

CITY OF NEW YORK

**MANHATTAN COMMUNITY BOARD FOUR**

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**Burt Lazarin**  
Chair

**Jesse Bodine**  
District Manager

March 15, 2018

Maria Torres-Springer  
Commissioner  
NYC Department of Housing Preservation & Development  
100 Gold Street  
New York, NY 10038

**Re: DEP (705 10th Avenue ) and MTA (806 9th Avenue)  
Affordable Housing Sites**

Dear Commissioner Torres-Springer,

On February 14, 2018, the Clinton/Hell's Kitchen Land Use Committee was presented with an update by the Department of Housing and Preservation (HPD) on the forthcoming Request For Proposal (RFP) for two future affordable housing development projects ("Projects") on two publicly-owned parcels — the Metropolitan Transportation Authority site at 806 Ninth Avenue between West 53rd and West 54th Streets ("MTA Site") and the Department of Environmental Protection site at 705 Tenth Avenue between West 48th and West 49th Streets ("DEP Site") — which the City committed to develop as affordable housing as part of the Western Rail Yards Points of Agreement (WRY POA) on December 10, 2009.

On March 7, 2018, following the counsel of its Clinton/Hell's Kitchen Land Use Committee, Manhattan Community Board 4 (MCB4) by 35 in favor, 0 opposed, 0 abstaining, and 0 present but not eligible, voted that the recommendations in this letter and the attached Power Point Presentation (Attachment A) be included with the RFP in order to inform responding applicants of the community's and the Board's requirements for developing these Projects.

**MCB4 RECOMMENDATIONS**

Through MCB4's substantial engagement with the community and sustained consultation with HPD, the following recommendations have been developed. They must be implemented to insure optimal development on both the MTA and the DEP Sites.

## **1. One Developer**

There should be one developer for both Sites.

## **2. No Inclusionary Housing Bonus**

A restrictive declaration must be filed stating that the site cannot generate an inclusionary housing bonus or be used to satisfy the Special Clinton District Harassment Cure requirements pursuant to ZR 96-110.

## **3. Height Restrictions**

*DEP Site:* The maximum height is 77 feet.

*MTA Site:* The maximum height along the Ninth Avenue frontage is 85 feet. Along West 54th Street, beginning 50 feet east of Ninth Avenue and through the mid block and backing against the existing MTA Control Center, the maximum height is 99 feet.

## **4. Income Bands**

MCB4 requests that a restrictive deck establish that HPD Financing for both Projects will follow HPD's M<sup>2</sup> (Mixed-Middle-Income Program) to achieve MCB4's required income band mix: 20% of units will be affordable at 80% Area Median Income (AMI); 40% will be affordable at 125% AMI, and 40% will be affordable at 165% AMI. (HPD's M<sup>2</sup> Program funds the new construction of multi-family rental housing affordable to low-, moderate-, and middle-income families up to 165% of Area Median Income.)

## **5. Size and Number of Units**

Both Projects combined should generate an estimated total of 267 permanently affordable units. At least 50% of the residential units in both Projects must contain two bedrooms or more.

*For the DEP Site,* MCB4's Affordable Housing Plan preliminary analysis proposed the following breakdown: 38 units at 80% AMI; 46 units at 125%; and, 59 units at 165%.

*For the MTA Site,* the Affordable Housing Plan proposed: 38 units at 80% AMI; 40 units at 125%; and 46 units at 165%.

## **6. Permanent Affordability**

All units in both Projects must be permanently affordable.

## **7. No Commercial Space at the DEP Site**

No retail or commercial use should be allowed on either the West 48th Street or the West 49th Street portion of the DEP Site. Twelve liquor-serving establishments already exist within 75 feet of the Site. Any additional establishment would exacerbate the problems of bars and clubs on residential blocks. And eliminating the need for commercial space on the ground level, hence reducing the ground floor-to-floor height, allows for more affordable units in the building.

## **8. Public Restroom and Parks Support Space on DEP Site**

The block front on Tenth Avenue will be developed as public open space ("Open Space") with the function of a public park. (The Open Space will not be mapped as a public park due to DEP's

access requirements for water tunnel maintenance, but will be maintained by the New York City Parks Department.) Both Hell's Kitchen Park, diagonally southeast of the DEP Site, and the future Open Space lack the basic amenity of a comfort station. An ADA accessible public restroom must be included in the affordable housing development and accessible from the Open Space.

The building must also have a small support space, including a janitor's sink and electricity, for NYC Parks Department staff. It will be accessible from the Open Space. Parks or open spaces with comfort stations should have fixed post staff to address constituents' concerns, provide security, and perform routine maintenance.

### **9. Supermarket Instead of Office Space on MTA Site**

Two decades ago, Ninth Avenue had three supermarkets between West 43rd and West 54th Streets. Today, there are none. With its large enough footprint, this publicly owned site is the district's sole opportunity for a supermarket which could serve the Ninth Avenue core of the Hell's Kitchen neighborhood. Allowing MTA office space in the development precludes that possibility. MCB4 will continue to work with the MTA and HPD to relieve the Project of burden to create 30,000 square feet of MTA office space.

### **10. No Garage on MTA Site**

The site has been used by the MTA for surface parking for its employees for nearly two decades without any permit or Certificate of Occupancy. The MTA request for a garage for 15 MTA parking spaces for the site must be reconsidered. The Board notes that there is already a garage in the MTA building (directly across the street from 351 West 54th) with a "24-Hour, Active Driveway."

### **11. Design Recommendations**

Both the MTA and DEP sites are in the Clinton Special District (CSD) in the historic Hell's Kitchen neighborhood. The majority of the buildings in the CSD are tenements, built between 1880 and 1920, often in groupings with some design variations, with facades comprised of brick and masonry. In keeping with the context of the district, the facades of the proposed buildings on the DEP and the MTA Sites should include predominantly brick and masonry with punched windows and avoid glass and panel systems.

*MTA Site:* The building at the MTA site should have landscaped tenant open space at the roof and the setback levels.

*DEP Site:* The building on the DEP Site should have windows facing north, south, and east. On the east, the building should relate to the Open Space but also provide privacy for ground floor units. The windows facing the Open Space should be noise attenuating. Balconies are not recommended.

Both ends of the building, on West 48th and West 49th Streets, should be enlivened by street trees and substantial tree beds. And the building at the DEP site should have landscaped tenant open space at the roof and the setback levels.

## **12. Feral Cats, DEP Site**

A small population of feral cats lives on the rail cut on West 48th Street. The cats are cared for by a coalition of volunteers from the New York City Feral Cat Initiative, a program overseen by the Mayor's Alliance for NYC Animals. The volunteers trap, neuter, vaccinate, and return the cats to their territory of origin (TNR (Trap, Neuter, Return) Program). Before construction begins on platforming over the rail cut at the DEP Site, HPD must coordinate with the NYC Feral Cat Initiative to safely remove the cats.

The Board would like both Projects to have a pet-friendly policy.

## **13. Construction Task Force**

MCB4 will form a Task Force to resolve complaints or issues arising from the construction of the buildings. The Task Force will include representatives from the local block association, business owners, the developer, City Councilmember, and MCB4.

## **BACKGROUND**

The MTA Site, located at 806 Ninth Avenue between West 53rd Street and West 54th Street, was formerly a bus depot built in 1906. It was demolished in 1996. The site is currently a vacant lot.

The DEP site, at 705 Tenth Avenue, between West 48th Street and West 49th Street, is a Third Water Tunnel Access Shaft site. As of October 2016, the site has been vacated. DEP is now working with the City to allow for the development of affordable housing by HPD and public open space to be designed and maintained by the New York City Department of Parks and Recreation on the site.

Both sites are located within the Special Clinton District — a special district created to preserve and strengthen the residential character of a community bordering Midtown, maintain a broad mix of incomes, and insure the community is not adversely affected by new development. The community and MCB4 has long worked toward the goal of preserving affordability through restrictions on residential demolitions as well as planning for the development of new affordable units.

