CITY PLANNING COMMISSION

March 5, 2014 / Calendar No. 9 C 140132 ZSK

IN THE MATTER OF an application submitted by Two Trees Management, LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to the following sections of the Zoning Resolution:

1. Section 74-743(a)(1) – to allow the distribution of total allowable floor area and lot coverage under the applicable district regulations without regard for zoning lot lines; and

2. Section 74-743(a)(2) – to modify the yard requirements of Sections 62-332 (Rear yards and waterfront yards) and 33-23 (Permitted Obstructions in Required Yards or Rear Yard Equivalents), and to modify the height and setback requirements of 62-341 (Developments on land and platforms);

in connection with a proposed mixed use development on property generally bounded by Grand Street and its northwesterly prolongation, Kent Avenue, South 3rd Street, a line 100 feet northwesterly of Wythe Avenue, South 4th Street, Kent Avenue, South 5th Street and its northwesterly prolongation, and the U.S. Pierhead line (Block 2414, Lot 1; and Block 2428, Lot 1), in R6/C2-4, R8/C2-4 and C6-2 Districts, within a large-scale general development, Borough of Brooklyn, Community District 1.

This application for a special permit pursuant to Section 74-743 ("Special Provisions for Bulk Modification)," was filed by Two Trees Management, LLC, on October 15, 2013. The special permit, along with the related actions, would facilitate a 2.95 million-square-foot large-scale general development located at 264-350 & 317-329 Kent Avenue, Community District 1, Brooklyn.

RELATED ACTIONS

In addition to the proposed special permit (C 140132 ZSK), which is the subject of this report, implementation of the proposed project also requires action by the City Planning Commission on the following applications, which are being considered concurrently with this application:

N 140131 ZRK Zoning Text Amendment of ZR Section 62-352 and 74-745 related to inclusionary housing and loading requirements.

C 140133 ZSK	Special Permit pursuant to ZR Section 74-744(b) to modify use regulations as part of a general large-scale development.
C 140134 ZSK	Special Permit pursuant to ZR Section 74-745(a) to modify parking location regulations as part of a general large-scale development.
C 140135 ZSK	Special Permit pursuant to ZR Section 74-745(b) (proposed) to modify loading regulations as part of a general large-scale development.
N 140136 ZAK	Authorization pursuant to ZR Section 62-822(a) to modify regulations pertaining to the locations and dimensions of required waterfront public access areas.
N 140137 ZAK	Authorization pursuant to ZR Section 62-822(b) to modify regulations pertaining to design requirements for waterfront public access areas.
N 140138 ZAK	Authorization pursuant to ZR Section 62-822(c) to permit phasing of construction of required waterfront public access areas.
N 140139 ZCK	Chair Certification pursuant to ZR Section 62-812 to subdivide a waterfront lot.
N 140140 ZCK	Chair Certification pursuant to ZR Section 62-811 to show compliance with waterfront public access and visual corridor requirements for Zoning Lot 1.
N 140141 ZCK	Chair Certification pursuant to ZR Section 62-811 to show compliance with waterfront public access and visual corridor requirements for Zoning Lot 2.

BACKGROUND

The Two Trees Management, LLC proposes the redevelopment of an approximately 11-acre former sugar refinery and packing plant located directly north of the Williamsburg Bridge on the East River waterfront in the Williamsburg neighborhood of Brooklyn, Community District 1.

The proposal would facilitate the construction of four new buildings and the adaptive reuse of the existing refinery building, which was designated as a New York City Landmark in 2007. The total project would encompass approximately 2.95 million square feet, containing 2,282 dwelling units, approximately 480,000 square feet of office space, 110,000 square feet of retail space, and 143,000 square feet of community facility space. Publicly accessible open spaces totaling 4.8 acres would also be created along the waterfront and within the development.

The project site is located in the Southside section of Williamsburg, Brooklyn along the East River. The East River waterfront is developed with industrial properties in the immediate vicinity of the Domino site, and residential development of 15- to 40 –stories including Northside Piers and Williamsburg Edge to the north and Schaefer Landing to the south. To the east, the upland areas are developed with residential and mixed use neighborhoods with buildings generally between 2- and 6-stories. The project site is adjacent to the area rezoned by the 2005 Greenpoint-Williamsburg Rezoning. The refinery was still in operation when the Greenpoint-Williamsburg Rezoning proposal was initiated and was not included in that rezoning. However, the 2005 approval of the rezoning by the City Council was accompanied by an agreement between the Administration and Council at the time to “ensure that development facilitated by a land use application for rezoning of the property includes a significant affordable housing component.”

The blocks immediately adjacent to the project site contain a mix of light industrial, commercial, and residential uses. Grand Ferry Park is located immediately north of the project site. The Williamsburg Bridge, approximately 300 feet tall, is across South Fifth Street to the south. Beneath the bridge and beyond it lies a New York City Department of Transportation

maintenance facility. The blocks to the east between Kent and Wythe Avenues are predominantly developed with light industrial, commercial, and some residential uses in buildings up to 6-stories tall. One block east of the project site, the residentially converted Esquire Shoe Polish Building rises to 16-stories. Also, several loft-style buildings rise to approximately 80 feet to the southeast of the site.

Several small playgrounds and parks are located near the project site, including Grand Ferry Park and William Sheridan Playground at PS 84, located two blocks east. The area is served by several bus lines, the L subway line at the Bedford Avenue stop, and the J-M-Z subway lines at the Marcy Ave stop.

The blocks immediately surrounding the site are zoned M3-1, MX8:M1-2/R6, MX8: M1-4/R6A and MX8:M1-2/R6B. Much of the upland area is zoned R6, R6A, and R6B, while MX8: M1-2/R6, M1-2/R6A, and M1-2/R6B mixed-use districts are mapped in areas that feature some industrial uses. A C4-3 district is mapped along Broadway and C1 and C2 overlays are mapped along commercial corridors in the residential districts along Bedford Avenue and Grand, Roebling, and Havemeyer streets.

The project site consists of two parcels, a 9.8-acre waterfront parcel and a 1.3-acre upland parcel. The site is zoned C6-2 and R8 with a C2-4 overlay on the waterfront parcel and R6 with a C2-4 overlay on the upland parcel. The parcels are separated by Kent Avenue, a 60-foot wide one-way northbound street that runs through Williamsburg near the East River. The waterfront parcel measures approximately 1,300 feet long by 330 feet wide and is bounded by the East River, Grand Ferry Park and Grand Street, Kent Avenue, and South Fifth Street. The Refinery Building is located on a separate zoning lot within the waterfront parcel. The upland parcel measures approximately 320 feet long by 180 feet wide and is located on the other side of Kent Avenue between South 3rd and South 4th streets. The waterfront parcel consists of land and a 40- to 90-foot wide platform over the East River that runs along its entire western edge. Both parcels slope downward to the west, toward the East River, with a total grade change on the upland parcel of approximately 16 feet on the upland parcel from its eastern to its western ends and of 11 feet on

the waterfront parcel from Kent to the platform at the water's edge.

The project site was used beginning in the 1850's as a sugar refinery, at one time the largest in the world. The upland parcel was used as a parking lot for refinery employees. The facility was closed in 2004 and the site is currently vacant. The buildings on the waterfront parcel were built between the 1880's and the 1960's. Notable structures include the landmarked Refinery building and the Bin building. The brick Refinery building, completed in 1884, is located in the center of the site along Kent Avenue and rises to a height of approximately 150 feet overall and 110 feet at Kent Avenue. This building, which is actually a complex of three different buildings with sugar refining equipment integrated into the structure, was designated a New York City Landmark on December 11, 2007. The steel and glass Bin building, built in the 1960s to a height of 140 feet, supports the iconic Domino sign. The Bin building is located directly south of the Refinery, and is connected to it by conveyor chutes that join the Refinery building's southern face. Other buildings on the site were built at various times to house the rest of the Refinery's operations including warehousing, packaging, and research and development.

Shortly after the Refinery ceased operations in 2004, the property was sold to the Refinery LLC, of which Community Preservation Corporation, Inc. (CPCR) was the controlling partner. In 2010, CPCR was granted approval for several ULURP applications related to rezoning of the site, text amendments and special permits pursuant to Large Scale General Development as described below. In 2012 the current applicant (Two Trees Management, Inc.) acquired the property from CPCR, and in 2013 filed an application for this special permit (C 140132 ZSK) and the related actions to advance the proposal described herein.

2010 Domino Land Use Approvals

On July 29, 2010, the City Council adopted a series of actions proposed by the then-owner (CPCR), to facilitate the redevelopment of the Domino Sugar site with five new buildings and the adaptive reuse of the landmarked Refinery building. The development would have comprised approximately 2.75 million square feet containing 2,200 dwelling units, approximately 97,558 square feet of office space, 126,012 square feet of retail space, 143,076 square feet of community

facility space, and approximately 3.7 acres of public open space. This would have resulted in an FAR of 5.6 on the waterfront parcel and 6.0 on the upland parcel. The project would also have included 1,428 parking spaces in garages built beneath each building.

This project proposed to use the Inclusionary Housing Program to obtain the full permitted floor area described above, which would have required approximately 20% of the floor area (excluding ground floor non-residential floor area), or approximately 502,000 square feet, to be provided as affordable housing. At the time, the applicant (CPCR) had also stated their intention to provide as much as 30% of the residential units (660 units) as affordable housing.

The site plan of the 2010 proposal extended the adjacent street grid through the site to the waterfront with east-west connections at each of South 1st through South 4th streets, all ending in a vehicular turnaround and a pedestrian path to the waterfront public access area along the water's edge. A 3.7-acre waterfront public access area would have been built along the seaward edge of the site, featuring a 1-acre lawn area in front of the Refinery building. New buildings were to be built between these connections, with the exception of the central block, which is occupied by the landmarked Refinery building that was to be adaptively reused. All the buildings would have housed residential uses with ground floor commercial uses, except for the northernmost building, which was to have approximately 100,000 square feet of office uses on portions of the upper floors, and the Refinery building, which was proposed to have a significant community facility component on floors 2-4 that would have included a school, if one was deemed necessary by the School Construction Authority and the Department of Education.

Each new building proposed a base between 60 and 110 feet tall surrounding a central courtyard, and would have fronted on Kent Avenue, the esplanade and the upland connections. A tower of between 300 and 340 feet would have risen from the seaward portion of each base, siting towers closer to the water, with lower portions landward, thereby providing a transition to the adjacent upland neighborhood. The building on the upland parcel would have risen to between 60 and 80 feet at the street, with a taller portion on the eastern part of the site rising to148 feet with a significant set-back from the street.

Adaptive reuse of the Refinery building would have involved conversion of the building to residential and community facility use. A steel and glass addition of between 3 and 4 stories would have been added to the top of the western portion of the Refinery that is set back from Kent Avenue, bringing the total height of the structure to 195 feet. This proposal was pursuant to a Certificate of Appropriateness issued by the Landmarks Preservation Commission in June of 2008.

The actions adopted to facilitate the 2010 proposal included the following:

- Zoning Map Amendment (C 100185 ZMK) rezoning from a manufacturing district, M3-1, to residential and commercial districts including R8/C2-4 and C6-2 on the waterfront parcel and R6/C2-4 on the upland parcel;
- Zoning Text Amendment (N 100186 ZRK) to apply the inclusionary housing program to the site, and to facilitate relocation of the Domino Sugar sign;
- Special Permit (C 100187 ZSK) to modify bulk regulations and transfer floor area consistent with a General Large Scale Plan;
- Special Permit (C 100188 ZSK) to modify use regulations in the northernmost tower; and
- Authorizations (N 100190 ZAK) to modify waterfront public access regulations and permit phased development of the required open space.

Proposed Development

The current applicant, Two Trees Management, Inc., also seeks to develop the site with a mix of residential, commercial, and community facility uses. The applicant proposes to build four new buildings and adaptively reuse the Refinery building. The entire project would include 2,948,429 zoning square feet, with approximately 2,215,210 zoning square feet of residential uses (2,282 dwelling units); 143,747 zoning square feet of community facility uses; 480,293 zoning square feet of commercial office space; and 109,179 zoning square feet of other commercial uses including ground floor retail and a health club. The waterfront parcel would be built to an FAR of 5.94 and the upland parcel would be built to an FAR of 7.0. The applicant also proposes a total of 4.8-acres of public open space on the site, including a 3.7-acre waterfront

public access area (WPAA) and a large publicly accessible square. Approximately 0.9 acres of the proposed open space would consist of private streets and drives, including the extension of River Street into the site, described further below.

The current program differs from that proposed in 2010 in a number of respects. Relative to the approved 2010 project, the applicant proposes to increase the total floor area by 200,729 square feet, reduce residential floor area by 166,000 square feet and reduce retail floor area by approximately 17,000 square feet in order to increase the commercial office component of the project by approximately 382,000 square feet. Approximately the same amount of office space would be located in the northernmost building as was proposed in 2010 (about 96,000 square feet) with the additional office square footage sited in the Refinery, which in contrast to the 2010 proposal, was dedicated to residential and community facility uses. The proposal also includes 1.1-acres more public open space than the 2010 proposal.

While reducing the total residential floor area, the current proposal is anticipated to include 82 more dwelling units than proposed in 2010 by reducing average unit size. Like the 2010 project, the current project relies on the use of the Inclusionary Housing program to achieve the proposed density, and would provide 20% of the residential floor area as affordable, pursuant to the modifications to Inclusionary Housing requirements requested in this application. The applicant has proposed that the Refinery building occupy a separate zoning lot from the rest of the waterfront parcel, with the result that it would not generate a requirement to provide affordable housing under the Inclusionary Housing program. The applicant has also proposed under the text amendment that commercial floor area on the remaining portion of the waterfront parcel located above ground floor level not generate residential floor area under the Inclusionary Housing program. These features of the current proposal would enable the construction of a project that is approximately 200,000 square feet (seven percent) larger than the previously approved project while reducing the affordable housing required for purposes of exercise of the Inclusionary Housing bonus by roughly 15 percent, from approximately 502,000 square feet for the 2010 project, to approximately 427,000 square feet.

Like the 2010 plan, the site plan proposed by the applicant would extend South 1st through South 4th streets through the site on the east-west axis. Additionally, the new proposal would also extend River Street, which currently terminates at the site's northern boundary. This would create five development blocks between the proposed River Street extension and Kent Avenue, measuring between 160 and 180 feet deep (east-west) and between 180 and 250 feet wide (north-south). While the 2010 approval built on all blocks within the site, the current proposal reserves one for a public open space, with only two small retail structures within it. The space between the River Street extension and the water's edge would be occupied by the Waterfront Public Access Areas (WPAA) and measures approximately 100 feet wide (east-west) by 1,250 feet long (north-south). This proposed street pattern is intended to open the site, increasing access to the WPAA and providing a more definite boundary between the private buildings and the public open space. It would also connect the extensions of South 1st through South 4th streets, allowing for the elimination of the vehicular turnarounds present in the 2010 proposal.

Moving from north to south, the applicant proposes to build a mixed office and residential building on the northernmost block, a residential building on the second block, reuse the Refinery building with office uses on the third block, reserve the fourth block for an additional public open space called Domino Square, and build a residential building on the southernmost block adjacent to the Williamsburg Bridge. The upland parcel would be developed as a residential building with ground floor retail.

All buildings would have some retail on the ground floor. In addition, the applicant proposes a non-profit health club in the base of the northernmost building and a commercial health club in the base of the southernmost building, both of which would front on River Street, facing the northern and southern entrances to the WPAA, respectively. The applicant would also offer space for a 375- to 580-seat public school (to mitigate a potential future shortfall in school seats – the size will depend on the need identified by the School Construction Authority and the Department of Education at the time of construction) in the base of the residential building north of the Refinery, the lobby for which would be located on the extended River Street near the WPAA.

Retail uses would front on Kent Avenue as well as most other building frontages both within and at the boundaries of the site. In addition, two retail kiosks would be located in Domino Square. The main office lobbies would also be on Kent Avenue in the northernmost building and Refinery building, while residential entrances would be located mostly on the side streets. Vehicles would be able to circulate through the site on the proposed new streets. 1,050 parking spaces are proposed in two garages. One, below the upland site, would house 750 spaces and would have combined entrance/exits along South 3rd or South 4th streets on the eastern-side of the parcel. The second garage would be located below the block north of the Refinery and would house an additional 300 spaces with an entrance on the extension of South 2nd Street, and a combined entrance/exit on the extension of South 1st Street.

The general massing strategy of the proposed development intends to push bulk to the periphery of each building site rather than setting back. While the buildings vary widely in form, they utilize large geometric shapes and voids in an attempt to moderate the effects of the buildings' bulk by creating some visual permeability through to the adjacent neighborhood. On the waterfront parcel, the proposed buildings would have large pedestal bases, occupying the entire block, on top of which towers would rise to heights between 435 and 535 feet.

On the northernmost block, the proposed building would have a 45-foot tall base occupying the entire block between River Street, Grand Street, Kent Avenue, and South 1st Street. The commercial office segment of the building would rise from the northern portion of the base in a 285-foot tower measuring 60 feet wide by 113 feet long, with its short (60-foot) dimension facing the water. The residential portion rises from the southern part of the base in a 64-foot wide by 67-foot long tower that, at the height of the office segment, extends northward to form a 157-foot by 68-foot slab with the long dimension facing the water. This creates a 40-foot wide by 240-foot tall vertical void in the center of the building. The slab element caps the office segment, rising to a height of 435 feet. The tower elements are set back between 10 and 15 feet from the edges of the base, except for a small portion of the River Street frontage. Mechanical bulkheads would be enclosed within a structure that would sit atop the tower, set back from its edges, and would be composed of a similar material to the tower itself.

On the block north of the Refinery, the proposed building would have a 70-foot tall base fronting on River Street, South 1st Street, Kent Avenue, and South 2nd Street. Two slab towers would rise from the northern and southern frontages of the base, joined at their top by elevated building segments at the ends of the tower slabs. The towers would each measure 60 feet by 175 feet, with their narrow dimension facing the water. They would rise to 530 feet in height with no setback except along Kent Avenue from which they set back 15 feet at a height of 110 feet (the height of the adjacent existing Refinery building as it fronts on Kent). However, South 1st and South 2nd streets have 30-foot wide sidewalks along these tower frontages. The towers are 100 feet apart and this distance is spanned on top at the eastern and western ends by 6-story, 35-foot wide building segment that start at a height of 470 feet and extends 60 feet to the top of the towers. This would leave a 100-foot wide by 400-foot tall vertical void in the center of the building. Mechanical bulkheads would be screened by a 30-foot high screen-wall along the outer edges of the towers and connectors that would extend the materiality of the towers to a total height of 560 feet and preserve the geometry of the design.

The Refinery building is proposed to be adaptively reused for office uses. It rises to 110 feet at Kent Avenue, sets back approximately 70 feet, and then rises to approximately 150 feet. Two Trees also proposes an addition to the Refinery that would rise 33 feet from the lower portion fronting on Kent Avenue and 47 feet from the taller portion, bringing the total height to approximately 200 feet. These additions would be set back 10 feet from all frontages. This addition would differ from the proposal approved in 2008 by the LPC in that it includes an addition on the lower portion of the existing building fronting on Kent Avenue, which increases the height of that portion of the building from 110 feet to 143 feet after a 10-foot setback.

Because the Refinery is a New York City landmark, the proposed addition must be approved by the Landmarks Preservation Commission (LPC). The applicant applied to the LPC for a Certificate of Appropriateness and presented this proposal to Brooklyn Community Board 1 and LPC during public review. The application for a Certificate of Appropriateness was approved by the LPC on January 14, 2014.

On the block south of the Refinery, the applicant proposes the Domino Square, a publicly accessible open space described in the discussion of open space below.

On the southernmost block, just north of the Williamsburg Bridge, the proposed building would have a 45- to 85-foot tall base fronting on River Street, South 4th Street, Kent Avenue, and South 5th Street. Two staggered towers (21 feet apart and each measuring approximately 90 feet by 70 feet) would rise from the base. One would rise sheer along Kent Avenue to a height of 535 feet, with its long (90-foot) dimension facing the water. The other would rise sheer on River Street and South 4th Street to a height of 435 feet, with its narrow (70-foot) dimension facing the water. A three-story sky-bridge joins the two towers between the heights of 275 and 305 feet. Mechanical bulkheads would be screened by a 30-foot high screen wall along the edges of the towers that would continue the materiality of the tower to total heights of 465 and 565 feet and preserve the geometry of the design.

Across Kent Avenue from Domino Square, the upland site would be developed with a building that is 170 feet tall at Kent Avenue and drops in an irregular stepped manner to a height of 60 feet at the eastern end of the upland parcel. The stepped reduction in height would create a series of east-facing terraces that the applicant states will help break up the building form. The building would rise sheer on South 3rd and South 4th streets, with a reveal at a height of 50 feet and would set back 15 feet from Kent Avenue, at heights between 30 and 50 feet. The 180-foot wide by 170-foot tall Kent Avenue frontage would contain a 60-foot wide by 100-foot tall void in the center between the heights of 30 and 130 feet.

The development would meet the new requirements for flood-resistant construction, with habitable first floors above the flood elevation shown on Federal Emergency Management Agency's (FEMA) Preliminary Flood Insurance Rate Maps, which represent the best available data to date. Also, the platform on the seaward side of the site, on which much of the open space is built, would be raised three to five feet to increase resilience of both the waterfront public access areas as well as the rest of the project site, and to make the street and sidewalk grades meet ADA standards.

The WPAA would occupy the entire 100-foot wide area between River Street and the water's edge, covering over a quarter-mile of shoreline over 5 blocks. The WPAA would measure approximately 100 feet wide by 1,300 feet long and would comprise 3.7 acres, including the upland connections. The open space would be built predominantly on an existing platform, which would be raised to be between 9 and 14 feet above mean high water. In addition to the open spaces required by waterfront zoning, the applicant proposes just over one acre of public access areas east of River Street. This would bring the total publicly accessible open space on the site to 4.8 acres.

The WPAA would feature a 12-foot wide clear path along the water's edge, lined with different activities ranging from active recreation on the southern end, including bocce, volleyball and a flexible field, to more passive amenities at the northern end, including a picnic area, a tot-lot, and a tree-shaded lawn. The center of the access area, across River Street from the Refinery, would feature a monumental seating-step structure, a water feature, and a step down at the edge of the platform, referred to as "viewing steps", to offer a different view closer to the water.

The area is proposed to be designed with materials and objects from the existing Refinery building. Some of these furnishings would be constructed from wood reclaimed from the existing building. The southern boundary of the WPAA would feature an "Artifact Walk" along the western side of River Street with various artifacts from the site including syrup tanks, gantry cranes, and screw conveyors. The northern portion of the Artifact Walk would include a steel observation platform raised 13 feet overhead. The platform would be 8 feet wide by approximately 400 feet long and would culminate in a close-up view of two existing gantry cranes at the northern entrance to the WPAA.

Seating and planting would provide shade, greenery and places to sit and rest throughout the WPAA. Seating would be placed at the entrances to the WPAA, and near and within activity areas to create a comfortable and inviting space. The area would also include companion seating for the disabled throughout the space, ADA-compliant grades on sidewalks and circulation areas, and ramp access to the viewing steps and observation platform.

In addition to the waterfront public access, the applicant also proposes to provide an open space east of River Street, fronting on Kent Avenue, which will help connect the site to the adjacent neighborhood. The block south of the Refinery would be completely occupied by Domino Square, a 0.74-acre public square measuring 180 feet by 180 feet. This space is intended to provide a location for organized events such as graduations and performances, as well as a space for everyday gatherings and recreation. The square would be edged on the eastern, southern, and western sides by square planters with trees and pedestrian passages between them. The northern side would be open to face the Refinery. The square would be paved and open with steps helping to negotiate the grade change across the site on the western and northern sides. Benches would line the planters on the edges, and movable tables and chairs would be provided in the interior of the space. The southern side of the square would also feature two small retail structures to help activate the space. The proposal also includes an approximately 0.3-acre plaza in front of the Refinery building.

The project would be expected to be built in phases, starting with the upland building, and then proceeding from north to south along the waterfront parcel. Each building would be built independently, with little overlap in construction periods for successive buildings. Domino Square would be built in conjunction with the last building on the southernmost part of the waterfront parcel.

Requested Actions

Eight land use actions are proposed to facilitate this project. These actions are described in further detail below.

Zoning Text Amendment (N 140131 ZRK)

The application, as originally referred, proposes two changes to the zoning text. The first would amend Section 62-352 of the Zoning Resolution to change the basis upon which the affordable housing requirement for inclusionary projects is calculated, with the result of reducing the amount of affordable housing required within the project. The second change to the zoning text would modify Section 74-745 to create a new special permit available for large-scale general

developments to waive loading requirements. The changes would apply only to large scale general developments on waterfront blocks in C6 districts in Brooklyn Community District 1, or to upland zoning lots that are part of large scale general development on the waterfront in Brooklyn Community District 1.

Currently, to receive the inclusionary floor area bonus for sites in R8 districts on the Greenpoint-Williamsburg waterfront, pursuant to Section 62-352, 20% of a project's total floor area, exclusive of ground floor non-residential floor area, must be provided for low-income households (80% Area Median Income (AMI) or less). Alternately, 10% of such floor area may be provided for low-income households and 15% for moderate income households (125% AMI or less), for a total of 25% affordable floor area. The full 33% bonus is available if either affordable requirement is met.

The applicant proposes to change these requirements in two ways. First, the applicant proposes to define the affordable requirement as a percentage of residential floor area only, rather than total floor exclusive of ground floor non-residential floor area. This would exclude non-residential floor area on the upper floors of the development from the calculation, thereby reducing the overall affordable requirement necessary to receive the bonus. The applicant estimates that this change would reduce the affordable requirement, if only low-income floor area is provided, to approximately 427,000 square feet.

The second modification to the Inclusionary Housing provisions would allow greater flexibility in the mix of low-income floor area and moderate-income floor area allowed, while remaining within the limits established by the zoning today. The proposed change would replace the two discrete options (20% low-income, or 10% low-income plus 15% moderate-income), with a formula allowing a mix of low and moderate incomes in-between these options, on a proportional basis. For instance, a combination of 11% low-income plus 13.5% moderate-income would not meet either of the discrete options but would comply with the proposed formula. In no event could less than 10% of floor area be provided as low-income housing. This provision would add flexibility for the use of a variety of funding programs in a multi-phase project.

The applicant also proposes to create a new special permit to allow the waiver of loading requirements for certain retail and service uses in establishments less than 8,500 square feet provided that the Commission made findings related to the ability of such spaces to accommodate curb-side deliveries, the effect of such waiver on the site plan, and the lack of adverse effect on the surrounding area. As described below, the applicant is applying for such a special permit to waive loading for small-scale retail proposed on the upland parcel.

Special Permit to Modify Bulk Regulations (C 140132 ZSK)

This special permit pursuant to Section 74-743 would allow the transfer of floor area from the waterfront site to the upland site. It would also establish an envelope for the proposed buildings, granting specific modifications to height and setback regulations as described below.

1. *Transfer of Floor Area:* The applicant proposes to transfer approximately 242,857 square feet of floor area from the waterfront parcel to the upland parcel. This would increase the floor area on the upland parcel from 158,389 square feet (2.75 FAR) to 401,246 square feet (7.0 FAR).
2. *Distribution of Lot Coverage [62-322]:* Zoning lots on waterfront blocks are required to have less than 70% residential lot coverage. The upland parcel is proposed to have72% lot coverage. The requested special permit allows for distribution of lot coverage without regard to zoning lot lines, in order to facilitate this result.
3. *Building Height [62-341(c)(1) and (2)]:* Zoning limits buildings to 210 feet in height in the R8 and equivalent districts mapped on the waterfront parcel and to 110 feet in the R6 district mapped on the upland parcel. The applicant proposes buildings that rise to between 435 and 535 feet on the waterfront parcel and 170 feet on the upland parcel. In addition, zoning requires setbacks of 15 feet on narrow streets and 10 feet on wide streets at the base height of 70 feet in R8 districts and 60 feet in R6 districts. The applicant's proposed buildings do not set back in some locations and set back at heights of up to 110 feet in others.
4. *Maximum Tower Floorplates [62-341(c)(4)]:* Zoning requires that floorplates above the maximum base height be limited to 7,000 square feet on zoning lots less than 1.5 acres

(upland parcel) and 8,100 square feet on zoning lots greater than 1.5 acres (waterfront parcel). Floorplates above the base height are proposed to be up to 9,282 square feet on the upland parcel and 19,849 square feet on the waterfront parcel.

5. *Maximum Width of Walls Facing the Shoreline [62-341(c)(5)]:* Zoning requires that the widths of walls facing the shoreline above the base height on waterfront blocks be less than 100 feet. The proposed buildings have walls facing the shoreline of between 167 and 230 feet. These walls are broken up at intermediate levels by voids within the building structures.
6. *Required Rear Yard Equivalent [33-23]:* Zoning requires a 60-foot wide rear yard equivalent on the upland parcel that must be open to the sky above a height of 23 feet. The applicant proposes to build a parking structure within the required rear yard equivalent to a height of 30 feet.
7. *Rooftop Permitted Obstructions [33-42(f)]:* Zoning requires rooftop mechanicals on the proposed buildings to be limited in their profile above the roofline to less than 880 square feet. The screen walls proposed for the southernmost building and the building north of the Refinery, which are intended to help preserve the geometry of the proposed building massing, would have a profile above the roofline of up to 6,600 square feet.
8. *Level of the Waterfront Yard [62-332]:* Zoning requires that the level of the waterfront yard not be increased above existing grade. The waterfront yard on this site is on top of the overwater platform at the seaward edge of the site and the applicant proposes to raise the platform between 3 and 5 feet, to levels between 9 and 14 feet above mean high water in order to improve the resilience of the development to flooding and to make sidewalk and street grades within the waterfront parcel conform to ADA standards.

Special Permit to Modify Use Regulations (C 140133 ZSK)

Section 33-42 requires that commercial uses be located on the ground floor or a level below the lowest level with dwelling units. This special permit, pursuant to 74-744(b), allows the location of commercial uses and residential uses on the same level.

The applicant proposes to locate commercial uses on the same level as dwelling units within the

northernmost building and the southernmost building. In the northernmost building, commercial office uses would be sited in the northern tower element, with residential uses sited in the southern tower element at the same level as the commercial uses. These uses would have separate access, egress, and circulation. On most floors they would be in building segments separated by a 40-foot wide void and in the base there would be no openings between the residential and commercial spaces.

In the southernmost building, the proposed commercial health club would occupy space on the first through third floors, along with dwelling units. As with the office uses in the northernmost building, the health club would have independent access, egress and circulation and there would be no openings between the residential and commercial spaces on these floors.

Special Permit to Modify Location Requirements for Required Accessory Parking (C 140134 ZSK)

Zoning requires that accessory parking spaces be located on a zoning lot containing the uses to which such parking is accessory. This special permit, pursuant to 74-745(a), allows for parking spaces to be located anywhere within a large-scale general development, regardless of zoning lot lines.

A total of 1,050 parking spaces are required for the proposed development under zoning, with 792 spaces required on the waterfront parcel and 258 required on the upland parcel. The applicant proposes to provide 300 spaces on the waterfront parcel in a garage beneath the building north of the Refinery and 750 on the upland parcel.

Special Permit to Modify Loading Requirements (C 140135 ZSK)

Zoning requires one loading dock for 8,000 square feet of retail within R6/C2-4 districts, which is mapped over the upland parcel. The proposed special permit, pursuant to the new Section 74-745(b), proposed to be added to the Zoning Resolution as part of this application, would allow a development to waive such requirements if it contains commercial uses that exceed 8,000 square feet where no individual establishment exceeds 8,500 square feet.

The applicant proposes to build 20,000 square feet of ground-floor commercial uses on the upland parcel. However, it proposes small-scale local retail spaces, the largest of which would be 8,410 square feet.

Authorization to Modify Location and Dimensions of Waterfront Public Access Areas (N 140136 ZAK)

This authorization pursuant to Section 62-822(a) allows modification of requirements related to the location, area and minimum dimensions of waterfront public access areas. The following waivers are requested.

1. *Width of Shore Public Walkway [62-53-(a)(2)]:* Zoning requires that shore public walkways be 40 feet in width. However, due to the shallowness of the site at the southern end near South 5th Street, the proposed shore public walkway is reduced to approximately 11 feet in this area.
2. *Configuration of Supplemental Public Access Areas [62-571(a)(1)]:* Zoning requires that supplemental public access areas have a width to depth ratio of between 1:1 and 3:1. The proposal contains one supplemental public access area with a width to depth ratio of 0.95:1 and one with a ratio of 4:1.

Authorization to Modify Design Requirements of Waterfront Public Access Areas (N 140137 ZAK)

This authorization pursuant to Section 62-822(b) allows modification of design requirements for waterfront public access areas. The following waivers are requested.

1. *Permitted Obstructions in Visual Corridors [62-513]:* Zoning requires visual corridors and upland connections to be open to the sky. South 3rd and 4th streets are visual corridors and upland connections. The proposed design for the southernmost building includes a skybridge linking the two towers between the heights of 275 and 305 feet and providing a point of visual interest and variety along their height. While the bridge would

not cross South 4th Street, it may extend up to 5 feet across the boundary of the visual corridor. In addition, the proposal includes bay windows on the southern façade of the Refinery that project up to 15 feet into the South 3rd Street visual corridor at heights between 40 and 60 feet above ground.

2. *ADA Compliance [62-61(c)]:* Zoning requires WPAAs to be accessible to persons with physical disabilities in accordance with ADA and ANSI guidelines. The space would be fully compliant with these guidelines with the exception of the seating steps in front of the Refinery, for which the applicant states a ramp could not be provided in the space available.
3. *Minimum Slope of Circulation Paths [62-61(d)(1)(i)]:* Zoning requires that circulation paths have cross-sectional slopes between 1.5 and 3 percent. The applicant is proposing grades ranging from 1 to 4 percent due to the significant grade change between Kent Avenue and the waterfront platform and other aspects of the existing grades on the site.
4. *Permitted Obstructions in Waterfront Public Access Areas [62-611(a)]:* Zoning requires that WPAAs, including upland connections, be open to the sky. The applicant proposes to install awnings along building frontages on South 2nd and South 4th streets. These partial obstructions would shelter building entrances and will be limited in dimensions. They would also be required to be at constructed of at least 50% translucent materials to allow sunlight through to the areas below. In addition, the applicant proposes a raised viewing platform at the northern end of the site. The platform would be approximately 8 feet wide and 400 feet long and would provide an alternate vantage point to view the waterfront and waterfront public access area, as well as some of the large industrial artifacts on the site.
5. *Planting in Shore Public Walkways and Supplemental Public Access Areas [62-62(c)(1)]:* Zoning Requires that at least 50% of the shore public walkway and supplemental public access areas be planted. The applicant proposes to plant only 42% of these areas, which would total 55,000 square feet of planting.
6. *Paving Upland Connections [62-64(b)(2)]:* Zoning requires that distinct paving be utilized when an upland connection crosses a street to emphasize the pedestrian function of this space. The applicant has proposed to build out all the streets within the site,

including upland connections with the same materials and design as typical city streets to emphasize the public nature of these spaces.

7. *Planting in Upland Connections [62-64(c)(3)]:* Zoning requires that at least 40% of transition areas within upland connections be planted. The applicant's proposal complies with this requirement at South 4th Street. At South 3rd Street the planting in the transition area is at 36%, and at South 2nd Street the planting in the transition area is 23%.
8. *Fences and Gates [62-651(c)(2)]:* Zoning requires that fences be mounted on curbs not higher than 6 inches and that they be not higher than 36 inches. The applicant proposes that the fence for the play area in the northern portion of the WPAA and the dog run in the southern portion of the WPAA be 48 inches high to provide better separation between the uses in these areas and the adjacent WPAA.

Authorization to Permit Phased Development of Waterfront Public Access Areas (N 140138 ZAK)

Section 62-822(c) allows a WPAA to be built-out in phases in conjunction with a phased development project. Absent an authorization under this section, all required WPAA on the zoning lot would need to be provided before Certificates of Occupancy could be obtained for the first phase of development.

The applicant proposes four WPAA phases related to each of the four buildings to be improved on the zoning lot. The phases would proceed from north to south, beginning with the northernmost building and ending with the southernmost building. The WPAA associated with each phase would consist of that portion of the WPAA directly adjacent to the building being constructed. Domino Square would be built in conjunction with the southernmost building in the last phase, as would the WPAA adjacent to that building.

Zoning Certifications (N 140139 ZCK, N 140140 ZCK, N 140141 ZCK)

The applicant also requests Certifications from the Chairman of the City Planning Commission to document compliance of the proposed waterfront public access areas with zoning regulations, except as modified by the zoning authorizations described above, and to permit the subdivision

of the waterfront zoning lot into two zoning lots along new boundaries.

ENVIRONMENTAL REVIEW

This application (C 140132 ZSK), in conjunction with the related applications and with the 2010 Domino land use actions described above (C 100185 ZMK, N 100186 ZRK, C 100187 ZSK, C 100188 ZSK, N 100190 ZAK, N 100191 ZCK, N 100192 ZCK), was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA), and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et seq. and the New York City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The CEQR number is 07DCP094K. The lead is the City Planning Commission.

It was determined that the 2010 Domino land use actions described above may have a significant effect on the environment. A Positive Declaration was issued on June 29th, 2007 and distributed, published and filed. A Final Environmental Impact Statement (FEIS) was prepared and a Notice of Completion of FEIS was issued on May 28th, 2010. Following the issuance of the Notice of Completion of FEIS, two Technical Memoranda were completed. The first Technical Memorandum (TM 001) was completed on June 4, 2010, in connection with the City Planning Commission approval of the 2010 Domino land use actions. The second Technical Memorandum (TM 002) was completed on July 10, 2010, in connection with the City Council approval of those same actions.

The 2010 FEIS, together with Technical Memoranda TM 001 and TM 002 identified significant adverse impacts and proposed mitigation measures related to community facilities, shadows, historic resources, traffic, transit, pedestrians, construction traffic and construction noise. The FEIS identified measures that would fully or partially mitigate impacts for community facilities, shadows, historic resources, traffic, transit, pedestrians, and construction. These impacts and mitigation measures are fully described in the lead City Planning Commission Report on the 2010 Domino land use actions under ULURP number C 100187 ZSK and in Technical

Memorandum TM 002.

A third Technical Memorandum to the FEIS was completed on October 31, 2013. This Technical Memorandum (TM 003) analyzed the changes to the development project described in the 2010 FEIS that would be facilitated by the proposed special permit and related actions which are the subject of this report (C 140132 ZSK, N 140131 ZRK, C 140133 ZSK, C 140134 ZSK, C 140135 ZSK, N 140136 ZAK, N 140137 ZAK, N 140138 ZAK, N 140139ZCK, N 140140 ZCK, N 140141 ZCK). TM 003 found that the proposed actions would not result in any significant adverse environmental impacts that had not been previously identified in the 2010 FEIS and subsequent Technical Memoranda (TM 001 and TM 002). Therefore, no supplemental environmental impact statement was warranted for the proposed special permit and related actions which are the subject of this report and the majority of the mitigation measures originally proposed for the 2010 Domino land use actions would continue to be warranted. As discussed in TM 003, in certain instances the mitigation measures proposed for the 2010 Domino land use actions would be modified for the current proposal. Those mitigation measures are discussed in detail in Section T, "Mitigation," of TM 003.

In addition, to avoid the potential for significant adverse hazardous materials, air quality and noise impacts, the current proposal includes (E) designations (E-337) on Block 2414, Lot 1 and Block 2428, Lot 1. Under the 2010 proposal, the hazardous materials, air quality, and noise issues were addressed in the Restrictive Declaration for that proposal. The (E) designation text related to air quality and noise are provided in Section N, "Air Quality," and Section P, "Noise," respectively, of TM 003. The (E) designation text related to hazardous materials would be as follows:

> Task 1-Sampling Protocol
> The fee owner(s) of the lot(s) restricted by this (E) designation is required to submit to OER, for review and approval, an updated Phase I of the site along with a soil, groundwater and soil vapor testing protocol, including a description of methods and a site map with all sampling locations clearly and precisely represented.. No sampling shall

begin until written approval of a protocol is received from OER. The number and location of samples should be selected to adequately characterize the site, specific sources of suspected contamination (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 sampling data. Guidelines and criteria for selecting sampling locations and collecting samples are provided by OER upon request.

Task 2-Remediation Determination and Protocol

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

If OER determines that remediation is necessary based on test results, a proposed remediation plan must be submitted to OER for review and approval. The fee owner(s) of the lot(s) must complete such remediation as determined necessary by OER. The fee owner(s) of the lot(s) shall then provide proper documentation that the work has been satisfactorily completed.

A construction-related health and safety plan must be submitted to OER for approval and then implemented during excavation and construction activities to protect workers and the community from potentially significant adverse impacts associated with contaminated soil, groundwater and/or soil vapor.

As discussed in detail in the Consideration section of this report, the City Planning Commission has determined to make certain modifications to the proposed project. A Technical Memorandum (TM 004) was prepared and issued on March 5, 2014 which determines that such modifications would not have the potential to result in new or different significant adverse impacts from those identified in the FEIS and subsequent Technical Memoranda (TM 001, TM 002, and TM 003).

UNIFORM LAND USE REVIEW

This application (C 140132 ZSK), in conjunction with the related ULURP applications, was certified as complete by the Department of City Planning on November 4, 2013, and was duly referred to Community Board 1 and the Brooklyn Borough President, in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b) along with the related non-ULURP actions, which were referred for information and review on November 4, 2013 in accordance with the procedures for non-ULURP matters.

Community Board Review

Community Board 1 held a public hearing on this application (C 140132 ZSK), in conjunction with the related actions, on November 13 and 21, 2013, and on December 10, 2013, by a vote of 24 in favor, 4 in opposition, and 2 abstentions, adopted a resolution recommending approval of the application with the following conditions:

1. The Zoning Text Amendment for the inclusionary housing will mandate that Two Trees provide 660 units of integrated affordable housing in perpetuity, utilizing at least 500,000 square feet of space representing net space; and the City will continue to offer the current tax exemptions and incentives, or the equivalent thereof, on which Two Trees has based the provision of this number of units.
2. The zoning amendments will lock in the shape and size of the buildings according to the SHoP architects' master plan as submitted and presented to the Community Board.
3. The developer will partner with local not-for-profits based in Community Board No. 1, as soon as the developer is notified that the project is approved, to assure adequate local recruitment and education of local residents and commercial tenants.
4. The developer will offer incentives and reasonable preferences to local businesses and entrepreneurs for the commercial spaces located on the ground and upper floors.
5. The spectrum of affordable apartments will include three bedroom apartments as follows:
    - 10% studio apartments
    - 25% one bedroom apartments

- 50% two bedroom apartments
- 15% three bedroom apartments

6. The distribution of AMI levels for the affordable residential units shall range as follows:
   - 30% less than 40% AMI
   - 25% less than 60% AMI
   - 25% less than 80% AMI
   - 20% less than 125% AMI
7. The developer will work with HPD to provide a 10% first screening preference for seniors for studio and one bedroom apartments, on the lower floors if necessary, with a provision for an appropriate community room.
8. The community recreation center will offer discounted rates to residents who occupy the affordable residential units.

Borough President Recommendation

This application (C 140132 ZSK), in conjunction with the related actions, was considered by the Borough President of Brooklyn who issued a recommendation on December 31, 2013 approving this special permit (C 140132 ZSK), subject to the following conditions:

1. Affordable Housing

   That the following conditions are codified regarding affordable housing:

   a. The creation of legal instruments, including conditioning the granting of the special bulk permit to the filing of an Inclusionary Housing Plan (IHP), and binding the remaining percentage of at least 500,000 square feet of net floor (not inclusive of lobbies, hallways, elevators, fire stairwells) floor area required to achieve a development that consists of not less than 30 percent or 660 units of the units being permanently affordable and that for non-elderly households, subject to adequate government subsidies, 50 percent of the units be two-bedroom and 15 percent be three-bedroom and that 30 percent of the units be affordable to households earning up to 40 percent and 50 percent AMI and 25 percent to households earning up to 60 percent AMI.

b. The guarantee of approximately 100 units of affordable housing for the elderly preferably as part of the initial phase of development.
c. The expansion of affordability tiers to include up to 50 percent and 100 percent Area Median Income (AMI) in addition to the 40 percent, 60 percent, 80 percent and 125 percent.
d. The community preference for at least 50 percent of the affordable housing units to include those displaced from Community District One subsequent to the adoption date of the 2005 Williamsburg Greenpoint rezoning.
e. The developer to agree to seek funding to achieve a higher proportion of lower-income units and multi-bedroom units by applying annually for discretionary funding from the Borough President and City Council members from the 33rd and 34th districts and other governmental funding allocation sources.
f. The developer to agree to partner with local not-for-profits as a means to assure adequate local recruitment and education of local residents to apply for the affordable housing.

2. Open Space
   a. Two Trees to revise its paving aesthetic in consultation with the Departments of City Planning and Transportation and the Fire Department to develop such a state-of-the-art design solution and memorializes its commitment prior to approval of the requested land use actions for a legally binding mechanism.
3. Schools
   a. Two Trees and the Department of Education (DOE)/School Construction Authority, in order to assure that a school of appropriate size is included in Building B, to execute a legal instrument that binds development for a district school within the building of not less than 90,000 square feet serving Community School District 14 facility, with the understanding that the adjacent section of River Street would on occasions be closed from through traffic so that it may serve as a play street.
   b. Grade assignment to be developed in consultation with the District 14 Community Education Council, to determine possible school structure (i.e. Pre-K to 5 or Pre-

K to 8, including reevaluating just prior to commencing design, the possibility of having elementary versus intermediate school students, as a means to best address needs, the proportion of elementary versus intermediate school students to determine possible school structure.

4. Child Care
    a. Two Trees to coordinate in writing with the Agency for Children Services (ACS), before commencing the final two phases, to first offer retail space to ACS to solicit the agency's interest in securing space for publicly funded day care prior to marketing for retail users, waiting not less than 90 days for ACS to respond whether it is interested in leasing such space.
5. Retail/Artisanal/Employment
    a. Two Trees to set aside a portion of the Kent Avenue store front retail space and retail frontage of the upland parcel for Brooklyn's artisan production and sales – such as jewelry and/art metal craft manufacturing; custom clothing/accessories manufacturing; ceramic/glass products, art needlework, hand weaving or tapestries, studios for art – including gallery/framing, music, dancing or theatrical space;
    b. Two Trees to set aside a portion of the offices to be sized and priced for startup firms, including those linked to creative tech pursuit:
    c. Two Trees to establish a lease protection mechanism that provides for the continued use of such retail for artisans and start-up office space, in order to provide protection from future market based rents, which may include the achievement of stabilized rents by providing leases through a designated not-for-profit or some equivalent entity: and,
    d. Two Trees to submit its framework for its commitment, in writing prior to the City Council hearing, to clarify its intent to maximize hiring opportunities for the local community, including providing outreach to area businesses which could serve as material suppliers and subcontractors.
6. Parking: Two Trees to incorporate car sharing services as part of the accessory parking facilities.

7. Vehicular Traffic
    a. Two Trees to obtain commitment from the Department of Transportation, as part of the Restrictive Declaration, to confirm how CB1 would be engaged prior to implementing both traffic monitoring programs and engaged in terms of weighing in on possible mitigation measures (including standard traffic engineering measures, such as signal timing adjustments, lane restriping and parking prohibition), disclosed in the Final EIS (FEIS) as modified by the Technical Memorandum and subsequent traffic monitoring program.
8. Mass Transit (Two Trees)
    a. In regards to the shuttle service, Two Trees to provide in writing its commitment to clarify what triggers the initiation of such service and its intent on when it would be initiating full service, though full service should be implemented not later than when 50 percent occupancy is achieved in the Refinery building and certainly before a TCO or C of O would be issued for Building C.
    b. In regards to ferry service, Two Trees to provide in writing its commitment to apply for and install a ferry dock with a shelter structure consistent with the proposed East River Ferry Zoning Text Amendment and that such application for Chair Certification be submitted no later than Two Trees receipt of a TCO or C of O for its first waterfront building phase and as a condition of obtaining a TCO or C of O for its second waterfront lot building, that such docking facility shall be in place.
    c. In regards to a possible MTA operated Q59 shuttle service (or its equivalent), Two Trees to commit to provide initial subsidies to sustain operation of such route, if necessary, to demonstrate to MTA the need for such service to compliment shuttle service routes on behalf of Two Trees.

The Borough President also recommended disapproval of the proposed zoning text amendment (N 140131 ZRK) to modify the floor area exclusion for the Inclusionary Housing Program.

City Planning Commission Public Hearing

On January 8, 2014 (Calendar No. 6), the City Planning Commission scheduled January 22, 2014, for a public hearing on this application (C 140132 ZSK). The hearing was duly held on January 22, 2014 (Calendar No. 14) in conjunction with the public hearing on the applications for related actions. There were 22 speakers in favor of the application and 10 speakers opposed.

Speakers in favor included seven representatives of the applicant. They summarized the proposed project, describing the architecture, design, open space, and programming, including the proposed commercial, community facility space and affordable housing program. They stated that while they could build the 2010 approvals as-of-right, their proposed project provides more open space and a greater mix of uses than the previous 2010 plan. They explained their belief that the 2010 site plan would create a more privatized waterfront open space with cul-de-sacs and grade changes between the upland neighborhood and the waterfront. The speakers also referred to the current applicant's success in DUMBO in developing a mixed-use, live-work urban neighborhood and the applicant stated its intention to create a community that would include new office space, including the potential for tech office space, housing, community space and open space. The representatives also noted that the new plan extends River Street through the site to better delineate the public waterfront and street network, and that the new design provides for a new public space, Domino Square.

The applicant's representatives responded to several issues raised during the public review process. They characterized their outreach efforts in the community prior to certification as extensive, cited that they solicited community feedback on the uses and the programming and design of the open space, and stated that the design for the site and the buildings were well-received. The applicant's architect noted Community Board 1's recommendation to lock in the shape and size of the buildings as a part of the approvals. Regarding the overall height of the project, the applicant argued that the proposed height serves to create a new skyline on the Brooklyn waterfront and provides for a greater amount of public open space on the site, including the new Domino Square, which is closer to the upland community.

Regarding affordable housing, the applicant indicated that the 2010 proposal required 20% affordable housing, but that the commitment to provide a portion of the 660 units was embodied in a non-binding MOU with HPD, about anticipated public subsidy for the affordable units developed beyond 440 units. The applicant explained that its willingness to bind itself to provide 660 units of affordable housing in 500,000 square feet of affordable floor area with an average of 70% of AMI across those units was contingent on the future availability of 421a tax incentives and the provision of "off-the-shelf" public subsidies to the project. The applicant claimed that the reduction of the Inclusionary Housing requirement that would result from their proposed text amendment was necessary to ensure that the project's proposed mix of uses, including the commercial office space, be economically viable in the event that 421a tax incentives are discontinued or modified in the future. The applicant stated that the affordable units would be integrated into all buildings and therefore, that financing and providing for senior housing would not be possible, since this could only accomplished in a separate building. With respect to the specific affordable housing unit distribution requested in the Community Board 1 and Borough President's recommendations, the applicant stated that their plan was not to include more two and three bedroom units, on the basis that doing so was not economically viable.

Other speakers in favor of the application included representatives of the New York State Assembly Member from the 50th District, Service Employees International Union 32 BJ Chapter, Brooklyn Chamber of Commerce, Regional Plan Association, Metropolitan Waterfront Alliance, New Yorkers For Parks, Greenpoint Chamber of Commerce, Downtown Brooklyn Partnership, New York University Rudin Center, the Metropolitan Waterfront Alliance, the Partnership for New York City, Service Employees International Union Local 32BJ, as well as a number of Williamsburg residents and businesses. These speakers expressed support for the project's overall plan, including the proposed mix of uses, open space and building design, and the applicant's established record in DUMBO for creating a vibrant urban community. Several local residents testified that the applicant's recent work in Williamsburg included community input on the design of the open spaces, and noted that the applicant had programmed the long-vacant site a variety of community-oriented interim uses. Other speakers in support also cited the applicant's commitment to 660 units of affordable housing in the proposed project.

Speakers in opposition included representatives of the Councilmembers for the 33rd and 34th Districts, representatives of El Puente, Construction Union Local 46, Southside United Housing, Association for Neighborhood Housing Development, Churches United and private individuals.

A representative of the Councilmember for the 33rd District stated that there was an increasing need for affordable housing in Williamsburg and throughout Community Board 1. He also stated that because the 2010 proposal gained support based on the guarantee of increased affordable housing, the Councilmember strongly urged the Commission to not approve the proposed text amendments that would decrease the amount of affordable floor area requirements or adjust the AMI level options permitted under the Inclusionary Housing Program.

A representative of the Councilmember for the 34th District stated that while the Councilmember was pleased with the mixed-use nature of the development, he did not support the proposed Inclusionary Housing text amendments that would result in a decrease in the amount of affordable housing accessible to lower-income households required at this site. It was also stated that the proposed commercial space that was proposed to be exempted from the Inclusionary Housing requirements would have limited public benefit, and that its inclusion in the project was a choice made by applicant based on a market decision. As such, the Councilmember stated that he did not think that this project should be held to a lower standard of affordable housing requirements.

Other speakers in opposition to the project, including a coalition of Southside Williamsburg community and affordable housing groups, echoed many of the points raised by the Council Members. Several speakers stated that the proposed text amendments that would modify the affordable housing requirements on the site should not be approved. It was stated that the applicant's stated commitment to 660 units of affordable housing be codified as a condition of the approvals, and that those 660 units be provided within an increased amount of floor area requirement and with a greater mix of two and three bedroom units. Speakers also stated that the project should provide a minimum of 30% of the units as affordable, and that the income levels be affordable to households at 40% to 80% of AMI. A representative of the Association for

Neighborhood Housing and Development stated that the commercial program reflected a market-based decision and that the applicant's request for additional public subsidies could potentially take away funding that would otherwise go to other affordable housing projects in the city.

Representatives of El Puente expressed concern regarding the environmental sustainability of the project and that the development should incorporate measures for renewable energy, on-site recycling and sorting, water for waste transfer, and the remediation of the nearby Radiac site. They also stated their strong objection to the applicant's proposal for Asphalt Green to be the operator of the proposed community facility space due to their labor practices, and that there should be community involvement and oversight over the community facility and open spaces on the project. It was also stated that there was a preference for the transfer of ownership of the opens spaces to the Department of Parks and Recreation but a strong maintenance and operation agreement with community involvement would be acceptable, and that because of the approximately 17% increase in residential population that the project would create, the applicant should contribute into a fund for local parks.

One speaker asked the Commission not approve the proposal and that an alternative plan for the site, including cultural and mixed uses in the historic buildings, be considered instead.

There were no other speakers and the hearing was closed.

