

RESTRICTIVE DECLARATION OF LARGE-SCALE GENERAL DEVELOPMENT

FOR THE NYU LSGD

by

NEW YORK UNIVERSITY

Date: ~~June 6~~, July, 2012

Real Property

In the Borough of Manhattan

New York, New York:

1, 2, 3, 4 Washington Square Village

Block 533, Lot 1

543 LaGuardia Place

Block 533 Lot 10

130 Bleecker Street

Block 524, Lot 9

100 and 110 Bleecker Street, 181 Mercer Street

Block 524, Lot 66

Record and Return to:

Bryan Cave LLP

1290 Avenue of the Americas

New York, New York 10104

Attention: Robert S. Davis, Esq.

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## DECLARATION OF LARGE-SCALE GENERAL DEVELOPMENT

THIS DECLARATION (“**Declaration**”), made as of this 6<sup>th</sup> \_\_\_\_\_ day of June \_\_\_\_\_, 2012 by NEW YORK UNIVERSITY (“**NYU**”), a New York education corporation organized pursuant to Section 216 of the New York State Education Law, having an address at 70 Washington Square South, New York, New York 10012 (NYU being hereinafter, the “**Declarant**”).

### RECITALS

#### WHEREAS

A. Declarant is the fee owner of certain real property located in the Borough of Manhattan, County, City and State of New York, designated for real property tax purposes as Block 533, Lots 1 and 10 (the “**North Block Parcel**”) and Block 524, Lots 9 and 66 (the “**South Block Parcel**”) (the North Block Parcel and the South Block Parcel shall hereinafter collectively be referred to as the “**Subject Property**”) on the Tax Map of the City of New York, which real property is more particularly described in **Exhibit A** annexed hereto and made a part hereof.

B. The Subject Property is comprised of three (3) Zoning Lots (hereinafter defined): (a) Zoning Lot 1, which comprises the North Block Parcel (“**Zoning Lot 1**”); (b) Zoning Lot 2, which comprises Block 524, Lot 66 of the South Block Parcel (“**Zoning Lot 2**”); and (c) Zoning Lot 3, which comprises Block 524, Lot 9 of the South Block Parcel (“**Zoning Lot 3**”), each of which is more particularly described in **Exhibit A** and is shown on the Development Plans (as hereinafter defined), annexed hereto as **Exhibit C**.

C. At such time as the City transfers fee title to that certain portion of Mercer Street adjacent to the South Block Parcel that has been closed and demapped pursuant to the Applications (as hereinafter defined) (the “**Mercer Street Land**”), as more particularly described in **Exhibit A-2**, annexed hereto and made a part hereof, the Mercer Street Land shall be merged into Zoning Lot 2 and shall be considered to be a portion of the Subject Property, the South Block Parcel and Zoning Lot 2 as those terms are defined and used in this Restrictive Declaration.

D. Declarant desires to improve the Subject Property as a "large-scale general development" meeting the requirements of Section 12-10 (Definitions) of the Zoning Resolution of the City of New York (the "**Zoning Resolution**" or "**ZR**") definition of "large-scale general development" (such proposed improvement of the Subject Property the "**Large-Scale Development Project**").

E. The Large-Scale Development Project will contain, in addition to the existing Washington Square Village apartment buildings on the North Block Parcel and the existing Silver Towers apartment buildings on the South Block Parcel: (a) one mixed-use building with academic, retail, gymnasium, community facility and potential dormitory and/or faculty housing use on Zoning Lot 2; (b) one building on Zoning Lot 3 for academic use and public school ~~and/or academic uses~~or community facility use; (c) two academic-use buildings with associated below-grade academic-use space on Zoning Lot 1; (d) a new below-grade parking garage on Zoning Lot 1; and (e) specified open space improvements.

F. In connection with the Large-Scale Development Project Declarant has filed applications with the New York City Department of City Planning ("**City Planning**") for approval by the New York City Planning Commission (the "**Commission**") of (1) a Special Permit pursuant to Zoning Resolution Section 74-743 (Special provisions for bulk modification) to permit modifications of the applicable regulations for height and setback, rear yard, rear yard equivalent and minimum distance between buildings regulations for a "large-scale general development" and to permit the transfer of 19,214 square feet of Floor Area to Zoning Lot 3 from a specified area on the South Block Parcel (C 120124 ZSM) (the "**Large-Scale Special Permit**"); (2) a Zoning Map amendment to, *inter alia*, change a portion of the Zoning Map from R7-2 and R7-2/C1-5 Districts to a C1-7 District and map a C1-5 commercial district overlay within an existing R7-2 District (C 120122 ZMM); (3) a Zoning Text amendment to modify (a) ZR Section 74-742 to allow an application to be submitted for a large-scale general development special permit within the former Washington Square Southeast Urban Renewal Area ("**WSSURA**"), within Community District 2 in the Borough of Manhattan, without meeting the otherwise applicable ownership requirements, provided such exception is only applicable to city-owned parcels and (b) ZR Section 74-743 to add language providing that within the former WSSURA, within Community District 2 in the Borough of Manhattan, where the Commission

has approved a large-scale general development and a lot line of such large-scale general development coincides with the boundary of a mapped public park, such lot line shall be considered to be a street line of a wide street for purposes of applying all use and bulk regulation of this Resolution (N 120123 ZRM); and (4) a change in the City Map for, *inter alia*, the narrowing, by the elimination, discontinuance and closure of various portions of LaGuardia Place and Mercer Street, to enable the disposition of city-owned property from the City of New York to the Declarant and to establish parkland (C 120077 MMM) (collectively, the **“Applications”**).

G. To ensure that the development of the Subject Property is consistent with the analysis in the Final Environmental Impact Statement (**“FEIS”**) issued for City Environmental Quality Review Application No. 11DCP121M pursuant to 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 (**“SEORA”**) and incorporates certain (i) requirements for mitigation of significant adverse environmental impacts (**“Mitigation Measures”**) and (ii) certain project components related to the environment which were material to the analysis of environmental impacts in the FEIS (**“PCREs”**), 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.

H. Chicago Title Insurance Company has certified in a certification annexed hereto as **Exhibit B** and made a part hereof, that as of May 18, 2012, Declarant is the only party in interest (**“Party-In-Interest”**) to the Subject Property as such term is defined in subdivision (c) of the definition of “zoning lot” in Zoning Resolution Section 12-10.

I. Declarant desires to restrict the manner in which the Subject Property is developed, redeveloped, maintained and operated now and in the future, and intends these restrictions to benefit all the land, including land owned by the City, lying within a one-half-mile radius of the Subject Property.

**NOW, THEREFORE**, Declarant hereby declares that the Subject Property shall be held, sold, conveyed, developed, used, occupied, operated and maintained subject to the following

restrictions, covenants, obligations and agreements, which shall run with the Subject Property and bind Declarant and its heirs, successors and assigns.

## **AGREEMENT**

Declarant hereby declares, covenants and agrees as follows:

1. **DEFINITIONS.** For the purposes of this Declaration, the following terms shall have the meanings hereinafter ascribed thereto:

1.1 “Accredited Certification Professional” shall have the meaning set forth in Section 4.3 of this Declaration.

1.2 “Additional Noise Reduction Plan” shall have the meaning set forth in Section 4.1(c)(ii) of this Declaration.

1.3 “Adjusted for Inflation” shall mean an amount adjusted pursuant to changes in the Consumer Price Index for All Urban Consumers for the New York – Northern N.J. – Long Island Area, All Items published by the Bureau of Labor Statistics of the U.S. Department of Labor, provided that if the aforesaid index ceases to be published, it shall mean such index as is generally adopted by the real estate industry in the City of New York as a substitute for such index.

1.4 “Adjustment Certification” shall have the meaning set forth in Section 6(c)(iii) of this Declaration.

1.5 ~~1.4~~ “Applications” shall have the meaning set forth in the Recitals to this Declaration.

1.6 ~~1.5~~ “Approvals” shall mean all approvals or consents required of any Governmental Authority with respect to the Large-Scale General Development or otherwise with respect to the Subject Property.

1.7 ~~1.6~~ “Archeologically Sensitive Areas” shall have the meaning set forth in Section 4.1(h)(i)(A) of this Declaration.

1.8 ~~1.7~~ “As-of-Right Development” shall have the meaning set forth in Section 3(b) of this Declaration.

1.9 ~~1.8~~ “BEC” shall have the meaning set forth in Section 4.3(d)(i)(B) of this Declaration.

1.10 ~~1.9~~ “Bleecker Building” shall mean the New Building to be constructed on Zoning Lot 3, as shown on the Development Plans and Construction Phasing Plans.

1.11 “Bleecker Construction Windows,” “Bleecker Construction Window 1,” “Bleecker Construction Window 2” and “Bleecker Construction Window 3” shall each have the respective meanings set forth in Section 6.2(a) of this Declaration.

1.12 ~~1.10~~ “Buildings Department” shall mean the New York City Department of Buildings or any successor to the jurisdiction thereof.

1.13 ~~1.11~~ “Building Permit” shall mean the issuance ~~of a permit~~ by the Buildings Department of a permit for or relating to the construction of a New Building (as hereinafter defined), whether in the form of (i) an excavation permit, authorizing excavations, including those made for the purposes of removing earth, sand, gravel, or other material from the Subject Property; (ii) a foundation permit, authorizing foundation work at the Subject Property; (iii) a demolition permit, authorizing the dismantling, razing or removal of a building or structure, including the removal of structural members, floors, interior bearing walls and/or exterior walls or portions thereof; (iv) a new building permit, ~~a work permit issued by the Buildings Department under a New Building application~~ authorizing construction of the ~~a~~ New Building ~~(as hereinafter defined)~~; or (v) any other permit normally associated with the development of a building.

1.14 ~~1.12~~ “Business Day” means any day other than a Saturday, Sunday or other day on which banks in the State of New York are authorized or required by Legal Requirements to be closed.

1.15 ~~1.13~~ “CAMP” shall have the meaning set forth in Section 4.1(g) of this Declaration.



1.16 ~~1.14~~ “Certification Checklist” shall have the meaning set forth in Section 4.3 of this Declaration.

1.17 ~~1.15~~ “Certification Construction Review” shall have the meaning set forth in Section 4.3 of this Declaration.

1.18 ~~1.16~~ “Certification Design Review” shall have the meaning set forth in Section 4.3 of this Declaration.

1.19 ~~1.17~~ “Certification Governing Body” shall have the meaning set forth in Section 4.3 of this Declaration.

1.20 ~~1.18~~ “Certification Points” shall have the meaning set forth in Section 4.3 of this Declaration.

1.21 ~~1.19~~ “Chairperson” shall mean the Chairperson of the Commission from time to time or any successor to the jurisdiction thereof.

1.22 ~~1.20~~ “CHASP” shall have the meaning set forth in Section 4.1(g) of this Declaration.

1.23 ~~1.21~~ “City” shall mean the City of New York.

1.24 ~~1.22~~ “City Council” shall mean the City Council of the City of New York or any successor to the jurisdiction thereof.

1.25 ~~1.23~~ “City Planning” shall mean the New York City Department of City Planning or any successor to the jurisdiction thereof.

1.26 ~~1.24~~ “CMM” shall mean “Construction Monitoring Measures” and shall have the meaning set forth in Section 4.8 of this Declaration.

1.27 ~~1.25~~ “CMM Default Notice” shall have the meaning set forth in Section 4.8 of this Declaration.

1.28 ~~1.26~~ “Commission” shall mean the City Planning Commission of the City of New York, or any successor to the jurisdiction thereof.

1.29 ~~1.27~~ “Commissioning Agent” shall have the meaning set forth in Section 4.3 of this Declaration.

1.30 ~~1.28~~ “Commissioning Plan” shall have the meaning set forth in Section 4.3 of this Declaration.

1.31 “Community Facility Rent” shall mean the maximum rent that may be charged a nonprofit organization without subjecting the portion of the building containing the leasehold space to real property taxation, as specified in section 420-a.2 of the New York Real Property Tax Law (i.e., rent monies may not exceed the amount of the carrying (including utilities), maintenance and depreciation charges of the leasehold portion of the property), except that the Community Facility Rent may not exceed the rent charged for similar space used for similar purposes in the surrounding neighborhood.

1.32 “Community Facility Tenant” shall mean a third party (i.e., not Declarant) conforming community facility use that is a nonprofit organization as such term is defined in Section 420-a of the New York Real Property Tax Law.

1.33 ~~1.29~~ “Completion Letter of Credit” shall have the meaning set forth in Section 8 of this Declaration.

1.34 ~~1.30~~ “Compliance Report” shall have the meaning set forth in Section 7.3(b)(i) of this Declaration.

1.35 ~~1.31~~ “CO Notice” shall have the meaning set forth in Section 4.9(c) of this Declaration.

1.36 ~~1.32~~ “Construction Commencement” shall mean the issuance of the first Building Permit by the Buildings Department to Declarant for the commencement of construction for work on a Development Phase. Construction Commencement shall occur at the issuance of the first Building Permit by the Buildings Department to Declarant for each of: Phase 1 Development, Phase 2 Development, Phase 3 Development and Phase 4 Development.

1.37 “Construction Committee” shall have the meaning set forth in Section 6(f) of this Declaration.

1.38 “Construction Liaison” shall have the meaning set forth in Section 6(f) of this Declaration.

1.39 ~~1.33~~ “Construction Monitor” shall have the meaning set forth in Section 4.8(a) of this Declaration.

1.40 ~~1.34~~ “Construction Monitoring Measures” shall have the meaning set forth in Section 4.8(a) of this Declaration.

1.41 ~~1.35~~ “Construction Pest Management Plan” shall have the meaning set forth in Section 4.1(f) of this Declaration.

1.42 ~~1.36~~ “Construction Phases” shall mean, collectively, the interim Construction Phases associated with the Phase 1 Development, the Phase 2 Development, the Phase 3 Development and the Phase 4 Development as shown on the Construction Phasing Plans.

1.43 ~~1.37~~ “Construction Phasing Plans” shall mean the plans and drawings listed in Section 6(a) of this Declaration and annexed hereto as Exhibit D.

1.44 ~~1.38~~ “Construction Protection Plan” shall have the meaning set forth in Section 4.1(h)(iii)(A) of this Declaration.

1.45 ~~1.39~~ “Corporation Counsel” shall mean the Corporation Counsel of the City of New York or any successor to the jurisdiction thereof.

1.46 ~~1.40~~ “CPP” shall ~~mean Construction Protection Plan.~~ have the meaning set forth in Section 4.1(h)(ii)(A) of this Declaration.

1.47 ~~1.41~~ “Declarant” shall have the meaning given in the Preamble to this Declaration, and shall include heirs, successors and assigns of the named Declarant.

1.48 ~~1.42~~ “Declaration” shall have the meaning given in the Preamble to this Declaration.

1.49 ~~1.43~~ “Delay Notice” shall have the meaning set forth in Section 8 of this Declaration.

1.50 ~~1.44~~ “Denial Determination” shall have the meaning set forth in Section 4.3 of this Declaration.

1.51 ~~1.45~~ “DEP” shall mean the New York City Department of Environmental Protection, or any successor to the jurisdiction thereof.

1.52 ~~1.46~~ “Design Guidelines” shall have the meaning set forth in Section 3 of this Declaration.

1.53 ~~1.47~~ “Development” shall mean the construction or redevelopment, as applicable, of the Large-Scale Development Project pursuant to the Construction Phasing Plans, annexed hereto as Exhibit D, and the Development Plans, annexed hereto as Exhibit C.

1.54 ~~1.48~~ “Development Phases” shall mean, collectively, the Phase 1 Development, the Phase 2 Development, the Phase 3 Development and the Phase 4 Development as shown on the Phasing Plans.

1.55 ~~1.49~~ “Development Plans” shall mean the plans and drawings listed in Section 3(a) of this Declaration and annexed hereto as Exhibit C.

1.56 ~~1.50~~ “Dewatering Plan” shall have the meaning set forth in Section 4.1(e) of this Declaration.

1.57 ~~1.51~~ “DOT” shall mean the New York City Department of Transportation, or any successor to the jurisdiction thereof.

1.58 ~~1.52~~ “EDC” shall mean the New York City Economic Development Corporation.

1.59 ~~1.53~~ “EEMs” shall have the meaning set forth in Section 4.3 of this Declaration.

1.60 ~~1.54~~ “Effective Date” shall have the meaning set forth in Section 12 of this Declaration.

1.61 ~~1.55~~ “Energy Report” shall have the meaning set forth in Section 4.3 of this Declaration.

1.62 ~~1.56~~ “EPA” shall mean the United States Environmental Protection Agency, or any successor to the jurisdiction thereof.

1.63 ~~1.57~~ “FEIS” shall mean the Final Environmental Impact Statement for the Large-Scale Development Project, dated May 25, 2012.

1.64 ~~1.58~~ “FEIS Obligation” shall mean any Obligation that is set forth in the FEIS, the FEIS Memo, or the Technical Memoranda that is (a) specifically required by the provisions of the FEIS to be incorporated into this Declaration, (b) a Mitigation Measure identified in the FEIS or (c) a PCRE.

1.65 ~~1.59~~ “Final Approval” shall mean approval of any one or more of the Applications by the Commission pursuant to New York City Charter Section 197-c, with or without modifications, which shall be effective on the date that the City Council’s period of review has expired without action by the City Council, provided that if (a) pursuant to New York City Charter Section 197-d(b), the City Council reviews the decisions of the Commission approving any one or more of the Applications and takes final action pursuant to New York City Charter Section 197-d approving any one or more of the Applications, with or without modifications, “Final Approval” shall mean such approval of such Application(s) by the City Council or (b) the City Council disapproves any one or more of the decisions of the Commission and the Mayor files a written disapproval of the City Council’s action pursuant to New York City Charter Section 197-d(e), and the City Council does not override the Mayor’s disapproval, “Final Approval” shall mean the date of the Mayor’s written disapproval of such Council action with respect to such Application(s) pursuant to such New York City Charter Section 197-d(e).

1.66 ~~1.60~~ “Final Completion” or “Finally Complete” shall mean the completion of all relevant items of work, including any so-called “punch-list” items that remain to be completed upon Substantial Completion.

1.67 ~~1.61~~ “Floor Area” shall have the meaning given in Section 12-10 of the Zoning Resolution.

1.68 ~~1.62~~ “Force Majeure Event” shall mean an occurrence beyond the reasonable control of Declarant which causes the delay of the performance of Declarant’s Obligations hereunder, provided that Declarant has taken all reasonable steps reasonably necessary to control or to minimize such delay, and which occurrences shall include, but not be limited to: (i) a strike, lockout or labor dispute; (ii) the inability to obtain labor or materials or reasonable substitutes therefor; (iii) acts of God; (iv) restrictions, regulations, orders, controls or judgments of any Governmental Authority; (v) undue material delay in performance of any work or processing and/or issuance of approvals of any applications or agreements or other actions required in order to permit Declarant to carry out its Obligations pursuant to this Declaration by any Governmental Authority, provided that such delay is not caused by any act or omission of Declarant; (vi) enemy or hostile government action, civil commotion, insurrection, terrorism, revolution or sabotage; (vii) fire or other casualty; (viii) a taking of the whole or any portion of the Subject Property by condemnation or eminent domain; (ix) inclement weather substantially delaying construction of any relevant portion of the Subject Property; (x) unforeseen underground or soil conditions, provided that Declarant did not and could not reasonably have anticipated the existence thereof as of the date hereof; (xi) the denial of access to adjoining real property, notwithstanding the existence of a right of access to such real property in favor of Declarant arising by contract or Legal Requirements, if such access is required to accomplish the Obligations of Declarant pursuant to this Declaration; (xii) failure or inability of a public utility to provide adequate power, heat or light or any other utility service; (xiii) orders of any court of competent jurisdiction which prohibit, or the pendency of any litigation which has the effect of prohibiting Declarant from performing its obligations hereunder. The time to perform any Obligation under this Declaration may be extended as a result of a Force Majeure Event only pursuant to the procedures set forth in Section 8 of this Declaration and provided the Chairperson certifies that Force Majeure Event exists in accordance with such Section 8.

1.69 ~~1.63~~ “Fugitive Dust Control Plan” shall have the meaning set forth in Section 4.1(b) of this Declaration.

1.70 ~~1.64~~ “Governmental Authority” shall mean any governmental authority (including any Federal, State or City governmental authority or quasi-governmental authority, or any

political subdivision of any thereof, or any agency, department, commission, board or instrumentality of any thereof) having jurisdiction over the matter in question.

1.71 ~~1.65~~ “HVAC” shall have the meaning set forth in Section 4.2(a) of this Declaration.

1.72 ~~1.66~~ “LaGuardia Building” shall mean the New Building to be constructed on Zoning Lot 1, as shown on the Development Plans and Construction Phasing Plans. The LaGuardia Building is comprised of the LaGuardia Building Tower and the LaGuardia Building Below- Grade Space.

1.73 ~~1.67~~ “LaGuardia Building Tower” shall mean the above-grade portion of the LaGuardia Building not including the ground floor of the LaGuardia Building.

1.74 ~~1.68~~ “LaGuardia Building Below- Grade Space” shall mean the ground floor of the LaGuardia Building and the below-grade portion of the LaGuardia Building (including the below-grade academic and mechanical space in the central area of the North Block Parcel, west of the former Greene Street). The LaGuardia Building Below- Grade Space does not include the LaGuardia Garage.

1.75 ~~1.69~~ “LaGuardia Garage” shall mean the new subsurface parking garage to be constructed on Zoning Lot 1, as shown on the Development Plans and Construction Phasing Plans.

1.76 ~~1.70~~ “Landscape Plans” shall mean those certain Development Plans identified in Section 7.16(c)(i) of this Declaration and annexed hereto as part of Exhibit C.

1.77 ~~1.71~~ “Large-Scale Development Project” shall have the meaning set forth in the Recitals to this Declaration.

1.78 ~~1.72~~ “Large-Scale Special Permit” shall have the meaning set forth in the Recitals to this Declaration.

1.79 ~~1.73~~ “LEED” shall have the meaning set forth in Section 4.3(a) of this Declaration.

1.80 ~~1.74~~ “LEED Silver” or “LEED Silver Certification” shall have the meaning set forth in Section 4.3(a) of this Declaration.

1.81 ~~1.75~~ “Legal Requirements” shall mean all applicable laws, statutes and ordinances, and all orders, rules, regulations, interpretations, directives and requirements, of any Governmental Authority having jurisdiction over the Subject Property.

1.82 ~~1.76~~ “Letter of Resolution” shall have the meaning set forth in Section 4.4(b) of this Declaration.

1.83 ~~1.77~~ “LPC” shall mean the Landmarks Preservation Commission of the City of New York or any successor to the jurisdiction thereof.

1.84 ~~1.78~~ “Maintenance and Protection of Traffic Plan” shall have the meaning set forth in Section 4.1(i) of this Declaration.

1.85 ~~1.79~~ “Manhattan Datum” shall mean the datum level used by the Topographical Bureau, Borough of Manhattan, which is 2.75 feet above the United States Coast and Geodetic Survey Datum, mean sea level, Sandy Hook, New Jersey.

1.86 ~~1.80~~ “Measurement and Verification Plan” shall have the meaning set forth in Section 4.3 of this Declaration.

1.87 ~~1.81~~ “Mercer Building” shall mean the New Building to be constructed on Zoning Lot 1, as shown on the Development Plans and Construction Phasing Plans. The Mercer Building is comprised of the Mercer Building Tower and the Mercer Building Below- Grade Space.

1.88 ~~1.82~~ “Mercer Building Tower” shall mean the above-grade portion of the Mercer Building not including the ground floor of the Mercer Building

1.89 ~~1.83~~ “Mercer Building Below- Grade Space” shall mean the ground floor of the Mercer Building and the below-grade portion of the Mercer Building.



1.90 ~~1.84~~ “Mercer Street Land” shall have the meaning set forth in the Recitals to this Declaration.

1.91 ~~1.85~~ “Mercer Street Land Recording Date” shall have the meaning set forth in Section 11 of this Declaration.

1.92 ~~1.86~~ “Minimum Energy Savings” shall have the meaning set forth in Section 4.3(d) of this Declaration.

1.93 ~~1.87~~ “Mitigation Measure(s)” shall have the meaning given in the Recitals to this Declaration and as more particularly set forth in Section 4.4 of this Declaration.

1.94 ~~1.88~~ “Monitor Agreement” shall have the meaning set forth in Section 4.8 of this Declaration.

1.95 ~~1.89~~ “MPT” shall mean Maintenance and Protection of Traffic Plan.

1.96 ~~1.90~~ “MTA” shall mean the Metropolitan Transportation Authority, or any successor to the jurisdiction thereof.

1.97 ~~1.91~~ “New Building” shall mean any new building or structure, or portion thereof, whether above grade or below grade, constructed or redeveloped on any portion of the Subject Property pursuant to the Development Plans and the Construction Phasing Plans, ~~including the LaGuardia Garage~~.

1.98 ~~1.92~~ “New Cure Period” shall have the meaning set forth in Section 4.8 of this Declaration.

1.99 ~~1.93~~ “New Landscape Improvements” shall have the meaning set forth in Section 6 of this Declaration.

1.100 ~~1.94~~ “New Landscape Improvements Obligation” shall mean any Obligation to construct the New Landscape Improvements as set forth in Section 6 of this Declaration.

1.101 ~~1.95~~ “New Landscape Improvements Work” shall have the meaning set forth in Section 6(c)(i) of this Declaration and shall include all the work necessary to construct the New

Landscape Improvements in accordance with all Legal Requirements and the provisions of this Declaration.

1.102 ~~1.96~~ “New York City Charter” shall mean the Charter of the City of New York, effective as of January 1, 1990, as the same may be amended from time to time.

1.103 ~~1.97~~ “Noise Reduction Plan” shall have the meaning set forth in Section 4.1(c)(i)(B) of this Declaration.

1.104 ~~1.98~~ “North Block Parcel” shall have the meaning set forth in the Recitals to this Declaration.

1.105 ~~1.99~~ “Notice” shall have the meaning set forth in Section 13 of this Declaration.

1.106 ~~1.100~~ “Notice of Final Completion” shall have the meaning set forth in Section 6(e)(iv) of this Declaration.

1.107 ~~1.101~~ “Notice of Substantial Completion” shall have the meaning set forth in Section 6(d)(iii) of this Declaration.

1.108 ~~1.102~~ “NYCT” shall mean MTA New York City Transit, or any successor to the jurisdiction thereof.

1.109 ~~1.103~~ “NYSDEC” shall mean the New York State Department of Environmental Conservation, or any successor to the jurisdiction thereof.

1.110 ~~1.104~~ “Obligation” shall mean any requirement imposed on Declarant by this Declaration, including, without limitation, any FEIS Obligation whether or not specifically incorporated herein, and any New Landscape Improvements Obligation.

1.111 ~~1.105~~ “OEM” shall have the meaning set forth in Section 4.1(a)(i)(G) of this Declaration.

1.112 ~~1.106~~ “OER” shall mean the New York City Office of Environmental Remediation, or any successor to the jurisdiction thereof.

1.113 ~~1.107~~ “Open Space Oversight Organization” shall have the meaning set forth in Section 7.36.3 of this Declaration.

1.114 ~~1.108~~ “OPRHP” shall mean the New York State Office of Parks, Recreation and Historic Preservation and any successor to the jurisdiction thereof.

1.115 ~~1.109~~ “Oversight Report” shall have the meaning set forth in Section 7.3 of this Declaration.