## **Western Rail Yards Points of Agreement**

Executed in 2009, the Western Railyards Points of Agreement (WRY POA) specifically outline the MTA and DEP sites as affordable housing commitments from the City. The WRY POA stated that HPD would issue Requests for Proposals (RFPs) for the development of both sites. And such RFPs would be reviewed by MCB4 before being released (see Attachment B)

## **ULURP**

As part of the development process, both sites went through the Uniform Land Use Review Process (ULURP) with the New York City Planning Commission. In its July 2009 letter to the Department of City Planning, MCB4 took a number of positions on ULURP Nos. 090422HAM, N090429ZRM, 090423HAM and 090430ZMM. (Attachment C)

## **MCB4 Affordable Housing Plan**

The development of both sites was contingent upon Related's closing title on the Western Railyards, which would allow the MTA site to be transferred to HPD. The site transferred on October 13, 2016. At that point, MCB4 began requesting that an RFP be issued for the two sites.

In 2015, MCB4 released an Affordable Housing Plan, which outlines the development of affordable housing units within our district. That Plan includes both the MTA and DEP sites. Under the plan, the proposed AMI distribution was consistent with the 2009 MCB4 letter regarding the ULURP.

## CONCLUSION

HPD plans to release the RFP this month (March 2018) and to begin receiving submissions this June. Proposals will be selected in the winter of 2018/2019.

MCB4 thanks HPD for its long and productive engagement with MCB4 on these important affordable housing developments. We look forward to working with HPD and with the developer to ensure that these Projects honor the commitments made in the Western Rail Yards Points of Agreement.

Sincerely,



Burt Lazarin  
Chair  
Manhattan Community Board 4



Jean-Daniel Noland  
Chair  
Clinton/Hell's Kitchen Land Use Committee

Cc: Hon. Jerry Nadler, U.S. Congress  
Hon. Brad Hoylman, New York State Senate  
Hon. Gale A. Brewer, Manhattan Borough President  
Hon. Richard Gottfried, New York State Assembly  
Hon. Linda Rosenthal, New York State Assembly  
Hon. Corey Johnson, Speaker, New York City Council  
Hon. Helen Rosenthal, City Council

### Enclosures:

Attachment A: Power Point Presentation

Attachment B: Western Railyards Points of Agreement dated December 10, 2009

Attachment C: Letter to Commissioner Burden, dated July 27, 2009

ATTACHMENT A

POWER POINT PRESENTATION

# MTA & DEP Sites

806 9<sup>th</sup> Avenue & 705 10<sup>th</sup> Avenue

Permanent Affordable Housing & Open Space



Manhattan Community Board 4

# Western Rail Yards Points of Agreement

## **POINTS OF AGREEMENT**

**Western Rail Yard Rezoning  
December 10, 2009**

### **3. AFFORDABLE HOUSING OFF-SITE COMMITMENTS**

(a) The Department of Housing Preservation and Development ("HPD") commits to issuing Requests for Proposals ("RFPs") for the development of affordable housing on the City-owned sites at West 54<sup>th</sup> Street and 9<sup>th</sup> Avenue, which is under the leasehold control of the Metropolitan Transportation Authority ("MTA"), and West 48<sup>th</sup> Street and 10<sup>th</sup> Avenue, currently occupied by the Department of Environmental Protection ("DEP") in connection with the construction of Water Tunnel No. 3. The City reiterates its commitment to propose, and Council Member Quinn reiterates her commitment to support, the provision in the City capital budget of the sum of \$40 million to construct or otherwise create new affordable housing units off-site.

HPD's RFPs will contain the following requirements:

- (i) A height cap restriction that the local Council Member and Community Board 4 ("CB4") understand will result in the creation of an estimated 267 units. Without the height cap restrictions, these sites would generate 312 units. The height on the DEP site will not exceed 77 feet. The height on the MTA site will not exceed 85 feet on 9<sup>th</sup> Avenue, and 99 feet on the midblock;
  - (ii) An AMI mix of 165% or under;
  - (iii) 50% two or more bedroom units; and,
  - (iv) Permanent affordability.
- (b) HPD will share the program overview with CB4 before releasing the RFPs for the off-site housing developments.
- (c) The Administration agrees that the MTA and DEP sites will not generate an Inclusionary Zoning bonus under NYC Zoning Resolution Section 23-90, and

## Requirements for RFP

- Height cap of 77 feet for the DEP site and 85 feet on 9<sup>th</sup> Avenue and 99 feet on the midblock for the MTA site
- 267 permanently affordable units
- An AMI mix of 165% or under
- 50% two or more bedroom units

## Process

- HPD to share program overview with MCB4 before releasing RFPs



# MCB4 Revised Requests—June 2017

## MTA Site

### Height, Bulk, and Use

- Setting a height limit of 85 feet along the 9<sup>th</sup> Avenue frontage and of 99 feet on West 54<sup>th</sup> Street, beginning 50 feet east of 9<sup>th</sup> Avenue and through the midblock backing against the existing MTA Control Center.

### Affordability Bands

- A restrictive declaration that 20% of units will be affordable at 80% AMI; 40% will be affordable at 125% AMI, and 40% will be affordable at 165% AMI
- At least 50% of the residential units contain two bedrooms or more

### MTA Use

- The elimination of the 30,000 square feet reserved for the MTA office/training space
- The elimination the 15 MTA parking spaces planned for the site
- The RFPs to select a developer for this site must be developed in consultation with MCB4

### Other Considerations

- A restrictive declaration that the site cannot generate an Inclusionary Housing bonus or be used to satisfy the SCD District Harassment Cure requirements pursuant to ZR § 96-110

# MCB4 Revised Requests—June 2017

## DEP Site

### **Height, Bulk, and Use**

- Setting the height limit for the site at 77 feet
- No retail and/or commercial use allowed on the West 49<sup>th</sup> Street portion of the DEP site, as such an addition would exacerbate the problems of bars and clubs on residential blocks

### **Affordability Bands**

- A restrictive declaration that 20% of units will be affordable at 80% AMI; 40% will be affordable at 125% AMI, and 40% will be affordable at 165% AMI
- At least 50% of the residential units contain two bedrooms or more

### **Relationship to DEP/Parks Open Space**

- A permanent easement for unobstructed light and air from the DEP water access tunnel site to the east
- Comfort stations for public use in conjunction with the DEP open space must be included in the affordable housing development
- Parks Department has agreed to a landscape architect to design the open space

### **Other Considerations**

- The RFPs to select a developer for this site must be developed in consultation with MCB4
- A restrictive declaration that the site cannot generate an Inclusionary Housing bonus or be used to satisfy the SCD District Harassment Cure requirements pursuant to ZR § 96-110

# MTA Site – 806 9<sup>th</sup> Avenue



 Residential

# MTA Site – 806 9<sup>th</sup> Avenue



# DEP Site – 705 10<sup>th</sup> Avenue



- Residential
- Open Space

# DEP Site – 705 10<sup>th</sup> Avenue



View from 10<sup>th</sup> Avenue facing west

# MCB4 Design Requirements – MTA Site

## March 7, 2018

### Building Design & Program

- Height not to exceed 85 feet on 9<sup>th</sup> Avenue and 99 feet in the midblock (100 feet east of 9<sup>th</sup>)
- Façade to be predominantly brick and masonry with punched windows
- Architecture should relate to surrounding context of 4 to 6 story brick and masonry tenements
- Landscaped tenant open space to be developed at roof and setback levels
- Commercial space to be a supermarket for the community
- MCB4 will continue to work with MTA to relieve project of burden to create 30,000 square feet of MTA office space

# Neighborhood Context – MTA Site





# MCB4 Design Requirements – DEP Site

## March 7, 2018

### Building Design & Program

- Height not to exceed 77 feet
- Façade to include predominantly brick and masonry with punched windows
- Architecture should relate to surrounding context of 4 and 5 story brick and masonry tenements
- Building to have windows facing south, north, and east
- No commercial space as per zoning
- HPD design requirements be modified to create both a lower ground floor and slightly lower floor to floor heights to create another floor within height limit
- With an additional floor, the unit count can be increased
- Landscaped tenant open space to be developed at roof and setback levels

