 10 feet 10 inches to accommodate site-specific conditions. The SPAA's are utilized to enhance connectivity within the site and are configured in a linear manner to improve site circulation. SPAA 1 is located within the shallower southern end of the site and includes pathways, planting and seating. SPAA 2 includes portions of the ring boardwalk adjacent to the beach.

#### **Zoning Authorization (N 220068 ZAK)**

The applicant requests a zoning authorization pursuant to ZR Section 62-822(b) to modify design requirements for waterfront public access areas. Waivers regarding grade level of planting area; permitted obstructions; circulation paths; seating; lawn areas; screening buffer location and width; fences, guardrails, and walls; social seating; minimum illumination of other areas; curb and retaining walls; and paving material for not require circulation paths are requested.

#### Grade Level of Planting Area

ZR Section 62-61(d)(2) requires the grade level of the planting area that is within three feet of the pedestrian circulation path to be no more than three feet higher or lower than the adjoining level of the pedestrian circulation path. However, the applicant proposes areas that range from 2

inches to 72 inches higher or lower than adjoining circulation paths to accommodate site elevation in certain locations and graduated landscaping strategies in response to site-scale resiliency needs.

#### Permitted Obstruction

ZR Section 62-611(c) specifies that play areas are allowed as permitted obstructions beyond 20 feet of the shoreline. The proposed “Nature Play Area” would be located within 20 feet of the shoreline due the proposed shoreline conditions, which weave in and out of the site at various locations, and a desire to locate the interpretive nature play area program closer to the water.

#### Circulation Path

ZR Section 62-62(a)(1) requires that the circulation path must be located within 10 feet of the shoreline for at least 20 percent of the length of such shoreline. The applicant proposes that 83 linear feet (8 percent) is located along within 10 feet of the shoreline due to the proposed shoreline condition and proposed programmatic elements.

#### Seating

ZR Section 62-62(b) requires one linear foot of seating for every 75 square feet of SPW and SPAA resulting in a 694 linear foot requirement for the site. The applicant proposes 602 linear feet of seating. However, the applicant proposes an additional 513 linear feet of seating within the PAA.

#### Lawn Areas

ZR Section 62-62(c)(1)(i) requires that where an SPAA is greater than 1,875 square feet, at least 15 percent of the required planted area to be provided as lawn (and thus, 2,735 square feet must be provided as lawn). The applicant proposes 303 square feet of lawn as part of the WPAA, and notes that additional lawn areas, totaling approximately 14,000 square feet of planting including lawn, are provided as part of the PAA.

### Screening Buffer Location and Width

ZR Section 62-62(c)(2)(i) requires that a screening buffer with a minimum width of six feet be provided along the entire upland boundary where the WPAA abuts non-publicly accessible areas of the zoning lot. However, ZR Section 62-62(c)(2)(ii) allows a reduction up to four feet on shallow lots where the width of the SPW may be reduced pursuant to ZR Section 62-53. Under the proposed plan, a screening buffer with a reduced width would be provided along the shared lot line with the NYPA plant. Under the alternative plan, kiosks would line a portion of the upland boundary and a screening buffer would not be provided.

### Fences, Guardrails, and Walls

ZR Section 62-651(a) and (c)(2) requires that guardrails and fences be mounted on curbs not higher than six inches and that they not be higher than 36 inches. The applicant proposes fences that are up to 42 inches high along the “Ring” and pier/breakwater pathways. Additionally, Railing Type 2 is designed as a wall with rails on top and Railing Type 3 is 12 inches high, designed as a warning railing along the tidal trail.

ZR Section 62-651 (c)(1) limits fences to specific locations within the WPAA. The applicant is proposing edge fencing (protective railings) along tidal wetland area and portions of the Ring walkway.

ZR Section 62-651(c)(3) requires walls not to exceed a height of 21 inches. The applicant proposes walls of 30 to 42 inches in height in response to site grading.

### Social Seating

ZR Section 62-652(f) requires that at least 25 percent of seating provided be social seating. While 173 linear feet is required, 168 linear feet is proposed. Further, a minimum of two square feet of tables is required for every three linear feet of social seating with no more than 150 linear feet in total. While 173 linear feet is required, 76 linear feet is proposed within the SPW and SPAA.

### Minimum Illumination of Other Areas

ZR Section 62-653 requires a minimum horizontal illumination of 0.2-foot candles for all non-walkable areas. The minimum horizontal illumination levels of 0.2-foot candles are met for all areas excluding the proposed beach, where the horizontal illumination is reduced to 0.0 foot candles seaward. The average illumination to minimum foot candle uniformity ratio for walkable areas must be no greater than 10:1 within a WPAA. The applicant proposes a uniformity ratio of 17.8:1 within the piers.

### Curb and Retaining Walls

ZR Section 62-655(a) requires any edging higher than six inches above adjacent grade a retaining wall. Retaining walls are not permitted to exceed a maximum of three feet above or below adjacent planted areas. The applicant proposes retaining walls up to four feet in height given the grade changes across the site and resiliency considerations.

### Paving Material for Not Required Circulation Paths

ZR Section 62-656 (a)(2) permits the use of metal grating is only in specific locations within the WPAA and to facilitate drainage or for platforms. The applicant is proposing metal grating in the “Ring” and portions of the pier structures in response to NYS DEC permeability requirements.

### **Zoning Authorization (N 220069 ZAK)**

The applicant requests a zoning authorization pursuant to ZR Section 62-822(c) to allow a WPAA to be built out in phases in conjunction with a phased development project. The applicant proposes two WPAA phases related to each of the two buildings to be improved on the zoning lot. The phases would proceed from north to south, beginning with the northern building and ending with the southern building. The WPAA associated with the first phase would encompass approximately 84,735 square feet and exceed that portion of the WPAA commensurate with the proposed development in Phase 1, nearly 99 percent of the overall WPAA provided. The first phase would complete the connection from North Third Street to Grand Ferry Park and open a

portion of Metropolitan Avenue. Phase 1 would also include portions of the PAA (lawn and planted areas) totaling approximately 27,800 square feet. Temporary fencing with a pathway along it would provide interim access to the open space. The remainder of the WPAA, approximately 740 square feet (less than one percent of the overall WPAA provided), would be completed as part of Phase 2. Phase 2 would also include the remaining PAA area of approximately 13,030 square feet and would include the remainder of the lawn and the proposed street end improvement for the demapped portion of North First Street.

#### **Landfill Action (C 220061 MLK)**

The applicant proposes a landfill of approximately 6,320 square feet. The landfill area would reconfigure the shoreline to provide a cove and allow for ecological habitats. The landfill area is on the northern-most portion of the development site, just south of the terminus of North Third Street.

#### **City Map Change (C 210425 MMK)**

The applicant proposes to eliminate, discontinue, close and, as necessary, dispose of portions of Metropolitan Avenue and a portion of North First Street west of River Street. The demapping is would facilitate the proposed site plan. The demapped area of Metropolitan Avenue would facilitate pedestrian access to the open space from River Street. The demapped portion of North First Street would function as part of the proposed WPAA. The demapped streets would generate 190,700 square feet that the applicant has not proposed to utilize for the proposed development.

The applicant also requests a ten-year lapse period for the LSGD special permit pursuant to ZR Section 11-42(c). Due to the size and complexity of the proposed development, substantial construction of one of the two buildings is not anticipated to have occurred within this four-year period. The Commission may, at the time of granting a special permit, extend the period to a period not to exceed 10 years.

The applicant is also seeking a Chair's certification pursuant to ZR Section 62-811 to

demonstrate compliance with the waterfront regulations, as modified by the requested authorizations.

A Joint Permit Application from the NYS Department of Environmental Conservation (NYSDEC) and the United States Army Corps of Engineers (USACE) is being sought by the applicant in conjunction with the publicly accessible open space proposed along the waterfront.

### **ENVIRONMENTAL REVIEW**

This application (C 220062 ZMK), in conjunction with the related applications (C 210425 MMK, C 220061 MLK, C 220064 ZSK, C 220070 ZSK, N 220063 ZRK, N 220065 ZAK, N 220068 ZAK, N 220069 ZAK), was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA) and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et. seq. and the New York City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 21DCP157K. The lead is the City Planning Commission.

It was determined that this application, in conjunction with the applications for related actions, may have a significant effect on the environment, and that an Environmental Impact Statement (EIS) would be required. A Positive Declaration was issued on March 22, 2021, and subsequently distributed, published, and filed. Together with the Positive Declaration, a Draft Scope of Work for the Draft Environmental Impact Statement (DEIS) was issued on March 22, 2021. A public scoping meeting was held on April 26, 2021, and the Final Scope of Work was issued on August 16, 2021.

A DEIS was prepared and a Notice of Completion for the DEIS was issued on August 16, 2021. Pursuant to SEQRA regulations and the CEQR procedures, a joint public hearing was held on the DEIS on October 6, 2021 in conjunction with the public hearing on the related Uniform Land Use Review Procedure (ULURP) items (C 210425 MMK, C 220061 MLK, C 220064 ZSK, C

220070 ZSK, N 220063 ZRK). A Final Environmental Impact Statement (FEIS) reflecting the comments made during the public review process was completed, and a Notice of Completion of the FEIS was issued on November 5, 2021. Significant adverse impacts related to hazardous materials, air quality, and noise would be avoided through the placement of (E) designations (E-636) on the project site as specified in Chapter 10, Chapter 13 and Chapter 15, respectively, of the FEIS.

The application, as analyzed in the FEIS, contained Project Components Related to the Environment (PCREs), which are set forth in Chapters 7, “Historic and Cultural Resources”, 10, “Hazardous Materials”, 15, “Noise”, and 18, “Construction.” To ensure the implementation of the PCREs, the applicant will enter into a Restrictive Declaration at the time of the approval of land use-related actions and prior to issuance of any permits.

The proposed project as analyzed in the FEIS identified significant adverse impacts with respect to transportation (pedestrians, street user safety) and construction (noise).

The identified significant adverse impacts and proposed mitigation measures under the proposed actions are summarized in Chapter 19, “Mitigation”. To ensure the implementation of the mitigation measures identified in the FEIS, the mitigation measures are included in the Restrictive Declaration.

#### **WATERFRONT REVITALIZATION PROGRAM CONSISTENCY**

This application (C 220062 ZMK) was reviewed by the City Coastal Commission for consistency with the policies of the New York City Waterfront Revitalization Program (WRP), as amended, approved by the New York City Council on October 30, 2013 and by the New York State Department of State on February 3, 2016, pursuant to the New York State Waterfront Revitalization and Coastal Resources Act of 1981 (New York State Executive Law, Section 910 *et seq.*). The designated WRP number is 21-080. This action was determined to be consistent with the policies of the New York City Waterfront Revitalization Program.

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

### **UNIFORM LAND USE REVIEW**

This application (C 220062 ZMK), and the related applications (C 210425 MMK, C 220061 MLK, C 220064 ZSK, C 220070 ZSK), was certified as complete by the Department of City Planning on August 16, 2021 and was duly referred to Community Board 1 and the Brooklyn Borough President, in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b) along with the related actions for a zoning text amendment (N 220063 ZRK) and zoning authorizations (N 220065 ZAK, N 220068 ZAK, N 220069 ZAK), which were referred for information and review on August 16, 2021 in accordance with the procedures for non-ULURP matters.

### **Community Board Public Hearing**

Community Board 1 held a public hearing on this application (C 220062 ZMK), in conjunction with the related actions, and, on September 14, 2021, by a vote of 20 in favor, 15 in opposition, and one abstaining, adopted a resolution recommending approval of the application with the following conditions:

- “1. Two Trees must rent all affordable housing units in their 1 South 1st Street development to honor prior community affordable housing commitments.
2. Reduce total number of apartment units in the project by 33%, to reduce the anticipated increased load on existing overcapacity on subway transit, vehicular traffic, pedestrian traffic, wastewater and with street sanitation storage and collection, and open space.
3. Increase the number of total affordable units to 50% to support deeper diversity and affordable living in the neighborhood.
4. 60% of affordable units must be 2 & 3-bedroom units to encourage long term family occupancy.

5. Within all affordable units one bedroom must be a minimum of 128 square feet to comfortably accommodate bedroom furniture, a closet and efficient movement throughout the room.
6. The City of New York must include funding for the full completion of Bushwick Inlet Park in their 10-year capital plan so the fully operational park can help mitigate the existing severe local open space deficiencies that will persist if this project is built out and the massive population increase from the quantity of current and future local waterfront housing developments.
7. The project must use a fossil-free energy source such as a geothermal heat loop system instead of a natural gas reliant system for heating, which will work to have the project more aggressively meet the challenging but critical goals of the New York City Climate Protection Act, Climate Leadership and Community Protection Act and those set by the Intergovernmental Panel on Climate Change.
8. Redesign the towers so that they are significantly less obtrusive and oppressive in feel and fit more contextually with nearby structures and better connect with the historic fabric of the neighborhood.
9. Two Trees must negotiate in good faith with the New York City & Vicinity District Council of Carpenters to ensure the project adheres to the safest and best construction work practices.
10. Two Trees must negotiate in good faith with local workforce organizations in order to provide service jobs for local job seekers.
11. Two Trees must provide funding in perpetuity for a local, independent agency or organization to oversee and enforce the rental fees and increases of affordable and market-rate apartments.
12. Two Trees and the City of New York must present and execute a plan to manage the steadily increasing volume of street trash that has come with the incredible volume of additional area residents that the project will exacerbate.
13. Before being granted any rezoning, Two Trees must present community facility architectural design plans which verify that the YMCA facility will serve the stated

purpose and promise of serving both the Williamsburg and Greenpoint communities as well as 250 school children annually; it must show that the size and location of the facility elements including pool, locker rooms, saunas, facility/pool access including elevator, pool depth and lane width, lifeguard station, staging area and pool equipment, weight rooms, full gym arena, and exercise rooms are adequate as a full service facility for the communities. The community facility must be built out and in operation before the building can be occupied as a rental.”

### **Borough President Recommendation**

This application (C 220062 ZMK), in conjunction with the related actions, was considered by the Brooklyn Borough President, who held a public hearing on September 27, 2021, and on October 5, 2021 issued a recommendation to approve the application with conditions.

- “1. That for 210425 MMK, the mapping agreement for the discontinuation and closing of Metropolitan Avenue and North First Street include a condition that the sale of either the City-owned right of ways in the form of easements or tax lots, be one dollar, further conditioned on adequate demonstration that the remainder of the proceeds of fair market value have been deposited into a New York City Comptroller’s Office Fiduciary Account for use by the New York City Department of Parks and Recreation (NYC Parks) to advance the development of Bushwick Inlet Park
2. That the City Council obtain written commitments from River Street Partners LLC clarifying how it would:
  - a. For the additional FAR increment in excess of an R7A MIH district, provide affordable housing floor area at a rate that commits a combined extra percentage of 76,690 sq. ft. of affordable housing floor area, at an average 60 percent AMI, or modest decrease in the 60 percent AMI average rent collection
  - b. Memorialize the recommended additional 76,690 sq. ft. of permanent affordable housing floor area via a legally binding mechanism, such as the New York City

Zoning Resolution (ZR) 74-533 (a) obligation to consult with the New York City Department of Housing Preservation and Development (HPD)

- c. Provide an affordable housing mix with at least 50 percent two- or three-bedroom units, and at least 75 percent one-bedroom and larger units, but for studios targeted to households not exceeding 40 percent AMI
  - d. Implement outreach efforts to seniors earning up to 40 percent AMI for single- and dual-person households, to maximize their participation in the affordable housing lottery
  - e. Utilize one or more local affordable housing non-profits to serve as the administering agent and have one or more such entities play a role in promoting lottery readiness
3. That Bulk Waiver Sections Z06-1, Z06-2 and C06-4, as part of special permit ULURP 220064 ZSK, be further modified to include a notation that restricts community facility floor area to Use Group 3A schools (restricted to child care centers), non-commercial art galleries, and/or UG 4A clubs, community centers, non-commercial recreation centers, philanthropic or non-profit institutions without sleeping accommodations. Restrict one-quarter of the commercial office and retail space for occupancy restricted to any combination of arts/cultural entities, child care, innovation and maker uses, and non-profit organizations – including recreational
  4. That the City Council obtain written commitments from River Street Partners, LLC clarifying how community facility floor area would be at below-market lease terms, and with intent memorialize to recruit such entities, based on reasonable lease terms in consultation with Brooklyn Community Board 1 (CB 1) and local elected officials, through a legally enforceable mechanism, such as a deed restriction or contract with a non-profit business or service provider, and that space set-aside for recreation shall be inclusive of design development drawings to confirm that such facility would serve the stated purpose and promise of serving both the Williamsburg and Greenpoint communities as well as 250 school children annually, including proper representation to scale of facility elements including pool and locker rooms

5. That in addition to considering the mandating of deeper and/or increased affordable housing floor area, the City Council should consider reducing the number of floors in one or both towers in its determination of the requested land use actions in consultation with CB 1
6. That the City Council obtain written commitments from River Street Partners LLC clarifying how it would:
  - a. Install curb extensions at the northwest intersection of North First Street and River Street as well as the southwest corner of North Third and River streets as part of a Builders Pavement Plan (BPP) or as treated roadbed sidewalk extensions, with the understanding that New York City Department of Transportation (DOT) implementation would require advance consultation with Brooklyn Community Board 1 (CB 1) and local elected officials
  - b. Coordinate with the New York City Department of Environmental Protection (DEP), and the New York City Department of Parks and Recreation (NYC Parks) to install DEP gardens as part of a BPP along North First, North Third, and River streets, in consultation with CB 1 and local elected officials
  - c. Integrate resiliency and sustainability measures, such as blue/green/white roof treatment, geo-thermal, grid-connected rooftop batteries, passive house construction, solar panels and/or façades, and/or wind turbines, including such wind-turbines being integrated into publicly-accessible waterfront access area extending along the power plant with such locations depicted on drawings LSGD Site Plan Z01-1 and Waterfront Public Access Area (WPAA) Overall WPAA Site Plan L-100.00 and Furnishing Plan L-150.00
  - d. That the requested parking reduction from 40 percent of the market rate units pursuant to ZR 74-533 (a) to satisfied by providing not less than 26.7 percent, provided that:
    - i. In lieu of in-building bike parking at a rate of one space per two units, such bike parking be provided at a rate of five spaces for every six units

- ii. Engagement with car-sharing companies to lease multiple spaces within the development's parking facilities in consultation with CB 1 and local officials
- iii. Electrical charging adapters be accessible to no less than 10 percent of all parking spaces, and not less than one car-share space for every 20 required parking spaces Bike Parking, including open space
- e. Exceed the ZR 62-62 (c) requirement for bike rack fixtures, as per the fixture indicated in WPAA drawing Furnishing Details L-511.00, to accommodate 48 bicycles by providing 39 double-capacity bike parking fixtures, that should be depicted on waterfront public access drawings Overall WPAA Site Plan L-100.00, Furnishing Plan L-150.00, and be reflected in Furnishing Schedule L-151.00
- f. Retain Brooklyn-based contractors and subcontractors, especially those designated local business enterprises (LBEs) consistent with Section 6-108.1 of the City's Administrative Code, and minority- and women-owned business enterprises (MWBEs) to meet or exceed standards per Local Law 1 (no less than 20 percent participation), and coordinate the oversight of such participation by an appropriate monitoring agency
- g. Outreach to local workforce organizations to provide service jobs for local job seekers and that such building service workers be required to be paid prevailing wages with full benefits

Be it further resolved:

1. That the CPC and/or the City Council call for modification of the ZR MIH section with a requirement that permits households with rent-burdened status to qualify for MIH affordable housing lotteries (allow for exceptions to the 30 percent of income threshold for households paying the same or higher rent than what the housing lottery offers)
2. That the City of New York include full funding for Bushwick Inlet Park in its 10-year capital plan to achieve a complete and operational park

3. That the New York City Economic Development Corporation (EDC) study running more frequent East River limited stop service between East 34th and Pier 11 from Northside Piers
4. That the Metropolitan Transportation Authority (MTA) investigate the following bus enhancements
  - a. Extending the last stop of Q59 (at Williamsburg Plaza) to the southwest corner of Broadway and Marcy Street
  - b. Instituting a frequent bus (shuttle) service segment of the Q59 to serve the ongoing and envisioned waterfront developments between Division and Grand avenues, inclusive of evaluation of rerouting from Broadway to further south to Division Avenue, to be routed between the Marcy Avenue (J/M/Z) and Lorimer Street/Metropolitan Avenue (L/G) stations
  - c. Introducing express bus (could be a waterfront extension of the B39 route) to Midtown and Lower Manhattan, inclusive of collaboration with DOT to pursue a dedicated Williamsburg Bridge bus lane for at minimum, peak commuting hours
  - d. Monitoring Q59, B32, B39, and B62 service in intervals, not to exceed six months, to determine when additional bus service would be warranted based on ridership demand and then provide additional vehicles to increase the frequency of bus service as warranted to promote adequate service to these routes and implement the above referenced route modifications
  - e. Obtaining additional buses for maintaining adequate frequency and capacity as follows:
    1. To implement the described shuttle for the Q59 route
    2. The B39 waterfront express route
    3. The B62 route to or from Downtown Brooklyn and Long Island City
  - f. Coordinating with DOT for the installation of bus shelters on Kent and Wythe Avenues in proximity to the River Ring site

- g. Undertaking semi-annual full line impact reviews to determine the projected need for increased frequency for L, J/M/Z and G line service and/or lengthening each G line train
- h. Adding additional cars to the G train to expand each train's capacity to eight cars from its current four cars per train
- i. Continuing MTA efforts to obtain additional cars to increase the number of trains along the L line to its designed community-based train control operating capacity of 22 trains per peak hour service in one direction"

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

On September 22, 2021 (Supplemental Calendar No. 1), the City Planning Commission scheduled October 6, 2021, for a public hearing on this application (C 220062 ZMK). The hearing was duly held on October 6, 2021 (Calendar No. 31) in conjunction with the public hearing on the applications for related actions. There were 40 speakers in favor of the application and none opposed.

An applicant team consisting of eight members spoke in favor of the application. The developer described their success with the Domino project as inspiration for exploring opportunities for improving the experience of the waterfront while providing storm-resilient design and infrastructure on the development site. He described the overall program for the site, including affordable housing, innovative resiliency strategy, high-quality design, open space, and a major community facility. The applicant's architect highlighted the significance of the site as the final gap to connect the Greenpoint-Williamsburg waterfront. He described the goals of the site plan, which includes connecting the waterfront esplanade, extending Metropolitan Avenue to the waterfront, creating a softened shoreline, and bolstering access to the water. He highlighted the proposed resiliency strategy of strengthening connections to the water and offering long-term flood protection, and how this differs greatly from commonly implemented flood mitigation practices of elevating or shoring up sites with hard, bulkheaded edge conditions. He also described the various elements of the open space plan that build upon each other, including using

the piers to connect to outposts, the protected water within the ring and breakwaters to support secondary recreation, and fostering new habitat with tidal pools and marshes.

A representative of the developer addressed some of the issues raised during the public review process. She noted that the application received support from the community board, which had provided a list of 13 conditions that the applicant team stated they would be able to largely address. Regarding the issue of open space maintenance, she stated that the applicant team envisions a similar maintenance model to that of Domino Park where the applicant team privately constructed and operated that park through a Maintenance and Operations agreement (M&O) with the New York City Department of Parks and Recreation. Regarding the CSO outfall relocation, she noted that the applicant team had been in contact with the New York City Department of Environmental Protection (DEP) over the course of the last year, and regarding on-site stormwater management, she shared that all the stormwater generated by the site will be directed to private outfalls and the applicant team also intends to develop an on-site wastewater treatment plant.

Regarding affordable housing, the applicant team stated that they intend to map MIH Option 1, which requires that 25 percent of the residential floor area be permanently affordable at an average of 60 percent AMI. With respect to the specific unit size requested in the Community Board 1, the applicant stated that they can meet the minimum bedroom size and would consider providing more family-sized units.

In addition to the applicant team, 32 people spoke in favor of the application and none in opposition.

The majority of speakers were local residents and business owners of Greenpoint and Williamsburg, some of whom were members of Community Board 1. These speakers expressed support for the overall vision and programming of the site, including the new housing and affordable housing, resiliency features, waterfront access and open space, and the applicant's

established record at the Domino site for creating a high-quality and well-used park. Most speakers recognized the applicant team for bringing a significant amount of permanently affordable housing to Williamsburg, with some residents expressing concern about the ability to stay in Williamsburg long term, as many have seen friends and family members leave due to the lack of affordable housing in the neighborhood.

Many residents also spoke favorably about the innovative resiliency features and design of the open space, noting the significance of the unique approach to waterfront access provided by the beach and ring. Many cited other benefits of the project, notably the inclusion of a meaningfully sized community facility space anticipated to be a YMCA with diverse programming and affordable memberships to locals, as well as water-based uses such as kayaking. Others noted that it was a public benefit that the applicant team would fund private infrastructure so not to burden the public networks. The creation of hundreds of permanent jobs was also cited as a benefit to the community.

Several residents spoke against the Community Board recommendation to reduce the project density by one third, citing the grave need for more affordable housing in the neighborhood. Instead, some speakers called for the removal of all proposed parking in exchange for more affordable housing.

Despite support for the project, some residents stated that the 2005 Greenpoint-Williamsburg had failed to deliver on its promises, most notably the full development of Bushwick Inlet Park, and that the rezoning had led to gentrification in the area. However, those supporting the project praised the team for ameliorating some of these issues with the development of more affordable housing and open space without cost to the public.

Other speakers in favor of the application included representatives of Open New York, Waterfront Alliance, Brooklyn Chamber of Commerce, North Brooklyn Chamber, North Brooklyn Parks Alliance, YMCA of Greater New York, Greenpoint YMCA, Committee of

Hispanic Children and Families, Brooklyn Greenway Initiative, Billion Oyster Project, and Parson's School of Design. These groups praised the applicant team for advancing strategies to address sea level rise and flood risk through innovative resiliency measures and proposing new types of waterfront experiences that would provide unique opportunities for recreation and education. Others also praised the team for providing a significant amount of affordable housing on the Williamsburg waterfront. The applicant team was also commended for their track record with delivering quality projects.

A representative for SEIU 32BJ testified in support of the proposed development, emphasizing the number and quality of the jobs the project would create, and noted that the developer has a track record of creating good jobs and that they have made an early commitment to creating prevailing wage jobs at the site.

There were no other speakers and the hearing was closed.

The Commission received written testimony in support subsequent to the hearing. New Yorkers for Parks submitted favorable testimony outlining the affordable housing, open space, and resiliency benefits of the project. Six residents provided written testimony describing support for the project as proposed.

The applicant submitted a response to the Borough President's recommendations on October 14, 2021, describing a commitment to working with local electeds on affordable housing, an agreement with the YMCA of Greater New York, the need for the tower height as proposed, and working with city agencies to advance various infrastructure, resiliency, and training opportunities.

## **CONSIDERATION**

The Commission believes that this application for a zoning map amendment (C 220062 ZMK), in conjunction with the related applications (C 210425 MMK, C 220062 ZMK, C 220064 ZSK,

C 220070 ZSK, N 220063 ZRK), as modified herein, is appropriate.

The proposed actions will facilitate the development of a vacant site along the Greenpoint-Williamsburg waterfront with an approximately 1,158,800-square foot mixed-use development with 1,050 apartments, including 263 affordable apartments, commercial space, community facility space, and innovatively designed waterfront public access areas. The Commission notes that this project will change the use of this site from industrial to residential at a density that will result in a significant amount of new housing with affordable housing and provide new publicly accessible open space along the water in Williamsburg, a neighborhood with one of the fastest growing residential populations in the city. The Commission is pleased that the project will help to address the need for more housing, which is consistent with the City's policy objectives for promoting housing production and affordability across the city, as outlined in *Housing New York*, and provide new waterfront open space that will connect other such open spaces in the north with Domino Park to the south.

The Commission recognizes the significance of the 2005 Greenpoint-Williamsburg rezoning to the Greenpoint and Williamsburg communities and notes that the proposed project, while one block outside of the rezoning, aligns with many of its original goals, including the revitalization of an underutilized and inaccessible waterfront, the construction of nearly three acres of public open space along the Williamsburg waterfront, and the provision of affordable housing. The proposed project will map MIH on the development site, which builds and improves upon the voluntary Inclusionary Housing program developed as part of the 2005 rezoning. The project will also provide exceptionally diverse opportunities to interact with the water, which the Commission notes has been a continued request from the local community; and center the site design around resiliency, reflecting sound planning for waterfront communities.

The Commission is pleased that the project will contribute to the redevelopment of the Greenpoint-Williamsburg waterfront, activating a formerly industrial site with uses compatible with development in the surrounding area, connecting Grand Ferry Park to the south to the

Williamsburg waterfront esplanade to the north through the creation of a new state-of-the-art resilient open space between the two sites. Furthermore, the proposal will add to the linear network of open spaces along the East River waterfront at a key juncture between WAP BK-1 to the north and existing and planned open spaces in South Williamsburg. The project will also support the mixed-use nature of the area, which has been furthered by the initial phases of the Domino project. New open spaces, ground floor retail, and a significant new community facility will activate this northern end of River Street and the western end of Metropolitan Avenue, a key corridor in Williamsburg. The active ground floor uses and design strategies will improve conditions around the immediate surrounding area, helping link the Williamsburg waterfront to the upland neighborhood.