1.116 ~~1.110~~ “Parcels” shall mean, individually or collectively, the North Block Parcel and/or the South Block Parcel, as further described in the Recitals.

1.117 ~~1.111~~ “Parks Department” shall mean the New York City Department of Parks and Recreation and any successor to the jurisdiction thereof.

1.118 ~~1.112~~ “Party In Interest” shall have the meaning set forth in subdivision (d) of the definition of the term “zoning lot” in Section 12-10 of the Zoning Resolution.

1.119 ~~1.113~~ “PCO” shall mean a Permanent Certificate of Occupancy issued by the Buildings Department.

1.120 ~~1.114~~ “PCRE(s)” shall have the meaning given in the Recitals to this Declaration and as more particularly set forth in Section 4 of this Declaration.

1.121 ~~1.115~~ “Permit Notice” shall have the meaning set forth in Section 4.9(a) of this Declaration.

1.122 ~~1.116~~ “Phase 1B Investigation” shall have the meaning set forth in Section 4.1(h)(i)(A) of this Declaration.

1.123 ~~1.117~~ “Phase 1 Development” shall mean the construction or redevelopment of Phase 1, including all interim Construction Phases therein, of the Large-Scale Development Project, as more particularly set forth in Section 6.1 of this Declaration.

1.124 ~~1.118~~ “Phase 2 Development” shall mean the construction or redevelopment of Phase 2, including all interim Construction Phases therein, of the Large-Scale Development Project, as more particularly set forth in Section 6.2 of this Declaration.

1.125 ~~1.119~~ “Phase 3 Development” shall mean the construction or redevelopment of Phase 3, including all interim Construction Phases therein, of the Large-Scale Development Project, as more particularly set forth in Section 6.3 of this Declaration.

1.126 ~~1.120~~ “Phase 4 Development” shall mean the construction or redevelopment of Phase 4, including all interim Construction Phases therein, of the Large-Scale Development Project, as more particularly set forth Section 6.4 of this Declaration.

1.127 ~~1.121~~ “Phasing Plans” shall mean those certain Development Plans identified in Section 6(a) of this Declaration and annexed hereto as part of Exhibit C.

1.128 ~~1.122~~ “Prior Zoning Development” shall have the meaning set forth in Section 3(b)(i) of this Declaration.

1.129 ~~1.123~~ “Proposed Cure Period” shall have the meaning set forth in Section 4.8 of this Declaration.

1.130 ~~1.124~~ “Public Access Areas” shall have the meaning set forth in Section 7(a) of this Declaration.

1.131 ~~1.125~~ “Public School” shall mean a primary and/or intermediate school of approximately 100,000 gross square feet, to be operated by the New York City Department of Education, proposed to be located on Zoning Lot 3 in accordance with Section 5 of this Declaration.

1.132 ~~1.126~~ “Public School Commitment” shall have the meaning set forth in Section 5.1 of this Declaration.

1.133 ~~1.127~~ “Punch List” shall have the meaning set forth in Section 6(d)(iii) of this Declaration.

1.134 ~~1.128~~ “RAP” shall have the meaning set forth in Section 4.1(g) of this Declaration.

1.135 ~~1.129~~ “Recording Date” shall have the meaning set forth in Section ~~4~~11 of this Declaration.

1.136 ~~1.130~~ “Recovery Measures” shall have the meaning set forth in Section 4.1(h)(i)(A) of this Declaration.

1.137 ~~1.131~~ “Register’s Office” shall have the meaning set forth in Section ~~4~~11 of this Declaration.

1.138 ~~1.132~~ “SCA Sasaki Garden” shall have the meaning set forth in Section ~~5.1~~6.3(d) of this Declaration.

1.139 “SCA” shall mean the New York City School Construction Authority or any successor to the jurisdiction thereof.

1.140 ~~1.133~~ “SCA Agreement” shall have the meaning set forth in Section 5.1 of this Declaration.

~~1.134~~ “~~School Construction Windows,~~” “~~School Construction Window 1,~~” “~~School Construction Window 2~~” and “~~School Construction Window 3~~” shall each have the respective meanings set forth in Section 6.2(a) of this Declaration.

1.141 ~~1.135~~ “School Election Notice” shall have the meaning set forth in Section 5.1 of this Declaration.

1.142 ~~1.136~~ “South Block Parcel” shall have the meaning set forth in the Recitals to this Declaration, subject to the provisions of Section 11(c) of this Declaration.

1.143 ~~1.137~~ “State Pollution Discharge Elimination System” or “SPDES” shall have the meaning set forth in Section 4.3(b)(ii) of this Declaration.

1.144 ~~1.138~~ “Stormwater Pollution Prevention Plan” or “SWPPP” shall have the meaning set forth in Section 4.3(b)(ii) of this Declaration.

1.145 ~~1.139~~ “Subject Property” shall have the meaning set forth in the Recitals to this Declaration..

1.146 ~~1.140~~ “Substantial Completion” or “Substantially Complete,” with respect to any New Landscape Improvement or Public Access Area, shall mean that such New Landscape Improvement or Public Access Area has been constructed substantially in accordance with the Development Plans and the Construction Phasing Plans, as applicable, and has been completed to such an extent that all portions of the improvement may be operated and made available for public use. An improvement may be deemed Substantially Complete notwithstanding that (a) minor or insubstantial items of construction or decoration remain to be performed or (b) Declarant has not completed any relevant planting or vegetation or tasks that must occur seasonally.

1.147 ~~1.141~~ “Substitute Standard” or “Substitute Standard Certification” shall have the meaning set forth in Section 4.3(a) of this Declaration.

1.148 ~~1.142~~ “Successor Declarant” shall have the meaning set forth in Section 4.8 of this Declaration.

1.149 ~~1.143~~ “TCO” shall mean a Temporary Certificate of Occupancy issued by the Buildings Department.

1.150 ~~1.144~~ “USGBC” shall have the meaning set forth in Section 4.3(a) of this Declaration.

1.151 ~~1.145~~ “WSSURA” shall have the meaning set forth in the Recitals to this Declaration.

1.152 ~~1.146~~ “Zipper Building” shall mean the New Building to be constructed on Zoning Lot 2 as shown on the Development Plans and Construction Phasing Plans. The Zipper Building is comprised of the Zipper Building Towers and the Zipper Building Below- Grade Space.

1.153 ~~1.147~~ “Zipper Building Towers” shall mean the above-grade portion of the Zipper Building not including the ground floor.

1.154 ~~1.148~~ “Zipper Building Below-Grade Space” shall mean the ground floor of the Zipper Building and the below-grade portion of the Zipper Building.

1.155 ~~1.149~~ “Zoning Lot” shall have the meaning given in Section 12-10 of the Zoning Resolution.

1.156 ~~1.150~~ “Zoning Lot 1,” “Zoning Lot 2” and “Zoning Lot 3” shall have the respective meanings set forth in the Recitals to this Declaration.

1.157 ~~1.151~~ “Zoning Resolution” or “ZR” shall mean the Zoning Resolution of the City of New York, effective December 15, 1961, as amended to date and as same may hereafter be amended.

2. **DESIGNATION OF LARGE-SCALE GENERAL DEVELOPMENT.** Declarant hereby declares and agrees that, following the Effective Date (as set forth in Section 12), the Subject Property if developed pursuant to the Large-Scale Special Permit, shall be treated and developed as a “large-scale general development,” as such term is defined in the Zoning Resolution in effect on the Effective Date, and shall be developed and enlarged as a single unit. Declarant agrees that the aggregate Floor Area of the Subject Property shall be in accordance with the Development Plans, and shall not exceed (i) ~~1,482,243~~1,355,519 square feet of Floor Area on the North Block Parcel (Zoning Lot 1) and (ii) ~~1,176,485~~1,157,439 square feet of Floor Area on the South Block Parcel, with no more than ~~1,080,183~~1,061,137 square feet of Floor Area on Zoning Lot 2 and 96,302 square feet of Floor Area on Zoning Lot 3. The New Buildings, in addition to the new 389-space accessory parking garage on the North Block Parcel and mechanical space, shall contain no more than ~~1,441,583~~1,309,583 gross square feet of academic use; ~~470,000~~450,000 gross square feet of student housing (dormitory) use (~~1,566~~1,500 beds); 220,000 gross square feet of faculty housing use (260 units); 200,000 gross square feet of athletic center use; ~~94,000~~76,171 gross square feet of retail use; ~~and~~ 100,000 gross square feet of public school ~~(PS/IS) use.~~use; and 32,500 gross square feet of other community facility use.

3. **DEVELOPMENT OF LARGE-SCALE GENERAL DEVELOPMENT PROJECT.**

(a) If the Subject Property is developed in whole or part in accordance with the Large-Scale Special Permit, Declarant covenants and agrees that the Subject Property shall

be developed in substantial compliance with the following plans, prepared by Grimshaw Architects (drawings Z-004 through Z-208) and Michael Van Valkenburgh Associates (drawings Z-300 through Z-346), ~~each with a last revised date of June 4, 2012,~~ approved as part of the Large-Scale Special Permit, annexed hereto as **Exhibit C** and made a part hereof (the “**Development Plans**”), and in compliance with this Declaration:

<u>Number</u>	<u>Title</u>	<u>Date</u>
Z-004	ZONING CALCULATIONS AND ZONING ACTIONS	<a href="#">July 23, 2012</a>
Z-100	SITE PLAN	<a href="#">July 23, 2012</a>
Z-101	NORTH BLOCK: SITE PLAN	<a href="#">July 23, 2012</a>
Z-102	SOUTH BLOCK: SITE PLAN	<a href="#">July 23, 2012</a>
Z-110	GROUND FLOOR SITE PLAN	<a href="#">July 23, 2012</a>
Z-111	NORTH BLOCK: GROUND FLOOR SITE PLAN	<a href="#">July 23, 2012</a>
Z-112	SOUTH BLOCK: GROUND FLOOR SITE PLAN	<a href="#">July 23, 2012</a>
Z-120	BUILDING ENVELOPE: MERCER BUILDING	<a href="#">July 23, 2012</a>
Z-121	BUILDING ENVELOPE: LAGUARDIA BUILDING	<a href="#">July 23, 2012</a>
Z-122	BUILDING ENVELOPE: ZIPPER AND BLEECKER BUILDING	<a href="#">July 23, 2012</a>
Z-125	NORTH BLOCK: AVERAGE CURB LEVEL DIAGRAM	<a href="#">July 23, 2012</a>
Z-126	SOUTH BLOCK: AVERAGE CURB LEVEL DIAGRAM	<a href="#">July 23, 2012</a>
Z-127	NORTH BLOCK: OPEN SPACE DIAGRAM	<a href="#">July 23, 2012</a>
Z-128	SOUTH BLOCK: OPEN SPACE DIAGRAM	<a href="#">July 23, 2012</a>
Z-130	NORTH BLOCK: ZONING ACTIONS PLAN DIAGRAM	<a href="#">July 23, 2012</a>
Z-131	NORTH BLOCK: BUILDING SECTIONS	<a href="#">July 23, 2012</a>
Z-133	SOUTH BLOCK: ZONING ACTIONS PLAN DIAGRAM	<a href="#">July 23, 2012</a>
Z-134	SOUTH BLOCK: INTERIM ZONING ACTIONS PLAN DIAGRAM	<a href="#">June 4, 2012</a>
Z-135	SOUTH BLOCK: BUILDING SECTIONS 1	<a href="#">July 23, 2012</a>
Z-136	SOUTH BLOCK: BUILDING SECTIONS 2	<a href="#">June 4, 2012</a>
Z-137	SOUTH BLOCK: BUILDING SECTIONS 3	<a href="#">July 23, 2012</a>
Z-138	SOUTH BLOCK: BUILDING SECTIONS 4	<a href="#">July 23, 2012</a>
Z-140	NORTH BLOCK: PEDESTRIAN ELEVATIONS 1	<a href="#">June 4, 2012</a>
Z-141	NORTH BLOCK: PEDESTRIAN ELEVATIONS 2	<a href="#">July 23, 2012</a>
Z-142	SOUTH BLOCK: PEDESTRIAN ELEVATIONS	<a href="#">July 23, 2012</a>
Z-201	NORTH BLOCK: SITE PLAN END OF PHASE 1	<a href="#">June 4, 2012</a>
Z-202	SOUTH BLOCK: SITE PLAN END OF PHASE 1	<a href="#">July 23, 2012</a>



<u>Number</u>	<u>Title</u>	<u>Date</u>
Z-203	NORTH BLOCK: SITE PLAN END OF PHASE 2	<a href="#"><u>June 4, 2012</u></a>
Z-204	SOUTH BLOCK: SITE PLAN END OF PHASE 2	<a href="#"><u>July 23, 2012</u></a>
Z-205	NORTH BLOCK: SITE PLAN END OF PHASE 3	<a href="#"><u>July 23, 2012</u></a>
Z-206	SOUTH BLOCK: SITE PLAN END OF PHASE 3	<a href="#"><u>July 23, 2012</u></a>
Z-207	NORTH BLOCK: SITE PLAN END OF PHASE 4	<a href="#"><u>July 23, 2012</u></a>
Z-208	SOUTH BLOCK: SITE PLAN END OF PHASE 4	<a href="#"><u>July 23, 2012</u></a>
Z-300	OVERALL OPEN SPACE PLAN	<a href="#"><u>July 23, 2012</u></a>
Z-301	OPEN SPACE AMENITIES CALCULATION	<a href="#"><u>July 23, 2012</u></a>
Z-302	NORTH BLOCK: OPEN SPACE PLAN	<a href="#"><u>July 23, 2012</u></a>
Z-303	SOUTH BLOCK: OPEN SPACE PLAN	<a href="#"><u>June 4, 2012</u></a>
Z-310	NORTH BLOCK: MATERIALS PLAN	<a href="#"><u>July 23, 2012</u></a>
Z-311	SOUTH BLOCK: MATERIALS PLAN	<a href="#"><u>June 4, 2012</u></a>
Z-312	NORTH BLOCK: GRADING PLAN	<a href="#"><u>July 23, 2012</u></a>
Z-313	SOUTH BLOCK: GRADING PLAN	<a href="#"><u>June 4, 2012</u></a>
Z-314	NORTH BLOCK: PLANTING PLAN	<a href="#"><u>July 23, 2012</u></a>
Z-315	SOUTH BLOCK: PLANTING PLAN	<a href="#"><u>June 4, 2012</u></a>
Z-316	NORTH BLOCK: SITE FURNISHINGS PLAN	<a href="#"><u>July 23, 2012</u></a>
Z-317	SOUTH BLOCK: SITE FURNISHINGS PLAN	<a href="#"><u>June 4, 2012</u></a>
Z-318	NORTH BLOCK: LIGHTING PLAN	<a href="#"><u>July 23, 2012</u></a>
Z-319	SOUTH BLOCK: LIGHTING PLAN	<a href="#"><u>June 4, 2012</u></a>
Z-320	SITE LIGHTING DETAILS	<a href="#"><u>July 23, 2012</u></a>
Z-321	PUBLIC SPACE SIGNAGE PLAN	<a href="#"><u>July 23, 2012</u></a>
Z-330	OVERALL SECTION KEY	<a href="#"><u>June 4, 2012</u></a>
Z-331	NORTH BLOCK: SECTIONS	<a href="#"><u>June 4, 2012</u></a>
Z-332	NORTH BLOCK: SECTIONS	<a href="#"><u>July 23, 2012</u></a>
Z-333	NORTH BLOCK: SECTIONS	<a href="#"><u>July 23, 2012</u></a>
Z-334	NORTH BLOCK: SECTIONS	<a href="#"><u>July 23, 2012</u></a>
Z-335	NORTH BLOCK: SECTIONS	<a href="#"><u>July 23, 2012</u></a>
Z-336	SOUTH BLOCK: SECTIONS	<a href="#"><u>June 4, 2012</u></a>
Z-340	PAVEMENT DETAILS	<a href="#"><u>June 4, 2012</u></a>
Z-341	SEATWALL DETAILS	<a href="#"><u>June 4, 2012</u></a>
Z-342	SEATWALL DETAILS	<a href="#"><u>June 4, 2012</u></a>
Z-343	RAILING DETAILS	<a href="#"><u>June 4, 2012</u></a>

<u>Number</u>	<u>Title</u>	<u>Date</u>
Z-344	FENCING DETAILS	<a href="#">June 4, 2012</a>
Z-345	TRASH RECEPTACLE AND BIKE RACK DETAILS	<a href="#">June 4, 2012</a>
Z-346	BENCH AND MOVEABLE CHAIR DETAILS	<a href="#">June 4, 2012</a>

(b) In the event that Declarant seeks to develop the Subject Property other than pursuant to the Large-Scale Special Permits, the Declarant shall not be authorized to develop the Subject Property except as would be permitted pursuant to the applicable zoning districts, subject to the following further restrictions: (i) such development shall comply in all respects with and only to the extent permitted under the zoning regulations existing immediately prior to the date of Final Approval of the Zoning Map Amendment, i.e., in accordance with the controls applicable to a R7 residential district (“**Prior Zoning Development**”); or (ii) to the extent such development is not permitted under (i) above, such development has been reviewed and approved by the Commission and drawings with respect thereto, in a form acceptable to the Department, have been incorporated in this Declaration pursuant to the procedures for modification of this Declaration as set forth in Section 17(c) (the “**As-of-Right Development**”). Development pursuant to Section 3(b)(i) shall not be subject to the provisions of Section 4.

(c) **Phasing of Development**. Declarant covenants and agrees that subject to the provisions set forth in Section 6 and all other provisions of this Declaration, Declarant shall develop the New Buildings and other improvements on the Subject Property in the following sequence, as set forth in the Development Plans and Construction Phasing Plans: Phase 1 Development, Phase 2 Development, Phase 3 Development and Phase 4 Development. Declarant may not accept a Building Permit for purposes of developing a New Building in a subsequent Development Phase until the New Building in the preceding Development Phase is fully enclosed and work on the New Building in the preceding Development Phase is limited to interior fit out/finishing work preparatory to the issuance of a TCO. Notwithstanding the sequence of Development Phases set forth herein and the preceding sentence, Declarant may develop the Phase 2 Development before, during or after any of the preceding or subsequent Phases, within the ~~School~~[Bleecker](#) Construction Windows set forth in Section 6.2(a).

(d) **Design Guidelines.** Declarant covenants and agrees that Declarant shall develop the New Buildings and other improvements on the Subject Property in accordance with the “Design Guidelines” shown on drawings Z-120 (“BUILDING ENVELOPE: MERCER BUILDING”), Z-121 (“BUILDING ENVELOPE: LAGUARDIA BUILDING”), Z-122 (“BUILDING ENVELOPE: ZIPPER AND BLEECKER BUILDINGS”), Z-140 (“North BLOCK: PEDESTRIAN ELEVATIONS 1”), Z-141 (“NORTH BLOCK: PEDESTRIAN ELEVATIONS 2”), Z-142 (“SOUTH BLOCK: PEDESTRIAN ELEVATIONS”) and Z-302 (“NORTH BLOCK: OPEN SPACE PLAN”) of the Development Plans. Notwithstanding the foregoing, the Chairperson, pursuant to Section 1617(b), may administratively modify Design Guideline Rule 4 as shown on drawing Z-122, in order to reduce the minimum publicly accessible points of entry set forth therein.

#### **4. PROJECT COMPONENTS RELATED TO THE ENVIRONMENT AND MITIGATION MEASURES.**

Declarant shall undertake the PCREs and Mitigation Measures set forth in this Section 4 for any development of the Subject Property, as such may be modified pursuant to Section 4.7, unless such development is pursuant to the provisions of Section 3(b)(i) or is pursuant to Section 3(b)(ii) in accordance with a Technical Memorandum reviewed and approved in accordance with Section 17(c).

##### **4.1 Project Components Related to the Environment Relating to Construction.**

Declarant shall implement and incorporate into its construction means and methods, prior to Construction Commencement of each Development Phase, of the Subject Property, and shall incorporate during the course of construction the following PCREs related to construction, during each Development Phase, except as specifically provided herein:

##### **(a) Construction Air Emissions Reduction Measures.**

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

(A) To minimize emissions of PM<sub>2.5</sub> and NO<sub>x</sub> to the maximum extent practicable, nonroad diesel-powered construction equipment with a power output of 50 hp or greater shall be rated as meeting or achieving EPA (i) Tier 3 Nonroad Diesel Engine Emission Standard or higher during construction work occurring before or during 2021 and (ii) Tier 4 Nonroad Diesel Engine Emission Standard or higher during all construction work occurring after 2021.

(B) All non-road, diesel-powered construction equipment with an engine power output rating of 50 horsepower or greater and controlled truck fleets (i.e., truck fleets under long-term contract to the Declarant's contractor) shall utilize the best available tailpipe technology for reducing diesel particulate emissions. Construction contracts shall specify that all diesel non-road engines rated at 50 horsepower or greater and all controlled-fleet trucks shall utilize active or passive diesel particle filters (either original equipment manufacturer or retrofit technology) verified under the EPA or California Air Resources Board verification programs to reduce diesel particulate matter emissions by at least 90 percent.

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

(D) Idling of all vehicles, including non-road engines, for periods longer than three minutes shall be prohibited on the Subject Property and on adjacent City-owned property and Streets, except for vehicles being used to operate a loading, unloading or processing device (e.g., concrete mixing trucks) or otherwise required for the proper operation of the engine.

(E) The use of diesel and gasoline engines, including generators, shall be minimized through the maximum practical use of (i) electric engines operating on grid power or electricity generated by the co-generation facility on Mercer Street, and (ii) lighting devices, illuminated traffic control signals and signs operating on grid power or electricity generated by the co-generation facility on Mercer Street. Where practicable, Declarant shall ensure the distribution of power connections throughout the Subject Property as needed. Equipment that shall use electric power instead of diesel shall include without limitation concrete vibrators and material/personnel hoists.

(F) Large emissions sources, such as concrete trucks and pumping operations, shall be located, to the extent practicable, away from operable windows, fresh air intakes, residential buildings, schools and publicly accessible open space. During the construction of the Zipper Building, to the extent practicable, all construction engines shall be located at least 15 feet away from the western construction fence. Since it is anticipated that the sidewalk on the west side of Mercer Street between Bleecker Street and W. Houston Street would be closed during the construction of the Zipper Building, gasoline engines used during this period of construction would be located on Mercer Street, away from accessible sidewalk locations. Similarly, all gasoline engines used during the construction of the Bleecker Building would be located away from accessible sidewalk locations, to the extent practicable. During construction on the North Block Parcel, all diesel construction engines shall be located at least 50 feet away from the Washington Square Village Buildings 1 and 2 and the Washington Square Village Buildings 3 and 4, to the extent practicable.

(G) All ready-mix concrete delivery trucks and concrete pumping trucks must be either retrofitted with a diesel particle filter as specified in Section 4.1(a)(i)(B) above, or be equipped by the original equipment manufacturer (“**OEM**”), to reduce diesel particulate matter emissions by at least 90 percent.

(ii) Declarant shall include enforceable contractual requirements with its contractors (and require the contractors to include enforceable contractual requirements with their subcontractors) to implement the provisions of this Section 4.1(a), with respect to applicable work at the Subject Property.

(b) **Fugitive Dust Control Plan.**

(i) Prior to the Construction Commencement, Declarant shall (x) develop a plan for implementation of and (y) thereafter implement, a plan for the prevention of the emission of dust from construction-related activities during development of the Subject Property (the “**Fugitive Dust Control Plan**”), which Fugitive Dust Control Plan shall contain the following measures:

(A) Water spraying shall be used to prevent or reduce fugitive dust from excavation, demolition, transfer of spoils, and loading and unloading of spoils.

(B) Large piles of soil, rock or sediment either shall be kept wet, coated with a non-hazardous, biodegradable dust suppressant and/or covered to prevent wind erosion and fugitive dust. Longer term stockpiles shall be covered with a properly secured tarp.

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

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

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

(F) Truck routes and surfaces on which nonroad vehicles are operating within construction areas shall be watered as needed; or, in cases where such routes will remain in the same place for extended periods, the soil on such surfaces and roadways shall be stabilized with a biodegradable dust suppressant solution, covered with gravel, or temporarily paved to avoid the re-suspension of dust.

(G) Roads adjacent to construction areas shall be cleaned by Declarant on a regular basis (as needed to supplement cleaning by the City), using appropriate legal methods, to minimize fugitive dust emissions.

(H) Materials and waste during demolition shall be brought to grade by hoists, cranes or chutes. If chutes are used, the bottom end of drop chutes shall be inserted into covered trucks or bins in a sealed manner so as to ensure that dust is not released from the truck or bin.

(I) A vehicular speed limit of 5 miles per hour shall be observed within construction areas.

(ii) Declarant shall include enforceable contractual requirements with its contractors (and require the contractors to include enforceable contractual requirements with their subcontractors) to implement the provisions of this Section 4.1(b) with respect to applicable work at the Subject Property.

(c) **Construction Noise Reduction Measures.**

(i) Prior to the Construction Commencement, Declarant shall (x) develop a plan for implementation of, and (y) thereafter implement, a plan for all construction activities (including demolition and excavation) related to the development of the Subject Property:

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

(B) For each New Building, Declarant shall develop and implement a plan for minimization of construction noise (the “**Noise Reduction Plan**”), which Noise Reduction Plan shall contain the following measures:

(1) Noise barriers shall be erected around the perimeter of the Construction Areas where construction activities are taking place for the purpose of minimizing construction noise consistent with reasonable construction procedures. Noise barriers shall be a solid fence with a minimum height of 8 feet, with such fence at a height of 15-feet when located adjacent to residential and other sensitive locations, where feasible.

(2) The noise emission levels of construction equipment shall not exceed the levels set forth in Table 20-20 of the FEIS when using the appropriate path control measure.

(3) As early in the construction period for each New Building as practicable, electrical-powered equipment shall be used for noisy equipment, such as concrete vibrators, crabs for panels, hoists and man lifts.

(4) Where practicable and feasible, construction sites shall be configured to minimize back-up alarm noise.

(5) Equipment shall be properly installed and where practicable, quality mufflers must be installed and maintained.

(6) Path noise control measures (i.e., portable noise barriers, panels, enclosures, and acoustical tents, where feasible) shall be used for certain dominant noise equipment, i.e., concrete trowel, crane, drill rig, and generator, where practicable.

(7) Where practicable, acoustical curtains shall be used for internal construction activities in the buildings under construction that are adjacent to residential and other sensitive locations, to break the line-of-sight and provide acoustical shielding between noise sources and sensitive receptors.

(ii) General construction hours shall be Monday – Friday 8:00 AM to 4:00 PM or 4:30 PM. Although it is not anticipated that construction work will occur at night or weekends, except in very unusual circumstances, if construction work will occur at night and/or on weekends, Declarant shall prepare an additional noise reduction plan (the “**Additional Noise Reduction Plan**”) in accordance with the City Noise Control Code prior to commencing such nighttime and/or weekend work.

(iii) Declarant shall include enforceable contractual requirements with its contractors (and require the contractors to include enforceable contractual requirements with their subcontractors) to implement the provisions of this Section 4.1(c) with respect to applicable work at the Subject Property.

(d) **Construction Vibration Reduction Measures,**



(i) Prior to Construction Commencement, Declarant shall develop and implement a Construction Protection Plan—~~(CPP)~~, as hereinafter defined, to protect the architectural resources identified in the FEIS as having lateral distance of 90 feet from the proposed construction activities. The ~~CPP~~Construction Protection Plan shall include a monitoring component to ensure that if vibration levels approach the 0.5 inches per second PPV criterion (or such other criterion as may be approved by the Buildings Department and LPC), corrective action will be taken to reduce vibration levels, thereby avoiding architectural damage and significant vibration impacts.