WATERFRONT REVITALIZATION PROGRAM CONSISTENCY

This application (C 140132 ZSK) was reviewed by the City Coastal Commission for consistency with the policies of the New York City Waterfront Revitalization Program (WRP), as amended, approved by the New York City Council on October 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.) The designated WRP number is 13-004.

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

CONSIDERATION

The Commission believes that this application for a special permit (140132 ZSK), in conjunction with the related applications (N 140131 ZRK (as modified), C 140133 ZSK, C 140134 ZSK, C 140135 ZSK, N 140136 ZAK, N 140137 ZAK, N 140138 ZAK) is appropriate.

The development of this site would provide significant improvements to the area. It would revitalize a large vacant and inaccessible waterfront site with new housing, including affordable housing, nearly five acres of high quality public open space, new community facility space including a public school, and office and retail uses to serve and employ the local community and beyond. It would also adaptively reuse a New York City Landmark building that would serve as a backdrop for new public open spaces. While the proposed site plan is unique and contains numerous beneficial attributes, the Commission notes that the applicant is requesting significant increases in building heights and density, without an increase – in fact, with a proposed decrease – in the amount of affordable housing required under the proposed actions. However, the Commission believes that the requested approvals, as modified herein, will lead to redevelopment of the former Domino Sugar site with a mix of uses and an amount and arrangement of bulk that is appropriate and beneficial to this unique site and its surroundings.

The current proposal is based on the zoning map changes approved in 2010, but proposes a larger development with approximately 200,000 square feet of additional floor area. This proposal's overall development program has the potential to create a more mixed-use neighborhood that provides housing, including affordable housing, employment, shopping, and recreational opportunities to serve the needs of future residents, workers and visitors in the area. The proposed mixed-use development with a new site plan proposes slightly less residential floor area, a greater mix of commercial and community facility uses and more open space. The Commission believes that the proposed development, as modified herein, represents an

improvement from the 2010 proposal with its additional public open space and greater commercial office component.

The Commission notes that a set of land use actions were previously approved for the 11-acre site in 2010, that would facilitate a large scale development with 2,200 units of housing, including an expected 660 units of affordable housing, and a mix of commercial and community facility uses, including a public school. That project also provided for the preservation of the landmarked Refinery Building and created new public open space on the waterfront.

The current Domino project extends the street network, including River Street, through the site, which the Commission believes would better connect the open spaces to the surrounding neighborhood. The Commission also believes that Domino Square, a new public space between South 3rd and South 4th streets, would help to create a unique urban waterfront neighborhood context that incorporates the historic context of the Domino site with a dynamic mix of new uses and development while providing for an enhanced public realm. Domino Square would function as a publicly accessible open space that could host special events and programming as well as more passive uses. The project's office component, including within the landmarked Refinery Building at the center of the site, has the potential to support the growing technology, media, creative and other related industries in Brooklyn and New York City. The applicant has stated that the approximately half million square feet of new office space and other commercial uses would provide space for approximately 2,700 jobs on the site.

The Commission recognizes that the heights of the proposed project's buildings would exceed those permitted elsewhere along the Greenpoint-Williamsburg waterfront, where zoning establishes height limits of 300 and 400 feet. The Commission also recognizes the unique relationship of this site to the East River waterfront and the surrounding community, as well as the character and scale of the Refinery Building and the Williamsburg Bridge as key points of reference within the immediate built context. The Commission understands that the proposed vertical shift of building density permits the introduction of a larger amount of open space and improvements to the site plan, which better integrates the neighborhood's street-grid and allows

for a greater mix of uses. Overall, the Commission believes that the project's proposed size and scale relate well to each other as a composition, and that the significant heights proposed would be warranted to accommodate within this site plan the proposed program of uses and the creation of a significant amount of affordable housing.

The Commission appreciates the proposed relocation and consolidation of parking which improves the overall site plan by reducing the number of curb cuts and blank walls. Moving such spaces to the upland site also raises them out of the flood plain and would only be a short walk from all buildings in the development.

In addition, the project site, which spans five blocks or a quarter-mile of the East River waterfront, would be accessed by the public through six upland streets and the newly-created River Street to reconnect the Southside neighborhood to its waterfront. The Commission believes that the waterfront would be enlivened by the creation of approximately 3.9 acres of well-designed public open space featuring various amenities such as open play equipment, active recreation programming, social seating areas, passive lawn areas, plaza areas, water features, and the incorporation of artifacts from the site's industrial past as design features to contribute to the unique character of the public spaces.

The requested applications would modify bulk, use, loading and waterfront public access regulations to facilitate the proposed development. They would also modify the zoning text to allow for a reduced loading requirement for certain commercial uses by special permit.

The Commission also believes the bulk, use and loading waivers that are part of the proposed special permits would produce a site plan that is superior to that which would be permitted as-of-right, or under the 2010 special permit, producing a more dynamic overall development and improved public open spaces. The Commission further believes the proposed approvals would facilitate a development that would reuse a vacant site in a manner consistent with the mixed-use context of the area, that has a superior site plan and preserves a landmark building, and that will contribute to the revitalization of the area.

As discussed in greater detail below, however, the Commission believes that the modifications to the zoning text amendment related to the inclusionary housing program applied to the site are essential to its consideration, and its determination that the proposed development would be appropriate.

Zoning Text Amendments – N 140131 ZRK

The Commission believes that the proposed zoning text amendment, as modified, is appropriate. The text amendment would modify the Inclusionary Housing Program requirements. It would also permit the waiver of loading requirements for certain retail uses on the site by special permit.

Inclusionary Housing Program

The Commission believes that the applicant's proposed text amendment to reduce the affordable housing for the project under the Inclusionary Housing bonus by defining the affordable requirement as a percentage of residential floor area only, rather than total floor area minus ground floor non-residential floor area, is not appropriate. It is also inconsistent with the approvals granted for the 2010 project. The effect of the proposed text amendment is further compounded by the reconfiguration of the development such that the Refinery building stands alone on a zoning lot without residences, which excludes it from the Inclusionary Housing calculations for the site. Under the text amendment as proposed by the applicant, combined with the reprogramming of the Refinery building, the affordable floor area required for the project would be 427,000 square feet, compared to the 502,000 square feet under the 2010 project. This result would run counter to the applicant's stated goal of providing 660 units of affordable housing and the commitments made by the applicant to Brooklyn Community Board 1 and the Brooklyn Borough President. The Commission is therefore modifying the application to eliminate this aspect of the text amendment and address the Refinery building as an integral component of the project.

The project proposed is conceived of as a unified, large-scale development that is predominantly residential, with commercial and community facility components that serve an integral function within the development. The Commission believes that floor area above the ground floor in the development, inclusive of the commercial floor area on both the northernmost building and the Refinery building, should be treated similarly for the purpose of calculating Inclusionary Housing requirements. Accordingly, the Commission is modifying the text amendment herein to include all floor area developed above the ground floor, with the exception of the proposed school, in the calculation of affordable floor area required.

The proposed modifications would result in an increase in the total affordable floor area required under the Inclusionary Housing program for exercise of the bonus, from the applicant's proposed 427,000 square feet, to approximately 537,000 square feet. The Commission notes that this amount of floor area would be sufficient for the applicant to fulfill its commitment to provide 660 units with a mix of unit sizes that would accommodate families as well as singles. The Commission also observes that these modifications would bring the total amount of affordable housing required within the development closer to the amount requested by the Community Board and Borough President in their recommendations, which cited a goal of 500,000 net square feet of affordable housing (a figure which, when allowing for hallways, stairs, and other common spaces results in significantly higher zoning square feet).

The Commission believes the proposed modification to the Inclusionary Housing provisions to allow greater flexibility in the mix of low-income floor area and moderate-income floor area allowed, while remaining within the limits established by the Inclusionary Housing Program, is appropriate, given the multiple phases anticipated for this large scale project. The proposed change would replace the two discrete options (20% low-income, or 10% low-income plus 15% moderate income), with a formula allowing a mix of low and moderate incomes in between these options, on a proportional basis. The Commission notes that in no event could less than 10% of floor area be provided as low-income housing and that this provision would add flexibility for the use of a variety of funding programs in a multi-phase project.

Recognizing the significant affordable housing requirement embodied in these land use actions, and the difficulty in New York City of providing housing through conventional subsidies for households at moderate incomes, the Commission also believes that additional flexibility may be warranted in the provisions of the Inclusionary Housing program as modified herein. The Commission is therefore modifying the proposed text amendment to allow up to 50,000 square feet of affordable floor area to be available either to low-income (up to 80% of Area Median Income) or moderate-income households (up to 125% of AMI), without change to the amount of affordable housing required.

The zoning text amendment as proposed by the applicant is based on the original Inclusionary Housing text applied to the waterfront in the 2005 Greenpoint-Williamsburg rezoning, which allows a zoning lot to increase from the base FAR to the maximum FAR once 20 percent affordable housing has been provided. The Commission notes that subsequent applications of the Inclusionary Housing program have used a different mechanism for floor area increase that allows an incremental increase in floor area for each square foot of affordable housing provided. The Commission believes that this latter mechanism is appropriate to apply to a large, multi-phase development such as this one, and is therefore incorporating modifications to the Inclusionary Housing text that incorporate a bonus ratio mechanism without changing the amount of affordable housing required to receive the maximum bonus floor area.

Loading Requirements

The Commission believes that the Text Amendment creating a new special permit to allow the waiver of loading requirements for certain retail and service uses is appropriate, and that the scale of the proposed ground floor uses in the project would allow for loading to be accommodated with curb-side deliveries without adverse effect on the surrounding area.

Special Permit for Bulk Modifications as part of a General Large Scale Development (74-743) – C 140132 ZSK

The Commission believes the special permit that is the subject of this report (C 140133 ZSK) is appropriate. The applicant proposes to designate the entirety of the project site, comprising the

9.8-acre waterfront parcel and the 1.3-acre upland parcel, as a General Large Scale Development (GLSD) as defined in the Zoning Resolution. As part of this special permit, the applicant requests the distribution of floor area without regard for zoning lot lines or district boundaries, the distribution of lot coverage, required rear yard equivalent, rooftop permitted obstructions, the level of the waterfront yard, tower floorplates, and height and setback regulations.

The Commission believes these actions create a superior site plan that relates well to its surroundings and, that does not overburden any portion of the development, or surrounding streets.

Transfer of Floor Area and Floor Area Ratio Limitation

The applicant has requested the transfer of 242,847 square feet of floor area from the waterfront parcel to the upland parcel. This transfer, in conjunction with FAR limits placed on both parcels as part of this special permit, would produce an FAR of 5.94 on the waterfront parcel, and 7.0 on the upland parcel. The Commission believes that the proposed transfer of floor area from the waterfront parcel to the upland parcel would not overly burden the upland parcel in terms of bulk, or availability of light and air due to the significant open space at Domino Square. The Commission further believes that the proposed envelope accommodates this bulk consistent overall with other buildings in the project, including the Refinery building across Domino Square, as described in the following section on Height and Setback Waivers.

The Commission believes that the tight building envelope and urban design controls that are a part of this special permit (C 140132 ZSK), and that are described below, successfully accommodate the project's bulk. The Commission further believes that the building envelope leaves ample room for public and private open space on the site, and arranges the bulk so as to relate well to structures and open space both on and around the site.

As a condition of this transfer, the Restrictive Declaration would require the R6 zoned floor area on this parcel to generate Inclusionary Housing floor area at the same rate (20%) as the floor area transferred from the waterfront parcel, which is zoned R8. This result is consistent with the

provisions of the Greenpoint-Williamsburg zoning governing zoning lots which include both R6 and R8 portions that any zoning lot using floor area generated in an R8 as well as an R6 zoning lot must meet the full R8 requirement of 20%.

Height and Setback Waivers

The Commission believes that the proposed design provides for varied building forms and heights that create a coherent design across the development with a strong relationship to the new street grid and open spaces, and notes that the building envelopes specified in the special permit would ensure these building forms are produced.

Waterfront Parcel

The Commission believes that the basic massing scheme proposed by the applicant is appropriate for the subject site. As proposed, the buildings generally provide building or initial setbacks from the street and rise to heights ranging from 435 to 535 feet, while the buildings' base heights range between 45 and 110 feet, consistent with the existing Refinery. The Commission recognizes that this design scheme requires modifications to the height and setback regulations of the proposed zoning districts, including the maximum building and base height, the maximum floor plate and length of walls facing the shoreline above the base height, and deems these modifications appropriate to facilitate a superior site plan.

The Commission is pleased that the site plan dedicates so much of the site area to public space that improves the waterfront and connects it to the neighboring communities. The plan includes 4.8 acres of open space while zoning requires only approximately 2.4 acres. Each street that meets the site at Kent Avenue is continued through the site, extending the street grid to the water. River Street is also extended through the site, creating a clear demarcation between the development and the public waterfront open space. Given the length of the site, the minimum required 40-foot wide shore public walkway that covers the entire shoreline of the site covers a significant portion of the site's area. The Commission notes that the proposal exceeds that requirement by providing additional connections to the upland area, and additional spaces including Domino Square and a widened shore public walkway to accommodate various

amenities that enliven the space. The significant increase in additional public space is made possible by the height of the proposed buildings, which allows for smaller building footprints.

Upland Parcel

The Commission believes the proposed building on the upland parcel has been designed to successfully accommodate the 7 FAR density proposed for that parcel. The building sets back from a 50-foot base height Kent Avenue and rises to 170 feet. This height relates to the large open space at Domino Square and the scale and volume of the Refinery across Kent Avenue. The building steps down in height to 50 feet at the eastern end of the block to create a transition to the adjacent existing lower-scale neighborhood context. The Commission notes that the proposed building form relates to both the scale of the urban space defined by Domino Square and the Refinery while providing for a transition in scale to better relate to the surrounding neighborhood. Therefore, the Commission finds the requested modifications of maximum base and building height and maximum floor plate above the base height for the upland parcel to be appropriate.

Design Controls

The Commission believes that the detailed and comprehensive urban design controls which form part of this special permit, will help ensure that the project, as constructed, will include the key elements of the proposed design. The Commission notes that the proposed envelope very closely tracks the proposed articulation and massing of the buildings, including the large voids in several of the buildings, while still allowing flexibility to accommodate changes that may be necessary during construction. The Commission believes that the tower top mechanical screening requirements, in conjunction with the required envelopes and floorplate controls, allow the design to successfully accommodate the proposed density while maintaining the coherent building forms perceived from within the development and from afar. Furthermore, the Commission believes that the requirements for the presence of retail uses, the transparency of retail frontages, and screening requirements for any parking facilities will ensure that the pedestrian spaces on the site are lively.

The Commission also notes that the maximum heights allowed under the special permit could only be achieved when a building participates in the Inclusionary Housing Program, and that if built without the bonus floor area, building heights would be reduced proportionately pursuant to terms set forth in the restrictive declaration.

The Commission believes that this requested special permit is appropriate as it will create a superior site plan, in which buildings relate well to each other, and to other buildings and open areas on and around the site, and will not unduly burden any portion of the site or the nearby street network.

Special Permit to Modify Use Regulations as part of a General Large Scale Development – (74-744) C 140133 ZSK

The Commission believes this special permit is appropriate. The special permit requests modification of regulations prohibiting the location of commercial uses on the same level as residential uses in adjacent building segments within the northernmost and southernmost buildings.

The Commission notes that all access, egress and circulation for the residential and non-residential uses on the upper floors of the buildings will be separate, that commercial uses are not proposed to be located directly above residential uses, and that there are no openings proposed to allow access between these two sets of uses. Given the scale of the buildings, the Commission believes that the arrangement of residential and non-residential uses is not dissimilar from the arrangement of uses found in abutting residential and non-residential buildings located on adjacent lots. Such a condition is found in many places throughout the city and will not create any adverse effects on the uses within the proposed buildings.

Special Permit to Modify Parking Requirement Location Regulations as part of a General Large Scale Development – (74-745) C 140134 ZSK

The Commission believes this special permit is appropriate. The special permit requests modification of the location requirements for required accessory parking. This special permit

allows for parking spaces to be located anywhere within a large-scale general development, regardless of zoning lot lines.

The Commission notes that the spaces will be a short walk from all buildings in the development and that the consolidation of garages will improve the site plan by reducing curb cuts and blank walls and that moving such spaces to the upland site also raises them out of the flood plain.

Special Permit to Modify Loading Regulations as part of a General Large Scale Development – (74-745) C 140135 ZSK

The Commission believes this special permit is appropriate. The special permit requests modification of regulations for required loading for certain commercial uses.

The Commission notes that zoning requires one loading dock for 8,000 square feet of retail within R6/C2-4 districts. The requested special permit would waive this requirement for developments that contain commercial uses that exceed 8,500 square feet. The commission notes that the applicant proposes to build 20,000 square feet of ground-floor commercial uses on the upland parcel but that these would consist of small-scale local retail spaces, the largest of which would be 8,410 square feet. The Commission believes that with this configuration, the proposed retail space can be served by curb-side deliveries without adverse effect on the surrounding area.

Waterfront Authorizations (62-822) – N 140136 ZAK, N 140137 ZAK, N 140138 ZAK

The Commission believes the requested authorizations are appropriate. As part of these authorizations, the applicant requests modification of waterfront public access requirements pertaining to dimensions, configuration, planting and other design requirements of the required waterfront public access areas, and approval of the phased implementation of these public access improvements.

The Commission believes that the modifications to the dimensional requirements of ZR Section 62-50 are appropriate. Due to the shallowness of the site at the southern end near South 5th Street, the proposed shore public walkway is reduced to approximately 11 feet at this location.

However, the walkway is adjacent to the prolonged River Street, which would be clear of structures and would be open public space. Regarding the modifications to the supplemental public access areas' width to depth ratio, the Commission notes that the requested changes are in response to the significant overall length of the site and its' relatively shallow depth. The Commission believes that the overall dimensions of the waterfront public access areas are generous and considers the reductions to the dimensional requirements to be the minimum necessary to accommodate a viable building program and open space design at locations where site conditions are unique.

The Commission believes that the proposed waterfront design is of high quality and provides users with an exciting and varied experience on the waterfront. The requested modifications to the design requirements of 62-60 create a waterfront public access area that is equivalent or superior to one that could be designed through strict adherence to zoning.

With respect to modifications to the requirements for permitted obstructions within visual corridors and waterfront public access areas, the Commission believes that the requested waivers are appropriate within the context of the design. The Commission notes that the proposed skybridge at Building D provides visual interest at a height significantly above the pedestrian level, and that the proposed awnings to shelter building entrances would be at least 50 percent translucent and help to protect pedestrians from high winds. The Commission believes that these obstructions do not diminish the quality of the public areas of the site. The Commission also believes that the requested increase in the fence height at the dog run and play areas to 48 inches high would provide better separation between the uses in these areas and the adjacent public spaces.

Regarding the requested reductions in required planting, the Commission notes that the Councilmember from the 33rd District submitted a letter that requested that the waivers for the planting requirement not be granted, and that the project should provide for more passive green space and lawn areas. However, the Commission believes that, taken as a whole, the planting provided within the waterfront public access areas is ample, and well distributed so as not to

produce a shortage of greenery and a variety of spaces for passive use. The Commission also notes that proposed large paved area at the center of the waterfront open space would serve to provide for a range of programming and the space would include a water feature, and that the paving areas provided within the required upland connection transition zones serve as a sidewalk for the western side of River Street. With respect to the requirement for distinct paving when an upland connection crosses a street, the Commission notes that the applicant has proposed to build out all the streets within the site. The Commission believes that a consistent treatment of the streets and sidewalks in these areas, including the required upland connections, is appropriate, and that it will emphasize the public nature of these spaces.

The Commission notes the applicant is proposing grades that range from 1 to 4 percent due to the significant grade change between Kent Avenue and the waterfront platform and other aspects of the existing grades on the site. The Commission believes that the increase to a maximum 4 percent slope for some of the public circulation paths is necessary to address the existing grades on the site. With respect to the waiver for ADA compliance for the seating steps in front of the Refinery, the Commission notes that a ramp could not be provided in the space available, and believes that the requested waiver is appropriate because these steps are a limited element, and notes that all other spaces in the waterfront public access areas would be fully compliant with these guidelines.

The Commission also notes that the authorization and restrictive declaration call for a phasing plan that requires the waterfront buildings to be built sequentially from north to south. These plans provide an amount of open space in each phase that is proportional to or greater than the amount of development proposed for that phase. The Commission also believes that the proposed phasing plan provides for functional and accessible open space at each interim phase.

The Commission understands that the applicant wishes to program both Domino Square and the waterfront spaces with a mix of arts and culture, entertainment, and other uses, including features such as a local farmer’s market on Domino Square. The Commission believes that such uses can enliven the spaces and provide a valuable community amenity, but shares the concerns expressed

by some at the public hearing that they be inviting to the general public and not overwhelm the use of the spaces for active and passive recreation. The Commission is therefore pleased that the project's Restrictive Declaration includes a mechanism for community involvement and input into program planning for the spaces. Under this mechanism, the applicant would provide a 'Review Board' with members appointed from among nominations made by the local community board, Council Members and the Open Space Alliance with a program plan setting forth a description of the programs it proposes for the open spaces during the upcoming year. The Review Board would have the opportunity to review the program plan and to approve, disapprove or approve the plan with modifications and conditions. The role of the Review Board would be to consider categories of programs, and the applicant would remain responsible for implementation, such as the selection of individual program sponsors. The Commission believes that this approach strikes an appropriate balance that will allow for creative programming of the spaces while ensuring that this is done in a way which meets community concerns. The Commission is also pleased that the applicant has indicated a willingness to program the area to be occupied by Domino Square with interim uses, prior to its construction.

Overall, the Commission believes that all the requested approvals, as modified, are appropriate. The Commission believes, however, that the modifications to inclusionary housing as applied to the site, described herein, are essential to its consideration, and that without them, the project would not meet the City's goals for socio-economic integration expressed though the Inclusionary Housing program. As proposed by the applicant, the project would not meet these objectives. With the modifications adopted herein, the Commission believes that the project reflects a well-considered approach towards a large scale, mixed use, mixed-income development that would effectively establish a new neighborhood on the Brooklyn waterfront.

FINDINGS

The Commission hereby makes the following findings pursuant to Section 74-743:

(1) the distribution of floor area, open space, dwelling units, rooming units and the

location of buildings, primary business entrances and show windows will result in a better site plan and a better relationship among buildings and open areas to adjacent streets, surrounding development, adjacent open areas and shorelines than would be possible without such distribution and will thus benefit both the occupants of the general large-scale development, the neighborhood, and the City as a whole;

(2) the distribution of floor area and location of buildings will not unduly increase the bulk of buildings in any one block or unduly obstruct access of light and air to the detriment of the occupants or users of buildings in the block or nearby blocks or of people using the public streets;

(3) Not applicable;

(4) considering the size of the proposed general large-scale development, the streets providing access to such general large-scale development will be adequate to handle traffic resulting therefrom;

(5) when the Commission has determined that the general large-scale development requires significant addition to existing public facilities serving the area, the applicant has submitted to the Commission a plan and timetable to provide such required additional facilities. Proposed facilities that are incorporated into the City's capital budget may be included as part of such plan and timetable;

(6) Not applicable;

(7) Not applicable;

(8) a declaration with regard to ownership requirements in paragraph (b) of the general large-scale development definition in Section 12-10 (DEFINITIONS) has been filed with the Commission.

RESOLUTION

RESOLVED, that based on the environmental determinations set forth in TM 003 and TM 004, the action would not have the potential to result in new or different significant adverse impacts from those identified in the 2010 FEIS and subsequent Technical Memoranda (TM 001, TM 002); and

RESOLVED, the City Coastal Commission, having reviewed the waterfront aspects of this action finds that the action will not substantially hinder the achievement of any WRP policy and hereby determines that this action is consistent with WRP policies; and be it further

RESOLVED, by the City Planning Commission, pursuant to Sections 197-c and 200 of the New York City Charter that based on the environmental determination, and the consideration and findings described in this report, the application submitted by Two Trees Management, LLC, pursuant to Sections 197-c and 201 of the New York City Charter and, for the grant of a special permit pursuant to the following sections of the Zoning Resolution:

1. Section 74-743(a)(1) – to allow the distribution of total allowable floor area and lot coverage under the applicable district regulations without regard for zoning lot lines; and

2. Section 74-743(a)(2) – to modify the yard requirements of Sections 62-332 (Rear yards and waterfront yards) and 33-23 (Permitted Obstructions in Required Yards or Rear Yard Equivalents), and to modify the height and setback requirements of 62-341 (Developments on land and platforms);

in connection with a proposed mixed use development on property generally bounded by Grand Street and its northwesterly prolongation, Kent Avenue, South 3rd Street, a line 100 feet northwesterly of Wythe Avenue, South 4th Street, Kent Avenue, South 5th Street and its northwesterly prolongation, and the U.S. Pierhead line (Block 2414, Lot 1; and Block 2428, Lot 1), in R6/C2-4, R8/C2-4 and C6-2 Districts, within a large-scale general development, Borough of Brooklyn, Community District 1, is approved, subject to the following terms and conditions:

1. The property that is the subject of this application (C 140132 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 SHoP Architects P.C., and James Corner Field Operations filed with this application and incorporated in this Resolution:

Dwg. No.	**Title**	**Last Date Revised**
Z00-0	Title Sheet	10.31.2013
Z00-2A	Zoning Lot Calculations	10.31.2013
Z00-2B	Zoning Waivers	10.31.2013
Z00-2C	Zoning Actions and Design Guidelines	03.05.2014
Z00-3	Upland/Seaward Lot Calculations	10.31.2013
Z01-1	Site Plan	10.31.2013
Z03-1	Adjusted Base Plane Calculations	10.31.2013
Z03-2	Shoreline Facing Walls	10.31.2013
Z05-B	Zoning Lot 1 Building A – Site Plan	10.31.2013
Z05-C1	Zoning Lot 1 Building A – Height and Setback Diagrams	10.31.2013
Z05-C2	Zoning Lot 1 Building A – Height and Setback Diagrams	10.31.2013
Z05-C3	Zoning Lot 1 Building A – Height and Setback Diagrams	10.31.2013
Z06-B	Zoning Lot 1 Building B – Site Plan	03.05.2014
Z06-C1	Zoning Lot 1 Building B – Height and Setback Diagrams	03.05.2014
Z06-C2	Zoning Lot 1 Building B – Height and Setback Diagrams	03.05.2014
Z06-C3	Zoning Lot 1 Building B – Height and Setback Diagrams	03.05.2014
Z06-C4	Zoning Lot 1 Building B – Height and Setback Diagrams	03.05.2014
Z06-C5	Zoning Lot 1 Building B – Height and Setback Diagrams	03.05.2014
Z06-C6	Zoning Lot 1 Building B – Height and Setback Diagrams	03.05.2014
Z07-B	Zoning Lot 2 Refinery Building – Site Plan	10.31.2013
Z07-C1	Zoning Lot 2 Refinery Building – Height and Setback Diagrams	10.31.2013
Z07-C2	Zoning Lot 2 Refinery Building - Height and Setback Diagrams	10.31.2013

Z09-B	Zoning Lot 1 Building D – Site Plan	10.31.2013
Z09-C1	Zoning Lot 1 Building D – Height and Setback Diagrams	10.31.2013
Z09-C2	Zoning Lot 1 Building D – Height and Setback Diagrams	10.31.2013
Z09-C3	Zoning Lot 1 Building D – Height and Setback Diagrams	10.31.2013
Z10-B	Zoning Lot 3 Building E – Site Plan	03.05.2014
Z10-C1	Zoning Lot 3 Building E – Height and Setback Diagrams	03.05.2014
Z10-C2	Zoning Lot 3 Building E – Height and Setback Diagrams	03.05.2014
Z11-1	Location of Uses	10.31.2013
G-001.00	Title Sheet	10.29.13
G-100.00	Survey	09.14.13
G-110.00	Zoning Lots	10.29.13
L-001.00	WPAA Zoning Calculations	10.29.13
L-002.00	WPAA Zoning Calculations	10.29.13
L-003.00	WPAA Zoning Calculations	10.29.13
L-100.00	Waterfront Public Area Access Diagram	10.29.13
L-121.00-A	Layout Plan – Area 1	10.29.13
L-122.00-A	Layout Plan – Area 2	10.29.13
L-131.00-A	Materials Plan – Area1	10.29.13
L-132.00-A	Materials Plan – Area 2	10.29.13
L-141.00-A	Grading Plan – Area 1	10.29.13
L-142.00-A	Grading Plan – Area 2	10.29.13
L-151.00-A	Planting Plan – Area 1	10.29.13
L-152.00-A	Planting Plan – Area 2	10.29.13
L-161.00-A	Furnishing Plan – Area 1	10.29.13
L-162.00-A	Furnishing Plan – Area 2	10.29.13
L-171.00-A	Lighting Plan – Area 1	10.29.13
L-172.00-A	Lighting Plan – Area 2	10.29.13
L-181.00-A	Lighting Foot Candle Diagram – Area 1	10.29.13
L-182.00-A	Lighting Foot Candle Diagram – Area 2	10.19.13
L-121.00-B	Layout Plan	10.19.13
L-131.00-B	Materials Plan	10.29.13
L-141.00-B	Grading Plan	10.29.13

L-151.00-B	Planting Plan	10.29.13
L-161.00-B	Furnishing Plan	10.29.13
L-171.00-B	Lighting Plan	10.29.13
L-181.00-B	Lighting Foot Candle Diagram	10.29.13
L-210.00	Typical Details 1	10.15.13
L-211.00	Typical Details 2	10.15.13
L-220.00	Typical Details 3	10.15.13
L-230.00	Typical Details 4	10.15.13
L-231.00	Typical Details 5	10.15.13
L-232.00	Typical Details 6	10.15.13
L-233.00	Typical Details 7	10.15.13
L-234.00	Typical Details 8	10.15.13
L-235.00	Typical Details 9	10.15.13
L-300.00	Site Sections 1	10.15.13
L-301.00	Site Sections 2	10.29.13
L-302.00	Site Sections 3	10.29.13
L-303.00	Site Sections 4	10.29.13

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. All zoning computations are subject to verification and approval by the New York City Department of Buildings.

3. Such development shall conform to all applicable laws and regulations relating to its construction, operation and maintenance

4. Development pursuant to this resolution shall be allowed only after (a) the restrictive declaration attached hereto as Exhibit A, with such administrative changes as are acceptable to Counsel to the City Planning Commission, has been executed and recorded in the Office of the Register, Kings County; and (b) the Maintenance and Operations Agreement associated with such declaration and attached as Exhibit G thereto shall have

been executed. Such restrictive declaration shall be deemed incorporated herein as a condition of this resolution.

5. The development shall include those project components related to the environment and mitigation measures identified in the Final Environmental Impact Statement (CEQR No. 07DCP094K) issued on May 28, 2010, as adjusted by the subsequent Technical Memoranda, dated June 4, 2010, July 10, 2010, October 31, 2013, and March 5, 2014, and in accordance with the restrictive declaration attached hereto as Exhibit A.

6. In the event the property that is the subject of the application is developed as, sold as, or converted to condominium units, a homeowners' association, or cooperative ownership, a copy of this report and resolution and any subsequent modifications shall be provided to the Attorney General of the State of New York at the time of application for any such condominium, homeowners' or cooperative offering plan and, if the Attorney General so directs, shall be incorporated in full in any offering documents relating to the property.

7. 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.

8. 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 covenants, restrictions, agreements, terms or conditions of this resolution and the restrictive declaration whose provisions shall constitute conditions of the special permit hereby granted, the City Planning Commission may, without the consent of any other party, revoke any portion of or all of said special permit. Such power of revocation shall be in addition to and not limited to any other powers of the City Planning Commission, or of any other 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 or the City Council, as applicable, to disapprove any application for modification, cancellation or amendment of the special permit hereby granted or of the restrictive declaration.

9. Neither the City of New York nor its employees or agents shall have any liability for money damages by reason of the city or such employees or agents failure to act in accordance with the provisions of this special permit.

The above resolution (C 140132 ZSK), duly adopted by the City Planning Commission on March 5, 2014 (Calendar No. 9), is filed with the Office of the Speaker, City Council, and the Borough President together with a copy of the plans of the development, in accordance with the requirements of Section 197-d of the New York City Charter.

CARL WEISBROD, *Chairman*
KENNETH J. KNUCKLES, *Esq., Vice Chairman*
ANGELA M. BATTAGLIA, RAYANN BESSER, IRWIN G. CANTOR, *P.E.*,
ALFRED C. CERULLO, III, BETTY Y. CHEN, MICHELLE DE LA UZ,
MARIA M. DEL TORO, JOSEPH I. DOUEK, RICHARD W. EADDY,
ANNA HAYES LEVIN, ORLANDO MARIN, *Commissioners*

EXHIBIT A
Domino Sugar

Restrictive Declaration for Domino Sugar

EXHIBIT A

RESTRICTIVE DECLARATION

THIS DECLARATION (this "**Declaration**"), made as of the ___ day of March, 2014, by Domino A LLC and Domino B LLC, New York limited liability companies having an address 45 Main Street, Suite 602, Brooklyn, New York 11201 (the "**Declarant**").

WITNESSETH:

WHEREAS, Declarant is the fee owner of certain real property located in the Borough of Brooklyn, County of Kings, City of New York and State of New York, designated for real property tax purposes as Lot 1 of Block 2414 (the "**Waterfront Parcel**") and Lot 1 of Block 2428 (the "**Upland Parcel**"; and together with the Waterfront Parcel, collectively, the "**Subject Property**") on the Tax Map of the City of New York, which real property is more particularly described on **Exhibit A** annexed hereto;

WHEREAS, the Subject Property is comprised of three (3) Zoning Lots (hereinafter defined): (a) Zoning Lot 1, which comprises the entire Waterfront Parcel, excluding the portion of the Waterfront Parcel upon which the Refinery Complex (hereinafter defined) is located ("**Zoning Lot 1**"), (b) Zoning Lot 2, which comprises the remainder of the Waterfront Parcel upon which the Refinery Complex is located ("**Zoning Lot 2**") and (c) Zoning Lot 3, which comprises the entire Upland Parcel ("**Zoning Lot 3**"), each as more particularly described on the Development Plans (hereinafter defined);

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

WHEREAS, Declarant intends to develop the Large-Scale General Development on the Subject Property by (a) constructing three (3) new mixed-use buildings on Zoning Lot 1 on the Waterfront Parcel, (b) redeveloping the Refinery by converting it to commercial and community facility use on Zoning Lot 2 on the Waterfront Parcel and (c) constructing one (1) new predominantly residential building on the Upland Parcel (collectively, the "**Proposed Development**");

WHEREAS, Declarant also intends to develop the Subject Property by constructing the (a) waterfront public access area with the following elements: (i) the Shore Public Walkway (hereinafter defined), (ii) the Supplemental Public Access Areas (hereinafter defined), and (iii) the Upland Connections (hereinafter defined) (the Shore Public Walkway, Supplemental Public Access Areas, and Upland Connections shall be collectively referred to herein as the "**Waterfront Public Access Area**" or "**WPAA**"), (b) by constructing the following public access areas: (i) Domino Square (hereinafter defined), and (ii) Refinery Public Access Area

(hereinafter defined), (the Domino Square and Refinery Public Access Area shall be collectively referred to herein as the "**Public Access Area**" or "**PAA**"), and (iii) the Private Drives and Sidewalks (hereinafter defined), the WPAA, PAA and Private Drives and Sidewalks collectively shown on the Waterfront Public Access Area Plans;

WHEREAS, the conditions of this Declaration include, inter alia, (a) a requirement that Declarant shall be responsible for the maintenance and capital repair of the Private Drives and Sidewalks, WPAA and PAA and (b) provisions that guarantee public access to the Private Drives and Sidewalks, WPAA and PAA;

WHEREAS, from and after execution and recordation of this Declaration, Declarant may convey portions of the Subject Property to one or more Persons;

WHEREAS, the Waterfront Parcel is located within a waterfront block, as such term is defined in Section 62-11 of the Zoning Resolution (hereinafter defined), and is subject to the regulations of Article VI, Chapter 2 of the Zoning Resolution;

WHEREAS, the Upland Parcel is to be redeveloped as part of the Large Scale General Development which includes the Waterfront Parcel, and is subject to certain regulations of Article VI, Chapter 2 of the Zoning Resolution;

WHEREAS, pursuant to Section 62-811 of the Zoning Resolution, no excavation or building permit may be issued for development of the Waterfront Parcel until the Chair (hereinafter defined) has certified to DOB (hereinafter defined) that a site plan has been submitted showing compliance with the requirements of Article VI, Chapter 2 of the Zoning Resolution and that an acceptable restrictive declaration has been executed and filed pursuant to Section 62-74;

WHEREAS, in connection with the Proposed Development and construction of the Waterfront Public Access Areas, Public Access Areas and Private Drives and Sidewalks, Declarant has filed applications with the Department of City Planning ("**DCP**") for approval by the Commission (hereinafter defined) and the Chair of the City Planning Commission, as applicable, for: (a) special permits pursuant to Sections 74-743(a) (C 140132 ZSK), 74-744(b) (C 140133 ZSK), 74-745(a) (C 140134 ZSK) and 74-745(b) (C 140135 ZSK) of the Zoning Resolution (the aforesaid special permits, collectively, the "**Large-Scale Special Permits**"), (b) certifications of the Chair pursuant to Sections 62-811 (N 140140 ZCK and N 140141 ZCK) and 62-812 (N 140139 ZCK) of the Zoning Resolution (the aforesaid certifications, collectively, the "**Certifications**"), (c) authorizations of the Commission pursuant to Sections 62-822(a) (N 140136 ZAK), 62-822(b) (N 140137 ZAK) and 62-822(c) (N 140138 ZAK) of the Zoning Resolution to modify requirements of the waterfront public access areas and visual corridors and for phased development of the waterfront public access area (the aforesaid authorizations, collectively, the "**Authorizations**"), and (d) certain amendments to the text of Sections 62-352 and 74-745(b) of the Zoning Resolution (N 140131 ZRK) (the aforesaid amendments, the "**Zoning Text Amendments**") (all of the foregoing, as the same may be amended, supplemented or otherwise modified, collectively, the "**Applications**");

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

WHEREAS, to ensure that the development of the Subject Property is consistent with the analysis in the FEIS (hereinafter defined) issued pursuant to Executive Order No. 91 of 1977, as amended, and the regulations promulgated thereunder at 62 RCNY § 5-01 et seq. ("**CEQR**") and the State Environmental Quality Review Act, New York State Environmental Conservation Law § 8-0101 et seq. and the regulations promulgated thereunder at 6 NYCRR Part 617 ("**SEQRA**") and incorporates certain (i) requirements for mitigation of significant adverse environmental impacts ("**Mitigation Measures**") and (ii) certain project components related to the environment which were material to the analysis of environmental impacts in the FEIS ("**PCREs**"), Declarant has committed to restrict the development, operation, use and maintenance of the Subject Property in certain respects, which restrictions are set forth in this Declaration;

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

WHEREAS, pursuant to the certificates annexed hereto as **Exhibit D**; Royal Abstract of New York LLC has certified that, as of _____ __, 2014, Declarant, Manufacturers and Traders Trust Company, as Administrative and Collateral Agent are the sole Parties-in-Interest (hereinafter defined) in the Subject Property;

WHEREAS, 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 E**, which instruments are intended to be recorded in the Office of the City Register, Kings County, New York, simultaneously with the recordation of this Declaration; and

WHEREAS, 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 respective rights to object hereto, no (i) restrictions of record on the development or use of the Subject Property, (ii) presently existing estate or interest in the Subject Property or (iii) Title Exceptions (hereinafter defined) of any kind, preclude, 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 with this Declaration; and

NOW, THEREFORE, Declarant hereby declares that the Subject Property shall be held, sold, conveyed, developed, used, occupied, operated and maintained subject to the following restrictions, covenants, obligations and agreements, which shall run with the Subject Property and bind Declarant and its heirs, successors and assigns.

ARTICLE I

CERTAIN DEFINITIONS

For purposes of this Declaration, the following terms shall have the following meanings.

"**2010 Declaration**" shall mean that certain declaration, dated July 27, 2010 and recorded in the Office of the New York City Register, Kings County on November 22, 1010, CRFN: 2010000396103 against the subject Property in connection with Land Use Numbers. C 100185 ZMK, N 100186 ZRK, C 100187 ZSK, C 100188 ZSK, C 100189 ZSK, N 100190 ZAK, N 100191 ZCK, and N 100192 ZCK (the "**2010 Declaration**"); and

"**Accredited MGS Professional**" shall have the meaning set forth in Section 3.03(b)(iii)(B) of this Declaration.

"**ACS**" shall have the meaning set forth in Section 3.04(b)(i) of this Declaration.

"Additional Base Floor Area" shall for the purposes of this Declaration be a quantity of floor area that equals 75.08 percent of the difference between 242,857 square feet and the amount of Floor Area transferred from Zoning Lot 1 to Zoning Lot 3 pursuant to Section 2.01(f)(i)(B) of this Declaration.

"**Adjusted Child Care Slots**" shall have the meaning set forth in Section 3.04(b)(i) of this Declaration.

"**Affordable Housing**" shall have the meaning set forth in Section 23-911 of the Zoning Resolution.

"**Affordable Floor Area**" shall have the meaning set forth in Section 23-911 of the Zoning Resolution.

"**Affordable Housing Documentation**" shall for purposes of this Declaration mean a letter from HPD addressed to the Department of Buildings indicating an amount of Affordable Floor Area provided in connection with a Development Phase.

"**Affordable Housing Threshold**" shall mean (i) for any New Building on Zoning Lot 3, an amount equal to (a) 7.5% of the Floor Area generated from such Zoning Lot exclusive of ground floor non-residential Floor Area; and (b) 20% of any Floor Area generated from Zoning Lot 1 that is transferred to Zoning Lot 3; and (ii) for any New Building on Zoning Lot 1, an amount equal to 20% of the Floor Area of such New Building, exclusive of ground floor non-residential Floor Area and, where applicable, the Floor Area of the Public School Facility, as defined in this Declaration.

"**Affordable Housing Unit**" shall have the meaning set forth in Section 23-911 of the Zoning Resolution.

"**Alternative FEIS Obligation**" shall have the meaning set forth in Section 3.07(a) of this Declaration.

"**Alternative Noise Reduction Plan**" shall have the meaning set forth in Section 3.01(c)(ii) of this Declaration.

"**Applications**" shall have the meaning set forth in the Recitals to this Declaration.

"**Approvals**" shall mean approvals of the Applications by the Commission and City Council with respect to the Proposed Development of the Subject Property.

"**As-of-Right Development**" shall have the meaning set forth in Section II of this Declaration.

"**Assessment Property**" shall have the meaning set forth in Section 15.07 of this Declaration.

"**Association**" shall have the meaning set forth in Section 13.09 of this Declaration.

"**Association Members**" shall have the meaning set forth on Section 15.04 of this Declaration.

"**Association Obligation Date**" shall mean the date on which Declarant establishes an Association in accordance with the terms of this Declaration.

"**Attorney General**" shall mean the Attorney General of the State of New York.

"**Authorizations**" shall have the meaning set forth in the Recitals to this Declaration.

"**Brooklyn Datum**" means the datum level used by the Topographical Bureau, Borough of Brooklyn, which is 2.56 feet above the United States Coast and Geodetic Survey Datum, mean sea level, Sandy Hook, New Jersey.

"**Building A**" shall mean that New Building to be constructed on Zoning Lot 1 on the Waterfront Parcel in the area delineated as "Building A" on the Development Plans.

"**Building B**" shall mean that New Building to be constructed on Zoning Lot 1 on the Waterfront Parcel in the area delineated as "Building B" on the Development Plans.

"**Building D**" shall mean that New Building to be constructed on Zoning Lot 1 on the Waterfront Parcel in the area delineated as "Building D" on the Development Plans.

"**Building E**" shall mean that New Building to be constructed on Zoning Lot 3 on the Upland Parcel in the area delineated as "Building E" on the Development Plans.

"**Building Permit**" shall mean the issuance of a permit by DOB whether in the form of (i) an excavation permit, authorizing excavations, including those made for the purposes of removing earth, sand, gravel, or other material from the Subject Property; (ii) a foundation permit, authorizing foundation work at the Subject Property; (iii) a demolition permit, authorizing the dismantling, razing or removal of a building or structure, including the removal of structural members, floors, interior bearing walls and/or exterior walls or portions thereof; (iv) a New Building Permit (as herein defined) or (v) any other permit normally associated with the development of a building.

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

"**Certifications**" shall have the meaning set forth in the Recitals to this Declaration.

"**CEQR**" shall have the meaning set forth in the Recitals to this Declaration.

"**Chair**" shall mean the Chair of the Commission from time to time or any successor to the jurisdiction thereof.

"City" shall have the meaning set forth in the Recitals to this Declaration.

"**City Council**" shall mean the City Council of the City of New York or any successor to the jurisdiction thereof.

"**City Noise Control Code**" shall have the meaning set forth in Section 3.01(c)(i)(A) of this Declaration.

"**Claim**" or "**Claims**" shall have the meaning given in Section 3.04(c) of this Declaration.

"**CMM Default Notice**" shall have the meaning set forth in Section 3.08(f) of this Declaration.

"**Commission**" shall mean the City Planning Commission of the City of New York or any successor to its jurisdiction.

"**Completion Letter of Credit**" shall have the meaning set forth in Section 6.03of this Declaration.

"**Construction Commencement or Commencement of Construction**" shall mean the issuance of the first Building Permit by DOB for the commencement of work on a Development Phase, except with respect to the demolition activities not subject to the provisions of Section 3.09 hereof. Construction Commencement shall occur at the issuance of the first Building Permit issued by DOB to Declarant for each of: Development Phase 1, Development Phase 2, Development Phase 3, Development Phase 4, and Development Phase 5.

"**Construction Drawings**" shall mean construction drawings prepared in accordance with the standards of the American Institute of Architects, or such equivalent professional membership association for architects.

"**Construction Monitoring Measures**" or "**CMMs**" shall have the meaning set forth in Section 3.08(a) of this Declaration.

"**Construction Pest Management Plan**" shall have the meaning set forth in Section 3.01(f)(i) of this Declaration.

"**Construction Protection Plan**" shall have the meaning set forth in Section 3.01(h)(i) of this Declaration.

"**CPP**" shall mean Construction Protection Plan.

"**DCP**" shall mean the New York City Department of City Planning or any successor to the jurisdiction thereof.

"**Declarant**" shall have the meaning given in the Preamble to this Declaration, and shall include heirs, successors and assigns of the named Declarant.

"**Declaration**" shall have the meaning given in the Preamble to this Declaration.

"**Delay Notice**" shall have the meaning set forth in Section 9.01 of this Declaration.

"**Denial Determination**" shall have the meaning set forth in Section 3.03(b)(v)(C)(1) of this Declaration.

"**DEP**" shall mean the New York City Department of Environmental Protection, or any successor to its jurisdiction.

"**Development**" shall mean the construction or redevelopment, as applicable, of the Proposed Development pursuant to the Development Plans.

"**Development Plans**" shall mean the following plans and drawings, prepared by SHoP Architects, P.C., each of which is annexed hereto as **Exhibit B**:

Number	Title	Date
Z00-0	Title Sheet	10.31.2013
Z00-2A	Zoning Lot Calculations	10.31.2013
Z00-2B	Zoning Waivers	10.31.2013
Z00-2C	Zoning Actions and Design Guidelines	03.05.2014
Z00-3	Upland/Seaward Lot Calculations	10.31.2013
Z01-1	Site Plan	10.31.2013
Z03-1	Adjusted Base Plane Calculations	10.31.2013
Z03-2	Shoreline Facing Walls	10.31.2013
Z05-B	Zoning Lot 1 Building A – Site Plan	10.31.2013
Z05-C1	Zoning Lot 1 Building A – Height and Setback Diagrams	10.31.2013
Z05-C2	Zoning Lot 1 Building A – Height and Setback Diagrams	10.31.2013
Z05-C3	Zoning Lot 1 Building A – Height and Setback Diagrams	10.31.2013
Z06-B	Zoning Lot 1 Building B – Site Plan	03.05.2014
Z06-C1	Zoning Lot 1 Building B – Height and Setback Diagrams	03.05.2014
Z06-C2	Zoning Lot 1 Building B – Height and Setback Diagrams	03.05.2014
Z06-C3	Zoning Lot 1 Building B – Height and Setback Diagrams	03.05.2014

Number	Title	Date
Z06-C4	Zoning Lot 1 Building B – Height and Setback Diagrams	03.05.2014
Z06-C5	Zoning Lot 1 Building B – Height and Setback Diagrams	03.05.2014
Z06-C6	Zoning Lot 1 Building B – Height and Setback Diagrams	03.05.2014
Z07-B	Zoning Lot 2 Refinery Building – Site Plan	10.31.2013
Z07-C1	Zoning Lot 2 Refinery Building – Height and Setback Diagrams	10.31.2013
Z07-C2	Zoning Lot 2 Refinery Building – Height and Setback Diagrams	10.31.2013
Z09-B	Zoning Lot 1 Building D – Site Plan	10.31.2013
Z09-C1	Zoning Lot 1 Building D – Height and Setback Diagrams	10.31.2013
Z09-C2	Zoning Lot 1 Building D – Height and Setback Diagrams	10.31.2013
Z09-C3	Zoning Lot 1 Building D – Height and Setback Diagrams	10.31.2013
Z10-B	Zoning Lot 3 Building E – Site Plan	03.05.2014
Z10-C1	Zoning Lot 3 Building E – Height and Setback Diagrams	03.05.2014
Z10-C2	Zoning Lot 3 Building E – Height and Setback Diagrams	03.05.2014
Z11-1	Location of Uses	10.31.2013

Number	Title	Date

"**Development Phases**" shall mean Development Phase 1, Development Phase 2, Development Phase 3, Development Phase 4, and Development Phase 5.

"**Development Phase 1**" shall mean the development of Building E on Zoning Lot 3 in accordance with the Development Plans.

"**Development Phase 2**" shall mean the development of Building A on Zoning Lot 1 and the Waterfront Zoning Lot Phasing: Phase 1 in accordance with the Development Plans, Waterfront Public Access Area Plans and Waterfront Zoning Lot Phasing Plans.

"**Development Phase 3**" shall mean the development of Building B on Zoning Lot 1 and the Waterfront Zoning Lot Phasing: Phase 2 in accordance with the Development Plans, Waterfront Public Access Area Plans and Waterfront Zoning Lot Phasing Plans.

"**Development Phase 4**" shall mean the development of the Refinery Building on Zoning Lot 2 and the Waterfront Zoning Lot Phasing: Phase 3 in accordance with the Development Plans, Waterfront Public Access Area Plans and Waterfront Zoning Lot Phasing Plans.

"**Development Phase 5**" shall mean the development of Building D on Zoning Lot 1 and the Waterfront Zoning Lot Phasing: Phase 4 in accordance with the Development Plans, Waterfront Public Access Area Plans and Waterfront Zoning Lot Phasing Plans.

"**Development Sequence**" shall mean the sequenced development of Development Phase 1, Development Phase 2, Development Phase 3, Development Phase 4, and Development Phase 5 in accordance with the Development Plans, Waterfront Public Access Area Plans and Waterfront Zoning Lot Phasing Plans, as applicable.

"**Dewatering Plan**" shall have the meaning set forth in Section 3.01(e)(i) of this Declaration.

"**DOB**" shall mean the Department of Buildings of the City of New York, or any successor to its jurisdiction.

"**Domino Square**" shall mean that approximately 29,800 square foot portion of the Public Access Area located on Zoning Lot 1, described as "Domino Square" and delineated as "PAA1" on the Waterfront Public Access Area Plans, required in connection with Development Phase 5 and Waterfront Zoning Lot Phasing: Phase 4.

"**DOT**" shall mean the New York City Department of Transportation, or any successor to its jurisdiction.

"**DPR**" shall mean the New York City Department of Parks and Recreation or any successor to its jurisdiction.

"**EEMs**" shall have the meaning set forth in Section 3.03(a)(i) of this Declaration.

"**Effective Date**" shall mean the date on which Declarant receives Final Approval of the Applications.

"**Elimination of FEIS Obligation**" shall have the meaning set forth in Section 3.07(b) of this Declaration.

"**Entity**" means any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative, or association.

"**EPA**" shall have the meaning set forth in Section 3.01(a)(i)(A) of this Declaration.

"**Federal/State Public Access Area Approvals**" shall have the meaning set forth in Section 5.07 of this Declaration.

"**FEIS**" shall mean the Final Environmental Impact Statement issued pursuant to CEQR Number 07DCP094K on May 28, 2010, together with the Technical Memoranda.

"**FEIS Obligation**" shall mean any Obligation that is set forth as a Mitigation Measure or Project Component Related to the Environment set forth in Article III of this Declaration.

"**Final Approval**" shall mean approval of the Applications by the Commission pursuant to New York City Charter Section 197-c, which shall be effective on the date that the City Council's period of review has expired, unless (a) pursuant to New York City Charter Section 197-d(b), the City Council reviews the decision of the Commission approving the Applications and takes final action pursuant to New York City Charter Section 197-d approving the Applications, in which event "Final Approval" shall mean such approval of the Applications by the City Council or (b) the City Council disapproves the decision of the Commission and the Office of the Mayor files a written disapproval of the City Council's action pursuant to New York City Charter Section 197-d(e), and the City Council does not override the Office of the Mayor's disapproval, in which event "Final Approval" shall mean the Office of the Mayor's written disapproval pursuant to such New York City Charter Section 197-d(e). Notwithstanding anything to the contrary contained in this Declaration, "Final Approval" shall not be deemed to have occurred for any purpose of this Declaration if the final action taken pursuant to New York City Charter Section 197-d is disapproval of the Applications.

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

"**Floor Area**" shall have the meaning given in the Zoning Resolution.

"**Floor Area Ratio**" or "**FAR**" shall have the meaning given in the Zoning Resolution.

"**Force Majeure**" shall mean that a Force Majeure Event has occurred and Declarant has provided the Delay Notice.

"**Force Majeure Event**" shall mean an occurrence, or occurrences, beyond the reasonable control of Declarant which causes delay in the performance of Declarant's obligations hereunder, provided that Declarant has taken all reasonable steps reasonably necessary to control or to minimize such delay, and which occurrences shall include, but not be limited to: (i) a strike, lockout or labor dispute; (ii) the inability to obtain labor or materials or reasonable substitutes therefor; (iii) acts of God; (iv) restrictions, regulations, orders, controls or judgments of any Governmental Authority; (v) undue material delay in the issuance of approvals by any Governmental Authority, provided that such delay is not caused by any act or omission of Declarant; (vi) enemy or hostile government action, civil commotion, insurrection, terrorism, revolution or sabotage; (vii) fire or other casualty; (viii) a taking of the whole or any portion of the Subject Property by condemnation or eminent domain; (ix) unusual or reasonably unforeseeable inclement weather substantially delaying construction of any relevant portion of the Subject Property; (x) unforeseen underground or soil conditions, provided that Declarant did not and could not reasonably have anticipated the existence thereof as of the date hereof; (xi) the denial of access to adjoining real property, notwithstanding the existence of a right of access to such real property in favor of Declarant arising by contract, this Declaration; or Legal Requirements, (xii) failure or inability of a public utility to provide adequate power, heat or light or any other utility service; or (xiii) orders of any court of competent jurisdiction, including, without limitation, any litigation which results in an injunction or restraining order prohibiting or otherwise delaying the construction of any portion of the Subject Property. No event shall constitute a Force Majeure Event unless Declarant, the Association, or the holder of a Mortgage on the Subject Property in control of the Subject Property, as applicable, complies with the procedures set forth in Article 9.