The site plan has been designed to maximize the amount of open space on the constrained site, balancing the “cut” into the upland lot with the remaining amount of upland land. The building footprints have been minimized and shaped to ensure generous widths for public walkways and circulation areas, optimal dimensions and proportions of open space elements and enhance unique view corridors. The minimized footprints allow for key open space features such as the arcade, amphitheater, nature play areas, and beach, while the cut feature allows for the creation of tidal marshes, wetland restoration areas, and facilitates areas with calmer waters. The Commission appreciates that the open space and expanded shoreline approach offers opportunities for enhanced interaction with the water’s edge through varied grading and landscaping strategies. The proposed piers, which will in part be built upon breakwaters intended to attenuate wave action and support the long-term resiliency of the site, will provide a unique experience with the East River and offer expansive views from newly created vantage points.

The ground floor of each building will include a significant amount of active uses, including neighborhood retail, community facility use, and public restrooms, with access from all frontages. The western frontages facing the waterfront will feature publicly accessible arcades that will support a seamless transition from the open spaces into the buildings, increasing transparency and providing visual and physical porosity through the development. The arcades

have been designed in a manner to ensure visual and physical porosity by establishing maximum column widths and minimum percentage of openness.

The Commission recognizes that the heights of the proposed buildings will exceed those permitted elsewhere along the Greenpoint-Williamsburg waterfront, where the 2005 rezoning established height limits of 300 and 400 feet and the Domino project established waterfront building envelopes with maximum heights between 435 and 535 feet. The Commission recognizes that that smaller building footprints, designed to allow for more open space, result in buildings that require increased height, and the uniqueness of this site, located between buildings developed under the 2005 rezoning and those developed (and to be developed) as part of the Domino redevelopment project. Further, the non-applicant owned sites within the project area provide a transition in use and height between the proposed development and surrounding community. However, the Commission notes that all surrounding streets are narrow, and recognizes the importance of carefully considered and well-designed streetscape and ground floor elements of the project.

The proposed relocation of the Metropolitan Avenue CSO will facilitate the creation of a beach and a soft edge treatment along the waterfront. The Commission believes that the waterfront would be enlivened by the creation of approximately 2.9 acres of innovatively-designed public open space featuring various amenities such as a beach, an amphitheater, nature play area, tidal marshes, kayak launch, a circuitous pier within the East River, social seating areas, passive lawn areas, a major plaza area at Metropolitan Avenue, and arcades that run along the majority of the waterfront frontage of both buildings. However, the Commission notes that swimming in the East River is prohibited, and that the beach and intertidal areas are designed to deter wading and direct access. The Commission fully supports the recommendations by DEP that water quality monitoring be conducted on a regular basis as necessary and that signage and staffing is provided to ensure public safety, and notes that the applicant has agreed to meet these requests.

The Commission believes the bulk, parking, and waterfront public access area waivers that are

part of the proposed special permits would produce a site plan that is superior to that which would be permitted under the proposed C6-2 zoning. The proposed actions will facilitate a development that will reuse an unused site in a manner consistent with the mixed-use context of the surrounding area with a superior site plan that provides high-quality and resilient open space, and much-needed affordable housing in Williamsburg.

### **Zoning Map Amendment (C 220062 ZMK)**

The Commission believes the proposed zoning map amendment to change an M3-1 zoning district to C6-2 and M1-4 zoning districts, is appropriate.

This site was not included within the 2005 rezoning due to an existing active industrial use on the site but that use is no longer present. The 2005 rezoning mapped R6 and R8 districts along the waterfront with the goal of transforming vacant industrial land into much needed housing, including permanently affordable housing, and waterfront open space. The Commission believes that the proposed change of use from industrial to residential at an increased density is aligned with the goals of the 2005 rezoning.

The current M3-1 zoning district allows only commercial and industrial uses, including open industrial uses, with a maximum FAR of 2.0 and no longer reflects the use or character of the project area and surrounding area. Zoning that allows residential use here is appropriate.

The Commission believes that the C6-2 district, an R8 residential equivalent that is proposed for the development site, is appropriate at this location, being in line the 2005 rezoning that introduced districts allowing residential use along the waterfront. As such, the Commission had approved a C6-2 district for the 2010 Domino rezoning, allowing housing, community facility, and commercial uses to a density of 6.5 FAR, with Inclusionary Housing. Within a designated MIH area, C6-2 districts allow a maximum 7.2 FAR for residential uses.

The Commission believes the higher density of the proposed C6-2 zoning district is appropriate

due to project area's location within a dense, mixed-use neighborhood and proximity to amenities and transit options.

The proposed zoning will permit uses that are consistent with the mixed-use character of the neighborhood and other waterfront developments. The C6-2 zoning district allows a broad range of community facility and commercial uses on multiple floors of buildings and will allow the proposed programming of the two buildings, including both community facility and commercial uses on upper floors.

The Commission believes that changing the zoning from M3-1 to M1-4 on the non-applicant owned sites will not only create a buffer between the proposed project to the west and the mixed-use area to the east, but also allow a wider array of commercial and industrial uses that are more compatible with and in service to the surrounding community.

The Commission recognizes the condition received from Community Board 1 that the density of the project should be reduced by a third. The density facilitated by the proposed zoning districts will be consistent with the density of other nearby zoning districts and will allow the construction of more housing with affordable housing, in conjunction with the addition of a significant amount of open space along the waterfront near transit and services, to serve nearby residents as well as other New Yorkers.

### **Zoning Text Amendments (N 220063 ZRK)**

The Commission believes that the proposed zoning text amendments, as modified herein, are appropriate. The amendments would map a Mandatory Inclusionary Housing area, as well as facilitate the unique waterfront design.

### **MIH Text Amendment to Appendix F of the Zoning Resolution**

The Commission believes that the establishment of an MIH area through the proposed zoning text amendment is consistent with the City's policy of requiring income-restricted housing in

areas being rezoned to allow for a substantial increase in residential capacity. The MIH area mapped will be coterminous with the proposed C6-2 zoning district. The applicant is proposing to map MIH Option 1 and will therefore be required to allocate 25 percent of the residential floor area to permanently affordable for households at an average of 60 percent of AMI, with no income band exceeding 130 percent of AMI. The proposed development is expected to create 263 permanently affordable residences.

#### Modification to LSGD ownership requirements of ZR Section 74-742

The Commission believes that the modification to ZR Section 74-742 that allows the applicant to be the sole applicant of the LSGD special permit application involving City- or State-owned property is appropriate. Unlike the upland demapped street bed, the publicly owned land under water is inalienable and cannot be conveyed to the applicant after approval. This modification will allow the applicant to advance a large-scale project with portions that will remain in public ownership.

#### Modification to ZR Section 74-743 (a) and (b)

The Commission believes that the text amendment to allow the waiver of waterfront requirements as part of a LSGD is appropriate, as modified. This text amendment, as modified, allows the reconfiguration of the upland lot and unique design of the in-water structures.

The text amendment will allow new platforms seaward of the bulkhead line to be part of the upland lot area of the waterfront zoning lot, provided that it is equivalent to the amount of upland lot area seaward of the existing shoreline that would be removed. This provision will allow the applicant to recoup existing available floor area under current conditions, which would be reconfigured as a result of the proposed shoreline modification and cut and fill strategies. The Commission believes that this amendment provides flexibility to alter the shoreline to facilitate a more resilient design, while not disincentivizing this type of intervention by not reducing overall floor area generated.

The text amendment will also provide more flexibility for an innovative waterfront design, allowing reconstructed in-water structures to be included in the LSGD without being subject to certain design requirements, provided that such structures are an integral part of the proposed LSGD resulting in a superior site plan and appropriate relationship with the surrounding waterfront areas and shorelines and provide a significant public access to and within the seaward portion of the LSGD.

The Commission believes that the portion of the text amendment to allow new, relocated, reconstructed piers to generate floor area is not necessary. Pursuant to the text amendment as proposed by the applicant, 140,000 square feet would be generated by the new piers. However, the proposed actions, including the Zoning Map Amendment and the City Map Amendment, generate sufficient floor area to facilitate the proposed project. This portion of the proposed Zoning Text Amendment thus allows for an unnecessary excess of floor area for the project. Elimination of this provision has no effect on the project and other proposed provisions that allow for reconfigured in-water structures remain. Therefore, the Commission modifies the application to eliminate this aspect of the text amendment.

#### **Zoning Special Permit (C 220064 ZSK)**

The Commission believes the special permit, as modified, is appropriate. As part of this special permit, the applicant requests the transfer of floor area from new in-water structures per the text amendment to ZR Section 74-743 and waivers associated with regulations pertaining to the distribution of floor area, height and setback, maximum tower floorplates, and maximum width of walls facing shorelines. The Commission finds that the application, as modified, meets the relevant requirements in order to grant the special permit.

The Commission believes these waivers will result in a superior site plan that relates to its surroundings and does not overburden any portion of the development or surrounding streets. The Commission also believes that the proposed in-water structures are an integral component of the overall site plan, support an appropriate relationship with the surrounding waterfront areas,

and provide significant public access to the water.

The Commission recognizes that this unique design scheme, reflective of the historic and future site conditions, requires modifications to the height and setback regulations of the proposed zoning districts, including the maximum building and base height, the maximum floor plate and length of walls facing the shoreline above the base height, and deems these modifications appropriate to facilitate a superior site plan.

#### Floor Area Computations

The Commission believes that the proposed upland lot reconfiguration that, per the proposed text amendment to ZR Section 74-743 facilitated through the replacement of existing land beyond the bulkhead line as new platforms, is appropriate. Through the proposed text amendment, the lot area of the new platform will be included in the upland lot and capped at the existing upland lot area westward of the bulkhead line for the purposes of generating floor area (8,267 square feet). The Commission believes allowing the lot area of the platform to be included in the upland lot but limited to the existing amount of land seaward of the bulkhead line for the purposes of generating floor area, is appropriate, as it will allow the reconfiguration of the shoreline while retaining the amount of existing upland area.

#### Distribution of Floor Area

The Commission believes that the request to reduce the required amount of floor area at a height of 20 feet from 30 percent to 25 percent is an appropriate waiver to facilitate the proposed site plan, which aims to maximize the amount of public open space by reducing building footprints.

#### Building Heights and Setbacks

The Commission believes that the proposed design provides for a unique building form and heights that results from the cut and fill strategy and triangular footprints while maximizing the amount of open space.

The Commission notes the unique massing scheme proposed by the applicant. As proposed the buildings rise from a triangular footprint to a rectilinear footprint to a height of 560 feet (Building A) and 710 feet (Building B), without a formal setback at the required setback height. Instead, the applicant's proposed towers gradually set back as they rise, starting at the ground floor level. The minimized footprints and ample surrounding open space allow access to light and air on the site, and the graduated setback will allow light and air into the streets. To accommodate more efficient tower floorplates and transition between a triangular footprint to a rectangular tower on the upper floors, the buildings gradually cantilever back out towards the waterfront. The Commission believes the requested waiver is appropriate to accommodate the unique building form but supports design strategies that mitigate the scale of the towers as experienced from a pedestrian perspective and address the lack of traditional base height and setback, codified in the drawing design notes.

The Commission recognizes the conditions received in Community Board 1's recommendation for the applicant to alter the buildings to better respond to the surrounding context. The Commission is pleased that the applicant has worked with the Department to develop design notes that help better relate the base of the building to its surrounding context, including the Austin Nichols building, as well as to provide for an improved pedestrian experience along North Third and River streets.

#### Maximum Tower Floorplates

The Commission believes that the request to modify the maximum tower floorplates limits above the maximum base height from 8,100 square feet to between 9,900 square feet and 15,000 square feet is appropriate to accommodate the proposed site plan and provide for more typical residential floorplates.

#### Maximum Width of Walls Facing the Shoreline

The Commission believes that the request to allow the widths of walls facing the shoreline above the base height on waterfront blocks to be greater than 100 feet is appropriate. Building A will

have walls facing the shoreline of between 28 and 199 feet in width and Building B will have walls facing the shoreline of between 50 and 158 feet in width. The Commission believes that this flexibility is needed to accommodate the unique design that is the result of the towers being oriented perpendicular to each other in combination with a sloped building form which results in wider building portions facing the shoreline in multiple directions.

#### Waterfront Regulations for New Piers or Platforms

The Commission believes that considering the new piers and platforms as part of the LSGD instead of adhering to the use, access, and design requirements in the waterfront regulations is appropriate due to the non-traditional nature of the piers, which contain breakwaters, pathways of varying widths, educational outposts, and hybrid seating and railing typologies, and other unique design elements.

#### Design Controls

The Commission believes that the design controls, as modified herein, which form part of this special permit, will help ensure that the project, as constructed, will include the key elements of the proposed design. In addition to the proposed drawing design notes that include guarantees to screen bulkheads and other mechanical devices, minimum ground floor transparency, and maximum arcade column widths, the Commission further modifies these design notes as follows. The required ground floor-to-ceiling height is increased to a minimum of 18 feet to ensure an appropriate scale and proportion for the ground floors of the arcades. A zone on both buildings is established where horizontal elements will project beyond the façade at every level up to a height of 80 feet to accentuate the base of the towers and create a better relationship between the lower portion of the tower and its surrounding context, and to the human scale.

The Commission is pleased that the site plan dedicates much of the site area to public space that improves the waterfront and connects it to the neighboring communities. The significant increase in additional public space is made possible by the compact building footprints, which necessitate the proposed building heights. The Commission believes that the proposed bulk modifications

will result in a better site plan and a better relationship among the buildings, the proposed waterfront public access area, the adjacent streets, surrounding development and the shoreline of the East River, than would be achieved absent such modifications. The modifications to height and setback regulations will allow the buildings to be located at the northeastern and southeastern portions of the zoning lot, in a manner that shifts the distribution of bulk away from the significant open areas and the central portion of the zoning lot between the buildings. The location and configuration also respond to the cut into the site which facilitates the wetland and beach condition. The Commission believes that this requested special permit is appropriate as it will create a superior site plan, in which the proposed buildings relate well to each other and to open areas on and around the site and will not unduly burden any portion of the site or the nearby street network.

#### **Zoning Special Permit (C 220070 ZSK)**

The Commission believes that the zoning special permit, pursuant to ZR Section 74-533 to reduce parking to facilitate affordable housing in the Transit Zone, is appropriate. Because site is within close proximity to the Bedford Avenue L and the Marcy Avenue J, M, Z train subway stations and access to the B32 bus route that runs long Kent Avenue, the Commission finds that the reduction in parking will not cause traffic congestion or have undue adverse effects on the surrounding area and will support the creation of affordable housing.

#### **Zoning Waterfront Authorizations (N 220065 ZAK, N 220068 ZAK, N 220069 ZAK)**

The Commission believes the proposed authorizations are appropriate and that the findings required in ZR Section 62-822 have been met. The modification of waterfront public access requirements pertaining to dimensions, configuration, planting and other design requirements of the required waterfront public access areas, and approval of the phased implementation of these public access improvements will facilitate the construction of 2.9 acres of WPAA, activating a formerly industrial site along the waterfront with varied programmatic experiences. The WPAA will be designed to provide unique opportunities to access the water, through a network of in-water piers and outposts, a beach, tidal marshlands, play areas, large lawn, and other features.

The Commission believes that the modifications to the dimensional requirements of ZR Section 62-50 are appropriate. Due to the shallowness of the site in certain locations and unique cut programming, the proposed SPW is reduced to approximately 29 to 34 feet at certain locations. The Commission believes that the reduction in the width and depth of the proposed SPW and waterfront yards will accommodate a tidal wetland area in one part of the site and reflects the shallowness of the site near the connection to Grand Ferry Park at the southern end of the site as well as the location and footprints of the proposed buildings. The Commission also believes that the reconfiguration of the SPAAs is appropriate to better align with the open space programming and to accommodate site-specific conditions including the location of pathways, additional space needs to accommodate site grading together with planting and seating amenities.

Regarding the modifications to the SPAAs' width to depth ratio, the Commission notes that the requested changes are in response to the significant overall length of the site and its' relatively shallow depth. The Commission believes that the dimensions of the WPAA are generous and considers the reductions to the dimensional requirements to be the minimum necessary to accommodate a viable building program and open space design at locations where site conditions are unique. The Commission appreciates the inclusion of nearly 40,800 square feet of additional PAAs that work together with SPAAs to create an expanded open space that can comfortably accommodate the envisioned programming and design features.

The Commission believes that the proposed waterfront design is of high quality and provides users with unique and varied experience on the waterfront. The requested modifications to the design requirements of ZR Section 62-60 create a WPAA that is equivalent or superior to one that could be designed through strict adherence to zoning. Further, the Commission believes certain elements of the requested waivers, including permitted obstructions, location of the circulation path, and heights of retaining walls are appropriate as they are largely the result of the new proposed conditions of the reconfiguration of the shoreline, site grading and resiliency measures.

The Commission notes that other elements of the requested waivers, including the reduction in seating and social seating linear footing, table linear footing, lawn area, and screening buffer width, is appropriate to facilitate the proposed design. The Commission acknowledges that additional seating is provided in the PAA and as such the overall seating required is provided across the accessible open spaces of the site.

Regarding the screening buffer waiver, which is requested along the shared lot line with the NYPA plant, the Commission understands that the applicant may program this portion of land in front the NYPA facility with community kiosks. Under this alternative plan, these small structures would replace the screening buffer and activate the open space along this frontage.

The Commission also notes that elements are needed to ensure safety and resiliency of the in-water ring, breakwater paths, and tidal trails, including increased height of fences and walls and location of new fences and guardrails. The Commission also acknowledges that metal grating is needed in the ring and pier structures in response to NYS DEC permeability requirements.

The Commission also notes that the authorization and restrictive declaration call for a phasing plan that requires the waterfront buildings to be built sequentially. These plans provide an amount of open space in each phase that is proportional to or greater than the amount of development proposed for that phase. The Commission notes there will be two WPAA phases tied to the development of the two buildings, which will proceed from north to south. The WPAA associated with the first phase will provide 99 percent of the overall WPAA requirement, resulting in the construction of the esplanade from North Third Street to Grand Ferry Park and a portion of Metropolitan Avenue. Phase 1 will also include portions of the PAA lawn areas, and a pathway to provide interim access to the WPAA. Phase 2 will include the remainder of the open space. The Commission believes that the proposed phasing plan provides for functional and accessible open space at each interim phase.

The Commission notes that in response to concerns around the potential impact of wind on the open space, the location of moveable seating and tables along the arcades and trees at the entrance of Metropolitan Avenue have been modified to improve user experience. The tree species along North Third Street has also been replaced with a more wind-resilient species.

#### **Landfill (C 220061 MLK)**

The Commission finds that the proposed landfill action, which will add 6,319 square feet of fill at the northwestern portion of the site adjacent to the North Third Street entrance is appropriate as part of the open space and shoreline plan. The proposed fill will be configured in a manner that facilitates the creation of a protected cove and beach, while expanding the extent of the shoreline. The fill area will accommodate a portion of the shore public walkway and will serve as an integral part of the overall breakwater system.

#### **City Map Change (C 210425 MMK)**

The CPC believes that the proposed City Map change for the elimination, discontinuance, and closing of portions of Metropolitan Avenue and a portion of North First Street west of River Street is appropriate. The Commission notes that this action will facilitate the development of the seamless site plan, facilitating one larger open space and allow pedestrian access to the open space from River Street, and that the demapped portion of North First Street would function as part of the proposed WPAA. The demapped streets would generate 190,700 square feet, which were not initially proposed to be utilized by the Proposed Development, but per the modification to the text amendment, will be needed to facilitate to the project.

The Commission notes that the applicant has also submitted a Chair's certification pursuant to ZR Section 62-811 to demonstrate compliance with the waterfront regulations, as modified by the requested authorizations, as well requested a ten-year lapse period for the LSGD special permit pursuant to ZR Section 11-42(c). The Commission believes, given the scope and complexity of the proposal, that the plans demonstrate that a longer time period for substantial completion is required for the proposed phased construction of the multi-building development,

and pursuant to Section 11- 42(c) the Commission extends the period set forth in paragraph (a) of Section 11-42 to a period not to exceed ten years.

Regarding the Borough President's request that the CPC and City Council modify the regulations of the MIH program, and require a community facility use through the special permit drawings, the Commission notes that these requests are beyond the scope of this application.

Regarding the Community Board's condition to reduce the number of units, the Commission believes that the site is an appropriate location for increased residential density, with good access to transit and local services and resources. The Commission notes that the applicant will provide private infrastructure to help off-set potential impacts of population increase. Regarding the Community Board's request to redesign the towers to better relate to the surrounding context, the Commission has modified the design to more strongly create a relationship between the base of Building A and the Austin Nichols building and River Street.

The Commission received conditions from the Community Board and the Borough President related to facilitating deeper affordability, a more diverse bedroom mix, expanded marketing and outreach efforts, and local preference for affordable housing. The Commission is pleased that the applicants have emphasized their ongoing work with local stakeholders to deepen affordability levels to better match community goals but notes that affordable housing funding contracts are outside of its purview.

The Community Board's and Borough President's recommendations also included a number of modifications and conditions that are beyond the CPC's purview with respect to the proposed actions as they fall under the purview of other entities, including the Department of Housing Preservation and Development (HPD), the Department of Transportation, the Department of Parks and Recreation, and the City Council.

## **RESOLUTION**

**RESOLVED**, that having considered the Final Environmental Impact Statement (FEIS), for which a Notice of Completion was issued on November 5, 2021, with respect to this application (CEQR No. 21DCP157K), the City Planning Commission finds that the requirements of the New York State Environmental Quality Review Act and Regulations have been met and that:

1. The environmental impacts disclosed in the FEIS were evaluated in relation to the social, economic, and other considerations associated with the action[s] that are set forth in this report; and
2. Consistent with social, economic and other essential considerations from among the reasonable alternatives available, the action is one which avoids or minimizes adverse environmental impacts to the maximum extent practicable; and
3. The adverse environmental impacts identified in the FEIS will be minimized or avoided to the maximum extent practicable by incorporating as conditions to the approval, pursuant to the restrictive declaration dated November 15, 2021, those project components related to the environment and mitigation measures that were identified as practicable.

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

**RESOLVED**, that the City Planning Commission, in its capacity as the City Coastal Commission, has reviewed the waterfront aspects of this application and finds that the proposed action will not substantially hinder the achievement of any WRP policy and hereby determines that this action is consistent with WRP policies; and be it further

**RESOLVED**, by the City Planning Commission, pursuant to Sections 197-c and 200 of the New York City Charter that based on the environmental determination and consideration described in this report, the Zoning Resolution of the City of New York, effective as of December 15, 1961, and as subsequently amended, is further amended by changing the Zoning Map, Section No. 12c:

1. changing from an M3-1 District to a C6-2 District property bounded by North 3rd Street, River Street, North 1st Street, a line 200 feet northwesterly of River Street, a northeasterly boundary line of Grand Ferry Park, and the U.S. Pierhead Line; and
2. changing from an M3-1 District to an M1-4 District property bounded by North 3rd Street, Kent Avenue, North 1st Street, and River Street;

Borough of Brooklyn, Community District 1, as shown on a diagram (for illustrative purposes only) dated August 16, 2021, and subject to the conditions of CEQR Declaration E-636.

The above resolution (C 220062 ZMK), duly adopted by the City Planning Commission on November 17, 2021 (Calendar No. 8), is filed with the Office of the Speaker, City Council, and the Borough President together with a copy of the plans of the development, in accordance with the requirements of Section 197-d of the New York City Charter.

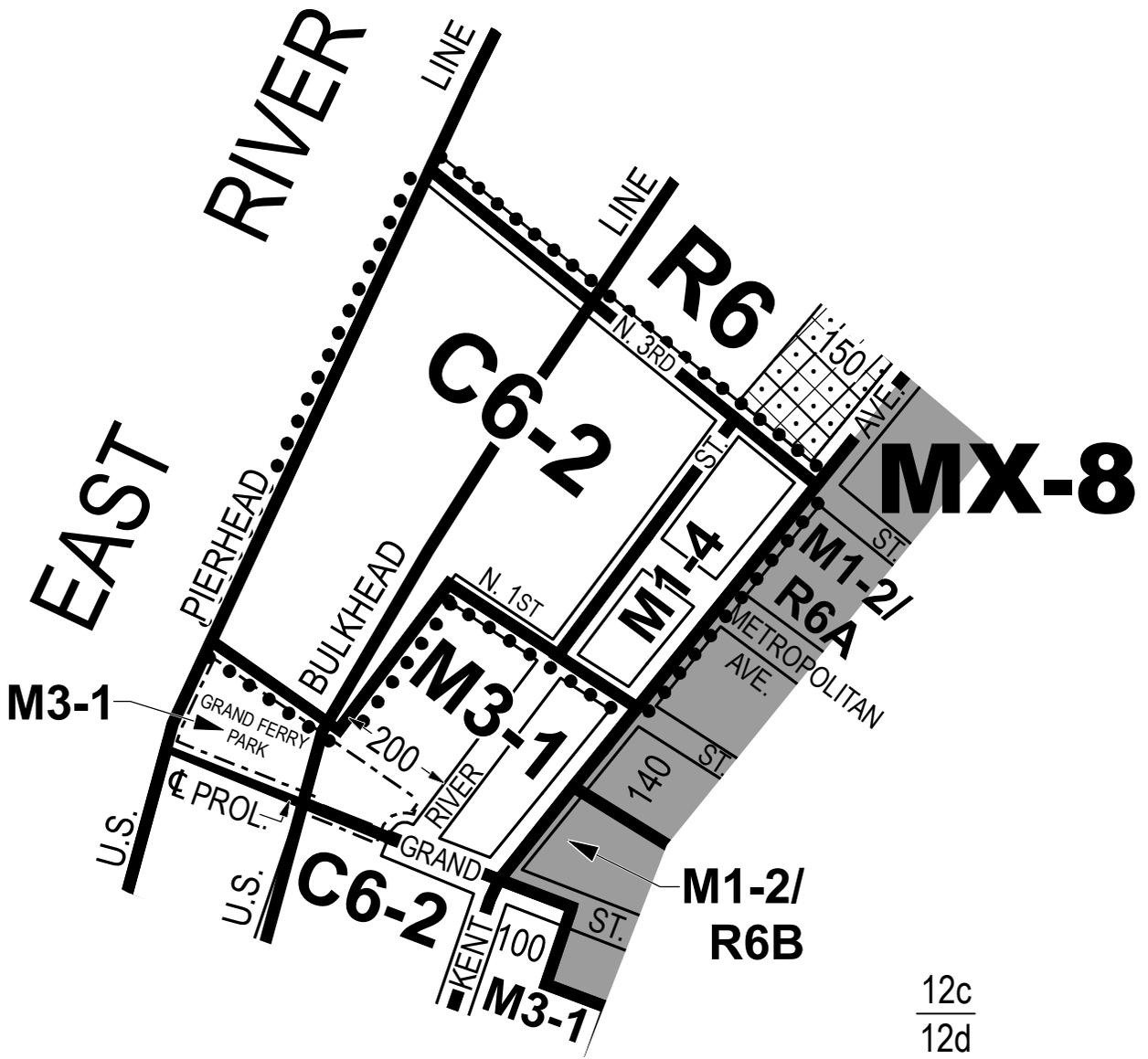
**ANITA LAREMONT**, *Chair*

**KENNETH J. KNUCKLES, ESQ.**, *Vice Chairman*

**DAVID BURNEY, ALLEN P. CAPPELLI, ESQ., ALFRED C. CERULLO, III,**

**JOSEPH DOUEK, RICHARD W. EADDY, ANNA HAYES LEVIN,**

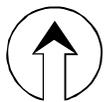
**ORLANDO MARIN, RAJ RAMPERSHAD**, *Commissioners*



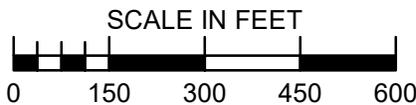
CITY PLANNING COMMISSION  
 CITY OF NEW YORK  
 DIAGRAM SHOWING PROPOSED  
**ZONING CHANGE**  
 ON SECTIONAL MAP

**12c**  
 BOROUGH OF  
**BROOKLYN**

*S. Lenard*  
 S. Lenard, Director  
 Technical Review Division



New York, Certification Date:  
 August 16, 2021



**NOTE:**

- Indicates Zoning District Boundary
- The area enclosed by the dotted line is proposed to be rezoned by changing an existing M3-1 District to C6-2 and M1-4 Districts.
- Indicates a C2-4 District
- Indicates a Special Mixed Use District (**MX-8**)

NOTE: THIS DIAGRAM IS FOR ILLUSTRATIVE PURPOSES ONLY.  
 THIS DIAGRAM REFLECTS PROPOSED CHANGES IN THE CITY MAP PURSUANT TO RELATED MAPPING  
 APPLICATION C 210425 MMK



# COMMUNITY/BOROUGH BOARD RECOMMENDATION

<b>Project Name:</b> River Ring	
<b>Applicant:</b> River Street LLC	<b>Applicant's Primary Contact:</b> David Lombino
<b>Application #</b> C220062ZMK	<b>Borough:</b>
<b>CEQR Number:</b> 21DCP157K	<b>Validated Community Districts:</b> K01

**Docket Description:**

IN THE MATTER OF an application submitted by River Street Partners LLC pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 12c:

1. changing from an M3-1 District to a C6-2 District property bounded by North 3rd Street, River Street, North 1st Street, a line 200 feet northwesterly of River Street, a northeasterly boundary line of Grand Ferry Park, and the U.S. Pierhead Line; and

2. changing from an M3-1 District to an M1-4 District property bounded by North 3rd Street, Kent Avenue, North 1st Street, and River Street;

Borough of Brooklyn, Community District 1, as shown on a diagram (for illustrative purposes only) dated August 16, 2021, and subject to the conditions of CEQR Declaration E-636.

