



## **CITY PLANNING COMMISSION**

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November 6, 2013 / Calendar No. 11

C 140047 ZSK

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**IN THE MATTER OF** an application submitted by Waterview at Greenpoint, LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 62-836 of the Zoning Resolution to modify the height and setback requirements of Section 62-341 (Developments on land and platforms) and Section 62-354 (Special height and setback regulations) in connection with a proposed mixed-use development on property located at 77 Commercial Street (Block 2472, Lot 410), in R6 and R6/C2-4 Districts, Borough of Brooklyn, Community District 1.

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The application for a special permit pursuant to Section 62-836 of the Zoning Resolution was filed by Waterview at Greenpoint, LLC on July 30, 2013, to facilitate the construction of an approximately 647,851 square foot mixed-use development with public waterfront esplanade along the Newtown Creek in Greenpoint, Community District 1, Brooklyn.

### **RELATED ACTIONS**

In addition to the special permit, which is the subject of this report (C 140047 ZSK), implementation of the applicant's proposal also requires action by the City Planning Commission on the following applications which are being considered concurrently with this application:

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| N 140048 ZAK | Authorization by the City Planning Commission pursuant to Section 62-822(a) to modify the location, area, and dimension requirements of Section 62-50 for waterfront public access areas and visual corridors. |
| N 140049 ZAK | Authorization by the City Planning Commission pursuant to Section 62-822(b) to modify the design requirements of Section 62-513 and 62-60 for waterfront public access areas and visual corridors.             |

N 140046 ZRK           With the Department of City Planning as co-applicant, an amendment to the Zoning Resolution modifying Sections 11-13 and 62-351 to permit future adjacent parkland to continue to generate development rights on Parcel 4 within the Waterfront Access Plan BK-1.

N 140050 ZCK           Chair certification pursuant to Section 62-811 that a site plan has been submitted showing compliance with the provisions of Sections 62-50, 62-60, and 62-90, except as modified by the authorizations (N 140048 ZAK and N 140049 ZAK).

## **BACKGROUND**

The applicant, Waterview at Greenpoint, LLC, is seeking a Zoning Special Permit, Zoning Authorizations, and is co-applicant with the Department of City Planning (DCP) for a Zoning Text Amendment, in order to facilitate a mixed-use development of 720 units of housing including 200 affordable units, 25,000 square feet of ground-floor retail space, 34,850 square feet of new public open space, and 6,000 square feet of community facility space in Greenpoint, Community District 1, Borough of Brooklyn. In addition, the proposed actions would facilitate the construction of approximately 2.8 acres of new parkland on an adjacent parcel. The proposed project would help fulfill commitments made by the City during the ULURP review of the 2005 Greenpoint-Williamsburg Rezoning (N 050110(A) ZRK and C 050111(A) ZMK), which aimed to increase development of much-needed affordable housing and the creation of additional public open space in the Greenpoint and Williamsburg communities.

The proposed project site, 77 Commercial Street, is located between Commercial Street and Newtown Creek, on a lot roughly 490 feet deep and 217 feet wide (Block 2472, Lot 410), and totaling approximately 110,519 square feet. The proposed project site is also identified as Parcel 3 in Waterfront Access Plan BK-1 (WAP BK-1) and is currently developed with a two-story warehouse, which covers a majority of the lot and operates on a short-term lease. Immediately to the west of the proposed project site is 65 Commercial Street, a City-owned lot (Block 2472, Lot 425), totaling approximately 125,063 square feet and identified as Parcel 4 in the WAP BK-1. It

is currently leased to the New York City Transit Authority (NYCTA) for two distinct operations; a Paratransit intermittent vehicle storage lot and an Emergency Response Unit (ERU) which responds to transit-related emergencies. Along the waterfront immediately south and west of these two parcels is the proposed 18.7-acre Greenpoint Landing development site, actions related to which are also currently under review pursuant to the Uniform Land Use Review Procedure (ULURP). Directly east of the proposed project site is a mixture of 3- to 6-story buildings containing commercial and light industrial uses, including the Greenpoint Manufacturing and Design Center (GMDC).

The proposed project site is zoned R6 with a 150-foot-deep C2-4 commercial overlay mapped along Commercial Street. Under unique Inclusionary Housing rules for this area, the R6 district permits residential densities between 2.43 and 2.75 FAR depending on participation in the Inclusionary Housing program. In addition, under special massing rules instituted by the 2005 Greenpoint-Williamsburg Rezoning, buildings are limited to 65 feet in height within 100 feet of Commercial Street, and may rise up to 150 feet elsewhere, with streetwall heights required between 30 and 65 feet. Community facility uses are permitted to an FAR of 4.8 if no residences are present on the zoning lot, while commercial uses are permitted up to 2.0 FAR in the C2-4 commercial overlay, and to a limited extent elsewhere within the zoning lot.

Waterfront parcels to the south are zoned a mix of R6 and R8 and also include the 2005 special massing rules permitting high-rise towers along the water and lower development toward the street. Within the R8 districts, towers are permitted to rise up to 300 and 400 feet under the Inclusionary Housing program and streetwalls are required to rise between 30 and 70 feet. Most of the zoning designations for the waterfront parcels within the 2005 Rezoning Area are within the combined R8-R6 districts.

In the upland areas to the south and east, the zoning is generally MX-8: M1-2/R6A, M1-2/R6B, or M1-2/R6. These districts permit a mix of residential, light industrial, commercial, and community facility uses. R6B is mapped east of Franklin Street with C2-4 overlays along Franklin Street which permit residential and community facility uses, with local retail and service uses within the C2-4 overlays. Residential FAR's for these districts range from 2.0 to 3.6

depending on the district and on participation in the Inclusionary Housing program. Where permitted, commercial and industrial uses can utilize up to 2.0 FAR and community facility uses can develop up to 4.8 FAR. Buildings are generally permitted to rise to between 50 and 70 feet in these districts and no side or front yards are required, generally resulting in attached mid-rise buildings.

Directly across Commercial Street from the proposed project site, at the intersection of Box and Commercial Streets, is a 4-story live-work loft, a one-story used clothing exporter, open vehicle storage and repair lots, and a mix of light industrial and residential uses ranging between 2- to 4-stories in height. Mapped just north and east of the proposed project site, also along the waterfront, is an M1-2 manufacturing district which includes predominately 3-6 story commercial and light industrial uses.

McGuinness Boulevard and the Pulaski Bridge, span Newtown Creek to connect Greenpoint to Long Island City and Hunters Point South, about two blocks to the north and east. The proposed project site is located approximately 8 blocks north of the Greenpoint Avenue G subway station located on Manhattan Avenue and the Jackson Avenue 7 subway station is an approximate 15-minute walk north across the Pulaski Bridge. Local bus service is provided by the B43 bus route one block to the east, also located on Manhattan Avenue.

The waterfront and adjacent blocks were rezoned from manufacturing to residential and mixed-use districts during the 2005 Greenpoint-Williamsburg rezoning, which mapped R8 and R6 residential districts as well as 100-150 foot deep C2-4 commercial overlays along some corridors. During public review for the 2005 Greenpoint-Williamsburg Rezoning, the Administration made a series of commitments to the City Council, known as the Points of Agreement (POA), which included obligations to utilize several City-owned parcels in Brooklyn Community District 1 in order to increase public open space and access to affordable housing. For City-owned Lot 425 (located at 65 Commercial Street, adjacent to the proposed project site), the agreement between the Administration and City Council proposed selling the lot's development rights to an adjacent property owner on the condition that the purchaser build 200

units of affordable housing. The City also agreed to relocate the existing NYCTA operations and develop the lot as a new public park, referred to as Box Street Park.

A public RFP was issued by the NYC Economic Development Corporation (EDC) on August 10, 2012 for the purchase of Lot 425's available development rights. The applicant, and owner of the proposed project site, Waterview at Greenpoint, LLC, responded to the RFP and proposed to purchase up to 303,903 square feet of unused development rights from the adjacent Lot 425 and utilize the increased floor area solely within their own property at Lot 410. As established within the commitments of the 2005 POA, the applicant would construct 200 units of affordable housing as part of this proposed project. In addition, the developer would pay the City approximately \$8 million, to be applied toward the construction of the adjacent Box Street Park proposed for Lot 425.

The use of approximately 647,851 square feet of floor area is proposed on Parcel 410, inclusive of both the floor area generated by that site and the floor area purchased from the City. The proposed project on Lot 410 would use this floor area to produce 720 units of housing, including the 200 affordable units, approximately 25,000 square feet of ground-floor retail space, approximately 6,000 square feet of community facility space, 320 off-street accessory parking spaces, and approximately 34,850 square feet of waterfront public access area. In addition, the sale of Lot 425's development rights would further facilitate the construction of Box Street Park, adding an additional 2.8 acres of new public open space to the neighborhood by securing approximately \$8 million for park design and construction.

In order to accommodate the full floor area on this site, the applicant has proposed a building form similar to the permitted envelope for other waterfront sites zoned with both R6 and R8 districts as part of the 2005 Greenpoint-Williamsburg rezoning, resulting in two slender residential towers nearer to the waterfront, reaching a height of 30- and 40-stories (305.7 feet and 404 feet, respectively), wrapped in an articulated 6- to 8-story (between 68 to 90.7 feet in height) mixed-use base building. The majority of the bulk in the buildings will be accommodated within the two, articulated towers with approximately 8,000 square foot floor plates, allowing for increased open space, with the nearest tower to the Commercial Street frontage being set back

over 100 feet and presenting only a 65 foot wide face to the street. The larger, 40-story tower is set back approximately 330 feet from Commercial Street and nearly 80 feet from the waterfront, in keeping with the massing guidelines of the Greenpoint-Williamsburg rezoning. There is approximately a 100 foot gap between the two towers. The towers would be clad in glass and steel, with the base in detailed masonry and large, ground-floor windows for increased transparency.

The base building would include residential uses on the 2<sup>nd</sup> through 6<sup>th</sup> floors, while ground-floor retail space would front on Commercial Street and wrap around the enclosed parking garage along the Upland Connection, a 30-foot-wide pedestrian way between Commercial Street and the Shore Public Walkway. A 2-story residential amenity space would be located on top of a portion of the base building nearer the waterfront and would be accessible residents of all three buildings. The proposed buildings would form a C-shaped base organized around a central courtyard and vehicular turnaround, which would also provide access to the enclosed parking facility and a number of the residential lobbies.

The Upland Connection would feature an approximately 50-foot-wide entry area along Commercial Street anchored by a series of planted areas, built-in benches, and a number of moveable tables and chairs. At this entry area, an active retail use, such as a café, would be located in a portion of the entry area for outdoor seating, further anchoring and activating the space.

The applicant is proposing to provide a 30-foot-wide Upland Connection with a 12-foot-wide walkway along the western property line, connecting Commercial Street to the Shore Public Walkway (SPW) running along Newtown Creek. Due to the increased elevation of the site for enhanced flood resiliency, the Upland Connection would slope gently upward from approximately 9.10 feet at Commercial Street, at a grade of approximately 4.3 percent, to an overlook in front of the main residential entrance at a height of approximately 19 feet. The Upland Connection would then slope back down toward the Shore Public Walkway and the water's edge at a grade of approximately 4.5%, from 19 feet at the overlook to approximately 13 feet along the shoreline.

Because the proposed Upland Connection would be adjacent to a future public park, special attention has been given to negotiate the grade change between the upland connection and the adjacent parcel with planted and stepped retaining walls in order to soften this raised edge. Beyond providing dramatic views over the park towards the waterfront, the ramped Upland Connection and landing would also help to mitigate any blank walls which could be created by the raised first floor at an elevation of approximately 20 feet.

Pursuant to ZR Sections 62-60 and 62-931, the applicant has proposed a 40-foot-deep, approximately 9,515- square-foot Shore Public Walkway (SPW) along the Newtown Creek waterfront with a 13.6- to 15.6-foot-wide walkway. Within this area, a slightly meandering path would gently slope from an elevation of approximately 13.7 feet in the northwest corner to 10 feet in the northeast corner, and would include a variety of plantings and interactive design interventions including a “get down” which would provide direct access to the water, a number of seating options including large wooden lounge chairs, moveable tables and chairs, built-in benches, and a planted trellis feature. The landscaping plan has been designed to accommodate a future connection when the SPW is eventually expanded to adjacent parcels further east.

Supplementing the required Shore Public Walkway and Upland Connection, the applicant has also proposed to establish an Additional Public Access Area which would run along the eastern lot line and connect the northeastern corner of the SPW with Commercial Street, preventing a “dead end”. This additional access would slope similarly to the Upland Connection and range in width from approximately 33.5 feet, including a 6-foot-wide walkway, to approximately 15 feet in width, where it rejoins the vehicular driveway mentioned earlier, along Commercial Street.

A 22-foot-wide curb cut along Commercial Street would provide access to the vehicular driveway through a 33.5-foot-wide and 25-foot-high pass-through, leading to an oval turnaround area and enclosed parking facility entrance in the central courtyard. A second 19.2-foot-wide curb cut, located 5 feet to the west of the residential drive would provide access to the commercial loading berth, which would front on Commercial Street, directly adjacent to the pass through. Approximately 320 off-street parking spaces, which are the minimum required under ZR Sections 25-23 and 25-25, would be provided in a fully enclosed, attended accessory parking

facility located below the central courtyard and vehicular turnaround. An additional 363 bicycle parking spaces, pursuant to ZR Sections 25-811 and 36-711, and one off-street loading berth pursuant to ZR Section 36-62, would also be provided.

## **Requested Actions**

### Special Permit (140047 ZSK)

The Applicant is applying for a Special Permit pursuant to ZR Section 62-836 to allow modifications to the requirements regarding maximum base and building heights and minimum setbacks. The waivers to be granted under the Special Permit would allow increased design flexibility to accommodate the development rights that are proposed to be transferred from Lot 425 to Lot 410 in a form similar to that permitted by zoning on other sites along the Greenpoint and Williamsburg waterfronts.

#### *a) Base Heights and Setbacks:*

Pursuant to ZR Sections 62-354(a) and 62-341(a), within WAP BK-1, portions of buildings that are within an initial setback distance of 15 feet from a narrow street (including, for this purpose, the Upland Connection) and within 30 feet of the SPW, are permitted to a height of 65 feet or six stories, whichever is less, except for street frontages greater than 100 feet in length, where, at least 20 percent of such frontage cannot exceed a maximum base height of 55 feet or five stories, whichever is less.

Along Commercial Street, the proposed building would rise to a height of 68 feet above the base plane, which is 3 feet above the maximum base height. Along the Upland Connection, portions of the base of the buildings (totaling approximately 126 linear feet) would rise to 8 stories (90.7 feet) encroaching into the setback area between 7 to 13.6 feet. Likewise, a 43.6-linear-foot portion of the base along the SPW would also rise to a height of 8 stories (90.7 feet), encroaching into the setback area by approximately 7 to 10.5 feet.



The applicant has stated that these waivers would allow for greater articulation in massing of the base along the Upland Connection and SPW, breaking up the 500 foot long streetwall with greater variation. The proposed waivers would also allow the affordable units within the base building to have the same floor to ceiling heights (9 feet clear) as the market rate units.

*b) Building Heights:*

Pursuant to ZR Section 62-354(b), within WAP BK-1, the maximum building height is 150 feet except for portions of a building within 100 feet of Commercial Street, for which the maximum building height is 65 feet or six stories, whichever is less.

The portion of the base building within 100 feet of Commercial Street is proposed to have a maximum building height of 68 feet, which is 3 feet greater than the maximum permitted building height. The proposed waiver would allow the affordable units to have the same floor to ceiling heights as the market rate units. In addition, the proposed southern tower would rise to 30 stories (305.7 feet) and the northern tower would rise to 40 stories (404 feet).

The applicant has stated that the proposed building height waivers would allow the additional development rights from Lot 425 to be accommodated within an efficient, slender building envelope, similar to the massings permitted within the 2005 Greenpoint-Williamsburg Rezoning, which would allow more light and air around the buildings than lower, wider buildings.

Authorizations (N 140048 ZAK, N 140049 ZAK)

The applicant is also applying for two Authorizations which would allow for enhanced flood resiliency and site design within the proposed project site. As described above in the Project Description, the applicant proposes 34,850 square feet of waterfront public access area, which is 9,397 square feet in excess of that required by zoning. The applicant requests the following waivers to modify certain requirements of this waterfront public access area.

ZR Section 62-822(a) allows for modifications to the level of waterfront yards and waterfront public access areas as well as the location and dimensions of visual corridors and upland connections.

*a) Level of Waterfront Yard*

Waterfront yards, which comprise a 40-foot wide strip of land along the shoreline, are required by ZR Section 62-332 to be no higher than the grade of the existing bulkhead, which currently ranges from 6.5 to 8.9 feet above sea level along the shoreline. The applicant proposes to raise the grade up to 13 feet in some locations, which would facilitate the implementation of a more flood resilient development.

*b) Level of Shore Public Walkway and Upland Connection*

The lowest level of the any waterfront public access area is determined by the elevation of the adjoining portions of zoning lots or the public sidewalk, and cannot be obstructed pursuant to ZR Section 62-61(a). The elevation of the sidewalk along Commercial Street is approximately 9.10 feet high; however the applicant proposes to gently raise the elevation of the Upland Connection at the mid-block of their site to an elevation as high as 19 feet to meet the first residential floor and central courtyard, and then descend back down towards the shoreline. The proposed intervention would allow the primary residential entrances of the buildings to be raised above the most-recent flood elevations and would have the added benefit of providing an overlook area with dramatic vistas of Newtown Creek, the Manhattan skyline, and the future Box Street Park, when developed.

*c) Location of Visual Corridor and Upland Connection*

ZR Sections 62-51 and 62-931(e)(1) as well as ZR Sections 62-561(a) and 62-931(d)(2) require Visual Corridors and Upland Connections to be provided at regular intervals through waterfront zoning lots along the shoreline. These regulations require a 30-foot-wide upland connection and a 50-foot-wide visual corridor, whose location is dependent upon timing of the adjacent parcel's development. The applicant is proposing a complying 30-foot-wide Upland Connection and a portion of the required Visual

Corridor along the shared western lot line, regardless of the timing of the development of these adjacent parcels.

ZR Section 62-822(b) allows for modifications of the permitted obstruction requirements for visual corridors and waterfront public access areas, and minor modifications to waterfront public access area design requirements.

*a) SPW Circulation Path*

ZR Section 62-62(a)(1) requires that the circulation path for the SPW be within 10 linear feet of the shoreline for at least 20 percent (46.5-linear-feet) of the length of the shoreline. The applicant is proposing to locate only 18.5 percent (43-linear-feet) of the circulation path within this proximity, falling short of the requirement by 3.5-linear-feet. However, the proposed design provides for a future connection to the adjacent zoning lot to the east, which when complete, would ultimately provide an additional 35-linear-feet of circulation path, exceeding zoning requirements.

*b) Upland Connection Entry Area*

ZR Section 62-64(b) requires that at least 40 percent, but no more than 65 percent, of the 15-foot-deep entry area of an upland connection be paved. The applicant is proposing a 590 square foot paved entry area, which exceeds the maximum 488 square feet permitted, by approximately 102 square feet. The applicant suggests that the additional paving allows for an activated space with extensive seating options proposed for the entry area (19 tables, 38 chairs, and approximately 45-linear-feet of bench seating).

*c) SPW Planting*

ZR Section 62-62(c) requires that at least 50 percent of the SPW be planted. This amount may be reduced by 10 square feet for every linear-foot of direct access to the shore line provided by a “get-down” or other means. Under these calculations, a minimum of 4,443.5 square feet of planted area would be required. In order to accommodate connection to the Additional Public Access Area and a future connection to the shore

public walkway to be provided, only approximately 4,185 square feet of the SPW would be planted.

*d) Guardrails*

ZR Section 62-931 requires a specific curved shoreline guardrail for waterfront public access areas in WAP BK-1. The applicant proposes to use a straightened guardrail which resembles the required design but takes up less lateral space. This substitution serves to conserve space within the shore public walkway.

*e) Maximum Heights of Fences and Walls*

Under ZR Section 62-651(c) fences are not allowed to be mounted on curbs in excess of 6 inches in height and walls are not allowed to exceed a height of 21 inches. Likewise, under ZR Section 62-655(a), not more than 60 percent of the perimeter of a planting area is permitted to be raised more than 18 inches above the adjacent grade. The fence, retaining walls and planted areas of the transition area between the top of the Upland Connection and the grade of portions of the adjacent parcel would exceed these height requirements. The Applicant has stated that the terraced landscaping would provide visual interest while allowing for the preferred design for the Upland Connection.

*f) Water-facing Seating*

ZR Section 62-652(a) requires that 50 percent of the seating with backs that is provided in the waterfront public access area face the general direction of the water. The proposed design for the SPW and Upland Connection would provide 366-linear-feet of seating, of which 183-linear-feet would be required to have backs and 91.5-linear-feet would be required to face the water. A waiver is required because the proposed design would provide for 36-linear-feet of seating backs directly facing the water, although the majority of the seating along the Upland Connection would face west and would provide views over Box Street Park to the water and the Manhattan skyline.

*g) Trash Receptacles*

ZR Section 62-658 requires that trash receptacles have a minimum 12-inch opening on top. The applicant's preferred design for the trash receptacles would have an opening of only 8 inches, requiring a waiver.

Zoning Text Amendment (N 140046 ZRK)

Under the proposed Text Amendment, the text of ZR Sections 11-13 and 62-351(c) would be amended to provide that Lot 425, which is to be retained by the City as a future "public park" as defined in ZR Section 12-10, would continue to generate floor area after it becomes parkland. Pursuant to ZR Section 11-13, public parks are not subject to zoning and therefore do not generate development rights. If the land became parkland as planned, the development rights would cease to exist and therefore could not be sold. This text amendment would help facilitate the construction of 200 units of affordable housing on the project site. The language proposed is identical to that proposed for the zoning text amendment for the recently certified Greenpoint Landing project.

**Environmental Review**

The subject application (C 140047 ZSK), in conjunction with the related actions (N 140048 ZAK, N 140049 ZAK, N 140046 ZRK, and N 140050 ZCK), was reviewed pursuant to the Rules of Procedure for City Environmental Quality Review (CEQR) Executive Order No. 91 of 1977, and the State Environmental Quality Review Act (SEQRA) set forth in Volume 6 of the New York Code of Rules and Regulations (NYCRR), Section 617.00. The designated CEQR number is 14DCP010K. Pursuant to Sections 5.03 and 5.05 of CEQR, the Department of City Planning, acting on behalf of the City Planning Commission, assumed lead agency status and this application, in conjunction with the related actions, was assigned CEQR No. 14DCP010K.

In addition to the proposed project described above, Waterview at Greenpoint, LLC is proposing improvements that would eliminate the potential for significant adverse impacts, also referred to as Project Components Related to the Environment (PCRE's). The improvement concerns the provision of child care for children from eligible households. In accordance with the terms of a

Restrictive Declaration (attached hereto) to be recorded against Waterview's property, Waterview at Greenpoint, LLC would provide funding for publicly-funded child care to the Administration for Children's Services (ACS). Such funding will provide up to 19 additional child care vouchers that would be made available in the project area before the occupancy of buildings on the property that would result in a specified number of residents with incomes at or below 80% of the Area Median Income (AMI).

To avoid the potential for significant adverse impacts related to hazardous materials, air quality and noise, (E) designation (**E-318**) has been incorporated into the proposed project as described below. This new (E) designation supersedes an (E) designation (**E-138**) previously assigned to the development site pursuant to the prior Greenpoint Williamsburg rezoning (CEQR No. 04DCP003K).

The (E) designation text related to hazardous materials is as follows:

**Development Site (Block 2472, Lot 410)**

**City-Owned Site (Block 2472, Lot 425)**

**Task 1**

**The applicant must submit to the NYCDEP Office of Environmental Planning and Assessment (OEPA), for review and approval, a soil and groundwater testing protocol including a description of methods and a site map with all sampling locations clearly and precisely represented.**

**No sampling program may begin until written approval of a protocol is received from DEP. The number and location of sample sites should be selected to adequately characterize site, the specific source of suspected contamination (i.e., petroleum based contamination and (i.e., petroleum based contamination and non-petroleum based contamination) and the remainder of the site's condition. The characterization should be complete enough to determine what remediation strategy (if any) is necessary after review of the sampling data. Guidelines and criteria for**

choosing sampling sites and performing sampling will be provided by DEP upon request.

## **Task 2**

A written report with findings and a summary of the data must be presented to DEP after completion of the testing phase and laboratory analysis for review and approval. After receiving such test results, a determination will be provided by DEP if the results indicate that remediation is necessary. If DEP determines that no remediation is necessary, written notice shall be given by DEP.

If remediation is necessary according to test results, a proposed remediation plan must be submitted to DEP for review and approval. The fee owner(s) of the lot(s) restricted by this (E) designation must perform such remediation as determined necessary by DEP. After completing the remediation, the fee owner(s) of the lot restricted by this (E) designation should provide proof that the work has been satisfactorily completed.

A DEP-approved construction-related health and safety plan would be implemented during excavation and construction activities to protect workers and the community from potentially significant adverse impacts associated with contaminated soil and/or groundwater. This Plan would be submitted to DEP for review and approval prior to implementation.

The (E) designation text related to air quality is as follows:

### **Development Site (Block 2472, Lot 410)**

#### **Building 1 (6-Story Base)**

Any new development on the above-referenced property must ensure that the fossil fuel-fired heating and hot water equipment will utilize only natural gas, and must be fitted with low NOx burners with a maximum emission concentration of 30 ppm, and that heating and hot water equipment exhaust stack(s) are located at least 68

feet above grade, and at least 120 feet from lot #425 of Block 2472, and at least 100 feet from Building 2, to avoid any potential significant air quality impacts.

**Development Site (Block 2472, Lot 410)**

**Building 2 (30-Story South Tower)**

Any new development on the above-referenced property ensure that the fossil fuel-fired heating and hot water equipment will utilize only natural gas, and must be fitted with low NO<sub>x</sub> burners with a maximum emission concentration of 30 ppm, and that heating and hot water equipment exhaust stack(s) are located at least 331 feet above grade to avoid any potential significant air quality impacts.

**Development Site (Block 2472, Lot 410)**

**Building 3 (40-Story North Tower)**

Any new development on the above-referenced property must ensure that the fossil fuel-fired heating and hot water equipment exhaust stack(s) are located at least 429 feet above grade, to avoid any potential significant air quality impacts.

The (E) designation text related to noise is as follows:

**Development Site (Block 2472, Lot 410)**

In order to ensure an acceptable interior noise environment, future residential/commercial uses must provide a closed window condition with a minimum of 31 dBA window/wall attenuation on all façades in order to maintain an interior noise level of 45 dBA. In order to maintain a closed-window condition, an alternate means of ventilation must also be provided. Alternate means of ventilation includes, but is not limited to central air conditioning or air conditioning sleeves containing air conditioners.

Statement of No Significant Effect:



The Environmental Assessment and Review Division of the Department of City Planning, on behalf of the City Planning Commission, has completed its technical review of the Environmental Assessment Statement, dated August 2, 2013, prepared in connection with the ULURP Application (Nos. 140046ZRK, 140047ZSK, N140048ZAK, N140049ZAK, N140050ZCK). A revised Negative Declaration, based on a revised Environmental Assessment Statement, was issued on November 6, 2013. The City Planning Commission has determined that the proposed action will have no significant effect on the quality of the environment. This Negative Declaration has been prepared in accordance with Article 8 of the Environmental Conservation Law 6NYCRR part 617.

The above determination is based on an environmental assessment which finds that:

1. The (E) designation for air quality, noise and hazardous materials would ensure that the proposed actions would not result in significant adverse impacts.
2. No other significant effects on the environment which would require an Environmental Impact Statement are foreseeable.

This Negative Declaration has been prepared in accordance with Article 8 of the Environmental Conservation Law 6NYCRR part 617.

## **WATERFRONT REVITALIZATION PROGRAM**

This application and its related actions (C 140047 ZSK, N 140048 ZAK, N 140049 ZAK, and N 140046 ZRK), was reviewed by the Department of City Planning for consistency with the policies of the New York City Waterfront Revitalization Program (WRP), as amended, approved by the New York City Council on October 13, 1999 and by the New York State Department of State on May 28, 2002, pursuant to the New York State Waterfront Revitalization and Coastal Resources Act of 1981 (New York State Executive Law, Section 910 *et seq.*) and determined that it was consistent with the policies of the WRP. The designated WRP number for this application and its related actions is 13-038.

The City Planning Commission, acting as the City Coastal Commission, having reviewed the waterfront aspects of this action, finds that the actions will not substantially hinder the achievement of any Waterfront Revitalization Program (WRP) policy and hereby determines that this action is consistent with WRP policies.

## **UNIFORM LAND USE REVIEW**

This application (C 140047 ZSK), was certified as complete by the Department of City Planning and was duly referred to Brooklyn Community Board 1 and to the Borough President, in accordance with Article 3 of the Uniform Land Use Review Procedure (ULURP) rules, along with the related non-ULURP actions (N 140048 ZAK, N 140049 ZAK, N 140046 ZRK and N 140050 ZCK), which were sent to Community Board 1 and the Borough President for information and review in accordance with the procedure for referring non-ULURP matters.

### **Community Board Review**

Community Board 1 held a public hearing on this application on August 20, 2013, and the hearing was continued on August 27, 2013. On September 9, 2013, by a vote of 29 to 8 with 0 abstentions, the Community Board voted to disapprove the application with the following conditions:

- 1) *Affordable Housing - The developer must provide a wider range of unit sizes and eligibility by adjusting the proposed sizes of the apartments and lowering the AMI percentages as follows;*
  - a. *Carve out of affordable units - least 70 units of the affordable housing be specifically earmarked for senior citizens/disabled, 30% AMI and lower, utilizing senior housing funding from HUD Section 202/Section 8 programs (this funding prefers smaller units for seniors, ie. more studios, allowing for more housing units to be constructed).*
  - b. *The balance of the units are to be developed as follows:*

30%	<i>studio apartments</i>
35%	<i>1- bedroom apartments</i>
30%	<i>2- bedroom apartments</i>
5%	<i>3 -bedroom apartments</i>

*with the following income breakdowns:*

*60% of the units for 40% AMI  
20% of the units for 50% AMI  
20% of the units for 60% AMI*

*The number of units might deviate from 200, either up or down, by this recommended unit distribution (including elderly units), though the 165,000 sq. ft. of affordable housing would remain.*

- 2) The Developer must avail itself to other programs and funding sources that would make the proposed units more affordable with a lower AMI (programs such as HDC's LAMP, as well as NYS HCR's 80120, bonds and tax credits). If necessary, some portion or all of the \$7 million allocated for the park must be used to meet this affordability mandate. Other funding sources could be discretionary funding from the Council Member and Brooklyn Borough President. The developer should apply for funding before deadlines expire to achieve the community's desired AMI. The developer should avail itself to NYS HCR's announced pre-registration workshops in NYC on September 10, 2013 and meet deadlines for funding of applications (October 10, 2013).*
- 3) Special Permit Bulk Text - shall be conditioned on the filing of an Inclusionary Housing Plan for the developer's site to its maximum 2.75 FAR and that as opposed to the Zoning resolution's 80% AMI allowance, such units shall not exceed 60% AMI.*
- 4) Reservation of units for Community Preference - At the minimum, 50% of community preference for the lottery should result in CB #1 residents including displaced former residents since the 2005 rezoning was adopted and be prioritized to obtain the lowest AMI (40%-60% AMI).*
- 5) On the basis of respecting the developer's economics, there is no reason why stories 1-6 in all three buildings cannot integrate the affordable units and market-rate units. Affordable units are to be integrated below the 7th floor in the tower or market rate parts of the proposed development.*
- 6) We also insist that the costs for amenities (including parking) are to be discounted for residents of the affordable units.*
- 7) All of the money donated by the developer for the park will be earmarked for this park and not placed into the City's General Fund.*

### **Borough President Recommendation**

This application was considered by the Borough President of Brooklyn, who held a public hearing on September 17, 2013 and issued a recommendation approving the application on October 4, 2013, subject to the following conditions:

*That the Land Disposition Agreement between the City and Waterview at Greenpoint LLC require it and its successors to commit to:*

- a. The filing of the Inclusionary Housing Plan, and approval by the Commissioner of the Department of Housing Preservation and Development, as a condition of utilizing the air rights and floor area bonus connected to the 65 Commercial Street park site;*
- b. The affordable units (pursuant to the Points of Agreement) be as follows:*
  - i. Permanently affordable;*
  - ii. Specifically earmarked that approximately 70 units be for senior citizens/the disabled, not exceeding 30 percent AMI by utilizing senior housing funding from HUD Section 202/Section 8 programs or other comparable sources of financing;*
  - iii. Using the same floor area envision for the 200 POA units, through an increase of the number of units based on the smaller size of the elderly units;*
  - iv. Continuing to include affordable housing at 80 percent AMI but that rent not exceed 120 percent of AMI and that eligibility not exceed 130 percent of AMI, which may be achieved through the introduction of government programs and to accommodate larger households by providing at least five percent as their bedroom units..*
- c. Memorializing the 50 percent preference for community residence in the lottery, including displaced former residents;*
- d. The sale of 65 Commercial Street proceeds be placed in a Trust and Agency Fund to cover the capital costs of the Box Street Park expansion and not remain in the City's General Fund;*
- e. Designating a community liaison officer just prior to commencing site work and maintaining such officer until the final Certificate of Occupancy is issued and such officer share not less than weekly updates during this period;*

*f. The discounting for residents of affordable units, the costs of amenities such as on-site parking and other building amenities.*

***Be it Further Resolved that:***

*The Department of Education commits to opening the new 640-seat district school at the proposed DuPont Street site in a timely manner; and,*

***That the Metropolitan Transit Authority should:***

- 1. Expedite improvements to the G train line to maximize on-time service and minimize delays;*
- 2. Undertake semi-annual full-line impact reviews to determine the projected need for increased frequency and/or lengthening each train;*
- 3. Add additional cars to the G train to expand each train's capacity to 8- 10 cars from its current four cars per train; and,*
- 4. Monitor B32 and B43 service in six months increments and increase service accordingly as well as modify the route of the B32 to DuPont and Eagle streets when usage warrants such a change.*

**City Planning Commission Public Hearing**

On September 23, 2013 (Calendar No. 3), the City Planning Commission scheduled October 9, 2013, for a public hearing on this application (C 140047 ZSK). The hearing was duly held on October 9, 2013 (Calendar No. 11), in conjunction with the public hearings on the applications for the related actions (N 140048 ZAK, N 140049 ZAK, N 140046 ZRK, and N 140050 ZCK). There were a total of 17 speakers, nine speakers in favor of the application and 8 speakers in opposition.