Force Majeure Event Completion Letter of Credit" shall have the meaning set forth in Section 9.01(a) of this Declaration.

"**Fugitive Dust Control Plan**" shall have the meaning set forth in Section 3.01(b)(i) of this Declaration.

"**Funding Obligation**" shall mean Declarant's obligation to furnish the funds sufficient to implement its Maintenance Obligation as set forth in the M&O Agreement between the Declarant and DPR.

"**GHG Water Credit Requirements**" shall have the meaning set forth in Section 3.03(b)(iii)(A) of this Declaration.

"**Governmental Authority**" shall mean any governmental authority (including any Federal, State, City or County governmental authority or quasi-governmental authority, or any political subdivision of any thereof, or any agency, department, commission, board or instrumentality of any thereof) having jurisdiction over the matter in question.

"**Historic Resources**" shall have the meaning set forth in Section 3.01(h)(i) of this Declaration.

"**HVAC**" shall have the meaning set forth in Section 3.02(a)(i) of this Declaration.

"**Indemnified Party**" shall mean (i) Declarant; (ii) the shareholders, members, partners, affiliates and/or subsidiaries of Declarant; (iii) the respective principals, directors, officers & employees of the foregoing Persons identified in the foregoing clauses (i) and (ii); (iv) the respective successors and assigns of the Persons identified in the foregoing clauses (i), (ii) and (iii) (each such person, an "Indemnified Party").

"**Individual Assessment Interest**" shall have the meaning set forth in Section 13.03(a) of this Declaration.

"**Large-Scale General Development**" shall have the meaning set forth in the Recitals to this Declaration.

"**LEED Certification**" shall mean 'Certified' or a higher level of certification (if chosen by Declarant) under the USGBC LEED rating system, and (i) for a building developed primarily for residential use, shall refer to the LEED rating system for 'New Construction'; and (ii) for a commercial building developed primarily for office use, shall refer to the LEED rating system for 'Core and Shell'.

"**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.

"**LPC**" shall mean the Landmarks Preservation Commission of the City of New York or any successor to its jurisdiction.

"**M&O Agreement**" shall mean the Maintenance and Operation Agreement, required by the provisions of Section 62-74 of the Zoning Resolution as a condition of development of a waterfront public access area, entered into by the Declarant with The City of New York acting through DPR dated even date with this Declaration and included in **Exhibit G**

"**Maintenance and Protection of Traffic Plan**" shall have the meaning set forth in Section 3.01(j)(i) of this Declaration.

"**Maintenance Obligation**" shall have the meaning set forth in Section 11.02 of this Declaration.

"**MGS Certification**" shall mean Minimum Green Standard Certification.

"**MGS Checklist**" shall have the meaning set forth in Section 3.03(b)(iii)(A) of this Declaration.

"**MGS Construction Review**" shall have the meaning set forth in Section 3.03(b)(iii)(A) of this Declaration.

"**MGS Design Review**" shall have the meaning set forth in Section 3.03(b)(iv)(A) of this Declaration.

"**MGS Governing Body**" shall have the meaning set forth in Section 3.03(b)(ii) of this Declaration.

"**MGS Points**" shall have the meaning set forth in Section 3.03(b)(iii)(A) of this Declaration.

"**Minimum Green Standard Certification**" shall have the meaning set forth in Section 3.03(b)(i) of this Declaration.

"**Minimum Energy Savings**" shall have the meaning set forth in Section 3.03(a)(i) of this Declaration.

"**Mitigation Measures**" shall have the meaning set forth in Section 3.04 of this Declaration.

"**Modified Development**" shall have the meaning set forth in Section 14.03 of this Declaration.

"**Modified Waterfront Public Access Area Plans**" shall have the meaning set forth in Section 5.01 of this Declaration.

"**Modified Stack Plan**" shall have the meaning set forth in Section 2.01(d)(iii) of this Declaration.

"**Mortgage**" shall mean a mortgage given as security for a loan in respect of all or any portion of the Subject Property, other than a mortgage secured by any individual residential dwelling unit located within the Subject Property.

"**Mortgagee**" shall mean the holder of a Mortgage.

"**MPT**" shall mean Maintenance and Protection of Traffic Plan.

"**MTA**" shall mean the Metropolitan Transit Authority, New York City Transit, or any successor to its jurisdiction.

"**New Building**" shall mean any building constructed or redeveloped on the Subject Property pursuant to the Proposed Development.

"**New Building Permit**" shall mean, with respect to any New Building, a work permit issued by DOB under a new building application authorizing construction of any New Building.

"**New Cure Period**" shall have the meaning set forth in Section 3.08(f) of this Declaration.

"**New York City Charter**" shall mean the Charter of the City of New York, effective as of January 1, 1990, as the same may be amended from time to time.

"**Noise Reduction Plan**" shall have the meaning set forth in Section 3.01(c)(i)(B) of this Declaration.

"**Notice of Final Completion**" shall have the meaning set forth in Section 8.03 of this Declaration.

"**Notice of Substantial Completion**" shall have the meaning set forth in Section 7.02 of this Declaration.

"**NYPA Facility**" shall mean the New York Power Authority North 1st Street gas turbine power generating facility.

"**OER**" shall mean the New York City Office of Environmental Remediation, or any successor to its jurisdiction.

"**OPRHP**" shall have the meaning set forth in Section 3.01(h)(i) of this Declaration.

"**PAA Obligation**" shall mean the obligation of Declarant to construct the Public Access Area, or portions thereof, set forth in each Waterfront Zoning Lot Phase required in connection with a Development Phase, in accordance with this Declaration.

"**Parcels**" shall mean each of the development parcels within the Subject Property, as further described in the Recitals.

"**Party-in-Interest**" shall have the meaning set forth in subdivision (d) of the definition of the term "zoning lot" in Section 12-10 of the Zoning Resolution.

"**Prior Approvals**" shall have the meaning set forth in Section 14.06 of this Declaration.

"**PCO**" shall mean a Permanent Certificate of Occupancy issued by DOB.

"**PCRE**" shall have the meaning given in the Recitals of this Declaration.

"**Permitted Encumbrances**" shall mean those certain matters set forth on **Exhibit F** annexed hereto, and such other encumbrances as the City shall approve.

"**Person**" shall mean any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person as the context may require.

"**Possessory Interest**" shall have the meaning set forth in Section 15.07(d) of this Declaration.

"**Private Drives and Sidewalks**" shall mean, individually or collectively, the areas described as "Private Drives and Sidewalks" delineated as "PAA3" on the Waterfront Public Access Area Plans, portions of which are required in connection with Development Phases 2 through 5, pursuant to the Waterfront Zoning Lot Phasing: Phase 1 through 4.

"**Private Drives and Sidewalks Work**" shall mean the work necessary to construct the Private Drives and Sidewalks in accordance with this Declaration.

"Private Drives and Sidewalks Obligation" shall mean the obligation of Declarant to construct the Private Drives and Sidewalks, or portions thereof, set forth in each Waterfront Zoning Lot Phase required in connection with a Development Phase, in accordance with the terms of this Declaration.

"**Proposed Cure Period**" shall have the meaning set forth in Section 3.08(f) of this Declaration.

"**Proposed Development**" shall have the meaning set forth in the Recitals to this Declaration.

"**Public Access Area or PAA**" shall have the meaning set forth in the Recitals to this Declaration and shall mean, individually and collectively, the areas labeled "Public Access Area", "PAA", "PAA1", "PAA2", on the Waterfront Public Access Area Plans, not including the areas labeled "PAA 3", i.e., the "Private Drives and Sidewalks."

"**Public Access Area Work**" shall mean the work necessary to construct the Public Access Area or PAA in accordance with this Declaration.

"**Public Access Easement**" shall have the meaning set forth in Section 10.01(a) of this Declaration.

"**Public School Facility**" shall mean a public school facility to be operated by the New York City Department of Education that can accommodate a minimum capacity of 375 seats, serving a grade configuration to be determined solely by the New York City Department of Education, consisting of approximately 70,000 gross square feet, which public school facility may be increased to accommodate up to 580 seats, consisting of approximately 90,000 gross square feet, where at the time of the Design Notice Declarant submits an updated CEQR analysis, accepted by DCP as lead agency, of the potential school seat impacts created by the Proposed Development, utilizing a methodology consistent with that set forth in the FEIS, and such updated CEQR analysis demonstrates the need for more than 375 seats.

"**Public School Site**" shall mean the location approved by SCA proposed to be developed with the Public School Facility as set forth in Section 3.04(a)(i).

"**Public School Obligations**" shall have the meaning set forth in Section 3.04(a)(i) of this Declaration.

"**Punch List**" shall have the meaning set forth in Section 7.02 of this Declaration.

"**Refinery Interim Report**" shall mean a report (i) describing the conditions of the Refinery Building, (ii) describing any necessary Refinery Interim Work and (iii) certifying that the condition of the Refinery Building currently complies, or that it will comply upon completion of the Refinery Interim Work, with all Legal Requirements applicable to landmarked buildings.

"**Refinery Interim Work**" shall mean any work identified in a Refinery Interim Report that is necessary to bring the Refinery Building into compliance with all Legal Requirements applicable to landmarked buildings, including Local Law 11, façade maintenance and structural stability work.

"**Register's Office**" shall mean the Register's Office of the City of New York, King's County.

"**Refinery Building**" shall mean those certain buildings shown on the Development Plans as the "Refinery Building" on Zoning Lot 2.

"**Refinery Public Access Area**" shall mean that portion of the Public Access Area located on Zoning Lot 2, delineated as "PAA2" on the Waterfront Public Access Area Plans, required in connection with Development Phase 4 and Waterfront Zoning Lot Phasing: Phase 3.

"**Refinery Site**" shall mean the area delineated as Zoning Lot 2 on the Development Plans.

"**Reporter**" shall have the meaning set forth in Section 3.08(a) of this Declaration.

"**Reporter Agreement**" shall have the meaning set forth in Section 3.08(b) of this Declaration.

"**Restrooms**" shall mean that certain "Publically Accessible Restrooms" to be constructed in the Refinery Building, as described in the Development Plans on drawing Z02-1.

"**Rules and Regulations**" shall have the meaning set forth in Section 11.05 of this Declaration

"**SCA**" shall have the meaning set forth in Section 3.04(a)(i) of this Declaration.

"**SCA Agreement**" shall have the meaning set forth in Section 3.04(a)(i) of this Declaration.

"**SCA Letter of Intent**" shall have the meaning set forth in Section 3.04(a)(i) of this Declaration.

"**Shore Public Walkway**" shall mean the areas labeled "Shore Public Walkway" or "SPW" on the Waterfront Public Access Area Plans.

"**Shuttle Service**" shall have the meaning set forth in Section 3.02(c) of this Declaration.

"**Soil Erosion and Sediment Control Plan**" shall have the meaning set forth in Section 3.01(d)(i) of this Declaration.

"**Special Permits**" shall have the meaning set forth in the Recitals to this Declaration.

"**State**" shall mean the State of New York, its agencies and instrumentalities.

"**Stormwater Pollution Prevention Plan**" or "**SWPPP**" shall have the meaning set forth in Section 3.03(c)(i) of this Declaration.

"**Subject Property**" shall have the meaning set forth in the Recitals to this Declaration.

"**Substantial Completion**" or "**Substantially Complete**," with respect to the PAA and/or Private Drives and Sidewalks included in any Waterfront Zoning Lot Phase shall mean such PAA and/or Private Drives and Sidewalks have been constructed substantially in accordance with the Waterfront Public Access Area Plans and has been completed to such an extent that all portions of the improvement may be operated and made available for public use. An improvement may be deemed Substantially Complete notwithstanding that (a) minor or insubstantial items of construction, decoration or mechanical adjustment remain to be performed or (b) Declarant has not completed any relevant planting or vegetation or tasks that must occur seasonally.

"**Superintendent Unit**" means a residential unit which is reserved for the use of a building superintendent.

"**Supplemental Public Access Areas**" shall mean the areas labeled "Supplemental Public Access Area" or "SPAA" in the Waterfront Public Access Area Plans.

"**SWPPP**" shall mean Stormwater Pollution Prevention Plan.

"**TCO**" shall mean a Temporary Certificate of Occupancy issued by DOB.

"**Technical Memoranda**" shall mean Technical Memoranda TM 001 dated June 4, 2010; TM 002 dated July 10, 2010 and TM 003 dated October 13, 2013 and any Technical Memorandum related to the FEIS that may subsequently be accepted in accordance with the provisions of this Declaration in connection with the Final Environmental Impact Statement for the Domino Sugar Rezoning, dated May 28, 2010, issued for City Environmental Quality Review Application No. 07DCP094K.

"**Title Exception**" shall mean any lien, declaration, easement, restrictive covenant or other instrument, charge, encumbrance or agreement affecting title to the Subject Property or any portion thereof.

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

"**Unit Owner(s)**" shall have the meaning set forth in Section 15.07(a) of this Declaration.

"**Upland Connection(s)**" shall mean, individually and collectively, the areas labeled "Upland Connection" or "UC" on the Waterfront Public Access Area Plans.

"**USGBC**" shall have the meaning set forth in Section 3.03(b)(ii) of this Declaration.

"**Waterfront Public Access Area** or **WPAA**" shall have the meaning set forth in the Recitals to this Declaration.

"**Waterfront Public Access Area Design Schedule**" shall have the meaning given in Section 5.08(e) hereof.

"**Waterfront Public Access Area Design Submission(s)**" shall have the meaning set forth in Section 5.01 of this Declaration.

"**Waterfront Public Access Area Plans**" shall mean, individually or collectively, the drawings approved by the Commission and Chair pursuant to the Approvals, which set forth the design and Phasing Sequence of the Waterfront Public Access Area and Public Access Area, prepared by James Corner Field Operations, reduced-size copies of which are attached as **Exhibit C**, and made a part hereof, as more particularly set forth in Section 4.01(b).

"**Waterfront Public Access Area Work**" shall mean the work necessary to construct the Waterfront Public Access Areas or WPAA in accordance with this Declaration.

"**Waterfront Zoning Lot Phases**" shall mean, individually or collectively, Waterfront Zoning Lot Phasing: Phase 1, Waterfront Zoning Lot Phasing: Phase 2, Waterfront Zoning Lot Phasing: Phase 3, and Waterfront Zoning Lot Phasing: Phase 4, as delineated on the "**Waterfront Public Access Area Plans**", as set forth in Section 4.01(b) of this Declaration.

"**Waterfront Zoning Lot Phasing: Phase 1**" shall mean the Waterfront Public Access Area, Public Access Area and Private Drives and Sidewalks delineated on the Waterfront Zoning Lot Phasing: Phase 1 Plan.

"**Waterfront Zoning Lot Phasing: Phase 1 Plan**" shall mean drawing L-601.00 of the Waterfront Public Access Area Plans.

"**Waterfront Zoning Lot Phasing: Phase 2**" shall mean the Waterfront Public Access Area, Public Access Area and Private Drives and Sidewalks delineated on the Waterfront Zoning Lot Phasing: Phase 2 Plan.

"**Waterfront Zoning Lot Phasing: Phase 2 Plan**" shall mean drawing L-602.00 of the Waterfront Public Access Area Plans.

"**Waterfront Zoning Lot Phasing: Phase 3**" shall mean the Waterfront Public Access Area, Public Access Area and Private Drives and Sidewalks delineated on the Waterfront Zoning Lot Phasing: Phase 3 Plan.

"**Waterfront Zoning Lot Phasing: Phase 3 Plan**" shall mean drawing L-603.00 of the Waterfront Public Access Area Plans.

"**Waterfront Zoning Lot Phasing: Phase 4**" shall mean the Waterfront Public Access Area, Public Access Area and Private Drives and Sidewalks delineated on the Waterfront Zoning Lot Phasing: Phase 4 Plan.

"**Waterfront Zoning Lot Phasing: Phase 4 Plan**" shall mean drawing L-604.00 of the Waterfront Public Access Area Plans.

"**Waterfront Zoning Lot Phasing Plans**" shall mean, individually or collectively, Waterfront Zoning Lot Phasing: Phase 1 Plan, Waterfront Zoning Lot Phasing: Phase 2 Plan, Waterfront Zoning Lot Phasing: Phase 3 Plan, and Waterfront Zoning Lot Phasing: Phase 4 Plan.

"**WPAA Obligation**" shall mean the obligation of Declarant to construct the Waterfront Public Access Area, or portions thereof, set forth in each Waterfront Zoning Lot Phase required in connection with a Development Phase, in accordance with the terms of this Declaration.

"**ZL1 Building(s)**" shall mean any building constructed or redeveloped on Zoning Lot 1 pursuant to the Proposed Development, including Building A, Building B and Building D.

"**ZL2 Building**" shall mean any building constructed or redeveloped on Zoning Lot 2 pursuant to the Proposed Development, including the Refinery Building.

"**ZL3 Building**" shall mean any building constructed or redeveloped on Zoning Lot 3 pursuant to the Proposed Development, including Building E.

"**Zoning Lot**" shall have the meaning given in the Zoning Resolution.

"**Zoning Lot 1**" shall have the meaning set forth in the Recitals to this Declaration.

"**Zoning Lot 2**" shall have the meaning set forth in the Recitals to this Declaration.

"**Zoning Lot 3**" shall have the meaning set forth in the Recitals to this Declaration.

"**Zoning Resolution**" shall mean the Zoning Resolution of the City of New York, effective December 15, 1961, as amended from time to time.

"**Zoning Text Amendments**" shall have the meaning set forth in the Recitals to this Declaration.

ARTICLE II

DEVELOPMENT AND USE OF THE SUBJECT PROPERTY

2.01 **Development of the Subject Property**

(a) **Designation of Large-Scale General Development**. Declarant hereby declares and agrees that, following the Effective Date, the Subject Property shall be treated as a "large-scale general development," as such term is defined in the Zoning Resolution in effect on the Effective Date, and shall be developed and enlarged as a unit. Declarant agrees that, except in the event that any Development Phase in the Large-Scale General Development satisfies the Affordable Housing Threshold in accordance with Section 2.01(f), the total FAR and Floor Area of the Development permitted in accordance with the Development Plans and the lot area of all of the Zoning Lots shall not exceed (i) 2.43 FAR and 139,958 square feet of Floor Area on Zoning Lot 3, (ii) 4.88 FAR and 1,762,323 square feet of Floor Area on Zoning Lot 1, and (iii) 6.5 FAR and 442,686 square feet of Floor Area on Zoning Lot 2.

(b) **Bulk Transfer**. Transfer of Floor Area from Zoning Lot 1 to Zoning Lot 3, authorized pursuant to the Large Scale Special Permit (C 140132 ZSK), is only permitted in accordance with the provisions of Section 2.01(f).

(c) **Development Plans.** If Declarant develops the Subject Property in whole or in part in accordance with the Approvals, Declarant covenants and agrees that any development of the Subject Property shall occur only if it is in substantial conformity with the Development Plans and in compliance with this Declaration, subject to the modification provisions of Article XIV hereof.

(d) **As-of-Right Alternative**. In the event that Declarant elects to develop the Subject Property other than in accordance with the Approvals, such development shall be (x) only as would be permitted pursuant to the zoning district regulations applicable to the Subject Property on the Effective Date of this Declaration (*i.e.: R8/C2-4, R6/C-24 and C6-2*), and shall be subject to the following further restrictions: (i) such development shall comply in all respects with and only to the extent permitted under the M3-1 zoning regulations applicable to the Subject Property immediately prior to the rezoning pursuant to C 100185 ZMK (the "**Prior Zoning Development**"), or (ii) to the extent such development is not permitted under (i) above, such development has been reviewed and approved by the Commission and drawings with respect thereto, in a form acceptable to DCP, have been incorporated in this Declaration pursuant to the procedures for modification of this Declaration, as set forth in Section 14.03 (the "**As-of-Right Development**"), or (y) only as would be permitted pursuant to the terms of the 2010 Declaration, provided that the Prior Approvals (hereinafter defined) have not been surrendered in accordance with Section 14.06 of this Declaration. Development pursuant to this Section 2.01(d)(i) shall not be subject to the provisions of Article III hereof.

(e) **Phasing**.

(i) In connection with Declarant's request for an Authorization for phased development of the waterfront public access areas, pursuant to ZR Sections 62-822(c), and in connection with the grant of a Large Scale Special Permit for a phased construction

program of a multi-building complex, Declarant hereby covenants and agrees, subject to the provisions of this Declaration, that: (aa) Declarant shall develop the Proposed Development on the Subject Property in Development Phases in accordance with the Development Sequence, i.e., commencing with Development Phase 1, then commencing with Development Phase 2, then commencing with Development Phase 3, then commencing with Development Phase 4 and then commencing with Development Phase 5; and (bb) that Declarant may not apply for or accept a TCO or PCO for any portion of a New Building in a Development Phase until a TCO has been issued for any portion of a New Building in the preceding Development Phase. Notwithstanding the foregoing, in the event that Declarant Substantially Completes all the Waterfront Zoning Lot Phases in accordance with this Declaration, the Development Sequence may be altered with respect to Development Phases 2 through 5, provided however that Declarant has demonstrated to the satisfaction of the Chair pursuant to the procedures set forth in Section 14 that no new unmitigated environmental impacts would result from such alteration in the Development Sequence.

(f) **Inclusionary Housing**

(i) **Development With Affordable Housing.**

(A) **Development Without Floor Area Transfer**. In the event that there is no transfer of Floor Area pursuant to subsection (B) below, the FAR and Floor Area for the Proposed Development of the Subject Property shall not exceed (i) 2.75 FAR and 158,389 square feet of Floor Area on Zoning Lot 3, and (ii) 6.5 FAR and 2,347,354 square feet of Floor Area on Zoning Lot 1. The Floor Area for a New Building in a Development Phase that does not provide Affordable Floor Area equal to or greater than the Affordable Housing Threshold for such New Building, as determined pursuant to subdivision f (vi) of this Section, shall not exceed the limitations set forth in Section 2.01(f)(iii)(B)(1). The Floor Area for a New Building in a Development Phase that provides Affordable Floor Area equal to or greater than the Affordable Housing Threshold for such New Building shall not exceed the limitations set forth in Section 2.01(f)(iii)(B)(2).

(B) **Development With Floor Area Transfer.** A transfer of Floor Area from Zoning Lot 1 to Zoning Lot 3 is permitted in accordance with the Large Scale Special Permit (C 140132 ZSK) and the FAR and Floor Area for the Proposed Development of the Subject Property shall not exceed (i) 6.967 FAR and 401,246 square feet of Floor Area on Zoning Lot 3, such increase in density on Zoning Lot 3 permitted pursuant to such transfer of up to 242,857 square feet of Floor Area from Zoning Lot 1 pursuant to the Large Scale Special Permit (C 140132 ZSK), and (ii) 6.5 FAR and 2,347,352 square feet of Floor Area on Zoning Lot 1 less any amount of Floor Area transferred to Zoning Lot 3 ,provided further that 20 percent of such transferred Floor Areas shall be Affordable Floor Area that is located in Building E. If 242,857 square feet of Floor Area is transferred from Zoning Lot 1 to Zoning Lot 3, the Floor Area for a New Building in a Development Phase shall not exceed the limitations set forth in Section 2.01(f)(iii)(A). If less than 242,857 square feet of Floor Area is transferred from Zoning Lot 1 to Zoning Lot 3, the Floor Area for a New Building in a Development Phase that does not provide Affordable Floor Area equal to or greater than the Affordable Housing Threshold shall not exceed the limitations set forth in Section 2.01(f)(iii)(B)(1), and the Floor Area for a New

Building in a Development Phase that provides Affordable Floor Area equal to or greater than the Affordable Housing Threshold shall not exceed the limitations set forth in Section 2.01(f)(iii)(B)(2).

(ii) **Development Without Affordable Housing.** Notwithstanding the maximum heights and Floor Area otherwise permitted pursuant to the Development Plans for each New Building, if prior to commencing construction of a New Building in a Development Phase, such New Building does not generate and/or provide Affordable Floor Area equal to or greater than the Affordable Housing Threshold, as determined pursuant to subdivision f (vi) of this Section, with respect to such New Building, the maximum Floor Area shall be subject to the limitations set forth in Sections 2.01(f)(iii)(A) or (B), as applicable, and the maximum height of such New Building for a Development Phase shall not exceed the maximum height set forth for such New Building in the Table B provided in Section 2.01(f)(iv).

(iii) **Establishment of Base and Bonus Floor Areas.**

(A) If the full 242,857 square feet of Floor Area is transferred to Zoning Lot 3 pursuant to Section 2.01(f)(i)(B), then the maximum base floor area for each New Building in a Development Phase without affordable housing shall be as set forth for such New Building in Column A of Table A below, and the maximum floor area for each New Building in a Development Phase that provides Affordable Floor Area equal to or greater than the Affordable Housing Threshold shall be as set forth for such New Building in Column B of Table A.

(B) If less than 242,857 square feet of Floor Area is transferred to Zoning Lot 3 pursuant to Section 2.01(f)(i)(B), or no floor area is transferred to Zoning Lot 3 pursuant to Section 2.01(f)(i)(A), then:

(1) The maximum base Floor Area for each New Building in a Development Phase shall be as set forth for such New Building in Column A of Table A. However, such Floor Area may be increased with an amount of Additional Base Floor Area, provided that the resulting increased Floor Area does not exceed the amount set forth for such New Building in Column C of Table A, and provided that the amount of Additional Base Floor Area available to subsequent Development Phases shall be reduced by the amount of Additional Base Floor Area added within such New Building.

(2) For a New Building in a Development Phase that provides Affordable Floor area equal to or greater than the Affordable Housing Threshold, the Floor Area of such New Building may be increased as set forth in Section 2.01(f)(iii)(B)(1), and may be further increased pursuant to the Inclusionary Housing Program as set forth in Sections 62-352 and 23-90 of the Zoning Resolution, to a maximum Floor Area equal to 1.3320 times the increased base Floor Area established pursuant to Section 2.01(f)(iii)(B)(1), but not exceeding the maximum floor area set forth for such New Building in Column D of Table A.

Table A

	If 242,857 sf of Floor Area is transferred to Zoning Lot 3		If less than 242,857 sf of Floor Area is transferred to Zoning Lot 3	
	Column A	**Column B**	**Column C**	**Column D**
Zoning Lot/Site	**Maximum Floor Area If Affordable Housing Threshold Is Not Met**	**Maximum Floor Area If Affordable Housing Threshold Is Met**	**Maximum Floor Area If Affordable Housing Threshold Is Not Met, Including Additional Base Floor Area***	**Maximum Floor Area If Affordable Housing Threshold Is Met, Including Additional Base Floor Area***
Zoning Lot 1/Building A	292,658	389,811	327,500	436,219
Zoning Lot 1/Building B	806,132	1,073,741	886,500	1,180,789
Zoning Lot 1/Building D (and Buildings C1 and C2)	481,202	640,945	548,319	730,343
Zoning Lot 3/Building E	n/a	401,246	***	**

* Figures shown are maximums, and depend on the amount of Floor Area transferred from Zoning Lot 1 to Zoning Lot 3.

** Floor area for Building E determined based on the amount of Floor Area transferred from Zoning Lot 1 to Zoning Lot 3, pursuant to Section 2.01(f)(i)(B).

*** In the event that 0 sf of Floor Area is transferred to Zoning Lot 3, the Maximum Floor Area if Affordable Housing Threshold is Not Met is 139,958 square feet.

(iv)

Table B

Zoning Lot/Site	Maximum Height Without Inclusionary*	Maximum Floor Area Without Inclusionary
Zoning Lot 1/Building A	355’	327,500
Zoning Lot 1/Building B	410’	886,500
Zoning Lot 1/Building D	445’ and 345’	548,319
Zoning Lot 3/Building E	90’	139,958

* Maximum building heights indicated are measured from the Adjusted Base Plane as specified on ULURP Drawing Z03-1.

(v) Except as required pursuant to Section 2.01(f)(i)(B)(ii)) above, the Affordable Housing to be provided to the Proposed Development may be generated from any eligible generating site in accordance with Section 23-90 of the Zoning Resolution.

(vi) Prior to accepting a New Building Permit for a New Building in a Development Phase, Declarant shall (i) submit Affordable Housing Documentation for such New Building to the DOB and (ii) provide zoning calculations to DOB in conjunction with the New Building application that shall include calculations sufficient for DOB to determine whether the New Building meets the Affordable Housing Threshold such that the New Building may exceed limitations set forth in Sections 2.01f(i) and (ii). In the event any New Building generates Affordable Floor Area in excess of the Affordable Housing Threshold for such New Building, Declarant may utilize such excess Affordable Floor Area to satisfy the Affordable Housing Threshold requirements in a subsequent Development Phase. In the event that DOB determines that satisfaction of the Affordable Housing Threshold requires that additional Affordable Floor Area be included in such New Building, the DOB shall specify the amount of Affordable Floor Area so required and Declarant shall not accept from DOB such New Building Permit for such New Building unless and until such additional Affordable Floor Area is included in a regulatory agreement approved by the HPD and HPD has provided DOB with requisite Affordable Housing Documentation in connection therewith. For the first New Building for which the Declarant seeks a New Building Permit following a development of the Refinery Building that results in Zoning Lot 2 exceeding 4.88 FAR, the Affordable Housing Threshold for such New Building shall be increased by an amount equal to 20 percent of the Floor Area located above the ground floor of the Refinery Building less any Floor Area above the ground floor within the Public School Facility .

(vii) Declarant shall not apply for and shall not accept a TCO or PCO from DOB for any New Building in any Development Phase which includes Affordable Floor Area unless it has fulfilled its obligations relating to the acceptance of TCOs or PCOs as set forth in the regulatory agreement for that New Building or any HPD rules and regulations.

(viii) ***No Amendment to Plans or Declaration Required.***

(A) If Declarant elects not to incorporate "Inclusionary Housing" in the Proposed Development pursuant to Sections 23-90 and 62-352 of the Zoning Resolution, no amendment to the Development Plans or this Declaration shall be required, provided that (1) the development of the Subject Property complies with all conditions to the Approvals and the requirements of this Declaration; (2) the building densities and heights do not exceed the maximums set forth in Section 2.01(f)(i) and (ii) of this Declaration; (3) all other design requirements are met, including, but not limited to, transparency requirements and street wall heights.

(B) If no Public School Facility is provided in the Proposed Development pursuant to Section 3.04 of this Declaration, then the Floor Area which would have been utilized by the Public School Facility may instead be used for any use permitted by the underlying zoning district, provided that Declarant has performed an environmental analysis approved by DCP demonstrating that such proposed use would not result in any new or different significant environmental impact not addressed in the FEIS.

(g) **Maintenance and Operating Agreement**. Declarant shall develop, maintain and administer the WPAA in accordance with the M & O Agreement.

(h) **Representation**. Declarant hereby represents and warrants that there is no restriction of record on the development, enlargement, or use of the Subject Property, nor any present or presently existing estate or interest in the Subject Property, nor any existing lien, obligation, covenant, easement, limitation or encumbrance of any kind that shall preclude the restriction to develop the Subject Property as a general large-scale development as set forth herein.

(i) **LPC.** Except in conjunction with Refinery Interim Work, Declarant shall not apply for a Building Permit for a New Building in Development Phase 4 until DCP shall have certified to Declarant that the plans for such New Building are consistent with the Approvals and the LPC-approved drawings for such enlargement.

ARTICLE III

FEIS OBLIGATIONS

Declarant shall implement the following FEIS Obligations as part of the Proposed Development, in accordance with the FEIS and as further set forth in this Article III for any development of the Subject Property, as such may be modified pursuant to Section 3.07 of this Declaration, unless such development is pursuant to the provisions of 2.01(d)(i) or is pursuant to Section 2.01(d)(ii) in accordance with a Technical Memorandum reviewed and approved in accordance with Section 14.03 herein.

3.01 **Project Components Related to the Environment Relating to Construction**. Declarant shall implement and incorporate as part of its construction of New Buildings, as appropriate, the following PCREs**:**

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

(i) Prior to Construction Commencement on Building E and subject to DCP review pursuant to Section 3.09 of this Declaration, Declarant shall (x) develop a plan for implementation of, and (y) thereafter implement, the following measures for all construction activities (including, but not limited to, demolition and excavation) during the development of the Subject Property:

(A) To minimize hourly emissions of NO_2 to the maximum extent practicable, non-road diesel-powered vehicles and construction equipment meeting or achieving the equivalent of the United States Environmental Protection Agency ("**EPA**") Tier 3 Non-road Diesel Engine Emission Standard would be used in construction, and construction equipment meeting the Tier 4 standard, will be used once Tier 4-compliant equipment is widely available for use in New York City and the use of such equipment is practicable.

(B) Gasoline-powered non-road engines used in construction activities shall meet the latest EPA emissions standards for existing or newly manufactured engines, as the case may be, in effect at the time they are first rented, purchased or otherwise put into use for construction at the Subject Property.

(C) All non-road, diesel-powered construction equipment with an engine power output rating of 50 horsepower or greater (except with respect to a diesel-powered non-road vehicle that is used to satisfy the requirements of a specific construction contract lasting fewer than twenty (20) calendar days) and controlled truck fleets shall utilize the best available tailpipe technology for reducing diesel particulate emissions. Construction contracts shall specify that all diesel non-road engines rated at 50 horsepower or greater and all controlled-fleet trucks shall utilize active or passive diesel particle filters (either original equipment manufacturer or retrofit technology) verified under the EPA verification programs to reduce diesel particulate matter emissions by at least 90 percent (when compared with the uncontrolled exhaust of an equivalent engine).

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

(E) Idling of all vehicles, including non-road engines, for periods longer than three minutes shall be prohibited on the Subject Property, except for vehicles being used to operate a loading, unloading or processing device (e.g., concrete mixing trucks).

(F) The use of diesel and gasoline engines, including generators, shall be minimized through the maximum practical use of (1) electric engines operating on grid power, and (2) lighting devices, illuminated traffic control signals and signs operating on grid power. Construction contracts shall require the use of electric engines where practicable. Declarant shall ensure the distribution of power connections throughout the Subject Property as needed. Equipment that shall use grid power rather than diesel engine power shall include, but not be limited to, cut-off saws, masonry bench saws, material hoists, table saws, welders, and water pumps.

(G) Large emissions sources, such as concrete trucks and pumping operations shall be located, to the extent practicable, away from operable windows, fresh air intakes, parks, and playgrounds.

(H) All ready-mix concrete delivery trucks and concrete pumping trucks must be either retrofitted with a diesel particle filter as specified in Section 3.01(a)(i)(C) above, or come equipped with an original equipment manufacturer ("**OEM**"), verified to reduce diesel particulate matter emissions by at least 90 percent (when compared with the uncontrolled exhaust or fan equivalent engine).

(ii) To facilitate the use of electrically powered equipment and minimize the use of diesel and gasoline engines, not fewer than sixty (60) days prior to the anticipated date of commencement of demolition or excavation on a Development Phase (whichever first occurs), Declarant shall apply to Con Edison to establish an electrical connection of such Site to grid power. A complete copy of such application shall be forwarded to DCP at the time the application is first sent to Con Edison. Upon connection to grid power, electrically powered equipment will be used to the extent practicable.

(iii) Declarant shall include enforceable contractual requirements with contractors and subcontractors to implement the provisions of this Section 3.01(a), with respect to applicable work at the Subject Property.

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

(i) Prior to Construction Commencement on Building E and subject to DCP review pursuant to Section 3.09 of this Declaration, Declarant shall (x) develop a plan for implementation of, and (y) thereafter implement, a plan for the prevention of the emission of dust from construction-related activities during development of the Subject Property (the "**Fugitive Dust Control Plan**"), which Fugitive Dust Control Plan shall contain the following measures:

(A) Fugitive dust from excavation, demolition, transfer of spoils, and loading and unloading of spoils shall be controlled through water spraying.

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

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

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

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

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

(G) In addition to regular cleaning by the City, roads adjacent to construction areas shall also be cleaned by Declarant on a regular basis, using appropriate legal methods, to minimize fugitive dust emissions.

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

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

(ii) Declarant shall include enforceable contractual requirements with contractors and subcontractors to implement the provisions of this Section 3.01(b) with respect to applicable work at the Subject Property.

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

(i) Prior to Construction Commencement on Building E and subject to DCP review pursuant to Section 3.09 of this Declaration, Declarant shall (x) develop a plan for implementation of, and (y) thereafter implement, the following measures for all construction activities (including demolition and excavation) related to the development of the Subject Property:

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

(B) Declarant shall develop and implement a plan for minimization of construction noise (the "**Noise Reduction Plan**"). The Noise Reduction Plan shall contain the following measures:

(1) Noise barriers shall be erected around the perimeter of areas where construction activities are taking place for the purpose of minimizing construction noise consistent with reasonable construction procedures. Prior to Construction Commencement of any New Building, a solid fence will be erected around the perimeter of the areas where construction activities are taking place, and shall be at least sixteen (16) feet high, which can be accomplished with an twelve (12) foot high noise barrier with an additional four (4) foot cant tilting inwards toward the Subject Property.

(2) The noise emission levels of all construction equipment shall not exceed the levels set forth in column C of Table 57 of the FEIS when using the appropriate path control measure. For construction equipment that no noise level has been provided in column C, the noise emission levels shall not exceed those found in column B of Table 57 of the FEIS, as determined by manufacturer's specifications adjusted to a reference distance of 50 feet.

(3) Declarant shall maintain a website or implement another program to inform the affected public about the construction work schedule.

(4) To the extent practicable, the noise of backup alarms on construction equipment shall be minimized.

(5) For construction activities involving the use of pile drivers, hoe-rams, jackhammers, or blasting, additional noise reduction measures chosen by Declarant from a list of options to be set forth in the Noise Reduction Plan shall be implemented where feasible.

(ii) If construction work will occur on weekends, Declarant shall prepare an additional noise reduction plan (the "**Alternative Noise Reduction Plan**") in accordance with the City Noise Control Code prior to commencing such nighttime work.

(iii) Declarant shall include enforceable contractual requirements with contractors and subcontractors to implement the provisions of this Section 3.01(c) with respect to applicable work at the Subject Property.

(d) **Construction Soil Erosion and Sediment Reduction Measures**.

(i) Prior to Construction Commencement on Building E and subject to DCP review pursuant to Section 3.09 of this Declaration, Declarant shall (x) develop a plan for implementation of, and (y) thereafter implement, a plan for soil erosion and sediment control for all construction activities (including demolition and excavation) related to the development of the Subject Property, in conformance with the requirements of the DEC Standards and Specifications for Erosion and Sediment Control (the "**Soil Erosion and Sediment Control Plan**"), which Soil Erosion and Sediment Control Plan shall contain the following measures:

(A) The wheels or treads of vehicles and equipment that could track soil from areas under construction shall be washed before leaving such areas. To reduce the use of potable water for this purpose, to the extent practicable, the wheel wash shall be supplied by collecting precipitation or using water collected during dewatering operations.

(B) Rinse water from the wheel wash (described in this Section 3.01(d) shall be reabsorbed into the ground or pumped into tanks holding storm water or dewatering water. The wheel wash shall not be used for concrete trucks.

(C) Concrete trucks shall be rinsed into watertight dedicated bins. The captured washout water shall be left to evaporate, be treated, or be returned to the concrete manufacturer.

(D) Concrete from trucks, chutes, buckets and other equipment shall be removed and collected in dedicated waste bins prior to equipment rinsing. Concrete spillage on the Subject Property shall be collected in dedicated waste bins.

(E) Disturbed areas shall be stabilized for the duration of construction activity or until construction work resumes on the inactive disturbed areas. All disturbed areas of construction, including exposed ground and subgrade surfaces, storage piles of fill, dirt and other bulk materials, which are not being actively utilized for construction purposes for a period of seven (7) calendar days or more, shall be stabilized using: water as a dust suppressant; biodegradable dust stabilizer or suppressant; physical barriers or covers; or vegetative ground cover.

(ii) Declarant shall include enforceable contractual requirements with contractors and subcontractors to implement the provisions of this Section 3.01(d) with respect to applicable work at the Subject Property.

(e) **Construction Dewatering Plan**.

(i) Prior to Construction Commencement on Building E and subject to DCP review pursuant to Section 3.09 of this Declaration, Declarant shall (x) develop a plan for implementation of, and (y) thereafter implement, a plan setting forth procedures for handling site runoff and groundwater encountered during construction activities (including excavation) related to the development of the Subject Property (the "**Dewatering Plan**"), which Dewatering Plan shall:

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

(B) Identify the necessary permits required from DEP and/or DEC to discharge dewatering water into the City's sewers or surface waters.

(C) (1) Require that dewatering water be pumped into sedimentation tanks for removal of sediments prior to reuse on the Subject Property or discharge into the City's sewer system or surface waters, (2) require the water in such sedimentation tanks to be tested periodically for pH, turbidity and contaminants, and (3) if unacceptable levels of turbidity or contaminants are identified, as determined by applicable DEP or DEC regulations, require treatment prior to discharge off site.

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

(ii) Declarant shall include enforceable contractual requirements with contractors and subcontractors to implement the provisions of this Section 3.01(e) with respect to applicable work at the Subject Property.

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

(i) Prior to Construction Commencement of Building E and subject to DCP review pursuant to Section 3.09 of this Declaration, Declarant shall (x) develop a plan for implementation of, and (y) thereafter implement, an integrated plan to control pests (including unwanted vermin, insects and weeds), in accordance with DOB requirements, throughout the development of the Subject Property (the "**Construction Pest Management Plan**"), which Construction Pest Management Plan shall contain the following requirements:

(A) Vegetation fostering vermin shall be kept trimmed.

(B) Construction trailers, dumpsters, and sheds shall be elevated off of the ground to discourage vermin from burrowing or hiding in them.

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

(ii) Declarant shall include enforceable contractual requirements with contractors and subcontractors to implement the provisions of this Section 3.01(f) with respect to applicable work at the Subject Property.

(g) **Historic Resource Protection Measures**.

(i) Prior to Construction Commencement of any New Building that is located within ninety (90) feet of the Refinery Building, the Williamsburg Bridge or 390 Wythe Avenue (f/k/a the Matchett Candy Factory) (collectively, the "**Historic Resources**," and each a "**Historic Resource**") or operating a vibratory pile driver within one hundred twenty (120) feet of any such Historic Resources, Declarant shall develop a plan, in coordination with the New York State Office of Parks, Recreation and Historic Preservation ("**OPRHP**") and the Landmarks Preservation Commission of the City of New York ("**LPC**"), to avoid any adverse physical, construction-related impacts to the Historic Resources, such as those from ground-borne vibrations, falling objects, dewatering, flooding, subsidence, collapse, or damage from construction machinery (the "**Construction Protection Plan**" or "**CPP**") and shall submit same to DCP.

(ii) DOB shall not issue, and Declarant shall not accept, a building permit allowing work within ninety (90) feet or operation of a vibratory pile driver within one

hundred twenty (120) feet of any Historic Resource until LPC shall have certified to the DOB Commissioner that both OPRHP and LPC have determined that the CPP is acceptable.

(iii) All construction activities (including demolition and excavation) within ninety (90) feet and any operation of a vibratory pile driver within one hundred twenty (120) feet of a Historic Resource shall be undertaken in accordance with the CPP.

(iv) Unless other guidelines are approved by LPC, the CPP shall follow the guidelines set forth in LPC's Guidelines for Construction Adjacent to a Historic Landmark and Protection Programs for Landmark Buildings. The CPP shall also follow the requirements established in DOB's Technical Policy and Procedure Notice #10/88, in effect as of the Effective Date, in addition to the guidelines set forth in Section 523 of the CEQR Technical Manual, in effect as of the Effective Date.

(v) The construction procedures included in the CPP to protect the foundations and structures of the Historic Resources shall be developed and monitored by structural and foundation engineers.

(vi) The CPP shall:

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

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

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

(D) With respect to the Refinery Building and 390 Wythe Avenue, establish a monitoring program to measure vertical and lateral movement and vibration.

(E) Establish methods and materials to be used for any repairs.

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

Clam Shovel Drop	15 feet
Auger Drill Rig	16 feet
Jackhammer	6 feet
Mounted Hoe Ram	70 feet
Vibratory Pile Driver	120 feet
Impact Pile Driver	73 feet

(G) Authorize the structural and foundation engineers to issue "stop work orders" to prevent damage to the Historic Resources and establish procedures for the

recommencement of work following same.

(h) **Construction Materials**. Declarant shall use reasonable efforts to use locally-purchased materials and recycled materials, including concrete made with slag or fly ash, to the extent practicable for construction on the Subject Property. For purposes of this Section 3.01(i), "locally" shall mean within 500 miles of the Subject Property. As an alternative to slag or fly ash, ultra low-carbon cement or cement replacements (such as cement made from recycled materials or using a salt water and carbon dioxide process) may be considered. Following Construction Commencement of Building E, Declarant shall provide DCP with an annual report, due January 31st of each year during which Declarant is performing construction on such New Building, listing the amounts of locally-purchased and recycled materials utilized in construction during the prior year and proposed measures to increase such amounts in future construction, if any. Notwithstanding the foregoing, submission of a MGS Checklist and the affirmation of an Accredited MGS Professional in accordance with Sections 3.03(b)(iii)(A) and (B), demonstrating that Declarant is seeking MGS Points for Regional Materials in an application for LEED Certification, or the applicable MGS Certification, shall be deemed compliance with the annual reporting requirements of this section with respect to such Development Phase.

(i) **Maintenance and Protection of Traffic Plan**.

(i) Prior to Construction Commencement of any New Building, Declarant shall prepare a plan which provides diagrams of proposed temporary lane and sidewalk alterations, the duration such alterations will be implemented, the width and length of affected segments, and sidewalk protection measures for pedestrians, which shall be necessary during construction of such New Building (the "**Maintenance and Protection of Traffic Plan**" or "**MPT**"). Declarant shall submit the MPT to DOT for review and approval, provided, however, that completion and submission of the MPT shall not be necessary for preliminary site work, unless DOT advises Declarant that a MPT is required.

(ii) Declarant shall include provisions in the contracts of all relevant contractors and subcontractors requiring adherence to the provisions of the MPT plan.

(j) **Open Space**. Upon construction of the third floor of the superstructure of Building A, Declarant shall install netting on the northerly façade of the Building A superstructure to prevent construction materials from falling into Grand Ferry Park. Hoists, cranes and other such equipment shall not be located on the northern side of a Building A, which is adjacent to Grand Ferry Park.

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

(a) **Shuttle Bus**. Declarant shall implement peak hour shuttle bus service for occupants of any New Building, between (1) the Subject Property and the Broadway entrance of the Marcy Avenue subway station and (2) the Subject Property and the northern stair of the Driggs Avenue entrance of the Bedford Avenue subway station (the "**Shuttle Service**"), upon full occupancy of Building E. For such purpose, Declarant shall provide DCP with no less than thirty (30) days advance notice of the date Declarant anticipates acceptance of a TCO for the final residential unit in Building E, such notification to include a description of the Shuttle

Service plan that will be implemented upon full occupancy of Building E and the anticipated date of full occupancy. No later than five (5) days following full occupancy of Building E, Declarant shall provide DCP with notice of the date that full occupancy was achieved , together with documentation demonstrating that Shuttle Service has been established as of such date in accordance with the Shuttle Service plan previously described to DCP. The Declarant shall monitor demand for shuttle bus service to determine needed capacity for the shuttle bus fleet as well as frequency and hours of operation, as specified in the FEIS.

3.03 **Project Components Related to the Environment Relating to Sustainability**. Declarant shall implement and incorporate as part of its design and operation of New Buildings, the following PCREs relating to sustainability:

(a) **Energy Efficiency**.

(i) Declarant shall incorporate certain energy efficiency measures, with respect to fuel consumption and energy use ("**EEMs**") in each New Building, that are designed to result in at least 10% less energy consumption in building systems and by building tenants (the "**Minimum Energy Savings**") than standard set forth in the Energy Conservation Construction Code of New York State, in effect as of the Effective Date. EEMs may include, but shall not be limited to, building design, high-performance glazing, increased insulation, high-efficiency lighting (occupancy sensors), higher efficiency HVAC equipment, variable frequency drives for pumps and fans, premium efficiency motors, improved temperature controls, the use of EnergyStar appliances, and except as set forth herein, operable windows to all residential living spaces and allowance to all residents of full control over their fresh air, heating and cooling.

(ii) Declarant shall cause to be prepared by a qualified building energy consultant (the "**BEC**"), a report identifying the EEMs for a New Building that are designed to result in the Minimum Energy Savings (the "**Energy Report**"). The Energy Report shall demonstrate how such EEMs, once implemented, will achieve and maintain the Minimum Energy Savings. Nothing herein shall be deemed to preclude Declarant from achieving a greater amount of energy savings.

(iii) No later than ninety (90) days prior to submitting an application for a building permit for a New Building to DOB, Declarant shall cause the BEC to submit copies of a draft Energy Report to DCP, which shall, from the date of receipt, have thirty (30) days to review the draft Energy Report, based on consultation with the Energy Division of EDC, or any successor thereto, and to provide Declarant with written comments detailing any issues regarding the sufficiency of the proposed EEMs to achieve the Minimum Energy Savings. Declarant shall cause the BEC to submit to DCP a final Energy Report, which shall include responses to such comments. The final Energy Report shall be accompanied by a written certification of the BEC stating that, in its opinion, the EEMs described in the final Energy Report are sufficient to achieve and maintain the Minimum Energy Savings. DOB shall not issue, and Declarant shall not accept, any building permit for a New Building until DCP shall have certified in writing to the DOB Commissioner that a final Energy Report has been submitted in accordance with the procedures of this Section 3.03(a)(iii).

(b) **Minimum Green Standard Certification or Equivalent**.

(i) Declarant shall design and construct each New Building in accordance with the standards and criteria required to achieve a minimum of LEED Certification, or if LEED Certification is no longer available at the time of construction then such other equivalent standard then being used in New York City (such applicable minimum certification, the "**Minimum Green Standard Certification**" or the "**MGS Certification**"). However, in the case of a New Building which includes an Affordable Housing component subsidized or assisted by HPD, the Minimum Green Standard Certification may be the Enterprise Green Communities Certification for such New Building.

(ii) Declarant shall use reasonable and good faith efforts to at least obtain the MGS Certification, from the U.S. Green Building Council (the "**USGBC**") or such other equivalent body that governs the applicable MGS Certification (collectively, the "**MGS Governing Body**").

(iii) DOB shall not issue, and Declarant shall not accept, any building permit for a New Building, until the Chair shall have certified to the DOB Commissioner that Declarant has submitted the following to DCP:

(A) A LEED checklist, or its applicable equivalent (in either case, a "**MGS Checklist**"), for the New Building demonstrating that the number of 'points', or their applicable equivalent (in either case, "**MGS Points**"), Declarant intends to pursue during LEED 'Construction Review', or its applicable equivalent (in either case, "**MGS Construction Review**"), will make the New Building eligible to obtain the MGS Certification. In the case of LEED Certification, such MGS Checklist shall demonstrate that Declarant is providing a minimum of (1) 15% of possible MGS Points in the GHG Credit Categories, as set forth in **Exhibit H** to this Declaration, and (2) 15% of possible MGS Points in the Water Credit Categories as set forth in **Exhibit H** to this Declaration (collectively, the "**GHG and Water Credit Requirements**"); in the case of the Minimum Green Standard Certification, then the MGS Checklist must demonstrate performance equivalent thereto. New Buildings for which Declarant seeks the MGS Certification, shall demonstrate performance at least equivalent to that which would have been required to meet the GHG and Water Credit Requirements under version 2009 of the USGBC LEED rating system.

(B) A signed affirmation from a LEED-accredited or equivalent-certified professional (in either case, an "**Accredited MGS Professional**"), as selected by Declarant, stating that he or she has reviewed the plans and drawings submitted or to be submitted to the DOB for purposes of a building permit for a New Building and that such plans and drawings are consistent with the MGS Checklist, and meet the intent of the criteria for the MGS Certification with respect to the applicable New Building.

(iv) DOB shall not issue, and Declarant shall not accept, any TCO, until the Chair shall have certified to the DOB Commissioner that Declarant has submitted the following to DCP:

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

(B) A MGS Checklist for the New Building, demonstrating that the number of MGS Points 'anticipated' during the MGS Design Review, in combination with the number of MGS Points that Declarant intends to pursue during MGS Construction Review will make the New Building eligible to obtain the MGS Certification. Such MGS Checklist, shall demonstrate that the GHG and Water Credit Requirements will be met.

(v) DOB shall not issue, and Declarant shall not accept, a PCO for a New Building, until the Chair shall have certified to the DOB Commissioner that Declarant has submitted the following to DCP:

(A) If the New Building has received the MGS Certification:

(1) Documentation demonstrating that the New Building has received the MGS Certification.

(2) MGS Checklist for the New Building demonstrating the number of MGS Points that the New Building was awarded. Such MGS Checklist shall demonstrate that the GHG and Water Credit Requirements have been met.

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

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

(2) A MGS Checklist for the New Building demonstrating that the number of MGS Points 'anticipated' during MGS Design Review, in combination with the number of MGS Points that Declarant has applied for in MGS Construction Review, will make the New Building eligible to obtain the MGS Certification. Such MGS Checklist shall demonstrate that the GHG and Water Credit Requirements are anticipated to be met.

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

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

(1) Documentation describing: (I) the determinations (collectively, the "**Denial Determination**") which resulted in an inability to receive the MGS Certification, including a list of standards or criteria for which MGS Points were 'denied' during MGS Design Review or MGS Construction Review, the basis for such Denial Determination, and any related technical advice provided to the review team; (II) the steps taken by Declarant in response to the Denial Determination, including appeals thereof; and (III) alternative elements proposed by Declarant in order to receive the MGS Certification.

(2) Documentation demonstrating that Declarant has (I) designed and constructed the New Building according to the MGS Certification standards or criteria then in effect, but without the standards or criteria which were subject to the Denial Determination; and (II) applied for and used good faith and reasonable efforts to obtain the highest level of MGS Certification available in the absence of such standards or criteria. The provisions of Section 3.03(b)(ii) shall continue to apply with respect to the categories equivalent to the GHG Credit Categories and Water Credit Categories, except to the extent that the MGS Governing Body Denial Determination is applicable to such standard or criteria.