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

<b>RECOMMENDATION: Conditional Favorable</b>			
<b># In Favor:</b> 20	<b># Against:</b> 15	<b># Abstaining:</b> 1	<b>Total members appointed to the board:</b> 36
<b>Date of Vote:</b> 9/15/2021 12:00 AM		<b>Vote Location:</b> WEBEX	

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

<b>Date of Public Hearing:</b> 9/1/2021 6:30 PM	
<b>Was a quorum present?</b> Yes	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
<b>Public Hearing Location:</b>	Land Use, ULURP & Landmarks Committee Held Public Hearing, MS 126 (John Ericsson Middle School), 424 Leonard Street, Brooklyn, NY 11222 (Between Bayard Street & Engert Avenue)

**CONSIDERATION:** Please see the attached.

Recommendation submitted by	BK CB1	Date: 9/15/2021 10:42 AM
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# COMMUNITY/BOROUGH BOARD RECOMMENDATION

<b>Project Name:</b> River Ring	
<b>Applicant:</b> River Street LLC	<b>Applicant's Primary Contact:</b> David Lombino
<b>Application #</b> N220063ZRK	<b>Borough:</b>
<b>CEQR Number:</b> 21DCP157K	<b>Validated Community Districts:</b> K01

**Docket Description:**

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

<b>RECOMMENDATION: Conditional Favorable</b>			
<b># In Favor:</b> 20	<b># Against:</b> 15	<b># Abstaining:</b> 1	<b>Total members appointed to the board:</b> 36
<b>Date of Vote:</b> 9/15/2021 12:00 AM		<b>Vote Location:</b> WEBEX	

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

<b>Date of Public Hearing:</b> 9/1/2021 6:30 PM	
<b>Was a quorum present?</b> Yes	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
<b>Public Hearing Location:</b>	Land Use, ULURP & Landmarks Committee Held Public Hearing, MS 126 (John Ericsson Middle School), 424 Leonard Street, Brooklyn, NY 11222 (Between Bayard Street & Engert Avenue)

**CONSIDERATION:** Please see the attached.

Recommendation submitted by	BK CB1	Date: 9/15/2021 10:42 AM
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# COMMUNITY/BOROUGH BOARD RECOMMENDATION

<b>Project Name:</b> River Ring	
<b>Applicant:</b> River Street LLC	<b>Applicant's Primary Contact:</b> David Lombino
<b>Application #</b> C220064ZSK	<b>Borough:</b>
<b>CEQR Number:</b> 21DCP157K	<b>Validated Community Districts:</b> K01

**Docket Description:**  
 IN THE MATTER OF an application submitted by River Street Partners LLC pursuant to Sections 197-c and 201 of the New York City Charter for, for the grant of special permits pursuant to the following Sections of the Zoning Resolution:

1. Section 74-743(a)(2) - to modify the height and setback, floor area distribution, maximum residential tower size, and maximum width of building walls facing a shoreline requirements of Section 62-341 (Developments on land and platforms); and
2. Section 74-743(a)(13)\*:
  - a. to allow existing land projecting seaward of the bulkhead line to be replaced or reconstructed with new platforms and such platform be included as part of the upland lot;
  - b. to allow such new piers and platforms to be considered lot area for the purposes of determining allowable floor area, dwelling units, and other bulk regulations of Section 62-31(b) & (c) (Bulk Computations on Waterfront Zoning Lots); and
  - c. to waive the requirements of Sections 62-242 (Uses on new piers and platforms), 62-54 (Requirements for Public Access on Piers, and Section 62-63 (Design Requirements for Public Access on Piers and Floating Structures);

in connection with a proposed mixed-use development, within a large-scale general development, on property generally bounded by North 3rd Street, River Street, North 1st Street, a line 200 feet northwesterly of River Street, Grand Ferry Park, and the U.S. Pierhead Line (Block 2355, Lots 1 and 20; Block 2361, Lots 1, 20 and 21; and Block 2376, Lot 50; and the demapped portions of Metropolitan Avenue\*\* and North 1st Street\*\*), in a C6-2 District\*\*\*, Borough of Brooklyn, Community District 1.

\* Note: Section 74-743 is proposed to be changed under a concurrent related application for a Zoning Text Change (N 220063 ZRK).  
 \*\* Note: Portions of Metropolitan Avenue and North 1st Street are proposed to be demapped under a concurrent related application for a City Map change (C 210425 MMK).

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

<b>RECOMMENDATION: Conditional Favorable</b>			
<b># In Favor:</b> 20	<b># Against:</b> 15	<b># Abstaining:</b> 1	<b>Total members appointed to the board:</b> 36
<b>Date of Vote:</b> 9/15/2021 12:00 AM		<b>Vote Location:</b> WEBEX	

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

<b>Date of Public Hearing:</b> 9/1/2021 6:30 PM	
<b>Was a quorum present?</b> Yes	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
<b>Public Hearing Location:</b>	Land Use, ULURP & Landmarks Committee Held Public Hearing, MS 126 (John Ericsson Middle School), 424 Leonard Street, Brooklyn, NY 11222 (Between Bayard Street & Engert Avenue)

**CONSIDERATION:** Please see the attached.



# COMMUNITY/BOROUGH BOARD RECOMMENDATION

Recommendation submitted by	BK CB1	Date: 9/15/2021 10:42 AM
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# COMMUNITY/BOROUGH BOARD RECOMMENDATION

<b>Project Name:</b> River Ring	
<b>Applicant:</b> River Street LLC	<b>Applicant's Primary Contact:</b> David Lombino
<b>Application #</b> C220070ZSK	<b>Borough:</b>
<b>CEQR Number:</b> 21DCP157K	<b>Validated Community Districts:</b> K01

**Docket Description:**  
 IN THE MATTER OF an application submitted by River Street Partners LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-533 of the Zoning Resolution to reduce the number of required accessory off-street parking spaces from 40 percent to 20 percent, for dwelling units in a development within a Transit Zone, that includes at least 20 percent of all dwelling units as income-restricted housing units, in connection with a proposed mixed-use development, within a large-scale general development, on property generally bounded by North 3rd Street, River Street, North 1st Street, a line 200 feet northwesterly of River Street, Grand Ferry Park, and the U.S. Pierhead Line (Block 2355, Lots 1 and 20; Block 2361, Lots 1, 20 and 21; and Block 2376, Lot 50; and the demapped portions of Metropolitan Avenue\*\* and North 1st Street\*\*), in C6-2 District\*\*\*, Borough of Brooklyn, Community District 1.

\* Note: Section 74-743 is proposed to be changed under a concurrent related application for a Zoning Text Change (N 220063 ZRK).

\*\* Note: Portions of Metropolitan Avenue and North 1st Street are proposed to be demapped under a concurrent related application for a City Map change (C 210425 MMK).

\*\*\* Note: This site is proposed to be rezoned by changing an existing M3-1 District to a C6-2 District under a concurrent related application for a Zoning Map change (C 220062 ZMK).

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

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

<b>RECOMMENDATION: Conditional Favorable</b>			
<b># In Favor:</b> 20	<b># Against:</b> 15	<b># Abstaining:</b> 1	<b>Total members appointed to the board:</b> 36
<b>Date of Vote:</b> 9/15/2021 12:00 AM		<b>Vote Location:</b> WEBEX	

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<b>Date of Public Hearing:</b> 9/1/2021 6:30 PM	
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<b>Public Hearing Location:</b>	Land Use, ULURP & Landmarks Committee Held Public Hearing, MS 126 (John Ericsson Middle School), 424 Leonard Street, Brooklyn, NY 11222 (Between Bayard Street & Engert Avenue)

<b>CONSIDERATION:</b> Please see the attached.		
Recommendation submitted by	BK CB1	Date: 9/15/2021 10:42 AM



# COMMUNITY/BOROUGH BOARD RECOMMENDATION

<b>Project Name:</b> River Ring	
<b>Applicant:</b> River Street LLC	<b>Applicant's Primary Contact:</b> David Lombino
<b>Application #</b> C220061MLK	<b>Borough:</b>
<b>CEQR Number:</b> 21DCP157K	<b>Validated Community Districts:</b> K01

**Docket Description:**  
 IN THE MATTER OF an application submitted by River Street Partners LLC pursuant to Section 197-c of the New York City Charter for a landfill of approximately 6,230 square feet located in the East River, in connection with a proposed mixed-use development, within a large-scale general development, on property generally bounded by North 3rd Street, River Street, North 1st Street, a line 200 feet northwesterly of River Street, Grand Ferry Park, and the U.S. Pierhead Line (Block 2355, Lots 1 and 20; Block 2361, Lots 1, 20 and 21; and Block 2376, Lot 50; and the demapped portions of Metropolitan Avenue\*\* and North 1st Street\*\*), in C6-2 District\*\*\*, Borough of Brooklyn, Community District 1.

\* Note: Section 74-743 is proposed to be changed under a concurrent related application for a Zoning Text Change (N 220063 ZRK).  
 \*\* Note: Portions of Metropolitan Avenue and North 1st Street are proposed to be demapped under a concurrent related application for a City Map change (C 210425 MMK).  
 \*\*\* Note: This site is proposed to be rezoned by changing an existing M3-1 District to a C6-2 District under a concurrent related application for a Zoning Map change (C 220062 ZMK).

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

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

<b>RECOMMENDATION: Conditional Favorable</b>			
<b># In Favor:</b> 20	<b># Against:</b> 15	<b># Abstaining:</b> 1	<b>Total members appointed to the board:</b> 36
<b>Date of Vote:</b> 9/15/2021 12:00 AM		<b>Vote Location:</b> WEBEX	

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

<b>Date of Public Hearing:</b> 9/1/2021 6:30 PM	
<b>Was a quorum present?</b> Yes	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
<b>Public Hearing Location:</b>	Land Use, ULURP & Landmarks Committee Held Public Hearing, MS 126 (John Ericsson Middle School), 424 Leonard Street, Brooklyn, NY 11222 (Between Bayard Street & Engert Avenue)

<b>CONSIDERATION:</b> Please see the attached.		
Recommendation submitted by	BK CB1	Date: 9/15/2021 10:42 AM



# COMMUNITY/BOROUGH BOARD RECOMMENDATION

<b>Project Name:</b> River Ring	
<b>Applicant:</b> River Street LLC	<b>Applicant's Primary Contact:</b> David Lombino
<b>Application #</b> N220065ZAK	<b>Borough:</b>
<b>CEQR Number:</b> 21DCP157K	<b>Validated Community Districts:</b> K01

**Docket Description:**

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

<b>RECOMMENDATION: Conditional Favorable</b>			
<b># In Favor:</b> 20	<b># Against:</b> 15	<b># Abstaining:</b> 1	<b>Total members appointed to the board:</b> 36
<b>Date of Vote:</b> 9/15/2021 12:00 AM		<b>Vote Location:</b> WEBEX	

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

<b>Date of Public Hearing:</b> 9/1/2021 6:30 PM	
<b>Was a quorum present?</b> Yes	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
<b>Public Hearing Location:</b>	Land Use, ULURP & Landmarks Committee Held Public Hearing, MS 126 (John Ericsson Middle School), 424 Leonard Street, Brooklyn, NY 11222 (Between Bayard Street & Engert Avenue)

**CONSIDERATION:** Please see the attached.

Recommendation submitted by	BK CB1	Date: 9/15/2021 10:42 AM
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# COMMUNITY/BOROUGH BOARD RECOMMENDATION

<b>Project Name:</b> River Ring	
<b>Applicant:</b> River Street LLC	<b>Applicant's Primary Contact:</b> David Lombino
<b>Application #</b> N220068ZAK	<b>Borough:</b>
<b>CEQR Number:</b> 21DCP157K	<b>Validated Community Districts:</b> K01

**Docket Description:**

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

<b>RECOMMENDATION: Conditional Favorable</b>			
<b># In Favor:</b> 20	<b># Against:</b> 15	<b># Abstaining:</b> 1	<b>Total members appointed to the board:</b> 36
<b>Date of Vote:</b> 9/15/2021 12:00 AM		<b>Vote Location:</b> WEBEX	

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

<b>Date of Public Hearing:</b> 9/1/2021 6:30 PM	
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**CONSIDERATION:** Please see the attached.

Recommendation submitted by	BK CB1	Date: 9/15/2021 10:42 AM
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# COMMUNITY/BOROUGH BOARD RECOMMENDATION

<b>Project Name:</b> River Ring	
<b>Applicant:</b> River Street LLC	<b>Applicant's Primary Contact:</b> David Lombino
<b>Application #</b> N220069ZAK	<b>Borough:</b>
<b>CEQR Number:</b> 21DCP157K	<b>Validated Community Districts:</b> K01

**Docket Description:**

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

<b>RECOMMENDATION: Conditional Favorable</b>			
<b># In Favor:</b> 20	<b># Against:</b> 15	<b># Abstaining:</b> 1	<b>Total members appointed to the board:</b> 36
<b>Date of Vote:</b> 9/15/2021 12:00 AM		<b>Vote Location:</b> WEBEX	

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Recommendation submitted by	BK CB1	Date: 9/15/2021 10:42 AM
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# COMMUNITY/BOROUGH BOARD RECOMMENDATION

<b>Project Name:</b> River Ring	
<b>Applicant:</b> River Street LLC	<b>Applicant's Primary Contact:</b> David Lombino
<b>Application #</b> N220066ZCK	<b>Borough:</b>
<b>CEQR Number:</b> 21DCP157K	<b>Validated Community Districts:</b> K01

**Docket Description:**

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

**RECOMMENDATION: Conditional Favorable**

<b># In Favor:</b> 20	<b># Against:</b> 15	<b># Abstaining:</b> 1	<b>Total members appointed to the board:</b> 36
<b>Date of Vote:</b> 9/15/2021 12:00 AM		<b>Vote Location:</b> WEBEX	

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<b>Date of Public Hearing:</b> 9/1/2021 6:30 PM	
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<b>Public Hearing Location:</b>	Land Use, ULURP & Landmarks Committee Held Public Hearing, MS 126 (John Ericsson Middle School), 424 Leonard Street, Brooklyn, NY 11222 (Between Bayard Street & Engert Avenue)

**CONSIDERATION:** Please see the attached.

Recommendation submitted by	BK CB1	Date: 9/15/2021 10:42 AM
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## Brooklyn Borough President Recommendation

CITY PLANNING COMMISSION

120 Broadway, 31<sup>st</sup> Floor, New York, NY 10271

[CalendarOffice@planning.nyc.gov](mailto:CalendarOffice@planning.nyc.gov)

### INSTRUCTIONS

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

**APPLICATION #:** RIVER RING – 210425 MMK, 220061 MLK, 220062 ZMK, 220063 ZRK, 220064 ZSK, 220070 ZSK

Applications submitted by River Street Partners LLC, pursuant to Sections 197-c, 199 and 201 of the New York City Charter, and Section 5-430 et seq. of the New York City Administrative Code for the following actions concerning a property in Brooklyn Community District 1 (CD 1):

- An amendment to the City Map involving:
  - The elimination, discontinuance, and closing of Metropolitan Avenue between River Street and the United States Pierhead Line (USPL)
  - The elimination, discontinuance, and closing of a portion of North First Street from a point 200 feet west of River Street and the USPL
  - The adjustment of grades and block dimensions necessitated thereby; including authorization for any acquisition or disposition of real property related thereto, in accordance with Map No. Y-2760 dated August 16, 2021, and signed by the Brooklyn borough president
- To facilitate a landfill of approximately 6,230 square feet (sq. ft). located in the East River, in connection with a proposed mixed-use development, within a large-scale general development (LSGD), on property generally bounded by North Third Street, River Street, North First Street, a line 200 feet northwesterly of River Street, Grand Ferry Park, and the USPL (Block 2355, Lots 1 and 20; Block 2361, Lots 1, 20, and 21, and Block 2376, Lot 50, and the above reference intended demapped portions of Metropolitan Avenue and North First Street), in a proposed C6-2 District.
- An amendment of the Zoning Map changing from an M3-1 District to a C6-2 District property bounded by North Third Street, River Street, North First Street, a line 200 feet northwesterly of River Street, a northeasterly boundary line of Grand Ferry Park, and the USPL, and changing from an M3-1 District to an M1-4 District property bounded by North Third Street, Kent Avenue, North First Street, and River Street, and subject to the conditions of CEQR Declaration E-636. The proposed zoning text amendment would designate a Mandatory Inclusionary Housing (MIH) area coterminous with the area proposed to be designated as a C6-2 zoning district.
- An application in connection with a proposed mixed-use development, within a LSGD, on property generally bounded by North Third Street, River Street, North First Street, a line 200

A motion was made that we vote Yes with the following conditions:

- Two Trees must rent all affordable housing units in their 1 South 1st Street development to honor prior community affordable housing commitments.
- Reduce total number of apartment units in the project by 33%, to reduce the anticipated increased load on existing overcapacity on subway transit, vehicular traffic, pedestrian traffic, wastewater and with street sanitation storage and collection, and open space.
- Increase the number of total affordable units to 50% to support deeper diversity and affordable living in the neighborhood.
- 60% of affordable units must be 2 & 3-bedroom units to encourage long term family occupancy.
- Within all affordable units one bedroom must be a minimum of 128 square feet to comfortably accommodate bedroom furniture, a closet and efficient movement throughout the room.
- The City of New York must include funding for the full completion of Bushwick Inlet Park in their 10-year capital plan so the fully operational park can help mitigate the existing severe local open space deficiencies that will persist if this project is built out and the massive population increase from the quantity of current and future local waterfront housing developments.
- The project must use a fossil-free energy source such as a geothermal heat loop system instead of a natural gas reliant system for heating, which will work to have the project more aggressively meet the challenging but critical goals of the New York City Climate Protection Act, Climate Leadership and Community Protection Act and those set by the Intergovernmental Panel on Climate Change.
- Redesign the towers so that they are significantly less obtrusive and oppressive in feel and fit more contextually with nearby structures and better connect with the historic fabric of the neighborhood.
- Two Trees must negotiate in good faith with the New York City & Vicinity District Council of Carpenters to ensure the project adheres to the safest and best construction work practices.
- Two Trees must negotiate in good faith with local workforce organizations in order to provide service jobs for local job seekers.
- Two Trees must provide funding in perpetuity for a local, independent agency or organization to oversee and enforce the rental fees and increases of affordable and market-rate apartments.
- Two Trees and the City of New York must present and execute a plan to manage the steadily increasing volume of street trash that has come with the incredible volume of additional area residents that the project will exacerbate.
- Before being granted any rezoning, Two Trees must present community facility architectural design plans which verify that the YMCA facility will serve the stated purpose and promise of serving both the Williamsburg and Greenpoint communities as well as 250 school children annually; it must show that the size and location of the

facility elements including pool, locker rooms, saunas, facility/pool access including elevator, pool depth and lane width, lifeguard station, staging area and pool equipment, weight rooms, full gym arena, and exercise rooms are adequate as a full service facility for the communities. The community facility must be built out and in operation before the building can be occupied as a rental.

feet northwesterly of River Street, Grand Ferry Park, and the US Pierhead Line (Block 2355, Lots 1 and 20; Block 2361, Lots 1, 20 and 21, Block 2376, Lot 50, and the demapped portions of Metropolitan Avenue and North First Street), in a C6-2 District, for the grant of special permits pursuant to the following Sections of the New York City Zoning Resolution (ZR):

- ZR Section 74-743(a)(2):
  - To modify the height and setback, floor area distribution, maximum residential tower size, and maximum width of building walls facing a shoreline per requirements of ZR Section 62-341 (Developments on land and platforms)
- Section 74-743(a)(13):
  - To allow existing land projecting seaward of the bulkhead line to be replaced or reconstructed with new platforms and such platform be included as part of the upland lot
  - To allow such new piers and platforms to be considered lot area for the purposes of determining allowable floor area, dwelling units, and other bulk regulations of ZR Section 62-31(b) & (c) (Bulk Computations on Waterfront Zoning Lots)
- To waive the requirements of ZR Sections 62-242 (Uses on new piers and platforms), 62-54 (Requirements for Public Access on Piers), and ZR Section 62-63 (Design Requirements for Public Access on Piers and Floating Structures)
- An application for the grant of a special permit pursuant to Section 74-533 of the ZR to reduce the number of required accessory off-street parking spaces from 40 percent to 20 percent, for dwelling units in a development within a Transit Zone, which includes at least 20 percent of all dwelling units as income-restricted housing units, in connection with a proposed mixed-use development, within a LSGD, on property generally bounded by North Third Street, River Street, North First Street, a line 200 feet northwesterly of River Street, Grand Ferry Park, and the USPL (Block 2355, Lots 1 and 20; Block 2361, Lots 1, 20 and 21; Block 2376, Lot 50, and the intended to be demapped portions of Metropolitan Avenue and North First Street), in a C6-2 District

The requested actions are intended to facilitate two mixed-use towers, one at 49 stories and an approximately 560'-tall tower (600', including bulkhead) and the second being 64 stories and an approximately 710'-tall tower (750' including bulkhead). In total the proposed development is intended to be approximately 1,158,800 sq. ft. (6.17 FAR), with approximately 1,050 dwelling units, a 30,000 sq. ft. community center, 79,000 sq. ft. of commercial space, including office space and local retail, approximately 250 accessory attended parking spaces for at least 20 percent of market-rate dwelling units, 538 required bicycle parking spaces, and approximately 2.9 acres of new public open space composed of approximately 2.32 acres of accessible in-river space and 0.86 acres of intertidal area. Approximately 263 units (25 percent of residential floor area) would be affordable to households earning an average 60 percent of Area Median Income (AMI). Local retail uses on the ground floor of both buildings would activate street frontages along North First and Third streets, and River Street, as well as along the adjacent publicly accessible open space. No loading docks are required, and none will be provided. A landfill action would add approximately 6,319 sq. ft. of landfill as part of the waterfront public open space plan.

BROOKLYN COMMUNITY DISTRICT NO. 1

BOROUGH OF BROOKLYN

**RECOMMENDATION**

- APPROVE
- APPROVE WITH  
MODIFICATIONS/CONDITIONS

- DISAPPROVE
- DISAPPROVE WITH  
MODIFICATIONS/CONDITION

SEE ATTACHED

*Eric L. Adams*

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

October 5, 2021

\_\_\_\_\_  
DATE

**RECOMMENDATION FOR:** RIVER RING – 210425 MMK, 220061 MLK, 220062 ZMK, 220063 ZRK, 220064 ZSK, 220070 ZSK

River Street Partners LLC submitted applications pursuant to Sections 197-c, 199 and 201 of the New York City Charter, and Section 5-430 et seq. of the New York City Administrative Code for the following actions concerning a property in Brooklyn Community District 1 (CD 1):

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  - The elimination, discontinuance and closing of Metropolitan Avenue between River Street and the United States Pierhead Line (USPL)
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  - The adjustment of grades and block dimensions necessitated thereby; including authorization for any acquisition or disposition of real property related thereto, in accordance with Map No. Y-2760 dated August 16, 2021, and signed by the Brooklyn borough president
- To facilitate a landfill of approximately 6,230 sq. ft. located in the East River, in connection with a proposed mixed-use development, within a large-scale general development (LSGD), on property generally bounded by North Third Street, River Street, North First Street, a line 200 feet northwesterly of River Street, Grand Ferry Park, and the USPL (Block 2355, Lots 1 and 20; Block 2361, Lots 1, 20, and 21, and Block 2376, Lot 50; and the above reference intended demapped portions of Metropolitan Avenue and North First Street), in a proposed C6-2 District.
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- An application in connection with a proposed mixed-use development, within a LSGD, on property generally bounded by North Third Street, River Street, North First Street, a line 200 feet northwesterly of River Street, Grand Ferry Park, and the US Pierhead Line (Block 2355, Lots 1 and 20; Block 2361, Lots 1, 20 and 21, Block 2376, Lot 50, and the demapped portions of Metropolitan Avenue and North First Street), in a C6-2 District, for the grant of special permits pursuant to the following Sections of the New York City Zoning Resolution (ZR):
  - ZR Section 74-743(a)(2):
    - To modify the height and setback, floor area distribution, maximum residential tower size, and maximum width of building walls facing a shoreline per requirements of ZR Section 62-341 (Developments on land and platforms)
  - Section 74-743(a)(13):
    - To allow existing land projecting seaward of the bulkhead line to be replaced or reconstructed with new platforms and for such platform to be included as part of the upland lot
    - To allow such new piers and platforms to be considered lot area for the purposes of determining allowable floor area, dwelling units, and other bulk

regulations of ZR Section 62-31(b) & (c) (Bulk Computations on Waterfront Zoning Lots)

- To waive the requirements of ZR Sections 62-242 (Uses on new piers and platforms), 62-54 (Requirements for Public Access on Piers), and ZR Section 62-63 (Design Requirements for Public Access on Piers and Floating Structures)
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The requested actions are intended to facilitate two mixed-use towers, one at 49 stories and an approximately 560'-tall tower (600', including bulkhead) and the second being 64 stories and an approximately 710'-tall tower (750' including bulkhead). In total the intended development would contain approximately 1,158,800 sq. ft. (6.17 FAR), with 1,050 dwelling units, a 30,000 sq. ft. community center, 79,000 sq. ft. of commercial space, including offices and local retail, approximately 250 accessory attended parking spaces for at least 20 percent of the market-rate apartments, 538 required bicycle parking spaces, and approximately 2.9 acres of new public open space with 2.32 acres of accessible in-river space and 0.86 acres of intertidal area. Approximately 263 units (25 percent of residential floor area) would be affordable to households earning an average 60 percent of AMI. Local retail uses on the ground floor of both buildings would activate street frontages along North First and Third streets, and River Street, as well as along the adjacent publicly accessible open space. No loading docks are required, and none will be provided. A landfill action would add approximately 6,319 sq. ft. of landfill as part of the waterfront public open space plan.

On September 27, 2021 Brooklyn Borough President Eric Adams held a public hearing on these applications. There were 42 speakers on the item with five in opposition and 37 in support, including area residents and business owners, members of 32BJ Service Employees International Union (32BJ SEIU), and the United Brotherhood of Carpenters and Joiners of America New York City & Vicinity District Council of Carpenters (Carpenters' Union), and representatives of the YMCA. Those in favor underscored the need for affordable housing in Brooklyn, and the environmental benefits of the project, including coastal resiliency. Representatives of several non-profit organizations including the Billion Oyster Project and the Waterfront Alliance voiced support for ecological restoration and edge design. Some supporters, including North Brooklyn Neighbors, urged deeper affordability at 40 percent AMI. Others argued against a reduction the height of the towers and urged eliminating the proposed parking. Those in opposition cited excessive density on the Williamsburg waterfront and other quality-of-life concerns.

In response to Borough President Adams' inquiry as to which of the conditions articulated by Brooklyn Community Board 1 (CB 1) in its recommendation the developer intends to meet and which ones might be partially considered, the applicant noted that the affordable housing lottery for One South First Street would commence in six to eight weeks; that the applicant would be open to increasing the number of affordable units, though it's unlikely that the project would reach 50 percent affordability; that River Street Partners, LLC would be willing to include more family-sized units and commit to the requested minimum bedroom size; that it would advocate for the completion of Bushwick Inlet Park; that it would strive for a carbon-neutral development and study the feasibility of sustainable technologies, including geothermal heating; that River Ring would provide a contextual façade and active streetscape; that the developer is holding discussions with the Carpenters' Union regarding construction jobs; that the project would be subject to rent stabilization laws, and regulated by the New York State Division of Housing and Community

Renewal (HCR); that the developer will work with the New York City Department of Sanitation (DSNY) to minimize the impacts of trash pickup; that it will share the YMCA plans but cannot tie the space's buildout/operation to residential unit occupancy due to New York City Department of Buildings (DOB) and New York City Department of Health and Mental Hygiene (DOHMH) approval processes and YMCA control of its facility, and finally, that reducing the project size by 33 percent would be financially infeasible and would impede the applicant's ability to meet other board conditions.

In response to Borough President Adams' inquiry regarding the qualifying income range for prospective households based on household size, the anticipated rents based on the number of bedrooms, and the distribution of units by bedroom size, the applicant stated that the distribution would be determined closer to construction. The affordability program would include a combination of units at 40 and 60 percent of AMI, though in response to additional inquiry, the representative noted that the average rent collection would be 60 percent AMI with units at higher AMIs dependent on future government incentives.