(ii) Declarant shall include enforceable contractual requirements with its contractors (and require the contractors to include enforceable contractual requirements with their subcontractors) to implement the provisions of this Section 4.1(d) with respect to applicable work at the Subject Property.

(e) **Construction Dewatering Plan.**

(i) Prior to Construction Commencement, Declarant shall (x) develop a plan for implementation of and (y) thereafter implement, upon receipt of necessary permits required from DEP and/or NYSDEC a plan setting forth procedures for handling site runoff and groundwater encountered during construction activities (including excavation) related to the development of the Subject Property (the “**Dewatering Plan**”), which Dewatering Plan shall:

(A) Provide a description of the methods used to collect, store and dispose of water collected during dewatering activities.

(B) Identify the necessary permits required from DEP and/or NYSDEC to discharge dewatering water into the City’s sewers.

(C) Where necessary to comply with DEP or NYSDEC regulations, (1) require that dewatering water be pumped into sedimentation tanks for removal of sediments prior to discharge into the City’s sewer system or surface waters, (2) periodically test water in such sedimentation tanks for pH, turbidity and contaminants, and (3) if needed, treat the water prior to discharge off site.

(D) Suitable drainage means shall be provided for removal of (1) surface runoff from the Subject Property, and (2) sludge which drains from construction activities on the Subject Property.

(ii) Declarant shall include enforceable contractual requirements with its contractors (and require the contractors to include enforceable contractual requirements with their subcontractors) to implement the provisions of this Section 4.1(e) with respect to applicable work at the Subject Property.

(f) **Construction Pest Management Plan.**

(i) Prior to Construction Commencement, Declarant shall (x) develop a plan for implementation of and (y) thereafter implement, an integrated plan to control pests (including vermin and insects), in accordance with Buildings Department requirements (the “**Construction Pest Management Plan**”), which Construction Pest Management Plan shall contain the following requirements:

(A) Vegetation that fosters vermin shall be kept trimmed.

(B) Construction trailers shall be elevated off of the ground to discourage vermin from burrowing or hiding in them. Dumpsters and sheds shall be placed on poured concrete pads to the extent practicable.

(C) Standing water shall be pumped out before the water becomes septic.

(D) Prior to the commencement of construction and as necessary during the construction period, the Declarant shall cause its contractors to bait appropriate areas of the site, using only USEPA and DEC-registered rodenticide.

(ii) Declarant shall include enforceable contractual requirements with its contractors (and require the contractors to include enforceable contractual requirements with their subcontractors) to implement the provisions of this Section 4.1(f) with respect to applicable work at the Subject Property.

(g) **Hazardous Materials Remediation and Protection Measures.**

Declarant shall comply with (1) a Remedial Action Plan (a "**RAP**") for the remediation of potential hazardous materials identified in the FEIS during subsurface construction activities on the Subject Property, consistent with NYSDEC DER-10 (Technical Guidance for Site Investigation and Remediation) and (2) a site-specific Construction Health and Safety Plan (a "**CHASP**") for such work. The CHASP shall include a Community Air Monitoring Plan (a "**CAMP**") during site excavation and handling of site soils; the CAMP shall be consistent with the New York State Department of Health Generic Community Air Monitoring Plan (DER-10 Appendix 1A) and shall include upwind and downwind monitoring for PM10 and where soils may be contaminated with volatile organic compounds (VOC), upwind and downwind monitoring for PM10 and VOC. Prior to Construction Commencement, a RAP and CHASP, which shall cover all Development Phases, shall be prepared and submitted to the Mayor's Office of Environmental Remediation ("**OER**") for its review and approval. Soil disturbance shall not occur without OER's written approval of the RAP and CHASP. The CHASP shall identify potential hazards that may be encountered during construction and specify appropriate health and safety measures to be undertaken to ensure that subsurface disturbance is performed in a manner protective of workers, the community, and the environment (such as personal protective equipment, air monitoring including community air monitoring, and emergency response procedures). The RAP shall delineate the contaminated soils to be properly disposed of at off-site locations in accordance with applicable NYSDEC regulations. The RAP shall provide for any necessary remediation for each New Building (and associated new Public Access Area or open space) in the Development Phases. Such remediation may include, but is not limited to: soil stockpiling, soil disposal and transportation; dust control; dewatering procedures; quality assurance; and contingency measures should petroleum storage tanks or contamination be unexpectedly encountered as well as vapor barriers or other measures to reduce the potential for vapor intrusion into new construction. Such remediation may proceed independently of any required remediation of other areas of the Subject Property and therefore it is expected that OER may issue a Notice of No Objection as set forth in Section 4.1(g)(iii)(A) below, a Notice to Proceed as set forth in Section 4.1(g)(iii)(B) below, a Notice of Satisfaction as set forth in Section 4.1(g)(iii)(C) below, and a Final Notice of Satisfaction as set forth in Section 4.1(g)(iii)(D) below, on a building-by-building basis.

(i) Permits. Declarant covenants and agrees that no application for a Building Permit respecting the Subject Property which permits soil disturbance for the Development of any New Building or any Future Project (hereinafter defined), shall be submitted to or accepted from the Buildings Department by Declarant until OER has issued to the Buildings Department, with respect to the area to be disturbed, a Notice of No Objection as set forth in Section 4.1(g)(iii)(A) below, a Notice to Proceed as set forth in Section 4.1(g)(iii)(B) below, a Notice of Satisfaction as set forth in Section 4.1(g)(iii)(C) below or a Final Notice of Satisfaction as set forth in Section 4.1(g)(iii)(D) below, as applicable. Declarant shall submit a copy of the Notice of No Objection, Notice to Proceed, Notice of Satisfaction or Final Notice of Satisfaction to the Buildings Department at the time of filing of any Building Permit for the Development of any New Building on the Subject Property.

(ii) Notices.

(A) Notice of No Objection. OER shall issue a Notice of No Objection for the Development of any New Building or any Future Project, as the case may be, after Declarant has completed the work set forth in the project-specific Sampling Protocol (hereinafter defined) submitted to OER, and OER has determined in writing that the results of the Sampling Protocol demonstrate that no hazardous materials remediation is required in connection with the Development of any New Building or any Future Project as the case may be, that is the subject of the Building Permit submitted to the Buildings Department.

(B) Notice to Proceed. A Notice to Proceed, if approved by OER, shall allow concurrent remediation and construction work. OER shall issue a Notice to Proceed for the Development of any New Building or Future Project, as the case may be after it determines that: (A) the RAP and CHASP have been approved by OER, and (B) the construction work (such as the grading, excavation, foundation, alteration, building, soil disturbance or construction of the superstructure) for the Development of any New Building or any Future Project, as the case may be, for which Building Permit applications are, have been or will be made by Declarant would further the implementation of or not be inconsistent with the approved RAP.

(C) Notice of Satisfaction. OER shall issue a Notice of Satisfaction for the Development of any New Building or any Future Project, as the case may be after (A) the RAP has been prepared for and accepted by OER and (B) OER has determined in writing that such RAP has been completed to the satisfaction of OER.

(D) Final Notice of Satisfaction. OER shall issue a Final Notice of Satisfaction for the Development of any New Building or any Future Project, as the case may be, after (A) the RAP has been prepared and accepted by OER, (B) OER has set forth in writing that such RAP has been completed to the satisfaction of OER, and (C) all potential hazardous materials have been removed or remediated as and to the extent required by the RAP and no further hazardous remediation is required on the Subject Property as determined by OER.

(iii) Future Projects. If any further development of the Subject Property beyond that which is set forth in the Development Plans and Development Phases, which involves a change in use or the disturbance of soils (not including clean fill/top soil previously brought to the site in connection with the Development) is conducted (a “**Future Project**”), Declarant shall submit to OER for approval a hazardous materials sampling protocol prepared by a qualified consultant and including a health and safety plan (a “**Sampling Protocol**”) specific to the Future Project, and test and identify any such potential hazardous materials pursuant to said Sampling Protocol. If any such hazardous materials are found, Declarant shall submit to OER for approval a RAP and CHASP specific to the Future Project based on the results of the Sampling Protocol, and upon the approval of the RAP and CHASP by OER, Declarant shall provide for the remediation of such hazardous materials in accordance with such RAP and CHASP.

(iv) The RAP approved by OER shall included, but shall not be limited to, the following remediation measures:

(A) Declarant shall, for all areas, which will either be landscaped or covered with grass (not capped), provide a minimum of two (2) feet of clean fill/top soil imported from an approved facility/source, graded across all landscaped/grass covered areas of the sites not capped with concrete/asphalt. The clean fill/top soil must be segregated at the source/facility, and be sampled by qualified environmental personnel who shall

collect representative samples at a frequency of one sample for every 250 cubic yards, which sample shall be analyzed for Target Compound List (TCL) VOC's, SVOCs, Pesticides, PCBs, and TAL Metals by a New York State Department of Health Environmental Laboratory Approval Program certified laboratory, and determine the clean fill/top soil to be suitable for Restricted-Residential Use pursuant to the NYSDEC Part 375 regulations; however, OER may in its discretion approve an alternative sampling plan.

(B) Declarant shall continue remediation of Spill No. 0910543 in accordance with NYSDEC requirements.

(C) Declarant shall incorporate a vapor barrier (or other form of vapor control) into the design plan of the proposed New Buildings.

(D) Declarant shall cover excavated soils, which are temporarily stockpiled on-site, with polyethylene sheeting while disposal options are determined. Declarant may be required to undertake additional testing that may be required by the disposal/recycling facility. Declarant shall not reuse excavated soil for purposes of grading the surface (top two feet) of the site, unless it is determined to meet the standards for Restricted-Residential Use pursuant to the NYSDEC Part 375 regulations.

(E) Prior to the start of any renovation/construction activities, Declarant shall properly remove and/or manage asbestos containing materials, lead-based paint, and suspected PCB containing materials that may be present in the onsite structures, and dispose of said materials in accordance with all federal, state and local regulations.

(F) Declarant shall ensure that dust suppression is maintained by the contractor during excavation and grading activities at the site.

(G) If any petroleum-impacted soils (which display petroleum odor and/or staining) are encountered during the excavation/grading activities, Declarant shall remove and properly dispose of such impacted soils in accordance with all NYSDEC regulations.

(H) Declarant shall properly remove/abandon-in-place all known or found underground storage tanks and above-ground storage tanks in accordance with all applicable NYSDEC regulations.

(I) If de-watering into New York City storm/sewer drains will occur during the proposed construction, Declarant shall obtain a New York City Department of Environmental Protection Sewer Discharge Permit prior to the start of any de-watering activities at the site, if such permit is required by applicable regulations.

(h) **Historic and Cultural Resource Protection Measures.**

(i) **Archeological.**

(A) The FEIS (at Figure 7-1A and accompanying text) identifies specific areas of the Subject Property as archaeologically sensitive (the “**Archaeologically Sensitive Areas**”). Prior to or in connection with Construction Commencement in an Archaeologically Sensitive Area, Declarant shall conduct a Phase 1B archaeological investigation at any construction locations that have been identified as an Archaeologically Sensitive Area to determine the presence or absence of archaeological resources such as domestic shaft features (i.e., privies, cisterns, or wells) dating to the early- to mid- 19th century pursuant to an archaeological testing protocol, prepared in advance of testing, in consultation with LPC and OPRHP before construction involving soil disturbances or excavation begins in such Archaeologically Sensitive Area (the “**Phase 1B Investigation**”). The Phase 1B Investigation may be phased so that the testing of portions of the Archaeologically Sensitive Area is sequenced in relation to the start of construction activities for such portions. Should any intact archaeological resources be identified during the Phase 1B Investigation or the construction work, such resources shall be properly documented and evaluated in consultation with LPC and OPRHP. The Phase 1B Investigation shall also determine the need for additional archaeological analysis (i.e., a Phase 2 survey) to assess the horizontal and vertical extent of any recovered archaeological resources as well as their potential significance (S/NR-eligibility). A Phase 2 survey would therefore determine if further investigation, in the form of Phase 3 data recovery, is warranted. Declarant shall consult with LPC and OPRHP with respect to the results of any Phase 1B Investigation and any required Phase 2 survey or Phase 3 data recovery. Should

archaeological resources be identified LPC and OPRHP shall make determinations of significance and any preservation or recovery measures would be developed by DASNY, after consultation among Declarant, OPRHP, LPC, and DASNY, and would be based on the characteristics and significance of the resource. Any preservation or recovery measures would be conducted pursuant to the *Standards for Cultural Resource Investigations and the Curation of Archaeological Collections in New York State*, prepared by the New York Archaeological Council and adopted by OPRHP (1994) and pursuant to *Guidelines for Archaeological Work in New York City* established by LPC (April 12, 2002) (the “**Recovery Measures**”). If DASNY is not involved in the financing of the building with which the contemplated construction work in an Archaeologically Sensitive Area is planned and declines participation in the activities described in this paragraph, then LPC, after consultation with Declarant and OPRHP, shall make the determinations and decisions assigned to DASNY in this paragraph.

(B) Declarant covenants and agrees that no application for a Building Permit with respect to the Archaeologically Sensitive Areas of the Subject Property that permits soil disturbance, including excavating of test pits for environmental soil sampling, shall be submitted to or accepted from the Buildings Department by the Declarant until LPC has issued to the Buildings Department, as applicable, a Notice to Proceed as set forth in subparagraph (i)(C), a Notice of No Objection as set forth in subparagraph (i)(D), a Notice of Satisfaction as set forth in subparagraph (i)(E) or a Final Notice of Satisfaction as set forth in subparagraph (i)(F). Declarant shall submit a copy of the Notice to Proceed, Notice of No Objection, Notice of Satisfaction or Final Notice of Satisfaction, as the case may be, to the Buildings Department at the time of filing of any application set forth in this Paragraph (i)(B).

(C) Notice to Proceed with LPC-Approved Phase 1B Investigation or Recovery Measures. LPC shall issue a Notice to Proceed after it approves a Phase 1B Investigation or Recovery Measures. Issuance of a Notice to Proceed shall enable the Declarant to obtain a building permit to perform excavation or other work necessary to implement the Phase 1B Investigation or Recovery Measures and such additional construction work as LPC may permit to occur concurrently with such Phase 1B Investigation or Recovery Measures. All such Phase 1B Investigation or Recovery Measures shall be undertaken in consultation with LPC and OPRHP. LPC’s failure to make a decision whether to approve or



disapprove the Phase 1B Investigation or Recovery Measures within thirty (30) days of its receipt of Declarant's proposed Plan shall be deemed to constitute approval.

(D) Notice of No Objection After Field Work. LPC shall issue a Notice of No Objection for work identified in the FEIS as occurring in an Archaeologically Sensitive Area if Declarant has performed required LPC-approved Phase 1B Investigation in such Area or portion thereof, and, as a result of such testing, LPC determines in writing that that Area of the Subject Property does not contain potentially significant archaeological resources. Issuance of a Notice of No Objection shall be sufficient to enable Declarant to obtain a full Building Permit for the performance of excavation or construction for work in the Archaeologically Sensitive Area.

(E) Notice of Satisfaction. LPC shall issue a Notice of Satisfaction after the Recovery Measures for an Archaeologically Sensitive Area have been prepared and accepted by LPC, and LPC has determined in writing that all significant identified archaeological resources in such Archaeologically Sensitive Area have been documented and removed from the Subject Property. Issuance of a Notice of Satisfaction shall enable Declarant to obtain a Building Permit for excavation and construction of the Declarant's proposed New Building or other improvement in the Archaeologically Sensitive Area.

(F) Final Notice of Satisfaction. LPC shall issue a Final Notice of Satisfaction for an Archaeologically Sensitive Area after the Recovery Measures have been completed and LPC has set forth in writing that the Recovery Measures, for any archaeological resources found in the Archaeologically Sensitive Area, have been completed to its satisfaction.

(G) Declarant shall not accept a PCO for any Building in an Archaeologically Sensitive Area until LPC shall have issued a Final Notice of Satisfaction or Notice of No Objection with respect to such Archaeologically Sensitive Area.

(H) It is anticipated that the Director of Archaeology of the LPC will issue all notices required to be issued hereunder reasonably promptly after Declarant has made written request to the LPC and has provided documentation to support each such request, and that the Director of Archaeology of the LPC will in all events endeavor to issue such

written notice to the Buildings Department, or inform Declarant in writing of the reason for not issuing said notice, within thirty (30) calendar days after Declarant has requested such written notice.

(I) Any submittals necessary under this Declaration from Declarant to LPC shall be addressed to the Director of Archaeology of LPC, or such other person as may from time to time be authorized by the Chair of the LPC to receive such submittals. As of the date of this Declaration LPC's address is:

Landmarks Preservation Commission  
1 Centre Street, 9N  
New York, NY 10007

Any notices sent to Declarant shall be sent to the address set forth in Section 13 and shall be sent by personal delivery, delivery by reputable overnight carrier or by regular mail.

(ii) Architectural.

(A) Prior to Construction Commencement on the Subject Property of activities that are located within ninety (90) feet of University Village (100 and 110 Bleecker Street and 505 LaGuardia Place), Declarant shall develop and implement a plan to avoid any adverse physical, construction-related impacts to these and any other historic resources within ninety (90) feet of the construction work, such as those from ground-borne vibrations, dewatering, flooding, subsidence, collapse, or damage from construction machinery (the "**Construction Protection Plan**" or "**CPP**") and shall submit same to City Planning. The CPP shall be prepared in coordination with and monitored by a licensed professional engineer and, unless other guidelines are approved by LPC, shall follow the (A) guidelines set forth in Section 523 of the *CEQR Technical Manual*; (B) guidelines set forth in LPC's *New York City Landmarks Preservation Commission Guidelines for Construction Adjacent to a Historic Landmark and Protection Programs for Landmark Buildings*; and (C) procedures set forth in the Buildings Department's *Technical Policy and Procedure Notice* (TPPN) #10/88. Declarant shall consult with LPC and OPRHP in developing the CPP.

(B) Declarant shall not accept a Building Permit for the construction of a New Building on the Subject Property within ninety (90) feet (or operation of a

vibratory pile driver within one hundred twenty (120) feet) of University Village until LPC shall have certified to the Buildings Department that LPC does not object to the CPP for such New Building and Declarant shall have certified to the Buildings Department that OPRHP does not object to the CPP for such New Building.

(C) The CPP shall:

(1) Describe in detail the demolition, excavation and construction procedures anticipated to occur.

(2) Provide for the inspection and reporting of existing conditions.

(3) Establish protection procedures, including, without limitation, the types and locations of barriers that will be used to protect University Village during construction activities.

(4) Establish and monitor construction methods to limit vibrations. Specifically, the CPP shall establish vibration protection measures to be implemented should applicable construction activities involve the use of certain equipment within the following specified distances from University Village:

Clam Shovel Drop	13 feet
Jackhammer	5 feet
Hoe Ram/Large Buildings/Caisson Drillings	8 feet
Vibratory Roller	15 feet
Loaded Trucks	8 feet

(i) Maintenance and Protection of Traffic Plan.

(i) Prior to the Construction Commencement on the Subject Property, Declarant and its contractor shall prepare a plan that provides diagrams of proposed temporary curb lane and sidewalk closures, the duration such closures will be implemented, the width and length of affected segments, and sidewalk protection measures for pedestrians, which shall be necessary during construction of such New Building (the “**Maintenance and Protection of**

**Traffic Plan**” or “**MPT**”). Declarant shall submit the MPT to DOT for review and approval; provided, however, that completion and submission of the MPT shall not be necessary for preliminary site work which does not impact upon curb lanes and sidewalks surrounding the Subject Property, unless DOT advises Declarant that an MPT is required. Adequate access to existing residences, retail stores and buildings shall be maintained at all times.

(ii) Declarant shall include provisions in the contracts of all relevant contractors requiring adherence with the provisions of the MPT plan and shall ensure that the MPT shall be adhered to during construction.

(j) **Protection of Trees During Construction in Areas Adjacent to the North Block Parcel.** The areas to the east and west of the North Block Parcel, which are to be mapped as parkland pursuant to the Applications, contain certain mature trees. Although many of these trees are in areas that will be used for construction staging, construction-related access, and other construction-related activities, and therefore will be removed in connection with the construction work, in engaging in construction-related activities in the future parkland areas, Declarant shall to the extent practicable seek to preserve the existing mature trees, particularly at the north and south ends of the future parkland areas.

4.2. **Project Components Related to the Environment Relating to Design and Operation of New Buildings.** Declarant shall implement and incorporate the following PCREs relating to design and operation of New Buildings:

(a) **HVAC.** Heating, ventilation and air conditioning (“**HVAC**”) systems installed in New Buildings shall utilize energy from NYU’s central heating plant, natural gas-fired boilers, electricity and/or a form of alternative energy (such as solar or geothermal) not involving on-site combustion. The only new boilers to be installed for the New Buildings are the boiler for the Bleecker Building and boiler for the southern portion (approximately 350,000 GSF) of the Zipper Building. The boiler stacks for the Bleecker Building and Zipper Building are to be located at the top building tier and, in the case of the Bleecker Building, not less than 30 feet above the Bleecker Building’s roof-top playground and at least 128 feet away from the 505 LaGuardia building. The Declarant may substitute, in place of natural gas, an alternative fuel

that would result in the same or lower emissions upon a written submission to City Planning providing notice of same.

(b) **NYU Central Heating Plant.** Declarant shall switch the NYU Central Plant boiler fuel to natural gas or No. 2 fuel oil before the Zipper Building or Mercer Building is occupied. The Declarant may substitute, in place of natural gas or No. 2 fuel oil, an alternative fuel that would result in the same or lower emissions upon a written submission to City Planning providing notice of same.

(b) **New Development Noise Attenuation.** The façades of each New Building shall be designed to provide a composite Outdoor-Indoor Transmission Class (OITC) rating greater than or equal to the attenuation requirements listed in FEIS Tables 17-6 and 17-7, summarized below:

<b>New Building</b>	<b>Proposed Building Façade Locations</b>	<b>Attenuation Required (in dBA)</b>
Zipper	North Façade	None
	East Façade	28 to 33, depending on location
	South Façade	33
	West Façade	28 to 33, depending on location
Bleecker	All Facades	None
Mercer	All Facades	None
LaGuardia	All Facades	None

(c) **Willow Oaks.** To prolong the life expectancy of the Willow Oaks planted on the South Block Parcel, near Bleecker Street, the Declarant shall, until the death of the last Willow Oak, implement a Tree Maintenance Plan, in consultation with the Parks Department arborists, that shall include the following elements: (i) pull back lawn from the base of the trees, by hand, to a radius of 6 feet around each tree, being careful not to damage trunk or roots; (ii) use of an Airspade or other supersonic air tool to loosen soils to a depth of at least 8 inches within this radius; (iii) mix ¾” of well-finished leaf compost into the loosened soil and till in the compost with the Airspade; (iv) cover the amended area with a 1-2” layer of clean mulch, making sure that mulch is kept back at least 1 foot from the basal flare of the trunk on each tree;

(v) before, during and for two years following completion of the Zipper Building, treat the root zones of the trees twice annually just after leaf-out in spring and again in late August-early September with Biopak Plus or equivalent material rich in humates to help the existing roots to throw new absorbing roots; (vi) before, during and for two years following completion of the Zipper Building, test soils before each annual application to assess need for other macro or micro nutrients and apply accordingly; and (vii) before, during and for two years following completion of the Zipper Building, apply supplementary water to the trees during the summer when less than 1 inch of rain has fallen in the preceding week.

(d) **Retail on the North Block Parcel.** The Declarant shall not locate retail uses on the upper floors (second floor or higher) of the Washington Square Village apartment buildings on the North Block Parcel.

4.3 **Project Components Related to the Environment Relating to Energy Efficiency, Environmental Design and other Sustainability Measures.** Declarant shall implement and incorporate as part of its design and operation of New Buildings, the following PCREs relating to Energy Efficiency, Environmental Design and other Sustainability Measures:

(a) **LEED Certification or Substitute Standard.**

(i) Declarant shall use reasonable and good faith efforts to obtain Leadership in Energy Environmental Design (“**LEED**”) Silver Certification from the United States Green Building Council (“**USGBC**”) for all New Buildings (“**LEED Silver**” or the “**LEED Silver Certification**”). In the event that LEED Silver Certification by the USGBC is no longer in effect, Declarant shall be required to exercise such substitute and equivalent standard that Declarant and the Chairperson agree has superseded LEED Silver Certification and is a successor thereto (the “**Substitute Standard**” or “**Substitute Standard Certification**”) and shall use reasonable and good faith efforts to obtain such Substitute Standard Certification from such other equivalent body that governs the applicable Substitute Standard Certification (the “**Certification Governing Body**”). All references hereinafter in this Section 4.3 to LEED Silver or LEED Silver Certification shall refer interchangeably to LEED Silver or LEED Silver

Certification and the Substitute Standard or Substitute Standard Certification, respectively. For purposes of this paragraph (a), the LEED Silver version in effect at the time contracts for full architectural, design and engineering services for each New Building are executed shall be the prevailing standard for each such New Building. Declarant shall promptly notify the Chairperson of the execution of such contracts for each New Building, and of the LEED version in effect for such New Building in accordance with this paragraph. Notwithstanding the above, should the Public School be constructed on Zoning Lot 3, it shall be required to be designed and constructed pursuant to the New York City Green Schools Guide, or the substitute and equivalent standard prevailing which is applicable to Public Schools, in effect at such time that the SCA designs the Public School.

(ii) In the event any LEED Silver Certification criterion, or elements thereof, change, and Declarant determines that the new criterion or element is not equivalent and is impracticable, Declarant shall notify the Chairperson prior to execution of contracts for full architectural, design and engineering services for the New Building to which the criterion or element would apply. In the event that the Chairperson disputes Declarant's determination, such dispute shall be resolved by arbitration. If the Chairperson does not dispute Declarant's determination, or if Declarant prevails in such arbitration, Declarant shall not be required to seek to satisfy such criterion or element thereof. Declarant shall bear the costs of arbitration, including any fees or expenses incurred by the City in connection therewith. Absent notification by Declarant as above provided, Declarant shall seek to satisfy the new criterion or element thereof in accordance with the provisions of this paragraph (a).

(iii) The Buildings Department shall not issue, and Declarant shall not accept a new Building Permit to Commence Construction of any New Building subject to LEED Silver Certification, until the Chairperson shall have certified to the Commissioner of the Buildings Department that Declarant has submitted the following to City Planning:

(A) A LEED checklist, or its applicable equivalent (in either case, a "**Certification Checklist**") for the New Building demonstrating the nature and number of "points," or their applicable equivalent (in either case, "**Certification Points**"), Declarant intends to pursue during LEED Certification "Construction Review," or its applicable equivalent (in

either case, “**Certification Construction Review**”), that will make the New Building eligible to obtain LEED Silver Certification.

(B) A signed affirmation from a LEED-accredited or equivalent-certified professional (in either case, an “**Accredited Certification Professional**”), as selected by Declarant, stating that he or she has reviewed the plans and drawings submitted or to be submitted to the Buildings Department for purposes of a Building Permit for a New Building and that such plans and drawings are consistent with the Certification Checklist, and satisfies Section 4.3(a)(i) set forth above for the LEED Silver Certification with respect to the applicable New Building.