(c) **Stormwater Management Measures**.

(i) Prior to commencement of construction of a New Building on Site E, Declarant shall prepare and submit to New York State Department of Environmental Conservation (NYSDEC) a Stormwater Pollution Prevention Plan (the "**SWPPP**") as required per the SPDES General Permit for Construction Activities (GP-0-10-001) with respect to construction activities and post-construction stormwater management, which shall comply with all erosion and sediment control measures and post-construction BMP requirements that shall (A) incorporate feasible measures to reduce runoff rates, (B) implement stormwater management techniques to address water quality concerns associated with the uncontrolled discharge of stormwater runoff into the East River. DEP should be forwarded a copy of the SWPPP for review. In addition to meeting NYSDEC's post-construction water quality best management practices ("**BMP**") requirements, Declarant will submit a BMP concept plan, consistent with the FEIS, to DEP that shall overlay on the project site plan proposals that may include the following: (1) incorporation of softscapes and other vegetated features into the design of the Subject Property that shall serve to retain stormwater runoff, (2) construction of green roofs and rooftop detention on certain New Buildings selected by Declarant, and (3) the use of pervious paving material for public access walkways, sidewalks, and other paved surfaces within the development; provided, however, that the use of pervious paving materials required under this Section 3.03(c)(i)(3) may be limited to the extent that Legal Requirements (e.g., the New York City Fire Code) require the use of impervious paving materials for emergency response vehicles, including without limitation fire trucks, ambulances and police vehicles.

(ii) DOB shall not issue, and Declarant shall not accept, a building permit for a New Building until Declarant shall have certified to the Commissioner of DOB that a SWPPP has been submitted to NYSDEC and a BMP concept plan has been submitted to DEP.

(iii) Any plans and drawings submitted by Declarant to DOB in connection with a Building Permit shall reflect and be consistent with both the SWPPP and BMP concept plan submitted to DEP.

(iv) Declarant shall have the right to modify and add to the SWPPP and BMP concept plan as development of the Subject Property proceeds, provided that such revised SWPPP and BMP concept plan are consistent with the requirements of this Declaration.

(v) Prior to accepting a TCO for a New Building, Declarant shall certify to DOB that provisions of the SWPPP and BMP concept plan required for such New Building have been implemented.

(d) **Water Conservation Measures**.

(i) In all residential units, Declarant shall install appliances, including, without limitation, dishwashers and clothes washers, which at a minimum meet EnergyStar standards for water conservation.

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

(iii) Prior to accepting a TCO for a New Building, Declarant shall certify to DCP that it has implemented the provisions of clauses (i) and (ii) of this Section 3.03(d), and if same have not been implemented, the reasons for such failure.

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

(a) **Public School**.

(i) The FEIS has identified that the Proposed Development would result in a significant adverse elementary and intermediate school impact. In order to address the significant adverse impact on elementary and intermediate schools Declarant shall dispose of the Public School Site to the SCA for the consideration of One ($1.00) Dollar should the SCA exercise an option to acquire such site for the construction of the Public School Facility, in accordance with the provisions of this Section and pursuant to the terms of a School Funding Agreement (hereinafter defined).

(ii) **Exercise of the SCA Option**. At least six (6) months prior to Declarant's commencement of preliminary design on Building B, Declarant shall send written notice to the SCA (by certified mail, with delivery confirmation and return receipt requested) advising the SCA of its plans to start preliminary design of Building B (the "**Design Notice**"). Within ninety (90) days of delivery confirmation of the Design Notice, the SCA will have the right to exercise an option to purchase the Public School Site for One ($1.00) Dollar (the "**SCA Option**") by written notice provided to Declarant. Should SCA provide written notice to Declarant, within ninety (90) days of the mailing of the Design Notice, that it intends to exercise the SCA Option, SCA and Declarant shall commence negotiation of the School Funding Agreement and incorporate the Public School Facility into the Public School Site in Building B. If, within ninety (90) days of delivery confirmation of the Design Notice, the SCA responds that it does not intend to exercise the SCA Option, or at the expiration of such period fails to indicate in writing that it intends to exercise the SCA Option, Declarant shall have no obligation to provide the Public School Site or include the Public School Facility in Building B.

(iii) **School Funding Agreement**. In the event of the exercise of the SCA Option, Declarant and SCA shall work expeditiously and in good faith to enter into a School Design, Construction, Funding and Purchase Agreement (the "**School Funding Agreement**") with the SCA in accordance with the Letter of Intent executed by the Declarant and accepted and agreed to by SCA on October 15, 2013, attached to this Declaration as **Exhibit I** (the "**SCA Letter of Intent**"). In the event that SCA does not enter into the School Funding Agreement, the Declarant shall have no obligation to provide the Public School Site or include the Public School Facility in Building B.

(iv) **Collaborative Design Development Process**. Promptly following execution of the School Funding Agreement and notice of availability of funds pursuant thereto,

Declarant shall engage with SCA in a collaborative design development process based upon SCA standards and requirements and both parties shall work in good faith to accommodate the General Design and Planning Criteria described in Exhibit C of the SCA Letter of Intent to the extent reasonable and consistent with conventional construction practices.

(v) **School Base Building Work**. Declarant shall complete the design of and perform the construction of the School Base Building Work in accordance with the School Funding Agreement. Declarant shall not be responsible for the purchase and installation of any furniture, fixtures and equipment and the School Fit-Out Work.

(vi) **Public School Unit**. Declarant shall enter into a condominium regime with the SCA with respect to the Public School Facility and the remainder of the Development (the Public School Site to be conveyed for the Public School Facility referred to as the "**Public School Unit**") prior to conveyance of the Public School Unit to the SCA.

(b) **Day Care**.

Upon occupancy of the 554th Affordable Housing Unit:

(i) Declarant shall notify the New York City Administration for Children's Services ("**ACS**") at its Division of Child Care and Head Start and request a day-care needs assessment (the "**Assessment Request**") to determine if development of the Subject Property, both existing and anticipated, would have the potential to create a need for additional day care capacity within the study area boundary identified in Section C, Figure 14 of TM 003 (the "**Study Area**"). In the event that ACS determines within ninety (90) days of the Assessment Request that such development would result in a need for additional day care capacity within such study area boundary and that ACS is prepared to expand day care capacity within the study area, Declarant shall offer to expand existing ACS capacity within the Study Area so as to accommodate eighteen (18) additional child care slots, provided that, in the event development of the Subject Property is anticipated to include additional day-care eligible units, the number of additional child care slots shall be increased so as to accommodate up to twenty-six (26) additional child care slots (the "**Adjusted Child Care Slots**"). If such existing ACS facilities (the "**Off-Site ACS Facilities**") cannot accommodate the additional child care slots, then Declarant shall offer ACS up to 10,000 sf (or such larger amount as is required to accommodate the Adjusted Child Care Slots), or such other lesser amount acceptable to ACS, of ground floor space suitable for use as a child care center (including either a facility to be operated under contract with ACS or by a day care provider identified by ACS that accepts ACS vouchers), in a New Building or at another existing location within the Study Area, at a rate affordable to ACS providers (currently $10 psf) (the "**Day Care Space Offer**"). ACS shall notify Declarant in writing, within ninety (90) days of receipt of Declarant's offer, whether the Day Care Space Offer is accepted or declined, either for some or all of the ground floor space acceptable to ACS, subject to all City requirements governing the leasing of property.

(ii) DOB shall not issue, and Declarant shall not accept, a TCO or PCO for any New Building, other than the Refinery Building until: (A) Declarant has made an Assessment Request under Section 3.04(b)(i), (B) DCP has notified DOB that the provisions of this Section 3.04(b) have been complied with, and (C) ACS has either: (1) determined that the Off-Site ACS Facilities can accommodate eighteen (18) additional child care slots (or the Adjusted Child Care Slots if applicable), (2) accepted a Day Care Space Offer; (3) determined

that no additional day care capacity is currently needed or that it is not prepared to expand day care capacity within the Study Area; or (4) failed to respond an Assessment Request or Day Care Space Offer made pursuant to Section 3.04(b)(i) within the time periods set forth therein. In the event of any of the foregoing, Declarant shall not be precluded from obtaining a TCO or PCO with respect to such New Building.

(iii) In the event that following notification by Declarant pursuant to Section 3.04(b)(i) above, ACS: (A) determines that no additional day care capacity is needed in the Study Area at that time; (B) is not prepared to expand day care capacity within the Study Area; or (C) fails to respond to or declines the Assessment Request or the Day Care Space Offer in the time periods set forth in Section 3.04(b)(i); then Declarant shall make an additional Assessment Request in the manner provided in Section 3.04(b)(i) within 180 days following the issuance of a TCO or PCO for each New Building, other than the Refinery Building, and, in the event ACS determines that development on the Subject Property would result in a need for additional day care capacity within the Study Area boundary and that ACS is prepared to expand day care capacity within the Study Area, Declarant shall (x) offer to locate Off-Site ACS Facilities to accommodate eighteen (18) child care slots (or the Adjusted Child Care Slots if applicable), (y) make a Day Care Space Offer, each in the manner provided in Section 3.04(b)(i) or (z) provide funding or make program or physical improvements to support additional capacity. In such event, DOB shall not issue, and Declarant shall not accept a TCO or PCO for a subsequent New Building until the conditions of subclauses (A), (B) and (C) of Section 3.04(b)(ii) above have been met.

(iv) Declarant shall have no further obligation or further responsibilities under this Section 3.04(b) in the event that (A) the Off-Site ACS Facilities can accommodate eighteen (18) additional child care slots, or (B) ACS (1) accepts a Day Care Space Offer; (2) determines in response to each of the Assessment Requests that there is no need for additional day care capacity within the Study Area boundary or that it is not prepared to expand day care capacity within the Study Area; (3) following issuance of a TCO or PCO for Development Phase 5, fails to respond to or declines the final Assessment Request or Day Care Space Offer required under Section 3.04(b)(iii) within the time periods set forth in Section 3.04(b)(i); or (4) following the date hereof, after consultation with the Chair, notifies the Chair and Declarant that it does not intend to expand day care capacity within the Study Area boundary in conjunction with development on the Subject Property.

(v) As an alternative to the provision of space for a day care facility pursuant to a Day Care Offer, ACS may request Declarant to implement other measures within the Study Area boundary, or other proximate locations within Community District 1, Brooklyn, which would result in program or physical improvements at existing child care centers to support additional capacity. Declarant shall consider any such request in good faith, but shall have no obligation under this Declaration to implement alternative measures. In the event that Declarant agrees to implement such other measures as may be requested by ACS, Declarant's obligations under this Section 3.04(b) shall be deemed complete upon the performance of such other measures by or on behalf of Declarant.

(c) **Shadows**.

(i) The FEIS identified that the Proposed Development would result in a significant adverse shadow impact on Grand Ferry Park. Prior to Commencement of Construction of Development Phase 2, Declarant shall provide DPR an amount equal to $25,000 each year on an annual basis for ten (10) consecutive years, subject to adjustment annually due to changes in the CPI (collectively, the "**Shadow Impact Payments**"). The Shadow Impact Payments shall be used by DPR for the purpose of the enhanced maintenance and horticulture care of plants that lie within Grand Ferry Park. The Shadow Impact Payments shall not be used for any other purpose, and the City shall not use the Shadow Impact Payments to reduce its level of support, in the form of services and expenditures for the operation and maintenance of Grand Ferry Park, in effect prior to the date on which Declarant begins making the Shadow Impact Payments. The Shadow Impact Payments shall be due no later than thirty (30) days after the start of each City fiscal year. If the Shadow Impact Payment due upon issuance of a building permit for the construction of Building A shall be paid on a date that is not July 1st, such Shadow Impact Payment shall be prorated by multiplying the annual Shadow Impact Payment for such year, as determined pursuant to this Section, by a fraction, the numerator of which is the number of days between the date on which the first payment is due the June 30th which follows such date, and the denominator of which is three hundred sixty (360). Such prorated amount shall constitute the Shadow Impact Payment that is due for the first year of the ten (10) year commitment under this Section. The Shadow Impact Payments shall be paid by check payable to DPR at its principal office or such other office within the City as DPR may from time to time designate, or by wire transfer to an account designated by DPR. In the event that, during the ten-year period in which Declarant is making Shadow Impact Payments, Grand Ferry Park is reduced in any way, then the amount of each Shadow Impact Payment shall be reduced to the extent that the Grand Ferry Park has thereby been reduced. Declarant shall have no liability to the City, DPR, its agents, officers, employees, affiliates, successors or principals for, and the City shall indemnify, defend and hold Declarant harmless from and against any loss, cost, liability, claim, damage, expense, including reasonable attorneys' fees and disbursements (any of the foregoing, a "Claim), incurred in connection with or arising from the operation or maintenance of Grand Ferry Park or the use of the Shadow Impact Payments.

(ii) Declarant shall not apply for or accept any New Building Permit, TCO or PCO for a New Building in Development Phases 2, 3, 4 and 5unless the Commissioner of Parks shall have certified to the Commissioner of DOB that all Shadow Impact Payments have been made for each year in which a Shadow Impact Payment was required. If the Commissioner of Parks does not respond to Declarant's request for such Certification within 30 days, Declarant may self-certify to DOB, provided however that such self certification shall include documentation demonstrating that the shadow impact payments have been made in accordance with Section 3.04(c)(i) above.

(d) **Historic Resources.** In conjunction with obtaining a permit from the Army Corps of Engineers for marine work, the Declarant shall enter into a Memorandum of Agreement or Letter of Resolution with the New York State Historic Preservation Office setting forth mitigation measures with respect to Historic Resources, as and to the extent required by SHPO.

(e) **Traffic and Parking.** The FEIS identified that the Proposed Development would result in significant adverse traffic impacts, and set forth mitigation

measures which include signal timing adjustments, lane re-striping, parking prohibition, changing bicycle lane classifications, and installation of new traffic signals at unsignalized intersections. As part of the traffic mitigation, Declarant has committed to conduct two traffic monitoring programs (each a "**TMP**") (at the Declarant's expense) to determine the need for and any adjustments to the mitigation measures included in Appendix 5 and Section T of TM 003, provided that any such adjustments shall be the most cost-effective measures available; and provided further that the TMPs are intended to be supplemental to and not in duplication or replacement of the mitigation measures set forth in FEIS as restated in Appendix 5 and Section T of TM 003.

(i) **Interim Year Monitoring Plan**. Declarant shall not apply for and shall not accept a TCO or PCO for Building A, until (A) Declarant has submitted for DOT's approval, a scope of work for the interim year TMP, (B) such scope of work has been approved by DOT, and (C) the Chair certifies to DOB that Declarant has provided to DOT a letter of credit or posted a performance bond for an amount reasonably determined by DOT to equal the estimated costs of undertaking the interim year TMP, plus the estimated costs of implementing the capital mitigation measures included in Appendix 5 and Section T of TM 003. At a time specified by DOT following the completion and occupancy of Building A, the Declarant will proceed with the TMP, and Declarant shall provide reasonable notice to DOT after the completion and full occupancy of Building A, before commencement of the TMP. Declarant shall implement at its own expense the entire approved TMP, the findings of which will be used by DOT as the basis for approving mitigation measures.

(ii) **Interim Year Mitigation**. Unless, following the implementation of the interim year TMP, DOT finds that such measures are not necessary or appropriate, Declarant shall send written notice to DOT, requesting that DOT implement the traffic mitigation measures included in Appendix 5 and Section T of the TM 003 or measures having comparable benefits as specified by DOT based on the results of the interim year TMP. Declarant shall comply with DOT requirements necessary to implement the traffic mitigation measures included in Appendix 5 and Section T of the TM 003 or measures having comparable benefits as specified by DOT based on the results of the interim year TMP, and shall either implement such measures as directed by DOT, or, if directed by DOT, pay DOT/City of New York for the ordinary and customary costs, if any, of implementing such capital improvements (including but not limited to the costs of the design and construction of such capital improvements), upon request of DOT accompanied by appropriate supporting documentation. In addition, Declarant will also be responsible for submitting for review proposed mitigation measures to the appropriate City agencies following the completion of the monitoring program. The Declarant will submit all of the required drawings/designs as per AASHTO and DOT specifications for DOT review and approval. To the extent that DOT does not approve or deems unnecessary one or more of the traffic measures included in Appendix 5 and Section T of the TM 003, Declarant shall have no further obligation with respect to such measures until following the implementation of the completion year monitoring plan as described hereafter.

(iii) **Completion Year Monitoring Plan**. Declarant shall not apply for and shall not accept a TCO or PCO for Building D, until (A) Declarant has submitted for DOT's approval, a scope of work for the completion year TMP, (B) such scope of work has been approved by DOT, and (C) the Chair certifies to DOB that Declarant has provided to DOT a

letter of credit or posted a performance bond for an amount reasonably determined by DOT to equal the estimated costs of undertaking the completion year TMP, plus the estimated costs of implementing the capital mitigation measures included in Appendix 5 and Section T of the TM 003. At a time specified by DOT following the completion and occupancy of Building D, the Declarant will proceed with the TMP, and Declarant shall provide reasonable notice to DOT after the completion and full occupancy of Building D, before commencement of the TMP. Declarant shall implement at its own expense the entire approved TMP, the findings of which will be used by DOT as the basis for approving mitigation measures.

(iv) **Completion Year Mitigation**. Unless, following the implementation of the completion year TMP, DOT finds that such measures are not necessary or appropriate, Declarant shall send written notice to DOT, requesting that DOT implement the traffic mitigation measures included in Appendix 5 and Section T of the TM 003 or measures having comparable benefits as specified by DOT based on the results of the interim year TMP, that have not already been implemented as part of interim year mitigation. Declarant shall comply with DOT requirements necessary to implement the traffic mitigation measures included in Appendix 5 and Section T of the TM 003 or measures having comparable benefits as specified by DOT based on the results of the completion year TMP, and shall either implement such measures as directed by DOT, or, if directed by DOT, pay DOT/City of New York for the ordinary and customary costs, if any, of implementing such capital improvements (including but not limited to the costs of the design and construction of such capital improvements), upon request of DOT accompanied by appropriate supporting documentation. In addition, Declarant will also be responsible for submitting for review proposed mitigation measures to the appropriate City agencies following the completion of the monitoring program. The Declarant will submit all of the required drawings/designs as per AASHTO and DOT specifications for DOT review and approval. To the extent that DOT does not approve or deems unnecessary one or more of the traffic measures included in Appendix 5 and Section T of the TM 003, Declarant shall have no further obligation with respect to such measures.

(f) **Transit and Pedestrians**. The FEIS identified that the Proposed Development would result in significant adverse impacts to the Marcy Avenue subway station's Manhattan bound and Queens-bound control areas for the J/M/Z lines and identified mitigation measures consisting of replacing the existing High Entrance Exit Turnstile at the impacted control areas.

(i) Declarant shall not apply for or accept a Building Permit for Building E, until:

(A) Ninety (90) days after Declarant has sent written notice to MTA requesting that it replace the existing single High Entrance-Exit Turnstile at each of the secondary control areas (the Manhattan and Queens bound control areas in the vicinity of Havemeyer Street) at the Marcy Avenue subway station with two standard turnstiles at each control area, and conduct such other capital improvements as may be necessary to implement this mitigation (i.e., modify the wind screens and upgrade the power supply to the turnstiles); and

(B) The Chair certifies to DOB that it has received a determination by MTA that the measures described in this Section have been implemented or the ordinary and customary capital costs of such measures have been paid for by Declarant as

specified or directed by MTA. (ii) Declarant shall comply with MTA requirements necessary to implement the measures described in this section, and shall either implement such measures as directed by MTA, or, if directed by MTA, pay MTA for the ordinary and customary costs, if any, of implementing capital improvements upon request of MTA accompanied by appropriate supporting documentation. To the extent that MTA disapproves or deems unnecessary the mitigation measures described in section, Declarant shall have no further obligation with respect to such improvements.

(ii) If, 90 days following the notice to MTA pursuant to Section 3.04(f)(i), MTA (A) has not requested that Declarant implement such measures and has not sought payment for them from Declarant, or (B) has declined to respond to such notice; then Declarant may obtain a building permit for Building E.

(g) **Construction Noise**.

(i) Pursuant to a written protocol approved by DCP, Declarant shall offer to provide, at its expense, window treatment (e.g., storm windows or double-glazed windows) and alternative ventilation (e.g., fan systems or air conditioning) to all residences at the following locations, which do not already have double glazed windows and alternative ventilation:

Block	Lots	Floors	Facades
2403	37, 41	all	South
2415	10, 16, 110	all	North
	38, 110	all	South
2441	8, 15, 24, 107	all	West, North
2428	24	all	South
2390	10, 11, 12, 13, 14, 15	2 and above	West, South

(ii) Declarant shall not apply for or accept a Building Permit for any portion of Building E unless and until DCP certifies to DOB, with respect to residences listed above on Blocks 2415 (South facades only) 2441 and 2428, that (i) the requisite time periods for offer and acceptance of window treatment and alternative ventilation in accordance with the DCP-approved protocol have elapsed, and (ii) that Declarant has provided the Chair with documentation demonstrating that such window treatment and alternative ventilation measures were offered to all applicable owners or residents, and have been provided to any owner or resident which has accepted its offer.

(iii) Declarant shall not apply for or accept a Building Permit for any portion of the Refinery Building unless and until DCP certifies to DOB, with respect to residences on Blocks 2403 and 2415 (North facades only), that (a) the requisite time periods for offer and acceptance of window treatment and alternative ventilation in accordance with the DCP-approved protocol have elapsed, and (b) that Declarant has provided the Chair with documentation demonstrating that such window treatment and alternative ventilation measures were offered to all applicable owners or residents, and have been provided to any owner or resident which has accepted its offer.

(iv) Declarant shall not apply for or accept a Building Permit for any portion of Building A unless and until DCP certifies to DOB, with respect to residences on listed above on Block 2390, that (i) the requisite time periods for offer and acceptance of window treatment and alternative ventilation in accordance with the DCP-approved protocol have elapsed, and (ii) that Declarant has provided the Chair with documentation demonstrating that such window treatment and alternative ventilation measures were offered to all applicable owners or residents, and have been provided to any owner or resident which has accepted its offer.

3.05 **Force Majeure Involving a PCRE or Mitigation Measure**. Notwithstanding any provision of this Declaration to the contrary, if Declarant is unable to perform a FEIS Obligation set forth in this Article 3 by reason of the occurrence of a Force Majeure Event, as determined by the Chair, pursuant to the procedures set forth in Section 9.01, then Declarant shall not be excused from performing such FEIS Obligation that is affected by Force Majeure Event unless and until the Chair, based on consultations with the Reporter designated under Section 3.08 of this Declaration, has made a determination in his or her reasonable discretion that the failure to implement the FEIS Obligation during the period of the Force Majeure Event, or implementing an alternative proposed by Declarant, would not result in any new or different significant environmental impact not addressed in the FEIS. Unless and until such a determination is made, Declarant shall cease any and all construction and other activities which under the FEIS require implementation of the FEIS Obligation which Declarant is unable to perform by reason of the occurrence of a Force Majeure Event and shall not resume such construction or other activities until such a determination is made or is able to resume implementation of the FEIS Obligation which was subject to a Force Majeure Event.

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

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

(a) **Innovation and Alternatives**. In complying with any FEIS Obligation set forth in this Article 3, Declarant may, at its election, implement innovations, technologies or alternatives now or hereafter available, including replacing any equipment, technology, material, operating system or other measure previously located on the Subject Property or used within the Proposed Development, provided that Declarant demonstrates to the satisfaction of DCP that such alternative measures would result in equal or better methods of achieving the relevant FEIS Obligation, than those set forth in this Declaration, (such measures, "**Alternative FEIS Obligation**") in each case subject to approval by DCP.

(b) **Modifications Based on Further Assessments**. In the event that Declarant believes, in good faith, based on changed conditions, that a FEIS Obligation required under this Declaration should not apply or could be modified without diminishment of the environmental standards which would be achieved by implementation of the FEIS Obligation, it shall set forth the basis for such belief in an analysis submitted to DCP. In the event that, based upon review of such analysis, DCP determines that the relevant PCRE or Mitigation Measure

should not apply or could be modified without diminishment of the environmental standards which would be achieved by implementation of the FEIS Obligation, Declarant may eliminate or modify the PCRE or Mitigation consistent with the DCP determination ("**Elimination or Modification of FEIS Obligation**").

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

3.08 **Appointment and Role of Reporter.**

(a) Declarant shall, with the consent of DCP, retain a third party (the "**Reporter**") reasonably acceptable to DCP to oversee and certify to DCP the implementation and performance by Declarant of the construction period FEIS Obligations required under this Declaration (the "**Construction Monitoring Measures**" or "**CMMs**"). The Reporter shall be a licensed engineer, architect, general contractor, or environmental consultant with significant experience in environmental management and construction management (or multiple such persons or a firm employing such persons), including familiarity with the means and methods for implementation of the CMMs. The Reporter may be the same person or firm that prepared for Declarant the various mitigation plans required by the CMMs. In the event that the Declarant that is signatory to this Declaration shall have sold, leased transferred or conveyed to a third party fee title to, or a ground or net lease of, one or more tax lots within the Subject Property (other than transfers of condominium units), then such third party shall be deemed a successor Declarant (a "**Successor Declarant**") with respect to such lots so sold, leased, transferred or conveyed to it, and, with the prior written approval of DCP, there may exist more than one Reporter with respect to multiple developments proceeding simultaneously on the Subject Property, pursuant to separate Reporter Agreements (hereafter defined). Notwithstanding the foregoing, the Reporter retained by Declarant pursuant to the 2010 Declaration shall be deemed retained pursuant to the provisions of this Section 3.08 pursuant to the reporter agreement entered into in connection with the 2010 Declaration and such reporter agreement shall be deemed the Reporter Agreement pursuant to this Declaration for purposes of continuing construction activities until such Agreement is terminated or expires pursuant to its terms, provided that such reporter agreement is updated to reflect the Approvals set forth herein no later than thirty (30) days from the recordation of this Declaration.

(b) The 'Scope of Services' described in any agreement between Declarant and the Reporter pursuant to which the Reporter is retained (the "**Reporter Agreement**") shall be subject to prior review by and approval of DCP, such approval not to be unreasonably withheld, conditioned or delayed. Such agreement shall include provisions in a form acceptable to DCP that, among others, shall: (i) provide for appropriate DCP review of the performance of services by the Reporter; (ii) authorize DCP to direct Declarant to terminate the Reporter for dishonesty or unsatisfactory performance of its responsibilities under the Reporter Agreement; (iii) allow for the retention by the Reporter of sub-consultants with expertise appropriate to assisting the Reporter in its performance of its obligations to the extent reasonably necessary to perform its obligations under this Declaration and the Reporter Agreement; and (iv) allow for termination by Declarant for cause, but only with the express written concurrence of DCP, which concurrence will not be unreasonably withheld or delayed. If DCP shall fail to act upon a

proposed Reporter Agreement within thirty (30) days after submission of a draft form of Reporter Agreement, the form of Reporter Agreement so submitted shall be deemed acceptable by DCP and may be executed by Declarant and the Reporter. The Reporter Agreement shall provide for the commencement of services by the Reporter at a point prior to the submission of the first Permit Notice (hereinafter defined) to DCP in accordance with Section 3.09(a) (the timing of such earlier point to be at the sole discretion of Declarant) and shall continue in effect at all times that construction activities are occurring on the Subject Property with respect to a Development Phase, until issuance of TCOs or PCOs therefor, unless Declarant, with the prior consent of DCP or at the direction of DCP, shall have terminated a Reporter Agreement and substituted therefor another Reporter under a new Reporter Agreement, in accordance with all requirements of this Section 3.08. If the relevant Development Phase identified in the 'Scope of Services' under the Reporter Agreement is completed, Declarant shall not have any obligation to retain the Reporter for a subsequent Development Phase of the Subject Property, provided that Declarant shall not recommence any construction until it shall have retained a new Reporter in compliance with the provisions of this Section.

(c) The Reporter shall: (i) respond to DCP with regard to review of plans and measures proposed by Declarant for purposes of satisfying CMMs in connection with determinations required under this Declaration as a prerequisite to Construction Commencement or the issuance or acceptance by Declarant of a TCO or PCO as the case may be; and (ii) provide reports of Declarant's compliance with the CMMs during any period of construction on a schedule reasonably acceptable to DCP, but not more frequently than once per month. The Reporter may at any time also provide Declarant and DCP with notice of a determination that a CMM has not been implemented, accompanied by supporting documentation establishing the basis for such determination, provided that any such notice shall be delivered to both parties. The Reporter shall: (x) have full access to the portion of the Subject Property then being developed as part of the applicable Development Phase (as referenced in the Reporter Agreement), 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; (y) be provided with access to all books and records of Declarant pertaining to the applicable Development Phase, either on or outside the Subject Property, which it reasonably deems necessary to carry out its duties, including the preparation of periodic reports; and (z) be entitled to conduct any tests on the Subject Property that the Reporter reasonably deems necessary to verify Declarant's implementation and performance of the CMMs, subject to compliance with all generally applicable site safety requirements imposed by law, site operations, or pursuant to construction contracts in effect for the Subject Property, and provided further that any such additional testing shall be (q) coordinated with Declarant's construction activities and use of the Subject Property by the occupants of and visitors to any New Building, Private Drives and Sidewalks, Public Access Area or Waterfront Public Access Area then located on the Subject Property, and (r) conducted in a manner that will minimize any interference with the Proposed Development. The Reporter Agreement shall provide that the Reporter shall secure insurance customary for such activity and may hold the Reporter liable for any damage or harm resulting from such testing activities. The Agreement shall also include provisions, acceptable to the City, providing for the City to be named as an additional insured and for Reporter to indemnify the City for any damages, suits, claims, liabilities, costs and

expenses to the extent caused by the Reporter's performance of any work or services under the Agreement.

(d) Subject to compliance with all generally applicable site safety requirements imposed by Legal Requirements, pursuant to construction contracts, or imposed as part of the site safety protocol in effect for the Subject Property, DCP, or any other applicable City agency, may, upon prior written or telephonic notice to Declarant, enter upon the Subject Property during business hours on Business Days for the purpose of conducting inspections to verify Declarant's implementation and performance of the CMMs; provided, however, that any such inspections shall be (i) coordinated with Declarant's construction activities and use of the Subject Property by the occupants of and visitors to any New Building, Public Access Area or Waterfront Public Access Area then located on the Subject Property, and (ii) conducted in a manner that will minimize any interference with the Proposed Development. Declarant shall cooperate with DCP (or such other applicable City agency) and its representatives, and shall not delay or withhold any material information or access to the Subject Property reasonably requested by DCP (or such other applicable City agency).

(e) Declarant shall be responsible for payment of all fees and expenses due to the Reporter in accordance with the terms of the Reporter Agreement and any consultants retained by the Reporter as may be necessary to determine Declarant's compliance with the CMMs, in accordance with the terms of the Reporter Agreement.

(f) If DCP determines, based on information provided by the Reporter and others, or through its own inspection of the Subject Property during construction, as applicable, that there is a basis for concluding that such a violation has occurred, DCP may thereupon give Declarant written notice of such alleged violation (each, a "**CMM Default Notice**"), transmitted by hand or via overnight courier service to the address for Notices for Declarant set forth in Section 15.01. Notwithstanding any provisions to the contrary contained in Section 12.04 of this Declaration, following receipt of a CMM Default Notice, Declarant shall: (i) effect a cure of the alleged violation within three (3) Business Days; (ii) seek to demonstrate to DCP in writing within two (2) Business Days of receipt of the CMM Default Notice why the alleged violation did not occur and does not then exist; or (iii) seek to demonstrate to DCP in writing within two (2) Business Days of receipt of the CMM Default Notice that a cure period greater than three (3) Business Days would not be harmful to the environment (such longer cure period, a "**Proposed Cure Period**"). If DCP accepts within one (1) Business Day of receipt of a writing from Declarant that the alleged violation did not occur and does not then exist, DCP shall withdraw the CMM Default Notice and Declarant shall have no obligation to cure. If DCP accepts a Proposed Cure Period in writing within one (1) Business Day of receipt of a writing from Declarant, then this shall become the applicable cure period for the alleged violation (the "**New Cure Period**"), provided that if DCP does not act with respect to a Proposed Cure Period within one (1) Business Day of after receipt of a writing from Declarant with respect thereto, the three (3) day cure period for the alleged violation shall be deemed to continue unless and until DCP so acts. If Declarant fails to: (i) effect a cure of the alleged violation; (ii) cure the alleged violation within a New Cure Period, if one has been established; or (iii) demonstrate to DCP's satisfaction that a violation has not occurred; then representatives of Declarant shall, promptly at DCP's request, and upon a time and date acceptable to DCP, convene a meeting at the Site with the

Reporter and DCP representatives. If Declarant is unable reasonably to satisfy the DCP representatives that no violation exists or is continuing, and Declarant and DCP are unable to agree upon a method for curing the violation within a time period acceptable to DCP, DCP shall have the right to exercise any remedy available at law or in equity or by way of administrative enforcement, to obtain or compel Declarant's performance under this Declaration, including seeking an injunction to stop work on the Subject Property, as necessary, to ensure that the violation does not continue, until Declarant demonstrates that it has cured the violation.

(g) **Third Party Monitor**.

(i) DCP reserves the right to require the designation of an independent third party (the "**Monitor**") reasonably acceptable to City Planning to be retained at Declarant's expense, to oversee, on behalf of City Planning, the implementation and performance by Declarant of the construction period FEIS Obligations required under this Declaration, if DCP determines, in its reasonable discretion, after consultation with the Declarant, that the Reporter has not acted in an impartial manner in its duty to oversee and certify to DCP the implementation and performance by Declarant of the construction period FEIS Obligations required under this Declaration . The Monitor shall be a person holding a professional engineering degree and with significant experience in environmental management and construction management (or a firm including such persons), including familiarity with the means and methods for implementation of the applicable construction period FEIS Obligations. Where DCP requires a Monitor all other provisions of Sections 3.08 and 3.09 shall remain in effect except that the word "Monitor" shall be substituted for the word "Reporter" and the Monitor Agreement shall include provisions acceptable to DCP which shall ensure that the Monitor is independent of Declarant in all respects relating to the Monitor's responsibilities under this Declaration and provides its impartial services on behalf of City Planning.

3.09 **DCP Review.**

(a) Not less than ninety (90) days prior to the date Declarant anticipates (i) to be the date of Construction Commencement of any Development Phase, Declarant shall send written notice to DCP advising of Declarant's intention to undertake Construction Commencement (each such notice, a "**Permit Notice**"). Any Permit Notice shall be accompanied by: (x) a summary of the provisions of this Declaration imposing conditions or criteria that must be satisfied as a condition to or in conjunction with Construction Commencement; (y) materials or documentation demonstrating compliance with such requirements or criteria to the extent Declarant believes that compliance has been achieved by the date of the Permit Notice; and (z) to the extent that Declarant believes that compliance with any condition or criteria has not been achieved by the date of the Permit Notice, an explanation of why compliance has not yet been achieved to date, the steps that are or will be taken prior to issuance of the Building Permit to achieve compliance and the method proposed by Declarant to assure DCP that the elements will be achieved in the future. Materials or documentation from any Governmental Authority, certifying the implementation of a FEIS Obligation set forth in this Declaration, shall be accepted as compliance with the relevant FEIS Obligation. Notwithstanding the foregoing, demolition activities which have previously been permitted pursuant to the 2010 Declaration by DCP, such approval having been set forth by letter dated September 19, 2013

from DCP to DOB Brooklyn Borough Commissioner Ira Gluckman, R.A., attached hereto as **Exhibit J**, shall not be subject to the provisions of this Section 3.09.

(b) Following the delivery of a Permit Notice to DCP in accordance with Paragraph (a) hereof, Declarant shall meet with DCP (and at DCP's option, the Reporter) to respond to any questions or comments on the Permit Notice and accompanying materials, and shall provide additional information as may reasonably be requested by DCP or the Reporter in writing in order to allow DCP to determine, acting in consultation with the Reporter and any City agency personnel necessary in relation to the subject matter of the Permit Notice, that the conditions and criteria for Construction Commencement or issuing the Building Permit have been or will be met in accordance with the requirements of this Declaration. Declarant shall not accept any Building Permit subject to review pursuant to this Section 3.09 until DCP has certified to Declarant and DOB that the conditions and criteria set forth in this Declaration for issuance of the Building Permit have been met. Notwithstanding the foregoing, (x) in the event that DCP has failed to respond in writing to Declarant within forty five (45) days of receipt of the Permit Notice, or (y) has failed to respond in writing to Declarant within fifteen (15) days of receipt of additional materials provided to DCP under this Paragraph (b), DCP shall be deemed to have accepted the Permit Notice and any subsequent materials related thereto under this Section 3.09(b) as demonstrating compliance with the requirements for issuance of the Building Permit and Declarant shall be entitled to accept the Building Permit and to undertake any and all activities authorized thereunder.

(c) Not less than thirty (30) days prior to the date that Declarant anticipates obtaining the first TCO or PCO for any New Building on the Subject Property, Declarant shall send written notice to DCP advising of Declarant's intention to obtain such TCO or PCO (each such notice, a "**CO Notice**"). Within twenty (20) days of delivery of any CO Notice, DCP shall have the right to inspect the New Building and review construction plans and drawings, as necessary to confirm that the FEIS Obligations required to be incorporated into the New Building have been installed in accordance with the plans initially submitted as part of the New Building Permit. DOB shall not issue, and Declarant shall not accept, a TCO or PCO if DCP has provided written notice to Declarant, copied to DOB, within five (5) days following any such inspection (x) advising that Declarant has failed to include a required FEIS Obligations within the New Building, or has failed to fully satisfy the FEIS Obligations, and (y) specifying the nature of such omission or failure. In the event that DCP provides such notice, Declarant and DCP shall meet promptly to review the claimed omission or failure, develop any measures required to respond to such claim, and Declarant shall take all steps necessary to remedy such omission or failure. Upon the completion of such steps to the satisfaction of DCP, Declarant shall be entitled to obtain the TCO or PCO as the case may be.

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

(e) Notwithstanding anything to the contrary set forth in this Article III, following the Effective Date, Declarant shall be entitled to perform any necessary safety and soundness work, as may be required under Legal Requirements, on the Refinery Complex and with respect to any other existing structure on the Subject Property prior to its demolition.

ARTICLE IV

PUBLIC ACCESS AREAS

4.01 **Construction of the Waterfront Public Access Areas, Public Access Areas and Private Drives and Sidewalks.**

(a) If Declarant develops the Subject Property, the Waterfront Public Access Areas, Public Access Areas and the Private Drives and Sidewalks shall be constructed substantially in accordance with the Waterfront Public Access Area Plans and the Final Waterfront Public Access Area Plans and otherwise in compliance with this Declaration.

(b) The "**Waterfront Public Access Area Plans**" shall mean the following plans and drawings, by James Corner Field Operations, annexed hereto in **Exhibit C** and made a part hereof:

Number	Title	Date
G-001.00	Title Sheet	10.29.13
G-100.00	Survey	09.14.13
G-110.00	Zoning Lots	10.29.13
L-001.00	WPAA Zoning Calculations	10.29.13
L-002.00	WPAA Zoning Calculations	10.29.13
L-003.00	WPAA Zoning Calculations	10.29.13
L-100.00	Waterfront Public Area Access Diagram	10.29.13
L-121.00-A	Layout Plan-Area 1	10.29.13
L-122.00-A	Layout Plan-Area 2	10.29.13
L-131.00-A	Materials Plan-Area 1	10.29.13
L-132.00-A	Materials Plan-Area 2	10.29.13
L-141.00-A	Grading Plan-Area 1	10.29.13
L-142.00-A	Grading Plan-Area 2	10.29.13
L-151.00-A	Planting Plan-Area 1	10.29.13
L-152.00-A	Planting Plan-Area 2	10.29.13
L-161.00-A	Furnishing Plan-Area 1	10.29.13

Number	Title	Date
L-162.00-A	Furnishing Plan-Area 2	10.29.13
L-171.00-A	Lighting Plan-Area 1	10.29.13
L-172.00-A	Lighting Plan-Area 2	10.29.13
L-181.00-A	Lighting Foot Candle Diagram-Area 1	10.29.13
L-182.00-A	Lighting Foot Candle Diagram-Area 2	10.29.13
L-121.00-B	Layout Plan	10.29.13
L-131.00-B	Materials Plan	10.29.13
L-141.00-B	Grading Plan	10.29.13
L-151.00-B	Planting Plan	10.29.13
L-161.00-B	Furnishing Plan	10.29.13
L-171.00-B	Lighting Plan	10.29.13
L-181.00-B	Lighting Foot Candle Diagram	10.29.13
L-210.00	Typical Details 1	10.15.13
L-211.00	Typical Details 2	10.15.13
L-220.00	Typical Details 3	10.15.13
L-230.00	Typical Details 4	10.15.13
L-231.00	Typical Details 5	10.15.13
L-232.00	Typical Details 6	10.15.13
L-233.00	Typical Details 7	10.15.13
L-234.00	Typical Details 8	10.15.13
L-235.00	Typical Details 9	10.15.13
L-300.00	Site Section 1	10.15.13
L-301.00	Site Section 2	10.29.13
L-302.00	Site Section 2	10.29.13
L-303.00	Site Section 4	10.29.13
L-601.00	Waterfront Zoning Lot Phasing Plan: Phase 1	10.29.13
L-602.00	Waterfront Zoning Lot Phasing Plan:	10.29.13

Number	Title	Date
	Phase 2	
L-603.00	Waterfront Zoning Lot Phasing Plan: Phase 3	10.29.13
L-604.00	Waterfront Zoning Lot Phasing Plan: Phase 4	10.29.13

4.02 **Permits and Other Approvals**. Declarant, at its sole cost and expense, shall diligently apply for and prosecute the applications for all City, State and Federal permits and approvals necessary for the Waterfront Public Access Area Work, the Public Access Area Work, and the Private Drives and Sidewalks Work.

4.03 **Performance of Waterfront Public Access Area Work, Public Access Area Work and the Private Drives and Sidewalks Work**. Declarant agrees that the Waterfront Public Access Area Work, Public Access Area Work and the Private Drives and Sidewalks Work shall be performed in accordance with all Legal Requirements and the provisions of this Declaration and the M&O Agreement, where applicable.

4.04 **Phasing of Public Access Areas, Waterfront Public Access Area and Private Drives and Sidewalks**. The Public Access Area, Waterfront Public Access Area and Private Drives and Sidewalks shall be constructed in four (4) Waterfront Zoning Lot Phases, as described on the Waterfront Public Access Area Plans. Declarant shall not apply for or accept a Building Permit, TCO or PCO for any ZL1 or ZL2 Building, except in compliance with the Waterfront Zoning Lot Phasing Plans and with this Declaration.

ARTICLE V

DESIGN DEVELOPMENT OF THE WATERFRONT PUBLIC ACCESS AREAS, PUBLIC ACCESS AREAS AND PRIVATE DRIVES AND SIDEWALKS

5.01 **Waterfront Public Access Area Plans**. Declarant shall ensure that the design of the Waterfront Public Access Area, Public Access and Private Drives and Sidewalks is substantially in accordance with the Waterfront Public Access Area Plans and in connection therewith agrees that:

(a) it shall not submit the Waterfront Public Access Area Design Submission pursuant Article II of the M&O Agreement to DPR for the portion of any Waterfront Zoning Lot Phase comprised of WPAA (the "**Waterfront Public Access Area Design Submission**") which is not in substantial conformity with the Waterfront Public Access Area Plans without first submitting drawings setting forth a modified Waterfront Public Access Area (the "**Modified Waterfront Public Access Areas Plans**") and obtaining the written approval of such Modified Waterfront Public Access Area Plans by DPR and DCP (any such consent, a **"Waterfront**

Public Access Area Plans Modification Approval"), provided further that for that portion of the Modified Waterfront Public Access Area Plans comprised of WPAA such WPAA shall comply with the requirements of Article VI, Chapter 2 of the Zoning Resolution;

(b) it shall not apply for or accept a Building Permit for any Development Phase subject to a Waterfront Public Access Area Plans Modification Approval until the Chair issues the Chair Certification pursuant to Section 62-811 of the Zoning Resolution in accordance with the provisions of Section 5.05 set forth below;

(c) it shall not apply for accept a Building Permit for the PAA or Private Drives and Sidewalk Work which is not in substantial conformity with the Waterfront Public Access Area Plans unless it obtains prior written approval of the necessary modifications of the Waterfront Public Access Area Plans by the Chair in accordance with the provisions Section 14.02 of this Declaration.

5.02 **Waterfront Public Access Area Plans**. Declarant agrees that the architectural character and design of the Waterfront Public Access Area, the Public Access Area and the Private Drives and Sidewalks shall substantially conform to the design intent reflected in the Waterfront Public Access Areas Plans, as may be further modified in accordance with the provisions of this Article 5.

5.03 **State and Federal Permits**. Declarant has advised the City that construction of portions of the PAA and WPAA will require a permit and approval from the State and Federal governments (together, the "**Federal/State Public Access Area Approvals**"), and that applications for the Federal/State Public Access Area Approvals have been submitted. Declarant covenants to proceed in good faith and exercise due diligence to obtain the Federal/State Public Access Area Approvals. In connection with its efforts to obtain the Federal/State Public Access Area Approvals, Declarant shall not file or otherwise formally submit to any Federal or State agency any plans, drawings or illustrative representations of the PAA and WPAA that do not conform with the, Waterfront Public Access Area Plans or an approved Public Access Area Design Submission made pursuant to this Declaration and the provisions of the M&O Agreement.

5.04 **Modifications Due to Failure to Obtain Permits**. If Declarant is unable, despite its good faith efforts, to obtain the Federal/State Public Access Area Approvals for the portions of the PAA and WPAA required in connection with a New Building no later than fifteen months after obtaining a New Building permit for such New Building, or if Declarant obtains the Federal/State Public Access Area Approvals and the Federal/State Public Access Area Approvals do not include approval for all portions of the PAA and WPAA required in connection with such New Building for which such approval is needed, or if Declarant otherwise determines that it will not be able to obtain the Federal/State Public Access Area Approvals for all or any portions of the PAA and WPAA required in connection with such New Building no later than fifteen months after obtaining a New Building permit for such New Building, Declarant shall so notify DPR and DCP. Provided that, in the exercise of their reasonable judgment, DPR and DCP concur that (i) Declarant has exercised good faith in seeking to obtain such Federal/State Public

Access Area Approvals and (ii) Declarant is unlikely to obtain such Federal/State Public Access Area Approvals by the date which, pursuant to the construction schedule for the applicable Waterfront Zoning Lot Phase, such Federal/State Public Access Area Approvals are needed to obtain a TCO at the time issuance of a TCO is anticipated, such inability to obtain the Federal/State Public Access Area Approvals shall be deemed to constitute a Force Majeure Event pursuant to the terms of this Declaration and Circumstances Beyond the Control of the Owner pursuant to the provisions of the M&O Agreement with respect to Declarant's obligation to Substantially and/or Finally Complete such portion of the PAA and WPAA required in connection with such New Building. In such event, Declarant may obtain a TCO or PCO with respect to a New Building in Waterfront Zoning Lot Phase, (x) provided that Declarant has satisfied all conditions to the issuance of such TCO or PCO with respect to such New Buildings, except for completion of any elements or satisfaction of any conditions required in order to Substantially Complete or Finally Complete the PAA and WPAA required in connection with such New Building that could not be completed or satisfied due to inability to obtain the Federal/State Public Access Area Approvals, and (y) subject to the provisions for Force Majeure set forth in Article IX hereof and subject to the provisions for Circumstances Beyond the Control of the Owner pursuant to the provisions of the M&O Agreement.

5.05 **Waterfront Public Access Area Plans Modification Approval**. A Waterfront Public Access Area Plans Modification Approval, with respect to that portion of the Waterfront Public Access Area Plans comprised of WPAA, shall serve as a determination by the Chair that he or she is prepared to certify the Modified Waterfront Public Access Area Plans pursuant to Section 62-811 of the Zoning Resolution to reflect the Waterfront Public Access Area Plans Modification Approval. Where a Waterfront Public Access Area Plans Modification Approval is obtained, Declarant shall file an application pursuant to Section 62-811 of the Zoning Resolution, with the Modified Waterfront Public Access Area Plans that incorporate all modifications previously approved pursuant to a Waterfront Public Access Area Plans Modification Approval, and provided that the formally filed land use application requesting Chair certification pursuant to Section 62-811of the Zoning Resolution is sufficiently complete and adheres to Department rules and standards for filing a land use application for a Chair Certification pursuant to Section 62-811 of the Zoning Resolution the Chair shall issue the Certification within thirty (30) calendar days of such filing. Upon the filing of an application pursuant to Section 62-811 of the Zoning Resolution requesting that the Chair certify that the Modified Waterfront Public Access Area Plans comply with the requirements of Article VI, Chapter 2 of the Zoning Resolution Declarant may submit the Waterfront Public Access Area Design Submission to DPR in accordance with the provisions of the M&O Agreement.

ARTICLE VI

CONSTRUCTION OF THE WATERFRONT PUBLIC ACCESS AREAS, PUBLIC ACCESS AREAS AND PRIVATE DRIVES AND SIDEWALKS

6.01 **Manner of Performance of the Construction Work; Permits**. Declarant shall, at its sole cost and expense, undertake and complete the performance of the WPAA Work, PAA Work and Private Drives and Sidewalks Work so as to construct the Waterfront Public Access

Areas, Public Access Areas and Private Drives and Sidewalks substantially in accordance with the Waterfront Public Access Area Plans, except as modified in accordance with the provisions of Article 5, this Article 6 and the M&O Agreement. Declarant shall perform the WPAA Work, PAA Work and Private Drives and Sidewalks Work in a good and workerlike manner and in accordance with Legal Requirements, including, without limitation, any applicable Legal Requirements pertaining to hazardous materials.

6.02 **Modifications of Final Waterfront Public Access Area Plans**. Declarant shall have the right to make non-material modifications to the Waterfront Public Access Area Plans to respond to unanticipated field conditions in accordance with the M&O Agreement.

6.03 **Security**.

(a) To secure Declarant's obligation to Finally Complete the Waterfront Public Access Areas and Private Drives and Sidewalks required in each Waterfront Zoning Lot Phase, Declarant shall, prior to issuance by the Chair of a Notice of Substantial Completion for any portion of the PAA and Private Drives and Sidewalks, deliver to the City 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 Developer's architect or landscape architect, as applicable, as being 125% of the cost of Finally Completing such PAA and Private Drives and Sidewalks (the "**Completion Letter of Credit**")

6.04 **Failure to Perform**.

(a) In the event that Declarant fails to Finally Complete the PAA or Private Drives and Sidewalks in a Waterfront Zoning Lot Phase that was the subject of a Notice of Substantial Completion, within such time period provided for in Section 8.02 of this Declaration, the City may, at its option, upon not less than thirty (30) days written notice to Declarant (i) complete the PAA or Private Drives and Sidewalks in such Waterfront Zoning Lot Phase; (ii) cause Declarant to remove all of its equipment and any other items impeding the City's completion of the PAA or Private Drives and Sidewalks in such Waterfront Zoning Lot Phase; and (iii) draw upon the Completion Letter of Credit issued in connection with a Notice of Substantial Completion in accordance with Section 6.03 of this Declartion for so much of the proceeds as is necessary to pay for the reasonable costs and expenses incurred in Finally Completing the PAA or Private Drives and Sidewalks in such Waterfront Zoning Lot Phase. If the full amount of the Completion Letter of Credit is not utilized, then the City shall return the balance of the proceeds to the Declarant promptly after Final Completion.

(b) Declarant hereby grants to the City and its contractors, agents, employees and sub-contractors a license to enter upon the Subject Property for the purpose of exercising its rights under Section 6.04(a) hereof, including the use of heavy construction equipment such as bulldozers, frontend loaders and the like as may be necessary to perform the PAA Work and Private Drive and Sidewalks Work, provided that the City shall use reasonable efforts to minimize disruption of any construction of any New Building to avoid damage to any portion of the Subject Property or any improvements thereon. The grant of the foregoing license shall be conditioned upon agreement by the City to indemnify, defend and hold each Indemnified Party harmless from and against Claim paid or incurred by Declarant be reason of the City's exercise of its rights under this Section 6.04, except to the extent such claim is caused by the negligence of the Indemnified Parties.

(c) If the City exercises its rights under Section 6.04 hereof and thereafter substantially completes a Waterfront Zoning Lot Phase, DCP shall issue a Notice of Substantial Completion with respect thereto.

ARTICLE VII

TEMPORARY CERTIFICATES OF OCCUPANCY

7.01 **TCO.**

(a) Declarant shall not apply for or accept a TCO for any New Building in Development Phase 2, 3, 4, and 5 until all of the following conditions have been met, provided that the requirements of this Section shall not be applicable where the Chair has determined that a Force Majeure Event has occurred pursuant to Section 9.01 of this Declaration with respect to a PAA or Private Drives and Sidewalk required in connection with a Waterfront Zoning Lot Phase, or DPR has determined that Circumstances Beyond the Control of the Owner exists pursuant the provisions of the M&O Agreement with respect to Waterfront Public Access Area required in connection with such Waterfront Zoning Lot Phase:

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

(ii) DCP has issued a Notice of Substantial Completion for the PAAs and Private Drives and Sidewalks in the Waterfront Zoning Lot Phase required in connection with the New Building in accordance with Section 7.02 of this Declaration;

(iii) Declarant has provided to the City the Completion Letter of Credit required by Section 6.05 of this Declaration for the PAA and Private Drives and Sidewalks required in connection with the New Building; and

(b) Within ten (10) days after receipt of documentation demonstrating satisfaction of the conditions set forth in Section 7.01(a), the Chair shall certify in writing to DOB that Declarant has met the requirements of this Declaration or Section 62-72 of the Zoning Resolution, as applicable, and that a TCO, may be issued to the Declarant for the New Building.

(c) In the event that pursuant to a Chair certification that a Force Majeure Event exists under the terms of Section 9.01 of this Declaration or pursuant to a DPR determination that Circumstances Beyond Control of the Owner exist under the terms of the M&O Agreement, Declarant has obtained a TCO prior to completion of the conditions set forth in Section 7.01(a) above, upon cessation of the Force Majeure Event or Circumstances Beyond the Control of the Owner, as the case may be, Declarant shall, as promptly as possible, satisfy the conditions of Section 7.01(a) that were prevented from being satisfied due to the existence of the Force Majeure Event or Circumstances Beyond Control of the Owner.