In response to Borough President Adams' inquiry as to whether one of the community's affordable housing non-profits would be used in the tenant selection process to ensure the highest level of participation from CD 1 and whether the development's marketing strategy would include a financial literacy component to qualify residents for the MIH lottery, the applicant stated intent to aggressively market the affordable units, starting with a financial literacy campaign, noted that it has historically partnered with local organizations, and said that it would consult elected officials in the selection of an administering agent.

In response to Borough President Adams' inquiry regarding the incorporation of sustainable features such as passive house design; blue, green, or white roof covering; solar roof and/or façade panels; geothermal energy; New York City Department of Environmental Protection (DEP) rain gardens, and/or wind turbines, the applicant explained that the development would have an onsite wastewater treatment plant, and that stormwater would be diverted from city sewers, treated, and then directed through two private outfalls into the East River. The representative also expressed interest in exploring new technologies, including solar facade materials.

In response to Borough President Adams' inquiry regarding the inclusion and participation of locally-owned business enterprises (LBEs) and minority- and women-owned business enterprises (MWBEs) in the construction process, the applicant stated intent to meet and exceed MWBE participation goals and conduct extensive local hiring local hiring efforts in partnership with St. Nicks Alliance (SNA).

Prior and subsequent to the hearing, Borough President Adams received extended testimony and letters in support from four individuals, as well as Evergreen, SNA, the Regional Plan Association (RPA), North Brooklyn Neighbors, and the Waterfront Alliance.

### **Consideration**

CB 1 voted to approve this application with conditions on September 9, 2021. The board requested that Two Trees:

- Rent all affordable housing units in their One South First Street development to honor prior community affordable housing commitments
- Reduce the project's total number of apartment units by 33 percent to mitigate anticipated adverse impacts to subway transit, vehicular traffic, pedestrian traffic, wastewater, street sanitation, waste storage and collection, and open space resources
- Increase the number of total affordable units to 50 percent to support deeper diversity and affordability in the neighborhood
- Configure 60 percent of the affordable units as two- and three-bedroom units to encourage long-term family occupancy
- Ensure that one bedroom within the affordable units is at least 128 square feet to accommodate bedroom furniture, a closet, and efficient movement

- Redesign the towers so that they are significantly less obtrusive and oppressive in feel and fit more contextually with nearby structures and the historic fabric of the neighborhood
- Negotiate in good faith with the New York City & Vicinity District Council of Carpenters to ensure the project adheres to the best and safest construction practices, and with local workforce organizations to provide service jobs for area applicants
- Provide funding in perpetuity for a local, independent agency or organization to oversee and enforce the rental fees and increases of affordable and market-rate apartments
- Present and execute a plan, together with the City of New York, to manage the increased volume of refuse that has resulted from new development in the area, and would be exacerbated by this large-scale project
- Utilize a fossil-free energy source such as a geothermal heat loop system instead of a natural gas reliant system for heating, which will work to have the project more aggressively meet the challenging but critical goals of the New York City Climate Protection Act, Climate Leadership and Community Protection Act (CLCPA) and those set by the Intergovernmental Panel on Climate Change
- Prior to rezoning approval, present community facility architectural plans verifying that the YMCA will serve both the Greenpoint and Williamsburg communities as well as 250 schoolchildren annually, and show that the center's size and location — as well as its pool, locker rooms, saunas, facility/pool access, elevator, pool depth and lane width, lifeguard station, staging area and pool equipment, weight rooms, full gym arena, and exercise rooms — are adequate as a full-service facility
- Ensure that the community facility is built out and operational before the building is occupied as rental housing

The board also requested that the City fund the full completion of Bushwick Inlet Park in its 10-year capital plan to mitigate current open space deficiencies that would be exacerbated by River Ring and other planned waterfront housing developments that would sharply increase the area's population.

The River Ring site consists of six tax lots on three waterfront blocks and portions of Metropolitan Avenue and North First Street between River Street and the pierhead line that would be demapped as part of the application. The development site is approximately 399,780 sq. ft., with 137,506 sq. ft. of upland lot portion and a 235,784 sq. ft. of seaward lot portion that includes 19,582 sq. ft. of existing in-water structures qualifying as "piers" or "platforms" as defined in ZR Section 62-11. The site has approximately 464 feet of frontage on River Street, 200 feet of frontage on North First Street, and 283 feet of frontage on North Third Street.

The full rezoning area fronting the East River, Kent Avenue, and North Third Street is approximately 441,660 sq. ft. Per the application, the development site would be rezoned from M3-1 to C6-2 to enable the River Ring proposal. The project area includes two non-applicant blocks between Kent Avenue and River Street that would be changed from M3-1 to M1-4. The block on the north side of Metropolitan Avenue is a 22,640 sq. ft. property improved with 210 Kent Avenue, a recently constructed six-story commercial office building. A vacant, 13,378 sq. ft. property, owned by Con Edison, is located to the south of Metropolitan Avenue.

The requested actions would enable a development of two-mixed use towers of 600 and 710 feet with a total floor area ratio (FAR) of 6.17 should the proposed eliminated street sections be consolidated as part of the River Ring development site. This represents approximately 1,158,000 sq. ft. of which more than 90 percent would be designated for residential use. The 49-story primarily residential tower would cover 15,070 sq. ft. of the site, while the 64-story primarily residential tower would cover 13,922 sq. ft. The towers would be massed to shift bulk away from the significant open areas along the shoreline, on seaward structures, and on the central portion of the development site.

The River Ring development area would include 170,103 sq. ft. of upland portion, and a 229,677 sq. ft. seaward portion, including 28,454 sq. ft. of new in-water structures. River Ring would significantly expand public access along the North Brooklyn waterfront with 2.96 acres of new open space, 3.17 acres of in-water recreation space and intertidal area, as well as with 1.3 miles of pedestrian walkways.

River Ring has been described as having attended parking for approximately 250 cars, though parking for the special permit would allow 26.7 percent of the 787 market rate apartments, which would require a minimum of 210 parking spaces. Such spaces would be accessed from the southern tower via North First Street. There would also be 538 required bicycle parking spaces. The towers would have ground floors with wraparound retail as well as lobbies for commercial office, community facility and residential use to activate street frontages along North Third Street, North First Street, and River Street as well as along the site's open space.

The surrounding context includes a mix of commercial, industrial, and residential uses. North of the site, along the Williamsburg waterfront, the predominant housing type is high-rise apartment towers, built after the 2005 Greenpoint-Williamsburg rezoning. The blocks to the east of the project area contain a mix of medium-density elevator buildings and multi-family homes. Commercial uses are scattered along Kent and Wythe avenues. To the south is the Domino Sugar Large LSGD site, which is currently under construction, though Domino Park has been open to the public since the summer of 2018. Additional open space resources include the small Grand Ferry Park, North Fifth Street Pier and Park, and the partially completed Bushwick Inlet Park.

Brooklyn is one of the fastest growing boroughs in the New York City metropolitan area. Its ongoing renaissance has ushered in extraordinary changes that were virtually unimaginable even a decade ago. Unfortunately, Brooklyn's success has led to the displacement of longtime residents who can no longer afford to live in their neighborhoods. Borough President Adams is committed to addressing Brooklyn's affordable housing crisis through the creation and preservation of units for very low- to middle-income households.

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

Borough President Adams supports actions to facilitate the River Ring development based on the expectation of permanently affordable residential floor area. As represented, 25 percent of the anticipated 1,050 apartments would be pursuant to MIH Option 1. Such residential floor area, resulting from additional zoning rights, would be affordable in perpetuity. Such development is consistent with Borough President Adams' policy for new residential developments to yield permanently affordable units.

In CD 1 and across New York City, there is a pressing need for affordable and stable housing among elderly adults, homeless households, low-income families, and other populations. Increasing the supply of affordable apartments for a range of incomes and household types in mixed-use buildings is a critical strategy for promoting a sustainable neighborhood and city.

The MIH program targets affordable housing units to a broad range of incomes, consistent with Borough President Adams' objective to extend such opportunities to households at various AMI tiers. MIH Option 1 would designate 25 percent of the floor area as affordable to households at an average 60 percent AMI, of which 40 percent must be offered at 40 percent AMI. Development adhering to

the MIH program is consistent with Borough President Adams' policy that income-restricted housing remains affordable in perpetuity.

River Ring would implement innovative coastal flooding measures, as a major component of its plan. The proposed breakwaters and groin would substantially reduce damage to public waterfront open space and upland residential buildings from tall flood waves. The elongated shoreline resulting from the planned park and protective cove would help dissipate energy from storm surges. The building design would utilize dry and wet floodproofing strategies, to protect residents and mechanical equipment. Borough President Adams believes that this should be the standard that developers should aspire to replicate for shoreline projects where bulkheads are not necessary.

Borough President Adams believes that the requested density is appropriate, as the development site is convenient to public transportation. River Ring would be accessible via the B32 bus, which makes stops along Kent Avenue, as well as the Q59, available south of Grand Street. The closest subway station, the Bedford Avenue stop of the 14<sup>th</sup> Street-Canarsie Local L train, is six blocks northeast of the site. The North Williamsburg stop of the NYC Ferry East River route is two blocks north at North Fifth Street. The area is also well-served by Citi Bike, with a large docking station at Kent Avenue and North Seventh Street, and is well-connected to the Brooklyn Greenway and other bicycle infrastructure.

Borough President Adams supports applications enabling the development of River Ring. He calls on the City and River Street Partners, LLC to direct the proceeds of the roadbed sale as either a surface easement or tax lot to fund Bushwick Inlet Park. Furthermore, River Street Partners, LLC should guarantee the represented degree of affordability and provide additional affordable housing, as well as provide a family-oriented bedroom mix, maximize outreach to seniors, provide space for community use, incorporate resiliency and sustainability measures, implement Vision Zero improvements, increase bike parking, include electric charging stations, promote car-share, and provide for local hiring. He also calls on the Administration to qualify rent-burdened households for affordable housing lotteries, and fund Bushwick Inlet Park, as well as for the New York City Economic Development Corporation (EDC) and the Metropolitan Transportation Authority (MTA) to improve area transit infrastructure.

### **Adequate Funding for Bushwick Inlet Park**

The 2005 Greenpoint-Williamsburg Rezoning was expected to result in 50 acres of new parkland along the East River waterfront. Due to unanticipated circumstances, the Bayside Oil and CitiStorage sections of Bushwick Inlet Park remain unfunded for construction. Borough President Adams shares the community's concerns regarding the delay in development of the park. Though Bushwick Inlet Park was established when the 2005 rezoning was adopted, its development has not kept pace with the high-rise residential construction in the last 15 years. To date, only the southern section has been completed and a middle section is now underway. However, the resulting assemblage allowed for environmental analysis of the former Bayside Oil site, as well as the section under construction between Bayside Oil and CitiStorage. Still, significant funding is still required to advance the master plan.

As part of the River Ring development, the proposed street bed elimination of a section of Metropolitan Avenue and North First Street, the City would be selling either an easement of such area or the resulting tax lot without the development rights from the adoption of the requested zoning. According to the special permit drawings, the applicant is proposing to remove 26,490 sq. ft. of mapped street bed. If the rezoning is approved, such land would provide 190,728 sq. ft. of development rights (at 7.2 FAR) that the City would retain if it would sell the tax lots resulting from the former street bed segments that would be merged into the River Ring tax lots. Alternatively, these lots would become independent tax lots remaining in City-ownership. In the latter instant, it would then provide River Street Partners, LLC, easements to the full surface area to allow for open space development. With either outcome, the sale should not be expected to generate significant revenue. Though, Borough President Adams believes that the proceeds

should be reinvested in the community, specifically as additional funding toward advancing the completion of Bushwick Inlet Park is a high-priority issue for CB 1, its elected officials and the community at-large.

Therefore, the mapping agreement for the discontinuation and closing of Metropolitan Avenue and North First Street should include a condition that the sale of the City-owned right-of-way segment, as either easements or as tax lots, to be one dollar, further conditioned on adequate demonstration that the remainder of the proceeds of fair market value have been deposited into a New York City Comptroller's Office Fiduciary Account for use by the New York City Department of Parks and Recreation (NYC Parks) to advance the development of Bushwick Inlet Park.

### **Realizing Appropriate Public Benefit of Affordable Housing Floor Area for the Requested Zoning**

Borough President Adams believes that significant upzonings should yield more affordable housing than rezonings that do not seek a comparable increase in density. Throughout his tenure as borough president, he has considered requests for substantial bulk increases that resulted in the development of 100 percent affordable housing. For other upzoning requests, he has consistently called for applicants to exceed MIH by providing additional floor area and/or more deeply affordable units.

Borough President Adams believes that public purpose based on MIH floor area alone does not capture the full value of upzoning from an M3-1 district, which does not permit housing construction, to a C6-2 (R8 residential equivalent) MIH district, with its maximum FAR of 7.2. Such a change of use and FAR increase results in a windfall of market-rate development compared to what is permitted as-of-right. There is thus a significant difference between drastic upzonings that unlock residential FAR and more modest ones that convert lower-density residential districts to higher density ones. Additionally, any zoning district in excess of R6A lacks leverage through MIH to induce more affordable housing floor area. The proposed rezoning would substantially enrich the project area with residential development rights without any obligation to provide deeper or greater affordability.

As this inequity cannot be rectified directly through MIH, Borough President Adams believes that increasing the number of affordable units while lowering the target household incomes is possible by blending what is required according to MIH with a voluntary special bulk permit. However, as the ZR does not provide such a special permit, he believes that the applicant could achieve equivalent public benefit through a legally binding mechanism.

Borough President Adams concurs that a C6-2 (R8 residential equivalent) would be an appropriate modification to the zoning map. However, to justify a C6-2 MIH district at this site, the developer should commit to providing additional affordable units based on a rent roll consistent with MIH Option 1. In addition, Borough President Adams believes that for this particular development, it would be more in keeping with community objectives to realize more affordable housing as opposed to the extent of parking normally required by the ZR.

To determine the appropriate amount of excess affordable housing floor area, it is helpful to calculate the site's development potential according to two residential zoning districts, the R8A MIH and the lower density R7A MIH, which stipulates a FAR of 4.6. The current M3-1 zoning permits only 2.0 FAR or approximately 314,175 sq. ft. of non-residential development based on ZR regulations. However, under the requested C6-2 MIH district, without consideration of the proposed demapped street sections, the remainder of the development site with a lot area of 161,454 sq. ft. would achieve approximately 1,162,469 sq. ft. of total development rights. With the represented 79,000 sq. ft. of commercial office and retail use, and 30,000 of zoning floor area for community facility use (more floor area would be below the curb level and would not be counted as zoning floor area) 1,049,800 sq. ft. or 6.5 FAR of River Ring would be available for residential floor area (including MIH).

Borough President Adams believes that a portion of these rights might be used to advance further public benefit. Based on the information above, the project area would provide 262,450 sq. ft. for permanently affordable residential floor area, i.e., the MIH Option 1 obligation. With C6-2 zoning, having 109,000 sq. ft. commercial and community facility floor area, River Street Partners, LLC would realize 787,350 sq. ft. of market rate residential floor area. In all, there would be 230,334 sq. ft. more market-rate residential floor area than if the site were zoned R7A MIH, with Option 1, and used exclusively for residential development.

Borough President Adams believes that if the 1.9 FAR increment remains the same between R7A and the resulting residential floor area with retention of 109,000 sq. ft. of commercial office, community facility and/or retail space, the R8 equivalent C6-2 district should yield additional affordable floor area to increase the project's public benefit. He typically seeks to set aside 50 percent of the FAR increment exceeding R7A MIH and 6.5 MIH regulated floor area for permanently affordable housing in lieu of the MIH Option 1 25 percent requirement. These units would be offered at Option 1 AMIs and rents, with 40 percent targeted to households earning 40 percent AMI and made affordable in perpetuity.

The additional 25 percent increment of 1.9 FAR would yield approximately 76,690 sq. ft. of affordable housing floor area on a 60 percent AMI basis beyond the required 262,450 sq. ft. pursuant to MIH Option 1. Linking a substantial amount of market-rate floor area beyond R7A MIH to the developer benefit of a zoning district with the higher C6-2 MIH FAR would provide sufficient incentive to seek such zoning district while generating the publicly desired affordability. Such affordable housing floor area — both the standard MIH requirement and additional area noted above — should also provide a family-oriented bedroom mix with more two and three-bedroom units.

Borough President Adams understands that the developer would be forgoing more profitable market rate residential FAR, even when it requires subsidizing permanently affordable housing floor area through the represented community facility zoning floor area. Should the City Council seek to mandate that community floor area include below-market space to promote locally desired uses, such as the represented YMCA, Borough President Adams believes that a nominal reduction of the recommended additional affordable housing floor area increase would be warranted.

To meet the threshold of public benefit necessary for approval of C6-2 MIH zoning, any residential FAR increment above R7A MIH should require provision of affordable housing floor area at a rate in lieu of the standard MIH Option 1 with permanent affordability. The developer should be required to memorialize the additional 1.9 FAR with more than 25 percent permanently affordable floor area and average rent not exceeding 60 percent AMI. Alternatively, the 60 percent AMI average rent collection could be marginally reduced as the warranted public benefit.

Therefore, Borough President Adams believes that the CPC and/or City Council should condition the requested C6-2 MIH district on a legal mechanism that commits a combined additional percentage of 76,690 sq. ft. of affordable housing at an average rent of 60 percent AMI, or modest decrease in the 60 percent AMI average rent collection. The City Council should obtain written commitments from River Street Partners, LLC to file a legally binding mechanism that commits an increased percentage of permanently affordable housing floor area or reduction of AMI below 60 percent.

### **Guaranteeing the Recommended Affordability**

Borough President Adams notes that ULURP application 220070 ZSK seeks to reduce the 40 percent parking requirement for the represented 787 unrestricted market rate housing units to a 26.7 percent requirement. By reducing the parking provided from 315 to 210 required parking spaces, the applicant would realize the represented publicly-accessible open space without subsurface constraints and avoid significant sub-surface construction — inclusive of costly ground water management — to accommodate a larger and/or deeper construction of the garage. He believes

that his recommendation for more extensive floor area is commensurate with the realized developer benefit of such cost avoidance of constructing a larger volume needed to accommodate the additional 105 normally required parking spaces. To memorialize his recommendation for additional affordable housing floor area, Borough President Adams believes that the ZR 74-533 special permit should be conditioned on developer obligation to increase permanently affordable housing from the MIH requirement of 25 percent of the residential floor area by an additional 76,690 sq. ft.

Finding ZR 74-533(a) requires consultation with the New York City Department of Housing Preservation and Development (HPD), which can be used to codify and mandate the recommended 76,690 sq. ft. of affordable housing floor area consistent with MIH Option 1 ZR requirements. Such consultation should produce a letter to the City Council submitted prior to its final determination on the application.

Therefore, prior to considering the application, the City Council should obtain from River Street Partners, LLC a written obligation from HPD attesting that the proposed affordable housing floor area would be increased by 76,690 sq. ft. and memorialized via a legally binding mechanism, such as the ZR 74-533(a) obligation to consult with HPD.

### **Bedroom Mix**

When reviewing rezoning proposals for affordable housing developments, Borough President Adams seeks a unit mix that adequately reflects the needs of low- and moderate-income families. River Street Partners, LLC has not disclosed the intended bedroom distribution within the affordable or market-rate units at River Ring. As such, there is no guarantee that the final bedroom mix would be consistent with Borough President Adams' policy to achieve family-oriented affordable housing units.

Borough President Adams believes that right-sizing the bedroom distribution within the affordable housing floor area is more important than maximizing the number of MIH units. The only indication of the unit mix is the represented gross unit size of 1,000 sq. ft. Given that most floors in the River Ring towers would be 12,600 sq. ft. and the number of stories served by elevators, there would be a high ratio of vertical core elements consisting of elevator shafts and stairwells in proportion to areas within individual apartment units. Such configuration is likely to achieve 80 to 85 percent efficiency between gross floor area and net area of the apartments. As such, the average apartments might be in the range of 800 to 850 sq. ft. However, there is no other indication that the River Ring development would provide an adequate distribution of family-sized apartments. Development pursuant to MIH lacks leverage to require affordable units with multiple bedrooms. Borough President Adams believes that it is appropriate to use discretionary land use actions to advance policies that constrain what would be permitted as-of-right.

While it might be possible for developments with net apartment size ranging between 800 and 850 sq. ft. to be consistent with such policy, Borough President Adams seeks a binding commitment to secure what has been represented to the community. For this project, it is important to mandate that the developer provide affordable housing pursuant to ZR Section 23-96(c)(1)(ii), with at least 50 percent of the units containing two or three bedrooms and at least 75 percent configured with one or more bedrooms.

Therefore, prior to considering the application, the City Council should obtain written commitments from River Street Partners, LLC that would require that at least 50 percent of the River Ring affordable units to have two or three bedrooms, and at least 75 percent to have one or more bedrooms.

### **Maximizing Affordable Housing Opportunities for Seniors**

In addition to family-sized units, there is a pressing need to build affordable apartments for the elderly, many of whom are of limited means. As noted in the New York City Department of City Planning (DCP)'s Zoning for Quality and Affordability (ZQA) study, New York's senior population is expected to grow 40 percent by 2040. The combination of rising housing costs across Brooklyn and declining production of age-based affordable housing has created a severe rent burden for seniors. Many elderly households are

struggling to remain in their homes and are exhausting their life's savings to keep up with living expenses until they are displaced from their communities.

A significant number of elderly households have negligible income and are at risk for displacement. As the Federal government has moved away from funding affordable housing for seniors, too few such rental apartments are being built, leaving tremendous demand for age-based affordable housing. As a result, many elderly households are experiencing increased and unsustainable rent burdens. One of Borough President Adams' top priorities is to help Brooklyn seniors secure affordable housing and remain in their neighborhoods. He seeks the advancement of more City projects, such as this proposal, which would result in permanently affordable units for older residents.

While Borough President Adams typically seeks a 50/50 blend of studios, one-bedrooms, two-bedrooms, and three-bedrooms, he believes that studio and one-bedroom units rented at 40 and 50 percent AMI might be affordable to senior households. With targeted marketing efforts, it is reasonable to expect that a greater share of studios and one-bedrooms at lower AMIs would be awarded to seniors. Borough President Adams calls on River Street Partners, LLC to conduct significant outreach to older residents of Greenpoint and Williamsburg, as part of its marketing strategy.

Therefore, prior to considering the application, the City Council should obtain written commitments from River Street Partners, LLC memorializing intended outreach efforts to seniors earning up to 40 percent AMI, or 50 percent AMI for dual-person households, to maximize their participation in the River Ring affordable housing lottery.

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

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

It is Borough President Adams' policy for housing non-profits to play a role in maximizing community participation in local affordable housing opportunities. CD 1 is served by several organizations with a proven record of marketing affordable housing units and promoting lottery eligibility such as Churches United for Fair Housing (CUFFH), Los Sures/Southside United HDFC, the North Brooklyn Development Corporation, SNA, and the United Jewish Organization (UJO). River Street Partners, LLC could retain one or more of these entities as affordable housing administrator(s) and/or marketing agent(s) for the project to qualify CD 1 residents for the River Ring affordable housing lottery. Such efforts should be undertaken in consultation with the Office of the Brooklyn Borough President, CB 1, and local elected officials.

Borough President Adams believes that prior to considering the application, the City Council should obtain written commitments from River Street Partners, LLC to utilize one or more local affordable housing non-profits to serve as the administering and/or marketing agent and promote lottery readiness.

#### **Securing Community Facility Floor Area for Local Arts/Cultural Groups, Non-Profit Organizations and Recreational Uses**

Borough President Adams regularly receives requests for assistance from arts/cultural groups and community non-profits seeking affordable space in Brooklyn. These organizations play an important role in the neighborhoods they serve but often struggle to obtain the space to expand and sustain their programs. It has been Borough President Adams' policy to review discretionary land use actions for opportunities to promote cultural and non-profit uses.

In June 2016, Borough President Adams released "All the Right Moves: Advancing Dance and the Arts in Brooklyn," a report examining challenges for artists in the borough, with accompanying recommendations. The report highlighted the benefits of arts and dance, which include maintaining physical fitness, promoting creative self-expression, and making significant contributions to the vibrant culture of Brooklyn. Among the difficulties faced by the Brooklyn arts community is an absence of diversity — according to 2000 United States Census data, fewer than half the individuals working in dance are people of color. Additionally, public funding for the arts in New York City has shrunk dramatically in recent years: by 37 percent from the New York State Council of the Arts (NYSCA), by 15 percent from the National Endowment for the Arts (NEA), and by 16 percent from the New York City Department of Cultural Affairs (DCLA).

Data show that cultural programs generate a variety of positive effects, which include combating the borough's high rate of obesity. As of 2016, 61 percent of Brooklyn adults are overweight or obese, according to the New York State Department of Health (NYSDOH). Research by the Citizens' Committee for Children of New York has found that such activities also help children succeed in school. Moreover, demand for cultural programs continues to grow across Brooklyn. A 2015 report by the Center for an Urban Future (CUF) found a 20 percent increase in attendance at events organized by local cultural institutions since 2006.

Borough President Adams believes that the inclusion of arts/cultural entities and non-profit organizations at River Ring would provide enrichment to the community. The development's location is advantageous given the area's considerable residential density, and the high proportion of youth in CD 1. However, he is aware that such entities cannot afford to compete with commercial office users and retailers who could pay higher rents to lease at this location. Borough President Adams believes that such space could be a community asset if rented at below-market rates to local arts and cultural groups and/or non-profit organizations.

Borough President Adams would support a binding commitment memorializing approximately one quarter of River Ring's non-residential floor area at below-market rents to provide space for non-profit and/or arts and cultural organizations, child care, as well as commercial maker and/or studio space. Furthermore, to the extent that the City Council seeks to secure space at below-market rents for such uses, it should obtain written commitments from River Street Partners, LLC in the form of an executed legally enforceable mechanism, such as a deed restriction or contract with a non-profit business service provider to actively solicit such entities based on reasonable lease terms, in consultation with CB 1 and local elected officials.

As represented, the River Ring development would include a 30,000 sq. ft. community center housed in the proposed 49-story building. The intended YMCA would be expected to contain a youth swimming center and serve the entire Greenpoint/Williamsburg community. As this much needed resource represents a valued neighborhood amenity, Borough President Adams seeks to secure what has been represented. He understands that it may not be possible to deliver such a community amenity at the time of residential occupancy given logistics that effect the ability of a use such as a YMCA to be fully operational.

However, he concurs with CB 1's request to verify that specific elements of a YMCA facility can be accommodated through space intended to be provided. Therefore, it is reasonable to expect that design schematic drawings be developed before consideration of the requested land use actions.

To confirm that appropriate community facility use would be realized, Bulk Waiver Sections Z06-1, Z06-2 and C06-4, as part of special permit ULURP 220064 ZSK, should be further modified with a notation that restricts community facility floor area to Use Group (UG) 3A schools (restricted to child care centers), non-commercial art galleries, and/or UG 4A clubs, community centers, non-commercial recreation centers, philanthropic or non-profit institutions without sleeping accommodations. Additionally, at least one-quarter of the floor area set-aside for commercial office, community facility, and/or retail space, should

be reserved for occupancy by any combination of arts/cultural entities, child care, innovation and maker uses, and non-profit organizations — including recreational facilities.

Prior to considering the application, the City Council should obtain written commitments from River Street Partners LLC clarifying how community facility floor area would be leased at below-market rates, and with intent memorialize to recruit such entities, based on reasonable lease terms in consultation with CB 1 and local elected officials, through a legally enforceable mechanism, such as a deed restriction or contract with a non-profit business or service provider. Furthermore, that such space set aside, for intended occupancy for a YMCA, should be represented on design development drawings to confirm that such facility would serve both the Williamsburg and Greenpoint communities as well as 250 school children annually, with to-scale representation of all facility elements to ensure adequate provision of amenities.

### **Consideration of Eliminating Building Floors in Lieu of Deeper/More Affordable Housing**

In its conditional approval, CB 1 requested that the developer provide more and/or deeper affordability at River Ring while also reducing the project volume by one third. In addition, some people testified that the project's excessive height would bring too much development to the immediate area. While the former CB 1 stipulation is more feasible, Borough President Adams believes it may be possible to modify the proposed density without compromising the represented project goals. However, a substantial reduction in density would diminish the opportunity to seek additional public benefit — particularly his recommendation for additional affordable housing floor area.

According to the River Ring application drawings, the upper floors of both towers are approximately 12,600 gross sq. ft.: 12,594 gross sq. ft. for the 20 highest floors of the shorter tower, and 12,620 gross sq. ft. for the topmost 36 floors of the taller tower. With mechanical deductions, the zoning floor area is likely to be approximately 12,000 sq. ft. Each floor represents a very modest amount of FAR (0.074). As the City Council would provide the last opportunity for public input in on desired outcomes for development at this site, it may find that additional consideration of the proposed affordability is warranted through any combination of additional and/or more deeply units, versus a reduction in overall height. Therefore, in addition to considering mandating deeper and/or increased affordable housing floor area, the City Council should consider reducing the number of floors in one or both towers in its review of the requested land use actions.