Applicant representatives, including architects, consultants, and attorneys for Waterview at Greenpoint, described the various elements of the proposed project and its potential benefits including bringing new affordable housing and publically accessible open space to the Greenpoint waterfront. They stated that utilizing the prevailing waterfront design standards set in the 2005 Greenpoint-Williamsburg framework would accommodate the full bulk on the

applicant's site in an appropriate built form. While the slender towers are proposed to be made of glass and steel, the articulated base is designed with contextual masonry and at a pedestrian-scale. The affordable units are proposed to have the same large ceiling heights as the market-rate units and include the same finishings.

The applicant representatives stated that by providing 200 permanent affordable units, as set in the 2005 Points of Agreement (POA), they are exceeding the Inclusionary Zoning requirements without the aid of further city subsidies by the Department of Housing Preservation and Development. The applicant's affordable housing consultant stated that, in response to the Community Board and the Borough President recommendations, they are currently researching State and Federal programs to further deepen their proposed affordability levels.

Applicant representatives also explained that this application and its related actions do not generate any new floor area or new development rights beyond those that already exist along the Greenpoint waterfront. The proposed transfer of development rights to the applicant's site would allow for public open space to be created on Lot 425, thus fulfilling both affordable housing and open space commitments of the POA. One of the applicant's representatives stated that all environmental analyses, cleanup, and construction-related activities would be required to follow NYC Department of Environmental Protection (DEP) and NYC Office of Environmental Remediation (OER) standards and procedures, including following requirements set-forth in the existing E-designations on the proposed project site.

A representative from the Department of Parks and Recreation (DPR) discussed the timeline of design and construction for the proposed adjacent Box Street Park, which is to utilize the monies generated by the sale of air-rights of the MTA site/65 Commercial Street, to develop a new 2.8-acre public park. The DPR representative continued that by combining the RFP for design and construction with the proposed Newtown Barge Park (located south along the waterfront within the proposed Greenpoint Landing project), the City was able to save costs and time for build-out. A representative from the Brooklyn Chamber of Commerce spoke in support of the proposed project's affordable housing components, the addition of publically accessible open space, and

the project's proposal to include small-scale retail spaces which could encourage local business opportunities.

A representative from the Mayor's Office also spoke in favor of the application, describing the history of the project and its relationship to the 2005 Greenpoint Williamsburg Rezoning and the POA. She stated that the City committed to producing 200 units of affordable housing and 2.8-acres of open space with the adjacent City-owned property. With the proposed sale of City-owned development rights to the applicant, the proposed project would meet these commitments by funding the design and construction of a new 2.8-acre public park, create 200 new units of much-needed affordable housing on the applicant's property without City subsidies, and create an additional 35,000 square feet of publically accessible open-space. The representative also stated that the Administration will continue to work with the applicant to reduce AMI's for the proposed affordable units.

Speaking in opposition to the application and its related actions, two union representatives related the history of labor and tenant disputes at other sites owned by the applicant within the City.

Several community residents, including some associated with the "Save Greenpoint" community group, also spoke against the project. They stated that they were concerned about the lack of local infrastructure, specifically mass-transit capacity, and the future tax-payer costs which could be associated with these infrastructure upgrades. Some opponents suggested that both the 2005 Greenpoint-Williamsburg EIS and the action-related EAS did not conduct a detailed and up-to-date environmental analysis which could ultimately result in air-quality impacts from long-term construction along the waterfront.

Speakers against the application also alleged that sale of air-rights did not result in a fair-price for the City, the City-owned development rights were undervalued, and the sale would not produce enough revenue for the clean-up and construction of the proposed Box Street Park. Some speakers stated that there should be more revenue for the build-out of the adjacent park, as stated in the 2005 Points of Agreement.

## CONSIDERATION

The Commission believes that this application and its related actions (C 140047 ZSK, N 140048 ZAK, N 140049 ZAK, N 140046 ZRK, and N 140050 ZCK) are appropriate.

The Commission recognizes the significance of the 2005 Greenpoint-Williamsburg rezoning to the Greenpoint and Williamsburg communities and notes that the rezoning is succeeding in many of its original goals, including the revitalization of an underutilized and inaccessible waterfront, the construction of almost 8-acres of public open space along the Greenpoint and Williamsburg waterfronts, and starting, or completion of construction, of over 1,000 units of affordable housing.

The Commission acknowledges that the Administration made a series of commitments to the City Council in 2005 (The Points of Agreement or POA) to use a wide array of mechanisms to address the community's concerns related to the rezoning, including the dedication of a number of City-owned properties in Community District 1 for affordable housing and open space development, and that budget challenges have delayed the fulfillment of several of these commitments. The proposed actions seeks to fulfill those commitments with the sale of development rights from a City-owned property (Block 2472, Lot 425) to facilitate the development of 200 units of affordable housing and the creation of 2.8-acre waterfront public park. The proposed project would create an additional 35,000 square feet of waterfront esplanade and publically accessible open space, maintain the quality design standards set in the 2005 rezoning framework, and help further activate the Commercial Street corridor with dynamic, ground-floor retail. The Commission recognizes that the creation of a waterfront public park has been an extremely important issue in the community, and residents have mobilized in support of the City's commitment to develop this open space. This proposed project helps achieve the dual-goals of creating a waterfront public park while simultaneously generating permanently affordable housing.

The Commission is pleased to note that the proposed actions further the 2005 rezoning framework by expanding the waterfront esplanade and creating an additional 35,000 square feet



of publically accessible open space. With an activated ground-floor retail component, the applicant proposes to invigorate both the Commercial Street corridor and anchor the new open space with nodes of pedestrian-scale activity. Additionally, with the purchase of City-owned development rights from the adjacent property, the applicant proposes to contribute approximately \$8 million to the build-out of a public park and will use more than half of the purchased development rights to provide 200 units of affordable housing on their development site. These 200 units of permanently affordable housing would be afforded similar views of the park and the waterfront, would have the same generous floor-to-ceiling heights as the market-rate units, and would share a common-lobby located along the Upland Connection.

The Commission believes that the special permit that is the subject of this report (C 140047 ZSK) is appropriate. The proposed special permit for height and setback waivers allows the increase in bulk to be situated in a form similar to the permitted envelope for other waterfront sites zoned with both R6 and R8, as part of the 2005 Greenpoint-Williamsburg rezoning. The proposed modifications will allow the massing of the buildings to be oriented toward the center of the zoning lot, providing a greater amount of open space than required by zoning. The majority of the bulk in the buildings will be accommodated within two slender towers, permitting increased access to light and air on the site and the surrounding streets and community.

Likewise, the proposed setback relief will not adversely affect access to light and air as the waiver would allow only a slight increase in the height of the 6-story base. The proposed setback relief would not only help introduce variation in the height of street walls along the Upland Connection and the Shore Public Walkway, improving site design, but also allow all units throughout the development to maintain similar generous floor-to-ceiling heights of 9 feet 8 inches.

The Commission also notes that the proposed height and setback waivers will allow the development rights that are being transferred from the adjacent City-owned lot to be utilized completely within the proposed project site. The Administration has stated that it intends to use the proceeds from the sale of these development rights to supplement the construction of the

adjacent 2.8-acre “Box Street Park”. Additionally, the Administration has stated that the sale, and subsequent transfer, of these air rights is on condition that the applicant, Waterview at Greenpoint, LLC, be required to construct 200 units of permanently affordable housing within their proposed development. The creation of both affordable housing and public open space creation were stated-goals in the 2005 Points of Agreement, of which the Administration and City Council were party to. Accordingly, the height and setback waivers would facilitate the use of these development rights in a preferred design for the adjacent open areas, shoreline, and proposed development site.

With regard to testimony received at the City Planning Commission public hearing related to the density, bulk and character of development, Commission also notes that the proposed actions do not permit more development than was contemplated in 2005, and that a large portion of the proposed development consists of affordable housing and public open space, promised by the Administration at that time. The proposed bulk and height waivers are requested in order to accommodate the purchased air rights in a form anticipated by the 2005 Greenpoint-Williamsburg rezoning, which was sensitive to community context, affordable housing development, quality waterfront access and open space generation, and encouraged superior design standards.

#### **Zoning Text Amendment - N 140046 ZRK**

The Commission believes that the proposed zoning text amendment is appropriate and advances the dual-goals of affordable housing and open space generation, as stated in the 2005 Points of Agreement, by allowing the development rights to be transferred from the adjacent City-owned lot and utilized within the proposed project site. Because public parks do not generate floor area, the purchased development rights would cease to exist once the City-owned lot was converted into a public park, and the proposed development would be rendered into non-compliance. This text amendment allows the proposed development to remain in compliance, even after the City-owned lot is converted into a public park. The Commission notes that, in doing so, the City-owned lot is able to generate both 200 units of affordable housing as well as become a much-needed public park.

The Commission acknowledges the Community Board, Borough President, and public's concerns regarding the market-rate sales price of the City-owned development rights and the number of negotiated affordable units. The Commission notes, however, that the number and income mix of affordable units on the proposed project site is not subject of the land use actions before the Commission and, apart from the project's participation in the Inclusionary Housing Program, not governed by the Zoning Resolution.

**Waterfront Authorizations (Sections 62-822(a) and (b)) - N 140048 ZAK & N 140049 ZAK**

The Commission believes that the proposed zoning text amendment is appropriate and meets the findings of Section 62-836 of the Zoning Resolution. The Commission would also like to note that the requested authorizations would allow for enhanced flood resiliency and site design by modifying the proposed development's waterfront public access areas. The applicant has proposed to increase the elevation of the project site above the latest base flood elevations, raising both on-site residential uses and mechanicals, as well as protecting upland residents and businesses from potential storm-related flooding. These modifications would not inhibit public access and enjoyment of the proposed open space or proposed waterfront esplanade. The proposed design modifications would help anchor and activate the upland connection with active ground-floor commercial uses, could encourage improved access and enjoyment of the proposed upland connection and provide dramatic views over the proposed Box Street Park and out towards the East River. The applicant's provision of a proposed additional access area, running along the eastern lot line, helps increase pedestrian access to the waterfront esplanade. The applicant has proposed to anchor this public area with a visual destination and activity-node to further act as a pedestrian attraction and draw. Furthermore, the Commission is pleased that the applicant proposes to provide approximately 35,000 square feet of thoughtfully-designed publically accessible open space, exceeding waterfront open space zoning requirements.

With regard to testimony received at the City Planning Commission public hearing related to environmental concerns, especially those related to air quality and on-site hazardous materials, the Commission notes the existing E-designations placed on the proposed project site requires specific remediation protocol, supervised by the Mayor's Office of Environmental Remediation (OER), prior to construction. The E-designations and involvement of OER could result in the

creation of both a Remedial Action Plan and a Construction Health and Safety Plan, which would protect workers and the community from any potential environmental hazards during construction. Ultimately, the future development of the proposed project site requires clean-up and remediation of any potential hazards.

In regard to the recommendations of Community Board 1 and the Brooklyn Borough President related to the proposed affordable housing program, the Commission notes that the project sponsor is required by the development rights sales contract to provide 200 units of permanently affordable housing, and has stated their intention to seek deeper affordability levels.

The Commission recognizes the recommendations of Community Board 1 and the Borough President, and testimony received at the Commission's public hearing, related to funding for the proposed new parkland. However, the Commission notes that funding for City capital projects is not within its purview. However, the Commission also notes that representatives of DPR have stated that the park projects will be designed to the currently proposed budgets.

Finally, the Commission believes that this application furthers the goals of both the 2005 Greenpoint-Williamsburg framework and also the 2005 Points of Agreement between the Administration and City Council. These requested actions facilitate the creation of 2.8 acres of new public parkland and the addition of 200 permanently-affordable units of housing within the Greenpoint community. The Commission recognizes that the applicant is pleased to note that the applicant proposes to provide shared residential-entrances, similar floor-to-ceiling heights, similar finishes, and access to all residential amenities for both the affordable and market-rate units. Moving forward, the Commission strongly encourages the applicant to continue to work with the Administration and the City Council by recognizing calls from the community to increase the proposed affordability levels for the 200 units of affordable housing.

## **FINDINGS**

The Commission hereby finds, pursuant to Section 62-836 of the Zoning Resolution, that the bulk modifications will not adversely affect access to light and air on surrounding waterfront public access areas, streets and properties; and that they:

(a) will result in a better site plan and a better relationship between the zoning lot and the adjacent streets, surrounding neighborhood, adjacent open areas and shoreline than would be possible through strict adherence to the regulations; or

(b) Not applicable.

## **RESOLUTION**

Therefore, the City Planning Commission, deeming the actions described herein to be appropriate, adopts the following resolution:

**RESOLVED**, that having considered the Environmental Assessment Statement, dated August 2, 2013, prepared in connection with the ULURP Application (Nos. 140046ZRK, 140047ZSK, N140048ZAK, N140049ZAK, N140050ZCK), the City Planning Commission finds that the New York State Environmental Quality Review Act and Regulations have been met and that the proposed actions will have no significant effect on the quality of the environment; and be it further

**RESOLVED**, that the City Planning Commission, acting as the City Coastal Commission, having reviewed the waterfront aspects of this action, finds that the actions will not substantially hinder the achievement of any Waterfront Revitalization Program (WRP) policy and hereby determines that this action is consistent with WRP policies; and be it further

**RESOLVED**, by the City Planning Commission, pursuant to Sections 197-c and 200 of the New York City Charter, that based on the environmental determination described in this report, the application submitted by Waterview at Greenpoint LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 62-836 of the Zoning Resolution to modify the height and setback requirements of Section 62-341 (Developments on land and platforms) and Section 62-354 (Special height and setback regulations) in connection with a proposed mixed-use development on property located at 77 Commercial

Street (Block 2472, Lot 410), in R6 and R6/C2-4 Districts, Borough of Brooklyn, Community District 1, is approved subject to the following terms and conditions:

1. The properties that are the subject of the related application (N 140047 ZSK) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications, and zoning computations indicated on the following plans, prepared by Cetra/CRI Architecture PLLC and MPFP LLP, filed with this application and incorporated in this resolution:

<u>Dwg. No.</u>	<u>Title</u>	<u>Last Date Revised</u>
Z-03	Site Plan	07/30/2013
Z-03.1	Tower Details	07/30/2013
Z-05	Zoning Calculations	
Z-06	Base Height, Building Height, Setback and Bulkhead Modifications - Plan	07/30/2013
Z-06.1	Base Height, Building Height, Setback and Bulkhead Modifications – Section 1	07/30/2013
Z-06.2	Base Height, Building Height, Setback and Bulkhead Modifications – Sections 2 and 3	07/30/2013
Z-06.3	Base Height, Building Height, Setback and Bulkhead Modifications – Section 4	07/30/2013
Z-06.4	Base Height, Building Height, Setback and Bulkhead Modifications – Section 5 and 6	07/30/2013

2. Such development shall conform to all applicable provisions of the Zoning Resolution, except for the modifications specifically granted in this resolution and shown on the plans listed above which have been filed with this application.
3. Such development shall conform to all applicable laws and regulations relating to its construction and maintenance.
4. All leases, subleases, or other agreements for use or occupancy of space at the

subject property shall give actual notice of this special permit to the lessee, sub-lessee or occupant.

5. Development pursuant to this resolution shall be allowed only after the restrictive declaration attached to the report on this application for a special permit (C 140047 ZSK), with such administrative and technical changes as are acceptable to Counsel to the City Planning Commission, and subject to the approval of the New York City Corporation Counsel for the insurance provisions contained in Sections \_\_\_ and the indemnification provisions contained in Sections \_\_\_, has been executed and recorded in the Office of the City Register, Kings County. Such restrictive declaration shall be deemed incorporated herein as a condition of this resolution.
6. Upon the failure of any party having any right, title or interest in the property that is the subject of this application, or the failure of any heir, successor, assign or legal representative of such party to observe any of the restrictions, agreements, terms or conditions of this resolution whose provisions shall constitute conditions of the authorization hereby granted, the City Planning Commission may, without the consent of any other party, revoke any portion of or all of said authorization. Such power of revocation shall be in addition to and not limited to any other powers of the City Planning Commission or of any agency of government, or any private person or entity. Any such failure as stated above, or any alteration in the development that is the subject of this application that departs from any of the conditions listed above, is grounds for the City Planning Commission to disapprove any application for modification, cancellation or amendment of the authorization.
7. Neither the City of New York nor its employees or agents shall have any liability for money damages by reason of the city's or such employee's or agent's failure to act in accordance with the provisions of this special permit.

The above resolution (C 140047 ZSK), duly adopted by the City Planning Commission on November 6, 2013 (Calendar No. 11), is filed with the Office of the Speaker, City Council, and the Borough President in accordance with the requirements of Section 197-d of the New York City Charter.

**AMANDA M. BURDEN, FAICP, Chair**  
**KENNETH J. KNUCKLES, ESQ., Vice Chairman,**  
**ANGELA M. BATTAGLIA, RAYANN BESSER, IRWIN G. CANTOR, P.E.,**  
**ALFRED C. CERULLO, III, BETTY Y. CHEN, MARIA M. DEL TORO, JOSEPH**  
**DOUECK, RICHARD W. EADDY, ANNA HAYES LEVIN, OLRANDO MARIN**  
**Commissioners**

**MICHELLE DE LA UZ, Commissioner, ABSTAINING**



ATTACHMENT 1

RESTRICTIVE DECLARATION

KINGS COUNTY  
BLOCK 2472, LOT 410

RECORD AND RETURN TO:

GREENBERG TRAURIG, LLP  
200 PARK AVENUE  
NEW YORK, NEW YORK 10166  
ATTENTION: S. NICHOLAS HOCKENS, ESQ.

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I     DEFINITIONS .....	6
ARTICLE II    DEVELOPMENT OF SUBJECT PROPERTY .....	15
2.1    Development of Subject Property .....	15
2.2    As-of-Right Development.....	15
ARTICLE III    OBLIGATION TO CONSTRUCT THE WPAA; PROJECT COMPONENTS RELATED TO THE ENVIRONMENT .....	16
3.1    Obligation to Construct the Waterfront Public Access Areas .....	16
3.2    PCRE Related to Publicly Funded Child Care Facilities.....	16
3.3    Inconsistencies with the EAS.....	19
3.4    Innovation; Alternatives; Modifications Based on Further Assessments .....	19
ARTICLE IV    DESIGN DEVELOPMENT OF THE WPAA .....	20
4.1    WPAA Drawings. ....	20
4.2    Submission of Construction Drawings .....	21
4.3    Administration. ....	22
4.4    Agency Review Time Periods. ....	22
4.5    Standards for Review .....	23
4.6    State and Federal Permits.....	23
4.7    Schedule.....	24
4.8    Modification of Drawings.....	24
4.9    Final Plans and Specifications / 100% Construction Drawings.....	25
4.10   As-Built Drawings .....	26
ARTICLE V     CONSTRUCTION .....	27
5.1    Manner of Performance of the Construction Work; Permits .....	27
5.2    Modifications of Final Plans and Specifications / 100% Construction Drawings.....	27
5.3    Resident Engineer .....	28
5.4    Insurance .....	30
ARTICLE VI    TEMPORARY CERTIFICATE OF OCCUPANCY; TRANSFER OF TITLE; GRANT OF EASEMENTS.....	30
6.1    TCO.....	30
6.2    Notice of Substantial Completion.....	31

6.3	Transfer of Title to the Shore Public Walkway .....	32
6.4	Grant of UC Easement .....	33
6.5	License .....	33
6.6	Security for Final Completion .....	34
6.7	Maintenance Fund for the Shore Public Walkway. ....	34
6.8	Security for Maintenance of Upland Connection. ....	35
ARTICLE VII PERMANENT CERTIFICATE OF OCCUPANCY .....		35
7.1	PCO.....	35
7.2	Notice of Final Completion .....	35
7.3	Failure to Perform .....	37
ARTICLE VIII ADMINISTRATION OF THE WPAA.....		37
8.1	Hours of Operation .....	37
8.2	Maintenance of the Shore Public Walkway.....	38
8.3	Maintenance of the Upland Connection .....	38
8.4	Private Access to the Shore Public Walkway.....	38
8.5	Commercial Access to the Shore Public Walkway.....	38
8.6	Commercial and Non-Public Uses of the Shore Public Walkway.....	39
ARTICLE IX ADDITIONAL PUBLIC ACCESS AREA.....		39
9.1	Additional Public Access Area .....	39
9.2	Grant of APAA Easement.....	40
9.3	Hours of Operation .....	40
9.4	Maintenance of the APAA .....	41
ARTICLE X ENFORCEMENT; LIMITATION OF LIABILITY; INDEMNIFICATION .....		41
10.1	Force Majeure .....	41
10.2	Failure to Make Annual SPW Maintenance Payment .....	42
10.3	Denial of Public Access .....	43
10.4	Enforcement by City .....	43
10.5	No Third Party Beneficiary.....	43
10.6	Additional Remedies.....	44
10.7	Notice and Cure .....	44
10.8	Notice to Mortgagee .....	45
10.9	Binding Effect.....	45
10.10	Limitation of Liability.....	46
10.11	Indemnification by the City .....	48

ARTICLE XI EFFECTIVE DATE; AMENDMENTS OR MODIFICATIONS;  
 CANCELLATION .....49

11.1 Effective Date; Cancellation .....49

11.2 Amendments of Declaration .....50

11.3 Minor Modification.....50

11.4 Modification of Maintenance Agreements .....50

11.5 Required Consents to Modifications or Amendments .....51

ARTICLE XII MISCELANEOUS .....52

12.1 Notices .....52

12.2 Severability .....53

12.3 Declaration to Be Included .....54

12.4 Default and Attorney’s Fees .....54

12.5 No Other Restrictions of Records .....54

12.6 Counterparts .....54

ARTICLE XII PROPERTY OWNERS’ ASSOCIATION.....55

13.1 Obligation to Create Property Owners’ Association .....55

13.2 Purposes .....56

13.3 Association as Successor of Declarant .....56

13.4 Required Recitals .....56

13.5 Powers.....57

13.6 Assessments. ....58

List of Exhibits

- Exhibit A: Legal Description of the Subject Property
- Exhibit B: Parties-in-Interest Certification
- Exhibit C: Form of Waiver and Subordination
- Exhibit D: Development Drawings
  - D-1: Drawings prepared by Cetra/CRI Architecture PLLC
  - D-2: Drawings prepared by MPFP LLC/M. Paul Friedburg & Partners
- Exhibit E: Legal Description of the Shore Public Walkway and Upland Connection
- Exhibit F: Form of SPW Maintenance Agreement
- Exhibit G: Form of UC Maintenance Agreement
- Exhibit H: WPAA Permitted Encumbrances
- Exhibit I: Form of Notice of Substantial Completion
- Exhibit J: Form of Bargain and Sale Deed
- Exhibit K: Form of Notice of Final Completion
- Exhibit L: ECB Fine/Penalty Schedule

## RESTRICTIVE DECLARATION

DECLARATION made as of the \_\_\_ day of \_\_\_\_\_, 2013 (this “Declaration”), by WATERVIEW AT GREENPOINT LLC, a New York limited liability company, having an office c/o Clipper Equity, LLC, 4611 12<sup>th</sup> Avenue, Brooklyn, New York 11219 (“Declarant”).

### RECITALS:

A. Declarant is the owner of certain real property located in the Borough of Brooklyn, Kings County, City and State of New York, which property is designated as Block 2742, Lot 410 on the Tax Map of the City of New York, Kings County (the “Tax Map”), as more particularly described in Exhibit A annexed hereto (the “Subject Property”).

B. The City of New York (the “City”) is the owner of the parcel of real property located directly adjacent and to the west of the Subject Property, which property is designated as Block 2742, Lot 425 on the Tax Map (the “City Property”).

C. Declarant has proposed to develop the Subject Property with three new buildings (each, a “New Building”), containing in the aggregate up to approximately 627,851 square feet (“sf”) of residential floor area (approximately 720 dwelling units), up to approximately 24,999 sf of commercial floor area for local retail uses and services, up to 6,000 sf of community facility floor area and approximately 320 off-street accessory parking spaces in the aggregate (the “Proposed Development”).

D. To enable Declarant to construct the Proposed Development on the Subject Property, the City and Developer will execute a Declaration of Single Development Parcel and a Joint Development Agreement (collectively, the “Floor Area Transfer Documents”) to take

advantage of the procedure authorized by Section 62-353 (Special floor area, lot coverage and residential density distribution regulations) of the Zoning Resolution of the City of New York (as amended from time to time, the “Zoning Resolution” or “ZR”), which will permit floor area, lot coverage and residential density to be located anywhere on a single development parcel consisting of the Subject Property and the City Property without regard to zoning lot lines or zoning district boundary lines.

E. The Subject Property is a waterfront zoning lot and the Proposed Development is therefore subject to the requirements (collectively, the “Waterfront Regulations”) set forth in Article 6, Chapter 2 (Special Regulations Applying in the Waterfront Area) of the Zoning Resolution, including the provisions of ZR Section 62-931 (Waterfront Access Plan BK-1: Greenpoint Williamsburg) (the “WAP”). The Subject Property is designated as “Parcel 3” in the WAP.

F. Pursuant to the Waterfront Regulations, the Proposed Development will include waterfront public access areas (the “Waterfront Public Access Areas” or “WPAA”) consisting of an approximately 9,515 sf Shore Public Walkway (as hereinafter defined) along Newtown Creek and an approximately 15,935 sf Upland Connection (as hereinafter defined) along the common lot line with the City Parcel. The Proposed Development will also include an approximately 9,400 sf Additional Public Access Area (as hereinafter defined) along the eastern lot line of the Subject Property. The WPAA and the Additional Public Access Area are hereinafter referred to, collectively, as the “Public Access Areas” or “PAA”.

G. Declarant has filed the following land use applications (collectively, the “Applications”) with the New York City Department of City Planning seeking: (i) a special

permit (the “Special Permit”) pursuant to ZR Section 62-836 (Bulk modifications on waterfront blocks) to waive requirements regarding maximum base and building heights and minimum setbacks (Application No. 140047 ZSK); (ii) an authorization (the “Location Authorization”) pursuant to ZR Section 62-822(a) (Authorization to modify requirements for location, area and minimum dimensions of waterfront public access areas and visual corridors) to waive upland connection and visual corridor requirements (Application No. N140048 ZAK ); (iii) an authorization (the “Design Authorization” and, collectively with the Location Authorization, the “WPAA Authorizations”) pursuant to ZR Section 62-822(b) (Authorization to modify requirements within waterfront public access areas) to waive requirements regarding the design of the WPAA (Application No. N140049 ZAK); (iv) a certification (the “Certification”) pursuant to ZR Section 62-811 (Waterfront public access and visual corridors) that except with respect to the waivers granted pursuant to the WPAA Authorizations, the WPAA comply with the Waterfront Regulations (Application No. N140050 ZCK); and (v) with the Department of City Planning as co-applicant, an amendment to the text ZR Sections 11-13 (Public Parks) and 62-351 (Special floor area regulations) to provide that the City Property will continue to generate floor area after it is developed as a public park (Application No. N140046 ZRK).

H. Pursuant to ZR Section 62-73(a) (Request to Transfer Title to Certain Waterfront Public Access Areas), Declarant intends to direct a request to the Office of the Mayor, prior to the commencement of design and construction of the WPAA, to transfer fee simple absolute interest in the Shore Public Walkway to the City subject to satisfaction of the conditions of this Declaration.

I. This Declaration sets forth the agreement of Declarant to construct the Public Access Areas as set forth herein, to transfer the Shore Public Walkway to the City (under the

conditions set forth herein), and to grant to the City permanent access easements over the Upland Connection, and to establish an account for the funding of ordinary maintenance of the Shore Public Walkway and a reserve for future repairs.

J. Pursuant to the SPW Maintenance Agreement (as hereinafter defined), DPR (as hereinafter defined) shall be responsible for the maintenance and capital repair of the Shore Public Walkway following conveyance to the City of title to the same.

K. In connection with the Applications, an Environmental Assessment Statement, under City Environmental Quality Review (“CEQR”) (CEQR No. 14DCP010K), was completed pursuant to Executive Order No. 91 of 1977, as amended, and the regulations promulgated thereunder at 62 RCNY §5-01 et. Seq., and the State Environmental Quality Review Act (“SEQRA”), New York State Environmental Conservation Law §§8-0101 et seq. and the regulations promulgated thereunder at 6 NYCRR Part 617 (the “EAS”).

L. At least 72 of the dwelling units in the Proposed Development will be reserved for low-income households (as such term is defined in ZR Section 23-911) (such units, the “Low-Income Units”) and Declarant has committed to seeking state and federal funding mechanisms that would allow up to 200 Low-Income Units to be provided as part of the Proposed Development.

M. To ensure that the development of the Subject Property is consistent with the analysis in the EAS upon which the New York City Planning Commission has made findings pursuant to CEQR and SEQRA and that the development of the Subject Property incorporates includes certain project components related to the environment which were material



to the analysis of environmental impacts of the Proposed Development in the EAS (“PCREs”), Declarant has agreed to certain obligations as set forth in this Declaration.

N. Declarant desires to restrict the manner in which the Subject Property may be developed, redeveloped, maintained and operated now and in the future, and intend these restrictions to benefit all the land, including land owned by the City, lying within a one-half (1/2) mile radius of the Subject Property.

O. Pursuant to the certificate annexed hereto as Exhibit B, Madison Title Agency, LLC has certified that as of October 1, 2013, there are no parties in interest (“Parties-in-Interest”), as that term is defined in the definition of “zoning lot” in ZR Section 12-10, to the Subject Property other than Declarant and New York Community Bank.

P. All Parties-in-Interest have either executed this Declaration or waived their respective rights to execute this Declaration by written instruments annexed hereto as Exhibit C, which instruments are intended to be recorded in the Office of the City Register, Kings County, New York (the “Register’s Office”), simultaneously with the recordation of this Declaration.

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

NOW, THEREFORE, Declarant does hereby declare and agree that the Subject Property shall be held, improved, operated, maintained, sold, transferred, conveyed and occupied subject to the following restrictions, covenants, obligations and agreements.

## ARTICLE I

### DEFINITIONS

1.1 “ACS” shall mean the New York City Administration for Children’s Services, Division of Child Care and Head Start, or any successor to the jurisdiction thereof.

1.2 “Additional Public Access Area” shall mean the area labeled “Additional Public Access Area” on the Development Drawings.

1.3 “Affordable Housing” shall mean dwelling units restricted to occupancy by low-income, moderate-income or middle-income households and eligible common areas as such terms are defined in Sections 12-10 and 23-91 of the Zoning Resolution.

