

Memorandum of Understanding

THIS MEMORANDUM OF UNDERSTANDING is made as of September 17, 2007, by Jewish Home and Hospital for the Aged (the "JHH") and JHH Housing Corp. (herein collectively, JHH), having a business address at 120 West 106 th Street, New York, New York, and Community Board 7, Manhattan, by its chairman, Sheldon J. Fine, or any successor chairperson or designee, having a business address at 250 West 87th Street, New York, New York.

RECITALS:

WHEREAS, JHH is the fee owner of that certain land parcel, which land parcel is designated as Tax Lots 20 and 57 in Block 1860 on the Tax Map (the "JHH Land"), located between West 105th and West 106th Streets and Columbus and Amsterdam Avenues, also known by the following street addresses: 111 through 143 West 105 th Street Ala 102 through 152 West 106th Street (Lot 20), and 156 West 106 th Street (Lot 57);

WHEREAS, the JHH Land is currently is mapped within an R7-2 zoning district and contains numerous buildings which function as the campus for the JHH;

WHEREAS, JHH initially intended to redevelop the JHH Land in compliance with the R7-2 zoning district parameters by (i) constructing a new nursing facility (the "New Long-Term Care Facility") on one portion of the JHH Land (the "Long-Term Care Facility Parcel") and (ii) selling another portion of the JHH Land (the "Residential Parcel") to a developer for construction of a residential building;

WHEREAS, in December 2005, Community Board 7 (Manhattan), in collaboration with the New York City Department of City Planning (the "DCP") and the Manhattan Borough President's Office (the "BP"), initiated an investigation of a potential rezoning of a large swath of the Upper West Side of Manhattan, which would include the JHH Land in its entirety (the "Proposed Rezoning");

WHEREAS, on April 23, 2007, DCP certified the Uniform Land Use Review Procedure ("ULURP") application for the zoning map amendment (C 070427 ZMM) and referred the related non-ULURP zoning text amendment (N 070428 ZRM) to begin the public review process for the Proposed Rezoning;

WHEREAS, the Proposed Rezoning would create a split-lot condition of R8A and R8B contextual districts on the JHH Land (historically used as a unified community facility campus), which would reduce the allowable maximum floor area available for development of the JHH Land and impose more restrictive bulk regulations, including height limits of 120 feet in the R8A district and 75 feet in the R8B district;

WHEREAS, JHH has proposed a modification to the Proposed Rezoning that would retain the existing R7-2 zoning designation (the "Retention") subject to development restrictions set forth herein being placed on the construction of both the proposed residential building and the New Long-Term Care Facility;

WHEREAS, accordingly, after frequent negotiations with elected officials, Community Board 7 and other members of the community, the residential building (the "New Residential Building") and the New Long Term Care Facility have been reduced in height. JHH's New Long-Term Care Facility and the New Residential Building herein collectively called the "Proposed Development";

WHEREAS, this MOU is being entered into in order to set forth certain restrictions on the development of the JHH Land, including height, floor area, number of floors and use restrictions related to the construction of the Proposed Development;

NOW, THEREFORE, in consideration of the exclusion of the JHH Land from the Proposed Rezoning and the retention of the currently applicable R7-2 zoning designation, JHH and Community Board 7 do hereby agree to the following:

1. Restrictions on Development of the Long-Term Care Facility Parcel.

(a) JHH agrees that the New Long-Term Care Facility shall (i) contain not more than 234,685 square feet of development rights" (as defined below), (ii) be limited to 14 above-grade floors and a maximum height of 150 feet (not including permitted obstructions as defined in Section 24-512 of the Zoning Resolution) and (iii) have a setback of 6 feet between the height of 60 and 85 feet and an additional setback of 10 feet at the 14th floor (the "New Long Term-Care Building Bulk Limitations"). JHH also agrees to apply, within nine months from the date that the City Council provides JHH with the Retention, for discretionary relief in the form of a variance from the City's Board of Standards and Appeals (the "BSA"), said variance to seek the following additional waivers: (i) a front street wall location that complies with R8A district parameters (although the height of the New Long Term-Care Facility shall be not more than 150 feet) and (ii) establish a setback at a height of between 60 and 85 feet. However, if the BSA denies such timely application, the New Long Term-Care Building Bulk Limitations shall remain limited to 14 above-grade floors and a maximum height of 150 feet, and no modification of this MOU shall otherwise be required. As used herein, the term "Development Rights" shall mean the rights, as determined by the Zoning Resolution, which are appurtenant to a zoning lot, whereby such zoning lot may be developed by erecting thereon one or more structures with floor area determined (i) by multiplying the area of the zoning lot by the allowable floor area ratio for structures in that zoning district, and (ii) by the inclusion of any available bonus floor area and any use, height, bulk, density, open space and other development rights permitted under the Zoning Resolution and which may be authorized to be developed by the appropriate agency of the City of New York from time to time.

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(b) At least twenty (20) calendar days prior to submitting any plans to the NYC Department of Buildings or any amendments to the building plans which would affect the floor area, height, number of floors or envelope of the New Long-Term Care Facility, JHH will deliver copies of same, together with an architect's certification certifying that the New Long-Term Care Facility to be constructed on the Long-Term Care Facility Parcel complies with the requirements and restrictions set forth in this MOU, to the BP, Community Board 7, the Manhattan Valley Preservation Coalition (the "MVPC"), the 145-147 West 105 th Street Housing Development Corp. (the "HDFC"), the Duke Ellington Boulevard Neighborhood Association (the "DEBNA") and the West Siders for Responsible Development (the "WRD").