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

It is Borough President Adams' policy to advocate for environmentally sustainable development that integrates blue/green/white roofs, solar panels, and/or wind turbines, as well as passive house construction. Such measures tend to increase energy efficiency and reduce a building's carbon footprint.

In the fall of 2019, the City Council passed Local Laws 92 and 94, which require newly constructed buildings as well as those undergoing renovation (with some exceptions) to incorporate a green roof and/or solar installation. The laws further stipulate 100 percent roof coverage for such systems and expand the City's highly reflective (white) roof mandate, which Borough President Adams believes developers should exceed by integrating blue roofs with green roof systems. Regarding solar panels, there are now options beyond traditional roof installation. Multiple companies are manufacturing solar cladding from tempered glass that resembles traditional building materials, with energy output approximating that of mass-market photovoltaic systems. Micro wind turbines can generate sustainable energy for taller buildings and developments near the waterfront. Finally, passive house construction achieves energy efficiency while promoting local construction and procurement.

Borough President Adams' letter to President Joseph R. Biden Jr., dated January 21, 2021 outlined policies to rebuild America as a more equitable and just society, including initiatives consistent with the Green New Deal. Specifically, Borough President Adams advocated investments in renewable energy and battery storage to move beyond reliance on natural gas and dirty "peaker plants" disproportionately sited in communities of color. He believes that grid-connected rooftop batteries should be a standard

consideration for commercial buildings. Between existing flat roofs upgrades and new developments, there should be sufficient demand to manufacture such units locally and create industrial jobs.

Borough President Adams believes it is appropriate for River Street Partners, LLC to engage the Mayor's Office of Sustainability, the New York State Energy Research and Development Authority (NYSERDA), and/or the New York Power Authority (NYPA) regarding government grants and programs that might offset costs associated with enhancing the resiliency and sustainability of this development. One such program, the City's Green Roof Tax Abatement (GRTA) provides a reduction of City property taxes by \$4.50 per sq. ft. of green roof space, up to \$100,000. The DEP Office of Green Infrastructure advises property owners and their design professionals through the GRTA application process. Borough President Adams encourages the applicant to contact his office for further coordination on this matter.

As part of his resiliency policy, Borough President Adams seeks to advance stormwater management best practices including permeable pavers and/or rain gardens that promote DEP's green infrastructure agenda. He believes that sidewalks with nominal landscaping and/or adjacent roadway surfaces could be transformed through the incorporation of rain gardens, which provide tangible environmental benefits through rainwater collection, improved air quality, and streetscape beautification. Tree plantings can be consolidated with rain gardens as part of a comprehensive green infrastructure strategy. Where it is not advisable to remove street trees, it's possible to integrate stormwater retention measures into existing tree pits, with additional plantings to increase infiltration and make the site more pleasant for its users. In addition, blue/green roofs, permeable pavers, and rain gardens (including street tree pit enhancements) would help divert stormwater from the Newtown Creek Wastewater Treatment Plant.

The required Builders Pavement Plan (BPP) for the proposed development provides an opportunity to install DEP rain gardens along the development site's North First, North Third, and River streets frontages. The ZR requirement to plant street trees provides shade on excessively hot days, helps combat the urban heat island effect, and provides other aesthetic, air quality, and enhanced stormwater retention benefits. It should be noted that a rain garden would require a maintenance commitment and attention from the landlord. Maintenance includes cleaning out debris that can clog the inlet/outlet and prevent water collection, regular inspection to prevent soil erosion, watering during dry and hot periods, and weeding to ensure proper water absorption.

Borough President Adams believes that River Street Partners, LLC should consult DEP, the New York City Department of Transportation (DOT), and the New York City Department of Parks and Recreation (NYC Parks) regarding the integration of rain gardens with street trees as part of the BPP. If there is interest in implementing an enhancement, it should be done through advance consultation with CB 1 and local elected officials.

Borough President Adams notes that waterfront development of such tower height would be expected to incorporate deeply-driven piles. Site work to such depth might reach a level where integration of a geo-thermal energy system could be economically feasible. Therefore, he believes that River Street Partners, LLC should try to accommodate CB 1's request to incorporate geothermal energy into the development. sustainability plan for River Ring. Borough President Adams believes that a project of such density and scale should strive to reduce reliance on fossil fuels. He also believes that the project's expansive extent of an open space system along a waterfront location provides an opportunity to capture sustained winds along the East River. The linear nature of the project site could provide multiple sites to incorporate wind turbines. Specifically, the narrow section of the development site along the existing NYPA "dirty peak" power plant, would allow wind turbines to be spaced along the shoreline.

Therefore, prior to considering the application, the City Council should obtain written commitments from River Street Partners, LLC to incorporate resiliency and sustainability measures, such as blue/green/white roof treatment, geo-thermal energy, grid-connected rooftop batteries, passive house construction, solar panels and/or façades, and/or wind turbines integrated into publicly-accessible waterfront access area

extending along the power plant with such locations depicted on drawings LSGD Site Plan Z01-1 and Waterfront Public Access Area (WPAA) Overall WPAA Site Plan L-100.00 and Furnishing Plan L-150.00.

### **Advancing Vision Zero Policies**

Borough President Adams supports Vision Zero policies, including practices that extend sidewalks into the roadway to shorten pedestrian crossings in front of traffic lanes. These bulbouts or neckdowns, promote driver awareness of pedestrian crossings and encourage them to slow down. Curb extensions also provide additional sidewalk space for seniors and families especially near dangerous intersections. When these measures are implemented, all roadway users benefit from safer streets.

In 2015, Borough President Adams launched the Connecting Residents on Safer Streets (CROSS) Brooklyn initiative. In its first year, the program allocated \$1 million to build curb extensions at five dangerous intersections. When reviewing discretionary applications for new residential and mixed-use development Borough President Adams seeks opportunities to implement pedestrian safety measures.

The River Ring proposal would result in dense, high-rise towers at the intersections of North First and North Third streets with River Street. These frontages would be traversed by pedestrians headed to the newly constructed publicly accessible open space along the East River that would serve as a community amenity, as well as the activated ground-floor with lobbies for commercial office and community facility use and residences and retail space. It is therefore expected that the project's crossings would draw a high volume of pedestrians. Per his CROSS Brooklyn initiative, Borough President Adams believes that curb extensions should be built at the intersections of River Street with the northwest corner North First Street and southwest corner of North Third Street. These improvements would benefit the future residents of River Ring and visitors to its amenities.

Therefore, prior to considering the application, the City Council should obtain written commitments from River Street Partners, LLC to coordinate curb extensions with DEP, DOT, and NYC Parks. All parties should affirm that implementation would require advance consultation with CB 1 and local elected officials.

### **Provision of Adequate Bike Parking, Electric Vehicle Chargers, and Car-Share Opportunities in Response to the Requested Parking Reduction**

Borough President Adams supports the establishment of Transit Zones in the ZR to enable affordable housing development without requirements to provide parking for affordable housing floor area. He also supports efforts to reduce parking obligations, though such waivers should be part of a well-considered plan that provides alternatives to car ownership, such as bicycle and car-share services. In addition, any parking reduction should promote electric vehicle car ownership.

#### **Ensuring Optimal Amount of Enclosed Bicycle Parking**

Borough President Adams believes that a significant reduction in off-street parking should be premised on a corresponding increase in bicycle parking requirements (per the ZR, one bicycle for every two units). To reduce parking of the market-rate units, developers should provide significantly more than the required number of bicycle spaces. Moreover, given the proposed 33 percent reduction in standard parking requirements, this development should be required to make improvements that promote bicycle use.

In this case, the applicant is seeking to reduce the ZR parking requirement from 315 to 210 parking spaces for the market-rate units. The requested parking reduction from 40 percent of the market rate units pursuant to ZR 74-533 to 26.7 percent, should be satisfied with the additional stipulation that in-building bike parking be provided at a rate of five spaces for every six units in lieu of the standard one space per two units.

#### **Accommodating Car-Share Vehicles within the River Ring Garage**

Parking capacity can also be addressed by facilitating urban car-share services. There are times when affordable access to automobiles can provide a quality-of-life enhancement, even for wealthier

households. Furthermore, research suggests that car-share achieves environmental benefits by reducing automobile use among car owners. Borough President Adams believes that providing access to car-share at River Ring would benefit future occupants, as well as nearby Williamsburg residents.

According to ZR Section 36-46(a)(1), a car-sharing entity is permitted to occupy up to five parking spaces, though no more than 20 percent of all spaces in group parking facilities. River Ring is expected to add more than 1,000 households to the area who would be less likely to own cars. A significant number of Williamsburg residents also lack access to automobiles. Borough President Adams believes that a limited number of the 210 spaces in the River Ring garage should be set aside for car-share vehicles through dialogue with car-sharing companies.

To stage rental vehicles within the garage, the developer would have to provide visible signage, per ZR Section 36-523, and state the total number of spaces, as well as the maximum number of car-sharing vehicles.

#### Encouraging Use of Electric Vehicles

Borough President Adams believes that as electric vehicles become increasingly accessible, more buyers will opt for this sustainable alternative to traditional automobiles. In 2021, new electric vehicle registrations in the United States nearly doubled, outstripping overall growth in the auto market. Encouraging ownership and use of electric vehicles at River Ring would align with the development's sustainability agenda and achieve tangible environmental benefits. However, as a key consideration for utilization of electric vehicles is availability of charging stations, he believes that adapters should be accessible to no less than 10 percent of all parking spaces.

Given the overwhelming expense of building underground parking in proximity to the East River, the approval of the requested reduction in parking would result in considerable cost savings for the project. Borough President Adams believes that the grant of such a waiver should be premised on providing additional public benefit as noted above, including the promotion of alternatives to driving though enhancing accommodation of bicycles, enticement of foregoing automobile ownership and promoting ownership of electric vehicles. Therefore, Borough President Adams believes that the requested parking reduction from 40 percent of the market rate units pursuant to ZR 74-533 should be satisfied with a parking provision of 26.7 percent, with the additional stipulation that in-building bike parking is provided at a rate of five spaces for every six units in lieu of the standard one space per two units, written commitments from River Street Partners, LLC to engage car-sharing companies in leasing multiple spaces within the development's garage, in consultation with CB 1 and local officials, as well as electric charging capacity for at least 10 percent of the provided parking spaces.

#### **Ensuring an Optimal Amount of Bicycle Parking for the Publicly Accessible Open Space**

As indicated in Waterfront Public Access Area (WPAA) drawing Furnishing Schedule L-151.00, eight, double capacity bike rack fixtures would be installed in the Supplement Waterfront Public Access Area (SPAA) and 16 of such fixtures would be placed in the combination of WPAA and the North Third Street terminus. This is in response to the ZR Section 62-62 (c) requirement to enable parking for 48 bicycles via bike racks. According to Furnishing Plan L-150.00, eight fixtures would be installed in proximity to the North Third Street southern right of way, near the shoreline.

The River Ring site is in proximity to a major bike route, the Brooklyn Greenway, and its publicly-accessible open space has the potential to serve as a stop-over, as well as a destination for those living directly upland but seeking to commute by bicycle. Borough President Adams believes that WAP requirements for the open space are deficient for such a represented public amenity. He believes that River Street Partners, LLC should greatly exceed the ZR requirement by providing many more bicycle parking fixtures. Based on a review of the proposed WAP, there appears to be an opportunity to include 39 extra bike fixtures. They could be added as follows: adding eight fixtures just west of the terminus of North Third Street, south of the right-of-way; another six along the south side of the North Third Street

right of way between the tables and chairs to the west of the corner retail space; 16 bike racks along the River Street right of way between North First and North Third streets, spaced between the retail stores and residential entry, and between the retail store and the prolongation of Metropolitan Avenue; three fixtures along North First Street between the corner retail and office lobby, and six more near Grand Ferry Park on the seaward side of the pathway to the south of the first group of benches.

Borough President Adams believes that River Street Partners, LLC should exceed the ZR 62-62 (c) requirement for bike racks as per the fixture indicated in Waterfront Public Access Area (WPAA) drawing Furnishing Details L-511.00, by providing 39 additional double-capacity bike parking fixtures depicted on waterfront public access drawings Overall WPAA Site Plan L-100.00, Furnishing Plan L-150.00, and reflected in Furnishing Schedule L-151.00.

### **Providing Quality Jobs**

Borough President Adams is concerned that too many Brooklyn residents are currently unemployed or underemployed. It is his policy to promote economic development that expands employment opportunities. According to the Furman Center's "State of New York City's Housing and Neighborhoods in 2017," double-digit unemployment remains a pervasive reality in the borough, with more than half of community districts reporting poverty rates of 20 percent or higher. The ongoing COVID-19 pandemic has only exacerbated widespread job insecurity.

This employment crisis can be addressed by prioritizing local hiring and Brooklyn-based businesses, including qualified LBEs and MWBEs, a central component of Borough President Adams' economic agenda. This site provides opportunities for the developer to retain a Brooklyn-based contractor and subcontractor, especially those that are designated LBEs, consistent with Section 6-108.1 of the City's Administrative Code, and MWBEs that meet or exceed standards per Local Law 1 (no less than 20 percent participation) and coordinate oversight of such participation by an appropriate monitoring agency.

In addition, jobs in the building service sector have long been a path to middle-class living for immigrants and people of color. Building service positions have low barriers to entry and real career prospects. When compensated at prevailing wage standards, such jobs provide average wages double that of the retail sector. Additionally, building service opportunities are often filled through local hiring.

Borough President Adams believes it is appropriate to advocate for economic opportunities that provide sufficient income to alleviate rent burdens for low- and moderate-income families. He further believes that building service positions increase neighborhood employment. Borough President Adams strongly encourages developers to commit to local hiring for building service jobs, and to provide prevailing wages and full benefits to this workforce.

Therefore, prior to considering the application, the City Council should obtain written commitments from the applicant, River Street Partners, LLC to memorialize in its intended RFPs, retention of Brooklyn-based contractors and subcontractors, especially those designated LBEs consistent with Section 6-108.1 of the City's Administrative Code and MWBEs, to meet or exceed Local Law 1 standards (no less than 20 percent participation). Such commitments should also clarify the developer's intent to partner with local employment organizations to fill building service positions and confirm that these workers would be paid prevailing wages with full benefits.

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

Data shows that more than 80 percent of New York City households earning 50 percent of AMI or less are rent-burdened. The crisis is even worse among those making 30 percent of AMI or less, currently \$32,220 for a family of three. More than 50 percent of this population pays more than half of their income toward rent. Finally, nearly one third of New York City households earn less than \$35,000 and more than one-fifth — over two million people — earn less than \$25,000 annually. As the City's housing crisis grows worse, the burden falls most heavily on these low-income households, exacerbating racial disparities.

According to the CHPC, one in four households of color is severely rent-burdened, which is 11 percent more than Caucasian households.

A strict rent-to-income requirement of no more than 30 percent prevents many rent-burdened households, who are often paying the same or greater rent for an apartment from applying for new affordable housing. As noted in his East New York Community Plan ULURP recommendation, Borough President Adams believes it's time to stop excluding families paying too much for substandard accommodations from affordable housing lotteries. He seeks to qualify rent-burdened households for the lottery process, which would maximize their opportunities to secure affordable housing and expand the number of households eligible for affordable housing lotteries.

One way to address this disparity is by amending the ZR AMI qualifications to include households that would maintain or reduce their rent burden. For MIH lotteries, DCP needs to modify the ZR to allow exceptions to the 30 percent of income limit so that those who are rent-burdened and paying equal or greater rent than that of the lottery unit would be eligible to live in new and quality affordable housing. Borough President Adams believes that the CPC and/or the City Council call for modification of the ZR MIH section pertaining to special bulk regulations, to allow rent-burdened households to qualify for MIH affordable housing units.

### **Adequate Funding for Bushwick Inlet Park**

Borough President Adams recognizes that CD 1 is significantly underserved by public open space, and that this issue has been a longstanding concern in the community. New developments that add residential density in Greenpoint-Williamsburg exacerbate demand for parkland, though opportunities to create new open space are limited. The completion of Bushwick Inlet Park has been a top objective for CD 1 since the 2005 rezoning opened the waterfront to high-rise residential construction. He therefore calls on the City to honor its commitments and include full funding for Bushwick Inlet Park in its 10-year capital plan to achieve a complete and operational park.

### **Ensuring Adequate Ferry Service**

One way to relieve pressure on existing bus and subway infrastructure in Williamsburg is to induce Lower Manhattan and Midtown commuters to take the ferry. New York City's subsidized ferry system, which consists of multiple routes that run across and along the East River, has an extensive ridership base within a brief walk given the ongoing high-rise residential development along the Brooklyn/Queens waterfront.

Currently, NYC Ferry operates an East River route between Hunter's Point South and Wall Street that picks up passengers along several stops before alighting in Midtown or Lower Manhattan. While the proposed development would bring more than 1,000 new households to the Williamsburg waterfront, the vast extent of the Domino site has yet to be developed; 420 Kent has many apartments to be occupied; development is underway to the north of Bushwick Inlet, and anticipated south of Schaefer Landing. Borough President Adams believes, over time, ridership in this area would overwhelm the capacity of the East River route. Therefore, a next step for the evolution of the ferry system would be for EDC, or a successor agency, to consider running point to point service between the Northside Piers and Pier 11 and East 34<sup>th</sup> Street during peak AM and PM weekday hours.

### **Adequate Public Bus Transit**

The waterfront section of Williamsburg is served by the B32 and Q59 buses, which stop on Kent and Wythe avenues between South Second and Third streets, and the B62 bus, which stops on Bedford Avenue between South First and Second streets. The Q59 provides a convenient connection to both the G and L trains. The MTA recently implemented the B32 route connecting the Williamsburg waterfront, Greenpoint, and Long Island City. The route operates between Marcy Avenue station and Long Island City stations served by the 7, E, G, and M subway trains, running along Kent Avenue (northbound) and Wythe Avenue (southbound). The B32 line has added capacity to the area and

has helped absorb the impacts of ongoing development on the Q59, as its southern segment mirrors the Q59 and B62 routes.

Borough President Adams believes that further improvements should be made to enhance local bus service. Specifically, the Q59, which is presently operating at 12-minute intervals, should be extended from Williamsburg Plaza to the southwest corner of Broadway and Marcy Avenue. Such a change would shift ridership to the east end of the station where there is more capacity to move between the street and the train platform. He believes the MTA should modify the Q59 to achieve best utilization of existing access to the Marcy Avenue platform.

The 2010 Final Environmental Impact Statement (FEIS) for what was referred to as the New Domino development cited a need for 11 additional buses on the Q59 route during peak periods with three attributed to the New Domino development. As sites develop along Williamsburg's East River waterfront, it is expected that the MTA would modify its intervals of these bus routes. As the time comes, rather than providing more buses for the entire route, with buses significantly under capacity east of Lorimer Street, Borough President Adams believes that the MTA should also provide frequent Q59 shuttle service. With a shorter route, each additional bus added to the line could be utilized more efficiently and cost-effectively. The shuttle could have terminuses at Lorimer or Union streets (Metropolitan Avenue) and at Marcy Avenue (Broadway). The route could even be extended south to Division Avenue close to Schaefer Landing, the Domino, 420 Kent, and the pending site initially presented as Rose Plaza on the Water. He believes that the MTA should further modify the Q59 to add more service through such a shorter route with an extension to Division Avenue to serve southside waterfront developments along with the River Ring site.

Borough President Adams believes that it is also appropriate to supplement subway transit with express bus service providing direct access to Manhattan without requiring bus transfers to reach the Marcy Avenue and/or Lorimer Street stations. Borough President Adams believes that the B39 could provide more utility if the MTA extended the bus route to Lower or Midtown Manhattan from its Lower East Side terminus and along the Brooklyn waterfront as an extension from its Williamsburg Plaza terminus. As part of considering such a route, the MTA should work with DOT to pursue a dedicated Williamsburg Bridge bus lane for at minimum, peak commuting hours to achieve a commute option that would provide predictable service and have the ability to maximize the number of potential passengers served.

Completed and anticipated residential developments in CD 1 are expected to add a significant daytime and overnight population to the area. It is therefore reasonable to expect an increase in ridership such as what was disclosed starting with the 2010 FEIS, as updated in its Technical Memorandum. The MTA should closely monitor ongoing increases in ridership to determine when modifications become necessary, and continuously procure buses to maintain adequate capacity and frequency. Such monitoring should consider when it might be appropriate to implement more frequent shuttle service on the Q59 route and recommended route modifications, an elongated route for the B39 as a waterfront express bus, increased frequency for the B32 route between Long Island City and Williamsburg Plaza, and additional service on the B62 route between Downtown Brooklyn and Long Island City. Borough President Adams believes that such MTA monitoring should occur in six-month intervals, to ensure that the agency is able to anticipate and meet transit demand associated commercial and residential occupancy of River Ring, and other in progress and pending developments in along the Greenpoint and Williamsburg waterfront. Such vigilance would ensure an adequate level of service and help control potential adverse impacts of increased ridership.

Finally, with the introduction of daytime office and residential occupancy, Borough President Adams believes it is appropriate for the MTA to coordinate the installation of bus shelters on Kent and Wythe avenues in proximity with DOT.

### **Adequate Subway Operation**

Borough President Adams believes that the MTA must work to address increased residential growth that relies on the L train for transit access in a timely manner. Equipping the tracks with technology to run 22 trains per hour in one direction rather than the current 20 was an important step toward meeting increased demand for service. Communications-based train control (CBTC) upgrades to electric power and train storage facilities allow for expansion of such maximum capacity. However, it is critical that the agency procure more trains to meet designed capacity under the newest technology.

The MTA had previously intended to have enough train cars to run the L line at the full CBTC capacity of 22 trains per hour and was to order the additional subway cars which were supposed to be put into service by 2017. However, according to the DEIS, only 20 trains were operating during morning peak hours in 2017, based on that year's schedule. A 25-percent increase in G line service between 3:00 PM and 9:00 PM was also intended to alleviate persistent peak-hour overcrowding. The DEIS assumes that 22 trains would be in operation by the time River Ring would be occupied in 2027. It is imperative that the MTA redouble its efforts to maximize operational capacity as this and other residential developments come online in this decade.

With the recent rerouting of M line service that had taken over the former Manhattan V line, commuters to Midtown have benefitted from a one-seat ride. The MTA had implemented measures (disclosed in 2010) to mitigate anticipated impacts to the Marcy Avenue station's Manhattan-bound and Queens-bound secondary control areas for the J/M/Z subway lines. This involved replacing the existing High Entrance and Exit Turnstile (HEET) at both control areas with two low-turnstiles at each location to achieve increased capacity.

In terms of capacity, as more waterfront development becomes occupied, it is important to understand how the MTA may optimize the operational potential for these lines. The agency should continuously monitor service to determine if additional enhancements might be warranted in response to the ongoing population increase. The MTA should continue semi-annual full-line impact reviews to identify any need for increased frequency and/or additional train cars.

According to transportation advocates, the MTA has available rolling stock to extend trains operating on the G line. Coupled with infrequent service, the characteristically shorter G trains prompt passengers to utilize less than half the platform space when waiting for trains. At Metropolitan Avenue station, the closest G stop to the River Ring and pending Domino development, access to the platform is concentrated at its northern section, which results in riders crowding this area to board the train before it leaves. To remedy this condition, the MTA initially added one train per hour during the weekday hours of 3:00 PM to 9:00 PM. The MTA should also consider extending the existing trains by at least two cars in the future, and ultimately lengthen the G to eight cars to address passenger capacity and platform crowding — even if doing so would result in added maintenance and operations costs.

Borough President Adams believes that to improve subway service in this neighborhood, the MTA should monitor ridership demand associated with the residential and commercial occupancy of River Ring (and other ongoing and anticipated developments) in six-month intervals to determine when additional and/or more frequent trains are warranted on the G, L, and J/M/Z lines. The MTA should continue to procure enough train cars to operate L service at the full CBTC capacity of 22 trains per hour to achieve the maximum service capacity and add excess rolling stock to the J/M/Z and G lines.

### **Recommendation**

Be it resolved that the Brooklyn borough president, pursuant to Sections 197-c, 199 and 201 of the New York City Charter, and of the New York City Charter and Section 5-430 et seq. of the New York City

Administrative Code recommends that the City Planning Commission (CPC) and City Council approve this application with the following conditions:

1. That for 210425 MMK, the mapping agreement for the discontinuation and closing of Metropolitan Avenue and North First Street include a condition that the sale of either the City-owned right of ways in the form of easements or tax lots, be one dollar, further conditioned on adequate demonstration that the remainder of the proceeds of fair market value have been deposited into a New York City Comptroller's Office Fiduciary Account for use by the New York City Department of Parks and Recreation (NYC Parks) to advance the development of Bushwick Inlet Park
2. That the City Council obtain written commitments from River Street Partners LLC clarifying how it would:
  - a. For the additional FAR increment in excess of an R7A MIH district, provide affordable housing floor area at a rate that commits a combined extra percentage of 76,690 sq. ft. of affordable housing floor area, at an average 60 percent AMI, or modest decrease in the 60 percent AMI average rent collection
  - b. Memorialize the recommended additional 76,690 sq. ft. of permanent affordable housing floor area via a legally binding mechanism, such as the New York City Zoning Resolution (ZR) 74-533 (a) obligation to consult with the New York City Department of Housing Preservation and Development (HPD)
    - a. Provide an affordable housing mix with at least 50 percent two- or three-bedroom units, and at least 75 percent one-bedroom and larger units, but for studios targeted to households not exceeding 40 percent AMI
    - b. Implement outreach efforts to seniors earning up to 40 percent AMI for single- and dual-person households, to maximize their participation in the affordable housing lottery
  - c. Utilize one or more local affordable housing non-profits to serve as the administering agent and have one or more such entities play a role in promoting lottery readiness
3. That Bulk Waiver Sections Z06-1, Z06-2 and C06-4, as part of special permit ULURP 220064 ZSK, be further modified to include a notation that restricts community facility floor area to Use Group 3A schools (restricted to child care centers), non-commercial art galleries, and/or UG 4A clubs, community centers, non-commercial recreation centers, philanthropic or non-profit institutions without sleeping accommodations. Restrict one-quarter of the commercial office and retail space for occupancy restricted to any combination of arts/cultural entities, child care, innovation and maker uses, and non-profit organizations – including recreational
4. That the City Council obtain written commitments from River Street Partners, LLC clarifying how community facility floor area would be at below-market lease terms, and with intent memorialize to recruit such entities, based on reasonable lease terms in consultation with Brooklyn Community Board 1 (CB 1) and local elected officials, through a legally enforceable mechanism, such as a deed restriction or contract with a non-profit business or service provider, and that space set-aside for recreation shall be inclusive of design development drawings to confirm that such facility would serve the stated purpose and promise of serving both the Williamsburg and Greenpoint communities as well as 250 school children annually, including proper representation to scale of facility elements including pool and locker rooms

5. That in addition to considering the mandating of deeper and/or increased affordable housing floor area, the City Council should consider reducing the number of floors in one or both towers in its determination of the requested land use actions in consultation with CB 1
6. That the City Council obtain written commitments from River Street Partners LLC clarifying how it would:
  - a. Install curb extensions at the northwest intersection of North First Street and River Street as well as the southwest corner of North Third and River streets as part of a Builders Pavement Plan (BPP) or as treated roadbed sidewalk extensions, with the understanding that New York City Department of Transportation (DOT) implementation would require advance consultation with Brooklyn Community Board 1 (CB 1) and local elected officials
  - b. Coordinate with the New York City Department of Environmental Protection (DEP), and the New York City Department of Parks and Recreation (NYC Parks) to install DEP gardens as part of a BPP along North First, North Third, and River streets, in consultation with CB 1 and local elected officials
  - c. Integrate resiliency and sustainability measures, such as blue/green/white roof treatment, geo-thermal, grid-connected rooftop batteries, passive house construction, solar panels and/or façades, and/or wind turbines, including such wind-turbines being integrated into publicly-accessible waterfront access area extending along the power plant with such locations depicted on drawings LSGD Site Plan Z01-1 and Waterfront Public Access Area (WPAA) Overall WPAA Site Plan L-100.00 and Furnishing Plan L-150.00
  - d. That the requested parking reduction from 40 percent of the market rate units pursuant to ZR 74-533 (a) to satisfied by providing not less than 26.7 percent, provided that:
    - i. In lieu of in-building bike parking at a rate of one space per two units, such bike parking be provided at a rate of five spaces for every six units
    - ii. Engagement with car-sharing companies to lease multiple spaces within the development's parking facilities in consultation with CB 1 and local officials
    - iii. Electrical charging adapters be accessible to no less than 10 percent of all parking spaces, and not less than one car-share space for every 20 required parking spaces Bike Parking, including open space
  - e. Exceed the ZR 62-62 (c) requirement for bike rack fixtures, as per the fixture indicated in WPAA drawing Furnishing Details L-511.00, to accommodate 48 bicycles by providing 39 double-capacity bike parking fixtures, that should be depicted on waterfront public access drawings Overall WPAA Site Plan L-100.00, Furnishing Plan L-150.00, and be reflected in Furnishing Schedule L-151.00
  - f. Retain Brooklyn-based contractors and subcontractors, especially those designated local business enterprises (LBEs) consistent with Section 6-108.1 of the City's Administrative Code, and minority- and women-owned business enterprises (MWBES) to meet or exceed standards per Local Law 1 (no less than 20 percent participation), and coordinate the oversight of such participation by an appropriate monitoring agency

- g. Outreach to local workforce organizations to provide service jobs for local job seekers and that such building service workers be required to be paid prevailing wages with full benefits

Be it further resolved:

1. That the CPC and/or the City Council call for modification of the ZR MIH section with a requirement that permits households with rent-burdened status to qualify for MIH affordable housing lotteries (allow for exceptions to the 30 percent of income threshold for households paying the same or higher rent than what the housing lottery offers)
2. That the City of New York include full funding for Bushwick Inlet Park in its 10-year capital plan to achieve a complete and operational park
3. That the New York City Economic Development Corporation (EDC) study running more frequent East River limited stop service between East 34<sup>th</sup> and Pier 11 from Northside Piers
4. That the Metropolitan Transportation Authority (MTA) investigate the following bus enhancements
  - a. Extending the last stop of Q59 (at Williamsburg Plaza) to the southwest corner of Broadway and Marcy Street
  - b. Instituting a frequent bus (shuttle) service segment of the Q59 to serve the ongoing and envisioned waterfront developments between Division and Grand avenues, inclusive of evaluation of rerouting from Broadway to further south to Division Avenue, to be routed between the Marcy Avenue (J/M/Z) and Lorimer Street/Metropolitan Avenue (L/G) stations
  - c. Introducing express bus (could be a waterfront extension of the B39 route) to Midtown and Lower Manhattan, inclusive of collaboration with DOT to pursue a dedicated Williamsburg Bridge bus lane for at minimum, peak commuting hours
  - d. Monitoring Q59, B32, B39, and B62 service in intervals, not to exceed six months, to determine when additional bus service would be warranted based on ridership demand and then provide additional vehicles to increase the frequency of bus service as warranted to promote adequate service to these routes and implement the above referenced route modifications
  - e. Obtaining additional buses for maintaining adequate frequency and capacity as follows:
    1. To implement the described shuttle for the Q59 route
    2. The B39 waterfront express route
    3. The B62 route to or from Downtown Brooklyn and Long Island City
  - f. Coordinating with DOT for the installation of bus shelters on Kent and Wythe Avenues in proximity to the River Ring site
  - g. Undertaking semi-annual full line impact reviews to determine the projected need for increased frequency for L, J/M/Z and G line service and/or lengthening each G line train

- h. Adding additional cars to the G train to expand each train's capacity to eight cars from its current four cars per train
- i. Continuing MTA efforts to obtain additional cars to increase the number of trains along the L line to its designed community-based train control operating capacity of 22 trains per peak hour service in one direction

**RESTRICTIVE DECLARATION**

**Made by:**

**RIVER STREET PARTNERS LLC**

**Dated:**

\_\_\_\_\_, 202\_

**KINGS COUNTY**

**Block 2355, Lots 1 and 20**

**Block 2361, Lots 1, 20, and 21**

**Block 2376, Lot 50<sup>1</sup>**

**RECORD AND RETURN TO:**

FRIED, FRANK, HARRIS, SHRIVER AND JACOBSON LLP

ONE NEW YORK PLAZA

NEW YORK, NY 10004

ATTENTION: DAVID KARNOVSKY, ESQ.