7.02 **Notice of Substantial Completion**. Declarant shall notify DCP at such time as it believes that the PAA and Private Drives and Sidewalks required in connection with a Waterfront Zoning Lot Phase are Substantially Complete and shall request that DCP issue a

certificate, in the form of **Exhibit K** annexed hereto (a "**Notice of Substantial Completion**"), to Declarant certifying Substantial Completion of such PAA and Private Drives and Sidewalks in such Waterfront Zoning Lot Phase. The notification to DCP shall be accompanied by documentation prepared by a qualified civil engineer demonstrating Substantial Completion of the PAA or Private Drive and Sidewalk in a form acceptable to DCP. No later than twenty (20) calendar days after receipt of such request, DCP shall either issue the Notice of Substantial Completion or deliver to Declarant a notice setting forth in detail the reasons why the PAA and Private Drives and Sidewalks of such Waterfront Zoning Lot Phase are not Substantially Complete and the items that need to be completed. If DCP notifies Declarant that such PAA and Private Drives and Sidewalks of such Waterfront Zoning Lot Phase have not been Substantially Completed in accordance with the Waterfront Public Access Area Plans, 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 (a "**Punch List**"). The Punch List shall not include items which, pursuant to the definition of Substantial Completion, are not required to be completed prior to Substantial Completion. Declarant shall promptly perform the work specified on the Punch List, after which it shall notify DCP of such completion. No later than ten (20) calendar days after receipt of such notice, DCP shall either issue the Notice of Substantial Completion or notify Declarant that it has not completed the Punch List (which notice shall specify which items of the Punch List remain incomplete). If DCP fails to provide a notice to Declarant within the time periods set forth in this Section, then DCP shall be deemed to have issued a Notice of Substantial Completion with respect to such PAA and Private Drives and Sidewalks of such applicable Waterfront Zoning Lot Phase.

ARTICLE VIII

PERMANENT CERTIFICATES OF OCCUPANCY

8.01 **PCO**.

(a) Declarant shall not accept a PCO for any New Building in Development Phase 2, 3, 4, and 5 until all of the following conditions have been met with respect to the Waterfront Zoning Lot Phase required in connection with such Development Phase, provided that the requirements of this Section shall not be applicable where the Chair has determined that a Force Majeure Event has occurred pursuant to Section 9.01 of this Declaration with respect to a PAA or Private Drives and Sidewalk required in connection with such Waterfront Zoning Lot Phase, or DPR has determined that Circumstances Beyond the Control of the Owner exists pursuant the provisions of the M&O Agreement with respect to Waterfront Public Access Area required in connection with such Waterfront Zoning Lot Phase:

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

(ii) DCP has issued a Notice of Final Completion for the PAAs and Private Drives and Sidewalks in the Waterfront Zoning Lot Phase required in connection with the New Building in accordance with Section 8.02 of this Declaration.

(b) Within ten (10) days after receipt of documentation demonstrating satisfaction of the conditions set forth in Section 8.01(a), the Chair shall certify in writing to DOB that Declarant has met the requirements of this Declaration or Section 62-72 of the Zoning Resolution, as applicable, and that a PCO, may be issued to the Declarant for the New Building.

(c) In the event that pursuant to a Chair certification that a Force Majeure Event exists under the terms of Section 9.01 of this Declaration or pursuant to a DPR determination that Circumstances Beyond Control of the Owner exist under the terms of the M&O Agreement, Declarant has obtained a PCO prior to completion of the conditions set forth in Section 8.01(a) above, upon cessation of the Force Majeure Event or Circumstances Beyond the Control of the Owner, as the case may be, Declarant shall, as promptly as possible, satisfy the conditions of Section 8.01(a) that were prevented from being satisfied due to the existence of the Force Majeure Event or Circumstances Beyond Control of the Owner.

8.02 **Performance of Work**. Subject to the provisions of Article 9 hereof, Declarant shall, within three (3) months after issuance of a Notice of Substantial Completion for the PAA or Private Drives and Sidewalks in a Waterfront Zoning Lot Phase required in connection with a New Building, Finally Complete the PAA or Private Drives and Sidewalks in such Waterfront Zoning Lot Phase that was the subject of the Notice of Substantial Completion. If Declarant fails to perform the PAA Work or Private Drives and Sidewalks work necessary to Finally Complete the PAA or Private Drives and Sidewalks in such Waterfront Zoning Lot within the applicable period, the City may, exercise its self help options pursuant to the provisions of Section 6.04 of this Declaration.

8.03 **Notice of Final Completion**. Declarant shall notify DCP at such time as it believes that the PAA and Private Drives and Sidewalks required in connection with a Waterfront Zoning Lot Phase are Finally Complete and shall request that DCP issue a certificate, in the form of **Exhibit L** annexed hereto (a "**Notice of Final Completion**"), to Declarant certifying Final Completion of such PAA and Private Drives and Sidewalks in such Waterfront Zoning Lot Phase. The notification to DCP shall be accompanied by documentation prepared by a qualified civil engineer demonstrating Final Completion of the PAA or Private Drive and Sidewalk in a form acceptable to DCP. No later than twenty (20) days after receipt of such request, DCP shall either issue the Notice of Final Completion or deliver to Declarant a notice specifying in detail the reasons why the PAA and Private Drives and Sidewalks of the applicable Waterfront Zoning Lot Phase is not Finally Complete and the items that need to be completed. If DCP notifies Declarant that such PAA and Private Drives and Sidewalks of such Waterfront Zoning Lot Phase have not been Finally Completed in accordance with the Final Public Access Area Plans, such notice shall include a detailed statement of the reasons for such non-acceptance in the form of a Punch List. Declarant shall promptly perform the work specified on the Punch List, after which it shall notify DCP of such completion. No later than twenty (20) days after receipt of such notice, DCP shall either issue the Notice of Final Completion or notify Declarant that it has not completed the Punch List (which notice shall specify which items of the Punch List remain incomplete). If DCP fails to provide a notice to Declarant within the time periods set forth in this Section, then DCP shall be deemed to have issued a Notice of Final Completion. The issuance of a Notice of Final Completion in accordance with the provisions of this Section 8.03

shall be conclusive evidence with respect to Declarant that the Waterfront Zoning Lot Phase has been constructed in accordance with Waterfront Public Access Area Plans.

ARTICLE IX

DELAY

9.01 **Delay By Reason of Force Majeure Event or Circumstances Beyond the Control of the Owner.**

(a) In the event that Declarant is unable to Complete a PAA Obligation or Private Drives and Sidewalk Obligation, or comply with an FEIS Obligation required pursuant to this Declaration, as a result of a Force Majeure Event, then Declarant may, upon written notice to the Chair (the "**Delay Notice**"), request that the Chair, certify the existence of such Force Majeure Event. Any Delay Notice shall include a description of the Force Majeure Event, its cause and probable duration and the impact it is reasonably anticipated to have on the completion of the item of work, to the extent known and reasonably determined by the Declarant. The Chair in the exercise of its reasonable judgment, shall determine whether a Force Majeure Event exists, and upon notice to Declarant, within ten (10) calendar days of its receipt of the Delay Notice certify in writing whether a Force Majeure Event has occurred. If the Chair certifies that a Force Majeure Event does not exist, the Chair shall set forth with reasonably specificity, in the certification, the reasons therefore. If the Chair certifies a Force Majeure Event exists, upon such notification, the Chair shall grant Declarant appropriate relief including notifying the Buildings Department that a Building Permit, TCO, or a PCO, as applicable, may be issued for the New Building, or, in the Chair's reasonable discretion, for portions thereof, located within the applicable Development Phase. Any delay caused as the result of a Force Majeure Event shall be deemed to continue only as long as the Force Majeure Event continues. Upon cessation of the events causing such delay, Declarant shall promptly recommence the PAA Obligation, or FEIS Obligation, as applicable. As a condition to granting relief pursuant to a Force Majeure Event with respect to a PAA Obligation or Private Drives and Sidewalk Obligation, the Chair may require that Declarant post a bond, letter of credit or other security in a form reasonably acceptable to the Chair and naming the City as a beneficiary, to secure Declarant's PAA Obligation and, if applicable, ensure that all requirements of Section 4.01(a) are satisfied, upon the cessation of the Force Majeure Event ("**Force Majeure Event Completion Letter of Credit**"). Declarant shall re-commence construction of the applicable PAA Phase to Substantially Complete (where a TCO has been issued pursuant to a Force Majeure Event), or Finally Complete, (where a PCO has been issued pursuant to a Force Majeure Event), or re-commence implementation of the applicable FEIS Obligation, at the end of the probable duration of the Force Majeure Event 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 of the PAA Work or Private Drives and Sidewalks Work, or for the implementation of the FEIS Obligation, as the case may be. If Declarant fails to Substantially Complete, or Finally Complete the PAA Work applicable to the issuance of a Building Permit, TCO or PCO for a New Building, the City may undertake to the PAA Work

necessary to Substantially or Finally Complete the applicable PAA Obligation, and draw upon the aforesaid Force Majeure Event Completion Letter of Credit for reasonable and necessary expenses, to the extent required to complete the PAA Obligation. Upon the City's completion of the applicable PAA Work, the City shall return the aforesaid security (or the undrawn balance thereof) to Declarant. Declarant hereby grants the City and its contractors, agents, employees and sub-contractors a license to enter upon such portions of the Subject Property as shall be required to for the purposes of exercising its rights under this Section 9.01.

(b) In the event that Declarant is unable to complete a WPAA Obligation, pursuant to this Declaration, such delay to perform a WPAA Obligation shall be subject to the provisions of the M&O Agreement relating to Circumstances Beyond the Owners Control.

ARTICLE X

EASEMENTS

10.01 **Public Access Easements.**

(a) Upon issuance of a Notice of Substantial Completion of the WPAA, PAA and Private Drives and Sidewalks set forth in a Waterfront Zoning Lot Phase required as a condition of a issuance of a TCO for a New Building in a Development Phase, Declarant hereby covenants that the City and the general public shall have permanent, perpetual and non-exclusive access over such completed portion of PAA, WPAA and Private Drives and Sidewalks as follows: (i) guaranteed access over such PAA and WPAA by the general public for the purpose of active and passive recreational use and pedestrian passage, and for programs and events permitted pursuant to Section 10.04 , and by the City for all purposes related to implementation of the provisions of this Declaration and the M & O Agreement; and (ii) guaranteed access over the Private Drive and Sidewalks: (aa) by the general public, for pedestrian passage and on the private drives for private vehicular passage and parking, subject to applicable parking regulations; and (bb) by the City for vehicular passage and parking, as well as emergency vehicle access, as well as for all purposes relating to the monitoring and enforcement of this Declaration, in each case unobstructed (except for such obstructions, objects, amenities and other items as are shown on the Waterfront Public Access Area Plans or as are otherwise permitted by the City), from the surface of the roadbed or the pavement up to the sky (each, a "**Public Access Easement**"; collectively, the "**Public Access Easements**"), subject to the terms and conditions set forth in this Article 10. The Public Access Easements granted herein shall run with the land and shall be binding on Declarant and all of its successors and assigns.

(i) All programs and events organized by the Declarant in the PAA shall be subject to the provisions of Section 10.04 of this Declaration.

(b) Declarant acknowledges, warrants and represents that the Public Access Easements granted herein shall be superior to all other liens and encumbrances, including but not limited to judgment liens, mortgage liens, mechanics liens and vendees' liens, and further agrees that Declarant shall take any and all action necessary to ensure that all other liens and encumbrances shall be subject and subordinate to the rights, claims, entitlements, interests and priorities created by the Public Access Easements granted herein.

(c) The Public Access Easements for Private Drives and Sidewalks include a grant to the City of the right of use and access to the Private Drives and Sidewalks as determined by the City to be necessary to provide for the management of traffic and parking on the Private Drives and Sidewalks, and the cleaning and plowing of the Private Drives and Sidewalks and collection of household refuse from buildings abutting such Private Drives and Sidewalks. Laws and regulations pertaining to vehicular and pedestrian traffic, parking, snow removal and garbage collection apply to the Private Drives and Sidewalks, and are enforceable by the City therein in the same manner as if the Private Drives and Sidewalks were public streets, in accordance with and to the extent permitted by law.

10.02 **Closing of Public Access Easements**.

(a) **Closure of the PAA or Private Drives and Sidewalks**. Declarant may close the Public Access Easement areas over the Private Drives and Sidewalks or the most limited portions thereof, as may be necessary, in order (a) to, in the event Declarant has completed all the Waterfront Zoning Lot Phases, effectuate construction of a New Building (including construction staging, hoisting or safety buffers which may require a partial street or sidewalk closures) or make repairs to an existing Building; (b) to accomplish the maintenance, repairs or replacements of the WPAA, PAA, Private Drives and Sidewalks, or portions thereof, or for the repair, restoration, rehabilitation, renovation or replacement of pipes, utility lines or conduits or other equipment on or under WPAA, PAA or Private Drives and Sidewalks, provided that Declarant notifies the Chair of such closure no less than seven (7) days in advance with a description in such notice of the area and duration of closure, and no less than three (3) days in advance of closure posts signs at sufficiently appropriate and visible locations in order to provide prior notice to the public of the area and duration of such approved closure; (c) to accomplish work as may be approved by DOB and other Governmental Authorities in connection with maintenance, repairs or improvements, including but not limited to Local Law 11 work, and the scaffolding and sidewalk bridges that accompany such work, on any of the buildings in the Large-Scale General Development, provided such closure is limited in scope to that necessary to accomplish such work and shall notify the Chair of such closing at least thirty (30) days in advance and such notice shall set forth the area and duration to be closed and shall post signs providing prior notice to the public of such area and duration of closure, at appropriate locations and entrances to and within the WPAA, PAA or Private Drives and Sidewalks; and (d) to make emergency repairs to mitigate hazardous site conditions or to address other emergency conditions and shall notify the Chair of such closing and its expected duration as soon as practicable but in no event more than two (2) Business Days after such closure, give notice to the Chair that such portion has been closed, which notice shall describe the nature of the emergency or hazardous condition causing the closure, the portion to be closed and the anticipated duration thereof, provided that conditions for which the WPAA, PAA or Private Drives and Sidewalks may be closed shall be limited to actual or imminent emergency situations, including but not limited to, security alerts, riots, casualties, disasters, or other events endangering public safety or property, and provided further that no such emergency closure shall continue for more than forty-eight (48) consecutive hours without Developer having consulted with the New York City Police Department (the "**NYPD**") or the Buildings Department, as appropriate, and having following the NYPD's or Building Department's direction, if any, with regard to the emergency situation. In the event of a closure pursuant to (a), (b), (c) or (d) above Developer shall close or permit to

be closed only those portions of such areas which must or should reasonably be closed to effect the construction, repairs or remediation, will exercise due diligence in the performance of such repairs or remediation so that it is completed expeditiously and the temporarily closed areas are re-opened to the public promptly, and will, wherever reasonably possible, perform such work in such a manner that the public will continue to have access to the WPAA, PAA or Private Drives and Sidewalks. In the event any closure pursuant to (a), (b), (c) or (d) is anticipated to last more than 7 days Developer shall simultaneously therewith submit a construction schedule to the Chair describing the work necessitated and the need for a duration of closure lasting greater than 7 days, the duration of such closure to be subject to Chairs reasonable review and acceptance of such notice, provided that where there is a disagreement as to the necessity of such closure lasting greater than 7 days Developer and the Chair shall convene to confer to reach a mutually agreeable duration of such closure. In addition to the foregoing, Developer shall have the right to close portions of the WPAA, PAA or Private Drives and Sidewalks to the City and the general public one (1) Business Day in each year to preserve its ownership interest in such portions of the WPAA, PAA or Private Drives and Sidewalks. Declarant agrees that the closure of portions of the Private Drives and Sidewalks, or the WPAA or the PAA to the City and the general public in order to preserve its ownership interest therein shall occur on not less than four (4) separate days each year so as to ensure that the majority of the Private Drives and Sidewalks WPAA and PAA are open to the public on any given day, and that no such closure may be made on a weekend or holiday (as defined in 5 U.S. Code Section 6103).

(b) **Closure of the WPAA.** Declarant may close the Public Access Easement located over the WPAA in accordance with the provisions set forth in the M & O Agreement.

10.03 **Restrooms.** Following substantial completion of the Refinery Building, Declarant agrees to grant an easement to permit the City and the general public access to, and use of, the Restrooms for any hours that the Waterfront Public Access Area is open to the public. The Restrooms may be closed for repairs and alterations as necessary. Declarant, in accordance with the M&O Agreement, shall maintain the Restrooms.

10.04 **PAA and WPAA Programming.** Declarant shall develop and implement public programming for the PAA and WPAA, consisting of recreational and leisure activities, arts and cultural activities, and gatherings and events, which programming shall be open to the public and developed consistent with a plan therefore, as set forth in this Section.

(a) **Review Board**. No later than six (6) months prior to the date on which the Declarant anticipates opening the WPAA or PAA, or any portion thereof, Declarant shall cause to be formed a committee (the "Review Board") for the purpose of evaluating and making determinations with respect to Declarant's proposed public programming for the PAA and WPAA, in accordance with this Section.

(i) The Review Board shall consist of seven (7) members, six (6) of whom shall be appointed by Declarant from among nominations made by the local Community Board, each City Councilmember representing any district within two city blocks of the Subject Property (currently the 33rd District and 34th District), the Brooklyn Borough President, and the Open Space Alliance for North Brooklyn, or successor entity thereto. Each nominating entity shall, within thirty (30) days following receipt of a request from Declarant, nominate at least two (2) individuals for appointment as members. Declarant shall thereafter appoint at least one (1)

individual nominated by each nominating entity. A representative of Declarant shall serve as an additional member. However, when the Review Board considers the programming of the WPAA, then the Review Board shall consist of eight (8) members, with the additional representative appointed by the Commissioner of DPR. Declarant shall be responsible for any costs for the operation of the Review Board under this Section.

(ii) All programming proposed for the WPAA shall be consistent with the Rules and Regulations for the WPAA established pursuant to the M&O and shall be open to the general public free of charge unless otherwise approved by DPR. In addition, any proposed fees and any process for issuance of permits for the use of the active recreation spaces in the WPAA shall be subject to the approval of DPR.

(iii) Declarant shall offer to meet and confer with the Review Board at least once prior to submission of a proposal pursuant to paragraph (iv) of this subdivision, in order to solicit the preliminary views of the Review Board concerning public programming in the PAA and WPAA.

(iv) No later than three (3) months prior to the date on which the Declarant anticipates opening the WPAA or PAA, or any portion thereof, Declarant shall provide the Review Board with a list of the types of organized events and programs proposed to take place in the WPAA and PAA in the remainder of the calendar year following commencement of operation of the WPAA and PAA (the **"Initial Programming Plan"**). For each year following the year during which the Initial Programming Plan was in effect, Declarant shall provide the Review Board with a list of the types of organized events and programs proposed to take place in the WPAA and PAA in such year no later than October 1st of the year prior thereto (the "**Annual Programming Plan**"). The Initial Programming Plan and Annual Programming Plan shall include, for each type of event or program, the anticipated location(s) and extent, anticipated attendance, hours, whether there may be amplified sound and/or light, possible access control measures, anticipated frequency/duration, whether such events or programming may take place on weekdays, weekends, or holidays, and whether such type of event or program may involve any user fees or costs to the public. Declarant may, at its discretion, combine the Initial Programming Plan with the first Annual Programming Plan for the subsequent calendar year in a single submission to the Review Board.

(v) Within thirty (30) days following receipt of the Initial Programming Plan, or an Annual Programming Plan, as the case may be, the Review Board shall meet and provide Declarant with a written approval, disapproval, or approval with modifications or conditions, of such Plan. Upon request, Declarant shall meet and confer with the Review Board during such thirty (30) day period. If the Review Board either approves such plan, or fails to provide a written determination with respect to such Plan within thirty (30) days of receipt, Declarant may proceed with implementation of the Plan in the form submitted. In the event that the Review Board disapproves the Plan or approves the Plan with modifications or conditions, the Declarant may proceed to implement the Plan with such modifications or conditions or may within fifteen (15) days of receipt of such disapproval or approval with modifications or conditions request that the Review Board reconsider its determination, in whole or in part, and that the Review Board meet and confer with Declarant to resolve differences. In the event that the Review Board does not meet with Declarant within fifteen (15) days of such request, Declarant may implement the Plan in the form originally submitted. Within fifteen (15) days

following such meeting, the Review Board shall review and reconsider its initial determination to disapprove the Plan or provide Declarant with any revisions to its approval with modifications or conditions, as applicable. If the Review Board submits a new written determination within such fifteen (15) day period Declarant may proceed to implement the Plan in accordance with such further determination of the Review Board, except where such written determination confirms a prior disapproval of the Plan. If the Review Board fails to provide a written determination within such fifteen (15) day period Declarant may proceed with implementation of the plan in the form originally submitted. Notwithstanding the above, all events and programming in the WPAA shall be open to the general public free of charge unless otherwise approved by DPR pursuant to subdivision (a)(ii) of this Section.

(b) If no Programming Plan is approved pursuant to subdivision (a) of this Section by December 31st of the calendar year in which an Annual Programming Plan is submitted for the forthcoming calendar year, Declarant may implement the Initial Programming Plan or Annual Programming Plan approved by the Review Board for the prior calendar year, as applicable.

(c) The Review Board shall not impose any restrictions or conditions on activities, events and recreation within the PAA and WPAA, except as provided in subdivision (a)(iv) of this Section and in no case may the Review Board base its determination or make modifications or conditions based upon matters or criteria unrelated to or beyond the scope of the matters set forth in the Plan pursuant to such subdivision, such as the identity of a performer or event sponsor , the content or presentation format of any individual event, Declarant's methods for selection of event and program providers, and Declarant's financial or business arrangements with event and program providers. Implementation of the Initial Programming Plan and Annual Programming Plans, including the selection and scheduling of events and programs pursuant thereto, shall be made by Declarant and not subject to Review Board review.

(d) The Initial Programming Plan and Annual Programming Plans shall represent the Declarant's proposal and intentions for the WPAA and PAA as of the date of submission. In the event that, during the period when the Initial Programming Plan or an Annual Programming Plan is in effect, Declarant wishes to hold an organized event or program in the WPAA or PAA that does not fall within the types of events and programming covered in the Initial Programming Plan or Annual Programming Plan, Declarant shall request an amendment to the Initial Programming Plan or the Annual Programming Plan to allow for such type of event. Such request must be made in writing to the Review Board at least thirty (30) days in advance of the any such event, and shall include, the type of event, the anticipated location(s) and extent, anticipated attendance, hours, whether there may be amplified sound and/or light, possible access control measures, anticipated frequency/duration, whether such events or programming may take place on weekdays, weekends, or holidays, and whether such type of event or program may involve any user fees or costs to the public. Within fifteen (15) days of receipt of such notice, the Review Board shall provide Declarant with a written approval, disapproval, or approval with modifications or conditions of such type of event or program. If the Review Board either approves, with or without conditions, or fails to provide a written determination with respect to such type event or programming within fifteen (15) days of receipt, Declarant may proceed with implementation of such type of event in accordance with the Review Board approval or, in the event of a failure to provide a written determination, in accordance with the amendment as

submitted, and the Initial Programming Plan or Annual Programming Plan shall be deemed modified provided that in the event that such event or program requires the separate approval of DPR pursuant to subdivision (a)(ii) of this Section it shall not be implemented without such approval.

(e) Determinations by the Review Board shall only be made by a majority vote of the members taken in the presence of a quorum of four (4) members for votes on the proposed programming of the PAA and a majority vote in the presence of a quorum of five (5) members for votes on the proposed programming of WPAA.

(f) At its first meeting, the Review Board shall establish guidelines governing the conduct of meetings and other procedures, including meeting locations and other matters.

(g) Programming for the WPAA shall comply in all respects with the M&O Agreement attached hereto and shall be subject to the additional provisions and restrictions set forth therein.

ARTICLE XI

ADMINISTRATION

11.01 **Hours of Operation**. Subject to the terms and conditions set forth in Article 10 of this Declaration, (a) the Public Access Areas shall be open and accessible from at least 6:00 a.m. until 10:00 p.m. between April 15 and October 31 and from at least 7:00a.m. to 8:00 p.m. between November 1 and April 14, provided that in the event the hours of operation of the WPAA are adjusted in accordance with the terms of the M & O Agreement, the hours of operation of the PAA shall be adjusted as necessary to remain consistent with the hours of operation of the WPAA; and (b) the Private Drives and Sidewalks shall remain open 24 hours a day, 7 days a week, 365 days a year **Maintenance of Restrooms, PAA, WPAA and Private Drives and Sidewalks**. Upon Substantial Completion of each WPAA, PAA or Private Drives and Sidewalks, or portions thereof, Declarant shall be solely responsible for the maintenance of and capital repairs to the Restrooms, the PAA, the Waterfront Public Access Areas and the Private Drives and Sidewalks over which the grant of a Public Access Easement to the City has become effective (the "**Maintenance Obligation**"). The Maintenance Obligation requires that Declarant maintain the PAA, Waterfront Public Access Areas, the Private Drives and Sidewalks and the Restrooms in accordance with the provisions of this Declaration and the M&O Agreement, and shall maintain the Private Drives and Sidewalks in accordance with the provisions of a builders pavement plan approved by DOB for the Private Drives and Sidewalks. In the event of a mapping of the Private Drives and Sidewalks as city streets pursuant to a land use application to designate the Private Drives and Sidewalks on the City Map, and a subsequent conveyance of the newly mapped streets to the City, Declarant shall be relieved of any and all obligations to maintain and repair such Private Drives and Sidewalks. Security for the Maintenance of the WPAA shall be provided in accordance with the provisions of the M&O Agreement.

11.02 **Commercial Access to Waterfront Public Access Areas**. Declarant acknowledges that any direct access to the Waterfront Public Access Areas from commercial establishments in the Proposed Development 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 commercial access to the Waterfront Public Access Areas.

11.03 **Commercial and Non-Public Uses of Waterfront Public Access Areas**. Declarant acknowledges that any commercial use of the Waterfront Public Access Areas 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 uses in the Waterfront Public Access Areas.

11.04 **Rules and Regulations**. Subject to the provisions of Section 10.04, Declarant shall establish rules and regulations governing public conduct in the PAA and Private Drives and Sidewalks which shall be consistent with the Rules and Regulations governing public conduct applicable to the WPAA pursuant to the M & O Agreement, except to address features and functions specific to the PAA and Private Drives and Sidewalks.

Illumination. The PAA and Private Drives and Sidewalks shall be illuminated for safe use and enjoyment, with a minimum level of illumination of not less than two horizontal foot candles (lumens per foot) throughout all walkable and sitting areas, including sidewalks directly adjacent to the WPAA or PAA, and a minimum of level of illumination of not less than 0.5 horizontal foot (lumens per foot) throughout all other areas and such level of illumination shall be maintained during the hours of operation set forth in this Declaration, excluding the daylight hours from one-half hour after sunrise to one-half hour before sunset.

11.05 **Signage**. Substantial Completion of the PAA and Private Drives and Sidewalks shall include signage located in the PAA and Private Drives and Sidewalks, as shown on Waterfront Public Access Area Plans, indicating hours open to the public, accessibility to individuals with disability, and the identity of Owner and the phone number and email address of persons responsible for maintenance.

ARTICLE XII

ENFORCEMENT

12.01 **Defaults and Remedies**.

(a) Declarant acknowledges that the restrictions, covenants, and obligations of this Declaration will protect the value and desirability of the Subject Property, as well as benefit the City. Declarant acknowledges that the City is an interested party to this Declaration, and consents to enforcement by the City, administratively or at law or equity, of the restrictions, covenants, easements, obligations and agreements contained herein. If Declarant, or as the case may be Mortgagee, fails to perform any of Declarant's obligations under this Declaration, the City shall have the right to enforce this Declaration against Declarant and exercise any administrative, legal, or equitable remedy available to the City, and Declarant hereby consents to

same; provided that this Declaration shall not be deemed to diminish Declarant's or any other Party In Interest's right to exercise any and all administrative, legal, or equitable remedies otherwise available to it.

(b) No Person other than Declarant, any Mortgagee, all holders of mortgages secured by (i) any condominium unit or (ii) other individual residential unit located within the Subject Property and, from and after the Association Obligation Date, the Association, shall have any right to enforce the provisions of this Declaration. This Declaration shall not create any enforceable interest or right in any Person, other than Declarant, any Mortgagee and, from and after the Association Obligation Date, the Association, any of which shall be deemed to be a proper Person to enforce the provisions of this Declaration, and nothing contained herein shall be deemed to allow any other Person, 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.

12.02 **Notice and Cure**.

(a) Except as provided in Section 12.05, prior to any agency, department, commission or other subdivision of the City instituting any proceeding or proceedings to enforce any of the terms or conditions of this Declaration by reason of the existence of an alleged breach or other violation hereunder, it shall give Declarant and any mortgagees who have provided Notice in accordance with the provisions of Section 14 hereof ninety (90) days written notice of such alleged breach or other violation, during which period Declarant or a mortgagee shall have the opportunity to effect a cure of such alleged breach or other violation or to demonstrate why the alleged breach or other violation has not occurred. If Declarant or a mortgagee commences to effect a cure during such ninety (90) day period and proceeds diligently towards the effectuation of such cure, the aforesaid ninety (90) day period shall be extended for so long as Declarant continues to proceed diligently with the effectuation of such cure.

(b) In the case of a mortgagee, if possession of the property is required to effect such cure, then the mortgagee shall be deemed to have commenced such cure so long as the mortgagee shall have commenced a foreclosure process to obtain control of the property. In the event that title to the Subject Property, or any part thereof, shall become vested in more than one party, the right to notice and cure provided in this subsection shall apply equally to all parties with a fee interest in the Subject Property, or any part thereof, including ground lessees. Notwithstanding the foregoing, in the event that the Subject Property, or any portion thereof, is converted to a condominium, the right to notice and cure provided in this subsection shall apply, in addition to Declarant (if Declarant remains at such time an owner of the Subject Property or of condominium units) and any mortgagees who have provided Notice in accordance with the provisions of Section 14 hereof, to the condominium board.

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

12.03 **Additional Remedies**. Declarant acknowledges that the remedies set forth in this Declaration are not exclusive, and that the City and any agency thereof with an interest herein may pursue other remedies not specifically set forth herein, including, without limitation, the seeking of a mandatory injunction compelling Declarant, its heirs, successors or assigns, to comply with any provision, whether major or minor, of this Declaration and a revocation by the City of any certificate of occupancy, temporary or permanent, for any portion of the Proposed Development on the Subject Property subject to the Large Scale Special Permit, which does not comply with the terms of this Declaration; provide, however, that such right of revocation shall not permit or be construed to permit the revocation of any certificate of occupancy for any use or improvement that exists on the Subject Property as of the date of this Declaration.

[SECTION 12.04 Intentionally Omitted]

12.05 **Denial of Public Access to PAA and Private Drives and Sidewalks.**

(a) Subject to the provisions of Section 10.02, if the City has reason to believe that the use and enjoyment of the PAA or Private Drives and Sidewalks by any member of the public has, without reasonable cause, been denied by Declarant, and the City determines that such denial of access with respect to the right of public access is in violation of the provisions of this Declaration, the City shall serve upon Declarant such statement, together with written notice that the City intends to make a finding of wrongful denial of access, unless within ten (10) business days of Declarant's receipt of the notice, Declarant submits to the City additional facts or evidence which indicate that there has been no denial or material impairment of access or such denial was in accordance with provisions of Section 10.02 (the "**Denial of Public Access Finding**"). At the expiration of such ten (10) business day period, the City shall evaluate any evidence submitted and make a Denial of Public Access Finding of whether denial has occurred. Upon making a Denial of Public Access Finding, the Commissioner shall notify Declarant. Where the Denial of Public Access Finding sets forth that a denial of public access has occurred the Declarant and Mortgagee shall not have further opportunity to cure under Section 12 above.

(b) Notwithstanding the foregoing provisions of Section 12.02, in the event of a denial of public access, the cure period to which Declarant shall be entitled shall be reduced to twenty-four (24) hours from Declarant's receipt of the Denial of Public Access Finding. 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 12.02 shall not apply to such denial of public access.

12.06 **Enforcement by City; No Enforcement by Third Parties**.

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

(b) No Person other than the City, Declarant, and the holder of a Mortgage who shall have obtained control of the Subject Property pursuant to a Mortgage agreement, shall have any enforceable interest in or right to enforce the provisions of this Declaration.

ARTICLE XIII

MISCELLANEOUS

Effective Date; Recordation; Binding Nature; Liability; Governing Law; Severability; Applications; Offering Plan; Indemnification; Acknowledgements; Representations; Estoppel

13.01 **Effective Date; Recordation**.

(a) **Effective Date**. This Declaration and the provisions and covenants hereof shall become effective only upon the Effective Date.

(b) **Recordation**.

(i) Prior to application for any Building Permit relating to the Subject Property, Declarant shall file and record this Declaration and any related waivers executed by Mortgagees or other Parties-in-Interest or other documents executed and delivered in connection with the Applications and required by this Declaration to be recorded in public records, in the Register's Office, indexing them against the entire Subject Property, and deliver to the Commission within ten (10) days from any such submission for recording, a copy of such documents as submitted for recording, together with an affidavit of submission for recordation. Declarant shall deliver to the Commission a copy of all such documents, as recorded, certified by the Register's Office, promptly upon receipt of such documents from the Register's Office. If Declarant fails to so record such documents, then the City may record duplicate originals of such documents. However, all fees paid or payable for the purpose of recording such documents, whether undertaken by Declarant or by the City, shall be borne by Declarant.

(ii) Notwithstanding anything to the contrary contained in this Declaration, if all Approvals given in connection with the Applications are declared invalid or otherwise voided by a final judgment of any court of competent jurisdiction from which no appeal can be taken or for which no appeal has been taken within the applicable statutory period provided for such appeal, then, upon entry of said judgment or the expiration of the applicable statutory period for such appeal, this Declaration shall be cancelled and shall be of no further force or effect and an instrument discharging it may be recorded, and the Prior Approvals shall be retroactively reinstated and in full force and effect. Prior to the recordation of such instrument, Declarant shall notify the Chair of Declarant's intent to discharge this Declaration and request the Chair's approval, which approval shall be limited to insuring that such discharge and termination is in proper form. Upon recordation of such instrument, Declarant shall provide a copy thereof to the Commission so certified by the Register's Office. If some of the Approvals given in connection with the Applications are declared invalid, then this Declaration may be (i) cancelled at the sole discretion of the Declarant and shall be of no further force or effect and an

instrument discharging it may be recorded as provided above or (ii) Declarant may apply for modification or amendment of this Declaration in accordance with Section 14 hereof.

13.02 **Binding Nature; Successors**.

(a) The restrictions, covenants, rights and agreements set forth in this Declaration shall be covenants running with the land and shall inure to the benefit of, and bind, the respective heirs, successors, legal representatives and assigns of Declarant, including Mortgagee (provided that no Mortgagee shall have any performance or payment obligations under this Declaration unless and until such Mortgagee succeeds to a Possessory Interest), and all holders of mortgages secured by any condominium unit or other individual residential unit located within the Subject Property (provided that no such individual unit mortgagee shall have any performance or payment obligations under this Declaration unless and until such mortgagee succeeds to a Possessory Interest), provided that the Declaration shall be binding on any Declarant only for the period during which such Declarant, or any successor, legal representatives or assign thereof, is the holder of an interest in the Subject Property and only to the extent of such Declarant's interest in the Subject Property, and references to Declarant shall be deemed to include such heirs, successors, legal representatives and assigns as well as the successors to their interests in the Subject Property, subject to the further provisions of this Section 13.02. At such time as a Declarant or any successor to a Declarant no longer holds an interest in any portion of the Subject Property, such Declarant's or such Declarant's successor's obligations and liability under this Declaration shall wholly cease and terminate for such portion and the party succeeding such Declarant or such Declarant's successor shall assume the obligations and liability of Declarant pursuant to this Declaration to the extent of such party's interest in such portion of the Subject Property. For purposes of this Declaration, any successor to a Declarant shall be deemed a Declarant for such time as such successor holds all or any portion of any interest in the Subject Property.

(b) 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.

(c) Notwithstanding anything to the contrary contained in this Declaration, (i) neither the Association nor any Unit Interested Party (other than Declarant, if Declarant is a Unit Interested Party) shall have any obligations under this Declaration to construct the Waterfront Public Access Areas, and (ii) no owner of an Affordable Housing Unit shall have any obligation with respect to or be subject to levy or execution for the maintenance of the PAA or WPAA. Notwithstanding the foregoing, in the event that a TCO or PCO has been issued for any portion of the Proposed Development prior to the receipt of a Notice of Substantial or Final Completion due to Force Majeure Event or any other reason, whether or not Declarant is a Unit Interested Party, Declarant shall remain obligated as Declarant until a Notice of Final Completion has been issued for the applicable Waterfront Zoning Lot Phase.

13.03 **Limitation of Liability**.

(a) 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, and no other property of Declarant or its principals, 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 Declarant shall have no personal liability under this Declaration. Notwithstanding the foregoing, nothing in this Section 13.03 shall be deemed to preclude, qualify, limit or prevent the exercise of 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.

(b) In the event that any building in the Proposed Development is converted to condominium form of ownership, every condominium unit (other than an Affordable Housing Unit) shall, as successor in interest to Declarant, be subject to levy or execution for the satisfaction of any monetary remedies of the City, to the extent of each Unit Interested Party's Individual Assessment Interest, and provided that such enforcement procedures shall be taken simultaneously against all the condominium units in the Proposed Development and not against selected individual units only. 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 Mortgage, 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 XV. 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 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 boards of managers of any condominium association, the names of the Unit Interested Parties who have not paid their Individual Assessment Interests.

(c) The restrictions, covenants and agreements set forth in this Declaration shall bind Declarant and any successor-in-interest only for the period during which Declarant and any such 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 the named Declarant has no further fee interest in the Subject Property and is no longer a Party in Interest of the Subject Property, such Declarant's obligations and liability with respect to this Declaration shall wholly cease and terminate from and after the conveyance of Declarant's interest and Declarant's successors-in-interest in the Subject Property by acceptance of such conveyance automatically shall be deemed to assume Declarant's obligations and liabilities here-under to the extent of such successor-in interest's interest.

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

13.05 **Severability**. In the event that any provision of this Declaration shall be deemed, decreed, adjudged or determined to be invalid or unlawful by a court of competent jurisdiction and the judgment of such court shall be upheld on final appeal, or the time for further review of such judgment on appeal or by other proceeding has lapsed, such provision shall be severable, and the remainder of this Declaration shall continue to be of full force and effect.

13.06 **Applications**. Declarant shall reference this Declaration in any application pertaining to the Subject Property submitted to DOB or any other interested governmental agency or department having jurisdiction over the Subject Property.

13.07 **Indemnification**. If Declarant is found by a court of competent jurisdiction to have been in default in the performance of its obligations under this Declaration and such finding is upheld on final appeal, or the time for further review of such finding on appeal or by other proceeding has lapsed, Declarant shall indemnify and hold harmless the City from and against all of its reasonable legal and administrative expenses arising out of or in connection with the enforcement of Declarant's obligations under this Declaration, provided, however, that nothing in this Section 13.10 shall impose on the Association any indemnification obligations other than with respect to the obligations set forth in Section 13.07(d) and Section 13.09 and the reasonable legal and administrative expenses incurred by the City arising out of or in connection with the enforcement of such obligations. If any judgment is obtained against Declarant from a court of competent jurisdiction in connection with this Declaration and such judgment is upheld on final appeal or the time for further review of such judgment or appeal by other proceeding has lapsed, Declarant shall indemnify and hold harmless the City from and against all of its reasonable legal and administrative expenses arising out of or in connection with the enforcement of said judgment.

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

13.09 **Acknowledgement of Covenants**. Declarant acknowledges that the restrictions, covenants, easements, obligations and agreements in this Declaration will protect the value and desirability of the Subject Property as well as benefit the City of New York and all property owners within a one-half mile radius of the Subject Property.

13.10 **Representations**. Declarant represents and warrants that there are no restrictions of record on the use of the Subject Property, nor any present or presently existing future estates or interest in the Subject Property, nor any liens, obligations, covenants, easements, limitations or encumbrances of any kind, the requirements of which have not been waived or subordinated, which would prevent or preclude, presently or potentially, the imposition of the restrictions, covenants, obligations and agreements of this Declaration.

13.11 **Further Assurances**. Declarant and the City each agree to execute, acknowledge and deliver such further instruments, and take such other or further actions as may be reasonably required in order to carry out and effectuate the intent and purpose of this Declaration or to confirm or perfect any right to be created or transferred hereunder, all at the sole cost and expense of the party requesting such further assurances.

13.12 **Estoppel Certificates**. Whenever requested by a party, the other party shall within ten (10) days thereafter furnish to the requesting party a written certificate setting forth: (i) that this Declaration is in full force and effect and has not been modified (or, if this Declaration has been modified, that this Agreement is in full force and effect, as modified) and (ii) whether or not, to the best of its knowledge, the requesting party is in default under any provisions of this Declaration and if such a default exists, the nature of such default.

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

ARTICLE XIV

AMENDMENT, MODIFICATION, CANCELLATION & SURRENDER

14.01 This Declaration may be modified, amended or canceled only upon application by Declarant and subject to the approval of the Commission, and no other approval or consent by any other public body shall be required for such modification, amendment or cancellation; Declarant shall not apply to modify this Declaration so as to make any Affordable Housing Unit subject to the Funding Obligation or the Maintenance Obligation or to assessment for either of the foregoing during the term of any "Lower Income Housing Plan Written Agreement," entered into between Declarant and the City, acting through the New York City Department of Housing Preservation and Development.

14.02 Notwithstanding the provisions of Section 14.01 above, any modification to this Declaration proposed by Declarant and submitted to the Chair, which the Chair deems to be a minor modification of this Declaration, may, by express written consent, be approved administratively by the Chair and no other approval or consent shall be required from the Commission, any public body, private person or legal entity of any kind, including, without limitation, any present or future Party-in-Interest, including but not limited to minor modifications to the Waterfront Public Access Plans to reflect modifications to the design of the PAA and Private Drives and Sidewalks.

14.03 No development other than: (a) the Proposed Development permitted by the Approvals as set forth in Section 2.01(a) and allowed subject to the provisions of Section 2.01(f); or (b) the Prior Zoning Development set forth in Section 2.01(d)(i), shall be permitted on the Subject Property (any such other proposed development the "**Modified Development**"), unless (i) the Commission has reviewed and approved the Modified Development, (ii) Declarant has submitted a Technical Memorandum to City Planning demonstrating that the Modified Development will not result in any greater adverse environmental impacts than have been identified in the FEIS, and (iii) drawings reflecting the Modified Development have been submitted in a form acceptable to the Department and have been incorporated into this Declaration pursuant to Section 14.01 above. In the event that Declarant determines that an FEIS Obligation set forth in this Declaration should not apply with respect to the Modified Development, it shall set forth the basis for such determination in the Technical Memorandum submitted in accordance with this Section 14. Upon the acceptance of a Technical Memorandum

demonstrating the same, the requirements of this declaration with respect to the FEIS Obligation analyzed in such Technical Memorandum shall not be required for the Modified Development. Declarant shall not apply for or accept Building Permits for the Modified Development until the Chair certifies to DOB that the Commission has approved the plans for the proposed Modified Development, a Technical Memorandum has been submitted to City Planning demonstrating that the proposed Modified Development will not result in any greater adverse environmental impacts than have been identified in the FEIS, and a modification of this Declaration has been approved pursuant to this Section 14 to reflect the plans and modified FEIS Obligations, as applicable, for the proposed Modified Development.

14.04 Notwithstanding anything to the contrary contained in this Declaration, for so long as Declarant (including any successor to its interest as fee owner of all or any portion of the Subject Property, other than a Unit Interested Party) shall hold any fee interest in the Subject Property, or any portion thereof: (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 document or instruments that may be required in order to amend, modify, cancel, revise or otherwise change this Declaration.

14.05 From and after the date that no Declarant holds any fee interest in the Subject Property or any portion thereof (other than one or more individual residential or commercial condominium units), 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 therefore, and each and every Unit Interested Party 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.

14.06 Declarant shall be deemed to have surrendered the approvals granted pursuant to Land Use Numbers N 100186 ZRK, C 100187 ZSK, C 100188 ZSK, C 100189 ZSK, N 100190 ZAK, N 100191 ZCK, and N 100192 ZCK (the "**Prior Approvals**") upon the later of (A) eleven (11) months following the expiration of the statute of limitations for bringing a judicial proceeding challenging the Approvals, or (B) if a judicial proceeding challenging the Approvals is brought, the date of entry of a final judgment of a court of competent jurisdiction upholding the Approvals from which no appeal can be taken or for which no appeal has been taken within the applicable statutory period provided for such appeal, and upon such date Declarant shall not be entitled to develop the Subject Property pursuant to such Prior Approvals; provided, that nothing herein shall be construed to extend the term of the Prior Approvals beyond such term as authorized pursuant to Sections 11-42 and 11-43 of the Zoning Resolution. Upon the date that

the Prior Approvals are deemed surrendered the 2010 Declaration shall be of no further force and effect.

ARTICLE XV

NOTICES

15.01 **Notices**.

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

If intended for Declarant, to: Domino A LLC and Domino B LLC
45 Main Street, Suite 602
Brooklyn, New York 11201
Attention: Jed Walentas

With a copy to: Slater & Beckerman PC
61 Broadway, Suite 1801
New York, New York 10006
Attention: Raymond Levin, Esq.

If intended for the City, to: Director,
Department of City Planning
22 Reade Street
New York, New York 10007

and

Commissioner,
Department of Parks and Recreation
The Arsenal, Central Park
New York, New York 10021

With a copy to: Office of the General Counsel
New York City Department of Parks & Recreation
The Arsenal, Central Park
830 Fifth Avenue
New York, New York 10021

If intended for DCP, to: Director,
Department of City Planning

22 Reade Street
New York, New York 10007

With a copy to:	Office of the General Counsel New York City Department of City Planning 22 Reade Street New York, New York 10007
If intended for DPR, to:	Commissioner, Department of Parks & Recreation The Arsenal, Central Park 830 Fifth Avenue New York, New York 10021
With a copy to:	Office of the General Counsel Department of Parks & Recreation The Arsenal, Central Park 830 Fifth Avenue New York, New York 10021
If intended for DEP, to:	Deputy Commissioner New York City Department of Environmental Protection 59-17 Junction Blvd Flushing, New York 11373
If intended for OER, to:	Mayor's Office of Environmental Remediation 100 Gold Street, 2nd Floor New York, NY 10038

(i) If intended for a Mortgagee, by mailing or delivery to such Mortgagee at the address given in its notice to DCP.

(ii) From and after the Association Obligation Date, a copy of all notices to Declarant shall include a copy to the Association, and the Association shall give notice to the City and DPR of its address for notice.

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

ARTICLE XVI

OFFERING PLAN & PROPERTY OWNERS' ASSOCIATION

16.01 **Offering Plan**. In the event that cooperative or condominium units are offered for sale in any building in the Proposed Development pursuant to an offering plan, a summary of the terms of this Declaration shall be included in any offering plan issued in connection therewith. Such offering plan shall clearly identify the rights and obligations pursuant to this Declaration of any cooperative or condominium that may be formed.

16.02 **Applicability**. The provisions of this Article XVI shall only apply if Declarant shall form an Association with respect to the Subject Property.

(a) **Property Owners' Association**. Where a New Building is constructed in a Development Phase that includes a Waterfront Zoning Lot Phase Declarant shall, in order to perform Declarant's obligations with respect to the Maintenance Obligation, to renew and maintain the Waterfront Maintenance Area Maintenance Security, and to provide public access to the Waterfront Public Access Area, Public Access Area and Private Drives and Sidewalks in accordance with the provisions of this Declaration, cause to be organized a property owners' association (the "**Association**") within one hundred eighty (180) days of the earliest of the following occurrences: (i) the issuance of a TCO for any portion of the Proposed Development (A) governed by a condominium regime, except a condominium created pursuant to a no action letter, (B) conveyed to a housing corporation to be governed by a cooperative regime, except any cooperative regime created pursuant to a no action letter, or (C) governed by such other legal regime which shall require the organization of a homeowner's association or similar governing entity comprised of homeowners, or (ii) a fee interest in any portion of the Subject Property (not including conveyance of a fee interest in Lot 3/Site E and a fee interest conveyed pursuant to individual residential condominium or cooperative housing unit sales) is conveyed to any other Person, other than to an entity affiliated with Declarant. If an Association is required to be formed as set forth above, the provisions of Article XVI shall be operative.

(b) The obligations of the Association under this Declaration shall commence upon the date of its organization (the "**Association Obligation Date**"), whether required to be formed as set forth above or otherwise formed, at which time the provisions of this Article XVI shall be operative.

16.03 **Filing Requirements**. The 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. Declarant shall certify in writing to the Chair and the Commissioner, or any individual succeeding to their jurisdiction, that the certificate of incorporation of the Association has been filed with the New York 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 and shall provide the Chair with copies of such certificate of incorporation and the other governing documents of the Association. If Declarant fails to comply with the provisions of this Section 16.02, the City may proceed with any available enforcement measures.

16.04 **Obligations**. The Association shall be established to, among other things, assume Declarant's Maintenance Obligation, Funding Obligation to renew and maintain the Waterfront Maintenance Area Maintenance Security as set forth in this Declaration, and to provide public access to the WPAA, PAA and Private Drives and Sidewalks in accordance with the terms of this Declaration.

16.05 **Members**. The members of the Association (the "**Association Members**") shall consist of (a) the fee owners of any portion of the Proposed Development other than the City and any Unit Interested Party, (b) the boards of managers of such portion of the Proposed Development as are subject to a declaration of condominium, and (c) the boards of directors of such portion of the Proposed Development as are subject to a cooperative regime.

16.06 **Powers**. To the extent permitted by law, Declarant shall cause the Association to be established with the power and authority to:

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

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

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

(d) to the extent permitted by law, impose liens, fines or assessments against individual lot or unit owners for the purpose of collecting funds reasonably necessary and sufficient to fund the obligations of the Association pursuant to this Declaration; and

(e) 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.

16.07 **Conveyances**. Every deed conveying title to, or a partial interest in Buildings A, B, C and D (other than a deed to an Affordable Housing Unit) , every lease held or granted by a cooperative corporation owning the Subject Property or any portion thereof, every lease of all or substantially all of the Subject Property, or the declaration of condominium imposed on any portion of the Subject Property shall contain a recital or other provision that the Unit Interested Party (other than a Unit Interested Party that owns an Affordable Housing Unit) is liable for its pro rata share of the (a) assessment by the Association to the condominium in which such unit is located for the Association's obligations under this Declaration, and (b) maintenance of the WPAA, PAA and the Private Drives and Sidewalks and all other obligations of the Association under this Declaration.

16.08 **Assessments**.

(a) The Association shall assess all real property within the Subject Property, other than the portion thereof consisting of the Waterfront Access Area, Public Access Area and Private Drives and Sidewalks and Affordable Housing Units, (the "**Assessment Property**") in order to obtain funds for the Maintenance Obligation, the Funding Obligation, and for any other

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 the Affordable Housing Unit for delivery to the Association in accordance with the condominium declarations. The liability of any fee owner of any portion of the Assessment Property shall be limited to such owner's interest in the Assessment Property, on an in rem basis only, for the collection of any money judgment recovered against such owner, and no other property of such owner shall be subject to levy, execution, or other enforcement procedure for satisfaction of such judgment and such owner 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.

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

(c) The periodic assessments shall be a charge on the land and a continuing lien upon the property owned by the Association Member against which each such assessment is made, except that if the Association Member is 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 (other than the owner of an Affordable Housing Unit), as the case may be, to recover such delinquent assessment(s), including interest and costs and reasonable attorneys' fees of any such action. Any Unit Interested Party, other than the owner of an Affordable Housing Unit, by acceptance of a deed or a lease to a portion of the Assessment Property, thereby agrees to the provisions of this Section 15.07. 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 Assessment Property. A Unit Owner may give to the Association nevertheless, subject to acceptance thereof by the Association, a deed in lieu of foreclosure.

(d) Notwithstanding any contrary term set forth in this Declaration, the 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 Assessment Property or any portion thereof, or (ii) the lessee's estate in a ground lease of all or substantially all of the Assessment Property or all or substantially all of any Parcel or portion thereof, or (iii) any single building to be built on the Assessment Property, unless and until any such mortgagee succeeds to either (x) a fee interest in the Assessment Property or any portion thereof or (y) the lessee's estate in a ground lease of all or substantially all the Assessment Property or all or substantially all of any Parcel or portion thereof (the interests described in sub-clauses (x) or (y) immediately preceding being each referred to as a "**Possessory Interest**") by foreclosure of the lien of the mortgage or other lien or acceptance of a deed or other transfer in lieu of foreclosure or exercise of an option to convert an interest as mortgagee into an Possessory Interest in any such fee or ground leasehold estate in the Assessment Property or by other means permitted under Legal Requirements 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 XV until the mortgagee or lien holder succeeds to such Possessory Interest.

[NO FURTHER TEXT ON THIS PAGE]

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

Domino A LLC and Domino B LLC,
New York limited liability companies

By: _____
Name:
Title:

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

THE CITY OF NEW YORK

By: _____
Name:
Title: Deputy Mayor

[Notary page on the following page]

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

On the ____ day of _____ _____, 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

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

On the ____ day of _____ _____, 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

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Exhibit A

Legal Description

Exhibit B

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Waterfront Public Access Area Plans

Exhibit D

Parties-In-Interest Certification

Exhibit E

Waiver by Party-In-Interest

Exhibit E

WAIVER OF EXECUTION OF RESTRICTIVE DECLARATION AND SUBORDINATION OF MORTGAGE

WAIVER OF EXECUTION OF RESTRICTIVE DECLARATION AND SUBORDINATION OF MORTGAGE, made this _____ day of _____, 2014 by Manufacturers and Traders Trust Company, as Administrative and Collateral Agent (the "Mortgagee"), having its principal place of business c/o M&T Bank at 350 Park Avenue, New York, NY 10022.

W I T N E S S E T H :

WHEREAS, the Mortgagee is the lawful holder of that certain mortgage, dated _____ (the "Mortgage") made by Domino A LLC, and Domino B LLC, each a New York limited liability company (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 Kings, on _____ at CFRN _____; and

WHEREAS, the Mortgage encumbers all or a portion of the property (the "Premises") known as Block 2414, Lot 1 on the Tax Map of the City of New York, County of Kings, 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 Mortgagor; 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:

ACKNOWLEDGMENT

State of New York
County of _____

On the _____ day of _____ in the year 2014 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(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Exhibit E

WAIVER OF EXECUTION OF RESTRICTIVE DECLARATION AND SUBORDINATION OF MORTGAGE

WAIVER OF EXECUTION OF RESTRICTIVE DECLARATION AND SUBORDINATION OF MORTGAGE, made this _____ day of _____, 2014 by Manufacturers and Traders Trust Company, as Administrative and Collateral Agent (the "Mortgagee"), having its principal place of business c/o M&T Bank at 350 Park Avenue, New York, NY 10022.