# MCB4 Design Requirements – DEP Site

## March 7, 2018

### Building's Relation to Open Space

- Public open space to include an ADA Accessible public restroom and support space for Park staff
- Building design to relate to open space on 10<sup>th</sup> Avenue but also provide privacy to ground floor apartments along east façade facing open space

# Neighborhood Context – DEP Site



# MCB4 Unit Affordability and Size Requests

## MTA & DEP Sites

### AMI Distribution

| AMI      | Percent |
|----------|---------|
| 80% AMI  | 20%     |
| 125% AMI | 40%     |
| 165% AMI | 40%     |

### Affordability Mix

- Production of between 200 and 230 permanently affordable apartments
- AMI mix of 80 %, 125% & 165% with no income eligibility gaps
- The HPD M<sup>2</sup> program funding be used to achieve community desired AMI mix

### Apartment Distribution

- 50% of the units to be two or more bedroom units

### WRYP OA Commitments

- Neither site to generate an Inclusionary Housing bonus
- Neither site to satisfy a Cure for Harassment

# Appendix

## MCB4 Documents Pertaining to MTA & DEP Sites

- [Western Rail Yards Points of Agreement. \*December 10, 2009\*](#)
- [MCB4 Letter re: ULURP Nos. 090422HAM, N090429ZRM, 090423HAM and 090430ZMM. \*July 27, 2009.\*](#)
- [MCB4 Letter re: Affordable Housing RFPs. \*October 7, 2015.\*](#)
- [MCB4 Letter re: Affordable Housing RFPs. \*February 8, 2017.\*](#)
- [MCB4 Letter re: Affordable Housing RFPs. \*June 7, 2017.\*](#)

ATTACHMENT B

WESTERN RAIL YARDS  
POINTS OF AGREEMENT



THE CITY OF NEW YORK  
OFFICE OF THE MAYOR  
NEW YORK, N.Y. 10007

December 10, 2009

Honorable Christine Quinn  
Speaker  
New York City Council  
City Hall  
New York, N.Y. 10007

Re: Western Rail Yard Rezoning Plan- City Council ULURP Actions

Dear Speaker Quinn:

Please find attached to this letter a "Points of Agreement" reflecting recent discussions among the City Council, the Administration and the Related Companies, representing the interest of RGWRY LLC, regarding the City Council's review of the Western Rail Yard Rezoning, a project which encompasses both the rezoning of the Western Rail Yard site itself as well as the provision of off-site affordable housing at two locations.

In addition to items which reflect modifications made by the City Council with respect to the ULURP actions and the associated restrictive declaration, a number of the items set forth in the "Points of Agreement" reflect commitments to future action by the Administration, while others reflect commitments to future action by the Related Companies. The Administration and the Related Companies are each providing you with this letter in acknowledgment of their respective commitments.

With respect to certain of the items described in the "Points of Agreement", implementation is subject to further review under applicable procedures, including land use and environmental review, and the receipt of additional approvals. In other cases, implementation is contingent upon the availability of funding and financing support or determinations by State or federal agencies. In all such cases, the Administration and the Related Companies, with respect to their respective commitments, will work diligently with your cooperation to achieve the goals stated in this "Points of Agreement".

We look forward to continuing to work with you and your colleagues as this project progresses towards the transfer of the Western Rail Yard site from the MTA to the Related Companies, and implementation of all the items in the "Points of Agreement" associated therewith.

Sincerely,

Handwritten signature of Robert C. Lieber.

Robert C. Lieber for the City of New York  
(with respect to Points of Agreement  
Sections: 1, 3 (a) – (f), 4 (b), 6 (c) & (d),  
8, and 10)

Handwritten signature of Jay Cross.

Jay Cross for RGWRY LLC  
(with respect to Points of Agreement  
Sections: 2, 3 (g) & (h), 4 (a) & (b), 5,  
(a) & (b), and 7)

**POINTS OF AGREEMENT**  
**Western Rail Yard Rezoning**  
**December 10, 2009**

**I. ANTI-DEMOLITION COMMITMENTS**

- (a) Anti-demolition Language: The Administration and the City Council recognize that with the construction of the Number 7 Line Subway underway and scheduled for completion by 2014, and completion of the Hudson Yards Park and Boulevard, scheduled for completion by 2014, the conditions will be in place for the substantial development forecasted in the 2004 Hudson Yards FGEIS and the 2005 West Chelsea FEIS to occur. The Administration and the City Council acknowledge the community's concerns that the growth forecasted for the Hudson Yards and adjacent areas, should it occur, could result in development pressures that may affect tenement housing that has historically provided an affordable housing resource for residents. To address these concerns, additional measures are warranted to facilitate the preservation of existing housing stock. For this purpose, the Administration agrees to support a zoning text amendment for Subareas D4 and 5 of the Special Hudson Yards District, Preservation Area P-2 of the Special Garment Center, and the Special West Chelsea District ( the " Zoning Text Amendment"), in the form annexed hereto as Exhibit I.
- (b) Referral of Zoning Text Amendment: The Department of City Planning ("DCP") commits to refer the Zoning Text Amendment for public review by no later than July 1, 2010. Council Member Quinn agrees to support the Zoning Text Amendment in the form annexed hereto as Exhibit I.

**2. AFFORDABLE HOUSING COMMITMENTS: WESTERN RAIL YARD ("WRY") AND EASTERN RAIL YARD ("ERY")**

- (a) Related commits to build a minimum of 265 permanently affordable rental units ("Affordable Units") on the WRY and an additional minimum of 166 Affordable Units on either the WRY or ERY, in either rental or condominium buildings, for a total of 431 Affordable Units combined, contingent upon:
- (i) Availability of a tax abatement program comparable to existing tax abatement programs for either rental units or condominiums, including 20 year abatement for condominium with 20% Affordable Units;
  - (ii) Availability of tax-exempt bonds to fully finance the construction of the 80/20 rentals that Related chooses to develop to fulfill its commitment; and,
  - (iii) At the expiration of the initial real estate tax program, WRY & ERY Affordable Units will convert to permanent affordability to households at an average income of up to 90% AMI, not to exceed 125% AMI, provided that there are incentives, programs, exemptions, credits or abatements available



that will reduce the real estate taxes for the 80/20 buildings to a level consistent with real estate taxes paid prior to any phase out of the real estate tax abatement in the initial 421-a program for the building. No restrictions shall apply to the market rate units as rentals or as a conversion to condominiums after the initial 421-a real estate tax exemption period.

- (b) With respect to the distribution of Affordable Units within any 80/20 rental component of a building, Related commits to the following:
  - (i) A maximum of 50% Affordable Units on any floor; and,
  - (ii) At least one Affordable Unit on 80% of the floors included within the 80/20 rental components (assuming there are enough Affordable Units planned for at least one per floor, otherwise one per floor for as many floors as there are Affordable Units).

### **3. AFFORDABLE HOUSING OFF-SITE COMMITMENTS**

- (a) The Department of Housing Preservation and Development (“HPD”) commits to issuing Requests for Proposals (“RFPs”) for the development of affordable housing on the City-owned sites at West 54<sup>th</sup> Street and 9<sup>th</sup> Avenue, which is under the leasehold control of the Metropolitan Transportation Authority (“MTA”), and West 48<sup>th</sup> Street and 10<sup>th</sup> Avenue, currently occupied by the Department of Environmental Protection (“DEP”) in connection with the construction of Water Tunnel No. 3. The City reiterates its commitment to propose, and Council Member Quinn reiterates her commitment to support, the provision in the City capital budget of the sum of \$40 million to construct or otherwise create new affordable housing units off-site.