2. Restrictions on Development of the Residential Parcel.

(a) JHH agrees that the New Residential Building shall (i) consist of a mixed-use, community facility and residential building that shall not utilize in excess of 325,275 square feet of Development Rights and (ii) be limited to 12 above-grade floors and a maximum height of 120 feet (not including permitted obstructions as defined in Section 23-62 of the Zoning Resolution), with a 10 above-grade floor section at 100 feet on the eastern end of the New Residential Building (the "New Residential Building Bulk Limitations"). JHH also agrees to apply, within nine months from the date that the City Council provides JHH with the Retention, for discretionary relief in the form of a variance from the City's Board of Standards and Appeals (the "BSA"), said variance to seek the following additional waivers : (i) a front street wall location that complies with R8A district parameters (that still may rise to 120 feet); and (ii) establish a set back at a height of between 60 and 85 feet. However, if BSA denies such timely application, the New Residential Building Bulk Limitations shall remain limited to 12 above-grade floors and a maximum height of 120 feet, with a 10 above-grade floor section at 100 feet, and no modification of this MOU shall otherwise be required.

(b) At least twenty (20) calendar days prior to submitting any plans to the NYC Department of Buildings or any amendments to the building plans which would affect the floor area, height or envelope of the New Residential Building, Declarant will deliver copies of same, together with an architect's certification certifying that the New Residential Building to be constructed on the Residential Parcel complies with the requirements and restrictions set forth in this MOU, to the BP, Community Board 7, the MVPC, the HDFC, the DEBNA and the WRD.

3. Use Restrictions

JHH agrees that if JHH sells the JHH Land (other than the Developer parcel) subsequent to Council approval of the Retention and prior to the construction of the New Long-Term Care Facility and/or the New Residential Building, any new construction on JHH Land shall be limited to the more restrictive of the bulk

limitations applicable to (i) R8A zoning district designations for property on the northern portion of the subject block or R8B zoning district designations for property on the southern portion of the subject block or (ii) any subsequent zoning designation applicable to the JHH Land, which ever is more restrictive.

JHH agrees it shall not construct any building on the Long-Term Care Facility Parcel other than the New Long-Term Care Facility and that it shall be initially occupied, and occupied so long as said building is owned by JHH, as a Use Group 3 Nursing Home (pursuant to the NYC Zoning Resolution). In the event that JHH voluntarily or involuntarily disposes of the New Long-Term Care Facility in any manner (including sale or foreclosure) after it is constructed, JHH shall promptly notify Community Board 7 and consult with Community Board 7 about the proposed disposition and use of the building. In connection therewith, JHH shall prepare a land use and environmental analysis of the proposed New Use of the Building in accordance with the standards of the NYC CEQR Manual to inform its consultations with Community Board 7.

4. Modifications.

This MOU may not be modified, amended or terminated, except pursuant to a written instrument executed by JHH and Community Board 7 by its chairman, Sheldon J. Fine, or any successor chairperson or designee.

5. Beneficiaries.

This MOU, and the agreements set forth herein, shall run to the benefit of all land owners and tenants in a defined area within a certain distance from the Declarant Land (such persons and/or entities, at any time, being herein called the "Beneficiaries" and said defined area being herein called the "Beneficiary Area"). The Beneficiary Area shall be limited to an area within a line running parallel to and one-half mile from JHH Land property lines, except that a radius of one half-mile shall be taken from all corners of the JHH Land having an interior angle of less than 180 degrees in lieu of a parallel line, where indicated. Additionally, Community Board 7 its chairman, Sheldon J. Fine, and any successor chairperson or designee, the MVPC, the HDFC, the DEBNA and the WRD shall be Beneficiaries to the extent permitted by law (collectively, the "Beneficiary Agents"). JHH will not object in any judicial or other forum to the standing of any Beneficiary named herein to enforce this MOU. This MOU is not intended to, nor shall it be construed to, confer any right, remedy or claim upon any person or entity other than the Beneficiaries.

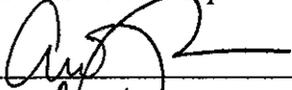
6. Enforcement

Nothing in this MOU shall be construed as placing any limitation on the ability of

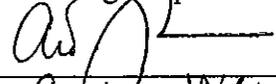
the Beneficiaries to seek legal recourse, including any application for injunctive relief, in an appropriate court of law if it is believed that the terms of this MOU are not being complied with. Without limiting the forgoing right to seek injunctive relief, JHH and Community Board 7 its chairman, Sheldon J. Fine, and any successor chairperson or designee further agree to binding arbitration at the American Arbitration Association in New York City to resolve any issue of compliance with this MOU. Any successors or designees of Sheldon Fine shall be bound by the provisions of this MOU.

IN WITNESS WHEREOF, JHH and Community Board 7 have executed and delivered this MOU as of the day and year first above written.

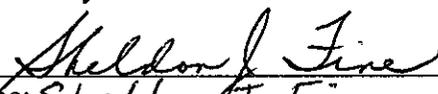
Jewish Home & Hospital for the Aged

By: 
Name: Andrew Weiner
Title: CEO/President

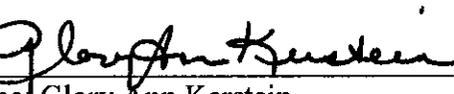
JHH Housing Corp.

By: 
Name: Andrew Weiner
Title: President

Community Board 7

By: 
Name: Sheldon J. Fine
Title: Chairman

Duke Ellington Boulevard Neighborhood Association

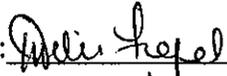
By: 
Name: Glory Ann Kerstein
Title: President

145-147 West 105th Street Housing Development Fund Corporation

By:  9-18-07

Name: Haydee Rosario
Title: Board Treasurer

West Siders for Responsible Development

By: 

Name: Mikl Figel
Title: President