W I T N E S S E T H :

WHEREAS, the Mortgagee is the lawful holder of that certain mortgage, dated _____ (the "Mortgage") made by Domino A LLC, and Domino B LLC, each a New York limited liability company (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 Kings, on _____ at CFRN _____; and

WHEREAS, the Mortgage encumbers all or a portion of the property (the "Premises") known as Block 2428, Lot 1 on the Tax Map of the City of New York, County of Kings, 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 Mortgagor; 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:

ACKNOWLEDGMENT

State of New York
County of _____

On the _____ day of _____ in the year 2014 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(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Exhibit F

Permitted Encumbrances

Exhibit G

Maintenance and Operation Agreement

DOMINO A LLC AND DOMINO B LLC,
AS TENANTS-IN-COMMON

WITH

THE CITY OF NEW YORK

ACTING BY AND THROUGH

THE CITY OF NEW YORK

DEPARTMENT OF PARKS & RECREATION

MAINTENANCE AND OPERATION AGREEMENT

Borough of Brooklyn

Block 2414

Lot 1

DATED AS OF MARCH 7, 2014

THIS AGREEMENT (this "Agreement"), made as of the 7th day of March, 2014 by and among **DOMINO A LLC and DOMINO B LLC, as tenants-in-common, each a limited liability company** organized under the laws of the State of New York, having an address at c/o Two Trees Management Company, LLC, 45 Main Street, Suite 602, Brooklyn, New York 11201 (hereinafter referred to as the "Initial Owner"), and **THE CITY OF NEW YORK** (hereinafter referred to as the "City"), acting by and through the Department of Parks & Recreation of the City of New York, having an address at The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10065 (hereinafter referred to as "Parks").

W I T N E S S E T H:

WHEREAS, Initial Owner is the fee owner of certain real property located in the Borough of Brooklyn, City and State of New York, designated as Block 2414, Lot 1, and described more particularly on **Exhibit "A"** annexed hereto and made a part hereof (the "Subject Property"); and

WHEREAS, Initial Owner has proposed a development (the "Development") on the Subject Property, which contains waterfront zoning lots subject to the requirements of Section 62-52 of the Zoning Resolution; and

WHEREAS, Initial Owner is required to provide a waterfront public access area ("WPAA") pursuant to Section 62-52 of the Zoning Resolution and has submitted (i) applications pursuant to Section 62-811 designated as N 140140 ZCK dated October 15, 2013, requesting that the Chairperson of the CPC (the "Chairperson") certify that the WPAA Drawings (the "WPAA Drawings") submitted with such application comply with the provisions of waterfront public access, pursuant to Section 62-60 of the Zoning Resolution, (ii) an application pursuant to Section 62-812 of the Zoning Resolution designated as N 140139 ZCK, dated October 15, 2013, for a zoning lot subdivision; and an application pursuant to Section 62-822 of

the Zoning Resolution, designated as N 140138 ZAK for an authorization of the phased development of the required waterfront public access areas, to facilitate the construction of the waterfront public access area (collectively, the "Public Access Applications"); and

WHEREAS, in connection with approval of the Public Access Applications, Initial Owner shall execute a Declaration (as hereinafter defined) governing the development of the Subject Property; and

WHEREAS, this Agreement shall be (i) effective upon the recording of the Declaration, (ii) incorporated by reference into the Declaration and (iii) an enforceable part thereof; and

WHEREAS, pursuant to the terms of the Declaration, Initial Owner has agreed to develop the WPAA for the use and enjoyment of the public on a portion of the Subject Property; and

WHEREAS, pursuant to the terms of the Declaration, Initial Owner has agreed to construct, maintain and operate the WPAA; and

WHEREAS, Initial Owner and the City wish to provide for their respective rights and obligations in regard to the construction, maintenance and operation of the WPAA.

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

I. DEFINITIONS

The following words, when used in this Agreement, shall have the meanings set forth below.

1.01 "50% Submission" shall have the meaning set forth in Section 2.02(a) hereof.

1.02 "80% Submission" shall have the meaning set forth in Section 2.02(a) hereof.

1.03 "100% Submission" shall have the meaning set forth in Section 2.02(a) hereof.

1.04 "Access Cost" shall have the meaning set forth in Section 2.05(d)(i) hereof.

1.05 "Access Security" shall have the meaning set forth in Section 2.05(d)(i) hereof.

1.06 "Approved WPAA Drawings" shall mean the approved (or deemed approved) drawings that comprise the 100% Submission.

1.07 "Budgets" shall have the meaning set forth in Section 3.02 hereof.

1.08 "Buildings Department" shall mean the New York City Department of Buildings or any successor to the jurisdiction thereof.

1.09 "Chairperson" shall have the meaning set forth in the recitals hereto.

1.10 "Circumstances Beyond the Control of Owner" shall mean: (a) strike, lockout or labor dispute(s); (b) failure of a contractor to deliver labor or materials on schedule or inability to readily obtain materials or reasonable substitutes therefor unless due to any act or failure to act by Owner; (c) acts of God; (d) Laws (as defined in Section 1.27) that prevent the parties from carrying out their obligations as set forth herein; (e) terrorist incident, enemy or hostile government actions; (f) civil commotion, insurrection, revolution or sabotage; (g) fire or other casualty; (h) inclement weather of such a nature as to make construction, maintenance and repair of the WPAA or a material portion thereof temporarily impractical or not feasible; (i) a taking of the Subject Property, or a portion thereof, by condemnation or eminent domain; (j) failure of a public utility to provide adequate power, heat, light or other public utility; (k) unusual delay in transportation; (l) the pendency of a litigation or similar proceeding relating to the Public Access Applications; (m) undue material delay in the issuance of approvals by any governmental authority, provided, that such delay is not caused by any act or omission of Owner; (n) orders of any court of competent jurisdiction, including, without limitation, any litigation which results in an injunction or restraining order prohibiting or otherwise delaying the construction of any

portion of the Subject Property; or (o) other conditions similar to those enumerated herein and not avoidable by Owner and which are beyond the control of Owner. No event shall constitute a Circumstance Beyond the Control of Owner unless Owner complies with the procedures set forth in Section 2.07 hereof.

1.11 "City" shall mean the City of New York.

1.12 "Commissioner" shall mean the Commissioner of the New York City Department of Parks & Recreation or any successor to the jurisdiction thereof.

1.13 "Consumer Price Index" or "CPI" shall mean the All-Items consumer price index for All Urban Consumers for New York-Northern New Jersey-Long Island (NY-NJ-LI) determined by the Bureau of Labor Statistics of the United States Department of Labor (1982-84=100), or, if such index is discontinued, the most comparable index published by any other federal authority.

1.14 "Cost of Correction" shall have the meaning set forth in Section 3.02(b) hereof.

1.15 "CPC" shall mean the New York City Planning Commission or any successor to the jurisdiction thereof.

1.16 "DCP" shall mean the New York City Department of City Planning or any successor to the jurisdiction thereof.

1.17 "Declaration" shall mean the Restrictive Declaration to be entered into by Owner.

1.18 "Delay Notice" shall have the meaning set forth in Section 2.07(a) hereof.

1.19 "Development" shall have the meaning set forth in the Declaration.

1.20 "ECB" shall mean the New York City Environmental Control Board.

1.21 "Final Completion" or "Finally Complete" shall mean, with respect to each phase of the Development, that such phase of the WPAA has been finally completed in conformance with the Approved WPAA Drawings and no further work is required by Owner.

1.22 "Finish Work Performance Bond" shall have the meaning set forth in Section 2.05(a)(i) hereof.

1.23 "Finding" shall have the meaning set forth in Section 6.06(a) hereof.

1.24 "Initial Owner" shall have the meaning set forth in the preamble hereof.

1.25 "Interim Inspection Report" shall have the meaning set forth in Section 2.02(g) hereof.

1.26 "Inspector" shall have the meaning set forth in Section 3.02(b) hereof.

1.27 "Law" or "Laws" shall mean, but not be limited to, the New York City Charter, the New York City Administrative Code, any law of the State or City of New York, any federal law, and any ordinance, rule or regulation having the force of law.

1.28 "Maintenance Budget" shall have the meaning set forth in Section 3.02 hereof.

1.29 "Maintenance Security Bond" shall have the meaning set forth in Section 2.05(c)(i) hereof.

1.30 "Mortgagee" shall mean any mortgagee of any portion of the Subject Property who has given written notice of its name and address to the CPC and Parks.

1.31 "Notice of Final Completion" shall mean a certificate in the form attached hereto as **Exhibit "G"**, which certifies to Owner the Final Completion of the applicable phase of the WPAA.

1.32 "Notice of Substantial Completion" shall mean a certificate in the form hereto as **Exhibit "H"**, which certifies to Owner the Substantial Completion of the applicable phase of the WPAA.

1.33 "Owner" shall mean, severally (and not jointly and severally), Initial Owner and each subsequent entity which acquires a fee interest in any portion of the Subject Property containing the WPAA.

1.34 "Parks" shall mean the New York City Department of Parks & Recreation or any successor to the jurisdiction thereof.

1.35 "PCO" shall have the meaning set forth in Section 2.03(b) hereof.

1.36 "Pier and Platform Budget" shall have the meaning set forth in Section 3.02 hereof.

1.37 "Pier and Platform Security" shall have the meaning set forth in Section 2.05(c)(ii) hereof.

1.38 "Public Access Applications" shall have the meaning set forth in the recitals hereto.

1.39 "Punch List" shall have the meaning set forth in Section 2.04(a) hereof.

1.40 "Subject Property" shall have the meaning set forth in the recitals hereto.

1.41 "Substantial Completion" or "Substantially Complete" shall mean, with respect to each phase of the Development, that such portion has been constructed substantially in accordance with the Approved WPAA Drawings and has been completed to such an extent that all portions of the improvement may be operated and made available for public use as further set forth in the Declaration. An improvement may be deemed Substantially Complete notwithstanding that (a) minor or insubstantial items of construction, decoration or mechanical adjustment remain to be performed and/or (b) Owner has not completed any relevant planting or vegetation or tasks that are recommended to be undertaken seasonally.

1.42 "TCO" shall have the meaning set forth in Section 2.03(a) hereof.

1.43 "Transferee" shall have the meaning set forth in Section 12.01 hereof.

1.44 "WPAA" shall have the meaning set forth in the recitals hereto.

1.45 "WPAA Design Submission" shall have the meaning set forth in Section 2.02(a) hereof.

1.46 "WPAA Disapproval Report" shall have the meaning set forth in Section 2.02(c) hereof.

1.47 "WPAA Drawings" shall mean the drawings approved by the Chair of the City Planning Commission in connection with Application N 140140 ZCK and set forth in Section 4.01 of the Declaration.

1.48 "Zoning Resolution" shall mean the Zoning Resolution of the City of New York.

II. DEVELOPMENT OF THE WPAA

2.01 Construction of the WPAA. In accordance with Article IV, V and VI of the Declaration, if the Subject Property is developed with the Development, Owner agrees that it shall, at its sole cost and expense, undertake to construct the applicable portion of the WPAA required in connection with such phase of the Development substantially in accordance with the WPAA Drawings, reduced size copies of which are attached to the Declaration as Exhibit "C" thereto, and in accordance with the terms and conditions of the Declaration and this Agreement. Owner agrees that the WPAA will substantially conform to the Approved WPAA Drawings.

2.02 Submission of Construction Drawings; Review.

(a) Owner shall submit to Parks construction drawings, including, without limitation, drawings in the form to be submitted to Owner's general contractor in connection with the construction of any phase of the WPAA, showing 50%, 80% and 100% completion of the construction drawings of the applicable phase of the WPAA (respectively, the "50%

Submission", the "80% Submission" and the "100% Submission", and individually and collectively, the "WPAA Design Submission(s)"). The 100% Submission shall include the full final plans and specifications for the applicable phase of the WPAA. Nothing in this Section 2.02 shall prevent Owner from submitting construction drawings to Parks at other times as may be agreed by Owner and Parks or submitting drawings for more than one phase of the WPAA simultaneously. For the avoidance of doubt, to the extent Owner submits drawings for more than one phase of the WPAA simultaneously, Parks shall review and comment on the drawings for each phase independently in accordance with this Section 2.02, and the approval or disapproval of the drawings for one phase shall not affect the approval or disapproval of the drawings for any other phase.

(b) In order to ensure that Parks has adequate time to prepare for the design development process contemplated by this Section 2.02, Owner shall inform Parks of its intention to submit the 50% Submission for one or more WPAA phases in writing at least thirty (30) days prior to submitting the 50% Submission to Parks. Such notification shall include an anticipated schedule for: (i) the 50% Submission, (ii) the 80% Submission, (iii) the 100% Submission (the final plans and specifications), (iv) commencement of construction of the applicable phase of the WPAA, and (v) commencement of any private development associated with the corresponding WPAA phase. After notifying Parks as outlined above, Owner shall make a good faith effort to timely notify Parks of any material changes in the previously anticipated schedule. Owner shall not submit 50% Submission, 80% Submission and 100% Submission simultaneously.

(c) Parks shall approve or disapprove each WPAA Design Submission upon written notice to Owner within thirty (30) days after its receipt thereof in accordance with clause

(e) below. No separate approval of DCP or the Chairperson of any WPAA Design Submission shall be required. If Parks disapproves any portion of a WPAA Design Submission, then Parks shall provide a written report (the "WPAA Disapproval Report") setting forth in detail the reasons for such disapproval, together with suggestions as to what Owner must do in order to gain Parks' approval of its WPAA Design Submission. Owner shall, within ten (10) business days of receipt of a WPAA Disapproval Report, submit a revised WPAA Design Submission responsive to such WPAA Disapproval Report and, upon receipt thereof, Parks shall approve or disapprove such revised WPAA Design Submission within ten (10) business days after receipt of revised WPAA Design Submission in the same manner provided herein until such revised WPAA Design Submission has been approved.

(d) If Parks fails to respond to a WPAA Design Submission within the time periods set forth in this Section 2.02 with a WPAA Disapproval Report, then Owner shall re-submit such WPAA Design Submission and if Parks fails to respond with a WPAA Disapproval Report within five (5) business days of such re-submission, then Parks shall be deemed to have approved such WPAA Design Submission, including all of the construction drawings which comprise such WPAA Design Submission.

(e) The scope of review by Parks of any WPAA Design Submission shall be limited to determining whether, in the reasonable discretion of Parks, the designs set forth in such WPAA Design Submission (i) would be reasonably likely to create a risk to public safety, (ii) conform to the relevant provisions of the Zoning Resolution, and (iii) substantially conform to the most recently approved WPAA Design Submissions or the WPAA Drawings, as applicable.

(f) Parks shall not disapprove any elements of the WPAA that were approved (deemed or otherwise) in a previous Design Submission unless such disapproval is based upon a modification, revision, or new specification to an element of the design to the WPAA that was not included in such previous Design Submission. Notwithstanding the foregoing, nothing in this Agreement is intended to release Owner from its obligation to ensure that the WPAA conforms with all relevant provisions of the Zoning Resolution. In reviewing any WPAA Design Submission, Parks shall use reasonable efforts to minimize any suggestions in the WPAA Disapproval Report that could be reasonably likely to increase the cost of construction of the WPAA work, or the cost of maintenance of the WPAA or delay or lengthen the schedule for construction of the WPAA work.

(g) On no more than two occasions during the course of construction of the WPAA work for each Phase of Development, Owner may request in writing that Parks perform an inspection of the WPAA work in order to confirm that such work has been performed in substantial conformity with the Approved WPAA Drawings. Owner shall include in its request a detailed listing and description of the elements to be inspected. Upon receipt of such a request for inspection, within ten (10) business days Parks shall use reasonable efforts to inspect the completed WPAA work and, as appropriate, advise Owner in writing of any elements of the WPAA work that have or have not been completed in substantial conformance with the Approved WPAA Drawings (the "Interim Inspection Report"). Such request for inspection will not obligate Parks to perform such an inspection; however, Parks will use reasonable efforts to comply with Owner's request. Parks shall use reasonable efforts to cause each inspection to be performed by qualified professionals with respect to the design elements being inspected. The Interim Inspection Report shall indicate for each element requested to be inspected whether (a)

such element was completed in substantial conformance with the Approved WPAA Drawings, (b) such element was not completed in substantial conformance with the Approved WPAA Drawings, (c) such element was not inspected by a qualified professional, or (d) Parks was unable to determine whether such element was completed in substantial conformance with the Approved WPAA Drawings. The Interim Inspection Report shall be binding on Parks with respect to any element which was indicated as being completed in substantial conformance with the Approved WPAA Drawings and Parks may not later determine that such element is not in substantial conformance with the Approved WPAA Drawings unless such disapproval is based upon (X) a change to such previously approved element since the time such Interim Inspection Report was issued or (Y) conditions which were not reasonably observable to or knowable by Parks at the time such Interim Inspection Report was issued. The Interim Inspection Report shall not be in lieu of the Notice of Substantial Completion requirements further described under Section 2.04. The Interim Inspection Report shall not be sent to the New York City Department of Building nor may the New York City Department of Buildings rely on it in order to make any determination with respect to whether to grant Owner a TCO or PCO in connection with the Development. A copy of the Interim Inspection Report form is annexed hereto as **Exhibit "B".**

(h) Owner shall deliver copies to Parks of the pier and platform construction drawings for the reconstruction of the pier and platform at 50% and 100% (bid drawing set) completion, as well as all associated permits (including, but not limited to, to the extent applicable, New York State Department of Environmental Conservation, U.S. Army Corps of Engineers, New York State Department of State, New York City Department of Small Business Services, New York City Department of Buildings, and the New York City Transit Authority) relating to any waterfront structural work such as construction, reconstruction, and/or

rehabilitation of the pier and/or platform, prior to such work being performed. The construction drawings shall include but not be limited to a detailing of the performance specifications for the concrete mix design, rebar type and sizing, pile placement, and elevations, and shall provide the load capacity of each phase of the pier. The design load of the pier is not to be less than three hundred and fifty (350) pounds per square foot (100 pounds per square foot live load and 250 pounds per square foot superimposed dead load) unless a licensed engineer certifies in writing to Parks that a lesser design load is structurally appropriate for particular portions of the pier assuming a planned service life of no less than twenty (20) years and consistent with the uses of such portions of the pier as reflected in the most recent construction drawings and the anticipated programming for that portion of the pier, in which case such portion of the pier can be designed to such lesser design load. Submission of the 100% drawings shall include a licensed engineer's statement indicating a projection of (i) planned service life of the improvements (which shall not be less than twenty (20) years), (ii) the anticipated construction schedule of the improvements, (iii) life cycle cost of the improvements and (iv) confirmation that the structural design meets the loading requirements of the platform, including requirements for emergency vehicle access as required by the New York City Fire Department. Upon completion of such work, Owner shall provide Parks with copies of the applicable sign-offs as they become available and true and complete copies of the final construction drawings.

2.03 Certificates of Occupancy.

(a) The Buildings Department shall not issue, and Owner shall not apply for or accept, a temporary certificate of occupancy ("TCO") for any portion of the Development until the following conditions have been met with respect to the applicable phase of the WPAA for which such TCO is sought:

(i) Parks has issued or shall have been deemed to have issued a Notice of Substantial Completion for such phase of the WPAA;

(ii) Owner has delivered to Parks the Maintenance Security Bond for such phase of the WPAA;

(iii) Owner has delivered to Parks the Pier and Platform Security for such phase of the WPAA;

(iv) Owner has delivered to Parks its Access Security for such portion of the WPAA for which it holds a fee interest; and

(v) Owner has delivered to Parks the Finish Work Performance Bond for such phase of the WPAA.

(b) The Buildings Department shall not issue, and Owner shall not apply for or accept, a permanent certificate of occupancy ("PCO") for any portion of the Development until the following conditions have been met with respect to the applicable phase of the WPAA for which such PCO is sought:

(i) Parks has issued or shall have been deemed to have issued a Notice of Final Completion for such phase of the WPAA;

(ii) The Maintenance Budget and a Pier and Platform Budget for such phase of the WPAA shall have been approved (or been deemed approved in accordance with the provisions hereof) by Parks; and

(iii) Owner delivers true and complete copies of the Approved WPAA Drawings to Parks and certifies in good faith that there were no significant deviations from such Approved WPAA Drawings in the final construction.

2.04 Right of Inspection; Substantial and Final Completion

(a) Upon Owner's reasonable belief that it has Substantially or Finally Completed construction of a portion of the WPAA required in connection with a Phase of Development, as applicable, then Owner shall notify the Commissioner that such phase of the WPAA is Substantially or Finally Complete. The Commissioner shall, within ten (10) business days of its receipt of Owner's written notice, (i) issue the Notice of Substantial or Final Completion, as applicable, or (ii) notify Owner in writing of any work which has not been completed in accordance with the Approved WPAA Drawings and must be completed before the Commissioner of Parks will issue a Certification of Substantial or Final Completion. If the Commissioner of Parks notifies Owner that work remains to be completed in accordance with the Approved WPAA Drawings, 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 either remaining to be completed or unsatisfactorily performed (the "Punch List"), which Punch List shall (i) be signed by an Assistant Commissioner, a Deputy Commissioner or the Commissioner and (ii) set forth in separate sections, (X) the work that remains to be completed before the Commissioner will issue a Notice of Substantial Completion and (Y) the work that remains to be completed before the Commissioner will issue a Notice of Final Completion. The Punch List section relating to work that remains to be completed before the Commissioner will issue a Notice of Substantial Completion shall be limited to (i) material items (i.e., those items that materially affect the usability of the WPAA, excluding minor or insubstantial items of construction, decoration or mechanical adjustment) that are not completed in substantial conformance with the Approved WPAA Drawings (excluding plantings or vegetation that is recommended to be undertaken seasonally), (ii) items consistent with an "unacceptable" rating under the then-current version of the Parks Inspection Program Manual, the most recent version of which is annexed hereto as

Exhibit "D", (iii) items that constitute a threat to public health and safety and (iv) items that violate the relevant provisions of the Zoning Resolution. Owner shall promptly endeavor to complete the work specified on the Punch List. Upon completion of such work, Owner shall notify the Commissioner that it has completed such work and, within ten (10) business days of receipt of such notice, the Commissioner shall either issue a Notice of Substantial or Final Completion, as applicable, or set forth the reasons for non-acceptance in a new Punch List, provided, however, that after the first Punch List, no reasons for non-acceptance may be added to subsequent notices of non-acceptance and no new items may be added to the Punch List except for (1) latent defects (i.e., defects which were not readily apparent to the naked eye), (2) the failure of Owner to cure a deficiency noted in a prior Punch List, (3) a defect caused by Owner's attempt to cure a deficiency noted in a prior Punch List, (4) defects that have developed subsequent to the time at which such Punch List was prepared or that are based upon conditions which were not reasonably observable to or knowable by Parks or (5) those items that violate the relevant provisions of the Zoning Resolution. Owner shall complete the work identified in each successive Punch List until the Commissioner has certified that such phase of the WPAA is Substantially or Finally Complete.

(b) In the event that the Commissioner fails to respond to Owner's request for a Notice of Substantial Completion for a particular phase of the WPAA within ten (10) business days, Owner shall re-submit such request for a Notice of Substantial Completion, and if the Commissioner fails to respond within five (5) business days of such resubmission, then the Commissioner shall be deemed to have issued a Notice of Substantial Completion for such phase.

(c) Notwithstanding anything to the contrary contained in any other provision of this Agreement, a phase of the WPAA shall be certified by the Commissioner, in the exercise of its reasonable judgment, to be Substantially Complete for the purposes of this Agreement, notwithstanding that Owner has not completed planting of vegetation which must occur seasonally and, as such, will be planted the next appropriate planting season.

(d) Upon issuance or deemed issuance of a Notice of Substantial Completion, the WPAA shall be open to the public in accordance with the terms of the Declaration, and Owner shall be obligated to maintain the WPAA in accordance with the terms of this Agreement.

2.05 Security for Performance of Certain Obligations.

(a) Final Completion.

(i) To secure Owner's obligation to complete the construction of each phase of the WPAA, Owner shall, upon issuance by the Commissioner of a Notice of Substantial Completion for such phase, in Owner's discretion either (X) post or cause the posting with Parks of a performance bond for the benefit of the City, in a form reasonably satisfactory to the Commissioner and issued by a surety company licensed to do business in the State of New York, (Y) deposit with Parks one or more clean, irrevocable letters of credit, naming the City as beneficiary, in a form reasonably satisfactory to the City, or (Z) deliver to Parks other security reasonably acceptable to the City (any such security being hereinafter referred to as a "Finish Work Performance Bond").

(ii) The Finish Work Performance Bond shall be in an amount that has been certified by Owner's architect or engineer to be equivalent to one hundred and fifty percent (150%) of the estimated cost of Finally Completing the WPAA as identified on the Punch List at the time the Finish Work Performance Bond is issued. Owner shall

notify the Commissioner as to the proposed amount of the Finish Work Performance Bond and within ten (10) business days of receipt of such notification, the Commissioner shall approve or disapprove said amount, using his or her reasonable judgment. If the Commissioner disapproves such amount then the Commissioner shall state, in writing and with specificity, the reasons such estimate does not adequately reflect the required percentage of the cost of completion. The Owner's architect or engineer may then submit a revised estimate to the Commissioner, who, exercising reasonable judgment, shall within ten (10) business days of such submittal approve or disapprove such amount, provided that any disapproval shall include a writing as set forth above. In the event of further disapproval, Owner's architect or engineer shall submit further revised bond amounts and the Commissioner shall approve or disapprove such revisions, in the same manner set forth herein. If the Commissioner fails to approve or disapprove any amount within the time periods set forth in this Section, then Owner shall re-submit such request for approval or disapproval, and if the Commissioner fails to respond to such resubmission within ten (10) business days, then the Commissioner shall be deemed to have approved the amount of the Finish Work Performance Bond.

(iii) The Finish Work Performance Bond shall be for a term of at least one (1) year and shall be renewed annually prior to the expiration thereof until the work secured by such Finish Work Performance Bond is certified or deemed certified as Finally Complete in accordance with the terms hereof.

(iv) Upon issuance or deemed issuance of the Notice of Final Completion for the work encompassed by the Finish Work Performance Bond, Parks shall promptly return such Finish Work Performance Bond to Owner and shall execute

and deliver any and all documents necessary to cancel such Finish Work Performance Bond.

(b) Maintenance Security Bond. To secure Owner's obligation to maintain each phase of the WPAA in good condition and repair in accordance with this Agreement, Owner shall, upon issuance or deemed issuance of a Notice of Substantial Completion for such phase, in Owner's discretion, either (i) post or cause the posting with Parks of a performance bond for the benefit of the City, in a form reasonably satisfactory to the Commissioner and issued by a surety company licensed to do business in the State of New York, (ii) deposit with Parks one or more clean, irrevocable letters of credit, naming the City as beneficiary, in a form reasonably satisfactory to the City, or (iii) deliver to Parks other security reasonably acceptable to the City (any such security being hereinafter referred to as the "Maintenance Security Bond"). The Maintenance Security Bond shall be in an amount set at one hundred and twenty-five percent (125%) of the most recently approved annual Maintenance Budget; provided, however, that where there is no prior approved annual Maintenance Budget, then the Maintenance Security Bond shall be calculated by multiplying the number of square feet in the applicable phase of the WPAA that have been Substantially Completed by $2.51, adjusted to reflect changes in CPI since the date of this Agreement. The Maintenance Security Bond shall be for a term of five (5) years through a five (5) year bond, or, if a five (5) year bond is not available on commercially reasonable terms, then by five (5) successive one (1) year bonds which shall be reassessed and renewed every year at least two (2) weeks prior to the expiration thereof.

(c) Pier and Platform Repair Security. To secure Owner's obligation to maintain and repair the platform and pilings for each phase of the WPAA, Owner shall, upon issuance or deemed issuance of a Notice of Substantial Completion for such phase, in Owner's

discretion either (i) post or cause the posting with Parks of a performance bond for the benefit of the City, in a form reasonably satisfactory to the Commissioner and issued by a surety company licensed to do business in the State of New York, (ii) deposit with Parks one or more clean, irrevocable letters of credit, naming the City as beneficiary, in a form reasonably satisfactory to the City, or (iii) deliver to Parks other security reasonably acceptable to the City, naming the City as beneficiary (the "Pier and Platform Repair Security"). The Pier and Platform Security shall be in an amount set at the greater of (X) one hundred and fifty percent (150%) of the most recently approved Pier and Platform Budget (where one exists), or (Y) $50,000 (in aggregate for all phases of the WPAA). The Pier and Platform Security shall be for a term of five (5) years through a five (5) year bond, or, if a five (5) year bond is not available on commercially reasonable terms, then by five (5) successive one (1) year bonds which shall be reassessed and renewed every year at least two (2) weeks prior to the expiration thereof.

(d) Access Security. To secure Owner's obligation to cover any civil penalties imposed by the ECB pursuant to Section 6.06 hereof, Owner shall, prior to the issuance or deemed issuance of a Notice of Substantial Completion for the first phase of the WPAA, in Owner's discretion either (i) post or cause the posting with Parks of a performance bond for the benefit of the City, in a form reasonably satisfactory to the Commissioner and issued by a surety company licensed to do business in the State of New York, (ii) deposit with Parks one or more clean, irrevocable letters of credit, naming the City as beneficiary, in a form reasonably satisfactory to the City, or (iii) deliver to Parks other security reasonably acceptable to the City (any such security being hereinafter referred to as the "Access Security"). The Access Security shall be (X) in an amount equal to Ten Thousand Dollars ($10,000.00), as adjusted by CPI from the date of this Agreement to the date of the issuance or deemed issuance of a Notice of

Substantial Completion for the first phase of the WPAA, to cover damages in the event that civil penalties are imposed by the ECB pursuant to Section 6.06 hereof with respect to a Finding of access denial (the "Access Cost"), and (Y) shall be for a term of five (5) years through a five (5) year bond, or, if a five (5) year bond is not available on commercially reasonable terms, then by five (5) successive one (1) year bonds which shall be reassessed and renewed every year at least two (2) weeks prior to the expiration thereof, with the amount of such future Access Security adjusted by CPI from the date of this Agreement to the date of such renewal. Where Owner transfers a portion of its fee interest in any phase of the WPAA to a Transferee as outlined in Article XI below (but specifically excluding transfers to individual condominium unit owners), then each additional owner of a phase of the WPAA shall be required to post with Parks Access Security calculated as set forth herein. Where Transferor transfers the entirety of its fee interest in all phases of the WPAA, then Transferor shall be refunded its Access Security.

2.06 Final Completion.

(a) In the event that the Commissioner fails to respond to Owner's request for a Notice of Final Completion for a particular phase of the WPAA within twenty (20) business days, Owner shall re-submit such request for a Notice of Final Completion, and if the Commissioner fails to respond within five (5) business days of such resubmission, then the Commissioner shall be deemed to have issued a Notice of Final Completion for such phase. Notwithstanding the issuance of a Notice of Final Completion, but subject to the provisions of Section 9.08 hereof, Owner shall be liable as provided by law for any claims related to such construction and shall be responsible for any other responsibilities (including maintenance, repair and indemnification) set forth in this Agreement.

2.07 Circumstances Beyond the Control of Owner.

(a) In the event that Owner reasonably believes that full performance of its obligations to develop one or more portions of the WPAA required in connection with each phase of Development has been delayed or prevented as a result of "Circumstances Beyond the Control of Owner," or if any other obligation of Owner under this Agreement or the Declaration has been or will be delayed or prevented as a result "Circumstances Beyond the Control of Owner", Owner shall so notify (a "Delay Notice") the Commissioner as soon as Owner concludes that such circumstances constitute Circumstances Beyond the Control of Owner. Owner's written notice shall include a description of the condition or event, its cause (if known to Owner), its estimated duration, and in Owner's reasonable judgment, the impact it is reasonably anticipated to have on the completion of the work or on the obligation under this Agreement.

(b) The Commissioner, in the exercise of its reasonable judgment, shall determine whether Circumstance Beyond the Reasonable Control of the Owner exits. Upon receipt of a Delay Notice, the Commissioner shall, within ten (10) business days of receipt of Owner's written notice, certify in writing using his or her reasonable judgment that either (i) Circumstances Beyond the Control of Owner have occurred and specify the number of days the Commissioner reasonably anticipates that Circumstances Beyond the Control of Owner shall delay (X) Substantial or Final Completion, or (Y) the performance of any other obligation hereunder; or (ii) Circumstances Beyond the Control of Owner have not occurred; provided, however, that such determination may be challenged by Owner in any appropriate forum.

(c) In the event that Circumstances Beyond the Control of Owner have prevented or delayed Owner in achieving Substantial Completion or Final Completion, as applicable, then notwithstanding such delay, the Commissioner of Parks shall grant Owner

appropriate relief, including notifying DCP, CPC and Department of Buildings that a TCO or a PCO (as applicable) may be issued for any buildings in any phases of Development, or portions thereof, associated with the applicable portion of the WPAA required in connection with such phase of Development.

(d) Any delay caused as a result of the Circumstances Beyond the Control of Owner shall be deemed to continue only as long as Circumstances Beyond the Control of Owner are continuing. Upon cessation of the causes for such delay, Owner shall promptly recommence the work necessary for the WPAA or the performance of any other obligations tolled during the pendency of Circumstances Beyond Control of Owner, as applicable. Additionally, upon a finding by the Commissioner that Circumstances Beyond the Control of Owner have occurred, the Commissioner may require that Owner post a letter of credit, bond or other security, in a form reasonably acceptable to the Commissioner and naming the City as beneficiary, to secure Owner's obligation to Finally Complete the applicable phase of the WPAA upon the cessation of the Circumstances Beyond the Control of Owner. Such security shall be in a sum equal to one hundred and seventy-five percent (175%) of the estimated cost of the remaining work required to Substantially Complete or Finally Complete, as applicable, the applicable phase of the WPAA, as certified by Owner's architect or landscape architect, and submitted, reviewed, and approved in accordance with Sections 2.05(a)(ii) and 2.05(b)(ii). Owner shall be obligated to recommence construction of the applicable phase of the WPAA to Substantially Complete or Finally Complete same at the end of the Circumstances Beyond the Control of Owner specified in the Delay Notice as approved pursuant to Section 2.07(b); provided, however, that if the Circumstances Beyond the Control of Owner have a longer duration than as set forth in the Delay Notice, or as reasonably determined by the Commissioner, then the Commissioner shall

grant additional time for Substantial Completion or Final Completion, as the case may be. Any delay arising by reason of Circumstances Beyond the Control of Owner shall be deemed to continue only so long as the Circumstances Beyond the Control of Owner continue. Upon cessation of the Circumstances Beyond the Control of Owner, Owner shall promptly recommence the applicable WPAA work. If Owner fails to resume construction of the applicable phase of the WPAA within three (3) months after cessation of the Circumstances Beyond the Control of Owner (as reasonably determined by the Commissioner), the Commissioner shall give Owner written notice of such alleged failure, upon receipt of which Owner shall have thirty (30) days to resume construction of the applicable phase of the WPAA. If Owner fails to resume such performance with such thirty (30) day period, the City may undertake performance of the applicable WPAA work, and draw upon the aforesaid security, to the extent required to complete the WPAA work. Upon Final Completion of the applicable WPAA work (either by Owner or the City), the City shall return the aforesaid security (or the undrawn balance thereof) to Owner. Owner hereby grants the City a license to enter upon such portions of the Subject Property as shall be required to exercise the self-help rights conferred upon the City by this Section 2.07. The City hereby agrees to indemnify, defend and hold Owner harmless from and against any and all claims, suits, causes of action, losses, damages, judgments, costs and expenses ("Claims") arising by reason of its exercise of the self-help rights set forth in this Section 2.07, except to the extent such claim is caused by or contributed by the negligence of Owner.

III. MANAGEMENT AND BUDGET

3.01 Management and Pier and Platform Repairs. Owner shall provide or cause to be provided at Owner's sole expense, all services required for maintaining the WPAA in accordance

with the provisions of this Agreement. As more particularly set forth in, and subject to the standards identified in, Section IV of this Agreement, such services shall include keeping and maintaining the WPAA in good condition and good repair, and making replacements and capital repairs to those design elements approved as shown on the WPAA Drawings annexed to the Declaration as Exhibit "C" thereto. Additionally, Owner shall provide or cause to be provided at Owner's sole expense, all services required for the capital maintenance and repair of the platform and pilings upon which the WPAA is built in accordance with the provisions of this Agreement. Such services shall include, without limitation but subject to the terms of this Agreement, pier and bulkhead inspection, pier pile replacement, and project manager and designer costs.

3.02 Budgets. On or before the date any phase of the WPAA is first open to the public pursuant to the terms hereof, and thereafter on an annual basis, Owner shall provide to the Commissioner proposed budgets relating to such estimated maintenance costs and expenses (the "Maintenance Budget") and capital maintenance and repair costs of the platform and pilings upon which the WPAA is built (the "Pier and Platform Budget") for Parks' upcoming fiscal year commencing on July 1 and ending on June 30 (collectively, the "Budgets"). Owner shall not be required to prepare more than one such Maintenance Budget and Pier and Platform Budget for each fiscal year. Within twenty (20) business days of receipt of the Maintenance Budget and/or the Pier and Platform Budget by the Commissioner, the Commissioner shall approve or disapprove said Budget(s), using his or her reasonable judgment. If he or she disapproves of either one or both such Budgets, then he or she shall state the reasons in writing. Owner shall then submit a revised Maintenance Budget and/or Pier and Platform Budget, as the case may be, and the Commissioner, within twenty (20) business days of such revised Budget(s), shall, exercising reasonable judgment, approve or disapprove such revised Budget(s), 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.

(a) In the event the Maintenance Budget delivered by Owner is not approved by the Commissioner prior to July 1 of the applicable year, then the Maintenance Budget may be calculated by multiplying the number of square feet of the WPAA that have been Substantially Completed pursuant to the terms of this Agreement, by $2.51, and adjusted to reflect changes in CPI from the date of this Agreement to July 1 for the current fiscal year.

(b) In the event that the Pier and Platform Budget delivered by Owner is not approved by the Commissioner prior to July 1 of the applicable year, then Owner shall, upon the request of Parks, employ (at Owner's cost and expense) an independent third-party engineer (the "Inspector"), reasonably acceptable to Parks and Owner. The Inspector shall be a person holding a professional engineering degree and with significant experience in the design, construction and inspection of marine structures and shall be jointly engaged by Owner and Parks and have a duty of impartiality, as between Owner and Parks, and be terminable for cause by either party. The Inspector shall have full access to the WPAA and shall (i) conduct a complete and detailed surface and underwater inspection of the condition of the marine structure, including but not limited to all piers, pilings, and bulkheads, and (ii) thereafter within a sixty (60) days provide Owner and Parks with a detailed report of the Inspector's findings and conclusions, including a cost estimate for the capital costs required to return the marine structure to a condition consistent with the American Society of Civil Engineers Underwater Investigations Standards of Practice for a structure with a "satisfactory" rating (the "Cost of Correction"). For that applicable fiscal year, the Pier and Platform Budget shall be set at the greater of (i) the Cost of Correction, or (ii)

$50,000. Additionally, where the Cost of Correction exceeds the current Pier and Platform Security, then within ten (10) days of Owner's receipt of the Cost of Correction, Owner shall supplement the Pier and Platform Security by an amount equal to one hundred and fifty percent (150%) of the difference between the Cost of Correction and the current Pier and Platform Security.

(c) For the calculation of any partial year, the amount of the Maintenance Budget or Pier and Platform Budget for that partial year shall be calculated by multiplying the most recently approved annual Budget(s) for such year by a fraction, the numerator of which is the number of days before or after July 1, as applicable, and the denominator of which is 365.

IV. MAINTENANCE AND REPAIR

4.01 In General. Owner shall be responsible for ordinary maintenance and repair of the WPAA in accordance with the standards set forth in this Article IV and consistent with an "acceptable" rating under the Parks Inspection Program Manual, annexed hereto as **Exhibit "D"** and made a part hereof. The standards for inspection and maintenance of the marine structure shall be consistent with the American Society of Civil Engineers Underwater Investigations Standards of Practice for a structure with a "satisfactory" rating. All such maintenance shall be performed by Owner in a good and worker-like manner.

4.02 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 WPAA in a clean, neat and good condition.

(b) All walkways, sidewalks and lighting and all other improvements and facilities installed in the WPAA 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.

(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.

4.03 Snow Removal. Snow and ice shall be removed from all walkways so as not to interfere with safe passage, and from all other paved surfaces in accordance with the New York City Administrative Code § 16-123.

4.04 Landscape Maintenance. In addition to the obligations set forth in Section 4.02 hereof, the maintenance program for the planted portions of the WPAA 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 portions of trees that have overextended or died or otherwise unsightly branches to maintain natural form.

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

(v) Remove any sand deposited as a result of winter sandings.

(vi) Replace any plant material or trees that are dead, diseased and/or otherwise unhealthy with healthy specimens of substantially equal type and reasonable size.

(vii) 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) 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 every two weeks. 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 every two weeks.

4.05 Repairs and Replacement. Repair and/or replacement of all facilities within the WPAA, including, without limitation, furnishings, equipment and light bulbs, ball/flexible field components, pipes, water feature components, utility lines and conduits and all other equipment and features as shown on the Approved WPAA Drawings shall occur as needed to maintain such facilities in good order and working condition. Owner shall exercise due diligence in commencing the repair and/or replacement of same as promptly as possible and subject to the notice requirements contained in Section 8.03 hereof (if applicable), and in completing the same within a reasonably expeditious time after commencement. Repairs shall include, but not be limited to, the following, as applicable to the facilities in the WPAA:

(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 (as opposed to replacement signage substantially the same as that which existed prior to such replacement) shall be subject to the prior review and approval of Parks in its reasonable discretion.

(e) Facilities: All recreation facilities, fields, water features, 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 (10) trees or of all trees of any species, Owner shall consult with Parks and provide appropriate replacements for such trees as determined by the Commissioner exercising reasonable judgment.

(h) Marine Structures: Owner shall undertake to maintain all marine structures in a condition which is consistent with the American Society of Civil Engineers Underwater Investigations Standards of Practice for a structure with a "satisfactory" rating (but subject to all applicable Federal, State and environmental requirements). Owner shall undertake to maintain in such condition all marine structures by engaging a marine engineer to conduct routine inspections of the entire infrastructure including those portions underwater. All

condition reports and recommendations shall be made available to the City and Parks upon request. Marine structures shall be inspected in accordance with the schedule and standards established by the American Society of Civil Engineers Underwater Investigations Standards of Practice for a marine structure with a "satisfactory" rating.

(i) Construction Defects & Hazardous Conditions: Owner shall periodically inspect the WPAA (including the platform and pilings in accordance with the terms of clause (h) above) for construction defects and hazardous conditions and shall promptly repair or replace any portion or feature of the WPAA that exhibit 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.

(j) Utilities: Owner shall be solely responsible for the maintenance and cost of all utilities required for the operation of the WPAA.

V. OPERATION AND ACCESS

5.01 Hours of Public Access.

(a) Upon Substantial Completion of the WPAA, the WPAA shall immediately be open and fully accessible to the public without charge or fee, seven days per week, from at least 6:00 a.m. until 10:00 p.m. between April 15th and October 31st of each calendar year, and from at least 7:00 a.m. until 8:00 p.m. between November 1st and April 14th of each calendar year, except as provided in Section 5.01(b) below.

(b) Notwithstanding the provisions of this Agreement or the Declaration, Parks and Owner may by joint written agreement temporarily vary such hours for all or a portion of the WPAA. At such times as the WPAA or any portion thereof is closed, in accordance with this Agreement, they shall be closed to all, including Owner and any residential or commercial

tenants of the Subject Property, except Owner shall have access to perform maintenance and repairs.

(c) Owner shall have the right, in its sole discretion, to close the WPAA to the public for one day, or such other period as shall be required by law to prevent a public dedication of the WPAA, other than 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) to preserve its interest in the WPAA.

5.02 General Use of the WPAA.

(a) Owner and Parks agree that the WPAA is intended to be an active and passive recreational area and, as such, that the WPAA may be used by all members of the public for activities appropriate to WPAA of similar design and size in the City of New York containing both active and passive recreation activities, including, without limitation, walking or standing; walking domestic animals (provided such animals are leashed and properly curbed); jogging; sitting on benches and seating areas provided in the WPAA; use of public facilities and recreation areas provided in the WPAA; use of portions of the WPAA for events which are open to the general public free of charge (unless otherwise approved by Parks), and otherwise in accordance with those activities contemplated by the WPAA Drawings annexed to the Declaration as Exhibit “C” thereto. Owner agrees that those areas designated for "Bocce" and for "Volleyball", as contemplated by the Approved WPAA Drawings shall be used solely for active recreation unless otherwise approved by Parks. With respect to any activities carried on in all or any part of the WPAA, Owner shall promulgate rules and regulations for the WPAA which provide that no member of the public shall use the WPAA 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; provided, however, that in no event shall Owner be in default hereunder if any member of the public violates Owner's rules and regulations regarding the use of the WPAA. Owner shall be bound by the Prohibited Uses specified in the Parks rules and regulations.

5.03 Closure for Repairs.

(a) The WPAA, or the most limited portion thereof as may be reasonably necessary, may be temporarily closed to the public in order (i) to accomplish the repairs or replacements described in Section 4.05 hereinabove, (ii) to accomplish routine maintenance, (iii) to make emergency repairs or to mitigate hazardous conditions or emergency conditions or (iv) to repair, restore, rehabilitate, renovate or replace pipes, utility lines or conduits or the equipment on or under the WPAA. Owner shall erect such barriers around the portion of the WPAA 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 repairs or maintenance to be undertaken, and will exercise due diligence in the performance of such repairs or maintenance so that they are completed expeditiously and within any time period reasonably established by the Commissioner as provided below, and so that the temporarily closed areas (or any portions thereof) are reopened to the public promptly. Except in cases of (i) hazardous conditions or emergency and (ii) closures of less than 1,000 square feet of space (determined taking into account all closed areas of the WPAA during such time period) for less than forty-eight (48) continuous hours that do not comprise the whole of a unique feature within the WPAA, Owner shall provide seven (7) days' advance notice to the public of any temporary closure of the WPAA by posting signs at appropriate locations at the WPAA. In cases of (i) hazardous conditions or emergency and (ii) closures of less than 1,000

square feet of space (determined taking into account all closed areas of the WPAA during such time period) for less than forty-eight (48) continuous hours that do not comprise the whole of a unique feature within the WPAA, then Owner shall provide such public notice as soon as practicable.

(b) Except in cases of (i) hazardous conditions or emergency and (ii) closures of less than 1,000 square feet of space (determined taking into account all closed areas of the WPAA during such time period) for less than forty-eight (48) continuous hours that do not comprise the whole of a unique feature within the WPAA, Owner shall give notice to the Commissioner of its intention to perform repairs no less than twenty (20) days prior to the commencement of the performance of such repairs, which notice shall describe the scope of such repairs, the anticipated duration thereof, and the portion of the WPAA which must be closed in order to carry out the repairs. If the Commissioner, using reasonable judgment, believes that the duration of the repairs stated in such notice is unnecessarily long or that the area for such closure is unnecessarily large, then the Commissioner shall notify Owner prior to the commencement date of such repairs of a shorter period for completion of such repairs or of a smaller area to effectuate such repairs. If the Commissioner determines that Owner has failed to comply with the requirements of this Section 5.03(b), then the Commissioner may, no less than five (5) business days after notice to Owner of said determination, order Owner to reopen all or any portion of the WPAA which was closed; provided, that such order shall not apply to the extent that it would create or allow the creation of an emergency or hazardous condition.

(c) In the event of an emergency or hazardous condition, Owner shall promptly, but in no event more than two (2) business days after such closure, give notice to the Commissioner that such portion of the WPAA has been closed, which notice shall describe the

nature of the emergency or hazardous condition causing the closure, the portion of the WPAA to be closed and the anticipated duration thereof. Emergency or hazardous conditions for which the WPAA may be closed without prior notice shall be limited to actual emergency situations or hazardous conditions 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 WPAA or any portion thereof or to reopen any portion of the WPAA which was not required to be closed to the public. In any such case, Owner shall not, for the duration of the closure, be deemed to be in default of its obligation to cause the WPAA to remain open and accessible to the public; provided that Owner will close or permit to be closed only those portions of the WPAA which must or should reasonably be closed to effect the repairs or remediation, will exercise due diligence in the performance of such repairs or mitigation so that it is completed expeditiously and the temporarily closed areas are re-opened to the public promptly, and will, wherever reasonably possible, perform such work in such a manner that the public will continue to have access to the WPAA.

5.04 Staffing. Upon any portion of the WPAA being open and accessible to the public, Owner shall, in fulfillment of Owner's obligations hereunder, have discretion to employ, appoint, select, contract with or otherwise hire the services of such number of qualified attendants, gardeners, groundskeepers, laborers, supervisors, and similar personnel to maintain such areas in accordance with the terms of this Agreement. 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 except as otherwise specifically provided for with respect to the Inspector described in Section 3.02(b) hereof.

5.05 Rules and Regulations.

(a) Owner shall have the right, but not the obligation, to establish pursuant to Section 5.05(b) rules and regulations governing public use of, and behavior in, the WPAA, which rules and regulations shall not conflict with Parks' rules and regulations as set forth in 56 RCNY §1-01 et seq. In addition, Owner may from time to time modify such rules and regulations, with the consent of Parks, as provided for in this Section 5.05; provided, however, that Parks may subsequently rescind such consent if such modified rule or regulation conflicts with an existing rule or regulation of Parks imposed on all similar public facilities. Owner shall operate the WPAA in conformity with the rules and regulations of Parks, unless and until Owner promulgates rules and regulations of its own for use of the WPAA.

(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 Parks, or any successor to the jurisdiction thereof, for approval.

5.06 Illumination. All pedestrian walkways and paths in the WPAA shall be illuminated from one half hour before sunset to one half hour after sunrise in accordance with the requirements set forth in Section 62-653 of the Zoning Resolution. The lighting plan shall be approved by the New York City Department of Transportation.

5.07 Signage. Upon any portion of the WPAA being open and fully accessible to the public as provided hereinabove, appropriate signage, indicating hours open to the public, accessibility to individuals with disability, the identity of Owner and the entity responsible for maintenance shall be provided in accordance with Section 62-654 of the Zoning Resolution. Any signage not required by the provisions of Section 62-654 shall be approved in writing by

Parks prior to installation of such signage. All signage shall be maintained and replaced as needed in accordance with the provisions of Section 4.05(d) of this Agreement.

VI. ENFORCEMENT

6.01 Right of Inspection. During the course of construction of the WPAA, the City, acting through Parks, upon one (1) business day's prior notice, shall have a right of inspection to determine whether the WPAA is being constructed in substantial conformance with the WPAA Drawings approved as set forth in Section 2.01 of this Agreement. Additionally, Owner shall have the right to request an inspection by Parks to review the performance of the work on any phase of the WPAA in order for Parks to assess whether such work is proceeding in conformance with the Approved WPAA Drawings, and in the event Parks performs such inspections, Parks shall deliver the results thereof to Owner.

6.02 Right of Access. The City, acting through Parks, shall have a right of access to the WPAA at all times the WPAA is open and at other times upon reasonable notice, for the purpose of inspecting the WPAA and determining Owner's compliance or noncompliance with the terms of this Agreement or for any lawful purpose. As part of the training of any private security personnel employed by Owner, such personnel shall be informed of Parks' right of access to the WPAA pursuant to this Section 6.02, and such personnel shall be trained not to obstruct or interfere with the right of the general public to use and enjoy the WPAA in accordance with the terms and conditions of this Agreement.

6.03 Default.

(a) If Owner fails to perform any of its obligations under this Agreement, the Commissioner shall give Owner written notice of such alleged violation, upon receipt of which Owner shall have fifteen (15) business days to effect a cure of such alleged violation. If the

Commissioner finds that Owner has diligently commenced and diligently prosecuted efforts to effect a cure during such fifteen (15) business day period, then the aforesaid fifteen (15) business day period shall be extended for so long as Owner proceeds diligently to cure. If the Commissioner finds that Owner is unable to commence to cure an alleged violation in the initial fifteen (15) business day period due to Circumstances Beyond the Control of Owner as defined in Article I, 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 reasonably appropriate, may allow Owner an additional reasonable period of time in which to commence to cure.

(b) If Owner fails to cure a breach or other violation under this Agreement within the applicable grace period provided for herein, then, prior to the institution by Parks of any action, proceeding or proceedings against Owner in connection with such failure, Parks shall give any Mortgagee (other than the holder of a mortgage secured by a condominium unit or other individual residential unit), which has notified Parks of its interest in the Subject Property, 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. Failure of the Commissioner to give notice to any Mortgagee shall not affect the validity of a notice given to any other Mortgagee. If such Mortgagee commences to effect a cure during such thirty (30) day period and proceeds diligently toward 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, in the reasonable judgment of Parks.

(c) If, for any phase of the WPAA, Owner fails to timely post and/or maintain (as applicable) the Maintenance Security Bond, the Pier and Platform Security, the Access Security, or the Finish Work Performance Bond, for such phase of the WPAA, and such failure

has not been cured within the grace periods set forth in Section 6.03(a) and (b), then provided Parks shall have delivered to Owner a second notice of such failure and Owner has failed within ten (10) days after receipt of such second notice to timely post and/or maintain (as applicable) the Maintenance Security Bond, the Pier and Platform Security, the Access Security, or the Finish Work Performance Bond, then Owner shall be liable for liquidated damages in the cash amount of $1,000.00, per breach, for every calendar day or part thereof that such failure continues, it being acknowledged by Owner that (i) said cash amount will be reasonable in proportion to the probable damages likely to be sustained by Parks if Owner fails to comply with the terms of this Agreement, (ii) the amount of actual damages to be sustained by Parks in the event of such failure is incapable of precise estimation, (iii) the payment of such cash amount by Owner would not result in severe economic hardship for Owner, and (iv) such payment does not constitute a penalty or punitive damages for any purposes. Such amounts due and unpaid by Owner shall constitute a lien on the Subject Property owned by the defaulting Owner. This liquidated damages provision will survive the termination of this Agreement.

(d) In the event that any alleged violation of this Agreement has not been cured within the grace periods provided in subsections (a) and (b) above, the City, acting through the Commissioner, shall be entitled to draw down on the Finish Work Performance Bond, the Maintenance Security Bond, the Pier and Platform Security, and the Access Security, as applicable, to the extent necessary to cure the default and to apply such monies solely to the performance of such obligation, and subject to Sections 6.05 and 6.06 hereof, the City shall be entitled to any remedy available in law or at equity. If the City has drawn down such Finish Work Performance Bond, Maintenance Security Bond, Pier and Platform Security, or Access Security, as provided above, then Owner shall, within ten (10) business days of its receipt of

notice from City of the City's election to make such draw and the amount thereof, post a new or supplemental Finish Work Performance Bond, Maintenance Security Bond, Pier and Platform Security, or Access Security, replacing or supplementing the Finish Work Performance Bond, Maintenance Security Bond, Pier and Platform Security, or the Access Security, drawn down by the City, except that Owner shall not be required to post a new or supplemental Finish Work Performance Bond for any work which is Finally Complete. Nothing set forth herein shall prevent Parks from performing any obligation of Owner not performed by Owner, in accordance with this Agreement, prior to drawing down on such Finish Work Performance Bond, Maintenance Security Bond, Pier and Platform Security, or Access Security, and then drawing down on such Finish Work Performance Bond, Maintenance Security Bond, Pier and Platform Security, or Access Security, to the extent necessary to reimburse or otherwise pay for such work.