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<sup>1</sup> Tax lot numbers for demapped portions of Metropolitan Avenue and N 1st Street to be added.

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## RESTRICTIVE DECLARATION

Declaration (“**Declaration**”) made as of this \_\_\_\_ day of \_\_\_\_\_, 202\_, by River Street Partners LLC (“**Declarant**”), a New York limited liability company, having an address at c/o Two Trees Management Co., 45 Main Street, 12<sup>th</sup> Floor, Brooklyn, New York 11201.

### WITNESSETH:

WHEREAS, Declarant is the owner of certain real property located in the Borough of Brooklyn, Kings County, City and State of New York, which property is designated on the tax map of the City of New York, Kings County (the “**Tax Map**”) as (i) Block 2355, Lots 1 and 20 (the “**Declarant Block 2355 Property**”) as more particularly described in Exhibit A-1 annexed hereto; (ii) Block 2361, Lot 1 and 20 (the “**Declarant Block 2361 Property**”) as more particularly described in Exhibit A-2 annexed hereto; and (iii) Block 2376, p/o Lot 50 (the “**Declarant Block 2376 Property**”) as more particularly described in Exhibit A-3 annexed hereto;

WHEREAS, the State of New York is the owner of certain real property located in the Borough of Brooklyn, Kings County, City and State of New York, which property is designated on the Tax Map as (i) Block 2361, Lot 21 (the “**State Block 2361 Property**”) as more particularly described in Exhibit B-1 annexed hereto, and (ii) Block 2376, Lot p/o 50 (the “**State Block 2376 Property**”) as more particularly described in Exhibit B-2 annexed hereto;

WHEREAS, the Declarant Block 2361 Property and the State Block 2361 Property have previously been declared to be a single zoning lot (the “**Block 2361 Zoning Lot**”) pursuant to that certain Declaration of Zoning Lot Restrictions dated as of [\_\_\_\_], 2021 and recorded in the Office of the City Register for the City of New York (the “**Register’s Office**”) at City Register File Number (“**CRFN**”) [\_\_\_\_]; and

WHEREAS, the Declarant Block 2376 Property and the State Block 2376 Property have previously been declared to be a single zoning lot (the “**Block 2376 Zoning Lot**”) pursuant to that certain Declaration of Zoning Lot Restrictions dated as of [\_\_\_\_], 2021 and recorded in the Register’s Office at CRFN [\_\_\_\_]; and

WHEREAS, the New York City Planning Commission (the “**CPC**”) and New York City Council (“**Council**”) have approved a demapping action under Application No. C 210425 MMK (the “**Street Demapping Application**”) with respect to certain land formerly mapped as Metropolitan Avenue west of River Street and portions of N 1st Street west of River Street, comprising (iv) certain upland land identified on the Tax Map as Block [\_\_\_\_], Lot [\_\_\_\_] and Block [\_\_\_\_], Lot [\_\_\_\_] (the “**Demapped Upland Property**”) as more particularly described in Exhibit C-1 annexed hereto, and (ii) certain seaward land identified on the Tax Map as Block [\_\_\_\_], Lot [\_\_\_\_] and Block [\_\_\_\_], Lot [\_\_\_\_] (such seaward land, the “**Demapped Seaward Property**”), as more particularly described in Exhibit C-2 annexed hereto; and

WHEREAS, the Declarant Block 2355 Property, the Block 2361 Zoning Lot, the Block 2376 Zoning Lot, the Demapped Upland Property and the Demapped Seaward Property (collectively, the “**Subject Property**”) have been declared to be a single zoning lot in accordance with paragraph (d) of the definition of “zoning lot” set forth in Section 12-10 of the Zoning

Resolution of the City of New York, effective as of December 15, 1961, as amended to date (the “**Zoning Resolution**” or “**ZR**”) pursuant to that certain Declaration of Zoning Lot Restrictions dated as of [\_\_\_\_], 202[\_\_\_\_] and recorded in the Register’s Office at CRFN [\_\_\_\_], a copy of which is annexed hereto as **Exhibit D**; and

WHEREAS, the Subject Property is located within a waterfront block, as that term is defined in ZR Section 62-11, and is subject to the regulations of Article VI, Chapter 2 of the Zoning Resolution; and

WHEREAS, all parties in interest, as that term is defined in the definition of “**zoning lot**” in Section 12-10 of the Zoning Resolution (“**Parties in Interest**,” or each, individually, a “**Party in Interest**”), to the Subject Property, as shown on the certification prepared by Royal Abstract of New York (the “**Title Company**”) a copy of which certification is attached hereto as **Exhibit E**, have either executed this Declaration or waived their rights to execute this Declaration by written instruments annexed hereto as **Exhibit F**, which instruments are intended to be recorded simultaneously with this Declaration; and

WHEREAS, Declarant has proposed to improve the Subject Property as a “large-scale general development” pursuant to the requirements of a “large-scale general development” provided in ZR Section 12-10 in effect on the Effective Date, in accordance with the Development Plans (hereinafter defined) and Waterfront Public Access Area Plans (hereinafter defined) (such proposed improvement of the Subject Property, the “**Large Scale General Development**” or “**LSGD**”); and

WHEREAS, Declarant desires to develop the Large-Scale General Development on the Subject Property with two (2) mixed-use buildings (the “**Proposed Development**”), [87,260] square feet of WPAA (defined below) and [39,048] square feet of other public access areas (the “**Public Access Area**” or “**PAA**”); and

WHEREAS, in connection with the Proposed Development, Declarant is required to provide Waterfront Public Access Areas (the “**Waterfront Public Access Area**” or “**WPAA**”) and visual corridors (hereinafter referred to as the “**Visual Corridors**”) pursuant to Section 62-50 of the Zoning Resolution; and

WHEREAS, in connection with the Proposed Development and construction of the Waterfront Public Access Area, Declarant filed applications with the New York City Department of City Planning (“**DCP**”) for approval by the Chairperson of the CPC (the “**Chairperson**”) or the CPC, as applicable, for: (a) a zoning map amendment (Application No. 22062 ZMK) (the “**Zoning Map Amendment**”); (b) amendments to the text of ZR Sections 74-742 and 74-743 and Appendix F of the Zoning Resolution (Application No. N 220063 ZRK) (the “**Zoning Text Amendments**”); (c) approval of landfill (Application No. 220061 MLK) (the “**Landfill Action**”); (d) special permits pursuant to ZR Sections 74-743(a)(2) and 74-743(a)(13) (Application No. 220064 ZSK) and ZR Section 74-533 (Application No. 220070 ZSK) (the aforesaid special permits, collectively, the “**Special Permits**”); (e) authorizations of the CPC pursuant to ZR Sections 62-822(a) (Application No. N 220065 ZAK), 62-822(b) (Application No. N 220068 ZAK), and 62-822(c) (Application No. N 220069 ZAK) to modify requirements of the Waterfront Public Access Areas and to permit phased development of the Waterfront Public Access Area (the aforesaid

authorizations, collectively, the “**Authorizations**”); and (f) a certification of the Chairperson pursuant to ZR Section 62-811 (Application No. N 220066 ZCK with respect to compliance with waterfront public access area and visual corridor requirements (the “**Certification**”) (all of the foregoing, as the same may be amended, supplemented, or otherwise modified, collectively, the “**Application**”; the Application, excluding the Certification, the “**Discretionary Actions**”); and

WHEREAS, the Commission conducted an environmental review of the Discretionary Actions as lead agency pursuant to City Environmental Quality Review, Executive Order No. 91 of 1977, as amended, and the regulations promulgated thereunder at 62 RCNY § 5-01 et seq. (“**CEQR**”) and the State Environmental Quality Review Act, New York State Environmental Conservation Law § 8-0101 et seq. and the regulations promulgated thereunder at 6 NYCRR Part 617 (“**SEQRA**”), and issued a Notice of Completion of the Final Environmental Impact Statement (“**FEIS**”) on [DATE TO BE INSERTED]; and

WHEREAS, to ensure that the development of the Subject Property is consistent with the analysis in the FEIS upon which the Commission has made findings pursuant to CEQR and SEQRA, and incorporates certain project components related to the environment (“**PCREs**”) which were material to the analysis of environmental impacts in the FEIS and certain measures (“**Mitigation Measures**”) identified in the FEIS to mitigate significant adverse traffic and pedestrian impacts, Declarant has agreed to restrict the development, operation, use, and maintenance of the Subject Property in certain respects, which restrictions are set forth in this Declaration; and

WHEREAS, the Discretionary Actions were approved, with certain modifications to the Zoning Text Amendment and the Special Permits, on [DATE TO BE INSERTED]; and

WHEREAS, this Declaration is entered into: (a) pursuant to ZR Section 74-743(b)(10), which requires that a declaration, with regard to the ownership requirements, as set forth in paragraph (b) of the definition of “large-scale general development” in ZR Section 12-10, as modified by the Zoning Text Amendments, is to be filed with the CPC and to set forth commitments in relation to the Special Permits including, inter alia, to (i) develop the Proposed Development on the Subject Property in Development Phases (as defined herein) in accordance with the Development Sequence (as defined herein), and (ii) construct the buildings and the Public Access Area in accordance with the Special Permits and the terms of this Declaration, (iii) to grant to the City and the general public permanent access easements over the Public Access Area upon Substantial Completion (as defined herein) thereof and (iv) to assume responsibility to maintain, operate and repair the Public Access Area upon Substantial Completion thereof; and (b) pursuant to ZR Section 62-74 to set forth the commitments of Declarant to (i) construct the Waterfront Public Access Area in accordance with the requirements of the Zoning Resolution, the Authorizations and the terms of this Declaration, (ii) grant to the City and the general public permanent access easements over the Waterfront Public Access Area upon Substantial Completion (as defined herein) thereof and (iii) assume responsibility to maintain, operate and repair the Waterfront Public Access Area, upon Substantial Completion (as defined herein) thereof; and

WHEREAS, pursuant to the Application, Declarant intends to construct the Waterfront Public Access Area and Public Access Area and to provide Visual Corridors as shown in the Drawings in **Exhibit H** attached hereto; and

WHEREAS, as a condition to the Certification, Declarant is required to execute and file of record this Declaration confirming that the Declarant shall (i) improve, maintain and operate the WPAA pursuant to Sections 62-52 and 62-70 of the Zoning Resolution and (ii) provide the Visual Corridor(s) pursuant to Section 62-51 of the Zoning Resolution; and

WHEREAS, pursuant to Zoning Resolution Section 62-811, no excavation or building permit may be issued for development of the Subject Property until the Chairperson (as defined hereinabove) has certified to the Department of Buildings (as hereinafter defined) that a site plan has been submitted showing compliance with the requirements of Article VI, Chapter 2 of the Zoning Resolution and that a restrictive declaration has been executed and recorded pursuant to Section 62-74; and

WHEREAS, in connection with the Certification, Declarant shall execute a maintenance and operation agreement (the "**WPAA Maintenance Agreement**") with the Department of Parks and Recreation ("**DPR**"), which WPAA Maintenance Agreement shall be incorporated by reference into this Declaration and made an enforceable part hereof, a copy of which is attached hereto as **Exhibit G**; and

WHEREAS, Declarant, its successors and assigns, for so long as any shall have any right, title or interest in the Subject Property, shall maintain ownership of the WPAA and shall be responsible for the maintenance and capital repair of the WPAA, subject to the terms and conditions of the WPAA Maintenance Agreement; and

WHEREAS, Declarant desires to restrict (i) the manner in which the Proposed Development will be arranged to provide the Visual Corridors for the life of the Proposed Development and (ii) the manner in which the WPAA may be developed, redeveloped, maintained and operated for the duration of the existence of the Proposed Development and intends such restrictions to benefit all land owners and tenants, including the City of New York (the "**City**"), owning or leasing property within one-half mile of the Subject Property.

NOW THEREFORE, Declarant hereby declares that the Subject Property shall be held, sold, transferred, conveyed, used, occupied, operated and maintained subject to the following restrictions, covenants, obligations and agreements, which shall run with the land and bind Declarant and its heirs, successors and assigns so long as they have any right, title or interest in the Subject Property or any part thereof.

## ARTICLE 1

### DEFINITIONS

#### 1.1. Definitions.

(a) “**Affordable Housing Unit**” shall have the meaning ascribed to such term at Section 23-911 of the Zoning Resolution.

(b) “**AG**” shall mean the Attorney General of the State of New York.

(c) “**Applicable Law**” shall mean all presently existing or hereafter enacted laws, orders, ordinances, rules, regulations and requirements of all federal, state, municipal and local governments and their departments, agencies, commissions, boards and officers and any other governmental agency applicable to or having appropriate jurisdiction over the Subject Property or any portion thereof.

(d) “**Application**” shall have the meaning given in the Recitals to the Declaration.

(e) “**As-Built**” shall have the meaning set forth in Section 5.12.

(f) “**As-of-Right Development**” shall mean any development that can be developed and constructed on the Subject Property without utilizing any of the Special Permits or Authorizations.

(g) “**Assessment Property**” shall have the meaning set forth in Section 13.5(a).

(h) “**Association**” shall have the meaning set forth in Section 14.1.

(i) “**Association Members**” shall have the meaning set forth in Section 13.2.

(j) “**Association Obligation Date**” shall have the meaning set forth in Section 16.1.

(k) “**Authorizations**” shall have the meaning set forth in the Recitals.

(l) “**Block 2361 Zoning Lot**” shall have the meaning set forth in the Recitals.

(m) “**Block 2376 Zoning Lot**” shall have the meaning set forth in the Recitals.

(n) “**Board**” shall have the meaning set forth in Section 12.1.

(o) “**Bulkhead Line**” shall mean the Bulkhead Line adopted by the United States Army Corps of Engineers.

(p) “**Certification**” shall have the meaning set forth in the Recitals.

(q) “**CEQR**” shall have the meaning set forth in the Recitals.

(r) “**Chairperson**” shall mean the then Chairperson of the New York City Planning Commission.

(s) “**City**” shall mean The City of New York.

- (t) “**Coop/Condominium**” shall have the meaning set forth in Section 13.1.
- (u) “**Coop/Condominium Obligation Date**” shall have the meaning set forth in Section 13.1.
- (v) “**CPC**” shall have the meaning set forth in the Recitals.
- (w) “**CRFN**” have the meaning set forth in the Recitals.
- (x) “**DCP**” have the meaning set forth in the Recitals.
- (y) “**DCRE**” shall mean Declaration of Covenants, Restrictions, and Easements establishing the Association.
- (z) “**Declarant**” shall mean the named Declarant and the heirs, successors and assigns of the named Declarant except that (i) Declarant shall not include the holder of a mortgage or deed of trust on all or any portion of the Subject Property unless and until it succeeds to the interest or obligation of Declarant by purchase, assignment, foreclosure or otherwise, (ii) Declarant shall include a Coop/Condominium only from and after the Coop/Condominium Obligation Date as set forth in Section 13.1, and (iii) Declarant shall include the Association only from and after the Association Obligation Date as set forth in Section 14.1.
  - (aa) “**Declarant Block 2355 Property**” shall have the meaning set forth in the Recitals.
  - (bb) “**Declarant Block 2361 Property**” shall have the meaning set forth in the Recitals.
  - (cc) “**Declarant Block 2376 Property**” shall have the meaning set forth in the Recitals.
  - (dd) “**Declaration**” shall mean this document and any exhibits attached hereto an incorporated herein.
  - (ee) “**Delay Notice**” shall have the meaning set forth in Section 6.5.
  - (ff) “**Demapped Seaward Property**” shall have the meaning set forth in the Recitals.
  - (gg) “**Demapped Upland Property**” shall have the meaning set forth in the Recitals.
  - (hh) “**Development Phase**” shall mean either Development Phase 1 or Development Phase 2, as applicable, and “**Development Phases**” shall mean both Development Phase 1 and Development Phase 2, collectively..
    - (ii) “**Development Phase 1**” shall mean, collectively, Waterfront Phase 1 and the associated New Building and/or other improvements as shown on the Waterfront Phase 1 Plan.

(jj) “**Development Phase 2**” shall mean, collectively, Waterfront Phase 2 and the associated New Building and/or other improvements as shown on the Waterfront Phase 2 Plan.

(kk) “**Development Plans**” shall mean the following drawings showing the plans for the Proposed Development prepared by Bjarke Ingels Group, and attached hereto as **Exhibit K**, as the same may be modified thereafter in accordance with this Declaration.

*[Drawing list to be added]*

(ll) “**Development Property**” shall mean the Subject Property exclusive of the Waterfront Public Access Area.

(mm) “**Development Sequence**” shall mean the sequenced development of Waterfront Development Phase 1 and Waterfront Development Phase 2 in accordance with the Development Plans, Drawings, and Waterfront Zoning Lot Phasing Plans, as applicable.

(nn) “**DOB**” shall mean the New York City Department of Buildings or any successor to its jurisdiction.

(oo) “**DPR**” shall have the meaning set forth in the Recitals.

(pp) “**Drawings**” shall mean the following drawings showing the plans for the Waterfront Public Access Area and Public Access Area prepared by James Corner Field Operations, and attached hereto as **Exhibit D**, as the same may be modified thereafter in accordance with this Declaration:

*[Drawing list to be added]*

(qq) “**Effective Date**” shall mean the date on which the Certification is approved.

(rr) “**Federal/State Public Access Area Approvals**” shall have the meaning set forth in Section 3.2 hereof.

(ss) “**FEIS**” shall have the meaning set forth in the Recitals.

(tt) “**Final Completion**” or “**Finally Complete**” shall mean the completion of all relevant items of work, including any Punch List or other items that remain to be completed after Substantial Completion.

(uu) “**Floor Area**” shall mean “floor area” as defined in Section 12-10 (floor area) of the Zoning Resolution.

(vv) “**Force Majeure**” shall mean that a Force Majeure Event has occurred.

(ww) “**Force Majeure Event**” shall include, but not be limited to, (i) governmental restrictions, regulations or controls; (ii) enemy or hostile government action, civil commotion, insurrection, revolution, terrorism or sabotage; (iii) fire or other casualty; (iv)

inclement weather substantially delaying construction of any relevant portion of the Subject Property; (v) failure or inability of a public utility to provide power, heat or light or any other utility service; (vi) strikes, lockouts or labor disputes; (vii) inability to obtain labor or materials or reasonable substitutes therefor (unless due to any act or omission of Declarant); (viii) acts of God; (ix) a taking of the whole or a portion of the Subject Property by condemnation or eminent domain; (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) any undue material delay in the issuance of approvals by any department or agency of the City, the State of New York or the United States that is not caused by any act or omission of Declarant; (xii) underground or soil conditions that were not and could not reasonably have been foreseen by Declarant prior to their discovery or occurrence; (xiii) the pendency of any litigation relating to the Application or to the underlying sections of the Zoning Resolution; (xiv) public health emergencies declared by the Governor of the State of New York or the Mayor of the City of New York affecting Declarant's ability to undertake and/or pursue construction of the Waterfront Public Access Area; or (xv) any other condition similar to the foregoing which are beyond Declarant's reasonable control.

(xx) “**Inspector**” shall have the meaning set forth in Section 7.3.

(yy) “**Large Scale General Development**” or “**LSGD**” shall have the meaning set forth in the Recitals.

(zz) “**Legal Requirements**” shall mean all laws, rules and regulations pertaining to the construction of the WPAA Work (as hereinafter defined).

(aaa) “**Maintenance Obligation**” shall have the meaning set forth in Section 9.2.

(bbb) “**Mitigation Measures**” shall have the meaning set forth in the Recitals.

(ccc) “**Mortgagee**” shall mean (i) the holder of a first mortgage on all or any portion of the Subject Property, other than the holder of a mortgage solely on one or more individual residential or commercial condominium units in the Proposed Development, who has given written notice of its name and address to DCP and DPR, and (ii) the holder of a pledge of the direct or indirect equity interests in Declarant who has given written notice of its name and address to DCP and DPR. Any Party in Interest to this Declaration is not obligated to provide DCP and DPR its name and address.

(ddd) “**New Building**” shall mean any building constructed or redeveloped on the Subject Property pursuant to the Proposed Development.

(eee) “**Notice of Final Completion**” shall have the meaning set forth in Section 7.2.

(fff) “**Notice of Substantial Completion**” shall have the meaning set forth in Section 6.2.

(ggg) “**Offering Plan**” shall have the meaning set forth in Section 13.2.

(hhh) “**Party in Interest**” shall mean a party in interest as defined in Section 12-10 (definition of zoning lot) of the Zoning Resolution.

(iii) “**PCO**” shall mean a Permanent Certificate of Occupancy issued by DOB.

(jjj) “**PCREs**” shall have the meaning set forth in the Recitals.

(kkk) “**Proposed Development**” shall have the meaning set forth in the Recitals.

(lll) “**Public Access Easement**” shall have the meaning set forth in Section 8.1.

(mmm) “**Punch List**” shall have the meaning set forth in Section 6.2.

(nnn) “**Register’s Office**” shall have the meaning set forth in the Recitals.

(ooo) “**SEQRA**” shall have the meaning set forth in the Recitals.

(ppp) “**Shore Public Walkway**” shall mean the areas labeled “Shore Public Walkway” on the Drawings.

(qqq) “**Special Permits**” shall have the meaning set forth in the Recitals.

(rrr) “**State**” shall mean the State of New York.

(sss) “**State Block 2361 Property**” shall have the meaning set forth in the Recitals.

(ttt) “**State Block 2376 Property**” shall have the meaning set forth in the Recitals.

(uuu) “**Subject Property**” shall have the meaning set forth in the Recitals.

(vvv) “**Substantial Completion**” or “**Substantially Complete**” shall mean that the WPAA Work associated with the Waterfront Public Access Area has been constructed substantially in accordance with the Drawings and has been completed to such an extent that all portions of the Waterfront Public Access Area associated with the WPAA Work may be operated and made available for public use, notwithstanding that (i) minor or insubstantial items of construction, decoration or mechanical adjustment remain to be performed; or (ii) Declarant has not completed any relevant planting or vegetation or other tasks that may be required to occur seasonally.

(www) “**Successor Declarant**” shall have the meaning set forth in Section 12.1(b).

(xxx) “**TCO**” shall mean a Temporary Certificate of Occupancy issued by DOB.

(yyy) “**Title Company**” shall mean a title insurance company licensed to do business by the State of New York.

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

(aaaa) “**Waterfront Public Access Area**” or “**WPAA**” shall have the meaning set forth in the Recitals.

(bbbb) “**Waterfront Zoning Lot Phases**” shall mean, individually or collectively, Waterfront Phase 1 or Waterfront Phase 2, as delineated in the Drawings.

(cccc) “**Waterfront Phase 1**” shall mean the Waterfront Public Access Area delineated on the Waterfront Zoning Lot Phasing: Phase 1 Plan.

(dddd) “**Waterfront Phase 1 Plan**” shall mean drawing L-[\_\_\_\_\_] of the Waterfront Public Access Area Plans.

(eeee) “**Waterfront Phase 2**” shall mean the Waterfront Public Access Area delineated on the Waterfront Zoning Lot Phasing: Phase 1 Plan.

(ffff) “**Waterfront Phase 2 Plan**” shall mean drawing L-[\_\_\_\_\_] of the Waterfront Public Access Area Plans.

(gggg) “**WPAA Maintenance Agreement**” shall have the meaning set forth in the Recitals.

(hhhh) “**WPAA Maintenance Security**” shall have the meaning set forth in Section 6.3 hereof.

(iiii) “**Waterfront Work**” shall mean the work necessary to construct the Waterfront Public Access Area and Public Access Area in accordance with this Declaration. This shall include any work on substructure elements, which may include, but not be limited to, the bulkhead, pilings and platform.

(jjjj) “**Visual Corridor**” shall mean the Visual Corridor depicted on drawing L-002 and labelled “Waterfront Waterfront Public Access Area Plan.”

(kkkk) “**Zoning Resolution**” shall have the meaning set forth in the Recitals.

(llll) “**Zoning Text Amendments**” shall have the meaning set forth in the Recitals.

## ARTICLE 2

### DEVELOPMENT AND USE OF THE SUBJECT PROPERTY

#### 2.1. Development of the Subject Property.

(a) Designation of Large-Scale General Development. Declarant hereby declares and agrees that if, following the Effective Date, the Subject Property is developed pursuant to the Application, it shall be treated as a “large-scale general development,” as such term is defined in the Zoning Resolution, and shall be developed and enlarged as a unit substantially in accordance with the locations, dimensions and specifications as indicated on the Development Plans and in accordance with this Declaration.

(b) As-of-Right Development. The provisions of paragraphs (a) and (c) of this Section 2.1 shall not apply to an As of Right Development. Notwithstanding the foregoing, and for the avoidance of doubt, any As-of-Right Development shall be developed in accordance with the terms and conditions of Article 4 of this Declaration and Article VI, Chapter 2 of the Zoning Resolution.

(c) Phasing. In connection with Declarant’s request for an Authorization for phased development of the WPAA, pursuant to ZR Section 62-822(c), Declarant hereby covenants and agrees, subject to the provisions of this Declaration, that: (aa) Declarant shall develop the WPAA on the Subject Property in Development Phases in accordance with the Development Sequence, i.e., commencing with Waterfront Phase 1 and then commencing with Waterfront Phase 2; and (bb) that Declarant may not apply for or accept a TCO or PCO for any portion of a New Building in a Development Phase until the WPAA associated with such Development Phase has been Substantially Completed.