(iv) The Buildings Department shall not issue, and Declarant shall not accept, a TCO for a New Building subject to LEED Silver Certification until the Chairperson shall have certified to the Buildings Department that Declarant has submitted the following to City Planning:

(A) Documentation demonstrating that Declarant has completed LEED Certification “Design Review,” or such applicable equivalent review (collectively, “**Certification Design Review**”), and showing the number of Certification Points achieved or denied as a result of the Certification Design Review, and

(B) A Certification Checklist for the New Building demonstrating that the number of Certification Points achieved during the Certification Design Review, in combination with the number of Certification Points that Declarant intends to pursue during Certification Construction Review will make the New Building eligible to obtain the LEED Silver Certification.

(v) The Buildings Department shall not issue, and Declarant shall not accept, a PCO for a New Building, until the Chair shall have certified to the Building Department that Declarant has submitted the following to City Planning:

(A) If the New Building has received the LEED Silver Certification:



(1) Documentation demonstrating that the New Building has received the LEED Silver Certification; and

(2) The Certification Checklist for the New Building demonstrating the number of Certification Points that the New Building was awarded.

(B) If the application for Certification Construction Review is still pending:

(1) Documentation demonstrating that the complete application for Certification Construction Review was submitted within nine (9) months of receiving the TCO for the applicable New Building and Declarant has thereafter diligently pursued its application for the LEED Silver Certification.

(2) A Certification Checklist for the New Building, demonstrating that the number of Certification Points achieved during Certification “Design Review,” in combination with the number of Certification Points that Declarant has applied for in Certification “Construction Review,” will make the New Building eligible to obtain the LEED Silver Certification.

(3) A signed affirmation from an Accredited Certification Professional stating that he or she has reviewed the application submitted to the Certification Governing Body, and that the application is consistent with the Certification Checklist and meets the intent of the criteria for the LEED Silver Certification of the New Building.

(C) In the event that the New Building has failed to receive LEED Silver Certification after Declarant has accepted the final results of the Certification Construction Review, Declarant shall submit to City Planning a report including the following:

(1) Documentation describing: (i) the determinations (collectively, the “**Denial Determination**”) which resulted in an inability to receive the LEED Silver Certification, including a list of standards or criteria for which Certification Points were ‘denied’ during Certification Design Review or Certification Construction Review, the basis for

such Denial Determination, and any related technical advice provided to the review team (ii) the steps taken by Declarant in response to the Denial Determination, including appeals thereof; and (iii) alternative elements proposed by Declarant in order to receive the LEED Silver Certification.

(2) Documentation demonstrating that Declarant has (i) designed and constructed the New Building according to the LEED Silver Certification standards or criteria then in effect, but without the standards or criteria which were subject to the Denial Determination; and (ii) applied for and used good faith and reasonable efforts to obtain the highest level of LEED Silver Certification available in the absence of such standards or criteria.

(b) **Stormwater Management Measures.**

(i) The Declarant shall develop and implement one or more plans incorporating best management practices to reduce the rate of peak discharge to the combined sewer system from the areas of the Subject Property that would be substantially altered by the Development (the "**BMP Plans**").

(A) A BMP Plan shall be submitted to DEP prior to Construction Commencement of each Development Phase. The Declarant may consolidate one or more BMP Plans into one BMP Plan, provided that such BMP Plan is submitted to DEP prior to the Development Phase or Phases included in the consolidated Plan.

(B) The BMP Plans shall achieve an overall release rate of 0.25 cfs or 10 percent of the allowable flow rate (whichever is greater) from the areas of the Subject Property that would be subject to construction-related activities related to a Development Phase or Phases for which such BMP Plans apply.

(C) The Declarant shall construct and operate the Development in accordance with the BMP Plans.

(ii) Prior to Construction Commencement of each Development Phase Declarant shall prepare a Stormwater Pollution Prevention Plan (the "**SWPPP**") if required per

the State Pollution Discharge Elimination System (“**SPDES**”) General Permit for Construction Activities (GP-0-10-001) with respect to construction activities.

(iii) Any plans and drawings submitted by Declarant to the Buildings Department in connection with a Building Permit shall reflect and be consistent with the SWPPP (if applicable) and BMP Plan.

(iv) Declarant may modify and add to the SWPPP and BMP Plan as development of the Project proceeds in order to address additional New Buildings on the Subject Property and new Public Access Areas on the Subject Property, provided that such revised SWPPP (if applicable) and BMP Plan is consistent with the requirements of this Declaration.

(v) Prior to accepting a TCO for a New Building, Declarant shall certify to the Chairperson that provisions of the SWPPP (if applicable) and BMP Plan required for that New Building have been implemented and if same have not been implemented, the reasons for such failure.

(c) **Water Conservation Measures.**

(i) Declarant shall install water-conserving toilets and faucets in all New Buildings.

(ii) Declarant shall implement strategies that would use 20 percent less water than the water use in a baseline case. These strategies may include the use of WaterSense certified fixtures and fixture fittings as well as high-efficiency fixtures. Prior to accepting a TCO for a New Building, Declarant shall certify to City Planning that it has implemented the provisions of clause (i) and (ii) of this Section 4.3(c), and if same have not been implemented, the reasons for such failure.

(d) **Other Sustainability Measures.** Declarant shall design, construct and operate each New Building in the following manner:

(i) Declarant shall reduce energy consumption in all New Buildings by incorporating energy efficiency measures into the design and operation of all New Building (the “**EEMs**”), which shall result in at least 10% less energy consumption in each New Building

(the “**Minimum Energy Savings**”) than the standards set forth in the New York State Energy Conservation Construction Code, or any subsequent baseline energy code applicable in New York City (the “**Effective Energy Code**”).

(A) The EEM’s may include, but shall not be limited to: use of energy efficient building envelope to reduce cooling/heating requirements; include high-efficiency HVAC systems, or generators; eliminate or reduce use of refrigerants in HVAC systems; use high-albedo roofing materials; incorporate window glazing to optimize day lighting, heat loss and solar heat gain; incorporate motion sensors and lighting and climate control; use efficient lighting and elevators, and *Energy Star* appliances, if appliances are being installed; use water conserving fixtures that exceed building code requirements; include water-efficient landscaping; provide for storage and collection of recyclables (including paper, corrugated cardboard, glass, plastic and metals) in building design; use super insulation to minimize heat loss; use efficient directed exterior lighting; including other measures to achieve maximum interior day lighting; use peak shaving or load-shifting strategies and/or energy savings; attain a score of 80 or higher under the U.S. Environmental Protection Agency *Energy Star*’s Target Finder; use of variable frequency drives for pumps and fans; use of premium efficiency motors; investigate other measures for minimizing energy use through low impact development for storm water design, reuse of grey water and/or collection of rain water; and except as set forth herein, use operable windows to all residential living spaces and allowance to all residents of full control over their fresh air, heating and cooling.

(B) Declarant shall cause to be prepared by a qualified building energy consultant (the “**BEC**”) a report identifying the EEMs for each New Building that is designed to result in the Minimum Energy Savings (the “**Energy Report**”). The Energy Report shall demonstrate how such EEMs, once implemented, will achieve the Minimum Energy Savings. Nothing herein shall be deemed to preclude Declarant from achieving a greater amount of energy savings. No later than ninety (90) days prior to submitting an application for a New Building Permit for a New Building to the Buildings Department, Declarant shall cause the BEC to submit copies of a draft Energy Report to the Chairperson, which shall, from the date of receipt, have thirty (30) days to review the draft Energy Report, based on consultation with the Energy Division of EDC, and to provide Declarant with written comments detailing any issues

regarding the sufficiency of the proposed EEMs to achieve the Minimum Energy Savings. Declarant shall cause the BEC to submit to the Chairperson a final Energy Report, which shall include responses to such comments. The final Energy Report shall be accompanied by a written certification of the BEC stating that, in its opinion, the EEMs described in the final Energy Report are sufficient to achieve the Minimum Energy Savings. The Buildings Department shall not issue, and Declarant shall not accept, any New Building Permit for a Building until City Planning shall have certified in writing to the Commissioner of the Buildings Department that a final Energy Report for such Building has been submitted in accordance with the procedures of this Section 4.3(d).

(C) In order to ensure that each New Building operates to achieve the Minimum Energy Savings and ensure optimal system performance consistent with the standard use of the term “commission” in the construction industry, Declarant shall retain a commissioning agent (the “**Commissioning Agent**”), independent of the construction contractor for any portion of the Development, to lead, review and oversee the completion of commissioning activities. At least 90 days prior to accepting a TCO for each Building, Declarant shall have the commissioning agent submit for review by City Planning, based on consultations with the Energy Division of EDC or its successor, a plan for commissioning of major building energy systems, which shall specify measures to verify each New Buildings major energy-related systems are installed, calibrated and perform according to design (the “**Commissioning Plan**”)

(D) In order to ensure each New Building operates on an ongoing basis to achieve the Minimum Energy Savings, Declarant shall rely upon a Measurement and Verification Plan (as defined herein) to monitor the ongoing Minimum Energy Savings of each New Buildings. At least 90 days prior to accepting a TCO for each New Building, Declarant shall have the BEC submit for review by the Chairperson, based on consultations with the Energy Division of EDC, a plan to measure and verify the energy performance of each New Building and its energy systems (the “**Measurement and Verification Plan**”). Such Measurement and Verification Plan shall (i) describe the expected performance of the Building and its energy systems using energy simulation or engineering analysis; (ii) specify metering equipment necessary to measure energy use; (iii) describe a process to evaluate

performance, comparing predicted performance to actual performance, during at least one year of post-construction occupancy; and (iv) describe a process to identify and repair of any component or system, which is not performing according to design. The Chairperson shall provide written comments detailing the sufficiency of the Measurement and Verification Plan within thirty (30) days after receipt thereof. If the Chairperson provides any recommendations for revisions to the Measurement and Verification Plan, then Declarant shall have the BEC (i) submit a revised Measurement and Verification Plan to the Chairperson, incorporating any revisions to such plan, and/or (ii), provide a written explanation to the Chairperson as to why any recommendation has not been incorporated into the Measurement and Verification Plan. No more than two (2) years following occupancy of each New Building, Declarant shall have the BEC submit a report to the Chairperson (i) certifying that measurement and verification has been performed in accordance with the Measurement and Verification Plan; and (ii) describing any problems that were identified and corrective actions that were implemented.

(ii) Declarant shall design and construct each New Building to support walking and bicycling, including but not limited to the following measures: use of paths, bicycle storage and showers; encourage bicycle commuting via NYU's Bike Share program whereby students and staff have access to short-term use of bicycles for free, conveniently located in dormitory buildings and around campus.

(iii) Declarant shall utilize alternative fuel and efficient vehicles for maintenance and operational fleets associated with the New Buildings and shall further investigate additional measures to encourage use of such vehicles, which may include designating on-site parking for alternative vehicles and charging stations for electric vehicles.

(iv) In the event that Declarant demonstrates to the satisfaction of the Chairperson that sustainability measures of the type set forth in this Section 4.3(d) may be satisfied through alternative means and methods pursuant to a LEED Silver criterion, and that implementation of such LEED Silver criterion would provide equivalent or greater benefits, Declarant may implement the LEED Silver criterion in lieu of the measure set forth in this Section 4.3(d).

4.4 **Environmental Mitigation.** Declarant shall, in accordance with the FEIS, undertake the mitigation measures set forth therein (the "**Mitigation Measures**"), as follows:

(a) **Shadows.**

(i) If the Bleecker Building is constructed for ~~NYU~~[academic and community facility](#) use (but not if the Bleecker Building is constructed so as to include a Public School), Declarant shall undertake the activities described below, as applicable:

(~~1~~[A](#)) At least 12 months prior to construction of the Bleecker Building, but not more than 36 months prior to the planned construction of the Bleecker Building, Declarant shall provide written notice to City Planning of the planned construction schedule for the Bleecker Building and request that City Planning convene a Task Force consisting of representatives of City Planning, the Parks Department, Manhattan Community Board 2, the Manhattan Borough President, [the New York City Councilmember who represents the Council district in which the Subject Property is located](#), the City Green Thumb Program, the LaGuardia Corner Gardens and Declarant (the "**Gardens Task Force**") to consider whether there is a feasible permanent relocation site for the LaGuardia Corner Gardens (the "**Permanent Relocation Site**"). A Permanent Relocation Site shall be one located in Community Board 2 that is: (aa) already owned by Declarant or the City; (bb) of a size sufficient to accommodate a community garden of approximately comparable size to the LaGuardia Corner Gardens; (cc) so located as to provide sufficient sun-light to sustain shade-intolerant species; (dd) in the case of property owned by the City, not currently occupied or planned to be occupied for use by the City and acceptable to the City; and (ee) in the case of property owned by Declarant, not currently occupied or planned to be occupied for use by Declarant and acceptable to the Declarant, whose consent for use of a site as the Permanent Relocation Site shall not be unreasonably withheld. City Planning shall convene the Gardens Task Force within 30 days of the Declarant's request in writing to do the same. In the event that, within 6 months following such request by the Declarant that City Planning convene the Gardens Task Force, the Gardens Task Force identifies a feasible Permanent Relocation Site meeting the foregoing criteria, with the agreement of the representatives of LaGuardia Corner Gardens, then (~~aa~~[y](#)) Declarant shall be responsible for all costs of relocation, including any necessary site preparation, including but not limited to the

installation of utilities, as required to make such site usable as a community garden, provided that where a Permanent Relocation Site is provided for on Declarant's property, Declarant shall provide the City with a permanent right of use of such site for community garden purposes, in a form acceptable to the City and (~~bbz~~) Declarant shall not receive and the Buildings Department shall not issue a Building Permit for the demolition of the existing Morton Williams grocery store on the Bleecker Building site unless and until such relocation and site preparation shall have been completed and the Permanent Relocation Site is made ready for use. In the event City Planning fails to convene the Gardens Task Force, or when convened the Gardens Task Force fails to identify a feasible Permanent Relocation Site within 6 months of Declarant's request that City Planning convene the Gardens Task Force, Declarant's responsibilities herein to pay for costs of relocation shall cease, and Declarant shall be permitted to proceed with demolition of the Morton Williams grocery store without further obligations with respect to the requirements of this paragraph.

(~~2B~~) In the event that the LaGuardia Corner Gardens has not been relocated, Declarant shall, as a condition to Commencement of Construction for the Bleecker Building, establish a fund for use by the LaGuardia Corner Gardens to implement measures to increase the viability of plants such as creating raised beds to enhance soil quality; provide constant access to water for shade-grown plants through an irrigation system or rain barrel; and provide for multiple organic fertilizer applications evenly spaced throughout the year. The Chairperson shall determine the amount of such fund, and shall approve the instruments governing its establishment and administration, acting in consultation with the Commissioner of the Parks Department.

(ii) If the Bleecker Building is to be constructed prior to or during 2021 so as to include a Public School, Declarant shall use best efforts to require that the SCA Agreement require SCA to discharge the responsibilities imposed upon Declarant pursuant to the immediately preceding Section 4.4(a)(i) above.

(b) **Historic Resources Mitigation Measures.** The Declarant shall comply with the Letter of Resolution annexed hereto as Exhibit E. Where the LOR requires that Declarant develop a CPP for Washington Square Village, Declarant shall follow the provisions



set forth in Section 4.1(h)(ii) for Washington Square Village to the same extent as they apply therein to University Village.

(c) **Traffic and Pedestrians, and Construction Traffic.**

(i) Chapter 26 of the FEIS sets forth recommended mitigation measures that are subject to review and approval by DOT. Aside from traffic signal timing adjustments, these mitigation measures are identified in the table below:

<b>Traffic and Pedestrian Mitigation Measures Recommended in FEIS (Excluding Signal Timing)</b>			
<b>Timing of Mitigation</b>	<b>Purpose of Mitigation</b>	<b>Intersection</b>	<b>Mitigation</b>
Prior to Issuance of a TCO for any of the New Buildings	Traffic	Bleecker Street and Mercer Street	Eliminate 4-5 alternate side parking spaces on the south side of Bleecker Street on the eastbound approach; install No Standing Anytime sign approximately 100 feet from the intersection; paint transitional striping on the pavement.
Prior to Issuance of a TCO for LaGuardia Building.	Pedestrian	Washington Square East and West 4th Street – West Crosswalk	Widening by 1.5 feet to 15 feet

(ii) Declarant shall either implement such measures as directed by DOT pursuant to DOT-approved plans, or, if directed by DOT, pay the City for the ordinary and customary cost of implementing such improvements (including but not limited to the costs of the design and construction of such improvements), upon request of DOT accompanied by appropriate supporting documentation.

(iii) Due to the potential for conditions to change over time, Declarant shall conduct a traffic monitoring program (“**TMP**”) (at Declarant’s expense) to determine the need for and any adjustments to the mitigation measures described in Chapter 26 of the FEIS.

(A) Declarant shall provide reasonable notice to DOT prior the completion and full occupancy of the LaGuardia Building before commencement of the TMP. The TMP shall be undertaken by Declarant at a time specified by DOT after the completion and occupancy of the LaGuardia Building, but in no event later than 12 months after a TCO has been issued for the LaGuardia Building. The TMP shall be undertaken pursuant to a scope approved

by DOT; however, the scope of the TMP shall be limited to the intersections identified in the FEIS and City Planning's Findings Statement as requiring mitigation. Declarant shall implement at its own expense the entire approved TMP, the findings of which will be used by DOT as the basis for approving mitigation measures

(B) Unless and to the extent, following the implementation of the TMP, DOT finds that such mitigation measures should be adjusted or are not necessary or appropriate, Declarant shall send written notice to DOT, requesting that DOT implement the traffic mitigation measures set forth in Chapter 26 of the FEIS or measures having comparable benefits as specified by DOT based on the results of the TMP. Declarant shall comply with DOT requirements necessary to implement the traffic mitigation measures set forth in Chapter 26 of the FEIS or measures having comparable benefits as specified by DOT based on the results of the TMP, and shall either implement such measures as directed by DOT, or, if directed by DOT, pay DOT/City of New York for the ordinary and customary costs, if any, of implementing such capital improvements (including but not limited to the costs of the design and construction of such capital improvements), upon request of DOT accompanied by appropriate supporting documentation. The Declarant will submit any and all required drawings/designs as per AASHTO and DOT specifications for DOT review and approval. To the extent that DOT does not approve or deems unnecessary one or more of the traffic measures set forth in Chapter 26 of the FEIS, Declarant shall have no further obligation with respect to such measures.

(C) Declarant shall not apply for and shall not accept a PCO from the Building Department for the LaGuardia Building until (A) Declarant has submitted for DOT's approval, a scope of work for the TMP, (B) such scope of work has been approved by DOT, and (C) the Chairperson certifies to the Building Department that Declarant has provided to DOT a letter of credit or posted a performance bond for an amount reasonably determined by DOT to equal the estimated costs of undertaking the TMP, plus the estimated cost of implementing any not-already-implemented traffic and pedestrian capital mitigation measures set forth in Chapter 26 of the FEIS.

(d) **Transit.** The FEIS identifies potential significant adverse impacts to the level of service at two subway stairs: (i) stair S9 at the Broadway-Lafayette Subway Station (B,

D, F and M Lines) near the northeast corner of Broadway and Houston Street (“**Stair S9**”); and (ii) stair S2A/B at the W. 4<sup>th</sup> Street Subway Station (B, D, F, M, A, C and E Lines) near the northeast corner of Sixth Avenue and W. 3<sup>rd</sup> Street (“**Stair S2A/B**”). The mitigation identified in the FEIS is to widen Stair S9 and Stair S2A/B to 8.5 feet. Declarant shall coordinate with NYCT with respect to the preparation of the required construction plans to widen these subway stairs, and implementation of NYCT-approved construction plans to widen these subway stairs, at Declarant’s expense, in accordance with the following schedule: (i) **Stair S9** shall be widened prior to the issuance of the TCO for the Zipper Building, unless Declarant undertakes a study and City Planning, in consultation with the NYCT, determines, based on its review of the study and applying applicable CEQR methodologies, that the widening of Stair S9 is not warranted at that time; (ii) **Stair S9** shall be widened prior to the issuance of the TCO for the LaGuardia Building, unless Declarant undertakes a study and City Planning, in consultation with the NYCT, determines, based on its review of the study and applying applicable CEQR methodologies, that the widening of Stair S9 is not warranted at that time; (iii) **Stair S9** shall be widened prior to the issuance of the TCO for the Mercer Building, unless Declarant undertakes a study and City Planning, in consultation with the NYCT, determines, based on its review of the study and applying applicable CEQR methodologies, that the widening of Stair S9 is not warranted at that time; and (iv) if the Build Program is developed with a program that generates trips similar to RWCDS 1 in the FEIS (no Stair S2A/B widening is required for RWCDS 2 or the Illustrative Program presented in the FEIS), Stair S2A/B shall be widened prior to the issuance of the TCO for the Mercer Building, unless Declarant undertakes a study and City Planning, in consultation with the NYCT, determines, based on its review of the study and applying applicable CEQR methodologies, that the widening of Stair S2A/B is not warranted at that time. Notwithstanding any other provision of this Restrictive Declaration, Declarant’s obligation to undertake or pay for the construction work for the stair widening is contingent upon NYCT’s approval of construction plans to widen the stairs and grant of access to NYCT’s subway station facilities to undertake the work; if NYCT does not approve the plans or grant access to its facilities, the Declarant’s inability to widen the subway stairs shall not prevent issuance of the aforementioned TCOs. Declarant shall not apply for and shall not accept a TCO from the Building Department for the Zipper Building, LaGuardia Building, or Mercer Building, as applicable, until any applicable mitigation measures set forth in subsections (i), (ii), (iii) and (iv) of this Section 4.4(d),

requiring the widening of Stair S9 or Stair 2A/B stairway, as applicable, have been complied with and the Chairperson certifies to the Buildings Department that the Declarant has complied with the requirements of this Section.

(e) **Construction Noise.**

(i) Pursuant to a written protocol approved by City Planning, the Declarant shall offer to provide at its expense, window treatment and/or alternative ventilation mitigation as specified below, to all occupants at the following locations, which do not already have double glazed windows and/or alternative ventilation:

<b>Buildings on Subject Property</b>				
<b>Building Name</b>	<b>Total Stories</b>	<b>Façade</b>	<b>Associated FEIS Analysis Receptor and Impacted Floor(s)</b>	<b>Mitigation to be Completed Prior to Commencement of Specified Construction Activity for New Building</b>
Washington Square Village 1	17	South and West	As specified in FEIS Table 26-50	LaGuardia Building
		South	As specified in FEIS Table 26-50	Mercer Building
Washington Square Village 2	17	South	As specified in FEIS Table 26-50	LaGuardia Building
		South and East	As specified in FEIS Table 26-50	Mercer Building
Washington Square Village 3	17	North	As specified in FEIS Table 26-50	LaGuardia Building
		North	As specified in FEIS Table 26-50	Mercer Building
		West	As specified in FEIS Table 26-50	Bleecker Building (LaGuardia Staging Option)
		West	As specified in FEIS Table 26-50	LaGuardia Building
		South	As specified in FEIS Table 26-50	Bleecker Building
Washington Square Village 4	17	North	As specified in FEIS Table 26-50	LaGuardia Building
		North	As specified in FEIS Table 26-50	Mercer Building
		South	As specified in FEIS Table 26-50	Zipper Building
		South	As specified in FEIS Table 26-50	LaGuardia Building

<b>Buildings on Subject Property</b>				
<b>Building Name</b>	<b>Total Stories</b>	<b>Façade</b>	<b>Associated FEIS Analysis Receptor and Impacted Floor(s)</b>	<b>Mitigation to be Completed Prior to Commencement of Specified Construction Activity for New Building</b>
		East	As specified in FEIS Table 26-50	Zipper Building
Silver Tower II	30	East and South	As specified in FEIS Table 26-50	Zipper Building
Silver Tower I	30	West and South	As specified in FEIS Table 26-50	Zipper Building
<p>Required Mitigation: For areas of Washington Square Village Buildings requiring mitigation, Declarant shall: (i) re-caulk existing windows and provide new storm windows (or, at Declarant’s option, install new double-paned windows) and (ii) insulate/seal existing air conditioning units and provide an interior cover or provide new air conditioning units. For areas of Silver Towers requiring mitigation, Declarant shall: (i) re-caulk existing windows and provide new storm windows (or, at Declarant’s option, install new double-paned windows) and (ii) replace the existing packaged terminal air conditioner (“PTAC”) units with high-attenuation PTAC units installed to fit properly/snugly in the PTAC sleeve.</p>				

<b>Buildings Not On Subject Property</b>						
<b>Building Name</b>	<b>Land Use</b>	<b>Total Stories</b>	<b>Façade</b>	<b>FEIS Analysis Receptor</b>	<b>Impacted Floor(s)</b>	<b>Mitigation to be Completed Prior to Commencement of Specified Construction Activity for New Building</b>
510 LaGuardia Place	Residential/Commercial	5	East	I	3 <sup>rd</sup> -top	Bleecker Building (LaGuardia Place Stating Option)
520 LaGuardia Place	Residential/Commercial	7	East	J	As specified in FEIS Table 26-50	Bleecker Building
520 LaGuardia Place	Residential/Commercial	7	East	J	As specified in FEIS Table 26-50	LaGuardia Building
530 LaGuardia Place	Residential/Commercial	8	East	K	3 <sup>rd</sup> -top	LaGuardia Building

246 Mercer Street	Institution	20	West	O	3 <sup>rd</sup> -top	Mercer Building
81 Bleecker Street	Residential	6	West	P	3 <sup>rd</sup> -top	Zipper Building
200 Mercer Street	Residential	4	West	Q	1 <sup>st</sup> -top	Zipper Building
158 Mercer Street	Residential/ Commercial	12	West	EE	10 <sup>th</sup> -top	Zipper Building
81 Bleecker Street	Residential	6	South	KK	Top	Zipper Building
520 LaGuardia Place	Residential	7	South	NN	Top	Bleecker Building (LaGuardia Place Stating Option)
18 West Houston Street	Commercial	9	West	Q1	3 <sup>rd</sup> -top	Zipper Building
25 West Houston Street	Residential/ Commercial	9	East	S1	7 <sup>th</sup> -top	Zipper Building
506 LaGuardia Place	Residential/ Commercial	5	East	H1	3 <sup>rd</sup> -top	Bleecker Building (LaGuardia Place Stating Option)
500 LaGuardia Place	Residential/ Commercial	5	East	H2	3 <sup>rd</sup> -top	Bleecker Building (LaGuardia Place Stating Option)
Required Mitigation: For areas of these buildings requiring mitigation, Declarant shall provide: (i) new storm windows (or, at Declarant's option, new double-glazed windows) if not already installed and (ii) new air conditioning units if alternative ventilation to open windows is not already installed.						

(ii) For purposes of the foregoing noise mitigation, references to (i) construction of the “LaGuardia Building” includes the demolition of the existing LaGuardia Retail Building on the North Block Parcel such that mitigation required for the construction of the LaGuardia Building shall be implemented prior to demolition of the LaGuardia Retail Building; (ii) construction of the “Bleecker Building” includes the demolition of the existing Morton-Williams Supermarket Building on the South Block Parcel such that mitigation required for the construction of the Bleecker Building shall be implemented prior to demolition of the Morton-Williams Supermarket Building; and (iii) construction of the “Zipper Building” includes the demolition of the existing Coles Gymnasium on the South Block Parcel such that mitigation required for the construction of the Zipper Building shall be implemented prior to demolition of the Coles Gymnasium.