1.4 “Annual SPW Maintenance Payment” shall be an amount calculated in accordance with the provisions of Section 6.7 below. Such amount shall be adjusted from the date of this Declaration based on CPI.

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

1.6 “Association” shall have the meaning set forth in Section 13.1.1 hereof.

1.7 “Certification” shall have the meaning set forth in the Recitals to this Declaration.

1.8 “Chair” shall mean the Chairperson of the New York City Planning Commission or any successor to the jurisdiction thereof.

1.9 “City” shall have the meaning set forth in the Recitals to this Declaration.

1.10 “City Property” shall have the meaning set forth in the Recitals to this Declaration.

1.11 “Commissioner of DPR” shall mean the Commissioner of the New York City Department of Parks & Recreation or any successor to the jurisdiction thereof.

1.12 “Completion Security” shall have the meaning set forth in Section 6.6 hereof.

1.13 “CPC” shall mean the New York City Planning Commission or any successor to the jurisdiction thereof.

1.14 “CPI” shall mean shall mean the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor, New York- Northern New Jersey- Long Island, NY-NJ-CT area, All Items (1982-1984 = 100) or any successor index thereto, appropriately adjusted, or such other index upon which DPR and Declarant may agree. If the Consumer Price Index ceases to be published, and there is no successor thereto, DPR and Declarant shall agree upon another index, each acting reasonably, and such index, as appropriately adjusted, shall be substituted for the Consumer Price Index. If the Consumer Price Index ceases to use 1982-1984 = 100 as the basis of calculation, the Consumer Price Index shall be adjusted accordingly.

1.1 “DCP” shall mean the New York City Department of City Planning or any successor to the jurisdiction thereof.

1.2 “Declarant” shall have the meaning set forth in the Preamble of this Declaration.

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

1.4 “Design Submission” shall have the meaning set forth in Section 4.2 hereof.

1.5 “Development Drawings” shall mean the WPAA Drawings and the following drawings prepared by Cetra/CRI Architecture PLLC, copies of which are attached hereto as

Exhibit D-1:

<u>DRAWING NUMBER</u>	<u>TITLE</u>	<u>DATE</u>
Z-03	Site Plan	07/30/2013
Z-03.1	Tower Details	07/30/2013
Z-05	Zoning Calculations	07/30/2013
Z-06	Base Height, Building Height, Setback and Bulkhead Modifications - Plan	07/30/2013
Z-06.1	Base Height, Building Height, Setback and Bulkhead Modifications – Section 1	07/30/2013
Z-06.2	Base Height, Building Height, Setback and Bulkhead Modifications – Sections 2 and 3	07/30/2013
Z-06.3	Base Height, Building Height, Setback and Bulkhead Modifications – Section 4	07/30/2013
Z-06.4	Base Height, Building Height, Setback and Bulkhead Modifications – Sections 5 and 6	07/30/2013

1.6 “DPR” shall mean the New York City Department of Parks and Recreation or any successor to the jurisdiction thereof.

1.7 “Drawing Modification” shall have the meaning set forth in Section 4.8 hereof.

1.8 “EAS” shall have the meaning set forth in the Recitals to this Declaration.

1.9 “Expected Federal/State Approval Date” shall have the meaning set forth in Section 4.7 of this Declaration.

1.10 “Federal/State Approvals” shall have the meaning set forth in Section 4.6 of this Declaration.

1.11 “Final Completion” or “Finally Complete,” shall mean the completion of all relevant items of work, including any punch list or other items that remained to be completed after Substantial Completion.

1.12 “Final Plans and Specifications / 100% Construction Drawings” shall have the meaning set forth in Section 4.9 hereof.

1.13 “Floor Area Transfer Documents” shall have the meaning set forth in the Recitals to this Declaration.

1.14 “Force Majeure” shall mean that the Chair has made the determination required in Section 10.1 below.

1.15 “Force Majeure Event” shall mean: (a) strike, lockout or labor dispute(s); (b) failure of a contractor to deliver labor or materials on schedule or inability to obtain labor or materials or reasonable substitutes therefore unless due to any act or failure to act by Declarant; (c) acts of God; (d) Legal Requirements (hereinafter defined) that prevent the parties from carrying out their obligations as set forth herein; (e) enemy or hostile government actions; (f) civil commotion, insurrection, terrorism, revolution or sabotage; (g) fire or other casualty; (h) inclement weather of such a nature as to make construction, maintenance, and repair of the Public Access Areas or a material portion thereof, temporarily impractical or not feasible; (i) unsuitability of any soil conditions that were not in existence, were not known, or could not reasonably have been foreseen at the time of the signing of this Declaration making construction, maintenance, or repair of the Public Access Areas or any material portions thereof, temporarily impractical or not feasible; (j) a taking of the Subject Property, or a portion thereof, by condemnation or eminent domain; (k) failure of a public utility to provide power, heat or light; (l) unusual delay in transportation making construction, maintenance, or repair of the Public Access Areas or any material portions thereof, temporarily impractical or not feasible; (m) denial or delay by the City, State of New York or United States government or any agency or instrumentality of any of the foregoing in the processing or approval of any application or

agreements required in order to permit Declarant to carry out its obligations under this Declaration (including, without limitation, denial of or delay in the grant of the Federal/State Approvals beyond the Expected Federal/State Approval Date) provided that such denial or delay is not caused by Declarant's failure to use good faith efforts to diligently seek such approval; (n) the pendency of a litigation or similar proceeding relating to the Applications, the Maintenance Agreements or this Declaration brought by a person or entity not a party hereto; or (o) other conditions not reasonably avoidable by Declarant and which are beyond the reasonable control of Declarant.

1.16 "Governmental Authority" shall mean the City, acting in its governmental capacity, and the United States, the State of New York and/or any political subdivision of any of them, and/or any agency, department, commission, board or instrumentality of any of them.

1.17 "Landscape Architect" shall mean MPFP LLC/M. Paul Friedburg & Partners, or such other registered landscape architect, licensed to do business in the State of New York, as may be selected by Declarant from time to time.

1.18 "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.

1.15 "Lot Owners" shall mean (i) Unit Interested Parties, (ii) the fee owner or ground lessee of any portion of the Subject Property, (iii) all mortgagees of any interest in the Subject Property, and (iv) all boards of managers of any condominium corporation and boards of directors of any cooperative corporation on the Subject Property.

1.16 "Low-Income Units" shall have the meaning set forth in the Recitals to this Declaration.

1.19 “Maintenance Agreements” shall mean, collectively, the SPW Maintenance Agreement and the UC Maintenance Agreement.

1.20 “Mortgagee” shall mean (i) the holder of a mortgage on all or any portion of the Subject Property, other than the holder of a mortgage solely on one or more individual condominium units in the Subject Property, and (ii) the holder of a pledge of the direct or indirect interests in the named Declarant, who has given written notice of its name and address to DCP and DPR.

1.21 “New Building” shall have the meaning set forth in the Recitals to this Declaration.

1.22 “Notice of Final Completion” shall have the meaning set forth in Section 7.2.1 of this Declaration.

1.23 “Notice of Substantial Completion” shall have the meaning set forth in Section 6.2 of this Declaration.

1.24 “PCO” shall mean a permanent certificate of occupancy.

1.25 “PCRE” shall have the meaning set forth in the Recitals to this Declaration.

1.26 “Proposed Development” shall have the meaning set forth in the Recitals to this Declaration.

1.27 “Public Access Areas” or “PAA” shall have the meaning set forth in the Recitals to this Declaration.

1.28 “Punch List” shall have the meaning set forth in Section 7.2.1 of this Declaration.

1.29 “Register’s Office” shall have the meaning set forth in the Recitals to this Declaration.

1.30 “Resident Engineer” shall have the meaning set forth in Section 5.3.1 of this Declaration.

1.31 “SC Punch List” shall have the meaning set forth in Section 6.2 of this Declaration.

1.32 “Shore Public Walkway” shall mean the area labeled “Shore Public Walkway” on the Development Drawings and more particularly described in Exhibit E annexed hereto.

1.33 “Special Permit” shall have the meaning set forth in the Recitals to this Declaration.

1.34 “SPW Maintenance Agreement” shall mean the maintenance and operations agreement for the Shore Public Walkway, dated as of the date hereof, by Declarant and DPR, substantially in the form attached hereto as Exhibit F.

1.35 “SPW Maintenance Security” shall have the meaning set forth in Section 6.1.1(d) of this Declaration.

1.36 “State/Federal Permits” shall have the meaning set forth in Section 4.6 of this Declaration.

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

1.38 “Substantial Completion” or “Substantially Complete” shall mean that the WPAA has been completed substantially in conformance with the WPAA Drawings and to such an extent that the WPAA may be operated and made available for public use. The WPAA may be deemed Substantially Complete notwithstanding that (i) minor or insubstantial terms of construction, decoration or mechanical adjustment remain to be performed; or (ii) Declarant has not completed any relevant planting or vegetation or tasks that must occur seasonally.



1.39 “Substantial Completion Date” shall mean the date that DPR first issues a Notice of Substantial Completion for the WPAA pursuant to Section 6.2 below.

1.40 “TCO” shall mean a temporary certificate of occupancy.

1.41 “Transfer Date” shall mean the date that Declarant delivers the Transfer Documents to the City in the manner prescribed in Section 6.3.1 below.

1.42 “Transfer Documents” shall have the meaning set forth in Section 6.3.1 below.

1.43 “UC Easement” shall have the meaning set forth in Section 6.4 of this Declaration.

1.44 “UC Maintenance Agreement” shall mean the maintenance and operations agreement for the Upland Connection, dated as of the date hereof, and executed by Declarant and DPR, substantially in the form attached hereto as Exhibit G.

1.45 “UC Maintenance and Access Security” shall have the meaning set forth in Section 6.8 hereof.

1.46 “Unit Interested Party” shall mean (i) all owners, lessees and occupants of any individual condominium unit in the Subject Property and (ii) all holders of a mortgage or other lien securing each such condominium unit, on the Subject Property.

1.47 “Upland Connection” shall mean the area labeled “Upland Connection” on the Development Drawings and more particularly described in Exhibit E annexed hereto.

1.48 “Waterfront Public Access Areas” or “WPAA” shall have the meaning set forth in the Recitals to this Declaration.

1.49 “Waterfront Regulations” shall have the meaning set forth in the Recitals to this Declaration.

1.50 “WPAA Authorizations” shall have the meaning set forth in the Recitals to this Declaration.

1.51 “WPAA Drawings” shall mean the following drawings showing the plans for the WPAA prepared by MPFP LLC/M. Paul Friedburg & Partners, copies of which are attached hereto as Exhibit D-2 and made a part hereof, as the same may be modified hereafter in accordance with this Declaration:

DRAWING NUMBER	TITLE	DATE
L-01	Survey	08/05/2013
L-02	WPAA Diagram	08/05/2013
L-03	Zoning Calculations	08/05/2013
L-04	Zoning Calculations	08/05/2013
L-100	Open Space Key & Dimension Plan	08/05/2013
L-101	Enlargement Plans	08/05/2013
L-102	Seating Plan	08/05/2013
L-200	Grading Plan	08/05/2013
L-300	Planting Plan	08/05/2013
L-400	Material Plan	08/05/2013
L-604	Site Section through Upland Connection	08/05/2013
L-604A	Upland Connection Enlarged Section	08/05/2013
L-700	Details	08/05/2013
L-701	Details	08/05/2013
L-702	Bench & Seating Details	08/05/2013
L-702A	Bench & Seating Details	08/05/2013
L-703	Planting Details	08/05/2013
L-704	Trellis Plan & Details	08/05/2013
L-705	Guardrail Details	08/05/2013
L-706	Streetscape Details	08/05/2013
L-800	Lighting Plan	08/05/2013
L-801	Lighting Photometric Plan	08/05/2013
L-900	Signage Plan & Details	08/05/2013

1.52 “WPAA Permitted Encumbrances” shall mean the encumbrances set forth on Exhibit H to this Declaration.

1.53 “WPAA Work” shall mean the construction of the Shore Public Walkway and Upland Connection in compliance with the WPAA Drawings and Final Plans and Specifications / 100% Construction Drawings, as the same may be modified, from time to time, in compliance with the further provisions of this Declaration.

1.54 “Zoning Resolution” or “ZR” shall have the meaning set forth in the Recitals to this Declaration.

## ARTICLE II

### DEVELOPMENT OF SUBJECT PROPERTY

2.1 Development of Subject Property. Declarant agrees that if the Subject Property shall be developed pursuant to the Special Permit (i) the maximum street wall heights and building heights of the New Buildings shall not exceed the heights set forth in the Development Drawings, (ii) the amount of floor area (as defined in the Zoning Resolution) on the Subject Property shall not exceed 647,851 square feet, and (iii) the Subject Property shall be developed in substantial compliance with the Development Drawings.

2.2 As-of-Right Development. Notwithstanding anything herein to the contrary, in the event that the Subject Property is not developed pursuant to the Special Permit, Declarant may develop the Subject Property as would be permitted pursuant to the underlying R6 and R6/C2-4 districts, as applicable the (“As-of-Right Development”), provided that (i) the As-of-Right Development will not violate any regulation applicable within an R6 or R6/C2-4 district, as applicable and (ii) except as set forth in the immediately following sentence, the As-of-Right

Development will not utilize any floor area transferred from the City Parcel pursuant to the Floor Area Transfer Documents (the “Transferred Floor Area”). In the event that Declarant shall desire to utilize all or a portion of the Transferred Floor Area in an As-of-Right Development (a “TFA As-of-Right Development”), Declarant shall not accept a building permit from the Department of Buildings for such TFA As-of-Right Development until Declarant demonstrates to the reasonable satisfaction of DCP that such TFA As-or-Right Development would not result in a significant adverse impact under CEQR, taking into account any new PCRE’s or modifications of the PCRE’s set forth herein to which Declarant consents pursuant to an amendment to this Declaration and/or any new E-Designations or modifications of existing E-Designations placed on the Subject Property.

### ARTICLE III

#### OBLIGATION TO CONSTRUCT THE WPAA; PROJECT COMPONENTS RELATED TO THE ENVIRONMENT

3.1 Obligation to Construct the Waterfront Public Access Areas. In the event that Declarant develops the Subject Property, Declarant agrees to develop the WPAA in substantial conformity with the Development Drawings and the Final Plans and Specifications / 100% Construction Drawings. 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 WPAA Work. Declarant agrees that the WPAA Work shall be performed in accordance with all Legal Requirements and with the provisions of this Declaration.

3.2 PCRE Related to Publicly Funded Child Care Facilities. In the event that more than 126 Low-Income Units are provided as part of the Proposed Development, Declarant shall

provide funding to ACS for publically-provided child care slots (the “Funded Child Care Slots”) as set forth in the Table 1 below.

<b>Table 1. Required Funded Child Care Slots</b>	
Number of Low-Income Units Provided	Number of Funded Child Care Slots
0 – 126	0
127 – 132	1
133 – 137	2
138 – 148	3
149 – 154	4
155 – 160	5
161 – 165	6
166 – 171	7
172 – 182	8
183 – 188	9
189 – 193	10
194 – 200	11

3.2.1 Declarant shall give ACS and DCP at least 120 days’ notice before requesting a TCO for a New Building that would result in, when combined with all other Low-Income Units on the Subject Property, the occupancy of more than 126 Low-Income Units on the Subject Property in the aggregate (each such building, a “**Child Care Eligible Building**”). Such notice shall be in writing, and shall specify (i) the date upon which the Declarant expects to request a TCO for the Child Care Eligible Building; (ii) the number of Low-Income Units previously built on the Subject Property; (iii) the number of Low-Income Units to be located in the new Child Care Eligible Building; and the corresponding number of Funded Child-Care Slots required pursuant to Table 1 above.

**Table 2. Child Care Funding Obligation**

**NYC Children's Services**

**NYC Planning Department Child Care Mitigation Grid**

This scenario uses information at the time of Mitigation funding.

Variables:																			
Mitigation Slots		1																	
Infant SMR		\$17,226																	
Toddler SMR		\$13,311																	
Pre-school SMR		\$11,327																	
Inflation Factor		1.43%																	
		2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
Infant Cost	19%	\$3,273	\$3,320	\$3,367	\$3,415	\$3,464	\$3,513	\$3,563	\$3,614	\$3,665	\$3,718	\$3,771	\$3,824	\$3,879	\$3,934	\$3,990	\$4,047	\$4,105	\$4,163
Toddler Co	28%	\$3,727	\$3,780	\$3,834	\$3,889	\$3,944	\$4,000	\$4,057	\$4,115	\$4,174	\$4,233	\$4,294	\$4,355	\$4,417	\$4,480	\$4,544	\$4,609	\$4,674	\$4,741
Pre-School	53%	\$6,003	\$6,089	\$6,175	\$6,263	\$6,353	\$6,443	\$6,535	\$6,628	\$6,723	\$6,819	\$6,916	\$7,014	\$7,114	\$7,216	\$7,319	\$7,423	\$7,529	\$7,636
<b>One Year Cost Per Slot</b>	100%	<b>\$13,003</b>	<b>\$13,188</b>	<b>\$13,376</b>	<b>\$13,567</b>	<b>\$13,760</b>	<b>\$13,957</b>	<b>\$14,156</b>	<b>\$14,357</b>	<b>\$14,562</b>	<b>\$14,770</b>	<b>\$14,980</b>	<b>\$15,194</b>	<b>\$15,410</b>	<b>\$15,630</b>	<b>\$15,853</b>	<b>\$16,079</b>	<b>\$16,308</b>	<b>\$16,540</b>
<b>Six Year Cost Per Slot</b>		<b>\$80,852</b>	<b>\$82,004</b>	<b>\$83,173</b>	<b>\$84,359</b>	<b>\$85,561</b>	<b>\$86,781</b>	<b>\$88,018</b>	<b>\$89,273</b>	<b>\$90,546</b>	<b>\$91,836</b>	<b>\$93,146</b>	<b>\$94,473</b>	<b>\$95,820</b>					

**Notes/Assumptions:**

Inflation factor is CPI 5-year average for New York-Northern New Jersey-Long Island, NY-NJ-CT-PA; Series ID: CUURA101SA0,CUUSA101SA0

Mitigation slots are based on the proportionate number of affordable units that would be developed per phase (i.e., 98 of 430 in Phase I)

Slots are average total voucher slots by age for most recent full City Fiscal Year at time of calculation.

State Market Rate (SMR) is most recent GDC weekly rate for NYC from the NYS OCFS website multiplied by 52.2 weeks.

CPI is applied to current SMR to bring up to Year 1 (2020) as build year.

3.2.2 Declarant shall provide funding at the rate specified in Table 2 above to provide for the required number of Funded Child Care Slots (the “**Child Care Funding Obligation**”). The amount of the Child Care Funding Obligation shall be calculated according to the appropriate Six Year Cost Per Slot for the year of occupancy. For each Child Care Eligible Building, Declarant shall provide to ACS a payment, in a form reasonably acceptable to the City, equal to the Child Care Funding Obligation (the “**Child Care Payment**”). Within ten (10) days of the receipt of the Child Care Payment for a Child Care Eligible Building, ACS shall certify in writing to DOB that the Child Care Payment has been made for such building. Declarant shall not apply for or accept a TCO or PCO for a Child Care Eligible Building until ACS has certified to DOB that the Child Care Payment for such building has been made. For avoidance of doubt, no Child Care Funding Obligation shall be required hereunder in the event that less than 127 Low-Income Units are provided on the Subject Property.

3.3 Inconsistencies with the EAS. If this Declaration inadvertently fails to include a PCRE set forth in the EAS, such PCRE shall be deemed to be incorporated in this Declaration by reference. If there is any inconsistency between a PCRE as set forth in the EAS and as incorporated in this Declaration, the more restrictive provision shall apply.

3.4 Innovation; Alternatives; Modifications Based on Further Assessments.

3.4.1 *Innovation and Alternatives.* In implementing any PCRE contemplated by this Article III, Declarant may implement innovations, technologies or alternatives now or hereafter available, including replacing any equipment, technology, material, operating system or other measure previously located on or adjacent to the Subject Property or used within or adjacent to the Proposed Development, including replacement measures under standards required by the New York City Department of Housing Preservation and Development and/or the United

States Department of Housing and Urban Development, provided that Declarant demonstrates to the satisfaction of DCP that such alternative measures would result in equal or better methods of achieving the relevant PCRE than those set forth in this Article III.

3.4.2 *Modification Based on Further Assessments.* In the event that Declarant believes, based on changed conditions or partial satisfaction of a PCRE that a PCRE required under Section 3.2 hereof should not apply or could be modified without diminishment of the environmental standards which would be achieved by implementation of the PCRE, Declarant shall set forth the basis for such belief in an analysis submitted to DCP. In the event that, based upon the review of such analysis, DCP determines that the relevant PCRE should not apply or could be modified, Declarant may eliminate or modify the PCRE consistent with the DCP determination, provided that Declarant records a notice of such change against the Subject Property in the Register's Office.

## ARTICLE IV

### DESIGN DEVELOPMENT OF THE WPAA

4.1 WPAA Drawings. Declarant acknowledges that DCP and DPR have reviewed and approved the WPAA Drawings and agrees that it may not submit any Design Submission pursuant to this Article IV which is not in substantial conformity with such WPAA Drawings without the prior written approval of DPR and DCP. Such written approval by DPR and DCP shall constitute acceptance by the Chair of such Drawing Modification(s), which the Chair thereafter will, if necessary, incorporate into a re-certification pursuant to ZR Section 62-811 (Waterfront public access and visual corridors) that, except with respect to the waivers granted pursuant to the WPAA Authorizations, the WPAA Drawings comply with the requirements of



the Waterfront Regulations upon application by the Declarant as hereinafter set forth.

Concurrent with submission of Final Plans and Specifications / 100% Construction Drawings pursuant to Section 4.9 below, Declarant shall, if the WPAA Drawings have been modified, file an application pursuant to ZR Section 62-811 revising the WPAA Drawings to incorporate all such Drawing Modifications which have been previously approved in accordance with this Section 4.1, whereupon the Chair shall certify that, except with respect to the waivers granted pursuant to the WPAA Authorizations, the revised WPAA Drawings comply with the requirements of the Waterfront Regulations.

#### 4.2 Submission of Construction Drawings.

4.2.1 Declarant shall submit to DPR and DCP drawings and a schedule of cost estimates for the WPAA Work at 30% completion (the “30% Submission”), at 50% completion (the “50% Submission”) and at 80% completion (the “80% Submission”) (each such submission referred to as a “Design Submission,” and collectively, the “Design Submissions”).

4.2.2 The 30% Submission shall include, without limitation, conceptual drawings and furnishing details. The 50% Submission shall include, without limitation, a complete set of contract drawings and all specifications, in particular, all custom specifications. The 80% Submission shall include, without limitation, all bid items, all specifications and all drawings. Each Design Submission shall consist of two (2) sets of half-scale plans and two (2) burned CD’s containing the materials required under this Section 4.2.

4.2.3 Nothing in this Section 4.2 shall prevent Declarant from submitting construction drawings at other times as may be agreed by Declarant and DPR.

4.3 Administration. DPR shall manage and coordinate on behalf of the City the review of the Design Submissions. All documents prepared by Declarant pursuant to this Article IV shall be sent simultaneously to DPR and DCP.

4.4 Agency Review Time Periods. DPR shall review the Design Submissions and shall approve or disapprove the same by written notice to Declarant no later than thirty (30) calendar days after delivery to DPR with respect to the 30% Submission and no later than twenty (20) calendar days after delivery to DPR with respect to each subsequent Design Submission. No separate approval of DCP or the Chair shall be required. DPR shall approve Design Submissions that are consistent with the WPAA Drawings, subject to Section 4.5 hereof. If DPR disapproves a Design Submission, DPR shall set forth in detail the reasons for such disapproval (the "Disapproval Report"). Declarant shall thereafter submit a revised Design Submission responsive to DPR's Disapproval Report and, upon receipt thereof, DPR shall approve or disapprove all revised Design Submissions within twenty (20) calendar days after receipt thereof. DPR may approve a Design Submission with recommendations for modifications (the "City Recommendations") and Declarant shall incorporate the City Recommendations in revised construction drawings unless Declarant submits to DPR a written explanation (an "Objection") of why it believes that such modifications would increase the cost of the WPAA Work or are otherwise not in conformity with the WPAA Drawings. DPR shall, within twenty (20) calendar days after receipt of a revised Design Submission incorporating the City Recommendations in a manner satisfactory to DPR, approve such Design Submission, or if Declarant's written explanation or revised Design Submission is not satisfactory, disapprove such Design Submission and issue a Disapproval Report. If DPR fails to respond to any submission by Declarant within the time periods set forth in this Section 4.4, then DPR shall be deemed to have

approved such Design Submission, including all of the construction drawings which comprise such Design Submission.

4.5 Standards for Review.

4.5.1 DPR may only disapprove any Design Submission that

(a) would, in DPR's reasonable judgment, make the Shore Public Walkway too costly or impractical for DPR to maintain;

(b) would, in DPR's reasonable judgment, create an unusual risk to public safety; or

(c) would not, in DPR's reasonable judgment following consultation with DCP, substantially conform to the WPAA Drawings, as the same have been previously modified with the approval of DPR and DCP pursuant to Section 4.1 above.

4.5.2 Upon approval by DPR of the 30% Submission, 50% Submission or the 80% Submission, each such approval shall be binding on DPR, and DPR may not disapprove a feature or element on a subsequent Design Submission or on the Final Plans and Specifications / 100% Construction Drawings, which has not been added, revised or modified by Declarant on such subsequent Design Submission or on the Final Plans and Specifications / 100% Construction Drawings.

4.5.3 In reviewing any Design Submission, DPR shall use reasonable efforts to minimize any requested changes that increase the cost of the WPAA Work. Any such requested changes shall be subject to Declarant's right to make an Objection with respect to such increased cost pursuant to Section 4.4 above.

4.6 State and Federal Permits. Declarant has advised the City that construction of the Shore Public Walkway will require certain permits and approvals from the New York State

government and the Federal government (collectively, the “Federal/State Approvals”). Declarant covenants to proceed in good faith and exercise due diligence in seeking to obtain the Federal/State Approvals. In connection with its efforts to obtain the Federal/State Approvals, Declarant shall not file or otherwise formally submit to any federal or state agency any plans, drawings or illustrative representations of the Shore Public Walkway that does not conform with the Drawings or Design Submissions submitted pursuant to this Declaration and have not been approved in writing by DPR and DCP.

4.7 Schedule. In order to ensure that DPR and DCP have adequate time to prepare for the design development process contemplated by this Article IV, Declarant shall notify DPR and DCP in writing of its intention to commence the design development process for the WPAA at least ten (10) days prior to submitting the 30% Submission. Such notification shall include an anticipated schedule (the “Schedule”) for: (i) receipt of the Federal/State Approvals (the “Expected Federal/State Approval Date”); (ii) delivery of the 30% Submission; (iii) delivery of the 50% Submission; (iv) delivery of the 80% Submission; (v) delivery of the Final Plans and Specifications / 100% Construction Drawings; (vi) commencement of construction of the WPAA; and (vii) commencement of the Proposed Development. Declarant shall notify DPR and DCP of any material changes or delays in the anticipated schedule.

4.8 Modification of Drawings. In the event that, in connection with the Design Submissions, Declarant and DCP and DPR agree that one or more modifications of the WPAA Drawings are appropriate (a “Drawing Modification”), DCP shall issue a written approval thereof. Such written approval by DCP shall serve as a determination by the Chair that he/she is prepared to recertify the WPAA Drawings to incorporate such Drawing Modification. Together with its application for approval of Final Plans and Specifications/100% Construction Drawings,

Declarant shall file an application pursuant to ZR Section 62-811 (Waterfront public access and visual corridors) requesting that the Chair certify that, except with respect to the waivers granted under the WPAA Authorizations, the revised WPAA Drawings comply with the requirements of the Waterfront Regulations. The Chair shall issue such re-certification within thirty (30) days of receipt of such complete application.

4.9 Final Plans and Specifications/100% Construction Drawings.

4.9.1 No later than twenty (20) calendar days prior to the date on which Declarant intends to commence the WPAA Work, Declarant shall submit to DPR the final plans and specifications / 100% construction drawings therefor (the “Final Plans and Specifications / 100% Construction Drawings”). The Final Plans and Specifications / 100% Construction Drawings shall be reviewed in accordance with the time periods and standards set forth in Sections 4.4 and 4.5 hereof. No later than twenty (20) calendar days from the date on which Declarant submits to DPR the Final Plans and Specifications / 100% Construction Drawings, DPR shall either approve such Final Plans and Specifications / 100% Construction Drawings or deliver a Disapproval Report therefor, and if DPR fails to respond in such twenty (20) day period, the Final Plans and Specifications / 100% Construction Drawings shall be deemed approved in all respects and for all purposes of this Declaration. Nothing contained in this Declaration shall be construed to give the City or any agency thereof (including the Resident Engineer or any engineers or field inspectors) the right to require changes to the Final Plans and Specifications / 100% Construction Drawings.

4.9.2 The Final Plans and Specifications / 100% Construction Drawings shall include, without limitation, the entire bid book including all finalized specifications and final contract documents relating to the WPAA Work. The submission of the Final Plans and

Specifications / 100% Construction Drawings pursuant to this Section 4.9 shall consist of two (2) sets of half-scale plans and two (2) burned CD's. The Final Plans and Specifications / 100% Construction Drawings shall conform to DPR's then existing standards for such Record Drawings. The Final Plans and Specifications / 100% Construction Drawings shall be signed and sealed by the Landscape Architect and shall include the following: Declarant's company name, address and telephone number; the project name and address; drawing date; the words "Final Plans and Specifications/100% Construction Drawings". Declarant shall include with such submission a written statement from the Landscape Architect certifying that the "Final Plans and Specifications/ 100% Construction Drawings" drawings are accurate and correct.

4.10 As-Built Drawings. Declarant shall submit complete as-built record drawings to DPR ("As-Built Drawings") upon completion of the WPAA Work. Submittals shall be delivered to:

New York City, Parks and Recreation  
Map File, Olmsted Center  
Flushing Meadows - Corona Park  
Flushing, New York 11368

The As-Built Drawings shall conform to DPR's then existing standards for such Record Drawings. The As-Built Drawings shall be signed and sealed by the Landscape Architect and shall include the following: Declarant's company name, address and telephone number; the project name and address; drawing date; the words "As-Built Drawings". Declarant shall include with such submission a written statement from the Landscape Architect certifying that the "As-Built Drawings" drawings are accurate and correct.

## ARTICLE V

### CONSTRUCTION

5.1 Manner of Performance of the Construction Work; Permits. Declarant shall, at its sole cost and expense, undertake the performance of the WPAA Work so as to construct the Waterfront Public Access Areas substantially in accordance with the approved Final Plans and Specifications / 100% Construction Drawings, except as modified in accordance with the provisions of this Article V. Declarant shall perform the WPAA Work in a good and worker-like manner, free from mechanics' and materials providers' liens (other than liens which have been bonded over) and in accordance with any applicable Legal Requirements. Declarant will use reasonable efforts to provide DPR with a quantity of replacement parts for any custom designed elements of the Shore Public Walkway so as to allow DPR to maintain and repair such custom designed elements for two (2) years.

5.2 Modifications of Final Plans and Specifications / 100% Construction Drawings. Declarant shall have the right to make non-material modifications to the Final Plans and Specifications / 100% Construction Drawings to respond to unanticipated field conditions. All material modifications to the Final Plans and Specifications / 100% Construction Drawings may be made only upon the written approval of DPR, which approval shall not be unreasonably withheld or delayed. DPR shall, within twenty (20) calendar days after receipt of a request for approval of a material modification to Final Plans and Specifications / 100% Construction Drawings, approve or deny such request. If DPR fails to respond to any request by Declarant within such twenty (20) day period, Declarant may send a reminder notice requesting DPR's approval within ten (10) days of receipt of such reminder notice. If DPR fails to respond within

such ten (10) day period, DPR shall be deemed to have approved such request in all respects and for all purposes under this Declaration.