HPD’s RFPs will contain the following requirements:

- (i) A height cap restriction that the local Council Member and Community Board 4 (“CB4”) understand will result in the creation of an estimated 267 units. Without the height cap restrictions, these sites would generate 312 units. The height on the DEP site will not exceed 77 feet. The height on the MTA site will not exceed 85 feet on 9<sup>th</sup> Avenue, and 99 feet on the midblock;
  - (ii) An AMI mix of 165% or under;
  - (iii) 50% two or more bedroom units; and,
  - (iv) Permanent affordability.
- (b) HPD will share the program overview with CB4 before releasing the RFPs for the off-site housing developments.
  - (c) The Administration agrees that the MTA and DEP sites will not generate an Inclusionary Zoning bonus under NYC Zoning Resolution Section 23-90, and

acknowledges that they cannot serve as the Cure for Anti-Harassment under NYC Zoning Resolution Section 96-110.

- (d) The Administration, in the attached letter from Deputy Mayor Edward Skyler dated December 10, 2009 and annexed hereto as Exhibit 2, commits to make a best effort to vacate the Department of Sanitation (“DSNY”) facilities located at 136-140 West 20<sup>th</sup> Street with a goal of completing the relocation by December 31, 2011. If DSNY is relocated from its West 20<sup>th</sup> Street facilities, HPD commits to develop the site for affordable housing at a range of incomes up to 165% AMI. In the event that DSNY is not relocated, the local Council Member and CB4 acknowledge that HPD will not be expected to make up for those units anywhere else.
- (e) SRO Preservation: HPD will work with the local Council Member and CB4 to preserve up to 150 units of privately owned SRO housing. The Council Member and CB4 acknowledge the difficulties inherent in and lengthy timeframe needed to accomplish these private acquisitions. To the extent that such acquisition(s) can be negotiated, HPD will use its programs to acquire and rehabilitate these SRO units.
- (f) HPD commits to providing CB4 with quarterly updates on the affordable housing developments that were committed as a part of the Hudson Yards and West Chelsea rezonings.
- (g) Related commits that it will seek two extensions of federal rental subsidy to its existing Mark Up to Market Project Based Section 8 HUD Contracts (or a comparable successor program) for a period of no less than 40 years from City Council approval of the WRY rezoning, for its properties known as Terrific Tenements (at 525 West 47<sup>th</sup> Street and 425 West 48<sup>th</sup> Street) and the French Apartments (at 330 West 30<sup>th</sup> Street). Related will apply for the initial extension no later than March 31, 2010. The current maximum extension is a 20 year period, and if granted, will expire in 2030. Related will then seek additional extensions totaling an additional 20 year period. Related will diligently pursue all necessary approvals to seek such extensions, provided:
  - (i) All necessary Department of Housing and Urban Development (“HUD”) and investor approvals are obtained; and,
  - (ii) The relevant financing and tax programs, including applicable real estate tax abatement programs, currently available for Section 8 housing are made available to effectuate the extensions. Related will commit to pursue extending Section 8 benefits at these properties and will diligently pursue all necessary approvals. The period of each extension will be the maximum period allowed under the program.
- (h) Related Off-site 80/20s: Related commits to guaranteeing that all existing affordable rental units in the Westport (at 500 West 56<sup>th</sup> Street) and the Tate (at 535 West 23<sup>rd</sup> Street) in Community District 4 will remain permanently affordable to

households at an average income of up to 90% AMI, not to exceed 125% AMI, provided that there are incentives, programs, exemptions, credits or abatements available that will reduce the real estate taxes for the 80/20 buildings to a level consistent with real estate taxes paid prior to any phase out of the real estate tax abatement in the initial 421-a program. No restrictions shall apply to the market rate units as rentals or as a conversion to condominiums after the initial 421-a period. This commitment is contingent on obtaining lender and investor approvals, which Related will diligently pursue.

- (i) A summary chart of the affordable housing commitments is annexed hereto as Exhibit 3.

#### **4. WRY SCHOOL COMMITMENTS**

- (a) Community Notification: Related agrees that copies of an amended Letter of Intent with the School Construction Authority (“SCA”) regarding school site selection, modified to reflect the commitments in paragraph (b) will be provided to CB4, the local school district, the Manhattan Borough President, and the local Council Member.
- (b) School Site Selection: Related commits that it will offer SCA approximately 120,000 square feet of space at Site 6 for a public school and that Site 6 will be one of the first three buildings to be built. The SCA commits that it will initiate the site selection process for the public school at Site 6 no later than July 1, 2010. Related shall only be required to offer Site 6 to the SCA and no alternate sites. In the event that the SCA rejects Site 6, for whatever reason, Related's obligation to provide space for the public school under Section 3.04 of the Restrictive Declaration (“Declaration”) is terminated.

#### **5. COMMUNITY AND CULTURAL SPACE COMMITMENTS**

- (a) Related agrees to make available a minimum of 16,000 gross square feet of space for local cultural institutions or other local arts not-for-profits.
- (b) The cultural space will be provided in at least two facilities.
- (c) Related commits to constructing the core and shell of the cultural spaces, including the distribution of base building systems to the cultural spaces, in accordance with Section 2.04(d) of the Declaration, as modified by the City Council.

#### **6. OPEN SPACE COMMITMENTS**

- (a) Related agrees to replace the member appointed by the President of the Hudson Yards Development Corporation to serve on the Open Space Advisory Board established under Section 2.02(e) of the Declaration with a member appointed by the Manhattan Borough Commissioner of the Department of Parks and Recreation (“Parks Dept”).

(b) Related agrees to change the timing of the open space payments required under Section 3.04(b)(i) of the Declaration to two payments of \$1 million each, with the 1st payment triggered by the TCO for the 2nd residential building, provided that the 2nd residential building results in a total of 500 or more units, and the 2nd payment triggered by the TCO for the 4th residential building. In the event that the 1st and 2nd residential buildings produce less than 500 total units, then the 1st payment will be triggered by the TCO for the 3rd residential building and the 2nd payment will be triggered by the TCO for the 5th residential building.

(c) Greening and Neighborhood Opens Space Development:

(i) Street Tree Planting: The Administration agrees to work with the City Council to review and modify, as necessary, the Parks Dept's street tree planting program to ensure that the Hudson Yards area of CB4 has an appropriate allocation of street trees. In addition, the Administration will work with Con Edison on a master plan for the appropriate location of street trees and infrastructure vaults. The Parks Dept will seek to plant trees at all viable street tree locations.

(ii) Port Authority Sites: The Administration will continue working with the City Council, the community and the Port Authority of NY & NJ ("Port Authority") toward creating open space on Port Authority sites within the blocks bounded by West 34<sup>th</sup> and West 41<sup>st</sup> Streets, between 9<sup>th</sup> and 10<sup>th</sup> Avenues.

(iii) The Administration agrees to establish an Open Space Task Force to review and advise on the creation of open space within the blocks described above. The Task Force will be comprised of representatives from the Department of Transportation ("DOT"), the Parks Dept, and the Hudson Yards Community Advisory Committee. The Administration will invite the Port Authority to participate on the Task Force.

a. The Administration, in coordination with the Port Authority, agrees to use the Greenstreets Program to green the "canoe" traffic island on the north side of West 36<sup>th</sup> Street, between 9<sup>th</sup> Avenue and the Lincoln Tunnel Expressway, subject to and in accordance with the following:

i. The Administration will allocate new funding to the Greenstreets Program for this greening;

ii. The Parks Dept, DOT and the Port Authority will work together to establish a plan to address greening, sidewalk and safety requirements;

iii. The nature and extent of the greening will depend upon subsurface conditions, including utilities, and infrastructure issues

at or adjacent to the canoe traffic island, which will be examined as part of the planning process;

- iv. DOT will relocate the NYPD vehicles currently parked on this island; and,
- v. The Administration will use all reasonable efforts to expedite the implementation of these plans.

(iv) Sidewalk ADA Compliance: The Administration agrees to work with the Port Authority to improve sidewalks along Dyer Avenue, between West 34<sup>th</sup> and West 36<sup>th</sup> Streets in order to upgrade to ADA standards, subject to any public safety concerns identified by either the Administration or the Port Authority with respect to any particular location. The Administration will use all reasonable efforts to achieve these upgrades.