### ARTICLE 3

#### PERFORMANCE OF THE WATERFRONT WORK

3.1. Construction of Waterfront Public Access Area. If Declarant develops the Subject Property, then Declarant shall be required to perform the Waterfront Work and construct the Waterfront Public Access Area and Public Access Area substantially in accordance with the Drawings, the Final Plans and Specifications/100% Construction Drawings, and this Declaration and, once constructed, shall maintain the WPAA and PAA as set forth herein. The WPAA and PAA shall be accessible by the public as shown on the Drawings, during the hours of operation of the WPAA and PAA, as delineated in Section 11.1. The Waterfront Work associated with the Waterfront Public Access Area shall be required at such time as Declarant develops the Subject Property as set forth in this Declaration, subject to Section 2.1(d) hereof.

3.2. State and Federal Permits. Declarant has advised the City that construction of portions of the WPAA and PAA will require one or more permits and approvals from the State and Federal governments (together, the “**Federal/State Public Access Area Approvals**”), and that applications for the Federal/State Public Access Area Approvals have been submitted. Declarant covenants to proceed in good faith and exercise due diligence to obtain the Federal/State Public Access Area Approvals. In connection with its efforts to obtain the Federal/State Public Access Area Approvals, Declarant shall not file or otherwise formally submit to any Federal or State agency any plans, drawings or illustrative representations of the WPAA and PAA that do not conform with the Drawings and, with respect to the WPAA, the provisions of the WPAA Maintenance Agreement.

3.3. Modifications Due to Failure to Obtain Permits. If Declarant is unable, despite its good faith efforts, to obtain the Federal/State Public Access Area Approvals for the portions of the WPAA required in connection with a New Building no later than fifteen months after obtaining a New Building permit for such New Building, or if Declarant obtains the Federal/State Public Access Area Approvals and the Federal/State Public Access Area Approvals do not include approval for all portions of the WPAA required in connection with such New Building for which such approval is needed, or if Declarant otherwise determines that it will not be able to obtain the Federal/State Public Access Area Approvals for all or any portions of the WPAA required in connection with such New Building no later than fifteen months after obtaining a New Building permit for such New Building, Declarant shall so notify DPR (with respect to the WPAA) and DCP. Provided that, in the exercise of their reasonable judgment, DPR (with respect to the WPAA) and DCP concur that (i) Declarant has exercised good faith in seeking to obtain such Federal/State Public Access Area Approvals and (ii) Declarant is unlikely to obtain such Federal/State Public Access Area Approvals by the date which, pursuant to the construction schedule for the applicable Waterfront Phase, such Federal/State Public Access Area Approvals are needed to obtain a TCO at the time issuance of a TCO is anticipated, such inability to obtain the Federal/State Public Access Area Approvals may be deemed to constitute a Force Majeure Event pursuant to the terms of this Declaration and Circumstances Beyond the Control of the Owner pursuant to the provisions of the WPAA Maintenance Agreement with respect to Declarant's obligation to Substantially and/or Finally Complete such portion of the WPAA required in connection with such New Building. In such event, Declarant may obtain a TCO or PCO with respect to a New Building in Waterfront Phase, (x) provided that Declarant has satisfied all conditions to the issuance of such TCO or PCO with respect to such New Building, except for completion of any elements or satisfaction of any conditions required in order to Substantially Complete or Finally Complete the WPAA required in connection with such New Building that could not be completed or satisfied due to inability to obtain the Federal/State Public Access Area Approvals, and (y) subject to the provisions for Force Majeure set forth in Article IX hereof and subject to the provisions for Circumstances Beyond the Control of the Owner pursuant to the provisions of the WPAA Maintenance Agreement.

3.4. Modifications of Final Waterfront Public Access Area Plans. Declarant shall have the right to make non-material modifications to the Drawings to respond to unanticipated field conditions in accordance with the WPAA Maintenance Agreement.

3.5. Performance of Waterfront Work. Declarant agrees that the Waterfront Work shall be performed in accordance with all Legal Requirements and with the provisions of this Declaration.

**ARTICLE 4**  
**PROJECT COMPONENTS RELATING TO THE ENVIRONMENT AND MITIGATION MEASURES**

4.1. Project Components Related to the Environment. Declarant shall implement as part of its construction of the Proposed Building, as appropriate, the following PCREs:

(a) Restriction on Beach Access and Swimming. Declarant shall design the WPAA to provide secondary contact recreation access, and pursuant to New York State Department of Health ("**DOH**") regulations (subject to changes made pursuant to DOH or agency

directive) swimming shall be prohibited. Declarant shall provide signage on-site to indicate that swimming is prohibited.

(b) Construction Air Emissions Reduction Measures. Declarant shall (x) develop a plan for implementation of, and (y) thereafter implement, the following measures for all construction activities (including excavation) during the development of the Subject Property:

(i) ULSD fuel will be used exclusively for all diesel engines throughout the Subject Property;

(ii) on-site vehicle idle time would be restricted to three minutes for all equipment and vehicles that are not using their engines to operate a loading, unloading, or processing device (e.g., concrete mixing trucks) or are otherwise required for the proper operation of the engine;

(iii) non-road diesel engines with a power rating of 50 hp or greater and controlled truck fleets (i.e., truck fleets under long-term contract with the project) including but not limited to concrete mixing and pumping trucks would utilize the best available tailpipe (BAT) technology for reducing diesel particulate matter (DPM) emissions;

(iv) construction contracts would specify that all diesel non-road engines rated at 50 hp or greater and controlled truck fleets would utilize Diesel Particulate Filters (DPF), either installed by the original equipment manufacturer or retrofitted, to the extent practicable and feasible. Retrofitted DPFs must be verified by EPA or the California Air Resources Board. Active DPFs or other technologies proven to achieve an equivalent reduction may also be used;

(v) to the extent practicable, all diesel-powered non-road construction equipment 50 horsepower (hp) or greater would meet at least the EPA Tier 3 emissions standard (alternatively at least the Tier 4 final emissions standard);

(vi) all land-based non-road engines rated less than 50 hp would meet at least Tier 2 emissions standard; and

(vii) marine diesel engines would meet at least Tier 3 emissions standards.

(c) Fugitive Dust Control Plan. Declarant shall (x) develop a plan for implementation of, and (y) thereafter implement, a plan for the minimization of the emission of dust from construction-related activities during development of the Proposed Building (the "**Fugitive Dust Control Plan**"), which Fugitive Dust Control Plan shall contain the following measures:

(i) all trucks hauling loose material would be equipped with tight-fitting tailgates and their loads securely covered prior to leaving the Subject Property;

(ii) water sprays would be used for all demolition, excavation, and transfer of soils;

(iii) loose materials would be watered and covered;

(iv) stabilized truck exit areas would be established for washing off the wheels of all trucks where feasible;

(v) truck routes within the Subject Property would be either watered as needed or, in cases where such route would remain in the same place for an extended duration, the routes would be stabilized, covered with gravel, or temporarily paved to avoid the resuspension of dust; and

(vi) all measures required by DEP's *Construction Dust Rules* regulating construction-related dust emissions would be implemented.

(d) Construction Noise Reduction Measures. Declarant shall (x) develop a plan for implementation of, and (y) thereafter implement, the following measures for all construction activities (including excavation) related to the development of the Proposed Building:

(i) equipment that meets the sound level standards specified in Subchapter 5 of the *New York City Noise Control Code* would be utilized from the start of construction;

(ii) as early in the construction period as practicable, electrical-powered equipment would be selected for noisy equipment, such as, concrete vibrators, hoists, and man lifts (i.e., early electrification);

(iii) on-site vehicle idle time would be restricted to three minutes for all equipment and vehicles that are not using their engines to operate a loading, unloading, or processing device (e.g., concrete mixing trucks) or otherwise required for the proper operation of the engine;

(iv) a perimeter noise barrier shall be provided of at least 8 feet in height around the Subject Property;

(v) additional path noise control measures (i.e., portable noise barriers or shrouds) would be considered during the development of the construction noise mitigation plan; and

(vi) equipment producing noise will be located at reasonable distances from receptors when there is flexibility in the operating location for the noise source (e.g., hand tools and saws).

(e) Hazardous Materials. Prior to commencement of all construction activities related to the development of the Proposed Building:

(i) Declarant shall submit to the New York City Office of Environmental Remediation (OER) the Phase I report for the Subject Property along with a proposed soil and groundwater testing protocol, including a description of methods and a site map with all sampling locations clearly and precisely represented.

(ii) After completion of the testing phase and laboratory analysis, Declarant shall submit a written report with findings and a summary of the data to OER for review, approval, and a determination by OER as to whether remediation is necessary.

(iii) Prior to construction of the Proposed Building, Declarant shall evaluate vapor intrusion pathways and the feasibility of installing a vapor intrusion mitigation barrier as part of the Proposed Building. Declarant shall, to the extent feasible, implement the institutional and engineering controls (including vapor mitigation measures) that are recommended in the Phase I report for the Subject Property.

(iv) Declarant shall prepare a Health and Safety Plan, a Community Air Monitoring Plan (CAMP) and a Soil Management Plan to address the handling and off-site disposal of contaminated soil and water during construction of the Proposed Building.

(v) If remediation is determined to be necessary by OER, Declarant shall prepare a proposed remediation plan and submit same to OER for review and approval. Once approved, Declarant shall undertake and complete such remediation in accordance with the OER-approved remediation plan and a construction-related health and safety plan (CHASP) which shall be submitted to OER and implemented during excavation and construction activities.

(f) Historic and Cultural Resources. Prior to Construction Commencement, a Construction Protection Plan (“CPP”) for historic structures shall be developed to avoid any inadvertent demolition and/or construction-related damage from ground-borne construction period vibrations, falling debris, collapse, etc. The CPP shall be developed in coordination with LPC and implemented in consultation with a licensed professional engineer. The CPP shall be prepared in compliance with the procedures included in DOB’s TPPN #10/88 and LPC’s Guidelines for Construction Adjacent to a Historic Landmark and Protection Programs for Landmark Buildings.

4.2. Mitigation Measures.

(a) Transportation. The Declarant shall notify DOT in writing six (6) months before the completion and full occupancy of the Proposed Building and request that DOT determine the feasibility or necessity of implementing the transportation mitigation measures described in Chapter 19 of the FEIS and as listed below. DOT shall advise Declarant of its determination of the feasibility and necessity in writing after the project is fully occupied. Declarant shall have no obligations with respect to those mitigation measures that DOT determines are not feasible or necessary.

(i) New traffic signal at Metropolitan Avenue/River Street (including any proposed geometric modifications, traffic signs and pavement markings removals/installations).

(ii) Crosswalk widenings at the following locations:

(i) A 1-foot widening of the east crosswalk on North 6th Street at Bedford Avenue;

- (ii) A 3-foot widening of the north crosswalk on Wythe Avenue at Metropolitan Avenue;
- (iii) A 3.5-foot widening of the south crosswalk on Wythe Avenue at Metropolitan Avenue;
- (iv) A 5.5-foot widening of the north crosswalk on Kent Avenue at Metropolitan Avenue; and
- (v) A 3.5-foot widening of the south crosswalk on Kent Avenue at Metropolitan Avenue

(b) Construction Noise. At its expense, and prior to commencing construction of the Proposed Building, Declarant shall: (i) provide noise monitoring to ensure that violations of the New York Noise Code do not occur at adjacent receptors; and (ii) offer well-sealed window air conditioning units for living rooms or bedrooms in residential units located in 68 North 3<sup>rd</sup> Street and 233 Kent Avenue that do not already have an alternate means of ventilation.

4.3. Force Majeure Events involving a PCRE or Mitigation Measure. Notwithstanding any provision of this Declaration to the contrary, if Declarant is unable to perform a PCRE or Mitigation Measure set forth in this Article IV by reason of the occurrence of a Force Majeure Event, Declarant shall not be excused from performing such obligation unless the failure to implement the obligation during the period of Force Majeure Event, or that implementing an alternative proposed by Declarant, would not result in any new or different significant environmental impact not addressed in the FEIS or any subsequent Technical Memorandum.

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

(a) Innovation and Alternatives. In complying with any obligation set forth in this Article IV, Declarant may, at its election, implement innovations, technologies or alternatives now or hereafter available, including replacing any equipment, technology, material, operating system or other measure previously located on the Subject Property or used within the Proposed Development, provided that Declarant demonstrates to the satisfaction of DCP that such alternative measures would result in equal or better methods of achieving the relevant obligation than those set forth in this Declaration (such measures, "Alternative Environmental Measures"), in each case subject to approval by DCP.

(b) Modifications Based on Further Assessments. In the event that Declarant believes, in good faith, based on changed conditions, that an obligation under this Article IV should not apply or could be modified without diminishment of the environmental standards which would be achieved by implementation of the obligation, it shall set forth the basis for such belief in an analysis submitted to DCP. In the event that, based upon review of such analysis, DCP determines that the relevant PCRE or Mitigation Measure should not apply or could be modified without diminishment of the environmental standards which would be achieved by implementation of the obligation, Declarant may eliminate or modify the PCRE or Mitigation Measure consistent with the DCP determination ("Elimination or Modification of FEIS Obligation").

(c) If Declarant implements any Alternative Environmental Measures Obligation or an Elimination or Modification of FEIS Obligation, a notice indicating of such change may be recorded against the Subject Property in the Register's Office, in lieu of modification to this Declaration.

## ARTICLE 5 INSURANCE AND INDEMNIFICATION

*[Subject to insurance counsel review]*

5.1. Insurance. Declarant shall, at all times, maintain insurance for the WPAA pursuant to the terms of Article [ ] of the WPAA Maintenance Agreement, as such terms may be updated and revised from time to time upon the mutual agreement of Declarant and DPR, and shall, at all times, maintain insurance for the PAA substantially in accordance with such terms.

### 5.2. Indemnification by the City.

(a) Upon issuance of the Notice of Substantial Completion of the WPAA in a given Waterfront Phase, and subject to Declarant's compliance with the requirements set forth in Section 5.2(b) directly below, in accordance with Section 62-72 (Performance and Maintenance Requirements) of the Zoning Resolution with respect to the WPAA, the City shall indemnify and hold harmless Declarant, its officers, agents, employees, successors, and assigns, for any judgment or settlement arising out of a claim for injury to persons who are members of the public (i.e., not agents or employees of Declarant while acting within their agency or employment) as a result of any defect or otherwise dangerous condition in, or on the WPAA or PAA within such Waterfront Phase to the extent not covered by the insurance required under this Article 5, provided that the City's obligation to indemnify and hold harmless hereunder shall not arise: (i) if Declarant has not fully complied with the design and maintenance obligations set forth in this Declaration and, with respect to such portion of the WPAA, the WPAA Maintenance Agreement; or (ii) if the injury is determined by a court of competent jurisdiction in a final judgment not subject to appeal to have resulted from intentional wrongdoing or recklessness on the part of the Declarant or its employees.

(b) The City's obligation under Section 5.2(a) with respect to the WPAA is conditioned upon: (1) Declarant's compliance with the insurance provisions of Section 5.1 hereof and the WPAA Maintenance Agreement and with the requirements of all insurance policies; (2) Declarant's delivery of a copy of any summons, complaint, process, notice, demand or other pleading initiating an action or proceeding, together with any other correspondence with an insurance company relating to the incident, within ten (10) business days after Declarant's receipt thereof of documents, to the Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007; (3) Declarant's adherence to the notice requirement under its insurance policies concerning the occurrence and claim at issue in (2) above, together with such pleading or other document; (4) Declarant's full cooperation with DPR and the New York City Law Department, including the provision of such information and documentation as either may reasonably require, including without limitation, that which relates to (a) the incident or claim at issue, (b) Declarant's compliance with the insurance requirements of this Article or any insurance policy, and (c) Declarant's compliance with its design and maintenance obligations set forth in the Declaration and the WPAA Maintenance Agreement;

and (5) Declarant's prompt notification to the Insurance Claims Specialist, Affirmative Litigation Division of any settlement demand that may not be covered by insurance.

(c) Subject to Declarant's compliance with the above requirements, and after exhaustion of the underlying insurance required by this Article 5 and subject to Article [ ] of the WPAA Maintenance Agreement, the City shall assume Declarant's defense with respect to the WPAA. Thereafter, Declarant shall not make or communicate to the claimant an offer of settlement nor shall Declarant or its counsel admit liability or waive any material right, including right to appeal, or otherwise prejudice the rights of Declarant or the City with regard to the claim. After assuming responsibility for defense of the claim(s), the City shall not enter into any settlement without obtaining a complete release of any further liability on the part of Declarant.

## ARTICLE 6

### TEMPORARY CERTIFICATES OF OCCUPANCY

#### 6.1. Temporary Certificates of Occupancy.

(a) Declarant shall not apply, upon the completion of any inspections, for the issuance of a TCO for any New Building on the Subject Property until the following conditions have been met with respect to construction of such New Building:

(i) DPR has certified that Declarant has complied with all conditions required in connection with issuance of a TCO for the New Building under the provisions of the WPAA Maintenance Agreement; and

(ii) DCP has issued a Notice of Substantial Completion for the PAA in the applicable Waterfront Phase in accordance with Section 6.2 of this Declaration; and

(iii) Declarant has provided to the City the Completion Letter of Credit (as hereinafter defined).

(b) Within ten (10) calendar days after satisfaction of all of the conditions set forth in Section 6.1(a), the Chairperson shall certify in writing to DOB that Declarant has met the requirements of this Declaration or Section 62-72 of the Zoning Resolution, as applicable, and DOB may issue a TCO for the New Building.

(c) In the event that, due to a Force Majeure Event or pursuant to a DPR determination that Circumstances Beyond Control of Developer exist under the terms of the WPAA Maintenance Agreement, Declarant has obtained a TCO prior to completing the conditions set forth in Section 6.1(a), Declarant shall, as promptly as possible, satisfy the conditions of Section 6.1(a) upon cessation of the Force Majeure Event and/or the Circumstances Beyond Control of Developer, as applicable.

6.2. Notice of Substantial Completion. Declarant shall notify DCP at such time as it reasonably believes that the applicable Waterfront Phase is Substantially Complete and shall request that DCP issue a certificate, in the form of **Exhibit I** (a "**Notice of Substantial Completion**") to Declarant certifying Substantial Completion of such Waterfront Phase. Not later

than twenty (20) calendar days after receipt of such request, DCP shall either issue the Notice of Substantial Completion or deliver to Declarant a notice setting forth the reasons why construction is not Substantially Complete and the items which need to be completed. If DCP notifies Declarant that construction has not been Substantially Completed, 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 or unsatisfactorily performed (“**Punch List**”). The Punch List shall not include items which, pursuant to the definition of Substantial Completion in Section 1.1, are not required to be completed prior to Substantial Completion. Declarant shall promptly perform the work specified on the Punch List, after which it shall notify DCP of such completion. Not later than twenty (20) calendar days after receipt of such notice, DCP shall either issue the Notice of Substantial Completion or notify Declarant that it has not completed the Punch List. If DCP fails to respond to any such request within the time period set forth in this Section, then DCP shall be deemed to have issued a Notice of Substantial Completion.

6.3. Security for Final Completion. Upon issuance of the Notice of Substantial Completion, Declarant shall deliver one or more irrevocable letters of credit or other security in a form reasonably acceptable to the City, naming the City as beneficiary, in an amount that has been certified by Declarant’s architect or landscape architect as being 150% of the cost of Finally Completing the PAA (the “**Completion Letter of Credit**”).

6.4. Force Majeure. In the event that Declarant is unable to Substantially Complete construction of a Waterfront Phase by the time the associated New Building is eligible to obtain a TCO, as a result of a Force Majeure Event, then Declarant shall so notify DCP as soon as Declarant learns of such circumstances. Declarant’s written notice (the “**Delay Notice**”) shall include a description of the condition or event, its cause and probable duration (if known to Declarant), and in Declarant’s reasonable judgment, the impact it is reasonably anticipated to have on the completion of the item of work. The Chairperson shall, within ten (10) calendar days of its receipt of the Delay Notice, (i) certify in writing that a Force Majeure Event has occurred, or (ii) notify Declarant that it does not reasonably believe a Force Majeure Event has occurred, in which case the Commissioner shall state with particularity the reasons it believes Force Majeure has not occurred. Such certification or notice shall constitute a final determination. Upon a determination that a Force Majeure Event has occurred, the Chairperson shall grant Declarant appropriate relief for such delay, including certifying in writing to the DOB that the Chairperson has no objection to the issuance of a TCO for all or part of the building(s) in the Proposed Development. Any delay caused as the result of a Force Majeure Event shall be deemed to continue only as long as the Force Majeure Event is continuing. Upon cessation of the events causing such delay, the Declarant shall promptly recommence construction of such Waterfront Phase. As a condition of granting such relief, DCP may require that Declarant post a bond or other security in a form and amount reasonably acceptable to DCP in order to ensure that such Waterfront Phase is Substantially Completed and that all other requirements of Section 6.1 or 7.1, as applicable, are satisfied. Such security shall be in a sum equal to 150% of the cost of the remaining work in order to Finally Complete such Waterfront Phase within the applicable Development Phase. Declarant shall be obligated to Substantially Complete or Finally Complete construction within the period of time specified in the Delay Notice, or such lesser period of time as DCP reasonably determined in the Delay Notice; provided, however, that if the Force Majeure Event has a longer duration than as set forth in the Delay Notice or as reasonably determined by DCP, DCP may grant additional time for Substantial Completion or Final Completion, as the

case may be.

## ARTICLE 7

### PERMANENT CERTIFICATES OF OCCUPANCY

7.1. PCO. Subject to Force Majeure, Declarant shall not apply, upon the completion of any inspections, for the issuance of a PCO for any New Building in a Development Phase until the following conditions have been met:

(a) DPR has certified that Declarant has complied with all conditions required in connection with issuance of a PCO for the New Building in accordance with the provisions of the WPAA Maintenance Agreement; and

(b) DCP has issued a Notice of Final Completion for the PAA in the applicable Waterfront Phase in accordance with Section 7.2 of this Declaration.

7.2. Notice of Final Completion. Declarant shall notify DCP when it believes construction of a Waterfront Phase is Finally Complete and shall request that DCP issue a certificate in the form of **Exhibit J** annexed hereto (a “**Notice of Final Completion**”) to Declarant certifying Final Completion. Not later than twenty (20) calendar days after receipt of such request, DCP shall either issue the Notice of Final Completion or deliver to Declarant a notice setting forth the reasons construction is not Finally Complete. Such notice shall include a Punch List of items remaining to be completed or unsatisfactorily performed. Declarant shall promptly perform the work specified on the Punch List, after which it shall notify DCP of such completion. No later than twenty (20) calendar days after receipt of such notice, DCP shall either issue the Notice of Final Completion or notify Declarant that it has not completed the Punch List. If DCP fails to provide a notice to Declarant within the time periods set forth in this Section, then DCP shall be deemed to have issued a Notice of Final Completion. The issuance of a Notice of Final Completion or DCP’s inaction, in accordance with the provisions of this Section 7.2, shall be conclusive evidence with respect to Declarant that the Waterfront Phaes has been constructed in accordance with Drawings.

## ARTICLE 8

### PUBLIC ACCESS EASEMENT

8.1. Public Access Easement. Declarant hereby covenants that following Substantial Completion of any Development Phase, subject to Section 6.5, the City and the general public shall have a perpetual and non-exclusive public access easement over the WPAA and PAA within such Development Phase unobstructed (except for such obstructions, objects, amenities and other items as are shown on the Drawings or as are otherwise permitted by the City) from the ground surface up to the sky (a “**Public Access Easement**”), subject to the terms and conditions set forth in this Article 8. Declarant further agrees that liens, including but not limited to judgment liens, mortgage liens, mechanics liens and vendees’ liens, shall be subject to and subordinate to the rights, claims, entitlements, interests and priorities created by the easements granted herein.

8.2. Closing of Public Access Easement. Notwithstanding anything contained in herein, and subject to Section [ ] of the WPAA Maintenance Agreement, Declarant may close all or any

portion of the Public Access Easement (i) for the repair, restoration, rehabilitation, renovation or replacement of pipes, utility lines or conduits or other equipment on or under the WPAA and/or PAA, or for the repair of the WPAA and/or PAA, (ii) as may be approved by DOB in connection with work on any of the buildings in the Development Property, or (iii) in the event of an emergency or hazardous condition; provided that Declarant will close or permit to be closed only those portions of the WPAA and/or PAA which must or should reasonably be closed to effect the repairs or remediation in a safe and expeditious manner, will exercise due diligence in the performance of such repairs or mitigation so that it is completed expeditiously and the temporarily closed areas are re-opened to the public promptly, and will, wherever reasonably possible, perform such work in such a manner that the public will continue to have access to any unaffected portions of the WPAA and/or PAA. Except in cases of emergency, Declarant shall provide seven (7) days advance notice to the public and DPR and DCP of any temporary closure of the WPAA (or portions thereof), by posting signs at appropriate locations. In cases of emergency, Declarant shall provide such public notice as soon as practicable and shall promptly, but in no event more than two (2) business days after such closure, give notice to DPR and DCP that such portion has been closed, which notice shall describe the nature of the emergency or hazardous condition causing the closure, the portion to be closed and the anticipated duration thereof.

8.3. Preservation of Ownership Interest. Declarant shall have the right to close all or any portions of the WPAA to the City and the general public one (1) calendar day, other than a Saturday, Sunday or legal holiday, in each year to preserve its ownership interest therein.

## ARTICLE 9

### ADMINISTRATION

9.1. Waterfront Public Access Area. Declarant shall develop, maintain and administer the WPAA in accordance with WPAA Maintenance Agreement.

9.2. Public Access Area. Declarant shall maintain and administer the PAA in accordance with the following.

(a) Hours of Operation. Except as provided in Section 8.3 hereof, the PAA shall be open to the public from [ ] to [ ] every day of week, all year<sup>2</sup>. Notwithstanding the foregoing, Declarant and the owners, tenants, residents, employees and invitees of the private development on the Subject Property shall have the right to use the PAA at all times in connection with the egress and ingress to buildings located on the Subject Property.

(b) Maintenance of by Declarant. Upon Substantial Completion of any Waterfront Phase, Declarant shall be solely responsible for the maintenance of and capital repairs to the PAA in such Waterfront Phase (the "**Maintenance Obligation**"). The Maintenance Obligation requires that Declarant maintain the PAA in accordance with the provisions of this Declaration.

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<sup>2</sup> Note to Draft: Hours of operation to be consistent with the hours of operation for the WPAA under the WPAA Maintenance Agreement.

9.3. Enforcement by the City.

(a) Declarant acknowledges that the City is an interested party to this Declaration, and consents to enforcement by the City, administratively or at law or equity, of the restrictions, covenants, easements, obligations and agreements contained herein

(b) No person or entity other than the Declarant, its successors and assigns, or the City shall have any right to enforce the provisions of this Declaration. Nothing contained herein shall be deemed to allow any other person or entity, public or private, any interest or right of enforcement of any provision of this Declaration or any Exhibit hereto, including any claim by any public or private landowner to be the beneficiary of an easement appurtenant to lands adjoining the Subject Property which could or might be affected by the enforcement of the provisions of this Declaration with respect to the Subject Property.

9.4. Additional Remedies. Declarant also acknowledges that the remedies set forth in this Declaration are not exclusive, and that the City and any agency thereof may pursue other remedies not specifically set forth herein.

9.5. Enforcement by Declarant. Declarant shall have the right to pursue any remedy available to Declarant, both administrative and judicial and at law and equity, to enforce its rights under this Declaration.

9.6. Notice and Cure.

(a) Before any agency, department, commission or other subdivision of the City institutes any proceeding or proceedings to enforce the terms or conditions of this Declaration by reason of the existence of an alleged breach or other violation hereunder, it shall give Declarant and any Mortgagee ninety (90) days' written notice of such alleged breach or other violation, during which period Declarant or a Mortgagee shall have the opportunity to effect a cure of such alleged breach or other violation or to demonstrate why the alleged breach or other violation has not occurred. If Declarant or a Mortgagee commences to effect a cure during such ninety (90) day period and proceeds diligently towards the effectuation of such cure, the aforesaid ninety (90) day period shall be extended for so long as Declarant or such Mortgagee continues to proceed diligently with the effectuation of such cure.

(b) In the case of a Mortgagee, if possession of the property is required to effect such cure, then the Mortgagee shall be deemed to have commenced such cure so long as the Mortgagee shall have commenced a foreclosure process to obtain control of the property. In the event that title to the Subject Property, or any part thereof, shall become vested in more than one party, the right to notice and cure provided in this Section 9.6 shall apply equally to all parties with a fee interest in the Subject Property, or any part thereof, including ground lessees. Notwithstanding the foregoing, in the event that the Subject Property, or any portion thereof, is converted to a condominium, the right to notice and cure provided in this Section 9.6 shall apply, in addition to Declarant (if Declarant remains at such time an owner of the Subject Property or of condominium units) and any Mortgagee, to the condominium board.

(c) Notwithstanding the foregoing, if the City has reason to believe that the use and enjoyment of the Waterfront Public Access Area and/or Public Access Area by any member

of the public has, without reasonable cause, been denied by Declarant, and the City determines that such denial of access with respect to the right of public access under the Public Access Easement was in violation of the provisions of this Declaration and Section [ ] of the WPAA Maintenance Agreement, the City shall have, after notice to Declarant and an opportunity for Declarant to present evidence disputing such alleged denial of access, in addition to such other rights as may be available at law or equity, the right to seek civil penalties at the New York City Environmental Control Board for a violation relating to privately owned public space.