(iii) Declarant shall not accept and Buildings Department shall not issue any Building Permit associated with the construction of each New Building specified in the column labeled “Mitigation to be Completed Prior to Commencement of Specified Construction

Activity for New Building” as may be applicable until the Construction Monitor, as such is defined in Section 4.8(a), certifies to the Chairperson, in writing, that the Declarant has demonstrated to the satisfaction of the Construction Monitor, that Declarant has offered the applicable mitigation measure identified above, to the affected parties in the applicable impacted locations, as set forth above and in FEIS Table 26-50 and the affected parties have either (i) rejected the offer or (ii) have accepted the offer of the mitigation measures, as the case may be, and such mitigation measure has been implemented with respect to parties who have accepted the offer. The offer of the mitigation measures as set forth above shall be made on a yearly basis to all new occupants of the affected units pursuant to a protocol accepted by the Chairperson.

(f) **Construction Open Space – Active Open Space Impact During LaGuardia Building Construction.**

(i) Prior to issuance of a TCO for the Zipper Building Towers (and in any event no later than 12 months prior to the issuance of a Building Permit for the LaGuardia Building), Declarant shall make a financial contribution to the Parks Department in the amount of \$350,000 as Adjusted for Inflation occurring after the Effective Date (\$350,000 being the approximate cost in 2012 dollars of installing the Adrienne’s Garden play area, which is being displaced by the construction activities associated with the LaGuardia Building construction) for improvements at the Mercer Street Playground and/or Washington Square Park playgrounds prior to construction of the LaGuardia Building. Declarant shall not receive and the Building Department shall not issue a Building Permit for the LaGuardia Building unless and until Declarant has provided the funding described in this paragraph to the Parks Department and the Chairperson has certified to the Building Department that the aforementioned funding has been provided to the Park Department by the Declarant.

(ii) Declarant shall, no later than Commencement of Construction of the LaGuardia Building, provide the first annual payment to the Parks Department to fund the stationing of a Parks Department seasonal playground associate at Washington Square Park for six months a year, which amount of funding shall be equal to the then applicable salary and fringe rate for such an employee (approximately \$20,000 in 2012 dollars). Declarant’s obligation to provide the annual funding described herein to the Parks Department for purposes

of stationing a seasonal playground associate at Washington Square Park for six months a year shall continue on an annual basis until certain of the New Landscape Improvements associated with the LaGuardia Building (the LaGuardia Plaza, Public Lawn, Philosophy Garden and Washington Square Village Play Garden) have been Substantially Completed. Declarant shall not receive and the Buildings Department shall not issue a Building Permit for the Commencement of Construction of the LaGuardia Building unless and until Declarant has provided the first year's funding described in this paragraph to the Parks Department and the Chairperson has certified to the Building Department that the Declarant has provided such funding to the Parks Department. Declarant shall not receive and the Buildings Department shall not issue a TCO for the LaGuardia Building unless and until the Declarant has provided all the required annual payments set forth above for each year prior to the Substantial Completion of such New Landscape Improvements and the Chairperson has certified to the Buildings Department that the aforementioned funding was provided in the manner set forth above.

(g) **Construction Open Space – Impact of Bleecker Building Construction on LaGuardia Corner Gardens.** If the LaGuardia Corners Garden is not relocated pursuant to Section 4.4(a), and if the Bleecker Building is constructed containing above-grade academic space (instead of a Public School), Declarant shall undertake the following activities to reduce or partially mitigate impacts on the LaGuardia Corner Gardens: (i) if requested by the LaGuardia Corner Garden gardeners to City Planning, provide temporary relocation space to the LaGuardia Corner Garden gardeners in the northern fenced-off area of the North Block Parcel between the existing LaGuardia Retail Building (to the west) and the Wooster Street driveway (to the east) (i.e., the northern most of the two areas identified as Area “B” on FEIS Figure 5-2), during the period of time in which the Bleecker Building is under construction, including any necessary site preparation prep work to make the area suitable for a community garden, unless the LaGuardia Building has already been constructed in this area, in which case this area would not be available for temporary relocation space; (ii) if not temporarily relocated pursuant to Section 4.4(g)(i), utilize the Bleecker Street Staging Option for construction, unless Declarant demonstrates to the satisfaction of the Chairperson that, based on detailed construction staging plans or due to unforeseen circumstances, the Bleecker Street Staging Option is infeasible; and (iii) if temporary relocation space is not provided pursuant Section 4.4(g)(i), to the maximum extent feasible and consistent with sound construction practices, as authorized by the Buildings Department, protect



the LaGuardia Corner Gardens from the impacts of construction and enable light to reach the garden through the use of a transparent material (~~e.g., plexiglass~~) as an alternative to a standard plywood construction shed and/or through the provision of “grow lights” under the construction shed, and allow for suitable hours for garden maintenance outside of construction hours, as well as other options to be explored in coordination with City Planning and in consultation with the Buildings Department, prior to construction of the Bleecker Building, in order to maximize opportunities to provide for adequate overhead protection and ~~luminescent~~ transparency without compromising safety. In the event that, pursuant to this Section 4.4(g)(ii), the Chairperson determines that the Bleecker Street Staging Option is infeasible, construction of the Bleecker Building may be staged from LaGuardia Place (the “LaGuardia Place Staging Option”), subject to the approval of plans by the Chairperson, acting in consultation with the Commissioner of the Parks Department, for the temporary closure of the LaGuardia Corner Gardens, and its reconstruction, with the costs thereof to be borne by Declarant. If the LaGuardia Corners Garden is not relocated and if the Bleecker Building is to be constructed so as to include a Public School, Declarant shall use best efforts to require that the SCA Agreement require SCA to discharge the responsibilities imposed upon Declarant pursuant to this Section 4.4(g).

**4.5. Force Majeure Involving a FEIS Obligation.** Notwithstanding any provision of this Declaration to the contrary, if Declarant is unable to perform a PCRE or Mitigation Measure set forth in this Section 4 by reason of a Force Majeure Event, as determined by the Chairperson, pursuant to the procedures set forth in Section 8, then Declarant shall not be excused from performing such PCRE or Mitigation Measure that is affected by a Force Majeure Event unless and until the Chairperson has made a determination in his or her reasonable discretion that the failure to implement the PCRE or Mitigation Measure during the period of the Force Majeure Event, or implementing an alternative proposed by Declarant, would not result in any new or different significant environmental impact not addressed in the FEIS.

**4.6. Incorporation of FEIS Requirements in FEIS Obligation.** If this Declaration inadvertently fails to incorporate a FEIS Requirement set forth in the FEIS, such FEIS Requirement shall be deemed incorporated herein by reference as an FEIS Obligation. If there is any inconsistency between a FEIS Obligation as set forth in the FEIS or Technical Memoranda

and as incorporated in this Declaration, the more environmentally protective provision shall be applicable.

**4.7. Innovation; Alternatives; Modifications Based on Further Assessments.**

(a) **Innovation and Alternatives.** In complying with any PCRE or Mitigation Measure set forth in this Section 4, Declarant may implement innovations, technologies or alternatives now or hereafter available, provided that Declarant demonstrates to the satisfaction of City Planning that such alternative measures would result in equal or better methods of achieving the relevant PCRE or Mitigation Measure, than those set forth in this Section 4, in each case subject to approval by City Planning.

(b) **Modifications Based on Further Assessments.** In the event that Declarant believes, in good faith, based on changed conditions, that a PCRE or Mitigation Measure required under Sections 4.1, 4.2, 4.3, or 4.4 could be eliminated or modified without diminishment of the environmental standards that would be achieved by implementation of the PCRE or Mitigation Measure, Declarant shall request that City Planning grant a waiver or modification. Such request shall be submitted to City Planning and shall include an analysis that sets forth the basis of Declarant's belief.

(c) In the event that City Planning determines in a technical memorandum that innovations, technologies or alternatives, as set forth in Section 4.7(a), are acceptable, or that the relevant PCRE or Mitigation Measure should not apply or could be modified, as set forth in this Section 4.7(b), Declarant may eliminate or modify the PCRE or Mitigation consistent with the City Planning approval or determination, provided that Declarant records a notice of such change against the Subject Property in the Register's Office, but no amendment of this Declaration shall be required.

**4.8. Appointment and Role of Independent Monitor.**

(a) Declarant shall, with the consent of City Planning, appoint an independent third party (the "**Construction Monitor**") reasonably acceptable to City Planning to oversee, on behalf of City Planning, the implementation and performance by Declarant of the construction period PCREs and Mitigation Measures required under this Section 4 (the "**Construction**

**Monitoring Measures**” or “**CMMs**”). The Construction Monitor shall be a person holding a professional engineering degree and with significant experience in environmental management and construction management (or a firm including such persons), including familiarity with the means and methods for implementation of the CMMs. ¶ In the event that the Declarant that is signatory to this Declaration shall have sold, leased transferred or conveyed to a third party fee title to, or a ground or net lease of, one or more tax lots within the Subject Property, then such, third party shall be deemed a successor Declarant (a “**Successor Declarant**”) with respect to such lots so sold, leased, transferred or conveyed to it, and, with the prior written approval of City Planning, there may exist more than one Construction Monitor with respect to multiple developments proceeding simultaneously on the Subject Property, pursuant to separate Monitor Agreements (hereafter defined).‡ Notwithstanding, if the SCA constructs the Public School on Zoning Lot 33, the Construction Monitor shall not oversee the implementation and performance of the SCA with respect to such construction-related activities so long as the SCA constructs pursuant to the New York City Green Schools Guide, or other applicable sustainability guidelines, and the SCA has substantiated through a technical memorandum that the design and construction methods chosen for the construction of the Public School are no less protective of the environment than that which is provided for in this Declaration by the Declarant.

(b) The scope of services described in any agreement between Declarant and the Construction Monitor pursuant to which the Construction Monitor is retained (the “**Monitor Agreement**”) shall be subject to prior review by and approval of City Planning, such approval not to be unreasonably withheld, conditioned or delayed. Such agreement shall include provisions in a form acceptable to City Planning that, among others, shall: (i) ensure that the Construction Monitor is independent of Declarant in all respects relating to the Construction Monitor’s responsibilities under this Declaration (provided that the Construction Monitor shall be responsible to Declarant with regard to practices generally applicable to or expected of consultants and independent contractors of Declarant) and has a duty of loyalty to City Planning; (ii) provide for appropriate City Planning management and control of the performance of services by the Construction Monitor; (iii) authorize City Planning to direct the termination of services by the Construction Monitor for unsatisfactory performance of its responsibilities under the Monitoring Agreement; (iv) allow the Declarant to approve the retention by the Construction Monitor of sub-consultants with expertise appropriate to assisting the Construction Monitor in its

performance of its obligations to the extent reasonably necessary to perform its obligations under this Declaration and the Monitor Agreement; (v) allow the Construction Monitor to retain any such approved sub-consultants to assist the Construction Monitor in its performance of its obligations to the extent reasonably necessary to perform its obligations under this Declaration and the Monitor Agreement; and (vi) allow for Declarant's termination of the Construction Monitor or any sub-consultant for cause, but only with the express written concurrence of City Planning, which concurrence shall not be unreasonably withheld or delayed. If City Planning shall fail to act upon a proposed Monitor Agreement within sixty (60) days after submission of a draft form of Monitor Agreement, the form of Monitor Agreement so submitted shall be deemed acceptable by City Planning and may be executed by Declarant and the Construction Monitor. The Monitor Agreement shall provide for the commencement of services by the Construction Monitor at a point prior to Construction Commencement of the relevant Development Phase(s) (the timing of such earlier point to be at the sole discretion of Declarant) and shall continue in effect at all times that construction activities are occurring on the Subject Property with respect to the relevant Development Phase(s) including, with respect to New Buildings, until issuance of TCOs or PCOs therefor, unless the Declarant, with the prior consent of City Planning or at the direction of City Planning, shall have terminated a Monitor Agreement and substituted therefor another Construction Monitor under a new Monitor Agreement, in accordance with all requirements of this Section 4.8. If the Development Phase(s) identified in a Scope of Services under the Monitor Agreement is completed, Declarant shall not have any obligation to retain the Construction Monitor for a subsequent Development Phase, provided that Declarant shall not recommence any construction until it shall have retained a new Construction Monitor in compliance with the provisions of this Section 4.8.

(c) The Construction Monitor shall: (i) assist and advise City Planning with regard to review of plans and measures proposed by Declarant for purposes of satisfying CMMs in connection with determinations required under this Declaration as a prerequisite to Construction Commencement or the issuance or acceptance by Declarant of a Building Permit, TCO or PCO as the case may be, pursuant to the process set forth in Section 4.9; ~~and~~ (ii) provide periodic reports of Declarant's compliance with the CMMs during any period of construction on a schedule reasonably acceptable to City Planning, but not more frequently than once per month, ~~and~~ (iii) a copy of which report shall be delivered simultaneously to Declarant; (iii) prepare a

quarterly report summary of activities for distribution to any Construction Committee, as hereinafter defined, established under Section 6(f); (iv) liaise with any Construction Committee established under Section 6(f), as directed by City Planning; and (v) provide City Planning on an expedited basis with notice of a determination that a particular CMM has not been implemented, accompanied by supporting documentation establishing the basis for such determination.~~A, a~~ copy of ~~such~~which notice and supporting documentation shall be delivered simultaneously to Declarant. At the direction of City Planning, Declarant shall publish the periodic reports required under this Section 4.8(c) on the construction website established by Declarant.

(d) The Construction Monitor shall: (i) have full access to the Subject Property, subject to compliance with all generally applicable site safety requirements imposed by law, pursuant to construction contracts, or imposed as part of the site safety protocol in effect for the Subject Property; (ii) be provided with access to all books and records of Declarant either on or outside the Subject Property pertaining to the development of the Project which it reasonably deems necessary to carry out its duties under the Monitor Agreement, including the preparation of periodic reports; and (iii) be entitled to conduct any tests on the Subject Property that the Construction Monitor reasonably deems necessary to verify Declarant's implementation and performance of the CMMs, subject to compliance with all generally applicable site safety requirements imposed by law, site operations, or pursuant to construction contracts in effect for the Subject Property and provided further that any such additional testing shall be coordinated with Declarant's construction activities and use of the Subject Property by the occupants of and visitors to any New Buildings and Public Access Areas then located on the Subject Property, and shall be conducted in a manner that will minimize any interference with the Project.

(e) The Monitor Agreement shall provide that Declarant shall have the right to require the Construction Monitor to secure insurance covering the Construction Monitor's activities under this Section 4.8, including coverage for customary activities set forth in Section 4.8(d), and Declarant may hold the Construction Monitor liable for any damage or harm resulting from such testing activities.

(f) Declarant shall be responsible for payment of all the reasonable fees and expenses due to the Construction Monitor and any consultants retained by the Construction Monitor in accordance with the terms of the Monitor Agreement.

(g) If the Construction Monitor determines, either in a periodic report or expedited notice, as provided in Section 4.8(c) above, that Declarant has failed to implement or to cause its contractors to implement a CMM, either in full or in part, and City Planning determines, based on consultation with the Construction Monitor and others, as appropriate, that there is a basis for concluding that such a violation has occurred, City Planning may thereupon give Declarant written notice of such alleged violation (each, a “**CMM Default Notice**”), transmitted by hand or via overnight courier service to the address for Notices for Declarant set forth in Section 13. Notwithstanding any provisions to the contrary contained in Section 13, following receipt of a CMM Default Notice, Declarant shall: (i) effect a cure of the alleged violation within ten (10) business days, or if City Planning reasonably determines that the nature of the violation poses a potential threat to public health and safety, within such shorter period as City Planning’s notice shall direct (the “Cure Period”); (ii) seek to demonstrate to City Planning in writing within nine (9) business days of receipt of the CMM Default Notice (or if City Planning has determined that the nature of the violation poses a potential threat to public health and safety, within the Cure Period established therefor) why the alleged violation did not occur and does not then exist; or (iii) seek to demonstrate to City Planning in writing within nine (9) business days of receipt of the CMM Default Notice that a cure period greater than ten (10) business days would not result in any significant harm to the environment (such longer cure period, a “**Proposed Cure Period**”). If City Planning accepts within one (1) business day of receipt of a writing from Declarant that the alleged violation did not occur and does not then exist, City Planning shall withdraw the CMM Default Notice and Declarant shall have no obligation to cure. If City Planning accepts a Proposed Cure Period in writing within one (1) business day of receipt of a writing from Declarant, then this shall become the applicable cure period for the alleged violation (the “**New Cure Period**”), provided that if City Planning does not act with respect to a Proposed Cure Period within one (1) business day of after receipt of a writing from Declarant with respect thereto, the ten (10) day cure period for the alleged violation shall be deemed to continue unless and until City Planning so acts. If Declarant fails to: (i) effect a cure of the alleged violation Cure Period; (ii) cure the alleged violation within a New Cure

Period, if one has been established; or (iii) demonstrate to City Planning's satisfaction that a violation has not occurred, then representatives of Declarant shall, promptly at City Planning's direction, and upon a time and date acceptable to City Planning, convene a meeting at the Site with the Construction Monitor and City Planning representatives. If Declarant is unable reasonably to satisfy the City Planning representatives that no violation exists or is continuing and the Declarant, the Construction Monitor and City Planning are unable to agree upon a method for curing the violation within a time period acceptable to City Planning, City Planning shall have the right to exercise any remedy available at law or in equity or by way of administrative enforcement, to obtain or compel Declarant's performance under this Declaration, including seeking an injunction to stop work on the Subject Property, as necessary, to ensure that the violation does not continue, until the Declarant demonstrates that it has cured the violation.

#### **4.9. City Planning Review.**

(a) Not less than ninety (90) days prior to the date Declarant anticipates to be the date of Construction Commencement, Declarant shall send written notice to City Planning, with a copy to the Construction Monitor, advising of Declarant's intention to undertake Construction Commencement or obtain such Building Permit as the case may be (each such notice, a "**Permit Notice**"). Any Permit Notice shall be accompanied by: (i) a summary of the provisions of this Declaration imposing conditions or criteria that must be satisfied as a condition to or in conjunction with Construction Commencement or issuance of the relevant Building Permit; (ii) materials or documentation demonstrating compliance with such requirements or criteria to the extent Declarant believes that compliance has been achieved by the date of the Permit Notice; and (iii) to the extent that Declarant believes that compliance with any condition or criteria has not been achieved by the date of the Permit Notice, an explanation of why compliance has not yet been achieved to date, the steps that are or will be taken prior to issuance of the Building Permit to achieve compliance and the method proposed by Declarant to assure City Planning that the elements will be achieved in the future.

(b) Following the delivery of a Permit Notice to City Planning in accordance with Paragraph (a) hereof, Declarant shall meet with City Planning (and at City Planning's option, the Construction Monitor) to respond to any questions or comments on the Permit Notice

and accompanying materials, and shall provide additional information as may reasonably be requested by City Planning or the [Construction](#) Monitor in writing in order to allow City Planning to determine, acting in consultation with the [Construction](#) Monitor and City agency personnel as necessary in relation to the subject matter of the Permit Notice, that the conditions and criteria for Construction Commencement or issuing the Building Permit have been or will be met in accordance with the requirements of this Declaration. Declarant shall not accept any Building Permit subject to review pursuant to this [Section 4.9](#) until City Planning has certified to Declarant and the Buildings Department that the conditions and criteria set forth in this Declaration for issuance of the Building Permit have been met. Notwithstanding the foregoing, (x) in the event that City Planning has failed to respond in writing to Declarant within forty five (45) days of receipt of the Permit Notice, or (y) has failed to respond in writing to Declarant within fifteen (15) days of receipt of additional materials provided to City Planning under this Paragraph (b), City Planning shall be deemed to have accepted the Permit Notice and any subsequent materials related thereto under clause (iii) of this Paragraph (b) as demonstrating compliance with the requirements for issuance of the Building Permit and Declarant shall be entitled to Commence Construction or accept the Building Permit and to undertake any and all activities authorized thereunder.

(c) Not less than thirty (30) days prior to the date that Declarant anticipates obtaining the first TCO or PCO for any New Building on the Subject Property, Declarant shall send written notice to City Planning, with a copy to the [Construction](#) Monitor, advising of Declarant's intention to obtain such TCO or PCO (each such notice, a "**CO Notice**"). Within twenty (20) days of delivery of any CO Notice, City Planning shall have the right to inspect the New Building and review construction plans and drawings, as necessary to confirm that the PCRE and/ or Mitigations Measures required to be incorporated into the New Building have been installed in accordance with the plans initially submitted as part of the New Building Permit. The Buildings Department shall not issue, and Declarant shall not accept, a TCO or PCO if City Planning has provided written notice to Declarant, copied to the Buildings Department, within five (5) days following any such inspection advising that Declarant has failed to include a required PCRE and/or Mitigation Measure within the New Building, or has failed to fully satisfy the PCRE and/or Mitigation Measure, and specifying the nature of such omission or failure. In the event that City Planning provides such notice, Declarant and City Planning shall



meet promptly to review the claimed omission or failure, develop any measures required to respond to such claim, and Declarant shall take all steps necessary to remedy such omission or failure, and upon the completion of such steps to the satisfaction of City Planning, shall be entitled to obtain the TCO or PCO as the case may be.

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

## 5. ~~Public School.~~ PUBLIC SCHOOL

5.1. If constructed, the Public School would be located in the Bleecker Building on the South Block Parcel. Upon receiving written certification of the New York City School Construction Authority ("SCA") that there is a need for school seats in the area, that the proposed Public School has been included in the Department of Education capital plan and that SCA anticipates that funding will be provided for the design and construction of the Public School (the "School Election Notice"), Declarant shall, subject to SCA's execution of a School Design, Construction and Funding Agreement requiring SCA to pay for the cost of designing and constructing the Public School (the "SCA Agreement"), subject to SCA obtaining its site selection approval for the Public School from the Mayor and the City Council, and subject to Sections 5.2 and 5.3, perform the following with respect to the Public School: (A) engage in a collaborative design development and reasonable approval process with SCA, which shall include collaboration on schematic design, design development and contract documentation; (B) perform construction of the "School Base Building Work," as defined under the SCA Agreement; and (C) enter into a long-term lease with respect to the use of the Public School, or such other regime acceptable to the SCA and Declarant, as a means of transferring interest in the Public School to the SCA ((A) to (C) collectively, the "Public School Commitment").

5.2. Declarant shall coordinate with SCA to perform the Public School Commitment and construct the Public School within the SchoolBleecker Construction Windows described in Section 6.2(a) as soon as is practicable after SCA makes funding available for the Public School.

5.3. If (a) the SCA fails to provide ~~written notice~~the School Election Notice on or before December 31, ~~2025 of its intent to proceed with~~2014, or (b) the SCA provides the School Election Notice by December 31, 2014, but fails to fund the Public School ~~(or fails to fund the public school~~ so as to allow its construction to commence by ~~the later of January 1, 2027 or two years before the scheduled commencement of the excavation/foundation work for the Mercer Building)~~July 1, 2018, then Declarant shall have no further Public School Commitment and shall be permitted to construct the Bleecker Building without including a Public School therein. In the event that Declarant's Public School Commitment has terminated pursuant to this Section 5.3, Declarant shall certify to the Buildings Department, with a copy to City Planning, that the SCA has failed to undertake the action specified in Section 5.1 and that Declarant is proceeding to construct the Bleecker Building without a Public School. Declarant may thereupon apply for and receive Building Permits, TCOs and PCOs for the Bleecker Building without regard to the Public School Commitment.

5.4. In lieu of engaging in the process described in Sections 5.1 through 5.3 above, Declarant may satisfy the Public School Commitment by entering into a long-term ground lease of Zoning Lot 3 in a form acceptable to the SCA for SCA's design and construction of the Public School, at SCA's sole expense, in conformance with the PCREs, Mitigation Measures and other requirements specified in this Declaration. In such event, Declarant shall deliver the Public School site portion of Zoning Lot 3 to the SCA in vacant condition. The Public School shall not be constructed pursuant to any design not approved by the Declarant, which shall not unreasonably withhold its approval of any proposed design.

5.5. The ~~concept~~occurrence of a Force Majeure Event shall not extend the deadline for SCA's election to construct the Public School as set forth in Section 5.3.

5.6. In no event shall this Declaration be construed to preclude the Buildings Department from issuing or Declarant from accepting TCOs or PCOs for any portion of the

Phase 1 Development, Phase 3 Development, or Phase 4 Development, constructed pursuant to a Building Permit, issued prior to or after Building Permits for the Bleecker Building.

**6. PHASING.**

(a) Declarant covenants and agrees that subject to the provisions of this Section 6 and all other provisions of this Declaration, Declarant shall develop the New Buildings and other improvements on the Subject Property and adjacent City-owned property, including but not limited to those improvements titled New Landscaping Improvements (as hereinafter defined), in the following sequence, as set forth in drawings Z-201 through Z-208 of the Development Plans (the “**Phasing Plans**”) and in accordance with the following drawings, prepared by Grimshaw Architects, ~~last dated June 4, 2012,~~ annexed hereto as **Exhibit D** (the “**Construction Phasing Plans**”): Phase 1 Development, Phase 2 Development, Phase 3 Development and Phase 4 Development, subject to compliance with the requirements and conditions in this Section 6, set forth below with respect to each Development Phase and each interim Construction Phase associated therewith. Notwithstanding the sequence of Development Phases set forth above, Declarant may develop the Bleecker Building (Phase 2 Development) preceding, during or subsequent to the other Phases, subject to the provisions set forth in Section 5 of this Declaration and within the ~~School~~Bleecker Construction Windows set forth in Section 6.2(a) below.

<u>Number</u>	<u>Title</u>	<u>Date</u>
C-201A	N.B.: CONSTRUCTION TEMP PLAYGROUND (1A)	<a href="#">June 4, 2012</a>
C-201B	N.B.: NO CONSTRUCTION (1B)	<a href="#">June 4, 2012</a>
C-202A	S.B.: CONSTRUCTION DOG RUN & BLCKR ST (1A)	<a href="#">June 4, 2012</a>
C-202B	S.B.: CONSTR. ZIPPER BLDG, DOG RUN & GREENE ST. WALK (1B)	<a href="#">July 23, 2012</a>
C-203A	N.B.: NO CONSTRUCTION (2A)	<a href="#">June 4, 2012</a>
C-204A	S.B.: CONSTRUCTION BLCKR BLDG (2A)	<a href="#">July 23, 2012</a>
C-205A	N.B: CONSTR. W3RD AND BLEECKER SEATING (3A)	<a href="#">June 4, 2012</a>
C-205B	N.B.: CONSTR. PARKING GARAGE (3B)	<a href="#">June 4, 2012</a>
C-205C	N.B.: CONSTR. LGA CELLAR, OPEN PARKING GARAGE (3C)	<a href="#">June 4, 2012</a>
C-205D	N.B.: CONSTRUCTION LGA BLDG & CELLAR (3D)	<a href="#">July 23, 2012</a>
C-205E	N.B.: CONSTRUCTION LAGUARDIA BLDG (3E)	<a href="#">July 23, 2012</a>

<u>Number</u>	<u>Title</u>	<u>Date</u>
C-206A	S.B.: NO CONSTRUCTION (3A)	<a href="#">July 23, 2012</a>
C-206B	S.B.: NO CONSTRUCTION (3B)	<a href="#">July 23, 2012</a>
C-206C	S.B.: NO CONSTRUCTION (3C)	<a href="#">July 23, 2012</a>
C-206D	S.B.: NO CONSTRUCTION (3D)	<a href="#">July 23, 2012</a>
C-206E	S.B.: NO CONSTRUCTION (3E)	<a href="#">July 23, 2012</a>
C-207A	N.B.: CONSTRUCTION MERCER BLDG (4A)	<a href="#">July 23, 2012</a>
C-208A	S.B.: NO CONSTRUCTION (4A)	<a href="#">July 23, 2012</a>

(b) All construction-related activities that will take place on the Subject Property related to each Development Phase shall be contained within the areas shown on the Construction Phasing Plans with gray cross hatching and defined in the legend of said plans as “Construction Areas” (each, a “**Construction Area**” and collectively, the “**Construction Areas**”). The extent of the Construction Areas may vary by approximately 15 feet unless the extent of a Construction Area is further restricted by more restrictive dimensions or notes as shown on the applicable Construction Phasing Plan.