(d) DEP Open Space Funding:

- (i) Provided that the open space proposed for the site currently occupied by DEP at 10<sup>th</sup> Avenue, between West 48<sup>th</sup> Street and West 49<sup>th</sup> Street is not mapped as park land, upon completion of Water Tunnel No. 3 DEP will fund the design of the open space and will make a capital contribution to the construction of the open space.
- (ii) DEP will not be responsible for making any contributions to the maintenance or operation of the proposed open space. A maintenance and operations plan will be created as part of the design process.

The proposed open space is identified on the map annexed hereto as Exhibit 4 as that area occupying the northeast corner of the DEP site, bounded to the north by West 49<sup>th</sup> Street, to the east by 10<sup>th</sup> Avenue, to the south by the horizontal line demarking the "Fenced Area For DEP Operations" and to the west by the solid black line identified in the map legend as an "Easement Line" and running in a north to south direction.

At an appropriate time following completion of Water Tunnel No. 3, a metes and bounds survey will be conducted to establish the boundaries of the proposed open space consistent with the description of the open space boundaries contained in the map annexed hereto as Exhibit 4.

## **7. DAY CARE COMMITMENTS**

Related agrees to provide the Administration for Children's Services ("ACS") with additional opportunities to exercise the option for 10,000 square feet of ground floor space suitable for use as a child care center. Under Section 3.04(c) of the Declaration, as modified by the City Council, ACS may trigger the requirement for Related to offer space following the issuance of a TCO or PCO for any new building on the WRY

containing residential rental units. In that event, Related shall offer space located either in a new building on the WRY or at a nearby off-site location, provided that Related shall have no obligation to offer space in new buildings on the WRY other than Sites 1, 2 and 4. In the event that ACS accepts a space at an off-site location, Related shall have no further obligations under Section 3.04 to offer space, whether on or off site.

## **8. FIRE PROTECTION ASSESSMENT COMMITMENTS**

To address the potential need for new Fire Department (“FDNY”) facilities in the Hudson Yards district, if the City Council requests in 2014, the FDNY will commence a review of the fire protection needs of the district beginning January 1, 2015, and at the City Council's request every five years thereafter, until such time as all projected development has been completed.

## **9. ZR SECTION 93-06 AND RESTRICTIVE DECLARATION**

(a) Modification of ZR Section 93-06: Under Section 93-06 of the Zoning Resolution, as modified by the City Council, the execution and recordation of a Restrictive Declaration including the modifications described in (b)- (e) below shall be required for any development or enlargement on the WRY pursuant to the zoning amendments.

(b) City Council Approval of Modifications: Under Section 4.04 of the Declaration, as modified by the City Council, any future modifications to the provisions of the Declaration pertaining to Affordable Housing (Sec. 2.01); Public Access Areas (Sec. 2.02 (a)-(e) and (h)); Arts and Cultural Space (Sec. 2.04); the Public School, Open Space, and Day Care Mitigations (Sec. 3.04 (a)-(c)), Modification and Amendment (Sec. 4.04(a)), and the Construction Consultation Process Committee and Liaison (Sec. 6.01), that would diminish or alter the obligations of Related, shall be subject to the approval of the City Council.

(c) Independent Monitor: Under Sections 3.07(a) and 6.01 of the Declaration, as modified by the City Council, the Independent Monitor shall prepare a quarterly report summary of activities for distribution to any Construction Consultation Process Committee established under Section 6.01 of the Declaration.

(d) Wind Analyses: Under Section 3.02(c) of the Declaration, as modified by the City Council, Related agrees to provide copies of all final Wind Conditions Reports to Manhattan Community Board 4, the local Council Member, the Manhattan Borough President, and any Construction Consultation Process Committee established pursuant to Section 6.01 of the Declaration.

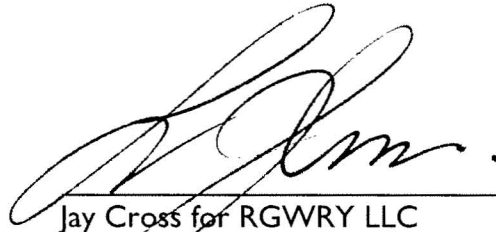
(e) Construction Consultation Process Committee: Under Section 6.01 of the Declaration, as modified by the City Council, Related agrees that, upon request of the Construction Consultation Process Committee, Related's designated liaison shall address, on a regular basis, the questions and concerns of the Committee about construction related issues beginning at the time of issuance of the first Foundation Permit for a New Building on the WRY.

**10. LANDMARKS**

The Landmarks Preservation Commission (“LPC”) will conduct a preliminary review of the historic districts proposed by CB4 in their letter dated November 20, 2009 and annexed hereto as Exhibit 5, by the end of Fiscal Year 2010. During that period the LPC will also complete an evaluation of the 11 sites proposed for landmark designation by CB 4 in their letter dated November 20, 2009 and annexed hereto as Exhibit 6, to determine whether they should be considered further for landmark status.



Robert C. Lieber for the City of New York  
(with respect to Points of Agreement  
Sections: 1, 3 (a) – (f), 4 (b), 6 (c) & (d),  
8, and 10)



Jay Cross for RGWRY LLC  
(with respect to Points of Agreement  
Sections: 2, 3 (g) & (h), 4 (a) & (b), 5,  
6 (a) & (b), and 7)

ATTACHMENT C

LETTER TO COMMISSIONER BURDEN





CITY OF NEW YORK

**MANHATTAN COMMUNITY BOARD FOUR**

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John Weis  
Chair

ROBERT J. BENFATTO, JR., ESQ.  
District Manager

July 27, 2009

Director Amanda M. Burden  
Department of City Planning  
22 Reade Street  
New York, New York 10007

**Re: ULURP Nos. 090422HAM, N090429ZRM, 090423HAM and 090430ZMM  
West 48<sup>th</sup> and 49<sup>th</sup> Streets, west of 10<sup>th</sup> Avenue and 806 Ninth Avenue  
Off-site Affordable Housing sites a/k/a DEP site and MTA site, respectively**

Dear Director Burden:

At the recommendation of its Clinton/Hell's Kitchen Land Use Committee, Manhattan Community Board 4 (CB4), having held a duly noticed public hearing on ULURP application numbers 090422HAM, N090429ZRM, 090423HAM and 090430ZMM adopted the following resolution by roll call vote at its meeting on July 22, 2009 with 23 in favor, 10 opposed, 0 abstaining and 1 present but not eligible to vote). The resolution recommends **denial** of each Application **unless certain conditions are met**.

**OVERVIEW**

The above applications contemplate the disposition, zoning text and map changes, and zoning map changes relating to two off-site affordable housing developments, at 806 Ninth Avenue and West 48<sup>th</sup> Street and West 49<sup>th</sup> Street, west of Tenth Avenue. These Off-site Actions ("Off-site Actions") are related actions to the larger proposed redevelopment ("Proposed Actions") of the Western Rail Yards ("WRY"), located from West 30<sup>th</sup> Street to West 33<sup>rd</sup> Street between 11<sup>th</sup> and 12<sup>th</sup> Avenues.

Both sites are located in the Special Clinton District ("SCD") and are publicly-controlled by the Department of Environment Protection ("DEP") and the Metropolitan Transit Authority ("MTA") respectively. The off-site affordable housing development sites were identified in a Memorandum of Understanding ("MTA MOU") between the Metropolitan Transportation Authority ("MTA") and the Mayor of the City of New York dated July 11<sup>th</sup>, 2007. The goals of MTA MOU were acknowledged in a letter from Councilmember Quinn to the Deputy Mayor Dan Doctoroff also dated July 11<sup>th</sup>, 2007 (Attachments A and B).