(d) If after due notice as set forth in this Section, Declarant or Mortgagee fails to cure a violation, the City may exercise any and all of its rights, including those delineated in this Section and may disapprove any amendment, modification, or cancellation of this Declaration on the sole grounds that Declarant is in default of a material obligation under this Declaration.

(e) Notwithstanding the foregoing, in the event of a denial of public access of an ongoing nature or interference on a continuing basis with the City's rights pursuant to this Declaration, the City may immediately exercise any and all of its rights hereunder, including but not limited to the issuance of violations and seeking a mandatory injunction; in such an event, the notice and cure provisions of this Section 9.6 shall not apply.

## ARTICLE 10

### MISCELLANEOUS

#### 10.1. Filing and Recording.

(a) This Declaration shall become effective at the Effective Date. Within ten (10) days of the Effective Date, Declarant shall file and record at its sole cost and expense this Declaration in the Register's Office, indexing it against all the tax lots that comprise the Subject Property. Declarant shall promptly deliver to DCP and DPR and two (2) duplicate executed originals and, following recordation, three (3) copies of this Declaration as recorded. Upon receipt of the recorded, original Declaration, DCP will notify Declarant's counsel via email of such receipt. If Declarant fails to so record this Declaration, the City may record this Declaration, at the sole cost and expense of Declarant, who shall promptly pay to the City such costs together with fees for purchase of a reasonable number of certified copies of the recorded Declaration.

(b) Notwithstanding the provisions of Section 10.1(a), in the event the Subject Property is subdivided or otherwise arranged so as to include any tax lot not listed within the first recital of this Declaration, Declarant, its heirs, successors, legal representatives, or assigns, shall cause a Notice of Restriction to be recorded against said tax lot, which specifies such tax lot is subject to the terms and conditions of this Declaration and provides the CRFN assigned to this Declaration as well as any subsequent amendments. In the event that the subdivided lot is subject to a condominium declaration, such notice of restriction shall only have to be recorded against the subdivided lot once and referenced in the condominium declaration, as provided in Section 13.1, and shall not have to be recorded against each unit of the condominium.

#### 10.2. Binding Nature; Successors and Assigns.

(a) The provisions of this Declaration shall be covenants running with the land and shall inure to the benefit of and be binding upon the respective heirs, successors, legal representatives and assigns of Declarant to the Subject Property, including Mortgagee (provided Mortgagee shall have no performance or payment obligations unless and until any such Mortgagee succeeds to a possessory interest), and references to Declarant shall be deemed to include such heirs, successors, legal representatives and assigns as well as the successors to their interests in the Subject Property, subject to the further provisions of this Section 11.2. Reference in this Declaration to agencies or instrumentalities of the City shall be deemed to include agencies or instrumentalities succeeding to jurisdiction thereof pursuant to the laws of the State of New York and the New York City Charter.

(b) Notwithstanding anything to the contrary contained in this Declaration, in the event that any building in the Proposed Development is converted to condominium or cooperative corporation forms of ownership, the Coop/Condominium (as hereinafter defined) and any Unit Interested Party shall not have any obligations under this Declaration to construct the WPAA except and unless the Coop/Condominium has expressly assumed such obligations in writing or if the initial Declarant or Successor Declarant (as defined herein) is also a Unit Interested Party, in which case Declarant or the Successor Declarant shall remain obligated to construct the WPAA.

(c) Notwithstanding the provisions of Section 11.2(b), in the event that a temporary or permanent certificate of occupancy has been issued for any portion of the Proposed Development prior to the receipt of a Notice of Substantial or Final Completion due to Force Majeure, the Declarant that developed such portion of the Proposed Development allowed to proceed due to the Force Majeure event shall remain obligated as Declarant hereunder until a Notice of Final Completion has been issued.

10.3. Limitation of Liability. The restrictions, covenants and agreements set forth in this Declaration shall be binding upon the Declarant and any successor in interest only for the period during which Declarant and any successor in interest is the holder of a fee interest in or is a Party in Interest of the Subject Property and only to the extent of such fee interest or the interest rendering such person or entity a Party in Interest. It is hereby acknowledged that Declarant shall have the absolute right to convey all or any portion of the Subject Property owned by Declarant from time to time and at any time to one or more parties as Declarant sees fit in its sole discretion. Except as set forth in Sections 11.2(c) and Article 13 of this Declaration, at such time as the named Declarant has no further fee interest in the Subject Property and is no longer a Party in Interest of the Subject Property, such Declarant's obligations and liability with respect to this Declaration shall wholly cease and terminate from and after the conveyance of Declarant's interest, and Declarant's successors in interest in the Subject Property by acceptance of such conveyance automatically shall be deemed to assume Declarant's obligations and liabilities hereunder to the extent of such successor in interest's interest.

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

10.5. Severability. In the event that any provision of this Declaration shall be deemed, decreed, adjudged or determined to be invalid or unlawful by a court of competent jurisdiction and

the judgment of such court shall be upheld on final appeal, or the time for further review of such judgment on appeal or by other proceeding has lapsed, such provision shall be severable, and the remainder of this Declaration shall continue to be of full force and effect.

10.6. Modifications.

(a) This Declaration may be amended, modified or canceled only with the express written approval of the Commission, except that with respect to amendments or modifications that the Chairperson determines to be minor or administrative in nature or in connection with replacement Certification, only the express written approval of the Chairperson shall be required. No other approval or consent shall be required from any public body, private person or legal entity of any kind, including, without limitation, any other present Party-in-Interest or future Party-in-Interest who is not a successor of Declarant.

(b) Changes to the Development Plans that the Chair deems to be minor may be amended or modified administratively by the Chair and no other approval or consent (including modifications to the Special Permits) 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.

(c) Changes to the Drawings that the Chair deems to be minor may be amended or modified administratively by the Chair and no other approval or consent (including modifications to the Special Permits or Authorizations) 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.

(d) This Declaration shall not be modified so as to make any Affordable Housing Unit subject to the Maintenance Obligation or to any assessment attendant hereto during the term of any agreement entered into between the Declarant and the City, acting through the New York City Department of Housing Preservation and Development, if applicable.

(e) In the event that the Proposed Development shall become a Coop/Condominium, as that term is defined in Section 13.1(a) herein, then until the Coop/Condominium shall be deemed to be the sole Declarant and Party in Interest as contemplated in 13.1(b), any Unit Interested Party and any Board, as such terms are defined in Section 13.1(a), hereby (x) irrevocably consent to any amendment, modification, cancellation, revision or other change in this Declaration by Declarant; (y) waive and subordinate any rights they may have to enter into an amended Declaration or other instrument amending, modifying, canceling, revising or otherwise changing this Declaration; and (z) nominate, constitute and appoint Declarant their true and lawful attorney-in-fact, coupled with an interest, to execute any document or instruments that may be required in order to amend, modify, cancel, revise or otherwise change this Declaration.

(f) Notwithstanding any other provision herein, this Declaration shall automatically and without any further public or private action be canceled, and the restrictions, covenants, obligations, liens and agreements hereof shall be of no further force and effect if, prior to the issuance by the DOB of a building permit for the Proposed Development, Declarant delivers

to the Chairperson and records with the City Register's Office, a document duly executed and acknowledged in which the Declarant discharges this Declaration of record and surrenders its rights to develop the Proposed Development.

(g) Declarant may cancel the Declaration, subsequent to the issuance by the DOB of a building permit for the Proposed Development, if Declarant demonstrates to the Chairperson that no construction pursuant to the building permit has commenced. In such event, Declarant acknowledges that the future development of the Subject Property will be subject to a new certification pursuant to the Zoning Resolution Section 62-811.

(h) Any modification or amendment 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 11.6(a) and provide an executed and certified true copy thereof to DCP and DPR and, upon Declarant's failure to so record, permit its recording by DCP at the cost and expense of Declarant.

10.7. Indemnification. If Declarant is found by a court of competent jurisdiction to have been in default in the performance of its obligations under this Declaration 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 Declarant's obligations under this Declaration. If any judgment is obtained against Declarant from a court of competent jurisdiction in connection with this Declaration and such judgment is upheld on final appeal or the time for further review of such judgment or appeal 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 said judgment.

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

10.9. Acknowledgement of Covenants. Nothing contained in the Declaration shall confer on any party not contemplated herein any right to enforce the provisions of this Declaration, the sole parties having such right being the Declarant, its successors and assigns and the City as provided in Article 10 of this Declaration.

10.10. Representations. Declarant represents and warrants that Declarant is aware of no restrictions of record on the use of the Subject Property, nor any present or presently existing future estates or interest in the Subject Property, nor any liens, obligations, covenants, easements, limitations or encumbrances of any kind, which would prevent or preclude, presently or potentially, the imposition of the restrictions, covenants, obligations and agreements of this Declaration.

10.11. Estoppel Certificates. Whenever requested by a party, any other party and/or the City shall within ten (10) days thereafter furnish to the requesting party a written certificate setting forth: (i) that this Declaration is in full force and effect (or if there have been modifications, that the Declaration is in full force and effect as modified and identifying the modifications), and (ii)

whether or not, to the best of its knowledge, the requesting party is in default under any provisions of this Declaration and if such a default exists, the nature of such default.

10.12. Parties in Interest. As of the date hereof, the Title Company has determined that there has been no change in the certification attached as Exhibit E and Declarant represents and warrants that the Parties in Interest listed in Exhibit E are the only known Parties in Interest in the Subject Property as of the date hereof.

10.13. Counterparts. This Declaration may be executed in one or more counterparts, each of which shall be an original and all of which, together, shall constitute one agreement.

## ARTICLE 11

### NOTICES

All notices, demands, requests, consents, waivers, approvals and other communications which may be or are permitted, desirable or required to be given, served or deemed to have been given or sent hereunder shall be in writing and shall be sent as follows:

If intended for Declarant, to: River Street Partners LLC  
Two Trees Management Co.  
45 Main Street, 12<sup>th</sup> Floor  
Brooklyn, New York 11201

With a copy to: Fried, Frank, Harris, Shriver & Jacobson LLP  
One New York Plaza  
New York, New York 10004  
ATTN: David Karnovsky, Esq.

If intended for DCP, to: Chairperson  
City Planning Commission  
120 Broadway, 31<sup>st</sup> Floor  
New York, New York 10271

With a copy to: Office of the General Counsel  
Department of City Planning  
120 Broadway 31<sup>st</sup> Floor  
New York, New York 10271

If intended for DPR, to: Commissioner  
Department of Parks & Recreation  
The Arsenal, Central Park  
830 Fifth Avenue  
New York, New York 10065

With a copy to: Assistant Commissioner for Planning and Parkland  
Department of Parks & Recreation

The Arsenal, Central Park  
830 Fifth Avenue  
New York, New York 10065

and to:

Office of the General Counsel  
Department of Parks & Recreation  
The Arsenal, Central Park  
830 Fifth Avenue  
New York, New York 10065

From and after the Condominium Obligation Date, a copy of all notices to Declarant shall include a copy to the Condominium, and the Condominium shall give notice to DCP and DPR of its address for notice.

Declarant, DCP or DPR or their respective representatives, by notice given as provided in this paragraph, may change any address for the purposes of this Declaration. Each notice, demand, request, consent, approval or other communication shall be either sent by registered or certified mail, postage prepaid, overnight courier or delivered by hand, and shall be deemed sufficiently given, served or sent for all purposes hereunder five (5) business days after it shall be mailed, or, if delivered by hand, when actually received.

## ARTICLE 12

### CONDOMINIUMS AND COOPERATIVE CORPORATIONS

#### 12.1. Filing Requirements.

(a) In the event that any part of the Proposed Development shall be subject to a condominium declaration, or if any part of the Proposed Development shall be owned or otherwise held by a cooperative corporation in accordance with the provisions of the laws of the State of New York (in either instance, referred to herein as the “**Coop/Condominium**,” and such term shall refer to either organizational form), from and after the date the declaration of condominium has been recorded in the Office of the City Register, or the date that the Proposed Development (or some portion thereof) shall be in title to the cooperative corporation (the “**Coop/Condominium Obligation Date**”), under the directorship of a duly elected or appointed Board of Directors or Board of Managers, as the case may be (the “**Board**”), the Coop/Condominium shall thereafter be deemed to be a Declarant under this Declaration. The owners of the shares of stock of the cooperative corporation, the holder of a lien encumbering any such shares, the holder of a proprietary lease or of any other right to occupancy or other interest therein, the owner of any residential or commercial unit in the condominium, or the holder of a lien encumbering any such condominium unit and the holder of any lease, right of occupancy or any other interest in such condominium unit, or the holder of any Affordable Housing Unit (each of the foregoing, hereinafter, a “**Unit Interested Party**”) shall not be deemed to be a Declarant or a Party in Interest, except to the extent that such Unit Interested Party was a Declarant hereunder and retains the right under Applicable Law to control the Board. In the event that a Declarant becomes a Unit Interested Party and the WPAA is not Finally Complete, such party shall continue to be deemed a Declarant irrespective of Board control.

(b) The initial Declarant (or any successor entity to the balance and entirety of Declarant's fee interest in the Subject Property (the "**Successor Declarant**")), together with the Coop/Condominium, shall be considered Declarants until the WPAA are Finally Complete. At such time as Declarant or the Successor Declarant no longer holds a fee interest in the Subject Property (unless such interest is solely that of a Unit Interested Party and Declarant no longer retains the right to control the Board) and provided that the WPAA is Finally Complete, the initial Declarant or the Successor Declarant shall no longer be deemed a Declarant, and the Coop/Condominium shall be deemed to be the sole Declarant and Party in Interest under this Declaration, subject to the provisions of Article 12. In such event, the Board of the Coop/Condominium shall be the sole party with any right to amend, modify, cancel, revise or otherwise change the Declaration, or make any application therefor, subject to the provisions of Article 14.

(c) Each and every Unit Interested Party hereby (x) irrevocably consents to any amendment, modification, cancellation, revision or other change in this Declaration by the Board; (y) waives and subordinates any rights it may have to enter into an amended Declaration or other instrument amending, modifying, canceling, revising or otherwise changing this Declaration; and (z) nominates, constitutes and appoints the Board its true and lawful attorney-in-fact, coupled with an interest, to execute any documents or instruments that may be required in order to amend, modify, cancel, revise or otherwise change this Declaration and Exhibits hereto.

(d) From and after the Association Obligation Date (hereinafter defined): (i) the Board of any Coop/Condominium shall be responsible for satisfying its obligations as an Association Member (hereinafter defined), and (ii) any Coop/Condominium shall continue to be considered a Declarant, provided that: (x) prior to Final Completion of the WPAA, any party that constitutes a Declarant under this Article 13 or Article 15 shall be jointly and severally responsible for the construction and Final Completion of the WPAA, and (y) upon Final Completion of the WPAA, the liability of any Coop/Condominium that is a Declarant shall be limited to the extent of its proportionate share of the Maintenance Obligation assessed by the Association pursuant to Section 13.5.

12.2. Offering Plans. Upon the marketing and sale of securities appurtenant to units in a Coop/Condominium constructed or otherwise included in the Proposed Development as is contemplated in this Article, a summary of the terms of this Declaration shall be included in any offering plan or "red herring" issued in connection therewith (the "**Offering Plan**"). Such Offering Plan shall clearly identify the rights and obligations of the unit owners or the owners of shares of stock in the cooperative corporation, as the case may be, under this Declaration, as well as the obligations of the Association Members (hereafter defined) with respect to the assessment of maintenance fees for the ongoing operation and maintenance of the WPAA. The cost of maintenance of the Waterfront Public Access Area and the obligations of the Coop/Condominium under this Declaration are essential elements of the City actions permitting the development of the Proposed Development in accordance with the provisions of this Declaration, and in accordance with any other approvals granted by the City, shall be described in any Offering Plan and copies of the Declaration and WPAA Maintenance Agreement shall be provided as exhibits thereto.

12.3. Common Elements. Any condominium declaration shall, upon filing, contain provisions describing the shore public walkway and all areas covered in the WPAA as "common

elements,” as that term is constructed under RPL 339-I, or, alternatively, as elements owned jointly by multiple Coops/Condominiums on the zoning lot in their capacity as members of a property owners’ association, for which Unit Interested Parties are obligated to pay assessments, as provided in Article 14.

12.4. Affordable Housing and Common Expenses. No Affordable Housing Unit which may be constructed in the Proposed Development shall have any obligation for the Maintenance Obligation, WPAA Maintenance Security, or other costs to the Coop/Condominium attendant to this Declaration, and the calculation of any rents, common charges or maintenance on an Affordable Housing Unit shall not include any Pro Rata contribution thereto.

12.5. Estoppel. Declarant shall certify in writing to the Chairperson and the Commissioner, or any individual succeeding to their jurisdiction, that all governing documents of the Coop/Condominium are in full compliance with the requirements of this Declaration and shall provide the Chairperson with copies of such governing documents within ten (10) days of the AG’s acceptance for filing of the Offering Plan for such Coop/Condominium. If Declarant fails to comply with the provisions of this Section 13.5, the City may proceed with any available enforcement measures.

## ARTICLE 13

### PROPERTY OWNERS’ ASSOCIATION

13.1. Declarant shall cause a property owner’s association to be organized, pursuant to the provisions of 13 NYCRR Article 22 (the “Association”) or join a previously created Association, created for the purposes set forth in Section 13.2 herein, if the Subject Property is subdivided and conveyed to multiple fee owners and/or ground lessees. The obligations of the Association under this Declaration shall commence on the date that a Declaration of Covenants, Restrictions, and Easements establishing the Association is recorded in the Register’s Office (the “DCRE”) (the “Association Obligation Date”), at which time the Association shall be deemed a Declarant. There may be only one Association for the Subject Property.

13.2. Obligations. The Association shall be established for, among other things, the purposes of assuming the Declarant’s performance of the Maintenance Obligation as set forth in this Declaration. The initial Declarant or any Successor Declarant, along with the Association and any party that constitutes a Declarant under Article 13 or this Article 14, shall be jointly and severally responsible for the construction and Final Completion of the WPAA.

13.3. Members. The members of the Association (the “Association Members”) shall consist of (a) the fee owners and/or ground lessees of any portion of the Subject Property that has not been developed as or converted to a Coop/Condominium, and (b) the Boards of any portion of the Subject Property which is developed as or converted to a Coop/Condominium.

(a) Each Association Member hereby (x) irrevocably consents to any amendment, modification, cancellation, revision or other change in this Declaration, relating to the WPAA, by the Association; (y) waives and subordinates any rights it may have to enter into an amended Declaration or other instrument amending, modifying, canceling, revising or otherwise

changing this Declaration; and (z) nominates, constitutes and appoints the Association its true and lawful attorney-in-fact, coupled with an interest, to execute any documents or instruments that may be required in order to amend, modify, cancel, revise or otherwise change this Declaration and Exhibits hereto relating to the WPAA and Private Drive Easements.

(b) Each Association Member, by acceptance of a deed or lease for a portion of the Subject Property shall, whether or not the covenant is expressed in such deed or lease (or, if the Association Member is the Board of a Coop/Condominium, in the declaration, bylaws and/or proprietary leases of such Coop/Condominium) be deemed to have consented to pay all assessments which may be imposed by the Association on the parcel owned or leased by such Association Member, as set forth herein.

13.4. Powers. Declarant shall cause the Association to be established with the power and authority to:

(a) Maintain, repair, and operate the WPAA to the extent required by this Declaration, the WPAA Maintenance Agreement and the terms of any license, easement or other agreement that may hereafter be executed between or among DPR, DCP, DOT and Declarant with respect to the Waterfront Public Access Area;

(b) impose fees or assessments against the Association Members, for the purpose of collecting funds necessary to satisfy the obligations of the Association pursuant to this Declaration;

(c) collect, receive, administer, protect, invest and dispose of funds;

(d) bring and defend actions and negotiate and settle claims to recover fees or assessments owed to the Association pursuant to this Article 14;

(e) exercise any of its duties or obligations pursuant to this Declaration without seeking the consent of any Unit Interested Parties; and

(f) exercise any and all of such powers as may be necessary or appropriate for purposes of this Declaration and as may be granted to the Association in furtherance of the Association's purposes pursuant to the New York Not-for-Profit Corporation Law or New York State Business Corporation Law, or the rules and regulations promulgated by the Department of Law for the regulation of homeowners' (property owner's) associations, as the case may be.

13.5. Assessments; Association Member Obligations.

(a) The Association shall assess real property constituting each Coop/Condominium or fee parcel within the Subject Property (the "Assessment Property") for its proportionate share of the Maintenance Obligation as provided in the DCRE, in order to obtain funds for the performance of the obligations of Declarant pursuant to this Declaration. The Assessment Property shall be assessed on a reasonable prorated basis as initially determined by Declarant, in compliance with Applicable Law. For Association Members who are Boards, a reasonable basis for such proration shall be conclusively established if the AG accepts for filing an offering plan for the sale of interests in such Association and the Coop/Condominium, as

applicable, which plan describes such proration. The Boards of each Coop/Condominium shall collect such assessments from the owners of individual residential or commercial units, other than the Affordable Housing Units, for delivery to the Association in accordance with the DCRE and the governing documents of each Coop/Condominium.

(b) Each periodic assessment by the Association, together with such interest, costs and reasonable attorney's fees as may be assessed in accordance with the provisions of this Declaration, shall be the obligation of the Association Members against whom the assessment is charged at the time such assessment falls due and may not be waived by such Association Member.

(c) The periodic assessments shall be a charge on the land and a continuing lien upon the property owned by the Association Member against which each such assessment is made, except that if the Association Member is a Board, 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 for unpaid maintenance or common charges. The periodic assessments charged to an Association Member which is a Board shall be included within the common charges of the Condominium. The Association may bring an action to foreclose the Association's lien against the property owned by such Association Member, or a Unit Interested Party (other than the owner of an Affordable Housing Unit), as the case may be, to recover such delinquent assessment(s), including interest and costs and reasonable attorneys' fees of any such action. Any Unit Interested Party, other than the owner of an Affordable Housing Unit, by acceptance of a deed or a lease to a portion of the Subject Property, thereby agrees to the provisions of this Section 14.5. Any unit owner may eliminate the Association's lien described above on his or her unit by payment to the Condominium of such unit owner's prorated share of the periodic assessment by the Association to the Condominium in which such Unit is located. No Association Member may waive or otherwise escape liability for the assessments provided for herein by non-use of the Waterfront Public Access Area or abandonment of the Association's property, or by renunciation of membership in the Association, provided, however, that an Association Member's liability with respect to future assessments shall end upon the valid sale or transfer of such Association Member's interest in the Subject Property.

(d) Association Members who may be assessed for the Maintenance Obligation shall not include the holder of a mortgage or other lien encumbering (i) the fee estate in the Subject Property or any portion thereof, (ii) the lessee's estate in a ground lease of all or substantially all of the Subject Property or all or substantially all of any parcel or portion thereof, or (iii) any single building to be built on the Subject Property, unless and until any such mortgagee succeeds to either (x) a fee interest in the Subject Property or any portion thereof or (y) the lessee's estate in a ground Lease of all or substantially all the Subject Property or all or substantially all of any parcel or portion thereof (the interests described in sub-clauses (x) or (y) immediately preceding being each referred to as a "**Possessory Interest**") by foreclosure of the lien of the mortgage or other lien or acceptance of a deed or other transfer in lieu of foreclosure or exercise of an option to convert an interest as mortgagee into a Possessory Interest in any such fee or ground leasehold estate in the Subject Property or by other means permitted under Applicable Law from time to time and no such mortgagee or lien holder shall be liable for any assessment imposed by the Association pursuant to this Article 14 until the mortgagee or lien holder succeeds to such Possessory Interest.

(e) Upon acceptance for filing of an Offering Plan by the AG allowing the sale or transfer of membership interests in the Association, the Association shall certify in writing to the Chairperson and the Commission, or to any individual succeeding to their positions, that all governing documents of the Association are in full compliance with the requirements of this Declaration and shall provide the Chairperson with a copy of such governing documents. If Declarant fails to comply with the provisions of this Section 13.5, the City may proceed with any available enforcement measures.

(f) Association Members shall be considered Declarants. Notwithstanding the foregoing, upon Final Completion of the WPAA, the liability of any Association Member shall be limited to such Association Member's proportionate share of the Maintenance Obligation assessed by the Association pursuant to Section 13.5(a). In the event of a default by the Association, the City shall, prior to enforcing any rights against any Association Members, seek enforcement against the Association and, if applicable, the initial Declarant or a Successor Declarant, pursuant to the notice and cure provisions of Section 10.4.

13.6. Deed References. Every deed conveying title to, or a partial interest in, all or a portion of the Subject Property, every lease of all or any portion of the Subject Property, each condominium declaration, and/or any bylaws relating to any portion of the Subject Property shall contain a recital or other provision that (a) the Association Member is liable for its pro rata share of the assessment by the Association and the obligation to make such payments is binding on such Association Member, and (b) the construction and maintenance of the WPAA and all other obligations of the Association under this Declaration are essential elements of the City actions permitting the development of the Subject Property, including the CRFN of this Declaration and any subsequent recorded amendments thereto or notices thereof, including the Notice of Restrictions required to be recorded against any newly subdivided tax lot in the Subject Property as per Section 11.1(b) of this Declaration.

[Signature page follows]

IN WITNESS WHEREOF, this Declaration has been duly executed by the Declarant as of the date first written above.

**DECLARANT**

RIVER STREET PARTNERS LLC

By: \_\_\_\_\_

Name:

Title:

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

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

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

**EXHIBIT A-1**

DESCRIPTION OF DECLARANT BLOCK 2355 PROPERTY

**EXHIBIT A-2**

DESCRIPTION OF DECLARANT BLOCK 2361 PROPERTY

**EXHIBIT A-3**

DESCRIPTION OF DECLARANT BLOCK 2376 PROPERTY

**EXHIBIT B-1**

DESCRIPTION OF STATE BLOCK 2361 PROPERTY

**EXHIBIT B-2**

DESCRIPTION OF STATE BLOCK 2376 PROPERTY

**EXHIBIT C-1**

**DESCRIPTION OF DEMAPPED UPLAND PROPERTY**

**EXHIBIT C-2**

**DESCRIPTION OF DEMAPPED SEAWARD PROPERTY**

**EXHIBIT D**

**DECLARATION OF ZONING LOT RESTRICTIONS**

**EXHIBIT E**

**CERTIFICATION PURSUANT TO DEFINITION OF  
ZONING LOT IN  
SECTION 12-10 OF THE ZONING RESOLUTION OF  
DECEMBER 15, 1961 OF THE CITY OF NEW YORK -  
AS AMENDED - EFFECTIVE AUGUST 18, 1977**

**EXHIBIT F**  
**WAIVERS**

**EXHIBIT G**

**WPAA MAINTENANCE AGREEMENT**

[To be attached behind]

**EXHIBIT H**

**DRAWINGS**

**See Attached**

**EXHIBIT I**

**FORM OF NOTICE OF SUBSTANTIAL COMPLETION**

[Letterhead of the Chairperson of the New York City Planning Commission]

[Date]

NOTICE OF SUBSTANTIAL COMPLETION

DECLARANT CONTACT

Re: Block [\_\_\_\_], Lot [\_\_\_\_]  
[\_\_\_\_], New York

Dear [\_\_\_\_\_]:

This letter constitutes the Notice of Substantial Completion of the \_\_\_\_\_ pursuant to Section 6.2 of the Restrictive Declaration by DECLARANT \_\_\_\_\_ dated as of \_\_\_\_\_, \_\_\_\_\_ (the "**Declaration**").

Undefined capitalized terms shall have the meaning set forth in the Declaration.

Yours very truly,

\_\_\_\_\_  
Chairperson

New York City Planning Commission [THIS LETTER SHALL BE MODIFIED AS  
APPROPRIATE  
TO THE CERTIFICATION BEING ISSUED]

**EXHIBIT J**

**FORM OF NOTICE OF FINAL COMPLETION**

[Letterhead of the Chairperson of the New York City Planning Commission]

[Date]

NOTICE OF FINAL COMPLETION

OWNER CONTACT

Re: Block [\_\_\_\_], Lot [\_\_]  
[\_\_\_\_], New York

Dear [\_\_\_\_\_]:

This letter constitutes the Notice of Final Completion of the \_\_\_\_\_ pursuant to Section 7.2 of the Restrictive Declaration by DECLARANT----- dated as of \_\_\_\_\_, \_\_\_\_\_ (the "**Declaration**").

By this notice, the undersigned, for the Department of Parks and Recreation, confirms that the Waterfront Public Access Area has been Finally Completed (as defined in the Declaration) in accordance with all requirements of the Declaration. Undefined capitalized terms shall have the meaning set forth in the Declaration.

Yours very truly,

\_\_\_\_\_  
Chairperson

New York City Planning Commission[THIS LETTER SHALL BE MODIFIED AS  
APPROPRIATE  
TO THE CERTIFICATION BEING ISSUED]

**EXHIBIT K**  
**DEVELOPMENT PLANS**