5.3 Resident Engineer.

5.3.1 Declarant shall retain a third-party, licensed engineer (the “Resident Engineer”) reasonably acceptable to DPR to undertake, on behalf of DPR, on-site monitoring of the WPAA Work while any and all such work is underway for each phase. The “Scope of Services” for each phase described in the agreement between Declarant and the Resident Engineer pursuant to which the Resident Engineer is retained (the “RE Agreement”) shall be subject to review by and approval of DPR prior to the commencement of each phase of construction, such approval not to be unreasonably withheld, conditioned or delayed. The RE Agreement shall include provisions in a form acceptable to DPR that, among other things, shall: (i) ensure that the Resident Engineer is independent of Declarant in all respects relating to the Resident Engineer’s responsibilities under the RE Agreement (provided that the Resident Engineer 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 DPR; (ii) provide for appropriate DPR management and control of the performance of services by the Resident Engineer; (iii) authorize DPR to direct the termination of services by the Resident Engineer for unsatisfactory performance of its responsibilities under the RE Agreement; and (iv) allow for termination by Declarant for cause, but only with the express written concurrence of DPR, which concurrence shall not be unreasonably withheld or delayed. If DPR shall fail to act upon a proposed RE Agreement within thirty (30) days after submission of a draft form of the RE Agreement, the form of the RE Agreement so submitted shall be deemed acceptable by DPR and may be executed by Declarant and the Resident Engineer. The



RE Agreement shall provide for the commencement of services by the Resident Engineer at a point prior to commencement of the WPAA Work (the timing of such earlier point to be at the sole discretion of Declarant) and shall continue in effect at all times that the WPAA Work is continuing, unless the Declarant, with the prior consent of DPR or at the direction of DPR, shall have terminated the RE Agreement and substituted therefore another Resident Engineer under a new RE Agreement, in accordance with all requirements of this Section 5.3.

5.3.2 The Resident Engineer shall prepare and deliver to DPR reports regarding the status of the WPAA Work and Declarant's compliance with the Final Plans and Specifications therefor on a schedule reasonably acceptable to DPR, but not more frequently than once per week. However, the Resident Engineer shall at any time also provide Declarant and DPR with notice of a determination that the WPAA Work has not been implemented pursuant to the Final Plans and Specifications / 100% Construction Drawings, accompanied by supporting documentation establishing the basis for such determination, provided that any such notice shall be delivered to both parties simultaneously. Upon Declarant notification to DPR and DCP that construction of the WPAA is Finally Complete, the Resident Engineer shall provide Declarant and DPR with notice of a determination that the WPAA Work was implemented pursuant to the Final Plans and Specifications / 100% Construction Drawings. The Resident Engineer shall: (i) have full access to the portions of the Subject Property on which the WPAA Work is being undertaken, 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) have the right to attend construction meetings related to the WPAA Work; (iii) on reasonable notice and during normal business hours, be provided with access to all books and records of Declarant pertaining to the WPAA Work which it reasonably deems

necessary to carry out its duties, including the preparation of periodic reports; and (iv) be entitled to review the results of any field tests, technical reports, or inspections of the WPAA Work submitted to or undertaken by other Governmental Authorities. Declarant agrees that in the event DPR advises Declarant of issues or concerns based on the Resident Engineer's report(s), Declarant shall meet and confer with DPR in order to resolve these issues or concerns. The RE Agreement shall provide that Declarant shall have the right to require the Resident Engineer to secure policies for commercial general liability and professional liability insurance in customary amounts and naming Declarant, the City and DPR as additional insureds.

5.4 Insurance. [TO BE DRAFTED AND SUBJECT TO NYC LAW DEPARTMENT AND DPR REVIEW.]

## ARTICLE VI

### TEMPORARY CERTIFICATE OF OCCUPANCY; TRANSFER OF TITLE; GRANT OF EASEMENTS

#### 6.1 TCO.

6.1.1 Declarant shall not apply for nor accept a TCO for the Proposed Development until all of the following conditions have been met with respect to the WPAA, except if there has been Force Majeure:

- (a) DPR has issued a Notice of Substantial Completion for the WPAA;
- (b) Declarant has delivered to the City the SPW Transfer Documents, in form and substance reasonably satisfactory to the City;
- (c) Declarant has made the first Annual SPW Maintenance Payment pursuant to Section 6.7 hereof;

(d) Declarant has provided to the City a letter of credit or other security reasonably acceptable to the City in an amount equal to 25% (i.e., three (3) months) of the total of the Annual SPW Maintenance Payment (the “SPW Maintenance Security”); and

(e) Declarant has provided to the City the UC Maintenance Security.

6.1.2 In the event that due to a Force Majeure Event Declarant has obtained a TCO prior to completion of the conditions set forth in Section 6.1.1 hereof, Declarant shall, as promptly as possible upon cessation of such Force Majeure Event, satisfy all of the conditions of Section 6.1.1.

6.2 Notice of Substantial Completion. Declarant shall notify DPR and DCP at such time as it believes that the WPAA is Substantially Complete and shall request that DPR issue a certificate, in the form of Exhibit I attached hereto (a “Notice of Substantial Completion”), to Declarant certifying Substantial Completion of the WPAA. Not later than twenty (20) calendar days after receipt of such request, DPR shall either issue the Notice of Substantial Completion or deliver to Declarant a notice setting forth in detail the reasons why the WPAA is not Substantially Complete and the items which need to be completed. If DPR notifies Declarant that the WPAA has not been Substantially Completed in accordance with the Final Plans and Specifications, such notice shall contain a detailed statement of the reasons for such non-acceptance in the form of a so- called “punch list” of items remaining to be completed or unsatisfactorily performed (“SC Punch List”). The SC Punch List shall not include items which, pursuant to the definition of Substantial Completion in Section 1.38 above, are not required to be completed prior to Substantial Completion. Declarant shall promptly perform the work specified on the SC Punch List, after which it shall notify DPR of such completion. Not later than twenty (20) calendar days after receipt of such notice, DPR shall either issue the Notice of Substantial

Completion or notify Declarant that it has not completed the SC Punch List. If DPR fails to provide a notice to Declarant within the time periods set forth in this Section 6.2, then DPR shall be deemed to have issued a Notice of Substantial Completion. Declarant, in its sole discretion, may record the Notice of Substantial Completion in the Register's Office.

6.3 Transfer of Title to the Shore Public Walkway.

6.3.1 In connection with the transfer of title of the Shore Public Walkway to the City, and no earlier than the date on which Declarant notifies DPR and DCP pursuant to Section 6.2 above that the WPAA is Substantially Complete, Declarant shall deliver to the City the following documents (together, the "Transfer Documents"): (i) a bargain and sale deed with possibility of reverter, substantially in the form of Exhibit J attached hereto, signed and acknowledged by Declarant and in proper form for recording, conveying all of Declarant's right, title and interest in and to the portion of the Shore Public Walkway and the land thereunder free and clear of all liens, restrictions, encumbrances, security interests and mortgages other than the WPAA Permitted Encumbrances, (ii) all required transfer tax returns signed by Declarant, (iii) documentation evidencing the subdivision of the portion of the Subject Property being conveyed into a separate tax lot and (iv) a survey of the Shore Public Walkway, prepared by a land surveyor licensed in the State of New York. All of the Transfer Documents shall be consistent with the provisions of this Section 6.3 and in form and substance reasonably satisfactory to the City. Within twenty (20) calendar days of receipt of the Transfer Documents meeting the requirements hereof, the City shall cause the deed to be recorded in the City Register's Office. In the event that the City Register makes an objection to the recordation of some or all of the Transfer Documents in the form delivered by Declarant, Declarant shall cooperate with the City in curing any such objections, provided such modifications shall not

reduce Declarant's rights nor increase Declarant's obligations under this Declaration, the Transfer Documents or the Maintenance Agreements.

6.3.2 The transfer of title to the Shore Public Walkway as provided for herein shall not reduce the floor area (as defined in the Zoning Resolution) that may be developed on the Subject Property, or affect any calculations relating to lot coverage or other provision of the Zoning Resolution wherein the land of the Shore Public Walkway was included, and Declarant shall have the right to use the total area of the Subject Property, including the land conveyed to the City as provided herein, for all purposes related to permitted floor area, floor area ratio, lot coverage, waterfront yard requirements, legal light and air and other zoning calculations for the Proposed Development, notwithstanding that the Shore Public Walkway has been conveyed to the City. In furtherance of the provisions of this Section 6.3.2, the Subject Property shall continue to be deemed a single zoning lot (as defined in the Zoning Resolution) following such transfer of title of the Shore Public Walkway to the City.

6.4 Grant of UC Easement. Declarant covenants that immediately upon Substantial Completion of the Upland Connection, the City shall hereby enjoy, wield, and have the right to and the benefit of and be granted, conveyed and transferred a non-exclusive easement over the Upland Connection (the "UC Easement"), for the benefit of (i) the general public, for the purposes of passive recreational use by the general public and pedestrian access to the Shore Public Walkway and (ii) DPR, and its employees and agents, to provide access to the Shore Public Walkway for maintenance and repair thereof.

6.5 License. The City hereby grants to Declarant and its contractors, agents, employees and sub-contractors a license to enter upon the Shore Public Walkway for the purpose of performing the construction work required to obtain the Notice of Final Completion (the

“WAA Access License”). Declarant agrees that such license shall be exercised in such manner so as to not unduly interfere with the use and enjoyment of the Shore Public Walkway by the public. If requested, Declarant shall execute a form of license provided by DPR which contains the City’s standard provisions relating to a license agreement, including, without limitation, insurance and specifications.

6.6 Security for Final Completion. Upon issuance of the Notice of Substantial Completion, Declarant shall deliver to DPR a performance bond or one or more irrevocable letters of credit or other security in a form reasonably acceptable to the City, naming the City as beneficiary, in an amount that has been certified by Declarant's architect or landscape architect as being one hundred fifty percent (150%) of the cost of Finally Completing the Shore Public Walkway (the “Completion Security”). Upon issuance of the Notice of Final Completion, DPR shall promptly deliver the Completion Security to Declarant and shall execute and deliver any and all documents necessary to cancel the Completion Security.

6.7 Maintenance Fund for the Shore Public Walkway. Pursuant to ZR Section 62-73(a)(1) (Request to Transfer Title to Certain Waterfront Public Access Areas), Declarant shall establish an account for the funding of ordinary maintenance and future capital repairs of the Shore Public Walkway (the “SPW Maintenance Account”). Prior to the issuance of a TCO for the Proposed Development, and annually thereafter on the anniversary of the first Annual SPW Maintenance Payment, Declarant shall deposit the Annual SPW Maintenance Payment into the SPW Maintenance Account. The Annual SPW Maintenance Payment shall be calculated by multiplying the number of square feet in the Shore Public Walkway which have been Substantially Completed and conveyed to the City pursuant to the terms of this Declaration times \$2.51 per square foot, as adjusted from the date of this Declaration based on changes in the CPI.

For the year in which Declarant has completed the SPW and conveyed same to the City, the amount of the Annual SPW Maintenance Payment for such year shall be calculated by multiplying the Annual SPW Maintenance Payment for such year times a fraction, the numerator of which is the number of days remaining from the Transfer Date to the next date for deposit of the Annual SPW Maintenance Payment and the denominator of which is 360.

6.8 Security for Maintenance of Upland Connection. Prior to obtaining a TCO for any building in the Proposed Development, Declarant shall deliver to the City a performance bond or other security (the “UC Maintenance and Security”) in such form and amount as set forth in Section 3.06 of the UC Maintenance Agreement. The UC Maintenance and Security shall be renewed as set forth in the UC Maintenance Agreement.

## ARTICLE VII

### PERMANENT CERTIFICATE OF OCCUPANCY

7.1 PCO. Subject to Force Majeure, Declarant shall not accept a PCO for the Proposed Development until DPR has issued a Notice of Final Completion with respect to the WPAA. The provisions of Section 10.1 shall apply to the use of Force Majeure in connection with a PCO.

7.2 Notice of Final Completion.

7.2.1 Declarant shall notify DPR and DCP at such time as it believes that the WPAA is Finally Complete and shall request that DPR issue a certificate, in the form of Exhibit K attached hereto (a “Notice of Final Completion”), to Declarant certifying Final Completion of the WPAA. Not later than twenty (20) calendar days after receipt of such request, DPR shall either issue the Notice of Final Completion or deliver to Declarant a notice setting

forth in detail the reasons why the WPAA is not Finally Complete and the items which need to be completed. If DPR notifies Declarant that the WPAA has not been Finally Completed in accordance with the Final Plans and Specifications, such notice shall contain a detailed statement of the reasons for such non-acceptance in the form of a so- called “punch list” of items remaining to be completed or unsatisfactorily performed (“Punch List”). Declarant shall promptly perform the work specified on the Punch List, after which it shall notify DPR of such completion. Not later than twenty (20) calendar days after receipt of such notice, DPR shall either issue the Notice of Final Completion or notify Declarant that it has not completed the Punch List. If DPR fails to provide a notice to Declarant within the time periods set forth in this Section 7.2.1, then DPR shall be deemed to have issued a Notice of Final Completion. The issuance of the Notice of Final Completion in accordance with the provisions of this Section 7.2.1 shall be conclusive evidence with respect to Declarant that the WPAA has been constructed in accordance with the design and construction specifications approved by DPR, including, without limitation, the Final Plans and Specifications / 100% Construction Drawings. Declarant, in its sole discretion, may record the Notice of Final Completion in the Register’s Office.

7.2.2 Declarant agrees to obtain such warranties on all products used in the Waterfront Public Access Areas as are customarily provided by manufacturers in connection with such products at commercially standard rates and to have the City included as a named beneficiary on all such warranties. Declarant further agrees to provide to the City, from its construction manager or its subcontractors, a warranty against defects, including customary warranties with respect to plant material installed by Declarant or its contractors, and including the obligation to repair same, in the Shore Public Walkway, for a period of one year from the date of the Notice of Final Completion.



7.3 Failure to Perform.

7.3.1 Subject to Force Majeure, Declarant shall, within three (3) months after issuance of the Notice of Substantial Completion for the WPAA, Finally Complete the WPAA, unless the Resident Engineer certifies, in writing, that it will take longer than three (3) months to Finally Complete the WPAA. In the event that Declarant fails to Finally Complete construction of the WPAA within such three (3)-month time period, DPR may, at its option, upon not less than thirty (30) days written notice to Declarant (x) complete the WPAA in accordance with Final Plans and Specifications / 100% Construction Drawings; (y) cause Declarant to remove all of its equipment and y other items impeding DPR's completion of the WPAA; and (z) draw upon the Completion Security for so much of the proceeds as is necessary to pay for the reasonable costs and expenses incurred in completing the WPAA and, if necessary, removing such equipment and impediments. If the full amount of the Completion Security is not drawn upon, then DPR shall return the balance of the proceeds thereof to Declarant promptly after Final Completion.

7.3.2 Declarant hereby grants the City and its contractors, agents, employees and sub-contractors a license to enter upon the Upland Connection for the purposes of exercising its rights under Section 7.3.1 as may be necessary to Finally Complete the WPAA.

ARTICLE VIII

ADMINISTRATION OF THE WPAA

8.1 Hours of Operation.

8.1.1 The Shore Public Walkway shall be open to the public at no charge from the hours of 6:00 AM to 10:00 PM between April 15 and October 31 of each year and from at

least 7:00 AM to 8:00 PM between November 1 and April 14 of each year. DPR shall consult with Declarant before changing the hours of operations, if DPR intends to cause the Shore Public Walkway to be open at times other than those set forth in this Section 8.1.1.

8.1.2 Subject to Section 4.03 of the UC Maintenance Agreement, the Upland Connection shall be open to the public at no charge from the hours of 6:00 AM to 10:00 PM between April 15 and October 31 of each year and from at least 7:00 AM to 8:00 PM between November 1 and April 14 of each year, and such additional times as Declarant shall desire from time to time.

8.2 Maintenance of the Shore Public Walkway.

8.2.1 Declarant shall be solely responsible for maintenance of and capital repairs to the Shore Public Walkway during the period beginning on the Substantial Completion Date and ending on the Transfer Date. During such period, Declarant shall maintain the Shore Public Walkway in accordance with the provisions of the SPW Maintenance Agreement as if Declarant were the City thereunder.

8.2.2 Commencing on the Transfer Date, the City shall be solely responsible for maintenance of the Shore Public Walkway. The City acknowledges and agrees that Declarant shall have no obligation or responsibility for maintenance of the Shore Public Walkway from and after the conveyance thereof to the City. The City further agrees that it shall maintain the Shore Public Walkway pursuant to the terms and conditions of the SPW Maintenance Agreement.

8.3 Maintenance of the Upland Connection. Declarant shall be solely responsible for the maintenance of and capital repairs to the Upland Connection upon Substantial Completion thereof (the "UC Maintenance Obligation"). The UC Maintenance Obligation requires that

Declarant maintain the Upland Connection in accordance with the provisions of the UC Maintenance Agreement.

8.4 Private Access to the Shore Public Walkway. Declarant acknowledges that any private access from a private residential unit in the Proposed Development directly to the Shore Public Walkway is subject to DPR review and approval, in the reasonable exercise of its discretion, and that in the event of approval, DPR may impose reasonable conditions with respect to the configuration and operation of such private access to the Shore Public Walkway.

8.5 Commercial Access to the Shore Public Walkway. Declarant acknowledges that any access from commercial establishments in the Proposed Development directly to the Shore Public Walkway is subject to DPR review and approval, in the reasonable exercise of its discretion, and that in the event of approval, DPR may impose reasonable conditions with respect to the configuration and operation of such direct commercial access to the Shore Public Walkway.

8.6 Commercial and Non-Public Uses of the Shore Public Walkway. Declarant acknowledges that any commercial use of the Shore Public Walkway is subject to review and approval by DPR, in the reasonable exercise of its discretion, and that in the event of approval, DPR may impose reasonable conditions with respect to the operation of such commercial or non-public uses in the Shore Public Walkway.

## ARTICLE IX

### ADDITIONAL PUBLIC ACCESS AREA

9.1 Additional Public Access Area. In the event that Declarant develops the Subject Property, Declarant agrees to develop the Additional Public Access Area substantially in the

manner set forth in the WPAA Drawings. Declarant shall not accept a TCO for the last of the three New Buildings to be developed (the “Last Building”) until Declarant’s architect or landscape architect has certified in writing to the Chair, with a copy to DPR, that the Additional Public Access Area has been substantially completed to such an extent that the Additional Public Access Area may be operated and made available for public use, notwithstanding that minor or insubstantial details of construction, decoration or mechanical adjustment remain to be performed (collectively, “APAA Punch-List Items”). Declarant shall not accept a PCO for the Last Building until Declarant’s architect or landscape architect has certified in writing to the Chair, with a copy to DPR, that the Additional Public Access Area has been finally completed so that all relevant items of work including any APAA Punch-List Items have been completed.

9.2 Grant of APAA Easement. Subject to Section 9.3 below, Declarant covenants that immediately upon substantial completion of the Additional Public Access Area, the City shall hereby enjoy, wield, and have the right to and the benefit of and be granted, conveyed and transferred a non-exclusive easement over the Additional Public Access Area (the “APAA Easement”), for the benefit of the general public, for the purposes of providing pedestrian access to the Shore Public Walkway.

9.3 Hours of Operation. Declarant covenants that upon substantial completion, the Additional Public Access Area shall remain open and accessible to the public pursuant to the APAA Easement daily from the hours of 6:00 AM to 10:00 PM between April 15 and October 31 of each year and from at least 7:00 AM to 8:00 PM between November 1 and April 14 of each year, and such additional times as Declarant shall desire from time to time. Notwithstanding anything herein to the contrary, Declarant shall be entitled to close the Additional Public Access Area to the public to the extent and for the period of time that such closure is reasonably required

to allow for the construction, reconstruction or alteration of a New Building in a safe manner or to allow for necessary maintenance and repair of the New Buildings or the Additional Public Access Area, and the easement granted pursuant to Section 9.2 above is limited to such extent. The Additional Public Access Area may also be closed to the public for one day in each calendar year to preserve Declarant's ownership interest therein.

9.4 Maintenance of the APAA. Declarant shall take good care of the Additional Public Access Area and shall make all such repairs to and maintain the Additional Public Access Area, and any paving or landscaping provided therein, as and when reasonably needed to preserve the Additional Public Access Area and the amenities contained therein neat, clean and in good working order and condition.

## ARTICLE X

### ENFORCEMENT; LIMITATION OF LIABILITY; INDEMNIFICATION

10.1 Force Majeure. In the event that Declarant is unable to Substantially Complete or Finally Complete the WPAA Work, or otherwise comply with its obligations under this Declaration, as a result of a Force Majeure Event, then Declarant shall so notify DCP, and with respect to matters related to the WPAA Work, DPR, promptly after Declarant actually learns of such circumstances. Declarant's written notice (the "Delay Notice") shall include a description of the condition or event, its cause and probable duration (if known to Declarant), and, in Declarant's reasonable judgment, the impact it is reasonably anticipated to have on the completion of the item of work. In the exercise of its reasonable judgment, and, if applicable, following consultation with DPR, the Chair shall, within ten (10) calendar days of its receipt of the Delay Notice, (i) certify in writing that Force Majeure has occurred or (ii) notify Declarant

that it does not reasonably believe Force Majeure has occurred, in which case the Chair shall state with particularity the reasons it believes Force Majeure has not occurred. Upon a determination that Force Majeure has occurred, the Chair shall grant Declarant appropriate relief including, with respect to items of work and other obligations affecting Substantial Completion or Final Completion of the WPAA Work, notifying the Department of Buildings that a TCO or PCO, as applicable, may be issued for one or more buildings or portions thereof in the Proposed Development. Such relief shall be confined to excusing those conditions of the Declaration for which compliance is rendered infeasible by the Force Majeure Event and the City may enforce other obligations under the Declaration that are unaffected by the Force Majeure Event. Any delay caused as the result of Force Majeure shall be deemed to continue only as long as the Force Majeure Event is continuing. Upon cessation of the events causing such delay, the Declarant shall promptly recommence the WPAA Work or other obligations tolled during the pendency of such Force Majeure Event. As a condition of granting such relief, the Chair may require that Declarant post a bond, letter of credit or other security in an amount up to one hundred fifty percent (150%) of the cost of Finally Completing the WPAA Work, as certified in writing to the Chair by Declarant's architect or landscape architect, and in a form reasonably acceptable to the Chair in order to ensure that the WPAA Work will be Substantially Completed or Finally Completed, as applicable, and that all requirements of Section 5.1 above are satisfied. Declarant shall be obligated to Substantially Complete or Finally Complete, as applicable, the WPAA Work within the period of time specified in the Delay Notice, or such lesser period of time as the Chair reasonably determined the Force Majeure Event shall continue; provided, however, that if the Force Majeure Event has a longer duration than as set forth in the Delay Notice or as

reasonably determined by the Chair, the Chair shall grant additional time for Substantial Completion or Final Completion, as the case may be.

10.2 Failure to Make Annual SPW Maintenance Payment. If Declarant fails to make the Annual SPW Maintenance Payment by the date set forth in Section 6.7 hereof and such default is not cured within 15 days after receipt by Declarant of written notice of such failure, the City shall have the right to draw upon the SPW Maintenance Security and then, subject to the provisions of Section 10.7 hereof, such other rights as may be available to it in law or equity and as are provided under this Declaration. If the City has drawn down on the SPW Maintenance Security pursuant to this Section 10.1, Declarant shall, within sixty (60) days of such action by the City, deposit with DPR an amount equal to the amount so drawn of the SPW Maintenance Security.

10.3 Denial of Public Access. If DPR has reason to believe that the use and enjoyment of the Upland Connection by any member of the public has, without reasonable cause, been denied by Declarant, and the City determines that such denial of access with respect to the right of public access under the UC Easement was in violation of the provisions of this Declaration, the City shall have, after notice to Declarant and an opportunity for Declarant to present evidence disputing such alleged denial of access, in addition to such other rights as may be available at law or equity, the right to seek civil penalties at the New York City Environmental Control Board for a violation relating to privately owned public space, as set forth in Exhibit L hereto.

10.4 Enforcement by City. Declarant acknowledges that the City is an interested party to this Declaration and consents to the enforcement by the City, administratively or at law or at equity, of the covenants, conditions, restrictions and agreements contained herein, provided, however, that once a building permit or TCO or PCO for any building within the Proposed

Development has been issued, the failure to comply with an obligation associated solely with other building(s) within the Proposed Development shall not cause the revocation of such previously issued building permit or TCO or PCO.

10.5 No Third Party Beneficiary. No person or entity other than Declarant (including Mortgagee) or the City shall have any right to enforce the provisions of this Declaration. This Declaration shall not create any enforceable interest or right in any person or entity other than Declarant and the City, who shall be deemed to be the proper entities to enforce the provisions of this Declaration, and nothing contained herein shall be deemed to allow any other person or entity, public or private, any interest or right of enforcement of any provision of this Declaration or any document or instrument executed or delivered in connection with the Applications.

10.6 Additional Remedies. Declarant 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, 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.

10.7 Notice and Cure.

10.7.1 Before any agency, department, commission or other subdivision of the City institutes any proceeding or proceedings to enforce the terms or conditions of this Declaration or the Maintenance Agreements, it shall give Declarant thirty (30) business days written notice of such alleged violation, during which period Declarant shall have the opportunity to effect a cure of such alleged violation, except that such right to cure shall not apply to the failure to notify the Law Department of the City under the provisions of Section 10.11 hereof. If Declarant commences to effect a cure during such thirty (30) day period and



proceeds diligently towards the effectuation of such cure, the aforesaid thirty (30) day period shall be extended for so long as Declarant continues to proceed diligently with the effectuation of such cure.

10.7.2 Notwithstanding the provisions of Sections 10.3 and 10.7.1 above, in the event of a denial of public access of an ongoing nature or interference on a continuing basis with the City's rights under the UC Easement, Declarant shall have the opportunity to effect a cure within twenty-four (24) hours of 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 a mandatory injunction and the provisions of Section 10.7.1 shall not apply to such denial of public access.

10.8 Notice to Mortgagee. If Declarant fails to cure a violation within the applicable grace period provided in Section 10.7 above, then, prior to the institution by the City, or any agency or department thereof, of any action, proceeding, or proceedings against Declarant in connection with such failure, a Mortgagee shall be given thirty (30) days written notice of such alleged violation, during which period such Mortgagee shall have the opportunity to effect a cure of such alleged violation. If such Mortgagee commences to effect a cure during such thirty (30) day period and proceeds diligently towards the effectuation of such cure, the aforesaid thirty (30) day period shall be extended for so long as such Mortgagee continues to proceed diligently with the effectuation of such cure.

10.9 Binding Effect. The provisions of this Declaration shall inure to the benefit of and be binding upon the respective heirs, successors, legal representatives and assigns of Declarant, and references to Declarant shall be deemed to include such heirs, successors, legal representatives and assigns as well as the successors to their interests in the Subject Property.

Reference in this Declaration to agencies or instrumentalities of the City shall be deemed to include agencies or instrumentalities succeeding to jurisdiction thereof pursuant to the laws of the State of New York and the New York City Charter.

10.10 Limitation of Liability.

10.10.1 The City shall look solely to the fee estate and interest of Declarant and any and all of its successors and assigns in the Subject Property, on an *in rem* basis only, for the collection of any money judgment recovered against Declarant or its successors and assigns with respect to the obligations set forth in this Declaration, and no other property of Declarant or its principals, disclosed or undisclosed, partners, shareholders, directors, members, officers or employees or successors and assigns shall be subject to levy, execution or other enforcement procedure for the satisfaction of the remedies of the City or any other person or entity with respect to this Declaration, and no such party shall have any personal liability under this Declaration. Notwithstanding the foregoing, nothing in this Section 10.10.1 shall be deemed to preclude, qualify, limit or prevent any of the City's governmental rights, powers or remedies, including without limitation, with respect to the satisfaction of the remedies of the City, under any laws, statutes, codes or ordinances.

10.10.2 In the event that any building in the Proposed Development is subject to a declaration of condominium, every condominium unit (other than Affordable Housing) shall be subject to levy or execution for the satisfaction of any monetary remedies of the City solely to the extent of each Unit Interested Party's Individual Assessment Interest. The "Individual Assessment Interest" shall mean the Unit Interested Party's percentage interest in the common elements of the condominium in which such condominium unit is located applied to the assessment imposed by the Association on the condominium in which such condominium unit is

located. In the event of a default in the obligations of the Association as set forth herein, the City shall have a lien upon the property owned by each Unit Interested Party solely to the extent of each such Unit Interested Party's unpaid Individual Assessment Interest, which lien shall include such Unit Interested Party's obligation for the costs of collection of such Unit Interested Party's unpaid Individual Assessment Interest. Such lien shall be subordinate to the lien of any prior recorded mortgage in respect of such property given to a bank or other institutional lender (including but not limited to a governmental agency), the lien of any real property taxes, and the lien of the board of managers of any such condominium for unpaid common charges of the condominium, and the lien of the Association pursuant to the provisions of Article XIII hereof. The City agrees that, prior to enforcing its rights against a Unit Interested Party, the City shall first attempt to enforce its rights under this Declaration against the named Declarant, the Association and the boards of managers of any condominium association. In the event that the Association shall default in its obligations under this Declaration, the City shall have the right to obtain from the Association and/or the boards of managers of any condominium association, the names of the Unit Interested Parties who have not paid their Individual Assessment Interests.

10.10.3 The restrictions, covenants and agreements set forth in this Declaration shall be binding upon Declarant and any successor-in-interest only for the period during which Declarant and any successor-in-interest is the holder of a fee interest in or is a party-in-interest of the Subject Property and only to the extent of such fee interest or the interest rendering Declarant a party-in-interest. At such time as a Declarant has no further fee interest in the Subject Property and is no longer a party-in-interest of the Subject Property, such Declarant's obligations and liability with respect to this Declaration shall wholly cease and terminate from and after the conveyance of Declarant's interest and Declarant's successors-in-interest in the Subject Property

by acceptance of such conveyance, automatically shall be deemed to assume Declarant's obligations and liabilities hereunder to the extent of such successor-in-interest's interest.

10.10.4 The City shall look solely to the interest of any Party-in-Interest in the Subject Property other than Declarant for the collection of any deficiency not collected from Declarant or any judgment recovered against Declarant or the enforcement of any remedy based upon any breach by Declarant under this Declaration, but only after the City has exhausted all legal and equitable remedies against Declarant. No other property of any such Party-in-Interest or its principals, disclosed or undisclosed, partners, shareholders, directors, officers, members or employees shall be subject to levy, execution or other enforcement procedure for the satisfaction of the remedies of the City under or with respect to this Declaration and any such Party-in-Interest, disclosed or undisclosed, shall have no personal liability under this Declaration.

10.10.5 Notwithstanding anything to the contrary contained herein, the obligation to construct the Public Access Areas in accordance with the provisions of this Declaration and the Maintenance Agreements shall be binding only upon the Declarant or any successor entity that develops the Subject Property.

10.11 Indemnification by the City. [TO BE DRAFTED AND SUBJECT TO NYC LAW DEPARTMENT AND DPR REVIEW.]

## ARTICLE XI

### EFFECTIVE DATE; AMENDMENTS OR MODIFICATIONS; CANCELLATION

#### 11.1 Effective Date; Cancellation.

11.1.1 This Declaration shall become effective upon the New York City Council's approval without modification of the Applications pursuant to the New York City Charter (the "Effective Date").

11.1.2 Prior to the approval of the Applications, Declarant shall deliver to DCP duplicate originals of the executed Declaration. Following the Effective Date, Declarant shall promptly file and record this Declaration in the Register's Office, indexing it against the Subject Property, and shall deliver to DCP and to DPR copies of this Declaration as recorded, certified by the Register. If Declarant fails to so record and/or deliver this Declaration, the City may record and/or request certified copies of the recorded Declaration at the sole cost and expense of the Declarant, who shall immediately pay such costs to the City, together with the fee for the purchase of a certified copy of the recorded Declaration. The filing of this Declaration in the Register's Office shall be a precondition for the issuance of a building permit.

11.1.3 If, prior to construction of the Proposed Development, the approval or issuance, as the case may be, of any of the Applications is declared invalid or is otherwise voided by final judgment of any court of competent jurisdiction from which no appeal can be taken or from which no appeal has been taken for the statutory period, which judgment has the effect of preventing development of the Subject Property substantially in accordance with the Development Drawings, then, upon entry of judgment or upon the expiration of the applicable statutory period for such appeal, as the case may be, this Declaration shall be automatically cancelled without any further action by Declarant and be of no further force or effect, and the

CPC shall, if requested by Declarant, provide Declarant with a letter or instrument in recordable form stating that this Declaration has been cancelled and is of no further force or effect.

11.2 Amendments of Declaration.

11.2.1 This Declaration may be modified, amended or canceled upon the approval of the CPC after application by Declarant. No other approval or consent by any other public body or private person or entity, including, without limitation, any present or future Parties-in-Interest, shall be required for such modification, amendment or cancellation.