The Proposed Actions include the adoption of zoning map and text amendments to the New York City Zoning Resolution ("ZR") and related land use action to permit the

development of the WRY as a mixed-use community with new commercial, residential and open space, including approximately:

- 5.7 million square feet of total development;
- 1.14 million square feet of commercial space;
- 4.56 million square feet of residential;

The resultant changes will encompass, *inter alia*, zoning map and text amendments and accessory parking special permits pursuant to ULURP; the leasing of, with option to purchase, development rights over the WRY, establishment of new legal grades on West 33<sup>rd</sup> Street between 11<sup>th</sup> and 12<sup>th</sup> Avenues; site selection by NYC School Construction Authority (“SCA”) for an elementary/intermediate public school; and the disposition and construction of two off-site affordable housing buildings, the subject of the above referenced ULURP applications.

### **GENERAL COMMENTS**

At the outset, Manhattan Community Board 4 (“CB4”) celebrates its economic diversity and welcomes development of affordable housing for all income levels. However, the development of the two off-site affordable projects has been the subject of an ongoing spirited debate within the community with widespread community consensus against that part of the special permit seeking height increases beyond what is now permitted within the SCD.

The applications for these two publicly owned sites, located between West 48<sup>th</sup> and West 49<sup>th</sup> Street west of Tenth Avenue (“DEP Site”) and 806 Ninth Avenue (“MTA Site”), contemplate the construction of a combined 312 affordable units. While the Off-site Actions are currently limited to a zoning text and district map amendment and a zoning map amendment, the ultimate development of these sites is predicated upon future land use actions.

#### **DEP Site**

##### Current Actions

- 1) Disposition of City Owned Property and UDAAP designation for Manhattan Block 1077, Lot 29 for development as affordable housing.
- 2) Text Amendment to the Special Clinton District Map to map Other Area on Block 1077, Lot 29 to facilitate the development of the site as affordable housing.

##### Future Actions

- 3) The request for the grant of a Special Permit pursuant to ZR § 96-104 to increase the height from 66 feet to 99 feet.
- 4) The request for the grant of a Special Permit pursuant to ZR § 74-681 to build over the below grade Amtrak railroad right of way.

## **MTA Site**

### **Current Actions**

- 5) Disposition of City Owned Property and UDAAP designation for Manhattan Block 1044, Lot 3 for development as affordable housing.
- 6) Zoning Map Amendment on Block 1044, Lot 3, to include a C1-5 overlay to facilitate the development of the site as affordable housing.

### **Future Actions**

- 7) The request for the grant of a Special Permit pursuant to ZR § 96-104 to increase the height from 85 feet (as-of-right) to 115 feet along Ninth Avenue at the MTA site.
- 8) The request for the grant of a Special Permit for General Large Scale Development on the MTA site to facilitate the development of the site as affordable housing.

Community members were outspoken against granting any Special Permits pursuant to ZR § 96-104 in the Preservation Area of the SCD. Such a Special Permit would allow developments in the midblock a maximum height of 99 feet from the as of right height of 66 feet, and developments on the avenues up to 115 feet from the as of right height of 85 feet. Community members were very wary of granting such permits given the strong commitment to preserve both the existing fabric of the community and overall quality of life. In the 38-year history of the SCD, only two such applications have been approved in the Preservation Area.<sup>1</sup> Both of these applications were opposed by CB4 as neither successfully argued that the public benefit outweighed the goals of the SCD in preserving its unique residential character.

At the same time however, the community supports the proposed housing programs for each site and welcomes securing affordable housing for the hard-to-reach 80%/125%/165% AMI (moderate and middle income) bands (Attachment C). However, many residents believe that these projects should proceed at the as-of-right heights of 66 feet and 85 feet respectively. Instead of granting the Special Permit pursuant to ZR § 96-104 to allow the requested increased height on these buildings as proposed, the community would like to see more affordable housing incorporated on-site at the WRY.

Although CB4 has previously taken a position to support Special Permits at these sites (Attachment D), our current position has now been modified to reflect the goal to balance the community's need to maximize affordable housing while at the same time preserve the residential and low-rise character of our neighborhood.

The off-site development of affordable units as mitigation for the WRY cannot take the place of a realistic plan to develop affordable units as part of the on-site development. CB4 is emphatic in its desire to see that this project integrates units affordable to those of low, moderate, and middle incomes. The WRY on-site plan must also include a firm commitment that at least 20% of all on-site residential units be developed as affordable, in perpetuity.

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<sup>1</sup> 360 West 43<sup>rd</sup> Street and 404 West 54<sup>th</sup> Street

## AFFORDABLE HOUSING

### *The Need for a Commitment to a Comprehensive Affordable Housing Plan.*

CB4 has strongly articulated a policy for future housing growth affordable to a full range of incomes. We cannot and will not support any WRY development plan that does not provide the amount and type of permanent affordable housing the community needs to retain its diversity. We disagree with the DEIS conclusion that “*the Proposed Actions would not significantly alter or substantially accelerate the study area’s long-term trend toward increasing residential development, affluence and residential desirability.*” The City should be mitigating the market trend through public policy initiatives and commitment of resources to ensure affordability for all New Yorkers, not just those with the highest incomes. The Proposed Actions present an opportunity to mitigate and balance that trend to promote inclusiveness for all New Yorkers, not to rationalize creating a high income exclusive community on the Westside. The construction of a great number of market-rate housing units balanced only by the small number of low-income housing that may be created under existing programs, e.g., 80/20 and inclusionary bonuses, does not achieve the community’s goal and is unacceptable.

CB4 has consistently advocated that 30% of the residential development on this public site known as the WRY must be allocated to permanent affordable housing for low-, moderate- and middle-income families. This message was strongly reinforced by the community’s comments in reviewing each of the proposals by the respondents to the Request for Proposal’s (“RFP”). The New York Times concurs with this position and ran an editorial in March 2008 identifying the need for more affordable housing on the Far West Side. (Attachment E) Yet the RFPs required only that any rental housing be built using New York State Housing Finance Agency’s (“HFA”) 80/20 program. Condominium or cooperative units are exempt from any affordable housing requirement, and none of the rental units are required to be permanently affordable.

Public land is one of the few places where government can require that development address the housing needs of a broad range of New Yorkers. ***The WRY is the largest publicly owned development site left in Manhattan.*** While the MTA has a corporate responsibility to maximize the value it gets for the property, it is also a public entity; it is appropriate that the MTA’s drive for financial gain be tempered by standards of public responsibility that would not apply to either a privately held corporation or a private land owner.

It is astounding that between 6,000,000 to 7,000,000 square feet will be developed for market-rate and commercial interest in the WRY, yet a just and adequate plan has not yet been fully developed to provide permanent affordable housing for New Yorkers of all incomes, particularly at a time when the need for affordable housing is so critical. CB4 cannot support the Proposed Actions in the absence of a permanent and realistic affordable housing program.

The DEIS states that only 379-390 units out of a total of 4,624 to 5,762 residential units will be affordable. How can this number be considered inclusive? It is simply unacceptable. Furthermore, the temporarily affordable units will only be for those households earning <60% AMI, with no provisions for moderate and middle income families. Such a mix will create a polarized household income range on the WRY and exclude moderate and middle income households, the backbone of our city.

After many productive discussions during the 2005 Hudson Yards rezoning process, the City and CB4 were able to achieve 28% permanent affordability that included provisions for production of moderate income housing through both a modified Inclusionary Housing Bonus and development of off-site publicly-owned land. Although the WRY proposal includes a special on-site Inclusionary Bonus, given the inherent difficult site conditions - with the extreme density proposed on such a limited lot area, CB4 is doubtful the development team will be able to access that housing bonus. CB4 appreciates and welcomes the proposed off-site moderate and middle income developments with a projected 312 affordable apartments. ***However, the plan for the WRY, even including those moderate and middle income off-site affordable developments, falls far short of the commitment achieved in the Hudson Yards rezoning with less than 4.5% of the square feet dedicated for the development of permanently affordable apartments.***

Moreover, this new neighborhood will not be a healthy neighborhood unless it includes the broadly diverse population that is this City's hallmark. CB4's response and comments to the proposed off-site housing at the DEP site, 505 West 48<sup>th</sup> Street, and the MTA site, 806 Ninth Avenue, are in our related letter.