(c) The open space improvements to be provided by Declarant within each Development Phase (each, a “**New Landscape Improvement**” and collectively, the “**New Landscape Improvements**”) are (i) those areas shown on the Phasing Plans and Construction Phasing Plans with a light grey tone and defined in the legend of said plans as “New Landscape Improvements” and also (ii) those areas described in Sections 6.3(b) and 6.3(c) as temporary and/or permanent New Landscape Improvements. Declarant shall provide the New Landscape Improvements within each Development Phase as set forth herein and on the Phasing Plans and Construction Phasing Plans. Notwithstanding the foregoing, subject to City Planning and/or Parks Department approval, as applicable, Declarant may provide the New Landscape Improvements on an expedited basis. New Landscape Improvements located on City-owned property shall be constructed substantially in accordance with the Development Plans and the Construction Phasing Plans, as applicable, subject to the final approval by the Parks Department, and any other involved City agencies, as provided in Sections 6.1(c), 6.2(b), 6.3(d), 6.3(e) and 6.4(a) below. New Landscape Improvements on the Subject Property shall be constructed substantially in accordance with the Development Plans and the Construction Phasing Plans, as

applicable, subject to final approval by the Chairperson, pursuant to the provisions set forth in Section 6(c)(ii) below.

(i) Declarant shall, at its sole cost and expense, undertake and complete the performance of all the work necessary to construct the New Landscape Improvements on City-owned property substantially in accordance with the sequencing and landscaping details set forth on the Construction Phasing Plans and the Development Plans, including but not limited to drawings Z-300 through Z-346 of the Development Plans (the “Landscape Plans”), as applicable, subject to the final approval by the Parks Department, and any other involved City agencies, as provided in Sections 6.1(c), 6.2(b), 6.3(d), 6.3(e) and 6.4(a) below. Declarant shall perform such work in a good and worker like manner and in accordance with Legal Requirements. Upon Substantial Completion of each New Landscape Improvement on City-owned property, Declarant shall, at its sole cost and expense, operate and maintain such New Landscape Improvement in accordance with a maintenance and operations agreement between Declarant and the Parks Department, to be agreed upon at a later date, which shall contain terms that are no less protective of the New Landscape Improvements on City-owned property than Declarant’s maintenance and operating obligations for the Public Access Areas, as set forth in Exhibit I, annexed hereto. Declarant shall provide a letter of credit in an amount equal to 150% of the annual maintenance and operations budget for the New Landscape Improvements on City-owned Property approved by the Parks Department, subject to escalation in future years for inflation, to be utilized by the Parks Department for maintenance of such New Landscape Improvements in the event of a failure by Declarant to perform its obligations under the maintenance and operations agreement, after notice to Declarant and Declarant’s failure to cure the breach.

(ii) ~~(i)~~ Declarant shall, at its sole cost and expense, undertake and complete the performance of all the work necessary to construct the New Landscape Improvements on the Subject Property substantially in accordance with the sequencing and landscaping details set forth on the Construction Phasing Plans and the Development Plans, including but not limited to ~~drawings Z-300 through Z-346 of the Development Plans (the “the~~ Landscape Plans”), as applicable (the “**New Landscape Improvements Work**”). Declarant

shall perform the New Landscape Improvements Work in a good and worker like manner and in accordance with Legal Requirements.

(iii) ~~(ii)~~—In the event that the Chairperson notifies the Declarant in writing that, based on review of the final landscape design for the New Landscape Improvements on City-owned property, ~~modifications~~adjustments of the landscape design for the New Landscape Improvements on the Subject Property at points at which such improvements would be adjacent to and contiguous with the New Landscape Improvements on City-owned property are necessary to ~~achieve an integrated design~~the operation of pedestrian circulation elements or to ensure the functionality of design features, then Declarant shall submit ~~plans~~drawings which ~~modify~~adjust the landscape design of the New Landscape Improvements ~~on the Subject Property in order to achieve an integrated design between those New Landscape Improvements located on the Subject Property and the City owned property. The review and approval of the modified~~accordingly. The adjusted landscape design for the New Landscape Improvements shall be subject to Certification by the Chairperson that such ~~modifications achieve an integrated design between the adjacent and contiguous~~adjustments are necessary to the operation of pedestrian circulation elements or to ensure the functionality of design features at locations where the New Landscape Improvements ~~located~~ on the Subject Property would be adjacent to and ~~the~~contiguous with the New Landscape Improvements on City-owned property and that such adjustments are no greater than necessary to achieve such purpose ( the “Adjustment Certification”). Such drawings shall be submitted to the Chairperson, subject to the procedures set forth below:

(A) Within sixty (60) days of the aforementioned request in writing from the Chairperson ~~that modifications of the landscape design for the New Landscape Improvements located on the Subject Property are necessary to achieve an integrated design at points at which such improvements would be adjacent to and contiguous with the New Landscape Improvements on City owned property,~~ the Declarant shall submit a ~~revised~~an adjusted landscape design for the New Landscape Improvements on the Subject Property.

~~(B) Within twenty (20) days of receipt of the modified landscape design for the New Landscape Improvements to be provided on the Subject Property,~~

~~the Chairperson, in its sole discretion, shall Certify whether such modified design achieves integration with those New Landscape Improvements located on City owned property at points at which such improvements would be adjacent to and contiguous with each other.~~

~~(B) (C) Where the Chairperson determines pursuant to the immediately preceding paragraph (Section 6(c)(ii)(B)) that the modified landscape design of the New Landscape Improvements located on Subject Property, submitted in accordance with this Section 6(c)(ii), is not sufficiently integrated with the final landscape design of the New Landscape Improvements provided on City owned property, the Chairperson shall~~Within twenty (20) days of receipt of the adjusted landscape design for the New Landscape Improvements to be provided on the Subject Property, the Chairperson shall either make the Adjustment Certification or set forth in writing with reasonable specificity the reasons therefor why the Adjustment Certification cannot be made. The Declarant shall thereafter further ~~modify~~revise the adjusted landscape design of the New Landscape Improvements on the Subject Property and resubmit, which resubmission shall be reviewed by the Chairperson in accordance with ~~immediately preceding paragraph (the provisions of this Section 6(c)(iii)(B)).~~ This process shall continue until the Chairperson ~~certifies that the newly proposed modified New Landscape Improvements on the Subject Property are those necessary to achieve integration between those New Landscape Improvements to be provided on City owned property and the Subject Property~~makes the Adjustment Certification.

(d) **Notice of Substantial Completion Prior to Issuance of Building Permit or TCO.**

(i) Subject to the provisions set forth in Section 8, Declarant shall not accept a Building Permit or TCO for any New Building in a Development Phase, as applicable, until the following conditions have been met with respect to the New Landscape Improvement required in connection with such New Building in each such Development Phase, as set forth in Sections 6.1, 6.2, 6.3 and 6.4 below:

(A) The New Landscape Improvement required in connection with such New Building is Substantially Complete;

(B) The Chairperson or the Parks Department, as applicable, has issued a Notice of Substantial Completion, pursuant to the process set forth in Section 6(d)(iii) below, for the New Landscape Improvement required in connection with such New Building.

(ii) Within ten (10) days after satisfaction of the conditions set forth in Section 6(d)(i), the Chairperson shall certify in writing to the Buildings Department that Declarant has fulfilled the conditions set forth herein, requiring Substantial Completion of New Landscape Improvements in connection with such New Building, prior to issuance of a Building Permit or TCO, as the case may be.

(iii) Declarant shall notify the Chairperson or the Parks Department, as applicable, when it believes that a New Landscape Improvement is Substantially Complete and shall request that the Chairperson or the Parks Department, as applicable, issue a certification, in the form of Exhibit GF annexed hereto (a “Notice of Substantial Completion”), to Declarant certifying Substantial Completion of such New Landscape Improvement. No later than twenty (20) calendar days after receipt of such request, the Chairperson or the Parks Department, as applicable, shall either (i) issue the Notice of Substantial Completion, or (ii) if the Chairperson or the Parks Department, as applicable, notifies Declarant that such New Landscape Improvement has not been Substantially Completed in accordance with the Development Plans, Phasing Plans, Construction Phasing Plans or Landscape Plans, whichever is applicable, such notice shall contain a detailed statement of the reasons for such non-acceptance in the form of a list of items remaining to be completed or unsatisfactorily performed (the “Punch List”). Declarant shall promptly perform the work specified on the Punch List, after which it shall notify the Chairperson or the Parks Department, as applicable, of such completion. No later than ten (10) calendar days after receipt of such notice, the Chairperson or the Parks Department, as applicable, shall either (A) issue a Notice of Substantial Completion, or (B) notify Declarant that it has not completed the Punch List (which notice shall specify which items of the Punch List remain incomplete). This process shall continue until the Chair or the Parks Department, as applicable, has issued a Notice of Substantial Completion.



(e) **Notice of Final Completion Prior to Issuance of PCO.**

(i) Subject to the provisions set forth in Section 8, Declarant shall not apply for or accept a PCO for any New Building in a Development Phase until the following conditions have been met with respect to the New Landscape Improvement required in connection with such New Building in each such Development Phase, as set forth in Sections 6.1, 6.2, 6.3 and 6.4 below:

(A) The New Landscape Improvement required in connection with such New Building is Finally Complete;

(B) The Chairperson or the Parks Department, as applicable, has issued a Notice of Final Completion, pursuant to the process set forth in Section 6(e)(iv) below, for such New Landscape Improvement required in connection with such New Building; and

(ii) Within ten (10) days after satisfaction of the conditions set forth in Section 6(e)(i), the Chairperson shall certify in writing to the Buildings Department that Declarant has fulfilled the conditions set forth herein, requiring Final Completion of New Landscape Improvements in connection with such New Building, prior to issuance of a PCO for such New Building.

(iii) Subject to the provisions of Section 8, Declarant shall, within three (3) months after issuance of a Notice of Substantial Completion for a New Landscape Improvement, Finally Complete construction of such New Landscape Improvement, unless the Declarant submits a report from a licensed engineer, certifying in writing, that it will take longer than three (3) months to Finally Complete such New Landscape Improvement (in which event Declarant shall Finally Complete such New Landscape Improvement prior to the expiration of such longer period). If Declarant fails to Finally Complete construction of a New Landscape Improvement within such longer period, the City may, at its option, upon not less than thirty (30) days' notice to Declarant, (i) complete such New Landscape Improvement in accordance with the applicable Development Plans, Phasing Plans, Construction Phasing Plans or Landscape Plans; and (ii) cause Declarant to remove all of its equipment and any other items

impeding the City's completion of the New Landscape Improvement. Declarant hereby grants the City and its contractors, agents, employees and sub-contractors a license to enter upon the Public Access Area, to the extent required to exercise its rights under this Section 6(e)(iii).

(iv) Declarant shall notify the Chairperson or the Parks Department, as applicable, when it believes that a New Landscape Improvement is Finally Complete and shall request that the Chairperson or the Parks Department, as applicable, issue a certification, in the form of Exhibit HG annexed hereto (a "Notice of Final Completion"), to Declarant certifying Final Completion of such New Landscape Improvement. No later than twenty (20) days after receipt of such request, the Chairperson or the Parks Department, as applicable, shall either (i) issue the Notice of Final Completion, or (ii) if the Chairperson or the Parks Department, notifies Declarant that such New Landscape Improvement required in connection with such New Building has not been Finally Completed in accordance with the Development Plans, Phasing Plans, Construction Phasing Plans or Landscape Plans, whichever is applicable, such notice shall include a detailed statement of the reasons for such non-acceptance in the form of 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 the Chairperson or the Parks Department, of such completion. No later than ten (10) calendar days after receipt of such notice, the Chairperson or the Parks Department, as applicable, shall either (i) issue a Notice of Final Completion or (ii) notify Declarant that it has not completed the Punch List (which notice shall specify which items of the Punch List remain incomplete). This process shall continue until the Chairperson or the Parks Department, as applicable, has issued a Notice of Final Completion.

(f) **Construction Consultation Process.** Declarant shall participate in a construction consultation process, as described below, if the Manhattan Borough President and/or Manhattan Community Board 2 shall hereafter elect to form a committee to conduct such process. If such a committee (the "**Construction Committee**") is hereafter established, the Declarant shall, before Construction Commencement, designate an individual to act as a liaison ("**Construction Liaison**") to the Construction Committee. Upon request of the Construction Committee, and beginning on the date the first Building Permit for a New Building on the Subject Property is issued, the Construction Liaison shall address, on a regular basis, the

questions and concerns of the Construction Committee about construction related issues. The Construction Liaison and the Declarant shall, promptly and in good faith, work with the Construction Committee and others, if necessary, to address such questions and concerns, as appropriate. Declarant's obligations hereunder shall expire when TCOs have been issued for all New Buildings on the Subject Property.

**6.1. Phase 1 Development** shall include the construction or redevelopment of the Zipper Building and the New Landscape Improvement titled Temporary LaGuardia Playground (Area 1), as shown on drawing C-201A (“N.B. CONSTRUCTION TEMP PLAYGROUND (1A)”) of the Construction Phasing Plans and Z-201 (“NORTH BLOCK: SITE PLAN END OF PHASE 1”) of the Phasing Plans and in accordance with the landscape design of such New Landscape Improvements as more specifically set forth on the Landscape Plans, and those New Landscape Improvements titled Toddler Playground, Greene Street Walkway, Bleecker Street Improvements (Area 3), Bleecker Street Seating (Area 2), and Dog Run, as shown on drawings C-202A (“S.B. CONSTRUCTION DOG RUN & BLCKR ST (1A)”) and C-202B (“S.B. CONSTRUCTION ZIPPER BLDG, DOG RUN & GREENE ST. WALK (1B)”) of the Construction Phasing Plans and Z-202 (“SOUTH BLOCK: SITE PLAN END OF PHASE 1”) of the Phasing Plans and in accordance with the landscape design of such New Landscape Improvements as more specifically set forth on the Landscape Plans, and shall be subject to the following requirements and conditions:

(a) Declarant shall not accept and the Buildings Department shall not issue a Building Permit related to the demolition of the existing Coles Athletic Center or construction of the Zipper Building until such time that the Chairperson has certified to the Department of Buildings that the New Landscape Improvements titled Temporary LaGuardia Playground (Area 1), Bleecker Street Seating (Area 2) and Dog Run have been Substantially Completed, pursuant to the procedures set forth in Section 6(d) above.

(b) The Zipper Building shall contain a public atrium on the ground floor level, accessible to pedestrians from the Greene Street Walkway, and space for a third party conforming community facility use, including but not limited to a community center providing services to the elderly, having an aggregate total floor area of not less than 7,500 square feet.

(i) The atrium shall be open to the public from 8:00 a.m. until 10:00 p.m., Friday and Saturday and from 8:00 a.m. until 8:00 p.m. all other days, provided that Declarant shall be entitled to close the atrium on a temporary basis for maintenance and repair or for security reasons. Declarant shall additionally have the right to close the atrium not more than 12 times in any calendar year for private events, provided that no such closing shall occur on any national holiday and notice of which shall be posted within the atrium not less than five days immediately prior to such closing. The atrium may contain a cafe, snack bar, food service kiosk or other similar amenity and may be furnished with movable tables and chairs.

(ii) Declarant covenants and agrees that beginning no later than 120 days after the issuance of a TCO for that portion of the Zipper Building containing the community facility space, Declarant shall undertake best efforts to lease such space to a Community Facility Tenant for Community Facility Rent. Such best efforts shall include but not be limited to advertising in local and citywide press, listing the space with brokers and informing local and citywide community facility organizations. The best efforts proposed by Declarant to market such space, along with the proposed Community Facility Rent, shall be delineated in a marketing plan, which Declarant shall publish for public comment for a period of no less than 30 days on a website to be established by Declarant. Upon expiration of such public comment period, Declarant shall finalize and commence to implement the marketing plan. The marketing plan shall be actively pursued for a period of no less than one year. If, after such one year period, a lease for such space has not been signed by a Community Facility Tenant at Community Facility Rent, Declarant's obligation under this Section 6.1(b)(ii) shall terminate. In the event such space is leased to a Community Facility Tenant, Declarant shall, at Declarant's sole cost and expense, fit out such space in such manner as such lessee may reasonably require. In the event such space is leased to a Community Facility Tenant that is a qualified provider of services to the elderly, Declarant may require such Community Facility Tenant to provide social work, nursing or other elder care related internships for NYU students, including but not limited to students at the Silver School of Social Work and the College of Nursing. In the event such space is leased to a Community Facility Tenant and such space is subsequently vacated, Declarant shall undertake best efforts to re-let the space to another Community Facility Tenant following the procedures described above in this Section 6.1(b)(ii). If, after a one year period, Declarant has not entered into a lease for such space with a

Community Facility Tenant at Community Facility Rent, Declarant's obligation under this Section 6.1(b)(ii) shall terminate. In the event such space is re-let to another Community Facility Tenant, Declarant shall not be required to fit out the space at Declarant's cost and expense. Declarant's obligation to undertake best efforts to re-let such space under this Section 6.1(b)(ii) shall apply in all subsequent cases where such space is vacated by a leaseholding Community Facility Tenant.

(c) ~~(b)~~—Declarant shall Substantially Complete those New Landscape Improvements titled Toddler Playground, Greene Street Walkway and Bleecker Street Improvements (Area 3) as soon as the Buildings Department may permit the use of those spaces by the public, in view of ongoing construction-related activities associated with the Zipper Building, but in no event shall Declarant apply for or the Buildings Department issue a TCO for any portion of the Zipper Building Towers until the Chairperson has certified to the Building Department that the aforementioned New Landscape Improvements have been Substantially Completed, pursuant to the procedures set forth in Section 6(d) above.

(d) ~~(e)~~—The final design of the New Landscape Improvements provided on the City-owned property located at LaGuardia Place and Bleecker Street, titled Temporary LaGuardia Playground (Area 1), Bleecker Street Seating (Area 2) and Bleecker Street Improvements (Area 3) are subject to approval by City agencies at a later date and may therefore vary in certain respects from that which is shown on drawings Z-201 and Z-202 of the Phasing Plans and from the landscape design of such New Landscape Improvements as more specifically set forth on the Landscape Plans; however, it is anticipated that the Bleecker Street Seating (Area 2) will provide seating, planting and trees and that the Temporary LaGuardia Playground will provide active recreation use.

6.2 **Phase 2 Development** shall include the construction or redevelopment of the Bleecker Building and adjacent New Landscape Improvement on Bleecker Street, as shown on drawing C-204A (“S.B. CONSTRUCTION BLCKR BLDG (2A)”) of the Construction Phasing Plans and Z-204 (“SOUTH BLOCK: SITE PLAN END OF PHASE 2”) of the Phasing Plans and in accordance with the landscape design of such New Landscape Improvements as more

specifically set forth on the Landscape Plans, and shall be subject to the following requirements and conditions:

(a) SchoolBleecker Construction Windows. The Bleecker Building may be constructed prior to construction of the Zipper Building (“SchoolBleecker Construction Window 1”), after excavation/foundation and superstructure/exterior work associated with the Zipper Building (“SchoolBleecker Construction Window 2”) or after completion of the below-grade construction activities associated with the LaGuardia Garage and the superstructure/exterior work associated with the LaGuardia Building (“SchoolBleecker Construction Window 3”). However, to avoid certain concurrent construction activities, the demolition of the existing Morton Williams Associated Supermarket building, Bleecker Building excavation/foundations, and Bleecker Building superstructure/foundation work shall not occur during: (i) demolition of Coles Gymnasium (approx. 6 months); (ii) excavation/foundation or superstructure/exterior work associated with the Zipper Building (approx. 36 months); (iii) demolition of the LaGuardia retail building (approx. 3 months); (iv) foundations, superstructure/exterior, or interior work associated with the LaGuardia Garage (approx. 20 months); (v) below-grade foundations and below-grade superstructure/exterior work associated with the LaGuardia Building (approx. 21 months); and (vi) super structure/exterior work associated with the LaGuardia Building (approx. 9 months). SchoolBleecker Construction Window 1, SchoolBleecker Construction Window 2 and SchoolBleecker Construction Window 3, as constrained by the limitations set forth in the preceding sentence, are collectively referred to as the “SchoolBleecker Construction Windows.”

(b) Declarant shall develop a preliminary schedule for each of the Construction Windows and update on an annual basis until such time as the Public School Commitment has been discharged, to account for material changes, if any, that will impact the SchoolBleecker Construction Windows and construction schedules for each of the New Buildings under construction or demolition and provide same to SCA and the Chairperson, the first such update to be provided to the SCA and the Chairperson no more than six months after the Final Approval of the Large-Scale Special Permit, and thereafter on an annual basis until such time as the Public School Commitment has been discharged.

(c) If the Bleecker Building is constructed without a Public School, Declarant covenants and agrees that it shall make available to a Community Facility Tenant, including but not limited to a community center, no less than 25,000 square feet of above grade space in the Bleecker Building. Beginning no later than 120 days after the issuance of a TCO for that portion of the Bleecker Building containing such space, Declarant shall undertake best efforts to lease such space to a Community Facility Tenant at Community Facility Rent. Such best efforts shall include but not be limited to advertising in local and citywide press, listing the space with brokers and informing local and citywide community facility organizations. The best efforts proposed by Declarant to market such space, along with the proposed Community Facility Rent, shall be delineated in a marketing plan, which Declarant shall publish for public comment for a period of no less than 30 days on a website to be established by Declarant. Upon expiration of such public comment period, Declarant shall finalize and commence to implement the marketing plan. The marketing plan shall be actively pursued for a period of no less than one year. If, after a one year period, a lease for such space has not been signed by a Community Facility Tenant at Community Facility Rent, Declarant's obligation under this Section 6.2(c) shall terminate. In the event such space is leased to a Community Facility Tenant, Declarant shall, at Declarant's sole cost and expense, fit out such space in such manner as such lessee may reasonably require. In the event such space is leased to a Community Facility Tenant that is a community center or qualified provider of early education services, Declarant may require such Community Facility Tenant to provide teaching or other education or child development related internships for NYU students, including but not limited to students at the Steinhardt School of Culture, Education and Human Development and the Silver School of Social Work. In the event such space is leased to a Community Facility Tenant and such space is subsequently vacated, Declarant shall undertake best efforts to re-let the space to another Community Facility Tenant following the procedures described above in this Section 6.2(c). If, after a one year period, Declarant has not entered into a lease with a Community Facility Tenant at Community Facility Rent, Declarant's obligation under this Section 6.2(c) shall terminate. In the event such space is re-let to another Community Facility Tenant, Declarant shall not be required to fit out the space at Declarant's cost and expense. Declarant's obligation to undertake best efforts to re-let such space under this Section 6.2(c) shall apply in all subsequent cases where such space is vacated by a leaseholding Community Facility Tenant.

(d) ~~(e)~~ Declarant shall not accept and the Buildings Department shall not issue a TCO for the Bleecker Building until such time that the Chair has certified to the Department of Buildings that the New Landscaping Improvement on City-owned property located on Bleecker Street, as shown on drawing Z-204 of the Phasing Plans and drawing Z-303 (“SOUTH BLOCK: OPEN SPACE PLAN”) of the Landscape Plans, have been Substantially Completed, pursuant to the procedures set forth in Section 6(d) above.

(e) ~~(d)~~ The final design of the New Landscaping Improvement provided on City-owned property located on Bleecker Street, adjacent to the Bleecker Building, is subject to approval by City agencies at a later date and may therefore vary in certain respects from that which is shown on drawing Z-204 of the Phasing Plans and from the landscape design of such New Landscape Improvements as more specifically set forth on the Landscape Plans, however, it is anticipated that such area will provide seating, planting and trees.

**6.3. Phase 3 Development** shall include the construction or redevelopment of the LaGuardia Garage and the LaGuardia Building and those New Landscape Improvements titled West Third Street Seating/Bike Parking, Bleecker Street Seating, LaGuardia Plaza, LaGuardia Playground, Washington Square Village Play Garden, Philosophy Garden and Public Lawn, and other areas identified with a light grey tone and defined in legend as “New Landscape Improvements,” which surround the LaGuardia Building, as shown on drawings C-205A (“N.B.: CONSTR. W3RD AND BLEECKER SEATING (3A)”), C-205B (“N.B.: CONSTR. PARKING GARAGE (3B)”), C-205C (“N.B.: CONSTR LGA CELLAR, OPEN PARKING GARAGE (3C)”), C-205D (“N.B.: CONSTRUCTION LGA BLDG & CELLAR (3D)”) and C-205E (“N.B.: CONSTRUCTION LAGUARDIA BLDG (3E)”) of the Construction Phasing Plans and Z-205 (“NORTH BLOCK: SITE PLAN END OF PHASE 3”) of the Phasing Plans and in accordance with the landscape design of such New Landscape Improvements as more specifically set forth on the Landscape Plans, and shall be subject to the following requirements and conditions:

(a) Declarant shall not accept and the Buildings Department shall not issue a Building Permit related to the demolition of the existing Washington Square Village Retail until such time that the Chairperson has certified to the Department of Buildings that the New



Landscape Improvements titled West Third Street Seating/Bike Parking and Bleecker Street Seating have been Substantially Complete, pursuant to the procedures set forth in Section 6(d) above.

(b) If within six months of demolishing the Washington Square Village Retail, Declarant has not commenced excavation of the Construction Areas associated with such demolition and with development of the LaGuardia Garage as such Construction Area is shown on drawing C-205B of the Construction Phasing Plans, in preparation of the construction of the LaGuardia Garage, then Declarant shall improve the Construction Area, or a portion thereof, with a New Landscape Improvement that shall be known as Temporary Lawn I and shall be subject to the provisions applicable to Public Access Areas as set forth below in Section 76 of this Declaration, subject to Certification by the Chairperson that the design of the Temporary Lawn I is compatible with the remainder of the Large-Scale Development Project. The Chairperson shall waive the requirement that Declarant provide Temporary Lawn I in the Construction Areas associated with the LaGuardia Garage if the delay to commence construction within the Construction Area is not attributable to the fault of the Declarant and/or Declarant submits a schedule to the Chairperson illustrating a reasonable timeframe for the commencement of construction of the LaGuardia Garage within the Construction Area. If Declarant provides the Temporary Lawn I as set forth above, and Declarant seeks to commence construction of the LaGuardia Garage thereafter, then Declarant may revert the Temporary Lawn I to a Construction Area.