11.2.2 Declarant acknowledges and agrees that if it is in default in the performance of any of its material obligations under this Declaration and such default shall not have been corrected after notice of such default prior to an application for amendment or modification of this Declaration, such default shall itself be sufficient grounds for the applicable person or entity as set forth above to disapprove any proposed amendment or modification of this Declaration.

11.3 Minor Modification. Notwithstanding the provisions of Section 11.2 above, the Chair may, by express written consent, administratively approve modifications to this Declaration that CPC or the Chair has determined to be minor, provided such modifications do not conflict with the Maintenance Agreements, and no other approval or consent shall be required from the CPC or any other agency or department of the City, or any private person or entity, including, without limitation, any present or future Parties-in-Interest.

11.4 Modification of Maintenance Agreements. Notwithstanding anything to the contrary contained in this Declaration, the Maintenance Agreements may be amended by Declarant and the DPR, which shall consult with the Chair, in accordance with the provisions of the Maintenance Agreements, and no other approval or consent shall be required from any other

public body or private person, including, without limitation, any present or future Parties-in-Interest.

11.5 Required Consents to Modifications or Amendments.

11.5.1 Notwithstanding anything to the contrary contained in this Declaration, for so long as Declarant (other than the Association) shall hold more than a 25% fee interest in the Subject Property (provided that, in the event the Shore Public Walkway shall have been transferred to the City in accordance with the provisions of Article VI, said percentage ownership shall be determined based on the area of the Subject Property exclusive of the portion as to which fee title was transferred to the City), (i) all Unit Interested Parties, (ii) all boards of managers of any condominium association, and (iii) the Association, hereby (x) irrevocably consent to any amendment, modification, cancellation, revision or other change in this Declaration by Declarant; (y) waive and subordinate any rights they may have to enter into an amended Declaration or other instrument amending, modifying, canceling, revising or otherwise changing this Declaration, and (z) nominate, constitute and appoint Declarant their true and lawful attorney-in-fact, coupled with an interest, to execute any documents or instruments that may be required in order to amend, modify, cancel, revise or otherwise change this Declaration.

11.5.2 From and after the date that Declarant (other than the Association) holds less than a 25% fee interest in the Subject Property or any portion thereof (other than one or more individual residential or commercial condominium units, and provided that, in the event the Shore Public Walkway shall have been transferred to the City in accordance with the provisions of Article VI, said percentage ownership shall be determined based on the area of the Subject Property exclusive of the portion as to which fee title was transferred to the City), and provided the Association shall have been organized as provided in this Declaration, the Association shall

be deemed to be the sole Declarant and Party-in-Interest under this Declaration. In such event, the Association shall be the sole party with any right to amend, modify, cancel, revise or otherwise change the Declaration, or make any application therefor, and each and every Lot Owner hereby (x) irrevocably consents to any amendment, modification, cancellation, revision or other change in this Declaration by the Association; (y) waives and subordinates any rights it may have to enter into an amended Declaration or other instrument amending, modifying, canceling, revising or otherwise changing this Declaration, and (z) nominates, constitutes and appoints the Association its true and lawful attorney-in-fact, coupled with an interest, to execute any documents or instruments that may be required in order to amend, modify, cancel, revise or otherwise change this Declaration.

## ARTICLE XII

### MISCELLANEOUS

12.1 Notices. All waivers, elections, demands and notices or other communications relating to this Declaration shall be effective only if in writing and (a) mailed to the party for which it is intended by certified or registered mail, return receipt requested, postage prepaid, or (b) personally delivered, or (c) by overnight express courier for next day delivery, addressed as follows, or to such other address as the parties hereto may from time to time designate by notice given as aforesaid:

If to the Declarant:

Waterview at Greenpoint LLC  
c/o Clipper Equity, LLC  
4611 12<sup>th</sup> Avenue,  
Brooklyn, New York 11219  
Attention: David Bistricher



With a copy to:

Greenberg Traurig, LLP  
200 Park Avenue  
New York, New York 10166  
Attention: S. Nicholas Hockens

If to the City:

New York City Planning Commission  
22 Reade St.  
New York, NY 10007  
Attention: Chairperson

With a copy to:

New York City Department of Parks and Recreation  
The Arsenal, Central Park  
830 Fifth Avenue  
New York, New York 10065  
Attention: Commissioner of Parks and Recreation

And to:

New York City Department of Parks and Recreation  
The Arsenal, Central Park  
830 Fifth Avenue  
New York, New York 10065  
Attention: General Counsel

All notices shall be deemed given (i) upon hand delivery, (ii) three (3) days after mailing, if sent by United States mail in the manner described above, or (iii) one (1) day after mailing if sent by overnight express courier for next day delivery.

12.2 Severability. In the event that any provision of this Declaration shall be deemed, decreed, adjudged or determined to be invalid or unlawful by a court of competent jurisdiction after all appeals are exhausted or the time for appeal has expired, such provision shall be severable, and the remainder of this Declaration shall continue to be in full force and effect.

12.3 Declaration to be Included. Declarant shall include a copy of this Declaration as part of any application related to the obligations under this Declaration to any governmental agency or department having jurisdiction over the Subject Property including, without limitation, the Department of Buildings, the New York City Board of Standards and Appeals and the CPC.

12.4 Default and Attorneys' Fees. If Declarant is found by a court of competent jurisdiction to have been in default in the performance of its obligations under this Declaration, and such finding is upheld on final appeal or the time for further review of such finding or appeal by a court or by other proceedings has lapsed, Declarant shall indemnify and hold harmless the City and the CPC from and against all reasonable legal and administrative expenses arising out of or in connection with the enforcement of Declarant's obligations under this Declaration.

12.5 No Other Restrictions of Record. Declarant represents and warrants with respect to the Subject Property that there are no restrictions of record, nor any present or presently existing liens, obligations, estates interests, covenants, easements, limitations or encumbrances of any kind which preclude, presently or potentially, the imposition on the Subject Property of the restrictions, covenants, obligations, liens and agreements set forth in this Declaration.

12.6 Counterparts. This Declaration may be executed in one or more counterparts, each which when so executed and delivered shall be deemed an original, but all of which taken together shall be construed as and shall constitute but one and the same instrument.

## ARTICLE XIII

### PROPERTY OWNERS' ASSOCIATION

#### 13.1 Obligation to Create Property Owners' Association

13.1.1 In order to guarantee Declarant's continuing obligations under this Declaration and under the Maintenance Agreements, Declarant shall cause to be organized a property owner's association (the "Association") if any of the following changes are made in the ownership of the Proposed Development: (i) any portion of the Proposed Development is submitted to a condominium regime under the provisions of Article 9-B of the New York Real Property Law, (ii) a cooperative corporation acquires title to less than all of the Proposed Development, or (iii) the Proposed Development is held in any other form of multiple ownership of fee title and/or leasehold of all or substantially all of the Proposed Development. If an Association is required to be formed as set forth above, the provisions of this Article XIII shall be operative.

13.1.2 (a) If an Association is required to be organized pursuant to this Article XIII such Association shall be organized in accordance with the terms of this Declaration and in accordance with the New York State Not-for-Profit Corporation Law. The members of the Association (the "Association Members") shall be the Board of Managers of any condominium, the Board of Directors of any co-op corporation, any ground lessee(s) of all or any portion of the Subject Property, and the fee owner(s) of any portion of the Subject Property other than owners of individual condominium units.

(b) Declarant shall certify in writing to the Chair and the Commissioner of DPR that the certificate of incorporation for the Association has been filed with the Secretary of

State and that the certificate of incorporation and all other governing documents of the Association are in full compliance with the requirements of this Declaration.

13.1.3 Any offering plan or “red herring” issued in connection with the sale of any units in or to a condominium regime formed with respect to any portion of the Proposed Development and any offering plan issued in connection with the ownership of any portion of the Proposed Development by a cooperative cooperation shall include a summary of the terms of this Declaration, and shall clearly identify the rights and obligations of the Association and the unit owners or the owners of shares of stock in the cooperative cooperation, as the case may be, including the provisions of Section 10.10.2 hereof.

13.2 Purposes. The Association shall be established for the purposes of assuming Declarant’s obligations with respect to the maintenance and operation of the WPAA as set forth in this Declaration and the Maintenance Agreements.

13.3 Association as Successor of Declarant. From and after the date the Association is formed, the Association shall be deemed a successor and assign of the Declarant pursuant to this Declaration, and shall be responsible for all costs associated with owning, maintaining, operating, and repairing the WPAA as required by this Declaration and the Maintenance Agreements. In connection with an application to amend, modify or cancel this Declaration, the Association shall be authorized to act on behalf of its members, who shall not be individually required to execute or waive the right to execute the application or the amended, modified, or cancelled Declaration.

13.4 Required Recitals. Every deed conveying title to, or a partial interest in, the portion of the Subject Property exclusive of the Shore Public Walkway (such portion, the “Development Property”), other than a deed to an Affordable Housing unit, every lease held or

granted by a cooperative corporation owning the Development Property or any portion thereof, every lease of all or substantially all of the Development Property, or the declaration of condominium imposed on any portion of the Development Property shall contain a recital or other provision that (i) the Unit Interested Party (other than an Unit Interested Party that owns an Affordable Housing unit) is liable for its pro rata share of the assessment by the Association to the condominium in which such unit is located for the Association's obligations under this Declaration, and (ii) the maintenance of the Upland Connection and the cost of maintenance of the Shore Public Walkway and the obligations of the Association under this Declaration are essential elements of the City actions permitting the development of the Proposed Development in accordance with the provisions of this Declaration and in accordance with any other approvals granted by the City.

13.5 Powers. In connection with its obligations under this Declaration and the Maintenance Agreements and to the extent permitted by law, Declarant shall cause the Association to be established with the power and authority to:

(a) maintain, repair and operate the WPAA to the extent required by this Declaration and the Maintenance Agreements.

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

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

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

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

(f) exercise any and all of such powers as may be necessary or appropriate for purposes of this Declaration and as may be granted to the Association in furtherance of the Association's purposes pursuant to the New York Not-for-Profit Corporation Law.

### 13.6 Assessments.

13.6.1 The Association shall assess all real property within the Subject Property, other than property used solely for Affordable Housing, (the "Assessment Property") in order to obtain funds for the obligations of the Association pursuant to this Declaration. The Assessment Property shall be assessed on a reasonable prorated basis as determined by Declarant, in compliance with all applicable laws. For Association Members who are the Boards of Managers of a condominium, a reasonable basis for such proration shall be conclusively established if the Attorney General accepts for filing an offering plan for the sale of interests in such condominium, as applicable, which plan describes such proration. The Boards of Managers of each condominium shall collect such assessments from the owners of individual residential or commercial units ("Unit Owners"), other than any Affordable Housing, for delivery to the Association in accordance with the condominium declarations. The Unit Owners shall have no personal liability under this Declaration, and the liability of any Unit Owner is limited to such Unit Owner's obligation to pay his or her prorated share of the periodic assessment to the Association or to the condominium association.

13.6.2 Each periodic assessment by the Association, together with such interest, costs and reasonable attorney's fees as may be assessed in accordance with the provisions of this

Declaration, shall be the obligation of the Association Members against whom the assessment is charged at the time such assessment falls due and may not be waived by such Association Member. The Association may bring an action to recover any delinquent assessment, including interest, costs and reasonable attorney's fees of any such action, at law or at equity, against the Association Member obligated to pay the same. In the event an Association Member has not paid its assessment to the Association within ninety (90) days of the date such payment was due, the Association shall take all reasonable measures as may be required in order to collect such unpaid assessment.

13.6.3 The periodic assessments charged to an Association Member shall be a charge on the land and a continuing lien upon the property owned by the Association Member against which each such assessment is made, except that if the Association Member is the Board of Managers of a condominium, such lien shall be subordinate to the lien of any prior recorded mortgage in respect of such property given to a bank or other institutional lender (including but not limited to a governmental agency), the lien of any real property taxes, and the lien of the Board of Managers of such condominium for unpaid common charges of the condominium. The periodic assessments charged to an Association Member which is the Board of Managers of a condominium shall be included within the common charges of the condominium. The Association may bring an action to foreclose the Association's lien against the property owned by such Association Member, or a Unit Interested Party, as the case may be, to recover such delinquent assessment(s), including interest and costs and reasonable attorneys' fees of any such action. Any Unit Owner may eliminate the Association's lien described above on his or her unit by payment to the Association of such Unit Owner's prorated share of the periodic assessment by the Association to the condominium in which such Unit is located. No Association Member

or Unit Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Public Access Areas or abandonment of the Association's property, or by renunciation of membership in the Association, provided, however, that a Unit Owner's liability with respect to future assessments ends upon the valid sale or transfer of such Unit Owner's interest in the Subject Property. A Unit Owner may give to the Association nevertheless, subject to acceptance thereof by the Association, a deed in lieu of foreclosure.

13.6.4 It is expressly understood that Association Members who may be assessed for the operation and maintenance of the Public Access Areas shall not include the holder of a mortgage or other lien encumbering (i) the fee estate in the Subject Property or any portion thereof, or (ii) the lessee's estate in a ground lease of all or substantially all of the Subject Property or all or substantially all of any Parcel or portion thereof, or (iii) any single building to be built on the Development Property, unless and until any such mortgagee succeeds to either (x) a fee interest in the Subject Property or any portion thereof or (y) the lessee's estate in a ground lease of all or substantially all the Subject Property (the interests described in sub-clauses (x) or (y) immediately preceding being each referred to as a "Possessory Interest") by foreclosure of the lien of the mortgage or other lien or acceptance of a deed or other transfer in lieu of foreclosure or exercise of an option to convert an interest as mortgagee into a Possessory Interest in any such fee or ground leasehold estate in the Subject Property or by other means permitted under applicable law from time to time; and no such mortgagee or lien holder shall be liable for any assessment imposed by the Association pursuant to this Article XIII until the mortgagee or lien holder succeeds to such Possessory Interest.

[Signatures on following page]



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

WATERVIEW AT GREENPOINT LLC

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

Name: David Bistricher

Title: Authorized Signatory

The City hereby joins in the execution of this Declaration solely for the purpose of confirming its  
obligations hereunder.

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

Name:

Title:

Approved as to form:

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

Name:

Title: Acting Corporation Counsel

STATE OF NEW YORK )

) ss.:

COUNTY OF NEW YORK )

On the \_\_\_\_ day of \_\_\_\_\_, 2013 before me, the undersigned, a notary in and for said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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Notary Public

STATE OF NEW YORK )

) ss.:

COUNTY OF NEW YORK )

On the \_\_\_\_ day of \_\_\_\_\_, 2013 before me, the undersigned, a notary in and for said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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Notary Public

EXHIBIT A

LEGAL DESCRIPTION

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

BEGINNING at a point on the northwesterly side of Commercial Street, distant 185 feet 9 inches southwesterly from the corner formed by the intersection of the northwesterly side of Commercial Street with the westerly side of Manhattan Avenue;

RUNNING THENCE southwesterly along the northwesterly side of Commercial Street, 217 feet 6 inches;

THENCE northwesterly along a line drawn at right angles to Commercial Street 499 feet 10 inches to the Pierhead Line approved by the Secretary of War in July 1916;

THENCE easterly along said Pierhead Line 234 feet 8 inches;

THENCE southeasterly in a straight line 489 feet to the northwesterly side of Commercial Street to the point and place of BEGINNING.

EXHIBIT B

PARTIES-IN-INTEREST CERTIFICATION

[Attached behind.]

EXHIBIT C

FORM OF WAIVER AND SUBORDINATION

WAIVER OF EXECUTION OF RESTRICTIVE DECLARATION  
AND SUBORDINATION OF MORTGAGE

WAIVER OF EXECUTION OF RESTRICTIVE DECLARATION AND  
SUBORDINATION OF MORTGAGE, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by  
\_\_\_\_\_, a \_\_\_\_\_ (the Mortgagee),  
having its principal place of business at \_\_\_\_\_.

WITNESSETH:

WHEREAS, the Mortgagee is the lawful holder of that certain mortgage, dated  
\_\_\_\_\_ (the "Mortgage") made by \_\_\_\_\_, a  
\_\_\_\_\_ (the "Mortgagor"), in favor of the Mortgagee, in the original principal  
amount of \$\_\_\_\_\_, recorded in the Office of the Register/Clerk of the City of  
New York, County of \_\_\_\_\_, on \_\_\_\_\_ in Reel\_\_\_\_\_,  
Page\_\_\_\_\_; and

WHEREAS, the Mortgage encumbers all or a portion of the property (the "Premises")  
known as Block \_\_\_\_\_, Lot(s) \_\_\_\_\_ on the Tax Map of the City of New York, County of  
\_\_\_\_\_, and more particularly described in Schedule A attached hereto and made a  
part hereof, and any improvements thereon (such improvements and the Premises are  
collectively referred to herein as the "Subject Property"), which Subject Property is the subject  
of a restrictive declaration dated \_\_\_\_\_, (the "Declaration"), made by  
\_\_\_\_\_; and

WHEREAS, Mortgagee represents that the Mortgage represents its sole interest in the  
Subject Property; and

WHEREAS, the Declaration, which is intended to be recorded in the Office of said  
Register/Clerk simultaneously with the recording hereof, shall subject the Subject Property and  
the sale, conveyance, transfer, assignment, lease, occupancy, mortgage and encumbrance thereof  
to certain restrictions, covenants, obligations, easements and agreements contained in the  
Declaration; and

WHEREAS, the Mortgagee agrees, at the request of the Mortgagor, to waive its right to execute the Declaration and to subordinate the Mortgage to the Declaration.

NOW, THEREFORE, the Mortgagee (i) hereby waives any rights it has to execute, and consents to the execution by the Mortgagor of, the Declaration and (ii) hereby agrees that the Mortgage, any liens, operations and effects thereof, and any extensions, renewals, modifications and consolidations of the Mortgage, shall in all respects be subject and subordinate to the terms and provisions of the Declaration.

This Waiver of Execution of Restrictive Declaration and Subordination of Mortgage shall be binding upon the Mortgagee and its heirs, legal representatives, successors and assigns.

IN WITNESS WHEREOF, the Mortgagee has duly executed this Waiver of Execution of Restrictive Declaration and Subordination of Mortgage as of the date and year first above written.

MORTGAGEE:

By: \_\_\_\_\_  
Name:  
Title:

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

On the \_\_\_\_ day of \_\_\_\_\_, 2013 before me, the undersigned, a notary in and for said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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

EXHIBIT D

DEVELOPMENT DRAWINGS

[Attached behind.]

EXHIBIT E

LEGAL DESCRIPTIONS OF SHORE PUBLIC WALKWAY  
AND  
UPLAND CONNECTION

[Attached behind.]



EXHIBIT F

FORM OF SPW MAINTENANCE AGREEMENT

[Attached behind.]

MAINTENANCE AND OPERATIONS AGREEMENT

– SHORE PUBLIC WALKWAY

KINGS COUNTY  
BLOCK 2472, LOT 410

DATED AS OF \_\_\_\_\_ 20\_\_

THIS AGREEMENT, made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (this “Agreement”), by and between WATERVIEW AT GREENPOINT LLC, a New York limited liability company, having an office c/o Clipper Equity, LLC, 4611 12<sup>th</sup> Avenue, Brooklyn, New York 11219 (the “Owner”), and THE CITY OF NEW YORK (hereinafter referred to as the “City”), acting by and through the Department of Parks and Recreation of the City of New York, having an address at The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10065.

**W I T N E S S E T H:**

**WHEREAS**, Owner is the owner of certain real property located in the Borough of Brooklyn, Kings County, City and State of New York, which property is designated as Block 2742, Lot 410 on the Tax Map of the City of New York, Kings County, as more particularly described in Exhibit A annexed hereto (the “Subject Property”); and

**WHEREAS**, Owner has proposed to develop the Subject Property with three new buildings, containing in the aggregate up to approximately 627,851 square feet (“sf”) of residential floor area (approximately 720 units), up to approximately 24,999 sf of commercial floor area for local retail uses and services, up to 6,000 sf of community facility floor area and approximately 330 off-street accessory parking spaces in the aggregate (the “Proposed Development”); and

**WHEREAS**, the Subject Property is a “waterfront zoning lot” and the Proposed Development is therefore subject to the requirements (collectively, the “Waterfront Regulations”) set forth in Article 6, Chapter 2 (Special Regulations Applying in the Waterfront Area) of the Zoning Resolution of the City of New York (the “Zoning Resolution” or “ZR”); and

**WHEREAS**, Owner has filed the following land use applications (collectively, the

“Applications”) with the New York City Department of City Planning seeking: (i) a special permit pursuant to ZR Section 62-836 (Bulk modifications on waterfront blocks) to waive requirements regarding maximum base and building heights and minimum setbacks (Application No. 140047 ZSK); (ii) an authorization pursuant to ZR Section 62-822(a) (Authorization to modify requirements for location, area and minimum dimensions of waterfront public access areas and visual corridors) to waive upland connection and visual corridor requirements (Application No. N140048 ZAK ); (iii) an authorization pursuant to ZR Section 62-822(b) (Authorization to modify requirements within waterfront public access areas) to waive requirements regarding the design of the WPAA (Application No. N140049 ZAK); (iv) a certification pursuant to ZR Section 62-811 (Waterfront public access and visual corridors) that except with respect to the waivers granted pursuant to the WPAA Authorizations, the WPAA comply with the Waterfront Regulations (Application No. N140050 ZCK); and (v) with the Department of City Planning as co-applicant, an amendment to the text ZR Sections 11-13 (Public Parks) and 62-351 (Special floor area regulations) to provide that the City Property will continue to generate floor area after it is developed as a public park (Application No. N140046 ZRK); and

**WHEREAS**, in connection with the approval of the Applications, Owner has executed, delivered and recorded, or simultaneously herewith will execute, deliver and record, a restrictive declaration governing the development of the Subject Property (the “Declaration”); and

**WHEREAS**, Owner is required to construct as part of the Proposed Development on the Subject Property an approximately 9,515 sf Shore Public Walkway along Newtown Creek; and

**WHEREAS**, pursuant to the Section 6.3 of the Declaration, Owner will convey to the City fee title to the Shore Public Walkway upon completion thereof; and

**WHEREAS**, pursuant to Section 8.2 of the Declaration, upon conveyance of the Shore Public Walkway to the City, DPR shall be responsible for the maintenance and capital repair of the Shore Public Walkway; and

**WHEREAS**, pursuant to Section 6.7 of the Declaration, Owner will establish the SPW Maintenance Account and will make the first required Annual SPW Maintenance Payment; and

**WHEREAS**, Owner and City wish to provide for their respective rights and obligations in regard to the maintenance and operation of the Shore Public Walkway; and

**WHEREAS**, it is the intent of the parties that the Shore Public Walkway be maintained in accordance with the standards and specifications set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing, Owner and City agree as follows:

I. **DEFINITIONS**

Capitalized terms used herein but not defined herein shall have the applicable meanings ascribed to such terms in the Declaration.

II. **TERM**

Commencing on the Transfer Date, DPR shall be solely responsible for the maintenance and repairs to the Shore Public Walkway, including but not limited to the piers, bulkhead, piles and other waterfront structures. DPR acknowledges and agrees that Owner shall thereafter have no obligation or responsibility for the maintenance, operation, repairs or improvement of the Shore Public Walkway, it being understood that nothing herein shall restrict or impede the rights of the City to enforce construction guarantees and warranties under Section 7.2.2 of the Declaration.

### III. SERVICES

3.01. General Scope. DPR shall perform all maintenance and repairs, capital repairs and improvements, recreational, horticultural and security services for the Shore Public Walkway. DPR shall operate and maintain the Shore Public Walkway to a high standard of service and cleanliness consistent with an “acceptable” rating under the Parks Inspection Program. The SPW Maintenance Account shall be used by the City exclusively for the funding of the services set forth in this Agreement for the Shore Public Walkway. Notwithstanding the foregoing, DPR acknowledges and agrees that its obligations to maintain and repair the Shore Public Walkway in accordance with this Agreement is not conditioned upon or limited by the amount of funds in the WAA Maintenance Account. DPR further agrees and acknowledges that if the amount of funds in the WAA Maintenance Account is not sufficient to maintain or repair the Shore Public Walkway as required hereunder, DPR shall be solely responsible for any additional costs attributable to such maintenance and repairs, and Owner shall have no obligation to pay any sums in excess of the WAA Maintenance Account.

3.02. Hours of Operation. The hours of operation of the Shore Public Walkway shall be determined by the City and shall be consistent with the hours of operation for other waterfront parks owned and managed by DPR. Notwithstanding the foregoing, DPR agrees that it shall consult with Owner before changing the hours of operation if DPR intends to cause the Shore Public Walkway to be to be open at times other than those set forth in ZR Section 62-71(a) (Hours of operation).

3.03. General Use of the Shore Public Walkway.

a. The Shore Public Walkway may be used by all members of the public for activities appropriate to public access areas of similar design and size in the City of New York (“Promenade Activities”), including, but not limited to, the Promenade Activities listed in

Section 3.03b. With respect to any activities carried on in all or any part of the Shore Public Walkway, DPR acknowledges that no member of the public may use the Shore Public Walkway for an activity or in a manner which injures, endangers or unreasonably disturbs the comfort, peace, health or safety of any person, or disturbs or causes injury to plant or animal life, or causes damage to property or any person, but such acknowledgement shall not be deemed to make DPR liable for any such activity unless undertaken with Owner's express consent.

b. For purposes of this Agreement, "Promenade Activities" shall include, but not be limited to the following:

- (1) walking or standing;
- (2) walking domestic animals (provided such animals are leashed and properly curbed);
- (3) jogging;
- (4) biking;
- (5) sitting on benches and seating areas provided in the Shore Public Walkway;
- (6) use of public facilities provided in the Shore Public Walkway.

c. For purposes of this Agreement, "Promenade Activities" shall not include any activity which, or is conducted in a manner which, injures, endangers or unreasonably disturbs the comfort, peace, health or safety of any person, or disturbs or causes injury to plant or animal life, or causes damage to property or any person.

3.04. 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 Shore Public Walkway in a clean, neat and good condition.

b. All walkways, sidewalks and lighting and all other improvements and facilities installed in the Shore Public Walkway 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 painted over or removed as appropriate to the nature of the surface within forty-eight (48) hours of its appearance.

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

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

3.05. Snow Removal. Snow and ice shall be promptly removed from all walkways so as not to interfere with safe passage, and from all other paved surfaces within twenty-four (24) hours after each snowfall or accumulation of ice.

3.06. Landscape Maintenance. In addition to the obligations set forth in Section 3.04 hereof, the maintenance program for the planted portions of the Shore Public Walkway shall consist of a “Spring Start-up Period” program, a “Season Closing Period” program, and a continuing maintenance program through the “Growing Season”.

3.07. Spring Start-up Period: The Spring Start-up Period shall commence on March 1st and terminate not later than the end of the second week of April of each calendar year. DPR shall cause the following work to be completed annually during the Spring Start-up Period:



- a. Remove any winter protectives from trees, shrubs and other planting materials.
- b. Remove all landscape debris including leaves and dead branches.
- c. Prune and trim those trees that have overextended, dead or otherwise unsightly branches to maintain natural form.
- d. Remove or destroy any weeds growing between paving blocks, pavement, cobbled and concrete areas.
- e. Apply commercially available nitrogen rich fertilizer to trees, shrubs, plants and lawn areas, as appropriate.
- f. Remove any sand deposited as a result of winter sandings.
- g. Replace any plant material or trees that are dead, diseased and/or otherwise unhealthy with healthy specimens of substantially equal type and reasonable size.
- h. Reseed grassed areas as needed.

3.08. Season Closing Period: The Season Closing Period shall begin on October 1st and shall terminate not later than November 1st of each calendar year. DPR shall cause the following work to be completed annually during the Season Closing Period:

- a. Rake and collect leaves from site.
- b. Wrap trees, shrubs and other plant material as necessary to ensure adequate winter protection.
- c. Apply commercially available nitrogen rich fertilizer to all lawn areas.
- d. Reseed grassed areas as needed.

3.09. Growing Season: The Growing Season shall commence with the commencement of the Spring Start-up Period and shall terminate at the end of the Season Closing Period. DPR shall cause the following work to be completed annually during the Growing Season:

- a. Inspect trees on a regular basis and spray when necessary.
- b. Water all trees, shrubs, plantings and grass areas 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.
- c. Mow grass-covered areas on a bi-weekly basis. During periods of excessive growth, mowing shall occur on a weekly basis. Re-seed grass-covered areas as needed.
- d. Weed as needed, no less than on a bi-weekly basis.

3.10. Non-Capital Repairs and Replacement. Non-capital repair and replacement of all facilities within the Shore Public Walkway, including, without limitation, furnishings, equipment and light bulbs, shall occur as needed to maintain such facilities in good order and working condition. DPR shall exercise due diligence in commencing the repair or replacement of same as promptly as possible hereof and in completing the same within a reasonably expeditious time after commencement. All non-capital repairs and replacements shall be consistent with the Final Plans and Specifications / 100% Construction Drawings. Repairs shall include, but not be limited to, the following, as applicable to the facilities in the Shore Public Walkway:

- a. Benches or Other Seating: Maintenance, including replacement of any broken or missing slats and painting, as necessary.

b. Walls, Barriers and/or Fencing: Any broken or materially cracked walls, barriers and/or fencing shall be repaired or removed and replaced. To the extent feasible, replacement materials and designs shall match the materials and designs of existing walls, barriers and/or fencing.

c. Pavements: All paved surfaces shall be maintained so as to be safe and attractive. To the extent feasible, replacement materials shall match existing materials.

d. Signage: All graphics 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.

e. Facilities: All recreation facilities, equipment and lighting fixtures shall be maintained in good condition and good working order at all times.

f. 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 installed color.

3.11. Plant Materials and Trees: Plant materials and trees that are dead, diseased and/or otherwise unhealthy shall be replaced with healthy specimens of substantially equal type and reasonable size. Branches from mature trees that are at eye level (six feet or less from the ground) in an active area should be pruned.

3.12. Park Repairs: Small, non-capital repairs to benches, walls, fencing, gates, paved surfaces, walkway and other structure and features of the Shore Public Walkway shall be performed as needed to maintain the facilities in good and working condition. DPR shall report to Owner on any repairs that cannot be completed within 48 hours and shall provide a timeframe for completion for these repairs.

3.13. Capital Repairs: DPR shall be fully responsible for capital repairs, including repairs to the piers, bulkheads, piles and other waterfront structures in the Shore Public Walkway. All capital repairs shall be performed in accordance with the Final Plans and Specifications / 100 % Construction Drawings unless DPR reasonably determines that such compliance is not feasible or economic in which event DPR shall use, to the extent feasible, replacement materials which are consistent with the quality and design set forth in the Final Plans and Specifications / 100 % Construction Drawings. DPR shall undertake to maintain in good condition all marine structures on or immediately adjacent to the Shore Public Walkway including, but not limited to the bulkhead, riprap, cribbing, pier decks and substructure as necessary to provide continuous, free, and safe public access through the Shore Public Walkway.

3.14. Illumination: During the period in which the Shore Public Walkway is open, all pedestrian walkways and paths shall be adequately illuminated from one half hour before sunset to one half hour after sunrise.

3.15. Signs: DPR shall post and maintain all signs within the Shore Public Walkway.

3.16. Security: DPR shall provide security using its Park Enforcement Patrol (PEP) personnel on a 24 hour, 7 days a week basis and acknowledges that the Annual SPW Maintenance Payment includes funding for such security.

3.17. General Maintenance Services: DPR shall perform all other services required to maintain the Shore Public Walkway to a high standard of service and cleanliness. DPR staff assigned to the Shore Public Walkway will be available 24 hours a day through DPR Central Communications.

3.18. Performance Monitoring and Inspection: The Shore Public Walkway shall be included in the DPR Inspection Program, and random inspection shall be conducted by DPR

inspection staff. These inspections shall be based on the guidelines contained in the Park Inspection Manual. DPR shall provide the results of all inspections to the Owner. DPR shall promptly repair or replace any portion or feature of the Shore Public Walkway that exhibits defects or hazardous conditions and shall promptly institute any appropriate measures to protect the public from harm, including but not limited to the erection of warning signs and temporary barriers.

IV. **VEHICLES AND EQUIPMENT**

DPR shall provide needed vehicles, equipment and supplies to perform the services described in this Agreement.