6.04 Binding on Successors. The restrictions, covenants and agreements set forth in this Agreement shall be binding upon Owner only for the period during which it holds a fee interest in a portion of the Subject Property containing the WPAA. At such time as Owner ceases to hold fee title 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 containing the WPAA shall assume Owner's obligations and liabilities thereafter arising hereunder pursuant to Article XI hereof. 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 shall be deemed to have ratified all actions of Owner taken in accordance with this Agreement.

6.05 Limitation of Liability. The City shall look solely to the interest of Owner in the Subject Property which includes the WPAA, on an in rem basis only, for the collection of any judgment recovered against its 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 not have any personal liability under this Agreement. Notwithstanding the foregoing, nothing herein 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.

6.06 Denial of Access.

(a) If the Commissioner has reason to believe that the use and enjoyment of the WPAA as described in Section 5.02 herein by any member of the public has, without reasonable cause, been denied or materially impaired, the City shall serve upon Owner such statement, together with written notice that the City intends to make a finding of wrongful denial of access (a "Finding"), unless within ten (10) business days of Owner's receipt of the notice, Owner submits to Parks additional facts or evidence which indicate that there has been no denial or material impairment of access. At the expiration of such ten (10) business day period, the Commissioner shall evaluate any evidence submitted and make a Finding of whether denial has occurred. Upon making a Finding, the Commissioner shall notify Owner. Owner and Mortgagee shall not have further opportunity to cure under Section 6.03(a) or (b) for such Finding.

(b) In addition to such other rights as may be available to Parks at law or in equity and as provided under this Agreement and the Declaration, Parks shall have the right to seek civil penalties at the ECB for a violation relating to privately owned public space, as set forth in **Exhibit "E"** annexed hereto and made a part hereof, as such penalties may be adjusted from time to time by the ECB.

(c) If Owner fails to pay any ECB penalty imposed pursuant to Section 6.06(b) above, then the City, acting through the Commissioner, shall be entitled to draw down on the Access Security in the amount of such penalty up to the Access Cost. The drawdown of the Access Security pursuant to this Section 6.06(c) does not waive any other remedies the City may have to enforce public access.

VII. RIGHT OF ENTRY TO THE PUBLIC SPACE

7.01 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 WPAA during the hours provided in Section 5.01(a) hereof (or at any time in the event of an emergency) following a Maintenance Default (hereinafter defined) to perform Owner's maintenance obligations 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 Section 2.04(a) or Section 2.06 hereof. A "Maintenance Default" shall occur if Owner has failed to perform any of its maintenance obligations under this Agreement and neither Owner nor any Mortgagee has commenced and diligently prosecuted efforts to effect a cure as provided in Section 6.03 during any applicable cure periods with Owner's failure to perform such obligations and Owner or Mortgagee's efforts to proceeded diligently with the effectuation of such cure as reasonably determined by the

Commissioner. The provisions of this Section 7.01 shall not be deemed to limit the access to the WPAA granted to Parks pursuant to Section 6.02 hereof.

VIII. MISCELLANEOUS

8.01 Amendment. This Agreement may not be amended except by a written instrument executed by Owner, Parks and the Chairperson.

8.02 Cancellation. This Agreement may not be canceled except upon the cancellation of the Declaration according to its terms or by written instrument executed by Owner and Parks. Upon such cancellation all of Owner's obligations with respect to any Finish Work Performance Bond, Maintenance Security Bond, Pier and Platform Security, held by Parks shall cease and Owner shall have no further obligations with respect thereto.

8.03 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 personally delivered, addressed to the party at the address provided at the beginning of this Agreement, and in the case of the City, to the attention of the Commissioner, Department of Parks & Recreation and the General Counsel, Department of Parks & Recreation at The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10065; and in the case of Owner, to David Walentas, c/o Two Trees Management Company, 45 Main Street, Suite 602, Brooklyn, New York 11201 and to any Mortgagee at the address provided in a notice given to Parks at the address for notices hereinabove set forth. Each notice which shall be mailed shall be deemed sufficiently given or sent for all purposes hereunder (a) five (5) business days after it shall be mailed at a branch post office regularly maintained by the

United States Postal Service, or (b) if delivered by hand or overnight courier, when actually received.

8.04 Governing Law and Venue.

(a) This Agreement shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of Owner and shall be governed by and construed in accordance with the laws of the State of New York. Any and all claims asserted by or against Parks and the City arising under this Agreement or related thereto shall be heard and determined either in the courts of the United States ("Federal Courts") located in New York City or in the courts of the State of New York ("New York State Courts") located in the City and County of New York.

(b) With respect to any action arising out of this Agreement between the City and Owner in New York State Court, each party expressly waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of forum non conveniens; (ii) to remove to Federal Court; and (iii) to move for change of venue to a New York State Court outside New York County.

(c) With respect to any action arising out of this Agreement between the City and Owner in Federal Court located in New York City, each party expressly waives and relinquish any rights it might otherwise have to move to transfer the action to a United States Court outside the City of New York.

(d) If any party commences any action arising out of this Agreement against any other party in a court located other than in the City and State of New York, upon request of such other the party, the initiating party shall consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York, or if the court where the action

is initially brought will not or cannot transfer the action, the initiating party shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

8.05 Effective Date. This Agreement shall become effective upon the recording of the Declaration.

8.06 No Reliance by Third Parties. No person or entity other than Owner, the City, Parks or DCP, or any successor in interest or assignee of such party, shall be entitled to rely on this Agreement or the performance of Owner, Parks 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.

8.07 Indemnification by Owner. Owner shall indemnify and hold harmless the City, Parks, and their respective officers, employees and agents from any and all claims, actions or judgments (including reasonable out-of-pocket attorney's fees) for actual loss, damage or injury incurred, including death or personal injury or property damage of whatsoever kind or nature, arising out of Owner's default under this Agreement or the negligence or carelessness of Owner, its agents, servants or employees in undertaking their obligations under this Agreement unless such claims, actions or judgments arose out of the negligence, recklessness or willful acts or omissions of the City, Parks, or their respective agents or employees; provided, however, that should any such claim be made or action brought, Owner shall have the right to defend and settle such claims or action with an attorney reasonably acceptable to the City.

8.08 Right to Sue.

(a) Nothing contained herein shall prevent Owner from asserting any claim or action against the City of New York or any of its subdivisions or any of its officials arising out of

the City's performance, or failure of performance, as to any of the City's obligations under this Agreement or the exercise, by the City, of any of its rights under this Agreement.

(b) Nothing contained herein shall prevent the City of New York or any of its subdivisions 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.

8.09 Approvals. Wherever in this Agreement the certification, consent or approval of Owner, the Chairperson, 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.

8.10 Merger. This written Agreement contains all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto, or to vary any of the terms contained herein.

8.11 Counterpart Copies. 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.

8.12 Prior Agreement. This Agreement shall supersede any prior maintenance and operation agreement entered into by Owner.

IX. INSURANCE

9.01 Prior to opening any portion of the WPAA, Owner shall ensure that the types of insurance indicated in this Article IX are obtained and remain in force, and that such insurance

adheres to all requirements herein. The amount of insurance required to be carried by Owner shall be increased by such amount as is reasonable and customary considering the amount of Owner's obligations as set forth herein, but in no event shall the costs of such increased coverage increase by more than ten percent (10%) per year.

9.02 Commercial General Liability Insurance.

(a) Owner shall maintain Commercial General Liability insurance in the amount of at least Three Million Dollars ($3,000,000) per occurrence. In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to the WPAA, and such per-location aggregate shall be at least Five Million Dollars ($5,000,000). This insurance shall protect the insureds from claims for property damage and/or bodily injury, including death, that may arise from any of the operations under this Agreement. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 0001 (or any successor form), shall contain no exclusions other than as required by law or as approved by the Commissioner of the Parks Department, and shall be "occurrence" based rather than "claims-made."

(b) Such Commercial General Liability insurance shall name the City, together, with its officials and employees, as an Additional Insured with coverage at least as broad as the most recent edition of the ISO Forms CG 2026 and CG 2037 (or any successor forms).

9.03 Workers' Compensation, Employers Liability, and Disability Benefits Insurance. Owner shall maintain Workers' Compensation insurance, Employers Liability insurance, and Disability Benefits insurance on behalf of, or with regard to, all employees involved in the

Owner's operations under this Agreement, and such insurance shall comply with the laws of the State of New York.

9.04 Business Automobile Liability Insurance.

(a) With regard to all construction, operations, and maintenance under this Agreement, Owner shall maintain or cause to maintained Business Automobile Liability Insurance in the amount of at least One Million Dollars ($1,000,000) each accident (combined single limit) for liability arising out of the ownership, maintenance or use of any owned, non-owned or hired vehicles. Coverage shall be at least as broad as the latest edition of ISO Form CA0001 (or any successor form).

(b) If vehicles are used for transporting hazardous material, such Business Liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48 (or any successor form)) as well as proof of MCS-90 (or any successor form).

9.05 General Requirements for Insurance Coverage and Policies.

(a) Policies of insurance under this Article IV shall be provided by companies that may lawfully issue such policy and have an A.M. Best rating of at least A-/"VII" or a Standard and Poor's rating of at least A, unless prior written approval is obtained from the Commissioner.

(b) Policies of insurance required under this Article IX shall be primary and non-contributing to any insurance or self-insurance maintained by the City.

(c) There shall be no self-insurance program with regard to any insurance required under this Article IX unless approved in writing by the Commissioner. Owner shall ensure that any such self-insurance program provides the City with all rights that would be

provided by traditional insurance under this Article IX, including but not limited to the defense and indemnification obligations that insurers are required to undertake in liability policies.

(d) The City's limits of coverage for all types of insurance required under this Article IX shall be the greater of (X) the minimum limits set forth in this Article IX or (Y) the limits provided to Owner under all primary, excess and umbrella policies covering operations under this Agreement.

(e) All required policies, except for Workers' Compensation insurance, Employers Liability insurance, Disability Benefits insurance shall contain an endorsement requiring that the issuing insurance company endeavor to provide the City with advance written notice in the event such policy is to expire or be cancelled or terminated for any reason, and to mail such notice to both the Commissioner at The Arsenal, Central Park, 830 Fifth avenue, New York, New York, 10065 and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007. Such notice is to be sent at least (30) days before the expiration, cancellation or termination date, except in cases of non-payment, where at least ten (10) days written notice would be provided.

(f) All required policies, except Workers' Compensation, Employers Liability, and Disability Benefits Insurance, shall include a waiver of the right of subrogation with respect to all insureds named therein.

9.06 Proof of Insurance.

(a) Certificates of Insurance or certified copies of policies for all insurance required in this Article IX must be submitted to the Commissioner prior to opening any portion of the WPAA.

(b) For Workers' Compensation, Employers Liability Insurance, Disability Benefits Owner shall submit one of the following:

(i) C-105.2 (or any successor form) Certificate of Worker's Compensation Insurance;

(ii) U-26.3 (or any successor form) State Insurance Fund Certificate of Workers' Compensation Insurance;

(iii) Request for WC/DB Exemption (Form CE-200 (or any successor form));

(iv) Equivalent or successor forms used by the New York State Workers' Compensation Board; or

(v) Other proof of insurance in a form acceptable to the City. ACORD forms are not acceptable proof of workers' compensation coverage.

(c) For all insurance required under this Article IX other than Workers Compensation, Employers Liability, Disability Benefits insurance, Owner shall submit one or more Certificates of Insurance in a form reasonably acceptable to the Commissioner. All such Certificates of Insurance shall (i) certify the issuance and effectiveness of all such policies of insurance, each with the specified minimum limits; and (ii) be accompanied by the provision(s) or endorsement(s) in Owner's policy/ies (including its general liability policy) by which the City has been made an additional insured or loss payee, as required herein. All such Certificates of Insurance shall be accompanied by either a duly executed "Certification by Broker" in a form substantially consistent with the broker certification form annexed hereto as **Exhibit "F"**, or certified copies of all policies referenced in such Certificate of Insurance. If any policy is not

available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time a certified copy of the policy shall be submitted.

(d) Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of all policies required under this Agreement. Such Certificates of Insurance shall comply with subsections (b) and (c) directly above.

(e) Acceptance or approval by the Commissioner of a Certificate of Insurance, policy, or any other matter does not waive Owner's obligation to ensure that insurance fully consistent with the requirements of this Article IX is secured and maintained, nor does it waive Owner's liability for its failure to do so.

(f) Owner shall be obligated to provide the City with a copy of any policy of insurance required under this Article IX upon written request by the Commissioner or the New York City Law Department.

9.07 Miscellaneous.

(a) Owner may satisfy its insurance obligations under this Article IX through primary policies or a combination of primary and excess/umbrella policies, so long as all policies provide the scope of coverage required herein.

(b) Owner shall be solely responsible for the payment of all premiums for all policies and all deductibles or self-insured retentions to which they are subject, whether or not the City is an insured under the policy.

(c) Where notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Article IX, Owner shall notify, in writing, all insurance carriers that issued potentially responsive policies of any such event

relating to any operations under this Agreement (including notice to Commercial General Liability insurance carriers for events relating to Owner's own employees) no later than 20 days after such event. For any policy where the City is an additional insured, such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Insured as well as the Named Insured." Such notice shall also contain the following information: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged or lost. Owner shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.

(d) Owner's failure to secure and maintain insurance in complete conformity with this Article IX, or to give the insurance carrier timely notice on behalf of the City, or to do anything else required by this Article IX shall constitute a material breach of this Agreement. Such breach shall not be waived or otherwise excused by any action (other than express written waiver) or inaction by the City at any time.

(e) Insurance coverage in the minimum amounts provided for in this Article IX shall not relieve Owner of any liability under this Agreement, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or the law.

(f) In the event of any loss, accident, claim, action, or other event that does or can give rise to a claim under any insurance policy required under this Article IX, Owner and Parks shall at all times fully cooperate with each other with regard to such potential or actual claim.

(g) Except for any damages, claims or losses caused by the City including its officials, employees and agents, Owner waives all rights against the City, including its officials and employees, for any damages or losses that are covered under any insurance required under this Article IX (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of Owner and/or its employees, agents, or servants of its contractors or subcontractors.

(h) In the event the Agreement requires any entity, by contract or otherwise, to procure insurance with regard to any operations under this Agreement and requires such entity to name Owner as an additional insured under such insurance, Owner shall ensure that such entity also name the City, including its officials and employees, as an additional insured with coverage at least as broad as ISO forms CG 2026 and 2037 (or any successor forms).

(i) In the event Owner receives notice, from an insurance company or other person, that any insurance policy required under this Article IX shall expire or be cancelled or terminated (or has expired or been cancelled or terminated) for any reason, Owner shall immediately forward a copy of such notice to both the Commissioner at The Arsenal, Central Park, 830 Fifth avenue, New York, New York, 10065 and the New York City Comptroller, attn: Office of Contract Administration, Municipal Building, One Centre Street, room 1005, New York, New York 10007. Notwithstanding the foregoing, Owner shall ensure that there is no interruption in any of the insurance coverage required under this Article IX.

9.08 Indemnification by the City.

(a) Subject to Owner's compliance with the requirements set forth in paragraph (b) directly below, the City shall indemnify and hold harmless Owner, its officers, agents, employees, successors, and assigns, for any judgment or settlement arising out of a claim

for injury to persons who are members of the public (i.e., not agents or employees of Owner while acting within their agency or employment) as a result of any defect or otherwise dangerous condition in, or on the WPAA to the extent not covered by insurance, provided that the City's obligation to indemnify and hold harmless hereunder shall not arise: (i) if Owner has not fully complied with the construction and maintenance obligations set forth in the Declaration and this Agreement or the consent of Parks pursuant to the provisions of this Agreement; or (ii) if the injury is determined by a court of competent jurisdiction in a final judgment not subject to appeal to have resulted from intentional wrongdoing or recklessness on the part of Owner or its employees.

(b) The City's obligation under this Section 9.08, is conditioned upon:

(i) Owner's compliance with the insurance provisions of this Article IX and with the requirements of all insurance policies;

(ii) Owner's delivery to the Chief of the Torts Division of the Law Department of the City of New York at 100 Church Street, New York, New York 10007 of a copy of any summons, complaint, process, notice, demand or other pleading initiating an action or proceeding, within ten (10) business days after Owner's receipt thereof (or such longer period acceptable to the Chief, Torts Division);

(iii) Owner's adherence to the notice requirement under its insurance policies concerning the occurrence and claim at issue in (ii) above, together with such pleading or other document;

(iv) Owner's simultaneous delivery of the documents described in (ii) and (iii) directly above, together with any other correspondence with an insurance company relating to the incident, to the Insurance Claims Specialist, Affirmative

Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007;

(v) Owner's full cooperation with Parks and the New York City Law Department, including the provision of such information and documentation as either may reasonably require, including without limitation, that which relates to (X) the incident or claim at issue, (Y) Owner's compliance with the insurance requirements of this Article IX or any insurance policy, and (Z) Owner's compliance with its maintenance obligations set forth in the Declaration and this Agreement; and

(vi) Owner's prompt notification to the Chief, Torts Division of the New York City Law Department of any settlement demand that may not be covered by insurance.

(c) Subject to Owner's compliance with the above requirements, and after exhaustion of the underlying insurance, the City shall assume Owner's defense. Thereafter, Owner shall not make or communicate to the claimant an offer of settlement nor shall Owner or its counsel admit liability or waive any material right, including the right to appeal, or otherwise prejudice the rights of Owner or the City with regard to the claim.

X. CLAIMS AND ACTIONS THEREON

10.01 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.

10.02 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, at no material cost to Owner, diligently render to Parks and/or the City of New York without compensation any and all assistance which Parks and/or the City of New York may reasonably require of Owner.

10.03 Owner shall give written notice to Parks and the City pursuant to Section 8.03 of the initiation by or against Owner of any legal action or proceeding in connection with or relating to this Agreement, within ten (10) days after Owner has actual notice of the pendency of any such legal action or proceeding.

10.04 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.

10.05 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 WPAA 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, Parks and CPC.

10.06 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, Parks and CPC 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.

XI. SUBSEQUENT OWNERS

11.01 To the extent Initial Owner (or any subsequent Owner) transfers its fee interest in all or any portion of the Subject Property containing the WPAA to one or more entities (each, a "Transferee"), such Transferee shall be deemed a party to this Agreement and shall be deemed an "Owner" hereunder, and the rights and obligations of "Owner" shall apply to such Transferee with respect to the portion of the WPAA owned by such Transferee, and (b) such Transferee shall replace any required Finish Work Performance Bond, Maintenance Security Bond, Pier and Platform Security, and security required in the event of Circumstances Beyond Control of Owner as per Section 2.07(b), with respect to the portion of the WPAA owned by such Transferee proportionately in the same amount and with the same provisions as required pursuant to Section 2.05 and 2.07, and upon such delivery, the amounts of the Finish Work Performance Bond, Maintenance Security Bond, Pier and Platform Security, and security required in the event of Circumstances Beyond Control of Owner as per Section 2.07(b), that have been provided by Initial Owner (and/or any such subsequent Owner) shall be proportionately reduced (or returned) to Initial Owner (and/or any such subsequent Owner).

11.02 For the avoidance of doubt, each entity which is deemed an "Owner" hereunder shall be (a) granted the rights and shall assume the obligations of "Owner" hereunder only with respect to the portion of the WPAA owned by such entity, and (b) severally liable (and not

jointly and severally liable) for the obligations of "Owner" hereunder only with respect to the portion of the WPAA owned by such entity.

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[Signature page follows]

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

Owner

DOMINO A LLC, as tenant-in-common

By:_____

Title:_____

DOMINO B LLC, as tenant-in-common

By:_____

Title:_____

CITY OF NEW YORK
DEPARTMENT OF PARKS & RECREATION

By:_____
LIAM KAVANAGH
FIRST DEPUTY COMMISSIONER

State of New York)
) SS:
County of New York)

On the 7th day of March, in the year 2014, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacities, and that by his/her/their signature(s) on the instruments, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

_____
Notary Public

State of New York)
) SS:
County of New York)

On the 7th day of March, in the year 2014, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacities, and that by his/her/their signature(s) on the instruments, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

_____
Notary Public

EXHIBIT “A”

Legal Description of Subject Property

EXHIBIT “B”

Interim Inspection Report

EXHIBIT “C”

Intentionally Omitted

EXHIBIT "D"

Parks Inspection Program Manual

EXHIBIT “E”

ECB Penalty Schedule

EXHIBIT “F”

Certification by Broker

EXHIBIT "G"

Form of Notice of Final Completion

[Letterhead of the Commissioner of Department of Parks and Recreation]

[Date]

NOTICE OF FINAL COMPLETION

Re: Block 2414, Lot [__], Brooklyn, New York, New York

Dear _____:

This letter constitutes the Notice of Final Completion of the _____ pursuant to Section ____ of the Restrictive Declaration made by Domino A LLC and Domino B LLC dated as of _____, _____ (the "Declaration").

By this notice, the undersigned, for the Department of Parks and Recreation, confirms that the WPAA in Development Phase [__] (as defined in the Declaration) has been Finally Completed (as defined in the Maintenance and Operations Agreement).

Yours very truly,

EXHIBIT "H"

Form of Notice of Substantial Completion

[Letterhead of the Commissioner of Department of Parks and Recreation]

[Date]

NOTICE OF SUBSTANTIAL COMPLETION

Re: Block 2414, Lot - , Brooklyn, New York, New York

Dear _____:

This letter constitutes the Notice of Substantial Completion of the _____ pursuant to Section 7.02 of the Restrictive Declaration made by Domino A LLC and Domino B LLC dated as of _____, _____ (the "Declaration").

By this notice, the undersigned, for the Department of Parks and Recreation confirms that the WPAA in Development Phase [__] (as defined in the Declaration) has been Substantially Completed (as defined in the Maintenance and Operations Agreement).

Yours very truly,

Exhibit H

GHG and Water Credit Requirements

Exhibit I

SCA Letter of Intent

Exhibit J

Demolition Letter

EXHIBIT K

FORM OF NOTICE OF SUBSTANTIAL COMPLETION

(attached)

[Letterhead of the Director of the Department of City Planning]

[Date]

NOTICE OF SUBSTANTIAL COMPLETION

Re: Block 2414, Lot - , Brooklyn, New York, New York

Dear _____:

This letter constitutes the Notice of Substantial Completion of the _____ pursuant to Section 7.02 of the Restrictive Declaration made by Domino A LLC and Domino B LLC dated as of _____, _____ (the "Declaration").

By this notice, the undersigned, for the Department of City Planning confirms that PAA Phase [__] (as defined in the Declaration) has been Substantially Completed (as defined in the Declaration) in accordance with all requirements of the Declaration.

Yours very truly,

_____

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

EXHIBIT L

FORM OF NOTICE OF FINAL COMPLETION

(attached)

[Letterhead of the Director of the Department of City Planning]

[Date]

NOTICE OF FINAL COMPLETION

Re: Block 2414, Lot [__], Brooklyn, New York, New York

Dear _____:

This letter constitutes the Notice of Final Completion of the _____ pursuant to Section ____ of the Restrictive Declaration made by Domino A LLC and Domino B LLC dated as of _____, _____ (the "Declaration").

By this notice, the undersigned, for the Department of Parks and Recreation, confirms that PAA Phase [__] (as defined in the Declaration) has been Finally Completed (as defined in the Declaration) in accordance with all requirements of the Declaration.

Yours very truly,

_____

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

NYCPLANNING — CITY OF NEW YORK

Community/Borough Board Recommendation

Pursuant to the Uniform Land Use Review Procedure

Application #: **C 140132 ZSK**	Project Name: **Domino Sugar**
CEQR Number: 07DCP094K	Borough(s): Brooklyn Community District Number(s): 1

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

SUBMISSION INSTRUCTIONS

1. 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** and include the following subject line: (CB or BP) Recommendation + (6-digit application number), e.g., "CB Recommendation #C100000ZSQ"
   - **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"
2. 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.

13 NOV 7 12:02 P

Docket Description:

IN THE MATTER OF an application submitted by Two Trees Management, LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to the following sections of the Zoning Resolution:

1. Section 74-743(a)(1) - to allow the distribution of total allowable floor area and lot coverage under the applicable district regulations without regard for zoning lot lines; and

2. Section 74-743(a)(2) - to modify the yard requirements of Sections 62-332 (Rear yards and waterfront yards) and 33-23 (Permitted Obstructions in Required Yards or Rear Yard Equivalents), and to modify the height and setback requirements of 62-341 (Developments on land and platforms);

in connection with a proposed mixed use development on property generally bounded by Grand Street and its northwesterly prolongation, Kent Avenue, South 3rd Street, a line 100 feet northwesterly of Wythe Avenue, South 4th Street, Kent Avenue, South 5th Street and its northwesterly prolongation, and the U.S. Pierhead line (Block 2414, Lot 1; and Block 2428, Lot 1), in R6/C2-4, R8/C2-4 and C6-2 Districts, within a large-scale general development, 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.

Applicant(s):	Applicant's Representative:
Two Trees Management, LLC 45 Main Street, Ste. 602 Brooklyn, NY 11201	Ross F. Moskowitz Stroock & Stroock & Lavan LLP 180 Maiden Lane New York, NY 10038

Recommendation submitted by:

Brooklyn Community Board 1

Date of public hearing: November 13, 2013 **Location:** 6:30PM 211 Ainslie St.
November 21, 2013 6:30PM 250 Berry St.

Was a quorum present? YES ☒ NO ☐ *A public hearing requires a quorum of 20% of the appointed members of the board, but in no event fewer than seven such members.*

Date of Vote: December 10, 2013 **Location:** 6:30PM 211 Ainslie St. Bklyn, NY

RECOMMENDATION

☐ Approve ☒ Approve With Modifications/Conditions

☐ Disapprove ☐ Disapprove With Modifications/Conditions

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

Voting

 # In Favor: 24 **# Against:** 4 **# Abstaining:** 2 **Total members appointed to the board:**

Name of CB/BB officer completing this form	*Title*	*Date*
Christopher H. Olechowski	Chairman	12/11/13

COMMUNITY BOARD 1 Fax:718-389-0098 Dec 11 2013 12:29pm P004/008

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
Website: www. nyc.gov/brooklyncb1

HON. MARTY MARKOWITZ
BROOKLYN BOROUGH PRESIDENT

CHRISTOPHER H. OLECHOWSKI
CHAIRMAN

GERALD A. ESPOSITO
DISTRICT MANAGER

HON. STEPHEN T. LEVIN
COUNCILMEMBER, 33rd CD

HON. DIANA REYNA
COUNCILMEMBER, 34th CD

RABBI JOSEPH WEBER
FIRST VICE-CHAIRMAN
DEL TEAGUE
SECOND VICE-CHAIRPERSON
STEPHEN J. WEIDBERG
THIRD VICE-CHAIRPERSON
DEALICE FULLER
FINANCIAL SECRETARY
ISRAEL ROSARIO
RECORDING SECRETARY
PHILIP A. CAPONEGRO
MEMBER-AT-LARGE

Amended
December 10, 2013

LAND USE, ULURP & LANDMARKS COMMITTEE REPORT

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

FROM: Ms. Del Teague, Committee Chair

RE: Monday, November 25, 2013 Committee Meeting

The Committee met on Monday, November 25,2013 at 6:30PM, at the McCarren Park Recreation Center, 776 Lorimer Street, Brooklyn, NY 11222 (Between Driggs Avenue and Bayard Street). The Attendance sheet is attached.

AGENDA

Items Heard At The Public Hearing:

(1.) NYC DEPARTMENT OF CITY PLANNING: DOMINO SUGAR

(# C 140132 ZSK) IN THE MATTER OF an application submitted by Two Trees Management, LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to the following sections of the Zoning Resolution:

1. Section 74-743 (a) (1) - to allow the distribution of total allowable floor area and lot coverage under the applicable district regulations without regard for zoning lot lines; and

2. Section 74-743(a)(2) - to modify the yard requirements of Sections 62-332 (Rear yards and waterfront yards) and 33-23 (Permitted Obstructions in Required Yards or Rear Yard or Rear Yard

Equivalents), and to modify the height and setback requirements of 62-341 (Developments on land and platforms);

in connection with a proposed mixed use development on property generally bounded by Grand Street and its northwesterly prolongation, Kent Avenue, South 3rd Street, a line 100 feet northwesterly of Wythe Avenue, South 4th Street, Kent Avenue, South 5th Street and its northwesterly prolongation, and the U.S. Pierhead line (Block 2414, Lot 1; and Block 2428, Lot 1), in R6/C2-4, R8/C2-4 and C6-2 Districts, within a large-scale general development, Borough of Brooklyn, Community District 1.

(# C 140133 ZSK) IN THE MATTER OF an application submitted by Two Trees Management, LLC pursuant to Section 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-744(b) of the Zoning Resolution to allow residential and non-residential uses to be arranged within a building without regard for the regulations set forth in Section 32-42 (Location within Buildings), in connection with a proposed mixed use development on property generally bounded by Grand Street and its northwesterly prolongation, Kent Avenue, South 3rd Street, a line 100 feet northwesterly of Wythe Avenue, South 4th Street, Kent Avenue, South 5th Street and its northwesterly prolongation, and the U.S. Pierhead line (Block 2414, Lot 1; and Block 2428, Lot 1), in R6/C2-4, R8/C2-4 and C6-2 Districts, within a large-scale general development, Borough of Brooklyn, Community District 1.

(# C 140134 ZSK) IN THE MATTER OF an application submitted by Two Trees Management, LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-745(a)* of the Zoning Resolution to allow the distribution of required or permitted accessory off-street parking spaces without regard for zoning lot lines, in connections with a proposed mixed use development on property generally bounded by Grand Street and its northwesterly prolongation, Kent Avenue, South 3rd Street, a line 100 feet northwesterly of Wythe Avenue, South 4th Street, Kent Avenue, South 5th Street and its north westerly prolongation, and the U.S. Pierhead line (Block 2414, Lot 1; and Block 2428, Lot 1), in R6/C2-4, R8/C2-4 and C6-2 Districts, within a large scale general development, Borough of Brooklyn, Community District 1.* Note: A zoning text amendment to modify Section 74-745 is proposed under a concurrent related application N 140131 ZRK.

(# C 140135 ZSK) IN THE MATTER OF an application submitted by Two Trees Management, LLC pursuant to Section 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-745 (b)* of the Zoning Resolution to waive the requirements for loading berth for retail or service uses listed in Use Group 6A, 6C, 7B, 8B, 9A, 10A, 12B & 14A, and where no single establishment exceeds 8,500 square feet for a zoning lot bounded by Grand Street and its northwesterly prolongation, Kent Avenue, South 3rd Street, a line 100 feet northwesterly of Wythe Avenue, South 4th Street, Kent Avenue, South 5th Street and its northwesterly prolongation, and the U.S. Pierhead line (Block 2414, Lot 1; and Block 2428, Lot 1), in R6/C2-4, R8/C2-4 and C6-2 Districts, within a large-scale general development, Borough of Brooklyn, Community District 1. * Note: A zoning text amendment is proposed to modify Section 74-745 under a concurrent related application N 140131 ZRK.

(CEQR Number: 07DCP094K. Related applications: N 140131 ZRK, N140136 ZAK, N 140137 ZAK, N 140137 ZAK, 140138 ZAK, N 140139 ZCK, 140140 ZCK, N 140141 ZCK)

Resolution - The committee noted that there was considerable support expressed by the community at the public hearings for the development in its current format. Such support was based on the developer's efforts to obtain and respond to community input, the need for business, commercial, and economic development in the area, and the developer's commitment to provide 660 affordable units encompassing at least 500,000 square feet of integrated affordable housing. The committee also noted relevant concerns raised at the public hearings, such as questions about whether the developer would be required to meet his promise to build 660 affordable units; whether there will be adequate community outreach to assist Community Board 1 residents in the application process for the affordable units; whether there would be a meaningful provision for Community Board 1 seniors ; and whether there would be a meaningful preference for local businesses in the commercial spaces.

With the above community support and concerns in mind, the committee voted to approve with the following conditions:

-1- The Zoning Text Amendment for the inclusionary housing will mandate that Two Trees provide 660 units of integrated affordable housing in perpetuity, utilizing at least 500,000 square feet of space representing net space; and the city will continue to offer the current tax exemptions and incentives, or the equivalent thereof, on which Two Trees has based the provision of this number of units.

-2- The zoning amendments will lock in the shape and size of the buildings according to the ShoP architects' master plan as submitted and presented to the Community Board.

-3- The developer will partner with local not-for-profits based in Community Board No. 1, as soon as the developer is notified that the project is approved, to assure adequate local recruitment and education of local residents and commercial tenants.

-4- The developer will offer incentives and reasonable preferences to local businesses and entrepreneurs for the commercial spaces located on the ground and upper floors.

-5- The spectrum of affordable apartments will include three bedroom apartments, as follows:

10% studio apartments;
25% one bedroom apartments;
50% two bedroom apartments;
15% three bedroom apartments.

-6- The distribution of AMI levels for the affordable residential units shall range as follows:

30% less than 40% AMI;
25% less than 60% AMI;
25% less than 80% AMI; and
20% less than 125% AMI.

-7- The developer will work with HPD to provide a 10% first screening preference for seniors for studio and one bedroom apartments, on the lower floors if necessary, with a provision for an appropriate community room.

-8 The community recreation center will offer discounted rates to residents who occupy the affordable residential units.

The vote was 7 in favor of the resolution, 1 recusal, and 1 against by a non-board member.

(1A.) LANDMARKS APPLICATION (LPC 14-6970) - The application is for a Certificate of Appropriateness for the adaptive reuse of the Refinery into a 440,000-SF commercial office building with ground floor retail. The Beyer Blinder Belle design includes preservation and restoration of the existing brick facade and important historic building elements along with a new rooftop addition and a plaza fronting the proposed new waterfront park.

The committee voted unanimously to approve, noting that the current application, which provides for exclusively commercial and retail space in this building, is historically appropriate, and will provide much needed business, commercial and economic revitalization, while preserving the historic character of the building.

(2.) NYC DEPARTMENT OF CITY PLANNING (# N 140099 ZRK, # N 140100 ZCK, # N 140101 ZCK, N 140102 ZCK) EAST RIVER FERRY TEXT AMENDMENT- The New York City Economic Development Corporation (NYCEDC) is proposing a zoning text amendment to the New York City Zoning Resolution that would be applicable to Brooklyn Community District 1, and would support the continuation of East River Ferry service. NYCEDC launched the East River Ferry service pilot program in June 2011, which is currently operated by New York Waterway and offers frequent daily service .

Resolution - The proposed amendment will allow the ferry service to continue to maintain its current level of service, including the employment of ferries that accommodate 399 passengers, instead of the 99 passenger ferries that are currently allowed as of right. The committee recognized the need for ferry service in general, and specifically for the employment of the larger ferries. However, the committee also noted that the proposed amendment does not satisfactorily address the public safety need for adequate lighting and illuminated shelters at the docking areas.

Accordingly, the committee voted unanimously to approve with the following conditions:

-1- The zoning text will mandate illuminated shelters within 100' of the boat docks.

-2- The zoning amendment will mandate an upgrade in and around the docking areas of any lighting that does not meet the city's current safety standards for areas of public usage.

E-mail/ Fax transmittal

Community District 1 Distribution **TO**	Borough President Marty Markowitz **FROM**
December 31, 2013 **DATE**	**Richard Bearak,** **Land Use Director** Phone: (718) 802-4057 E-Mail: rbearak@brooklynbp.nyc.gov **CONTACT**
ULURP Recommendation Domino Sugar **RE: 140131 ZRK 140132 ZSK, 140133 ZSK, 100134 ZSK, 140135 ZSK**	**NO. PAGES, INCLUDING COVER** **29**

Attached is the recommendation report for ULURP application 140131 ZRK, 140132 ZSK, 140133 ZSK, 100134 ZSK, 140135 ZSK

If you have any questions, please contact Richard Bearak at (718) 802-4057.

Distribution

NAME	TITLE	FAX	E-MAIL
Amanda Burden	City Planning Commission Chair	212-720-3356	ygruel@planning.nyc.gov
Hon. Christine Quinn	City Council Speaker	212-788-7207	quinn@council.nyc.ny.us
Purnima Kapur	Dir. DCP Brooklyn	718-596-2609	pkapur@planning.nyc.gov
Jackie Harris	DCP - Director of Land Use Review	212-720-3356	jharris@planning.nyc.gov
Gail Benjamin	Dir. City Council Land Use Division	212-788-7207	gbenjam@council.nyc.ny.us
Hon. Stephen Levin	Council Member	718-643-6620	Stephenlevin9@yahoo.com
Christopher Olechowski	Chair, CB 1	718-389-0098	Bk01@cb.nyc.gov
Gerald Esposito	District Manager, CB 1	718-389-0098	Bk01@cb.nyc.gov
Jed Walentas			jed@twotrees-dumbo.com
Richard Bearak	Director, Land Use BBPO		rbearak@brooklynbp.nyc.gov

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 # 140131 ZRK, 140132 ZSK, 140133 ZSK, 100134 ZSK, 140135 ZSK

Domino Sugar

In the matter of an application submitted by Two Trees Management, LLC pursuant to Sections 197-c, 200 and 201 of the New York City Charter for the grant of zoning text amendments and special permits pursuant to the Zoning Resolution:

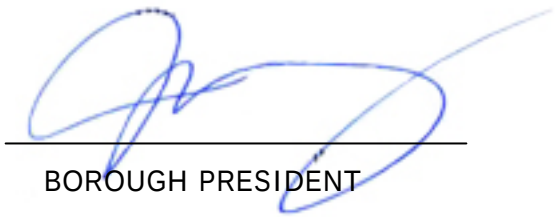
- To modify the Inclusionary Housing Program requirements to exempt non residential floor area above the ground floor from the requirement to be consistent with maximum permitted floor area as properties developed exclusively non-residential and to modify as it pertains to maximum income levels to qualify as affordable housing.
- To waive or reduce loading berth requirements
- To allow residential and non-residential uses to be arranged within a building without regard for regulations set forth in Section 32-42 (location within buildings).
- To allow the distribution of total allowable floor area and lot coverage under the applicable district regulations without regard for zoning lot lines.
- To modify the yard requirements of Sections 62-332 (rear yards and waterfront yards) and 33-23 (permitted obstructions in required yards or rear yard equivalents) and to modify setback requirements of 62-341 (development on land and platforms).
- To allow the distribution of required or permitted accessory off-street parking spaces without regard for zoning lot lines.
- To waive the requirements for a loading berth for retail or service uses.

COMMUNITY DISTRICT NO. 1 BOROUGH OF BROOKLYN

RECOMMENDATION

Zoning Text Amendment and Special Permits:
140131 ZRK, 140132 ZSK—140133 ZSK—140134 ZSK—140135 ZSK

☐ APPROVE
☒ APPROVE WITH MODIFICATIONS/CONDITIONS
☐ DISAPPROVE
☐ DISAPPROVE WITH MODIFICATIONS/CONDITIONS



BOROUGH PRESIDENT

December 31, 2013
DATE

RECOMMENDATION FOR THE FOLLOWING PROPOSED ACTIONS: AMENDMENT OF THE ZONING TEXT, THE GRANT OF SPECIAL PERMITS

These applications by Two Trees Management seek special permits, zoning text changes and City Planning Commission certifications pertaining to a mixed use development at the former Domino Sugar factory site. The project is located in CD1 and is generally bounded by Grand Street, Kent Avenue and South 3rd Street. The proposal entails the following features: approximately 2,215,000 sf for 2,300 residential units; approximately 504,000 sf of commercial office space; approximately 72,000 sf of retail space; approximately 42,000 sf for a health club; approximately 143,800 sf of community facility space (including a 375-seat school, approximately 36,000 sf for a not-for profit art studio space and approximately 45,000 sf for a not-for-profit sports and fitness center); approximately 1,050 parking spaces; and, approximately 6.85 acres of total public open space (including 3.76 acres of waterfront public access area and one acre for Domino Square park). The development proposal includes three new waterfront towers at heights of 435 ft, 530 ft and 535 ft, an inland building of 170 ft, and the rehabilitation of the former Domino Refinery building, including a rooftop addition of four floors. The applicant intends to provide up to 660 units of affordable housing, pending availability of government tax exemptions and incentives.

Public Hearing

On December 11, 2013 the Borough President held a public hearing for the Domino Sugar proposal.

The Borough President questioned the applicant, Two Trees, as to how the proposed 660 affordable units will be memorialized in the current plan. The applicant said that Two Trees seeks to memorialize the text though the action of the City Planning Commission, or by restrictive declaration in the City Council. At this point, the commitment is not legally binding. Achieving 660 affordable units are also conditional on approval of 421-a tax abatements and further subsidy from government programs.

The Borough President also asked Two Trees it will ensure local residents assume residence in affordable units. The applicant responded that over two years, Two Trees has met organizations with expertise in outreach that know how to reach members of the local community. Two Trees will rely on its knowledge to select tenants.

In response to the Borough President's question regarding the Community Board's push for lower AMI levels, higher percentages of two and three bedroom units as well as more housing for seniors, the applicant responded that although these requests were "economically challenging…by no means am I saying no." Two Trees expects to engage in a "healthy negotiation with HPD, City Planning," and other agencies.

In response to the Borough President's question regarding sustainable design elements and solar components, the applicant said it was "premature to design for solar", but he is committed to be LEED certified on the project. The applicant also suggested that the waterfront location of the project would be ideal for wind power generation.

13 persons testified on the proposal, with 11 in favor and two opposed. Speakers in favor included a representative of the Member of the Assembly for the 50th District, the President and CEO of the Brooklyn Chamber of Commerce, and representatives from Churches United for Fair Housing, El Puente, Greenpoint Waterfront Association for Parks and Planning (GWAPPP)/Neighbors Allied for Good Growth (NAG) and New Yorkers for Parks.

Many speakers expressed a qualified support for the proposal, simply voicing preference for the current plan versus the as-of-right development from the 2010 Domino ULURP. Three offered singular praise.

Supporters praised the following aspects of the project: the developer's engagement of neighbors in the visioning process; walkability and livability; provision of affordable housing; increased open space over the 2010 plan; improved access to the waterfront esplanade over the 2012 plan; addition of River Street; mixed use floor area; provision of prevailing wage jobs; economic development stimulus; creative economy work space; and opportunities for start-ups.

Speakers generally criticized the project on the following items: lack of affordable housing guarantees in a neighborhood facing considerable displacement; excluding commercial floor area from the calculation for inclusionary housing units; limited number of two-bedroom units and absence of three-bedroom units; affordable units at AMI levels above incomes of South Williamsburg population; and private management of public open space.

In addition, speakers expressed concern with an absence of anti-displacement funding, the lack of critical storm surge infrastructure and the lack of traffic mitigation efforts. Speakers drew attention to the need for transportation studies as well as expanded and rerouted MTA bus lines. Speakers also hoped the developer would commit to job training, community oversight and contributions to support south side parks.

Subsequent to the hearing, the Borough President received one statement in favor from the Metropolitan Waterfront Alliance and three statements against the proposal.

Consideration

Community Board 1 (CB 1) voted to approve the application with conditions. These include mandating 660 permanently affordable units in not less than 500,000 sf, a specific number of units of various sizes priced at four tiers of affordability; maintaining a ten percent unit set-aside for seniors; partnering with local not-for-profits in the residential and commercial leasing process; incentivizing local business leasing of commercial space; and discounting membership costs at the community recreation center for affordable housing residents.

Project and Requested Land Use Actions

The applicant seeks text amendments to the Zoning Resolution and four special permits to achieve the proposed development configuration and intended uses.

The development site consists of two parcels: a 1.3-acre upland parcel and a 9.8-acre waterfront parcel. The upland zoning lot, which is expected to be developed in the first phase of the project, as proposed, would feature a residential building (Building E), with 20,000 sf for ground floor commercial use. It will also contain a 750-space accessory parking facility. The building would step up in height along the building façade as it extends further from Wythe Avenue up to a maximum height of 170 feet (total 401,300 sf).

The proposed waterfront parcel contains two zoning lots and would be developed in four building phases. One zoning lot would be carved out of the waterfront parcel, and feature the waterfront park and the adaptively reused refinery building. The refinery building would be renovated with a glass and steel addition of four stories, subject to approval by the Landmarks Preservation Commission. The building would house 442,700 sf of office space, with ground floor retail use.

Approximately 34,000 sf within the building would be designated for a community facility. The glass and steel addition on top of the structure would bring the total proposed height to 190 feet.

The second waterfront lot stretches the length of the river frontage and would accommodate three towers. At one end of the lot, adjacent to Grand Ferry Park, a mixed-use building (Building A) would stand at a proposed height of 435 ft, and contain 389,800 sf of floor area, including residences covering nearly 245,000 sf, commercial-office space and retail totaling approximately 103,000 sf, and 42,500 sf of community facility uses (a not-for-profit sports and fitness facility).

North of the Refinery Building, Building B would stand at a proposed height of 530 ft and contain 1,074,000 sf of floor area. Building B features residences (approximately 996,000 sf), retail space at just over 10,000 sf, approximately 67,000 sf of community facility uses (featuring a proposed public school of at least 375 seats), and parking for 300 cars in an enclosed garage. The applicant anticipates entering into a School Operation Agreement with the School Construction Authority (SCA), which would detail the terms under which the SCA can elect to take title to the proposed school.

Building D, south of the Refinery Building, would contain 641,000 sf of total floor area, and stand at a proposed height of 535 ft. It would contain 593,000 sf of residences, 40,000 sf dedicated to a commercial health club, and approximately 7,500 sf of retail uses.

The proposed waterfront zoning lot features a public square with two small one-story commercial buildings, containing a total of 3,600 sf.

Consistent with the types of businesses found in the surrounding neighborhood, the retail and office spaces, as well as the community facilities and not-for-profit and/or artist studio spaces, would be designed to accommodate neighborhood retailers, startup technology and creative firms, artists, and not-for-profit users.

The project would also provide approximately 6.85 acres of publicly accessible open space (including easement areas), for both passive and active recreation. Public areas feature a new publicly-accessible waterfront park which extends nearly one-quarter mile between Grand Ferry Park and the Williamsburg Bridge. The development's publicly accessible waterfront facing spaces, including Domino Square, would total approximately 4.8 acres. Open space areas would be landscaped with large lawn areas, include planters and seating areas as well as feature playing fields and a dog run. The landscape construction would incorporate design elements celebrating the historical character of industrial Brooklyn, including an artifact walk with mementoes from the Domino Sugar factory buildings.

The open space network includes the newly created through-streets to the waterfront, improving the public's connection to the proposed open space. These new public sidewalks and streets would total approximately 2.0 acres and are intended to be memorialized at the outset through public access easements. The extended streets would be River Street, from the north, and South 1st through South 4th streets, from the east. Standard parking regulations would be enforced by the City. The streets would be designed and constructed to Department of Transportation (DOT) standards.

It is the applicant's intention to pursue a City map amendment to map the proposed River Street extension and western extensions of South 1st, South 2nd, South 3rd and South 4th streets at a later date. With that in mind, the applicant has consulted with DOT to ensure that the proposed streets are consistent with DOT street design material and the Fire Department requirements.

The applicant anticipates executing a Maintenance and Operations Agreement with the Department of Parks and Recreation that would identify the terms under which the Public Access Areas would be constructed, maintained and operated.

In order to develop the plans as presented, multiple discretionary actions require approval. In terms of the proposed massing, four of the proposed buildings would not comply with height, setback, maximum height, wall width and maximum tower size requirements. In addition, Buildings B and D, with proposed bulkhead screens, would exceed the maximum surface area requirements for bulkheads. These buildings would require a waiver of the maximum height requirements up to the top of the bulkheads. This waiver would allow the building façade to continue without interruption to the top of the bulkheads, creating uniformity with the intent to achieve optimal urban design aesthetics.

In addition to utilizing height as a means to free up land to achieve Domino Square, which would otherwise be covered by a high-rise building, the applicant seeks special permits to transfer development rights between lots within the development site. Permitting such transfer would enable approximately 242,857 sf of residential floor area from the parcel extending along the East River to be added to what could be developed on the upland parcel. Zoning restricts lot coverage for residential uses in R6/C2-4 districts to 65 percent. The configuration of the upland achieves a building coverage of 72 percent. Though, because the building would be opposite Domino Square, the application suggests that, collectively, the overall residential lot coverage of the three zoning lots would come to 22 percent, which mitigates the bulk placement on the inland lot.

There will also be Certifications and Authorizations before the City Planning Commission that are intended to modify waterfront public access requirements and visual corridor requirements.

In addition, the applicant seeks Zoning Text amendments to waive or reduce loading berth requirements around the site to better reflect the needs of the smaller sized retail establishment that would be incorporated into the development and to modify the means to obtain the maximum floor area.

Given the anticipated multiple phases and the assumed 2023 project completion date, the applicant seeks to be in position to have the development remain economically feasible should property tax abatements and exemptions in effect now, and government housing subsidy/incentive initiatives offered at this time, not be available for all phases. Therefore, the applicant seeks a zoning text change in regard to the Inclusionary Housing zoning bonus calculation in terms of commercial space and community facility space above the first floor. Such change is deemed necessary to ensure that constructing the extent of commercial and community space would remain economically feasible in the absence of such tax exemptions and financial subsidies and incentives.

When developing for residential use, the waterfront property is zoned to be developed as-of-right to the base Floor Area Ration (FAR) of 4.88. For exclusively non-residential buildings for commercial and/or community facility use, it is permitted to achieve a maximum FAR of 6.5 on the waterfront. Residential development can obtain a maximum FAR of 6.5 on the waterfront through the Inclusionary Housing Program, provided the developer uses 20 percent of the total floor area of the building for affordable units. The proposed Zoning Text change would make the affordable floor area requirement solely dependent on residential floor area, and not other types, such as commercial or community-space floor area. This change would allow the developer to build less than 20 percent of total floor area in waterfront buildings for affordable housing. The developer suggests that this amendment would facilitate the construction of approximately 145,000 sf of commercial space and 115,000 sf of community facility space, that might otherwise not be economic feasible if certain exemptions, abatements, incentives and/or subsidies were not available during the full duration of project construction.

For buildings with occupancy precluding residential use, the maximum permitted floor area of 6.5 FAR is as-of-right as long as at least 0.5 FAR is set aside for community facility use. But for the adaptive reuse of the refinery building, the applicant seeks more blending of use in building containing residential use and in order to obtain 6.5 FAR, the existing zoning text reduces the economic feasibility through its requirement to provide affordable housing without regard to use above the ground floor. The applicant seeks the possibility of equalization of treatment through this zoning text proposal, though does not intend to limit the provided affordable housing just because such text would provide such an opportunity. The applicant continues to express intent to provide more floor area for affordable housing than would be required by the proposed zoning text amendment provided certain conditions in place today, pertaining to government incentives and subsidies, which impact economic feasibility, are to remain available through the phasing. In essence, the proposed text to reduce the basis for calculating affordable using is meant to be utilized as a last resort basis to maintain economic feasibility.

With the text amendment on the waterfront zoning lot, a minimum of approximately 367,000 sf of floor area would be required to be designated as affordable housing in order to achieve the maximum FAR of 6.5. Without the text amendment, approximately 410,000 sf would be required on the waterfront zoning lot to be designated as affordable housing to achieve the maximum FAR.

In addition to the land use applications, a modified Restrictive Declaration would be recorded on the property requiring development in substantial accordance with the approved plans, providing for the implementation of the project components related to the environment and mitigation measures, as well as requiring construction monitoring measures to be implemented.

Policy Considerations

It is the Borough President's policy to support land use changes that enhance open space access, provide opportunities for employment and increase the supply of affordable housing for Brooklyn residents. The Borough President is concerned that too many of the borough's residents leave because they can no longer afford to live in Brooklyn.

This proposal, with its revitalization and reactivation of a vacant waterfront industrial site, resulting in new jobs through commercial, residential and community uses, along with the providing of public recreational and open space amenities, is generally consistent with the Williamsburg 197-a Plan, adopted in 2002. That Plan had recommended the reuse of vacant industrial parcels along the waterfront, additional residential development and the creation of a waterfront promenade. Subsequent to the adoption of that policy, the Domino Sugar complex ceased operations. The proposal is also consistent with the PlaNYC goals for creating affordable housing, developing new open space, increasing waterfront access, and implementing environmental remediation and redevelopment of a former industrial site.

In addition, the proposed development would be generally consistent in terms of bulk and use with recent waterfront developments in the surrounding area, including Northside Piers, Schaefer Landing and The Edge. These developments feature tall, modern, mixed-use buildings and mark a change in the urban design of the study area from a low-scale, mixed industrial and residential area to modern, tower-style, mixed-use developments.

As compared to the 2010 project, which established the zoning district designation for the sites, the 2013 development proposal would result in a reduction in the total number of residential floor area and, with the proposed zoning text change, would reduce the amount of floor affordable housing units required to be developed. The reduction in residential floor area would facilitate the

development of an additional 405,570 sf of commercial office space, which support the local economy and increase employment opportunities in the neighborhood. In addition, it would provide a more varied journey to work which would likely be better accommodated in the transportation infrastructure that would be available.

The proposed special permits collectively provide an opportunity to allow for development that provides enhanced waterfront public access, better site design, iconic architecture, more ability to incorporate commercial office and retail space. While in 2010 the Borough President did not believe that the upland site should have accommodated the more than doubling of the permitted floor area based on the proposed R6 designation, he believes having Domino Square directly across Kent Avenue justifies the placement of a building nearly 200 feet in height along with the additional floor area being requested. By permitting the 2013 modification requests, the resulting building would be sufficiently in context with the surrounding inland blocks, as the building height consistently is reduced as the street wall extends towards Wythe Avenue. The resulting interior facing apartments would have much more extensive light and air than the 2010 proposal and, thus, be more respectful to the buildings fronting Wythe Avenue. By largely maintaining the rear yard requirement, the 2013 scheme results in more ample interior space. By clustering the density along Kent Avenue as to the 2010 scheme's concentration near Wythe Avenue, there would result in a significant percentage of the apartments fronting Domino Square with views across the East River. Therefore, the Borough President supports the special permits that permit the proposed configuration of the inland site.