#### REQUESTS FOR AFFORDABLE HOUSING MITIGATION

1. *Not less than 20% of all residential units constructed on-site in the WRY must be permanently affordable.*<sup>2</sup>
2. *Identify additional publicly owned off-site affordable housing sites in CB4 for either construction or preservation of permanently affordable housing to achieve an overall goal of 30% affordability in the WRY development. Commit the use of this existing publicly owned land to develop and construct affordable housing (Attachments F and G). In particular, CB4 recommends the sites below for consideration:*
  - 136 West 20th Street (DSNY)
  - 415 West 40th Street (PANY/NJ)
3. *Preserve existing affordable housing within CB4 subject to subsidy expiration. (Attachment H) Specifically, those properties currently owned by the applicant, RG WRY LLC, an affiliate of The Related Companies:*

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<sup>2</sup> Permanently affordable shall mean that apartments are so designated by deed restriction, regulatory agreement or other legal instrument and may not be converted to market rate units after a given expiration date of a mortgage, tax incentive or any other government program. These specific units shall remain affordable in perpetuity.

- 425 West 48<sup>th</sup> Street
  - 525 West 47th Street
4. *Establish a dedicated fund within existing resources to preserve Single Room Occupancy units in CB4 as mitigation of the anticipated loss of SRO units as a result of the Proposed Actions.* (Attachment I) There are over 1000 SRO units noted to be at risk in the WRY study area, CB4 requests preservation of existing SRO housing with at least a 60% community resident requirement.
  5. *Implement the 2005 commitments to apply the Demolition Restrictions of the SCD in both the Hudson Yards Special District and West Chelsea Special District to preserve existing housing.*
  6. *Conversion over time of on-site low income units to moderate and middle income units.* At the expiration of affordability restrictions for the on-site affordable units built under the 80/20 financing program and upon the vacancy of the tenant and legal successor(s), make those units permanently affordable to households tenants with a range of moderate and middle incomes as follows:
    - 20% of the affordable units shall be available to people with incomes up to 80% of the Area Median Income (AMI);
    - 50% of the affordable units shall be available to people with incomes up to 125% of AMI; and
    - 30% of affordable units shall be available to people with incomes up to 165% of AMI.

Accomplish this conversion overtime through deed restriction and regulatory agreement to supplement the bond covenants, similar to the extended use restrictions on Low Income Housing Tax Credit developments.

7. *Affordable housing distribution within mixed income developments.* Eighty% of the floors of any mixed income building should have at least one affordable unit and there should be no more than 33% affordable units on any floor.
8. *Affordable housing must become available to the real estate market at a similar rate to the market rate housing.* The Restrictive Declaration should model such language from the existing Restrictive Declaration used in the Riverside South development in the West 60's.
9. *Developments of affordable housing on- or off-site units should require of at least 50% two-bedroom or greater units.*
10. *The administering agent should be an independent non-profit organization.*

## **THE ULURP APPLICATIONS**

In light of the above enumerated concerns, CB4 has carefully reviewed these ULURP applications; our comments and recommendations follow.

### **1) ULURP No. 090422HAM--Disposition of City Owned Property and UDAAP designation for Manhattan Block 1077, Lot 29 for development as affordable housing (DEP Site)**

CB4 recommends denial of the City Owned Property and UDAAP designation for Manhattan Block 1077, Lot 29 for development as affordable housing (DEP Site) ULURP No. 090422HAM, unless the following conditions are met:

#### **The Affordable Housing Component**

- A restrictive declaration be filed that restricts development of the site for affordable housing in perpetuity as follows:
  - 20% of the units be affordable to those earning 80% Area Median Income;
  - 40% of the units be affordable to those earning 125% Area Median Income; and
  - 40% of the units be affordable to those earning 165% Area Median Income.
- At least 50% of the developed units must be family-sized i.e. two bedrooms or larger.
- A permanent easement is granted for unobstructed light and air from the DEP water access tunnel site to the east. Because of the peculiarities of this development site, fronted by a park and/or undeveloped DEP water tunnel access along its eastern border and being situated over the railroad cut, CB4 is not opposed to a future special permit to reduce the lot coverage requirement and to reduce the rear yard depth. However, light and air, including operational windows along the eastern façade cannot be obstructed by the DEP water tunnel structures or subsequent security measures.
- Any future action at this site for a Special Permit pursuant to ZR § 96-104, seeking to increase building height, must not exceed a proposed 76 feet total in height. CB4 arrived at the 76 foot height limitation as a compromise between the City and the strongly held principles of community residents who care deeply about both maximizing affordable housing opportunities while preserving the residential, low-rise character of the neighborhood (Attachment J).
- No retail and/or commercial use shall be included in the development. The community strongly opposes the proposed use to include street level retail on West 49<sup>th</sup> Street. Retail commercial uses on the residential side streets are a growing problem now exacerbating an already problematic bar/club use on residential blocks, which is negatively impacting the character of the neighborhood.
- DEP release the portion of the site not being used by DEP (that portion over the rail cut and a strip of terra firma to the west) by 2010 in order to allow affordable housing development to proceed prior to 2013.

- The City’s prior commitment to use public funds to develop this project must be codified in a Follow-Up Corrective Actions (“FUCA”) memorandum of understanding that is executed simultaneously with the rezoning action for the WRY.
- A restrictive declaration be filed stating that the site cannot generate an inclusionary housing bonus or be used to satisfy the SCD District Harassment Cure requirements pursuant to ZR § 96-110.
- Comfort stations for public use in conjunction with the DEP open space be included in the affordable housing development. and
- The RFPs to select a developer for this site be developed in consultation with CB4.

### **The Open Space Component**

Finally, as part of a negotiated agreement between the City, DEP and CB4, the area immediately east of the affordable housing site shall be developed as open space and shall be used as a park with programming for young children. Currently, CB4 ranks 58<sup>th</sup> among 59 Community Districts throughout the city.

More than a decade ago, the use of the land fronting Tenth Avenue between West 48<sup>th</sup> and 49<sup>th</sup> Streets was committed for public open space. In the Negative Declaration dated May 25, 1993, DEP assured CB4 that the site was “to be used for occasional tunnel maintenance and that shaft would be 5 feet by 3 feet with a 14 inch diameter” (Attachment K). By letters dated February 28, 2005 from Adrian Benepe of the New York City Department of Parks (“NYCDP”) and dated September 7, 2006 by Deputy Commissioner Alfonso R. Lopez from DEP to Manhattan Borough President Scott Stringer (Attachments L and M), both city agencies restated their commitment for public open space on the balance of this site. At that point, even the area that DEP needed for access was intended to be accessible to the public as a park extension. ***We learned only late last week , on July 16<sup>th</sup>, 2009, that the West 49<sup>th</sup> Street site is now intended to serve as the main west side access point to the water tunnel and that security and maintenance needs will result in the full half-block being paved and fenced and that ownership will remain with DEP; therefore:***

- Resolution of the exact dimensions of the publicly-accessible open space in relation to the portion of the site needed by DEP for access to the water tunnel, **must be codified in writing by DEP.**
- A clear written timeline for acquisition and development of this open space must be included in the overall WRY development plan and **be codified in writing by DEP.**
- The identification by the Mayor’s office of a DEP or other agency controlled site for replacement open space to be located within a sub-area of CB4 (West 34th to West 57th Streets and West of 8th Avenue), equal to that open space lost due to



DEP's expanded site usage for water tunnel maintenance ((currently approximated at 120 by 200 feet in dimension).

- A written commitment from DEP for the hiring of a landscape architect to plan the landscaping and use of both the undisputed northern portion of open space and the southern portion maintenance area. A further written commitment for the funding of such open space improvements with the agreement to continue to include CB4 and the surrounding community in its development process.