V. **MAINTENANCE SECURITY**

Simultaneously with the execution of this Agreement, Owner shall post security in the form of a maintenance bond or irrevocable letter of credit (such maintenance bond or letter of credit shall be in such form as shall be reasonably acceptable to the City) naming the City as beneficiary in an amount equal to three (3) months of the Annual SPW Maintenance Payment (such security, the "SPW Maintenance Security"). The SPW Maintenance Security shall be replaced every five (5) years with a new security in an amount that is equal to one-fourth of the Annual SPW Maintenance Payment due for such year. If, in any year, Owner fails to make the Annual SPW Maintenance Payment by the due date therefore set forth in Section 6.7 of the Declaration and such default is not cured within 15 business days after receipt by Owner of written notice of such failure, the City shall have the right to draw upon the SPW Maintenance Security. If the City has drawn down on the SPW Maintenance Security pursuant to this Section, Owner shall, within sixty (60) days of such action by the City, deposit with DPR an amount equal to the amount so drawn of the SPW Maintenance Security

VI. **SUBCONTRACTING**

DPR shall notify Owner of any sub-contracts it plans to utilize for the performance of its obligations, in whole or in part, under this Agreement.

VII. **NOTICES AND REPORTING**

All notices or other communications which either party may be required or may desire to give to the other relating to this Agreement shall be effective only if in writing and mailed to the party for which it is intended by certified or registered mail, return receipt requested, postage prepaid, or overnight carrier, postage prepaid, or personally delivered, addressed to the party at the address provided below, and, in the case of the City, to the attention of the Commissioner, Department of Parks and Recreation and the General Counsel, Department of Parks and Recreation at The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10065, and, if to Owner, to:

Waterview at Greenpoint LLC  
c/o Clipper Equity, LLC  
4611 12<sup>th</sup> Avenue,  
Brooklyn, New York 11219  
Attention: David Bistricher

And to: Greenberg Traurig, LLP  
200 Park Avenue  
New York, New York 10166  
Attention: S. Nicholas Hockens

Each notice which shall be mailed shall be deemed sufficiently given or sent for all purposes hereunder five (5) business days after it shall be mailed at a branch post office regularly

maintained by the United States Postal Service, if sent by registered or certified mail, one (1) business day after mailing by overnight carrier for next day delivery, or if delivered by hand, when actually received or refused.

## VIII. MISCELLANEOUS

8.01. Amendments. This Agreement may not be amended except by a written instrument executed by Owner and DPR acting in consultation with the Chair.

8.02. Cancellation. This Agreement may not be canceled except by written instrument executed by Owner and DPR.

8.03. Governing Law. This Agreement shall be governed by and construed under and in accordance with the laws of the State of New York. All actions arising under or relating to this Agreement shall be brought exclusively in the appropriate court in the County of New York, State of New York. Each of the parties agrees to submit to personal jurisdiction and to waive any object as to venue in the County of New York, State of New York.

8.04. Reliance by Third Parties. No person or entity other than Owner, the City, the DPR or DCP, and the successors in interest or assignees of such parties, shall be entitled to rely on this Agreement or the performance of Owner, DPR or the City hereunder. This Agreement is not made for the benefit of any other person or entity and no such other person or entity shall be entitled to enforce or assert any claim arising out of or in connection with this Agreement.

8.05. Indemnity. [TO BE DRAFTED AND SUBJECT TO NYC LAW  
DEPARTMENT AND DPR REVIEW]

8.06. Right to Sue.

a. Nothing contained herein shall prevent Owner from asserting any claim or action against the City or any of its agencies or any of its officials, including but not limited to

DPR, arising out of the performance by the City, or agency thereof, of, or failure of the City or agency thereof, to perform, any of the obligations of the City, or any agency thereof, under this Agreement or the exercise by the City, or any agency thereof, of any of its rights under this Agreement. Nothing contained herein shall prevent the City of New York or any of its officials from asserting any claim or action against Owner arising out of Owner's performance of, or failure to perform, any of its obligations under this Agreement, or the exercise by Owner of any of its rights under this Agreement.

b. The obligation of Owner to make the Annual SPW Maintenance Payment is absolute and unconditional and nothing contained herein, including, without limitation, any claim which Owner may assert against the City, shall entitle to a right of set-off against its obligation to make the Annual SPW Maintenance Payment.

8.07. Severability. In the event that any provision of this Agreement shall be deemed, decreed, adjudged or determined to be invalid or unlawful by any court of competent jurisdiction after all appeals are exhausted or the time for appeal has expired, such provisions shall be severable and the remainder of this Agreement shall continue to be in full force and effect.

8.08. Cooperation. In the event any claim is made or any action brought in any way relating to the Agreement herein (except any claim made or action brought by Owner, or any claim or any action brought by the City or any of its agencies or instrumentalities against Owner) Owner shall diligently render to DPR and/or the City without compensation any and all assistance which DPR and/or the City may reasonably require of Owner, provided that such assistance shall not include financial assistance or any obligation to incur third-party, out-of-pocket costs.



8.09. Counterparts. This Agreement may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original, but all of which taken together shall be construed as and shall constitute but one and the same instrument.

***SIGNATURES ON FOLLOWING PAGES***

IN WITNESS WHEREOF, this Agreement has been duly executed by the City and  
Owner as of the day and year first above written.

WATERVIEW AT GREENPOINT LLC

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

Name:

Title:

CITY OF NEW YORK DEPARTMENT OF  
PARKS AND RECREATION

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

EXHIBIT A

LEGAL DESCRIPTION

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

BEGINNING at a point on the northwesterly side of Commercial Street, distant 185 feet 9 inches southwesterly from the corner formed by the intersection of the northwesterly side of Commercial Street with the westerly side of Manhattan Avenue;

RUNNING THENCE southwesterly along the northwesterly side of Commercial Street, 217 feet 6 inches;

THENCE northwesterly along a line drawn at right angles to Commercial Street 499 feet 10 inches to the Pierhead Line approved by the Secretary of War in July 1916;

THENCE easterly along said Pierhead Line 234 feet 8 inches;

THENCE southeasterly in a straight line 489 feet to the northwesterly side of Commercial Street to the point and place of BEGINNING.

EXHIBIT G

FORM OF UC MAINTENANCE AGREEMENT

[Attached behind.]

MAINTENANCE AND OPERATIONS AGREEMENT

– UPLAND CONNECTION

KINGS COUNTY  
BLOCK 2472, LOT 410

DATED AS OF \_\_\_\_\_ 20\_\_

THIS AGREEMENT, made as of the \_\_\_ day of \_\_\_\_\_, 20\_\_ (this “Agreement”), by and between WATERVIEW AT GREENPOINT LLC, a New York limited liability company, having an office c/o Clipper Equity, LLC, 4611 12<sup>th</sup> Avenue, Brooklyn, New York 11219 (the “Owner”), and THE CITY OF NEW YORK (hereinafter referred to as the “City”), acting by and through the Department of Parks and Recreation of the City of New York, having an address at The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10065.

**W I T N E S S E T H:**

**WHEREAS**, Owner is the owner of certain real property located in the Borough of Brooklyn, Kings County, City and State of New York, which property is designated as Block 2742, Lot 410 on the Tax Map of the City of New York, Kings County, as more particularly described in Exhibit A annexed hereto (the “Subject Property”); and

**WHEREAS**, Owner has proposed to develop the Subject Property with three new buildings, containing in the aggregate up to approximately 627,851 square feet (“sf”) of residential floor area (approximately 720 units), up to approximately 24,999 sf of commercial floor area for local retail uses and services, up to 6,000 sf of community facility floor area and approximately 330 off-street accessory parking spaces in the aggregate (the “Proposed Development”); and

**WHEREAS**, the Subject Property is a “waterfront zoning lot” and the Proposed Development is therefore subject to the requirements (collectively, the “Waterfront Regulations”) set forth in Article 6, Chapter 2 (Special Regulations Applying in the Waterfront Area) of the Zoning Resolution of the City of New York (the “Zoning Resolution” or “ZR”); and

**WHEREAS**, Owner has filed the following land use applications (collectively, the “Applications”) with the New York City Department of City Planning seeking: (i) a special

permit pursuant to ZR Section 62-836 (Bulk modifications on waterfront blocks) to waive requirements regarding maximum base and building heights and minimum setbacks (Application No. 140047 ZSK); (ii) an authorization pursuant to ZR Section 62-822(a) (Authorization to modify requirements for location, area and minimum dimensions of waterfront public access areas and visual corridors) to waive upland connection and visual corridor requirements (Application No. N140048 ZAK); (iii) an authorization pursuant to ZR Section 62-822(b) (Authorization to modify requirements within waterfront public access areas) to waive requirements regarding the design of the WPAA (Application No. N140049 ZAK); (iv) a certification pursuant to ZR Section 62-811 (Waterfront public access and visual corridors) that except with respect to the waivers granted pursuant to the WPAA Authorizations, the WPAA comply with the Waterfront Regulations (Application No. N140050 ZCK); and (v) with the Department of City Planning as co-applicant, an amendment to the text ZR Sections 11-13 (Public Parks) and 62-351 (Special floor area regulations) to provide that the City Property will continue to generate floor area after it is developed as a public park (Application No. N140046 ZRK); and

**WHEREAS**, in connection with the approval of the Applications, Owner has executed, delivered and recorded, or simultaneously herewith will execute, deliver and record, a restrictive declaration governing the development of the Subject Property (the “Declaration”); and

**WHEREAS**, Owner is required to construct as part of the Proposed Development on the Subject Property an approximately 15,935 Upland Connection connecting Commercial Street to the Shore Public Walkway; and

**WHEREAS**, pursuant to Section 6.4 of the Declaration, Owner has granted to the City a permanent access easement for the use and enjoyment of the Upland Connection by the public

commencing upon Substantial Completion of the Upland Connection; and

**WHEREAS**, pursuant to Sections 6.8 and 8.3 of the Declaration, Owner has agreed to maintain and operate the Upland Connection; and

**WHEREAS**, Owner and City wish to provide for their respective rights and obligations in connection with the maintenance and operation of the Upland Connection; and

**NOW, THEREFORE**, in consideration of the foregoing, Owner and City agree as follows:

I. **DEFINITIONS**

1.01. Capitalized terms used herein but not defined herein shall have the applicable meanings ascribed to such terms in the Declaration.

1.02. “Budget” shall have the meaning set forth in Section 2.02.b of this Agreement.

1.03. “Commissioner” shall mean the Commissioner of NYC Department of Parks and Recreation or any successor to the jurisdiction thereof.

1.04. “Force Majeure” shall include, but not be limited to: (i) governmental restrictions, regulations or controls; (ii) enemy or hostile government actions; civil commotion, insurrection, terrorism, revolution or sabotage; (iii) fire or other casualty; (iv) inclement weather substantially delaying construction of any relevant portion of the Subject Property; (v) failure of a public utility to provide power, heat, light or other utility service; (vi) strike, lockout or labor dispute(s); (vii) acts of God; (viii) a taking of the Subject Property, or a portion thereof, by condemnation or eminent domain; (ix) denial to Owner by any party of a right of access to any adjoining real property which right is vested in Owner by contract or pursuant to applicable law, if such access is required to accomplish the obligations of Owner pursuant to this Agreement; (xi) any undue material delay in the issuance of approvals by and department or agency of the City, the State of



New York or the United States that is not caused by an act or omission of Owner; (xii) underground or soil conditions that were not and could not reasonably have been foreseen by Owner prior to their discovery or occurrence; (xiii) the pendency of any litigation relating to the Applications or to the underlying sections of the Zoning Resolution; (xiv) failure of a contractor to deliver labor or materials on schedule or inability to obtain labor or materials or reasonable substitutes therefor unless due to any act or failure to act by Owner; (xiv) unusual delay in transportation; or (xiv) other conditions not reasonably avoidable by Owner and which are beyond the reasonable control of Owner.

1.05. “Promenade Activities” shall have the meaning set forth in Section 4.02.b of this Agreement.

1.06. “Upland Connection” shall mean the area labeled “Upland Connection” on the drawing attached hereto as Exhibit B.

## II. MANAGEMENT

2.01. Obligation to Maintain. Owner shall provide or, in Owner’s sole election, cause to be provided, at Owner’s sole expense, all services required for maintaining and repairing the Upland Connection in accordance with the provisions of this Agreement and to the reasonable satisfaction of the Commissioner, provided, however, that it shall be unreasonable for the Commissioner to require a higher level of maintenance than is customarily required in similar public access areas. Such services shall include keeping and maintaining the Upland Connection in good condition and good repair, and making replacements, if needed, all in accordance with the provisions of this Agreement.

2.02. Budget.

a. On an annual basis, Owner shall provide to the Commissioner (i) a statement setting forth the estimated costs and expenses of maintenance and operation of, and describing the maintenance work scheduled to be performed in respect of, the Upland Connection during the calendar year (or if Owner utilizes a fiscal year which does not correspond to a calendar year, such fiscal year) and (ii) a proposed budget relating to such estimated costs and expenses for the current calendar or fiscal year, as the case may be (a “Budget”). Owner shall not be required to prepare more than one such Budget in each year.

b. Within thirty (30) days of receipt of the proposed Budget by the Commissioner, the Commissioner shall approve or disapprove said proposed Budget, using his or her reasonable judgment. If the Commissioner disapproves such proposed Budget, he or she shall state the reasons in writing. Owner may then submit a revised Budget and the Commissioner, exercising reasonable judgment, shall within thirty (30) calendar days of such submittal approve or disapprove such revised Budget, with written reasons in the event of disapproval. In the event of a further disapproval, Owner shall submit further revised Budget(s) and the Commissioner shall approve or disapprove same, in the manner set forth herein. Notwithstanding anything to the contrary set forth in this Section 2.02b, a determination by the Commissioner pursuant to subsection (b)(ii) of Section 3.06 shall be conclusive to establish the amount of the approved Budget for the then applicable year.

### III. MAINTENANCE AND REPAIR

3.01. In General. Owner shall be responsible for ordinary maintenance and repair of the Upland Connection in accordance with the standards set forth in this Article III and consistent with an “acceptable” rating under the Parks Inspection Program. All such maintenance shall be performed by or on behalf of Owner in a good and worker-like manner.

3.02. 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 Upland Connection in a clean, neat and good condition.

b. All walkways, sidewalks and lighting and all other improvements and facilities installed in the Upland Connection 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 painted over or removed as appropriate to the nature of the surface within forty-eight (48) hours of its appearance.

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

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

3.03. Snow Removal.

Snow and ice shall be promptly removed from all walkways so as not to interfere with safe passage, and from all other paved surfaces within twenty-four (24) hours after each snowfall or accumulation of ice.

3.04. Landscape Maintenance.

In addition to the obligations set forth in Section 3.02 hereof, the maintenance program for the planted portions of the Upland Connection shall consist 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 March 1st and terminate not later than the end of the second week of April of each calendar year.

Owner 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 those trees that have overextended, dead or otherwise unsightly branches to maintain natural form.

(iv) Remove or destroy any weeds growing between paving blocks, pavement, cobbled and concrete areas.

(v) Apply commercially available nitrogen rich fertilizer to trees, shrubs, plants and lawn areas, 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 grassed areas as needed.

b. Season Closing Period: The Season Closing Period shall begin on October 1st and shall terminate not later than November 1st of each calendar year. Owner shall undertake and complete the following work annually during the Season Closing Period:

(i) Rake and collect leaves from site.

(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 grassed areas as needed.

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

(i) Inspect trees on a regular basis and spray when necessary.

(ii) Water all trees, shrubs, plantings and grass areas 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 grass-covered areas on a bi-weekly basis. During periods of excessive growth, mowing shall occur on a weekly basis. Re-seed grass-covered areas as needed.

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

3.05. Repairs and Replacement.

Repair and replacement of all facilities within the Upland Connection, including, without limitation, furnishings, equipment and light bulbs, shall occur as needed to maintain such facilities in good order and working condition. Owner shall exercise due diligence in commencing the repair or replacement of same as promptly as possible and, subject to the notice requirements contained in Section 4.03 hereof, as applicable, and in completing the same within a reasonably expeditious time after commencement. All repairs and replacements shall be

consistent with the Final Plans and Specifications / 100 % Construction Drawings. Repairs shall include, but not be limited to, the following, as applicable to the facilities in the Upland Connection:

a. Benches or Other Seating: Owner shall undertake all maintenance, including replacement of any broken or missing slats and painting, as necessary.

b. Walls, Barriers and/or Fencing: Any broken or materially cracked walls, barriers and/or fencing shall be repaired or removed and replaced. To the extent feasible, replacement materials and designs shall match the materials and designs of existing walls, barriers and/or fencing.

c. Pavements: All paved surfaces shall be maintained so as to be safe and attractive. To the extent feasible, replacement materials shall match existing materials.

d. Signage: All graphics 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. Any new signage not shown on the Upland Connection Drawings shall be subject to the prior review and approval of DPR.

e. Facilities: All recreation facilities, equipment and lighting fixtures shall be maintained in good condition and good working order at all times.

f. 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 installed color.

g. Plant Materials and Trees: Plant materials and trees that are dead, diseased and/or otherwise unhealthy shall be replaced with healthy specimens of substantially equal type and reasonable size. In the event of the loss of more than ten trees or of all trees of

any species, Owner shall consult with DPR and provide appropriate replacements for such trees as determined by the Commissioner exercising reasonable judgment. Branches from mature trees that are at eye level (six feet or less from the ground) in an active area should be pruned.

h. Construction Defects & Hazardous Conditions: Owner shall periodically inspect the Upland Connection for construction defects and hazardous conditions and shall promptly repair or replace any portion or feature of the Upland Connection that exhibits such defects or hazardous conditions and shall promptly institute any appropriate measures to protect the public from harm, including but not limited to the erection of warning signs and temporary barriers.

3.06. Maintenance and Access Security.

a. To secure its obligation to maintain the Upland Connection in good condition and repair in accordance with this Agreement and to cover any civil penalties imposed by the ECB pursuant to Section 5.05 hereof, Owner shall deposit with DPR, upon Substantial Completion of the Upland Connection, as security (the “Maintenance and Access Security”), one or more five-year performance bonds or, at Owner’s election, a one (1) year bond, naming the City as beneficiary, in a form reasonably satisfactory to the Commissioner. The Maintenance and Access Security shall be renewed prior to the expiration thereof. The Maintenance and Access Security for the first five (5) year period (or if the Maintenance and Access Security is provided by a one (1) year bond, for each of the first five (5) years) after Final Completion (the “Initial Maintenance and Access Security”) shall be in an amount that has initially been certified by Owner’s architect or landscape architect to be sufficient to cover one hundred twenty-five (125%) percent of the Budget (or if the Budget for the applicable year has not been approved, one hundred twenty-five (125%) percent of the cost of maintaining and operating the Upland

Connection for the twelve-month period following issuance of the Notice of Final Completion, as estimated by an architect or landscape architect licensed in the State of New York), as approved pursuant to the provisions of Section 3.06b hereof.

b. Not later than two (2) weeks prior to the expiration of the Initial Maintenance and Access Security, and of each subsequent Maintenance and Access Security, Owner shall provide a new or renewed Maintenance and Access Security with a term of five (5) years through a five-year bond, or, if five-year bonds are not commercially available, by one-year bonds which shall be renewed for a total term of five years, the annual amount of which shall be (i) if there is an approved Budget for the applicable year, equal to 125% of the approved Budget; or (ii) if there is no approved Budget for the applicable year, as determined in accordance with the following provisions, and such amount shall be used to calculate the Budget for the current calendar or fiscal year, as the case may be. At least forty-five (45) calendar days prior to the submission of the replacement Maintenance and Access Security, Owner shall notify the Commissioner as to the proposed amount of such replacement Maintenance and Access Security, which shall be equal to 125% of the estimated costs and expenses of maintenance and operation of the Upland Connection for the applicable year. Within fifteen (15) business days of its receipt of such notification, the Commissioner shall approve or disapprove said amount, using his or her reasonable judgment. If it disapproves said amount, it shall state its reasons in writing. Owner shall then submit a revised amount and the Commissioner, exercising reasonable judgment, shall within fifteen (15) business days of receipt of such submittal approve or disapprove the revised amount. In the event of a further disapproval, Owner shall submit further revised amounts and the Commissioner shall approve or disapprove same, in the manner set forth herein.



c. If the Maintenance and Access Security has not been renewed at least two (2) weeks prior to the expiration date of such Maintenance and Access Security the City shall be entitled to draw down on the Maintenance and Access Security for the purpose of maintaining the Upland Connection in accordance with this Agreement. Owner shall replenish all sums drawn down within fifteen (15) business days so that the available Maintenance and Access Security remains at the amount set by the Commissioner in accordance with the provisions of this Section 3.06. If the City draws down on the Maintenance and Access Security as provided herein, the City shall apply such funds solely towards the maintenance of the Upland Connection and shall return to Owner any sums not used for such maintenance.

d. Not more than once within a five-year period for which the Maintenance and Access Security is required to be in place (even if such Maintenance and Access Security is provided by one-year bonds), the Commissioner, at its sole discretion, may require that the amount of the Maintenance and Access Security be increased or decreased, as the case may be, in accordance with the procedures set forth in subsections (b)(i) and (b)(ii) of this Section 3.06.

e. Notwithstanding the foregoing, Owner may, at its option, in lieu of a bond, deposit with DPR a clean, irrevocable letter of credit, naming the City as beneficiary, in a form reasonably satisfactory to the City, in the same amount, and in accordance with the same procedure, as set forth above, with respect to the Initial Maintenance and Access Security or the Maintenance and Access Security, as the case may be.

f. Upon the transfer by Owner (the "Selling Owner") of its fee interest in the Subject Property and the provision by the new successor Owner of a substitute required Maintenance and Access Security in the same amount and with the same provisions as required

pursuant to this Section 3.06, the Maintenance and Access Security provided by the Selling Owner shall be returned to the Selling Owner.

3.07. No Obligation for Capital Improvements. Notwithstanding anything to the contrary contained in this Agreement, Owner shall have no obligation to make or provide capital improvements, including no obligation to provide any payments or financing for, any capital improvements to all or any portion of the Upland Connection after completion of the Upland Connection as set forth in the Declaration, as evidenced by the issuance by the Commissioner of the Notice of Final Completion, provided that nothing in this Section 3.07 shall be construed to relieve Owner of any obligation to maintain and repair the Upland Connection pursuant to the provisions of this Agreement.

#### IV. OPERATION AND ACCESS

##### 4.01. Hours of Public Access.

a. Upon Substantial Completion of the Upland Connection, the Upland Connection shall be open to the public at the times set forth in Section 8.1 of the Declaration, and such additional times as Declarant shall desire.

b. Notwithstanding the provisions of this Agreement or the Declaration, DPR and Owner may by written agreement temporarily vary such hours for all or a portion of the Upland Connection.

c. Owner shall have the right, in its sole discretion, to close the Upland Connection to the public for one day each year, or for such other period as shall be required by law to prevent a public dedication of the Upland Connection, other than a Saturday, Sunday or a public holiday, on the same date in January of each calendar year (or as near to such date as is

possible if such date falls on a Saturday, Sunday or public holiday), in order to preserve Owner's ownership interest in the Upland Connection.

4.02. General Use of the Upland Connection.

a. The Upland Connection may be used by all members of the public for activities appropriate to public access areas of similar design and size in the City of New York ("Promenade Activities"), including, but not limited to, the Promenade Activities listed in Section 4.02b. With respect to any activities carried on in all or any part of the Upland Connection, Owner acknowledges that no member of the public may use the Upland Connection for an activity or in a manner which injures, endangers or unreasonably disturbs the comfort, peace, health or safety of any person, or disturbs or causes injury to plant or animal life, or causes damage to property or any person, but such acknowledgement shall not be deemed to make Owner liable for any such activity unless undertaken with Owner's express consent.

b. For purposes of this Agreement, "Promenade Activities" shall include, but not be limited to the following:

- (1) walking or standing;
- (2) walking domestic animals (provided such animals are leashed and properly curbed);
- (3) jogging;
- (4) biking;
- (5) sitting on benches and seating areas provided in the Upland Connection;
- (6) use of public facilities provided in the Upland Connection.

c. For purposes of this Agreement, "Promenade Activities" shall not include any activity which, or is conducted in a manner which, injures, endangers or unreasonably

disturbs the comfort, peace, health or safety of any person, or disturbs or causes injury to plant or animal life, or causes damage to property or any person.

4.03. Closure for Repairs and Other Work.

a. In order (i) to accomplish the repairs or replacements described in Section 3.05 hereinabove, or (ii) to make emergency repairs or to mitigate hazardous conditions or emergency conditions, or (iii) for the repair, restoration, rehabilitation, renovation or replacement of pipes, utility lines or conduits or the equipment on, over or under the Upland Connection, including in the Proposed Development, or (iv) to construct or repair portions of the Proposed Development located above or adjacent to or forming part of the structure of the Upland Connection, the Upland Connection or the most limited portion thereof, as may be reasonably necessary, may be temporarily closed to the public. Owner shall erect such barriers around the portion of the Upland Connection that is temporarily closed as are reasonably necessary to protect the public from harm. Owner will close or permit to be closed only those portions of such areas which must or should reasonably be closed to effect the work to be undertaken, and will exercise due diligence in the performance of such work so that it is completed expeditiously and within any time period reasonably established by the Commissioner as provided below, and the temporarily closed areas (or any portions thereof) are reopened to the public promptly. Except in cases of emergency, Owner shall provide not less than seven (7) calendar days' advance notice to the public of any temporary closure of the Upland Connection by posting signs at the entrances to the Upland Connection. In cases of emergency, Owner shall provide such public notice as soon as practicable.

b. Except in cases of emergency, no less than twenty (20) calendar days prior to the commencement of the performance of such work, Owner shall give notice to the

Commissioner of its intention to perform such work, which notice shall describe the scope of such work, the anticipated duration thereof, and the portion of the Upland Connection which must be closed in order to carry out the work. If the Commissioner using reasonable judgment believes that the duration of the work stated in such notice is unnecessarily long, the Commissioner shall notify Owner prior to the commencement date of such work of a shorter period for completion of such repairs. If the Commissioner determines that Owner has failed to comply with the requirements of this Section 4.03b, then the Commissioner may, no less than five days after notice to Owner of said determination, order Owner to reopen all or any portion of the Upland Connection which was closed; provided that such order shall not apply to the extent that it would create or allow the creation or maintenance of an emergency or hazardous condition.

c. In the event of an emergency or hazardous condition which requires closure of all or a portion of the Upland Connection, Owner shall promptly, but in no event more than two business days after such closure, give notice to the Commissioner that such portion of the Upland Connection has been closed, which notice shall describe the nature of the emergency or hazardous condition causing the closure, the portion of the Upland Connection to be closed and the anticipated duration thereof. Emergency or hazardous conditions for which the Upland Connection may be closed without prior notice shall be limited to actual emergency situations causing or threatening to cause significant physical damage or substantial risks to public safety. In the event of an emergency or hazardous condition, the Commissioner shall have the right to order Owner to close the Upland Connection or any portion thereof or to reopen any portion of the Upland Connection which was not required to be closed or set a deadline for reopening the

Upland Connection (or portion thereof) to the public subject to Force Majeure with respect to any such deadline.

d. Notwithstanding anything to the contrary contained in this Section 4.03, the temporary cordoning off of an area of less than twenty-five (25) square feet to undertake repairs in such area shall not be deemed to be a closing and prior notice to the Commissioner shall not be required, unless such cordoning off has a duration longer than seventy-two (72) hours.

e. In the event of any closure in accordance with the provisions of this Section 4.03, for the duration of such closure Owner shall not be deemed to be in default of its obligation to cause the Upland Connection to remain open and accessible to the public.

#### 4.04. Staffing.

Upon any portion of the Upland Connection being open and accessible to the public, Owner shall, in fulfillment of Owner's obligations hereunder, have the discretion to employ, appoint, select, contract with or otherwise hire the services of qualified attendants, gardeners, groundskeepers, laborers, supervisors, and similar personnel to maintain such areas in accordance with the terms of this Agreement in such numbers as Owner shall determine appropriate. Owner shall at all times have the sole and exclusive right and power to select, appoint, employ, direct, supervise, control, remove, discipline and discharge all persons employed by Owner for the purpose of carrying out its obligations under this Agreement.

#### 4.05. Rules and Regulations.

a. Owner shall have the right, but not the obligation, to establish, in accordance with the following provisions of this Section 4.05, rules and regulations governing public use of, and behavior in, the Upland Connection, which rules and regulations shall not

conflict with DPR's rules and regulations (56 RCNY §1-01 et seq.). In addition, Owner may from time to time modify such rules and regulations, with the consent of DPR, as provided for in this Section 4.05. Owner shall operate the Upland Connection in conformity with the rules and regulations of DPR, unless and until Owner promulgates rules and regulations of its own for use of the Upland Connection.

b. Prior to instituting any rule or regulation or modifying any existing rule or regulation, Owner shall submit a copy of such rule or regulation or such proposed modification to DPR, or any successor to the jurisdiction thereof, for approval.

c. If the Commissioner fails to object to a proposed rule, regulation or modification of an existing rule or regulation within thirty (30) calendar days of the submission of such rule, regulation or modification to the Commissioner by Owner, DPR shall be deemed to have approved such rules, regulations or modifications and the same shall, in the discretion of Owner, take effect. Notwithstanding the foregoing, if the Commissioner subsequently objects to any such rule, regulation or modification of an existing rule, it shall be immediately rescinded. Any such rule, regulation or modification of an existing rule shall be posted at the Upland Connection in accordance with Section 4.07 hereof.

4.06. Illumination.

All pedestrian walkways and paths in the Upland Connection shall be illuminated from one half hour before sunset to one half hour after sunrise, or such longer period as Owner shall desire.

4.07. Signage.

Upon any portion of the Upland Connection being open and fully accessible to the public as provided hereinabove, appropriate signage, indicating hours open to the public and

accessibility to individuals with disability, shall be provided. Any public space signage not shown on the Upland Connection Drawings shall be approved in writing by DPR prior to installation of such signage. All signage shall be maintained and replaced as needed in accordance with the provisions of Section 3.05.d of this Agreement.

V. **ENFORCEMENT**

5.01. Right of Access. The City, acting through DPR, shall have a right of access to the Upland Connection at all times the Upland Connection is open and at other times upon reasonable notice, for the purpose of inspecting the Upland Connection and determining Owner's compliance or noncompliance with the terms of this Agreement, and any rules and regulations applicable to the Upland Connection. As part of the training of any private security personnel employed by Owner, such personnel shall be informed of DPR's right of access to the Upland Connection pursuant to this Section 5.01 and such personnel shall be trained not to obstruct or interfere with the right of the general public to use and enjoy the Upland Connection in accordance with the terms and conditions of this Agreement and the rules and regulations for the Upland Connection.

5.02. Default.

a. If Owner fails to perform any of its obligations under this Agreement, the Commissioner shall give Owner not less than thirty (30) days written notice of such alleged default, during which period Owner shall have the opportunity to effect a cure. If Owner has diligently commenced and is diligently prosecuting efforts to effect a cure during such thirty (30) day period, then the aforesaid thirty (30) day period shall be extended for so long as Owner continues to proceed diligently with effectuation of such cure. If the Commissioner finds that Owner is unable to commence the cure of an alleged failure to perform in the initial thirty (30)



day period due to Force Majeure, then upon application by Owner, the Commissioner, in the exercise of his or her reasonable judgment and upon such conditions as he or she may deem appropriate, may allow Owner an additional period of time in which to commence a cure.

b. Notwithstanding anything contained in this Agreement to the contrary, if Owner fails to observe any of the terms or conditions of this Agreement and Owner fails to cure or commence to cure such failure within the applicable grace period provided in subparagraph (a) above, then upon the expiration of said grace period, as extended by Force Majeure, the Commissioner shall give each Mortgagee not less than thirty (30) days written notice of any alleged default which would allow DPR to draw down all or substantially all of the Performance Bond or the Maintenance and Access Security as provided in subsection (c) below, during which period such Mortgagee shall have the opportunity to cure such alleged default. Failure of the Commissioner to give notice to any Mortgagee shall not affect the validity of a notice given to any other Mortgagee. If the Commissioner finds that such Mortgagee commences to cure such violation during such thirty (30) day period and proceeds diligently towards such cure, then the aforesaid thirty (30) day period shall be extended for so long as such Mortgagee continues to proceed diligently with such cure. If such Mortgagee is unable to commence a cure of an alleged default in the initial thirty (30) day period due to Force Majeure, as applied to Mortgagee, then upon application by Mortgagee, the Commissioner, in the exercise of his or her reasonable judgment, may allow such Mortgagee an additional period of time in which to commence such cure.

c. In the event that any alleged default under this Agreement has not been cured within the periods provided in Sections 5.02a and 5.02b above, the City, acting through the Commissioner, shall be entitled to draw down on the Maintenance and Access Security, as

provided above, to the extent necessary and to apply such monies to the performance of such obligation, and, subject to Sections 5.03 and 5.04 hereof, the City shall be entitled to any remedy available in law or at equity, except that such remedies shall not include termination of this Agreement. If the City has drawn down the Maintenance and Access Security as provided above, Owner shall, within fifteen (15) business days thereafter, post a new Maintenance and Access Security replacing the Maintenance and Access Security drawn down by the City. Nothing set forth herein shall prevent DPR from performing any obligation of Owner not performed by Owner, in accordance with this Section, prior to drawing down on the Maintenance and Access Security, and then drawing down on the Maintenance and Access Security to the extent necessary to reimburse or otherwise pay for such work.