(c) If (i) within six months of obtaining a TCO for the LaGuardia Garage Declarant has not commenced construction of the LaGuardia Building Below- Grade Space, or (ii) within six months of obtaining a TCO for a portion of the LaGuardia Building Below- Grade Space Declarant has not commenced construction of the remainder of the LaGuardia Building Below- Grade Space, or (iii) within six months of obtaining a TCO for the entirety of LaGuardia Building Below- Grade Space the Declarant has not commenced construction of the LaGuardia Building Tower, then Declarant shall improve the Construction Areas, or portion thereof, associated with the LaGuardia Building Below- Grade Space or LaGuardia Building Tower, as such Construction Areas are shown on drawings C-205C, C-205D or C-205 of the Construction Phasing Plans, whichever is applicable, with a New Landscape Improvement that shall be known

as Temporary Lawn II and shall be subject to the provisions applicable to Public Access Areas as set forth below in Section 7 of this Declaration, subject to Certification by the Chairperson that the design of the Temporary Lawn II is compatible with the remainder of the Large-Scale Development Project. The Chairperson shall waive the requirement that Declarant provide Temporary Lawn II in the Construction Areas associated with the LaGuardia Building if the delay to commence construction of the LaGuardia Building within the Construction Area is not attributable to the fault of the Declarant and/or Declarant submits a schedule to the Chairperson illustrating a reasonable timeframe for the commencement of construction of the LaGuardia Building within the Construction Area. If Declarant provides the Temporary Lawn II as set forth above, and Declarant seeks to commence construction of the LaGuardia Building Below- Grade Space or LaGuardia Building Tower thereafter, then Declarant may revert the Temporary Lawn II to a Construction Area.

(d) The open area in the central portion of the North Block Parcel located on the roof of the existing below grade parking facility (the “Sasaki Garden”) contains certain mature trees in planters. Although these trees are in areas in which construction and/or construction-related activities will occur, and therefore will be removed in connection with the construction and/or construction-related activities in this area, Declarant shall, in consultation with a qualified arborist and to the extent practicable, use all best horticultural practices to preserve such existing mature trees and, subject to City Planning approval, replant such trees on the Subject Property.

(e) ~~(d)~~—Declarant shall Substantially Complete those New Landscape Improvements titled LaGuardia Plaza, Washington Square Village Play Garden, and Philosophy Garden and Public Lawn as shown on drawing C-205E as soon as the Buildings Department may permit the use of those spaces by the public, in view of ongoing construction-related activities associated with the LaGuardia Building, but in no event shall Declarant apply for or the Buildings Department issue a TCO for any portion of the LaGuardia Building Below- Grade Space until the Chairperson has certified to the Buildings Department that the aforementioned New Landscape Improvements have been Substantially Completed, pursuant to the procedures set forth in Section 6(d) above.

(f) ~~(e)~~ Declarant shall Substantially Complete those New Landscape Improvements titled LaGuardia Plaza, LaGuardia Playground, Washington Square Village Play Garden, Philosophy Garden and Public Lawn and all other areas identified with a light grey tone and defined in legend as “New Landscape Improvements,” which surround the LaGuardia Building as shown on drawing Z-205 and the Landscape Plans as soon as the Buildings Department may permit the use of those spaces by the public, in view of ongoing construction-related activities associated with the LaGuardia Building, but in no event shall Declarant apply for or the Buildings Department issue a TCO for any portion of the LaGuardia Building Tower until the Chairperson has certified to the Buildings Department that the aforementioned New Landscape Improvements have been Substantially Completed, pursuant to the procedures set forth in Section 6(d) above.

**6.4. Phase 4 Development** shall include the construction or redevelopment of the Mercer Building and those New Landscape Improvements titled Tricycle Garden, Mercer Plaza and all other areas identified with a light grey tone and defined in legend as “New Landscape Improvements,” as shown on drawing C-207A (“N.B.: CONSTRUCTION MERCER BLDG (4A)”) of the Construction Phasing Plans and Z-207 (“NORTH BLOCK: SITE PLAN END OF PHASE 4”) of the Phasing Plans and in accordance with the landscape design of such New Landscape Improvements as more specifically set forth on the Landscape Plans, and shall be subject to the following requirements and conditions:

(a) Declarant shall Substantially Complete those New Landscape Improvements titled Tricycle Garden, Mercer Plaza, and all other areas identified with a light grey tone and defined in legend as “New Landscape Improvements,” which surround the Mercer Building as soon as the Buildings Department may permit the use of those spaces by the public, in view of ongoing construction-related activities associated with the Mercer Building, but in no event shall Declarant apply for or the Buildings Department issue a TCO for any portion of the Mercer Building Tower until the Chairperson has certified to the Buildings Department that the aforementioned New Landscape Improvements have been Substantially Completed, pursuant to the procedures set forth in Section 6(d) above.

**7. PUBLIC ACCESS AREAS AND PUBLIC ACCESS EASEMENT.**

(a) **Public Access Area Areas**. The Public Access Areas shall be those open areas on the Subject Property which are described as New Landscape Improvements in Section 6, except that it is expected that the new Dog Run (like the existing dog run at the northwest corner of Mercer and W. Houston Streets that it will replace) will continue to be managed as a membership-only dog run and is therefore not considered a Public Access Area. Each New Landscape Improvement shall become a Public Access Area at such time as they are Substantially Completed (each, a “**Public Access Area**”; collectively, the “**Public Access Areas**”).

(b) **Public Access Easements**. Declarant hereby grants the City and the general public permanent, perpetual and non-exclusive public access easements over the Public Access Areas, and the City and the general public shall hereby enjoy, wield, have the right to and the benefit of, and be granted, conveyed and transferred a non-exclusive easement in perpetuity, for the benefit of the general public, over each Public Access Area, unobstructed (except for such obstructions, objects, amenities and other items as are shown on the Phasing Plans and Construction Phasing Plans within the new New Landscape Improvements and Existing Landscape Improvements, or as are otherwise permitted by the City), from the surface thereof to the sky, for the purposes of: (i) passive recreational use by the general public, (ii) pedestrian right to use and enjoyment of such space, and (iii) emergency vehicle access (each a “**Public Access Area Easement**,” collectively, the “**Public Access Area Easements**”), subject to the terms and conditions set forth in this Section 7. Each Public Access Easement shall become effective at such time that each such New Landscape Improvement is Substantially Complete.

(c) The Public Access Areas shall remain open and accessible to the public pursuant to the Public Access Easement, from 6:00 AM to 12:00 AM (except for Greene Street Walk, which shall be open at all times, and playgrounds, which shall be open from dawn to dusk) or such longer hours as the Declarant may agree, unobstructed (except for such obstructions, objects, amenities and other items as are shown on the Development Plans, Phasing Plans, Construction Phasing Plans and Landscape Plans, or as are otherwise permitted by the City), subject to the terms and conditions set forth in this Section 7.

(d) With respect to each Public Access Area, Declarant agrees that liens, including but not limited to judgment liens, mortgage liens, mechanics liens and vendees' liens, shall be subject and subordinate to the rights, claims, entitlements, interests and priorities of the City and the general public created herein.

7.1 **Permits and Other Approvals.** Declarant, at its sole cost and expense, shall diligently apply for and prosecute the applications for all City, State and Federal permits and approvals necessary for the New Landscape Improvements Work, as required.

7.2 **Closing of Public Access Areas.** Notwithstanding Section 7(a) and 7(b) above, Declarant may close the Public Access Area, or the most limited portions thereof, as may be necessary, in order (a) to accomplish the maintenance, repairs or replacements of Public Access Areas, or portions thereof, and shall notify the Chairperson of such closure no less than seven (7) days in advance of such and such notice shall set forth the area and duration of closure and shall post signs providing prior notice to the public of such area and duration of closure, at appropriate locations and entrances to and within the Public Access Area; (b) for the repair, restoration, rehabilitation, renovation or replacement of pipes, utility lines or conduits or other equipment on or under a Public Access Area and shall notify the Chairperson of such closure no less than ten (10) days in advance of such closure and such notice shall set forth the area and duration of closure and shall post signs providing prior notice to the public of such area and duration of closure, at appropriate locations and entrances to and within the Public Access Area; (c) to accomplish work as may be approved by the Buildings Department and other involved city agencies in connection with improvements on any of the buildings in the Large-Scale General Development, provided such closure is limited in scope and area to that which is defined as Construction Area for a particular Phase of Development on the Construction Phasing Plans and Phasing Plans and shall notify the Chairperson of such closing at least thirty (30) days in advance and such notice shall set forth the area and duration to be closed and shall post signs providing prior notice to the public of such area and duration of closure, at appropriate locations and entrances to and within the Public Access Area; (d) to make emergency repairs to mitigate hazardous site conditions or to address other emergency conditions and shall notify the Chairperson of such closing and its expected duration as soon as practicable but in no event more than two (2) Business Days after such closure, give notice to the Chairperson 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. Emergency conditions for which the Public Access Area is closed pursuant to (d) above shall be limited to actual or imminent emergency situations, including but not limited to, security alerts, riots, casualties, disasters, or other events endangering public safety or property, provided that no such emergency closure shall continue for more than forty-eight (48) consecutive hours without Declarant having consulted with the New York City Police Department (the “**NYPD**”) or the Buildings Department, as appropriate, and having following the NYPD’s or Building Department’s direction, if any, with regard to the emergency situation. In the event of a closure pursuant to (a), (b) or (c) above Declarant will close or permit to be closed only those portions of such areas which must or should reasonably be closed to effect the repairs or remediation, will exercise due diligence in the performance of such repairs or remediation 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 the Public Access Areas. In addition to the foregoing, Declarant shall have the right to close all or any portions of the Public Access Areas to the City and the general public one (1) Business Day in each year to preserve its ownership interest in such portions of the Public Access Areas.

7.3 **Oversight of ~~Public Access Areas~~New Landscape Improvements.**

(a) **Open Space Oversight Organization.**

(i) Declarant shall cause to be formed a not-for-profit, 501(c)(3) entity (the “**Open Space Oversight Organization**”) for the purposes of (A) monitoring Declarant’s compliance with this Declaration as applicable to the ~~Public Access Areas located on the Public Access Areas~~New Landscape Improvements; (B) reviewing revisions to the Rules and Regulations for the Public Access Areas set forth in **Exhibit FH** annexed hereto; and (C) reviewing any modifications to the landscape designs for the ~~Public Access Areas~~New Landscape Improvements proposed by Declarant, all in accordance with this Section 7.3.

(ii) No later than December 31, 2012, Declarant shall ~~cause~~submit applications to (A) the New York State Department of State seeking not-for-profit incorporation

of the Open Space Oversight Organization ~~to be formed and shall submit an application to~~ and (B) the Internal Revenue Service seeking 501(c)(3) status for the Organization ~~no later than the date Declarant requests a determination by the Chairperson of Substantial Completion of the first permanent Public Access Area, or portion thereof.~~ The Certificate of Incorporation and /or By-Laws of the Open Space Oversight Organization, as appropriate, shall prescribe that the purposes and responsibilities of the Open Space Oversight Organization shall be to perform the functions set forth in this Section 7.3.

(iii) The Board of Directors of the Open Space Oversight Organization shall consist of five (5) members, appointed as follows: (A) one appointed by Declarant; (B) one appointed by the New York City Councilmember who represents the Council district in which the Subject Property is located; (C) one appointed by the Chair of Manhattan Community Board 2; (D) one appointed by the Manhattan Borough President; and (E) one appointed by the Manhattan Borough Commissioner of the Parks Department. All Directors shall serve without compensation. All decisions of the Board of Directors shall require a vote of the majority of the Board.

(iv) Declarant shall pay all costs for the formation of and obtaining of 501(c)(3) status for the Open Space Oversight Organization. Declarant shall also fund the customary annual legal and accounting costs in connection with maintenance of corporate existence and of tax exempt status.

(v) Declarant shall meet with the Open Space Oversight Organization at least two (2) times per year and at such other reasonable times as the majority of the board members request in writing that Declarant meet to discuss matters under this Section 7.3.

(b) **Compliance and Oversight Reports.**

(i) No later than June 30 of the year following the year that the first permanent ~~North Block Public Access Area~~ New Landscape Improvement is open for public use, and no later than June 30 of each year thereafter, Declarant shall cause all ~~North Block Public Access Area(s)~~ New Landscape Improvements which are Finally Complete and in existence as of May 31 of such year to be inspected and provide a report in draft form to the Open Space

Oversight Organization with respect to compliance of such ~~North Block Public Access Area(s)~~New Landscape Improvements with the provisions of this Declaration as of a date of inspection that is no earlier than May 31 of such year (the “**Compliance Report**”). Such report shall be prepared by a registered architect, landscape architect or professional engineer, in a format previously reviewed and accepted by the Director of City Planning and shall include, without limitation: (A) a statement that the ~~North Block Public Access Area(s)~~New Landscape Improvements which are Finally Complete and in existence as of the date of inspection have been inspected by such registered architect, landscape architect or professional engineer and that such ~~North Block Public Access Area(s)~~New Landscape Improvements are in full compliance with the Development Plans; (B) an inventory list of amenities required under the Development Plans, together with an identification of any amenity on such inventory list for which first inspection did not show compliance, including whether such amenities were not in working order or damaged, and a verification by such registered architect, landscape architect or professional engineer based upon subsequent inspection that any such noncompliance has been fully remedied; and (C) photographs documenting the condition of such Finally Complete ~~North Block Public Access Area(s)~~New Landscape Improvements at the time of initial or any subsequent inspection, sufficient to indicate the presence of the amenities on the inventory list of amenities.

(ii) Within sixty (60) days following receipt of the draft Compliance Report, the Open Space Oversight Organization shall submit comments to Declarant regarding noncompliances which it believes have not been identified in the draft Compliance Report, together with any recommendations for modifications thereto (the “**Oversight Report**”). Within sixty days (60) days following receipt of the Oversight Report, Declarant shall submit a copy of a final version of the Compliance Report, together with the Oversight Report, to the Chairperson and the Commissioner of Parks and Recreation, together with an description of all actions taken and modifications made to the Compliance Report in response to the Oversight Report. Copies of such submission shall be provided to the Open Space Oversight Organization, which may provide additional comments to the Chairperson.

(c) **Amendments to Rules and Regulations.**



(i) Prior to submission to the Chairperson and the Commissioner of the Parks Department pursuant to Section 7.4 below for approval of any modifications to the Rules and Regulations for the Public Access Area set forth in Exhibit ~~FH~~, Declarant shall submit such proposed modifications to the Open Space Oversight Organization for review and comment. The Open Space Oversight Organization shall provide Declarant with comments on the proposed modifications in writing within sixty (60) days of receipt (the “**Rules Comment Report**”) and, upon request, Declarant shall meet and confer with the Open Space Oversight Organization during such sixty (60) day period. If the Open Space Oversight Organization fails to provide comments within sixty (60) days of receipt, Declarant may forward the proposed modifications to the Chairperson for review and approval. Any submission made by Declarant to the Chairperson shall include a summary of the Rules Comment Report, and responses of Declarant thereto, together with a description of all changes to the proposed modifications made by Declarant in response to the Rules Comment Report, or, where changes have not been made, the reasons therefor. Copies of such submission shall be provided by Declarant to the Open Space Oversight Organization, which may provide additional comments to the Chairperson.

(d) **Modifications to Landscape Design for ~~Public Access Areas~~New Landscape Improvements.**

(i) Prior to (A) the formal filing with the Department of City Planning of any application for modification to the landscape designs for the Public Access Areas, or (B) any submission to the Parks Department and/or any other government agency or department for the modification of the landscape designs for any New Landscape Improvements on City-owned property. Declarant shall refer such proposed modification to the Open Space Oversight Organization for review and recommendation for a period of not less than sixty (60) days. Within such sixty period, the Open Space Oversight Organization shall provide Declarant with written comments and recommendations. Any application filed by Declarant following the expiration of such sixty period shall include a copy of the written comments and recommendations of the Open Space Oversight Organization, together with a description of all changes to the proposed modifications made by Declarant in response to such comments and recommendations, or, where changes have not been made, the reasons therefor. Declarant shall provide copies of the filed application, the written comments and recommendations of the Open

Space Oversight Organization, and the further submission described above, to the Commissioner of Parks and Recreation.

(ii) In the event that Declarant proposes a modification to the landscape designs for the ~~Public Access Areas made~~New Landscape Improvements prior to the formation of the Open Space Oversight Organization ~~not for profit, 501(c)(3) entity~~ pursuant to Section 7.57.3(a)–(ii), referral shall be made to the New York City Councilmember who represents the Council district in which the Subject Property is located, the Chair of Manhattan Community Board 2, the Manhattan Borough President, and the Manhattan Borough Commissioner of the Parks Department. The foregoing, together with a representative of Declarant, shall serve as members of the Open Space Oversight Organization in formation, for purposes of review and comment with respect to such proposed modification.

#### **7.4. Rules and Regulations, Illumination and Signage of Public Access Areas.**

##### **(a) Rules and Regulations.**

(i) Declarant shall operate the Public Access Areas in conformity with the rules and regulations governing public use of the Public Access Areas (the “**Rules and Regulations**”), as set forth in Exhibit FH, and shall not impose any further restrictions upon public use of the Public Access Areas except as necessary in the case of emergency. Declarant may from time to time modify such Rules and Regulations, subject to the review by the Open Space Oversight Organization, and the prior written approval of the Chairperson. The Rules and Regulations, and any such revisions, modifications or additions permitted pursuant to the provisions of Section 7.3(c), shall be posted in the Public Access Areas in accordance with Section 7.4(c) hereof.

(b) **Illumination.** The Public Access Areas shall be illuminated for safe use and enjoyment of all areas of the Public Access Areas, with a minimum level of illumination of not less than two horizontal foot candles (lumens per foot) throughout all walkable and sitting areas, including sidewalks directly adjacent to the Public Access Areas, and a minimum of level of illumination of not less than 0.5 horizontal foot (lumens per foot) throughout all other areas. Such level of illumination on the North Block Parcel shall be maintained from 6:00 AM – 12:00

PM (excluding the daylight hours from one-half hour after sunrise to one-half hour before sunset). Such level of illumination on Greene Street Walk shall be maintained at all times (excluding the daylight hours from one-half hour after sunrise to one-half hour before sunset).

(c) **Signage.** Upon a Public Access Area being open and fully accessible to the public as provided hereinabove, appropriate signage, indicating hours open to the public, accessibility to individuals with disability, the identity of Owner and the phone number and email address of persons responsible for maintenance shall be provided on signage to be located in the Public Access Areas as shown on drawing Z-321 (“PUBLIC SPACE SIGNAGE PLAN”) of the Development Plans.

#### 7.5. **Maintenance and Repair.**

~~(a) — Declarant shall clean each Public Access Area on a regular basis, to ensure: (a) that the Public Access Areas shall be reasonably free of dirt, leaves and debris, (b) that the walkways and lighting will be maintained, (c) that graffiti is promptly removed, (d) that all drains, sewers and catch basins are unlogged and draining efficiently, and (e) that tree branches, snow and ice are removed are promptly cleared.~~

~~(b) — No later than the fourth week of April in the each year after the Public Access Area, or portion thereof, has been established, Declarant shall perform regular springtime seasonal landscaping maintenance, which shall include but not be limited to, pruning, trimming, weeding, fertilizing, reseeding, culling dead plants, unwrapping from winter.~~

~~(c) — Declarant shall perform regular seasonal wintertime preparation landscaping maintenance, which shall include but not be limited to, raking, wrapping plants (if needed), fertilizing and reseeding.~~

(a) ~~(d)~~ Declarant shall ~~timely repair or replace on a regular and ongoing basis all amenities provided for in the Public Access Areas, which shall include but shall not be limited to, benches or other seating, walls, barriers, fencing, gates, paving, painting, lighting, plant materials and trees, construction defects and hazardous conditions.~~ maintain and repair each Public Access Area in accordance with the requirements set forth in Exhibit I, annexed hereto.

(b) ~~(e)~~ Notwithstanding any other provision of this Declaration, nothing herein shall require Declarant to maintain City-owned land or improvements such as City streets and parks. ~~Such maintenance by, except that Declarant, if any, shall be governed by other instruments, if any, agreed to and accepted by the City and Declarant.~~ shall maintain the New Landscape Improvements on City-owned property as provided in Section 6(c)(i).

8. **DELAY BY REASON OF FORCE MAJEURE EVENT**. If Declarant is unable to perform any Obligation under this Declaration by reason of a Force Majeure Event, Declarant may, upon notice to the Chairperson (a “**Delay Notice**”), request that the Chairperson, in consultation with the Parks Department as may be necessary for New Landscape Improvements to be provided on City-owned property, certify the existence of such Force Majeure Event. Any Delay Notice shall include a description of the Force Majeure Event and its probable duration and impact on the work in question (as reasonably determined by Declarant). The Chairperson, in consultation with the Parks Department, where necessary, shall thereafter determine whether Force Majeure Event exists, and upon notice to Declarant no later than ten (10) days after its receipt of the Delay Notice, certify whether a Force Majeure Event exists. If the Chairperson certifies that a Force Majeure Event does not exist, the Chairperson shall set forth with reasonable specificity, in the certification, the reasons therefor. If the Chairperson certifies that a Force Majeure Event exists, the Chairperson shall grant Declarant appropriate relief, including notifying the Buildings Department that a Building Permit, TCO or a PCO (as applicable) may be issued for the applicable New Buildings, or, in the Chairperson’s reasonable discretion, for portions thereof, located within the applicable Development Phase. Any delay arising by reason of a Force Majeure Event shall be deemed to continue only so long as the Force Majeure Event continues. Upon cessation of the Force Majeure Event, Declarant shall promptly recommence the performance of the affected Obligation. As a condition to granting relief as aforesaid, the Chairperson may require that Declarant post a letter of credit (“**Completion Letter of Credit**”) or other security, in a form reasonably acceptable to the Chairperson and naming the City as beneficiary, to secure Declarant’s Obligation to perform upon the cessation of the Force Majeure Event. Such security shall be in a sum no more than 175% of the estimated cost to perform the Obligation. Declarant shall recommence performance of the Obligation at the end of the Force Majeure Event specified in the Delay Notice, or such lesser period of time as the Chairperson has reasonably determined the Force Majeure Event shall continue; provided, however, that if

Declarant reasonably determines prior to the end of the period of the Force Majeure Event as so determined that it will have a longer duration, the Chairperson may grant additional time to perform the Obligation if Declarant demonstrates to the satisfaction of the Chairperson that the Force Majeure event will continue for a longer duration than previously specified. If Declarant fails to resume performance of the applicable Obligation, the City may undertake to perform the Obligation and draw upon the aforesaid Completion Letter of Credit, to the extent required to complete the Obligation. Upon performance of Obligation, the City shall return the aforesaid security (or the undrawn balance thereof) to Declarant. Declarant hereby grants the City a license to enter upon such portions of the Subject Property as shall be required to exercise the aforesaid self-help rights conferred upon the City.

9. **REPRESENTATION.** Declarant hereby represents and warrants that there is no restriction of record on the development, enlargement, or use of the Subject Property, nor any present or presently existing estate or interest in the Subject Property, nor any existing lien, obligation, covenant, easement, limitation or encumbrance of any kind that shall preclude, presently or potentially, the imposition of the restrictions, covenants, obligations, easements and agreements of this Declaration to develop and enlarge the Subject Property as a Large-Scale General Development as set forth herein and in accordance with this Declaration.

10. **BINDING EFFECT.** The restrictions, covenants, rights and agreements set forth in this Declaration shall be binding upon Declarant and any successor or assign of Declarant; provided that the Declaration shall be binding on any Declarant only for the period during which such Declarant, or any successor or assign thereof, is the holder of an interest in the Subject Property and only to the extent of such Declarant's interest in the Subject Property. At such time as a Declarant or any successor to a Declarant no longer holds an interest in the Subject Property, such Declarant's or such Declarant's successor's obligations and liability under this Declaration shall wholly cease and terminate and the party succeeding such Declarant or such Declarant's successor shall assume the obligations and liability of Declarant pursuant to this Declaration with respect to actions or matters occurring subsequent to the date such party assumes an interest in the Subject Property to the extent of such party's interest in the Subject Property. For purposes of this Declaration, any successor to a Declarant shall be deemed a Declarant for such time as such successor holds all or any portion of any interest in the Subject Property. In no event shall

any officer, director, trustee, member, partner, manager, employee, representative or agent of Declarant have any personal liability under this Declaration.

**11. RECORDATION.**

(a) Promptly, and no later than ten (10) days after Final Approval, as defined herein, Declarant shall file and record this Declaration and any related waivers executed by Mortgagees or other Parties-in-Interest or other such documents executed and delivered in connection with the Applications and required by this Declaration to be recorded in public records, in the Office of the City Register of the City of New York (the “**Register's Office**”), indexing it against the entire Subject Property (such date, the “**Recording Date**”).

(b) At such time as the City transfers fee title of the Mercer Street Land, Declarant shall cause the Mercer Street Land to be merged with Zoning Lot 2, whereupon, Declarant shall record a duplicate of this Declaration forthwith at Declarant’s sole cost and expense against the newly enlarged Zoning Lot 2 (the date of such duplicate recordation being the “**Mercer Street Land Recording Date**”). Recordation of this Declaration pursuant to Section 11(a), above, shall have the sole effect of applying Section 3(b)(i) of this Declaration, until such time as a duplicate Declaration is recorded against the enlarged Zoning Lot 2 pursuant to this paragraph.

(c) Declarant shall not apply for any Building Permit for the Subject Property, whether or not pursuant to the Large-Scale Special Permit, until this Declaration and any related waivers executed by Mortgagees or other Parties-in-Interest or other such documents shall have been recorded pursuant to Section 11(a) and (b), as set forth above. Declarant shall promptly deliver to the Commission within ten (10) days from any such submission for recording, a copy of this Declaration and any related waivers executed by Mortgagees or other Parties-in-Interest or other such documents as recorded, together with an affidavit of submission for recording, or in the alternative, a copy of this Declaration and any related waivers executed by Mortgagees or other Parties-in-Interest or other such documents, as recorded in the New York Department of Finance’s Automated City Register Information System (ACRIS) database, whichever is first available. If Declarant fails to so record this Declaration and any related waivers executed by Mortgagees or other Parties-in-Interest or other such documents, then the City may record duplicate originals of this Declaration and any related waivers executed by Mortgagees or other

Parties-in-Interest or other such documents, which shall have the sole effect of applying the provisions of Section 3(b)(i), however, all fees paid or payable for the purpose of recording, whether undertaken by Declarant or by the City, shall be borne by Declarant.

(d) In the event that the Final Approval includes modifications to the Development requiring modifications to this Declaration, Declarants shall prepare a revised declaration incorporating such modifications, which shall be recorded in accordance with Section 11(a) and (b) above. If Declarant fails to prepare a revised declaration and/or fails to so record said modified declaration in accordance Section 11(a) and (b), then the City may record duplicate originals of this Declaration and any related waivers executed by Mortgagees or other Parties-in-Interest or other such documents, which shall have the sole effect of applying the provisions of Section 3(b)(i), however, all fees paid or payable for the purpose of recording, whether undertaken by Declarant or by the City, shall be borne by Declarant. Where Declarant fails to modify this Declaration as required by this Section 11(d), development under the Large Scale Special Permit shall be prohibited.

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

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

(a) if to Declarant:

New York University  
70 Washington Square South  
New York, New York 10012  
Attention: General Counsel

with a copy to:

Bryan Cave LLP  
1290 Avenue of the Americas  
New York, New York 10104-3300  
Attention: Robert S. Davis, Esq.