When the Borough President opined on the 2010 proposal that established the zoning for the current proposal, he did not believe that the waterfront site, in itself, warranted floor area that is not generally consistent with recent rezonings along the Williamsburg waterfront. The area-wide Williamsburg-Greenpoint rezoning capped floor area at 4.7 FAR, with blended zoning district designations with the inclusion of affordable housing. Rezonings to the south of Broadway, which were pursued at the expense of individual applicants, were capped at 5 FAR with the inclusion of affordable housing by being designated R7-3. The Borough President believed that the 2010 application to redevelop privately-owned property should be more in keeping with the density of what is permitted by R7-3. However, he believed that certain publicly-minded consideration from that proposal did warrant consideration for floor area exemptions above 5.0 FAR and above the 2.75 standard for R6 designated inland block. For that block, the Borough President had recommended in 2010 to cap the floor area of the upland parcel to 3.6 FAR pursuant to R6A height and setback standards, though he believed that it is appropriate to make an exception for floor area as part of a nonprofit residence for the elderly. According to R6A regulations, such buildings are permitted to have an FAR of 3.9. In addition, the Borough President had called for a floor area exemption for the school and for supermarket space. The primary difference between the floor area that he had supported in 2010 versus what is proposed today is the additional 405,570 sf of office space – which the applicant has expressed intent to lease for small businesses. The Borough President supports the inclusion of such a substantial amount of office space in this section of Williamsburg and given that such space, especially when geared to small businesses, is less economically feasible when compared to what the residential market is yielding for waterfront sites. Therefore, he supports the overall floor area in the context of providing such office space, to advance his economic development policies.

Though the Borough President generally supports the proposal, he has concerns with a number of issues including: details of the affordable housing commitment; adequacy of River Street's design as part of the open space; adequacy of school size and its operation; provision of space for day care; opportunity for artisan and other creative/tech economy establishments; maximizing employment opportunities; parking/opportunity for implementing car share facility; traffic management; adequacy of the public transportation; and need for more contextual zoning.

Affordable Housing

Guarantee of Affordable Housing Provided, "Affordable Forever" and the Provision of More Family Oriented Units

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 Williamsburg should be affordable to area families.

The New Domino project had proposed setting aside 30 percent of its total units for affordable housing, including 20 percent of the residential floor area pursuant to the Zoning Resolution's Inclusionary Housing Program's (IHP) floor area bonus, pursuant to the applicant's proposed amendment. The IHP set-aside is consistent with the Borough President's "Affordable Forever" initiative, as floor area would remain affordable for the life of the development. According to the IHP, the affordable housing units would accommodate families earning up to 80 percent of area median income (AMI) or a split of units (40% not exceeding 80% AMI and up to 60% not exceeding 125%) when the affordable floor area represents 25% of the non-excluded floor area. According to the terms of the 2010 proposal, the requested zoning bulk waivers would only be available if the development made use of the IHP. This does not appear to be the case for the 2013 proposal.

The Borough President believes that the floor area bonus and real estate incentives provide some expectation that such affordable units linked to the IHP would be part of the development. However, this does not result in an explicit guarantee of receiving these units. The units proposed in excess of the 20 percent pursuant to the IHP have no basis under the proposal to ensure that they are included in the development. It would be unfortunate if circumstances prevented the applicant from honoring this commitment, especially given that the community's need for affordable housing is only increasing.

Like the 2010 proposal, he believes that restricting applicability of the bulk waivers to the use of the IHP should be part of the approved application. He believes that the City Planning Commission and/or City Council should see that such language is incorporated into appropriate special permits.

Furthermore, the Borough President seeks adequate assurances that the 660 units offered are included in the development and that there be a unit mix more reflective of the need to accommodate families according to the recommendation made by CB 1. In order to meet the expanded percentage of two-bedroom units (50 percent) and to incorporate 15 percent three-bedroom units, but for common spaces such as lobbies, elevators, stairwells and hallways, approximately 500,000 net square feet will be needed to accommodate this bedroom mix while achieving 660 affordable units. Therefore, the Borough President does not support the zoning text amendment that would reduce the affordable housing required pursuant to the Inclusionary Housing zoning bonus.

In seeking assurances of intent to bind to such commitments, it is the Borough President's policy to obtain a written commitment or explanation that conveys a suitable assurance that the affordable housing will be built. Residential construction should proceed only according to both a building permit that includes the floor area bonus, approved by the commissioner of the Department of Housing Preservation and Development (HPD), and the filing of a legal instrument that assures that as proposed, not less than 30 percent or 660 of the units would be affordable according to the bedroom mix recommended by CB1.

In a letter from Two Trees dated December 23, 2013, commits to building 660 units contingent upon 421a and some additional off-the-shelf government subsidy. It expects this to translate into significantly more than 500,000 sf of affordable housing. Regarding bedroom mix, Two Trees intends to have the ratio match its distribution for its market rate units. It remains unclear whether the number of units provided outside of the zoning bonus program would remain affordable in perpetuity.

Affordable Housing for the Elderly

The 2010 proposal intended to provide approximately 100 of the affordable housing units for the elderly. The Borough President supports projects that increase the supply of affordable housing for the growing number of elderly residents of Brooklyn. Unfortunately, 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. Though this section of Williamsburg is often thought of as a burgeoning community for a younger generation, the larger area has a senior population in need of affordable housing options.

While the developer has been promoting an anti-"poor door" approach to incorporating affordable housing, there may be constraints to earmarking a portion of affordable housing units, which are made available through lotteries, for households age 55 and above. Thus, funding for elderly units will likely require a dedicated entrance and building systems that are independent from the rest of what would be developed. While financing for Federal Section 202 housing might not be readily available in the near-term, State Housing and Community Renewal's (HCR) Homes for Working Families Initiative bond financing, when combined with subsidies and tax exempt bond credits and rental subsidies in the form of project-based vouchers, might be an ideal solution. The Borough President believes that this can be satisfied by constructing a building segment of the overall building, which is structured as a condominium for financing and operating purposes, that distinguishes the elderly housing from the remainder of the construction. The Borough President believes that this can be best accomplished as part of the inland development.

The Borough President urges Two Trees to provide a firm commitment that approximately 100 of the intended 660 units be affordable senior citizen housing as part of the overall development. In a letter from the applicant dated December 23, 2013, Two Trees has indicated it would look into the feasibility on Site E (upland site) of incorporating a separate structure that would be able to utilize certain state and federal subsidies.

Providing Maximum Opportunity for Obtaining Affordable Housing

The project had proposed to target income tiers up to: 40 percent, 60 percent, 80 percent and 125 percent, averaging 70 percent AMI. For smaller household size compositions eligible for a specific bedroom type (i.e. two-bedroom apartment) rent is typically set at two percent less than the maximum allowable income. These income eligibility bands increase for larger households. Families earning above or below each band within the income tiers proposed would not have an opportunity to seek affordable housing in the project.

The Borough President believes that expanding opportunities for more households within the community to apply for scarce affordable housing is an important objective to achieve. Adding more income tiers would provide a means to allow an increased number of families to become eligible to seek such housing at the project. Such a strategy was integrated into the Palmer's Dock affordable housing development with income tiers ranging from 30 to 80 percent AMI. The Borough President

believes that the project would benefit more area residents by incorporating additional tiers not to exceed 50 percent and 100 percent AMI. This should be achieved by blending the 50% with the 30 percent CB 1 recommended to not exceed 40 percent AMI and blending the 100 percent with the 20 percent CB 1 recommended to not exceed 125 percent AMI.

Local Preference for Displaced Households

The local community district preference for fifty percent, while laudable, does not benefit those who have been and continue to be displaced from Greenpoint and Williamsburg. Adequate consideration for those who have been unable to find affordable accommodations within Community District 1 (CD1) is imperative. In the Borough President's recommendation for the 2005 rezoning of Williamsburg and Greenpoint, he called for the local preference to be extended to those subsequently displaced from the district. He understands that affordable housing developments with City participation those families who had lived in the district at the time of the May 11, 2005 rezoning, include in the 50 percent CD1 prioritization. He believes that such a standard should also be met for the Domino Sugar development to provide additional opportunities for those displaced from CD1 subsequent to May 11, 2005.

One issue is that there are no assurances other than when the City has a role in property ownership or in financing that its policies would be in effect. Given that funding may emanate from State HCR, it is important for the State to adopt HPD's policy. In that regard, the Borough President's office has reached out to HCR to seek such policy. In a letter from Two Trees dated December 23, 2013, it is committed to finding innovative methods of reaching or exceeding the goal of 50 percent occupancy of the affordable units by current residents of CD1 and those who were since displace since the 2005 rezoning.

Financial Considerations to Achieve 30 Percent of the Housing as Affordable with More Units Serving Households of Lower Area Median Income and More Multi-Bedroom Apartments

The Borough President believes that the Domino Sugar redevelopment is an ambitious undertaking with tremendous financial obligations. Reconstructing/stabilizing the bulkhead and over water platform for approximately one-quarter of the development is a significant financial undertaking in itself. Landscaping the site and constructing the street extensions, consisting of approximately four-acres of waterfront public promenades and the approximately one-acre Domino Square, is relatively double the minimum required public open space and presents additional costs for the development to incur. While, developing waterfront public access areas is standard for redeveloping the waterfront with high-density housing, the financial hurdles for the extra acreage of publicly accessible open space combined with the high proportion of linear shoreline to overall site area is a unique financial obligation. Also unique to this development is the responsibility to preserve the Refinery Building, which is actually three structures that wrap machinery. Though the Landmarks Preservation Commission (LPC) approved adaptive reuse with a limited amount of floor area created through building enlargements, this is an expensive undertaking which requires stabilizing the existing walls, while essentially building a new building on the interior.

With all these elements to account for, the Domino Sugar development intended to provide 30 percent of its housing units as affordable. This was the basis in 2010 for the requested floor area. The Borough President is aware that the change in program from the 2010 proposal to shift floor area away from financially rewarding market rate housing in an attempt to house multiple firms requiring smaller office accommodations, reduces the ability to enable the development to successfully cross-subsidize the intended amount and degree of affordability of the below market-rate housing, should access to government incentives and subsidies not be as readily available. The project's extraordinary cost associated with preservation and reuse of the Refinery building, along with additional open space and ratio of land to water's edge, would much more likely be absorbed by

the remaining market-rate units as opposed to the requested commercial occupancy. In addition, the recommendations of CB 1 of more units requiring deeper subsidies to offset more units at lower AMI (Two Trees proposes 15 units in the first phase's 200 units not to exceed 40 percent AMI, while CB 1 seeks nearly 200 out of the 660 units) and an increased of the number of bedrooms per apartments, if incorporated into the approval, would increase the gap between affordable housing unit rental payments and the expenses of developing and operating such units.

In order for the project to meet the stated objectives of Two Trees as modified by the recommendations of CB 1, the Borough President encourages the developer to apply annually for such discretionary City Capital Budget funding from elected officials. As the community preference includes all of CD 1, it is appropriate for the City Council members from the 33rd and 34th districts, as well as the Assembly Members and State Senators to encourage the developer to call on them for funding allocations because the government has an obligation to leverage opportunities withsuch an extensive amount of affordable housing, including units to those households of very low income and larger household size. It is a legitimate public purpose to balance the highly atypical costs in developing this site with government financial resources to obtain the significant public benefits associated with this project, rather than rely on providing the balance merely through market-rate density. In addition, it is appropriate for the developer to seek City and State financing. He believes that with such additional funding, the project would successfully meet community objectives for having more of the units with two or three bedrooms and to increase the number of units at the lower AMI tiers and be able to include units for the elderly.

In a letter from Two Trees dated December 23, 2013, it is committed to working with the City as well as local elected officials to adjust the proposed discretionary subsidies and to locate additional resources to meet the recommendations of CB1 and the Borough President.

In regards to the affordable housing, the Borough President believes that the City Council should seek a commitment from Two Trees prior to approval of the requested land use actions but for the zoning text change to modify the Inclusionary Housing floor area exemption: that the special bulk permits be subject to the filing of an IHP with the Department of Buildings and that a legally binding mechanism be filed that assures that in total, approximately 500,000 net square feet be permanently affordable as a means to achieve approximately 30 percent (660 units) of all units as affordable housing; with approximately 100 set aside for seniors and with additional income tier to not exceed 50 percent and 100 percent AMI; and that provided City and/or local elected official subsidies are adequately provided, that 50 percent of such non-elderly housing be two-bedroom units and 15 percent be three-bedroom units and increasing the proportion of units that would accommodate lower income households; and the fifty percent community preference should continue to include those displaced from the community when City subsidies are provided and that such directive should be requested of the State should its subsidies be provided. Such commitments should be incorporated in legally binding mechanisms that bind the property.

Maximizing Community Preference Consideration

This southern section of Williamsburg west of the Brooklyn-Queens Expressway, is a neighborhood in transition, with prevailing housing trends including rising rents, an increase in housing units and increasing median household incomes. Though median household income is increasing along with median gross rent, there are those long-time residents living with stagnant incomes that are not able to sustain dramatic rent increases and, therefore, have no choice but to divert too much of their household income to rent or to vacant their apartments, often meaning leaving their community. According to testimony from GWAPP and NAG, more than twenty percent of Southside Williamsburg's Latino population has already been displaced.

While the anticipated 660 affordable units are an opportunity to stay in the neighborhood, merely having affordable housing units constructed are not enough in itself to assure that the

community will adequately benefit from an opportunity to live in quality affordable accommodations. In order for the community to benefit from the maximum number of affordable housing units, as noted in preceding sections, the Borough President recommended to incorporate more income tiers, more units with two or more bedrooms and housing for the elderly. In addition to these recommendations, in order to ensure significant participation from the community to apply for these units and that area residents are indeed qualified to meet the standards beyond merely being income qualified, he believes that local housing not-for-profits should be engaged and serve in the capacity of administrative agent for the affordable housing. Such non-profits have demonstrated being capable of coordinating effective outreach to community residents and providing guidance to assist households in resolving issues other than income that place risk to being disqualified as an applicant.

Therefore, the Borough President supports the recommendation of CB1 calling for Two Trees to partner with local not-for-profits as a means to assure adequate local recruitment and education of local residents to apply for the affordable housing.

In a letter from Two Trees dated December 23, 2013, Two Trees will partner with local community organizations to ensure that the affordable housing is utilized by qualified tenants from the surrounding neighborhoods and according to preferences decided upon by local leaders. An innovative bilingual marketing campaign will be launched to raise awareness among residents of CD1 of the opportunity to obtain affordable housing and of application requirements. There would be free credit counseling and financial planning classes as part of this initiative.

Open Space

The Borough President agrees with Two Trees that the publicly accessible open space serves the public best when it is not perceived as the domain of the Domino development. The question is whether this can only be accomplished by having the proposed River Street extension constructed per City street standards. Given the lack of anticipated auto traffic along this extension and the fact that it is the connecting element between the waterfront open space, Domino Square and the anticipated public school – which would not have its own dedicated outdoor space the question is whether Two Trees intended solution is taking the best advantage of a once in a multi-generation opportunity. He believes a design solution can still fulfill the intent of Two Trees to subsequently have the extension of River Street mapped as a city street. There are plenty of examples of piazzas in Europe where automobiles were subsequently introduced into streets of medieval origins. In the United States, one fine example is the section of Pine Street in Seattle's downtown which separates, yet connects, Seattle's Westlake Park from Westlake Center. In keeping more with traditional paving augmented by color, another example is pursuant to the City of Los Angeles' People Street program as already implemented at Sunset Triangle Plaza. These are solutions that read both as street yet simultaneously as park and seem to be the ideal solution for the River Street extension. The Borough President believes that Two Trees should consult with the Departments of City Planning and Transportation as well as the Fire Department to develop such a state-of-the-art design solution.

In a letter from Two Trees dated December 23, 2013, Two Trees intends to design the street according to DOT standards as it is important that the design of this street is easily identifiable as public, and should include the same monikers and materials as other nearby public streets.

The Borough President believes that the City Council should seek a commitment from Two Trees prior to approval of the requested land use actions for a legally binding mechanism to address the pavement aesthetic for the River Street extension.

School

According to the October 31, 2013 Technical Memorandum to the 2010 FEIS, the Domino Sugar project, in combination with ongoing and projected developments, could result in a shortfall ofmore than 850 elementary school seats and nearly 700 intermediate school seats. It does not appear that these estimates take into account the new development around McCarren Park, the Greenpoint waterfront and on the east side of the Brooklyn-Queens Expressway.

The FEIS concluded that school seat mitigation would consist of a 600-seat 100,000 sf PS/IS school constructed on premises, upon consultation with the School Construction Authority (SCA), as specified in a Restrictive Declaration. Within the projects third phase (Building B), the Technical Memorandum notes that the developer is committed to including space for 375 seats, which based on standards provided by the SCA would require more than 70,000 sf. The applicant entered a letter of intent and would consult with SCA six months in advance of design start for Building B to determine whether the proposed 375-seat elementary school could adequately meet actual elementary school demand. This location is across River Street from the proposed playground in the public access area that would be expected to be used by students during the school day.

According to the Technical Memorandum, adding 375 seats would still be 32 seats deficient in terms of the development, triggering a significant adverse impact, as by 2023 in sub-district 3 of CSD14 there would be 4,492 needed seats with the development. With the construction of a 375-seat elementary school, projected 2023 capacity would increase to 3,630 seats. With the 662 elementary axchool students generated by the development, and the increase in elementary school capacity, elementary schools in sub-district 3 of CSD14 are projected to have a deficit of 862 seats.

As for middle-school, the Technical Memorandum discloses that the development is expected to generate an additional 274 intermediate students for the sub district. Intermediate schools within CSD 14, sub-district 3 are projected by 2023 to have a total enrollment of 1,673 students and a shortfall of 684 intermediate seats. There might be a more than 150-seat deficit above the point where impacts are deemed significant. However, a new 640-seat PS/IS in conjunction with the Greenpoint Landing project may make additional capacity unnecessary. The applicant's Letter of Intent with SCA empowers SCA to determine whether the additional 153 intermediate school seats are still necessary six months prior to the intended start of building construction. If so, the Applicant would expand the proposed 70,624 sf elementary school in Building B to accommodate the additional intermediate seats.

According to the Technical Memorandum, a larger school could be accommodated in the existing Building B by eliminating some of the other uses currently proposed for the building. Being increased to 560 seats would require approximately 19,376 sf of additional floor area than currently proposed. It could be achieved by reprogramming approximately 6,000 sf of retail currently proposed for Building B, with the remaining floor area coming from Building B"s office or residential floor area.

The Borough President believes that the Domino Sugar development, with its 662 assumed elementary school students, warrants an additional elementary school site to supplement P.S. 84 (two blocks from the site) and P.S. 17 (six blocks from the site). While the project is assumed to generate 274 intermediate school students, with this development, middle schools are projected to have a shortfall of 862 seats by 2023.

The Borough President believes that planning for the needs of students residing in District 14, a school within Building B needs to take into consideration the fact that new charter schools are to be co-located in nearby JHS 50 John D. Wells and JHS 126 John Ericsson. According to their "Building Utilization Plans" the capacity of the district schools would be significantly reduced. On the plus side of consideration might be the status of the proposed 640 seat ES/IS intended for Dupont

Street. In addition, several other large waterfront development sites in Greenpoint would be developed after 2020, which will need to be given consideration to best house the resulting additional public school students in the context of school seats coming online at Building B and determining grades to assign for its school seats.

In order to assure that the Building B school best serves the needs of the Williamsburg community through expanding access to quality schools, the Department of Education should designate such school as a district school. In order to best meet neighborhood needs, a determination of what grades would be served should be made at the time the school is ready to be designed. Therefore, just prior to commencing design, there should be consultation with the District 14 Community Education Council for determining the appropriate school structure.

The Borough President supports efforts to include a "district" public school in Building B. Further, he seeks DOE/SCA's commitment for the acquisition of a sufficient area of designated community facility space in combination with retail and office space within Building B in order to proceed with a design for a "district" school to house appropriate grades in a timely manner. Planning for the school should commence at least one year prior to the estimated Building B construction date.

In addition, as the school does not have any apparent open space, the Borough President believes that the school should have the ability to close the adjoining section of the River Street extension for certain hours of the school day so that the space might be combined with the publicly accessible waterfront access area to provide the equivalency of a school yard.

In order to assure that a school of appropriate size is included in Building B, the Borough President seeks a legal instrument that binds development for a school within the building of not less than 90,000 square feet.

In a letter from Two Trees dated December 23, 2013, two Trees committed to coordinating closely with District 14 leadership on building a public school of up to 90,000 sf. Should public entities seek to close the street at certain times to accommodate the school, Two Trees would be supportive.

The City Council should seek a commitment from the Administration and from Two Trees prior to approval of the requested land use actions for a legally binding mechanism to expand access to quality schools by opening a new district school of not less than 90,000 sf as part of the proposed Building B site. In addition, such commitment should include re-evaluating, just prior to commencing design, the possibility of having elementary versus intermediate school students, to determine possible school structure.

Child Care

According to the Technical Memorandum, the affordable housing units might result in 117 children residing in the development that would be eligible for publicly-funded child care. Approximately 100 children residing at Domino Sugar qualifying for eligibility are considered resulting in a significant impact. This number of eligible children would not likely occur until one of the final phases of the Domino Sugar site redevelopment. The revised Restrictive Declaration will require the applicant to work with Agency for Children Services (ACS) to consider the need for the implementation of one or multiple measures to provide additional capacity. As shifts in demand and available day care slots will be evolving until the final phases are ready to proceed, the need for an ACS-contracted facility, which may include a contribution of capital funding, are yet to be determined, though measures are intended to be developed in consultation with ACS and may include provision of suitable space on-site for a child care center.

As part of the mitigation strategy developed, the Borough President believes that it would be appropriate to obligate the developer to first offer retail space in the final two phases to ACS prior to marketing for retail users. ACS should respond to developers within 90 days whether it is interested in leasing such space.

In the letter dated December 23, 2013, Two Trees noted that ACS will determine mitigation for this need at the time of impact.

The Borough President calls on the City Council to obligate the developer to first offer retail space in the final two phases to ACS prior to marketing for retail users and have such adequately memorialized as part of the mitigation strategy developed in consultation with ACS, prior to approval of the requested land use actions through a legally binding mechanism.

Retail/Creative Economy/Artisan Use

The Greenpoint and Williamsburg neighborhoods have grown and continue to grow at a remarkable rate; however the area still lacks opportunities for existing and new residents to work close to their homes.

Recent nearby office space developments are typically geared toward either small startup companies or creative and technology firms, similar to the tenants expected for a portion of the proposed development's more than 500,000 sf of office space. Many offices are anticipated to range from an average of approximately 1,500 to 2,500 sf and would be marketed primarily to small startup companies, serving as an incubator for new creative and technology companies; the proposed 35,700 sf of not-for-profit and/or artist studio spaces would similarly be comprised of spaces averaging approximately 2,000 sf. The neighborhood retail spaces, which are anticipated to range from an average of approximately 3,000 to 6,000 sf, would be in keeping with the independent retailers found throughout the surrounding area, providing additional rental space for independent local businesses.

The Borough President supports the intent for Two Trees to develop the more than 500,000 sf of office space. He believes the market will seek out tenancy in such space. It will also achieve more balance in the commute to and from the side, including a percentage of walking and bike riding as opposed to mere reliance on public transit and automobiles.

The recommendation of CB 1 calls for locally-based not-for-profit participation as a means to foster neighborhood entrepreneur tenancy for retail and office spaces. The Borough President generally supports this recommendation as Williamsburg is a significant cog within Brooklyn's "creative economy" community, however, its opportunities to flourish are dependent on the ability to pay market-based rents. Certain aspects of "creative economy" businesses traditionally cannot compete along retail corridors and in office developments in terms of ability to pay rent.

The project proposes approximately 70,000 sf of ground floor retail, with the vast majority oriented towards Kent Avenue as a means to activate the street for pedestrians. The Borough President would encourage Two Trees to devote some of the retail space fronting Kent Avenue and retail frontage of the upland parcel for Brooklyn's artisans. Such storefronts could be used as artisan spaces for the production and sales of items produced on premises, and/or teaching/performing. It could include examples as follows: art needlework, hand weaving and tapestries, ceramic and glass products, custom clothing manufacturing, jewelry and art metal craft manufacturing, studios for art – including gallery/framing space, music, dancing or theatrical, and other comparable artisan ventures.

A portion of the offices should be sized and priced for startup firms, including those linked to creative tech pursuit. Such spaces should support incubation, co-working, artisanal studios, craft manufacturing, cultural institutions, music related business, hi-tech/green-tech innovation enterprises and production facilities, in order to ensure the legacy of Williamsburg's creative economy. He also believes that inclusion of such retail/office spaces for these artisans and variety of office startups form part of the justification to permit the additional 200,000 sf as compared to the 2010 approval.

The Borough President believes that a lease protection mechanism needs to be incorporated into the continued use of such retail for artisans in order to provide protection from future market-based rents. A version of achieving stabilized rents could be accomplished by providing leases through a designated not-for-profit or some equivalent entity.

In a letter from Two Trees dated December 23, 2013, Two Trees shared its commitment to lease the retail space to independent, neighborhood oriented operators and will earmark space, where appropriate, for local tenants who produce goods made in Brooklyn, as well as spaces that support the visual and dramatic arts. As for the commercial office space, Two Trees envisions leasing at a discount to its Dumbo portfolio and to existing comparable spaces in Williamsburg. Its business model prescribes leasing small unit sizes with short-term leases and no bank credit requirements. Two Trees is committed to an innovative arrangement, including partnering with local orhanizations to ensure that this office space is marketed to business owners and entrepreneurs who reside in CD1.

The Borough President calls on the City Council to seek an acceptable commitment from Two Trees that is adequately memorialized prior to approval of the requested land use actions through a legally binding mechanism.

Local Hiring/Job Training

According to submitted testimony, there is a proposal for Two Trees to partner with the St. Nick's Alliance Workforce Development Center to create local hiring placement for 300 jobs, including 40 apprenticeship slots, and to ensure that building operation contractors utilize St. Nick's for local hiring. In addition there is an opportunity to refer tenants of the retail and office space to St. Nick's in an attempt to fill new hiring with local job seekers. The Borough President shares community interest to maximize community employment through the development and operation of the intended mixed-use development. In addition to the testimony in this regard, he believes locally-based organizations such as EVIDCO should be consulted as a means to provide outreach to area businesses to serve as material suppliers and subcontractors.

The Borough President believes that Two Trees should submit its framework for its commitment in writing prior to the City Council hearing to clarify its intent to maximize hiring opportunities for the local community. He calls on the City Council to seek an adequately memorialized commitment from Two Trees prior to approval of the requested land use actions through a legally binding mechanism.

Parking/Car Sharing

In regards to the 2010 project, CB 1 recommended that car-sharing parking be incorporated into the development and that less spaces be provided. The 2013 proposal would further reduce provided parking to 1,050 spaces. According to the Technical Memorandum, this amount is projected to be sufficient to meet the anticipated parking demand. Specifically, the development is expected to generate a maximum overnight demand of 844 parking spaces generated by the

residential uses. Overnight parking demand would be fully accommodated by the on-site accessory parking. Combined with park demand of the other proposed uses, the total parking accumulation is expected to be 870 vehicles (83 percent capacity). The maximum expected parking accumulation (933 vehicles) would occur during the weekday 3PM to 4PM analysis hour, with approximately 117 available parking spaces.

The Borough President understands that car usage culture is evolving and such disclosures in such environmental documents are as much an art as a science in being a predictive document. He believes that residents without owning cars at times would benefit with having access to automobiles. Having car share facilities on site has been reported to reduce dependence of car ownership. Thus, the Borough President believes that Two Trees should revise its parking strategies based on incorporation of car sharing services as part of the accessory parking facilities.

In a letter from Two Trees dated December x, 2013, Two Trees will work internally to identify the appropriate number of car-share spaces and to select a partner top manage such service.

The Borough President calls on the City Council to seek an adequately memorialized commitment from Two Trees prior to approval of the requested land use actions through a legally binding mechanism as part of approving the special permit.

Traffic

As required by the Restrictive Declaration, Two Trees would conduct two traffic monitoring programs which may include such analyses as the Department of Transportation (DOT) deems necessary. Such monitoring would be conducted at the time of completion and occupancy of the first building with proposed office uses, Building A, and the completion of Building D, which corresponds to the project's full build-out. At the time of the traffic monitoring program, if DOT determines that alternate mitigation measures would more adequately address the traffic conditions, then Two Trees is to work with DOT and alternate mitigation measures may be installed.

Mitigation in some combination of signal installation and other measures including: standard traffic engineering measures (such as signal timing adjustments), lane re-striping, parking prohibition (to create turning lanes at intersections) and installing new traffic signals at unsignalized intersections. It is possible that the community-at-large might not want certain of these measures being implemented despite being in the neighborhood's best interest to keep traffic moving, as other priorities such as not eliminating curbside parking might be preferred for certain approaches to intersections.

In order for the community to weigh in on recommended mitigation measures from the intended traffic monitoring program, the Borough President believes that it is appropriate for DOT to consult the community through CB 1 both for a means to weigh in on the parameters of each monitoring initiative and then for post-analysis, with assisting area residents and business interests in formulating a community position in terms of what mitigation recommendations should be implemented. After engaging CB 1 in a proactive role to review the non-signalized traffic mitigation measures disclosed pursuant to the traffic monitoring program, DOT should then seek for CB 1 to advise DOT and Two Trees, in writing, which measures it would like to be implemented where feasible.

Thus, the Borough President believes that Two Trees should obtain commitments from DOT as part of the Restrictive Declaration, to confirm how CB 1 would be engaged both prior to implementing the traffic monitoring program and in terms of weighing in on possible mitigation measures.

In a letter from Two Trees dated December 23, 2013, Two Trees is committed to regular consultation with CB1 prior to the implementation of its traffic monitoring programs and before initiating each traffic mitigation measure.

The Borough President calls on the City Council to have such a commitment from Two Trees include the DOT and should be adequately memorialized prior to approval of the requested land use actions through the Restrictive Declaration, as a legally binding mechanism, intended to achieve adequate environmental mitigation.

Mass Transit

The Two Trees Domino project would be among many collective developments in the area that result in overall population growth due primarily to recent rezonings. It is clear that operational logistics of public bus and train transit as well as ferry service need to be transformed to accommodate such residential growth. With significant adjustments, primarily by the MTA, the Borough President believes it is feasible to accommodate growth in the area. However, he believes there are actions that could be taken by the developer as well.

Shuttle Bus Service

Two Trees expressed intent to have the development served by up to two shuttle buses, with a 44-passenger capacity, each making up to six loops during the weekday AM and PM peak hours (for a total of twelve vehicle trips to the Bedford Avenue station's Driggs Avenue entrance for L train service and twelve vehicle trips to the Marcy Avenue station for J/M/Z service). At full operation, one bus would leave the Domino site for either the Bedford Avenue or the Marcy Avenue stations approximately every five minutes during the morning and evening peak hours.

Two Trees plans to monitor demand for the shuttle bus service to determine the capacity of the shuttle bus fleet and hours of operation. Prior to full build out, the capacity of the shuttle bus fleet could vary depending on demand.

In regards to the shuttle service, the Borough President seeks a commitment to clarify when service would be initiated. In addition, he believes that full service should be implemented not later than 50 percent occupancy being achieved in the Refinery building and certainly before a TCO or C of O would be issued for Building C.

In a letter from Two Trees dated December 23, 2013, it was noted that shuttle bus service will be fully operational during peak hours at the time the first building (upland site) is constructed

The City Council should seek commitments that memorialize the initiation of shuttle services and timing/triggers for implementing expanded frequency of such service.

Ferry Service

The Williamsburg community only recently has had a reliable ferry service and, only since January 2013, has a return of Lower East Side express bus service. Due to the developments promoted since the 2005 DCP rezoning and subsequent private rezonings bringing much density along the East River a great distance from subway transit stations, it is appropriate to seek non-traditional solutions to meet transit demands of this community. The Borough President supports the recently announced multi-year commitment through 2019 to continue this reliable ferry service. He believes that with the anticipated adoption of the East River Ferry Zoning Text Amendment regarding docking facilities in North Brooklyn, Two Trees should then apply for and install a ferry dock with a

shelter structure consistent with the proposed East River Ferry Zoning Text Amendment. It should apply for Certification no later than its receipt of a TCO or C of O for its first waterfront building phase and have the docking facility in place as a condition of obtaining a TCO or C of O for its second waterfront lot building.

In a letter from Two Trees dated December 23, 2013, Two Trees would be happy to accommodate a ferry stop if the Cirt and/or its operator would like to expand such service. Two Trees will work with the City and other partners to pay for the construction and maintenance of the dock and shelter. Construction and operation needs to be coordinated with the construction and phasing schedule for the waterfront esplanade and waterfront buildings.

Depending on the timing of a ferry dock being operational, the City should look to amend its contract with the operator of the contact that runs through 2019 to provide service to this location once the docking facility is operational. Should the docking facility not be ready until after this contract expires, the City should include this location as part of the post 2019 ferry operations contract.

Public Bus Transit

Complimenting the shuttle service are nearby B32 and Q59 bus service, with stops on Kent and Wythe Avenues between South 2nd and 3rd Streets, and the B62 bus stop on Bedford Avenue between South 1st and 2nd Streets. MTA recently implemented the B32 bus route connecting the Williamsburg waterfront, Greenpoint and Long Island City. The route operates between the Marcy Avenue station and extend north to train stations serving the G, 7, E and M lines in Long Island City, running along Kent Avenue (northbound) and Wythe Avenue (Southbound).

These services can be very much complimentary to the shuttle service intended by Two Trees as collectively they provide service 24/7, unlike the private shuttle service. In addition, the Q59 provides a connection to both the G and L lines. Since its September initiation, the B32 line has added additional capacity to the area and has played a role in reducing impacts of the development on the Q59, where the route south of the development mirrors the Q59, and the B62.

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

Rather than simply providing more buses for the entire Q59 route as was noted in the FEIS from 2010 (the need for 11 additional buses per peak periods with three attributed to the New Domino development), with buses significantly under capacity, east of Lorimer Street, the Borough President believes that Q59 frequent service should also be available in the form of a shuttle. With a shorter route, each additional bus added to the line could be utilized more efficiently and more cost effectively. The shuttle route could have terminuses at Lorimer or Union streets (Metropolitan Avenue) and at Marcy Avenue (Broadway). The route could even be extended south to Division Avenue to be proximate to developments at Schaefer Landing, the in-construction former Domsey site, and the pending Kedem and Rose Plaza on the Water sites. He believes that the MTA should further modify the Q59 to add more service through such shorter distance route with such extension to Division Avenue to also serve these south side waterfront developments along with the Domino site.

The Borough President believes that it may be necessary for the developer to provide initial operating subsidies for a Q59 shuttle service (or its equivalent) as a means to demonstrate to MTA the need for such service. The Borough President believes it is appropriate to supplement subway

transit with express bus service providing direct Manhattan access without requiring bus transfers to reach the Marcy Avenue and/or Lorimer Street stations for subway service. He believes that the B39 could provide more utility if the MTA could implement an elongated express bus route through extending the B39 route to Lower or Midtown Manhattan from its Lower Eastside terminus and along the Brooklyn waterfront as an extension from its Williamsburg Plaza terminus.

With all the recent and pending developments, it is reasonable to expect an increase in ridership similar to what was disclosed in the 2010 FEIS, as updated by the Technical Memorandum. The MTA needs to closely monitor the ongoing increases in ridership and follow through by continuously obtaining additional buses in order to maintain adequate frequency and capacity. Such monitoring should consider when it might be appropriate to implement the: described shuttle for the more frequent operation of the Q59 route and recommended route modifications; elongated route for the B39 as a waterfront express bus route; and, increased frequency for the B32 route between Long Island City and Williamsburg Plaza and B62 route between Downtown Brooklyn and Long Island City. The MTA should monitor these services to determine when enough daytime and/or overnight population has been added to the development by Two Trees to justify such the described modifications. In addition, the MTA should increase the frequency of bus service as warranted by demand for ridership. He believes that in order to improve bus service serving this neighborhood, the MTA should also monitor in intervals, not to exceed six month, to determine when additional bus service would be warranted, based on ridership demand associated with the residential and commercial office space occupancy of the Two Trees development, as well as to provide additional vehicles to these routes as necessary to promote adequate service.

Other Bus Route Improvements

Through the introduction of the added site population daytime office and residential occupants, it is appropriate for the MTA to coordinate the installation of bus shelters on Kent and Wythe avenues in proximity to the Two Trees development with the Department of Transportation.

Subway Operation

The Borough President is not pleased that the MTA was not able to respond in a timely manner to address the dynamic of the growth that depends on the L line for subway service. Equipping the tracks with technology to run 22 trains per hour in one direction, in lieu of the current number of 19, was an important step to ultimately have capacity meet demand for service. Communications-based train control (CBTC) upgrades to electric power and train storage facilities, might even allow such maximum capacity to be further increased. Until that is feasible, obtaining more trains towards meeting the designed capacity under the newest technology is a critical next step. The MTA has plans to add eight more round trips every weekday and four more round trips every Saturday and Sunday to ease the load starting in June 2014. The MTA still needs to procure enough train cars to run the L line at the full CBTC capacity of 22 trains per hour and orders have been placed to have these additional subway cars in place for 2016 or 2017. It is imperative that the MTA continues its efforts to this end to raise operational capacity to its maximum capability.

In addition to service improving on the L line in June of 2014, the MTA intends to implement a 25-percent increase in G-line service between 3 PM and 9 PM that would help alleviate the current status of overcrowded trains.

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

However, in terms of the number of trains serving this station, it may still be too soon to understand how the MTA may improve operation potential for these lines. Nevertheless, the MTA should monitor the change to determine if additional modifications would enhance service based on the projected population increase. The MTA should continue undertaking 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 train service, passengers are utilizing less than half the platform when waiting for the next train. In the context of the Domino development, the Metropolitan Avenue station is the nearest access to G-line service. At this station, access to the platform use is concentrated on the northern section of the platform; thus, riders will concentrate at this half of the platform to be able to board the train before it pulls out of the station. In essence, having four-car trains, when combined with erratic service, leads to crowding at this section of the platform, when service is too often less than acceptable. In order to remedy this condition, fortunately, the MTA intends to add an additional train per hour during the weekday 3 PM through 9 PM hours. The MTA should also give consideration to 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.

The Borough President believes that in order to improve subway service serving this neighborhood, the MTA should monitor in intervals, not to exceed six month, to determine when additional subway service would be warranted, in the context of the new service being introduced in June 2014 to the L and G lines, based on ridership demand associated with the residential and commercial office space occupancy of the Two Trees development and increase frequency of subwa service on L, J/M/Z (based on monitoring this recently implanted re-routing of the M in Manhattan) and G lines and lengthen G trains as warranted by demand for ridership. Furthermore, the MTA should continue to procure enough train cars to run the L line at the full community-based train control (CBTC) capacity of 33 trains per hour in order to achieve the maximum service capacity and add excess rolling stock to the J/M/Z and G lines as ridership demand warrants.

Adjacent R6 Zoning District Designation

The Borough President notes that the adjacent area east of Wythe Avenue remains R6 and therefore lots could be redeveloped at heights significantly taller than what typically exists on those blocks. He believes there will be more pressure to develop properties in this section as the Domino proposal proceeds. In order to properly protect built scale where justified, it is appropriate for the Department of City Planning (DCP) to undertake a rezoning of those blocks, in consultation with CB1 and local elected officials, to contextual districts as a means to ensure that building heights on those blocks would remain in context.

Recommendation

Be it resolved that the Brooklyn Borough President, pursuant to section 197-c and 201 of the New York City Charter, recommends the City Planning Commission and the City Council to disapprove the Zoning Text Amendment to modify the floor area exclusion for the Inclusionary Housing Program and to conditionally approve the Special Bulk and Use Permit applications and Zoning Text Amendment establishing a waiver of required loading berths and, based on the following:

AFFORDABLE HOUSING

1. That the following conditions are codified regarding affordable housing:

    a. The creation of legal instruments, including conditioning the granting of the special bulk permit to the filing of an Inclusionary Housing Plan (IHP), and binding the remaining percentage of at least 500,000 square feet of net floor (not inclusive of lobbies, hallways, elevators, fire stairwells) floor area required to achieve a development that consists of not less than 30 percent or 660 units of the units being permanently affordable and that for non-elderly households, subject to adequate government subsidies, 50 percent of the units be two-bedroom and 15 percent be three-bedroom and that 30 percent of the units be affordable to households earning up to 40 percent and 50 percent AMI and 25 percent to households earning up to 60 percent AMI.
    b. The guarantee of approximately 100 units of affordable housing for the elderly preferably as part of the initial phase of development.
    c. The expansion of affordability tiers to include up to 50 percent and 100 percent Area Median Income (AMI) in addition to the 40 percent, 60 percent, 80 percent and 125 percent.
    d. The community preference for at least 50 percent of the affordable housing units to include those displaced from Community District One subsequent to the adoption date of the 2005 Williamsburg Greenpoint rezoning.
    e. The developer to agree to seek funding to achieve a higher proportion of lower-income units and multi-bedroom units by applying annually for discretionary funding from the Borough President and City Council members from the 33rd and 34th districts and other governmental funding allocation sources.
    f. The developer to agree to partner with local not-for-profits as a means to assure adequate local recruitment and education of local residents to apply for the affordable housing.

OPEN SPACE

1. Two Trees to revise its paving aesthetic in consultation with the Departments of City Planning and Transportation and the Fire Department to develop such a state-of-the-art design solution and memorializes its commitment prior to approval of the requested land use actions for a legally binding mechanism.

SCHOOLS

1. Two Trees and the Department of Education (DOE)/School Construction Authority, in order to assure that a school of appropriate size is included in Building B, to execute a legal instrument that binds development for a district school within the building of not less than 90,000 square feet serving Community School District 14 facility, with the understanding that the adjacent section of River Street would on occasions be closed from through traffic so that it may serve as a play street.
2. Grade assignment to be developed in consultation with the District 14 Community Education Council, to determine possible school structure (i.e. Pre-K to 5 or Pre-K to 8, including re-evaluating just prior to commencing design, the possibility of having elementary versus intermediate school students, as a means to best address needs, the proportion of elementary versus intermediate school students to determine possible school structure.

CHILD CARE

1. Two Trees to coordinate in writing with the Agency for Children Services (ACS), before commencing the final two phases, to first offer retail space to ACS to solicit the agency's interest in securing space for publicly funded day care prior to marketing for retail users, waiting not less than 90 days for ACS to respond whether it is interested in leasing such space.

RETAIL/ARTISINAL USE/EMPLOYMENT

1. Two Trees to set aside a portion of the Kent Avenue store front retail space and retail frontage of the upland parcel for Brooklyn's artisan production and sales – such as jewelry and/art metal craft manufacturing; custom clothing/accessories manufacturing; ceramic/glass products, art needlework, hand weaving or tapestries, studios for art – including gallery/framing, music, dancing or theatrical space;
2. Two Trees to set aside a portion of the offices to be sized and priced for startup firms, including those linked to creative tech pursuit:
3. Two Trees to establish a lease protection mechanism that provides for the continued use of such retail for artisans and start-up office space, in order to provide protection from future market based rents, which may include the achievement of stabilized rents by providing leases through a designated not-for-profit or some equivalent entity: and,
4. Two Trees to submit its framework for its commitment, in writing prior to the City Council hearing, to clarify its intent to maximize hiring opportunities for the local community, including providing outreach to area businesses which could serve as material suppliers and subcontractors.

PARKING

Two Trees to incorporate car sharing services as part of the accessory parking facilities.

VEHICULAR TRAFFIC

Two Trees to obtain commitment from the Department of Transportation, as part of the Restrictive Declaration, to confirm how CB1 would be engaged prior to implementing both traffic monitoring programs and engaged in terms of weighing in on possible mitigation measures (including standard traffic engineering measures, such as signal timing adjustments, lane re-striping and parking prohibition), disclosed in the Final EIS (FEIS) as modified by the Technical Memorandum and subsequent traffic monitoring program.

MASS TRANSIT (TWO TREES)

1. In regards to the shuttle service, Two Trees to provide in writing its commitment to clarify what triggers the initiation of such service and its intent on when it would be initiating full service, though full service should be implemented not later than when 50 percent occupancy is achieved in the Refinery building and certainly before a TCO or C of O would be issued for Building C.

2. In regards to ferry service, Two Trees to provide in writing its commitment to apply for and install a ferry dock with a shelter structure consistent with the proposed East River Ferry Zoning Text Amendment and that such application for Chair Certification be submitted no later than Two Trees receipt of a TCO or C of O for its first waterfront building phase and as a condition of obtaining a TCO or C of O for its second waterfront lot building, that such docking facility shall be in place.

3. In regards to a possible MTA operated Q59 shuttle service (or its equivalent), Two Trees to commit to provide initial subsidies to sustain operation of such route, if necessary, to demonstrate to MTA the need for such service to compliment shuttle service routes on behalf of Two Trees.

Be it Further Resolved that:

FERRY SERVICE

The City should implement East River ferry service once the developer installed ferry dock is operational, whether that be through amending its contract with the operator of the contact that runs through 2019 or as part of the post 2019 ferry operations contract.

MASS TRANSIT (MTA)

The MTA should:

a. Extend the last stop of Q59 (at Williamsburg Plaza) to the southwest corner of Broadway and Marcy Street.

b. Institute a frequent bus (shuttle) service segment of the Q59 to serve the Two Trees development (or extended further south to Division Avenue to include Schaefer Landing, the in-construction former Domsey site, and the pending Kedem and Rose Plaza on the Water sites) to both the Marcy Avenue (J/M/Z) and Lorimer Street/Metropolitan Avenue (L/G) stations.

c. Introduce express bus (could be a waterfront extension of the B39 route) to Midtown and Lower Manhattan.

d. Monitor Q59, B32, B39 and B62 service in intervals, not to exceed six months, to determine when additional bus service would be warranted based on ridership demand and then provide additional vehicles to increase the frequency of bus service as warranted to promote adequate service to these routes and implement the above referenced route modifications.

e. Obtain additional buses for maintaining adequate frequency and capacity as follows: to implement the described shuttle for the Q59 route; the B39 waterfront express route; and, the B62 route to or from Downtown Brooklyn and Long Island City.

f. Coordinate with the Department of Transportation the installation of bus shelters on Kent and Wythe Avenues in proximity to the Domino site.

g. Undertake semi-annual full line impact reviews to determine the projected need for increased frequency for L, J/M/Z and G line service and/or lengthening each G line train

h. Add additional cars to the G train to expand each train's capacity to eight to ten cars from its current four cars per train;

i. Continue its efforts to obtain additional cars to increase the number of trains along the L line to its designed community-based train control operating capacity of 22 trains per peak hour service in one direction by the anticipated 2016 or 2017 estimated implementation date.

CONTEXTUAL ZONING

The Department of City Planning undertakes a zoning study of the adjacent R6 designation across Wythe Avenue for the purposes of rezoning to contextual zoning district designations in consultation with CB1 and local elected officials.

TWO TREES
Management Co. LLC

December 23, 2013

Honorable Marty Markowitz
President Borough of Brooklyn
209 Joralemon Street
Brooklyn, NY 11201

Re: Domino Sugar Rezoning

Dear Borough President Markowitz:

Many thanks to you and your staff for your thorough review of Two Trees' land use application to remake the site of the former Domino Sugar Factory into a vibrant, 21st Century, mixed-use community. The Two Trees plan will reconnect South Williamsburg to its waterfront with a new esplanade and 5 acres of new parkland; reactivate the historic Refinery and create new office space to house approximately 2,700 permanent jobs, supporting the growth of the neighborhood's small business, tech and creative industries; bring world-class architecture to the neighborhood; and deliver 660 units of integrated affordable housing, a public school and a community recreational facility.

While the plan for the Domino site approved in 2010 can be built immediately as-of-right, Two Trees has chosen to submit this new proposal for public review to provide an improved alternative. The new plan is informed by a series of meetings and community input sessions that Two Trees has held in Williamsburg since acquiring the property in October 2012. As you are aware, on December 10, Community Board 1 (CB1) voted 24-4-2 to approve the plan with a series of recommendations. The vote shows that neighborhood residents strongly prefer our new vision for Domino to what we can now build as-of-right. We also heard a number of other community concerns, including a guarantee of 660 units of integrated affordable housing, and we will be working with your office, the two local councilmembers, along with the City, to make that a reality during the remainder of the public review process.

We appreciate your thoughtful recommendations and will now take this opportunity to respond to some questions and suggestions that have been raised:

Ferry Service:
Two Trees would welcome a public ferry stop along the quarter mile of waterfront esplanade that we will construct over the next 6 to 8 years. The City's current East River ferry contract runs through 2019, and if the City and/or its operator would like to expand current service to include a stop at Domino at any time in the future we would be happy to work to accommodate it. Two Trees will work with the City and other partners to pay for the construction and maintenance of the dock and shelter. The construction and operation of the ferry stop must be coordinated with the construction and phasing schedule for the waterfront esplanade and the waterfront buildings.

Shuttle Bus:
As part of Two Trees' application, we are committing to running a free shuttle bus service from Kent Avenue to both the Driggs Avenue entrance to the Bedford L stop and to the Marcy Avenue JMZ station. This shuttle will be available to neighborhood residents regardless of whether they live in a Two Trees building. As part of the mitigation outlined in the tech memo, this shuttle bus service will be fully operational during peak hours at the time of completion of Site E -- the first building that will be constructed.

Vehicular Traffic:
Two Trees will commit to regular consultation with CB1 prior to the implementation of our traffic monitoring programs and before initiating each traffic mitigation measure.

Parking:
Two Trees is proposing to reduce the number of parking spaces by about 1/3 to 1,050. This will better align the amount of accessory parking with the expected demand generated by our mix of uses. The suggestion of devoting a portion of the spaces to car-sharing is a good one, and we will work internally to identify the appropriate number of spaces and to select a partner to manage the car-sharing service.

Affordable Housing:
As Two Trees has said repeatedly through the public review process, our commitment to building 660 integrated affordable units will go far beyond the required 20%, but will be contingent upon 421a and some additional off-the-shelf government subsidy. Despite the fact that zoning will only require 20% (+/- 430,000 SF) of affordable housing, our commitment to 660 units will translate into significantly more than 500,000 SF of affordable housing. And unlike the existing zoning or the 2010 MOU with the previous developer, we are willing to make the 660 commitment binding.

Our proposed mix of affordable units would include studios, 1BRs and 2BRs in a ratio that matches our market rate units. The recommendations from CB1 included bedroom mixes for the affordable units that would include larger units that we currently envision. Similarly, the median AMI that they proposed would require a deeper subsidy than our proposed median AMI of 70%. In the event that the existing 421a program remains intact, we can commit to maximizing the inclusionary housing project-wide.

And while the affordable units created under the inclusionary program would be permanently affordable, it is still unclear whether the additional 220 units constructed with the help of other subsidy programs would remain affordable in perpetuity. Two Trees is committed to working with the City as well as local elected officials to adjust the proposed discretionary subsidies and to locate additional resources to meet the recommendations of CB1 and the Borough President's office.

We have also heard a desire to accommodate senior housing needs as part of our affordable housing commitment. The concept of creating a separate structure that would be able to utilize certain state and federal subsidies is a good one, and while our master plan makes it more difficult to accommodate this type of structure, we will look into its feasibility on Site E.

Two Trees is committed to finding innovative methods of reaching or exceeding a goal of 50% occupancy of the affordable units by current residents of CB1 (or residents that were displaced since the 2005 rezoning.) Two Trees will partner with local community organizations to ensure that the affordable housing is utilized by qualified tenants from the surrounding neighborhoods and according to preferences decided upon by local leaders. About a year in advance of a potential move-in date for the first affordable units, the team will launch an innovative, bilingual marketing campaign that will raise awareness among residents of CB1 of the opportunities and the application requirements. A critical component of the marketing effort will be the development of a bilingual project website, and free credit counseling and financial planning classes.

Open Space:

The new plan proposed by Two Trees involves a significant new investment by the developer to build and maintain approximately 5 acres of new parkland, far more than is required by zoning. In addition, the developer will also make a substantial investment in building more than 2 acres of streets and sidewalks. The streets will be designed according to DOT standards so that they can be mapped as public City streets and turned over to the City as soon as possible. From an urban planning perspective, these public streets will make the 5 acre public park look and feel more public, destroying the perception that the park is merely a front lawn for the residents of the new buildings. As such, it is important that the design of these streets is easily identifiable as public, and should include the same monikers and materials as other nearby public streets.

Public School:

In our many conversations with the community around Domino, residents made clear their preference for a District 14 school that does not interfere with local efforts to support local elementary schools. We have already discussed the matter with DOE officials, and Two Trees is committed to coordinating closely with District 14 leadership on building a public school of up to 90,000 SF, based on the demonstrated demand for new seats. We are interested in exploring potential educational themes for the school that draw on existing neighborhood assets, like the arts, media, technology, film production or other ideas set forth by local elected officials.

It is our intention that the roads around the new school will be owned by the City and maintained by DOT, but should those public entities seek to close the streets at certain times to accommodate the school, Two Trees would be supportive.

Child Care:
As noted in the technical memorandum filed with our application, our project's reduction in residential space from the existing zoning will result in less demand for child care seats (2010 impact 23 seats vs. 2013 impact 13 seats). ACS will determine mitigation for this need at the time of impact. Mitigation will be one of the following: space onsite, space offsite or financial remediation.

Retail Space:
Our application reduces the amount of retail permitted at the Domino site from about 130,000 SF to about 80,000 SF. While the previous developer had two-story retail spaces that presumably would have been used to accommodate big-box retail, Two Trees is committing to lease the retail space to independent, neighborhood-oriented operators. As we have done historically in Two Trees properties in Dumbo and elsewhere, we will earmark retail spaces, when appropriate, for local tenants who produce goods made in Brooklyn, as well as spaces that support the visual and dramatic arts.

Commercial Office:
One of the fundamental changes to the plan is that Two Trees is dramatically increasing the amount of commercial office space to about 500,000 SF, contained in both the landmarked Refinery Building and as part of a mixed-use building at Site A. When complete, this will represent the largest, non-subsidized private-sector investment in new commercial office space in Brooklyn in decades. We envision the office space will look, feel and operate much like our 1.5 million SF office portfolio in Dumbo, where for the last decade start-ups, non-profits and other creative businesses have sought space that rents at a discount to similar space in Manhattan and elsewhere.

At the outset, based on its location and other factors, it is very likely that the Domino office space will lease at a discount to our Dumbo portfolio and to existing comparable spaces in Williamsburg. Our business model prescribes that we lease the Domino office space in small unit sizes – 1,000 to 5,000 SF – with short-term leases and no bank credit requirement. Furthermore, Two Trees will commit to an innovative arrangement and partner with local organizations to ensure that this office space is marketed to business owners and entrepreneurs who reside in CB1. Just like the affordable housing, this effort will make sure the benefits of this new office market will be appreciated by qualified local entrepreneurs and small business owners.

Thank you again for your review. We hope that this letter responds to your questions and comments. Please feel free to reach out to us for additional information at any time.

Sincerely,