5.03. Binding on Successors. The restrictions, covenants and agreements set forth in this Agreement shall be binding upon Owner only for the period during which and only to the extent to which Owner holds fee title to the Subject Property. At such time as Owner ceases to hold fee title to the Subject Property, or has assigned all its rights and obligations under this Agreement, Owner's obligations, indemnity and liability with respect to this Agreement shall wholly cease and terminate, and Owner's successors in interest in the Subject Property shall be deemed to have assumed Owner's obligations and liabilities thereafter arising hereunder. Owner and any party who succeeds to the interest of Owner under this Agreement shall be bound by this Agreement only for as long as the Proposed Development exists on the Subject Property, and every successor shall be deemed to have ratified all actions of Owner taken in accordance with this Agreement.

5.04. Limitation of Liability. The City shall look solely to the interest of Owner in the Subject Property on an in rem basis only, for the collection of any judgment recovered against

Owner or the enforcement of any monetary remedy based upon any breach by Owner under this Agreement, and no other property of Owner shall be subject to levy, execution or other enforcement procedure for the satisfaction of the monetary remedies of the City under or with respect to this Agreement, and Owner shall have no personal liability under this Agreement. For the sole purpose of this Section 5.04, “Owner” shall mean “Owner” as defined in the Declaration, as well as any principals, disclosed or undisclosed, partners, affiliates, officers, shareholders or directors of Owner. Notwithstanding the foregoing, nothing in this Section 5.04 shall be deemed to preclude, qualify, limit or prevent any of the City’s governmental rights, powers or remedies, including without limitation, with respect to the satisfaction of the remedies of the City, under any laws, statutes, codes or ordinances.

5.05. Denial of Access. If DPR has reason to believe that the use and enjoyment of the Upland Connection by any member of the public has, without reasonable cause, been denied by Declarant, and the City determines that such denial of access with respect to the right of public access under the UC Easement was in violation of the provisions of the Declaration, the City shall have, after notice to Declarant and an opportunity for Declarant to present evidence disputing such alleged denial of access, in addition to such other rights as may be available at law or equity, the right to seek civil penalties at the New York City Environmental Control Board for a violation relating to privately owned public space, as set forth in Exhibit L to the Declaration.

## VI. RIGHT OF ENTRY TO UPLAND CONNECTION

6.01. Owner hereby grants the City, its agents, or its contractors, the right, after prior written notice of such intention to enter, to enter upon the Upland Connection upon a Maintenance Default (hereinafter defined) to perform Owner’s maintenance obligation set forth

herein until such time as Owner resumes the performance of such obligations, and for the purpose of completing any work required pursuant to Article III hereof. A “Maintenance Default” shall occur if Owner has failed to perform any of its maintenance obligations under this Agreement after notice is given in accordance with this Agreement and neither Owner nor any Mortgagee has commenced and diligently prosecuted efforts to effect a cure as provided in Section 5.02 during any applicable cure periods. The provisions of this Section 6.01 shall not be deemed to limit the access granted to DPR to the Upland Connection pursuant to Section 5.01 hereof.

## VII. MISCELLANEOUS

7.01. Amendment. This Agreement may not be amended except by a written instrument executed by Owner and DPR acting in consultation with the Chair.

7.02. Cancellation. This Agreement may not be canceled except by written instrument executed by Owner and DPR.

7.03. Notices. All notices or other communications which either party may be required or may desire to give to the other relating to this Agreement shall be effective only if in writing and mailed to the party for which it is intended by certified or registered mail, return receipt requested, postage prepaid, or overnight carrier, postage prepaid, or personally delivered, addressed to the party at the address provided below, and, in the case of the City, to the attention of the Commissioner, Department of Parks and Recreation and the General Counsel, Department of Parks and Recreation at The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10065, and, if to Owner, to:

Waterview at Greenpoint LLC  
c/o Clipper Equity, LLC  
4611 12<sup>th</sup> Avenue,  
Brooklyn, New York 11219  
Attention: David Bistricher

And to: Greenberg Traurig, LLP  
200 Park Avenue  
New York, New York 10166  
Attention: S. Nicholas Hockens

Each notice which shall be mailed shall be deemed sufficiently given or sent for all purposes hereunder five (5) business days after it shall be mailed at a branch post office regularly maintained by the United States Postal Service, if sent by registered or certified mail, one (1) business day after mailing by overnight carrier for next day delivery, or if delivered by hand, when actually received or refused.

7.04. Governing Law. This Agreement shall be governed by and construed under and in accordance with the laws of the State of New York. All actions arising under or relating to this Agreement shall be brought exclusively in the appropriate court in the County of New York, State of New York. Each of the parties agrees to submit to personal jurisdiction and to waive any object as to venue in the County of New York, State of New York.

7.05. Reliance by Third Parties. No person or entity other than Owner, the City, DPR or DCP, and the successors in interest or assignees of such parties, shall be entitled to rely on this Agreement or the performance of Owner, DPR or the City hereunder. This Agreement is not made for the benefit of any other person or entity and no such other person or entity shall be entitled to enforce or assert any claim arising out of or in connection with this Agreement.

7.06. Indemnification by Owner. [TO BE DRAFTED AND SUBJECT TO NYC LAW DEPARTMENT AND DPR REVIEW.]

7.07. Right to Sue.

a. Nothing contained herein shall prevent Owner from asserting any claim or action against the City or any of its agencies or any of its officials, including but not limited to DPR, arising out of the performance by the City, or agency thereof, of, or failure of the City or agency thereof, to perform, any of the obligations of the City, or any agency thereof, under this Agreement or the exercise by the City, or any agency thereof, of any of its rights under this Agreement.

b. Nothing contained herein shall prevent the City of New York or any of its officials from asserting any claim or action against Owner arising out of Owner's performance of, or failure to perform, any of its obligations under this Agreement, or the exercise by Owner of any of its rights under this Agreement.

7.08. Approvals. Wherever in this Agreement the certification, consent or approval of Owner, the Chair, or the Commissioner is required or permitted to be given, it is understood that time is of the essence, and such certification, consent or approval will not be unreasonably withheld, conditioned or delayed.

7.09. Counterparts. This Agreement may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original, but all of which taken together shall be construed as and shall constitute but one and the same instrument.

## VIII. INSURANCE; INDEMNIFICATION BY CITY

[TO BE DRAFTED AND SUBJECT TO NYC LAW DEPARTMENT AND DPR

REVIEW.]

**IX. CLAIMS AND ACTIONS THEREON**

9.01. a. No action at law or proceeding in equity against any party to this Agreement shall lie or be maintained upon any claim based upon this Agreement or arising out of this Agreement or in any way connected with this Agreement unless the party bringing the action shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, all as herein provided.

b. In the event any claim is made against the City or Owner or any action brought in any way relating to this Agreement (except any claim made or action brought by Owner against the City, or any claim or any action brought by the City or any of its agencies or instrumentalities against Owner) Owner shall diligently render to DPR and/or the City without compensation any and all assistance which DPR and/or the City of New York may reasonably require of Owner, subject to the limitations of Owner's liability as set forth in Section 8.06, and provided that such assistance shall not include payment of attorney's fees or settlement or any recovery unless Owner is obligated for such payment pursuant to other provisions of this Agreement or the Declaration.

c. Owner shall notify DPR and the New York City Department of Law in writing within ten (10) business days after receipt by Owner of any summons or complaint in any legal action or proceeding commenced against Owner in connection with respect to or relating to this Agreement.

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

after all appeals are exhausted or the time for appeal has expired, such provisions shall be severable, and the remainder of this Agreement shall continue to be in full force and effect.

e. Owner shall include a copy of this Agreement as part of any application submitted by Owner with respect to the improvement, alteration, reconstruction, operation or maintenance of the Upland Connection to any governmental agency or department having jurisdiction over the Subject Property or the Proposed Development including, without limitation, the Buildings Department, the New York City Board of Standards and Appeals, DPR and CPC.

f. If Owner is found by a court of competent jurisdiction to have been in default in the performance of its obligations under this Agreement, or any judgment is obtained against Owner from a court of competent jurisdiction in connection with this Agreement, and such finding or judgment is upheld on final appeal, or the time for further review of such finding or judgment on appeal or by other proceeding has lapsed, Owner shall indemnify and hold harmless the City, DPR and DCP from and against all of its reasonable legal and administrative expenses arising out of or in connection with the enforcement of Owner's obligations under this Agreement or the enforcement of said judgment.

***SIGNATURES ON FOLLOWING PAGES***



IN WITNESS WHEREOF, this Agreement has been duly executed by the City and Owner as of the day and year first above written.

WATERVIEW AT GREENPOINT LLC

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

Name:

Title:

CITY OF NEW YORK DEPARTMENT OF  
PARKS AND RECREATION

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

EXHIBIT A

LEGAL DESCRIPTION

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

BEGINNING at a point on the northwesterly side of Commercial Street, distant 185 feet 9 inches southwesterly from the corner formed by the intersection of the northwesterly side of Commercial Street with the westerly side of Manhattan Avenue;

RUNNING THENCE southwesterly along the northwesterly side of Commercial Street, 217 feet 6 inches;

THENCE northwesterly along a line drawn at right angles to Commercial Street 499 feet 10 inches to the Pierhead Line approved by the Secretary of War in July 1916;

THENCE easterly along said Pierhead Line 234 feet 8 inches;

THENCE southeasterly in a straight line 489 feet to the northwesterly side of Commercial Street to the point and place of BEGINNING.

EXHIBIT B

UPLAND CONNECTION DRAWING

[Attached behind.]

## EXHIBIT H

### WPAA PERMITTED ENCUMBRANCES

1. This Declaration.
2. The Floor Area Transfer Documents.
3. The Maintenance Agreements.
4. Covenants, restrictions, easements, agreements, dedications, rights of way and reservations of record in effect on the date of the Declaration.
5. All present and future zoning, building, environmental and other laws, ordinances, codes, restrictions and regulations of all governmental authorities having jurisdiction with respect to the Shore Public Walkway.
6. All presently existing and future liens for real estate taxes and water and sewer charges not due and payable as of the Transfer Date.
7. Any state of facts an accurate survey or physical inspection may reveal.
8. Any easement or right or use created in favor of any public utility company for electricity, steam, gas, telephone, water or otherwise, and the right to install, use, maintain, repair and replace wires, cables, terminal boxes, lines service connections, pulls, mains, facilities, and the like, under the Shore Public Walkway.
9. Non-material variations between tax lot lines and lines of record title.
10. Standard exclusions from coverage contained in the form of title policy or “marked-up” title commitment employed by the Title Company.
11. Any liens, restrictions, encumbrances, security interests and mortgages arising out of the acts or omissions of the City.
12. Any other matter which the Title Company may raise as an exception to title, provided that the Title Company will either omit or affirmatively insure against collection or enforcement of same out of the Shore Public Walkway at standard title rates and without additional premium to the City.

EXHIBIT I

FORM OF NOTICE OF SUBSTANTIAL COMPLETION

[LETTERHEAD OF THE COMMISSIONER OF PARKS & RECREATION]

[Date]

**NOTICE OF SUBSTANTIAL COMPLETION**

Waterview at Greenpoint LLC  
c/o Clipper Equity, LLC  
4611 12<sup>th</sup> Avenue,  
Brooklyn, New York 11219  
Attention: David Bistricher

Re: Block 2472, Lot 410  
Brooklyn, New York (the "Subject Property")

Dear Mr. Bistricher:

This letter constitutes the Notice of Substantial Completion as defined in Section 6.2 of that certain Restrictive Declaration, made by Waterview at Greenpoint LLC, dated as of \_\_\_\_\_, 2013 (the "Declaration"). Capitalized terms used herein but not defined herein shall have the applicable meanings ascribed to them in the Declaration.

By this notice, the undersigned, for the New York City Department of Parks and Recreation, confirms that the Shore Public Walkway has been Substantially Completed in accordance with all requirements of the Declaration.

Yours very truly,

\_\_\_\_\_  
Commissioner of Parks and Recreation

STATE OF NEW YORK )

) ss.:

COUNTY OF NEW YORK )

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me, the undersigned, a notary in and for said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_

Notary Public

## LEGAL DESCRIPTION

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

BEGINNING at a point on the northwesterly side of Commercial Street, distant 185 feet 9 inches southwesterly from the corner formed by the intersection of the northwesterly side of Commercial Street with the westerly side of Manhattan Avenue;

RUNNING THENCE southwesterly along the northwesterly side of Commercial Street, 217 feet 6 inches;

THENCE northwesterly along a line drawn at right angles to Commercial Street 499 feet 10 inches to the Pierhead Line approved by the Secretary of War in July 1916;

THENCE easterly along said Pierhead Line 234 feet 8 inches;

THENCE southeasterly in a straight line 489 feet to the northwesterly side of Commercial Street to the point and place of BEGINNING.

EXHIBIT J

FORM OF BARGAIN AND SALE DEED

**BARGAIN AND SALE DEED**  
**WITH POSSIBILITY OF REVERTER**

**THIS INDENTURE**, dated as of \_\_\_\_\_, 20\_\_, between **WATERVIEW AT GREENPOINT LLC**, a New York limited liability company, having an address c/o Clipper Equity, LLC, 4611 12<sup>th</sup> Avenue, Brooklyn, New York (“**Grantor**”), and **THE CITY OF NEW YORK**, a municipal corporation (“**Grantee**”), acting by and through the Department of Parks and Recreation of the City of New York, having an address at the Arsenal, Central Park, 830 Fifth Avenue, New York, New York, 11065.

Grantor in consideration of the sum of Ten Dollars (\$10.00), and other good and valuable consideration paid by Grantee, the receipt and sufficiency of which is hereby acknowledged by Grantor, does hereby grant and release and assign forever unto Grantee, and the heirs or successors and assigns of Grantee, subject to the limitations, restrictions, easements and reservations hereinafter mentioned, the real property in the Borough of Brooklyn, County of Kings, City and State of New York described in Exhibit A attached hereto, together with fixtures and improvements now located or hereafter erected thereon (collectively, the “Property”).

This conveyance is made subject to the terms and provisions of (i) that certain Restrictive Declaration, made by Grantor, dated as of \_\_\_\_\_ and recorded in the Office of the City Register, Kings County, New York on \_\_\_\_\_ under City Register File Number (CRFN) \_\_\_\_\_ (the “Declaration”), including, without limitation, the SPW Easements (as such term is defined in Section 6.5.1 of the Declaration) and (ii) that certain Maintenance and Operations Agreement – Shore Public Walkway, dated of even date herewith (the “M&O Agreement”), by and between Grantor and Grantee, a copy of which is attached hereto as Exhibit B.

This conveyance is also made with the express limitation that the Property shall be used by Grantee solely for the purposes of Promenade Activities (as such term is defined in Section 3.02 of the M&O Agreement, maintenance and repair of the Shore Public Walkway (as such term is defined in Section 1.31 of the Declaration) and related accessory uses (collectively, “Permitted Uses”).

Grantee’s estate in the Property shall continue only for so long as all of the Property is used for Permitted Uses; and at such time as or in the event that any of the Property shall be used for any other purpose or cease to be used for Permitted Uses, all of the Property, together with all improvements, buildings and fixtures located thereon, and the title thereto, shall immediately and automatically revert to Grantor, its successors and assigns, it being the intent of Grantor to convey hereby a determinable fee which shall terminate, and the title revert, upon the use of any of the Property for any purpose other than Permitted Uses or in the event the Property shall cease to be used for Permitted Uses.



Notwithstanding the immediately preceding sentence, title to the Property shall not revert to Grantor, its successors and assigns, unless and until Grantor (or its successors and assigns, as applicable) shall give written notice to Grantee stating that the Property is being used for other than Permitted Uses or the Property has ceased to be used for Permitted Uses and a period of ninety (90) calendar days shall have lapsed from the date of such notice without Grantee's having renewed use of the Property for Permitted Uses or limited use of the Property for Permitted Uses, as applicable.

**TO HAVE AND TO HOLD** said Property unto Grantee for as long as said Property and any part thereof shall be used for Permitted Uses, and subject to the possibility of reverter of the Property or any part thereof to Grantor in the event or at such time as the Property or any part thereof shall cease to be used for Permitted Uses.

**AND** Grantor, in compliance with Section 13 of the Lien Law, covenants that Grantor will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of improvements and will apply the same first to the payment of the cost of improvements before using any part of the total of the same or any other purpose.

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, Grantor has duly executed this deed the day and year first above written.

**GRANTOR:**

\_\_\_\_\_

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

Name:

Title:

**ACKNOWLEDGMENT**

STATE OF NEW YORK            )  
  ) ss.:  
COUNTY OF QUEENS         )

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2011 before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public (SEAL)

EXHIBIT A

Legal Description

[Attached behind]

EXHIBIT B

Maintenance and Operations Agreement – Shore Public Walkway

[Attached behind]

EXHIBIT K

FORM OF NOTICE OF FINAL COMPLETION

[LETTERHEAD OF THE COMMISSIONER OF PARKS & RECREATION]

[Date]

**NOTICE OF FINAL COMPLETION**

Waterview at Greenpoint LLC  
c/o Clipper Equity, LLC  
4611 12<sup>th</sup> Avenue,  
Brooklyn, New York 11219  
Attention: David Bistricher

Re: Block 2472, Lot 410  
Brooklyn, New York (the "Subject Property")

Dear Mr. Bistricher:

This letter constitutes the Notice of Final Completion as defined in Section 7.2 of that certain Restrictive Declaration, made by Waterview at Greenpoint LLC, dated as of \_\_\_\_\_, 2013 (the "Declaration"). Capitalized terms used herein but not defined herein shall have the applicable meanings ascribed to them in the Declaration.

By this notice, the undersigned, for the New York City Department of Parks and Recreation, confirms that the Shore Public Walkway has been Finally Completed in accordance with all requirements of the Declaration.

Yours very truly,

\_\_\_\_\_  
Commissioner of Parks and Recreation

STATE OF NEW YORK )

) ss.:

COUNTY OF NEW YORK )

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me, the undersigned, a notary in and for said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_

Notary Public

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EXHIBIT L

ECB FINE/PENALTY SCHEDULE

Penalty	\$2,500
Mitigated Penalty	\$1,250
Maximum Penalty	\$2,500
2 <sup>nd</sup> Offense Penalty	\$10,000
Maximum Default Penalty	\$10,000



## Community/Borough Board Recommendation

Pursuant to the Uniform Land Use Review Procedure

Application #: **C 140047 ZSK**Project Name: **77 Commercial Street**

CEQR Number: 14DCP010K

Borough(s): Brooklyn

Community District Number(s): 1

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

### SUBMISSION INSTRUCTIONS


- Complete this form and return to the Department of City Planning by one of the following options:
  - EMAIL (recommended):** Send email to [CalendarOffice@planning.nyc.gov](mailto:CalendarOffice@planning.nyc.gov) and include the following subject line: (CB or BP) Recommendation + (6-digit application number), e.g., "CB Recommendation #C10000ZSQ"
  - MAIL:** Calendar Information Office, City Planning Commission, Room 2E, 22 Reade Street, New York, NY 10007
  - FAX:** (212) 720-3356 and note "Attention of the Calendar Office"
- Send one copy of the completed form with any attachments to the applicant's representative at the address listed below, one copy to the Borough President, and one copy to the Borough Board, when applicable.

#### Docket Description:

13 AUG 6 1:10 PM

IN THE MATTER OF an application submitted by Waterview at Greenpoint LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 62-836 of the Zoning Resolution to modify the height and setback requirements of Section 62-341 (Developments on land and platforms) and Section 62-354 (Special height and setback regulations) in connection with a proposed mixed-use development on property located at 77 Commercial Street (Block 2472, Lot 410), in R6 and R6/C2-4 Districts, Borough of Brooklyn, Community District 1.

Plans for this proposal are on file with the City Planning Commission and may be seen in Room 3N, 22 Reade Street, New York, N.Y. 10007.

<b>Applicant(s):</b> Waterview at Greenpoint LLC 4811 12th Avenue, Suite 11 Brooklyn, NY 11219		<b>Applicant's Representative:</b> Jay A. Segal Greenberg Traurig, LLP 200 Park Avenue New York, NY 10166	
<b>Recommendation submitted by:</b> Brooklyn Community Board 1			
<b>Date of public hearing:</b> Aug. -20, 2013		<b>Location:</b> Automotive HS 50 Bedford Avenue, Bklyn, NY 11222	
<b>Was a quorum present?</b> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		<i>A public hearing requires a quorum of 20% of the appointed members of the board, but in no event fewer than seven such members.</i>	
<b>Date of Vote:</b> Sept. 9, 2013		<b>Location:</b> Swinging 60's Senior Center 211 Ainslie Street, Bklyn, NY 11211	
<b>RECOMMENDATION</b> <input type="checkbox"/> Approve <input type="checkbox"/> Disapprove <input type="checkbox"/> Approve With Modifications/Conditions <input checked="" type="checkbox"/> Disapprove With Modifications/Conditions			
Please attach any further explanation of the recommendation on additional sheets, as necessary.			
<b>Voting</b> # In Favor: 28 # Against: 9 # Abstaining: 0		SEE ATTACHED REPORT Total members appointed to the board: 50	
<b>Name of CB/BB officer completing this form</b>  CHRISTOPHER H. OLECHOWSKI		<b>Title</b> CHAIRMAN	<b>Date</b> SEPT. 10, 2013



# COMMUNITY BOARD No. 1

435 GRAHAM AVENUE - BROOKLYN, N.Y. 11211-2429

PHONE: (718) 389-0009

FAX: (718) 389-0098

Email: [bk01@cb.nyc.gov](mailto:bk01@cb.nyc.gov)

Website: [www.nyc.gov/brooklyncb1](http://www.nyc.gov/brooklyncb1)

HON. MARTY MARROWITZ  
BROOKLYN BOROUGH PRESIDENT



RABBI JOSEPH WEBER  
FIRST VICE-CHAIRMAN

DEL TEAGUE  
SECOND VICE-CHAIRPERSON

STEPHEN J. WEDBERG  
THIRD VICE-CHAIRPERSON

DEALICE FULLER  
FINANCIAL SECRETARY

ISRAEL ROSARIO  
RECORDING SECRETARY

PHILIP A. CAPONEGRO  
MEMBER-AT-LARGE

CHRISTOPHER H. OLECHOWSKI  
CHAIRMAN

GERALD A. ESPOSITO  
DISTRICT MANAGER

HON. STEPHEN T. LEVIN  
COUNCILMEMBER, 35th CD

HON. DIANA REYNA  
COUNCILMEMBER, 34th CD

August 28, 2013

## COMMITTEE REPORT

TO: Chairman Christopher H. Olechowski and  
CB #1 Board Members

FROM: Del Teague, Committee Chair  
Land Use, ULURP and Landmarks (subcom.) Committee

RE: CB #1 Land Use, ULURP and Landmarks (subcom.) Committee  
Recommendations For 77 Commercial Street and  
Greenpoint Landing Proposals

On December 6, 2004 Brooklyn Community Board No. 1 opposed The NYC Department of City Planning's 2005 Rezoning proposal when it conducted its review. The board noted in its report that "...these areas of our community were in need of rezoning, but that the Department of City Planning's rezoning proposal did not meet the Community's needs."

The Board recognized that the rezoning plan did not adequately address the vital issues of economic development, affordable housing, parks, open space, building height and bulk.

In addition, The Points of Agreement adopted by both the City Council and the Mayor's Office were conceived without Community Board #1's input. These points were never consummated. Promises made on May 1, 2005 regarding affordable housing were never delivered and parks were never built!

We are now being asked to review the two remaining large tracts of property that complete the assemblage of our waterfront.

We must again say "Disapprove" (with modifications/conditions) to the Administration's attempt to plan for our community and not with our community.

**L 77 COMMERCIAL STREET** - City Planning (Application # C 140047 ZSK) - 77 Commercial Street: In the matter of an application submitted by Waterview at Greenpoint LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 62-836 of the Zoning Resolution to modify the height and setback requirements of Section 62-341 (Developments on land and platforms) and Section 62-354 (Special height and setback regulations) in connection with a proposed mixed-use development on property located at 77 Commercial Street (Block 2472, Lot 410), in R6 and R6/C2-4 Districts, Borough of Brooklyn, Community District 1.

**RESOLUTION: DISAPPROVE WITH MODIFICATIONS/CONDITIONS**

The committee recommends disapproval unless the following conditions are met:

- 1.) Affordable Housing - The developer must provide a wider range of unit sizes and eligibility by adjusting the proposed sizes of the apartments and lowering the AMI percentages as follows:
  - Carve out of affordable units - at least 70 units of the affordable housing be specifically earmarked for senior citizens/disabled, 30% AMI and lower, utilizing senior housing funding from HUD Section 202/Section 8 programs (this funding source prefers smaller units for seniors, i.e. more studios, allowing for more housing units to be constructed).
  - The balance of the units are to be developed as follows:
    - 30% studio apartments
    - 35% 1 - bedroom apartments
    - 30% 2 - bedroom apartments
    - 5% 3 - bedroom apartments

with the following income breakdowns:

  - 60% of the units for 40% AMI
  - 20% of the units for 50% AMI
  - 20% of the units for 60% AMI

The number of units might deviate from 200, either up or down, by this recommended unit distribution (including elderly units), though the 165,000 sq. ft. of affordable housing would remain.
- 2.) The Developer must avail itself to other programs and funding sources that would make the proposed units more affordable with a lower AMI (programs such as HDC's LAMP, as well as NYS HCR's 80/20, bonds and tax credits). If necessary, some portion or all of the \$7million allocated for the park must be used to meet this affordability mandate. Other funding sources could be discretionary funding from the Council Member and Brooklyn Borough President. The developer should apply for funding before deadlines expire to achieve the community's desired AMI. The developer should avail itself to NYS HCR's announced pre-registration workshops in NYC on September 10, 2013 and meet deadlines for funding of applications (October 10, 2013).
- 3.) Special Permit Bulk Text - shall be conditioned on the filing of an Inclusionary Housing Plan for the developer's site to its maximum 2.75 FAR - and that as opposed to the Zoning resolution's 80% AMI allowance, such units shall not exceed 60% AMI.
- 4.) Reservation of units for Community Preference - At the minimum, 50% of community preference for the lottery should result in CB #1 residents, including displaced former residents since the 2005 rezoning was adopted, and be prioritized to obtain the lowest AMI (40%-60% AMI).
- 5.) On the basis of respecting the developer's economics, there is no reason why stories 1-6 in all three buildings cannot integrate the affordable units and market rate units. Affordable units are to be integrated below the 7th floor in the tower or market rate parts of the proposed development.
- 6.) We also insist that the costs for amenities (including parking) are to be discounted for residents of the affordable units.
- 7.) All of the money donated by the developer for the park will be earmarked for this park and not placed into the City's General Fund.



## Brooklyn Borough President Recommendation

CITY PLANNING COMMISSION

22 Reade Street, New York, NY 10007

FAX # (212) 720-3356

### INSTRUCTIONS

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

APPLICATION # **140046 ZRK; 140047 ZSK; 140048 ZAK; 140049 ZAK; 140050 ZCK:**

### 77 Commercial

In the matter of an application submitted by Waterview at Greenpoint LLC pursuant to Sections 197-c and 201 of the New York City Charter for the granting of a zoning text amendment to transfer development rights from an intended park space, a special permit pursuant to Section 62-836 of the Zoning Resolution to modify the height and setback requirements of Section 62-341 and Section 62-354 in connection with a proposed mixed-use development consisting of 720 units (200 of which affordable) and nearly 26,000 square feet of commercial, more than 6,000 square feet of community facility and 320 affordable parking spaces and more than 35,000 square feet of waterfront public access and publicly accessible upland connections on property located at 77 Commercial Street.

COMMUNITY DISTRICT NO.

1

BOROUGH OF BROOKLYN

### RECOMMENDATION

**140046 ZRK; 140047 ZSK; 140048 ZAK; 140049 ZAK; 140050 ZCK**

APPROVE

APPROVE WITH

MODIFICATIONS/CONDITIONS

DISAPPROVE

DISAPPROVE WITH

MODIFICATIONS/CONDITIONS

Report to follow

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

October 4, 2013

\_\_\_\_\_  
DATE

## **RECOMMENDATION FOR 77 COMMERCIAL 140046 ZRK; 140047 ZSK; 140048 ZAK; 140049 ZAK; 140050 ZCK**

These applications by Waterview at Greenpoint LLC requests land use approvals for a proposal that would facilitate the redevelopment of 77 Commercial Street into a mixed-use project with 431 units of affordable housing, 276 units of market-rate housing and would generate funding to establish Box Street Park. The project would develop underutilized waterfront property and would improve public access to the waterfront. The applicants seek the disposition of City-owned land and property rights, a Text Amendment to the Zoning Resolution and a Special Permit.

### **PUBLIC HEARING**

The Borough President held his public hearing on these applications on September 17, 2013. Staff of the Borough President expressed concern on his behalf dealing with the lack of available affordable senior housing throughout the borough. Given the conditions outlined by CB 1 (detailed in **CONSIDERATION** section) and the concerns of the Borough President, the applicant's representative explained a willingness to work to find an appropriate program to make senior housing work in this project. Borough President staff also shared his concerns with regards to the funds earmarked for park improvement and the accessibility of the affordable units to the building and offered amenities. A representative from the Mayor's office explained that a contractual obligation with the developer ties this money to a set of performance obligations by the City to build the park. Further, a relocation site for the majority of MTA functions on site has been found and the City is working on a schedule with the MTA to remove its existing facilities.

The applicant's representative addressed the Borough President's other concern detailing that the affordable housing units will share an entrance with the market rate units in the tower closest to the water. The representative further clarified that all amenities on site will be open to all residents, with the fee built into the monthly rental.

Sixteen speakers provided testimony with the majority testifying against the proposed project. Representatives from CB 1, Neighbors Allied for Good Growth, the Greenpoint Waterfront Association for Parks and Planning as well as concerned residents testified to issues that included varying tiers of affordability, lack of open space, land toxicity, and inappropriate infrastructure within the area to support a project of this scale. Affordable housing concerns also included seeking housing for working class residents in the area. Testimony regarding site toxicity included detailed health issues that perhaps are linked to the toxins within the neighborhood. There is concern that it would be dangerous to dig up the land due to the potential to release toxins in the air, thus furthering health risks. Those citing the lack of infrastructure to support such an influx of residents voiced concerns pertaining to the strain of public transportation, streets in disrepair, traffic, and areas already experiencing flooding.

### **CONSIDERATION**

CB1 voted to disapprove these applications unless a number of changes are made to the proposal. These include: 1) earmarking 70 of the affordable housing units for senior citizens or disabled; achieving the remaining affordable units at: 60% at 40% AMI, 20% at 50% AMI and 20% at 60% AMI, with unit size allocated at 30% studios, 35% 1-bedroom apartments, 30% 2-bedroom apartments, 5% 3-bedroom apartments; 2) the developer's availing itself of other funding sources to increase affordability for a lower AMI; 3) ensuring the affordable housing lottery's 50% community preference will include displaced former CD 1 residents; 4) integrating affordable units within market rate buildings; 5)



discounting costs of amenities for residents of affordable units; 6) dedicating the proceeds of the sale of 65 Commercial Avenue's development rights for the development of this public open space.

The applicant and the City have executed a contract of sale pursuant to which the applicant would obtain up to approximately 368,000 sf of development rights from the city-owned property for use in the proposed development on the project site. The applicant would be permitted to include the lot area of the city-owned property in calculating the maximum permitted bonus floor area under the Inclusionary Housing Program, which would yield up to an additional 40,000 square feet of market rate development from the developer's property. The City would use the proceeds from the sale of the development rights as partial funding for the construction of the neighboring Box Street Park and the developer would use a portion of the transferred development rights to provide 200 affordable units as part of the proposed development. These units are part of the Points of Agreement (POA) between the Administration and the City Council established as part of the adoption of the 2005 rezoning.