(b) if to the Commission:

New York City Planning Commission  
22 Reade Street  
New York, New York 10007  
Attention: Chairperson

with a copy to:

the General Counsel of City Planning at the same address

(c) if to a Party in Interest other than Declarant:

at the address provided in writing to the Commission in accordance with this Section 13

(d) if to a Mortgagee:

at the address provided in writing to the Commission in accordance with this Section 13

Declarant, the Commission, any Party in Interest, and any Mortgagee may, by notice provided in accordance with this Section 13, change any name or address for purposes of this Declaration. In order to be deemed effective, any Notice shall be sent or delivered in at least one of the following manners: (i) sent by registered or certified mail, postage pre-paid, return receipt requested, in which case the Notice shall be deemed delivered for all purposes hereunder five days after being actually mailed; (ii) sent by overnight courier service, in which case the Notice shall be deemed delivered for all purposes hereunder on the date the Notice was actually received or was refused; or (iii) delivered by hand, in which case the Notice will be deemed delivered for all purposes hereunder on the date the Notice was actually received. All Notices from the Commission to Declarant shall also be sent to every Mortgagee of whom the Commission has notice, and no Notice shall be deemed properly given to Declarant without such notice to such Mortgagee(s). In the event that there is more than one Declarant at any time, any Notice from the Commission shall be provided to all Declarants of whom the Commission has notice.

#### **14. DEFAULTS AND REMEDIES.**

(a) Declarant acknowledges that the restrictions, covenants, and obligations of this Declaration will protect the value and desirability of the Subject Property, as well as benefit the City. If Declarant fails to perform any of Declarant's obligations under this Declaration, the



City shall have the right, subject to Sections 14.1 and 14.2 below, to enforce this Declaration against Declarant and exercise any administrative, legal, or equitable remedy available to the City, and Declarant hereby consents to same; provided that this Declaration shall not be deemed to diminish Declarant's or any other Party In Interest's right to exercise any and all administrative, legal, or equitable remedies otherwise available to it, and provided further, that the City's rights to enforcement shall be subject to the cure provisions and periods set forth in Section 14.1 below. Declarant also acknowledges that the remedies set forth in this Declaration are not exclusive and that the City and any agency thereof may pursue other remedies not specifically set forth herein including, but not limited to, an injunction compelling Declarant to comply with the terms of this Declaration and a revocation by the City of any certificate of occupancy, temporary or permanent, for any portion of the Large-Scale Development Project on the Subject Property subject to the Large Scale Special Permit, which does not comply with the terms of this Declaration; provide, however, that such right of revocation shall not permit or be construed to permit the revocation of any certificate of occupancy for any use or improvement that exists on the Subject Property as of the date of this Declaration.

(b) Notwithstanding any provision of this Declaration, only Declarant and Declarant's successors and assigns, and the City, acting through the Commission, shall be entitled to enforce or assert any claim arising out of or in connection with this Declaration. Nothing contained herein should be construed or deemed to allow any other person or entity to have any interest in or right of enforcement of any provision of this Declaration or any document or instrument executed or delivered in connection with the Applications.

#### 14.1 **Notice and Cure.**

(a) Except as provided in Sections 4.8(g) and 15.1(a), prior to the City instituting any proceeding to enforce the terms or conditions of this Declaration due to any alleged violation hereof, the City shall give Declarant and all Parties In Interest, that the City has notice of, thirty (30) business days written notice of such alleged violation, during which period Declarant and the Parties In Interest shall have the opportunity to effect a cure of such alleged violation or to demonstrate to the City why the alleged violation has not occurred. If a Mortgagee or Party in Interest performs any obligation or effects any cure Declarant is required

to perform or cure pursuant to this Declaration, such performance or cure shall be deemed performance on behalf of Declarant and shall be accepted by any person or entity benefited hereunder, including CPC and City, as if performed by Declarant. If Declarant or the Parties In Interest commence to effect such cure within such thirty (30) day period (or if cure is not capable of being commenced within such thirty (30) day period, Declarant or the Parties In Interest commence to effect such cure when such commencement is reasonably possible), and thereafter proceed diligently toward the effectuation of such cure, the aforesaid thirty (30) day period (as such may be extended in accordance with the preceding clause) shall be extended for so long as Declarant or the Parties In Interest continue to proceed diligently with the effectuation of such cure. In the event that more than one Declarant exists at any time on the Subject Property, notice shall be provided to all Declarants from whom the City has received notice in accordance with Section 13, and the right to cure shall apply equally to all Declarants.

(b) If after due notice and opportunity to cure as set forth in Section 14.1(a), Declarant or any Party In Interest fails to cure such alleged violations, the City may exercise any and all of its rights, including those delineated in this Section 14 and may disapprove any amendment, modification, or cancellation of this Declaration on the sole grounds that Declarant is in default of any material obligation under this Declaration.

14.2 **Additional Remedies**. Declarant acknowledges that the remedies set forth in this Declaration are not exclusive, and that the City and any agency thereof with an interest herein may pursue other remedies not specifically set forth herein, including, without limitation, the seeking of a mandatory injunction compelling Declarant, its heirs, successors or assigns, to comply with any provision, whether major or minor, of this Declaration.

## 15. **ENFORCEMENT**.

### 15.1. **Denial of Public Access**.

(a) If the Department of City Planning has reason to believe that the use and enjoyment of the Public Access Areas 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 is in violation of the provisions of this Declaration, the City shall

have, after (i) notice to Declarant and (ii) 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.

(b) Notwithstanding the provisions of Section ~~14.1~~15.1(a) above, in the event of a denial of public access in violation of the provisions of this Declaration, the cure period to which Declarant shall be entitled shall be reduced to forty-eight (48) hours from Declarant's receipt of notice thereof. If such denial of access or interference continues beyond such period, the City may thereupon exercise any and all of its rights hereunder, including seeking an injunction.

#### **15.2. Enforcement by City; No Enforcement by Third Parties.**

(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 other than the City and Declarant, shall have any enforceable interest in or right to enforce the provisions of this Declaration.

#### **16. APPLICATIONS.**

(a) Declarant shall include a copy of this Declaration with any application made to the Buildings Department as required for a Building Permit for any portion of the Large-Scale Development Project built pursuant to the Large-Scale Special Permit.

(b) Nothing in this Declaration shall be construed to prevent Declarant or any of Declarant's successors or assigns from making any application of any kind to any governmental agency or department (each an "Agency") in connection with the development of the Subject Property; provided, that Declarant shall include a copy of this Declaration in connection with any application for any such discretionary approval, and provided that nothing in this Section 16(b) shall be construed as superseding the requirements, restrictions, or approvals that may be required under agreements with any other Agency or the City.

**17. AMENDMENT, MODIFICATION AND CANCELLATION.**

(a) This Declaration may be amended, cancelled, or modified only upon approval of the Commission after application by Declarant, and no other approval shall be required from any other public body, private person, or legal entity of any kind, except that the provisions of Section 7.3 shall not be modified so as to diminish or alter the obligations of Declarant thereunder in any respect without the approval of the City Council.

(b) Notwithstanding anything to the contrary contained in Section 17(a) above, any modification or amendment to this Declaration proposed by Declarants and submitted to the Chairperson which is deemed by the Chairperson, in his or her sole discretion, by express written consent, to be a minor amendment or modification of this Declaration, may be administratively approved, and such minor modification and amendment shall not require the approval of the Commission or from any other public body, private person, or legal entity of any kind and, without limitation, any present or future Party-in-Interest.

(c) No development other than the development permitted by the Large-Scale Special Permit as forth in Section 3(a), or the Prior Zoning Development set forth in Section 3(b)(i), shall be permitted on the Subject Property (*i.e.*, the As-of-Right Development set forth in Section 3(b)(ii)), unless (i) the Commission has reviewed and approved of the As-of-Right Development, (ii) Declarant has submitted a Technical Memorandum to City Planning demonstrating that the As-of-Right Development will not result in any greater adverse environmental impacts than have been identified in the FEIS, and (iii) drawings reflecting the proposed As-of-Right Development have been submitted in a form acceptable to the Department and have been incorporated into this Declaration pursuant to Section 17(a) above. In the event that Declarant determines that a PCRE or Mitigation Measure set forth in Section 4 should not apply with respect to the As-of-Right Development, it shall set forth the basis for such determination in the Technical Memorandum submitted in accordance with this Section 17. Upon the acceptance of a Technical Memorandum demonstrating the same, the requirements of this declaration with respect to the PCREs and/or Mitigation Measures discussed in such Technical Memorandum shall not be required for such development. Declarant shall not apply for or accept Building Permits for any As-of-Right Development until the Chairperson certifies

to the Buildings Department that the Commission has approved the plans for the proposed As-of-Right Development, a Technical Memorandum has been submitted to City Planning demonstrating that the proposed As-of-Right Development will not result in any greater adverse environmental impacts than have been identified in the FEIS, and a modification of this Declaration has been approved pursuant to this Section 17 to reflect the plans and modified PCRE's and/or Mitigation Measures, as applicable, for the proposed As-of-Right Development.

(d) Notwithstanding anything to the contrary contained in this Declaration, if all the Final Approvals, as approved or modified by the City Council, given in connection with the Applications are declared invalid or otherwise voided by a final judgment of any court of competent jurisdiction from which no appeal can be taken or for which no appeal has been taken within the applicable statutory period provided for such appeal, then, upon entry of said judgment or the expiration of the applicable statutory period for such appeal, this Declaration shall be cancelled and shall be of no further force or effect and an instrument discharging it may be recorded. Prior to the recordation of such instrument, Declarants shall notify the Chairperson of Declarants' intent to discharge this Declaration and request the Chairperson's approval, which approval shall be limited to insuring that such discharge and termination is in proper form and provides the proper provisions which are not discharged survive such termination. Upon recordation of such instrument, Declarants shall provide a copy thereof to the Commission so certified by the Register's Office. If some of the Approvals given in connection with the Applications are declared invalid, then Declarants may apply for modification, amendment or cancellation of this Declaration in accordance with Section 17(a) or Section 17(b) hereof.

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

**19. APPLICABLE LAW.** This Declaration shall be governed and construed by the laws of the State of New York, without regard to principles of conflicts of law.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned has executed this Declaration as of the date written above.

**NEW YORK UNIVERSITY**

A New York education corporation

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

Name: Martin S. Dorph

Title: Executive Vice President for Finance and Information Technology

**ACKNOWLEDGEMENT**

State of New York        )  
                                  ) ss:  
County of New York     )

On the ~~6th~~ \_\_\_\_\_ day of ~~June~~ \_\_\_\_\_, 2012 before me, the undersigned, a notary public in and for said state, personally appeared Martin S. Dorph, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the entity upon behalf of which the individual acted, executed the instrument.

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

EXHIBIT A

Legal Description of North Block Parcel & South Block Parcel

NORTH BLOCK PARCEL

Zoning Lot 1 (Block 533, Lots 1 and 10)

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

BEGINNING at the intersection of the northerly line of Bleecker Street, 80 feet wide, and the easterly line of LaGuardia Place, width varies;

RUNNING THENCE north  $32^{\circ}25'50''$  east, along said easterly line of LaGuardia Place, a distance of 474.28 feet to a point at the intersection of the said easterly line of LaGuardia Place and the southerly line of West 3rd Street, 70 feet wide;

THENCE south  $57^{\circ}28'19''$  east, along said southerly line of West 3rd Street, a distance of 605.80 feet to a point at the intersection of said southerly line of West 3rd Street and the westerly line of Mercer Street, width varies;

THENCE south  $32^{\circ}25'18''$  west, along said westerly line of Mercer Street, a distance of 476.85 feet to the intersection of said westerly line of Mercer Street and the aforementioned northerly line of Bleecker Street;

THENCE north  $57^{\circ}14'35''$  west, along said northerly line of Bleecker Street, a distance of 605.88 feet to the point or place of BEGINNING.

SOUTH BLOCK PARCEL

Zoning Lot 2 (Block 524, Lot 66)

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

BEGINNING at a point formed by the current intersection of the northerly line of West Houston Street, 125 feet wide, and the westerly line of Mercer Street, width varies;

RUNNING THENCE north  $57^{\circ}21'50''$  west, along said northerly line of West Houston Street, a distance of 439.85 feet to a point;

THENCE north  $32^{\circ}38'10''$  east parallel to Mercer Street more or less, a distance of 197.39 feet to a point;

THENCE north  $09^{\circ}50'42''$  east, a distance of 54.83 feet to a point;

THENCE north  $32^{\circ}38'10''$  east, parallel to Mercer Street more or less, a distance of 130.19 feet to a point on the southerly line of Bleecker Street, 80 feet wide;

THENCE south  $57^{\circ}14'35''$  east, along said southerly line of Bleecker Street, a distance of 459.68 feet to the intersection of said southerly line of Bleecker Street and the aforementioned westerly line of Mercer Street;

THENCE south  $32^{\circ}25'18''$  west, along said westerly line of Mercer Street, a distance of 377.10 feet to the point or place of BEGINNING.



Zoning Lot 3 (Block 524, Lot 9)

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

BEGINNING at the intersection of the southerly line of Bleecker Street, 80 feet wide, and the easterly line of LaGuardia Place, width varies;

RUNNING THENCE south  $57^{\circ}14'35''$  east, along said southerly line of Bleecker Street, a distance of 124.47 feet to a point;

THENCE south  $32^{\circ}38'10''$  west, parallel to LaGuardia Place more or less, a distance of 130.18 feet to a point;

THENCE north  $57^{\circ}21'45''$  west, parallel with Bleecker Street more or less, a distance of 124.00 feet to a point on the aforementioned easterly line of LaGuardia Place;

THENCE north  $32^{\circ}25'50''$  east along said easterly line of LaGuardia Place, a distance of 130.44 feet to the point or place of BEGINNING.

EXHIBIT A-2

Legal Description of the Mercer Street Land

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

BEGINNING at a point formed by the current intersection of the northeasterly line of West Houston Street (125 feet wide) and the current northwesterly line of Mercer Street (100 feet wide);

RUNNING THENCE north  $32^{\circ}25'18''$  west, along said current northwesterly line of Mercer Street, a distance of 377.10 feet to the current intersection of said current northwesterly line of Mercer Street and the southwesterly line of Bleecker Street (80 feet wide);

THENCE south  $57^{\circ}14'35''$  east, along a line forming the southeasterly extension of the current southwesterly line of Bleecker Street, a distance of 39.00 feet to a point;

THENCE south  $32^{\circ}25'18''$  west, along a line parallel with the current northwesterly line of Mercer Street, a distance of 377.10 feet to a point on a line forming the southeasterly extension of the current northeasterly line of West Houston Street;

THENCE north  $57^{\circ}21'50''$  west, along said southeasterly extension of the current northeasterly line of West Houston Street, a distance of 39.00 feet to the point or place of BEGINNING.

EXHIBIT B

Title Company Certification of Parties In Interest

EXHIBIT C  
Development Plans

Order of Drawing Segments:

2	1		
<table border="1"><tr><td data-bbox="1144 1081 1312 1176">Title</td></tr><tr><td data-bbox="1144 1176 1312 1276">No.</td></tr></table>		Title	No.
Title			
No.			

EXHIBIT D

Construction Phasing Plans

Order of Drawing Segments:

2	1		
<table border="1"><tr><td data-bbox="1144 1102 1304 1192">Title</td></tr><tr><td data-bbox="1144 1192 1304 1291">No.</td></tr></table>		Title	No.
Title			
No.			

EXHIBIT E

Letter of Resolution

EXHIBIT F

Form Of Notice Of Substantial Completion

[Letterhead of the Commissioner of Parks & Recreation  
Or Letterhead of the Chairperson of the City Planning Commission, whichever is applicable]

[Date]

**NOTICE OF SUBSTANTIAL COMPLETION**

Re: Block \_\_, Lot \_\_, Manhattan, New York, New York

Dear \_\_\_\_\_:

This letter constitutes the Notice of Substantial Completion of the New Landscape Improvement(s) titled \_\_\_\_\_ pursuant to Section 6 \_\_\_\_ of the Restrictive Declaration of Large Scale General Development made by NYU, dated as of June \_\_\_\_\_, 2012 (the “LSGD Declaration”).

By this notice, the undersigned, for the [Department of Parks and Recreation/Chairperson of the City Planning Commission], confirms that the New Landscape Improvement titled \_\_\_\_\_ (as defined in the LSGD Declaration) has been Substantially Completed (as defined in the LSGD Declaration) in accordance with all requirements of the LSGD Declaration.

Yours very truly,

---

[THIS LETTER SHALL BE MODIFIED AS APPROPRIATE TO THE CERTIFICATION  
BEING ISSUED]

EXHIBIT G

Form Of Notice Of Final Completion

[Letterhead of the Commissioner of Parks & Recreation  
Or Letterhead of the Chairperson of the City Planning Commission, whichever is applicable]

[Date]

**NOTICE OF FINAL COMPLETION**

Re: Block \_\_, Lot \_\_, Manhattan, New York, New York

Dear \_\_\_\_\_:

This letter constitutes the Notice of Final Completion of the New Landscape Improvement(s) titled \_\_\_\_\_ pursuant to Section 6 \_\_\_\_ of the Restrictive Declaration of Large Scale General Development made by NYU, dated as of June \_\_\_\_, 2012 (the “LSGD Declaration”).

By this notice, the undersigned, for the [Department of Parks and Recreation/Chairperson of the City Planning Commission], confirms that New Landscape Improvement titled \_\_\_\_\_ (as defined in the LSGD Declaration) has been Finally Completed (as defined in the LSGD Declaration) in accordance with all requirements of the LSGD Declaration.

Yours very truly,

---

[THIS LETTER SHALL BE MODIFIED AS APPROPRIATE TO THE CERTIFICATION  
BEING ISSUED]



## EXHIBIT H

### Operating Rules for Public Access Areas

The Public Access Areas are privately-owned spaces required to be open for use and enjoyment by the general public for recreation. NYU shall not impose or apply any rules or restrictions upon public use of the Public Access Areas which vary from or are more restrictive than those set forth below, except as authorized pursuant to a modification to this Exhibit F made pursuant to Section 7.4.

#### General Guidelines

- All Public Access Area users should be respectful of others and mindful of how activity and noise affects other garden users and residents in immediately adjacent apartment buildings.
- All Public Access Area users are to heed directions or requests made by authorized building management or NYU Public Safety personnel.
- New York City laws and ordinances are in full force and effect at all times.

#### General Prohibitions

For the safety and enjoyment of everyone, the following types of behavior are prohibited in the Public Access Areas:

- Sleeping, loitering, nudity or disorderly conduct.
- Smoking, drinking or vending of alcoholic beverages
- Open flames ~~or~~, barbequing or cooking.
- Use or possession of flammable or combustible objects or materials, explosives, firearms or other lethal weapons.
- Shopping carts, obstructions or unattended packages.
- ~~Loud~~ Playing of loud music including musical instruments, radios, stereos, or use of amplification equipment.
- Camping or the erection of tents or other structures; sleeping bags, tarps, or other covering on the property.
- Lying down on the ground, walkways, or benches that unreasonably interferes with the use of benches and walkways by others.

- ~~Lying down on the ground, walkways, or benches; storage~~ Storage or placement of personal property ~~in~~ on the ground, benches, or sitting areas ~~or walkways~~ that unreasonably ~~interfere~~ interferes with the use of ~~benches and walkways~~ such areas by others.
- Panhandling or entertaining for the purposes of solicitation and/or publicity.
- Vending or the commercial or non-commercial distribution of products and/or material (other than non-commercial printed or similar expressive material).
- ~~Large assemblies~~ Assemblies or group gatherings of more than 20 persons, including musical, theatrical or other performances, except by prior permit.
- Defacement or destruction of property ~~and~~, littering, posting or affixing of handbills, flyers, posters or notices.
- Securing bikes to objects other than bike racks.
- Ball playing against building walls, public artwork or landscape features; no tree climbing.
- Driving, stopping, standing or parking a motor vehicle except as required for persons with disabilities or for performing security, maintenance or repair work.
- Any activity that obstructs pedestrian traffic or is detrimental or injurious to public safety.

In addition:

- Pets must be kept on a leash at all times and are not permitted on the grass. Owners are expected to clean up after their pets.
- Skateboards, bikes, rollerblades, and roller skates are permitted in designated areas only.

### Playground Prohibitions

- Adults who are not accompanied by or supervising children are prohibited.



~~EXHIBIT G~~  
~~Form Of Notice Of Substantial Completion~~

~~{Letterhead of the Commissioner of Parks & Recreation  
Or Letterhead of the Chairperson of the City Planning Commission, (whichever is applicable)}~~

~~{Date}~~

~~NOTICE OF SUBSTANTIAL COMPLETION~~

~~Re: Block \_\_, Lot \_\_, Manhattan, New York, New York~~

~~Dear \_\_\_\_\_:~~

~~This letter constitutes the Notice of Substantial Completion of the New Landscape Improvement(s) titled \_\_\_\_\_ pursuant to Section 6\_\_\_ of the Restrictive Declaration of Large Scale General Development made by NYU, dated as of June \_\_\_\_\_, 2012 (the “LSGD Declaration”).~~

~~By this notice, the undersigned, for the [Department of Parks and Recreation/Chairperson of the City Planning Commission], confirms that the New Landscape Improvement titled \_\_\_\_\_ (as defined in the LSGD Declaration) has been Substantially Completed (as defined in the LSGD Declaration) in accordance with all requirements of the LSGD Declaration.~~

~~Yours very truly,~~

\_\_\_\_\_

~~{THIS LETTER SHALL BE MODIFIED AS APPROPRIATE TO THE CERTIFICATION  
BEING ISSUED}~~

**EXHIBIT H**

**Form Of Notice Of Final Completion**

~~{Letterhead of the Commissioner of Parks & Recreation  
Or Letterhead of the Chairperson of the City Planning Commission, (whichever is applicable)}~~

~~{Date}~~

**~~NOTICE OF FINAL COMPLETION~~**

~~Re: Block \_\_, Lot \_\_, Manhattan, New York, New York~~

~~Dear \_\_\_\_\_:~~

~~This letter constitutes the Notice of Final Completion of the New Landscape Improvement(s) titled \_\_\_\_\_ pursuant to Section 6\_\_\_ of the Restrictive Declaration of Large Scale General Development made by NYU, dated as of June \_\_\_\_\_, 2012 (the “LSGD Declaration”).~~

~~By this notice, the undersigned, for the [Department of Parks and Recreation/Chairperson of the City Planning Commission], confirms that New Landscape Improvement titled \_\_\_\_\_ (as defined in the LSGD Declaration) has been Finally Completed (as defined in the LSGD Declaration) in accordance with all requirements of the LSGD Declaration.~~

~~Yours very truly,~~

---

~~{THIS LETTER SHALL BE MODIFIED AS APPROPRIATE TO THE CERTIFICATION  
BEING ISSUED}~~

## EXHIBIT I

### Maintenance and Repair of Public Access Areas

Declarant shall be responsible for the following maintenance and repair activities.

1. Cleaning.

(a) Dirt, litter and obstructions shall be removed as needed and trash and leaves collected and removed as needed so as to maintain the Public Access Area in a clean, neat and good condition.

(b) All walkways, sidewalks and all other improvements and facilities installed in the Public Access Area shall be routinely cleaned and maintained so as to keep such improvements and facilities in a clean, neat and good condition.

(c) Graffiti shall be regularly and promptly painted over or removed as appropriate to the nature of the surface.

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

(e) Branches and trees damaged or felled by winds, ice, vandalism, or by any other reasons whatsoever, shall be promptly removed.

2. Snow Removal. Snow and ice shall be removed from all walkways so as not to interfere with safe passage in a prompt fashion, and from all other paved surfaces used for pedestrian movement within a reasonable time period and in any event within twenty-four (24) hours after each snowfall or accumulation of ice.

3. Landscape Maintenance. A maintenance program for the planted portions of the Public Access Area shall be implemented consisting of a "Spring Start-up Period" program, a "Season Closing Period" program, and a continuing maintenance program through the "Growing Season."

(a) Spring Start-up Period. The Spring Start-up Period shall commence on or about March 1st and terminate on or about the end of the second week of April of each calendar year. Declarant shall complete the following work annually during the Spring Start-up Period:

(i) Remove any winter protectives from trees, shrubs and other planting materials.

- (ii) Remove all landscape debris including leaves and dead branches.
- (iii) Prune and trim trees as necessary to maintain natural form and remove unsightly branches.
- (iv) Remove or destroy any weeds growing between paving blocks, pavement, cobbled and concrete areas.
- (v) Apply nitrogen rich fertilizer to trees, shrubs, lawn areas and plants as appropriate.
- (vi) Remove any sand deposited as a result of winter sandings.
- (vii) Replace any plant material or trees that are dead, diseased and/or otherwise unhealthy with healthy specimens of substantially equal type and reasonable size.
- (viii) Reseed grass areas as necessary.

(b) Season Closing Period. The Season Closing Period shall begin on or about October 15th and shall terminate on or about November 30th of each calendar year. Declarant shall undertake and complete the following work annually during the Season Closing Period:

- (i) Rake and collect leaves.
- (ii) Wrap trees, shrubs and other plant material as necessary to ensure adequate winter protection.
- (iii) Apply commercially available nitrogen-rich fertilizer to all lawn areas.
- (iv) Reseed lawn areas as needed.

(c) Growing Season. The Growing Season shall commence with the end of the Spring Start-up Period and shall terminate at the start of the Season Closing Period. Declarant shall undertake and carry out the following work during the Growing Season:

- (i) Inspect trees and plantings on a regular basis and spray when necessary.
- (ii) Water all trees, shrubs and other plantings as necessary to maintain in a healthy condition. In extended periods of drought, i.e. little precipitation/high temperatures for more than one week, ground cover, trees, shrubs and other plantings shall be thoroughly watered, subject to any City or State regulations governing water usage.

(iii) Mow lawn areas on a bi-weekly basis and reseed as needed.

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

4. Repairs and Replacement. Repair and replacement of all facilities within the Public Access Area shall be undertaken by or at the direction of Declarant as needed to maintain such facilities in good order and working condition. Declarant shall exercise due diligence in commencing the repair or replacement of same as promptly as possible and shall complete the same within a reasonably expeditious time after commencement. All such repairs and replacements shall be performed so as to be in substantial conformance with the Landscape Plans identified in Section 6(a) of the LSGD Declaration and annexed thereto as part of Exhibit C. Repairs shall include, but not be limited to, the following, as applicable to the facilities in the Public Access Area:

(a) Benches or Other Seating. Undertake all maintenance, including replacement of any broken or missing slats and painting, as necessary.

(b) Walls, Barriers and/or Fencing and Gates. Any broken or materially cracked walls, barriers and/or fencing and gates shall be repaired or removed and replaced with materials and designs matching the existing structures to the extent feasible.

(c) Paving. All paved surfaces shall be maintained so as to be safe and attractive. If replacements are needed, any replacement material shall match the existing pavers to the extent feasible.

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

(e) Lighting. All lighting elements shall be maintained in a first class condition and will be maintained and/or replaced as necessary.

(f) Plant Materials and Trees. Plant materials and trees that are dead, diseased and/or otherwise unhealthy, as well as annual and biennial plants, shall be replaced with healthy specimens of substantially equal type and of reasonable size as necessary.

(g) Construction Defects & Hazardous Conditions. Declarant shall periodically inspect the Public Access Area for construction defects and hazardous conditions, shall promptly

repair or replace any portion or feature of the Public Access Area that exhibits such defects or hazardous conditions, and shall institute appropriate measures to protect the public from harm, including but not limited to the erection of warning signs and temporary barriers, during the period of repair or replacement work.

(h) Artwork. Any artwork elements shall be maintained in a first class condition and all vandalized or damaged signage shall be promptly cleaned or replaced with new signage to match other installed signs.

(i) Water Features. Any water features shall be maintained in a good, clean condition and shall be operable beginning on or about May 15th to on or about September 15th.