**2) ULURP No. N090429ZRM--Text Amendment to the Special Clinton District Map to map Other Area on Block 1077, Lot 29 to facilitate the development of the site as affordable housing**

The proposed Zoning Text Amendment seeks to move the boundaries of the Preservation Area of the SCD to the east so that the proposed development falls within the Other Area, which has less stringent rear yard requirements and overall greater lot coverage. This proposed action, reducing the Preservation Area, is in direct contravention with CB4's longstanding policy to expand the Preservation Area. It is also inconsistent with the Department of City Planning's ("DCP") own framework for the 11<sup>th</sup> Avenue Rezoning that will extend the boundaries of the Preservation Area westward to within 100 feet of 11<sup>th</sup> Avenue.

This site is unique. It is situated over a rail cut with open space and the DEP access for the water tunnel extends the full length of its eastern façade. The proposed building form makes best use of the site, maximizes the number of affordable units, and has adequate light and air, given the open space to the east. However, we strongly believe that the regulations are best modified through text amendments governing rear yard requirements and permitting greater lot coverage.

CB4 recommends denial of the Zoning Text Amendment for Manhattan Block 1077, Lot 29 (DEP Site) for development as affordable housing), ULURP No. N090429ZRM, unless the following conditions are met:

- The boundaries of the Preservation Area are not changed and that modifications as necessary to expand both rear yard requirements and lot coverage are accomplished through subsequent text amendments.

**3) ULURP No. 090423HAM, Disposition of City Owned Property and UDAAP designation for Manhattan Block 1044, Lot 3 for development as affordable housing (MTA Site)**

CB4 recommends denial of the City Owned Property and UDAAP designation for Manhattan Block 1044, Lot 3 for development as affordable housing (MTA Site) ULURP No. 090423HAM, unless the following conditions are met:

- A restrictive declaration be filed that restricts development of the site for affordable housing, in perpetuity, as follows:
  - 20% of the units be affordable to those earning 80% Area Median Income;
  - 40% of the units be affordable to those earning 125% Area Median Income; and
  - 40% of the units be affordable to those earning 165% Area Median Income;
- At least 50% of the units developed must be family-sized i.e. two bedrooms or larger.
- The elimination of the 30,000 square feet reserved for the MTA office/training space; additional MTA needs can be accommodated at the existing MTA Control Center (“Control Center”) to the east or on the 7,000,000 square feet to be developed on-site at the WRY. It is outrageous to expect MTA needs to be accommodated within the small lot area dedicated to affordable housing.
- Any future action at this site for a Special Permit pursuant to ZR § 96-104, seeking to increase building height, must maintain a building height of 85 feet along Ninth Avenue frontage, and on West 54<sup>th</sup> Street, beginning 50 feet east of Ninth Avenue and through the midblock backing against the existing MTA Control Center, the building height must be no greater than 99 feet. CB4 arrived at the 85 and 99 foot height limits at this site as a compromise between the City and strongly held principles of community residents who care deeply about both maximizing affordable housing opportunities while preserving the residential, low-rise character of the neighborhood (Attachment N).
- Eliminate the 15 MTA parking spaces planned for the site.
- ***MTA release the city owned site from the NYCTA master lease upon approval of the WRY ULURP by the City Council, not a release contingent upon construction start at the WRY.*** The off-site housing is mitigation under the DEIS for the Proposed Actions, namely the rezoning from an FAR of 2.0 to an FAR of 10.0. Therefore, when the zoning is approved the mitigation is required.
- The RFP to select a developer for this site be developed in consultation with CB4.
- The City’s prior commitment of public financing to develop this project be codified in a FUCA memorandum of understanding that is executed simultaneously with the rezoning action for the WRY.
- A restrictive declaration be filed stating that the site cannot generate an inclusionary housing bonus or be used to satisfy the CSD District Harassment Cure requirements pursuant to ZR § 96-110.
- The designation of two potential landmarks identified in the WRY DEIS: (Attachments O, P and Q)
  - *St. Benedict the Moor Church, 342 West 53<sup>rd</sup> Street* – NYCL- and S/NR-eligible: Erected in 1869 and designed by R.C. McLane & Sons, the church has seen various congregations and parishioners over its more than 100-year history, yet most famously served as the first black Roman Catholic Church north of the Mason Dixon line. In 1921, due to African American migration to the north, the congregation moved to Harlem and the church was reassigned to the Spanish Order of Franciscans in 1954 who have occupied the site ever since. The church stands as a vestige of

the days when the neighborhood of Clinton/Hell's Kitchen was a thriving African-American neighborhood.

- *Tenement Blockfront (781-795 9th Avenue)* – S/NR-eligible

This collection of Hell's Kitchen tenements serves as a reminder of the late 19<sup>th</sup> century residential character of Ninth Avenue. The Renaissance-inspired stone, brick, terra cotta, and metal ornamentation and largely extant cornices present a valuable collection of tenement architecture.

**4) ULURP No. 090430ZMM—Zoning Map Amendment to Block 1044, Lot 3, to include a C1-5 overlay to facilitate the development of the site as affordable housing**

This requested Zoning Map change seeks to cover the entire zoning lot with a C1-5 overlay thus permitting a future action that will include a Large Scale Development Plan reducing rear yard requirements and relaxing lot coverage restrictions. Similar to the DEP site, we believe that the proposed building form makes best use of the site, maximizes the number of affordable units and has adequate light and air. However, we are concerned by the wider latitude granted to a developer in a Large Scale Development Plan and the unforeseen consequences. In the history of the SCD, a Large Scale Development plan has never been used. To permit one now on this site would set a precedent for the entire Special District. Similar to the DEP site, we strongly believe that the rear yard and lot coverage regulations are best modified through text amendments.

This proposed action also anticipates a future action for a Special Permit to increase the building height along Ninth Avenue to 115 feet. At the conclusion of the well attended and very engaged public debates on the two off-site developments, we delicately balanced the concerns of the community and arrived at an overall compromise to maximize the affordable units and to preserve community character.

Accordingly, CB4 recommends denial of Zoning Map Amendment ULURP No. 090430 ZMM, unless the following conditions are met:

- C1-5 map amendment covering the entire zoning lot be denied; the City and/or future developers commit to not filing a Large Scale Residential Plan for the site and instead accomplish desired modifications as necessary to rear yard requirements and lot coverage through subsequent text amendments. If a C1-5 map amendment is approved against our objections then the commercial FAR be limited to one (1) FAR.

**NOW, THEREFORE, BE IT RESOLVED** that Manhattan Community Board 4 recommends denial of **ULURP Nos. N 090429ZRM, 090430ZMM, N090423HAM, 090422HAM** unless the above enumerated conditions are met.

Sincerely,



John Weis, Chair  
Manhattan Community Board 4

Elisa Gerontianos, Chair  
Clinton/Hell's Kitchen Land Use Committee



Joe Restuccia, Co-Chair  
Housing Health and Human  
Services Committee

Sarah Desmond  
Housing Health and Human  
Services Committee

## **ATTACHMENTS**

- A. MTA Memorandum of Understanding, dated July 11, 2007
- B. July 11<sup>th</sup>, 2007 letter from Councilmember Quinn to the Deputy Mayor Dan Doctoroff
- C. AMI Income Chart
- D. October 14, 2008 letter from CB4 to the New York City Planning Commission
- E. New York Times, "Finally, A Vision for the West Side", March 28, 2008
- F. Map of Publicly Owned Land in CB4: Potential Affordable Housing Sites North of 35<sup>th</sup> Street
- G. Map of Publicly Owned Land in CB4: Potential Affordable Housing Sites South of 35<sup>th</sup> Street
- H. Map of Existing Affordable Housing in CB4 Subject to Expiration
- I. Table of SROs in CB4
- J. CB4 recommended massing of DEP Site
- K. May 25, 1993 DEP Negative Declaration
- L. February 28, 2005 letter New York City Department of Parks to CB4
- M. September 7, 2006 letter from DEP to Manhattan Borough President Scott Stringer
- N. CB4 recommended massing of MTA Site
- O. Proposed Individual Landmarks Map
- P. Proposed Individual Landmarks Table
- Q. Proposed Individual Landmarks Photos