In connection with the 2005 Greenpoint-Williamsburg rezoning, the City executed the POA in which the City stated its intention to:

- Relocate the existing MTA facilities from the city-owned property to off-site locations.
- Designate the City-owned property for improvement as a public park (Box Street Park).
- Allow the sale of development rights from the city-owned property to an adjacent property owner.
- Require that the purchaser of the development rights provide 200 affordable housing units as a part of the future development of the property.

The development comprises three separate buildings: a 2- to 6-story base building containing the commercial, community facility and affordable housing components; a 30-story market rate residential tower and a 40-story market-rate residential tower. Development would be comprised of up to approximately 693,000 sf of residential uses (720 units), approximately 26,000 sf of ground floor commercial uses, and approximately 6,200 sf of community facilities, as well as attended, off-street accessory parking (320 spaces). The proposal includes approximately 25,000 sf of waterfront public access areas consisting of a shore public walkway along Newtown Creek and an upland connection linking the shore public walkway to Commercial Street along the western lot line of the development site, and a 9,400 sf publicly accessible landscaped pedestrian walkway linking the shore public walkway along the eastern lot line to Commercial Street.

A Zoning Text Amendment would provide for the city-owned property to continue to generate floor area even after it is developed as a public park. In order to adequately accommodate the transferred floor area in a commercially viable manner, a Special Permit is required to accommodate the height.

The city-owned property is currently leased to the Metropolitan Transit Authority (MTA) and used for vehicle storage and offices for its Office of Emergency Response and for vehicle maintenance and storage for its paratransit program (i.e. transit services primarily for elderly and disabled individuals that does not follow fixed routes). The City is currently in the process of relocating the majority of the MTA facilities from the city-owned property and anticipates relocating the paratransit uses to an off-site location prior to 2016 while it is actively searching for an additional off-site location for the emergency response facilities. It is possible that the emergency response program's two-story building may remain and be incorporated into the development of Box Street Park. In addition, the City has selected a consultant to provide design services for the public park. The Borough President supports the proposed

land use actions as they are consistent with the public policies recently established for the area in the 2005 rezoning initiative.

This project includes the redevelopment of vacant City-owned land, the provision of affordable housing and the creation of public open space in an area experiencing substantial new residential growth. The new development would be at a density and building scale compatible with other new development occurring along the waterfront pursuant to the City's 2005 rezoning.

The Borough President believes that the proposed actions are beneficial in that they would facilitate the development of a substantial number of affordable housing units through the development rights associated with the City's parcel included into the development area, while also allowing for the improvement of the remainder of the City parcel as Box Street Park.

The proposed actions would also enhance and upgrade a currently inaccessible waterfront area to provide waterfront access. The proposal includes almost three acres of publicly accessible open space providing recreation space integrated with nearby parks. The open space provided would enhance the residential uses developed in the area. The public open space would include a waterfront esplanade with views to the water and Manhattan and Queens skylines, with upland connections and visual corridors linking to the upland street network.

In response to the many that testified against additional development at 77 Commercial Street from the development generated by 65 Commercial Street, which would result in the exceeding of the sites' height limit of 150 feet to accommodate a 30y and a 40 story tower, the Borough President believes that this should be weighed in context of having the opportunity to facilitate 200 affordable housing units and the construction of Box Street Park now.

During the public discussion regarding the 2005 rezoning of the waterfront, providing as much affordable housing as possible was a major theme of interest from the greater Greenpoint and Williamsburg communities. In addition to establishing the enhanced Inclusionary Zoning provisions in the Zoning Resolution – which provides the potential to achieve having twenty percent of the total floor area as affordable housing, the City committed to transforming many publicly-owned sites to benefit the production of affordable housing. The 65 Commercial Street site, though earmarked for open space use, was intended to leverage 200 units of affordable housing through the property's development rights. The land use actions now before the Borough President are intended to achieve the open space and affordable housing now.

The Borough President believes that it is important to deliver the affordable housing commitment as there is a critical need to provide opportunities for households to be able to remain in Greenpoint and it is even more pressing in 2013 than it was in 2005. Therefore, the Borough President supports the transfer of what might amount to approximately 165,000 sf from 65 Commercial Street to 77 Commercial Street to deliver on this promise of 200 affordable housing units. As these affordable units more than meet the Inclusionary Zoning bonus for 77 Commercial Street, the Borough President accepts the fact that these 200 units leverage an additional 0.32 floor area ratio (multiplied by the lot size to determine the floor area), resulting in more than 35,000 sf of additional development at 77 Commercial Street. While the anticipated profit from this additional market-rate floor area helps offsets the cost of developing the 200 affordable units, the Borough President believes it is possible that a portion of the remaining floor area from 65 Commercial Street (believed to be somewhere around 140,000 sf) might be what is intended to financially support the construction of the 200 affordable units.



The Borough President supports the addition of the approximate 35,000 sf generated by the 77 Commercial Street lot and whatever portion of the apparently 140,000 sf from 65 Commercial Street that financially cross-subsidizes the 200 units of affordable housing.

The question of the remaining portion of the apparent 140,000 sf of possible market-rate floor area generated by 65 Commercial Street is related to the City's ability to obtain \$8 million of Box Street Park funding immediately. Reducing the height of one or both towers may negatively affect the amount the City would obtain from the sale of the market-rate development rights and may place the park construction in limbo, as the \$8 million sale proceeds are intended to fund Box Street Park. More specifically, any typical floor eliminated from the south tower might reduce the project by 6,900 sf of floor area from the developer's ability to pay the approximate \$8 million; any typical floor from the north tower might eliminate approximately 6,600 sf of floor area.

The Borough President has heard from dozens of constituents opposing the extra height as a trade-off for immediately financing the park construction (or even achieving 200-units of affordable housing), and he is aware of a petition to the Governor containing approximately 1,000 names seeking a remedy. On the other hand, he is also keenly aware of the community's severe shortage of open space as often cited by GWAPP, a local advocacy organization that expressed support for the proposal's public benefits, including the construction of Box Street Park. GWAPP and other local activists recently demonstrated support for prioritizing the construction of Box Street Park when they protested the MTA's delayed relocation from 65 Commercial Street. The Borough President is also aware of the high demand for playing fields in North Brooklyn, as evidenced by McCarren Park's intense youth and athletic league usage.

That said, though he has no conceptual concern regarding the proposed height, the Borough President believes it is up to the community to guide the City Council on the matter of Box Street Park funding, which in essence is whether it is more important not to build 140,000 sf that would essentially fund having Box Street Park now or whether it is more important to maximize development at 77 Commercial Street to have Box Street Park proceed with a clear funding stream.

While the Borough President is generally supportive of the proposal, he shares many of CB1's concerns regarding affordable housing and he harbors additional concerns including: the earmarking of funds specific to the open space, site remediation, the affordability of amenities, school capacity, and the adequacy of public transportation.

### **Affordable Housing**

The Borough President is committed to providing opportunities for Brooklyn's working families to have access to affordable housing. This commitment is followed through in each discretionary land use action that seeks his approval, as he advocates for "Affordable Forever" measures wherever possible. When applicable, it is the Borough President's policy for new residential developments, subject to ULURP, to provide a minimum of 20 percent affordable units. He believes development in this section of Greenpoint should be affordable to area families.

The Borough President believes that the increasing demand for senior citizen housing should be addressed where appropriate. Many seniors continue to live in substandard accommodations and/or are forced to spend an excessive amount of their income on their housing. The increasing demand for decent affordable senior citizen housing is not being met by the rate of production and needs to be addressed through the construction of quality accommodations.

In order to obtain a 421-a Real Estate Tax exemption and meet the Inclusionary Zoning floor area bonus, the proposed development would be required to stay within: (1) the Inclusionary Housing provisions, to be reserved for low-income household and an additional five percent to be reserved for moderate-income households; (2) the programmatic requirements of Section 421-a(6)(b) of the Real Property Tax Law, which would require that at least ten percent of the dwelling units be reserved for low-income households and 15 percent of the dwelling units be reserved for moderate-income households. If meeting these minimum standards of affordability, the 200 affordable housing units would be as follows: 72 low-income units (household income below 80 percent of the Area Median Income (AMI), 108 moderate-income units (household income below 125 percent of the AMI) and 20 middle income units (household income below 175 percent of the AMI). All affordable housing units would be located on the 2<sup>nd</sup> through 6<sup>th</sup> floors of the proposed 6-story base building.

Since 2005, approximately 763 affordable housing dwelling units and approximately 4,000 market rate units have been created in the Greenpoint-Williamsburg rezoning area. The minimum of 200 affordable housing units that the proposed project would create would advance the City's 1,398 dwelling unit goal identified for affordable housing in the rezoning area.

Greenpoint is a neighborhood in transition, with prevailing housing trends including: rising rents, an increase in housing units, increasing median household incomes, decreasing population, and increased vacancy rates. Median household income increased by 37.76 percent between 1999 and 2006-2010, as did median gross rent (from \$832 to \$1,202). Residents living below the poverty level decreased by 41.7 percent between 1999 and 2006-2010. And between 2000 and 2010, the study area's population decreased by approximately 8.6%. 784 housing units were also added to the Greenpoint area housing market between 2000 and 2010 (a 13 percent increase). Taken together, these trends suggest a high turnover rate of apartments from lower income residents to more affluent newcomers. Prevailing housing trends suggest further displacement of lower income Greenpoint residents.

The Borough President believes that all POA units should be permanently affordable. When new affordable units are created, it is always a concern of the Borough President regarding the number of years they can be kept affordable. In areas where new developments can be realized on city-owned sites, it should be a policy of the City to minimize the loss of affordable housing. Measures need to be put in place in order to ensure that these residences can remain as affordable options for the city's residents. In a letter (attached) dated October 4, 2013, Waterview at Greenpoint LLC (Waterview) agrees to file an Inclusionary Housing Plan and would accept as a condition that the affordable housing units will be permanently affordable.

The POA units should include a binding commitment for senior housing. Despite the approximately 800 units of affordable housing built in Community District 1, these units have not been earmarked for seniors. In addition, the hundreds of anticipated affordable units that would be developed according to the Inclusionary Zoning floor area bonus are also not expected to be earmarked for seniors. Outside of City-owned sites, there are virtually no opportunities to provide for seniors.

The Borough President believes that such affordable housing for seniors can be accomplished according to the Federal Section 202 program, Section 8 and/or any other government sources. Senior units can be accommodated with creative approaches beyond merely the 202 program.

Due to affordable housing units for seniors tending to be studios with some extra space devoted to common facilities, it is likely that 70 such units would require less floor area than 70 units of family

housing. Therefore, the Borough President believes that the Points of Agreement calling for 200 units should be updated to be reflective of the floor area that this was to represent, but given the call for elderly units, that it would be expected that more units would be achieved as part of the POA. In a letter (attached) dated October 4, 2013 Waterview agreed to seek funding in 2014 and 2015 and if such funding is not available, it would seek funding based on income limits not to exceed 60 percent AMI for those intended units for family households.

The Borough President is concerned that, as rents continue to rise, the displacement trend is affecting more than low-income residents in Greenpoint. The predominant rental stock in the neighborhood is not rent-stabilized; therefore, as homes sell, it is likely that any rental units in these homes would be a great risk for rental increases that lead to displacement. In addition, when leases expire in such homes, it is also possible that landlords might increase rent beyond the means of tenants. Given the trend for rent in Greenpoint, it is likely that many of these households that could be at-risk for displacement would be over income for the maximum 60 percent AMI requested by CB 1.

As for the nearly 800 units of affordable housing recently added to the community, the vast majority have been the result of developers utilizing the City's Inclusionary Housing Program, which limits AMI to not exceed 80 percent. Given available financing and the implications of qualifying for the 421-a Real Estate Tax relief, the units typically going forward would be available to households ranging from a handful of units less than 40 percent AMI to not exceeding 80 percent. The Borough President believes that it is important to also accommodate households earning more than 80 percent AMI. He believes having rental tiers at 60 percent, 80 percent, 100 percent and 120 percent, with eligibility up to 130 percent AMI provides an opportunity for certain Greenpoint residents to remain in the community. These POA sites are perhaps one of the few opportunities to accommodate such households exceeding 80 percent AMI. There would be hundreds of additional Inclusionary Zoning linked affordable units that would be expected to rent for those earning up to 80 percent AMI. Therefore, the Borough President believes these POA units must at least provide some opportunity for those earning more than 80 percent AMI to address moderate and middle income households.

The Borough President believes that the affordable housing from this proposal, while expected to reduce the potential for indirect resident displacement, has affordable units offered at income bands based on AMI that exceeds the needs of the neighborhood and does not address elderly households. Therefore, he believes that it is reasonable to earmark a substantial number of the affordable units for the elderly and limit the income of the remaining affordable units to not exceed 120 percent AMI with unit eligibility not exceeding 130 percent AMI. Senior units can be accommodated with creative approaches beyond merely the 202 program.

The developer could feasibly achieve the AMI reduction from what was proposed through government programs such as those offered by State Housing and Community Renewal (i.e. 80/20 taxable bonds) and the City's Housing Development Corporation (i.e. New HOP).

In a letter (attached) dated October 4, 2013, Waterview agreed to cap the AMI of the affordable units to 120 percent AMI.

The Borough President supports CB1's recommendation to have at least five percent of the non-senior units contain three-bedrooms. He believes by having such units, more families would be able to potentially benefit from the affordable housing being made available and thus have an opportunity to remain in the neighborhood. It would be appropriate to have a provision for three-bedroom units incorporated in the Land Disposition Agreement. In a letter dated October 4, 2013, Waterview/GLA

expressed a willingness to provide such units within the floor area being designated for affordable housing.

As part of the Borough President's consideration for his recommendation issued for the 2005 rezoning of the Williamsburg and Greenpoint waterfront, he expressed his belief that it was time for a radical shift in City policy that would result in adequate considerations for those who would become displaced to be able to return to their community through newly produced affordable housing. He recommended that local preference be also affordable to those that were displaced from the neighborhood. Fortunately, the Department of Housing Preservation and Development has made this official policy for Community District 1. In order to assure that this policy remains in place for 77 Commercial, the Borough President believes it would be appropriate to cement this policy in the Land Disposition Agreement (LDA) or some equivalent mechanism. In a letter (attached) dated October 4, 2013, Waterview is willing to commit to including those resident's displaced from CD 1 as part of the fifty percent community preference.

The Borough President believes that the City Council should seek a commitment from the Administration prior to approval of the requested land use actions for: all POA units to be permanently affordable; with 70 units set aside for seniors, and a corresponding increase in the number of POA units with rent not to exceed 120 percent AMI with eligibility not exceeding 130 percent AMI and that five percent of such housing be three-bedroom units. The fifty percent community preference should continue to include those displaced from the community. Such commitments should be incorporated in the LDA with the developer or some comparable mechanism.

#### **Funding Open Space**

The Borough President is concerned that funds from the disposition of development rights might not be adequately finance the open space at 65 Commercial Street.

The City intends to use proceeds from the sale of the development rights to the applicant to partially fund the construction and development of Box Street Park. The Greenpoint-Williamsburg Open Space Master Plan depicts Box Street Park as a mainly active recreational space with a large tree-lined multi-purpose field, a comfort station at Commercial Street, a viewing plaza with a shaded picnic area and the public walkway on the Newtown Creek waterfront.

The design for Box Street Park is expected to combine active and passive recreation facilities including a multi-purpose field and a shaded picnic terrace overlooking the shore public walkway and the East River. Designs are subject to change based on community input during the park's design development phase, which commenced with the September 24 stakeholders meeting and will continue with a public workshop during October.

In a letter (attached) dated October 4, 2013, Waterview expressed support for a requirement of the proceeds from the development rights on the City parcel to be placed in a designated fund. The Borough President believes that it would be appropriate for the City Council to obtain a commitment for the Administration to establish a Trust and Agency Fund to hold capital cost funds for the construction of Box Street Park.

#### **Site Remediation**

In response to concerns regarding cleaning up the contamination of these sites, it should be noted that the 2005 *Greenpoint-Williamsburg Rezoning* includes designations for hazardous materials for both Lots 410 and 425 on Block 2472. These would remain in effect as a condition of obtaining a building permit. **7**

They require that a remediation plan be developed and implemented to the satisfaction of the Office of Environmental Remediation (OER).

The Department of Buildings will not issue a building permit until the environmental requirements for the (E) designation are satisfied. For hazardous materials (E) designations, the environmental requirements are that a testing and sampling protocol be conducted and a remediation plan be developed and implemented where appropriate, to the satisfaction of the Mayor's Office of Environmental Remediation (OER). The measures required include Health and Safety Plans (HASPs) during site investigation work and remediation/construction, as well as plans for the safe disposal of soil and construction debris.

Any petroleum storage tanks encountered would be registered, properly assessed, and removed along with any contaminated soil, in accordance with all applicable regulatory requirements including New York State Department of Environmental Conservation (NYSDEC) requirements for spill reporting and cleanup. However, recent community experience with Brownfield cleanups have apparently resulted in incidents of fugitive dust emissions, trafficking of dust including unwashed trucks, and trucks idling with the resulting burning of diesel fuels. Excessive noise and vibration were reported where pile driving took place.

It is expected that all appropriate fugitive dust control measures—including watering of exposed areas and dust covers for trucks—would be employed during construction. Further, to minimize fugitive dust emissions, vehicles on-site would be limited to a speed of 5 mph, and water would be used to wet working surfaces. Storage piles would be covered. Exposed areas would be stabilized after disturbance to minimize dust. Tracking pads would be established at construction exits to prevent dirt from being tracked onto roadways. Dust associated with demolition activities would be controlled with misting systems. Developers have at times implemented a diesel particulate matter (DPM) emissions reduction program as another technique to minimize particulate concerns.

According to State Department of Environmental Conservation, the developer's environmental consultant is responsible for monitoring contamination related tasks and certifying that proper steps are taken according to an approved work plan. The Department of Buildings regulates pile driving.

The Borough President believes that the developer should promote a good neighbor policy by establishing a community liaison to be accessible to area residents and share frequent construction updates commencing from site clearance to TCO. In a letter (attached) dated October 4, 2013, Waterview expressed intent to designate a member of its construction team to serve as a community liaison. The Borough President calls on the City Council to memorialize such a commitment.

### **Affordable On-Site Amenities**

The Borough President is concerned that households owning cars and occupying the affordable units would not be able to park easily in the neighborhood without on-site affordable garage accommodations.

Though the EAS anticipates a surplus of approximately 104 spaces during the overnight peak period for residential demand, the Borough President believes that as additional development occurs, this supply would dwindle. Given the limited number of overnight spaces projected to be available in the northern section of Greenpoint, it would improve the quality-of-life for the households in the affordable units to be able to obtain on-site parking at less than market-rate cost. Therefore, the overall 77 Commercial Street project should make accommodations for those in the affordable units to have a quality of life



benefit through having an affordable opportunity to secure parking. The Borough President believes such a charge should not exceed fifty percent of market rate rental charges. This should be memorialized in the LDA or some equivalent mechanism. In a letter (attached) dated October 4, 2013, Waterview commits to exploring the possibility of providing discounts for households in the affordable units.

The Borough President would expect that whatever in-building amenities provided to market rate units that are developed, pursuant to the filing of an Inclusionary Housing Plan, should also be provided to the affordable units at a fee not exceeding fifty percent of the market rate fee. Such commitment should be memorialized in the LDA or some equivalent mechanism.

The City Council should thus seek commitments that memorialize: that parking rental be reduced for residents of the affordable units; that POA units' residents have free common amenities such as a community room and bike room; and that residents of affordable units developed according to the Inclusionary Housing Plan be receiving discounted charges for in-building amenities.

### **Schools**

The Borough President believes that the proposed 640 seat district elementary/intermediate school (ES/IS) needs to be completed by the time 77 Commercial Street is occupied in order to address anticipated need for school seats.

According to the Environmental Assessment, elementary school enrollment is expected to increase substantially and would require additional elementary school capacity to serve the study area. Elementary schools would have an estimated utilization rate of approximately 125.8 percent.

The Borough President calls for the intended school at the corner of DuPont and Franklin to be completed in a timely manner in an attempt to avoid elementary school crowding. He urges the City Council to obtain such a commitment from the Administration.

### **Transportation**

The Borough President believes that additional measures must be taken to assure the adequacy of transit accommodations.

Greenpoint is served by the G subway line, connecting to Kensington in Brooklyn and points in Queens; the B24, B43, B62, and B32 bus routes connecting Greenpoint with other Brooklyn neighborhoods and Long Island City, Queens; and the East River Ferry, which provides service to Midtown and downtown Manhattan, Long Island City, and other neighborhoods along the Harlem River.

Three bus routes will operate in proximity to development (the B32, B43 and B62) during weekday AM and PM peak hours. The B24 provides service between Greenpoint and Williamsburg via Sunnyside, Queens. The B43 provides services between Greenpoint and Prospect-Lefferts Gardens; it operates primarily on Manhattan Avenue with six buses per hour in the AM peak hour and five buses per hour in the PM peak hour with a transfer to the Greenpoint Avenue (G) subway station. The B62 provides service between Queens Plaza and Downtown Brooklyn; it operates on Manhattan Avenue, Freeman Street and Green Street with six to nine buses per hour in the AM peak hour and six to seven buses per hour in the PM peak hour with transfers to the Queens Plaza (E, M, R) and Queensboro Plaza (N, Q, 7) subway stations.

With the occupancy of this proposed development there would be a net incremental increase in the number of residents by 1,159. With other anticipated developments being occupied, area population by 2020 might reach approximately 26,000 residents, more than double the number currently residing in the northern section of Greenpoint.

Subway trips from the developments are expected to use the Greenpoint Avenue (G) subway station on the Crosstown Line while approximately 20 percent are assumed to walk to and from the Vernon Boulevard-Jackson Avenue (7) subway station on the Flushing Line in Queens.

The sole anticipated subway improvement includes an additional high-entry/high-exit turnstile added to the fare array at the India Street entrance to the northbound platform of the Greenpoint Avenue subway station to increase fare array capacity. This would be installed by MTA NYC Transit and paid for by Greenpoint Landing Associates (GLA) as a condition of implementation of the subway improvement. This obligation is pending transactional documents between GLA and the City and would be enacted when MTA NYC Transit advises that the level of construction of the project is such that implementation is required. Thus, it is not known at this time if the additional turnstile would be installed when the 77 Commercial Street would be first occupied.

This G-train route is projected by the EAS for Greenpoint Landing to exceed guideline capacity within a few years of 77 Commercial Street's achieving full occupancy. There are already incidents where riders have to let one or two trains go by before passengers can successfully board train cars due to unscheduled gaps in service. The MTA should identify strategies to achieve operation frequency consistent with the actual schedule of service. It should then expedite such improvements to maximize on-time service and minimize delays.

Based on the projected population increase, the MTA should undertake semi-annual full-line impact reviews to determine the projected need for increased frequency and/or adding cars to the trains. According to transportation advocates, the MTA has available rolling stock to add additional trains to the G-service. Earmarking such cars to the G line would result in added costs associated with powering the added cars and servicing the cars for maintenance. By not having longer trains or more frequent service, passengers are utilizing less than half the platform when waiting for the next train. Platform use is concentrated on one end of the platform, thus, riders might find themselves sprinting to be able to board the train before it pulls out of the station as from certain turnstiles, while riders need to travel several hundred feet to get to a place on the platform where the train actually stops. This is the case with the north end of the Greenpoint Avenue station. In essence, having four-car trains adds nearly two extra minutes to walk to the section of the platform where the train cars can be boarded. When combining this circumstance with erratic service, which leads to crowding at sections of the platform, service is too often less than acceptable. In order to remedy this condition, the MTA should begin to obtain funding, adding either an additional train per hour, or lengthening the existing trains by at least two cars in the near future, with the goal of lengthening to eight to ten cars as a means of addressing platform crowding due to passengers merely using less than half the existing platform in order to be adjacent to the train cars when in the station to receive more passengers.

NYC Transit recently initiated B32 service between Williamsburg and Long Island City via Greenpoint. In Greenpoint it operates on Franklin, Freeman, and Green Streets with two buses per hour from 7AM to 9PM; it also provides transfers to the Court Square (E,M,G,7) and Marcy Avenue (J,M,Z) subway stations.

All bus trips involving transfers to the Greenpoint Avenue (G) station would utilize the B43, though given the few stops and short walk to the G train, which often requires transferring to another train route, it is quite possible that this route would not be heavily utilized by residents of 77 Commercial Street. Bus trips involving transfers to subway stations in Long Island City would utilize the B32 or the B62.

The Borough President believes that in order to bring bus service that connects to the 7 line closer to the higher density area anticipated to be along Newtown Creek, the B32 might better be re-routed to DuPont Street (south) and Eagle Street (north). The MTA should monitor B32 service to determine when enough population has been added to the nearby development associated with Greenpoint Landing and with 77 Commercial Street to justify such a route modification. In addition, the MTA should increase the frequency of bus service as warranted by demand for ridership. The MTA should also monitor in intervals, not to exceed six months, the service of the B43 to determine when adding more service is warranted based on ridership demand associated with the occupancy of 77 Commercial Street.

### **RECOMMENDATIONS**

Be it resolved that the Borough President of Brooklyn, pursuant to section 197-c of the New York City Charter, recommends that the City Planning Commission and City Council **approve** the zoning map and text amendment proposal subject to the following **conditions**:

1. That the Land Disposition Agreement between the City and Waterview at Greenpoint LLC require it and its successors to commit to:
  - a. The filing of the Inclusionary Housing Plan, and approval by the Commissioner of the Department of Housing Preservation and Development, as a condition of utilizing the air rights and floor area bonus connected to the 65 Commercial Street park site;
  - b. The affordable units (pursuant to the Points of Agreement) be as follows:
    - i. Permanently affordable;
    - ii. Specifically earmarked that approximately 70 units be for senior citizens/the disabled, not exceeding 30 percent AMI by utilizing senior housing funding from HUD Section 202/Section 8 programs or other comparable sources of financing;
    - iii. Using the same floor area envision for the 200 POA units, through an increase of the number of units based on the smaller size of the elderly units;
    - iv. Continuing to include affordable housing at 80 percent AMI but that rent not exceed 120 percent of AMI and that eligibility not exceed 130 percent of AMI, which may be achieved through the introduction of government programs and to accommodate larger households by providing at least five percent as their bedroom units..
  - c. Memorializing the 50 percent preference for community residence in the lottery, including displaced former residents;
  - d. The sale of 65 Commercial Street proceeds be placed in a Trust and Agency Fund to cover the capital costs of the Box Street Park expansion and not remain in the City's General Fund;
  - e. Designating a community liaison officer just prior to commencing site work and maintaining such officer until the final Certificate of Occupancy is issued and such officer share not less than weekly updates during this period;
  - f. The discounting for residents of affordable units, the costs of amenities such as on-site parking and other building amenities.



Be it Further Resolved that:

The Department of Education commits to opening the new 640-seat district school at the proposed DuPont Street site in a timely manner; and,

That the Metropolitan Transit Authority should:

1. Expedite improvements to the G train line to maximize on-time service and minimize delays;
2. Undertake semi-annual full-line impact reviews to determine the projected need for increased frequency and/or lengthening each train;
3. Add additional cars to the G train to expand each train's capacity to 8- 10 cars from its current four cars per train; and,
4. Monitor B32 and B43 service in six months increments and increase service accordingly as well as modify the route of the B32 to DuPont and Eagle streets when usage warrants such a change.

WATERVIEW AT GREENPOINT LLC  
4611 12<sup>th</sup> Avenue, Suite 11  
Brooklyn, New York 11219

October 17, 2013

**VIA HAND DELIVERY**

Hon. Amanda Burden &  
City Planning Commissioners  
New York City Planning Commission  
22 Reade Street  
New York, New York 10007

Re: 77 Commercial Street Special Permit and Related Actions  
Nos. N140046 ZRK, C140047 ZSK, N140048 ZAK,  
N140049 ZAK & N140050 ZCK

Dear Chair Burden and Members of the Commission:

We are the applicant with respect to the above-referenced applications seeking a special permit, authorizations, text amendment and certification from the Commission for the proposed mixed-used development (the "Project") located at 77 Commercial Street (the "Property") in the Greenpoint section of Brooklyn (Block 2472, Lot 410), which was the subject of a public hearing on October 9, 2013. This letter will serve to affirm our commitment with regard to certain issues that arose at the hearing:

- Reduction of AMI Percentages. In mid-June of this year, we executed an agreement with the City of New York to acquire the excess development rights from the adjacent parcel located at 67 Commercial Street (Lot 428), which agreement requires that we provide 200 units of permanently affordable housing as part of the Project. We proposed that 72 units be reserved for low-income households (80% of average median income ("AMI")), 108 units be reserved for moderate-income households (125% of AMI) and the remaining 20 units be reserved for middle-income households (175% of AMI). We note that this proposal significantly exceeds the thresholds required under the Inclusionary Housing program for R6 districts along the Brooklyn BK-1 waterfront (5% low income and 5% moderate income) and, in fact, achieves the requirements established for R8 districts (10% low-income and 15% moderate income), even though the floor area bonus generated in the R6 district (0.33 FAR) is significantly lower than the bonus generated in an R8 district (1.62 FAR).

In the 2005 memorandum of Points of Agreement, the Administration committed to working with owners of specified sites to develop affordable housing with maximum

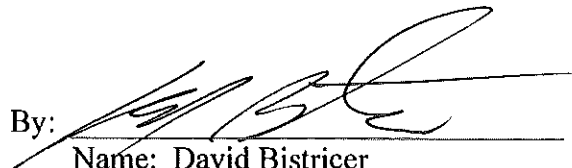
household limits ranging from 30% to 125% of AMI. We share the goal set forth in the Points of Agreement, and echoed in the recommendations of Community Board 1 and Borough President Markowitz, to obtain financing to further reduce the AMI's for the affordable housing component of the Project. We understand from conversations with the Administration that funding programs through Department of Housing Preservation and Development utilized by other affordable housing projects are unlikely to be available for our Project. Accordingly, we have been focusing on Federal and State programs, such as HUD Section 202, Section 8 and low income housing tax credits. Toward this end, we have set up a meeting on October 29 with Ms. Marian Zucker, who is the President of the Office of Finance & Development for New York State Homes and Community Renewal, which oversees multifamily housing programs and debt issuance for the New York State Housing Finance Agency to discuss financing opportunities for the Project.

- Location of Affordable Housing. The affordable housing component of the Project would be located in a 6-story C-shaped base building fronting along Commercial Street, Box Street Park and the Newtown Creek waterfront, while the market-rate housing would be located in 2 towers that sit above the base building. The affordable housing units will be the same size and have the same views of the park and waterfront, same floor-to-ceiling heights and same level of finishes as the market-rate units. The affordable building and the market rate building closest to the water will share a common lobby and entry area. Project amenities will be accessible to all residents. Locating the affordable component in separate building, which is permitted under the applicable provisions of the Inclusionary Housing program, will also allow us greater flexibility in seeking federal and state financing.
- Hazardous Materials. In connection with the 2005 Greenpoint-Williamsburg Rezoning, an E-designation was placed on the Property given the potential for hazardous materials contamination due to historic on-site uses: viz., a 550-gallon unleaded gasoline tank that was closed in 1980, an existing 15,000 gallon underground storage tank for heating oil and two closed petroleum spills. The E-designation, which is being updated as part of the Environmental Assessment Statement for the Project, requires that prior to undertaking any soil disturbance activity on the Property, a soil and groundwater testing protocol that specifies the number and location of sample sites, taking into account the characteristics of the site and the sources and locations of suspected contaminants, be submitted and approved by the Office of Environmental Remediation (OER). If OER determines, on the basis of its review of the test results, that remediation is necessary, a remedial action plan (RAP), detailing the means by which the contamination will be remediated, and a construction health and safety plan (CHASP), to protect workers and the community during excavation and construction activities, will be prepared and submitted to OER for review and approval. Proof of compliance with the RAP and CHASP will have to be submitted to OER in order to clear the E-designation.

In closing, we acknowledge that some members of the community who testified at the hearing expressed concerns regarding the proposed height of the towers. The additional height, which is comparable to what is allowed as-of-right in the adjoining R8 district, is necessary to accommodate the excess development rights from the adjacent City-owned parcel, over half of which will be used for the affordable housing component of the Project. In addition, the \$8.2 million of proceeds from the acquisition of the development rights will be used to fund construction of Box Street Park. We respectfully note that both the Community Board and Borough President recognize these benefits and, accordingly, did not object to the proposed building envelopes in their recommendations to you.

Sincerely,

WATERVIEW AT GREENPOINT, LLC

By:   
Name: David Bistricher  
Title: Authorized Signatory

cc: Hon. Stephen Levin  
Jay A. Segal, Esq.  
Edward C. Wallace, Esq.  
S. Nicholas Hockens, Esq.